

B Cleary

4-9-2014

Re: Biodiversity legislation review.

**DECLARATION  
ON NATIVE VEGETATION AND ALL STATUTORY THEFT  
LEGISLATION**

Dear Review Panel, The Minister and Government responsible,

In regard to your so called review of biodiversity legislation:

**The principle of protection of native species and habitat, although not without merit is hardly a basis for unilateral power in the Crown exercisable over private property without consent or agreement.**

**If the community wants national parks on private property they must enter into a willing contract with the owner and pay just terms for what it is that the community requires otherwise the legislation creates an unjust enrichment. Statutory theft of vegetated land or any thing else is totally unacceptable in a free and democratic society, and all offending legislation must be repealed. Or is it that since the introduction of SEPP 46 etc, we no longer live in a free and democratic society? We do not recall a referendum to install a totalitarian State.**

Preservationism is simply inconsistent with dynamic evolutionary theory. At what point in time does the State consider to be the appropriate set point for the biophysical museum now known as NSW? Should it be 1990 or a set time before white settlement or perhaps the State would prefer to recreate Gondwanaland and legislate to change the direction of continental drift, back to join the Australian plate with Antarctica.

The fact is evolution is a dynamic process and the best efforts should be made to conserve iconic species this is why we have a reserve system.

**Our reserve system is not to be considered in this biodiversity review or terms of reference, does this not seem a little inappropriate?**

Is our biophysical reserve system inadequate? And if so who is responsible? Why is it that the State considers that it is necessary for biodiversity legislation to burden private property if we have an adequate reserve system? Is human activity a biological process? Is population growth to be considered?

What is the most significant threatening process for biological conservation? Surely it is the unsustainable dogma of endless economic growth in a finite world. Government is the greatest proponent of economic growth. Our government signed international carbon agreements at the expense of landowners so that vested interests in coal and electricity can continue to profit and pollute without consequence to themselves or State royalties. Does the review address this?

How will this review address the problem of disincentive that arises when landowners are systematically dispossessed and disenfranchised from their land and the management of their land?

Obviously an economic incentive based program trumps disproportionate and punitive compliance enforcement and the resentment and hostility that comes with this draconian approach.

With the strong international policy focus the panel should not be surprised to hear that the right to own property is internationally recognized as a human right. Essential elements of propriety interest under common law include the right to use, the right to enjoy, the right to exclude and alienate.

Our title rights can not be extinguished in a time of peace without consent. The law of the land incorporates hard won and long standing provisions passed down from the Magna Carta and Bill of Rights through to us in our Constitution. Draconian legislation that removes our human rights without consent or agreement is bound to create hostility and rightly so, there are some lines that should never be crossed and this is one of them. Dispossession is not conducive to conservation.

The critical feature of fiduciary relationships is that the fiduciary undertakes or agrees to act for or on behalf of or in the interests of another person in the exercise of a power or discretion which will affect the interests of that other person in a legal or practical sense. The relationship between the parties is therefore one which gives the fiduciary a special opportunity to exercise the power or discretion to the detriment of that other person who is accordingly vulnerable to abuse by the fiduciary of his position.

Underlying such relationships is the scope for one party to exercise a discretion, which is capable of affecting the legal position of the other. One party has a special opportunity to abuse the interests of the other. The discretion will be an incident of the first party's office or position, "The Fiduciary Obligation", (1975) 25 University of Toronto Law Journal 1, at pp 4-8. The undertaking to act on behalf of, and the power detrimentally to affect, another may arise by way of an agreement between the parties, for example in the form of a contract, or from an outside source, **for example a statute** or a trust instrument. The powers and duties may be gratuitous and may be officiously assumed without request. A fiduciary has an obligation not to put himself or herself in a position of conflict of interests. But there are numerous examples of the Crown exercising different powers in different capacities. A fiduciary obligation on the Crown does not limit the legislative power of the Parliament, but legislation will be a breach of that obligation if its effect is adverse to the interests of the titleholders, or if the process it establishes does not take account of those interests. (Mabo HCA 1992).

Overriding statutes that remove or burden what we have already purchased and permanently alienated from the Crown is nothing but theft! Over and above this the State in the name of the Crown has a fiduciary responsibility to protect and maintain the integrity of our land grant title deeds that can never be watered down or detracted from as they were sold as indefeasible contracts. A statute that interferes with this creates the fiduciary responsibility to apply just terms.

It can not be over emphasized that a land grant in fee simple excludes all third party interests including governments and other unregistered individuals such as councils or so called stake holders, **there are no third party stake holders in private property**. We have no legal interest in your private property and you have no legal interest in ours when will you understand this as a simple common law fact. You asked for facts.

The right to own property and the right to inherit are internationally recognized human rights. The right to be immune from arbitrary deprivation of property is a human right. Under the current legislation our inalienable human rights are now considered to be a dispensation of government. The right to own and manage our land is removed without consent. No private property, No rights, No juries, just a totalitarian dictatorship.

If the true objective of this review is to enhance and protect biodiversity then first and foremost the review must recognize who owns the land. Secondly as the review is not considering the

publicly owned reserve system it is only dealing with issues of statutory theft on privately owned property.

Without just terms offered at the front end of any discussion there can be no just outcome. So really what this review is about is how to achieve a so called community aspiration on lawfully alienated land in a manner that does not abuse the rights of the landowner. The policy position remains, the State wants to maintain the theft of carbon credits from landowners without recognizing or compensating for such and as such they want to maintain an unjust enrichment. This is not a good position from which to start a review, especially after politically commitments prior to the election.

The ISSUES PAPER

**The current institutional policy and legislative framework is not delivering efficient outcomes especially for the landowners and biodiversity.**

## CONTEXT

The major threat of climate change is not addressed in the terms of reference or the issues paper in any meaningful way because they refuse to acknowledge that the endless pursuit of economic growth is the root cause of the climate change problem. They also refuse to acknowledge that coal is the major contributor and have surrendered to the vested interests and revenue from this industry.

International conventions etc do not get around the fundamental problem, being the endless pursuit of economic growth at any cost. Secondly international conventions that do not recognize Fee Simple Title only add to further dispossess landowners who are the only people that really matter in issues of statutory theft or conservation on private land.

The only positive way that biodiversity can be further enhanced on private property is by valuing habitat and its conservation in a manner that financially rewards the landowner for conservation and builds a sense of pride in the landowner. The financial incentive must truly represent just terms for the otherwise lost opportunity cost and time that the land owner has provided in conservation.

In some cases landowners have set aside vegetated land for a long period with the intention of utilizing the resources at a later date or as a super scheme. It is fundamentally unfair to introduce legislation that removes the right of these landowners to recover resources that they have invested in.

Should we also have legislation that removes the right of people to access investment accounts in banks.

Biodiversity is in decline because governments simply refuse to reward conservation. It is also in decline because human activity especially urban activity and roads etc, remove large areas of habitat and isolate populations so gene pools spiral downward. Biodiversity tolerant of urbanization will become more abundant and heaven help anything that lives in a State forest or above a coal seam.

The overwhelming majority of landowners wish to maintain biodiversity and the scenic amenity of there land. They do not want outside management and no one in their right mind will develop land better left vegetated because the development costs are extremely high. So simply on a cost of development basis the analysis will deter a landowner from clearing because rewards often do not justify the effort.

What is the correlation between population growth and biodiversity decline?

## THEME 1

National and international obligations:

I can hear some people screaming Agenda 21

The current state of biodiversity

We are currently in the largest rate of mass extinction regardless of legislation.

1. An aspiration of rewarding landowners for conservation is necessary
2. No without just terms and economic incentive
3. Decline marches on but strong and adaptive species persist
4. Yes a one stop shop and recognition of ownership on pp

#### THEME 2

1. This is the issue, if you want positive outcomes you must financially reward positive behaviour.
2. A lease agreement according value and scarcity of habitat, purchase of the valued area. The provision of lime or fertilizers for improved outcomes on land not effected, wages for stuidship
3. If they want to negotiate a willing contract with the owner there should be no problem.
4. Community groups should be self funded and work on public land they should not be funded by ratepayers. Priorities should be determined by biological need for eg, corridors or by scarcity of habitat
5. Monitor indicator species
6. Like for like with no time delays
7. It is about 50/50 legislation is just a hindrance it builds animosity and constricts opportunity
8. As we said above cost and reward are thew major determinants current practice reflects opportunity

#### THEME 3

1. No one really knows what the threshold is for many species before they are on the road extinction. Every species has different environmental parameters and needs. An enriched habitat with strong pathways to extended gene pools is the best approach. This can only be achieved with strong financial incentive on private land.
2. They are not effective on private land with no incentive vegetation tends to be ignored and pioneer species develop thickets of poor vegetation.
3. Preservationism is inconsistent with dynamic evolutionary process. Monitor indicator species

#### THEME 4

1. its an absolute dogs breakfast
2. We definitely need a one stop shop that recognizes who owns the land. It could make recommendations without compulsion etc but just terms and compensation must come first.
3. There is no transparency social and economic considerations along with ownership must come first
4. No we live in a world dominated by the delusion of economic growth. The utility is through economic incentive and recognition of ownership.
5. Fee Simple and common law might be worth considering
6. A significant extent
7. Unique habitat or niche. No they are not appropriately addressed. What is the relevance of the economic growth delusion
8. Like for like only
9. All areas that effect private property without consent or agreement

#### THEME 5

1. No
2. Leave it to stand alone laws. Interesting concept *free living* we want some of that
3. No whaling, seals silly question
4. Licensing is the problem, freedom to breed and propagate would enhance biodiversity
5. Wildlife should be left alone except for restocking etc There is no incentive to manage habitat on private land for conservation and enrichment of wildlife

#### THEME 6

1. If it is worth conserving it is worth paying for.
2. Private property is just that and should remain so
3. Employing landowners
4. It is a catch all policy without just terms
5. Yes
6. Duplication is always unnecessary. Return to Federalism
7. On just terms and agreement only
8. Only with agreement from the landowner.

#### A Grant in Fee Simple Title

Most Australians do not know or understand what they actually own when they purchase a parcel of land. As this knowledge is vital to clearly understand what is being removed from us via statutory theft

The following details are included:



The Australian structure of land ownership is centuries old. The best definition of it can be found in *Blackstone's Commentaries on English Law*, which are still a primary reference in all High Court land cases.

<http://www.yale.edu/lawweb/avalon/blackstone/blacksto.htm>

**Blackstone's definition of a Grant in Fee Simple land ownership (commonly known as Freehold) states we own –**

- **Tenements.** The land itself and any structures already in place on that land.
- **Messuages.** The right to build any structures of any kind on that land.
- **Corporeal Hereditaments.** This consists of substantial and permanent elements of the land – the ground, soil, or earth whatsoever; as arable, meadows, pastures, woods, moors, waters, marshes, furzes, and heath. It legally includes buildings, as they use the land as their foundation. Water cannot be owned, but the land which holds it can. In its legal significance, land has an indefinite extent both upwards and downwards to the centre of the earth.
- **Incorporeal Hereditaments.**

This is a right issuing from the physical element of land, such as rent, incomes from an enterprise on the land. They are a right to have an idea that will become physical on the land, ie to develop a business and produce an income. An incorporeal hereditament is the things we do with our land including waste it.

As an element of our Fee Simple ownership we also have the following responsibilities.

- At common law, landowners are not entitled to use their land in ways detrimental to their neighbours' use of their own land.
- An owner of land may be able to sue for nuisance against someone who does something that adversely affects the landowner's land.
- Landowners, or anyone else entitled to the possession of land, have a legal right to exclude trespassers.

High Court cases in support of our land ownership rights

- [The Commonwealth of Australia -v- The State of New South Wales \[1923\] HCA 23; \(1923\) 32 CLR 200 \[5 June 1923\]](#)
- [Fejo v Northern Territory of Australia \[1998\] HCA 58 \(10 September 1998\)](#)
- [The Wik Peoples vs. the State of Queensland & Ors; The thayorre People v The State of Queensland & Ors \[1996\] HCA 40 \(23 December 1996\)](#)



Torrens Title legislation aims to overcome difficulties of conveyancing and land ownership under general law or old system title and is based on four fundamental principles and protections, it is the Crown's fiduciary duty to uphold these, thus any breach via statutory theft is shown for what it is.

- The “Mirror” principle- the Register reflects accurately and completely all the facts and matters relevant to the title of a parcel of land.
- The “Curtain” principle- a purchaser needs only to search the title on the Register and need not make inquiries regarding interests which are not disclosed on the title.
- [The “Insurance” principle- persons deprived of interests or incurring loss through the operation of the system should be compensated.](#)
- The “Indefeasibility” (undefeatability) principle.

From Australian Business Law / Paul Latimer 1997.

Clearly all the unregistered statutory interests such as the Native Veg Act, the Local Govt Act, LHPA Acts, MLA legislation and all the rest commit trespass and theft from our above mentioned common law rights. We do have rights over and above the Crown as we are the sovereign people under our Constitution and our elected representatives are only there as our servants this is not a totalitarian state and they can not steal from us.

The requirements of the Native Vegetation Act, that attempt to create national parks on private property clearly indicate that the conservation of our biophysical resource base, threatened and endangered species in national parks and the reserve system has failed and the department responsible is incompetent or unable to perform its duty. The State has failed the community expectations that it has an adequate reserve system.

If the reserve system is inadequate as the Native Vegetation Act clearly indicates then the State must lawfully acquire the additional land that is needed but it can only acquire the so called necessary land on just terms. Statutory theft is not an option it never has been in a free and democratic society and never will be.

Abolition of the Native Vegetation Act is the only option.

Yours sincerely,

B Cleary

*P.S*

*It is very interesting to see that PVPs are requiring people to register an interest on their land titles of reserved vegetation etc. On one hand when there is no registered interest on a landowners title the government ignores it and tries to legislate an non existent interest into being without just terms or any agreement with the owner. On the other hand government via the PVP process requires owners to register an interest on their land and have that interest respected in perpetuity and still without just terms or compensation. The hypocrisy of the government simply beggars belief.*