Submission to NSW Government
Biodiversity Legislation Review
Governing
Native Vegetation Management, Threatened species and wild life in NSW.
From a number of rural industry operators and supporters in the Sydney Basin

Submitted by John W Wholohan JP.

1. <u>Representation</u>

1.1.1 This submission is presented by a range of landholders including fruit growers and horticulturalists, retired broad acre farmers and livestock producers, commercial rural retailers,

retired and active agricultural and non-agricultural professionals, semi-rural residential landholders and business people in the Sydney Basin.

1.1.2 We make our submission to the "**Biodiversity Legislation Review Team"** based on the experiences and knowledge of our members and noting the widespread disenchantment with current restraints on rural landholders, relative to "native vegetation" and "endangered species" regulations.

2. Terms of Reference

1.2.1 We note that it states in the Review Terms of Reference, that "this Review aims to establish simpler, streamlined and more effective legislation that will:

1.2.1.1 Facilitate the conservation of biological diversity;

1.2.1.2 Support sustainable development; and

1.2.1.3 Reduce red tape."

1.2.2 **With all due respect, we note there is one much more important aim that is not listed**.

1.2.2.1 That is **to ensure that any cost of any regulation, with which any landholder must comply, is shared across the whole community and not "left only on the shoulders of individual landholders".**

1.2.2.2 It would be even better if rural landholders or farmers, were not constrained by the current raft of regulations, and were allowed to operate their land based enterprises:

1.2.2.2.1 In their best commercial interests; and

1.2.2.2.2 Treated as innocent until proven guilty, with regard to environmental negligence.

1.2.2.2.3 After all, if farmers do not manage their land diligently and sustainably, they suffer more directly than any other member of the public, through loss of income and reduction in the value of their land assets. These are assets paid for in full by farming landholders. The community expects the landholders to be caretakers of that land for future generations, so it must recognize this and use encouraging methods rather than penalizing methods of encouragement.

1.2.2.3 There are so few cases today, of gross negligence affecting the environment, that the current conglomeration of constraints and regulations regarding native vegetation, heritage listings, and endangered species, are at best, a total over kill and affront to the freedom, environmental competence and intelligence of landholders. Very few if any individuals in the community are so heavily regulated and constrained, over the use of their land, as rural landowner/primary producers.

1.2.2.4 Very few if any virgin tracts of land for farming are being developed today and the current laws were more related to such activities, and are now outdated for care of developed, productive land.

3. History

1.3.1 In order to address the issue of restraining regulations on landholders, in relation to native vegetation management, threatened species and wild life in NSW, history is most often used against landholders as a means of justifying the regulations and restraints and effective cost burdens in place today.

1.3.2 In other words, rural business, primary producers and landholders, have been wrongly judged for about a century, based on subjective assessments of them, "singlehandedly destroying the environment in pursuit of mercenary objectives, with no care for the sustainability of that environment".

1.3.3 As a result of these subjective judgments, laws and restraining regulations have been imposed upon primary producers in ever increasing dimensions and directions; and by the admission of the OEH

(Office of Environment & Heritage) own legislation terms of review, "**the current laws do not deliver balanced outcomes across the NSW Government's environmental, social and economic objectives."** The Terms of Review also state current laws **"create inconsistent regulatory standards across different sectors and fail to deliver the right incentives for industry and landholders."**

1.3.3.1 On this basis, we are absolutely disgusted, that ongoing industry complaints along exactly those lines, have not only been ignored, but vigorously and zealously criticized. We are also fearful that the current review will go down the same path, and nothing will change.

1.3.4 In the beginning, it was the **Governments** of the day that **demanded people go out beyond the cities and clear land and develop it for production of plant and animal food and fibre.**

1.3.5 The Government in many cases actually gave incentives to landholders encouraging them to clear and fence and water properties, without limitation, so as to expand the area of food production.

1.3.6 These people were given very little if any environmental sustainability advice or training, but were expected to:

1.3.6.1 Work it out for themselves; and

1.3.6.2 Provide for the urban population, very much at their own expense, and risk.

1.3.7 Farmers were left very much to their own devices to learn how to best prepare the soil, contend with wild fauna, vermin and insect pests, while battling the often harsh elements of our climate and weather, during our first 100 years of white settlement.

1.3.8 It was during this struggle, that our experience started to teach us a little about the impacts of clearing virgin land and developing it into productive food and fibre enterprises. However, it was another 50 years at least before clear evidence of damage to the countryside and environment had occurred, (in certain areas more than others). We began to appreciate how Australia was made up of a range of differing soil types, subterranean aquifers' and flora and fauna. From that point on, experience and research helped us to much more sustainably micro manage the countryside and retain areas of native vegetation.

1.3.9 We now have a much **better mapping of the fragility of certain areas of our countryside**. We also have **technology which records soil fertility data for every inch of a property** and adjusts its fertilization and treatment automatically, during coverage in cultivation and harvesting operations. With this, and all of our other knowledge and research findings, **the present draconian regulations** are neither necessary nor beneficial. As the words in this review say**,** they ***do not provide the right signals***.

1.3.10 We now know that there are many pasture improvement and farming options that can be just as beneficial, if not better, for our soils and environment, than some of the native vegetation.

1.3.11 Our farming practices have changed in the last 50 years to such an extent that we are now much better at maintaining our farming land and the environment.

1.3.12 One major change in broad acre farming has been the adoption of **minimum tillage practices**. Instead of the heavy and multiple cultivation practices brought over by our Anglo Saxon ancestors, we now follow **a minimum soil disturbance policy which encourages constant vegetative coverage of our soils, better moisture retention in the profile, and retention of good soil structure. This not only militates against erosion, but also encourages beneficial micro biological life in our soil profiles and improves landscapes way beyond their native state.**

1.3.13 The theory that is promoted in current legislation for **locking away tracts of native vegetation forever within farming environs, may, in many instances be deleterious, locally and to surrounding environs.**

1.3.13.1 For example, land that is actively managed and farmed or grazed can be kept free of pest plants and animals whereas locked away tracts, can harbor many pests and diseases which can flourish out of hand, and infest surrounding land and cause management and control problems. Lantana and wild dogs are two major pest examples that come to mind.

1.3.13.2 **If Governments want to protect tracts of land on farms from any human activity, let them buy back that land at commercial rates** and/or replace it where appropriate with other land parcels. They then must manage that land, with general revenue, in such a way as to ensure it does not become a haven for the breeding and spread of harmful plants animals and vermin, which affects surrounding properties and the environment at large.

1.3.14 Not only have **farming operations been disrupted by native plants**, they have also been **damaged by native and feral domestic animals, birds and insects.**

1.3.14.1 Perhaps the worst of these have been **Kangaroos, Wallabies, Emus, dingoes and feral dogs, Rabbits, Foxes, Flying Foxes/Fruit Bats, Wild Pigs, Wild Goats, Parrots, Galahs, Cockatoos, Crows** and other birds etc.

1.3.14.2 Laws and regulations are such, that virtually no form of culling or control of pests to farming is allowed without unreasonable, costly "red tape procedures". **The full burden of such regulations is placed on the landholder even though it is the wider community which demands the procedures** for its benefit, and shares none of the cost burden or pays any penalty or compensation in response.

1.3.14.3 Many populations of these pests have grown and located themselves on land improved and developed for primary production. Had it not been for their access to cereal, pasture, vegetable, fruit and other crops, their numbers could not have increased or been sustained. **Why therefore are landholders constrained from culling these pests to their commercial operations?**

4. Native Vegetation

1.4.1 Policy Aims

1.4.1.1 We believe that the geographical boundaries of farming in Australia have been well defined over 200 years of experience and that Native Vegetation laws and regulations are no longer needed to dictate rules to landholders on currently occupied land. This is largely because; current regulations are outdated relative to the ongoing management of developed, productive land and relate more to the development of virgin land.

1.4.1.2 Landholders should no longer be treated as guilty and required to prove otherwise in relation to native vegetation and environmental "management regulation breaches".

1.4.1.3 We would not be opposed to Governmental Guidelines being set out for all landholders to retain as a knowledge bank and guide, to all landholders present and future, as to best land care and management practices for sustainability. Such guidelines should not be released without consultation with and sign off by landholder representatives.

1.4.1.4 We would also not be opposed to Government mapping out the State and nominating parcels of native vegetation covered land, to be set aside for National Parks, so long as any land so designated, which is currently freehold, must be purchased by the Crown in a negotiated settlement with the owner at market value or rated value whichever is the greater. There should also be compensation paid over and above that amount, sufficient to enable purchase of equivalent, replacement land.

1.4.1.5 We believe in these recommendations, because land holders engaging in primary production need their land in good shape, to aid in their commercial viability. To mistreat their own land is to

destroy their asset and income potential and only madness or gross negligence could possibly cause them to do so. Such cases are likely to be very rare and could be dealt with under similar provisions to the ones currently applying to animal cruelty, where there is obvious evidence of gross mistreatment or negligence**. Such a policy would also be much less expensive and much less onerous on Governments to manage.**

1.4.2 **Policy Imperative**

1.4.2.1 **In the event that Governments disregard such policy requests and continue to impose land environmental and heritage regulations on landholders, to satisfy community environmental and social demands, in opposition to landholders, there must be Statutory provisions set out, to compensate landholders, where adhering to these regulations, causes any financial loss or increases operational costs and effort.**

1.4.2.2 **It is not fair, to lay the cost and operational burdens of community demands on commercial landholders exclusively. Landholders already have to carry the risks of crop failures due to adverse weather, vermin, pests, and other acts of nature. Requiring them to carry the burdens of communities outside of their commercial operations, to meet external demands is not only inequitable, but has driven and will continue to drive farming out of existence in Australia.**

1.4.2.3 We believe incentives for the style of environmental care demanded of landholders by Government and the community will always be more successful than penalties and harsh regulations.

1.4.2.4 The history of landholders taking on the Government over disputed breaches of the various land and environment laws is a sad tale for landholders. The few landholders who have been game or crazy enough to take the Government to Court have been soundly beaten and/or left bankrupt. As a result, landholders are coerced to carry the full cost of regulations which by the admission of the Terms of Reference, are badly flawed.

1.4.3 Land clearing native vegetation

1.4.3.1 Current regulations make it very difficult if not impossible for a landholder to do any clearing at all on his commercial property.

1.4.3.2 If a landholder wants to gain permission to take down a tree or regrowth of previously cleared native vegetation, or any clump of native trees, they are required to prepare a costly **PVP (property vegetation plan)**, usually requiring outside professional consultants. There is no guarantee that plan will be accepted, as it must meet many regulatory guidelines. These guidelines incorporate many issues, including water flows, slopes, soil types, protected species of flora and fauna, heritage listings and so on.

1.4.3.3 Many of the guidelines relate to heritage and environmental issues, introduced since the landholder purchased their land and yet are capable of reducing the value of the land below its value at time of purchase.

1.4.3.4 There is no guarantee that by adhering to the guidelines the environment will be any better off than it would have been with the changes the landholder plans to make. However under present regulations, the landholder has no negotiation rights or ability if his plan offends the rules and regulations.

1.4.3.4.1 For example – a landholder wants to clear some native vegetation to replace it with a pasture like Setaria. Setaria is known to provide constant ground coverage and deep roots capable of properly aerating soil profiles and encouraging soil micro fauna and out competing deleterious plants. It is arguably able to capture and sequester carbon in the soil to the same or greater level than native trees. There are other pastures which can provide very good soil sustainability like

clovers and other grasses and crops. **While they may not capture as much soil carbon as an offset to the carbon being used up elsewhere in the country, it should not be the sole responsibility of the landholder to provide such a benefit for those in urban areas who fail to meet their own needs in that regard.** There is no guarantee such a PVP would gain approval because the Regulations usually have a blank opposition to clearing old growth native vegetation. It seems the authorities would rather leave it there as a home for white ants!

1.4.3.5 Planning new fencing or construction of dams also falls under the regulations for land clearing. This is despite the fact that both can be done in such a way that they improve the sustainability and productivity of a property. However if their construction confronts native vegetation, endangered species, or heritage listings, they are generally opposed. So often this opposition is based on the desired outcomes of environmental issues outside of the particular property. Such issues are of no benefit to the landholder, but are deemed to be of benefit to the wider community. So make "the wider community" compensate the landholder, to the extent of their loss and inconvenience.

1.4.4 **Rights to uninterrupted land use - From Miners.**

1.4.4.1 It is noted that landholders have virtually no right to prevent miners venturing onto their land in search for gas and minerals. As A result, any differences in miner's environmental obligations impact inequitably on other land owners.

1.4.4.2 Mining can and does cause significant impacts to vegetation, threatened species and wild life so it is important that all future modelling of mine impacts be accompanied with an uncertainty analysis so that the public and decision makers can see the range of possible impacts that a mine may cause. The extent to which miners are treated less harshly than other land owners needs to be taken into account in reducing regulatory restraints on non-mining land holders, for the sake of fairness and equity.

1.4.4.3 Farmers understand a risk based approach to decision making as they do it for their own businesses on an ongoing basis. What they won't accept is a government asleep at the wheel when it comes to monitoring mining impacts at a local and catchment level and not preventing impacts in excess of agreed levels. Farmers should not be the ones made to suffer from a failed monitoring and compliance policy in future years.

1.4.4.4 The undersigned are aware of the government's efforts to keep mining off Strategic Agricultural Land (SAL) and the policy settings to achieve this. Whilst this highly productive land is obviously very important it only accounts for 10% of the States land area.

1.4.4.5 The remaining 90% of land is subject to less rigorous scrutiny before mining approvals are considered and often granted. For the owners of this land it is just as important that the impacts caused by mining are accurately determined and appropriate compensation made to affected parties. It is also important to apply no greater restraint on other land owners than miners.

1.4.4.6 The success or otherwise of the Strategic Regional Land Use Policy is still to be determined. If all it does is increase the number of conditions placed on a mining approval then it will be judged a failure by NSW landowners.

1.4.5 **Rights to uninterrupted land use – From Pests**

1.4.5.1 There are a number of unwanted pests that have unfettered access to properties and generally inhabit and breed up on land outside the farm, (often in national parks or other crown land), but invade the farm at will and use the farm as a source of feed.

1.4.5.2 These pests include native birds and animals but also introduced species, which cause destruction and havoc to crops and farm animals, and commercial loss to landholders.

1.4.5.3 There are constraining regulations affecting the landholders' rights to cull or control these pests and stop them from causing damage to crops and farmed animals.

1.4.5.4 It is clear that, were it not for the environmental improvements made by landholders, such pest populations would be smaller, based on there being less food for them.

1.4.5.5 It therefore stands to reason that controlling or culling such pests on developed properties, would merely force them to fall back to the natural habitats provided by the Crown, outside of the developed properties. To oppose such a view would clearly suggest that the Crown has an unwritten requirement for landholders to propagate and care for native and feral animals, birds and pests.

1.4.6 **Semi-Rural Residential Landowners**

1.4.6.1 Approximately 4 years ago, certain Local Government Councils (such as the Hills Shire Council), introduced extremely restrictive biodiversity regulations ignoring protests by land owners with acreage. The residents were again ignored when the Hills Shire sought and gained State Government ratification of their unreasonably restrictive regulations.

1.4.6.2 Repeated attempts at obtaining a countervailing rate reduction for land forcibly removed from landholder's access and use, via the unnecessarily harsh restrictions, were rejected out of hand.

1.4.6.3 As a result many landholders have lost all use of land, (including recreational use), because the land is required to be left untouched in its wild or native state.

1.4.6.4 To add insult to injury, landholders have been subjected to excessive scrutiny and surveillance, and a "dob in a neighbor culture" has been promoted, along with detailed aerial surveillance and photography activity of a most intrusive nature.

1.4.6.5 Arising out of this surveillance, Draconian and heinous fines are levied against landholders with little concern for fairness and justice.

1.4.6.6 Even where paddock regrowth has occurred, the landholder is forbidden from cleaning up the regrowth or even accidentally damaging it.

1.4.6.7 If persons other than the owner's damage protected growth, the landholder is held responsible and is fined.

1.4.6.8 So not only has the Council reduced the value of land retrospectively, via these Draconian measures, it has made them liable for fines regardless of who caused the damage or how it was caused.

1.4.6.9 Fines of up to $23,000 are known to have been dished out and owners who have challenged the fines have finished up $70,000 out of pocket after Court and personal costs were taken into account.

1.4.6.10 These draconian regulations have not been democratically imposed.

1.4.6.11 They are not necessarily even resulting in better environmental outcomes.

1.4.6.12 They take away the right of owners to improve the environment by any methods, other than total avoidance of any change to existing wild or native vegetation.

1.4.6.13 This is despite the inequity of treatment of acreage land owners versus those living intensively on small building blocks in inner metropolitan areas, where land is clear felled and covered with "bricks and mortar", having little or no regard for native vegetation.

5. <u>Conclusions</u>

1.5.1 Present laws and regulations are very much out of date and inappropriate for farming and grazing land which has been developed and improved.

1.5.2 Blanket opposition to clearing of native vegetation ignores opportunities to replace that vegetation with improved vegetation which has the capacity to make land more sustainable, while also making it more productive.

1.5.3 Forbidding or minimizing a landholders rights to cull and control native animals and pests on their land, leaves them with no remedy to reduce losses in the production of crops and animals, which are attacking their produce, and can also result in infections and diseases getting out of control. (E.G – Hendra virus and Fruit Bats).

1.5.4 Imposing regulations and penalties on landholders, which take away their ability to make improvements in the productivity or recreational use, by changing the vegetation, is akin to retrospective devaluation of the land asset and its productive capacity. Such a principle it usually forbidden at law, across the board. It leads to loss of income and value of an asset due to Government intervention. This is totally unfair and inequitable.

1.5.5 In most cases, under present laws and regulations, it is presumed that landholders cannot be trusted to properly manage or care for their own land. It is even worse, when the laws have been constructed in such a way as to impose on landholders, a set of rules, used by the community at large, to hold landholders accountable for protection of environs well outside their boundaries.

1.5.6 If landholders are to be expected to carry the burden of maintaining environments for flora and fauna, both on their private land and outside it, for the general community, then a whole new set of rules are needed. For example, if the community wants to retain certain flora or fauna populations, and it requires landholders to help in that regard, at the expense of commercial activities on their land, the Community, (Government), needs a raft of commercial compensatory provisions in place first, to make sure the whole community pays the costs of such a policy and that individual landholders are compensated. Until compensation principles are established and implemented, landholders should be released from all current native vegetation, endangered species, and heritage regulations.