Biodiversity Legislation Review
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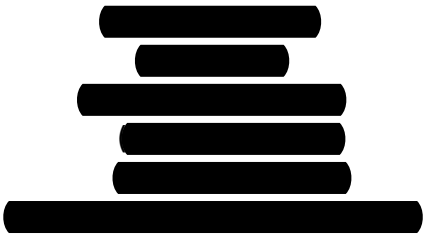

15 August 2014

Submission to the Biodiversity Legislation Review

I thank the *'Biodiversity Legislation Review committee'* for receiving my submission made on behalf of my family's land interests and specifically, this submission only goes to the committee's review of the *'Native Vegetation Act 2003'.*

- **Preamble**

My name is Robert Wass and I am a Farmer/Grazier and landowner working and residing in the Central West of New South Wales some 570 kilometres from Macquarie Street. I, along with my family, equitably own and manage six (6) Agricultural and Primary Production properties located principally in the Warren Local Government Area (LGA) and concurrently one (1) property in the Coonamble LGA and one (1) property in the Bourke LGA.

Under our group of Companies internally known as the 'Warrie Group' our Agricultural and Primary Production enterprises consists of Merino Wool production, including a Merino Stud and derivative commercial Merino flock, and broad-acre cereal, oil-seed and pulse crop production and includes supplementary fodder production for our livestock.

Specifically our land titles and deeds are of two (2) distinct tenures:

1) The Bourke LGA property has a land tenure of *'Western Lands Lease'* and subject to the terms and conditions as established pursuant to the *Western Lands Act 1901 (NSW).* This tenure has the paramount ownership vested in the Crown or State.

2) The Warren and Coonamble LGA properties all have land tenures of *Freehold* absolute [1] (right title and interests – fee simple) sold free and clear of Crown and State Interests and only subject to *Qualifications (reservations),* [2] *Covenants* [3] and *Easements* [4] as properly *Conveyed* [5] and *Registered* [6] confirming the complete alienation of this tenure from the Crown or State. This tenure has a private inheritable paramount beneficial ownership,

[1] Section 169 – Crowns Lands Act 1989 (NSW)
[2] Section 171 – Crowns Lands Act 1989 (NSW)
[3] Sections 77A & 77B – Crowns Lands Act 1989 (NSW)
[4] Section 52 – Crown Lands Act 1989 (NSW)
[5] Sections 52A & 4 – Conveyancing Act 1919 (NSW)
[6] Section 13A – Real Property Act 1900 (NSW)

although the State, other than the Crown, may also take *freehold title* for its own beneficial ownership.

My submission, for and on behalf of my family's land interests (this submission) **only embraces our private land that is owned in *freehold title* absolute and no other tenure is referenced.**

We do not consent to any individual or organisation to speak on our behalf, to, or for any of our land interests, or to in any way make submissions or come to any agreement or obligation with any individual, organisation, authority or Government with respect to any of our land interests in relation to any review of the *Native Vegetation Act 2003* or to any of our property *Restricted* or *Proscribed* by the *Native Vegetation Act* or the *Regulation.*

- **(Defining our freehold Land) We submit to the Biodiversity Legislation Review Committee for consideration that**:

1) There are no so-called *Stake-holders* in, or over our land, other than those with a registered *Propriety Interest* and any registered *Qualifications* held as *Reservations*.

2) There are no registered *Covenants* other than an irrelevant covenant held over a small portion of land pursuant to *section 77B of the Crowns Lands Act 1989 (NSW)* relating to subdivisions or separate dealings.

3) All native and non-native vegetation found on our land is *"Property"* [7] which is classified as a *Corporeal Hereditament* [8] that is linked and adopted by, and in, *Statutory law.*

4) All native and non-native vegetation found on our land is *"Property"* that has been divested (sold) by the State (or Crown), with the State (or Crown) holding no further *Interest* in or over, and is now exclusively and privately vested *"Property"* of my family registered and cited at *Statute Law* [9] as a *Corporeal Hereditament.*

5) All native and non-native vegetation found on our land has a *Profit a Prendre* (right of taking) exclusively and privately vested in and of my family.

6) As a matter of fact, and of equity, all native and non-native vegetation found on our land is **not** a *Natural Resource* of (or belonging to) the State, a Body Politic or any Public Policy Advocacy Organisation.

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[7] Section 5 – Bankruptcy Act 1966 (C'wth) – (def) "Property"
Section 21 – Interpretation Act 1987 (NSW) – (def) "Land"
Section 7 – Conveyancing Act 1919 (NSW) – (def) "Land"
Section 3 – Real Property Act 1900 (NSW) – (def) "Land"

[8] http://ebooks.adelaide.edu.au/b/blackstone/william/comment/book2.2.html

[9] Real property Act 1900 (NSW)
Conveyancing Act 1919 (NSW)
Crown lands Act 1989 (NSW)

7) As a matter of fact, and of equity, all native and non-native vegetation found on our land is a *Renewable Natural Resource* exclusively and privately vested in and of my family, for our enjoyment or otherwise, to the exclusion of all others.

8) As a matter of fact and of equity, the slippery slope in defining *Routine Agriculture Management Activities* and by default assigning an otherwise unheard of public *profit à prendre* and or any of its consequences affecting any or all native and non-native vegetation found on our land. Through the benefit of State (or Crown) divestment to private freehold, our freehold *Agriculture and Primary Production* land is **incapable of the consequences of this** *Definition* that is either expressed or implied, by any Government, Government Agency, Body Politic, or any Public Policy Advocacy Organisation in any law of the State or the Commonwealth **other than and until such time as** a law of the State or the Commonwealth creates a central *"Politburo"* [10] styled *title* that *Prescribes* [11] the methodology of *Agriculture and Primary Production*, the maximum level of ambition and the desired level enthusiasm for *Routine Agriculture Management Activities* as interpreted and enforced by a central *"Bureaucracy".*

9) As a matter of fact, and of law all native and non-native vegetation and other property including the land itself (real property) with a vested private ownership of my family is subject to normal administrative decisions of Government which invoke *Compulsory Acquisition* (eminent domain), agreements invoking *Covenants* (positive and negative), invoking *leasing* agreements, and the *Police Power* (Crimes Act) without essentially and substantially derogating the established *Laws of Property*.

I submit that the *Native Vegetation Act 2003* should be *Repealed.*

- **Case for the *Repeal* of the *Native Vegetation Act 2003.***

Grounds for *Repeal:*

1) Given that all vegetation on freehold land forms part of the land and is property of the owner of the land; that by omission, that the *Native vegetation Act 2003* does not have a *Definition* for *"Land".*

2) Given that all vegetation on freehold land forms part of the land and is property of the owner of the land; that by omission, that the *Native Vegetation Act 2003* does not have a *Definition* for *"Property".*

3) Given that all vegetation on freehold land forms part of the land and is property of the owner of the land; that by omission, that the *Native Vegetation Act 2003* are

[10] http://www.britannica.com/EBchecked/topic/467548/Politburo

[11] http://legal-dictionary.thefreedictionary.com/prescription

inconsistent specifically but not limited with *section 34, s36, s37, s38 and s77A* of the *Crowns lands Act 1989 (NSW)*.

4) Given that all vegetation on freehold land forms part of the land and is property of the owner of the land; that by omission, that the *Native Vegetation Act 2003* are **inconsistent** with ***Part 1,*** *division 1* (the whole of), *division 2* (the whole of), *division 3* (the whole of), *division 4* (the whole of) and *division 5* (the whole of) – ***Part 3,*** *divisions 1 and 3* (the whole of) – ***Part 4,*** *divisions 1(A) and division 1* (the whole of) – ***Part 6,*** *divisions 1(A), 1, 2, 3, 4 and 5* (the whole of) and ***Part 23,*** *division 1* (the whole of) of the *Conveyancing Act 1919 (NSW).*

5) Given that all vegetation on freehold land forms part of the land and is property of the owner of the land; that by omission, that the *Native Vegetation Act 2003* are **inconsistent** with ***Part 4A*** (the whole of), ***Part 6*** (the whole of), ***Part 8*** (the whole of) and ***Part 8A*** (the whole of) of the *Real Property Act 1900 (NSW).*
(Note – **section 42 (3)** of the *Real Property Act* specifically states: *"This section* ***prevails over any inconsistent provision of any other Act or law*** *unless the inconsistent provision expressly provides that it is to have effect despite anything contained in this section."*

6) Given that all vegetation on freehold land forms part of the land and is property of the owner of the land; that by omission, that the *Native Vegetation Act 2003* are **inconsistent** with *section 21 – "Meaning of commonly used words and expressions"- "land" includes messuages, tenements and hereditaments, corporeal and incorporeal, of any tenure or description, and whatever may be the estate or interest therein. –* of the *Interpretation Act 1987 (NSW).*

7) Given that all vegetation on freehold land forms part of the land and is property of the owner of the land; that by omission, that the *Native Vegetation Act 2003* are **inconsistent** with *section 5 – "Definitions" – " - "Goods" include* ***all chattels personal*** *other than things in action and money.* ***The term includes emblements and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.****"* – of the *Sale of Goods Act 1923 (NSW).*

8) Given that all vegetation on freehold land forms part of the land and is property of the owner of the land; that by omission, that the *Native Vegetation Act 2003* are **inconsistent** with *section 5 – "Interpretation" – "property" means real or personal property of every description, whether situate in Australia or elsewhere, and includes any estate, interest or profit, whether present or future, vested or contingent, arising out of or incident to any such real or personal property."* – of the *Bankruptcy Act 1966 (C'wth).*

9) Given that all vegetation on freehold land forms part of the land and is property of the owner of the land; that by omission, that the *Native Vegetation Act 2003* are **inconsistent** with the essential and fundamental principles contained in the provisions of the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW).*

10) Given that all vegetation on freehold land forms part of the land and is property of the owner of the land; that by obtuse and unprincipled legislative construction including but not limited to reversing the onus of proof, that the *Native Vegetation Act 2003* fundamentally offend the principles of *Natural Justice* and the *Courts of Common Law.*

11) Given that all vegetation on freehold land forms part of the land and is property of the owner of the land; that the *Objects* of the *Native Vegetation Act 2003* can be and has always had the ability to be assembled by employing existing land and property laws and Government powers through:

a) Compulsory Acquisition (for high and medium conservation value areas). This gives to the public the complete liability of the purchased benefit in the full ownership of the land and things (vegetation) that form the land.

b) Owner Initiated Acquisition (for high and medium conservation value areas). This gives to the public the complete liability of the purchased benefit in the full ownership of the land and things (vegetation) that form the land.

c) Registered Covenants (public/private partnership agreements). This spreads the complete liability of the agreed benefit between an authorising Government agency and *Agriculture and Primary Production* private landowners.

d) Registered Lease Agreements. This provides for an authorising Government agency, on behalf of the public, to enter into registered land-use agreements with *Agriculture and Primary Production* private landowners where the Government has full rights to the liability of the agreed land-use benefit on the leased land and the private landowner retains the full paramount vested ownership of the land with little or no responsibility over the leased area.

e) Purchase land at public auction and land resale with attached covenants at public auction. This provides for the Government to purchase private land at auction, insert registered covenants onto the land title and deeds as the registered owner, then resell the land at public auction thus realising for the public of NSW the complete liability of the generated benefit in open market.

- **Cost benefit assessment**

(Note – For the purposes of cost benefit assessment I draw on the flawed '***cost benefit assessment'*** provided to the ***'Review Committee'*** of the ***Native Vegetation Regulation 2005* of 2012** as cited in the Government's commissioned ***'Regulatory Impact Statement (RIS)'* of 2012)**

The *Regulatory Impact Statement* has at page vii provided the *Review* with a *'Cost benefit assessment"* stated thus:

> *"The relative costs and benefits of each option have been assessed against the Base Case of no regulation (Option 1). The costs and benefits of the options depend on their relative ability to achieve the objects of the Act.*
>
> *The cost benefit assessment indicates that the expected benefits of the proposed Native Vegetation Regulation 2012 will outweigh the anticipated costs, and that the Proposed Regulation (Option 2) will provide the greatest net benefit compared to other available alternatives. The Net Present Value (NPV) of Option 2 is $19.96 million compared to the Base Case."*

It is more than obvious that this assessment statement by the authors has been construed to the gain of the *Regulator* (Government) based on *"……..the largest net benefit to society….."* [12] and not to the losses incurred by the *Regulated;* therefore from the point of compliance with the *Regulation* and *the Act* and without a full and unrestricted impact on *Agricultural and primary Production* landowners, together with the substantive loss of fundamental land and property law it is apparent that the statements by the authors (above) are astonishingly absurd.

If the *Regulatory Impact Statement* had undertaken an unrestricted *'cost benefit assessment'* right through the *Regulatory* impacts of the whole device or scheme including but not limited to, regulatory compliance, loss of production and income, loss of efficiency, loss of natural justice, loss of equity, loss of property and the loss of fundamental land and property law then the *Regulator* (Government) acting for the*"……..the largest net benefit to society….."* would need a substantially bigger cheque book than the one currently not being used.

Additionally, the *Regulatory Impact Statement* fails to countenance and calculate the notion for *'Option 1 – base case for no regulation'* that the *Objects* of *the Act* including*"……..the largest net benefit to society….."* that can be sustained utilising prevailing land and property laws that would leave unaffected the underlying principles of these land and property laws, thus fulfilling societal environmental protection concerns and, fulfilling and protecting the equitable positions of affected *Agriculture and Primary Production* private landowners without the need for *the Act* or *Regulation* and the suffocating bureaucratic administration.

- **The *Native Vegetation Act 2003* is incompatible with the Laws of *'Nuisance'*.** [13]

In my opinion, it must be understood and conveyed by whatever means possible to Macquarie Street that, *Agriculture and Primary Production* private landowners are not, and never have been, National Park rangers in the employ of the Government of the day, that

[12] Page 35 of the Regulatory Impact Statement
[13] http://www.lawhandbook.sa.gov.au/ch30s01s01.php

they receive no benefit, financial or otherwise from the Government for being obligated to be the sole beneficiary of a liability for a compelled public benefit.

By doing so, the Government has disregarded the laws of *'Nuisance'* by providing that residents (the public) of the State as represented by the *Native Vegetation Regulator* and, who are directly and indirectly unaffected by activities on private *Agriculture and Primary Production* land, become the claimant for damages in legal proceedings against private freehold landowners.

Given that all vegetation, native or otherwise, found on *Agriculture and Primary Production* private freehold land is a *'Corporeal Hereditament'* (property) belonging to the private freehold landowner as a *Renewable Resource*, unless otherwise qualified (reserved), then any destruction of *Native Vegetation* that affects the rights of others can only ever amount to a "*Private Nuisance"* [14] and **not** a *"Public Nuisance"* [15] therefore, the *Public,* as represented by the *Regulator,* have no right of claim.

- **Conclusion.**

Because *Agriculture and Primary Production* private *freehold titles and deeds* are *Inheritable Estates* there is a deep natural, if not commercial, interest for the landowners of these titles to manage their inheritable land in a productive and protective manner so that the next generation can continue to produce food and fibre in a viable and maybe profitable manner.

At face value, by seemly overreaching Government interference in prohibiting and/or restricting the primary order of land management, specifically on private freehold *Agriculture and Primary Production* land, will lead to the overuse and deterioration of land that is unaffected by the *Native Vegetation Laws* simply because the rotational spelling and regeneration of specifically cropping in-production land requires to be cared for by incorporating or rotating in previously set-aside arable land and in which case has become a bureaucratic minefield, if not battlefield. In most instances that I am aware of, the timber to be cleared is simply in the wrong place within the field and can be replanted, if the owner thinks necessary, on another "out of the way" area in the same field and with the available machinery and technology replanted reasonably quickly.

Another issue seemly lacking in any common-sense is in *Agriculture and Primary Production* private *freehold* land that has already existing environmental *land-use 'Covenants'* placed over them, either on *'Conversion'* to freehold title or by mutual *'Consent'* and agreement. On the one hand the Government has a '*Qualified*' interest in the *Covenanted* area and has **excluded itself from any further interest in any remaining area** yet, the total area including the *Covenanted* area is subject to the Government *Interest* garnered through the *Native Vegetation Act and Regulations.*

[14] http://www.lawhandbook.org.au/handbook/ch10s02s02.php#

[15] http://www.lawhandbook.org.au/handbook/ch10s02s02.php#

These issues on there own will, in the medium to long term, completely undermine the *'Objects'* of *the Act,* naively because of a lack of common-sense in the prescriptive legislative framework.

There is no defined nexus concurrently providing a legislative framework between *the Native Vegetation Act 2003* and the *Crown Lands Act,* the *Conveyancing Act* and the *Real Property Act.* Given this lack of a clearly defined nexus and the fact that the three (3) *Land and Property Acts* (CLA, CA and RPA) can and do provide for and absorb the *'Objects'* of the *Native Vegetation Act* including *Regulation 2012* **without antagonising** the established laws of land and property, and therefore the *Courts of Common Law.* I, on behalf of my family, can see **no compelling reason** why the *Native Vegetation Act 2003* should **not** be *'Repealed'.*

We therefore strongly support the full **repeal** of the *Native Vegetation Act 2003* **however,** given our previous submission to the *'Review of the 2005 Regulation'* and consistent with many other farmers and landowners submissions to the *'Regulation'* review, we are absolutely confident that our submission (this submission) will fall on *'Tin-ears'* and therefore the making of this submission is and has been a total and complete waste of our (my) time.

I, on behalf of my family, thank the *Biodiversity Legislation Review Committee* for its time and consideration of this submission.

Yours faithfully,

[redacted]