Submission to the
Senate Finance and Public Administration Committee's
Inquiry into native vegetation laws, greenhouse gas abatement and climate change measures.

From Ian Mott, forested landowner.

I make this submission as President of the Regrowth Foresters Association and member of the Qld DERM, SLATS Steering Committee, a past National Councillor (SEQ) of Australian Forest Growers, past Chair of the SEQ Regional Forestry Committee, past member of the SEQ Regional Vegetation Management Committee and past member of the AGO Greenhouse Inventory Consultative Panel for Land Use Change and Forestry. I own a third generation native regrowth forest that has been re-established on land that was previously compulsorily cleared as a condition of the grant of title.

Essential Fact:

The single most important, and least understood, aspect of carbon sequestration and storage in vegetation is the fact that the cumulative carbon storage capacity of a forest that is continually harvested and regenerated can, in just one century, be 3 to 6 times greater than the carbon volume that is supposedly 'protected' in an unharvested forest. After a standard 50% partial harvest of a quality forest, the remaining trees have often been observed to replace all of the harvested carbon in as little as 15 years. And whenever the harvested wood is converted to stable stored form, as houses, furniture, books, or fence posts, there is minimal carbon emission for many decades. Even 60 year old newsprint has been found in landfills in near perfect condition. Wood and forest waste that is converted to charcoal in cool hazard reduction burns can also remain in the soil for up to 1000 years.

Furthermore, the carbon in the entire stump and root systems of trees that have regrown as 'coppice' stems remains completely intact for as long as the harvest/regrowth cycle is maintained. Indeed, according to H.L. Edlin, coppice stumps dating back over a 2000 year harvest/regrowth cycle are still alive and well in the UK today. A large portion of woodland clearing in Australia is akin to coppice management. The above ground wood is cleared while the root mass remains in situ where it continually reshoots for subsequent re-clearing some years later when the canopy begins again to impair pasture growth. This sort of system is capable of very significant carbon accumulation over the long term, especially if it is combined with off-site storage of wood products or onsite storage as charcoal.

So the notion that vegetation must be left intact to maximise a forests contribution to carbon accounting is a gross and highly simplistic misrepresentation of fact. Whenever removed wood carbon is prevented from being emitted for longer than it takes for the land and remaining forest to replace it, the original removal constitutes a cumulative carbon positive outcome. The misrepresentation to the contrary has been introduced by the now thoroughly discredited IPCC which has deemed that all the carbon in a tree has been emitted on the day the tree is cut. And it is through attempts to be seen to comply with IPCC rules that governments in Australia have knowingly participated in an improper exercise of power. The fact that the carbon in my house, sheds, fence posts, and in 80 year old tree stumps and standing stags, is still very much intact, is a highly relevant matter that no public official or policy process has any lawful right to ignore.

Indeed, the assumption that vegetation must be left untouched to maximise carbon budgets is an improper exercise of power by way of;

1. failing to take a relevant matter (accumulated off-site storage) into consideration,
2. exercising power according to rule (an IPCC one that lacks jurisdiction) without regard for the merits of a particular case, and
3. an unreasonable exercise of power.

And it should also be noted that grounds for judicial review also extend to cover "conduct in making a decision", not just in the decision itself.

There is absolutely no doubt from my discussions with senior commonwealth officers and others involved in the vegetation portion of the National Greenhouse Gas Inventory, that all of them understood perfectly well that the IPCC rule was a significant error of fact. Carbon is not emitted at the moment a tree is cut. And the existence of regrowth clearing exemptions in early vegetation management measures is clear recognition that the removal of trees from a paddock does not mean that trees don't continue to absorb carbon afterwards. Up to 50% of QLD clearing was of woody weeds and regrowth (after earlier clearing) and most of the remainder was Mulga which was classed as 'remnant' but which had been 'pulled' for stock fodder on a continuous 20 to 30 year rotation since the 1890's. It was also known to every state and federal departmental officer involved with this issue that, according to Prof Bill Burrows, more than 90 million hectares of woodland was sequestering up to 1 tonne of CO2/ha per annum, which was not being credited under improper and unlawful IPCC rules.

Yet, Professor Ian Noble, and others associated with the Australian Greenhouse Office (AGO), sought and gained a meeting with then Prime Minister Howard in the early part of last decade and made the specific point that ending land clearing was the easiest way to meet our Kyoto targets. T he

This inquiry needs to obtain the notes from that meeting and follow the resulting paper trail to determine exactly what went on there. It was this meeting that led to the Prime Minister's agreement for the then Environment Minister, Kemp, to write to the Qld Premier, Beattie, requesting a total ban on so called 'broadscale clearing' in that state for the claimed purpose of reducing carbon emissions. Only a full investigation can determine if any misconduct or breach of discipline has taken place. But it is appropriate to refer to the long established community standard in respect of the common law tort of fraud. The test is;

(1) the representation must be a false statement, including by omission, even silence may constitute misrepresentation,
(2) the misrepresentation will usually be one of fact, but an 'experts' opinion can be treated as fact,
(3) the misrepresentation must be made with a knowledge of its untruth or without belief in its truth,
(4) the representation must be made with the intention that it should be acted upon, and
(5) the representation must actually deceive, inducing action to someone's detriment.

In this case there is no contractual context. The misrepresentations have been made to a policy process, not to a commercial contract. Nevertheless, a decision maker has been induced to take action which has caused a detriment to third parties. The behaviour is contrary to the spirit of Section 408C (e) of the Qld Criminal code Act 1899, if not the letter of the law. The misrepresentation also appears to have been made with 'an intent to permanently deprive the (tree) owners of the thing of it' according to the definition of stealing under Section 391 of the Qld Criminal Code Act 1899. The only thing that excludes the operation of that section is the fact that the property dealt with has not been moved, and therefore cannot be regarded as being 'stolen'.

There is a very serious deficiency in the way the community's standards in respect of theft and fraud have not kept pace with changes in public policy. There is absolutely no doubt that a public officer is not immune from prosecution for theft of either public moneys or private property. And there is also no doubt as to the continued illegality of fraud where the proceeds of fraud have been given to third parties. The fact that the person committing fraud has not benefited from the crime does not diminish the offence.

Governments have also gone to considerable lengths to establish the fact that an ecological attribute is an item of value that falls within the definitions of a 'benefit' and of 'property'. Yet, the criminal codes do not appear to recognise even the slightest possibility that an ecological item of property is, first, capable of being stolen, and second, capable of being fraudulently converted to public use by a public servant or others.

There is no doubting that Parliaments have the authority to exercise power for "peace, order and good government", and Parliaments have a primary role in determining what that term, and the oath to "well and truly serve", actually means. But Parliaments cannot be the sole interpreter of their own powers. Clearly, dishonesty cannot be presumed or implied to be any part of any Parliament's, or any public officer's, powers. Indeed, nor can any of the principles within the grounds for judicial review, such as improper exercise of power, be presumed or implied to be allowable under any Parliament's, or public servant's, own interpretation of it's powers. So any interpretation of legal rights and privileges that would seek to imply that any person involved in the administration of law or public policy has a right to any form of dishonesty or wilful misrepresentation, is absolutely wrong. It lacks any semblance of legal and moral legitimacy.

It is also apparent that this issue involves serious questions of professional negligence. There are few stronger sources for informing on questions of professional best practise and discharge of duty of care than the criminal code and the principles of judicial review and proper exercise of power. The indemnity from civil liability accorded to both elected officials and government officers only extends to acts and omissions done 'honestly and without negligence'. Only for honest acts and omissions, and without negligence, does the relevant government assume liability on behalf of the officers concerned. In cases of dishonesty and negligence the liability rests with the offenders.

I also seek leave to provide additional testimony to the inquiry as to numerous detailed and specific instances of wilful misrepresentation and negligence in both the New South Wales and Queensland vegetation management policy processes. This testimony will cover issues such as;

Misrepresentation as to the character, scale and composition of clearing taking place
Misrepresentation as to the relevance of clearing compared to the character and scale of regrowth and thickening events
Misrepresentation as to the significance of environmental harm resulting from clearing
Misrepresentation in respect of a true and fair definition of 'remnant' vegetation
Improper exercise of power in respect of the definition of clearing
Improper exercise of power in respect of the mapping and monitoring of remnant vegetation
Improper exercise of power in respect of the transparency of mapping criteria
Improper exercise of power in respect of callous disregard for the rights and liberties of the owners of mapped vegetation
Possible conspiracy to pervert legislative standards and avoid regulatory impact assessment under Codes of Practice.

I am available to discuss this further at your earliest convenience.

Yours sincerely,

Ian Mott