JAMIE FISHER & Associates
LAWYERS & CONSULTANTS
A.B.N. 92 795 681 868

Our Ref: JF:RM:009350
Your Ref:
From: Nyngan Office

7 March 2010

The Chair
Senate Finance and Public Administration Committee
PO Box 6100
Parliament House
Canberra, ACT 2600

Dear Sir/Madam

RE: NATIVE VEGETATION LAWS etc.matters.

I am a sole legal practitioner, practising at Nyngan and Bourke, NSW. My practice in part is acting on behalf of farmers and contractors against the NSW Department of Environment, Climate Change and Water (Deccwat).

The view of the state legislatures, in regard to the preservation of native vegetation is consonant to the extent that farmers are landscape exploiters and need to be restrained, otherwise they shall irreparably damage the state eco- systems for ever.

For the present I shall not address the effects of the legislation of states other than NSW, the legislature of which has developed a body of law peculiarly astringent in its attack on farmers. The Native Vegetation Act and Regulations, supported by an ideologically driven Deccwat, is singularly responsible for much of the economic and social decay of the Nyngan, Tottenham, Cobar, Bourke, Brewarrina, Carinda, Warren, and Nevertire villages.

The effect of the Native Vegetation Act (NVA) is to prohibit, for all commercial purposes, the removal, destruction, or killing, of any native vegetation, no matter how deleterious might be the effect of the growth of that Native Vegetation (Native Veg). I realise there are a number of trivial exceptions to the effective blanket ban on Native Veg destruction, such as station track and fence line clearing, together with the residual right to destroy regrowth under 10 years old and under certain maxima diameter stem thickness, and the right to seek the registration of a Property Vegetation Plan, but for all commercial purposes, the NVA has the effect of restoring all forms of Native Veg to icon status at a snap shot of 2003.

PLEASE DIRECT ALL CORRESPONDENCE TO THE RELEVANT PO BOX
Nyngan Office: 88 Cobar Street, Nyngan NSW 2825, Australia. PO Box 40, Nyngan NSW 2825, Australia
Phone: 02 6832 2599 **Fax:** 02 6832 2590 **Mobile:** 0417 512 618
Bourke Office: 27 Richard Street, Bourke, NSW, 2840, Australia. PO Box 551 Bourke NSW 2840, Australia
Phone: 02 6872 4400 **Fax:** 02 6872 4411 **Mobile:** 0417 512 618
Email: office@jfassociates.com.au
Limited liability by a scheme approved under Professional Standards Legislation

The icon status of all Native Veg, in my submission, is not warranted, and no doubt you will have received many submissions refuting the intellectual integrity of, environmental wisdom of, aesthetic contribution of, practical landscape management values of, and carbon reduction possibilities flowing from making all the Native Veg extant in NSW to be worthy of that icon status.

Much of the Native Veg which has been forever protected is vegetation which has evolved subsequent to significant landscape changes since European settlement. The evolution of the Nyngan plains from an open grassland with interspersed ridges of black pine and few eucalypts is now a landscape dominated by eucalypts, wilga, black pine, and little grasses for stock. The evidence supporting this contention which has been largely ignored by Deccwat in drafting the legislation is contained in all the early maps of the first surveyors who were able to describe the landscapes, principally growing open grasslands, interspersed with Buddha, and other low scrub.

The arrival of European settlement saw the departure, largely, of the Aboriginals, and the cessation of traditional burning. It also saw the commencement of overstocking, which reduced the landscape to an eaten out desert within less than a decade, assisted by drought, and rabbits.

After the severe droughts of the late 19th century, the landscape change fundamentally. The appearance of the multi-stemmed box, infestation of black pine, wilga, emu bush and other, what are described as, woody weeds, then commenced apace through all the 20th century.

This passage of evolution is very well documented, but was ignored by Deccwat in drawing its legislation to protect the current landscape, which is a marauding cancer of destructive cells of plants, gone mad to strangle all evolved commercial use of the land. Many of my clients are not only thwarted in their attempts to advance the commercial use of their farms, but are restrained from protecting them against imminent destruction from the advancement of invasive native scrub. The affect of this is worse in the drier areas than the better rainfall areas. The brazen refusal to take notice of a former long-serving Western Lands Commissioner, who had written extensively on the subject, together with the evidence of Government enquiry, demonstrated an antipathetic attitude by Deccwat to landscape occupiers, notably the farmers, when they drafted the legislation, only aimed at 'saving' what remnant Native Veg they could, with their unintellectual and ideological approach.

My conclusion as to the lack of intellectual integrity, and ideological approach of the NVA is based on the following:

1. Deccwat sought to protect an irrevocably altered landscape, in a state of constant threatening change, as a result of the earlier occupation of Europeans, as being intrinsically worthy of protection, whilst that landscape had no pristineness, exemplariness, or fundamental value for its own sake.
2. Deccwat concluded that there was a social good in not only seeing the cancerous state of the landscape being permitted to be saved, but that the further degeneration following the blanket ban on clearing, caused by the advancement

of the invasive native scrub, and its affect on farmers, was just bad luck for the farmers.

3. Deccwat concluded that all Native Veg was good, and ipso facto, must be saved.

6. Deccwat assumes high levels of carbon are saved by the ban on clearing much of the landscape, which is simply not true.
7. Deccwat has concluded having ignored the evidence of prior landscape observers, that the environment at large is complemented by the NVA without good basis.

The matters I raise above shall be the objects of studied and more comprehensive description than I shall here describe generally, however, the most offensive aspect of the Native Veg debate, and that to which I will now present the most strongly upon, is the punitive nature of the NVA, of an activity which only 30 years ago was a statutory obligation of land holders.

The leases for terms, previously basing the entitlement to occupy much of the Western Division of NSW, and which have been progressively phased out, obligated leaseholders to eradicate the bush by ringbarking. This continued as a requirement for almost 100 years. Of course, many landholders did not get around to performing the task as was required, and the bureaucrats of the day, unlike their present day counterparts, did not have the air-conditioned 4Wheel Drives, GPS', and Satellite imagery to assist them in enforcement or we may have no need for an NVA at all.

There then followed an era of permitted but controlled Native Veg destruction, blessed by a view that the soldier or closer settler was advancing the fortunes of the country. Many land owners found themselves benefitting from the granting of additional blocks, in the vicinity of their existing holdings, to further foster the colonisation of the landscape, and add to the productive wealth of the state.

This encouraging state of affairs continued more or less restrictively, and without compensation for the removal of the rights of the land owners until the unholy alliance of The Coalition Federal Government, partially led by Peter Costello, and the politically challenged Bob Carr, who saw a consonance of purpose to ultimately remove all the rights to clear land for what appear to be acts of mendacity, justified by spurious claims to altruism.

But political argy bargy aside and to address the real foulness which aggrieves me.

Section 35 Native Vegetaion Act 2003 (NSW) provides:

"(1) An authorised officer may enter land for the purpose of determining whether a person is contravening or has contravened this Act, **but only if:**

(a) the landholder consents, or

(b) the Director-General has authorised the entry onto the land concerned."

My humble view is, that is a mandatory provision. For the Authorised Officer to enter a landholders land he or she must either be granted permission by the landholder, or the Director- General authorises the intrusion.

I have a client now, and I am aware of several others where the authorised officer is either too lazy, too suspicious, has conducted preliminary sortees to the land, or other wise has declined to seek permission to enter the landholder's land and relies on a putative blanket Director-Generals authority to enter the land. In fact I understand, the process which has now been adopted, is that no requests are being made on the pretext that if such requests were made then there would be, immediately, a blockade called by the local farmers to restrict the freedom of movement of the cadre. Such is the integrity of their cause.

The obligation to produce the authority on challenge, or prior to entry is not mandated. Consequently, the Director-General's cadre are entering lands as we sit here, not only with the Director-General's imprimatur, without seeking consent, but also without being obligated to advise the landholder, that they are on the land. Accordingly, as land holdings in this area are large, the cadre enter surreptitiously, and wander around all day without the land holder being aware they are there. In recent times, they invaded a family's land from 7.45 am to 6.30 pm and the landholder had no knowledge they were there.

There was reason the legislation included the requirement to seek land holder permission. That reason was to give the impression that the common law rule that a man's house is his castle (a lay approach to the sanctity of private property from intrusion by officials) still existed. I wonder what the approach of the High Court, in light of a recent decision would be, to a challenge to evidence gathered without the request to enter first being sought, might be.

There is a further reason why entry should first be sought from the land holder, and that is because, for officials to barge into a person's property for any purpose, usually requires a warrant, issued on the authority of a Justice, not some bureaucrat, who happens to have a prosecutorial interest in the material sought on entry to the land.

That prosecutorial interest is not in respect to some trivial offence, but in regard to an offence carrying a personal penalty of hundreds of thousands of dollars.

There is a further reason why the land holder's consent should first be sought, and that is bound up with the fact that the matters sought to be investigated by the cadre were originally mandated activities which only recently have become crimes. This is not murder which has been a crime from times immemorial, or theft which has been a crime since property rights were first available, nor even a crime against humanity which has only existed since 1945. This is a crime which has only existed since 2003 and it used to be a mandated activity for many of the older members of our society. This is a crime such as those created in "Animal Farm", and subsequent to the French and Soviet Revolutions in its absurdity, both as to raison detre and penalty.

The offensiveness of the NVA is further amplified by the power of the cadre to force the landholder to confess to all activity on the land thus exposing the landholder to bankrupting penalties by self incrimination. One is further amused to contemplate the High Court's prospective view of the erosion of such long held legal principles.

If ever there was an abandonment of a sector of our community more grievous and callously applied than this, I need to reminded of it. One is drawn to a comparison of this legislation and its unfairness to that relatively mild unfairness perpetrated upon the union community by Work Choices. Imagine the uproar if individual unionists could be rounded up in the dark by the cadre and then forced to confess all before a star chamber. There would be blood in the streets.

Yours faithfully

JAMIE FISHER & ASSOCIATES