

SUBMISSION
VEGETATION LAWS ENQUIRY

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**Comedy of the Commons – Agricultural sector carries
community's burden**

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Abstract

Paper mentions debt-for-nature swaps, and raises legal issues regarding possible trading by government in property and nature rights belonging to private landowners, and appropriate compensation for landowners deprived of control over their assets.

Comedy of the Commons – Agricultural sector carries community’s burden

Rural landowners are being forced unjustly to carry the general community’s burden — a ‘comedy of the commons’. They should be compensated for asset value and productive capacity losses resulting from their compliance with government regulations/policies. Proper compensation for landowners is ‘market value’ for assets removed from their control, that is, the value that would be obtained for the (e.g.) actual physical timber product in an open marketplace during an ‘arm’s length’ transaction.

If governments do not intend to compensate their rural landowners correctly then the public is entitled to know the philosophical basis of such a decision/agenda. Governments rarely inform the public regarding the soundness of individuals’ claims to their own private property, however Minister for Water Resources Malcolm Turnbull acknowledged,

“...water allocations, water entitlements are property, you can't go around confiscating people's property.” (Turnbull 2007)

The present Federal Government has however not provided similar assurance, that is, that they would protect land-purchasers’ rights. Without such assurance, who would invest in agriculture and risk governments seizing rights associated with land, vegetation or water without paying fair compensation?

According to (Latimer 2001, p.120), Australians’ land rights extend “*cuius est solum eius est usque ad coelum et ad inferos*” (Latimer 2001, p.120), that is, “where one owns the ground, one’s ownership extends up to the heavens and down to the infernal regions.” Australians’ private freehold property does not belong to their servant governments.

Debt for nature swaps

The inquiry should ascertain whether governments have undisclosed motivations for limiting landowners’ access to their nature assets. Worldwide, governments engage in debt-for-nature-swaps (see Sanders 1987), writing financial instruments against their nature reserves (parks, forests, marine reserves etc) then using them as collateral to obtain/repay debt — similar regimes probably apply in Australia. A risk from such international financial instrument sales (water, vegetation or carbon etc.) is that these instruments may need to be repurchased at the world’s highest prices if the underlying physical assets (trees, water, land and underground minerals) are needed.

(The inquiry might attempt to ascertain the present/intended owners of Australia's National Parks and marine reserves.)

Legalities

The public, including landowners, generally support environmental protection but would not accept governments' right to claim and trade in privately-owned assets (e.g. trees) on land that associated landowners are constrained from using (Renwick 2005). This circumstance appears to contravene section 160 of the *Crimes Act 1900* (Austlii 2007), especially if deprived landowners are not fully compensated:

Embezzlement, &c., by persons in the Public Service

160. Whosoever, being employed in the Public Service, fraudulently embezzles any property, or part thereof [e.g. carbon rights], so entrusted to him, or taken into his possession, or being in his custody, or under his control, or fraudulently secretes, removes, or in any manner fraudulently applies, or disposes of, the same, or any part thereof, shall be deemed to have stolen the same, and shall be liable for penal servitude for ten years.

[See also **sec 161** - It is not necessary to prove exactly how much was embezzled, only that is was embezzled.]

Latimer (2001, p.1185) defines embezzlement as:

“ The felony which consisted of the conversion to his own use by a clerk or servant of property received by him on behalf of his master.”¹

An implication of sec 160 is that 'nature-asset' transactions must be fully disclosed to landowners (not “fraudulently secreted”), and landowners must receive full compensation. Although it might prove difficult to prosecute a government, it could be possible to prosecute persons who induce a government to commit embezzlement. Moreover, sec 25-45 of ITAA97 appears to provide a remedy for landowners by allowing taxation deductions of monetary losses caused by “theft, stealing, embezzlement, larceny, defalcation, and misappropriation by your employee or agent [my emphasis].”

1. Government Ministers are servants [Latin: minister –ri m., ra –rae f. English: ‘attendant, servant, agent, ...tool (Collins 1969, p.205)

References

- Austlii, 2007, 'New South Wales Consolidated Acts: The Crimes Act (1900)',
retrieved 29 July 2007 from
<--www.austlii.edu.au/au/legis/nsw/consol_act/ca190082/s160.html -->
- Kidd, D.A. 1969, *Collins Latin-English English-Latin Dictionary*, Collins,
London and Glasgow.
- Latimer, P. 2001, *Australian Business Law*, 20th Edn, CCH Australia Ltd, North
Ryde, Sydney.
- Renwick, E. 2005, 'Stateline: A Farmer's Tale', ABC Television, interview with
Peter Spencer, reporter Emma Renwick,. Broadcast: 24/06/2005
- Turnbull, M. 2007, 'Malcolm Turnbull talks with Kerry O'Brien – Malcolm
Turnbull MP', '7-30 Report', ABC Television', Interview on Tuesday,
24 July 2007. Retrieved from
www.malcolmturnbull.com.au/news/article.aspx?ID=875
- Sanders, F, 1987, *The Moneychanger*, Vol.1, No. 6, December, 1987,
Moneychanger, 5705 Stage Rd., Suite 164, Memphis, TN. 38134