

TO THE SENATE FINANCE AND PUBLIC ADMINISTRATION REFERENCES COMMITTEE

SUBMISSION BY MR CRAIG UNDERWOOD

WITHOUT PREJUDICE

INQUIRY INTO NATIVE VEGETATION LAWS, GREENHOUSE GAS ABATEMENT AND CLIMATE CHANGE MEASURES.

BACKGROUND – THE NATIONAL STRATEGY (TNS).

1. The Australian Government ratified the Convention on Biological Diversity on the 18th June 1993. (TNS)
2. The strategy was prepared by the Australian and New Zealand Environment and Conservation Council (TNS).
3. The Strategy is a product of the spirit of cooperation engineered by the Inter Government Agreement on Environment (TNS).
4. Formal protocol for interaction between Commonwealth, State and Territory and Local Governments have been established through Intergovernmental Agreement on the Environment. (TNS)
5. The National Strategy was signed by the Prime Minister Paul Keating and all State Premiers and Chief Ministers that commit all respective governments to implement this Strategy as a matter of urgency.
6. Western Australia; December 2004 Government of W.A. towards a Biodiversity Conservation Strategy for Western Australia (discussion paper) (B.C.S.W.A.)
7. S 5.3 (p 24) The preparation of a biodiversity conservation strategy for W.A> will implement action 7.3.1 under the National Strategy , which states that
“State and Territory Governments will develop complimentary biological diversity strategies where these do not already exist and will review their existing Legislation framework for implementing biological diversity conservation programs and any legislation that results directly or indirectly in loss of biological diversity” The State Strategy will be consistent and compliment the National Biodiversity Conservation Strategy.

- This State Strategy was signed by the Hon Dr Judy Edwards MLA
8. Subsequently this W.A. State Strategy was reviewed in 2006 and signed by the Hon Mark McGowan MLA, Minister for the Environment.
 9. The new title became **“A 100 Year Biodiversity Conservation Strategy for Western Australia”** (draft) Phase One Blueprint to the Bicentenary in 2029.
 10. S 1.7 (p 19) *“A State Biodiversity Conservation Strategy is needed to : meet W.A’s National obligations, and ensure that key International Biodiversity –related policies and programs are addressed in W.A.”*
 11. In both W.A. Strategies under key Strategic direction 3 output targets and as a primary action 2 million ha of privately owned or managed land being managed under voluntary nature conservation agreements by 2017 and 5 million ha by 2029. Both of these targets carry a rating of (H) highest priority for action and (EEA) extension or enhancement of an existing action.
 12. To achieve these output targets the W.A. Environmental Protection Act was amended in 2004 (EPA) this act or any approval policy is to read as law.

TO SUMMARISE SO FAR:

13. There is a direct responsibility between the Commonwealth and State and Territory Governments via the National and State Strategies to be consistent with and complimentary to the international agreements signed by the Australian Government.
The Australian Constitution provides protection under S51.31 for any takings of it citizen’s rights on just terms.
In the absence of any such protection under Western Australian State Law, the Australian Government are clearly responsible to compensate or acquire lands affected by these Strategies when reflected in any Environment or Planning law, regulations or policy that amounts to a taking of interest in freehold land to meet these obligations.

W.A. legislation does not have Just Terms provisions in any jurisdiction. In fact the E.P.A is administered by a group of unelected members who produce policies that once approved by the Minister of the day are to be read as Law. Possibly the most undemocratic process I can imagine.

These policies by E.P.A and W.A. Planning Commission amount to Quasi reserves or Legislative takings without triggering the compulsory acquisition/ resumption sections for public works under the Land Act.
14. Of course any Commonwealth elected member or agency manager will defend these inconsistencies by stating it is a State Issue. I believe this to be highly challengeable given the direct linkages, however there still remains the responsibility by the Australian

Government to ensure there is a commonality between State and Territories Just Terms Legislation that affect the land asset value, the added risk in competing for finance when Public Drinking Water Reserves, Environmental and Planning Policies are layered over freehold titles for Public benefit all for the compliance of a National Directive.

15. The National Strategy in objective 1.5.1 Actions states *“Ensure that adequate, efficient and cost effective incentives exist to conserve biological diversity”*.

“These would include the use of appropriate economic adjustments for owners and managers, such as fair adjustment measures for those WHO’S PROPERTY RIGHTS are affected when areas of significance to biological diversity are protected”.

This National Strategy objective 1.5 is not acknowledged in either of the State Strategies, again the responsibility rests with the Australian Government to ensure “appropriate economic adjustments” are inclusive in the State Strategies and reinforced by appropriate legislation.

16. It should be noted that only 7% of W.A. is held in freehold title ie: land alienated from the Crown. The remaining land is owned by the State under National /State Parks, Pastoral Leases or Native Title.

17. Breaches of environmental Law in W.A. carry a criminal conviction for even the most trivial offence.

Consider those convicted, they will not get entry visas to many Countries around the World, as they do not permit criminal entry. Many farmers in W.A. have or are facing this prospect, simply for clearing regrowth (poison bush) outside the 10 year exemption rule (regs).

Even when found not guilty of an offence, vegetation Conservation Notices remain on the entire property.

Property and machinery and other assets can be confiscated as proceeds of crime or used in conducting the offence.

The result is turning hard working producers of food and fibre into criminals and is totally counterproductive and excessive to the real objectives.

18. Secure Property Rights are the cornerstone of democracy that underpin security of investment, security of tenure and provide an economic base to develop practices that realistically improve production to feed a protein hungry world and achieve environmental objectives.

Public unrest of the injustices and absence of protection as S51 31 provides for individuals and investment whose property in many instances represents a life time of work and savings is eloquently described by the CHIEF JUSTICE of WESTERN AUSTRALIA the HON WAYNE MARTIN in an address to the AUSTRALIAN PROPERTY INSTITUTE on August the 8th 2008 ***“But if a person’s home is their castle, against whom are the battlements and fortifications installed? As the plot of the castle reveals, the most common marauder, the most common assailant upon the sanctity of property, is not the burglar or blackguard, but the STATE”***

As the separation of powers would dictate the justice system don't make law, they certainly reflect the citizens angst and injustice in terms of legal recourse and cost in monetary terms of poor legislation and regulatory takings that represent a transfer of equity to the State at private cost.

19. Cumulative layers of Environmental Policies (read as law) and planning instruments over freehold title eventually diminish the title value to such an extent that interested purchasers deem as high legislative risk and become the least attractive to a free and open market. Again the E.P Act does not take economic or social effects into account when assessing a proposal.
A regulatory economic and social impact assessment statement by an independent body should be a prerequisite to any policies that affect freehold investment.
20. There are many other related issues associated with these Federal and State Laws and Regulations, such as valuation methodology bias and nepotism, deliberate time delays and constantly shifting the goal posts, and exaggerated ambit claims by managers of Water, Environment and Planning.
21. It is, although well overdue, very positive that the Senate have seen fit to hold an enquiry, I do however predict that the extreme green movement will organise a heavily funded campaign to swamp the Committee with submissions of fear, when the real social, economic and environmental values will diminish to such an extent that few Australian Companies and individuals will invest in our future and we will wonder why we have been reduced State by State to an economic basket case.
22. I have outlined some of the issues that affect or destroy property rights and the background to, and the vehicle used to arrive at what is for many Australians an untenable, dangerous position.
Will the Senate Committee make recommendations to put Security of Tenure back into democracy.?
23. Finally, I would appreciate the opportunity to give oral evidence if provided by the Senate Committee.

Submitted by Mr Craig Underwood