

# **Additional comments from Government Senators**

## **Howard Government's role in supporting anti land clearing laws**

Government Senators note that the previous Government actively and publicly pressured both New South Wales and Queensland State Governments to pass laws preventing the broad scale clearing of native vegetation as the Commonwealth Government does not have the constitutional power to pass such laws. This fact is not disputed by Coalition Senators or by farmers' associations and other participants making submission at the inquiry, even though the Coalition Senators have studiously attempted to ignore the Howard Government's role in anti land clearing laws.

Numerous statements by Howard Government Environment Ministers such as Senator Robert Hill and later Dr David Kemp demonstrate the Howard Government's desire to push for a stop to land clearing.

For example, Minister Hill said to the Senate:

"Five years ago, the Governments of Australia set the goal of reversing the decline in the quality and extent of our native vegetation by June 2001..."

"The exceptionally high rate of land clearing in Queensland is still the single most substantial factor in the failure to achieve the national goal... While a number of States have effective regulatory systems for land clearing in place, the main reason why the national goal has not been achieved is that many States have not contributed sufficiently to the national endeavour. The goal cannot be achieved as long as Queensland land clearing rates remain at current levels, and New South Wales clearing rates also remain too high. Significant improvements in other States and Territories are also required."<sup>1</sup>

Minister Kemp continued this pressure on the states when he became Minister for the Environment:

"Every other Australian state in its bilateral agreement with the Commonwealth on the Natural Heritage Trust has undertaken to protect of concern vegetation on private land. The only government that has not done so, so far, is the Beattie government....."

"I do not think anyone in this country who cares for the environment does not believe that vegetation clearing, at the rate that it is going, is a very significant environmental problem, particularly in two states – Queensland and New South Wales – with Labor governments that have had the capacity

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1 Statement to the Australian Senate, Senator Robert Hill, Minister for Environment and Heritage, 27 September 2001.

for quite some time to address this issue. It was not until the Natural Heritage Trust and the National Action Plan for Salinity and Water Quality were put in place by this government that solutions to these problems have become possible.”<sup>2</sup>

Minister Hill further made certain Commonwealth Government funding to the states contingent on laws restricting land clearing being passed in priority areas:

“Commonwealth funding for the (National Action Plan for Salinity and Water Quality) is contingent on the States and Territories committing to implement the whole package of measures outlined in this Agreement, which includes policy reform relating to land and water resource management.”

“The Agreement commits the States and Territories to put in place controls which at a minimum prohibit land clearing in the 21 priority catchments and regions where it would lead to unacceptable land or water degradation.”<sup>3</sup>

When New South Wales and Queensland State Governments passed these laws, the Howard Government took credit:

“I was delighted to record in the House only a week or so ago that, via the agency of the Natural Heritage Trust and the National Action Plan for Salinity and Water Quality, a complete halt will now be put on broad scale vegetation clearing in New South Wales. That is something that the Commonwealth is very pleased about. I know that landholders and environment and conservation groups are also very pleased about it. It is something we have been seeking, along with regional reform, to push the New South Wales government into for some time.”<sup>4</sup>

Both Ministers made it clear that the reason that they wanted these laws to be introduced was because clearance of native vegetation was “a fundamental cause of dry land salinity”, to provide “multiple productivity, biodiversity and greenhouse returns” and “to help us meet our greenhouse emissions abatement commitments”<sup>5</sup>

For example, Minister Hill stated:

“Reducing the rate of land clearing in Queensland remains one of the most significant opportunities to address our greenhouse emissions. The Commonwealth has offered Queensland unprecedented financial assistance

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2 MPI on land clearing, Dr David Kemp, Minister for the Environment and Heritage, 26 November 2003

3 Statement to the Australian Senate, Senator Robert Hill, Minister for the Environment and Heritage, 27 September 2001

4 MPI on land clearing, Dr David Kemp, Minister for the Environment and Heritage, 26 November 2003.

5 Statement to the Australian Senate, Senator Robert Hill, Minister for the Environment and Heritage, 27 September 2001

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to implement an improved land clearing regime that would deliver substantially reduced clearing rates and a significant greenhouse outcome beyond that resulting from the existing Queensland legislation and reform commitments. In order to meet our greenhouse commitments, certainty of outcome is essential. The delivery of this certainty and a sustained reduction in greenhouse emissions can only be achieved through the implementation of statewide caps on clearing of native vegetation."<sup>6</sup>

Years later, former Treasurer Peter Costello proudly acknowledged that the Commonwealth stopped land clearing to meet its Kyoto target:

“This was all designed to stop land clearing and we stopped land clearing and it’s helped us to meet our Kyoto target. If I may say so, Australia actually did something practical.”<sup>7</sup>

### **Effect on farmers and funding support offered**

While initially welcomed by the New South Wales Farmers’ Association as “a great step forward for farmers in NSW”<sup>8</sup> when first introduced, the laws have become unpopular among the farmers’ organisations. It appears that some of the farmers’ frustrations are legitimate, for example, where state laws are perhaps unduly inflexible, even where environmental benefits of native vegetation would be maintained offsetting, by moving the vegetation to another area of the farm. Furthermore, there does not appear to be an appeals mechanism at a state level that would allow farmers to appeal decisions in a cost-effective way. Farmers should not need to go to court to appeal an administrative decision that affects the way they are able to use their property.

However, it should be noted that while the Queensland and New South Wales state governments offered significant financial support to farmers affected by these laws, there was no financial support that can be found from the then Howard Government.

Questions remain unanswered as to why the Howard Government reneged on an agreement with the Queensland Government to jointly offer a \$150 million assistance package to farmers. A media release issued ON 22 May 2003 by Minister Kemp explained that Howard Government ministers David Kemp (Environment and Heritage); Warren Truss (Agriculture, Forestry and Fisheries); Ian Macfarlane (Industry, Tourism and Resources) and Ian Macdonald (Fisheries, Forestry and Conservation) met with Mr Larry Acton of Agforce, Mr Gary Sansom of Queensland Farmers’ Federation (QFF) and other primary industry leaders to outline the native vegetation laws and discuss the financial assistance to farmers. The package offered

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6 Statement to the Australian Senate, Senator Robert Hill, Minister for the Environment and Heritage, 27 September 2001.

7 Transcript of Interview with Kerry O’Brien, the Hon Peter Costello MP, 7.30 Report, ABC TV, 6 June 2007

8 "Plan to End Broadscale Land Clearing" AAP, 15 October 2003.

at that meeting “met the Commonwealth Government’s objectives of a substantial reduction in the clearing of remnant vegetation, in greenhouse gas emissions and the additional protection of the biodiversity of ecosystems”, according to Minister Kemp. The media release also stated: “The Commonwealth indicated it is willing to consider alternatives to the proposal that achieve the Commonwealth’s objectives in an assured, timely and cost effective manner.”

However, ultimately, no such funding was provided by the Howard Government when the laws were passed by the Queensland Government. The Queensland Government apparently paid all \$150 million itself. It is unfortunate that the committee was not able to ascertain the reason behind this back flip by the Howard Government – industry leaders do not appear to understand the reasons for the decision.

In addition, in New South Wales, a similar amount of funding went directly to financial assistance for farmers affected, usually in the form of incentive schemes, although a portion was spent on compensation for farmers whose land was rendered unsuitable for agriculture due to the extend of native vegetation protected.

The comments provided in this report by other senators refer to “unintended consequences” of the native vegetation laws being passed. However, it is indisputable that there were several prominent reports from reputable organisations such as the Productivity Commission and the Australian Bureau of Agricultural and Resources Economics available at the time that the Howard Government was “pushing”. The Productivity Commission report, for example, analysed the financial impact these laws would have on farmers in certain regions. Furthermore, Queensland farmers’ association, Agforce, was very clear very early about its opposition to the laws in Queensland. Some other farmers’ organisations did not appear to develop an opposition, apparently on the basis that they realised the laws were aimed at meeting the Howard Government’s Kyoto target, despite the Howard Government making it clear it wanted these laws to meet “greenhouse gas abatement commitments”.

The committee also received evidence of farmers’ meetings being held to discuss their concerns with the laws.<sup>9</sup> For example, one witness said there were hundreds of people at a public meeting in Dubbo in 2003 and participants “tried very hard to get this (issue) on the national agenda at that time, as did other people and groups.” Despite the fact that National and Liberal party members under the Howard Government, such as Senator Nash, appeared to have done nothing to communicate their concerns to their senior Howard Government ministers. It is therefore quite concerning that these same Senators are now claiming that the effects of these laws on farmers were unforeseen or unintended.

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9 Evidence submitted at Wagga Wagga hearing by Mr Max Rheese, Executive Director, Australian Environment Foundation

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## Compensation

Some farmers wanted compensation for what they argue is an abrogation of property rights. As the National Farmers Federation noted, this issue is subject to a High Court Appeal.<sup>10</sup> It would therefore not be appropriate to comment on the issue of compensation for the laws passed by the states prior to the Rudd Government's term and with the support of the Howard Government.

Government Senators note that the Opposition has ruled out providing compensation. In an interview with *The Australian's* Matthew Franklin, Senator Barnaby Joyce, the then Opposition Finance Spokesperson said, "If you are going to compromise their capacity to utilise their assets, you should compensate them."<sup>11</sup> Matthew Franklin wrote that Senator Joyce then "contacted *The Australian* again shortly after the initial interview to stress that he accepted that compensation would be too costly." The Leader of the Opposition, Mr Tony Abbott, also said on the same day of the farmers rally at Parliament House on 2 February 2010 "we are not proposing any additional policies directly on the subject of land clearing."<sup>12</sup>

## Impact of climate changes policies on farm use

Witnesses before the committee consistently agreed with the statement that there has been no change to land management regulations under the term of the Rudd Government. However, some farmers' associations, particularly the National Farmers' Federation and the NSW Farmers' Federation, argued that, while the Rudd Government did not orchestrate these laws like the previous Government did, the ratification of Kyoto amounted to a "cashing in" of the carbon credits.

However, submissions from the Department of Climate Change and Water make clear that the ratification of Kyoto does not result in the Government removing or acquiring any existing rights that farmers might have to carbon on their land. Furthermore, in relation to the Rudd Government's proposed Carbon Pollution Reduction Scheme, no liabilities for greenhouse gas emissions from deforestation or agriculture will be imposed, but the CPRS package included measures to promote voluntary action to reduce greenhouse gas emissions from these sources. Participation in offsets for avoided deforestation or in reforestation is purely voluntary. Furthermore, the CPRS, had it been passed by the Senate, would not have imposed any constraints or penalties for land clearing.

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10 Transcript of Wagga Wagga hearing

11 "Barnaby Joyce attacked over land use claim", *The Australian*, 18 December 2009, accessed at <http://www.theaustralian.com.au/politics/barnaby-joyce-attacked-over-land-use-claim/story-e6frgczf-12258115537771> (accessed 27 April 2010)

12 Leader of the Opposition, Press Conference, Parliament House, Canberra, 2 February 2010 accessed at <http://liberal.org.au/latest-news/2010/02/02/Press-Conference-direct-action-on-climate-change.aspx> (accessed on 25 April 2010)

## **Conclusions and recommendations**

On the basis of the evidence presented to the inquiry, Government Senators believe that farmers concerns relating to the administration of the native vegetation legislation warrant further scrutiny.

Government Senators therefore support the essence of the recommendations. The Natural Resource Management Ministerial Council (NRMMC) should review state native vegetation laws with a view to:

- Ensuring, where practical, that the laws are sufficiently flexible in each state to allow farmers to offset clearing where that leads to an equal or enhanced environmental outcome
- Introducing into each state a cheap and quick mechanism for merits review of decisions to refuse permission to clear land
- Ensuring that native vegetation policies encourage and allow for effective weed and pest control
- Devising a strategy to ensure that the land is not effectively ‘locked up’ and left without maintenance
- Ascertaining whether farmers can access affordable technology to assist farmers to manage native vegetation – for example, satellite imagery
- Establishing uniform protocols across the states to guiding enforcement and investigative procedures
- Establishing training for Government officers carrying out these duties
- Making available helpful and relevant information to the public to assist landholders to understand processes and aims of the laws
- Reviewing incentive-based programs available to landholders, such as environmental stewardship programs or access to sustainable agriculture grants, that allow landholders to earn income for protecting high quality native vegetation to ensure that policy settings across governments assist farmers to deliver environmental outcomes
- Ensuring native vegetation laws reflect scientific data regarding the best means to ensure enhancement of our natural environment while also enhancing productivity at the same time.

**Senator Helen Polley**  
**Senator for Tasmania**

**Senator Doug Cameron**  
**Senator for New South Wales**