property rights australia

Property Rights Australia

Submitted To:

Productivity Commission

"Solutions" Paper

Prepared by the Property Rights Australia Board

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Executive Summary

This submission serves to complement the initial submission made by Property Rights Australia (PRA) to the Productivity Commission's inquiry into the impact of native vegetation and biodiversity regulations. It provides "seven steps to a solution"; recommendations to alleviate or overcome the myriad inefficiencies, inequities and inadequacies within the current regulatory regime in Queensland, the significant costs of which are currently borne by private land owners and lessees of state-owned rural land.

The seven steps to a solution are:

1. Educate

A public education campaign should be employed to provide the public with balanced and accurate information on the native vegetation issue, disarm any fallacious claims and political interference and assist government to introduce a solution that is in the best environmental and economic interests of the state.

Due to the level of political opportunism and misinformation that has plagued the debate so far, landholders and the rural community have lost faith in the state government and the environment. Changing this situation will require a major demonstration of good will by government and the environmental movement, an enhanced investment by government in natural resource management research and landholder involvement in that work in order to rebuild confidence in the integrity of such research. The research effort should also be matched by a genuine investment in rebuilding the government's extension services so landholders can access the good information needed to make good decisions.

2. Adopt an Appropriate Time Frame

Vegetation management is closely regulated in Queensland and clearing rates are low relative to the extent of Queensland's woodlands. The proposed ban on clearing should be abandoned and a more appropriate time frame - at least ten years - should be adopted to allow for the necessary research, mapping and extension to be undertaken and the identification of an optimal long-term solution rather than a 'quick fix'.

3. Resource and Improve the Knowledge Base

Current natural resource management decision-making processes in Queensland have been constrained by a lack of reliable scientific data and a chronic lack of financial and human resources allocated to support these processes. This should be addressed via a significant injection of resources into the state government's research, mapping and extension services.

4. Improve the Adequacy of the Regulatory Framework

The diverse nature of Queensland's landscape demands that regulatory decision making be devolved to a regional level and undertaken by people with a solid understanding of the issues specific to the region. Ideally, such regional groups should not be dominated by government officers or appointees, but should instead comprise equal or majority membership from the landholding community. The twin issues of woodland thickening and encroachment should also be acknowledged and addressed on a region-by-region basis.

5. Better Equip the Bureaucracy

- Any regulatory regime should respect the basic civil rights of private landholders and those provisions which currently infringe on civil rights should be rescinded;
- Vegetation management permit assessment should only be undertaken by people with practical land management experience and a sound understanding of the regionally specific issues;
- Bureaucratic procedures and assessment processes be as objective as possible and fully transparent to the applicant;
- A single point of contact should be made responsible for all matters regarding an application, in order to reduce the now common practice of shuffling responsibility between departments;
- An affordable and accessible appeal process should be adopted to ensure government officers can be held accountable, thereby helping to restore landholder confidence in the bureaucracy.
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6. Acknowledge the Costs to Landholders and Pay for Preservation

- Before making any policy or regulatory change which may infringe on those property rights and/or impact on property values or productivity, government should complete a social and economic impact assessment to allow formal identification and assessment of these impacts for community and Cabinet consideration.
- If government deems it in the public interest to make a policy or regulatory change which infringes on an individual property owner's rights and in doing so impacts on their property's value or productivity, PRA believes government should "acquire" those rights. The acquisition should at least compensate for the subsequent economic loss in terms of productivity, land value prior to the change and any other costs or losses incurred by individual landholders. The process should also be open to appeal.
- Government should also provide adjustment assistance including industry development to shires that may be adversely affected as a result of the flow-on community impact of native vegetation and biodiversity regulation.
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7. Abandon the Greenhouse "Quick-Fix"

The argument that curbing land clearing in Queensland would be an inexpensive means of reducing the nation's greenhouse gas emissions is superficial and erroneous. The impact of current regulation and the proposed ban extends far further than the simplistic "straight line" opportunity cost often used, so the actual cost to individual farming families and regional communities is far more significant than has apparently been recognised to date. In the same way that the Federal Government declined to endorse the Kyoto protocol, reportedly at least in part for fear of the economic harm that would be caused to Australian industries and the domestic community, both levels of government should also decline to commit the Australian community to a native vegetation and biodiversity policy that will cause significant economic harm in regional Queensland.

Given the risk of significant economic harm as well as the serious inequity associated with the proposal, government should abandon plans to impose the burden of the nation's greenhouse aspirations on regional Queensland communities by banning the clearing and management of remnant vegetation.

Background

As part of the terms of reference for its inquiry into the impact of native vegetation and biodiversity regulations, the Productivity Commission is to make recommendations (of a regulatory or non-regulatory nature) that governments could consider to minimise the adverse impacts of the various state and Commonwealth regimes while achieving the desired environmental outcomes, including measures to clarify the responsibilities and rights of resource users.

Property Rights Australia (PRA) makes this submission to assist the Commission in fulfilling that objective. It should be used in conjunction with the initial submission made by PRA in August 2003.

Both submissions are based on PRA's support for a balanced approach to natural resource management that is sustainable in ecological as well as economic terms. PRA believes that secure tenure and secure "property rights" are as critical for the economic development and environmental sustainability of individual agricultural businesses as they are for achieving the state's and nation's economic and environmental aspirations. This is because investment confidence is reliant on secure tenure and property rights.

PRA believes property owners are entitled to the basic rights of exclusive access, use and the opportunity to profit. Government has a responsibility to recognise those property rights and safeguard them in the interests of a fair and just community. Property owners also have a basic responsibility to ensure a "duty of care" to the environment and their community. If government deems it in the public interest to make a policy or regulatory change which infringes on an individual property owner's rights and impacts on their property's value or productivity, PRA believes government should "acquire" those rights by compensating for any subsequent economic loss.

The Problem

The historic pattern of land development throughout Australia has resulted in a situation where the more populous southern states have been heavily developed, while Queensland remains largely undeveloped. Much of this development was carried out in earlier years, when there was limited understanding of the ecological processes at work in the Australian landscape and the political environment afforded greatest priority to economic development.

With the acquisition of further environmental expertise since then and the experience of hindsight, there is now a common view that land development in those areas was too extensive and has resulted in the substantial degradation of the natural resource base over time. Changes in the political environment, an aggressive and often sensationalist anti-development campaign by some green groups and an enhanced but still only very general awareness of environmental issues amongst the Australian public have now focused added attention on the issue of native vegetation management, particularly in Queensland. That has presented a problem for landholders and their communities on two levels.

In response to these pressures, which it has partly fuelled itself, the Queensland Government introduced a heavily regulated vegetation management regime in the years 1995-2000. The regime introduced a permit system for clearing on freehold and leasehold land and prevents any clearing of endangered vegetation. However, structure and administration of that regime has resulted in a number of perverse outcomes for the state, the costs of which are being inequitably borne by private land owners and lessees of state-owned rural land. Those perverse outcomes include:

1. A continuing reduction in the current productive capacity of state lands,
2. The loss of future economic opportunities,
3. A poor understanding of these effects (points 1 and 2 above) amongst regulators,
4. Ill-defined policy and processes that are open to manipulation by the bureaucracy,
5. An inability to ensure accountability within and from the bureaucracy,
6. A reliance by regulators on expensive enforcement measures achieve compliance rather than education and extension,
7. The absence of affordable appeal processes for individual members of the public,
8. A regulatory regime that is poorly aligned to the unique and diverse nature of Queensland's woodlands, and
9. A lack of credible or reliable base data for assessment.

Compounding what was an already unsatisfactory situation is the significant investment uncertainty that has been created by the threat in early 2003 of further regulation in the form of a complete ban on clearing so-called "remnant" vegetation. This threat has been offered by government as a response to the misleading claims perpetuated by certain vested and political interests that clearing levels remain excessive. Put simply, this current problem is a political one, exacerbated by the proximity of upcoming state and to a lesser extent, federal elections.

While this is impeding the attainment of a sensible, optimum balance between development and preservation ideals, there remains potential for such a genuine solution if good policy and pragmatism can prevail over politics. Due to the relatively low level of land development that has been undertaken in Queensland to date and the continuing development of environmental expertise, the opportunity still exists for land development to continue on a truly sustainable basis. In this way, the economic benefit of land development can continue to be realised while still having regard to the preservation of necessary ecological processes and other preservation ideals.

The Solution

1. Educate

The perverse outcomes of the current regulatory regime for native vegetation management in Queensland can be addressed by the adoption of a range of measures and policies outlined below. Ideally though, a public educational campaign should also be employed to complement these specific measures and address some of the misinformation that has plagued the current debate and caused unwarranted public confusion and concern.

However, such an education campaign should be truly that, providing the public with balanced and accurate information about the issue similar to the anti-smoking campaigns and recent Pharmaceutical Benefits Scheme education campaign where the goal is to achieve a superior outcome for the state. One of the root causes of the current problem has been the increasing intrusion of politics into the natural resource management agenda and the relative absence of such information. Instead of fulfilling the "honest broker" role expected by the public, the state government has unfortunately been embroiled in this activity. Environmental lobby groups, which currently enjoy considerable political influence, and other vested interests have exploited the situation and the public's limited understanding of what are often very complex land management issues in seeking to impose simplistic and economically-damaging policies.

The unfortunate but not unexpected result of subjecting landholders and the rural community to such a sustained campaign of political opportunism and misinformation is the near complete breakdown of relations between them, the government and the environmental movement. The reality is that landholders now have very little, if any, faith or belief in any claims made by the state government or environmental lobby groups regarding environmental issues. This is an undesirable situation which undermines any effort to achieve the type of cooperative working relationship that is most effective in addressing environmental issues. No amount of legislation can deliver the optimum outcomes that a sound working relationship built on mutual trust can. Changing this situation will require a massive investment, and demonstration, of good will by government and the environmental movement. It will also require an enhanced investment by government in natural resource management research and essentially, the involvement or oversight by landholders in this work in order to rebuild their confidence in the integrity of such research. The research effort should also be matched by a genuine investment in rebuilding the government's extension services, which have been stripped in recent years but remain critical for landholders to access good information to make good decisions.

Better informing landholders and the wider community will give them a better understanding of the issues and a heightened expectation of a superior solution. At the same time, any fallacious arguments may be effectively disarmed, assisting government to govern for the best outcomes of the state, rather than its own survival. Therefore, PRA contends that education should be a central plank in any genuine and lasting solution to the problems of inefficiency, inequality and inadequacy within Queensland's current regulatory regime. Specifically, those problems may also be addressed by the measures which follow.

2. Adopt an Appropriate Time Frame

The attempt by the Queensland Government to impose a 'quick fix' solution to a very complex problem using 'command and control' techniques has resulted in both inequitable and inefficient outcomes. This is unnecessary.

Despite media reports to the contrary, there is no environmental crisis in Queensland as a result of tree clearing. 82% of the state's vegetation and 70% of its original woodlands remains in an intact remnant condition. However, it is important [0]to note that while the vegetation or woodland present may not have been disturbed, the addition of permanent water, the control of natural and aboriginal initiated bushfires and the disruption of ecological balance in other ways (eg. the introduction of pests and weeds) has resulted in bushland very different from the original state that explorers such as Captain Cook discovered. As a result, simply preventing development does not and will not ensure that these communities are preserved in, or returned to, a pristine wilderness state. To the contrary, in many areas it will ensure the degradation of the ecological community.

It is also fact that clearing rates relative to the extent of Queensland's woodlands are low. Figure 1 shows the areas cleared in 1997-1999 relative to the total area of remnant vegetation by broad vegetation group. Note that the area cleared has been doubled in the graph to enable it to be seen. Additionally, these rates of clearing were those prior to the proclamation of the Vegetation Management Act. Since then, the clearing of all endangered ecosystems and most of-concern ecosystems has been outlawed

Figure 1: Total remnant areas relative to remnant areas cleared 1997-1999 (times two)

NB: Only for vegetation types where average annual clearing was > 50 square kilometres (5,000 Ha). Source Wilson et. al. 2002, The Rangeland Journal 24(1) pp 6-35.

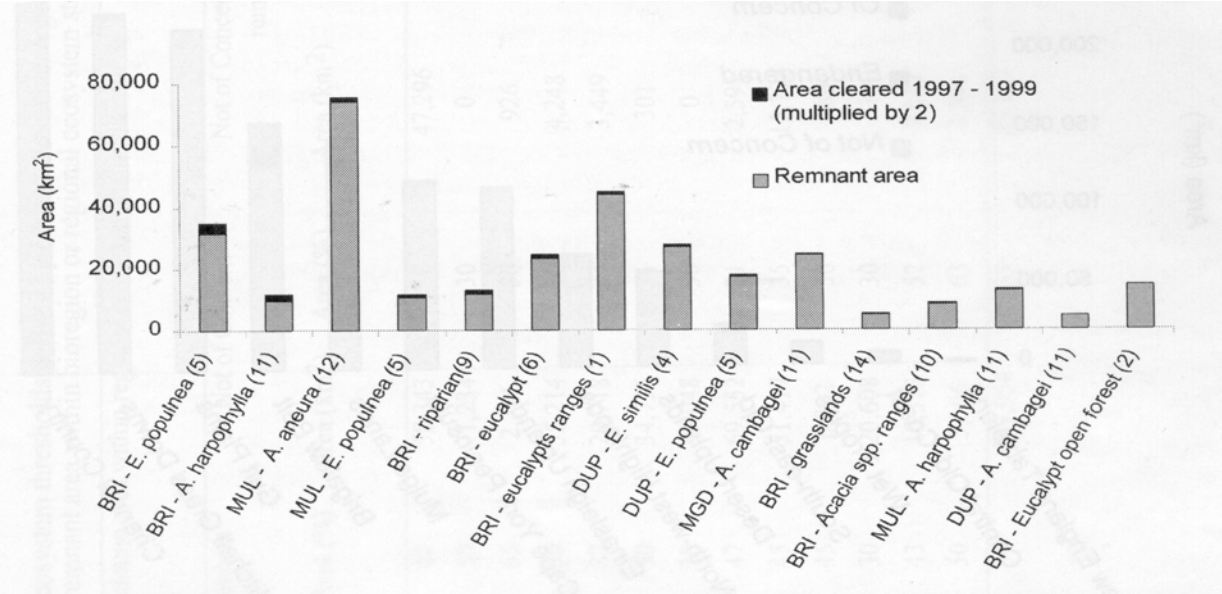

Fig. 8. 1999 remnant area (km^2) and total area cleared (km^2 x 2) between 1997 and 1999 by Broad Vegetation Group and bioregion, for groups with an average annual clearing rate > 50 km^2/a. Groups are labelled with bioregion abbreviation (Fig. 1) and BVG number (Appendix 1). NOTE: Because of the relatively small values, the total area cleared has been doubled to allow comparison.

Given that no 'crisis' exists, that preservation values are already addressed under the existing regime, that the economic implications are so significant and that the long-term management of our landscape is a complex issue requiring careful consideration, the proposed ban on clearing should be abandoned. At the same time a more appropriate time frame - at least ten years - should be adopted that will allow for the necessary research, mapping and extension to be undertaken and, from that, the identification of the optimal solution to this issue rather than a 'quick fix'.

3. Resource and Improve the Knowledge Base

Current natural resource management decision-making processes in Queensland have been constrained by a lack of reliable scientific data and a chronic lack of financial and human resources allocated to support these processes. There is ample evidence of this, including the highly inaccurate mapping system utilised by the Department of Natural Resources and Mines. The current regulatory regime has exacerbated the situation, focusing considerable Departmental effort on an enforcement regime while research, education and extension have suffered.

Ecological processes in the Australian landscape are still not well understood however it is accepted that ecologically sustainable development requires trade offs between economic objectives and preservation ideals. PRA believes a concerted effort should be made to improve the understanding of these ecological processes via a significant injection of resources into the state government's research, mapping and extension services.

By adopting a more appropriate time frame and by placing increased emphasis on sourcing reliable data, the appropriate 'trade offs' can be better identified and more adequately established than has historically been the case in the southern states to assist in the development of a policy which achieves economic development within an ecologically sustainable framework. Additionally, as more reliable and robust data is made available, achieving broad community agreement on points of contention becomes easier.

The State Government's current exploitation of the 'precautionary principle' in relation to the environment is a catch-all excuse to curb economic development, or is some cases to simply do nothing, and is not an acceptable outcome for landholders or the State. Indeed if the precautionary principle is to be applied, it should equally be applied in economic and environmental terms. A baseline policy framework should be adopted for future land development that can be further refined and improved upon as more science and a better understanding of the landscape is achieved.

4. Improve the Adequacy of the Regulatory Framework

A core issue that needs to be addressed is the fact that the existing regulatory regime has been developed in haste, with little or no community consultation, by regulators who have a simplistic understanding of what are very complex environmental and economic issues. Consequently, the regime is poorly aligned with the unique and diverse nature of Queensland's natural environment and perverse outcomes like those listed earlier have been generated. A further problem is that compliance has been enforced by the Department of Natural Resources at a standard that cannot be applied in practice and is not applied within the Department itself. Evidence of this is the inaccuracy of Departmental mapping and the contradictory expectation of the Department for absolute adherence of broadscale mechanical clearing operations to "lines on maps."

While some attempts were initiated to better tailor the regime to regional Queensland ecosystems through a regional planning process, this process now appear to have been abandoned or at least indelibly compromised by the proposed ban on remnant clearing.

The diverse nature of Queensland's landscape demands that regulatory decision making needs to be devolved to a regional level and should be undertaken by people with a solid understanding of the issues specific to the region. Ideally, such regional groups should not be dominated by government officers or appointees, but should instead comprise equal or majority membership from the landholding community.

Importantly, the twin issues of woodland thickening and encroachment need to be acknowledged and addressed on a region-by-region basis or the complete loss of all grazing utility, coupled with a reduction in the floristic diversity of Queensland's grazed woodlands will result.

5. Better Equip the Bureaucracy

Apart from the inadequacy of the regulations themselves, one of the key reasons for the failure of existing Queensland regulatory regime is the under-resourced and ill-disciplined state bureaucracy. As outlined above, the current Queensland Government has focussed its efforts on enforcing compliance with the regulations through the courts rather than resourcing the bureaucracy sufficiently so that the regulations are properly understood and implemented. This has resulted in a situation where relations between landholders and the bureaucracy are at an all time low and government officers are largely mistrusted and, in some cases, despised.

Departmental communication with permit applicants, or lack of, also presents problems. For example, situations where permits granted may not reflect the application made, the practice of "buck-passing" responsibility between government departments and /or individual officers, and so on.

Adding to the mistrust is the fact that the current regulations provide government officers with scope to adopt their own interpretation of the guidelines. When this occurs there is no affordable way for landholders to hold an offending officer accountable for his/her actions, which perpetuates the practice. In order to address this problem:

- Any regulatory regime should respect the basic civil rights of private landholders and those provisions which currently infringe on civil rights should be rescinded;
- Vegetation management permit assessment should only be undertaken by people with practical land management experience and a sound understanding of the regionally specific issues;
- Bureaucratic procedures and assessment processes be as objective as possible and fully transparent to the applicant;
- A single point of contact should be made responsible for <u>all</u> matters regarding an application, in order to reduce the now common practice of shuffling responsibility between departments;
- An affordable and accessible appeal process should be adopted to ensure government officers can be held accountable, thereby helping to restore landholder confidence in the bureaucracy.

6. Acknowledge the Costs to Landholders and Pay for Preservation

The cost to landholders of the current regulatory regime and the proposed ban on clearing remnant vegetation is significant and has been extensively examined in PRA's initial submission. In short, land development provides opportunities to increase economies of scale, reduce unit costs of production and value-add in an industry characterised by narrow profit margins that are highly susceptible to changes in productivity and production costs. The interaction of the tree-grass relationship with the micro-economic sensitivity of the grazing business means that natural resource management regulation has severe and wide-ranging ramifications for family farm businesses.

However, the cost of such regulation extends much further than the family farm. Many shires are dependent on the pastoral or other agricultural industries but throughout most of the current public debate to date, the impact of native vegetation and biodiversity regulation on regional communities has been understated and almost overlooked except by those living in these areas. Government must acknowledge that any on-farm impact has an immediate flow-on impact on the local economy. A reduced profit margin on-farm can translate into the loss of an on-farm employee, resulting in the loss of a family from the district, children from the school and so on. There are a number of shires where a ban on development will result in the loss of working families from across the district, having a dramatic effect on the community's businesses, social and cultural services.

Before making any policy or regulatory change which may infringe on those property rights and/or impact on property values or productivity, government should complete a social and economic impact assessment to allow formal identification and assessment of these impacts for community and Cabinet consideration.

If government deems it in the public interest to make a policy or regulatory change which infringes on an individual property owner's rights and in doing so impacts on their property's value or productivity, PRA believes government should "acquire" those rights. Its acquisition of private property rights should at least compensate for the subsequent economic loss in terms of productivity, land value prior to the change and any other costs or losses incurred by individual landholders. The acquisition process for private property rights should also be open to appeal.

Government should also provide adjustment assistance including industry development to shires that may be adversely affected as a result of the flow-on community impact of native vegetation and biodiversity regulation.

7. Abandon the Greenhouse "Quick-Fix"

Paraphrased, one of the arguments put forward to support the curbing of land clearing in Queensland has been that doing so would be an inexpensive means of reducing the nation's greenhouse gas emissions. This is a superficial and erroneous claim. While a lack of established economic data has hindered the identification of a definitive figure that represents the entire state-wide cost of banning land development or regulating vegetation management, PRA's initial submission showed that the impact of regulation extends far further than the simplistic "straight line" opportunity cost that is often used. The cost to individual farming families and regional communities is therefore far more significant than has apparently been recognised to date. In the same way that the Federal Government declined to endorse the Kyoto protocol, reportedly at least in part for fear of the economic harm that would be caused to Australian industries and the domestic community, both levels of government should also decline to commit the Australian community to a native vegetation and biodiversity policy that will cause significant economic harm in regional Queensland.

PRA also contends that it is inequitable in the extreme if Queensland rural communities are required to shoulder the direct economic cost and forgo the development and job creating opportunities already enjoyed elsewhere so that the rest of the nation may also enjoy the apparent benefit of meeting international treaty obligations. Given the economic harm already being incurred because of existing restrictions in the current vegetation management regime, it would seem incongruous for either level of government or the tax-paying community to risk causing further economic harm through a curb on development that is so inequitable and lacking in scientific rigour.

Conclusion

The need to balance the demands of economic development with environmental preservation is a responsibility that must be shared by the entire community. Current native vegetation management and biodiversity regulation in Queensland has sought to ensure a level of environmental preservation, but in doing so, has curbed economic development in rural Queensland and generated a number of other perverse outcomes that are imposing a significant and inequitable cost on landholders.

The package of complementary measures proposed by PRA in this submission, if adopted, would assist government to redress the current policy and regulatory imbalance for the benefit of landholders, rural communities and taxpayers and while achieving the state's economic and environmental aspirations.