Submission to Productivity Commission
Impacts of Native Vegetation and Biodiversity Regulations - by Helen Mahar

By Mrs Helen Mahar
SA
Phone/fax
Email

South Australia's Native Vegetation laws are flawed in that they lack adequate and affordable appeal provisions to help keep the administration within powers. So since 1985 the administrators and decision makers have exceeded their powers, lacked transparency, and avoided accountability.

I will be concentrating on these areas of administrative deficiency in this submission, using our own experience as landholders, with supporting documents, and other documents that have come into my possession.

Brief overview.
After the Native Vegetation Authority twice made it quite clear in 1987, that we would not get clearance consent unless we first signed a heritage agreement, we accepted a Native Vegetation Branch invitation to negotiate for a clearance consent / heritage agreement compromise – a 'package deal'.

But after five years of negotiation run-around we signed a heritage agreement in 1992, under pressure, and without clearance consent.

As we picked up the pieces I started to ask questions, trying to make sense of what had happened. First about the negotiation tactics we had experienced, then eventually about the NVA's two 1987 clearance refusals that had triggered this conflict.

Getting answers has not been easy. Getting accountability is harder.

Methodology
I intend to move through each of the phases in the overview, breaking to note some legally questionable decisions and practices as I go. Much of this I learned later.

Then look at the current act, the Native Vegetation Act 1991, and show how some of these practices have continued to the present day.

Then look briefly at the economic impact upon us, with its social and environmental consequences, and finally at the wider social consequences of sustained abuse of power and of process.

Clearance application 010/0020/84

Clearance controls were imposed on 12/05/1983 through regulations under the Planning Act. On being advised by Planning Department staff that we needed to apply for consent to complete the clearance of regrowth, we lodged our first application in June 1984.[1]

But the regulations were disallowed following a Supreme Court case. The Native Vegetation Management Act 1985 (NVM Act 1985) was introduced to remove clearance matters from the limitations of the Planning Act. The transitional provisions stated that applications under the Planning Act that had not been determined by the time the NVM Act 1985 came into force would be deemed to be applications under the NVM Act 1985. So our application was processed under the NVM Act 1985.

Following a field assessment, the Native Vegetation Branch recommended that part of our application (marked C) be approved for clearance consent, subject to us signing a heritage agreement over all of our land south of a dotted line to the sea. That was the balance of our application (marked R) plus a large amount of undeveloped country along the coast.[2] Correspondence as supplied on 5/12/86 in Attachment 2.

We were not told the acreages involved. But a much later freedom of information search showed that clearance consent was recommended for "C" (612 ha) and refusal for "R" (978 ha). In further notes the Branch recommended clearance consent for the land north of the dotted line in exchange for a heritage agreement over all of the coastal areas including the dunes, and further recommended refusal if a Heritage agreement could not be obtained. The branch anticipated obtaining a heritage agreement from us over some 3020 ha. These file notes enclosed with relevant parts highlighted.[3]

We objected to the condition, so clearance consent was totally refused.[4] Our objections, while valid, are not relevant here. What is relevant, however, is whether the grounds for refusal were valid.

The powers of the NVM Act 1985 were as follows:

- Clearance consent could only be approved if the consent would not seriously contravene the Planning Principles.

- In giving clearance consent the Native Vegetation Authority could attach conditions (if any) as it saw fit.

- No appeal lay against a clearance refusal or a condition attached to a consent.

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[1] Attachment 1 Copy of cover letter.
[2] Attachment 2 Notice of recommendation, summary of field survey, Planning Principles and Plan of recommendation.
[3] Attachment 3 File notes, found in Freedom of Information searches in 1998-9. **Information used by Native Vegetation Authority in making its decision, but not made available to applicants.**
[4] Attachment 4 Notice of clearance refusal for application 010/0020/84 + NVA minutes found in file search.

1 Planning Principles – Attachment 2A

Clearance refusal on application 010/0020/84 boils down to whether the 'C' areas were an important part of the coastal wildlife corridor. The field assessment thought not, but considered the "R' areas to be so. The Native Vegetation Authority overturned the field assessment and determined that clearance consent for the 'C' areas would seriously contravene Planning Principle 1(a). They used no added material evidence to substantiate overturning the Branch assessment of the status of area 'C'.

The NVA also quoted Planning Principle 3(a)(1). This required that in proposing consent, consideration needed to be given to the **retention** of corridors and wildlife refuges.

Retention of an extensive system of broad regrowth shelter belts and wildlife corridors was the outstanding feature of application 010/0020/84. Over the years we had observed that leaving the recommended narrow belts of old growth scrub resulted in the death of the belt. Much better to leave very wide belts. Better still was to leave a re-growth buffer against wide old-growth shelter belts. But the most vigorous of all was where regrowth belts were left. These survived very well indeed. That was the experience and the thinking behind application 010/0020/84.

This application proposed to retain large regrowth areas as shelter belts and wildlife corridors – all linked. As these re-growth areas **were going to be retained,** they were not within the area over which we had applied for clearance consent. For clarity, I have highlighted them.[5]

Reading section 3(a)(1) of the Planning Principles literally, the NVA could, as a condition of consent, have stipulate that part of our application area **be retained** to enhance the coast corridor and/or the other belts, corridors and buffers already proposed. That would have been enforceable, within powers, and reasonably related to the permit sought.

Our original letter (Attachment 1) shows that we were prepared to be quite flexible about retaining extra regrowth areas.

2 Conditions as thought fit.

During the years of trying to make sense of what we were dealing with, I studied and completed an Associate Diploma in Land Management (external) through Orange Agricultural College. One of the units, Planning and Environmental Law threw light on this issue. I quote from one of the books of recommended reading:

Power to impose conditions as a deciding body thinks fit. This is not an unfettered power. Conditions must reasonably relate to the purpose for which development is sought.

[5] Attachment 5. Highlighted plan.

This is illustrated in the Protean (Holdings) Ltd v Environment Protection Authority (Vic) [1977] Vr 51.

In that case, the appellant had previously sought a license from the EPA to discharge wastes from two specified chimney stacks which served as boilers used to heat water for sterilizing and cleansing purposes at a local abattoir. Then the method of heating the water was changed from oil to natural gas the company re-applied for a license on the basis of this change. The EPA then took the opportunity to impose the condition that henceforth no obnoxious or offensive odour should emanate from the premises. This condition was struck out because … 'the license of discharge was a personal license permitting it to discharge wastes from two specified chimney stacks, not a discharging of wastes from the premises as a whole. A condition attempting to exert controls over the whole premises was therefore extraneous to the permit sought."

Source:
Bates GM. Environmental law in Australia. Butterworths 1987. 2nd edition p 236.

Our application was over a specific area. The NVA's attempt to exert land use control over a much wider area was extraneous to the permit sought.

3 No Appeal.
While the NVM Act specifically stated that no appeal lay against a clearance refusal or a condition of consent, decisions could be taken to administrative appeal, in the Supreme Court. Few farmers have the money for this, then and now. So they were left powerless to question NVA decisions and have mistakes corrected.

In addition, legal advice I have received, states that administrative appeal cannot overturn a decision, it can only send it back to the current deciding body for reconsideration under the current law. That is not likely to mend the damage done to us under the NVM Act 1985.

However, from studies I learned that appeal provisions are part of the traditional checks and balances designed to help keep administrations within powers. To help protect the Minister claims of incompetence, and the Crown from liability, arising from unlawful application of the State's laws. That is the primary purpose of appeal provisions. All other considerations, eg fairness or reasonableness, are optional extras. Both of South Australia's native vegetation laws leave the Minister and the Crown exposed and liable.

4 Heritage Agreements.
Heritage agreements had been around since 1980. During the consultation leading up to writing the NVM Act 1985, the South Australian Government, to its credit, accepted that it was not fair to expect landowners to carry the whole cost of preserving native vegetation. If the community wanted native vegetation preserved, then the community should help pay. The heritage agreement scheme was adapted to facilitate compensation for land refused clearance. The Native Vegetation Authority was empowered to oversee the processing of these heritage agreements. The Minister signed them.

Basically, the Native Vegetation Authority could recommend compensation (diminution value) for land refused clearance consent, **after** a landowner had requested the Minister to enter into a heritage agreement over the refused land.

The above mentioned legal advice (QC) informed me that for the Native Vegetation Authority to insist that land be placed under a heritage agreement before it was refused clearance consent, was in effect putting the cart before the horse. For such a demand to be lawful, there would have had to be provision under the NVM Act 1985 that triggered compensation at the same rate as that available for land refused consent. The NVM Act contained no such provision.

In addition, most of our land targeted for a heritage agreement was external to the application, and thus **could not be refused consent!** This became important later.

Application 010/7089/87
Included with the notice of refusal for our first application was a pamphlet outlining the exemptions – where some clearance was allowable without having to first get permission. We naturally studied this carefully, and particularly noted the following:

5 … native vegetation may … be cleared –
(q) where –
(i) The land on which the vegetation is situated was used for cultivation or pasture within 5 years immediately before the proposed grazing occurs;
(ii) the clearance is necessary to maintain the land so that it can continue to be used for either cultivation or pasture to the extent to which it had been used for those purposes wihin the immediately preceding 5 years;
and
(iii)(A) the vegetation has a stem diameter at ground level of 150 mm or less;
or
(B) the vegetation is of the genus Xanthorrhoea;
(r) by grazing of domestic stock at a rate that does not exceed the average rate at which that species had grazed the land in the previous 5 years;

Reading this literally, we were exempt to maintain grazing over all of our regrowth country. That meant chaining the mallee shoots that were getting larger.

We were in Adelaide again in autumn 1987 and met with the Acting Manager of the Native Vegetation Management Branch, Tim Dendy. Dendy did not seem comfortable with the way we had been refused clearance consent, and when we pointed out that we could be exempt, looked surprised, and agreed that it read that way. But he did not seem to want us to follow this line. He suggested that a better strategy would be to apply for clearance consent over the 'C' areas, get that without conditions, then negotiate for the

right to maintain grazing in the 'R' areas, if necessary trading this off with a heritage agreement over the coast. This looked better, so we agreed to try this.

We lodged this application in May 1987. By this time we had were aware that the coast corridor contained an area of outstanding conservation value. A heritage agreement suddenly became the best way to manage this – to distance the fishing public from it. So we were anxious to get this application through quickly so that we could move onto the grazing / heritage agreement negotiations.

The Branch supported clearance consent without conditions attached. But the NVA 'preferred' to see a heritage agreement first. We failed to read 'preference' as a hard-line ultimatum, and asked the NVA to make a decision on the application as it stood, so that we could quickly move onto other matters. Again the branch supported consent without conditions, but the NVA refused consent, citing Planning Principle 3(a)(i).

But the thinking of NVA members was revealed in the minutes of their meeting of 26/08/87. We did not receive a copy of that. I found it in file searches in 1998-9.

5.31 D.T. Mahar – 010/7089/87
The Authority received correspondence from Mr D.T. Mahar requesting that a decision be made in regard to this application, which had previously been deferred pending discussion on a Heritage Agreement over the coastal vegetation on his property.

In discussion, members were of the opinion that as there was no guarantee that the coastal vegetation would be permanently secured under a Heritage Agreement, it would be improper to grant consent to an adjoining area which at this time not only provides an important vegetation corridor, but also acts as a buffer zone to the coastal region.

Resolved:
The Native Vegetation Authority refused consent to application 010/7089/87 in accordance with Planning Principle 3(a)(i) which was added by the State Government to the Development Plan for Districts Out of Council.

The NVA were constructing 3(a)(i) - consideration given to **retention** of wildlife corridors - as a moral obligation to **guarantee permanent protection** (heritage agreement) over corridors external to an application, that were going to be retained anyway.

More about the NVA and Branch tendency to favor on non-literal constructions later.

Another meeting with the NVM Branch Manager, this time David Conlon. We asked why we had not been given clearance consent. It was because we had not first signed a heritage agreement

We asked for a conciliator, but David Conlon explained that conciliators were not intended to be a form of appeal, they had no powers. They could only make recommendations which the NVA could take or leave. As they could take or leave the Branch recommendations. The NVA would very much like us to negotiate through the Branch for a clearance consent / heritage agreement, a 'package deal'.

As the Branch had shown decency in recommending clearance consent without conditions, we decided to negotiate as asked. Negotiations started. They got as far as a Branch offer for about 1,000 ha of clearance consent in return for about 2000 ha of heritage, and assessment of the compensation that would be available to us on signing a heritage agreement. The compensation was uneconomic - we would be financially better off to continue to run stock in most of that country.

At the same time sought independent legal advice. What we had experienced was highly questionable, but reading the exemptions literally, we were exempt to maintain grazing. Our lawyer notified the Branch that we would be exercising our rights to maintain grazing under exemption.

The Branch sought Crown Law opinion[6]. Basically, the exemptions were to be read literally, if the Branch wanted a different construction, then they would have to get the Act changed. David Conlon told us on verbally in July 1988 that we were exempt, to go ahead and chain all of our regrowth (but not to tell the NVA). The Branch and NVA would still be very interested in a heritage agreement from us.

With that, we decided to move on a heritage agreement over the coast as a matter of urgency. But - first there was a hitch. While the NVA were keen to assist us protect areas of such high conservation value, the financial assistance and fencing needed was not available until after those areas had been refused clearance consent. The NVA had been demanding a heritage agreement over country not eligible for compensation, and we had to make the move that would help the Branch to mend this oversight. Such a convoluted process.

David Conlon accepted that more than diminution value would be needed for the area, but there was room in the Act for this and could be sorted later. The main thing was to lodge that application to start things moving to protect the site.

Application 010/7145/88

In good faith we quickly lodged an application to mend this gap. As Conlon had portrayed the NVA as 'difficult', we decided to only ask for clearance consent over some small regrowth areas within our cropping paddocks – areas (1) and (2). In total, probably about 70 ha. Area (3), some 700 ha on the coast, contained the areas of outstanding conservation value. We were prepared to consider this for a heritage agreement if refused consent, as we knew it would be[7].

[6] Attachment 6: Crown Law opinion found in file search 1998.
[7] Attachment 7: Cover letter with application 010/7145/88 7A Applicant's plan 7B Applicants plan redrafted by Branch

Four months later we had heard nothing. A phone call hurried things up. David Conlon suggested that as the area was known to the Branch, a field inspection could be dispensed with, and the application rushed before the NVA. We agreed to the Branch fast-tracking this application and left it in their hands - they knew their procedures better than us.

The Branch only processed area (3) for heritage. At the time, we did not question this as we wanted to hurry up the protection of that area, and most of the (1) and (2) areas had already twice been supported for consent upon signing a heritage agreement. It was reasonable to assume that the Branch knew what they were doing. Area (3) was refused clearance consent as expected, opening up the way for financial assistance under a heritage agreement.

On 20/12/88 we met with David Conlon and the Case Officer Craig Whisson, to sort out the many management details of this heritage agreement, and the clearance consent we would get on signing it. But things had changed.

The new NVA chairman had a legal background. According to Conlon he had told the Branch that demanding a heritage agreement in return for clearance consent was levering on unrelated issues which could be blackmail which was illegal, so the practice had to stop. Besides, heritage agreements were supposed to be voluntary, and one signed under pressure could be invalid. The NVA Chairman did not want to see any more such arrangements.

There was a new policy of no more clearance consent. All clearance applications were to be refused. Leaving landholders free to take up heritage agreement options without pressure. The Branch would no longer support clearance consent for us, but would still support heritage agreements.

When I asked for written confirmation of the Crown law opinion that we were exempt, Conlon refused to put anything in writing. The Branch were not happy with that opinion and were starting a test case to clarify it. When they won, as they expected to, we could be next in court. The Branch were seeking to have the word ‘pasture’ interpreted as ‘introduced pasture’, thus removing pasture based on native vegetation species from the exemption.

Conlon stressed that if we still wanted to do business with the NVA, then we had to clearly understand that the Branch would no longer support clearance consent for us.

We walked out with nothing resolved, all of the negotiation goalposts changed, and some added hurdles.

Uncertainty over exemption 5(q)

For the next two years negotiations stalled on our right to maintain grazing. We were not prepared to take on managing something for the benefit of the whole State, while there was uncertainty about our right to earn enough income to be there to do the job.

During one phone conversatation Conlon suggested that a way out of the impasse would be for us to submit a retrospective clearance application for the country we had already chained. While I appreciated Conlon's efforts to find solutions, I declined this one. I told him that we believed we were acting within the law, and would no do anything that could be construed as an admission of unlawful conduct on our part. (We did not trust the NVA to respect an application lodged to help fix their mess - we had already tried that.)

I was to learn later that at that time it was common practice for landowners caught clearing without permission to submit, on Branch advice, a retrospective clearance application. In effect, confessing guilt. In return for the retrospective clearance approval that would protect them from threat of prosecution, the NVA usually required the landowner to enter into a heritage agreement over their remaining native vegetation.

That test case was decided in December 1989. The exemptions were to be read literally. The Branch failed to notify us of this – someone else did. Native Vegetation Authority v Margaret Ann Lyon and Reginald William Lyon. D.C. (N.V.A.) No. 2 of 1989. I can supply a copy if needed.

During this period (1989 & 90) it became widely understood that the NVA were no longer approving clearance consent. There was an election, but no change of government, so the extreme native vegetation regime was set to continue. Landholders gave up hoping for changes, accepted reality, and took up their heritage agreement options in increasing numbers.

As we believed that we would no longer get clearance consent on signing a heritage agreement, we reduced the area we were prepared to place under heritage to the minimum that would effectively buffer the site. It paid us to keep the rest for grazing.

Conciliation

In mid 1990 submissions were sought on the Native Vegetation Management Act. I responded, through the United Farmers and Stockowners (now South Australian Farmers Federation) outlining the problems as I understood them at the time, and recommending that appeal rights were needed to help keep Branch and NVA honest. I can supply this document if needed.

My submission was passed to Nicholas Newland, acting Director of the Dept, who asked us to negotiate the problems, as there seemed to be considerable common ground between ourselves and the Department. We agreed to negotiate. Newland passed the negotiation task back to the Native Vegetation Branch where the new manager, Leith Yelland wanted to appoint a conciliator. We agreed, provided the conciliator was allowed to report fully, and allowed to make any recommendations that might resolve this affair. Yelland agreed to this – verbally – then passed the management of the conciliator back to the case officer Craig Whisson, without our knowledge. We found in file searches that Yelland did write to us on this matter, but as his letter was incorrectly addressed, we never received it. Can supply a copy if needed.

The conciliator told us that his instructions were to investigate thoroughly our use of the exemption to maintain grazing, our grazing management, and to write a whole farm plan. I started to feel a little uneasy. On mentioning the cropping land we had been denied, the conciliator told us that if we really wanted to sort out our differences with the NVA, not to ask for clearance consent.

On returning to Adelaide the conciliator reported to the Branch, and was told that the type damages of compensation we were looking for was not available under the Act, so the conciliator suggested that if we were looking for a compensation payment, then we could put more land in other parts of our property under heritage.[8]

We received this letter on the afternoon of Monday 11th February 1991. The next day was the opening of the South Australian Parliament. The new Native Vegetation Act was to be introduced that day. There would be no more heritage agreement compensation available for clearance applications lodged after the 12th. We only had overnight to get that application in. We did this, to keep all options open, then sought independent advice. We told the conciliator that he could make any recommendations he thought appropriate and we wanted him to bring up the grazing income losses. The NVA had the final say, not the Branch.

Then we contacted the Branch. Leith Yelland was surprised that we had problems. Craig Whisson had told him that things were coming along nicely, and that extra heritage areas would be the means of resolving all the problems. Knowing that Craig Whisson was involved, we promptly engaged a solicitor to help us with the negotiations.

We were fairly jumpy about being 'levered' into heritage agreements, so we asked that the application just lodged be processed separately from matters already in hand.

The Native Vegetation Act 1991 was passed without an appeal mechanism. The role of conciliators was written into the new Act. They were still just a sort of counselor, with no real powers.

The conciliator's report arrived.[9] I have enclosed his Summary and Recommendations. The complete report is available if needed.

Our solicitor supported adding interest to the grazing losses, so I did this. That brought the losses well into 6 figures.

At its meeting on 8th April 1991, the NVA resolved:[10]

[8] Attachment 8. Conciliators' letter dated 6/2/91.
[9] Attachment 9: Conciliator's Summary and Recommendations.
[10] Attachment 10. Copy of NVA (29/04/91) after NVA meeting of 8th April 1991.

1 To support in principle recommending to the Minster for Environment and Planning a payment under s.30(3) NVM Act, in recognition of the hardship caused through delays in finalizing Mr & Mrs Mahar's application to chain regrowth area, now considered exempt under regulation 5(q).

The Manager of the Native Vegetation Management Branch was requested to examine and report back to the Authority on the basis of payment to be recommended under Section 30(3).

2 To continue negotiations for Heritage Agreements and satisfactory resolution of issues concerning a financial assistance package, fencing and stock water supply.

3 To request the Native Vegetation Management Branch to discuss with Mr & Mrs Mahar options for additional fencing to improve the grazing management of the native pastures where costs can be minimized by locating some fences on the boundaries of Heritage Agreement areas.

4 To advise Mr & Mrs Mahar that it is not within the Authority's power to guarantee that the regrowth exemption, Regulation 5(q), will always remain in force.

We received the NVA's response to the conciliator's report on Friday 3nd May, three days before the next NVA meeting on Monday 6th May. We expected the Branch to contact us, but they did not.

At its meeting on 6th May 1991 the NVA resolved the following.

"To recommend the Minster pay financial assistance to DT & HJ Mahar under section 30(3) NVM Act to a total of $70,000 in recognition of hardship caused through delays in finalizing the application to chain regrowth areas now considered exempt under Regulation 5(q).

The Authority further considered that any payment should be made as part of a package involving a heritage agreement around the "…" site.

The proposed heritage agreement compensation was set at diminution value, and the *Authority further considered that other areas of native vegetation on the property were worthy of conservation and is willing to discuss protection of additional scrub blocks under a Heritage agreement. The boundaries of those areas, and the "…" site, and hence fencing erected at the department's expense may coincide with additional fencing requirements identified in Mr Matheson's report as important for improved property management.*

Clearly, the reduced costs of this fencing, together with the additional financial assistance, could be of considerable benefit to the property. Letter dated 22/5/91. Can supply if needed.

We asked our solicitor to find out how the $70,000 hardship payment had been calculated, and whether the NVA really were 'levering' again.[11]

Leith Yelland's response to our lawyer made things quite clear.[12]

The figure of $70,000 in recognition of hardship caused through delays in finalizing the application to chain regrowth, was established by the Authority following full consideration of all the relevant circumstances presented to it. The Authority is not prepared to negotiate on this figure.

It is the Authority's understanding that the estimate for hardship was to be linked with a Heritage Agreement over the area surrounding the "…" site on your client's property. The Authority would be extremely disappointed if this did not eventuate.

In relation to the question of further fencing beyond that required to enclose the "…" site, the Authority is of the view that this could be considered as part of any further Heritage Agreement application.

As discussed at the Authority meeting, it would seem that all parties would be suited if this matter could be brought to a speedy resolution. The Authority has expressed concern to the effect that it would be very disappointed if there were any further delays.

I confirm that the Valuer-General's estimate…for the proposed Heritage Agreement (245 ha) is $10,800 and that the total for diminution in value and hardship payment is $80,800 as conveyed in our letter of 22 May 1991.

I would be pleased to hear from you at the earliest possible moment as to your client's response to this offer.

Leith Yelland [11 June 1991].

The clients were not at all happy with the resumption of 'levering' for a heritage agreement under a chairman allegedly opposed to the practice.

But of more immediate concern – no explanation of how that hardship payment had been calculated, and the site heritage compensation was set at diminution value only.

I wrote to the Chairman of the NVA, (dated 12/5/91 but sent 12/6/91) expressing disappointment that the NVA had not more fully implemented the conciliator's recommendations, and asked how that hardship payment had been calculated. It is a long letter, somewhat upset, but I can supply it if needed. I waited for a response to the 12/5/91 letter while our solicitor set about trying to increase the compensation for the

[11] Attachment 11: Letter from Lawyer to NV Branch 27/5/91.
[12] Attachment 12: Letter from Branch Manager Leith Yelland. Poor quality, so have attached clearer typed page. Will obtain fair copy from dept if needed.

heritage agreement. We both hit brick walls, until I began to suspect that the NVA Chairman had not received my letter. He had not. I had sent it by fax and hard copy. Odd for two copies of a letter to go astray.

Our solicitor tabled our 12/5/91 at the NVA meeting of October, 1991. Leith Yelland responded. [13] I have presented the full text in the body of this document as this was, for us, a turning point letter.

Dear Mr McFarlane 21/10/91
Re: D.T. & H.J. Mahar – Financial Assistance Claim & Heritage Agreement
(Your ref: AGM/C1822790

I refer to our letters of October 4 and September 24, and our short response of 4 October 1991 which was faxed to you'

The letter in question from D.T. & H.J. Mahar was received by the Branch first by fax and then by hard copy in mid May 1991. [Sent in mid June]. The fax was received on 12 May 1991. I made the decision not to place that letter before the Authority on the basis that I do not, and still do not, believe that it raised any issues that had not been thoroughly canvassed by the Authority. Furthermore, it had been made abundantly clear to me that the Authority, in respect of the hardship and financial assistance claims being made in the letter, had concluded its business with Mr & Mrs Mahar regarding the recommendations it was required to make.

I remain of that view, but point out that the bundles of papers you presented, or tabled, at the last Authority meeting have been taken home by the members of the Authority with a request from me that both they and the Chairman let me know if they are prepared to hear any further on the matter of the Mahar's financial assistance packages. I will be guided by their wishes, but I will not be putting the matter before them unless the Authority wishes to consider it again.

In the meantime, you should be aware that Nicholas Newland has been contacted by Mrs Mahar and he, in return has been in touch with her again. Both Nicholas Newland and I have discussed the Mahar matter with the Member for Eyre, Mr Graham Gunn.

Mrs Mahar has now been advised that it would be in her interest to accept the hardship payment offer arising from the applicaton under the vegetation retention program as a separate matter to that which might arise from the protection of the … site. We are awaiting a response to the letter (copy attached) forwarded to her by the Acting Director, Conservation and Land Management.

The most recent contact with Mrs Mahar was prefaced by advice to her that we were talking to her on the understanding that we are still dealing with you on her behalf, and that if there have been changes of arrangements, we were not aware of it. I would be

[13] Attachment 13. Copy of letter from Leith Yelland dated 21/10/91.

grateful if you would let me know whether in future we will be dealing with Piper Alderman and Mr & Mrs Mahar concurrently.

Yours sincerely

Leith Yelland.
Manager, Native Vegetation Management Branch.

It is the small things that finally knock you. Leith Yelland had intercepted two copies of a letter, and withheld them for four months from the addressee, the NVA Chairman. And given our solicitor a run-around for months, at our expense. I was shattered by such conduct. We had been asked by Newland to negotiate the problems, but how do you negotiate with this?

I still did not have an explanation of how that $70,000 hardship payment had been calculated. And the contempt for us that Yelland conveyed was almost physical. I guess, with a letter like that I should have gone public – I thought of it - but I doubt that l would have been coherent, and there was the site to consider. Any publicity about our property would guarantee public attention on the site – the media love the unusual - and we were trying very hard to keep it quiet to protect it.

Just prior to this I had contacted Nicholas Newland as the negotiations were breaking down. He had suggested that we could access the hardship payment while continuing to negotiate for increased compensation for the site area. We agreed to separate the issues.

About a week later I had calmed down a little, so I rang Newland and let off steam about Yelland's letter. Newland only wanted to know if we were still prepared to continue negotiations. With the site so still vulnerable, there seemed little else we could do but stay quiet and keep negotiating 'in channels', So I agreed to continue.

The next letter, from John Riggs, Manager, Native Vegetation Management Branch shows how things progressed[14].

The financial assistance for the site was to compromise diminution value, re-imbursement for over-capitalization for existing fencing and equipment, and two discretionary payments in recognition of the unique nature of the Heritage Agreement site, and of our care and protection of the site for 5 years following the establishment of the site. [We had only wanted compensation for reduced grazing, and were prepared to continue to protect the site for nothing, as we had been doing. But claims for foregone income did not wash with the NVA, so we let Newland and the Branch cook up claims that could wash.]

Riggs confirmed the basis on which he made the $70,000 payment.

[14] Attachment 14. Letter from John Riggs 24/2/92.

This is the sum offered to you by the Authority and accepted in your letter to Nicholas Newland, dated 28/10/91, as a hardship payment for reduced grazing while an interpretation of the regrowth exemption was established.

The Authority indicated that this payment would be made with the remaining sum of $10,000 following your decision to establish a Heritage Agreement around the '…' site.

However, notwithstanding the Authority's view, I made this payment in the expectation of a conclusion soon being reached in establishing the Heritage Agreement.

Then a surprise letter from the NVA Chairman, dated 30 March 1992.[15]

Apparently John Riggs had conveyed my concern at the lack of a formal reply from the Authority to my letter of 12 May 1991.

It was the Chairman's understanding that the previous Manager had responded to that letter on the Authority's behalf, but our letter would appeared to suggest that two points remained unanswered.

First, the conciliation process, and the way in which Mr Matheson's report was dealt with by the Authority. The NVA made the final decisions, not the conciliator.

Regarding the 'hardship payment', the Authority was concerned that Mr Matheson did not recognize the date the restrictions on chaining regrowth were introduced – November 1985 – nor the date –July 1988 – when we were advised of the Crown's interpretation of that exemption. So the Authority recommended the hardship payment for a shorter period, [but did award interest for that shorter period].

The NVA approved the site compensation package at their meeting on 6 April 1992. But the hostility of some towards us was obvious and I was taken aback. That afternoon the numbness from the Yelland letter disappeared and the questions started. I started to look at the big picture again. After all these years, where were we?

We had applied for clearance consent for enough cropping land to be viable, and we did not have it.

We had twice been refused clearance consent for the cropping land we needed because we would not first agree to sign a heritage agreement.

Because of a rare and valuable site, we had stayed quietly in channels, and tried to negotiate a package deal, as asked, on the understanding that we would get clearance consent on signing a heritage agreement.

[15] Attachment 15: Letter from NVA Chairman 30/3/92.

Once the way was clear to obtain compensation for that heritage agreement, the Branch withdrew support for clearance consent for us – on the grounds that 'levering' on unrelated issues could be blackmail, which was unlawful.

We had secured our right to maintain grazing in our regrowth country.

We had recouped, through a 'hardship payment', most of the costs incurred through delays in recognizing our exempt status. The remainder was now part of our core farm debt.

Years of trying to negotiate as asked had been costly and had increased those debts.

I had written a submission recommending that an appeal mechanism was needed to keep the Branch and NVA honest. We had been dropped straight back into the questionable practices and had my recommendation strongly reinforced.

The new Native Vegetation Act 1991 had been passed without appeal rights, and two of the NVA members being appointed to the new Native Vegetation Council for continuity. So the questionable practices were set to continue.

We had secured the capital 'break-even' price we needed to be able to set aside grazing land without reducing farm earnings - and had ended up appearing contemptible.

And we had crawled to a bunch of 'virtual blackmailers' for the means to be able to do the State a conservation favour.

Somehow, we had been rolled.

Getting answers.
I had a lot of questions and I wanted answers. Asking our lawyer to get them would be costly, especially if the Branch gave him another run-around. I approached the Ombudsman's office. They should be able to get some answers. The Ombudsman would not investigate while we had a lawyer working for us, and would only investigate the most recent events. So we signed the heritage agreement and dismissed our lawyer, telling him there were matters we were going to take to the Ombudsman. He was OK about this, and thought we might get more money. It was more than money I wanted. I wanted answers.

The Ombudsman found no administrative defect in the Authority's processes, found that while Yelland did block communications, there could be mitigating reasons, and did not address my concerns about 'levering'. That wasted a year – no answers there.[16]

The NVA became involved again, and offered an extra 'hardship payment' – on condition we gave an undertaking in writing that we would make no further claims under S30(3) of the NVM Act[17]. The NVA were 'levering' again. I sought legal advice and was told that this was unlawful, and improper for a body of such standing as the NVA to impose. But we could decide to accept it. So I wrote back stating that the condition was improper, and could they please send the cheque.

To our surprise they did, with this letter attached.[18] The NVA were still 'levering'. So we accepted the cheque as finalizing the income losses arising from the regrowth dispute, but we would not give an undertaking of no further claims against the NVA while we still had unfinished business with the NVA. This arose from the NVA's two questionable clearance refusals of 1987, which left us without enough cropping land to be viable. As the NVA could no longer correct those decisions, we requested the Department buy the property.

The NVA accepted that the 'hardship payment' would finalize the regrowth grazing dispute, but the NVA could no longer recommend that property made unviable by NVA clearance decisions be purchased. The whole affair was forwarded to the Minster for consideration.[19]

In February 1994 Minister David Wotton asked us what would settle the affair. We gave it some thought, and gave the Minister some options: pay our outstanding costs or buy the property.

In August 1994 the Minster's told us his hands were tied - he could do neither. He urged us to talk to the Native Vegetation Branch about putting more land under heritage as a means of accessing finance. Talk to the Branch? Heritage agreement? I felt sick. But

[16] Attachment 16. Correspondence from Ombudsman's office – two letters 1/7/91 & 5/8/91
[17] Attachment 17. Letter from NVA dated 15th July 1993
[18] Attachment 18: Letter from NVA dated 26/10/93
[19] Attachment 19: Letter from NVA 14/12/93.

this time we struck Lindsay Best. He had worked out that getting us some clearance consent might be the go.

We had other land that could be eligible for clearance consent under the NV Act 1991. We applied, and consent was granted, on condition that we left a certain proportion as belts and corridors. An appropriate condition, within powers, and reasonably related to the permit sought. Now why couldn't the NVA have done that in the first place? It would have saved an awful lot of trouble. I formed a high opinion of the standards and probity of the Native Vegetation Council.

A heritage agreement was signed over the land we had applied for at the urging of the conciliator. This land had little grazing value, so the diminution value offered was a good deal. We were allowed to draw the boundaries to suit our farm management.

But there were still unanswered questions. I asked the Native Vegetation Authority to review its two 1987 clearance decisions. The Authority met in July 1995.

The Chairman asked if we had a copy of the Branch enclosures – we did not, so he ordered we be given a copy, as it turned out we had the right to see all information on which the NVA based its decisions. We did not achieve much at that meeting, as the NVA did not seem to know why we were there. Afterwards we had a chance to look at the information provided by the Branch to the NVA, and noticed that the Summary of Events was incorrect, particularly on entry 5/12/86. But we had to return home (870 km) to check our documents.

We wrote to the NVA chairman[20], and on receiving no acknowledgement, began to suspect another withheld letter. So I began to closely examine that Summary, and the rest of the Branch briefing, checking the 'facts' against the departmental source documents in my possession.

Summary / Sequence of Events [21]
This had its origins as part of the conciliator's briefing (originating officer Craig Whisson) which supplied as Branch information to the NVA in April 1991.

This summary was updated by the Branch and sent as an attachment labeled 'Sequence of Events' to Minister Wotton in Dec 1993/Jan 1994. The updated summary was presented again to the Native Vegetation Council in July 1995, as part of the Branch briefing prepared by Craig Whisson.

We were not aware of the existence of this influential summary until July 1995, when the NVA Chairman asked if we had a copy of the branch briefing, and ordered that we be given one. Later, I asked why he had done this, and he told me that I had the right to see all information considered by the Authority in making its decisions. For his alertness and propriety in this instance, the NVA Chairman deserves credit. He obviously had no idea

[20] Attachment 20: Letter to NVA Chairman 26/8/1995.
[21] Attachment 21: Summary/Sequence of Events 01/06/84 to 14/12/94.

that he was being supplied with factually deficient information by the Department, and had been for years.

I can supply a copy of the Conciliator's briefing (found in file search) to verify the origin of this summary, and a copy of the Branch submission to the NVA for its July meeting to verify that the summary was updated and presented at that meeting.

The entry 05/12/86 hit me straight away. See Attachments 2 and 3. I was also disturbed by entry 20/12/88, which omitted to mention that at that meeting the Branch had withdrawn its support for clearance consent for us. And entry of 06/05/91 fails to mention that the NVA had 'linked' the 'hardship payment' to a heritage agreement. Attachment 12. In fact, the entries 06/05/91 and 06/04/92 do a pretty good job of masking that attempted linkage. See Attachment 21A for footnoted corrections.

Anyone needed to rely on this document to understand the case and make decisions, would be disadvantaged. The next few years saw a lot of correspondence, asking questions about the many errors in the summary, and looking for answers to other problems. Gradually I came to the conclusion that most of the errors had been deliberate. With that, things started to make sense.

I kept asking questions about the legality of the NVA's two clearance refusals of 1987, and in 1997 the Minister referred this to Crown Law for an opinion. The Branch eventually sent us a letter containing the substance of this opinion. Basically, 3(a)(1) of the Planning Principles required the NVA to give consideration to retention of wildlife corridors, and anyway, the NVA had the power to impose conditions as it thought fit. No consideration of the validity of 'linking' clearance consent to a heritage agreement. I can supply this letter if needed.

The questions started to center on the 20/12/88 meeting. Why had the Branch withdrawn their support for clearance consent for us? The most plausible reason given, that for legal reasons, the new NVA Chairman would not countenance 'levering' for heritage agreements, had not stacked up. The NVA, under that chairman had 'levered' to the last.

In 1998 I asked to look at our files with the Branch. I could not find any reference to the 1988 period, so I concentrated on the files made available to us, and took copies of documents I did not have.

Two documents, one a briefing from Nicholas Newland[22] to Minster Wotton in Jan 1994, and the other a letter from Dr Andrew Black[23] in1984, are enclosed. They show the hostility and contempt that we were held in at the time. Dr Black's letter is particularly interesting in that his recommendation – that we put more land under heritage – was adopted by Minister Wotton. Both letters refer to the Summary / Sequence of Events in support of their understanding of this affair.

[22] Attachment 22. Minute from Nicholas Newland to Minister Wotton Jan 1994.
[23] Attachment 23. Letter from Andrew Black, Native Vegetation Council, to Minister Wotton. 1994.

File on Application 010/7145/88

By mid 1999 I had worked out, by cross referencing, the number of the missing file, 010/7145/88. On my next trip to Adelaide I asked for this file and it was found. It did contain some record of the 20/12/88 meeting, but not much. What was really interesting was how our third application had been processed. Our cover letter was there mentioning three areas in the application, and that we wanted clearance consent for two. (Attachment 7). This was followed by a copy of the applicant's proposal (Attachment 7A).

But the next document, labeled Applicant's proposal Redrafted by branch (Attachment 7B) was not our proposal. Areas 1 and 2 were missing. It looked like a photocopying error. There was nothing within the file noting that the proposal had been changed, and no document authorizing the changes. Nor any indication that the NVA had noted our cover letter, where the two missing areas are mentioned. The Branch presented only an application for clearance consent over area 3, for the purpose of refusal, making the area eligible for heritage agreement compensation.

Getting Accountability

I immediately raised this altered plan with the Minister. Ten months later the Minister responded that, according to Branch information, the changes to application 010/7145/88 had been made as the result of a verbal agreement between ourselves and the Branch.[24]

With that I immediately thanked the Minister for telling me that the alterations to this application had been deliberate, and stated that this now looked like a case of fraud.[25] A Minister's stiffer responded thanking me for my interest, and advising me that my comments were noted. I can supply this letter, dated 2/5/2000.

Another letter to the Minister, dated 3 August 2000, stated that unauthorized alterations to an application were not the only complaint I had against Whisson. Mr Whisson, as the primary source of information about this affair, had been misinforming decision makers and others who needed to know, for years.[26] No recorded response from the Minister.

With that, in October 2000 I lodged a complaint with the Commissioner of Public Employment about the conduct, in the course of his duties, of Public officer Craig Whisson[27]. We attended the Commissioner's office in Adelaide on 30/10/200, bringing with us a lot of supporting documents.

After sifting through all the documents, the complaints came through as:

The complainant alleges that:

[24] Attachment 24 Letter 8/4/2000 from Minister Iain Evans
[25] Attachment 25 Letter signed by Dan and Helen Mahar to Iain Evans 24/4/2000
[26] Attachment 26 Letter 3/8/2000 to Minister Evans
[27] Attachment 27 Letter to Commissioner for Public employment lodging complaint against Craig Whisson.

- Mr Whisson altered, without consultation, the clearance application submitted by Mr Mahar on 14 July 1988 (see Attachments 12 and 13)
- Briefings prepared by Mr Whisson to inform the conciliator's report on 15 February 1991 and the Native Vegetation Authority's report on 21 June 1995 were incorrect (see attachments 17A and 40, respectively). While Mr and Mrs Mahar were provided with a copy of the briefing in 1995 by the Chairperson at the meeting of the Native Vegetation Authority, they were not provided with a copy of the briefing for the conciliator until mid 1988.
- Mr Whisson has provided misleading information to senior officers, which has influenced their actions (refer attachment 22, the letter dated 22 October 1991 from Nicholas Newland, Acting Director Conservation Land Management), and
- Mr Whisson, in his involvement in the case, and in providing inaccurate information to other parties involved has undermined the credibility of the process (refer attachment 39, letter from Mr Andrew Black, Native Vegetation Authority).

Further to this complaint, Mrs Mahar has concerns in regard to Mr Whisson acting as Executive Officer to the Native Vegetation Council, and in applying for the position on an ongoing basis (see attachment 41). Until this matter is resolved Mr and Mrs Mahar have no confidence in the credibility of the processes within the Branch while Mr Whisson is acting in this capacity.

A little inaccurate in some of the attachment references, but overall, a fair enough assessment of our complaints. It took a while to find someone to investigate. Then I had an interview with the investigator, on a trip to Adelaide, and again provided a lot of documents. Then signed a statement. By June 2001 we were through all that.

In February 2002, the Office for the Commissioner responded

"*the events in question happened a considerable time ago and the Government investigators have indicated that it is not now possible to reach a state of certainty about many of the issues involved.*

I do not believe that there is sufficient evidence that Mr Whisson has breached the conduct standards required of public servants.

However, I acknowledge that it is quite likely that there were some misunderstandings between you and departmental staff, and that you are dissatisfied with the outcome and conduct of various processes.

I therefore intend to ask the Chief Executive, Department for Environment and heritage to review the administrative and communication processes used in his agency to ensure that such issues do not arise in the future.[28]

[28] Attachment 28 Response, 11/2/2002 from Commissioner for Public Employment

Here I would like to compare of the style of report from the Ombudsman's office with the above. The Ombudsman acknowledged that my complaint against Leith Yelland for blocking communications appeared to be justified, and then cited possible mitigating factors as the reason for dismissing it.

The Commissioner for Public Employment's report makes no attempt to acknowledge the complaints, or refute them.

I can only conclude that Craig Whisson, in altering an application without documenting the alteration and his authority for making it, and in providing factually incorrect information in his reports to decision makers, did not breach the standards required of public servants.

Getting accountability is harder.

Ironically, the Native Vegetation Act 1985 had the all the powers needed to deal very well with our on-ground issues. See attached chart.[29]

- Clearance consent was allowable if the clearance did not breach the Planning Principles.
- We were exempt to maintain grazing
- It was within powers to use a native vegetation heritage agreement to protect a non-native vegetation item.
- And extra compensation was available under special circumstances. Helping a small family farm business protect a fragile site of national significance, without reducing their viability just had to be a special circumstance.

The Act was fine. The administration was not.

Native Vegetation Act 1991 – the 'Net Vegetation Gain' Policy.

My high opinion of the Native Vegetation Council did not last long. Less than a year later, late in 1995, a farmer contacted me with the same problem that I had experienced. In return for clearance consent for some small degraded patches of regrowth, he was required to place a very large area (originally a multiple of 17, but negotiated through a conciliator down to a multiple of 10) of old growth scrub under a heritage agreement. He still objected, so he was refused consent. What surprised me was that it was the Native Vegetation Council making this demand. What on earth was going on?

I made some enquiries and was told that under the Native vegetation Act 1991 it was a required condition of clearance consent that there be a net vegetation gain.

But on reading the Act, it was not quite like that.

[29] Attachment 29. Chart showing powers of NVM Act, on-ground issues, and impact of NVA Decisions.

Provisions relating to consent

29. (1) Subject to subsection (4), in deciding whether to consent to an application to clear native vegetation, the Council

(a) must have regard to the principles of clearance of native vegetation so far as they are relevant to that decision; and

(b) must not make a decision that is seriously at variance with those principles.

…

(4) The Council may give its consent to clearance of native vegetation that is in contravention of subsection (1)(b) if –

(a) the vegetation comprises one or more plants; and

(b) the applicant is in the business of primary production; and

© in the opinion of the Council, the retention of that plant, or those plants, would put the applicant to unreasonable expense in carrying on that business or would result in an unreasonable reduction of potential income from that business.

…

(10) A consent under this division is subject to conditions (if any) as the Council thinks fit to impose, and any such conditions are binding on, and enforceable against, the person by whom the clearance is undertaken, all subsequent owners of the land and any other person who acquires the benefit of the consent.

(11) The Council may give its consent to clearance of native vegetation pursuant to subsection (4) if, and only if –

(a) it attaches to the consent a condition requiring the applicant to establish native vegetation on land specified by the Council: and

(b) the Council is satisfied that the environmental benefits that will be provided by that vegetation will significantly outweigh the environmental benefits to be provided by the vegetation to be cleared.

So the set up for consent 'not seriously at variance' was the same as under the previous act. The Council had the powers to impose conditions (if any) as it thought fit.

The provision for limited clearance in contravention of the above was introduced to facilitate the development of center pivots and vineyards. Here, where clearance would be 'seriously at variance', the applicant was required to establish, on land specified by the council, vegetation that would more than offset the damage done by the proposed clearance.

What is really interesting is that here, for the first time, the deciding body (Council) is given the power to exercise control over land outside the area under application (*on land specified by the Council)* for consent 'seriously at variance'.

The Native Vegetation Branch and Council had adopted the 'net vegetation gain' requirements for clearance 'seriously at variance' and applied them as **policy** to clearance 'not seriously at variance'.

For high rainfall or irrigation areas, applicants were usually required to plant trees at about the ratio of 10:1. Economically, the benefits of clearance consent would outweigh the cost of 'net vegetation gain'.

For drier areas, the Council would often require a heritage agreement (over land outside the application area) in order to achieve the 'net vegetation gain' aim. The economics were reversed, especially if the area demanded for heritage had grazing value, as was the case with the above farmer.

The consequence of the 'net vegetation gain' policy is that it is not cost effective for farmers in the broad acre areas to apply for clearance consent. The costs of consent outweigh the benefits. And these areas have got the message.

This policy imposes regional and enterprise discrimination under an Act that is supposed to apply to the whole State.

Shortly after this I came across a South Australian Supreme Court case which spelt out the relationship between laws, regulations and policies. It also dealt with some of the limits of administrative powers. Leaving aside the details of the case, the Supreme Court found:

- That Ministerial or Administrative policies cannot take on powers not already existent within the Parent Act or the Regulations.
-

(I already knew that Regulations cannot exceed the powers of the Parent Act.)

- That a Ministerial or Administrative Policy that has not been properly promulgated is invalid.

- That a Policy at variance with or contrary to an existing Act or Regulation is invalid.

- That where a law specifically allows a right, regulations or policies cannot then demand that in addition ministerial approval be obtained to exercise that right.

On the matter of the 'net vegetation gain' policy, the Native Vegetation Act has recently been amended to ratify practice as law. All clearance consent will now require a 'net vegetation gain'.

A recent letter to the current Minister notes this and other matters[30]. His reply is also enclosed[31]. Sometimes I wonder.

Financial costs of clearance refusals of 1987.
The main cost arising now is from the denial of cropping land. At the time we had 4,500 acres cleared arable. The NVA offered clearance consent over 612 ha (1500 acres). Had

[30] Attachment 30 Letter to Minister Hill 30/3/2002 re speech in Hansard and other matters.
[31] Attachment 31 Response 18/6/2002 from Minister Hill

we received that consent, we would have been able to expand our cropping enterprise by 33% to 6000 acres cleared arable. I have taken the following into consideration.

1 Grain pool payments extend over several seasons. Grain income is allocated on recipt.

2 This is a high drought risk area. We try to avoid cropping in doubtful seasons, or reduce acreages. So cropping expenses are also highly variable. I have taken the grain income for each year, and deducted the direct cropping enterprise expenses, (seed, fertilizer, fuel, wages, etc) to get the enterprise profit for each year.

3 I have added 33% to the profit for each year.

4 I have allowed two seasons to clear that land. So the calculations start for 1989-90.

Financial costs of SA Native Vegetation Legislation on Property of DT & HJ Mahar..
Cropping losses.

Year	Opening Balance	Int rate %	Int/Annum	OpBal + Interest	Cropping loss	Annual Loss	Closing Balance
	OB	I		OB+I		AL(F+G+H)	(OB+I) + AL
1999-90	$ -	0.1	$ -	$ -	$ 45,538	$ 45,538	$ 45,538
1990-1	$ 45,538	0.1	$ 4,554	$ 50,092	$ 8,797	$ 8,797	$ 58,889
1991-2	$ 58,889	0.1	$ 5,889	$ 64,778	$ 20,126	$ 20,126	$ 84,904
1992-3	$ 84,904	0.1	$ 8,490	$ 93,394	$ 2,103	$ 2,103	$ 95,497
1993-4	$ 95,497	0.1	$ 9,550	$ 105,047	$ 6,722	$ 6,722	$ 111,769
1994-5	$ 111,769	0.1	$ 11,177	$ 122,946	$ 3,358	$ 3,358	$ 126,304
1995-6	$ 126,304	0.1	$ 12,630	$ 138,934	-$ 5,082	-$ 5,082	$ 133,852
1996-7	$ 133,852	0.1	$ 13,385	$ 147,237	$ 8,133	$ 8,133	$ 155,370
1997-8	$ 155,370	0.1	$ 15,537	$ 170,907	$ 11,504	$ 11,504	$ 182,411
1998-9	$ 182,411	0.1	$ 18,241	$ 200,652	$ 7,265	$ 7,265	$ 207,917
1999-00	$ 207,917	0.1	$ 20,792	$ 228,709	-$ 944	-$ 944	$ 227,765
2000-01	$ 227,765	0.1	$ 22,777	$ 250,542	-$ 2,295	-$ 2,295	$ 248,247
2001-02	$ 248,247	0.1	$ 24,825	$ 273,071	$ 21,042	$ 21,042	$ 294,113
2002-03	$ 294,113	0.1	$ 29,411	$ 323,525	$ 19,939	$ 19,939	$ 343,464
Totals					**$ 146,206**	**$ 146,206**	**$ 343,464**

Notes:
Nominal Interest rate 10%, calculated on opening balance. We have paid up to 19.75% (1989-91).
Our rate is now just over 10%.
We have a lot of droughts, and some years show a cropping enterprise loss.
These show as negative figures in the cropping loss
columns.
Can make source documents available to Productivity Commission in confidence if needed.

If we factor in the remaining grazing losses calculated by the conciliator, and the legal expenses we incurred trying to work our way through that tricky bureaucratic maze, the total losses come to $477,575.

These are funds that could have been used for property development, upgrading machinery, land purchase, off-farm investments, retirement/generation transfer, conservation projects or holidays.

We have had to put back everything - and more – into the farm to survive. Dan's personal superannuation matured. It was used to help reduce the farm debt. Some windfall AMP shares helped too. We are now financially safer, but very risk averse.

I would not now fund anything that did not promise a satisfactory financial return. I cannot afford to. Conservation projects cost money, they do not earn it.

Social costs
I have good reason to no longer trust the institutions and regulations that exist to promote the protection of the environment, and I no longer have confidence in the mechanisms for complaint; the Ombudsman, Ministers, and the Commissioner for Public Employment.

We are all obliged to abide by the law and to try to follow due process. We have. We are all entitled to receive due process in return. We have not.

Stress has also taken its toll. Shortly after the stress years began I developed ulcers, but Dan developed cancer. He fought a long battle, but recently lost.

Many others have been stressed by the application of South Australia's native vegetation laws. These laws have contributed to failure to realize economic potential, reduction of economic base (eg capturing grazing land within heritage agreements) and to rural population decline. Leaving less people to meet the costs of the ever increasing statutory obligations imposed by conservation laws. The younger generation are seeing these pressures, and wisely opting to follow other careers.

We need a different approach. Instead of legislation that shifts conservation obligations and costs onto landholders, then 'levering' them for extra conservation concessions, we need to look at making it worthwhile to have, and to look after the biodiversity and conservation items we have. We have experienced native vegetation conservation as an economic and social liability. It needs to be an economic and social asset.

LIST OF ATTACHMENTS

Attachment 1 Copy of cover letter.

Attachment 2 Notice of recommendation, summary of field survey, Planning Principles and Plan of recommendation.

Attachment 3 File notes, found in Freedom of Information searches in 1998-9. **Information used by Native Vegetation Authority in making its decision, but not made available to applicants.**

Attachment 4 Notice of clearance refusal for application 010/0020/84 + NVA minutes found in file search.

Attachment 5. Highlighted plan.

Attachment 6: Crown Law opinion found in file search 1998.

Attachment 7: Cover letter with application 010/7145/88 7A Applicant's plan 7B Applicants plan redrafted by Branch

Attachment 8. Conciliators' letter dated 6/2/91.

Attachment 9: Conciliator's Summary and Recommendations.

Attachment 10. Copy of NVA (29/04/91) after NVA meeting of 8th April 1991.

Attachment 11: Letter from Lawyer to NV Branch 27/5/91.

Attachment 12: Letter from Branch Manager Leith Yelland. Poor quality, so have attached clearer typed page. Will obtain fair copy from dept if needed.

Attachment 13. Copy of letter from Leith Yelland dated 21/10/91.

Attachment 14. Letter from John Riggs 24/2/92.

Attachment 15: Letter from NVA Chairman 30/3/92.

Attachment 16. Correspondence from Ombudsman's office – two letters 1/7/91 & 5/8/91

Attachment 17. Letter from NVA dated 15th July 1993

Attachment 18: Letter from NVA dated 26/10/93

Attachment 19: Letter from NVA 14/12/93.

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Attachment 22. Minute from Nicholas Newland to Minister Wotton Jan 1994.

Attachment 23. Letter from Andrew Black, Native Vegetation Council, to Minister Wotton. 1994.

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Attachment 29. Chart showing powers of NVM Act, on-ground issues, and impact of NVA Decisions.

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