Constitutional Property Rights Association

Final Submission in response to inability to accept the video conferencing offer at Canberra Tuesday 24th February 2004

Inclusions: 9 page submission

Letter: 1 page: from Minister Craig Knowles Department of Infrastructure Planning and Development the Notice must have been both inappropriate and unlawful because before the CPRC could get into Court to argue Continuing and Existing Use Provisions .... the Department withdrew the Notice and set it aside.

Comment: other letters have ensued out of the office of the Department of Natural Resources which deals with Native Vegetation.

Personnel, merely because of their employment with the Department are loosely "authorised" to administer the NV&C Act 1997.

The CPRC argues that these "authorised" public servants have neither the experience nor the necessary understanding of how to interpret to administer co-existing legislation.

The Department in its ignorance says it doesn't need to: the NV&C Act is a stand alone Act ..__ the only thing we have to determine is whether or not NV can be cleared and under what circumstances.

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Constitutional Property Rights Association

Thank you for the opportunity to continue with our submissions. Your work is important.

We cannot reiterate enough, what our concerns were, and which remain. We are out and about on a regular basis, and we receive phone calls almost daily. We know!

There is a genuine fear among farmers, especially of continuing threats and intimidation from the bureaucracy, against landowners rights. Most feel we've lost already.

I quote..." Yes that's *the way it used to be but no longer Now we can come on to your land and tell you not only what to do, but how to do it. We've been given this responsibility by the government and we have to ensure that the environment is well managed for future generations".*

Farmers [as the principal landowners with the greatest capital investment] feel defeated and [drought] depressed and consider its useless now, to complain or argue.

It's a constant battle living with Mother Nature and no politician or public servant has listened in the last decade and the same things keep happening. We instance the re vamp of the 1997 NSW Native Vegetation Act into a new Act with Catchment Management Boards_ Nothing has changed only the name, and the *illusion* of change.

We still maintain it is vitally important, that the findings of the Commission distance themselves from what the CPRC now sees, more than at first as events unfold, the questionable Terms of Reference.

Unless the Inquiry is able to acknowledge from the submissions which are before them, that for more than a decade, **there has been a grave misapplication of Environmental Legislation, unconscionably imposed over lawfully existing landuse approvals,** then those of us who have argued this way will have failed the landowners, whose property rights have been recklessly abused, and expediently misused. [Remember the *one* example and submission of Peter Heppburn].

1. In the Draft Report we see [beyond reasonable conclusions in the arguments put forward], that the supposed **supremacy of the parliament to apply subordinate Environmental Legislation over an Existing Approval;**

2. Which *then,* in turn, **has the 'derogating' effect *of unlawfully* frustrating the "continuance' of a legitimate FEE SIMPLE Property Right** to socially and **economically defeat *and prejudice those rights and planning principles*** from day one, has never been anything more than a contrived illusion;

3. **and outside a referendum the constitutional authority was never there.**

4. We continue to argue therefore, that to place the terms of your reference into context, if one is going to assess the **effects of subordinate Environmental Legislation over the principal Planning and Development process** [ie the Environmental and Planning Assessment Act 1979], then we believe

5. the Commission must determine whether or not the ***subordinate*** Environmental Legislation being applied, has firstly, been legally structured; OR when legislated, was ill is it capable of being applied in the manner now entrenched into the system eg esp. the Native Vegetation and Conservation Acts and to a lesser extent, the Threatened Species Acts.

6. The CPRC say NO on both counts. We know there is evidence to support our view, which is demonstrably contrary to the common "perception" that the latest Act overrides the previous.

7. Again we say, that environmental "perceptions" need to be qualified., and we repeat that for matters of planning and landuse, the "environment" is defined as *man either as an individual or in the wider community, one with consideration for all that surrounds him …….* ***if 'individual*** **man' who owns the LAND and the investment, is not permitted to invest and produce in accordance with the freehold principles of yesterday** ...man in the wider community will not survive.

8. We argue: "perception" is not law; and principle and integrity should not be allowed to give way to expedience, else there *will* be anarchy.

9. **We reiterate that** Justice Else-Mitchell considered in the 1974-6 Land Tenures' Commission of Inquiry that *there* was **no *virgin freehold land*** *left in NSW it had all been developed by virtue of its continuing use.*

10. He was referring *here* to Freehold RURAL land- because as the later Chief Justice in the Land and Environment Court, he understood Planning and Development law enough to know that to "continue with its agricultural use", RURAL land would not need "development" consent.... *if was all developed.* DEVELOPMENT CONSENT would [of necessity] apply [in the main] to URBAN freehold LAND and to a much lesser degree, Crown land.

11. The contradictions and propaganda which surround the **development and use of rural land** are legend. And that's exactly what they are, *legends.* Put very simply:-

12. **Agriculture** does not need development consent. The two words 'development' and 'use' **are synonymous.**

13. **Agriculture** is the *first* **physical 'use' of Freehold LAND** as LAND is described ie water, soil, vegetation and air.

14. **If one cannot till the soil,** then clearly, **there** is **no agriculture.**

15. **No agriculture .... no economy.**

16. **Agriculture** is the primary or **first 'use' of land** and the **economic foundation** of the national economy.

17. This Commission of Inquiry therefore should assess the legislated Property Right for Agricultural use of LAND *first* [ie the EP&A Act Division 10 and 109B] with accompanying **SAVINGS PROVISIONS** before other factors are taken into consideration. *This* is why the Terms of Reference are misleading.

18. ***"Whether or not there is likely to be any significant effect on the environment, the Consent Authority and the Land and Environment Court are NOT to be concerned with the natural environment'*** *[ref:* ***legal*** precedence: Redfern Legal Centre: Environmental Law Book for Environmental Assessment page 506].

19. There is **no *direct* protection for the Environment in any Constitution** except by implication of *man's landowning right as an individual in* the people's *charters that no man is to be disseised of his property rights { Magna Carta and Bill of Rights) now underpinning and co-existing with Environmental and Planning Assessment LAW and the F P & A Act 1979] to where*

20. the parliament bestows on decision-makers; and the High Court in Annetts V McCann 1990 65 ALJR 167 Chief Justice Mason and Justices Dean and McHugh held that

21. *" it can now be taken as settled, that when a statute confers power upon a public official to* ***destroy, defeat or prejudice*** **a persons** ***rights, interest or legitimate expectations*** *the rules of natural justice regulate the exercise of that* ***power*** ***unless they are excluded by plain words or necessary intendment".***

22. We instance: ***CR Dorrestijn and Another v South Australian Planning Commission 29-11-84*** *in the High Court where the* ***High Court overturned*** *the Planning Commissions appeal from the original District Court Judge and reversed the decision back to be held with the District Court Judge, who found that ... " the appellant's clearing operations* ***on land constituted development within the meaning of the*** *relevant section of the Act and that the development was undertaken so as to enable the land to* ***continue to be used*** *for farming purposes and that being so ... the appellant's activities did not constitute a breach of the NV Act by reason that they [ie the farming activities] were* ***protected*** *by [another relevant section of that Act] which refers* ***to a "continued use".***

23. For NSW we relate that "opinion" to the **SAVINGS PROVISION** [always found in the Schedules where *nothing is to prejudice or bias the rights of a person existing before the day of gazettal] in* all subordinate environmental legislation.

24. The SAVINGS PROVISION is derived from **Division 10 of the EP&A Act sections 106-1098 with absolute emphasis on 109B. The SAVINGS of all current approvals are reiterated in the REGULATIONS**.

25. **The foregoing clearly supports the intention of the EP&A Act for *man as an individual to "continue" to be able to use LAND in accordance with the intent of the LAND use legislation…… EP&A Act [the principal instrument] and the Local Environmental Plan ... where the principal landuse consent authority Local Government determines matters of local importance.***

26. **Agriculture:** by its very nature of being embodied in the soil, does not lend itself to either bureaucratic Regulation or Control_

27. **Agriculture:** has been established .here, for .more than 200 years.. It is far too late to change landuse; planning laws; and the culture of an activity, which is totally seasonally dependent and market force driven. [see advice of judicial considerations in Mabo].

28. **Development:** is **Use and Use. is Development.** When one grasps the logic of that simple truism, then we might start to get somewhere. The Commission's findings can help us. The Nation's economic base would collapse without the farming sector.

29. **LAND** is the basis of all development. Without LAND [and in particular without freehold land], investment is with a mere handfull of owners. In Australia only 13% of the landmass is alienated from the Crown fee *simple, absolute in unrestricted vacant possession.*

30. The -hidden agenda appears to be for the complete reversion of Freehold Land to Crown. Whilst there is cynical denial from the authorities, **some public servants admit the agenda;** and several go out of their way in the indiscriminate Issue Of Remedial Notices for alleged breaches of the NV&C Act to prove that we *have a job to do and we are expected to do it we're told to keep the "pressure" on.*

31. **Agriculture ...** We return to RURAL LAND and Agriculture, where **the physical activity of the LAND** [agriculture] **IS its 'developed' use.**

32. And to *repeat* [in turn] the ***LAND itself is the development .... so no Development Consent is ever needed or indeed can*** it ever be given.

33. The concept of needing consent to use rural LAND for agriculture is a nonsense which is why the saying ***unrestricted freehold*** *applies.*

34. **Whilst the LAND is being used for Agriculture, there are no "restrictions" on its use.... for obvious reasons the "restrictions" come later when the primary use of the LAND has been abandoned and the LAND gives way to a secondary 'use'.**

35. **Urban Zones:** here the LAND is still the basis for DEVELOPMENT **Without LAND .... there can be no development.** Nothing has changed ! ! But……..

36. Conversely, in the Urban Zone, if one wants to **'use' the land** for which it is ZONED, then **"development"** can only be permitted if a Development Authority CONSENTS to that DEVELOPMENT. e.g. one might have LAND for a Residential Development.

37. But before the 'bricks and mortar' can be built enough for the LAND to be able to be 'used' for its Zoned purpose …… one must have Consent .... logically, because **Residential LAND without a house** is not developed ……there needs to be a "physical" presence beyond the LAND itself, to accommodate whatever is the permitted secondary 'use' [ie development].

38. Now back to RURAL land ……. one doesn't have to build or erect on the LAND to achieve an agricultural development

39. I repeat the physical USE of the LAND itself, **IS the development.** [Please forgive me but I can think *of no other way].* Structures of course, ancillary to Agriculture mostly need Building-Consent [woolsheds; hay sheds; silos etc]... but they can *NEVER* require Development consent.

40. The public confusion arises because people have not understood that there are two separating CONSENTS …….. Planning and Development. Agriculture has Planning Consent.

41. By any measure of logic and distilling to reasonable conclusions, and by acting in the manner it has, it is the government which is **destroying, defeating and prejudicing ones lawful interests and legitimate expectations** ref: paragraph 8 **and through taking away the rightful management of the LAND, the government will eventually, destroy it.** [We repeat.... see the manner of total destruction on Crown land during last summer's holocaust esp the Kosciusko National Park more than 500,000 hectares some of which will never recover....the evidence is there].

42. Consider also the aftermath of the Canberra fires being part of the Kosciusko scandal. The Territory [ACT] has 99 year leases. Those leases are now coming up to full term, and there are speculative considerations that leases on older homes, may not be renewed and where homes were burnt, authorities may not allow a rebuilding.

43. Consider then, in the same manner, if the 13% of Freehold LAND in the Nation gradually reverts to the Crown who will manage the asset, and what chances will we have of enjoying the so called democracy and prosperity we now have.

44. Reality? The general population in NOT being the major investors, either in LAND or in the productivity of the nation, have not seen the wood for the trees ---- and never will unless the PRODUCTIVITY COMMISSION reveals the TRUTH.

45. **FARMERs are practising conservationists. They are NOT environmental vandals.**

46. The evidence of Government mis-management is there in almost everything the Government touches.

47. ***Native Vegetation:*** *now let us return to the NV&C Act 1997 and address* the most illogical interpretation this side of 1788 which curiously suggests, that **Vegetation can be separated from within itself** ie the LAND [of 4 components] [soil, vegetation, water and air] and the residue LAND, can still function as a productive 'use'.

48. This manifestation is too inconceivable to credit that anyone could ever consider that such stupidity was ever be a possibility. We've heard of the gale-force winds *blowing milk out of a cups of tea .___ but this ? ? ? Impossi-bull? Incredi-bull?* Indefensi-bull? *Unprint-a-bull? or just plain bull*

49. The consideration of whether or NOT any one component can be separated from the whole, and still leave a complete entity for development, exposes the absurdity for what is put before us. That this stupidity in brain-washing has survived for 9 years shows where the level of intelligence is and also gives credence to the agenda.

50. The popular image is: farmers are too conservative to resist: and are too divided in their activities. *Just keep the pressure on and in the end it will all come together.... the one's who are protesting now will give way to a new generation and by* then *it won't matter. The game will be over.*

We beg the Commission to find, that like Johnne Donne where No Man is an Island.... LAND is a total entity [entire of its own] where each component is dependent on the other for any DEVELOPMENT foundation.

Consequences of Irrational Legislation:

1. Every now and again an absurdity surfaces which is even more absurd than the one before.

2. Here the NV&C absurdity is so manifestly unjust that no sensible person can tolerate or accept the injustice of the inconceivable manifestations. But in Demtel fashion WAIT… there's more!

3. In all the disguises and propaganda which surround the contrivance to depict farmers as environmental vandals, the 1979 NV&C Act [and the *new 2003 Act) have each decreed that if one "clears NV without the* Consent of the Authority" **one has breached the law** and rune has committed a **'criminal'** offence.

4. A NOTICE is immediately 'issued" to the offender ... but what the offender sees writ large is, that "failure to respond to this Direction allows the authority to impose a fine of **$1.1m up front and $11Ok each day the Offence continues Or $110k up front and $11 k each day.** Plus similar emotional and intimidatory monetary threats eg the Authority can apply to the Court to have all Costs awarded against the offender.

5. However one may appeal against this NOTICE to the Land and Environment Court [at considerable cost].

6. Most people are so **traumatised by the NOTICE** that all they see is the $1.1m penalty with $110K each day.

7. **Farmers have then tended to compromise** OR to plead guilty ... and by default, the Government becomes a defacto partner in a freehold enterprise, at no cost; and instantly, assumes a de facto management-position, overriding a previously intellectual Regulatory and Controlling influence., to introduce new ways on how the owner's LAND and BUSINESS [into the future] is to be managed.

8. As if that were not enough, the reality is, that conversely: if one decides to appeal to the Land and" Environment Court, the NV Act under s 48 (2) boldly advises that an appeal to the Court does not necessarily stay action on the decision appealed against. Inconceive-a-bull. Despic-a-bull.

9. This has the effect of sending any farmer already under management stress, [seasonal…… droughts, bushfires, floods and market force dictates] almost off the planet. In other words, **according to the NV&C Act ...** the **Authority can enforce the Direction;** yet the appeal succeed; and depending on the Court, costs may [or may not] be recoverable... .and if costs are not awarded, are subject to another appeal through the Court.

10. However the reality is not the perception according to the NV&C Act but farmers are generally too emotionally traumatised and economically constrained to think beyond what they are confronted with;

11. and the propaganda and contrivances within the flawed legislation does not permit the ordinary person not familiar with law, time to see the reality or their lawful rights toutside the court] in the pressure of the NV intimidation.

12. We have before us now a farmer who has offended by allegedly clearing NV without consent. He is required to take 2000 acres out of production for 10 years, by fencing out the "damaged" land with "new" fencing, to ensure that the NV can regenerate naturally, without interference.

13. Fortunately, there is one, saving unintended consequence of the flawed legislation only now coming to light. Put in the perspective of the allegation with the REMED AL NOTICE, as soon as the breach -of the NV&0 Act is appealed in the Court, the " alleged illegal clearing of NV immediately takes on the persona of being with criminal intent and consequences. However:-

14. **One is innocent, until proven guilty.** So whilst the NV Act is immoral enough, that the bureaucratic invasion into civil; human and democratic rights [under the spurious guise of protecting the Vegetation] can interfere with one's intellectual capacity to manage one's own commercial business and significant investments;

15. and where the Parliament, stoops to such an expedient level of Regulation and Control to where [from 1995 to 2004] farmers have been singled out; living under constant threat and intimidation in an atmosphere where hundreds have been made criminals, in the mere day-to-day management of one's own legitimate agricultural business, is beyond description. Bastardry is too polite a word. Treason is more apt. The parliament has betrayed its -responsibility to the people it is elected to serve.

16. What is even perhaps worse is: that despite being advised time and time again…… this inglorious inconceivable manifestation, [subject to criminal threat] perpetuates. It has been transferred into the new 2003 NV Act.... s39 (2) for more of the same, unless the Productivity Commission can engender common sense into this betrayal.

In Conclusion: we draw attention to the legal and planning FACT that the NV&C Act in itself is NOT an Environmental Planning Instrument; there are no Regulations; and in the Assessment and procedural process, it has no relativity to any other Planning Instrument where other EPI's [especially the EP&A Act and focal Environmental Plans] are of necessary consideration.

- The 1997 NV&C Act has been perpetually administered in isolation to ail other relevant Acts and in doing so, the **grave misapplication** in the hands of "authorised' but inexperienced public servants, has been too traumatic to describe. The Ministers don't listen to the people.

- Ministers admit that they are 'advised' by public servants to where Minister Knowles [like his three NV predecessors] persistently refuses a meeting;

- but was confident enough to reply 17-9-03 [enclosed) that the advice of his senior departmental legal officers reflects the government's view.[In this instance the Department of Natural resources actually withdrew the Notice (which previously was appropriate and lawful from the Court) before its appropriateness and lawfullness could be judged in the Court.

- Of course public servants reflect the Government's view on NV matters .... but that doesn't make the Government's view lawful, constitutionally right or morally defensible.

With very sincere thanks for your patience and anticipated consideration

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Constitutional Property Rights Committee

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Additional: to previous faxed 23rd Feb 2004

1. Imperative that some acknowledgment and consideration must be given to the ever increasing plethora of, frivolous Regulation and Control measures being placed against farmers each turn of the clock.

2. The situation has now arisen to where farmers are expected and indeed are REQUIRED to attend classes in order to receive Certificates of Competency before they can "continue" with best management practices which have been the order of their day for past decades.

3. We vigorously argue that most of the Work Cover and Safety measures running rife within the bureaucracy are nothing more than job creation exercises with no productive benefit.

4. In FACT, the reverse is evident. The economic COST in Compliance to the farmer and the economic COST to the government in ensuring that these compliances are being monitored and followed [by the farmer] is beyond the resources of the Nation.

5. We argue: that most teachers holding classes, are essentially, academically trained with no "on the job" experience. Professional farmers are so skilled in the diversity of their own individual operations, that these "book-like" exercises are an absolute nonsense.

6. We see no comparison for the necessity that a farmer who might pick up a chain saw once a month should have a Certificate of Compliance before he can now purchase a chain saw.... than one who by the professional nature of his occupation uses a chain-saw 8 hours a day 6 days a week, on the job.
7. We see no necessity, and no benefit to the self-employed farmer who in the management of his farm, soon learns to know right from wrong, to where until now he has no obligation to another [except of course to ensure that he exercises a Duty of care to ensure neighbors are not disadvantage by his presumed carelessness].

8. The absolute absurdity is that this Nation is awash with rules, regulation, laws and bi-laws beyond resourcing; and beyond policing.

9. If a law cannot be enforced; policed and effectively and efficiently administered it is nothing more than the proverbial gong booming in the night.

10. Our streets are littered with 50KM speed-limits that are ignored with contempt for the stupidity that equates a low speed with safety.

11. Our highways and roads are mortuaries from fatalities that again equates a driving licence with an ability to anticipate; have judgment; capability; experience and competency to drive .... merely because one has the required licence *to* drive. For God's sakes ... is there no reality any more. If a "licence" to perform is the answer, why is the road toll as unacceptable as it is. Licence and Regulation is NOT the answer.

12. Are we going to have to have a licence before we eat; drink and sleep; learn to swim; play football; bungy jump; hang-glide; walk through crocodile swamps; tangle with a snake; ride a self-operated elevator; step on an escalator; climb a ladder; fix tiles on the roof; draft cattle/sheep/horse/goats; ride a horse; milk a cow; ……..

13. The personification of absurdity is best illustrated in my own experience. We have the very common acre or so, on-farm gravel pit.

14. All gravel pits [even though they may only be used one or two days a year] are now required to have an "onsite-manager" who is the "registered owner of the "pit".

15. The Registered owner is "required" to have a First Aid Certificate and there must be a First Aid 'facility' readily available to the site [in case of accidents]. Now wait for the crunch line.

16. An authorised person may enter or leave the pit at any time carrying the extraction of the pit in an authorised conveyance [truck] **BUT** there is no requirement for the Registered Owner of the pit to he onsite during the period of the operation. So what happens to the First Aid Certificate? and why both 'requirements' in the first place?

17. Perhaps because the annual owner-Registration Fee is $110.00.

We beg the Productivity Commission to publicly drawn attention to what is happening. Russia started to look good 10 years ago. Now its time to leave. Australia is no longer the lucky country; the smart country .... it's the stupid country.

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