Submission

Senate Inquiry into Native Vegetation Laws, Greenhouse Gas Abatement and Climate Change Measures by the Senate Finance and Public Administration Committee

This submission has been prepared by the NSW Regional Community Survival Group.

As per the inquiry terms of reference this submission deals with the impact of the NSW native vegetation laws on our community.

Specifically section

(a) **Any diminution of land asset value and productivity as a result of such laws;**

The NSW Regional Community Survival Group represents disaffected landowners in the Nyngan/Tottenham area of central west NSW. Our region includes a large area of agricultural land that is significantly impacted upon by invasive native scrub (INS), and we have felt the direct impact of the NSW legislation introduced to stop broadscale landclearing since 1995 with State Environmental Planning Policy Number 46 (SEPP-46).

At no point in the introduction and administration of SEPP-46 and the subsequent Native Vegetation Conservation Act 1997 (NVCA), Native Vegetation Act 2004 (NVA) and their associated regulations has the individual property rights of landowners been recognised and respected, nor the environmental impact on our land by not being able to adequately control invasive scrub.

In May 2001 the Fiveways Landcare Group, Nyngan undertook a survey of landowners in the district in an attempt to quantify the impact of the NVCA on our community. One hundred and three (103) landowners completed the survey which was distributed in the Nyngan, Hermidale, Girilambone, Coolabah, Canbelego and Tottenham districts, showing a high level of concern for this issue.

Compilation of the survey results showed that these 103 respondents owned 523,834.4hectares, of which 307,173.11hectares or fifty nine percent (59%) was affected by invasive scrub. At the time of the survey, average land values for improved country were between Three hundred and seventy dollars ($370) and Four hundred and eighty five dollars ($485) per hectare. Unimproved country affected by INS had a commercial value of between Fifty dollars ($50) and One hundred and twenty five dollars ($125) per hectare.

On today's market, improved country in our region is valued at between Five hundred and fifty dollars ($550) and Seven hundred and fifty dollars ($750) per hectare. The value of unimproved country that is affected by INS now has a commercial value of between Twenty

dollars ($20) and Ninety dollars ($90) per hectare. This disparity in value has emerged exclusively due to the impacts of NSW State legislation and the increasing degradation of those areas significantly impacted upon by INS.

The specific restrictions in the legislation that have resulted in this negative impact relate to control of INS and appropriate land management strategies being recognised. The introduction of the NVCA saw the definitions of some key management and production based strategies altered in such a way as to render the continued rotational cropping/grazing programme mostly utilised here severely restricted. In spite of robust objection from landowners and representative associations in NSW, the rotation from grazing to cropping was classed as a change in land use ie if grazing country had not been cultivated before then to do so after a specified date was a change in land use and so proscribed under the Act.

All land covered by the native vegetation legislation in our region is zoned Rural 1(a) and is used solely for agricultural production. Surely this restriction goes against the recommendations of the then Department of Agriculture in their strategies of operating cropping/grazing enterprises in a conditional rotation, being from between a three year in/six year out and two year in/eight year out cycle, depending on seasonal conditions. Any landowner who had been progressively improving their land and working towards this strategy was caught out, and prevented from managing their land for appropriate production in a sustainable manner.

At no point was adequate financial recompense offered to offset the impact of this legislation. Some small grants and offers of assistance to leave the land were available, but this was just insulting to those landowners that had a deep commitment to their land and wanted only the best, most sustainable outcomes for it.

The specific impacts on production can be illustrated in the Case Study attached (Attachment A1, A2 and A3). This case study explains in simple terms the full spectrum of impacts on the land and the landowner from the application of native vegetation legislation. Following advice obtained from Elders Ltd Rural Real Estate in Dubbo, land value calculations are generally performed using some very basic principles that have been applied for these examples. For instance, grazing values are generally calculated at around Three hundred dollars per Dry Sheep Equivalent ($300/DSE), and land developed for cropping is approximately the net return from cropping per year multiplied by five. You will note that in some instances the land values do not change much over a ten year period, due to the impacts of having restrictive management practices in place and the pressure that can put on agricultural practices.

The three most prevalent management strategies used in this area when compared present a very stark picture of the impacts on production of the legislation. In the specific property used in the Case Study, having a total area of 3107ha of which only 400ha had been developed, the future management strategies applied make an incredible difference. For this type of land that is prone to continued invasion by scrub, the productive capabilities continue to decline without appropriate management.

At the start of the period highlighted, the property was capable of producing some 45 bales of wool; 220tonnes of grain off 133ha of the developed country; no progeny sales as the

land is not suitable for ewes, only wethers; DSE capability on the improved area of 1.25hd/ha and 0.48hd/ha on the unimproved or 'natural' landscape; and an estimated land value of $508,375. Within ten years production falls to 31 bales of wool; still growing 220 tonnes of grain (impact of increased feral activity has not been taken into account here); still no capability for progeny sales; ten year production profit is $303,200 - $30,320per annum; DSE capability is 1.25hd/ha and 0.30hd/ha due to the thickening scrub and diminishing grass cover; and land value sits at $423,630 – a capital loss of $84,745. After twenty years production falls to 16 bales of wool; still growing 220 tonnes of grain; no capability for progeny sales; twenty year production profit is $359,900 - $17,995 per annum; DSE capability is allowed for at 1.25hd/ha (no impacts by feral animals allowed for here) and 0.10hd/ha due wholly to thickening scrub and no grass cover; and land value sits at $281,210 – a capital loss of $227,165.

Looking at the same property and applying the strategy of clearing for grazing – remember that under the PVP process taking a grazing block and cultivating it is against the legislation – on an area of 1600ha,the following production outcomes are projected. At the initial period, the property has an area of 530ha thinned for grazing which includes chaining and raking to allow access for stock and to get grass growing at a cost of $132,500; and is capable of producing 220 tonnes of grain off the original 400ha development – only 133ha is cropped at any one time; 51 bales of wool; no progeny sales as the land is not suitable for ewes, only wethers; DSE capability is assessed at 1.25hd/ha on developed area, 1.00hd/ha on the treated area of 530ha and 0.48hd/ha on the unimproved area; and an estimated land value of $626,375. There is an increased grazing return from the thinned areas, with 530ha parcels introduced in the third year and fifth year at a cost of $132,500 each. The area thinned in the first year requires retreatment in the seventh year, whilst the area treated in the third year will be retreated in the ninth year, and so on ad infinitum - all still at a direct cost of $132,500 each time. Within ten years production is estimated at 220 tonnes grain; 62 bales of wool; varying progeny numbers as regrowth encroaches and affects joining/survival rates; ten year production profit is $351,700 - $35,170 per annum; DSE capability is 1.25hd/ha on improved area, 1.00hd/ha on treated grazing area and 0.30hd/ha on unimproved area; and land value sits at $769,630 – a capital improvement of $143,255. After twenty years production is 220 tonnes of grain; 56 bales of wool; varying progeny numbers as regrowth encroaches and affects joining/survival rates; twenty year production profit is $517,750 - $25,887.50 per annum; DSE capability is 1.25hd/ha on improved area, 1.00hd/ha on grazing area (this cannot be significantly increased as no improvement to soil through the lucerne rotation is occurring) and 0.10hd/ha on the unimproved area; and land value is $723,210 – a capital improvement of $96,835. This type of land management is very labour intensive and expensive, with the thinning operation being required to be repeated every seven years or risk having the land return to its pre-treatment condition, as only the cultivation of INS affected lands will eradicate it completely.

There is potential to develop an additional area of 1600ha on this property, which would still provide an area of 1107ha retained as native vegetation, spread throughout the property, being roughly 70% developed and 30% retained. Although it must be noted that in the area identified for retention there are significant INS issues that should be dealt with as a matter of urgency to restore groundcover to prevent erosion. When the development strategy is applied to the holding in a gradual process, commencing with an area of 530ha developed in the first year, the production capability is 220 tonnes of grain; 39 bales of wool; sales of progeny of 300hd; DSE capability is assessed at 1.25hd/ha on improved area, and 0.48hd/ha

on the rest; and an estimated land value of $628,375. Within ten years development has been completed of the 1600ha, a cropping/grazing rotation has commenced with the introduction of lucerne in the last crop before going into the pasture phase and production is consistently at 1100 tonnes of grain; 55 bales of wool; progeny sales of 1,560head per year; the ten year production profit is $959,600 - $95,960 per annum; DSE capability of 1.25hd/ha on the developed area and 0.30hd/ha on the retained areas; and the land value rests at $1,699,630 – a capital improvement of $331,225. At the twenty year benchmark production is 1100tonnes grain; 49 bales of wool (the whole unimproved area of 1107ha is now only producing 3 bales of wool in total); progeny sales of 1,560 head; the twenty year production profit is $2,649,900 - $132,495 per annum; DSE capability is maintained at 1.25hd/ha on the improved area and is only 0.10hd/ha on the unimproved area; and the land value is estimated at $1,833,210 – a capital gain of some $1,204,835.

This brief overview of the impacts of the legislation on both production outcomes and asset values is indicative only. Variable factors were not included such as record wheat/wool prices nor the failure of crops and loss of stock due to drought. The important thing to remember in this example is that any area in this region that has a significant amount of woody native vegetation and INS present is in a constant state of drought and degradation. Appropriate management can arrest this decline, but having it locked up and removed from active management will only exacerbate the problem.

(b) **compensation arrangements to landholders resulting from the imposition of such laws**

To date, no appropriate compensation has been made available to those landowners negatively impacted upon from the imposition of these laws. There are some quite simple mechanisms that are available that would quickly and transparently correct this anomaly, although the principal consideration should be the long term impacts of the legislation on our land, the continued lockup of our country should not go unrecognised.

We have prepared a simple strategy that we would like to include with our submission that we believe is the second best option to recognise the contribution private lands are making to the alleged conservation of native vegetation in NSW. Obviously the best option is to restore to landowners the ability to manage their land in the manner that they deem to be in the best interest and sustainable outcomes of that land.

The Community Lease Proposal (Attachment B) is predicated on the entity benefitting, be it State or Federal, from the cessation of land clearing paying to the individual landowner a financial return for the vegetation locked up in the form of a commercial lease. This strategy allows for transparency of implementation, equity to those affected landowners, and the long term conservation of those areas of native vegetation required to satisfy public good outcomes.

Any land that has native vegetation present that has been prevented from being utilised for appropriate agricultural production due to the impacts of the legislation can be made available for lease by the landowner. The leasing entity will then need to explain to their constituents, be they state or federal, why such amounts of money are being paid out to secure the conservation of native vegetation, and an appropriate cost/benefit analysis can be undertaken at regular intervals. At any time that the cost seems to outweigh the benefit,

the land can be returned to the management of the landowner without restriction.

This simple system allows affected landowners to receive an income stream from an asset that has become a liability, local towns and businesses benefit from the funds being spent in the local district, and the wider community is happy that lots of native vegetation is locked up. Of course, when that same community wonders why their taxes have increased so dramatically, they may rethink this desire to lockup a significant part of the state for a questionable ideological return.

(c) **the appropriateness of the method of calculation of asset value in the determination of compensation arrangements;**

In calculating the asset value for the determination of any compensation arrangements that may be entered in to, it is wholly appropriate for the value of land that is predominantly covered in native vegetation, in particular those areas affected by INS, that have little or no commercial value, be assessed at the improved value of the land in the immediate area. The landowner must be recognised for the opportunity forgone, and any compensation calculated at the value of the highest commercial land value for that area. In a system that is so unjust in its treatment of the owners of private estates, this is the very least that should be assured.

(d) **any other related matter**

This inquiry in to the impacts of native vegetation laws and legislated greenhouse gas abatement measures on landowners has an opportunity to draw attention to the inequities in the Constitutions that are in place in Australia.

The Commonwealth is bound to act in accordance with the Australian Constitution at Chapter I, Part V, 51 *to have power to make laws for the peace, order, and good government of the Commonwealth with respect to: ..... **(xxxi.)** The acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws:*

It is only 'just' that the State governments should be faced with the same responsibility. Whilst we acknowledge that technically no land has been wholly resumed or acquired there is no doubt that the restrictions that have been placed on the operation and use of private lands in the country has been so onerous as to render the remaining value of affected land inconsequential. This is surely a taking in all but land title.

There has clearly been a benefit claimed by the Commonwealth Government from the cessation of land clearing in the states of Australia. This is quantified in the document prepared by the Australian Government's Department of Environment and Heritage Australian Greenhouse Office titled *Australia's Fourth National Communication on Climate Change – A report under the United Nations Framework Convention on Climate Change 2005 (http://www.climatechange.gov.au/climate-change/emissions/~/media/publications/greenhouse- gas/australias- fourth- national-communication- cc.ashx)* At page 2 of the Executive Summary National Greenhouse Gas Inventory, Table 1.1 clearly establishes how the abatements in greenhouse gas emissions have been achieved.

The table is followed by this statement:

Using the UNFCCC inventory rules as a basis for analysis, the largest percentage increases in emissions were in the Stationary Energy (37.2%) and Transport (28.8%) subsectors, and the Industrial Processes (15.2%) sector. Smaller increases occurred in the Waste and Agriculture sectors, while emissions from Fugitive Emissions from Fuels and net Land Use, Land Use Change and Forestry emissions fell by 8.2% and 93.5%, respectively, between 1990 and 2003.

This report leaves little doubt that the Australian Government has claimed the benefit from the change in land use and cessation of land clearing implemented by the states through the restrictions placed on privately owned lands within Australia. To date there has been no acknowledgement of that, nor any attempt by any level of government to pay under Just Terms compensation for that taking.

For too long there has been no recognition given to the property rights of individual landowners in Australia, be they in cities, regional centres, towns, or rural properties. We do live in a democracy and the basic respect for private property and all that its ownership entitles one to must be respected.

If any entity wants to gain some benefit from an asset that they do not own, they must be made to pay just terms compensation for the use of such benefit.

There are also significant issues with the NSW Native Vegetation Act 2003 in relation to the Powers of Entry allowed which are beyond even Police powers, and the presumption of guilt over innocence – the landowner is required to prove their innocence, not the authorities any guilt. These are significant breaches of both Common Law and common decency.

Thank you for the opportunity to make this submission. Representatives of the NSW Regional Community Survival Group would appreciate the opportunity to participate in the Hearing to be held in New South Wales.

Yours sincerely

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