



Premier of Western Australia

Our Ref: D1102331

Hon Doug Cameron MP
Chair
Senate Standing Committee on Environment
and Communications - Legislation
Parliament House
CANBERRA ACT 2600

Dear Senator Cameron

Carbon Credits (Carbon Farming Initiative) Bill 2011 (Clth) ("Bill")

I recently wrote to the Prime Minister to express the Western Australian Government's concerns relating to some of the native title aspects of the above Commonwealth Bill which is currently in the House of Representatives and the Senate.

I also advised the Prime Minister I would register my concerns with the Senate Standing Committee on Environment and Communications.

Please find enclosed a copy of the letter for your consideration.

Yours sincerely

Colin Barnett MLA
PREMIER

10 MAY 2011

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Premier of Western Australia

Our Ref: D1102331

Hon Julia Gillard MP
Prime Minister
Parliament House
CANBERRA ACT 2600

Dear Prime Minister

Carbon Credits (Carbon Farming Initiative) Bill 2011 (Cth) ("Bill")

I am writing to express the Western Australian Government's concerns relating to some of the native title aspects of the above Commonwealth Bill which is currently in the House of Representatives and the Senate.

As you will be aware the principal objective of this Commonwealth Bill is to allow people to obtain carbon credits for carbon sequestration projects. In this context, the Bill, by a clear negative implication, indicates that the relevant State Minister does not hold an "eligible interest" in State Crown land if that land is not Torrens system land and is subject to a determination of exclusive possession native title.

As has been outlined in previous correspondence with the Commonwealth Department of Climate Change and Energy Efficiency, the Western Australian Government considers that this approach proposed by the Commonwealth Bill arbitrarily limits and curtails the rights of the State over State Crown land and in this regard raises not only serious policy issues but also legal and constitutional questions.

From the policy perspective there are several important issues. For example, firstly, the State is concerned that this Bill will create the potential for conflict between native title holders and other land users such as miners. Secondly, the State will be denied the ability to plan the use of its land, for example where land is earmarked for a resource development project or another use. Thirdly, there is also a risk that the State will become subject to carbon maintenance obligations under the Commonwealth Act in circumstances where the State has not agreed to such a project.

The State also considers that the Bill is discriminatory in relation to the State's interests as the State is treated differently from private land owners. For example, private land owners are deemed in the Bill to hold an "eligible interest". However, the State is not deemed to have such rights for all categories of State Crown land, despite its ownership of all Crown land in the State. In my view there is no legitimate basis for treating the State differently from private land owners.

Further, the State considers it arguable that the effect of the Bill may be to effect a compulsory acquisition of the State's rights. Presently, the State has rights at common law in relation to State Crown land and statutory rights, for example, under the *Carbon Rights Act 2003* (WA) to approve projects on Crown land. However, by not recognising the Crown Lands Minister of the State as holding an "eligible interest", one consequence of the Bill may be to take away these pre-existing rights. That the Bill will in fact be removing pre-existing rights of the State appears to be confirmed by paragraph 4.24 of the Explanatory Memorandum for the Bill. To do this without compensation on just terms may well be to contravene section 51(xxxi) of the Commonwealth Constitution.

In view of all of the above, I would strongly urge you to reconsider the Bill and to have the relevant provisions in the Bill amended to rectify all of these issues.

I note that paragraph 4.51 of the Explanatory Memorandum expressly indicates that there will be Commonwealth Government amendments to the Bill. Such amendments must include amendments to rectify the serious problems outlined above. To assist the Commonwealth in formulating and drafting those amendments, I have instructed Western Australian officials to be available for that purpose.

I am registering my concerns to the Senate Committee on Environment and Communications and the House of Representatives Standing Committee on Climate Change, Environment and the Arts by forwarding the Chair of each a copy of this letter. Further, and because these aspects of the Bill may be relevant to other States, I am also sending a copy of this letter to the other Premiers.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Colin Barnett', with a stylized, flowing script.

Colin Barnett MLA
PREMIER

10 MAY 2011

Cc Hon Anna Bligh MP, Premier of Queensland
Hon Barry O'Farrell MP, Premier of New South Wales
Hon Lara Giddings MP, Premier of Tasmania
Hon Mike Rann MP, Premier of South Australia
Hon Ted Baillieu MP, Premier of Victoria