property rights australia



Property Rights Australia Inc
[redacted]

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The Research Director
Legal Affairs and Community Safety Committee
Parliament House
Brisbane QLD 4000
Email address: lacsc@parliament.qld.gov.au

# Human Rights Inquiry

Property Rights Australia (PRA) is a not for profit organisation with members in all states but mostly in Queensland. PRA was formed primarily to protect a range of property rights, including rural property rights. It aims to promote fair treatment of landowners in their dealings with government, businesses and the community. Our philosophy is that if the community (or business) wants our resource for any other purpose such as environmental protection then the community must pay fair and unsterilised value for it.

**2. a. the effectiveness of current laws and mechanisms for protecting human rights in Queensland and possible improvements to these mechanisms;**

**(also incorporating 3. c. the implications of laws and decisions not being consistent with the legislation)**

In an audit of Federal legislation enacted in 2015[1] it was found 290 provisions breaching the legal rights including privilege against self-incrimination; the right to silence; adherence to natural justice and the burden of proof.

The NSW Chief Justice Tom Bathurst in a speech at the beginning of the law term, February 2016,[2] told of a review he did into NSW legislation where he found "at least 397 legislative encroachments" on three basic common law rights, including the privilege against self-incrimination and presumption of innocence.

[1] http://www.theaustralian.com.au/business/legal-affairs/faster-erosion-of-rights-threat-to-rule-of-law/news-story/675505ecb2eb7bbbcce6a6d16c943d83?login=1

[2] http://www.smh.com.au/nsw/chief-justice-tom-bathurst-warns-of-threat-to-basic-legal-rights-20160204-gmlo5n.html

It is highly likely that similar reviews to legislation enacted in all States will reveal similar results. The authors of the Federal audit noted that:

> *"regulators, bureaucrats and politicians still considered it legitimate to abrogate legal rights in the interests of regulatory goals. Over time, there has been an erosion of respect for the importance of common law rights and fundamental legal rights."*

Queensland does have the Legislative Standards Act 1992[3] which requires the question to be asked of new legislation of 'Consistency with fundamental legislative principles'. Recent governments are allowing the advancement of legislation inconsistent with fundamental legislative principles. The most recent example is currently before Parliamentary Committee called the Vegetation Management (Reinstatement) and Other Legislation Amendment Bill 2016.[4] In the Explanatory Notes[5] it states:

> *"The Bill potentially breaches fundamental legislative principles (FLPs) as outlined in section 4 of the Legislative Standards Act 1992 (Legislative Standards Act). These inconsistencies only occur in order to achieve the policy objective"*

This would suggest a lack of respect to legal rights justified in the aim to achieve regulatory outcome.

The Explanatory notes go on to show inconsistency with Legislative Standards Act, section
4(3) - reasonable and honest mistake of fact
4(3) (d) - reverse the onus of proof
4(3) (g) - impose obligations, retrospectively

Property Right Australia has observed that new laws are being passed through Parliament far too quickly. New Bills are sometimes developed too quickly resulting in poor drafting. After being tabled and sent to a Parliamentary Committee the reporting date is often too short of a period especially for complex legislation. Members of Parliament serving on these committees have not enough time to properly consider the Bill and those members not of the committee have little opportunity to understand the legislation.

There are a number of occasions when the Bill has been tabled for the second reading and to be voted on that the Minister responsible has introduced further unreviewed amendments. The most notorious recent example was the Mineral and Energy Resources (Common Provisions) Bill 2014.[6] [7]

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[3] https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/L/LegisStandA92.pdf

[4] https://www.parliament.qld.gov.au/work-of-committees/committees/AEC/inquiries/current-inquiries/11-VegetationMangt

[5] https://www.legislation.qld.gov.au/Bills/55PDF/2016/B16_0035_Vegetation_Management_%28Reinstatement%29_and_Other_Legislation_Amendment_Bill_2016E.pdf

[6] https://www.legislation.qld.gov.au/Bills/54PDF/2014/MinEnergyResCPB14E.pdf

[7] http://evacuationgrounds.blogspot.com.au/2014/09/pra-regional-queensland-deserves-better.html

Too much haste also leaves open the possibility of unintended consequences for citizens that full consideration of the wider implications may have circumvented. Also trying to administer Acts with poorly defined clauses can also result in different individuals in the public service giving these clauses various interpretations. In both cases the problems may not become apparent for some time.

A good example has just come to light and was published in a newspaper article on April 14.[8] A provision that has always been a feature of the Vegetation Management Act 1999 was property maps known by the acronym of PMAV with the areas colour coded white and named as Category X. These areas had been assessed by the Department of natural Resources as having been already cleared in the past and having no "of-concern" vegetation present. The landowner could conduct management of these mapped areas with certainty and without risk of prosecution.

But these rights currently allowed under the Vegetation Management Act are under risk because of not considering the implications to other Acts at the time of the parliamentary committee review of the Nature Conservation (Protected Plants) and Other Legislation Amendment Bill 2013.[9] The Nature Conservation Act is administered by the Department of Environment and officers from this Department with the passing of this Bill can operate completely independent of the provisions in the Vegetation Management Act.

The Parliamentary Committee could have taken warning of this possibility where in submission Queensland Farmers Federation wrote:

> *"QFF is disappointed to see that there is no change in option 2 to include integration with the Sustainable Planning Act 2009 (SPA) and Vegetation Management Act 1999 (VMA) as this is not supported across government at this time.*
> *QFF notes the integration with other assessment processes is essential. The opportunity to integrate the NCA with the VMA is now as the VMA is currently under review which presents the opportunity to align the compliance requirements of the Acts, and to present a single compliance framework for vegetation management which will enhance regulatory consistency across the state."*[10]

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[8] http://www.queenslandcountrylife.com.au/story/3848273/how-trigger-maps-can-catch-landholders-out/?cs=4698

[9] https://www.parliament.qld.gov.au/work-of-committees/former-committees/AREC/inquiries/past-inquiries/14-NatConsPPOLA

[10] https://www.parliament.qld.gov.au/documents/committees/AREC/2013/14-NatConsPPOLA/submissions/013-QFF.pdf

Even when a Parliamentary Committee does conduct a full review and in its report to Parliament recommends changes to remove inconsistencies and improve legislative standards, the Minister can ignore it all.

Legislation rushed through and poorly reviewed can also fail another fundamental tenet of the rule of law; that the body of law must be capable of being understood.

**3. a. the objectives of the legislation and rights to be protected**

The Human Rights Commission[11] has compiled a list of rights and this would be as good a place as any to start to look at what rights should be protected.

PRA recommends the content of a speech in May 2014 by the now former Human Rights Commissioner, Tim Wilson.[12] Amongst other worthy statements Mr Wilson said:

> *"Human rights are the foundational building blocks of our liberal democracy.*
>
> *Human rights are not the same as freedoms. Human rights are the protection against government encroachment. Freedoms are the exercise of those rights.*
>
> *To that end there are four foundational human rights that need to be strongly reasserted – freedom of association, religion, expression and property.*
>
> *They are 'the forgotten freedoms'.*
>
> *It probably seems odd to refer to freedoms we exercise on a daily basis as 'forgotten'.*
>
> *But as foundational freedoms, they are being taken for granted and are consequently compromised."*

Of special interest to PRA is what Mr Wilson said about property rights in this speech:

> *"Arguably the most forgotten of all human rights is property.*
>
> *Of all the forgotten freedoms I talk about, property rights appears to be the one that attracts the most response.*
>
> *Yet it should be utterly uncontroversial. Article 17 of the Universal Declaration of Human Rights states that 'everyone has the right to own property alone as well as in association with others' and 'no one shall be arbitrarily deprived of his property'.*
>
> *Property rights are not just about physical property. Property rights are about people's ownership of their own bodies, the use of physical property and land and intellectual property.*

[11] https://www.humanrights.gov.au/rights-and-freedoms-right-right-0

[12] https://www.humanrights.gov.au/news/speeches/forgotten-freedoms

*Property rights are regularly compromised by legislation and regulation, such as native vegetation legislation that restricts how legitimate property owners can use their land."*

PRA would also recommend the reading of the publications by the Australian Law Reform Commission in relation to property rights.[13] This linked publication provides a definition of property rights and how they are established in law.

It has been of great concern to PRA, the disadvantage created by rushed legislation or that motivated by political expediency. In 2015 PRA developed the 'No Disadvantage Principle' as available in the attached document in Appendix A on page 6. Just as the question is asked of new legislation of the, 'Consistency with fundamental legislative principles'; the 'No Disadvantage Principle' should be applied. If a section of society, a community or even an individual is placed at a disadvantage, the Parliament should not pass the Bill unless the means is found to prevent that disadvantage or those impacted by a disadvantage are fully compensated.

**Recommendations**

- New legislation must be consistent with the Legislative Standards Act 1992
- A review of the parliamentary committee system with the aim of giving the committees greater powers and mandated time periods to properly consider legislation.
- Any Human Rights Act to also include property rights
- The establishment of the 'No Disadvantage Principle'

Regards,

[redacted]

Dale Stiller
Chairman
Property Rights Australia Inc.

[13] https://www.alrc.gov.au/publications/definitions-property-1

# APPENDIX A

June 2015

## THE NO DISADVANTAGE PRINCIPLE.

Background

Property Rights Australia (PRA) was formed in 2003 to provide a strong voice for landowners with regard to property rights issues. It aims to promote fair treatment of landowners in their dealings with government, businesses and the community.

PRA is neither anti-resource activity, nor a supporter of indiscriminate vegetation or water use. However for too long Governments of all persuasions have imposed policy and passed legislation that transferred the rights to land, vegetation and water, bestowing these rights to the requirements and demands of the Resource Industries and Environmental interests, leaving the affected landholder bear impacts and costs. Often this has happened by "cherry picking" convenient parts of science and economic studies and ignoring other critical points that would have made such decisions untenable

No Disadvantage Principle

In January 2015, as a result of sound and credible evidence, gathered over the past several years PRA called for all political parties and independents to adopt a simple and all encompassing "No Disadvantage Principle" (NDP), to be legislated to protect the interests, the investment, the income, the assets, and the futures of landowners.

The current situation in reality is a complex tangle of interconnected regulations, rules and codes that are a lawyers paradise but a land holder's nightmare and above all else ruinous or impossible to fund the actions necessary to protect the impacted land holder's rights.

The NDP test

To address this undesirable situation PRA requests that the Government introduce a NDP test to all legislation and policies that impact Landholders, particularly in relation to resource and environment impacts.

PRA envisages that NDP would be an unbreakable safety net that ensures that impacted landholders will be fully and justly compensated by the responsible party, be it a Resource company, the Government or any other relevant party that are affected by:-

- Loss of income.
- Compliance and legal costs.
- Loss of Asset Value, including unsalable homes or properties.
- Loss of Lifestyle and amenity value.
- Loss of availability of water, both quantity and quality
- Increases in management, time and labour costs.
- Areas of land taken out of production or has production reduced.
- Future liabilities, for example, weed infestations and meat contamination
- Impacts resulting from withholding of information, the absence of full & clear disclosure.

Such a clear and unequivocal legislated rule would still allow economic development including mining and petroleum projects to operate, to generate wealth and jobs for the State and allow Government to legislate on environmental concerns for the public good but there would no longer be financially crippled victims sacrificed to achieve the desired goals.

Historical context

There have been several attempts to address such problems in the past, notably the Federal Government's Ecological Sustainable Development Policy – ESD –and the Productivity Commission Report in 2004.

The Productivity Commission report found that Native Vegetation regulation would pass the costs of such regulation to landholders both individually or as a group and recommended that the wider community should pay for the costs of providing "public good" environmental outcomes.

The ESD was a simple one page statement consisting of a Goal, three Core Objectives and seven Guiding principles, with a clear three line summary which stated that the Guiding Principles and Objectives were a package and no one principle or objective should predominate over the others.

However politics intervened in both initiatives and the P.C. report was correct in that landholders bore the cost of vegetation regulation, while the public money was either non-existent or miniscule. The ESD document saw one Guiding Principle, i.e. the Precautionary Principle, become the sole focus of debate and the other principles of economics, costs and flexible policy were either lost or ignored.

Conclusion

As earlier stated we now have a tangle of rules and regulations that impact on the land, water and vegetation of landholders that even District Court Judges have described as convoluted and complex.

PRA puts forward the "No Disadvantage Principle" as a clear, simple and all-encompassing solution to address the impacts on landholders that will provide economic development providing jobs and income streams for the State without diminishing or removing opportunities for future generations of landholders.

The State can still legislate for the public good, the full application of the NDP test would ensure that there are no losers and that all Queenslanders benefit from Resource and Environmental demands.

The No Disadvantage Principle is a fundamental Property Right which safeguards the rights of all property owners and should be supported by all sides of politics.