

Submission by Property Rights Australia into the Vegetation Management Framework Amendment Bill 2013

Property Rights Australia was formed in 2003 to protect property rights and to assist landowners who we believed had been unfairly prosecuted for vegetation management offences and to ensure that the State conducted itself as a model litigant.

Property Rights Australia welcomes the reforms to be made under the Vegetation Management Framework Amendment Bill and congratulates the government on restoring some natural justice to a system that had become highly politicised.

It will remove many of the injustices visited on the rural community by having some of the basic principles and protections of our system of government reversed by the previous government.

I am referring to the attacks on our system as examined by people such as Professor Suri Ratnapala¹ who wrote and spoke extensively about reversal of the onus of proof, removal of the right to remain silent and removal of the defence of mistake of fact among other rights.

Similarly Magistrates and Judges were often disbelieving of sentencing requirements. I recall one transcript where the Magistrate questioned this method and was assured by the prosecuting barrister that it was common practice to start at the maximum sentence and then give discounts for co-operation and increases for aggravations.

The Bill will also allow landowners to reverse some of the environmental damage caused by inappropriate and ill considered regulation.

If Property Rights Australia has any criticism of the Bill it is that it does not go far enough in removing some of the injustices. One such injustice is the provision for Restoration Notices.

¹ <http://www.samuelgriffith.org.au/papers/html/volume17/v17chap2.html>

Restoration Notices can be imposed by a departmental officer without the subject ever having been found guilty of a crime by a court. They can stay on a title deed for up to forty years causing property devaluation in the many hundreds of thousands of dollars. Conditions can be onerous and one such Notice was described by Magistrate Cheryl Cornack as being “confusing, unclear, uncertain, vague and impossible to comply with.” Magistrate Cornack then went on to detail no fewer than twenty reasons why she believed this to be the case². The terms of the Notice are not appealable.

Property Rights Australia believes that Restoration Notices should only be imposed when landowners have been found guilty of a crime. The Notices and the terms of the Notice should be imposed by the Court and not Departmental Officers. The terms of the Notice should be able to be appealed and they should aim to restore country to its former state or better in the simplest and most cost effective manner. Owners should be able to apply to have the notice removed from their title deed when this aim has been achieved. Some of the notices and particularly those with convoluted conditions impose a penalty which in sum total is likely to be greater than any fine imposed.

We believe that in the past the terms of these Notices have been unnecessarily onerous and lengthy.

PRA also submits that any rights under landowner initiated Property Maps of Assessable Vegetation (PMAV's) are not diluted.

Thank you for the opportunity to comment on this Bill.

Joanne Rea

Chair

Property Rights Australia

² Whyenbirra Pty Ltd and Department of Natural Resources Civil M201/06