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Standing Committee on Public Administration Legislative Council  
Parliament House PERTH WA 6000  
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Dear Committee,

## **Inquiry into Private Property Rights**

### **INTRODUCTION**

I would like to thank the Standing Committee on Public Administration Legislative Council for the opportunity to contribute to the "Inquiry into Private Property Rights". My comments are confined to two areas in the terms of reference

1. *"recognises the fundamental proprietary right of private property ownership that underpins the social and economic security of the community;"*
2. *"asserts that fair and reasonable compensation must be paid to the owner of private property if the value of the property is diminished by a government encumbrance or resumption in order to derive a public benefit;"*

For over 60 years, (30 years as a farmer) I have been involved in associations in the central wheatbelt. As a member of many rural community organisations I met many farming and "small business" families. While the opinions I have expressed in this submission are mine, I am sure that the views and sentiments stated would resonate favourably with most rural people.

The State Government legislation has implemented the greatest erosion of private property rights and economic security of the agriculture community. The role of the State Government should be to promote and attain a just, democratic, prosperous, and secure society in which private enterprise and jobs may flourish.

Environmental regulations and animal activism fails to recognise the fundamental rights of private property ownership. The infringement of private ownerships is eroding the social and economic security of a free and democratic Australia.

If Government environmental legislation inflicts a loss in the value of private property, (for the benefit of the community), then the community, not the property owner should bear the cost. An independent assessment and compensation for the loss of property should be paid. Without recognition and compensation for property loss, there is no integrity and no justice by Government. In its place, there is Nationalisation of private assets and theft of private wealth.

Environmental legislation that restricts economic activity on private property affects innovation, investment and income opportunities. Moreover, farm and business competitiveness, productivity and jobs are lost. The environmental legislation acts as a Government imposed quota, tariff, or tax on private farming landowners.

The fundamental principal in business and farming is "You cannot earn what you do not produce". In addition to the variabilities of world market prices and exchange rates, the Government's environmental legislation has introduced an increased economic risk, viability, and insecurity in agriculture.

When the "Highest Value and Best Use" principle for private property is devalued by Government legislation, to derive a public benefit, then it is fair and reasonable that compensation must be paid. The principle of

“Highest Value and Best Use “ of land ensures the most productive allocation of resources, to improve the living standards for all West Australians, regardless of their location.

## **DISCUSSION and RECOMMENDATIONS**

A key point in The Productivity Commission’s 2017 report “Inquiry into the Regulatory Burden Imposed on Australian Farm Businesses” was:

“Native vegetation and biodiversity conservation regulations need fundamental change so that risks and impacts are considered at a relevant landscape-wide scale. Environmental regulatory decisions also need to take into account economic and social factors.”

As you would be aware, the Productivity Commission’s Inquiry’s recommendations with respect to the environment were:

### **Recommendation 3.1**

The Australian state and territory governments, in consultation with natural resource management organisations, should ensure that native vegetation and biodiversity conservation regulations:

- a. are risk based (so that landholders’ obligations are proportionate to the impacts of their proposed actions)
- b. rely on assessments at the landscape scale, not just at the individual property scale
- c. Consistently consider economic, social, and environmental factors.

### **Recommendation 3.2**

The Australian state and territory governments should continue to develop market-based approaches to native vegetation and biodiversity conservation. Governments could achieve desired environmental outcomes by buying environmental services (such as native vegetation retention and management) from existing landholders.

- A. **It is recommended the State Government reform current environmental laws to promote innovation and modern farming methods to achieve equity, fairness, transparency and certainty for private landowners.**

When State Government actions affect the value, enjoyment or ownership of privately owned land a higher level of governance and transparency is needed by:

1. Publishing a “Private Property Rights Charter” that includes;
  - a. How to calculate the economic cost to individuals and the community when making or amending , laws and legislation which restrict the use of privately owned land;
  - b. Alternative means by which the relevant community benefit or public interest could be advanced that avoids or reduces adverse effects on private property rights; and
  - c. A fair and independent process is established for the payment of compensation.
2. Drafting and passing legislation to compensate individuals for the loss of property.
  - a. In the Federal Government, compensation for property loss is enshrined in the Commonwealth Constitution. (The Commonwealth Constitution Section 51 (xxxi) requires any property taken by the Federal Government to be on just terms, when existing private property rights are breached for public benefit, and that the cost be met by the public rather than the individual.)

- b. Previous Western Australian Legislation at Section 23F of the Wildlife Conservation Act 1950 stated:  
“(7) Where an owner or occupier of private land who has been refused consent to take rare flora on that land satisfies the Minister that he will suffer loss of use or enjoyment of the land by reason of that refusal, the Minister shall inform the Treasurer in writing accordingly and the owner or occupier shall be paid compensation for that loss at such rate or rates per annum as,

(a) is agreed between the owner or occupier and the Treasurer; or

(b) in default of agreement, is determined by a valuer appointed by agreement between the Treasurer and the owner or occupier, or in default of agreement on such an appointment, by a valuer appointed by the Minister, for such period, not exceeding 5 years, as the loss continues.

(8) Where compensation has been paid under subsection (7) for a period of 5 years in respect of any particular land, the Minister shall not refuse an application by the owner or occupier of that land to take rare flora on that part of the land for the loss of use or enjoyment of which compensation has been so paid.

In addition, Section 13 Fauna Protection Act 1950 stated:

13. The Minister may enter into agreements with the owners of areas of land for the use of the land as a sanctuary for the conservation and protection of fauna.”

**B. It is recommended the State Government address the question of compensation for property loss by introducing Legislation comparable to that found in the Australian Constitution:**

The Commonwealth Department of the Environment and Energy (DoEE) has identified and detailed 23 Conservation Management Zones in Australia. These zones are specific geographic areas, classified according to their ecological and threat characteristics, to assist in long-term conservation planning.

Eight of the 23 zones are specific to Western Australia. Fortunately, within the 92% of State owned land there are numerous national parks and reserves that meet the detailed native flora and fauna in the identified eight zones. The State Government should commit to funding strategic conservation sanctuaries, similar to the sanctuaries at Mt Gibson, Yookamurra, Scotia and Pillinga or the unique biodiversity of WA will continue to deteriorate with the non-indigenous fauna and flora incursions.

While most farmers spend considerable resources removing the three most destructive pests to biodiversity, (rabbits, cats and foxes) there is a continuous re-population of these animals from State owned parks and reserves. For farmers, the time and cost required in the eradication of feral animals on private property leads to a loss of productivity and profits.

**C. It is recommended the Government use State land to develop and maintain strategic native flora and fauna sanctuary areas. This will guarantee Western Australian biodiversity is retained for future generations.**

**SUMMARY**

1. Privately owned farming properties in areas designated and zoned for agriculture are working “commercial sites”. Farming is a business that needs to operate in an efficient, cost effective and profitable manner to be sustainable
2. If the State reasons a farmer’s land may contain rare or endangered flora or fauna then the burden of proof and the cost of an independent assessment of the land is a State responsibility.
3. If the State decides to restrict a farmer’s freedom of action to work their land in their best commercial interests then the State must pay fair and just compensation. Without compensation there are opportunity costs being incurred each year.
4. The removal of private property rights, by restrictive environmental legislation without financial compensation is a kin to Nationalisation. Legislation that reduces, the opportunity to be

innovative, productive and profitable should be reformed. More importantly, by increasing economic activity, an increase in GDP will follow that will benefit all Western Australians.

5. Farmers know their land is the critical source of equity and income for their business, today and for following generations. Consequently, farmers will work hard to protect and maintain the value of their land.
6. Farm value is directly related to the arable area available and productivity attained in production. The ability to farm where “Marginal Revenue per ha equals Marginal Cost per ha” is critical for farm profitability. Sub optimal performance due to restrictive legislation is a cost to the individual as well as a loss in jobs and wealth to the community
7. While acknowledging the impact of weather, “time taken” is also a critical element. Productivity and profitability is enhanced if the time taken to complete sowing, spraying and harvesting operations is minimised. Long uninterrupted runs by machinery using modern farming practices reduces salinity, wind and water erosion far more effectively than retained native vegetation which also impedes productivity.
8. Governments advocating the protection and promotion of biodiversity must fund and commit to strategic indigenous flora and fauna sanctuaries on State owned land. These sanctuaries would reduce the need to restrict proprietary right of private property. More importantly, all West Australians would share the cost of protecting and maintaining the biodiversity in the State.

#### **CONCLUSION:**

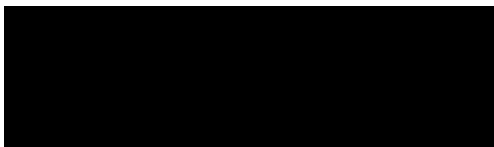
The Productivity Commission stated; “The challenge for governments when developing environmental regulatory frameworks and policies is to achieve a balance between the benefits of agricultural production and the potential environmental costs, as well as to ensure that the frameworks and policies have clear and measurable objectives.”

The establishment of “conservation sanctuaries” on Crown Land or State purchased free hold land is needed to achieve clear and measurable biodiversity objectives.

The funding of the eradication of all non-indigenous flora and fauna and protection of the environmental is a benefit of the whole community. Thus, all members of the community should willingly make an equal contribution to this objective.

Environmental policies need to ensure fair and equitable treatment of all citizens. Regulations that impede fairness, and restrict a fair outcome for farmers on private property should be amended. Where there is a perceived community benefit at a cost to an individual, the community must be prepared to bear this cost and not the individual. State legislation similar to the Commonwealth Constitution Section 51 (xxxi) or Section 23F of the Wildlife Conservation Act 1950 is essential.

Yours sincerely

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Steve Chamarette  
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29 July 2019