Submission Regarding Petition No 42

The Environmental Protection Legislation is some of the most complicated and difficult to interpret of any legislation ever put in place by the Western Australian Parliament. Land owners and farmers in particular are mainly affected by the Act, Regulations, Two Policies, and the Environmental Protection (Environmentally Sensitive Areas) Notice 2005 (the Notice)

In my view, the Act and Clearing Regulations require review, particularly in the area of determining trivial and significant environmental harm, however it is the Notice that requires urgent attention and repeal.

The regulation of clearing native vegetation caused and continues to cause severe financial loss to land owners who had purchased undeveloped land with the object of turning it into productive farms. It also meant a complete U turn in government policy from insisting that Conditional Purchase Land releases be cleared in the State's interest to discouraging clearing, which could only be legally undertaken under a tightly controlled permit system. Several farmers have been fined and one jailed for breaches of these rules. Unfortunately, because of the high cost of a court case and the risk of a criminal record, some have chosen to plead guilty as the cheapest option rather than defending the charge.

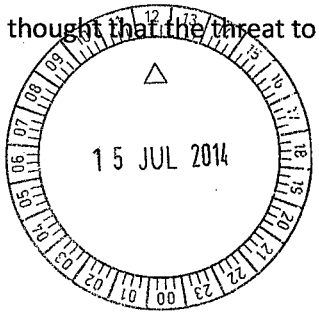
The Notice first came to my attention when a neighbour sought advice regarding a letter he had received from DEC (now the Department of Environmental Regulation, DER) advising that although he had been reported for clearing regrowth on his property, much of which was an Environmentally Sensitive Area (ESA), he would on this occasion be let off with a warning. He had owned the property for many years and was unaware of the Notice until he asked when the ESA had been declared. The matter has had a severe impact on his health and interfered with his ability to use and enjoy his property.

When I raised the issue of the Notice with both grower organisations, PGA and WAFF, neither were aware of it, although PGA advised me that Mr Peter Swift was currently before the court on a charge of clearing an ESA without a permit. Mr Swift was contacted. By this stage he was financially, physically and mentally exhausted and the Gingin Private Property Rights Group (Inc.) (GPPRG) and West Australian Property Rights Group (WAPRA) with assistance from others were able to mount a successful defence. A transcript of the case is worth study, particularly the summing up. It demonstrates the lack of clarity in the legislation as well as being highly critical of the departmental officers involved.

Wetlands, have throughout history, been recognized as prime agricultural land and in WA summer green country has always been highly valued.

The protection of Wetlands in the South West Land Division is mainly through the Environment Protection (South West Agricultural Zone Wetlands) Policy 1998 (SWAZWP) and the Swan Coastal Plains Lakes Policy 1992 (SCPLP). Both appear to be effective and have good community support.

The Environment Protection Authority had attempted to make major amendments to the SCPLP when it came up for review in the 1990's. Titled the Draft Swan Coastal Plains Wetlands Policy, the then Minister, Hon. Cheryl Edwardes, declined to sign off on the draft because of the economic and property rights implications. The incoming Labor Government considered a revised draft and reverted back to the original Policy due to public disquiet. Land owners thought that the threat to their livelihoods was overcome. (See attachment)



The ESA in the Notice are Wetlands identified by the V & C Semeniuk Research Group. Maps were compiled from aerial photos, covering the area from Kalbarri to East of Esperance. Known as the Geomorphic Maps, they were a desk top study and are certainly not completely accurate. They were also used for the abandoned Draft Swan Coastal Plains Wetlands Policy.

Petitioners are concerned that the Notice firstly appears to have not had proper consultation as required by the Minister in the Environment Protection Act 1986, Section 51 B. Land owners have an interest, Environmental Groups are only interested!

Secondly, there appears to have been no report to Parliament by the Delegated Legislation Committee. Surely strange for a document that has the force of law and deprives thousands of land owners of the right to continue using their property as before. To do so would be to commit a criminal act!

Thirdly, there appears little if any public information was published. There are no printed maps readily available to land owners, who are expected to make their own enquiries on the Net. Most people would find it difficult if not impossible to determine their responsibility under the law. Ignorance may be no excuse, however the law must be readily available.

The Peter Swift case has put the spot light on the Notice and led to further confusion. It has demonstrated that financial institutions and real estate agents are also unaware of the Notice and have yet to come to terms with the implications to property values. Recent correspondence from DER indicates that permits could be issued to allow grazing on ESA by a clearing permit (grazing is considered clearing) but only for a short period. This is clearly unviable for a farmer who must make long term business plans. (Letter Enclosed) This also appears in conflict with the Hansard Statement of Wednesday 26th of August 2006 and the fact that there is a buffer of 50 metres around an ESA.

It appears that the major difference in property rights between lands zoned rural (farming land) and rural land identified as ESA is in regard to the right to graze. Land not blighted, can be gazed if cleared and any native vegetation can also be grazed to the extent it has been grazed in the past. This enables stock lawful access to native vegetation (either bush or parkland cleared), for shade and shelter. It also enables the land owner to control regrowth (up to 20 years old).

Those land owners with ESA are only allowed to graze land outside the ESA and the 50 metre buffer zone unless a permit is obtained. Certainly they are unable to lawfully clear regrowth and therefore risk that land (particularly in the buffer zone) will revert back to bush.

Currently, native vegetation (other than regrowth as above) can only be lawfully cleared if a permit is obtained. If the purpose of the Notice is to protect native vegetation as claimed, this can be protected under the normal Land Clearing Regulations.

The Notice if enforced would make thousands of properties unviable and thousands of farmers criminals. Examination of the maps of the Coastal Plain from Armidale to Busselton demonstrates about 90% is an ESA. There are thousands of properties throughout the South West also affected.

The matter has not been before the Ombudsman, however the PGA, WAFF and both major Property Rights organisations have made a joint submission to the Premier's Office requesting repeal of the Notice.

If the community wishes to lock up valuable land as a type of National Park, the land owner must receive fair compensation.

Murray Nixon, President, Gingin Private Property Rights Group (Inc.)