



SIXTEENTH REPORT

OF THE

**STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS
AND STATUTES REVISION**

IN RELATION TO

**A PETITION REGARDING THE EFFECT OF SOIL
CONSERVATION POLICY ON CLEARING CONTROLS AND
REMNANT VEGETATION MANAGEMENT**

Presented by the Hon M D Nixon (Chairman)

**16
October 1996**

**STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS
AND STATUTES REVISION**

Date first appointed:

21 December 1989

Terms of Reference:

The functions of the Committee are to consider and report on -

- (a) what written laws of the State and spent or obsolete Acts of Parliament might be repealed from time to time;
- (b) what amendments of a technical or drafting nature might be made to the Statute book;
- (c) the form and availability of written laws and their publication;
- (d) any petition;
- (e) any matter of a constitutional or legal nature referred to it by the House.

A petition stands referred to the Committee after presentation.

Members as at the date of this report:

Hon M D Nixon MLC (Chairman)
Hon A J G MacTiernan MLC
Hon B M Scott MLC

Staff as at the date of this report:

Mr Chris Richards, Advisory/Research Officer
Ms Kelly Campbell, Committee Clerk

Previous reports:

See Appendix I

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1. INTRODUCTION

The Standing Committee on Constitutional Affairs and Statutes Revision was first appointed on 21 December 1989. Under its Terms of Reference, the Committee is required, *inter alia*, to consider and report on any petition.

1.1 The Petition

On 14 March 1996, Hon Bruce Donaldson MLC tabled a petition (*TP #28 of 1996*) requesting that

the Legislative Council, as a matter of urgency, address the issues of clearing controls, remnant vegetation management and associated issues of equity, including compensation and alternative land use.

1.2 Overview

The Committee has been asked to assess the issues of clearing controls and remnant vegetation management as they are affected by the State Government's land conservation policy. The petitioners assert that the prohibition on the use and control of land under the State Government's Soil Conservation Land Use Policy has unfairly restricted the right to farm on land and has inhibited the effectiveness and viability of alternative land use.

2. BACKGROUND TO THE PETITION

The land conservation policy is governed by the *Soil and Land Conservation Act 1945* ("Act"), which is currently administered by the Minister for Primary Industries.

The purpose of the Act is to prevent and mitigate land degradation in Western Australia. Under the Act, the Commissioner of Soil and Land Conservation ("Commissioner") has a responsibility to prevent any activities which are likely to result in land degradation

Land degradation is defined as any activity that may be detrimental to the present or future use of land and includes:

- i. soil erosion;
- ii. increased salinity;
- iii. eutrophication;
- iv. flooding; or
- v. the removal or destruction of natural or introduced vegetation.

Underlying this approach is the belief that land degradation is not only relevant to the farming sector, but that it is an important concern to the entire community.

Due to widespread fears over the effect of further land clearing in Western Australia, the State Government gazetted land clearing regulations on 10 January 1986 under the Act

These regulations:

- a. require notification of an intention to clear land by the landowner or occupier;
- b. enable the Commissioner to prevent clearing of land if, in his opinion, that activity is likely to cause land degradation.

Under these regulations, the landowner or occupier who intends to clear more than one (1) hectare of vegetation for a change of land use must notify the Commissioner at least ninety (90) days before the commencement of clearing.

During this period, the Commissioner must assess the likelihood of land degradation resulting from the clearing activity. Any land which is considered to represent a degradation hazard if cleared, is protected under the Act by either:

- landholders entering into an Agreement to Reserve ("ATR")¹;
- landholders protecting remnant vegetation through the use of Conservation Covenants ("CC")²; or
- the Commissioner issuing a Soil Conservation Notice ("SCN")³.

This protection includes the exclusion of stock to prevent passive clearing by grazing.

3. CONCLUSIONS AND RECOMMENDATIONS

The Committee has considered the petitioner's request to assess the effect of the State Government's soil and land conservation policy on the issues of clearing controls, remnant vegetation management and the associated issues of equity, including compensation and alternative land use.

¹ An ATR is a formal document stating that the landholder agrees with the Commissioner's assessment that a prescribed area cannot be cleared. ATR's are negotiated between the landholder and the Commissioner and are indefinite in their application. ATR's may be discharged by the Commissioner where it is no longer considered necessary, or following application by the landholder provided suitable reasons exist. An ATR is registered as a memorial on the Certificate of Title.

² A CC can apply where a landholder wishes to voluntarily protect remnant vegetation in the long term. The CC acknowledges that the landholder voluntarily recognises the value of protecting remnant vegetation for land or nature conservation reasons. It is registered as a memorial on the Certificate of Title.

³ A SCN is an order in writing from the Commissioner served on a landholder of any land on which degradation is occurring or likely to occur directing the landholder to take such action as is specified in the notice to prevent actual or potential degradation. It is registered as a memorial on the Certificate of Title.

In considering the issues raised in this petition, the Committee has recognised the difficulties which face conservation authorities in balancing the need to protect the environment through responsible soil and land management practices and the rights of landholders to put their land to economic use. However, the Committee believes that such a task is beyond the limited resources of the Committee.

Therefore, the Committee has resolved to recommend the appointment of a Select Committee to investigate the matters raised in the petition in the following terms:

That a Select Committee be appointed to inquire into and report on the effectiveness of the current land clearing regulations in achieving the objectives of the soil and land conservation policy and the operation of the procedures adopted by the Commissioner of Soil and Land Conservation to prevent and mitigate land degradation in Western Australia under the Soil and Land Conservation Act 1945 and, in particular, to investigate -

- (a) whether applications to clear land are dealt with in a manner consistent with the guidelines developed by the Department of Agriculture to ensure that the assessments of proposed clearing controls are as professional and equitable as possible;*
- (b) the actual and potential hardship suffered by landholders from the effects of a Soil Conservation Notice, Agreement to Reserve or Conservation Covenant in the context of the overall policy objectives;*
- (c) the adequacy and equity of the provisions contained in Part V of the Soil and Land Conservation Act 1945, particularly in relation to the possible introduction of arbitration and compensation provisions; and*
- (d) whether changes to the land clearing regulations are required to improve the effectiveness of those regulations in meeting the demands of soil and land conservation objectives.*

APPENDIX I
LIST OF REPORTS

1. Report regarding a petition seeking legislation on various aspects of substantive law and procedural law relating to sex offences against children.
2. Interim report into links between Government agencies and the failed Western Women Group.
3. Second interim report into links between Government agencies and the failed Western Women Group.
4. Report regarding a petition requesting the Legislative Council to investigate whether the proposed dissolution of the City of Perth contravenes the Constitution Act 1889 or any other Act or Statute.
5. Report in relation to a petition requesting the ban on the use of fishing nets (other than prawn drag nets and throw nets) for recreational fishing in the Pilbara region and the phasing out of certain professional licence endorsements.
6. Report in relation to a petition concerning the export of iron ore through Esperance.
7. Report in relation to a petition concerning the town of Wittenoom.
8. Overview of Petitions: April 1993 - March 1994.
9. Overview of Petitions: May 1994 - December 1994.
10. Report in relation to a petition regarding the Port Kennedy Development.
11. Report in relation to the Electronic Availability of Statutes.
12. Report in relation to a petition regarding the Swan Valley and Whiteman Park.
13. Report in relation to a petition regarding the Sewerage System.
14. Report in relation to a petition objecting to the Government's decision to restrict the use by pensioners of their Free Westrail entitlement during holiday periods.
15. Overview of Petitions: March 1995- March 1996.