SUBMISSION ON REVIEW OF THE ENVIRONMENT PROTECTION ACT 1986

The Minister for the Environment, Hon. Steven Dawson MLC, is to be congratulated for undertaking a review and redrafting of the Environmental Protection Act 1986.

Generally, the wording of the new draft is an improvement on the old, but there is concern when the Minister appears to want the Department to have more power. Good law should be clear and reduce arbitrary decisions to a minimum.

A good example of this is Schedule 5 on page355- Clearing for which a permit is not required. However now is the chance for review. Clearing on road reserves should certainly be included, particularly for road construction and maintenance, but also along boundary fences adjoining private property to allow scheduled burns of roadside vegetation and to make attendance to uncontrolled fire safer.

Similarly, Schedule 6 on page 356 – Principles for clearing native vegetation – Should not be cleared if" (a) it comprises a high level of biodiversity"- Should be deleted as it is not in accord with the Federal Act which aims to protect a percentage of species present at European settlement.

Also:" (f) it is growing in or in association with a watercourse or wetland", should also be deleted. With the best of intentions, this can be very damaging to the environment. Along salt creeks, (of which there are many in W.A), trees are relatively deep rooted and often die as the water table rises. Grasses that are shallower rooted or more salt tolerant are far more effective in controlling salt encroachment. Often dead trees have to be removed for its establishment. For a different reason, along major water flows, (such as the Moore River) in flood, water surges around large trees and causes severe erosion, whilst it flows over grass and does no damage. If (f) was deleted it would allow perennial grasses to be established if in a particular case that was in the best interest of the environment.

The original Act was likely more appropriate and relative in its time. Major amendments in 2003 were introduced when public opinion swung away from encouraging development and the protection private property rights to a view that Native Vegetation was the most beneficial land use, and was best protected by locking it up. No distinction was made between privately owned land and Crown land.

The Rural community carried most of the burden, particularly new land farmers who were still in the development stage. The change in law that restricted what a land owner could do with the natural vegetation on their property has led to conflict with the Department (currently DWER). When Vegetation Conservation Notices (VCN) are issued or permits to clear are refused, the land owner has right of appeal to the Minister, but it is seldom if ever that the appeal receives favourable consideration as the Minister gets advice from the Department. "Appealing to Caesar against Caesar". Justice can only be restored if the land owner has access to the SAT as is the case in other legislation.

Page 341, introduces the term "Environmental Practitioners. "Is this a move to more regulation of those able to make submissions and will it add to costs?

State governments (unlike the Commonwealth) did not consider they had to pay compensation for property rights taken for environmental conservation.

It was a time when the Federal Government was signing International Agreements with little or no consultation with the States, that are constitutionally responsible for land management and there

was a need for complementary State legislation. The 2003 Amendments authorised the "Environmental Protection (Environmentally Sensitive Areas) Notice of Environmentally Sensitive Areas Notice 2005"(ESA Notice) that was introduced by devious means and has since been subject to Parliamentary enquirey. It was never well understood by the general public and most particularly by the land owners it concerned.

It should be noted that the Exposure Draft of the proposed Bill indicates that the ESA Notice is to be rescinded and replaced with a Regulation dealing with ESAs.

We now have an opportunity to solve the problems and injustice that has occurred under the existing law. The view that private property rights can be over ridden by government in the common interest has been subject to a comprehensive review by the Australian Law Reform Commission at the request of the then Federal Attorney General, Senator Brandis.

The final report 129, published in December 2015, into Traditional Rights and Freedoms-Encroachments by Commonwealth Laws made it very clear – that property could be taken for public purposes, but under entrenched common law, only if fair compensation was made.

The report also noted that the Federal Environment Protection and Bio-diversity Conservation Act 1999 did not restrict any legal existing land use, but controlled changes to future land use. This could not have been by accident, but must have been following legal advice. It brings into question the legality of the ESA Notice 2005, which makes it a criminal act to graze livestock on most of the Swan Coastal Plain although grazing has been the major land use since European settlement. No government has been brave enough to enforce the grazing prevention.

These areas should be covered by the same controls as other agricultural land, grazing must be allowed to the extent it was allowed in the past, or fair and just compensation paid.

Certainly the Green view that Native Vegetation is best protected by locking it up has been proven a failure. The need for regular cool fires to reduce the fuel load has been clearly demonstrated. It should be allowed on private land and increased on Crown land.

Whilst not the direct subject of this Act, the establishment of more National Parks and the reduction in the area of forest that can be harvested has not resulted in an improved environment but too many massive fires that have decimated both flora and fauna. Crown land has to be well managed and that requires huge resources. It must be recognised that under aboriginal land management, the natural vegetation was regularly burnt, and our land was parkland cleared, with far less biomass than now.

The restriction of fire-breaks to three metres in privately owned native vegetation, certainly needs increasing. It should be a minimum not a maximum and in dense or high bush should be increased as required. Firebreaks in themselves sometimes halt fires, but their main use is to enable back burning. Clearing and protective burning are always the best way to control bush fires and the current legislation that prevents the reclearing of regrowth more than 20 years old should be changed to enable the reclearing of land that was legally cleared regardless of the time period.

If our natural environment is to be protected, increased recourses must be allocated to deal with the greatest threats, generally the introduced weeds and vermin that thrive on Crown land.

Summary

1. Schedules 5 and 6 need to be made more relevant, particularly to enable better fire prevention.

2. Land owners must have access to the Statutory Appeals Tribunal (SAT).

3. Cost of administration for the private sector must be kept affordable.

5. The regulations, replacing the ESA Notice, must recognise the right to graze.

6. Private property rights taken in the community interest must receive fair and just compensation.

7. “Green” native vegetation management must be replaced by scientific forestry management.

8. Effective fire breaks must be allowed on private land and increased on Crown land.

9. More resources must be made available to control introduced weeds and vermin.

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