SUBMISSION TO THE STANDING COMMITTEE ON PUBLIC ADMINISTRATION JULY 2019

INQUIREY INTO PROPERTY RIGHTS

As a former Member of the Legislative Council, representing the Agricultural Region, 1993-2001, I became very aware of the issues raised in this Inquiry and as President of the Gingin Private Property Rights Group (Inc)(GPPRG, have observed the effect of amendments to Legislation since.

Most of the blights on private property have been driven in the interest of protecting the environment, and often following International Agreements made by the Commonwealth Government with little or no consultation with the States. Unfortunately, the bureaucracy has not always followed the intention of, or accurately administered the law.

The introduction of clearing regulations is a good example. Following the Kyoto agreement, the Federal Government saw the reduction of clearing as a way of meeting the target. In Queensland, the Brigalow country, under aboriginal land management was regularly burnt to encourage the growth of grass and trees never became established. Under European management, without regular fires the trees took over the grass lands and required mechanical clearing to maintain production. Similarly the Mulga country, which was always the best protection against drought had to be knocked down when it grew too high for stock to reach, it quickly regenerated. Queensland has suffered greatly when these activities were over regulated.

In Western Australia, we were at the end of developing our Agricultural Region, (although there is country that was assessed as suitable for agricultural production that has never been released) and there were farmers who had taken up land under conditional purchase agreements with the State Government, who still had land to clear, as well as others who had been granted clearing permits on freehold land were badly effected by restrictions imposed by a " Memorandum of Understanding" issued by the Director of Agriculture, as the lead Agency in these matters. It claimed that the Cabinet had agreed to certain conditions regarding Clearing. As a member representing the Region, I was suspicious that this was not the case and was able to establish this was a lie. The Director moved on! (Proof is available if required).

Both the Kyoto and Paris agreements are based on the IPCC papers, which by computer modelling, project the change in climate based on increasing CO2 in the atmosphere causing global warming. Although the IPCC and United Nations, claim the science is settled, there is much scientific evidence to support the theory that the Sun is the main driver of World temperatures and CO2 emissions, mainly from the sea, increase after the World warms rather than it being the cause. Actual recordings indicate the projections are not being fulfilled. Environmental Regulation is causing a blight on property rights, and any regulation must be based on scientific evidence and not the "Precautionary Principle."

Western Australia was also subject to the Commonwealth Biodiversity Agreement which was designed to protect endangered species, both flora and fauna. Here again what appeared a worthy objective was blighted by incompetence and I suspect personal prejudice. As chairman of the Standing Committee on Constitutional Affairs and Statues Revision, I became aware of the plight of Geraldton farmers, Mervan Heinrich and Family when we examined their petition. Mr Heindrich owned a developed farming property which he sold so as to buy a larger less developed property to provide for his family. At the time it was legal to clear the undeveloped portion. Departmental officers wrongly identified a common species as endangered and his permit to clear was refused, When the mistake was recognised, the MOU was in place and clearing impossible. Following the publishing of the report by the Committee,(Seventeenth Report) the then Minister for the

Environment realising the injustice the Heindrichs had suffered and the environmental value of the uncleared land in an area that is short of Native vegetation, directed the Department to put a case for Commonwealth funds to purchased most of the uncleared land. Once again the Department botched the issue. Funds were obtained, but only enough to buy an area in acres not hectares, there should have been two and a half as much money requested.

Another Geraldton citizen purchased a property that he planned to develop, partly using the sale of gravel. He also was unable to clear because of another so called rare and endangered species. After the man's life had been destroyed, it was found that the plant only flourished if the land was cleared!

State Government regulations to protect the Carnabies Cockatoo have led to loss of property rights for many rural land owners unable to clear and make their properties fully productive.

One method used by the Department to protect habitat is when a metropolitan developer wants to clear land for housing, an off-set must be purchased of "Habitat" country in the rural areas. This is bush that the owner would not be granted a permit to clear. The owner has suffered a loss of capital value because of it, and there is no increase in the area of habitat. It would be just, that the rural property owner should be able to recover that loss from the city developer. In reality, the developer has to negotiate and pay a price to the Department, and the Department negotiates a price with the farmer without disclosing the price extracted from the developer. The Department is usually the only buyer interested in unproductive land and the profit goes to the Department!

As a rural Member I continued to receive complaints from constituents on many issues, particularly clearing and the loss of property rights when public infrastructure, such as Gas pipelines and large electric power lines were installed. Land owners generally accepted the need for the installations but believed they could often be put on Crown land and if not the land owner should receive compensation from the community, as the structure was for the benefit of the community. There has been some improvement in this area by the Barnett Government's Charter of Property Rights which instructed Agencies to where possible place such infra structure on Crown land.

The Metropolitan area was also effected. The Legislative Assembly Member for Southern Rivers, Monica Holmes, approached the Committee when Westrail were in the process of building a shunting yard in a residential area, clearly in breach of planning regulations. Following the Committee's inquiries the bulldozers had to withdraw.

Further departmental incompetence continued to damage the life of honest hard working people and it became obvious that an Enquiry into Private Property Rights was required to protect property owners. Another petition from Ms Holmes led to years of hearings, commenced by Constitutional Affairs Committee, the enquirey was continued under the Chairmanship of the Hon Kim Chance and finalised with the Report tabled by Chairman Hon. Barry House. "The Report in Relation to the Impact of State Government Actions and Processes on the Use and Enjoyment of Freehold and Leasehold Land in Western Australia", was a mammoth task but all involved should be proud of the result, it is probably the best document on property Rights ever produced.

The recommendations of the Report spelt out what was required to ensure justice in the future. The Government of the day, referred the Report to the W.A. Law Reform Commission, who after long deliberations also produced a report, making 31 recommendations, in general terms supporting the findings of the House Report. There was by this time another change of Government, and all involved waited for the Governments response. When it came, only one recommendation was

supported and this never became law as there was controversy over the wording rather than the principle.

Towards the end of the Court Government, the Swan Coastal Plain Lakes Policy came subject to its statutory five year review. This Policy had good community support and a clear definition of lakes that should be protected. The new draft, titled the Swan Coastal Plain Wetland Policy was a completely different document which would have destroyed the viability of many land owners, farmers in particular. Agriculture, had until then, been considered a beneficial use of wetlands, the new document made grazing illegal on the summer green country, the most valuable land in the district. As a representative of the area, I took my concerns to the Minister for Environment, Hon Cheryl Edwardes and Gingin Shire. The Minister visited the district, saw the implications of the document if it was approved and refused to endorse it.

Gingin Private Property Rights Group was formed to protect landowners interests under the leadership of the then Shire President, George Gifford. In time, a second Draft of the, the Swan Coastal Plain Wetlands Policy was produced, which was equally obnoxious and the community made its concerns clear at large public meetings and submissions to the Government.

In 2005, the then Minister for the Environment, Hon Mark McGowan, at the request of the GPPRG visited Gingin to see the problems first hand. He then stated in Parliament, that he believed the Environment was well protected under existing legislation and the Draft policy was no longer required and it was cancelled.

The GPPRG was delighted as it thought the problem had been solved.

Long after, a land owner contacted the group with a letter, warning him that he had broken the law by removing some small regrowth on a damp part of his property, and enclosed a map, showing environmentally sensitive areas on his property. I contacted the PGA and the Property Rights Policy officer, Milan Zaklan informed me that all he knew was that Peter Swift, a farmer East of Manjimup was before the courts on a charge of clearing an environmentally sensitive area (ESA) without a permit.

This was the first either PGA or GPPRG had heard of the ESA Notice 2005 and we arranged to meet with Peter Swift to get an understanding of the problem. Mr Swift had recently purchased the land, intending to develop it as a life style and retirement property and had pleaded not guilty, although it was suggested that pleading guilty would be the cheapest and easiest way out of his problem. GPPRG decided to support Mr Swift's legal defence, but even after the previous owners admitted they had done the clearing, the Department continued the persecution, until in due course Mr Swift was found innocent. The tragedy was that the strain left Mr Swift physically, mentally and financially exhausted. The matter was subject to Petition 42 and Report 41 of the Standing Committee on Environment and public Affairs.

There is good reason to believe that the Department used the 2005 Notice and lack of due process to deliberately overcome community concerns at the Draft Swan Coastal Plains Wetlands Policy.

In December 2017, the Department issued a policy document, A Methodology for the Evaluation of Wetlands on the Swan Coastal Plain, Western Australia, in it (Executive Summary) it claims that only 21% of the land declared ESA is of conservation value and spells out a method of having it removed from the designated area. It is probable this was seen wise as ESAs West of Armidale and East of Mandurah are currently being built on, contrary to the Notice and possibly criminal acts as the Environment Protection Act Binds the Crown.

GPPRG believes the conservation areas should be identified and all other land returned to the normal legal requirements for agricultural land.

The cause of much of the injustice suffered is because of modern interpretations of the Law. When the Colony of Western Australia was established, all British law, particularly common law and Legislated law if applicable applied. When self-Government was granted, our Constitution was mainly concerned with the election of a sovereign Parliament and the law remained the same unless changed by the Parliament.

The British Constitution is mainly entrenched common law, unwritten except for the Magna Carta and Bill of Rights and in my view protects property rights. The Australian Law Reform Commission in its report on Traditional Rights and Freedoms, stated it thus: Common Law has long regarded a personal property rights as fundamental. However, property rights could be encroached by legislative action as long as any deprivation was not arbitrary and reasonable compensation was given.

At Federation, the States were concerned that the new Government would acquire State land and made it clear in the Federal Constitution that it could only be acquired on Just Terms. Unfortunately, because there is not a similar clause in our State Constitution some claim that only the Federal Government is required to compensate. This in turn has led the Federal Government using the States as a way of avoiding having to pay compensation for Property Rights damaged by International Agreements.

The most important service this Enquirey can produce is a set of words that ensures the protection of Private Property Rights is part of Western Australian Law, and that where the Community acquires or blights those rights, compensation on just terms is made. If the community cannot afford it, it must do without. If the community cannot afford to pay, the property owner certainly cannot afford the loss!

Legislation should protect Western Australian citizens, not harm them!

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President GPPRG (Inc)

P.S. The GPPRG would like to add to this submission in an oral hearing if it would please the Standing Committee.