WAFarmers Submission

Standing Committee on Public Administration
Inquiry into Private Property Rights

11 July 2019

Committee Clark
Legislative Council
Parliament House
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WAFarmers Submission in response to the questions posed in the Terms of Reference ;

(a) That this house recognises the fundamental proprietary right of private property ownership that underpins the social and economic security of the community;

The common law has long regarded a person's property rights as fundamental. Jeremy Bentham said that '[p]roperty and law are born together, and die together'. At common law, property rights could be encroached upon 'by the law of the land', so long as any deprivation was not arbitrary and only where reasonable compensation was given.

Prosperity and property rights are inextricably linked. The importance of having well-defined and strongly protected property rights is now widely recognized among economists and policymakers. A private property system gives individuals the exclusive right to use their resources as they see fit. That dominion over what is theirs leads property users to take full account of all the benefits and costs of employing those resources in a particular manner. The process of weighing costs and benefits produces efficient outcomes that translates into higher standards of living for all.

(b) That this house recognises the threat to the probity of the Torrens title system, which guarantees disclosure, and re-establishes the necessity for registration of all encumbrances that affect land including environmentally sensitive areas, bushfire-prone areas and implied easements for Western Power that currently sit behind the certificate of title;

The effect of registration of an interest in Torrens titles is to give the registered owner an indefensible title to that interest. There is no doubt that Torrens' system was constructed on firm foundations: reliability, simplicity, low cost, speed and suitability. However its ability to register all the encumbrances, interests and limitations on land usage has struggled to keep up with the wave of restrictions that commonwealth and state governments are imposing over landholders.

WAFarmers holds that the position that any encumbrance, or limitation on a landholders use or enjoyment of a property must be communicated to the landholder and registered in a easily accessible electronic format linked to the Torrens title.

(d) That this house 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;

Farmers are increasingly uncertain about their future and their rights as landholders. Successive governments have done little to allay concerns or clear the way. Property rights of farmers must be respected in relation to government decisions affecting land and water entitlements to give them confidence to invest and run a farm business.

Full and adequate compensation must be provided where property rights are compulsorily acquired by governments or where farmers are required to undertake management practices above and beyond their duty of care.

There has been a substantial decline in support for the security of private property rights by courts and governments over the last 50 years. Too often we are seeing the emergence of the modern problem of governments assuming a property right, while leaving the title with the owner. This is unacceptable. Whether it is in relation to rights surrounding carbon credits, water, natural resource management or mining's interaction with farming resources, this imbalance must be urgently corrected.

WAFarmers strongly contends that legislative changes are needed to mitigate the erosion of rights and provide landholders with the certainty they are entitled to.

In summary WAFarmers calls for:

- Full and adequate compensation where property rights are compulsorily acquired by governments or where farmers are required to undertake management practices above and beyond their duty of care.

- Governments to take responsibility to provide appropriate and just compensation to landholders whose property rights have been usurped or eroded.

- Government should offer the option to lease farm land that it has, or plans to impose land use restrictions on (at unimpaired land commercial lease rates), to allow farmers to maintain a commercial income.

- In regard to retrospectivity, the Government must recognise past misdeeds and compensate landholders accordingly.

WAFarmers Discussion Paper – Property Rights

Provisions against uncompensated takings of property are not in state law but the Commonwealth constitution under Article 51 (XXIII) saying the Commonwealth could not take property without offering "just terms" to its owners.

> *The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to … [t]he acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws.*

As noted above, this 'just terms' guarantee is particularly significant as it is one of the very few express guarantees that is provided in the Australian Constitution concerning individual human rights. The idea that private property should not be taken without just compensation was described by Justice McTiernan as being 'a rule of political ethics'.

Questions about compensation for governmental interference with property are many and complex because incursions on property rights are made by a host of Commonwealth Acts, State laws and local government ordinances. One thing is becoming increasingly clear is that the current laws around the adequacy of existing compensation rights are far from adequate and the extent of the protections of property owners against the state ill-defined and limited.

Compensation for 'injurious affection' is an important part of protection the property rights of rural land owners as state and commonwealth governments have moved to adopt intrusive restrictions on land usage to accord with state, national and international environmental goals. That expression refers to acts of government that do not directly or formally touch the property in question, but which nevertheless damage its value and enjoyment. Examples include the erection of high-tension electricity lines without resumption of the property concerned or land use restrictions for the protection of wetlands or land clearing for carbon emissions mitigation. The common refusal to pay compensation for injurious affected is not based upon any clear link between adverse 'affection' and resumption, but upon the refusal of the state to accept that it has an obligation to compensate land owners for the full use of their land and the ability to maximise returns.

In respect to farmers this submission focuses on the compensation problem of 'injurious affection', namely, de facto resumptions (partial and sometimes near-complete) that occur when governments unilaterally impose controls on the use of land under the guise of 'environment', 'heritage values' and the like.

The principle upon which all governmental acquisitions of land are based is the Crown's right of 'eminent domain' — the automatic power of governments to take private property for public purposes.

The Commonwealth and the States do have acquisition acts which set out general procedures for the resumption of property and the payment of compensation. But these laws have no special constitutional status; they are ordinary legislation that can be repealed or amended at any time by a bare parliamentary majority. Only tradition and public opinion prevent the States from resuming property without compensation; and occasionally those inhibitions are cast aside. Since 1900 several Australian States have simply confiscated private rights to petroleum or to minerals — rights originally granted by them to early freeholders.

Two key limitations to existing constitutional safeguards exist. The first is structural, namely that the 'just terms' constitutional guarantee but there are limits on the 'Just Terms' Guarantee as s .51 doesn't extend to the States. The second is interpretive, focusing on the limited scope of the term 'acquisition' in s. 51(xxxi) and specifically its failure to extend to significant government regulation or restriction of property rights.

The first difficulty is that the 'just terms' guarantee provided under s. 51(xxxi) of the Australian Constitution ensures that the Commonwealth Government is required to provide 'just terms' compensation whenever it acquires property, but does not extend a similar requirement to the State Governments. This was confirmed by Chief Justice Latham in P J Magennis Pty Ltd v Commonwealth who observed that State Governments

'… if they judge it proper to do so for some reason, may acquire property on any terms which they may choose to provide in a statute, even though the terms are unjust'.

It is, according to the Law Council of Australia, 'a significant gap in the protection of property rights in Australia'.

The example of environmental laws highlights the obvious problem with this. While there are certainly significant environmental laws at the Commonwealth level, there are equally also significant environmental laws at the State level that directly impact upon private property rights and the ability of an individual landowner to use their property for productive purposes. Given this context, any 'just terms' constitutional guarantee protecting property rights that doesn't extend to the States will inevitably fail to provide comprehensive protection.

A further important factor to be considered here is the increasing use of intergovernmental arrangements that see the Commonwealth encouraging the States (often through the use of tied funding) to implement policies that impact upon property rights. As these are technically State-based laws they side-step the constitutional 'just terms' guarantee.

The second key difficulty with the current protection is that the term 'acquisition' has been read in a narrow, technical way by the High Court. Deane and Gaudron noted that '[t]he extinguishment, modification or deprivation of rights in relation to property does not of itself constitute an acquisition of property … For there to be an "acquisition of property", there must be an obtaining of at least some identifiable benefit or advantage relating to the ownership or use of property

This can be clearly seen in a number of recent cases. For example, in both ICM Agriculture Pty Ltd v Commonwealth and Arnold v Minister Administering the Water Management Act 2000 a High Court majority held that the reduction of a licensee's groundwater entitlement by the replacement of groundwater bore licenses with aquifer access licenses did not constitute an acquisition of property.

This was despite the fact that, for example, the plaintiffs in ICM Agriculture found that their water entitlements under the new aquifer access licenses were reduced by between 60-70%, which obviously had immense practical impact on the productive usage of the land and its value. Another recent example can be found in the case of Spencer v Commonwealth, 17 where the Federal Court acknowledged that NSW legislation controlling land management and native vegetation clearing had 'fundamentally altered and impaired' the bundle of rights that Mr Spencer exercise over his farm 'Saarahnlee' in NSW.

However, the Court concluded that there was no 'acquisition' of the property, with Justice Mortimer stating: In the July 2007 decision of the NSW Rural Assistance Authority that Mr Spencer's farm was

not commercially viable because of the impact of the State's native vegetation laws there was what can be characterized as a 'sterilisation' or a 'taking', but it was by the State, and there was no acquisition by the State nor by any other person of an interest or benefit of a proprietary nature in the bundle of rights Mr Spencer held in his farm.

The key issue that has emerged in cases such as Spencer v Commonwealth in which there has been a significant restriction of rights that does not technically amount to an acquisition of property, and which therefore falls outside the scope of the constitutional guarantee of just terms compensation. Government regulations may be so restrictive that they make it effectively impossible to productively use a particular parcel of land, but unless these restrictions constitute an 'acquisition' there is no requirement (at least at the Commonwealth level) for compensation to be paid.

According to the doctrine of eminent domain, the giving of reasonable notice and the payment of proper compensation are left to political morality and gentlemanly understandings. But it appears that the Founding Fathers were not prepared to trust their child, the Commonwealth, to that extent They embedded the traditional understanding in Section 51(xxxi) of the Constitution: The Parliament shall . . . have power to make laws for the peace, order, and good government of the Commonwealth with respect to . . . acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws. In 1979 Chief Justice Barwick described this provision as a 'very great constitutional safeguard'. But until the term 'acquisition' is more liberally and realistically interpreted that statement will have more than a touch of hyperbole.

Until the 1970s land-use law in Australia was largely a State concern. The Commonwealth intervened only now and then to acquire land for purposes such as defence, communications and aviation. It had not yet thought of imposing land-use controls in the name of the environment, 'heritage', 'national estate' or Aboriginal affairs, relying on the High Court's recent and generous interpretations of the 'external affairs' power (Constitution s.51 (xxix)) and the 'race' power (s.51 (xxvi)).

It emerges from the Tasmanian Dam case (1983) that Commonwealth environmental policies can virtually 'sterilise' State or private land without bringing into play the duty to pay 'just terms', provided that the legal title is left in the name of the owner affected. This is so because the current judicial meaning of 'acquisition' is wedded to old technicalities of private land law. According to this school of thought there is no 'acquisition' unless the Commonwealth or State takes an outright conveyance of property and formally places the title in its own name. Thus the meaning of 'acquisition' remains incongruously narrow and formalistic while judicial creativity, not to mention the occasional legal revolution, flourishes in other High Court jurisprudence.

Government intervention in the name of the environment, aboriginal rights, 'heritage values' and so on — intervention which is often election-driven such that the value of property can be destroyed or greatly diminished without compensation so long as title or possession has not been taken.

In legal theory 'property' is not the physical object (if indeed there be a physical object) to which the rights of ownership are attached. It refers to the rights themselves. Those rights are better thought of as a 'bundle' of entitlements: rights of entry, rights to exclude others, rights to cultivate, to build, and so on.

When government removes or diminishes rights to property without assuming full ownership it should be seen as 'acquiring' a proportionate number of the rights in the proprietary 'bundle'. The reasons for adopting this more flexible and more realistic approach are all the stronger when (as

here) we are talking of 'acquisition' in the context of a Constitution, a set of fundamental principles which govern the making of federal laws. If a realistic interpretation of 'acquisition' makes federal vote-catching more expensive, and leads politicians and their advisers to count more carefully the costs of 'government by pressure group', then the public interest, on balance, may be served. The main defence of the narrow meaning of 'acquisition' is that a more liberal approach would raise difficult questions of degree, not to mention claims upon federal and state Treasury that may be so large as to force interventionist politicians and bureaucrats to think again.

In a small way, some Australian States have found a way of compensating owners of premises placed on 'heritage' registers. An owner of such a property may reasonably ask why he should have to bear the expense, in maintenance and capital depreciation, of a perceived amenity to the community in general. One way of adjusting the balance is to reduce local-authority rates and land taxes proportionately or bounties or grants to redress the sterilising effects of environmental and other fashionable interventions.

Farmers in Australia are being forced to disproportionately carry the regulatory cost burden of achieving environmental outcomes, such as the preservation of threatened species and the conservation of biodiversity, that provide a clear benefit to the entire community. Increasingly, farmers are required to comply with environmental regulations that are designed to benefit the global community but involve limiting the range of activities that can be undertaken on private agricultural land. But we are not seeing offsets in the form of reduced rates or taxes or the payment of environmental bounties rather land owners are left with the full cost of the owning land that is reduced in productivity.

The National Farmers Federation and WA Farmers recommends that legislative measures be implemented to address these inconsistencies, with the 'taking' of property by state law to be restricted by a requirement that any such taking be performed on 'just terms'. The narrow construction that the High Court has given the term 'acquisition' in s 51(xxxi) of the constitution has caused significant harm to farmers who are forced to comply with Commonwealth environmental regulations that do not amount to an 'acquisition' of property within the meaning of s 51(xxxi) and therefore do not give rise to a right to compensation, but nevertheless cause significant harm to these farm businesses meaning that farmers are disproportionately carrying the costs of achieving a broader public good.

This implications of these impacts on property rights has significant and widespread economic consequences for Australian farmers, particularly in the area of farm business financing. This is because property values decrease and the productive capacity of farm land is lowered. Given that the availability of finance is closely bound to asset values and future income of a property, when farm property assets are impinged by legislation and policies, or where seasonal production cycles are broken or missed because of uncertainties arising from complex and unclear legislative requirements, farmers livelihoods are put at risk.

Therefore, this distinction allows Commonwealth laws to encroach property rights in a manner that is unjustified as it means that regulations which fundamentally alter and impair the property rights held by a farmer do not give rise to a right of compensation within the meaning of s 51(xxxi) despite the economic loss that they impose to achieve their aim of recognising a broader public good. WAFarmers recommends the implementation of measures to address this harm and ensure that environmental objectives can be achieved without necessitating undue harm to landowners.

At the Commonwealth level the EPBC Act and the Water Act are the two key Commonwealth Statutes that unjustifiably interfere with property rights in a way that falls short of triggering

invalidity pursuant to section 51(xxxi) of the Constitution. Environment Protection and Biodiversity Conservation Act 1999 The Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) places severe limitations on property development and land use change that is a direct encroachment of the landholders' property rights and therefore the Act should require compensation for the resulting financial impact.

However, the requirement for a 'significant impact' does not justify landholders carrying the bulk of the financial burden that necessarily arises in the pursuit of achieving the goals of these measures, which are primarily aimed at protecting a broader public good. Despite the environmental benefit that may be gained from land use restrictions under the EPBC Act, the direct impact on property values, and uncertainties in the complex operational aspects of the EPBC Act, mean that farmers are denied the ability to plan in the longer term and subsequently derive optimum value from their land assets. Such impacts are unjustified and disproportionate in comparison to the environmental benefit that flows to the landholder

As has been noted by The Senate Finance and Public Administration References Committee Inquiry into Native Vegetation Laws, Greenhouse Gas Abatement and Climate Change Measures, it reported that 'there comes a point at which regulation of land may be so comprehensive as to render it of a substantially lower economic value to the landowner' and 'in such circumstances consideration should be given to compensation being provided to the landowner in recognition of this.'

The Committee did not make final recommendations in this regard however, these comments represent an acknowledgement that compensation may be appropriate in circumstances that do not amount to a direct acquisition of property within the meaning of section 51(xxxi). While Section 519 of the EPBC Act provides for compensation in certain circumstances, this section is limited to the acquisition of property within the meaning of section 51(xxxi) and therefore does not apply to a 'taking' in the sense of a fundamental alteration or interference with the property rights of a landholder. Therefore, there are a broad range of property rights that are restricted by the EPBC Act, that seriously harm the property rights of a landholder, but do not amount to an acquisition within the meaning of section 51(xxxi).

The Environmental Laws in Western Australia provide a clear example of both of the limitations outlined above. As State Government laws they avoid entirely the 'just terms' constitutional guarantee. The interference with property rights under this framework also falls short of an acquisition, although the laws clearly have a significant impact on the property rights of individual property owners by substantially restricting what they can lawfully do with their land.

A complicated native vegetation protection framework in Western Australia has been created under the EPA, Environmental Protection (Clearing of Native Vegetation) Regulations 2004 (WA) and related subsidiary legislation such as the Environmental Protection (Environmentally Sensitive Areas) Notice 2005 (WA) ('2005 Notice').

The Standing Committee on Environment and Public Affairs in a previous report described the framework as 'a complex web of interrelated laws'. The complexity is significant in terms of the difficulties that are created for individuals attempting to understand and comply with their legal obligations. Under s 51B of the EPA the WA Environmental Minister may, by notice, declare an area to be an ESA.22 It is an offence under s 51C of the EPA to clear native vegetation unless this is done under a legislative exemption or permit.

The example that many farmers quote is restrictions on the removal of isolated paddock trees that may be required to adopt controlled traffic and precision cropping practices. Precision cropping has

many benefits, including reduced chemical and fertiliser use (and run-off into waterways), reduced soil compaction, and considerably lower fuel consumption with associated reductions in emissions. Or access to historic grazing lands which are deemed by the Department of Conservation to be wetlands.

A farmer who finds their property declared as an ESA will effectively be unable to continue using the declared area for farming, at the risk of a criminal conviction. To continue farming they need to obtain a permit, which relies upon a bureaucrat from the Department of Environmental Regulation deciding to exercise their discretion to grant such a permit. There is no certainty for property owners, and it is difficult to engage in long term planning when permits can only be granted for a maximum period of two years (in the case of an area permit) and five years (in the case of a purpose permit).

As the names describe, an 'area permit' is one that relates to the clearing of a particular area specified in the permit application, in Western Australia: Highlighting the Limits of the 'Just Terms' Guarantee say that it is impossible to obtain permission to clear native vegetation on private property. In the ten years between 2004 – 2014 a total of 924 clearing permits were granted for land within an ESA. However, less than 20% of these permits related to farming or grazing activities and during that same period a total of 245 clearing permits were refused. Importantly, before you can apply for a permit you also need to actually know that your property has been declared as an ESA. In fact, landowners were not individually consulted or notified before their property is encumbered and the ESA designation is not recorded on a property's Certificate of Title. The Minister for the Environment confirmed in Parliament in 2007 that all landholders with declared ESAs on their properties as a result of the 2005 Notice had not been individually notified of that declaration. Instead, the Government confirmed that declared areas under the 2005 Notice were only identified in published sources, notably the Government Gazette.

The failure to formally notify affected landowners has been described by the Standing Committee that recently examined this issue as 'extraordinary'. The Standing Committee also considered this ESA framework in detail in the context of having been referred a petition that had been tabled in the WA Legislative Council in June 2014 calling for the repeal of the 2005 Notice. The failure to notify was compounded by a consultation process before the introduction of the 2005 Notice that could best be described as limited. The Department of Environment Regulations confirmed in evidence before the Standing Committee that they did not consult with individual landowners, stating that 'the view was that it was more practical to consult with peak bodies and that is a common practice, and still is' and suggesting that 'there was an 'purpose permit' is one that relates to the clearing of different areas from time to time for a particular purpose specified in the permit application.

Highlighting the Limits of the 'Just Terms' Guarantee require skills to be able to get under the first two or three layers of that information system. It appears to be unnecessarily difficult for land-owners (and potential purchasers) to find out if their property is affected, and how it is affected, by an ESA designation. The combined effect of the lack of prior consultation, lack of individual notification, failure to record an ESA designation on a Certificate of Title, and non-user friendly search system is that many property owners are simply not aware that their property is affected, and it is unnecessarily difficult for them to find out. As a result, many current landowners may unknowingly be committing a criminal offence. Furthermore, it is difficult for prospective purchasers to identify whether the land they are interested in purchasing is covered by an ESA.

While ignorance of the law is no excuse, there must surely be sympathy for an individual whose legal obligations are so significantly altered from one day to the next, without any attempt being made to consult with them, to notify them of the changes, or to make it easy for them to directly identify

themselves what changes have been made. In a similar vein, the Standing Committee found that there 'is significant confusion and concern about ESAs and their impact on landowners, occupiers and persons responsible for the care and maintenance of ESA land.

There is no doubt that the protection of environmentally sensitive areas is an important public good, and something that the community rightly values. This is not being challenged. Rather, what is being questioned is whether the existing ESA framework in Western Australia strikes an appropriate balance between environmental protection and private property rights.

The broad and sweeping way in which the WA framework prioritizes environmental protection, and yet provides no compensation to affected private landowners, highlights the practical need for reforms to strengthen the protection of property rights in Australia.

Given the extensive areas of land across Western Australia that have been classified as ESAs it is apparent that it is not only areas of high conservation value that are being impacted. The individual impact of this is enormous, with it being estimated that between 4,000 – 6,000 landowners are impacted by an ESA designation. This legislative framework effectively results in ESA land being 'locked away', unable to be used for regular farming activities, and often renders the land commercially unviable, it technically amounts to a restriction on land and not an acquisition. This is particularly concerning when the broad area concerned includes some of the most productive farming land in Western Australia, as 'the area covered by ESAs goes from Gingin and along the coastal strip, all the way down to Esperance'. The idea that productive land can effectively be 'locked away' without compensation being payable is concerning from both an economic and moral standpoint.

The argument here is not that property rights should always be given priority or indeed supersede environmental protections. Rather, the focus should be on finding an appropriate balance, and on ensuring that compensation is provided to individual land-owners when they are obliged to 'sterilize' their land for environmental purposes.

The key arguments in favour of an expanded 'just terms' guarantee to protect property rights that are significantly restricted include the modern pervasiveness of compensation, the moral case for sharing costs, and the practical case for improved environmental outcomes.

Modern politics seems to require that compensation measures be provided for anybody who is likely to be left even slightly worse off by a change in government policy, to the point recently where the compensation measures to be introduced with the carbon tax were left in place even when the original tax itself was repealed. In this environment an obvious question is why providing compensation for the significant restriction of property rights should be viewed any differently?

While a number of difficulties that would arise when determining compensation for ESA land, notably that it might be difficult to determine the cost of compensating landowners, that it might be difficult to determine when a clearing permit is refused because the land is designated as an ESA, and that there are other legislative restrictions imposed on property owners (such as, for example, town planning laws) that do not attract compensation.

These are certainly issues that would need to be carefully considered. For example, one of the advantages of the line being drawn at compensating 'acquisitions' but not 'restrictions' is that it recognizes that there are a significant range of government restrictions placed on every single piece of property (covering everything from planning laws through to water restrictions) and that it would simply not be realistic to require that compensation be paid every single time a restriction was

imposed or altered. This does not, however, change the moral case to be made for compensation when it comes to this particular area of public policy.

In the case of ESA designations, the restrictions are not just trivial but – as seen in the case of Peter Swift – they result in large areas of productive land being effectively 'sterilized' for evermore. These particular restrictions were imposed without the individuals who would be affected being consulted, without them being subsequently notified, and without the information being easily accessible so that any future buyers are appropriately notified when they are choosing whether or not to purchase the land.

One common argument raised against provided compensation for 'restrictions' is that it would 'open up the floodgates' and would be simply unaffordable for governments. This misses the simple point that there is always a cost attached to environmental protection policies. At the moment, however, we are simply forcing the private land owner to bear this cost, rather than the community who wishes to see the particular parcel of land being protected. The moral case for sharing these costs is obvious. If the community believes that it is important to impose particular environmental restrictions on a particular parcel of land, then the community should be willing to bear this cost. As was recently observed by Glen McLeod '… the issue is not about the desirability of conservation, but who should pay for the value which our society places on conservation'.

Suri Ratnapala, 'Constitutional Vandalism under Green Cover' (2005) Upholding the Australian Constitution (Proceedings of the 17th Conference of the Samuel Griffith Society) highlighted the point that the denial of compensation is damaging to good governance. The denial of compensation eliminates the discipline that the price mechanism brings to decision making. A government that need not compensate owners has less reason to 'get it right' than a government that must. The uncoupling of power and financial responsibility allows governments to seek short term political dividends. It promotes politics and ideology over facts and science. V I

CONCLUSION

There are significant concerns regarding the protection of property rights in Australia at present, based primarily on two significant 'gaps' in the s 51(xxxi) 'just terms' compensation guarantee and the fact that the compensation guarantee does not currently extend to the States, and in addition it does not encompass significant restrictions to property rights that are imposed by government policies.

These two limitations are serious gaps in the current protection of property rights in Australia today, and they are starkly highlighted by the ESA framework in Western Australia. While the ESA framework has the laudable public policy goal of ensuring that vulnerable areas of environmental sensitivity are protected, it significantly overreaches and asks private property owners to bear the full cost of protecting land that the community supposedly values. The case of Peter Swift demonstrates the very real and human cost that has resulted from these policies, and the urgent need for some form of compensation mechanism to be implemented.

Farmers are increasingly uncertain about their future and their rights as landholders. Successive governments have done little to allay concerns or clear the way. Property rights of farmers must be respected in relation to government decisions affecting land and water entitlements to give them confidence to invest and run a farm business.

Full and adequate compensation must be provided where property rights are compulsorily acquired by governments or where farmers are required to undertake management practices above and beyond their duty of care.

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- In regard to retrospectivity, the Government must recognise past misdeeds and compensate landholders accordingly.

Extensively quoted from

Finley Lorraine; Environmentally Sensitive Areas in Western Australia: Highlighting the Limits of the Just Terms The University of Western Australia Law Review vol 41(1)
http://www.law.uwa.edu.au/__data/assets/pdf_file/0006/2958846/02-Finlay.pdf

2010 Federal Election National Farmers Federation Policy Platform
file:///C:/Users/trevor.whittington/Downloads/%232010%20Federal%20Election%20Policy%20Platform%20-%20FINAL%20(1).pdf