

The Death of Rural Freehold Rights

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FARMER Jim is thinking of felling one of the 20,000 trees on his property for fenceposts. He has used up his 30 tree (0.15 per cent) exemption. He looks at one of the 19,970 remaining trees. He has to consider: what slope it is on; whether it is a rare species; whether it has any hollows or is on the way to having hollows; what native animals or birds are feeding off it or are likely to do so; what effect it has on the forest canopy; whether it is near a stream; whether it is of aboriginal significance; etc., etc. Then he will be in a position to make a lengthy submission to government seeking permission to fell. Welcome to the world of tree-by-tree approvals.

Over many years, governments have taken actions that have diluted the rights to freehold title. They have done so for a variety of reasons, including to provide for essential public services, to control harmful activities and, more recently, to prevent ugly development. This has resulted in extremely interventionist regimes. Such regimes are necessary, particularly in crowded urban areas. But they are not costless.

Nevertheless, the planning regimes have generally not destroyed the economic value of a whole class of property and deprived landholders of the incentive to care for it.

State Governments are in the process of doing just this. They are establishing native vegetation legislation that will quarantine large areas of Australia, effectively eliminating freehold tenure in those ar-

reas. In opting for coercion rather than cooperation, for preservation rather than management, they will also ensure that their environmental objectives will not be attained.

THE LEGISLATION

At the national level, the legislation is intended to prevent widespread additional clearing of private native forest and woodland. At the local level, this will be done

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by depriving landholders of historical legal rights and existing economic value. The rights are the counterweight for the responsibility of care. The new legislation does not provide for the expropriator (the government) to take up the responsibility of care. Indeed, it seeks to impose additional responsibilities on the landholder as it removes the property rights.

The method of expropriation is through the familiar requirement

for official permission that will be hard to obtain and seldom granted. Permits will generally be required from government before native vegetation can be disturbed. Native vegetation is widely, if vaguely, defined but can be taken to encompass most native forest and woodland. The legislation is duplicated, extended and reinforced in many respects by existing and new rules covering water and native fauna. The legislation will be administered through regional plans containing detailed regulation.

Some exemption has been granted so that landholders can remove or take a number of trees per annum. The exemptions bear no relation to existing rights. In one NSW regional plan, it is 30 trees per property. On a property with 100 hectares of trees (not uncommon) there could be up to 40,000 trees. The exemption is, therefore, nominal and negligible. It cannot be described as maintenance of landholders' rights nor does it provide the basis for sensible forest management.

The avenues for landholders to apply for permission to undertake native forest activities will be hedged with the usual interminable processes of analysis, submission, impact statement, comment, etc. Only big businesses will have the time, expertise or money to take on the crushing weight of the State bureaucracies and the inevitable third-party intervention that the centralizing of decisions fosters and favours. Farmers already have a day job. Expensive and complex submissions to government are far

more onerous for them than for full-time bureaucracies or (government-financed) Green organizations.

In this case, regulation of rights is effectively elimination of rights.

In effect, the policy locks up the private forest at no immediate cost to the government and eliminates the freehold property right. This involves about 7 million hectares of private property in NSW alone—60 per cent of the total forested area. It is a land grab of Zimbabwean proportions—and with similar likely results.

LAZY POLICY IS BAD POLICY

This is very poor policy because it is both discriminatory against a minority group in society and it won't work.

What seems to have happened is that governments have simply applied the policy that they have been using for public parks to private land. This has two main drawbacks.

First, the policy applying to public land does not seem to be working. The creation of extensive public parks provides only a transient political gain and the parks are then permanently under-resourced for operations. The result is poor access for the public, neglect and the creation of extreme fire-risk.

At the same time, the diminished State forest areas are under pressure to sustain timber production levels to meet the continuing needs of construction and manufacturing. We will reap the penalties for this later.

Both activities suffer.

Second, the application of the policy to private land simply overrides the long-established and intricate balance of rights and responsibilities that apply to thousands of freehold properties and to thousands of individuals who have cared, and will be expected to continue to care, for the land. There is no evidence that the majority of

these individuals deserve to be penalized in this way or that quarantining will produce a better environmental outcome than the present private management.

'One size fits all' is a lazy and inadequate approach to public policy.

BAD POLICY WILL FAIL

The implications are:

- Landholders have their ownership in these areas reduced to something like leasehold—indeed the areas become a significant liability.
- There will be no incentive for them to care for the forest—to maintain access tracks—to remove noxious weeds—to control feral animals—to do risk-reduction for bushfires. And they cannot be asked turn out to fight fires in dangerous conditions which may have been created or exacerbated by government.

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- There is a powerful incentive for landholders to circumvent what will be an unjust law and to conceal or destroy any significant environmental values in the forest—the government will alienate those whose support is essential to the success of its broader objectives.

- Governments have neither the will nor the capacity to care for these areas themselves—the huge, regular, uncontrollable fires in our national parks indicate their incapacity.

- Nor will governments want to accept public liability for the hazardous conditions that their policies will create in neglected forests. There will be much fruitful ground for future litigation as the neglected quasi-public forest estate generates injury and damages claims.

- Nevertheless, governments are already planning the recruitment of a host of jobsworth tree stump police to enforce the legislation on the thousands of landholders it has deliberately alienated. There will be the usual draconian enforcement powers and there will be the usual cadre of informers.

- The inspectors will, nevertheless, be unable to monitor, much less inspect, more than a tiny fraction of the tens of billions of trees supposedly in their mandate.

The legislation will create the opposite of sustainable development.

There will be no development in most of the forest areas and large new regions of badly neglected native forest will be created. They will be of negative value to the landholder and there will be no access or value for the general public.

THE 'NON-DEBATE'

Although there has been passing mention of this legislation in the national media and parliaments, there is little substantive debate. This is partly because there are currently multiple assaults on rural private property rights through environmental and other legislation. Restrictions on land and water use, fauna protection and Aboriginal and heritage protection are all on the shopping list of one activist group or another. So any one issue tends to be buried or confused.

In addition, as farmers grapple with prolonged drought, and volunteer bushfire brigades risk their lives on public and private land, the more mundane and complicated business of policy formulation is pushed out of the limelight. Moreover, media commentators tend to avoid the complexities of bad regulation. There are simpler, more interesting targets, such as farm subsidies or more exciting, if long-discredited, fantasies, such as turning the coastal rivers inland.

The usual defenders of the rural sector have been muted or, in some cases, have been bought off by chimerical promises of compensation, such as the National Farmers Federation's joint bid with the Australian Conservation Foundation to get \$65 billion from the public purse to solve salinity and buy out farmers. There has been a whisper of compensation for expropriated rights, but political promises in this area are notoriously fragile and compensation is always hard to get and slow to be delivered. Full compensation for loss of capital value and for ongoing maintenance of areas that government has effectively expropriated would be enormous. Other potential champions of the rural sector, such as the NSW Opposition, are desperately trying to look like a pale green shadow of government.

The Green movement has strongly supported the legislation. More sinisterly, it has also attempted to stifle debate by seeking to exclude landholders even from their minority role in consultation processes on the grounds of their direct interest. This is rather like excluding voters at an election, or ratepayers from local issues, on the grounds that they will be damaged by the actions of government.

The fact is that this policy is costless both to those who promote it and to most of those who pass it into law. It has substantial benefits for those in the bureaucracy who devise the policy, because it pro-

vides employment and power. The costs to the real stakeholders, the landowners, are very high. The costs to the community generally are well into the future beyond the next election.

The policy dynamic is profoundly biased against the rural sector.

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A BETTER WAY

There is a better way.

If the State and Commonwealth Governments were serious about the future of our native vegetation, they would focus on the detection and regulation of large-scale land clearing. The invention of the aeroplane and, more recently, the satellite, permits regular detailed aerial inspection, and hence control, of those who flout the law.

Instead of alienating thousands of private forest landholders (who are not clearing), government should enlist their support. It is a myth that the average farmer knows or cares less than the average Green about land on which he has worked for years. Overseas, the worth of schemes involving coop-

eration in native forest management between public and private sectors is already well recognized. In the USA, some developing countries and at the World Bank, the perversity of mandated quarantining has been recognized. As is so often the case, Australia continues to adopt policies that elsewhere are regarded as obsolete.

A cooperative regime would allow for sustainable forestry activities while providing for protection of significant environmental values. We are surely beyond the point of believing that large, regular, random blazes in neglected public parks are preferable to the alternative of detailed forest management.

Perhaps the States might also look at the big picture before deciding to lock up land in addition to that which they already conspicuously fail to manage. In NSW, the area of parks and reserves has quintupled from one million to five million hectares since 1970. The number of parks has increased from 100 to a completely unmanageable 580. The area of State forest is 2.8 million hectares—still substantial though no longer a viable resource at current extraction rates.

The variation from region to region is significant and unrecognized by the policy. In those regions where forest cover in public hands is more than 20 per cent, the need to lock up more land should be presumed unnecessary.

For the Green movement there will never be enough parks or enough regulations that simply say 'no' to human activity. But other people must live on this continent and their productive activities must support the public domain. We need to look at more intelligent and tailored solutions.

Perhaps it is time to say enough is enough.

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