

## Board Of Chairs response

Bruce Cleary

17-12-2013

Re: 13/524

Dear IPART, Hugo Harmstorf and Colin Reid,

Yes we do want you to include our two previous submissions and this response in your initial call and also as a submission in response to the Board of Chairs submission.

Thanks for giving us a say on this issue.

We all know that this IPART process is just a scam to somehow adjust and legitimize a discriminatory and unjust tax. A tax that a previous government inquiry had admitted is an unlawful excise tax.

The only ones who want this bureaucracy are the bureaucrats and the government. It is clearly a breach of political commitments, made before the O'Farrell Government was elected. There is no mandate for this LLS bureaucracy, it is a direct betrayal of the rural community.

If there was any democratic process in the establishment and funding arrangements for this proposed LLS parasite, all ratepayers would have been given a free and fair vote, on: 1. whether we wanted to have this bureaucracy at all. & 2. If it was found to be necessary, whether as a government department it should be funded out of general revenue.

Neither of these two premises have yet have been established.

It is also a fact that the lawfulness of the tax remains in question as it is clearly an excise on the production of livestock thus in contradiction of Section 90

The Australian structure of land ownership is centuries old. The best definition of it can be found in *Blackstone's Commentaries on English Law*, which are still a primary reference in all High Court land cases.

<http://www.yale.edu/lawweb/avalon/blackstone/blacksto.htm>

Blackstone's definition of a Grant in Fee Simple land ownership (commonly known as Freehold) states we own –

- **Tenements.** The land itself and any structures already in place on that land.
- **Messuages.** The right to build any structures of any kind on that land.
- **Corporeal Hereditaments.** This consists of substantial and permanent elements of the land – the ground, soil, or earth whatsoever; as arable, meadows, pastures, woods, moors, waters, marshes, furzes, and heath. It legally includes buildings, as they use the land as their foundation. Water cannot be owned, but the land which holds it can. In its legal significance, land has an indefinite extent both upwards and downwards to the centre of the earth.
- **Incorporeal Hereditaments.**

This is a right issuing from the physical element of land, such as rent, incomes from an enterprise on the land. They are a right to have an idea that will become physical on the land, ie to develop a business and produce an income. An incorporeal hereditament is the things we do with our land including waste it.

The Problem with Statutory Theft is that it breaches a current binding contract with the Crown (the Queen her Heirs and successors). The IPART review must address this issue. A grant in fee simple is a binding deed

of agreement and there is no mention of the Crown reserving any rights in favour of the LLS the LHPA, the RLPB or any other unregistered statutory creature.

Overriding statutes pose the greatest single threat to public confidence in the Torrens system. So substantial are their inroads into indefeasibility of title that it is imprudent, when acquiring interests in Torrens title land, to rely on the Register as an accurate mirror of the registered proprietor's title. To do so invites ambush from unrecorded interests.

Torrens Title legislation aims to overcome difficulties of conveyancing and land ownership under general law or old system title and is based on four fundamental principles and protections, it is the Crown's fiduciary duty to uphold these, thus any breach via statutory theft is shown for what it is.

- The "Mirror" principle- the Register reflects accurately and completely all the facts and matters relevant to the title of a parcel of land.
- The "Curtain" principle- a purchaser needs only to search the title on the Register and need not make inquiries regarding interests which are not disclosed on the title.
- [The "Insurance" principle- persons deprived of interests or incurring loss through the operation of the system should be compensated.](#)
- The "Indefeasibility" (undefeatability) principle.

From Australian Business Law / Paul Latimer 1997

All landowners must be compensated for the losses incurred as a result of the imposition of the unregistered LLS interest.

There is also the problem with this LLS bureaucracy being a corporation and also acting as a government department collecting tax. Does not the Constitutional corporations powers prohibit a corporation from acting as government?

Competitive Neutrality

The National Competition Policy principles require reform of government monopolies, separation of government's regulatory and business functions, removal of legislative restrictions on competition and the adoption of pricing reforms to recognise and offset the public ownership advantages enjoyed by government businesses. Where is the competitive neutrality in the LLS?

Back to the Board of Chairs Submission

IPART must determine who the risk creators are and who wants services and who benefits.

The largest elephant in the room is undoubtedly a resident of the urban community. International airports, import shipping container terminals and international mail systems are the gateways for biosecurity failure and who is responsible for the management of these risks? The Federal Government so do we really need a duplication of services to manage the major risk creators. Is IPART and LLS saying that the national border security regime is incompetent and we need a rural landowner funded duplication. What we need is a competent national biosecurity regime. Not a state government department masquerading as one.

They have correctly identified that it is a government responsibility to fund services that benefit the general public. Then in the following paragraphs they want to integrate all funds to create one big slush fund that they wish to further invest into other income streams. This is a guaranteed recipe for misappropriation and waste of ratepayer money.

They have correctly identified the next elephant in the room. There must be a direct correlation between the intensity of the activity and the risk that is created due to intensity. This must also bring into context high density urban populations because they also create significant risk multipliers. Urban population density must also be thrown into the mix and the tax applied accordingly. Flu epidemics etc always expand from urban environments and species hopping epidemics will also. No exemption for landowners under 2 Ha can be justified. High density residential and commercial areas and industrial poultry production essentially pose similar biosecurity risks, you can't tax one and not the other.

When it comes to the crunch the fact is biosecurity is not just a rural issue and the intensity of the activity must be accounted for. A large school or shopping complex poses a far greater biosecurity risk than a low intensity grazing activity.

The concept of having councils collecting the LLS rates of urban communities really does provide some comic relief. When councils are looked at through the spectrum of their Tcorp sustainability ratings and the number of councils throughout the State that are determined to be at financial risk, it must be concluded that, the Board of Chairs obviously perceives incompetence as the status quo.

The LLS is a government department and must be funded out of general revenue as the risk occurs across the entire state. The overall biosecurity risk is higher in urban areas where products are demanded, consumed and often value added than it is in rural areas where primary production occurs. The greatest risk multipliers occur at urban

international gateways don't tax the wrong people.

The Liberal Government mantra is free enterprise. We demand that we are not required to pay for services that we do not want or receive. We demand that any service provision is undertaken on a willing contractual basis only. We demand that all government departments are funded out of general revenue.

We demand that our land grant title deeds are respected.

B Cleary

30-11-2013

To IPART - Have your say

It would appear that the Hon Minister Katrina Hodgkinson along with LLS and IPART believe that dogs, cats, horses, canaries and gold fish among many others do not represent a biosecurity risk if they live in an urban area like Sydney. This could also be said for the pet industry, zoos, lab test animals or the live food trade where fish and lobsters are displayed at restaurants throughout the city. The hypocrisy of this proposed new LLS Department simple beggars belief. How can it be possible that only regional areas outside town boundaries are solely responsible for the creation of the so called biosecurity risk?

But yes here we have it land owners on blocks of 2 hectares or more are to be held responsible for the costs of running a State based biosecurity bureaucracy regardless of the status of the land that they own. Be it a bush block, vegetable, fruit or grain production which represent little or no animal risk, then through the spectrum from low intensity grazing to the other extreme of very high intensity feed lots and industrial chicken or egg production.

When it comes to high risk environments such as industrial poultry production it is also clear that the produce is demanded and consumed by city based urban populations wanting cheap food.

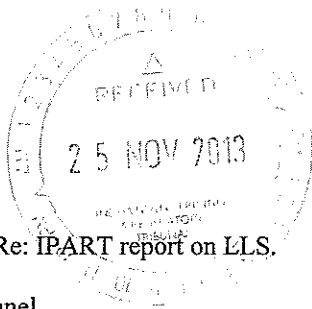
So who is the risk creator and who should be held responsible for the cost of such a State based biosecurity bureaucracy? This is also despite the fact that the Federal Government is running a national biosecurity regime. We all know the LLS and its false justifications are a front for the unfair and discriminatory taxation of rural landowners, to run a government department at our expense and without our consent.

While city dwellers who create the highest risks through demand, consumption and high density living conditions are to pay nothing at all. Human beings are animals with biosecurity risks but in our case the multipliers of risk are exponential due to our propensity for travel and import.

For God sake Katrina, government departments must be funded out of general revenue, and rural people who need services should be free to purchase them, but not have so called services foisted upon them or charged for services that we do want or receive. We do not want the LLS at our expense.

When will politicians and IPART represent country people?

Bruce Cleary



Bruce Cleary

20-11-2013

Re: IPART report on LLS.

Dear IPART LLS review panel,

IPART used by government as Trojan horse to impose unlawful excise tax!

You must ask yourselves do you want to be a party to this?

Unconstitutional statutory theft is theft regardless of your terms of reference. And theft regardless of how the tax is worded, levy, charge, tax or whatever the legislative obfuscation. Whether it is imposed on notional carrying capacity or land area it is an unlawful excise tax on the production of goods and the State is fully aware of this. The State is relying on the fact that the cost of legal action and no separation of powers at State courts will prevent landowners from upholding the law to defend their rights.

1. All land grant title deeds between the Crown and the purchaser are a deed of agreement a binding contract between the monarch and the purchaser. No land grants reserve any registered interests in favour of the pastures protection board, LHPA or the LLS. Statutory theft is a breach of contract between the landowner and the Crown. Before you give your seal of approval to this unlawful tax you must take this into consideration and uphold the existing contracts on behalf of the landowners.
2. Statutory theft must never be able to destroyed any capacity of the Torrens title system to protect or compensate for loss by unregistered interests. What is IPARTS position on this?
3. There is no contract between the proposed LLS and the landholder for goods or services, we have never asked for or received any services from this bureaucracy. The majority of respondents to the Ryan review wanted the LHPA abolished outright and not resurrected in any form especially this bigger uglier LLS parasite.
4. Why in this so called free society do landowners not have the freedom to choose what goods or services they require?
5. The Mathews v Chickory Marketing Board (Vic) 1938 60CLR 263; Case clearly sets a precedent with regard to excise tax on the production of goods. The rural lands regulation 11 Assessment of notional carrying capacity at 4c clearly states that it "must make its assessment as if the raising of stock were the only use of the land." This is an unlawful excise tax. The State and now you are fully aware of it. Changing the rating system to a land size over NCC will not change the fact that it is an excise tax.
6. Biosecurity is a national issue it relates to all Australians and all states it must be federally funded just as quarantine and border security are funded. Any other suggestion that the State needs an additional landowner funded bureaucracy is totally ridiculous. The LHPA can't even manage wild dogs. It has only ever been reactive over cases such as the Ikeda strain of bovine anaemia and pestivirus etc. These and many others were able to spread like wild fire costing producers heavily while the LHPA and DPI clearly could not identify, prevent or compensate producers for their inability to manage relatively minor biosecurity breaches.

7. The idea of the landowner as the risk creator is an insult to landowners it is clearly a corruption of the issue and a fraudulent but deliberate attempt to foist costs onto landowners when it is clearly the community as a whole that is the risk creator. It is the community that creates demand for goods and thus any risk associated with such goods. Any tax must be applied at the retail end of the supply chain and definitely not at a minority of the community who do the hard work to produce the goods.
8. Fundamentally any government department must be funded from general revenue and this includes the LLS parasite. The idea that a minority can be taxed for the general good is abhorrent to the concept of a free and fair society.

Yours sincerely

B Cleary 

Please See Attachments

# Battle against LHPA rates ramps up

By SHAN GOODWIN

**T**HE campaign driven by small landowners against paying Livestock Health and Pest Authority (LHPA) rates appears to be lacking into top gear in the lead-up to the introduction of Local Land Services (LLS) early next year.

While attempts to launch a class action against the NSW government on the grounds that LHPA rates are unconstitutional have hit a brick wall, due mainly to a lack of financial backing, organisers are planning public meetings throughout the State to gain momentum for the fight.

Despite several court judgements going against those who have refused to pay the rates, many others say they will take the same path in order to raise awareness of the issue.

Hay grower Howard Furner, "Gumboot Gully", Goonengerry near Lismore, said debt collectors had this year served more than 200 statements of claim on North Coast landholders who had not paid LHPA rates.

The LHPA has declined to provide figures on how many cases it currently has with the Small Claims Division of the Local Court.

Media officer Dave Rannine said it was "not of any news value".

"We have processes in place to manage the payment and collection of monies owed as regulated under the Rural Lands Protection Act," he said.

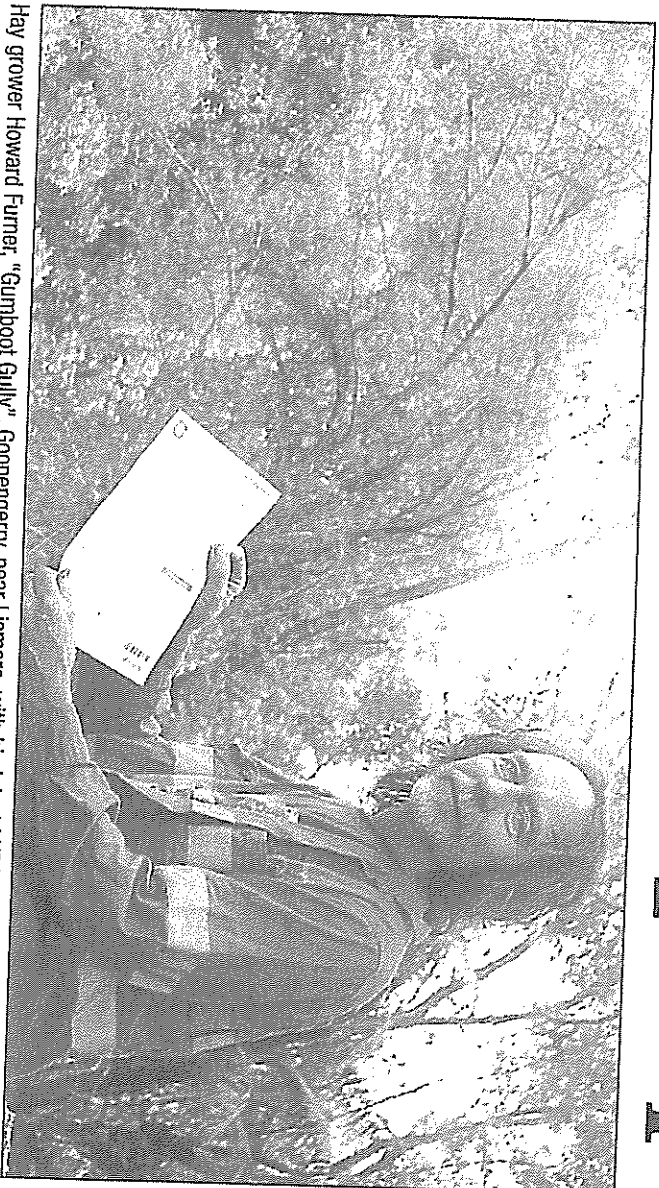
"The specific figures involved form an integral part of our organisation structure but it is not one we would be happy to divulge."

Mr Furner, and other coastal small area landowners who would be contesting the claims in court, have argued they do not receive any service for the rates they are charged.

"Wild dogs are the biggest problem landowners face around here and the LHPA has been ineffective in providing any assistance," he said.

"We are employing dog trappers at our own expense – at \$100 a week retainer and \$100 per dog."

Cowra sheep grazer Richard Wells, "Bedrock", said it was getting harder and harder to use agricultural land for



Hay grower Howard Furner, "Gumboot Gully", Goonengerry, near Lismore, with his latest LHPA rates notice.

the purpose it was originally zoned and at the same time, landowners were being made to pay for services that benefitted all.

Three district beef producer Ray Gorton, "Wongabena", Killabuck, said since 1985 he had had advice from LHPA veterinarians only three times and didn't feel that equated to value for his rates.

"The majority of landowners I know do not believe it is fair and just but pay their rates because there is no legal outlet for a protest," he said.

Bywong's Trevor Kirk, a former accountant, said he was willing to go to jail before paying "what amounts to an excise that picks on people who

like to live in the country".

Mr Kirk, who has spent \$20,000 unsuccessfully fighting the LHPA over rates due on his eight hectare block, is the instigator of LHPAclassaction.com, which this year has joined up 17 members.

He believes the potential lowering of the rateable land size from the current 10ha to 2ha under the new LLS regime next year will see an influx of landowners join the battle.

That recommendation was made in the draft Independent Pricing and Regulatory Tribunal report, which has been on public exhibition, with a final report due to the NSW government at the end of the month.

## LLS report delayed

The release of the final report on how the new Local Land Services (LLS) in NSW will be funded has been delayed to allow more submissions.

Chairman of the LLS board of chairs, John Macarthur-Stanham asked for an extension for the Independent Pricing and Regulatory Tribunal (IPART) report, to allow the Board of Chairs to make its own submission.

He said each of the new regional chairs needed to add their input and take

ownership of the direction for the LLS. The IPART project manager for the LLS review, Colin Reid, said the board of chairs had until December 6 to make its submission.

The final report, due to be released at the end of November, would be delayed until January to give stakeholders a chance to respond to the board of chairs submission, Mr Reid said.

The LLS was still due to be operational for the start of January.



# Matthews v Chicory Marketing Board (Vic)

From Wikipedia, the free encyclopedia

*Matthews v Chicory Marketing Board (Vic)* (1938) 60 CLR 263 is a High Court of Australia case that considered section 90 of the Australian Constitution, which prohibits States from levying excise (taxes). Although the meaning of excise was considered in *Peterswald v Bartley*, this case significantly broadened its reach.

In this case, the law in question was a Victorian tax on producers of chicory, which was measured at the rate of one pound per half-acre, of land planted with the crop. The minority in this case, consisting of Latham CJ and McTiernan J, followed the *Peterswald* definition and held that an excise must have some relation to the quantity or value of the goods.

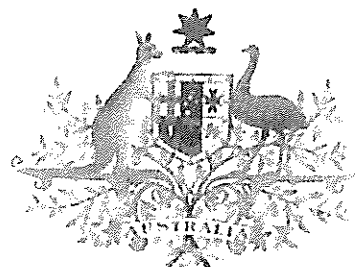
On the contrary, the majority, whose principal judgment was delivered by Dixon J, allowed this extension. After examining the history of excise in England, his Honour concluded that the definition in *Peterswald* may be too narrow. All that is required is that the "tax must bear a close relation to the production or manufacture, the sale or the

consumption of goods and must be of such a nature as to affect them as the subjects of manufacture or production or as articles of commerce". Hence, although the tax in this case did not directly refer to the quantity or value of the chicory produced, the land area has a "natural, although not a necessary" relation to the quantity produced, and it is a "controlling element". This was formulated with reference to the framers of the Constitution, who adopted an excise as "a tax directly affecting commodities".

## See also

- Section 90 of the Australian Constitution
- Australian constitutional law

## Matthews v Chicory Marketing Board (Vic)



<b>Court</b>	High Court of Australia
<b>Full case name</b>	<i>Matthews v The Chicory Marketing Board (Victoria)</i>
<b>Date decided</b>	9 August 1938
<b>Citation(s)</b>	(1938) 60 CLR 263 ( <a href="http://www.austlii.edu.au/au/cases/cth/HCA/1938/38.html">http://www.austlii.edu.au/au/cases/cth/HCA/1938/38.html</a> )
<b>Judge(s) sitting</b>	Latham CJ, Rich, Starke, Dixon and McTiernan JJ

### Case history

**Prior action(s)** none

**Subsequent action(s)** none

### Case opinions

**(3:2)** The tax on producers of chicory calculated by land area was found to be an excise (per Rich, Starke & Dixon JJ; Latham CJ & McTiernan J dissenting)



(2)

You will note the above provisions refer to matters prescribed in the Regulations. In this regard Clause 11 of the *Rural Lands Protection (General) Regulation) 2001* gives additional information about the assessment of notional carrying capacity. It says -

### **11 Assessment of notional carrying capacity**

(1) In determining the notional carrying capacity of land for the purposes of this clause:

(a) a 40 kilogram wether sheep of any breed represents 1 stock unit, and

(b) a 400 kilogram steer of any breed represents 10 stock units.

(2) For the purposes of section 69 of the Act, a board is to assess the notional carrying capacity of land by reference to the number of stock units that could be maintained on the land in an average season under management practices that, in the board's opinion, are usual for the district.

(3) The assessment is to be made whether or not the land is, at the date of assessment, used for any purpose.

(4) Without limiting matters that the board may have regard to in assessing the notional carrying capacity of particular land, the board:

(a) must disregard the presence of noxious weeds or pest animals on the land, and

(b) must not take into consideration the use of irrigation if the land is irrigated land used for permanent plantings of trees or vines, and

— (c) must make its assessment as if the raising of stock were the only use of the land, and

(d) in the case of land that remains in or is reverting to its original undeveloped state-must base its assessment on the condition of the land as at the date of assessment.

It is section 69 of the Act that gives the Board the power to enter land for the purpose of determining notional carrying capacity. This applies to freehold, leasehold or any other tenure of land. I note that the title deed to your land makes no reference to the Board. No doubt it also makes no reference to the local Council, the Valuer-General or any other authority that periodically has some relationship with the land. It is legislation, not the title deed, that gives such bodies the power to take certain actions in relation to land.

Regarding your belief that the rates charged by the Board are "illegal", I note your reference to High Court cases in which State excise on fuel, alcohol and tobacco were ruled to be invalid. These rulings were made in relation to section 90 of the Australian Constitution Act that only enables the Commonwealth Government to collect excise. However, that case had nothing to do with rates charged under the *Rural Lands Protection Act 1998*, which have not been deemed to be an excise.

## STATE NEWS : AGRIBUSINESS AND GENERAL

*Posted on Aug 21, 2006*

**Not happy, RLPBs told** *By Lucy Skuthorp*  
Thursday, 20 July 2006

THE NSW Farmers Association will hold immediate talks with the Rural Lands Protection Board (RLPB) State Council to outline a range of serious and long-held problems farmers are experiencing with boards and RLPB services.

While a motion to have the boards abolished was lost clearly at this week's NSW Farmers Association annual conference, sharp debate on the issue highlighted the level of frustration many farmers were experiencing with their boards and questioned the relevance of the boards now in NSW.

Peak Hill executive councillor, Peter Cannon, moving the abolition motion, said all 48 RLPBs in NSW needed to go.

He said the NSW Department of Primary Industries should be controlling the needs of the RPLBs and rural landholders but instead farmers were taxing themselves to finance RLPBs.

He even claimed RLPB rates were an excise and thus illegal.

"This was found in a recent parliamentary inquiry into the RLPB Act by the NSW Government, which highlighted that the rates probably were illegal, but had never been challenged," Mr Cannon said.

"RLPB rates are a tax imposed on a step in production and ... on the potential to produce."

The rate did not reflect a fee for service and only producers paid the tax.

*Posted on Aug 21, 2006*

**Rural Lands Board sacked**  
*By Bruce Reynolds*

Friday, 08/09/2006

The directors and manager of the Molong Rural Lands Protection Board have been sacked by the State Government. The Minister for Primary Industries says the decision follows more than two years of internal conflict which is affecting the performance of the Molong RLPB, which has 2,500 ratepayers. The whole board has been sacked and new members due to take up their positions soon will no longer do so.

The sacking does not affect other staff including rangers, customer service staff and the veterinarian. In 2005 the State Rural Lands Protection Board issued Molong with a series of directions to overcome some problems but the minister says the situation hasn't improved and he has appointed Gary West, a former minister of agriculture, as administrator until new elections can be held.

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B Cleary

18-3-2013

Re: Review Local Land Services: Stake Holder Reference Panel;

WITHOUT PREJUDICE

## **SUBMISSION**

Dear Dr John Keniry and Panel.

This Panel and consultation process suffer from the same affliction that the Ryan review suffered from. ***There is a fundamental democratic deficit in the whole process.***

Richard Croft is totally correct in saying that the plan to consult is an insult and you know it is.

Dr Keniry you stated in the Land newspaper 14-3-2013 that "nothing has been set in stone" except the obvious fact that you intend to maintain the parasite that nobody wants.

If nothing is set in stone why do we not have the option of a vote, a plebiscite by all ratepayers on whether we want to maintain this bureaucracy at the expense of landowners or abolition it?

The overwhelming majority of submissions to the Ryan Review were to have the LHPA abolished along with the unlawful excise tax on the production of livestock. Yet we are only offered what we did not want in a new name the same parasite is perpetuated with other State responsibilities thrown in as well.

The Ryan review had a bureaucratic predetermined outcome, it ignored the overwhelming majority of public input. It ignored the facts and betrayed the will of all the people who took time to have a democratic input. The Ryan review was basically used as a trigger to foist the burden of this bigger uglier LLS parasite on to the rural landowners of NSW.

A Stakeholder Reference Panel what can of worms this is. It is an irrefutable fact that there are no third party stakeholders in private property our land grant fee simple title does not register, NSW Farmers, the NSW Shires Association, Landcare, CMA, LHPA, and the DPI as having an interest in our private property. Over and above this bureaucrats involved with this LLS have a fundamental conflict of interest between themselves and landowners as bureaucrats have a pecuniary interest in maintaining positions and emoluments at the expense of the landowner. All bureaucrats must remove themselves from this consultation process with regard to private property as they are conflicted, along with your reference panel.

We all know this is just the thin edge of the wedge that is intended to increase the burden on rural landowners (a demographic minority) with the expense of running a government department. All the outcomes that are proposed are for the community benefit as a whole, bio security, food security and quality assurance, livestock health and pest management, catchment management. The cost burden must be removed to the end user the consumer not the producer. If this LLS is to proceed the taxation must be transferred to the supermarket end or not at all.

**The only really relevant review issues that must be determined is whether the rates are a lawful tax and whether we still have fee simple ownership of our private property without interference from unregistered interests.** It is paramount that Sect 42 of the Real Property Act takes effect and our land grant titles that have permanently alienated all other unregistered interests are respected or just terms must apply. Given the finding in the Matthews v Chicory Marketing Board High Court case (1938) HCA60 CLR263 it is obvious that LHPA and LLS rates based on livestock production, carrying capacity and land area are an excise tax on the production of livestock thus outside the jurisdiction of the State and therefore *ultra vires*. One has to wonder when the penny will drop will this review face the truth that LLS rates are an unlawful statutory theft.

Without a lawful revenue base you must reconsider the landowner funded tax contribution to LLS. The State is fully aware that this excise tax is unlawful under S90 of the Constitution and deceitfully persists with it in the knowledge of the fact that the cost of legal remedy to the High Court prohibits justice on this issue. Thus we are subjected to unlawful State taxation without recourse to remedy. With no mandate from the overwhelming majority of landowners who are expected to fork out their hard earned cash, in return for absolutely nothing on a perpetual basis, The State must stop this abuse of landowners now.

**In light of the Chicory Marketing Board Case and fairness to the landowners of NSW we want your review team to seek and publish QC/ High Court level legal advice and have it peer reviewed, as to the lawfulness of this tax. This must be done before it is implemented under the guise of LLS.**

We demand a return to a functional DPI funded from general revenue.

We demand the abolition of the LHPA component along with its unlawful taxation.

We demand that any interference in private property by government or other third parties is undertaken on a contractual basis with just terms, a fair price and agreement from both parties.

We demand that we are not asked to pay for services we do not want or for services that others want

Yours sincerely, 11

B Cleary

Plus 3 page Attachment!