

C/o Trevor Kirk

Snail mail to:

Dr. Peter J Boxall, AO
Independent Pricing & Regulatory Tribunal of New South Wales
PO Box Q290
QVB Post Office
New South Wales 1230

15 October 2013

G'day Peter,

Here's my submission on your Draft Report. Review of Funding Framework for Local Land Services NSW date September 2013

First some feedback about your report presentation:

Font size	Congratulations on using a font size which is easily read	I'm not vision impaired (reading glasses occasionally) but some of your readers, no doubt, will be.
Font theme	Congratulations on using a serif typeface in accordance with Government Style Manuals (so I'm told) instead of spidery Arial, a sans serif face, used by so many Government Agencies in contravention of Government policy.	Serif fonts are recognised by experts as being more easy to read and concentrate on than sans serif

I find it of deep concern that IPART does not seem to understand the real problems with the biosecurity discussion in Australia. As I see it, there are two problems;

- 1 Australia's biosecurity and indeed its border security and Customs are of immense importance to all Australians. Simply put, biosecurity protects our shores against plant, animal and disease invasion and attack from other countries and border security/customs protects our shores against human and disease invasion and attack from other countries.
- 2 As all Australians are the beneficiaries (your term) of our National Security activities all Australians should fund those activities as they do for border protection from Federal Consolidated Revenue.

However put, biosecurity must be a Federal issue!!

The attempt by NSW DPI and, for that matter, any Australian State, which attempts to take control of just a small part of biosecurity is a continuation of the archaic States system which was adopted in Colonial days before Federation. The same is true for other activities;

- Education
- Law and order
- Policing
- Health and safety
- Licensing – vehicles, trades etc.
- Insurance principles and conditions

All these activities and many more contain differences due to State borders, State jealousies and bureaucratic empire building from days of yore. Such childishness is perpetuated by allowing the States to continue.

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Still, you were not charged with assessing the incompetence of the pre-federation structure of the States. Although what you have done by your recommendations has helped to maintain this structure and supports the activities of NSWG. Nor were you charged with the task of assessing the “management” (or rather the mismanagement) structure. In my >50 years experience as a Senior Executive in multi national firms and listed Public companies, I’ve never seen a more cumbersome, expensive, top heavy, inefficient management structure.

The DPI has only created “jobs for the LLS Boards’ boys & girls”. **89 Directors in LLS!** (Including Chair of Chairs, 1 Chair + 7 Directors x 11 Boards with a total salary bill of \$6million+/-).

There are only 76 Senators in the entire Australian Senate!

Perhaps the Federal Govt. should set up border security/customs with a few hundred Director’s positions as “jobs for the boys and girls!”

As I understand it you were called on by the New South Wales Government’s (NSWG) Department of Primary Industries (DPI) to consider the cost recovery mechanisms available to the DPI to fund the 11 new Local Land Services (LLS) following the merger of the Catchment Management Authorities with the Livestock Health & Pest Authorities.

Following mutterings in the media and elsewhere about the parlous state of NSWG finances, bordering on bankruptcy, the main purpose of your review must be to maintain a source of funding for NSWG coffers without rocking the boat too much. The spurious “rates” system exists and the present LNP NSWG believes, I’m sure, just as all past NSWGs of both persuasions have, an increase in an existing tax is less likely to rock that boat. As evidence of my theory let me tell you a former NSWG Labo(U)r Premier who was asked to “fix” this horrendous, abhorrent tax some years ago, has been anecdotally reported as replying:

“No! – it’s a nice little earner”!

Let me tell you products and services provided by the former RLPB/LHPA included threats & intimidation!

I know of 2 x 90yo Centrelink Pensioners threatened with gaol by the LHPA &/or its debt collectors unless they capitulated and paid up.

A disaffected land owner had his property put up for auction without his knowledge! He was alerted by a neighbour!
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If you took the time to investigate the mental torture, persecution and financial distress the LLS in all its forms over 28+/- reviews, over the last 130 years, each costing \$hundreds of thousands, has caused, I’m sure you too would be reluctant, either independently **or** otherwise, to be associated with the fourth level of Government it has created.

A better proposition is for the archaic, jealous, colonial state system should be abolished. Local Councils should be amalgamated so we have provinces big enough to efficiently manage large slices of the whole of Australia. What could be simpler than including a charge in all local council rate notices? Perhaps Local Govt. provinces could also collect land tax! They should be agents of the federal government of the day and in the case of biosecurity should report to a Federal Department of Biosecurity & Primary Industries.

We, my wife and I, challenged the LHPA (as it then was) over a \$730 odd excise bill. To date it has cost us over \$20,000 in legal fees. As Centrelink Pensioners this is a rather indigestible sum, but we felt our actions were justifiable as now we can lay straight in our graves knowing we have done our duty to the Best Country in the World.

C/o Trevor Kirk [REDACTED] [REDACTED]

Snail mail to: [REDACTED]

Unfortunately our efforts to raise \$500,000 to fund a challenge, firstly in the Supreme Court, then in the High Court, of Australia failed. We set up a dedicated website (lhpaaction.com) to provide information to dissident “ratepayers” and to collect funds. Only 17 LHPA Dissidents put their money where their mouths were but others were happy to use our information and keep the moths in their purses and wallets. “At risk” loans of \$100 were received from each of the 17 but the NSW Government with inordinate access to Taxpayers’ funds has forced us to make a commercial decision. We capitulated! Now we will pay the \$730 extortion.

Finally all Australian citizens and residents are, in your words, both *the impact/risk creators and the beneficiaries* so the **whole community**, including we “blockies” and “townies” should pay for biosecurity.

BUT the fight is not over UNLESS your final recommendation is for **everyone in NSW to pay** for the privilege of protecting our part (NSW) of Australia from pests and diseases.

Trevor Kirk CPA (Rtd) FCIS

Attachments:

The Defence we used in our Court case against the LHPA.

Selected text from your Draft.

A copy of an opinion by The Hon Phillip Ruddock wherein he opines the rates to be an excise – the province of the Australian Constitution.

Photograph of a fox in Sydney suburbs

C/o Trevor Kirk

Snail mail to:

Selected text from your Draft to help you locate the sections to which I refer

Your reference	Your text (In red earns my comment)	My comment
2.3 Likely impactors, risk creators and beneficiaries of LLS Services	or the entire NSW (or Australian) community	<p>Neither fauna or flora pests and diseases stop at State, City, Town, Village or Hamlet borders so how can biosecurity be a NSW issue? Even Tasmania, being surrounded by water, given the freedom of movement between the Apple Isle and the Mainland cannot claim to have its own control over fauna or flora pests and diseases!</p> <p>The proof of this is the attached photograph of a fox fewer than 10 kilometres, by road, from Sydney International Airport and there are many lists of flora and fauna diseases, insects, and other threats to our biosecurity from Hamlets to Broadhectare Farms in every gardening book I've ever read. And what about Urban weeds, exotic aquarium fish, plants and crustaceans dumped over the back fence of an urban plot of say fewer than 500m2 or from a fishbowl formerly sitting on a dining room table in a balcony-less home unit or a 9m2 room in a boarding house in a city or elsewhere?</p> <p><i>However put, biosecurity must be a Federal issue!!</i></p> <p>This means there should be no LLS in NSW!!</p>

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3.3.4 Transparency Cost shifting	A number of submissions and comments at IPART's workshops in June/July 2013 related to concerns about cost shifting. Cost shifting in this context means the unjustified allocation of costs to parties that do not create the need or receive a benefit from a service, but are required to pay the cost of its provision.	Are you aware of the cost shifting by the NSW DPI dipping of fingers into Landcare grants for unfunded DPI superannuants? As the Finance Director of Greening Australia ACT & NSW Inc. for 7 years, I saw it happening & no one would take corrective action! I was told, to stay silent!
4.1 Overview of draft framework	Market Failure.	The market failure is that rural dwellers don't like being discriminated against when ALL Australians use the subject resources and cause the biosecurity problems
4.4 Supplementary considerations	The cost recovery purpose is to identify the relevant party that should be charged, because they have created the need for or benefit from, the activity,	It's ALL Australians (And that s/be who)
IPART 7	The reduction should occur no later than 1 July 2017, to give LLS boards time to educate and inform small landholders.	How patronising? It is the NSW DPI who needs the education
8.4 Treatment of annual returns	penalty for failure to submit an annual return on time so that it is higher than the cost of any rate the submitter could be required to pay based on the content of the return	The annual return requires actual numbers of stock. Why are "notional numbers" used? Why not actual numbers?
1 Executive Summary 8 IPART Review of funding framework for Local Land Services NSW	18 Land area should be used as the rating base for any general or broad-based rate (such as those that target all LLS ratepayers as the beneficiary). Where the minimum rateable land area is below 10 hectares, LLS boards should be required to use land area as the rating base for general rates.	NO! Land value is the true measure of wealth. More wealth = more benefit to preserve that wealth. Therefore the wealthier should pay the appropriate "insurance premium"!

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9.4 Flexibility for LLS boards	Ensuring that LLS boards can, where possible, service the needs of its community appears to be accepted by all stakeholders. The Government's stated view is that: "Local Land Services will be managed by local people on local Boards, working closely with farmers, land managers and communities, to deliver services relevant to their local needs	A majority of Directors of each Board appointed by the Minister. A greater number of "directors" than Senators in the entire Australian Senate!
10 Auditing LLS boards' compliance with the funding framework	<i>"an audit methodology to ensure compliance with the funding framework."</i> <i>"The audit should be conducted in accordance with the Standard on Assurance Engagements, ASAE 3100."</i>	As a former KPMG Senior Auditor and [REDACTED] [REDACTED] INTERNAL CONTROL MUST be the crux of any audit methodology
10.1 Overview of findings on audit methodology	<i>An audit is a "systematic, independent and documented process for obtaining evidence and evaluating it objectively to determine the extent to which the criteria are fulfilled".</i> <i>The audit should be conducted in accordance with the Standard on Assurance Engagements, ASAE 3100. 106</i>	AND in accordance with Generally Accepted Professional Accounting & Audit Standards.

And now, in true critique writing style, I draw your attention to some negatives observed in your Draft

Use of incorrect English	Your Draft contains many words which don't appear in any of my Australian English dictionaries, thesauruses and word finders. See examples in green. They appear to have been "manufactured" using the USA (or Crank Yanker – US TV Show) idiomatic culture introduced by Noah Webster in his "Manual on How to Con a Nation by Murdering the English Language" which he mistakenly called "Webster's International (it ain't) Dictionary" which he sold in 1805 for \$0.14. Still you get what you pay for eh! [REDACTED]	Example are; Impactors Additionality Allocative Therefore, any analysis of an existing or proposed service <i>that</i> (s/be which) does not consider.... However, it should not be assumed <i>that</i> (is redundant) the current mix of ... Nonregulatory rivalrous nonexcludable nonclub allocatively Serated Tussock per ha (s/be hectarage See Aust
	[REDACTED] show the same	

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	respect to Australia as they may rightly expect from Ozzies in the U.S. although I'm told some the US use correct English and I see some on signs in the US.	Oxford Dictionary 2008 Ed compiled by Australian National University free-riding
Spelling mistakes	A number of spelling mistakes were noted.	Riskcreating Crosssubsidise
Editing	A number of editing and punctuation mistakes were made. Perhaps you could keep in mind my family company provides proof reading services!	<ul style="list-style-type: none">□ transparency, and □ consistency.109 RLP Regulation , Schedule 3
Repetition	I found your report repetitious. It sounded to me as though you had been instructed by the NSW Government to find this horrendous excise (the "LHPA/LLS Rates") justifiable no matter what and you were trying to condition your readers by coming to the same conclusions over and over again.	

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Form 7B (version 1)
UCPR 14.3

AMENDED DEFENCE

COURT DETAILS

Court	Local Court of NSW
#Division	Small Claims
#List	
Registry	Parramatta
Case number	2012/00233339

TITLE OF PROCEEDINGS

Plaintiff	North Coast Livestock Health & Pest Authority
First defendant	Trevor George Kirk
Second defendant	Theresa Mary Hackett

FILING DETAILS

Filed for	North Coast Livestock Health & Pest Authority
#Filed in relation to	2012/00233339
Contact name and telephone	Trevor George Kirk, 0411 142 281

PLEADINGS AND PARTICULARS

The Defendants deny the claims on the following grounds:

- 1 The Rural Lands Protection Act 1988 levies an excise in contravention of Section 90 of the Australian Constitution.

The LHPA "rates" are calculated by reference to numbers of DSE (Dry Sheep Equivalents) units of production estimated to be sustainable on hectarages of 10 or more hectares of land. Consequently the rates constitute an excise and are therefore in breach of Section 90 of the Australian Constitution which prevents States from levying excises. The precedent for our assertion is, excises are calculated by reference to numbers of litres of wine, alcohol, petrol, diesel, spirits and to kilograms of tobacco, to name a few. In support of our claim we reproduce here a copy of a letter from The Hon Phillip Ruddock (Annexure 1).
- 2 The Rural Lands Protection Act 1988 discriminates against groups of citizens in contravention of Section 99 of the Australian Constitution.

Citizens are qualified for payment of the said excise (rates) using the size of their hectarage, a guess, without inspection, as to the number of DSE which can be sustained on the subject hectarage or the uses to which the land is put or not put. In support of this claim we attach the relevant section of the Rural Lands Protection Act 1988 which clearly identifies rural dwellers exempted from the LHPA Excise because of land usage. This qualification process discriminates further by excluding certain land users conducting certain types of activities on parts of the hectarages otherwise rateable.

Rural Lands Protection Act 1998

No 143

244 Exemptions

The regulations may exempt from the operation of all or any of the provisions of Part 7 or 8

any specified land or class of land, any specified person or class of persons or any specified activities or class of activities in such circumstances, and subject to such condition as may be specified in the regulations.

Rural Lands Protection Regulation 2010

17 Land exempt from operation of Part 7 (Rates) of Act

(1) For the purposes of section 244 of the Act, the following are exempt from the operation of the provisions of Part 7 of the Act:

- (a) any part of a holding used as a motel or caravan park,
- (b) any part of a holding occupied by an authority,
- (c) any part of a holding occupied by a local authority and that is used for a purpose other than an agricultural enterprise,
- (d) any part of a holding used for the purposes of a cemetery, golf course, racecourse, showground or industrial area.

(2) For the purposes of section 244 of the Act, the following land is exempt from the operation of the provisions of Part 7 (other than section 76) of the Act:

- (a) any part of a holding on which a rifle range or buildings ancillary to the conduct of such a range are located,
- (b) any part of a holding used for growing sugar cane.

- 3 The Rural Lands Protection Act 1988, a NSW Act only, contravenes Section 92 of the Australian Constitution by imposing the LHPA excise (rates) thereby preventing free trade among the States.

All costs of whatever type including all standing charges are used to establish the cost of production. This is known as absorption costing. Once the cost of production is established the difference between that and the sale price is known as profit margin.

For example, the sale price in a perfectly competitive market, will be the same e.g. two sheep sold in Brisbane for say, \$500 each. One sheep produced in NSW, one sheep produced in QLD. The costs of production as per Australian Taxation Office Tax Ruling 2006/8 are – variable costs, (fodder, transport costs to market, electricity, fuel, wages, depreciation on farm buildings and equipment) plus the

fixed costs – known as non-variable - (land rates, water rates, telephone rental, rental of buildings, licence fees etc.) in NSW excluding the LHPA rates amount to \$400 per sheep.

	QLD	NSW
Variable	150	150
Fixed exc. LHPA	50	50
LHPA excise	0	30
TOTAL COST	200	230
SALE PRICE	300	300
Profit	100	70

In QLD the costs are the same - \$200. Therefore at first glance the grazier's profit margin is \$100 in both cases; but in NSW the LHPA rates are \$30 therefore the profit margin for the NSW grazier is \$70 and the profit margin for the QLD grazier stays at \$100.

It can clearly be seen the cost of doing business across the NSW/QLD border is \$30 – a tax

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imposed by a Government in contravention of Section 92 of the Australian Constitution.

NOTE: The LHPA rates of \$30 in this example are the rates on the property assessed as having a carrying capacity of say, 50 DSE but our NSW farmer produced only one sheep, 49 died. Therefore 100% of the “rates” apply to one sheep. The remaining fixed costs were related to a golf course business.

The Australian Tax Office has issued Tax Ruling TR 2006/8:-

Tax Ruling TR 2006/8 Income Tax: the cost basis of valuing trading stock for taxpayers in the retail and wholesale industries.

Taxpayers in the retail and wholesale industries who choose to value their trading stock on hand at year-end at cost for income tax purposes should use absorption costing. Under absorption costing, the costs to be absorbed for income tax purposes include the cost of purchase and any direct or indirect expenses incurred in relation to the trading stock in the normal course of operations in bringing the trading stock to a saleable condition and to its existing location. In a retail or wholesale business, these include:

- *The purchase price*
- *Import duties and taxes (other than those subsequently recoverable from tax authorities, such as GST)*
- *Inwards transport and handling charges*
- *Insurance on the trading stock while in transit*
- *Adjustments and assembly costs incurred in preparing the trading stock for sale*
- *Relevant costs incurred in operating a purchasing department*
- *Administrative costs associated with receiving and inspecting the trading stock.*

In addition, distribution centre and off-site storage costs should be apportioned across the relevant trading stock.

(TR 2006/8 (paragraph 7))

In a perfect market the production costs and the sale price of one DSE in any State in Australia would normally be identical except in NSW where the cost of production of the said DSE on LHPA “rateable” land is inflated by LHPA excise. Consequently the profit margin of the NSW grazier is reduced by the same amount. This is evidence of contravention by the LHPA of Section 92 of the Australian Constitution which stipulates trade between the States shall be free.

- 4 The Rural Lands Protection Act 1988 contravenes the cartel provisions of the Consumer and Competition Act 2010.

44ZZRA Simplified outline

The following is a simplified outline of this Division:

- This Division sets out parallel offences and civil penalty provisions relating to cartel conduct.
- A corporation must not make, or give effect to, a contract, arrangement or understanding that contains a cartel provision.
- A cartel provision is a provision relating to:
 - (a) price-fixing; or
 - (b) restricting outputs in the production and supply chain; or
 - (c) allocating customers, suppliers or territories; or
 - (d) bid-rigging;

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by parties that are, or would otherwise be, in competition with each other.

Part 4 Annual State Conference of boards 14 Annual State Conference of boards

- (1) A State Conference of boards is to be convened each year.
- (2) The Minister is to convene the first State Conference after the commencement of this section in such manner as the Minister thinks fit.
- (3) The State Council is to convene a State Conference in each subsequent year.
- (4) The State Council is to give each board at least 42 days' notice in writing of the time and place at which the State Conference is to take place.

Among other things, the conference is to discuss:

17 Business of State Conference

The matters to be determined by resolution at a State Conference are :

- (a) the general policies to be implemented by boards for the protection of rural lands on a State and national basis,
- (b) the primary policies to guide the State Council in carrying out its functions.
- (c) the budget for the State Council for the following financial year,
- (d) any specified matter relating to the operation of boards that is placed on the agenda for the State Conference at the request of the Minister, the State Council or a board,
- (e) such other matters as may be prescribed by the regulations.

When each separate, corporatised LHPA Board returns to its district it levies the excise colluded to at the LHPA State Conference. In our view this is in contravention of the Cartel Provisions of the Competition & Consumer Act 2010.

SIGNATURE

Signature

Capacity

Date of Signature

.....
Trevor George KIRK

First Defendant

25 March 2013

.....
Theresa Mary HACKETT

Second Defendant

25 March 2013



ATTORNEY-GENERAL
THE HON PHILIP RUDDOCK MP

28 FEB 2006

07/2838, MC07/1292

The Hon. John Cobb MP
Assistant Minister for the Environment and Water Resources
Parliament House
Canberra ACT 2600

Dear Assistant Minister

I refer to the recent correspondence you received from [REDACTED] regarding Rural Lands Protection Boards and section 90 of the Constitution. As you would be aware, I do not provide legal advice to members of the public. However, I trust that the following information is of assistance.

Chapter IV of the Constitution (sections 81-105A) contains provisions dealing with, among other things, trade and commerce throughout Australia. The aim to have a single trade area throughout Australia is generally seen to have been a central consideration in relation to federation. To achieve this, Australia needed both uniform customs duties and the abolition of protectionist burdens on interstate trade. The Constitution achieves the first of these objectives by requiring the Commonwealth Parliament to impose uniform customs duties (section 88) and prohibits the State Parliaments from imposing customs and excise duties (section 90). It achieves the second objective primarily by providing that in section 92 that trade and commerce between the States shall be 'absolutely free'.

The High Court has held in a series of decisions that 'excise' under section 90 includes not only taxes on production but taxes on distribution and sale. This broad view of excise has been confirmed most recently in *Capital Duplicators Pty Ltd v Australian Capital Territory* [No. 2] (1993) 178 CLR 561 and in *Ha v New South Wales* (1997) 189 CLR 465 where the High Court held that New South Wales business franchise fees imposed on wholesalers and retailers of tobacco were duties of excise, and therefore invalid.

Yours sincerely

Philip Ruddock

FOXES, LOCUSTS & OTHER PESTS
DON'T STOP AT CITY LIMITS

■ PEST PROBLEM



Killers in our midst ... a fox soaks up the sunshine at Ramsgate beach. The booming population will dine on wildlife or pets. Photo: Brian Destry

Tally-ho! Open season on urban foxes

Tim Elliott

THE quick brown fox jumps over your lazy dog. He then eats your kids' pet guinea pigs, before washing them down with a drink from your neighbour's swimming pool. Most people associate foxes with the country, but the bushy-tailed canids are as much a feature of Sydney's suburbs as Hills hoists and roundabouts.

"They're all through Sydney," said the Moss Vale Rural Lands Protection Board's managing ranger, Andrew Glover. "They're in the Botanic Gardens, the eastern suburbs, around the harbour foreshore. I've seen them in Centennial Park, and I've no

reason to doubt they would be in Hyde Park, too."

This month the board, which has authority over the Sydney metropolitan area, will begin a fox-baiting program in the northern suburbs, timed to coincide with the fox-breeding season.

Introduced into Victoria by fox hunters in 1871, European red foxes are thought to have moved north in 1893, and were declared a pest soon after. Mr Glover estimates there are now as many as 10 foxes per square kilometre in Sydney, where they do considerable damage to wildlife, including ground-dwelling birds, reptiles, possums and the threatened southern brown bandicoot.

"Foxes are more an urban problem than a rural one, because rural people can do things like trapping, shooting and fencing. Also, in urban areas the fox's opportunity to find food is greater because of parks, gardens and garbage bins," he said.

Foxes will eat food from dog bowls, shellfish from the foreshore and bait and guts that fishermen leave behind. They are also insectivorous. "I've seen foxes in Sutherland gather under a street lamp at night, waiting for Christmas beetles to drop down," Mr Glover said.

For city folk, a fox strike can be an unpleasant surprise. "Earlier in the year I had six ducklings taken

from their enclosure from my backyard in Bellevue Hill," said Tanya Excell, a Woollahra councillor and volunteer with the WIRES wildlife rescue group. Cr Excell regularly sees foxes on local golf courses. "A friend saw one run across the sand at Rose Bay and into a stormwater drain."

Michelle Schofield, of Concord, recently had to stop a fox from eating one of her pet chooks. "We heard a noise, came out, and it had it in its mouth," she said. "We've had foxes at night but never in broad daylight, so they're definitely on the rise."

Dog owners will be alerted by signs and letterbox drops to the board's 1080 baiting program.