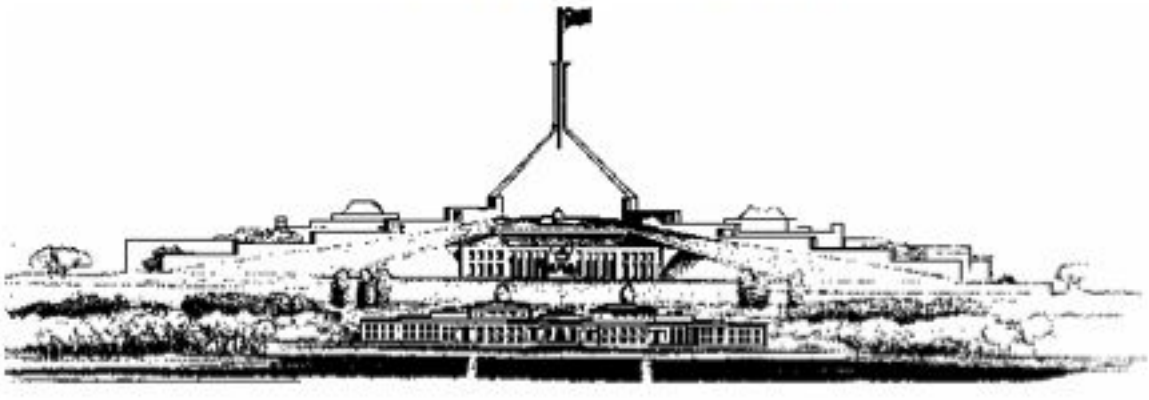
COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



HOUSE OF REPRESENTATIVES

PROOF

Federation Chamber

GRIEVANCE DEBATE

Western Australia: Property Rights

SPEECH

Monday, 23 June 2014

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

Date	Monday, 23 June 2014	**Source**	House
Page	181	**Proof**	Yes
Questioner		**Responder**	
Speaker	Randall, Don, MP	**Question No.**	

Mr RANDALL (Canning) (19:04): I rise today to speak about property rights—those that have affected my constituent Peter Swift and have the possibility of impacting around 2,000 more landowners in Western Australia. For those not familiar with Peter Swift's case, in summary he was prosecuted by the Western Australian state government's Department of Environment and Conservation, or DEC, for clearing vegetation on his Manjimup property without authorisation, contrary to sections 51C and 99Q of the Environmental Protection Act 1986. Mr Swift maintained his innocence against the charges and provided aerial photographs showing the land clearing had taken place before he purchased the property in 2007. In the end, Mr Swift won the case, though he is now $360,000 out of pocket and severely physically and mentally drained—wrecked—by this experience.

The concern about clearing is because the Manjimup land in question falls within a Western Australian state government declared 'environmentally sensitive area', or ESA. This was land that Mr Swift thought, at the time of purchase, he could use to farm. In fact, it was going to be his retirement option. The regulations of the Western Australia's Environmental Protection Act 1986, an act that contains a provision for subsidiary legislation pertaining to the declaration of environmentally sensitive areas, is not mentioned on Peter Swift's record of certificate of title; he is just expected to know all the legislation that may or may not relate to his particular block of land. Nor is the matter that his land falls within an environmentally sensitive area specifically mentioned on his record of certificate of title.

I suppose this is a warning to all landholders, farmers or otherwise, to make sure they know all the current legislation—and future changes to legislation—governing the property they own. Ever since Mr Swift's case has been in the public eye, questions about property rights have escalated, including a call from Simon Breheny at the Institute of Public Affairs requesting the WA state government to launch an inquiry into the heavy-handed approach that DEC used against my constituent. Mr Breheny says the consequences of native vegetation regimes essentially pit small farmers against massive taxpayer-funded bureaucracies like DEC. He says native vegetation laws are an attack on property rights, restrict farmers from managing their land, and additionally act as a constraint to economic growth.

In Mr Swift's case, he is so very right. As I understand it, Mr Swift is now left with three-quarters of the land he purchased that he cannot use to farm at all. The introduction of environmentally sensitive areas in Western Australia has also come under scrutiny. After agreements were made by the Commonwealth on Ramsar wetlands, the state also started to protect other wetlands. In WA, we saw this done with the Swan Coastal Plain wetland policy and then the South West Agricultural Region policy, which covers Mr Swift's area. As I understand it, the policy had a review period, and this gave DEC an opportunity to list all wetlands on geomorphic maps previously produced for the department by a husband-and-wife team, V and C Semenuik. I have been informed that the Liberal Minister for the Environment at the time, the Hon. Cheryl Edwardes, refused to sign off on this document.

It was then in 2003 that sections 51B and 51C were inserted into the Environmental Protection Act. Section 51B gave the minister of the day authority to declare, by notice, an area to be environmentally sensitive. Section 51C covered detail about unauthorised clearing, including that clearing cannot be done in an environmentally sensitive area. Following the amendments to the act, notice 55, relating to environmentally sensitive areas, was published in the *Government Gazette* in April 2005. It declared all wetlands produced by the Semenuiks' geomorphic maps as environmentally sensitive areas. I do not know what qualifications this husband-and-wife team had, but this policy was adopted, and for whatever reason we do not know.

Questions have since been raised about the validity of the process that enabled the declaration of environmentally sensitive areas. While the notice was tabled in the Western Australian parliament, I am told it bypassed the required scrutiny by the Joint Standing Committee on Delegated Legislation, whose responsibility was to examine subsidiary legislation. But, because no motion of disallowance was put forward in the parliament, the ESAs became law. The minister of the day was the Labor Party's Judy Edwards.

Peter Swift's Manjimup land had trees felled prior to or during 2004. The ESAs were then introduced in 2005, but without any compensation to landowners at the time, the reason being that there are no compensation provisions in relation to clearing in the WA state government's Environmental Protection Act 1986. It has been raised with me that, at a federal level, the Commonwealth has power to make laws for the acquisition of property in relation to section 51 of the Commonwealth Constitution, qualified by a requirement of 'just terms'. It should duly be noted that there is no such equivalent to section 51 of the Commonwealth Constitution in the Western Australian state Constitution Act 1889. While the state has responsibility for land clearing provisions—and things like wetland management with regard to ESAs—confusion has reigned on land use entitlements and compensation. But it can be argued that this is not a matter of compensation for the acquisition of land. The declared 'environmentally sensitive areas' dictate what property owners can do with their land though do not acquire it for any specific use by the state.

The Western Australian state government is making steps towards relaxing draconian laws on land clearing —some would say a bit too small and a bit too late. Last December, the WA environment minister, Albert Jacob, announced changes that would allow an increase in the area of native vegetation to be cleared annually for farming projects from one hectare to five hectares. Changes include allowing land managers and farmers 20 years to maintain land previously cleared lawfully without applying for a permit, up from 10 years. While these changes will reduce red tape and surely be welcomed by farmers, they do not help my constituent, Mr Swift.

Recently, the state member for Murray-Wellington, Murray Cowper, introduced a private members' bill, the Taking Property on Just Terms Bill 2014. Well intentioned, but simplistic in its form, it is essentially a bill for an act to provide that taking of property by public authorities must be on just terms—in other words, that done in the movie *The Castle*. It is an altruistic bill but it is not likely to pass the Western Australia parliament and, in this case, help Mr Swift or any of these landowners.

I have no disagreement to the notion of the bill. The acquisition of property on just terms is in the Commonwealth Constitution. This particular bill stipulates the taking of property by a public authority must be compensated but has limited detail on compensation for changes to land use requirements, particularly where a person considers their land value diminished. It also does not specify whether the act would work retrospectively. If it does not, it would not be much help to Mr Swift or the other landholders in the environmentally sensitive areas.

Earlier this month, Mr Swift received a letter from the Western Australian Department of Environment Regulation clarifying the areas of his property he may clear without a permit. He was taken to court over the previously cleared areas. However, existing native vegetation is to remain untouched. In my constituent's view this has not only severely limited his farming use for the land—which he understood he had at the time of purchase—but also significantly impacts on the land's resale value. To clarify this for the House: Mr Swift was prosecuted over a certain amount of land that may well have been cleared prior to his ownership and now they have come back and said that he can use that land but he cannot use bits of other land. It is totally confusing. It is not consistent and it needs to be cleared up once and for all by the Western Australian state government.

While landowners in environmentally sensitive areas can apply to the government for a clearing permit, I am told that about 900 or so clearing permits exist in ESAs. This, I expect, is a vague process dictated by a few in the department. As I said on a previous occasion, you have these voracious environmental Nazis in the DET who go around traumatising people on some of these disputed lands, and it is causing a huge amount of angst for those who own this land. It is a pity that I do not have the letter here to table, because it shows just how confusing the advice to Mr Swift has been.

Before I finish, I must commend the work and the support on this issue by former state member for the agricultural region, Murray Nixon. He has worked tirelessly for my constituent, Mr Swift, and in turn all landowners adversely affected by these land use laws. Mr Swift is one of many people who sit in this absolute limbo in relation to what they can and cannot do on their land. There does not seem to be much science behind which areas are quarantined and which areas are to be retained as bush forever. It severely affects their ability for resale. Sadly, Mr Swift is paying an enormous mortgage on this land which is essentially now worthless. The state government must step in and see fair pay to Mr Swift and, potentially, thousands of other Western Australian landowners in the affected area.