

# Australian Climate Madness

Just don't tell me the debate is over...

[Home](#)
[About](#)
[ACM Summary](#)
[Info](#)

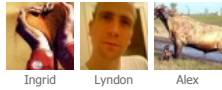
Search

## Become a fan on Facebook!

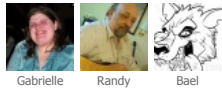


Like

Australian Climate Madness has 1,246 fans



Ingrid Lyndon Alex



Gabrielle Randy Bael

Facebook social plugin

## "Big Oil" Tip Jar

Donate



## Recent Posts

Gillard calls election - climate in "top three" policy areas

Break from blogging

Amazongate - the final word?

Climategate - just a "storm in a teacup"

No ETS or carbon tax until at least 2013

CRU/UEA breached Freedom of Information rules

Yet another Climategate whitewash

UN climate report "one-sided"

Moonbats of the Week:

Blacktown City Council

Climategate was indeed a "game changer"

## Tag cloud

UN schemes  
 Penny Wong  
 alarmism  
 Climategate  
 Nick Minchin  
 Science  
 Sea level  
 Rour  
 ABC

## Popular Posts

Julia Gillard is new Australian

Prime Minister 1166 view(s) |

posted on June 23, 2010

Idiotic Comment of the Day:

Frank Fenner 611 view(s) |

posted on June 17, 2010

Climate scientists meet to

improve brainwashing skills 527

view(s) | posted on June 15,

2010

James Delingpole: The Al Gore Poetry Competition

30 years of global cooling?

## Jan 11 2010 Peter Spencer: further research on Native Vegetation laws

Climate



One of the key claims made by Peter Spencer is that the NSW native vegetation laws (the *Native Vegetation Act 2003* and the *Native Vegetation Regulation 2005*) were used in order to "lock up" vegetation to use as carbon sinks in order to meet obligations under the Kyoto protocol. Since it is the State legislation under which those determinations were made, I undertook further research into the processes under which development consents and PVPs (property vegetation plans) were considered.

Under Regulation 24 of the *Native Vegetation Regulation 2005*, the Minister adopted a document entitled the Environmental Outcomes Assessment Methodology. The document sets out in detail the criteria by which applications for PVPs and development consents should be judged, and can be downloaded from the NSW Environment web site [here](#). The following extract is taken from the overview (my emphasis):

The environmental outcomes of clearing are highly variable and depend on a range of issues such as the type of vegetation being cleared, how the clearing will be undertaken and the existing state of the landscape in the area where the clearing is proposed. This document and the data that underlies some of the requirements (see Chapter Section 2.4) reflect this complexity.

To facilitate timely assessment of clearing proposals in accordance with the computer models set out in this document, the scientific information in the models has been codified into a decision support tool called the PVP Developer. This allows local environmental variables and details of the clearing and any offset proposals to be entered into the computer, with the results of ensuing computations being available to assist decision making by the appropriate authorities as to whether the proposed broadscale clearing is to be regarded as improving or maintaining environmental outcomes in accordance with this Environmental Outcomes Assessment Methodology. An officer delegated by the Minister must certify that the PVP Developer complies in all aspects with the Environmental Outcomes Assessment Methodology. Decisions made in accordance with the PVP Developer will be regarded as improving environmental outcomes.

...  
**Broadscale clearing must be assessed in accordance with Chapters 2 to 6.** The overall impacts of proposed broadscale clearing are to be determined by separately assessing the impacts of the proposal on:

- water quality (Chapter 3);
- salinity (Chapter 4);
- biodiversity (Chapter 5); and
- land degradation (soil) (Chapter 6).

These are effectively the only criteria on which the decision can be based, and nowhere in this document does it permit an officer any discretion to base a decision on anything related to climate change, carbon sequestration or carbon sinks. Therefore, if an officer were to refuse an application for land clearing on that basis, such an officer would be acting outside his powers.

I would appreciate comments.

Share this:

## Live Blog Roll

Climate Depot

UN dreams up new power and money scheme: New UN body to put value on planet, show cost of damage -- 'access and benefit-sharing' regime for countries

Tom Nelson

Watts Up With That?

Climate Change Fraud

Roger Pielke Jr's Blog

Climate Realists

Climate Research News

I Love CO2

Unbearable Nakedness

Jo Nova

Gore Lied

The Daily Bayonet

An Honest Climate Debate

The Air Vent

Climate Audit

Roy Spencer, Ph. D

C3 Headlines

Greenie Watch

13 hrs ago

Heliogenic

SPPI Blog

The World As We Know It

Quadrant

Climate madness: New Zealand begins ETS 402 view(s) | posted on July 1, 2010

Brace yourselves for even more alarmism 296 view(s) | posted on July 2, 2010

Julia's backflip on climate 287 view(s) | posted on June 24, 2010

New Zealand's climate disaster 263 view(s) | posted on June 29, 2010

UK windfarms being paid to turn off turbines 258 view(s) | posted on June 20, 2010

New CSIRO boss has "no scientific pedigree" 239 view(s) | posted on June 21, 2010

Must read: Matt Ridley - "Down with Doom" 223 view(s) | posted on July 3, 2010

Subscribe



Follow ACM on Twitter



Archives

July 2010 (18)  
 June 2010 (49)  
 May 2010 (61)  
 April 2010 (3)  
 March 2010 (52)  
 February 2010 (60)  
 January 2010 (70)  
 December 2009 (147)  
 November 2009 (161)  
 October 2009 (67)  
 September 2009 (94)  
 August 2009 (63)  
 July 2009 (60)  
 June 2009 (63)  
 May 2009 (51)  
 April 2009 (49)  
 March 2009 (70)  
 February 2009 (66)  
 January 2009 (55)  
 December 2008 (54)  
 November 2008 (98)  
 October 2008 (180)

ACM is an Earth Hour-free Zone



Celebrate **Human Achievement Hour** instead.

Possibly related posts (automatically generated):

1. [Peter Spencer: update](#)
2. [Peter Spencer: legal commentary](#)
3. [Rally in Canberra for Peter Spencer](#)

Posted by [Simon](#) at 5:14 pm

Tagged with: [Peter Spencer](#)

## 6 Responses to "Peter Spencer: further research on Native Vegetation laws"

Comments (6)

1. **Eloi** says:

Monday, 11 January 2010 at 10:08 pm

However, the Native Vegetation Act 2003 also says --S14(3) -- that:  
 "Development consent for broadscale clearing is not to be granted by the Minister unless the clearing concerned will improve or maintain environmental outcomes."  
 What chance of any broadscale clearing being deemed to "maintain environmental outcomes", let alone "improve" them?



Slightly O/T, but this one -S36(5)- is my favourite:

"A person is not excused from giving information, answering questions or producing documents under this section on the ground that the information, answers or documents may tend to incriminate the person."  
 Just in case anyone was under the mistaken impression that they had any rights left...

2. **Simon** says:

Tuesday, 12 January 2010 at 7:48 am

@Eloi: that's the key test: "improve or maintain environmental outcomes". I agree with your points though. I am yet to be convinced that this is a grand conspiracy between the Commonwealth and the States. If it is, let's see some evidence of it.



3. **Eloi** says:

Tuesday, 12 January 2010 at 6:34 pm

@Simon: I don't know about "grand conspiracy" - probably just the usual "sordid conspiracy" involving politicians and money will suffice. Check out this item over at Crikey:  
<http://blogs.crikey.com.au/rooted/2009/12/12/carbongate-the-great-carbon-heist/>  
 Three dodgy politicians getting their heads together to screw over the punters would have to satisfy the textbook legal definition of a conspiracy, wouldn't it?



But the important point is: who gets the money out of this little frolic? If there is carbon sequestration involved here, surely there would have to be some carbon credits that someone can sell? I wonder who?

While on the subject - it is interesting to track the rise and rise of one Bob Carr, Esq - the one who got all this Native Vegetation legislation on the books in the first place?  
 - Left NSW parliament to join Macquarie Bank in 2005:  
[http://www.macquarie.com.au/au/about\\_macquarie/media\\_centre/20051010a.htm](http://www.macquarie.com.au/au/about_macquarie/media_centre/20051010a.htm)  
 - Moved to head up their carbon trading scheme (enVex) three years later:  
[http://www.fex.com.au/fex\\_news20080521.html](http://www.fex.com.au/fex_news20080521.html)  
 Hmm...

4. **sgi** says:

Wednesday, 13 January 2010 at 5:22 pm

I first read about Peter Spencer a few weeks ago. I thought at the time despite my anger that there was a lot to this story that I didn't know about and of course there is. So thank you for going to the trouble of explaining it.



Clearly the root of the problem is in the native vegetation laws passed by Labor governments in NSW. And when I read the post about the former premier I did a bit of sleuthing on Google and found this document which is a speech that Bob Debus, the Environment Minister and Attorney General at the time, gave to the Australian Fabian Society in 2005. Having read it I now don't believe for a second that there wasn't at the very least an idea or a plan that NSW, if not the country of Australia, intended to profit from the acquisition of land in NSW. Starting on page 19 there is a section that

ABC News Watch

Green Hell Blog

No Fracking Consensus

references a trading scheme that NSW developed for Hunter River and a description of American trading schemes which sound eerily familiar to the carbon trading schemes developed since then.

I don't know enough at the moment about the history of the idea of carbon trading but that might reveal if it's possible that this NSW government could have known about it at the time. When and where was the idea of creating carbon sinks first discussed openly?

Mr. Spencer has been living this nightmare for a long time and I'm sure he knows all about Bob Debus and Bob Carr, so this speech and lots more besides is probably well known to him. Still I wanted to bring it to your attention to see what you make of it.

<http://www.fabian.org.au/881.asp>

5. **Joh4Canberra** says:  
Thursday, 14 January 2010 at 1:59 am



Simon,

I came across your site from a reply you made about a comment I left at watsupwiththat. I posted some links there about the link between Kyoto and Native vegetation laws. I have posted a further clarificatory comment there which you may like to read. Like you I am a qualified lawyer with an Oxbridge connection (no engineering degree I'm afraid, I'm an accountant and lawyer by training and currently in Oxford undertaking a PhD [well, D.Phil if you want to get technical] in law).

On the face of either the NSW or the Qld statute (for the Qld legislation see (see the Vegetation Management Act 1999 (Qld)) you won't find any reference to carbon sinks or reducing Kyoto targets which -- as you point out -- gives rise to the argument that a refusal to allow land clearing on that basis would be ultra vires. Legally speaking under the NSW Act it would probably (unless you could get it in under the more general idea of "protecting environmental outcomes" etc.) be an error of law to refuse an application for clearing purely on the basis of reducing Australia's greenhouse gas "emissions" under the Kyoto protocol.

But a purely legal focus of how the statute works is too narrow a focus to take here. Here's the chain of reasoning:

(1) The Commonwealth asks the states if they can reduce the amount of land clearing so that can meet its Kyoto targets ==> this is a matter of public record.

(2) The states (particularly NSW and Qld) use anti- land-clearing laws (which have no explicit reference to Kyoto or carbon sinks) to reduce the amount of land clearing going on. In the case of Queensland, these laws were enacted AFTER Kyoto. In the case of NSW there were already laws on the books (subsequently replaced) before Kyoto. Legally speaking this reduction in land clearing was not explicitly for the stated end of meeting Kyoto targets, but for other environmental ends which in most cases can probably be justified within the terms of the statute.

(3) However, without the pressure to reduce land clearing for Kyoto purposes the states would never have enacted these laws in the first place or if they had they would have been framed and/or enforced differently. The Commonwealth's Kyoto policy has had an indirect -- but nevertheless substantial -- effect on the way the states are going about creating and enforcing land clearing bans (ostensibly for non-Kyoto policy ends).

(4) \*Legally\* speaking, the land clearing ban is for non-Kyoto purposes and its contribution to helping Australia meet its Kyoto targets is a "happy coincidence". But as a matter of \*policy\* it is nothing of the sort. This outcome was carefully designed from the beginning.

As far as Peter Spencer's case is concerned, it's entirely possible that if Kyoto had never happened he still would have fallen foul of NSW's native vegetation laws. I'm not commenting on his case particularly but making the more general point that the states' current policy towards land clearing is to a large extent a response to Kyoto even though this is not apparent on the face of the statutes. This is very much a case of having to "join the dots". To that end I posted a few links at watsupwiththat. Since then I have posted a few more (ABC reports) if you care to read them.

Regards,  
J4C

6. **Simon** says:  
Thursday, 14 January 2010 at 9:54 am



@Joh4Canberra: Thanks for your comments. I hope to do a follow up post in due course dealing with these issues, but not sure when I will get around to it.