

# Can't see the wood

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HERE'S an exercise for you.

If you want to understand why NSW farmer Peter Spencer is up a tower on a hunger strike; why some of the contributions of politicians Barnaby Joyce and Bill Heffernan are less than useless at this point; and why this is a classic example of a good environmental concept being killed by lousy government and opportunistic politics, take the time to read 13 pages of an October 2008 NSW Supreme Court judgement.

The story of Peter Spencer, as outlined in Justice Stephen Rothman's judgement of Peter James Spencer v NSW Minister for Climate Change, Environment and Water, ticks every box in terms of how governments should not treat individuals, even in the pursuit of social good.

Peter Spencer is up a tower doing an extreme thing because his sense of the fairness, the rightness of the world he lives in, went out the window when he was left carrying the cost of a social good, and the response from government at all levels was indifference. And then his extreme responses were used against him.

Mr Spencer has a 5000-hectare grazing property in the upper Murrumbidgee area. It includes rare species of mountain ash and extensive woodlands.

The impact of a series of NSW laws, starting with the Native Vegetation Conservation Act 1997, meant that by July 5, 2007, Mr Spencer had a Rural Assistance Authority ruling that his farm was "no longer commercially viable".

By that stage there had been eight months of discussions between Mr Spencer and the Native Conservation Trust – a federal-funded, NSW-administered body to



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compensate farmers whose businesses are affected by various native vegetation laws.

The discussions were based on a valuation as if the Native Vegetation Act 2003, which had a significant impact on the viability of Mr Spencer's farm, did not apply. The discussions were in line with a business plan released by the Native Conservation Trust in July 2006, confirming that compensation to farmers was based on pre-2003 valuations, which were obviously higher than valuations after the new law restricting farming activity.

But during that same period various NSW government departments and ministers were proposing changes so that compensation would be "based on independent valuation of the current market value" – in other words of farms whose viability had been impacted by laws designed to protect the environment by restricting farming activity.

A new native vegetation assistance package business plan with the new compensation arrangements came into effect on June 30, 2007. Mr Spencer had his Rural Assistance Authority confirmation that his farm was "no longer commercially viable" on July 5, 2007.

He was offered \$2.17 million for his property in October, 2007, based on the new arrangements. He objected and took legal action, seeking damages for misleading and

deceptive conduct and/or unconscionable conduct by the government, represented by the minister.

Justice Rothman found the law was against Mr Spencer. But in a few sharp paragraphs the judge spelt out where governments had failed the Murrumbidgee farmer.

"While all members of society must accept that there will be restrictions on their activities for 'the greater good of society', when those restrictions prevent or prohibit a business activity that was hitherto legitimate, because of the area in which it is operating, and assistance is offered which does not fully compensate for the restrictions imposed, society is asking Mr Spencer, and people in his position, to pay for its benefit," Justice Rothman said.

Mr Spencer was "effectively denied proper compensation . . . by a scheme implemented for the public good".

And it's easy for people to blame "the environment", at this point. But don't. Even Peter Spencer did not dispute the conservation policies that cost him his farm, the judge noted. What he rightly objected to was having to pay the price for everyone.

As for Bill Heffernan fluffing on about pulling Peter Spencer off the tower and taking the matter to court; or Barnaby Joyce throwing the word "communism" into the mix as if that even made sense, well, all I can suggest is that you read the judgement.

Go to Google, type lawlink, then NSW Caselaw, then NSW Supreme Court and October, 2008 decisions where you'll find it.

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