Growing the Business of Farming | NSW Farmers Association

Submission to the Senate Inquiry: The impact of native vegetation laws and legislated greenhouse gas abatement measures on landholders

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NSW Farmers' Association
Level 25, 66 Goulburn Street
Sydney NSW 2000

Ph: (02) 8251 1700
Fax: (02) 8251 1750
Email: *emailus@nswfarmers.com.au*

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1 INTRODUCTION

The NSW Farmers' Association (the 'Association') welcomes the opportunity to make this submission to the Senate Inquiry into the impact of native vegetation laws and legislated greenhouse gas abatement measures on landholders ('the Inquiry').

The Association understands that Terms of Reference for the Inquiry are:

(1) The impact of native vegetation laws and legislated greenhouse gas abatement measures on landholders, including:
(a) any diminution of land asset value and productivity as a result of such laws;
(b) compensation arrangements to landholders resulting from the imposition of such laws;
(c) the appropriateness of the method of calculation of asset value in the determination of compensation arrangements; and
(d) any other related matter.

(2) in conducting this inquiry, the committee must also examine the impact of the Government's proposed Carbon pollution Reduction Scheme and the range of measures related to climate change announced by the Leader of the Opposition (Mr Abbott) on 2 February 2010.

This submission comprises comments directly relating to the above terms or reference and, in addition, comments that related to the broader policy framework governing natural resources, landuse planning and environmental conservation.

1.1 Why have property rights?

Property rights are the foundation of society and it is impossible for citizens to enjoy the security offered by a Commonwealth in the absence of law protecting individual property.

Justice Heydon, in the recent decision of the High Court, ICM Agriculture Pty Ltd v The Commonwealth, defended the need for property rights to be stringently applied, quoting the prominent English Jurist, Jeremy Bentham:

> *"Property and law are born together, and die together. Before laws were made there was no property; take away laws, and property ceases.*
> *As regards property, security consists in receiving no check, no shock, no derangement to the expectation founded on the laws, of enjoying such and such a portion of good. The legislator owes the greatest respect to this expectation which he has himself produced. When he does not contradict it, he does what is essential to the happiness of society; when he disturbs it, he always produces a proportionate sum of evil."*

While urban citizens may feel secure in their property rights, this is certainly not the case for Australian farmers.

Farmers purchase and hold land so that they can use it to produce food and fibre. Understandably, they have believed that title to the land provides the security they need to invest in the farm – as a real estate holding, in capital improvements and as their home.

But each year this security, the confidence that farmers hold regarding the foundations of their wellbeing, is being eroded by the action and sometimes inaction of government.

While this can be a tragedy for individual farming families and is a significant contributor to rural decline, it is also a matter of general economic significance to Australia.

1.2 Restoring policy balance

Global demand for food and fibre is increasing. Perhaps contrary to popular opinion, agriculture is an industry of the future, with major capacity for growth and for increasing contribution to the Australian economy, in addition to meeting our basic needs for food security.

Australian farmers produce 93% of all the food we eat in Australia - plus we export a massive 61% of our total agriculture production overseas.

During the worst drought on record, in 2006-07 Australia's farm exports earned the country $27.6 billion. Agriculture is a major industry by any standards, with significant upside if the policy settings are right.

Despite the importance of agriculture to the long term food security and prosperity of Australia, the past two decades have seen a 'downsizing' of agricultural departments and a corresponding 'supersizing' of environmental departments - a trend around Australia.

As these new environmental departments extend their reach to cover all natural resource issues, the bureaucracy controlling rural land use has come to be dominated by people who have little or no affinity for farming and few relevant technical skills.

These policy makers and enforcers appear not to understand that land is the means of production for a farmer: it is not simply the site for a house, a shop or a factory. If you take away a farmer's ability to develop his land, you take away his ability to use his capital. If you take away or inhibit a farmer's ability to manage his soil, water, native vegetation, weeds, feral animals and to control fire risk you threaten his physical, emotional and financial security.

A disregard for the specific needs of Australia's diverse farming communities has been particularly evident in relation to the proposed Carbon Pollution Reduction Scheme, as is discussed below.

The level of desperation among farmers at the front line of these issues is reaching crisis point, as we have seen with recent hunger strike by Peter Spencer. All round NSW there are farmers in fear for their future, economically, but also for their way of life.

The solution is not about grants or rescue packages: what farmers need, what regional Australia needs, is for balance and economic intelligence to be restored to the policy framework affecting farm land and natural resources. While just terms compensation is certainly required where the costs of public goods have been transferred onto farmers, the priority of reforms should be establishing laws and planning systems that enable sustainable development in regional Australia and which support farming communities in designing their own futures.

This is not simply an environmental problem that can be left to environmental policy makers to sort out. Primarily it is about the investment of public and private capital in sustaining the future of our continent and our community. The current 'business model' for conservation on private land – based on punitive regulation and billion dollar incentive schemes such as the Caring for Country Program - is demonstrably wasteful, socially destructive and counterproductive. As numerous studies have found, it does not work, and cannot be expected to work.

2 THE IMPACT OF NATIVE VEGETATION LAWS AND LEGISLATED GREENHOUSE GAS ABATEMENT MEASURES ON LANDHOLDERS

The Association contends that current native vegetation policy, in NSW and elsewhere in Australia, is designed to:

- Create proxy national parks on private land at no-cost to the public purse;
- In so doing, shift a major proportion of the costs of a public good (biodiversity conservation) onto farmers; and
- Offset increases in fossil fuel emissions from coal-fired power stations, which have increased more than 50% since 1990.

2.1 Proxy national parks on private land

Over the past several decades, Federal and State Governments have been subject to extreme political pressure to extend the national reserve system and to reduce both forestry activity and land clearing for agriculture.

When seeking to deliver biodiversity conservation undertakings, however, markedly different approaches were taken with regard to Crown forests and private farm land.

With regard to forestry, the Regional Forest Agreement (RFA) process was implemented through the 1990s and resulted in the conversion of a significant proportion of the Crown forest estate to National Park. The program was underpinned by an explicit structural adjustment program, with several hundred of million dollars of compensation provided to timber mills and forestry workers, including retraining and exit schemes.

There was never a suggestion as part of this process that the owners of timber mills and the timber workers whose livelihoods depend on access to the Crown estate, had a 'duty of care' to stop felling timber. On the contrary, it was treated as given that the private impacts of the new policy required thorough social and economic impact analysis and fair compensation.

Biodiversity conservation undertakings could not be delivered via the conversion of crown forests alone, however. The question of biodiversity on private farm land – more than 60% of Australia's land mass - remained to be addressed.

Could farm land be purchased by government to extend the reserve system? The fiscal implications of creating new national parks are not trivial. Reserves are costly to purchase and costly to manage. Exempt from paying rates in NSW, reserves reduce the income of Shires with consequent loss of local services. They also create significant liabilities in relation to fire, weeds and feral animals. Then there is the challenge of finding willing sellers. Even if the government could afford to purchase some private land to create new reserves, achieving the desired comprehensive and adequate coverage, including connectivity of habitat, would be hard to achieve.

What about a process equivalent to the RFA process, supported by comprehensive scientific information and collaborative planning, and backed up by a structural adjustment package?

With a majority of the Australian land mass held and managed by farmers, the complexity and potential cost of undertaking a structural adjustment and consultation process

regarding the future of native vegetation on farm land, was orders of magnitude greater than it was for forestry.

Governments realised that the cheapest option, both financially and politically, was to simply force all farmers to conserve native vegetation. There would be no need for a complex and expensive structural adjustment process and no risk of a political back lash in urban Australia. On the contrary, governments realised that urban voters would be unlikely to see clearing bans from the point of view of affected farmers. Unlike the forest sector, there was no Trade Union interest in the issue.

It is easy to see why State Governments have elected to treat this massive cost shift as an inconvenient truth: as something never to be referred to, never to be acknowledged and, certainly, never to be mentioned in the context of structural adjustment or compensation.

2.2 When 'broad scale' does not mean 'broad scale'

Few urban citizens of NSW understand that so called 'broad scale' clearing bans imposed on farm land in fact apply to single specimens of plants. In other words, for the purposes of farm development, approval is required to clear a single tree or shrub older than 1990. In the context of a working farm, this level of micro-management is absurd and blocks the intelligent, sustainable development of 'mosaic' rural landscapes, where conservation coexists with efficient production.

Farmers value both native vegetation and biodiversity and voluntarily retain certain native vegetation in mosaic patterns on their land. Where this retention goes beyond a reasonable duty of care, however, the Association believes that farmers must be paid for the conservation service at a rate that compensates for the lost value of production. This is not a minority view; it is main stream in the academic and economic literature on conservation.

The Productivity Commission, in its major report, *Impacts of Native Vegetation and Biodiversity Regulations* (2004) found that native vegetation legislation imposed unreasonable costs on farmers and was an inefficient way of achieving public conservation outcomes in rural Australia. It recommended that a priority was to remove impediments to private conservation (imposed by the current laws); developing a formal process for equitably sharing costs; and to properly consider social and economic impacts in relation to clearing approvals.[1]

Likewise, the Wentworth Group of Concerned Scientists has called for farmers to be paid for provision of environmental services and for more flexible, collaborative approaches to conservation on private land.[2]

A recent study for the Victorian Government made by the Australian Centre for Agriculture Law found that an over-reliance on forced investment through regulation is harmful both to private farming interests and the advance of sustainable landscape use.[3] This study warrants detailed consideration by the Inquiry. Among other things, it found that:

1. **The 'business model' for funding of conservation on private and public lands is non-viable as it presently stands.** This is because of the scale of the investment that is required and the insufficiency of taxation revenues to provide even a reasonable proportion of the total of funds that are needed to meet community aspirations for the

[1] *Impacts of Native Vegetation and Biodiversity Regulations,* Productivity Commission Inquiry Report No 29, 8 April 2004
[2] *Blueprint for a Living Continent*, Wentworth Group of Concerned Scientists, 2002.
[3] Martin P and Werren K, *Discussion paper: An industry plan for the Victorian environment?* Dept of Sustainability and Environment, Victoria (2009)

state of our landscapes. The report found that the fiscal impacts of an ageing population, the natural acceleration of established harms (such as weeds, once established) and the forecast economic impacts of climate change policy will result in an increasing insufficiency of funds to meet public landscape conservation aspirations. Unless the business model for conservation is sound, then any apparent refinement of biodiversity laws is unlikely to effectively improve outcomes and address the problems of unfairness that are endemic.

2. **The flawed landscape conservation investment model results in a situation where regulation is used to force private investment for the public good, upon a small part of the community.** Many of these people are farmers, but within that population there are some who are disproportionately affected by accidents of history (such as having substantial high value native vegetation on their properties). Regulation is covertly being used to shift the costs to some people because collectively we have not created a mechanism to fund what is desired by the public as a whole. This fact is masked by populist debates that focus on land-clearing laws, rather than highlighting the larger problem of funding for community aspirations, and the fairness or feasibility of using regulation to force some to pay (often unwillingly) whilst the rest of the community stand by.

3. **The unfairness of the model contributes to its inefficiency.**
    a. Whilst it is within the function of Parliament to reallocate public and private costs in different ways, forced investment by landowners in things that give them no economic return must reach limits of practicality and effectiveness.
    b. One result of the forced investment approach must be grudging investment applied un-evenly or randomly (depending on economic capacity and attitudes of landowners). This flies in the face of contemporary approaches to conservation, which stress landscape scale, systemic program approaches.
    c. Ultimately, the combination of forced investment in conservation and limits to farming practice will impact on the feasibility of some, if not most, farms. There is a limit to what private operators can contribute. [4]

The Association recommends that the Inquiry refers to the large body of literature that now exists in Australia critiquing the current approach to the regulation of, and investment in, environmental outcomes on agricultural land in Australia. The universal theme of this literature is that the current model is unfair, is ineffective in delivering environmental objectives and cannot deliver the sustainable use of land and water resources desired by the community.[5]

2.3 Environmental zonings and other local government controls

Rezoning farm land for environmental protection is a crude tool increasingly being applied in coastal and peri-urban NSW for achieving biodiversity connectivity at least-cost to

[4] Ibid

[5] *Impacts of Native Vegetation and Biodiversity Regulations,* Productivity Commission Inquiry Report No 29, 8 April 2004; P. Martin, R. Bartel, J. Sinden, N. Gunningham and I. Hannam *Developing a Good Regulatory Practice Model for Environmental Regulations Impacting on Farmers,* Australian Farm Institute and Land and Water Australia 2007, ISBN978-0 9803460; Paul Martin, Jacqueline Williams and Christopher Stone: *Transaction costs and water reform: the devils hiding in the details* Cooperative Research Centre for Irrigation Futures Technical Report 08/08, September 2008; P. Martin *The changing role of Law in the pursuit of sustainability* in *Bridging the North South Divide* Ed: Michael Jeffrey, Jeremy Firestone, Karen Bubna-Litic, IUCN Academy of Environmental Law, Cambridge University Press 2008 at pp49-65; P. Martin and M. Verbeek, *A Cartography for Natural Resource Law: Finding new paths to effective resource regulation,* Land and Water Australia 2000

Government. Such rezoning reduces farmers' production options and prevents agricultural development and adaptation to changing conditions. Likewise, if local Government decides that it wants to introduce a tree protection order or some other ordinance designed to control native vegetation management, it can override the permitted clearing provisions of the Native Vegetation Act. Such measures have been imposed in many coastal Shires, where Council staff are responding to new 'green change' residents who have little appreciation of the production needs of farmers.

2.3.1 New Restrictions on Existing Use Rights

Changes to 'existing use rights' in relation to the development and use of land in New South Wales were introduced by the Environmental Planning and Assessment (Existing Uses) Regulation 2006 (2006 Regulation) gazetted on 29 March 2006.

An existing use right permits a land owner to continue carrying out an activity on land which was lawfully commenced has since become prohibited under a local environmental plan or other environmental planning instrument due to a change in the zoning of that land.

The provisions governing existing use rights are contained in the Environmental Planning and Assessment Act 1979 (NSW) (EP&A Act) and the Environmental Planning and Assessment Regulation 2000 (NSW) (2000 Regulation).

The intent of these provisions was to balance the potential hardship that a land owner or occupier would suffer if they were required to discontinue a lawfully commenced land use following a zoning change.

Before the gazettal of the 2006 Regulation, it was possible (with development consent) to change an existing use to another prohibited use.

The 2006 Regulation amends the 2000 Regulation so that (among other things):

- a land owner who has existing use rights may only apply to change the use of the land to an alternative use which is permissible under the current zoning;
- an existing use can no longer be changed to another prohibited use unless the zoning is also changed to permit that use.

This represents a significant restriction on the development potential (and a consequential reduction in value) of land which enjoys the benefit of existing use rights. The changes to existing use rights introduced by the 2006 Regulation are retrospective and apply regardless of when the existing use commenced.

Clause 14 of the Department of Planning's Standard Instrument for LEPs sets out the template for the preparation of new local environmental plans in New South Wales. Under clause 14, councils are permitted to include as 'additional permitted uses' any existing land uses which would otherwise be prohibited under the new zoning.

The practical consequence of this is that some or part of farmers' land can be rezoned for environmental protection in a way that gives the appearance of protecting the existing farming use but which effectively prevents the farmer from in future adapting or changing farming practices.

Perhaps the most extreme example of this removal of property rights via zoning is occurring in relation to private forestry. To illustrate, many farmers in NSW practice private native forestry, selectively harvesting timber on cycles that may be as long as 60 years. These farmers believe the timber on their land to be their property and part of their farming asset. It is noteworthy that State Forests NSW is actively seeking timber from such farmers and that the Regional Forest Agreement process identified growth in the provision of timber from private forests as an integral element in sustaining the future of the NSW timber industry.

It is typically these private forests, however, that are now being rezoned for environmental protection by local governments.

The changes introduced by the 2006 Regulation represent a significant erosion of the value of existing use rights and farm land.

2.4 Carbon offsets – the missing billions

A similar cost shift has occurred with regard to carbon emission reduction. As the Climate Institute has argued, land clearing bans introduced across Australia in the 1990s enabled the Government to requisition from farmers carbon credits worth billions of dollars in order to offset increases in fossil fuel emissions.[6]

When the Kyoto Protocol was negotiated, Australia insisted on inclusion of Article 3.7, the infamous "Australia Clause". This clause allows nations to treat avoided land clearing as an emission offset in the first commitment period. [7]

The clearing bans have enabled Australia to meet its Kyoto targets while over the same period increasing emissions from coal-fired power stations by 50 percent. As reported in the National Greenhouse Gas Inventory, the largest increase in emissions over the 1990 to 2007 period, of 49.5 per cent (96.6 Mt CO2-e), occurred in the Stationary Energy sector, with an increase in emissions from the combustion of coal accounted for 66.1 per cent of the overall increase in emissions.[8]

Without the clearing bans, Australia would be seriously in breach of the Kyoto Protocol and facing a multi-billion dollar carbon liability.

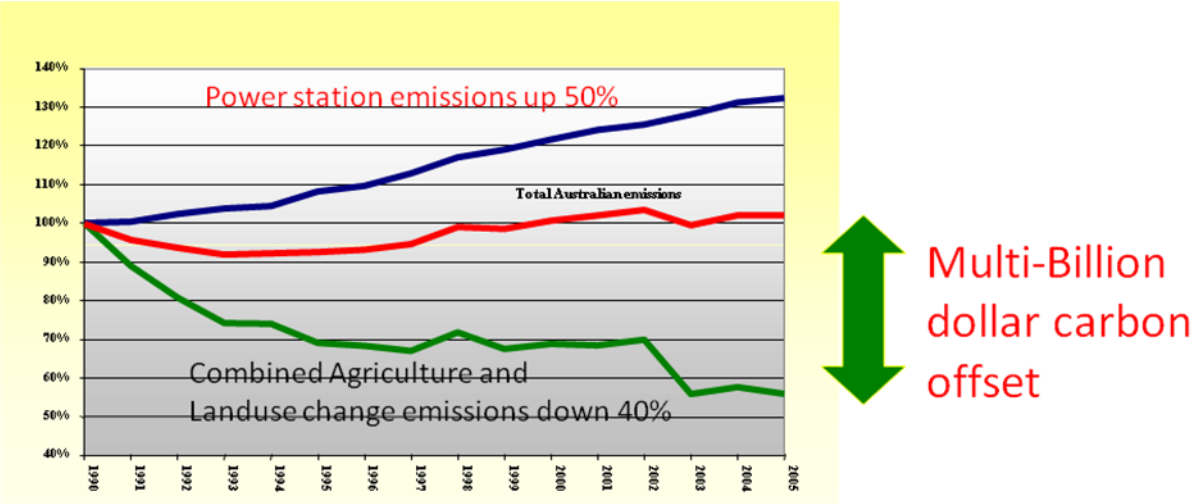

Figure 1: Clearing bans have offset a 50% increase in fossil fuel emissions[9]

[6] *Mission Billions: How the Australian Government Climate Policy is Penalising Farmers*. Climate Institute: October 2006. (http://www.nswfarmers.org.au/__data/assets/pdf_file/0020/58322/CI024_Billions_Final_Print.pdf)

[7] The clause permits countries for which land-use change and forestry are a net source of greenhouse gas emissions to include net emissions from land-use change in their 1990 base year for the purpose of calculating assigned amounts or targets for the first commitment period (2008-2012).

[8] *National Greenhouse Gas Inventory,* Australian Greenhouse Office 2007, p3.

[9] Derived from National Greenhouse Gas Inventory data and *Mission Billions: How the Australian Government Climate Policy is Penalising Farmers*. Climate Institute: October 2006.

It has been argued by government that the clearing bans would have occurred anyway for biodiversity conservation reasons. The Association disputes this on the grounds that better biodiversity conservation outcomes could have been achieved via a landscape planning model focusing on the highest quality vegetation and allowing sustainable development of new farm land (see below). The all-inclusive, 'lock down' nature of the clearing bans, operating at the level of individual plant specimens, was motivated by the objective to maximise the Kyoto Article 3.7 carbon offset and to simplify vegetation carbon accounting in the National Greenhouse Gas Inventory.

Should there be any doubt about this motivation, it is noteworthy that under NSW native vegetation legislation, 'regrowth' (which can be cleared without approval) is defined as vegetation grown post 1990, the cut off date for vegetation for inventory purposes under Kyoto.

The cost shift, from the energy sector to the farm sector must be corrected, with due compensation to farmers (see section 5). However, it is also essential that Parliament fully understands the policy complications that have been introduced by the coupling of biodiversity conservation outcomes to greenhouse gas abatement outcomes.

The Australia Clause presents a major barrier to Australia liberalising its clearing legislation and adopting the landscape planning methodology recommended in this submission, since policy changes that could allow increased clearing of pre-1990 native vegetation would trigger a significant emissions liability[10].

Recommendation 1: That the Inquiry:

- **Clearly identifies barriers to the reform of biodiversity legislation resulting from Australia having avoided fossil fuel emissions liabilities via clearing bans**
- **Seeks competent legal advice regarding the Government's claim that commitments made in relation to emission reduction under Kyoto are irrevocable**

2.1 Other impacts of greenhouse gas abatement measures

The Association's analysis, and that of the limited economic studies so far undertaken by the Federal Government on this issue, is that the proposed CPRS would substantially affect the productivity and profitability of Australian agriculture and the food sector. It would affect all Australians, city and country, by way of increased food prices, and in the longer term, would result in serious damage to food security.

A regional level, the structural and distortionary impacts of a carbon price would be profound and have neither been analysed or addressed by the government.

The high variation across and within agricultural sectors and farming systems means that a carbon price will create winners and losers, significantly impacting the viability of certain production systems and, therefore, the value of land and capital improvements. In stark contrast to the elaborate compensation provisions offered to the fossil fuel sector, the government has not begun to consider how to address these impacts. It can be inferred, however, that the government is likely to seek to shift the costs of its climate change policy onto the farm sector, without either compensation or structural adjustment, just as it did in relation to the clearing controls.

[10] Making native vegetation less rigidly prescriptive at property scale would entail allowing the clearing of more pre1990 vegetation, decreasing the effectiveness of clearing bans in reducing Australia's carbon liabilities in the 2000 -2012 Kyoto commitment period.

The Government's White Paper on the CPRS largely avoided addressing the above issues, deciding instead to defer coverage of agriculture and, consequently, any detailed discussion of impacts on agriculture. Professor Garnaut, however, in his Climate Change Review 2008, commissioned by the Government, found that:

- Agriculture has few abatement options and abatement and sequestration (e.g. in soil) will be expensive
- The sheep and cattle industries are highly emissions intensive, and there are currently limited opportunities for the reduction of methane emissions.
- The CPRS/and or regulatory measures will drive structural adjustment in agriculture, with shifts away from beef and sheep (methane intensive farming systems)
- Prior to coverage of agriculture, 'regulatory means' should be used to achieve abatement and sequestration. [11]

The clear inference of the Garnaut Review is that it would be a good thing to shift Australian agriculture away from meat and wool towards grains and horticulture. In his preferred scenario, in response to a carbon price on the agricultural sector:

- Households move away from meat and meat products because of the higher price of these commodities under an emissions trading scheme. Households also move away from beef and lamb towards less emissions-intensive meat, such as chicken and pork. A similar pattern of change is observed in Australia's export of meat and meat products under the mitigation scenarios.
- The composition of the agriculture sector changes: output from sheep and cattle, grains and dairy decreases relative to the no mitigation scenario, while the share of other animal products and other agriculture, including horticulture, increases.[12]

It is noteworthy that Garnaut appears to believe that the CPRS both would and should influence household shopping decisions and consumer preferences for sources of nutrition. The Inquiry may wish to examine whether it is appropriate for environment policy to be used to achieve outcomes of this nature.

Beef is the agricultural sector most exposed to a carbon price. The government was proposing to cap the carbon price at $40 per tonne in the first few years. At this price, if agriculture were made a covered sector, a typical beef farm would have to purchase credits worth in the order of $100,000 dollars per annum.[13] There are few family farms that could absorb this kind of overhead.

[11] Garnaut R. *The Garnaut Climate Change Review: Final Report*, 2008
[12] Ibid page 539-540
[13] Estimated using the Australian Farm Institute, Farm Gas calculator; http://farmgas.farminstitute.org.au/publicpages/AFIPublic.aspx?ReturnUrl=%2fdefault.aspx

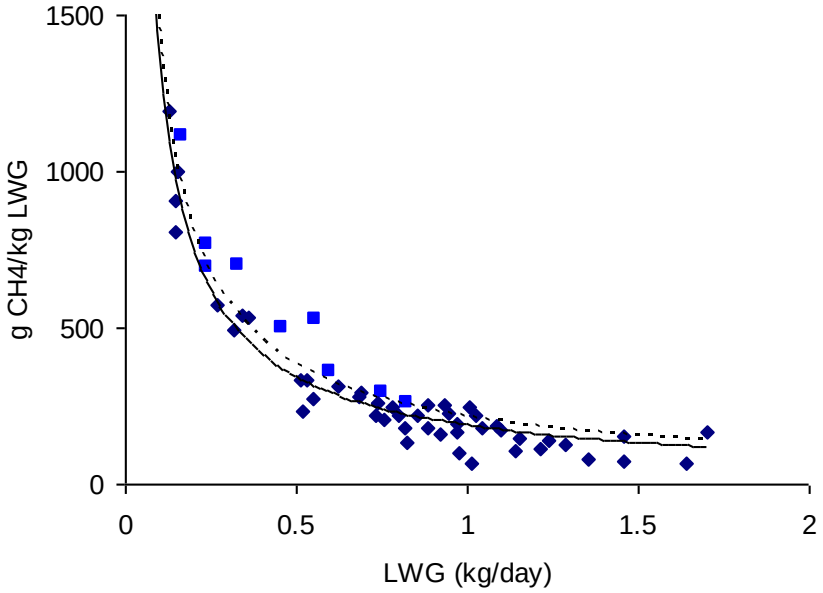

Figure 2: ***Beef cattle rate of live weight gain and methane emissions***

Figure 2 illustrates the dramatic difference in emissions intensity and, therefore, potential liability between different beef production methods.[14] Live Weight Gain is a simple way to estimate emissions from beef cattle. The *y* axis is methane emissions per kilogram of live weight gain, the *x* axis the rate of live weight gain. The graph shows that the slower cattle grow to market weight, the more methane they emit in total. It follows that a rangeland pastoralist (whose production strategy is based on large areas of land and browsed feed) may be facing a far larger carbon bill that a farmer operating a feedlot: perhaps eight times greater for the same unit of production. This example highlights how an emission liability would distort the economics of agriculture in Australia, destroying the viability of some farming systems and impacting land values.

The policy makers may glibly pass over the social and economic consequences of their proposals on farmers, but it would be delusional for Parliament to expect that the regional citizens of Australia would willingly accept such impacts on their property and on their families well being.

To again quote Jeremy Bentham:

> "The legislator owes the greatest respect to this expectation which he has himself produced. When he does not contradict it, he does what is essential to the happiness of society; when he disturbs it, he always produces a proportionate sum of evil."

The Association position on climate change policy is given in Section 8. In brief, the Association's concerns regarding the current policy include:

- The CPRS would distort the social and economic structure of regional Australia in an unplanned and uncontrolled way.

[14] Howden and Reyenga (1999) from presentation by Dr Mark Howden to the Department of Climate Change Agricultural Technical Options Working Group.

- Kyoto accounting rules include farm emissions but exclude the majority of farm sequestration. Net accounting rules are needed.
- Farm emissions can't be estimated accurately – you can't put a monitor on every cow or a bell jar over every paddock and there are orders of magnitude variations across production systems.
- There is no clarity about the "point of obligation" – who in the agricultural supply chain would hold permits and account for emissions?
- Even if agriculture is not covered, the CPRS would increase input costs – eg fuel, fertiliser and put many producers out of business. It will be hard, if not impossible, to absorb or pass on the costs of a carbon price, such as more expensive energy and fertilizer. In a free trade environment, consumers will switch to cheaper imported agricultural goods.
- No plausible remedy has been provided for the global 'churning' of land use that will result from uneven international application of terrestrial carbon policy. The CPRS will just drive food (and/or fibre) production to countries with lower environmental standards. To illustrate, it would be truly perverse if policy that cripples range land beef production in Australia acts to drive increased clearing of rainforest in South America for beef production.

Recommendation 2:

That detailed analysis is undertaken of the structural impacts of climate change policy, including carbon market policy, on regional Australia and on the agricultural industry. The farm sector should be closely engaged in the development of the terms of reference for this study.

The Association's current position statement on the CPRS is given at Appendix 1.

3 DIMINUTION OF LAND ASSET VALUE AND PRODUCTIVITY

A number of studies have been done into the diminution of land asset value and productivity resulting from environmental legislation. These include the *Mission Billions: How the Australian Government Climate Policy is Penalising Farmers*. Climate Institute: October 2006 and *The Productivity Commission Inquiry Report, Impacts of Native Vegetation Regulations, April 2004.*

The Productivity Commission Inquiry Report included two case studies of the Shires of Moree Plains in NSW and Murweh in South West Queensland. The Moree case study estimated the present value of total impacts from clearing restrictions to range from $26 million to $83 million for the period 1995 to 2040.[15] This equates to around $1.8 million per annum at the upper bound for this one area of NSW.

The Association appreciates the difficulties associated with generalising this kind of finding across the many and varied farming regions of Australia. At this point of time, there is no comprehensive quantitative data regarding the diminution of land asset value and productivity on farmers.

[15] *Impacts of Native Vegetation and Biodiversity Regulations,* Productivity Commission Inquiry Report No 29, 8 April 2004, p 142.

Recommendation 3:

That the Productivity Commission, in conjunction with ABARE, conducts a robust Australia-wide quantitative analysis of the impacts of clearing regulations and other environmental regulation on farm productivity and the value of farm land. The farm sector should be closely engaged in the development of the terms of reference for this study.

In the meantime, however, the Association believes that there is abundant evidence to suggest that the financial impacts are extreme and are in the orders of many billions of dollars.

Appendix 2 provides several case studies of specific farmers in NSW affected by environmental legislation.

3.1 Water property rights

Currently, major reforms are underway regarding the allocation of bulk water in the Murray Darling Basin. It is essential that decisions made via this process do not negatively impact farmers' property rights, resource security, the viability of regional communities that depend on access to irrigation water, as well as the national obligation to provide quality food and fibre for the population.

There is significant concern in NSW that the structural impacts of purchasing of water for environmental allocation are not being adequately considered.

It is essential that the basin planning process is fully collaborative and supports farming communities in designing their own irrigation futures. This is not currently the case.

As is discussed below, property rights to water are also being impacted by mining. Large scale mining can have major impacts on the both the quality and availability of water resources needed for farming. Currently NSW legislation does not provide any explicit protection of agricultural water from the impacts of mining and there is no mechanism for provision of compensation in cases where mines result in the loss of water assets.

Recommendation 4:

- **Make provision in the Water Act 2007 to require protection of ground water from mining, and to require compensation where mining impairs farmers water entitlements**
- **Amend the Water Act (with complementary amendments to State legislation) to formally recognise mining and coal seam gas exploration and extraction as an interception activity, to require licensing for all water intercepted due to mining or gas industry activity and the accounting of such water in water sharing plans**

3.2 The effect of Mining on Property Rights

Currently, mining and planning legislation fails to adequately protect agricultural land and water and farmers' property from the impacts of mining and coal seam gas extraction.

It is impossible to undertake any large scale mining without permanently destructive changes to natural resource systems and a range of negative amenity, health and financial impacts to the surrounding district. In some locations, these impacts can be managed: in others they cannot. As the Chief Executive of the NSW Minerals Council, recently observed, coal mining in regions such as the Hunter Valley presents unique challenges compared with the remote outreaches of the Pilbara in Western Australia. This is because it is happening "on top of, next to and underneath" other industries.[16]

Figure 3: Aerial view of coal mines in the Upper Hunter abutting the Hunter River. These mines have been permitted with minimal safety buffers and are cut far below level of the river and its water table. Coal mines have already had serious impacts on the quantity and quality of surface and ground water in the Hunter.

In NSW, current standards and processes for selecting appropriate sites, minimising cumulative impacts, controlling risk and compensating affected citizens are unacceptably low. Figure 3 shows open cut coal mines surrounding the Hunter River. These coal pits are far below the level of river. If a mine wall collapsed, the Hunter River would literally end up in a hole in the ground, as happened in 2007 with the Latrobe River in Victoria (Figure 4).

While governments appear to be calm about the risks associated with such mines, the farmers living next door, who depend on access to reliable, uncontaminated water are not calm. They want compensation for the current impacts (noise, dust, contaminated water) and they want assurances that this kind of development will never occur again in highly productive farming regions.

[16] *Locals brace against a looming coal front*, Sydney Morning Herald, March 18 2010.

Figure 4: In 2007, the Latrobe River was lost into the Yallourn open cut coal mine following collapse of the mine wall. The Government Inquiry into the disaster identified slack and lapsed safety standards and found that mine consultants had lacked the skill to give competent advice[17]

Right now, new open cut and underground coal mines are being planned in the Liverpool Plains, just over the range from the Hunter. This region is by many measures, Australia's most productive farming region. Farmers are concerned that these mines may damage the precious underground water systems on which the productivity of the region depends. It is literally impossible to reassemble and rehabilitate an aquifer after mining.

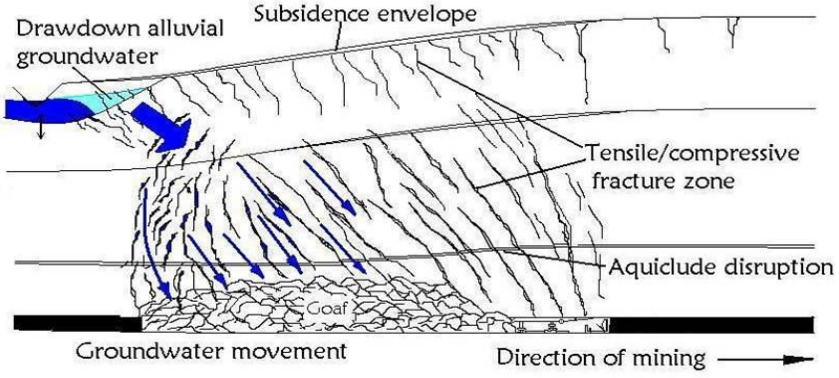

Figure 5: Underground mining can fracture aquifers resulting in loss and contamination of groundwater

It may be possible to limit the damage and risk resulting from one mine, but experience shows that one mine tends to be followed by others, and the cumulative impacts are catastrophic – not just in environmental terms, but on the entire social and economic character of the district. Planning legislation and the mining approval process makes no provision for managing these cumulative impacts.

[17] The Yallourn Mine Batter Failure Inquiry Report, Victorian Government, June 2008

3.2.1 Exploration Licences

Currently in NSW, mining and gas exploration licences are granted with insufficient consideration of the impacts on freehold land and water titles in the affected area. To make matters worse, licences are awarded without any inter-agency or stakeholder consultation, assessment of scientific data, independent assessments of natural resources, consideration of cumulative impacts, or consideration of the agricultural production activities that are potentially affected by them. While some exploration processes are relatively low impact, others, for example for gas or coal, may have significant impacts.

In NSW, landowners are not individually notified of exploration licences granted over their properties and often have to read about these in the local press. The law provides for access agreements to be developed between explorers and landholders, but this is between private parties. Government takes no role in developing the agreement or supervising compliance and abnegates all legal responsibility in this regard.

The Courts are increasing recognising deficiencies in the law and in government process in relation to these matters.

3.3 Supreme Court Decision on Caroona Mining Access Agreements

On 5 March 2010, Her Honour Justice Monika Schmidt in the Supreme Court of NSW handed down her decision in a case supported by the Association and the Australian Farmers' Fighting Fund reviewing the Exploration Access agreements handed down by review of the Mining Warden upon two farms in the Caroona region.

The decision quashed the challenged arbitrated access agreements on the basis of jurisdictional error finding that Coal Mines Australia Pty Ltd had failed to notify all persons defined as a landholder in the making of the access agreement. This was because the Mining Act 1992 contemplates a single access agreement with all landowners, including mortgagee, arrived at either by consent or arbitration.

The decision also held that:

- access could be withheld from the holder of an exploration licence, however this would be bound to the terms of the proposed agreement, with the licence holder able to recommence negotiations for exploration.
- that the Mining Warden's decision not to incorporate terms covered by the exploration licence within the access agreement was flawed. This was on the basis that the legislation contemplates the rights of landholders to enforce specific conditions of access to their property during exploration.

In her decision, Her Honour relied upon the recent Kirk Group Holdings decision of the High Court of Australia, which was also supported by the Association and the Australian Farmers' Fighting Fund.

Recommendation 5:

- **Include an independent scientific process prior to the granting of any exploration licence to identify and protect high value natural resources and highly productive agricultural land**
- **Include an independent body in the assessment process**
- **Require notification of each and every title holder prior to publication of awarding of licence**
- **Provide an initial appeals process prior to the awarding of exploration licences.**

3.3.1 Improving planning for mining development

Current planning processes are not up to the task of resolving the complex resource allocation and risk management questions that must be addressed when considering areas for mining or gas development. This is particularly the case when highly valuable agricultural and water resources are involved.

The current process encourages significant investment in exploration and the development of mining project proposals in isolation and without any consideration of competing values (for example agricultural values) and potential risks to those values.

A priority is amending planning legislation and the mining approval process to make provision for managing cumulative impacts.

Recommendation 6:

- **Establish an integrated regional strategic planning process for mining development that factors in all competing social, environmental and economic values.**
- **In such planning, make explicit, upfront provision for cumulative impacts**
- **Ensure the planning and approval process, including the issuance of exploration licences, incorporates inter-agency discussion, strategy, advice and recommendations**

The Association is not opposed to mining. We simply want equal treatment under the law, a balanced approach to deciding where and how mining occurs, and just terms compensation to all affected landholders when it does go ahead.

With the National Farmers Federation, the Association will continue to support farmers in legal challenges in this area until greater certainty and equity is provided through legislative or common law means.

4 COMPENSATION ARRANGEMENTS TO LANDHOLDERS

4.1 Native vegetation and other environmental legislation

In NSW there are no arrangements in place to compensate farmers for loss of land value and existing use rights resulting from native vegetation legislation or other biodiversity conservation policy.

The NSW Government claims that its current Native Vegetation management framework addresses any need for compensation. In fact, the government has offered compensation in two strictly limited forms:

- Farmer exit assistance - this was limited to a total pool of $12 Million dollars and only applied where entire properties were rendered uneconomic and the landholder was willing or able to exit farming.
- 'Incentive payments' of various kinds for farmers who are willing to fence off areas of their property for environmental purposes under permanent caveats – these payments are 'one off' and do not amount to a value that replaces the ongoing value of lost production or development potential.

No compensation was offered to farmers to cover the lost income and land value of areas of land locked up and sterilized from production by the legislation.

Biodiversity related impacts on property rights go beyond the Native Vegetation legislation, however. As discussed above, NSW Planning legislation allows and encourages Local Government to re-zone farm land for environmental conservation, removing existing use rights and future development potential without compensation.

The Association understands that, with the exception of the Environment Protection and Biodiversity Act, biodiversity and planning legislation affecting farmers is largely in the hands of the States. However, it has been demonstrated that the COAG and Bilateral Agreement process can achieve integrated legislative reforms where there is political will.

Recommendation 7:

Amend biodiversity and planning legislation to require Just Terms Compensation in all cases where private landholders are required by law to provided public conservation services.

As is discussed elsewhere in this submission, compensation should be secondary to reducing the need for compensation by improving the regulatory model: a priority of the reforms, should be establishing a collaborative landscape planning model that has the effect of reducing the area of land locked up and the compensation required.

4.2 Compensation for mining impacts

The compensation currently available to landholders in relation to mining impacts typically stops at the boundary of the directly affected property. This typically means that the farmer adjacent to the mine, or in range of the mines dust and noise, gets nothing.

Nor is there any provision for impacts on farmers' water entitlements. In NSW there is currently no provision in any statutory instrument to compensate farmers for impacts to quantity or quality of water assets to which farmers hold legal title.

In NSW, in any legal challenge the onus is on the landholder to provide all evidence regarding the extent of any damage that has been done, prove that the mining activities are directly responsible for this damage, and bear all costs associated with the process, including any adverse cost orders in the Land and Environment Court.

Farmers do not have the resources to defend themselves against the financial clout of multinational mining companies. The miners know this, often pouring unlimited resources into cases they know they cannot win, simply to deter individuals from taking them on.

Currently there is no requirement for independent monitoring of any environmental factors during the exploration or mining process, with these activities being left in the hands of the miners themselves. This makes it virtually impossible for famers to gather the evidence needed to prove their case.

Recommendation 8:

- **Provide statutory arrangements for proportional just terms compensation to all landholder affected by mines**
- **Establish an independent Federal Mining Impact Tribunal to assist landholders in investigating mining and gas extraction impacts and in gathering evidence**
- **Provide statutory arrangements for just terms compensation for loss of water or degradation of water title resulting from mining or mining exploration activity**

4.1 Compensation for impacts on water entitlements

Currently there is considerable uncertainty in the farm sector regarding the future approach to compensation in relation to the Murray Darling Basin Plan.

The 2004 National Water Initiative (NWI) established the principle of a compensable right in relation to private water entitlements, with compensation to be delivered with reference to Risk Assignment Principles. There is considerable confusion in the farm sector, and apparently some disagreement between State and Federal governments about how such principles would be implemented in the event of future changes in the availability of water from the consumptive pool.

To restore business confidence and resource security to farmers, it is essential that COAG confirms its intention to compensate water entitlement holders for any loss of water from the consumptive pool resulting from the reform process and details how the compensation will be calculated and allocated.

Recommendation 9:

That COAG reconfirms its intention to compensate water entitlement holders for any loss of water from the consumptive pool resulting from the Basin Planning Process and details regarding how the compensation will be calculated and allocated.

5 THE APPROPRIATENESS OF THE METHOD OF CALCULATION OF ASSET VALUE IN THE DETERMINATION OF COMPENSATION ARRANGEMENTS

As far as the Association is aware, there is no legally mandated method for calculation of asset value in relation to clearing controls, the rezoning of farm land for biodiversity or the requisitioning of carbon credits in native vegetation or conservation.

An appropriate method could be based on an opportunity cost derived from the current and likely future production capacity of the land and/or its real estate value, were it unencumbered by clearing controls. Such a model was employed by ABARE and the Productivity Commission in its previous analysis of the impacts of clearing controls.

Recommendation 10:

- **ABARE be directed to develop a formal valuation methodology in consultation with the Productivity Commission, suitable for application at property scale.**
- **The Productivity Commission be directed to develop recommendations regarding legal mechanisms for just terms compensation in relation to biodiversity conservation and climate change policy affecting the farm sector**
- **The Productivity Commission be directed to develop recommendations regarding a new legislative and investment model for conservation on private farmland that respects farmers property rights and removes negative financial impacts on farmers**

5.1 Valuing carbon in pre-1990 vegetation

With regard to valuing carbon credits embodied in pre-1990 vegetation, the National Greenhouse Gas Inventory (NGGI) includes a spatial model of native vegetation cover and its carbon content which could used to calculate individual farmers' share and entitlement to the national native vegetation carbon credit.

There can be no doubt that these credits do have a value and that this value exists irrespective of whether there is an Australian carbon market in operation. This is because Australia has a commitment under international law to meet its emissions target under the first Kyoto commitment period. As is argued above, in the absence of the clearing controls, Australia would be significantly in breach of its commitment and would therefore have to purchase permits on the international market to cover the liability.

Establishing a present dollar value for these permits is problematic, however. Given the current uncertainty regarding both the international and Australian carbon market, provision of a bankable entitlement to farmers may be a preferable course of action.

Recommendation 11:

With regard to carbon in pre-1990 native vegetation on farm land, consideration should be given to a valuation model that provides bankable permit entitlements to farmers, which could either be sold (with provision that vegetation is retained) or surrendered if vegetation is cleared.

6 RELATED MATTERS

6.1 The need for integrated reforms

A general review of planning, natural resource management and biodiversity conservation legislation is needed in Australia.

In NSW, the Native Vegetation Act 2003 is part of a broader regulatory framework and major problems with the implementation of the Act flow from the operation of other legislation, primarily the Threatened Species Conservation Act and the Environmental Planning and Assessment Act.

Almost continuously since the early 1990s, NSW has been engaged in the expensive and divisive process of developing, consulting about and reforming biodiversity controls on private land. Simultaneously the Department of Planning, and Local Governments, have been developing and applying supervening clearing controls. In short, there has not been agreement within Government as to how to implement fundamental aspects of biodiversity policy on private land.

The Association continues to support the regional model and the principles behind the NSW Sinclair Reforms.[18] However, experience indicates that implementing these principles will be impossible in the absence of reform to other legislation, the removal of jurisdictional conflict and an integrated biodiversity, natural resource allocation and landuse planning strategy.

6.2 Landscape planning

The Association has for some years been advocating a landscape planning solution to biodiversity conservation and farm development. Despite strong support in the scientific and academic community the black letter law has largely prevented progress on this front.

[18] The intensive consultative process, headed by Ian Sinclair, that resulted in the Native Vegetation Act 2003.

The most detailed case study of this approach has been conducted in Walgett NSW and the Association recommends that the Inquiry visits this location and interviews local farmers.

6.2.1 The Walgett landscape plan

In Walgett, a group of farmers have for ten years tried to gain approval for a sustainable landscape plan but have to date been prevented from doing so by rigid clearing controls and threatened species legislation. These farmers embrace biodiversity conservation within a balanced regional model. Walgett, as a local economy and as a community with high unemployment, needs these farmers and the multipliers that sustainable development would bring. The town is in decline, as biodiversity legislation blocks the necessary transition from sheep farming to cropping.

Compare two scenarios for Walgett:

- Currently, extensive areas of degraded, weed infested grazing land, interspersed with remnant Coolibah Black Box woodlands, and largely locked stands of stunted trees with bare eroded soil below; and
- Following implementation of the farmers' landscape plan, a mosaic of well managed croplands, restored Mitchell grass pastures and restored, high conservation value Coolibah Black Box woodlands.

Compare the costs and benefits of these two scenarios:

- Ongoing expenditure on compliance activity and cash 'incentives' to conserve small parts of the landscape. Resentment in the community towards Government and Government employees. The landscape continues to degrade and the local economy continues to decline.
- Some loss of listed threatened species at property scale so that farmers can create viable paddocks; this is balanced by farmers themselves paying for the restoration and management of Mitchell Grass lands and old growth Coolibah Black Box woodlands and a net gain of biodiversity. Government environmental extension workers are again welcome in the community and a foundation for true collaboration is established. The Walgett agricultural economy is able to adapt to current market conditions and economic and social vitality begins to return.

The majority of stakeholders, including representatives of the environment movement can see the benefits of the Walgett landscape plan but the requirements of the Threatened Species Act, imposed via the Act have presented nearly insurmountable impediments. While a version of the plan based on a set of individual Property Vegetation plans has been developed, the process and the final result have been compromised by the prescriptive and inflexible approach required by the law.

Recommendation 12:

That collaborative landscape planning, based on triple bottom line sustainable development principles, is adopted as the primary mechanism for achieving environmental outcomes on rural land.

6.2.2 Landscape planning reduces compensation liability

The quantum of Government's liability for compensation is largely a factor of the flexibility/rigidity of the policy framework: ie less prescriptive controls at property scale means a lower cost to farmers for providing environmental services. The introduction of

landscape planning would provide farmers with more flexibility in delivering conservation outcomes which, in turn, would reduce the social and economic impacts and the liability to government.

6.3 Property vegetation plans

There has recently been discussion of implementing the NSW Property Vegetation Planning model nationally. It is the Association's experience, however, that the Property Vegetation Planning (PVP) model:

- Inhibits landholders' ability to balance agronomic outcomes with environmental outcomes;
- Inhibits landholders' ability to manage low quality native vegetation in order to generate income to finance management and improve the condition of medium to high quality vegetation;
- Undermines the regional model and the role of CMAs.

PVPs are a narrow instrument of limited utility when addressing the complex biodiversity conservation, natural resource management, regional development and planning priorities of rural Australia.

Recommendation 13:

The role of Property Vegetation Plans (PVPs) should not be extended and, on the contrary, the role should be diminished with PVPs largely replaced by landscape plans involving many farmers.

6.4 Ecologically Sustainable Development

The Association is calling for a balanced, equitable approach to policy affecting land and natural resources, based on application of "triple bottom line" sustainability principles (where social, economic, and environmental outcomes are given equal consideration) and applying equally to all industry sectors. Currently, biodiversity policy applying to development of farm land in NSW excludes consideration of social and economic outcomes.

The key insight of the United Nations, Brundtland Report, which established the principle Ecologically Sustainable Development (ESD) in 1987, is that environmental policy which neglects human needs is unsustainable. The Brundtland Report concluded that sustainability depends on the balanced consideration of the social, economic and environmental needs of present and future generations: *"Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs".* [19]

The 2009 review of Native Vegetation Legislation in NSW stated that socio economic considerations have been addressed "mainly at state level". This statement makes a mockery of the principle of ESD. It infers that the socio-economic needs of the owners of the land, their children, and of regional communities are unimportant and are legitimised by some supervening, state-level good.

In 2002, the Wentworth Group of Concerned Scientists in their *Blue Print For a Living Continent* called for "fundamental changes in our approach to engaging with farmers and rural communities" … "Where we expect farmers to maintain land in a certain way that is

[19] *Our Common Future, Report of the World Commission on Environment and Development,* World Commission on Environment and Development, 1987

above their duty of care, we should pay them to provide those services on behalf of the rest of Australia.[20]

Government, for obvious fiscal reasons, has been unwilling to accept liability for compensating farmers in this way. A mature society, however, would understand that if it cannot afford to pay farmers market rent to manage land for conservation, the only viable option is a planning model that enables farming to occur hand-in-hand with biodiversity conservation. This entails compromise, tradeoffs and prioritisation. Legally, it would involve replacing the rigid controls imposed by current threatened species legislation with an integrated landscape planning system. Culturally, it would require increased levels of trust between farmers and environmental stakeholders.

6.5 Gaining the trust of farmers

The Government must make greater efforts to gain the trust of farmers. Conservation on private land depends on true collaboration: it depends on the good will of the farmers participating in the process. As discussed above, the current policy framework compulsorily transfers the cost of biodiversity conservation onto a relatively small number of private individuals. This continuing transfer of costs undermines the extension efforts of CMAs and renders the current regional model grossly inefficient.

Achieving effective biodiversity conservation in rural Australia depends on the willing cooperation of the farmers who own the majority of the land. This was the insight of the Decade of Landcare and it is a concern that the sound sociology unpinning that strategy has been largely forgotten by policy makers.

6.6 Gaining the trust of environmental stakeholders

Government must provide confidence to environmental stakeholders that reform will deliver the outcomes they seek. Landscape planning and more flexible approaches at property scale cannot be implemented without resolving a policy deadlock over whether prioritisation and trade offs – essential processes in planning – can be allowed when it comes to biodiversity and threatened species. It is literally impossible to optimise landscapes at state, regional or local scale when absolute constraints are imposed at property scale by a single factor (threatened species).

Prescriptive controls at property scale stand in the way of landscape planning because they prevent effective tradeoffs. In the absence of a robust landscape planning system, however, prescriptive controls are seen by environmental stakeholders as the only policy tool available.

The policy deadlock over biodiversity conservation on private land can only be broken via an integrated reform process that provides confidence to environmental stakeholders that relaxing controls at micro level will deliver more resilient ecosystems and more effective conservation.

7 CONCLUSION

Biodiversity conservation on private land must be founded on a partnership between government and landholders, based on collaborative landscape planning and with just terms compensation provided to farmers for providing land for public conservation purposes when this goes beyond their normal duty of care.

Likewise, adaptation to climate change must be a genuine partnership. While farmers can potentially provide carbon-related services to society, these must be agronomically practical and properly funded. Measures aimed at shifting the cost of a carbon price from the fossil fuel sector onto the farm sector (either via an ETS or by other means) will be no more acceptable to regional Australia than is the current approach to biodiversity conservation.

[20] *Blueprint for a Living Continent,* Wentworth Group of Concerned Scientists, 2002 p 3.

From a strictly fiscal view point, government decision makers need to understand that the size of the compensation bill (or the injustice inflicted on land holders) is proportional to the bluntness of the policy instruments.

You can hammer farmers into the ground, or you can work with them to protect the most valuable habitat and species, re-establish landscape connectivity, and maximise terrestrial carbon storage.

The new model has to be grounded in sound agronomics and must respect the needs and aspirations of regional communities.

Due to increasing global demand, agriculture has a very bright future in Australia but only if we get the policy settings right at both Federal and State level.

In the global context, Australia's relatively efficient and highly productive agricultural systems are increasingly important and valuable. In short, the world needs Australia to keep producing food.

It would truly be a national tragedy, in both economic and social terms, if unjustified and poorly conceived environmental policy is allowed to continue to damage Australia's great agricultural sector and the well being of our regional communities.

APPENDIX 1:

THE NSW FARMERS' ASSOCIATION POSITION STATEMENT ON THE CPRS

Need for objective reassessment of climate science

There are considerable and increasing doubts in the farm sector and in the broader community about the validity of aspects of climate change science.

Accordingly, the Association is calling for a Royal Commission, or equivalent process, to independently and comprehensively review critical aspects of Australian climate change science to confirm that sound scientific practice has been followed and valid conclusions have been drawn. Such a review could draw on reviews/investigations being conducted internationally (for example the recently announced United Nations review of climate science practice) and should precede any decisions regarding Australian land, water and drought management policy and, in particular, any decision regarding introduction of an emissions trading scheme (ETS).

Emissions trading scheme

The Association has a number of requirements should Federal Parliament decide to proceed with an emissions trading scheme (ETS):

- The 'last amendments of the CPRS' (exclusion of Agriculture and a Voluntary offset market) must be honoured by both sides of the federal government as a minimum of any further ETS discussions/decisions.

- So called 'complementary measures' must expressly exclude punitive regulatory measures such as constraints on landuse and/or farming practices.
- ETS rules must recognise efficiency gains in agriculture as an offset to emissions.
- That the ETS rules must recognise and reward current best practice

- Any offset market for farm carbon must be established on a voluntary 'opt-in' basis

- Early adopters must not be penalised and must be duly recognised for pioneering advances.

Research and development

- The centre piece of Government policy relating to climate change must be Research and Development (R&D) programs directed towards improving the efficiency of production via innovations in renewable technology, waste reduction and recycling, more efficient machinery, transportation and so on.

- Agriculture is part of a complex chain of production and it essential that the government recognises the importance of supply chain issues in both policy and R&D programs. Efficiency gains in one link of the chain can be blocked or limited by deficiencies in other links.

- In consultation with the sector, consideration must be given to innovative financial mechanisms for leveraging R&D investment, including tax incentives.

- A production-focused emissions reduction pathway would focus on 'doing more with less' (For example, greater fuel efficiencies in machinery, less volatilization of nitrogenous based fertilisers, stock feed products similar to 'Rumensin' or 'Escalin')

- This must not be at the expense of other production-focused R&D programs, which are unrelated to climate change. Such programs have suffered significant funding reductions in recent years and must be reinvigorated.

Renewable energy/energy security

- Current perverse incentives to expand coal and gas production at the expense of productive farming systems must be removed. The majority of Australia's coal and gas is exported and the Australia's current and future energy needs could be met without need for new mines and gas fields.

- The Association supports an accelerated transition to renewable energy

- Specific incentives must be provided to rural and regional land managers to drive uptake and further development of renewable energy technologies, both at farm scale and regional utility scale. These should include targeted R&D funding, tax incentives, and feed in tariffs.

- Planning and investment in new energy distribution infrastructure is required to support bulk renewable energy production in regional Australia.

Rangelands

- Under current carbon accounting methodologies, rangeland livestock enterprises would be severely penalized relative to other producers. In the absence of compensating policy measures, a carbon price or tax on livestock methane emissions would drive many rangeland pastoral enterprises out of business with severe consequences for farming families and regional communities.

- It is essential that any ETS policy provides protections for rangeland livestock enterprises such that a level playing field applies to all domestic and international producers and traders.

Trade issues

- While the ETS is primarily environmental policy it is also trade policy, since it will seriously impact terms of trade and competition. It is essential that the full trade impacts of an ETS on agriculture are addressed and managed prior to any introduction of legislation.

- Measures that could be considered in this regard include:

    - Border measures (such as are proposed under USA draft legislation) applying to goods produced in countries with no, or lesser, carbon taxes

    - 'Most Favoured Nation' approaches such as operate under any Free Trade and Bi-Lateral Trade Agreements.

Bio-sequestration

- The Association supports further research, development and innovation aimed at increasing the bio-sequestration of carbon that naturally occurs within farming systems.

- It is essential that any offset market created for terrestrial carbon does not result in loss of good farming land to forestry. Current incentives for forestry are driving distortion of land markets and are resulting in the loss of arable land, and water, from Australia's farming system.

- Offset markets and other policy designed to increase biosequestration must expressly aim to increase and not decrease Australia's capacity to produce food.

- The Association supports the regulation of offset markets, and the establishment of standards and design features that allow farmers to be direct participants in markets without the need for commercial brokers and other intermediaries.

Carbon accounting

- The Association has significant concerns about current carbon accounting, measurement, reporting and verification rules currently operating under the Kyoto protocol. Current criteria for additionality and permanence are inoperable in the context of farming systems. A net farm carbon model is needed for agriculture, based on net stock changes and which does not require the permanent freezing of landuse or landuse practice.

- These and other concerns are detailed in the NFF paper: *'Carbon accounting for agriculture: supplementary discussion paper – agriculture post Kyoto',* September 2009*'* pages 6-11).

Recommendations regarding the CPRS

The Association recommends that:

1. That a Royal Commission be commissioned to carry out a full, open, comprehensive, due diligence Inquiry into the veracity of the science and computer model predictions that underlie the CPRS, before the CPRS Bill is passed into law.
2. If, as a result of, or despite the above, a CPRS is introduced then;
    - That Agriculture is excluded from an ETS or CPRS, and
    - That any equivalent 'other measures' provisions are deleted from the Bill and not introduced into a new Bill.
3. That the range of carbon sequestration options for agriculture be increased from tree plantations only on cleared agricultural land, to a full suite of carbon offset options (and landuses) including soil carbon.
4. That a positive incentive scheme be implemented to encourage the sequestration of soil carbon and other biological sequestration processes.
5. That Agriculture is given the option to voluntarily 'opt in' as a comprehensive provider of AEUs to Australian emitters, even if it is excluded from the CPRS.
6. That separate provision is made to all of Agriculture to offset the progressively increasing costs arising from the CPRS in the form of increased energy and production costs.
7. That the rules in respect of soil carbon sequestration be changed to separate and distinguish anthropogenic emissions of soil carbon from emissions arising from natural causes and circumstances beyond our control.

8. That the rules in respect of calculating the GWP of livestock methane be changed to distinguish it from fossil methane emissions, and to take into account the lower net global warming potential (GWP) of methane arising from livestock methane emissions.
9. That the rules in respect of calculating net agricultural emissions be corrected to include all carbon sequestration in agricultural land resulting as part of the terrestrial carbon cycle.

APPENDIX 2: CASE STUDIES

The following three case studies exemplify the urgent need for balance to be restored to the policy framework affecting farm land and natural resources in Australia, addressing:

- The impacts of planning legislation on the income-producing potential an capital value of farm land;
- The impacts of native vegetation legislation on private native forestry in NSW; and
- The impacts native vegetation and threatened species legislation on landscape planning pursuits in Western NSW.

Case Study 1: The Impacts of Planning Legislation

John and Charmian McConaghy, Moruya

John and Charmian McConaghy are cattle producers from Moruya on the south coast of NSW. In 2006, with intentions of retiring from the family business, John and Charmain applied to have the 68ha property subdivided in line with Council's minimum 2 ha lot size requirements.

In August 2009, after 3½ years of deliberation, Eurobodalla Shire Council refused the proposal, instead offering an entirely different plan, subject to an extensive list of conditions.

In John's words, they are "restrictive beyond common sense", with large tracts of land declared 'untouchable' and restrictions placed not only on landuse practices, but even the keeping of household pets such as dogs and cats. If the subdivision is to proceed, only 18ha of the original 68ha property could be subdivided into 2ha lots, complete with restrictions on dogs, cats, fencing, riparian and vegetation buffers etc. Of the remainder, 30ha will be effectively National Park, and the final 20ha are 'untouchable' from a development sense, with only a residence, shed and yard permitted. In total, 10 lots, each with a massive 17 special restrictions, have been approved by the Shire Council. It should be noted that the McConaghy's original subdivision proposal was for 31 lots.

As a step in granting subdivision approval, Eurobodalla Shire Council required John to apply for a Property Vegetation Plan (PVP). Having sustainably managed the landscape for the 34 years they have been on the property, John and Charmian are not opposed to sensible native vegetation requirements, and see themselves as "conservationists in many ways". However, the resulting draft PVP proved to be anything but practical.

The constraints imposed by the PVP have dramatically reduced the value of the property, with only one quarter of the property deemed suitable for 2ha subdivision. To add insult to injury, commencement of any part of the approved subdivision would prevent present and future owners from running cattle on the remaining large parcel. Again, and consequentially, Local Government Rural Rating would be withdrawn (ie rates would double), State Land Tax levies would be imposed, the land value would diminish and the land would become a financial and physical liability – rather than a source of productivity and income.

The *Native Vegetation Act 2003,* in combination with the local government's planning policy, has unquestionably diminished the land asset value of the McConaghy's property, throwing their retirement plans into disarray.

The environmental values of the property are a result of the sustainable farming practices the family has employed over more than three decades. John and Charmian are now being asked to bear the full cost of preserving these environmental values – well in excess of what could reasonably be conceived as their 'duty of care' – without so much as a mention of compensation for the overwhelming loss in the value of their asset.

Case Study 2: The Impacts of Native Vegetation Legislation
Bronwyn Petrie, Tenterfield

Since 1860, the Petrie family has operated a mixed cattle and forestry operation on their property in the ranges east of Tenterfield. The property includes flats with predominantly native pastures, open woodland and dense forest where sustainable timber harvesting operations have been conducted for generations (from fence posts to mill logs).

Bronwyn Petrie is chairman of the Timbarra Landcare Group and has represented NSW Farmers' Association on Private Native Forestry and wider native vegetation issues for over a decade.

When State Environment Planning Policy (SEPP) 46 was introduced in 1995, the family's grazing operations were affected due to the policy only allowing them to control regrowth less than 10 years of age. The family's operations were geared to selectively control regrowth trees between 10-40 years of age, rotating through the paddocks every few years.

The Petrie family's strategy was to control those trees that were not value adding to their paddocks, but to retain multi-aged and scattered tree cover, which provided stock and pasture shelter in winter, and an ongoing timber supply for farm use.

In addition, the Petrie family has sustainably harvested timber as well as grazing cattle. This included selective logging, habitat retention and mosaic burning, resulting in a productive forest with rich biodiversity. This practice, which was held up as a model of best practice by the Carr Government, was permitted under SEPP46 because the management met the sustainability criteria.

But that changed in 2003. The *Native Vegetation Act 2003* defined private forestry as 'broadscale clearing'. This was against recommendations from the Native Vegetation Reform Implementation Group and Sinclair reports, and a code of practice was developed requiring a Property Vegetation Plan with exclusion zones for threatened species, riparian areas and 'old growth' (as mapped from aerial photos) making the Petrie timber operation unviable.

Forestry is not clearing by any reasonable definition. The Petrie family harvests selectively, the trees grow back and the land use does not change – they retain the land as forest. The only areas that the Petrie family can now harvest are mostly non-commercial due to species or quality. In addition, the Code restricts the use of routine agricultural management activities, making it impossible for them to integrate grazing with forest operations.

One of the principal protections of property rights in the law is recognition of existing use rights. Bronwyn was personally assured by successive Ministers that her family's existing use rights would be recognised with regard to their forestry operations. This promise has not been delivered.

The family feels that they are being forced to choose between cattle or forestry, but the sustainability of their operation depends on them doing both. Cattle have been run in these multi-use forests for 150 years.

The Petrie family were doing the right thing in sustainably managing their property, but these latest policy changes are a slap in the face.

The problem for the Petrie family is that because of the way they have managed their property over generations, they have masses of valuable, high-quality biodiversity. This should not be a problem – on the contrary, they should be rewarded for our good previous management and encouraged to keep doing what they are doing. Instead, the government just wants to lock up their land without compensation and effectively turn it into an extension of the public nature reserve system.

In Bronwyn's words, "This is not just an insult to our property rights, it is bad conservation policy, because the laws prevent us managing the land effectively. The result will be weed infestation, increased fire risk, and less biodiversity".

Case Study 3: The Impacts of Native Vegetation and Threatened Species Legislation

Cameron Rowntree, Walgett

Cameron Rowntree is a beef cattle producer from Walgett in the north-west of NSW. As progressive young farmers in an area with a number of natural resource challenges, Cameron and his family joined forces with 10 other families in the district to develop a sustainable landscape plan, embracing biodiversity conservation within a balanced regional model.

Cameron and his peers developed a collaborative Property Vegetation Plan (PVP) covering a massive 40 000 hectares across 11 landholdings, aimed at striking a balance between environmental and economic objectives – the latter particularly important given the severity and extent of the drought in the north-west over the last decade. Such was the enthusiasm for the plan that even landholders without development intentions, and hence little to gain in an economic sense, signed up to the PVP.

Unfortunately, native vegetation and threatened species legislation has undermined the proposed sustainable landscape plan. In Cameron's words, the State Government is a "victim of its own nightmare legislation", missing out on the immeasurable environmental, economic and social outcomes that would be delivered via a landscape planning approach.

Extensive areas of degraded, weed infested grazing land are currently interspersed with remnant Coolibah Black Box woodlands, and largely locked stands of stunted trees with bare eroded soil below. Farmers like Cameron are keen to turn this situation around. The proposed sustainable landscape plan would have enabled a mosaic of well managed croplands, restored Mitchell grass pastures and restored, high conservation value Coolibah Black Box woodlands. The biodiversity and productivity outcomes cannot be underestimated.

Walgett, as a local economy and as a community with high unemployment, needs these farmers and the multipliers that sustainable development would bring. The current regime of managing the landscape under the legislative framework of the *Native Vegetation Act 2003* and *Threatened Species Conservation Act 1995* requires significant ongoing expenditure on compliance activities and cash 'incentives' to conserve small parts of the landscape. Cameron feels that this is resulting in an increasing resentment in the community towards Government and Government employees, with the landscape continuing to degrade and the local economy continuing to decline.

The sustainable landscape plan Cameron is advocating will admittedly see some loss of listed threatened species at a property scale so that farmers can create viable paddocks.

However, this would be balanced by farmers themselves paying for the restoration and management of Mitchell Grass lands and old growth Coolibah Black Box woodlands, resulting in a net gain of biodiversity. By taking a landscape planning approach, landholders can work in partnership with Government, which would see public environmental extension workers again welcome in the community, with a foundation for true collaboration established. The flow-on effects for the community would be overwhelmingly positive, with the Walgett agricultural economy able to adapt to current market conditions and economic and social vitality beginning to return.

The majority of stakeholders, including representatives of the environment movement can see the benefits of the Walgett landscape plan but the requirements of the current legislative framework have presented nearly insurmountable impediments. Threatened Species and Planning legislation override any powers that Catchment Management Authorities may possess to implement effective vegetation plans and catchment management plans. For example, the presence of a threatened species can 'red light' an action, even if that action would improve net environmental outcomes. In the case of the Walgett plan, the proposed collaborative PVP "doesn't fit" the PVP Developer, and hence, a separate PVP would need to be developed for each property, ignoring the environmental gains to be achieved by operating at a landscape scale.

The potential for a unique solution to a complex natural resources challenge has been unquestionably compromised by the prescriptive and inflexible approach required by the law.