SENATE FINANCE AND PUBLIC ADMINISTRATION REFERENCES COMMITTEE

INQUIRY INTO

NATIVE VEGETATION LAWS, GREENHOUSE GAS ABATEMENT AND CLIMATE CHANGE MEASURES

March 2010

1.0 EXECUTIVE SUMMARY

1.1 Society is faced with an incredibly complex challenge as it attempts to feed a burgeoning population, balance competing land use demands and address the resulting impacts on its inextricably linked ecosystems. Despite this, human ingenuity has repeatedly demonstrated a capacity to resolve seemingly intractable problems, while shared common goals have united otherwise disparate groups[1].

1.2 Australian agriculture is now at a crossroads. It can be encouraged to progress, to provide a sustainable food supply and export earnings source for years to come, or it can be neglected and allowed to decline and perhaps ultimately be lost. A stable and low cost food supply is too important to the nation, to be lost. These assets need to remain in Australian hands. Its export earning capacity likewise is too important to be lost.

1.3 Australian agriculture can only be maintained if certain legislative changes are implemented to protect it from unnecessary and excessive environmental demands. What we ask is that the needs of a sustainable agricultural industry be identified and prioritised, whilst at the same time, proper consideration is given to the legitimate needs and concerns of environmental protection.

1.4 Agriculture and the environment do not have to be, and should not be, treated as being necessarily in conflict. We need to protect both, for the good of us all. There is significant scope for Australia to strengthen its existing environmental programmes. Establishing the proposed *National Stewardship Initiative* would enable the country to move toward a unified and genuinely sustainable, more comprehensively funded, systems based approach to ecosystem preservation and management.

1.5 Stewardship payments are an essential tool to deliver sustainable, pragmatic and publicly acceptable environmental outcomes. Adopting the proposed Initiative provides an opportunity for ecosystem management to move away from the current piece meal approach, fund activities beyond traditional three-year cycles, and address the issue of ecosystems and their services crossing spatial boundaries. It also presents an opportunity recognise and remunerate farmers who have and will continue to perform a significant role in providing ecological goods and services that benefit the entire Australian community.

1.6 This will require robust, equitable and flexible national NRM policies, together with a preparedness by Government, land managers and society to challenge and move on from existing paradigms. In developing a national initiative stakeholders, in particular policy makers, must be mindful that;

1. agriculture is vital to the nation's food security, food sovereignty and sustainable ecosystem preservation.
2. intact ecosystems are essential to humanity; yet, markets have inherent difficulty pricing in externalities, including environmental preservation and enhancement.
3. consumers need to pay the true price for ecosystem goods and services.
4. land managers must be remunerated for stewardship outcomes delivered over and above their duty-of-care.
5. a market based stewardship scheme should be a cornerstone of a national climate change initiative.
6. implementation of the initiative will require strong and committed leadership from Government and the agricultural sector together with open collaboration from all stakeholders, and
7. an effective stewardship scheme will require good science, good economics, good policy and goodwill.

1.7 Debate surrounding appropriate levels of NRM have and will continue to range widely, evoking strong and at times polarised opinions. Proponents predicting more catastrophic environmental outcomes are often informed by Malthusian[2] beliefs that rapacious demand, driven by over-population, will eventually outstrip the world's natural resources. Conversely, economic rationalists advocate that the free market and human ingenuity will respond to market signals, providing the most cost-effective delivery of environmental goods and services[3].

1.8 Increasingly these groups, and those positioned in between, will need to focus on their common aspirations and collaborate in working toward realising their shared goals. Material gains and the economic benefits of environmental preservation can be achieved if, as stated previously, stakeholders are prepared to be flexible in their approach to the development of realistic environmental outcomes.

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[1] One of Australia's most enduring community based environmental movements, Landcare, was the result of the National Farmers Federation and the Australian Conservation Foundation uniting to put a proposal to the Federal Government to protect and restore the environment. It now has over 4,000 groups in Australia and has been replicated in Germany, Iceland, Kenya, Tanzania, Zimbabwe, South Africa, the Philippines, Fiji, New Zealand, the United Kingdom and USA http://svc018.wic008tv.server-web.com/, and http://www.landcareinternational.net/ <accessed 05.11.09>

[2] Thomas Malthus was an influential British scholar and Anglican clergyman, who in his 1798 work *An Essay on the Principle of Population*, hypothesised that an "endless progress toward a utopian society" was a flawed premise because population growth would invariably be checked by the earth's inability to sustain the population, leading to famine, disease and widespread mortality. http://www.1911encyclopedia.org/Thomas_Robert_Malthus. <accessed 09.09.09>

[3] Free market environmentalists advocate that the free market and property rights, supported by tort law are the most cost-effective way to protect the environment (Anderson et al, 2001).

INTRODUCTION

Australia should have in place a clear and transparent legislative structure capable of adjusting, where necessary, to competing private and public land use detriments and benefits. A structure that is fair, equitable, and flexible, able to meet the changing needs of both the farming community, and the general population, with minimal dispute or disruption.

Increased environmental regulation relating to native vegetation, water and carbon abatement, often in the absence of an evidence based underpinning but deemed necessary for the public good, have increasingly impinged upon the rights of property owners to farm on land zoned as agricultural. And no compensation is paid for these expunged rights.

There would be considerable outcry in Sydney or Canberra if the State or Territory Government, citing a public good, placed a development ban on all houses; where owners could no longer renovate or improve their property.

With the stroke of a Ministerial pen, millions of dollars would be wiped off the value of these privately owned assets, causing alarmed financiers to foreclose on some properties, while demanding greater security over residual assets.

The impact would be felt across the entire economy, leading to; reduced investment, reduced building activity, reduced employment and reduced regional growth.

What if that same Government, having effectively capped the value of these assets, refused to compensate owners for their lost property rights?

This is exactly what the NSW Government has done to its farmers. Native vegetation laws have removed our right to develop the productive capability and value of our property. We have no recourse to fair or "just terms" compensation as state laws do not require the government to compensate owners for removing property rights.

Similarly, legislation pertaining to water, carbon abatement, crown lease conversions, private native forests, land use planning, national parks and mining have seen governments fail to acknowledge landholders' entitlement to just and fair compensation for the subsequent extinguishment of property rights.

Despite which farmers, like the city house owner, have purchased assets (farms) in good faith, in the expectation that with judicious spending and capital investment (renovations) the market will reward them with an increase in property values and an increase in earning capacity.

This submission highlights the need to find a balance between competing land use demands and the public's environmental expectations, predicated on a clear cost benefit and evidence based policy settings. To this end, the submission addresses property rights;

- Issues
- Policy considerations
- Legislative considerations
- Case Studies, and
- Recommendations

It promotes a model for a sustainable, commercially viable, pragmatic and publicly acceptable national environmental initiative. It highlights a range of critical factors that will need to be addressed, if as a nation, we are to cost-effectively meet society's environmental needs and expectations while maintaining our food sovereignty and continuing to produce high quality food and fibre to feed and clothe the world.

2.0 BACKGROUND

2.1 Nations are faced with many similar and interrelated issues; the impacts of climate change, food and water security, fossil fuel dependence, development pressures, an urban/rural disconnect, a globalised economy and ecosystem decline. Responses vary greatly, due in large part to political, economic, historic and cultural legacies. Farmers, however, have the greatest capacity to effect sustainable land use change to protect and enhance our ecosystems whilst producing food and fibre to feed and clothe a burgeoning population. They manage 60% of the world's productive landmass and 70% of its freshwater[4].

2.2 Competing demands exist for productive agricultural land including food production, mining, forestry, urban development and environmental services. Forecasts indicate the world's population will increase 50% by 2050, with food demand set to double in the next 50 years[5]. Limited additional farmland is available to meet these needs, with potential actions being; **1)** to take more land from the environment; **2)** develop technological solutions to increase farm production; **3)** change consumption patterns; or **4)** limit population growth. All options have the potential to polarise the public, will prove politically unpalatable and have significant environmental impacts.

2.3 There is an increased expectation that Australian farmers have a responsibility, as stewards, to manage their land for the benefit of the wider community. The Wentworth Group[6] advocates paying farmers for environmental services, provided that the services delivered benefit the rest of the community and are above the farmer's duty of care for their land[7]. They propose that "we need to change how we farm – reversing the onus of responsibility and creating opportunity – by improving economic signals and support"[8], and that "degradation of natural systems occurs because our economy makes it cheaper to degrade Australia than look after it"[9].

2.4 Farmers acknowledge many of the environmental aims of existing and proposed legislation and support preserving our natural resources and the environment. But they are extremely frustrated that, despite providing a public good which is enjoyed by everyone, they are not entitled to compensation for the restrictions and economic impost placed on their right to farm.

2.5 Australia is the only democracy in the world without a law that upholds property rights wherein property owners have recourse to "just terms compensation" when these rights are expunged. The Australian Constitution requires compensation for the removal of property rights, whereas state laws have no such provision. Consequently, the Federal Government has successfully struck agreements with the states that have repeatedly stripped property rights, passing the benefits by agreement to the Commonwealth, but at no cost to either government or the public.

[4] Food and Agricultural Organisation (2006) *ResourcesSTAT*. http://faostat.fao.org/site/291/default.aspx. The United Nations. <accessed 8.01.09>
[5] Cnossen, A (2008) *Asian demand - is it sustainable & what is the future?* Rabobank Food & Agribusiness Research and Advisory.
[6] The Wentworth Group of Concerned Scientists.
[7] Wentworth Group (2002:4), *Blueprint for a Living Continent*.
[8] Wentworth Group (2002:13), *Blueprint for a Living Continent*.
[9] Possingham et al., (2002:15), *Sustaining our Natural Systems and Biodiversity: an independent report to the Prime Minister's Science, Engineering and Innovation Council*.

3.0 ISSUES

3.1 Diminution in land values has resulted from the restricted enjoyment of the commercial opportunity embedded in rural land. Farmland is traditionally traded at the value that reflects its highest productive potential. This has been corroded by Native Vegetation laws in particular which restrict the removal of even single trees. In this latter case, for example, productive efficiencies available to neighbouring or even international competitors from larger or laser-guided machinery are not available to the farmer with trees inconveniently located. Similarly, laws that predated Native Vegetation laws made no extensive restriction on vegetation removal on freehold land. Land purchased in these years but not activated by the removal or modification of vegetation was traded at pre-Vegetation Law prices but now is valued at a lower rate reflecting the unproductive or less productive native areas that are sterilised from their former potential. The same is true of irrigation country that is traded having regard to water access or the total water market. Though water can now be traded separately to land, the market for land is influenced by issues such as the availability of water licences, access limitations, uncertainty about the future of regional Water Sharing Plans and removal of greater quantities of "environmental water" from the total tradable supply. These land values are stressed by the removal or restriction of earlier water access entitlement that once contributed to land price, collateral or surety for borrowings but is now diverted for environmental purposes.

3.2 Diminution in productive capacity and reduction in production have resulted in the underutilisation of both the real and intellectual capital of the farmer. Plans and investments made in the pre-Vegetation Law era were clipped by the passage of such laws. The effect has been to cap the capability of the farmer to realise the full potential of investments made in either the real estate itself or infrastructure, machinery, knowledge-base and market opportunities to which the farmer had already made a financial commitment on the understanding that no such caps existed. This impact not only effects plans but also sharply increases the existing risk profile of any debt that was incurred by the business assuming that expansion was possible but for the unforeseen impost of restrictive future laws.

3.3 Inadequate compensation arrangements abound. Piecemeal payments under such programmes as the National Landcare Initiative have masqueraded as stewardship payments but they lack the essential ingredients of either repaying forgone capital value at the hands of restrictive laws or recompensing annualised opportunity costs. These two factors are vital in any attempt to encourage sustained interaction between the business interests of an established farmer and any environmental interests of society that impair productive potential.

3.4 Impacts on regional communities are felt through lost employment opportunities, decreased trading for farm-related businesses and population decline related to restricted economic output. Smaller communities away from either larger regional centres or mining towns are the hardest hit. These communities are usually dependant upon a vibrant and expanding farm sector. Much of their secondary industry, social services and character are fashioned by farms, as is the viability of these ancillary activities. Declining productive capacity or expansion opportunities on farms has a direct impact on local communities by restricting the work available and products or services purchased by farms.

3.5 Restrictions on farm growth reveal a lack of strategic foresight, employment opportunity and post-mining economic activity. Demand for food and fibre from a global population that is growing exponentially represents a great and sustained opportunity, if not obligation, for the Australian farm sector. Employment and a diverse economic base in regional Australia is a precursor to decentralisation and relocating population pressure on existing cities. Mining underpins many regional locations at present but this industry is, by definition, exhaustive meaning that the wellbeing of the community and the environment once mining moves on is not assured. Each of these factors appears to have been underrated or overlooked in the policy framework of current environmental law. Land law that stagnates development places Australia at a competitive disadvantage compared to other farming countries. Water law that removes irrigation opportunities rather than streamlining them erodes productive capacity and sustainability in a drought-prone continent. Unless these matters are considered in the framing of environmental law, there will be a gradual but increasing frustration of emerging opportunities in regional Australia.

3.6 Proposed CPRS legislation has been modified to remove its direct effect of the carbon accounting of farmers but the impact of the proposed law on farm suppliers and product handlers will see the costs of the CPRS passed to the farmer. Farming uses energy for irrigation, mechanisation and transportation. Chemical and fertiliser production are high-energy users. All of these costs pass on to the farmer already, as would a carbon charge imposed on any of these sectors. At the same time, no recognition exists in carbon accounting for the sequestration or cycling of carbon on farms or in farm goods so credits are not available to farmers to offset the costs of carbon penalties. Importantly, these costs will not be borne equally by farmers in other countries where different or no carbon laws are contemplated thereby creating high levels of competitive disadvantage for Australian farmers operating internationally.

3.7 Regional natural resource management models developed so far have failed because they do not place key decision-making power in the hands of local peers. Catchment Management Authorities (CMA's) in NSW were heralded as the way forward for vegetation management. The concept was to localise decisions about land management, land clearing policy and even individual applications to clear land. The logic was that landscapes are dynamic and so is the farming upon them and nobody would know better than local peers how these should best be correlated. The end result has been to isolate the power of CMA's in this regard to high-level policy only, whilst centralising and standardising the decision making about specific land clearing or modification. This shows only that the implementation of the model has lacked a certain trust in delegated local authority, despite which the model itself is still sound.

3.8 Impacts on the economy include minimising rather than optimising farm sector output, curtailing the economic diversity offered by a growing primary sector and impairing a major export earner. These impacts have economy-wide implications. Farming is the source of raw materials for the food-processing sector. Australia is a main trader of beef and wheat internationally. During the recent Global Financial Crisis, farming was the only domestic sector to grow. Technological advances, largely funded by farmers through Research Corporations, are enhancing productive efficiencies and diversity making it possible to produce more with less. This diverse sector contributes much but does so in harmony with the environment. Policies that over-react to marginal environmental impacts by prohibitions rather than collaboration are damaging to the national economy.

3.9 Impacts to the National revenue base result from decreased tax and a decreased Local government rate base. Farm productivity correlates directly with taxation earnings to Government from farms and farm-related businesses. Impacts that remove or restrict farm earnings also remove a source of public revenue that could fund the very environmental effort that the restrictive laws aim to achieve. Equally, sterilisation of farmland and its decreased capital worth erodes local government rate revenues but increases the call on government services, as farmers tend to be less self-reliant through financial pressure. The purchase of farmland for National Park removes that estate from the rateable reserve thereby displacing to other ratepayers the cost of service delivery for the local community. These long-sighted anomalies seem not to have been considered by vegetation law proponents.

3.10 One-dimensional environment policy disengages farmers and deprives rural communities. For example, the recent federal decision to pay $300m to purchase the water licences and entitlements of the Twynam Pastoral Company and return them to 'the environment'. This iconic capital outlay needs to be assessed against the alternative of a perpetual fund of this sum earning, arguably, $30m per annum to be applied to buy out irrigators' annual plans to use water. In years when river flows are plentiful, then no funds would be needed for environmental purposes. Alternatively they could be applied to irrigation infrastructure upgrades, payments to encourage water use efficiency such as incentives for dripline on farms or payments to encourage off-river storage by farmers to take advantage of high flows for use in dry times thereby taking pressure off river flows in those times. Effectively, the Twynam water could have remained in the irrigation 'system' but temporarily bought back when needed by compensating farmers for the income forgone from annual irrigated crops not grown. Wider alternatives to capital expenditure on water and land buy-outs need to be developed better utilising the money already spent by Governments on so-called environmental remediation.

4.0 POLICY CONSIDERATIONS

4.1 Australia should move away from the "all stick and no carrot" approach to land management. "All proposed environmental policies, plans and practices should be subject to rigorous analysis of social and private costs and benefits"[10]. In the absence of market failure all environmental "initiatives" should be voluntary and delivered through environmental stewardship schemes (ESS).

4.2 Emissions trading policy must not be made in isolation of other equally critical, inextricably linked, global issues. A balance is required between food security, climate change initiatives (including biofuels) and ecosystem preservation. Australian farmers are critical to both the national economy and the success of environmental preservation. They manage 61% of the Australian landmass, produce 93% of Australia's domestic food supply, underpin 12% of GDP, and employ 17% of the national workforce[11]. Consequently, Australia cannot afford to relinquish its food security, or its food sovereignty, solely in pursuit of an all-inclusive ETS.

Table 1: *Australian Land Use*[12].

Land Use	Area (sq. km)	%
Grazing	4,424,070	57.54%
Dryland agriculture	237,096	3.08%
Irrigated agriculture	30,535	0.40%
Minimal use	1,169,748	15.21%
Other protected areas including Indigenous uses	985,749	12.82%
Nature conservation	529,380	6.89%
Forestry	149,943	1.95%
Water	134,869	1.75%
Built environment	23,473	0.31%
No data	2,274	0.03%
Mining	1,366	0.02%
Total	**7,688,503**	**100.00%**

4.3 Farmers are very mindful of the balance between their financial and environmental resources and are intuitively good stewards of the land. Of Australia's 150,000 farm businesses, 94% have voluntarily undertaken some form of NRM activity to; increase productivity (89%), increase sustainability (88%), protect the environment (75%), increase land values (72%) and improve risk management (64%)[13]. Of those farms, 52% have protected native vegetation, 45% have protected wetlands and 49% have protected river and creek banks[14]. This has been balanced with producing sufficient food to feed over 60 million people each day[15]. It is not uncommon, however, for some sections of the urban-centric media to conveniently portray farmers as environmental vandals. This is despite the fact that many of the environmental problems currently faced in Australia are the direct result of Government policy of the day;

> *'In the past governments have inadvertently contributed to many of the adverse environmental impacts associated with agriculture. Government sponsored and encouraged much of the irrigation and land clearing for agricultural development, directly or indirectly – albeit with the best intentions. In some cases, the environmental consequences were not known. In others, evidence of the possible consequences was ignored or discounted'*[16]

4.4 Ecosystem services schemes should, where possible, encompass a private sector funded/consumer pays, whole-of-landscape approach. They should be implemented on marginally productive land and paid as a performance-based, annual cashflow stream. Historically Australia's Natural Resource Management (NRM) has been funded on a cost share basis between government and land managers and applied in isolation of other NRM targets. It is often paid in total on completion of on-ground works and not performance based, such as; tonnes of carbon sequestered, hectares of remnant vegetation protected, or megalitres of improved water quality.

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[10] Australian Farm Institute (2008), *Estimating the Value of Environmental Services Provided by Australian Farmers.*
[11] National Farmers Federation (2008) *Farm facts*: www.nff.org.au/farm-facts.html. National Farmers Federation, Canberra <accessed 12.01.09>
[12] Bureau of Rural Science, *Land use in Australia (based on 2001/02 Land Use of Australia, Version 3).* adl.brs.gov.au/mapserv/landuse/pdf.../Web_LandUseataGlance.pdf. <accessed 15.10.09>
[13] Australian Bureau of Statistics (2008:13), *Natural Resource Management on Australian Farms 2006-07.*
[14] Australian Bureau of Statistics (2009:14), *Land Management and Farming in Australia 2007-08.*
[15] CSIRO (2009), *World Food Day – CSIRO rising to the challenges*. http://www.csiro.au/news/World-Food-Day-09.html <accessed 05.11.09>
[16] Industry Commission (1988), *The Role of Economic Instruments in Managing the Environment*, as cited in Collins and Whitten (2007:17).

4.5 Stewardship schemes must be equitable, remunerating land managers who deliver ecosystem benefits above their "environmental duty-of-care[17]". Agriculture must not bear a disproportionate cost burden to enable other sectors to continue operating on a "business as usual" basis. Approximately 80% of the Australian population live in cities and 85% within 50km of the coast[18], less effected by the physical realities of climate change, ecosystem decline and natural resource management. They must, however, pay the true price for ecosystem goods and services, most of which are currently externalised.

4.6 Land use policy should ensure that productive agricultural land is utilised for food and fibre production and marginally productive land for ecological goods and services. Farmers should be encouraged to identify their least productive land which might be a combination of, but not limited to; riparian zones, acidic or saline soils, remnant vegetation, water logged areas, wind swept ridge lines, highly eroded or degraded sites[19]. They would manage these marginal areas to deliver ecological goods and services, be they carbon, water, biodiversity[20] or soil related. These ecological goods and services would generate environmental "credits" that would entitle the farmer to an annual cashflow stream, with ongoing payment predicated on the continued delivery of environmental benefits to a standard of peer reviewed industry best management practice which were over and above the farmer's "environmental duty-of-care".

4.7 Effective design is critical to provide incentives for the efficient operation of a national stewardship scheme. The Australian Government should provide enabling legislation, allow a lightly regulated non-government organisation to administer the scheme and the private sector to develop and drive an innovative and sustainable ecosystem marketplace. Agriculture's appetite to participate in an ongoing scheme will be influenced largely by cost-benefit analysis, together with instrument complexity, transaction costs, contractual property rights, liability periods and scheme flexibility within an industry characterised by significant seasonal and economic fluctuations. All stakeholders must be flexible in developing realistic, cost effective, practical and sustainable solutions.

4.8 Resilient ecosystems underpin sustainable agriculture and vibrant communities. Low resilience leads to a low capacity to adapt and change, creating thresholds beyond which a system's capacity to absorb shocks and maintain function is irrevocably changed. The environmental, social and economic impacts currently being experienced within Australia's drought affected Murray Darling Basin (MDB), may well be the precursor to changes that are more permanent and are already testing the system's resilience. Within the MDB the close interconnection between resilience, diversity and sustainability is clearly manifested through growing concern around resource allocation, profitability, sustainability and community needs, including mental health.

4.9 In the face of increased climate variability research and development (R&D) must be adequately funded, appropriately targeted, capable of commercial application and delivered through coordinated extension programmes. A) Australian agriculture's capacity to provide sustainable ecosystem services must be underpinned by leading R&D. Many nations, excluding Australia, highly subsidise their agricultural sector (US 11%, Canada 23%, EU25 31%, Japan 52%[21]) and will increasingly look to ecosystem payments to perpetuate producer support through World Trade Organisation (WTO) compliant "green box" mechanisms. Australia will be solely reliant on productivity gains and efficiencies to remain globally competitive. **B)** Australian business confidence in agriculture's capacity to provide genuine ecosystem services will only eventuate if backed by proven scientific research, addressing issues of rigour, transparency and integrity.

4.10 Land managers must be educated prior to the implementation of any stewardship scheme, including (if introduced) an Emissions Trading Scheme. Failure to manage participant expectations will significantly compromise long-term scheme participation and outcomes. Australian farmers are extremely innovative, quickly adopting new technologies and sustainable farm practices. They must be provided with the appropriate skills and knowledge to implement, manage and report on the delivery of ecosystem goods and services.

[17] Environmental duty-of-care is defined as "the maintenance of farmland in a condition that does not diminish its existing environmental attributes".
[18] Australian Bureau of Statistics (2008) *3218.0 - Regional Population Growth, Australia, 2006-07*: www.abs.gov.au/ <accessed 12.01.09>
[19] Often the least productive land has been modified the least, resulting in it retaining greater ecological diversity.
[20] Biodiversity includes both native flora and fauna.
[21] OECD (2006) *Producer Support Estimate and related indicators by country*: http://stats.oecd.org/WBOS/ <accessed 8.01.09>

5.0 LEGISLATIVE CONSIDERATIONS[22]

5.1 Community and governments need to recognize that appropriate agricultural needs must, in some instances, be given priority to all but essential environmental demands. This must be given effect if the Australian public and its various governments wish to have a sustainable agricultural industry in this country. One that is able to provide a stable food supply for a rapidly growing population and continue generating significant export income.

5.2 The present relationship between agricultural and environmental interests is one of almost complete dislocation. That situation has been created fundamentally since the introduction in 1996 of unreasonably intrusive and restrictive legislation, the effect of which has been to impede agricultural growth and development in many areas, consequentially reducing both profit and incentive for farmers and related industries. This process has become increasingly oppressive and detrimental, to both farmers and the general community.

5.3 Landholders should have and be permitted to exercise, with but minimum necessary legal restraint, their freehold land rights for their own personal or commercial gain, given that that gain is one that almost always benefits the entire Australian community. Landholders and their community, not governments, should be the final arbiter of any dispute, or should at least have a much greater say than is presently the case, in resolving any such disputes.

5.4 Legislative changes will need to find ways to appropriately redress or relieve burdens imposed on landowners who are asked to restrict the use of their land in order to provide environmental and other benefits to the general community, or state and federal governments. Peter Spencer's situation is that the operation and effect of the native vegetation legislation has effectively "sterilised" his property from any real productive use, and that Commonwealth involvement has resulted in an acquisition of his land other than on "just terms", as required by the Constitution. To date, his claims have been defeated in both the State and Federal Courts, and now – subject to a recent development, the effect of which is not yet clear - it would appear, in the High Court. Despite which four Judges involved in these proceedings in each of the courts have expressed sympathy for Mr Spencer's position, whilst having to determine that his legal claims could not succeed.

5.5 Changes are required in NSW and related Commonwealth land use legislation and agreements, in order to:

1. remove discriminatory and inequitable land use restrictions;
2. provide schemes of redress and compensation in instances where land use restrictions remain in place;
3. ensure that more specific and effective guidelines are adopted and implemented by Catchment Management Authorities ("CMA's") in order to give greater priority to local agricultural developmental needs;
4. provide for greater landholder and local community involvement in the operation and function of CMA's;
5. provide for greater landholder and local community involvement in any appellate or review process in connection with land use restrictions, and in particular, to transfer to CMA's the discretions currently given to the Minister in connection with final decisions relating to land use restrictions;
6. in the alternative to (4) and (5), to provide a detailed set of guidelines to be included in native vegetation legislation, recognizing the need for effective land management practices and revising and extending those practices ("RAMS") identified in the current legislation.

5.6 Issues which must be addressed include the;

1. operation and effect of the NSW Native Vegetation Act of 2003, and the attendant Commonwealth legislation and interstate agreements ("the Spencer Issues");
2. operation and effect of the NSW Crown Lands Act 1989 Part 4A, and the NSW Crown Land (Continued Tenures) Act 1989 ("the covenant issues");
3. identification of appropriate legislative changes;
4. identification of appropriate ways to measure and redress inequities and unfairness in the operation of current legislation, and to identify alternatives to compensation and farmer exit assistance schemes.

5.7 What needs to be done;

1. **implementation of amendments to the NSW Native Vegetation legislation and repeal of the Crown Land legislation** – Part 4A and Schedules 6 and 7 of the Crown Land legislation. This will also involve a complete review of the State and Commonwealth Agreements, presently in place in connection with the existing legislation.
2. **a review of the present native vegetation legislation, which is poorly drafted, and often vague and uncertain in many important respects**. A lack of precision and clarity makes it very difficult for

[22] Adapted with permission from the Property Rights Reclaimer Moree (PRRM) submission, which is currently before the Senate Committee.

landholders to have any clear understanding of what they can and cannot do, under the Act. Consequently, it is nearly impossible to make effective land management decisions. Often the landholder is required to enter into protracted negotiations with numerous authorities, the result of which is generally either a blanket refusal to any proposal made, or an approval qualified by conditions, restrictions or limitations, which are unnecessary for the legitimate needs of protecting native vegetation.

3. **a review of the function and efficacy of the regional NRM model**[23], in NSW Catchment Management Authorities (CMA's). If retained, then specific emphasis needs to be given to restructuring the model to provide for far greater and effective input from landholders and agriculturalists in the relevant decision-making processes. A set of appropriate guidelines needs to be drawn up for implementation in CMA decision-making processes. Bureaucracy is overrepresented on these committees, and oppressive and sometimes irrational environmental demands override proper agricultural objectives.

   This is further borne out with Australia's Landcare volunteers being "alienated and disenfranchised" by the Rudd Government's $2.5 billion *Caring for Our Country* environmental grants scheme[24].

5.8 **If the number and extent of disputes can be reduced by these means, there should be a significant reduction in the number and extent of compensation and other monetary claims** likely to be made upon the financial resources of both State and Federal Governments. Reform of the legislative structure, in accordance with these aims and objectives, involves altering the intrusive extent and impact of the existing provisions and providing for a much greater degree of community involvement in the process, giving them the greater role in exercising discretions, some of which presently may only be exercised by the Minister.

5.9 **It is envisaged that legislative considerations can not be made in isolation and will need address issues of: food security, competing land use demands, public versus private good, adaptive capacity, biosecurity, environmental regulation, investment incentives, research and development needs, taxation framework, drought policy, and rural and regional resilience**. The Federal Government currently has before it initiatives to establish, reform or review; an emissions trading scheme (the Carbon Pollution Reduction Scheme), water entitlements and water efficiency, the Environment Protection and Biodiversity Conservation Act (EPBC), the Income Tax Assessment Act, superannuation legislation, Managed Investment Schemes, Farm Management Deposits, the Goods and Services Tax (GST), and the "Caring for our Country" programme. Within each of these key legislative frameworks, the Government can provide clear signals and certainty to the market regarding its commitment to remunerate land managers who deliver public environmental goods and services.

[23] Since 2003, Australia's natural resource management has been delivered through fifty-six regional resource agencies with their boundaries broadly defined by watershed catchment regions. These bodies are variously known as Catchment Management Authorities (NSW and Vic), Regional Groups (Qld), NRM Groups (SA), Catchment Councils (WA), Regional Committees (TAS), the NRM Council (ACT) and the NRM Board (NT). http://www.nrm.gov.au/nrm/region.html <accessed 12.10.09>

[24] Australian Government (2010). *Inquiry into Natural Resource Management and Conservation Challenges.* http://www.aph.gov.au/SENATE/committee/rrat_ctte/natural_resource/report/index.htm <accessed 14.02.10>

6.0 CASE STUDIES

6.1 Native Vegetation. NSW law restricts a farmer from improving their land if that involves removing native vegetation. The law takes no account of evolving technology and farmers' stewardship. The ability to improve the farm is capped. And no compensation is paid.

6.2 Mining. Mining is allowed to brush aside farmers. Royalties go the government. Profits go to the company. Water sources including rivers and aquifers are polluted or damaged. Farmers are left with a degraded property. And no compensation is paid.

6.3 Stock and Domestic water. It is proposed that all stock and domestic water use will be metered. Restrictions and charges on use will presumably follow. A right that attaches to title is about to be restricted. And no compensation will be paid.

6.4 Carbon credits. Qld and NSW both banned clearing and gave the carbon credits generated from avoiding the removal of trees to the Commonwealth. As a result, agriculture has provided Australia with a reduction in carbon emissions of 46% since 1990. The rest of the nation continues unchecked with "business as usual", increasing its emissions by 48%. And no compensation is paid.

6.5 Irrigation. Introduction of *Sustainable Diversion Limits* in 2014 will result in every catchment allocating water to the environment first. Governments intend to forcibly take entitlements from irrigators if unable to acquire sufficient water from voluntary sellers. And no compensation will be paid.

6.6 Crown Lease conversions. Conversion of NSW Crown leases to freehold are subject to the Minister's discretion. The Minister imposes covenants on the new title that restrict the use of the land, in effect establishing quasi National Parks on private land. And no compensation is paid.

6.7 Private Native Forests (PNF). Harvesting of long established private forests is now restricted. New PNF rules limit harvest rights. And no compensation is paid.

6.8 Land Use Planning. Land that is zoned rural is managed in good faith in the expectation that it can be farmed. Laws increasingly prohibit and restrict farming practices, especially those close to urban areas. And no compensation is paid.

6.9 National Parks. Wild dogs and wild fires from National Parks can break into neighbouring farmland. Farmers pay the bill in stock and property losses. But no compensation is paid.

7.0 RECOMMENDATIONS

7.1 Australia should have a clear and transparent legislative structure capable of adjusting, where necessary, to competing private and public land use detriments and benefits. A structure that is fair, equitable, and flexible, able to meet the changing needs of both the farming community, and the general population, with minimal dispute or disruption.

7.2 Legislative changes will need to find ways to appropriately redress or relieve burdens imposed on landowners who are asked to restrict the use of their land in order to provide environmental and other benefits to the general community, or state and federal governments. This will require changes in NSW and related Commonwealth land use legislation and agreements, including;

1. implementation of amendments to the NSW Native Vegetation legislation and repeal of the Crown Land;
2. a review of the present native vegetation legislation; and.
3. a review of the function and efficacy of the regional NRM model

7.3 Emissions trading policy must not be made in isolation of other equally critical, inextricably linked, global issues. A balance is required between food security, climate change initiatives (including biofuels) and ecosystem preservation. Australia cannot afford to relinquish its food security, or its food sovereignty, solely in pursuit of an all-inclusive ETS.

7.4 Land managers should be remunerated for delivering ecological goods and services above their "environmental duty-of-care". Agriculture must not bear a disproportionate cost burden to enable other sectors to continue operating on a "business as usual" basis, which inherently externalises environmental costs.

7.5 Australia should establish a *National Stewardship Initiative*, using seed capital from Government, with a clearly defined process and timetable for moving to a self-funded model. The benefit to Government, land managers, taxpayers and the environment is a more cost-effective delivery of landscape scale ecosystem services and preservation. It would also provide national oversight of the collective work that is being undertaken, ensure corporate knowledge is retained and remove many of the underlying factors that contribute to the current piece meal approach.

The Initiative's charter should include the establishment of;

1. a National Stewardship Centre that contributes to ecosystem solutions and knowledge through innovative, interdisciplinary approaches to applied research, development, extension, practice and market engagement,
2. a National Stewardship Framework to ensure rigour, integrity and consistency in the development of all ecosystem initiatives, and
3. appropriate sites to undertake R&D and demonstrate the principles of the Initiative by show casing working rural landscapes delivering triple bottom line results.

The Initiative's objectives should be to;

a. engage all stakeholders, especially land managers and the private sector who are currently being lead through the process;
b. develop targeted R&D tax concession programmes to assist the private sector to best allocate R&D funding;
c. design robust MBI's incorporating national Best Management Practice (BMP) standards;
d. consider in detail all funding options, including those proposed in this report;
e. create a communications strategy for end users and land managers to promote the ESS and its benefits;
f. establish an education and training programme to deliver extension services to land managers; and,
g. develop a rigorous monitoring and evaluation programme to underpin the scheme's integrity.

7.6 Australia's stewardship schemes should, where possible, be private sector funded/consumer pays, whole-of-landscape, voluntary, implemented on marginally productive land and paid as a performance-based, annual cashflow stream. This would provide Government with a much greater capacity to cost effectively balance the nation's food security needs with its environmental expectations.

7.7 The private sector will understandably require a clearly defined cost-benefit in a user-pays scenario prior to embedding stewardship costs into the prices charged for their goods and services. Similarly, land managers will seek surety that they too receive tangible cost-benefits before embarking on changes to their land management practices, including payment for;

1. the environmental benefits delivered,
2. the cost of delivering those benefits, whether they be operational or capital expenditure, and
3. the opportunity cost of forgone income from the land committed to the stewardship initiative/s.

7.8 Architects of the next generation of stewardship schemes need to consider complementary incentives, including mitigation banks, cost-share agreements, safe-harbor agreements[25], tax credits, revenue sharing and those incentives that complement private markets[26]. Australia has a number of institutional and regulatory frameworks that should be critically examined to determine if they are both suitable and capable of providing funding or effecting positive change in land management practices. Far from being an exhaustive list, Australia should undertake a detailed cost-benefit analysis of the following potential funding opportunities;

1. including GST on all food[27] and using these revenues to fund the ESS;
2. enabling regulated industries to pass-through stewardship costs to consumers;
3. increasing the tax deduction for superannuation funds investing in stewardship schemes;
4. providing an exemption from stamp duty on purchases of land managed under the ESS;
5. providing an exemption from capital gains tax on sales of land managed under the ESS;
6. granting relief from local government rates for land delivering stewardship services;
7. investment by the Australian Government's Future Fund, consistent with its Investment Mandate[28]; and
8. making income derived from private sector funded environmental programmes tax-free.

These suggestions should be comprehensively reviewed and not dismissed merely for political expediency.

7.9 In creating a conducive taxation and investment environment, it is critical that the distortionary impacts and problems inherent in Australia's agricultural Managed Investment Schemes (MIS) are not replicated. These tax driven pooled schemes, have primarily invested in plantation timber and orchards, with investors often more focussed on the taxation benefits, than the profitability or sustainability of the enterprise. They allow the investor full tax deductibility for capital expenditure, a concession not available to non-MIS primary producers. This has created investment opportunities that have significantly impacted regional hydrology and downstream water use, distorted market signals and investment decisions, and through the displacement of families formerly involved in farming the MIS land, severely undermined local communities and associated services, such as schools and hospitals which require a critical mass to employ staff and remain operationally viable.

[25] Safe Harbor Agreements provide assurances to private landowners, who voluntarily enter into an agreement to restore and maintain habitat for endangered species that they will not incur additional regulatory obligations in excess of those that existed at the time of entering into the agreement. This seeks to allay landowners' concerns that increasing an endangered species habitat and population will lead to increased land use restrictions. Environmental Defense Fund, http://www.edf.org/article.cfm?ContentID=399. <accessed 12.10.09>

[26] Casey (2008), *Creating Economic Opportunity Through Ecotourism/Ecosystem Services in North Carolina*.

[27] The GST is not levied on fresh and unprocessed food in Australia.

[28] The Future Fund was created by the Australian Government to meet the cost of unfunded public sector superannuation by managing invested monies and growing its asset base. Contributions to date have been from Government budget surpluses and the sale of Telstra shares, previously transferred to the Fund, and formerly held by the Federal Government. The Fund's long-term asset allocation allows up to 15% of the portfolio weighting to be invested in alternative assets. As at the 30 September 2009 the balance of the Fund was AU$64bn. http://www.futurefund.gov.au/ <accessed 05.11.09>