

**Submission to the House of Representatives Standing
Committee on Environment and Heritage Inquiry into
Public Good Conservation - Impact of Environmental
Measures Imposed on Landholders**

**Submission from the
Soil and Land Conservation Council of Western Australia**



January 2001



**Soil and Land
Conservation Council
*Western Australia***

Mr Ian Dundas
Committee Secretary
Standing Committee on Environment and Heritage
House of Representatives
Parliament House
Canberra ACT 2600

Dear Mr Dundas

**RE: Inquiry into Public Good Conservation – Impact of Environmental Measures
Imposed on Landholders**

Please find attached the submission from the Soil and Land Conservation Council of Western Australia to the House of Representatives Standing Committee on Environment and Heritage for its Inquiry into Public Good Conservation – Impact of Environmental Measures Imposed on Landholders.

Council welcomes the opportunity to make a submission and looks forward to discussing the issues with you further at the public hearing in Perth on Tuesday, 20 February 2001.

Please call Christine Wardell-Johnson on 08 9325 0025 if you have any queries relating to this submission.

Yours sincerely

Christine Wardell-Johnson
EXECUTIVE OFFICER

31st January 2001

ABOUT THE SOIL AND LAND CONSERVATION COUNCIL

THE ROLE OF THE COUNCIL

The Soil and Land Conservation Council is the peak landcare body for Western Australia. It is a statutory authority established under Section 9 of the *Soil and Land Conservation Act* and reports directly to the Minister for Primary Industry.

Section 16 of the *Soil and Land Conservation Act* defines Council's functions. These functions fall into four main areas of activity:

- Leadership
- Policy Development
- Monitoring
- Providing assistance to the Commissioner for Soil and Land Conservation

Table 1 demonstrates the relationship between Council's statutory functions and its main activities.

Table 1: Functions of the Soil and Land Conservation Council.

Activities	Functions listed in Section 16 of the <i>Soil and Land Conservation Act</i>
Policy Development	<ul style="list-style-type: none">• Make recommendations to the Minister as to land use, soil and land conservation policy and programs for the implementation of that policy.• Supervise soil and land conservation programs undertaken by the State Government.
Leadership	<ul style="list-style-type: none">• Co-ordinate and advise on the implementation in the State of soil and land conservation programs funded by the Commonwealth Government.• Promote awareness of land degradation and conservation.• Co-ordinate the establishment of, and activities within, Land Conservation Districts.
Monitoring	<ul style="list-style-type: none">• Advise the Minister as to the condition of soil and land resources.• Co-ordinate, monitor and review soil and land conservation programs and activities.
Assist Commissioner	<ul style="list-style-type: none">• Generally assist the Commissioner in the carrying out of his functions under the Act.• To carry out such functions under this Act as the Commissioner or the Minister, respectively, may refer to the Council.

THE COUNCIL'S MISSION

To provide policy and advice to government on the conservation, sustainability and improvement of soil and land resources.

THE COUNCIL'S OBJECTIVES

The Council's primary objective is:

To provide direction for landcare to maintain and improve the condition of land.

The Soil and Land Conservation Council has developed two secondary and specific objectives for the period 1997-2002 and strategies to achieve these.

i. Over five years, there will be improved management of land.

This objective will be achieved through the following strategies:

- develop appropriate policy;
- support management practices through funding and education; and
- ensure adequate monitoring and reporting.

ii. Over five years, inappropriate use of soil and land resources will be identified and reduced.

This objective will be achieved through the following strategies:

- identify inappropriate use of soil and land resources;
- develop appropriate policy;
- support policy implementation, through funding and education; and
- ensure adequate monitoring and reporting.

COUNCIL MEMBERSHIP

The *Soil and Land Conservation Act 1945* defines the membership of the Soil and Land Conservation Council.

The Council has eleven members with expertise in land conservation issues, appointed by the Minister for Primary Industry. There is a balance of community and government representatives.

Council's membership consists of:

- Two land user representatives
- One member nominated by the Western Australian Farmers' Federation
- One member nominated by the Pastoralists and Graziers' Association
- One member nominated by the Country Shire Councils' Association
- One member nominated by the voluntary conservation movement
- One member from Agriculture Western Australia
- The Commissioner of Soil and Land Conservation

Three officers employed under the Public Service Commission Act

Impacts of conservation measures and their costs

In Western Australia the agricultural sector is under challenge by a number of severe land degradation problems, particularly salinity. Some properties and even areas are becoming unviable as a result. Since 1983, when the concept of land conservation districts was introduced, there has been a significant increase in landholder efforts to address degradation. All parts of the state are covered by regional natural resource management or catchment groups. There are 150 Land Conservation District Committees, an estimated 600-700 smaller landcare and sub-catchment groups, and a considerable amount of on-ground effort. Conservation measures are being undertaken voluntarily by landholders in order to enhance production, improve the amenity of their property, rehabilitate degraded land and prevent land degradation occurring.

A number of regulatory measures have been introduced to ensure that efforts made by individual landholders and the groups are not undermined. In Western Australia the conservation measures that are imposed on landholders include:-

- Non approval of a notice of intent to clear
- Non-approval of a notice of intent to drain (saline water)
- Non-approval to dispose of effluent
- Compliance with a soil conservation notice
- Protection of rare and endangered flora and fauna
- Protection of broader biodiversity issues such as wetlands

Clearing Controls

In considering the issue of public good/private benefit it is important to remember the responsibilities of all landholders and industries towards fellow landholders and the environment. In Western Australia the view has been taken that landholders do not have the right to cause significant environmental damage, either on or off their properties.

However, farmers still hold a special place in environmental legislation. Their industry is subject to far fewer controls than most industries. Environmental management is generally introduced on a transitional basis, with significant subsidies to assist both individuals and the industry to assist them manage the cost of meeting modern environmental requirements.

Land clearing controls are a case in point. In Western Australia, controls on clearing by farmers have been gradually introduced over fourteen years, and it is only since 1999 that they have reached a standard comparable to the controls placed on numerous other industries. Basically, all landholders are required to demonstrate that their development proposal will not cause harm to adjoining or downslope landholders, or destroy recognised environmental values – such as through the destruction of a rare species or ecosystem.

As recently as 1982, land in Western Australia was still being allocated for agricultural purposes. General controls on clearing for agricultural purposes were first introduced in 1986, and have been progressively tightened in response to escalating concerns at environmentally irresponsible behaviour, such as clearing in salinity prone catchments. A regulation to notify the Commissioner of Soil and Land Conservation of intended clearing came into effect in 1986. Guidelines and land degradation assessment criteria were published in March 1994 after lengthy consultation with the rural community and others. Of significance was the recognition that salinity was a key issue. The guidelines set minimum levels of remnant vegetation for subcatchments.

In May 1995, the Minister for Primary Industry Monty House announced that the State Government has adopted a new policy in relation to land clearing. The key changes were the “20/20 rule” which restricted clearing where there was less than 20% remnant vegetation on properties and within shires, along with consideration of nature conservation values in the assessment process.

In April 1997, the Minister for Primary Industry announced that a Memorandum of Understanding for the protection of native vegetation on private land had been signed between key government agencies and authorities. The MOU set out policy, procedures and criteria for assessment of clearing of rural zoned land.

In March 1999, this policy was again adjusted to require landholders to prove that any proposed clearing would not cause land degradation, as is generally required of other industries. This was re-inforced, in relation to nature conservation and broader environmental issues, by a subsequent decision of the Environmental Protection Authority.

The long transition period between 1986 and 1999 should have enabled landholders to adjust their business practices to allow for their increasing inability to clear. Additionally, during this 13 year period the State Government:

- carried the cost of surveying and assessing land where clearing was proposed for agricultural purposes (estimated in 1998 at over \$700,000 per year); and
- introduced fencing incentives (over \$5 million allocated since 1988) for landholders with native vegetation, including for a number of landholders who agreed to retain areas of vegetation as part of being allowed to clear significant other areas.

Before the issue of private benefit and public good is pursued in relation to controls on clearing, there needs to be clarity on landholder responsibilities. In Western Australia the position is that no landholder is considered to have a legal right to cause environmental harm or damage downstream properties. Hence there is no basis for payments because of the perceived “public good” that may be involved. Farmers have already had a significant publicly subsidised transition period from the time of no controls to the current level of control, which is now comparable with those followed by other industries.

Management of increased saline flows

Western Australia’s agricultural areas are experiencing a rapid increase in highly saline surface and ground waters. Some 30% of previously unaffected land, both public and private, may become seriously degraded. The areas damaged, or likely to be damaged, include farmland, bushland, residential and industrial areas in rural towns, and essential infrastructure such as roads and railway lines.

This damage is occurring as a result of agricultural practices which removed the deep rooted perennial vegetation and replaced it with annual crops and pastures which only use a percentage of the available annual rainfall. It can be argued that the increased saline flow is, in effect, an effluent created by the agricultural industry. If this argument is accepted, then it follows that the agricultural industry should have the legal responsibility of reducing the damage its economic activities have caused.

However, Western Australia has adopted a more cooperative approach, whereby substantial government assistance is being directed towards helping the agricultural sector deal with the costs of improving both their economic and their environmental sustainability. This is being

directed through a State Salinity Strategy, and already more than \$60 million of State and Commonwealth money per year is being directed towards the problem. A considerable proportion of these funds goes directly to supporting on-ground works by landholders and catchment groups. It must be recognised that while the Commonwealth/State contribution is significant, landholders usually multiply this amount by a factor of at least four in many cases.

Included in the mechanisms being adopted to deal with this issue are various forms of drainage. Drainage can be loosely defined as “*the act of transferring water and its solutes from one area to another*”.

In Western Australia there has been considerable controversy over the right of landholders to institute drainage schemes designed to alleviate their salinity problems. This has largely occurred because of:

- differing views over the likely benefits and impacts of proposed drainage works, and scientific difficulties in clarifying these benefits and impacts;
- fears amongst downstream landholders that significant damage would occur as a result of drainage, to both public and private lands;
- conflicting opinions and advice on what is good drainage “best practice”;
- legal uncertainty over the rights and responsibilities of both landholders and state government; and
- an assumption within government that landholders with drainage proposals are seeking private benefits that will cause substantial public costs (downstream damage).

While it is possible to debate at great length the relative merits of these issues, some fundamental facts will remain unchanged:

- The actions that unleashed salinity occurred over many years and through many landholders, often with government support and encouragement. Whatever the current landholder does, extra salt water will flow and the downstream landscape will become increasingly salinised. Drainage may only change this by a small degree.
- It is impossible to determine with any degree of precision what the relative merits and impacts of particular drainage proposals are. Hence it is impossible to precisely determine the relativity of any public costs and private benefits.

To apply the principles of public good and private benefit in this arena, with any degree of confidence, will require a considerably higher degree of scientific certainty in estimating catchment water and salt loads, with and without drainage, than currently exists.

Given the urgency of the situation, more urgent approaches are required.

Financial assistance for conservation by landholders

Financial assistance for conservation by landholders in Western Australia is available through a number of funding sources including:

- Natural Heritage Trust (NHT);
- State Revegetation Scheme (final round in 2000);
- Remnant Vegetation Protection Scheme (last round currently closing);
- Gordon Reid Foundation for Conservation; and
- Community Conservation Grants.

The State Revegetation and Remnant Vegetation Protection Schemes are drawing to a close. However, a new scheme combining elements of the two previous schemes is currently under development as discussed below. The Commonwealth could assist by actually contributing to these schemes or by ensuring compatibility of the assessment process of their own schemes to avoid duplication.

In considering financial assistance for conservation by landholders, it appears more appropriate to offer incentives for landholders to retain and actively manage remnant vegetation rather than compensate them for not being able to clear. Active management would include protection, expansion and enhancement of the remnant. Fencing alone is often insufficient to ensure the long-term viability of the remnant. In such a situation it may be necessary to find an appropriate balance in the proportion of public and private good.

Sharing costs

The agricultural region of Western Australia is part of one of the richest non-tropical botanic provinces in the world. Without intervention the loss of land currently at risk to salinity would see 450 plant species endemic to the region become extinct, and three quarters of the region's waterbird species severely decline (*Natural Resource Management in Western Australia, The Salinity Strategy, March 2000*). The retention and effective management of existing native vegetation is vital to ensure that this does not happen and would have benefits right across the community.

A Native Vegetation Working Group was established by Hon. Monty House, Minister for Primary Industry; Fisheries in 1999. The Working Group was charged with the task of developing "mechanisms that minimise the economic burden carried by individual landholders in the protection and retention of privately owned bushland in agricultural areas". The focus of the group was on mechanisms that would provide an incentive for landowners to retain native vegetation. The report and recommendations of the group have now been accepted by the State Government.

Recognising the complexities involved, the Working Group agreed that there was no single state-wide mechanism that could be adopted. Instead an overall approach that covers four interrelated areas of action was developed. This provides choice to landholders, and can be readily varied to suit different areas and circumstances. It involves:

- Gaining greater acceptance by landholders that having areas of well-managed bush on their property is an integral part of operating a productive and sustainable farm.
- Removing disincentives and adding incentives that affect a landholder's ability and willingness to own and manage large areas of bushland.
- Utilising market based approaches to the fullest possible extent, before programs that interfere with the free market are introduced.
- Acting to resolve difficult cases. Where other measures fail, providing both compassionate and active intervention to address the needs of the families affected and the landscape at large.

Additionally, the Working Group considered that it would be inequitable to provide assistance packages for landholders prevented from clearing without also providing similar packages to those who voluntarily stopped clearing their properties many years ago, when the problems of salinity and biodiversity loss first became apparent.

SLCC fully supports and endorses the guiding principles of the Native Vegetation Working Group as listed below.

1. There is no longer a well-defined legal right to clear, and what rights there are come with responsibilities.
2. When landholders are prevented from causing harm to downstream properties, through the off-site environmental impacts of their clearing or inappropriate use of the land there is not, and never has been, a legal or moral right to compensate.
3. We have lost enough land and biodiversity, and are in a landscape crisis. We need to help farmers who:
 - Are suffering from salinity;
 - Have already conserved significant vegetation areas; or
 - Still want to clear
4. It is better to reward than penalise.
5. Government has clear roles and responsibilities to fulfil. These include:
 - Mediating equitable and responsible land management;
 - Protecting the rights of landholders from the damaging actions of other landholders; and
 - Showing leadership on their own land.
6. Lack of individual profitability or viability is not an argument for continued clearing, but it does demonstrate the need for assistance.
7. Farmers need to recognise that ownership and management of bushland on their properties is an integral part of sustainable farming and that in areas where little bush remains there is a need to revegetate.
8. Areas that can reasonably be considered as unsuitable for agricultural use following clearing will not fulfil criteria for equity assistance, but may fulfil criteria for management assistance.
9. The community needs to be able to clearly identify what its rights are, what the government requirements are, and to have a meaningful involvement in the development and application of assistance packages. This involvement is most appropriately managed through recognised regional groups.
10. The current generation of landholders should not be expected to bear the cost of past mistakes, nor should future generations be expected to pay for current mistakes.
11. Where the community is paying for a community benefit it should involve a fair recompense to an individual leaving them no better or worse off.
12. Any assistance measures need to be applied in an integrated manner if maximum value is to be gained from them. This includes measures that target farm business viability, biodiversity imperatives and the control of land degradation.

The fifteen recommendations made by the Working Group are now being progressively funded and implemented. This represents substantial additional support to the farming sector in meeting modern environmental standards. Some of the key support mechanisms outlined by the working group are listed below:

Remnant Vegetation Protection Scheme (RVPS). This is to be broadened and extended. Additional elements being considered include incentives to assist shire councils introduce rate relief for bushland and incentives to encourage landholders into fence “set-back” to widen road verge vegetation. Draft guidelines are currently being developed by a sub-group of the Soil and Land Conservation Council, and will be worked up with and delivered through the regional groups.

Between 1988 and 2000, the RVPS has supported 1323 projects totaling almost \$4.5 million and protecting 66,426 hectares under covenant. The Scheme encouraged landholders to promote revegetation, and protect and manage remnant vegetation on their land. Funds were provided to fence and protect remnant vegetation where landholders were prepared to manage and use the land in ways that support its nature conservation values for a period of 30 years. A memorial was placed on the land title to inform all future landholders of their management requirements.

Bush Brokers. This program encourages much greater private investment into the ownership and management of bushland. It is a collaborative partnership between the World Wide Fund for Nature Australia (WWF), the Real Estate Institute of Western Australia (REIWA) and the Soil and Land Conservation Council (SLCC). It is conducting training programs for agents in selling conservation values, undertaking market analysis, and developing materials that will stimulate the private conservation market. The first materials will be available early in 2001.

Bush Bank Revolving Fund. This is a consortium between the WA Landcare Trust, the National Trust, the World Wide Fund for Nature and CALM. Revolving Funds operate by purchasing specific parcels of land, where significant conservation benefits are gained from the purchase. While the land is owned by the fund it has a protective covenant put over it and a management agreement drafted. It is then on-sold, with adherence to the management agreement being a condition of sale. While the aim is to be self-funding, land may be sold at below cost price in order to gain the best conservation outcome. For financial viability a fund is reliant on initial start up capital, plus ongoing income from grants, bequests, donations and its more profitable sales.

In addition to the measures outlined above, on October 12th 2000 the Minister for Primary Industry announced that a Special Assistance Process would be established to help landholders who:

- are suffering significant and unreasonable economic costs as a result of having large areas of bushland on their property; and/or
- have had reasonable long term business plans disrupted by the need to retain a large area of bushland on their property; and/or
- are seeking to improve the protection or management of a large area of bushland on their property where there are clear benefits to landscape sustainability.

In general, it is considered that a landholder with more than 20% of their property under bushland may be disadvantaged compared to their neighbours.

The Special Assistance Process will include:

- a number of incentive payments and other assistance measures;
- a Case Management Team of departmental officers who work with landholders to provide advice and guidance on what incentive or market based approaches are available, and also assist landholders to access these.
- a FarmBush Advisory Committee to assess individual cases and recommend to the Minister on what special assistance (if any) should be provided to particular landholders for whom incentive and market based measures are inadequate, and who have taken genuine steps to resolve the problem through other incentive and market based approaches;

- a fund which can be drawn upon to provide payments in special circumstances, on the advice of the FarmBush Advisory Committee.

Recommendations, including potential legislative and constitutional means to ensure that costs associated with public-good conservation measures are shared equitably by all members of the community.

Many of the issues relating to public-good conservation measures and equity in relation to clearing are currently being addressed in Western Australia as outlined above. Additionally, in January 2001, Planning Bulletin No.48 was released by the Western Australian Planning Commission (WAPC) advising of revisions to *Development Control Policy 3.4 – Rural Land Use Planning*. These revisions enable the subdivision of areas of remnant vegetation from cleared rural land in special circumstances for conservation purposes.

SLCC wishes to stress the importance of partnerships between the Commonwealth, State and regions in addressing many of the issues discussed in this submission. In Western Australia, regional groups have a pivotal role to play in strategic planning for natural resource management within their respective regions. The groups are community based and managed, and established along Agriculture Western Australia regional boundaries. Five groups have been established in the agricultural region with another two groups forming in the rangelands. The five agricultural regional groups are each in the process of finalising natural resource management strategies which include strong partnerships with State government agencies.

Providing true options to landholders in regards to public-good conservation measures must be a priority. Issues to address include buy-back options in cases where landholders no longer wish to own their remnant vegetation. This would include cases where a landholder is refused permission to clear a large tract of bushland and consequently the remnant is considered unproductive or undesirable by the landholder. Rather than compensation, the option should be provided to buy-back this land. This would be an expansion of the Bush Brokers concept with the State and regions then partnering to actively manage the land.

Building on the rate relief option proposed under the revised Remnant Vegetation Protection Scheme, the Commonwealth and State could partner in an initiative to provide rate relief to local government. Many local governments in Western Australia are severely limited in their ability to provide rate relief to landholders for remnant vegetation due to a declining population and hence a declining rates base. Removing or at least decreasing the rates payable on remnant vegetation would reduce the conservation cost on landholders and encourage retention and protection of the remnant.

Overall Conclusion

Continued debate over public good and private benefit is unlikely to produce significant improvement in the allocation of resources for development of sustainable landscapes. Instead, an approach is needed which recognises the fundamental obligation of land owners to behave with environmental responsibility, while at the same time seeking the most effective mechanisms to produce the changes in landscape management that benefit all.

Where these mechanisms involve payments to landholders then they should be subject to the fundamental common law test of “reasonableness” – given the physical circumstances, the historical background and the relative abilities of the parties to undertake certain actions,

what payments and actions are “reasonable”. This will always rely on judgement, often the judgement of those people nearest the landscape.

The Commonwealth’s role in these issues is largely a financial one – it is wholly or partly funding the process of change. It is suggested that the Commonwealth should be openly negotiating its “bottom lines” – what degree of change it is expecting for its expenditure – while allowing regional and state bodies to decide on the mechanisms that are most effective in meeting these bottom lines.

An open monitoring and evaluation process would, over a reasonable period of time, determine which approaches were both reasonable and effective, and which were not.