

Philanthropy

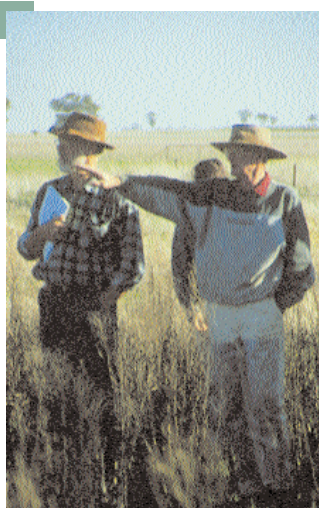
sustaining the land



A briefing paper proposing tax and policy change that will forge new partnerships and create innovative pathways for nature conservation across Australia.

Philanthropy

sustaining the land



The Vision

‘to create a strong and vibrant market for private investment and philanthropic donation for nature conservation’

The Goal

‘That private sector contributions will exceed public expenditure for nature conservation by the year 2020’



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Introducing the briefing paper

This document puts forward a bold and imaginative proposal that has the potential to create a strong and vibrant market for private investment and philanthropic donation for nature conservation.

Were this to occur it is quite feasible that private sector contributions could exceed public expenditure for nature conservation by the year 2020.

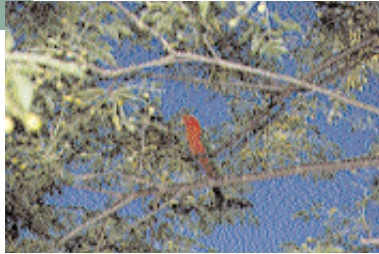
The briefing paper identifies the policy changes required to achieve this goal. Such changes would lead to:

- **effective partnerships delivered through Private Conservation Trusts** that foster on-ground conservation action between landholders, the community (as volunteers), philanthropists (as facilitators) and businesses (as contributors of funds and resources); and
- **improved incentives for philanthropic contributions** (through the taxation system) to nature conservation.

A pathway for how this might be achieved is set out on the following pages together with examples of what is being done here and overseas.

The United States is actively involved in promoting nature conservation from the private sector, and is demonstrating what can be achieved. The private sector is of equal significance to the public sector in the United States, and is proving to be powerful and highly successful in achieving conservation outcomes.

Following a Decade of Landcare, Australia needs to explore different approaches towards nature conservation. Now, as Australia approaches a new millennium, is the perfect opportunity to forge a new framework that has the capacity to better sustain our nation's natural heritage through the decades ahead.



Tax and Nature Conservation

The Importance of Nature Conservation on Private Lands

Traditionally Australia has depended on the creation of National Parks to conserve areas of natural and scenic beauty. This has resulted in a network of public conservation reserves that are the envy of the World, an achievement of which we Australians can be justifiably proud.

But many of our most vulnerable ecosystems for communities of native plants and animals are found on private land within our agricultural heartlands and close to our cities. Examples include the temperate woodlands and grasslands of the Murray Darling Basin, coastal heathlands, and parts of the rangelands.

Traditional approaches to public conservation through National Parks will not work in these regions. New and innovative approaches are required. Much can be learned from the United States where a strong market for private investment and philanthropic giving for nature conservation has been created.

Taxation incentives - A driver of philanthropic giving

Taxation is recognised as a fundamental driver of philanthropy; a mechanism through which community-business partnerships can be facilitated. This mechanism allows business to do what they do best - develop innovative solutions to complex problems in a way that is largely free of bureaucracy.

To successfully engage the philanthropic sector several factors need to be addressed:

- Conservation has to be transformed from one of the most highly taxed land-uses in Australia to a land-use that enjoys taxation treatment commensurate with the public benefits associated with our natural heritage.
- Practical on-ground environmental management needs to be given an increased profile and promoted as part of the core business of the charitable and philanthropic sectors.
- Mechanisms that facilitate and promote the creation of private conservation Trusts need to be established.





Private Conservation – The US Experience

The United States has a vibrant non-government sector actively involved in promoting nature conservation. The private sector is of equal significance to the public sector.

Conservation on private lands is supported by over 1500 Land Trusts that raise funds through corporate and individual donations. The Trusts buy and sell conservation lands and enter into legally binding conservation covenants that restrict development rights and protect conservation values in perpetuity. An umbrella organisation – the *Land Trust Alliance* – supports the work of individual Trusts, coordinates activities and provides supporting knowledge and training programs that build organisational capacity.

The role of The Nature Conservancy, the largest of the US conservation organisations is outlined as an example of the potential of the non-government sector.

The Nature Conservancy now protects more than 9 million acres of ecologically significant land in the United States.

The Conservancy places primary importance on developing partnerships with landholders, businesses, academic institutions and government. Some examples are:

- Aluminium Company of America (Alcoa) and The Nature Conservancy signed a cooperative agreement in January 1996 that will result in the conservation and management of 1058 acres in Arkansas;
- A partnership was established in 1996 between the New Jersey Chapter of The Nature Conservancy and a utility company called Public Service Electric and Gas Company (PS&G). Under contract, the Conservancy is required to manage 16,000 acres of land owned by PS&G, which is home to 376 rare plants, animals and natural communities. 101 of these are listed by the State of New Jersey as endangered;
- Microsoft co-founder Paul G. Allen pledged to donate \$5 million to The Nature Conservancy of Washington in January 1997 in the form of a Challenge Grant donated through the Paul G. Allen Forest Protection Foundation. The Foundation will donate \$1 for every \$2 donated to the Conservancy until the \$5 million limit is reached. Allen's intention is to spur additional private donations to a total of \$15 million.

Through innovative programs of this kind the Conservancy has become one of the top 10 charities in the United States. This demonstrates the increased importance of nature conservation to individuals and corporations, who between them provide 80% of funding for The Nature Conservancy.

Because the Nature Conservancy relies on donations and investment they have had a strong incentive to find innovative ways to expand. The result has been a dramatic increase. Today annual turn-over exceeds \$US450 million.

Private Conservation Trusts with the Power to Conserve

Establishment of Private Lands Conservation Trusts

If a thriving non-government sector for private lands conservation is to be created, an expanded suite of organisations for private conservation will be required.

These organisations, known as Land Trusts in the United States, would be able to access the full range of conservation tools outlined in the following pages including: the capacity to raise funds through donations and corporate contributions; enter conservation covenants; and buy and sell land under Trust.

The organisations could be supported by an overarching Trust that supports the development of regional or local Trusts and accredits these smaller organisations to deliver conservation programs

Conservation Covenants

A conservation covenant is a legally binding agreement between a landholder and a third party regarding the use and management of their land. It is registered on title and, in the case of conservation, would generally restrict adverse land-uses and prescribe the management actions required to sustain conservation values in the long term.

In Australia, conservation covenants are statutory and linked to government agencies. The Trust for Nature (Victoria) and the National Trust (Western

Australia) are the only organisations with the capacity to enter conservation covenants at arms length from government.

Enabling legislation that empowers accredited trusts to negotiate conservation agreements on a level playing field with government agencies is one of the centerpiece proposals of this briefing paper.

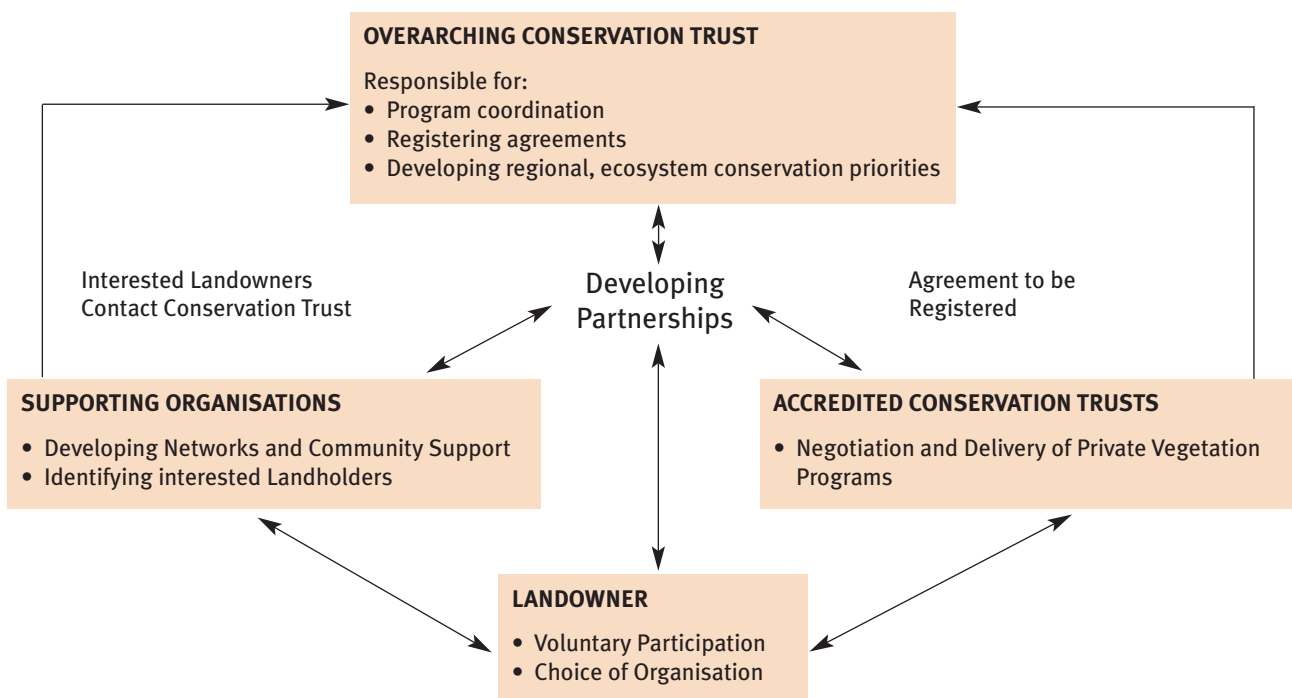
A Proposed Model

An overarching Conservation Trust provides support and builds the capacity of regions to undertake conservation works. It can accredit local and regional trusts to deliver conservation programs.

The Conservation Trusts would build on the work of Landcare and the Natural Heritage Trust. They would be focused on on-ground outcomes rather than advocacy.

To give effect to this Vision legislation is required that enables Conservation Trusts to be established. They would be registered as environmental organisations for tax purposes and be able to enter conservation covenants. It is unclear whether such legislation would be required in each State or if the Commonwealth could use its recently acquired capacity to enter conservation agreements through the *Environment Protection and Biodiversity Conservation Act 1999*.

A model for non-government organisations to participate in nature conservation is given below.





Toolbox of Financial Mechanisms

What sets the United States apart from Australia in terms of conserving natural areas is the range of financial tools and incentives available to promote private conservation. These tools are beginning to be used in Australia, but are limited in their application because of tax and other legislative impediments. Each of these tools is introduced below.

Basic Ways of Giving

Cash donations: involves the capacity of a conservation organisation to receive donations from the public, corporations, philanthropic trusts and other charitable organisations.

Donations of assets – eg shares: involves the ability to make donations of property such as shares. The key issue with donations of this kind is the treatment of any capital gains.

Donations of land: involves the donation of a particular kind of asset - land. Of particular interest is when land of high conservation value is donated to a conservation organisation that agrees to protect and manage it in perpetuity.

Bequests: involve the donation of assets or money in a will. Once again the key issue is the treatment of capital gains associated with any property donated.

Mechanisms that Involve Conservation Covenants

Donations of conservation covenants: a conservation covenant is a restrictive covenant, in much the same way as a covenant protecting goodwill in a business. A key issue is if any change in the value of land arising from entering a conservation agreement would be tax deductible.

Deducting costs of management: businesses, such as primary producers, are able to deduct the costs of managing land from their income or claim a 34% Landcare rebate. A key issue is whether land covered by a conservation covenant should be given access to similar tax deductions.

Negative Gearing and Primary Producer Status: based on a public interest argument it has been suggested that people who buy and manage land for conservation should be given the same tax treatment as primary producers (conservation becomes a 'business' in this sense). This would allow land to be negatively geared and all costs associated with its management either depreciated or claimed as an outright tax deduction. The key issue here is whether taxation arrangements that apply to businesses could be carried over to conservation activities.



Land taxes and local government rates: most classes of land are exempt from land tax and many rural areas enjoy lower differential rates. It would be possible to exempt land covered by a conservation covenant from land taxes and Local Government rates.

Revolving funds: involve the purchase of land, attachment of a conservation covenant that protects native habitat in perpetuity to the title and then resale to a willing landholder, thereby maintaining the organisation's capital base. The Commonwealth government is committed to the establishment of revolving funds through the *Bush for Wildlife* program. Key issues include the ability of Trusts to enter conservation covenants and access to exemptions from stamp duty and other charges associated with the purchase and resale of land.

Other Financing Options used in the USA

Bargain sales of land: involves the sale of land to a conservation trust at a discounted price. The gap between the full market value of the land and the sale price is considered a charitable donation and therefore is tax deductible. Further, the portion of land value donated is exempt from capital gains tax. This is the single most effective private lands conservation instrument currently applied within the United States.

Landswaps and exchanges: involve a land trust exchanging land of high conservation value for land or other assets of a similar value. The key issue here is to ensure a capital gains tax event is not triggered through the acquisition and disposal of assets.

Capital gains roll over for voluntary acquisition: When land is compulsorily acquired by government agencies the landholder enjoys a 12 month capital gains relief in which time they may acquire a replacement asset. This roll-over provision could be extended to land of high conservation value that is voluntarily sold to a conservation trust.

Donation of land with retained right of occupation: Land is donated to a conservation trust subject to the current owner being able to live on the property until they die. The key issue is the treatment of the donation both in terms of tax deductibility and in terms of capital gains tax.

Financial options, annuities and trusts: A wide range of more sophisticated financial tools are used by land trusts in the United States. These include entry into options for the purchase of lands of high conservation land, payment of annuities to people who donate land or other assets, the use of tax free bonds and sales of shares in conservation lands. These tools raise complex tax issues, but are given favourable treatment within the United States.

Comparing Tax Treatments



In the US gifts to conservation qualify for:

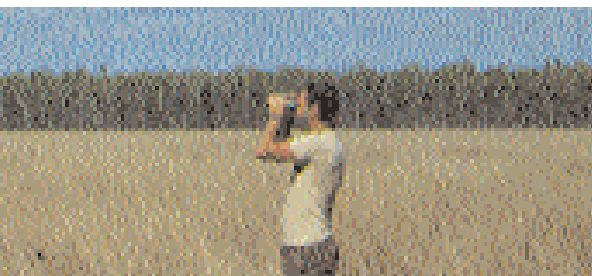
“The highest possible deduction for charitable contributions under federal law”

If this statement could be made in Australia much could be done to facilitate private investment in nature conservation. For example, The Nature Conservancy is one of the top 10 charities in the United States.

The following tables summarise the current state of play in relation to each of the conservation tools identified in this briefing paper.

Basic Ways of Giving

Tool	US Situation	Australian Situation	Changes Required
Cash donation	Cash donations are deductible and can be apportioned over 5 years	Cash donations are deductible only in the year they are made	Apportionment over 5 years
Donation of assets – eg shares	Deduction at full market value Capital gains exempt May be apportioned over 5 years	Deduction at full market value from 1 July 1999 Subject to capital gains	Capital gains tax exemption Apportionment over five years
Land	Deductible Capital gains exempt May be apportioned over five years	Deductible from 1 July 1999 Subject to capital gains tax	Capital gains tax exemption Apportionment over five years
Bequests	Exempt from Capital gains tax	Exempt from Capital gains tax from 1 July 1999	



Mechanisms that Involve Conservation Covenants

Tool	US Situation	Australian Situation	Changes Required
Donation of Conservation Covenants	Deduction of the difference in land value before and after the covenant is entered	Not currently, although may be allowable under existing gifting provisions if a statutory covenant is considered property Requires a test case	Confirm current situation and make legislative changes if required
Deduction of management costs	No	No – unless carrying out a business on the land	Give access to the 34 % Landcare rebate to land covered by a conservation agreement
Negative gearing and primary producer status	Not applicable	No	Allow negative gearing of properties covered by a conservation agreement Give landholders who enter conservation covenants primary producer status for tax purposes
State Government land tax	Exempt in many US States but not all	No exemption provided	State governments would be required to exempt land covered by a conservation covenant
Local Government Rates	Exempt in many US States but not all	A small number (less than 15) local governments provide rate exemptions NSW Voluntary Conservation Agreements are exempt from rates	State governments would be required to exempt land covered by a conservation covenant
Revolving Funds	Exempt from land sales taxes and charges in some States	Only Trust for Nature (Victoria) and State agencies are currently exempt	Allow Conservation Trusts to enter conservation covenants Exempt registered Conservation Trusts from stamp duty, taxes and charges associated with the purchase and sale of land



Other Financing Options

Tool	US Situation	Australian Situation	Changes Required
Bargain Sale of Land	Deductible Capital Gains exempt May be apportioned over 5 years	Current taxation arrangements do not allow for Bargain Sales	Allow the gap between sale price and full market value to be a tax deductible gift Capital Gains exemption Apportionment over five years
Landswaps and Exchanges	Does not trigger capital gains tax	Capital gains tax would be triggered by the disposal and acquisition of assets	Allow capital gains to be rolled over in negotiated land swaps
Capital gains roll-over for land voluntarily acquired	Proceeds may be reinvested in similar capital (ie land) within two years provided a government agency has committed to compulsorily acquire the land in the absence of voluntary sale	No arrangements in place.	Allow capital gains roll over for properties voluntarily sold to conservation trusts
Donation of land with retained right of occupation	Donation of the value of the land is allowed over five years and is capital gains tax exempt.	May be deductible but is untested	Allow deduction for the donation of land with retained right of occupation. Capital gains tax exemption Apportionment over five years
Conservation annuities, bonds and shares	Receive favourable taxation treatment especially in relation to capital gains and estate taxes	Only deductible once annuity, bond or shares mature/are sold	Allow donations of principal to be deducted over five years Exempt from capital gains tax Treat life time annuities as income

Summary of Recommendations

To realise the vision of private sector contributions exceeding public expenditure on nature conservation by the year 2020 the following recommendations should be considered by governments.

Recommendation 1

To facilitate private sector involvement in nature conservation enact legislation enabling the establishment of private lands conservation trusts. With a focus on administrative simplicity, this legislation should:

- Allow broad fund raising powers that allow for donations from individuals or organisations in a manner consistent with the objectives of the Trust;

- Provide for conservation trusts to be placed on the register of environmental organisations that enables them to receive tax deductible donations; and

- Allow the conservation trusts to enter statutory conservation covenants that are legally binding in perpetuity and registered on the title of land.

- Allow existing conservation trusts to sponsor the development of subsidiary/accredited trusts which would be given the same status as the parent organisation.

Recommendation 2

To encourage greater private contributions, allow all donations of property to conservation trusts to be tax deductible over five years and exempt from capital gains tax. The definition of property for the purposes of this recommendation could be extended to:

- All land, physical and financial assets;

- Conservation covenants;

- Bargain sales of land – that is the gap between sale price to the conservation trust and the full market value of the land;

- Donations of land with an occupation right retained by the existing owner; and

- Donations of assets for which a limited lifetime annuity is paid.



Recommendation 3

To facilitate the creation of private conservation reserves, provide the following tax incentives to land covered by a conservation covenant.

- Access to tax deductions, or the 34 % Landcare rebate, for costs associated with managing land covered by a conservation covenant;

- Exemption from State land taxes;

- Exemption from local government rates similar to NSW practice;

- Exemption for conservation trusts from stamp duties, taxes and charges on the purchase and sale of land in the operation of a revolving fund; and

- Allow private conservation reserves to be negatively geared and give their owners primary producer status.

Examples

Examples of the impact of tax on conservation

Joe owns a block of land that he manages for primary production. The value of the land is \$250 000. As a primary producer Joe is able to deduct from income all costs associated with undertaking his business including: interest payments on loans and any costs of managing the land including any rates and charges. As a necessary part of his business costs associated with fencing, weeding and so on are also tax deductible.

Jill owns an undeveloped block of land of high conservation value which is also valued at \$250 000. Because conservation is not a business that generates income, Jill is unable to deduct from income the costs of managing her land. Further she must earn and pay income tax prior to investing any money in her land.

Jill would like to enter a conservation covenant with a conservation organisation to protect her land in perpetuity. However, this will decrease the value of her land, by \$100 000. There are no arrangements for the value of this contribution to be deducted from her taxable income.

Bob wants to donate a property, worth \$250 000 of high conservation value to a registered environmental organisation. However, he will be liable to pay tax on any capital gain arising from the donation (\$100 000), prior to making a deduction for his donation to a charitable organisation. Further, the remaining deduction (\$150 000) must be deducted in one year, rather than over 5 years as allowed for under the Cultural Bequests Program.



Supporters of the briefing paper

Private conservation is gaining increased attention in Australia. This briefing paper has put forward a range of options that, if adopted, will enhance the capacity of the private sector to complement existing conservation programs being supported through the Commonwealth government's Natural Heritage Trust.

The document provides a unique opportunity for Australia to take the next step in conservation policy by catalysing private markets for nature conservation.

Supporters of the briefing paper include:

Philanthropy Australia

"This document is a comprehensive analysis of what can be readily achieved in Australia to replicate some of the extensive tax incentives that are available in the USA. Philanthropy Australia encourages the Government to introduce such practical yet far reaching tax reforms which are in accordance with the Government's policy on mutual responsibility."

Elizabeth Cham, Executive Director

The Australian Landscape Trust

"The Australian Landscape Trust, a partnership of major Australian philanthropic Trusts, provides coordinated support of conservation and sustainable development programs. Our funding grants allow private citizens and the corporate sector, in concert with government agencies, to ensure Australians protect their land with its unique flora and fauna for the next generation. We welcome and actively encourage government tax and policy initiatives to promote such community based conservation."

Tom Healy, Trustee

The Ian Potter Foundation

"This is an excellent document that sets out the case for involving the private sector in conservation and makes constructive proposals by drawing comparisons with the incentives available in the USA. To achieve active private sector involvement we need a quantum leap in our tax incentives in respect to conservation."

I hope the document leads to changes in government policy in this area."

Charles Goode, Chairman

Trust for Nature (Victoria)

"We encourage you to support the proposals in this document as a means for all of us to protect our natural heritage, particularly when you consider that all we have left is all that we will ever have. Time and your support are critical."

Brain Whelan, Director

This briefing paper was developed drawing on the research of Carl Binning and Mike Young, **CSIRO Wildlife and Ecology** under the National Research and Development Program on Rehabilitation, Management and Conservation of Remnant Vegetation. This research was funded by Environment Australia and the Land and Water Resources Research and Development Corporation.

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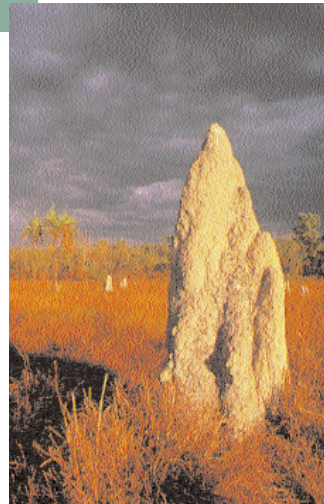
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Only with a genuine partnership between individuals, business, government and the community can we hope to properly address contemporary social problems and create a more civil society.

Prime Minister John Howard Launching the Community Business Partnerships Program
26 March 1999.