Chapter 3

The impact of native vegetation laws and legislated greenhouse gas abatement measures on landholders

Introduction

3.1 This chapter considers the impact of native vegetation laws and greenhouse gas abatement measures on landholders, in particular, in relation to any diminution of land asset value and productivity.

3.2 The 2004 Productivity Commission report on the impacts of native vegetation and biodiversity regulations contains a substantial discussion on the impacts on landholders. The report noted that landholders receive both productivity and amenity benefits from selective retention of native vegetation and biodiversity. It was recognised that in some regions there are benefits to landholders from reduced soil and water degradation arising from vegetation retention or planting.[1] Negative impacts on farming practices were reported as:

- preventing expansion of agricultural activities;
- preventing changes in land use (for example native to cropping) and adoption of new technologies (such as installation of centre-pivot irrigation);
- inhibiting routine management of vegetation regrowth and clearing of woodland thickening to maintain areas in production; and
- inhibiting management of weeds and vermin.[2]

3.3 The committee received evidence during this inquiry which reflected that received by the Productivity Commission: there are some benefits for landowners arising from native vegetation and greenhouse gas abatement measures but there are also a range of negative impacts. However, the majority of submissions received from those directly involved in agriculture outlined the negative impacts of laws regarding native vegetation. These negative impacts include restrictions on agricultural activities which decrease productivity levels and subsequently the value of land. As a result there are a number of flow-on impacts for families and rural communities and indeed in terms of the relationships between landholders and state and territory government officials.

3.4 It must be recognised from the outset that the committee received a substantial number of submissions from aggrieved landholders, principally farmers, who reported a diminution of land asset value and saw it as a direct consequence of native

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1 Productivity Commission, *Impacts of Native Vegetation and Biodiversity Regulations*, April 2004, pp 118–119.

2 Productivity Commission; p. XXX.

vegetation legislation. Little evidence was received from landholders whose experience in relation to native vegetation legislation has been positive or even neutral.

3.5 A further matter noted by the committee is that the laws impact unevenly. The Western Australian Farmers Federation (WAFarmers), for example, noted that the laws are more extensively applied in newer farming areas.[3] Mr Dale Park of WAFarmers further stated:

> I think the classic problem is that when you have 'one rule fits all' you have got different areas that are affected differently. In Western Australia, for instance, the same laws on land clearing apply for shires like Merredin or the eastern wheat belt – where we have got one or two per cent remnant vegetation – and to shires like Ravensthorpe or Badgingarra, which have got over 50 per cent remnant vegetation.[4]

3.6 Mr Ian Thompson of the Department of Agriculture, Fisheries and Forestry (DAFF) also commented:

> …the assessed economic impacts of these [laws] do vary from place to place. They do vary depending on the potential for land use or land practice change that might be envisaged by farmers or might be being forced upon farmers by climate change or markets. So, in areas where agriculture is developing, the vegetation legislation would have a bigger impact. Where land use is not changing, they possibly do not have a major impact. So they are quite variable in their impact and perception by farmers.[5]

3.7 It is obvious that there is substantial concern at the impact of these laws by those who have borne the direct and indirect costs and regulatory burden of their implementation.

Impact on agricultural activity

3.8 The committee received extensive evidence on the impact of native vegetation laws on the management of agricultural activity and as a consequence, levels of productivity in the agricultural sector.

Management of agricultural activity

3.9 In his opening statement to the committee, Mr Tom Grosskopf, New South Wales (NSW) Department of Environment, Climate Change, noted that the legislative framework for the management of native vegetation in NSW is framed to deliver three key outcomes:

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3 Mr D Park, WA Farmers Federation, *Committee Hansard*, 20.4.10, p. 53.

4 Mr D Park, WA Farmers Federation, *Committee Hansard*, 20.4.10, p. 48.

5 Mr I Thompson, Department of Agriculture, Fisheries and Forestry, *Committee Hansard*, 20.4.10, p. 45.

> The first is to protect important vegetation in the landscape. The second is to let farmers get on with the business of farming. The third is to work with farmers to achieve balanced outcomes, ensuring that there are balances between the protection of important environmental and natural resource management outcomes and economic development and the continued support for rural and regional communities.[6]

3.10 Mr Grosskopf went on to note that farmers are able to manage the landscape and their existing business as the NSW *Native Vegetation Act 2003* makes it clear that any regrowth younger than 1 January 1990 in the central and eastern divisions and younger than 1 January 1983 in the western division can be cleared without reference to the government. That is 'the management of that younger native vegetation is completely within the control of the landholder'.[7] He also added that the legislation provided for a wide range of exemptions to deal with matters including the management for bushfire, the provision of power lines and other farm infrastructure. There are also a range of routine agricultural management activities (RAMAs) that allow farmers to continue to undertake their activities. RAMAs include gaining construction timber from vegetation on the property and clearing along fence lines—six metres on either side of a boundary fence line in the central and eastern divisions and 20 metres on either side of a fence line in the western division.[8]

3.11 Ms Rachel Walmsley from the Australian Network of Environmental Defender's Offices (ANEDO) stated that there is a category of routine agricultural management activities which are listed clearly under the NSW Act and regulations which are designed 'so that a farmer could undertake routine activities like noxious weed management and everyday things and not attract enforcement under the Act'.[9] Similarly, Mr Peter Cosier, Director of the Wentworth Group of Concerned Scientists held that in NSW 'in broad principle the existing use rights of farmers to continue to farm their land has been maintained through these laws'.[10]

3.12 However, many landholders who made submissions to the inquiry saw the native vegetation laws as taking away their ability to manage their land. The Tasmanian Farmers and Graziers Association, for example, held the view that native vegetation regulations impose significant restrictions on landowners' ability to

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6 Mr T Grosskopf, NSW Department of Environment, Climate Change and Water, *Committee Hansard*, 8.4.10, p. 2.

7 Mr T Grosskopf, NSW Department of Environment, Climate Change and Water, *Committee Hansard*, 8.4.10, p. 2.

8 Mr T Grosskopf, NSW Department of Environment, Climate Change and Water, *Committee Hansard*, 8.4.10, p. 2.

9 Ms R Walmsley, ANEDO, *Committee Hansard*, 8.4.10, p. 26.

10 Mr P Cosier, Wentworth Group of Concerned Scientists, *Committee Hansard*, 20.4.10, p. 2.

'effectively manage their properties in a socially and economically sustainable manner'.[11] AgForce articulated common concerns of farmers and other producers:

> Each amendment or introduction of new legislation has led to further removal of agricultural land from production thus generating negative social, environmental and economic outcomes. Many of these policies are reminiscent of the 'lock up and leave' stance, and is fraught with questionable environmental outcomes that often lead to a myriad of land management issues and impacts. It also leads to the inability for landholders to sustainably manage their landscape as exemplified by increased issues of pest, weed and feral animal management as well as possible issues with erosion and sediment control; positions managed by sustainable land practices.[12]

3.13 Mr Alex Davidson put the case bluntly:

> Native vegetation and other similar laws have reduced owners of freehold land to a type of serfdom–custodians and caretakers, compelled to follow government-set management plans. While they may be landholders, they are no longer land *owners*: no longer free to engage in the vital discovery process, absolutely crucial for prosperity, of findings new ways to use their land and its resources more productively.[13]

3.14 Many landholders commented to the committee that they had farmed the land for many years, even generations, and had done so successfully. They know their land but are now being told how to manage their farming activities by bureaucrats. AgForce Queensland continued:

> The thing that is always missed in this kind of draconian legislation is that it is about protecting something that farmers and land managers have been protecting for 100-plus years and all of a sudden they want to legislate to protect it.[14]

3.15 Mr Phillip Wilson commented:

> In many cases we look after our farms better than many of the present guidelines dictate as we know where erosion control barriers should be used on slopes, we even plant our own native animal and bird corridors and refuges, we know how water is guided in our properties as we are the only ones there twenty four hours a day when it rains or pours sometimes for twenty four hours a day.[15]

3.16 Mr Anthony and Mrs Suzanne Kenny added:

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11 Tasmanian Farmers and Graziers Association, *Submission 36*, p. 6.

12 AgForce Queensland, *Submission 7*, p. 4.

13 Mr A Davidson, *Submission 31*, p. 1.

14 Mr J Cotter, Agforce Queensland, *Committee Hansard*, 9.4.10, p. 33.

15 Mr P Wilson, *Submission 104*, p. 1.

> Surely after five generations of managing, maintaining and preserving our land we should be considered good managers and allowed within reason to fertilize, clear or plough or land to lift production. Otherwise we should be heavily compensated for it.[16]

3.17 A further point of discontent with many of those who felt that they had been adversely affected by native vegetation laws, was that the legislation has significantly fewer negative affects on landholders who have little native vegetation remaining on their properties. Mr Richard Golden commented:

> Careful, generational land owners and managers stewarded their landscapes, making them targets for restriction because they had the remaining examples of what the State said they applauded…The perversity of penalizing these managers by removing their freedom to continue the necessary hands-on management to keep their landscapes in the 'preferred' state became de facto approval of those who had completely developed their landscapes, in the process protecting their land value, productivity, profitability and financial future, and who had no restrictions placed on them.[17]

3.18 Many witnesses commented that because they had in the past cared for their land and nurtured the vegetation on their land, such action was now to their detriment as portions of their properties were now being 'locked up'.[18] Mr Scott Hamilton commented:

> We have left many shadelines and shade clumps on our properties for aesthetic appeal and for shade benefits for stock. In most cases the timber costs us significantly in lost income from moisture loss in crops and grass due to the tree root extractions, and invasion by feral animals that live in the trees. While some people preach about being environmentalists we have been. It would seem now that by being responsible in the past we are being punished for leaving so many shade lines and clumps of trees. A recent valuation of our farm has revealed this.[19]

3.19 The Pastoralists and Graziers Association of Western Australia concluded in its submission:

> It is a sad irony that changes in land clearing regulations mostly affect those who have in the past preserved much of the native vegetation on private land, and who in many cases have also planted tens of thousands of trees.

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16 Mr A & Mrs S Kenny, *Submission 129*, p. 2.

17 Mr R Golden, *Submission 95*, p. 2.

18 See for example, Mr D & Mrs E Butler, *Submission 134*, p. 1; Mr J Ramsay, *Submission 131*, p. 1; Mr J Dedman, *Submission 83*, p. 1; Mr A Ellis, *Submission 170*, p. 1; Mr D Woods, *Submission 215*, p. 1.

19 Mr S Hamilton, *Submission 108*, p. 1.

> As such, many of the most environmentally friendly farmers have been left to bear the heaviest financial implications of the new regulations.[20]

Property rights

3.20 Many submitters and witnesses argued that the implementation of native vegetation laws were such that they not only impacted on the management of agriculture but also on the property rights of owners of agricultural land. The commonly held view of landholders, is that as landholders, they have property or ownership rights over the land and therefore a right to determine how to utilise it. Mr Claude Cassegrain articulated this position:

> When we acquired land in the Hastings in the 1960's and 1970's, we knew we did not acquire the mineral rights under the surface. These rights were retained by the Crown. However as far as we knew, we did acquire legal and practical ownership control, inter alia, over the flora and fauna that grew or lived on the land. We understood the Crown relied upon us acting in our own pecuniary interest not to replace, destroy or alter the flora and fauna unless it was in our own interest to do so, including improving the productivity and therefore the value of the land.[21]

3.21 The concept of their land constituting private property in every sense was highlighted. The NSW Farmers' Association represented this view:

> Farmers purchase and hold land so that they can use it to produce food and fibre. Understandably, they have believed that title to the land provides the security they need to invest in the farm – as a real estate holding, in capital improvements and as their home. But each year this security, the confidence that farmers hold regarding the foundations of their wellbeing, is being eroded by the action and sometimes inaction of government.[22]

3.22 The ramifications of the commonly held view that farmers were being stripped of their property rights cut across the socio-economic spectrum and are varied. It has the potential to seriously impact on:

- the relationship between landholders and the land in terms of environmental sustainability and the level of investment of resources, time and energy landholders are willing to put into the land;
- investor confidence, market stability and the ability of landholders to secure finance to work the land;
- farming legacies and the viability and attractiveness of farming as a profession for younger generations; and
- Australia's food security as well as environmental biodiversity and conservation.

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20 Pastoralists and Graziers Association of Western Australia, *Submission 12*, p. 3.

21 Mr Claude Cassegrain, *Submission 345*, p. 1.

22 NSW Farmers' Association, *Submission 236*, p. 3.

3.23 Landholders views on compensation in relation the perceived changes in property rights are discussed in Chapter 4.

Impact on productivity

3.24 The committee received extensive evidence on the impact of native vegetation laws on productivity of which most pointed to a negative impact. The evidence reflects studies of the Australian Bureau of Agricultural and Resource Economics (ABARE) which have shown that land clearing restrictions in Queensland, NSW and Southern Australia, applied to improve environmental outcomes, impose negative impacts on agricultural producers as they forego potential increases in agricultural production and income. The analysis suggests that the opportunity costs (foregone agricultural production and income) of native vegetation laws could be higher for some producers than others.[23]

3.25 DAFF stated that the ABARE reports indicated that native vegetation laws were identified by farmers in the survey region (rangeland and cropping areas of southern and western Queensland) as by far the most important constraint to development. Up to 14 per cent of the survey region was identified by farmers as being affected by existing nation vegetation regulation. The estimated cost of foregone agricultural development opportunities in the survey region is around $520 million in net present value terms. While the median cost of a foregone rangeland development was estimated at $217 000 per farm, the private costs of native vegetation regulation varied widely. However, for 90 per cent of farmers in the survey region, the opportunity cost of foregone development across farms' operating areas ranged between $26 a hectare and $838 a hectare.[24]

3.26 The Property Rights Reclaimers Moree, put the case bluntly:

> The present relationship between agricultural and environmental interests is one of almost complete dislocation. That situation has been created fundamentally by the introduction since 1996 of unreasonably intrusive and restrictive legislation, the effect of which has been to impede agricultural growth and development in many areas, and consequentially to reduce both profit and incentive for farmers and related industries. The process has gradually become more and more oppressive, and more and more detrimental, to both farmers and the general community.
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> If this process is not brought to a halt, and in some cases reversed, the long term effects on Australian agriculture and the community overall, it will be appalling. The consequences include an unstable food supply, far greater dependence on foreign food supply, degeneration of food quality standards accordingly, and a complete loss of enormous export income potential.[25]

23 Department of Agriculture, Fisheries and Forestry, *Submission 371*, p. 21.

24 Department of Agriculture, Fisheries and Forestry, *Submission 371*, p. 21.

25 Property Rights Reclaimers Moree, *Submission 234*, p. 1.

3.27 The negative impacts on productivity may arise in two ways: the inability to expand productivity into areas not already developed; and, the removal, or diminution, of previously productive land from cultivation or utilisation. A third element, which was touched upon in evidence, was that of the over-use of existing productive land where alternative land is otherwise unavailable due to the native vegetation laws.

3.28 Under the various native vegetation regimes, landowners may have restrictions placed on vegetation clearance which prevents the development of land for production. The Pastoralists and Graziers Association of Western Australia stated:

> In many instances landholders have decided against seeking permission to develop land, realising that there would be lengthy processes leading to little or no chance of approval and that the formal application process could invoke a Vegetation Conservation Notice on their entire property, adversely impacting on their equity.[26]

3.29 One landholder submitted that he obtained permission from respective local and state authorities to clear 40 per cent of 1 000 acres to run 50 head of cattle only to see the law change six months later and the permission withdrawn. In addition, a Declared Rare Flora (ERF) was identified on his property. The landholder stated that as a consequence:

> Unencumbered, our property, based on comparable market values, would be worth approximately $2 million at this point in time. Due to the fact that the property is tied up in native vegetation and DRF rulings, it is virtually valueless. If we had been able to clear the 400 acres as originally approved, comparable figures put annual profit at approximately $50 per acre in real terms, or $20,000 per year. Over the 12 year time frame, this equates to $240,000 in lost income. We have spent over $3,000 on legal fees and associated costs.[27]

3.30 Another landholder detailed the frustration resulting from the restrictions imposed by native vegetation legislation:

> We are now locked in an agreement we never had any real say in or wanted. At the stroke of a pen we could no longer develop 50 percent of our property. Yes we were able to use it, but not develop it. That is like having a home that I can use the rooms, but not being able to change any part of half of those rooms.[28]

3.31 Mr Greg Moody stated of the impact of the legislation on land value:

> The resulting diminishing land value due to lost production has seen agricultural land drop by 15% according to local property consultants. This has eroded equities placing enormous financial pressure on an already cash strapped community. Properties were purchased on the understanding that

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26 Pastoralists and Graziers Association of Western Australia, *Submission 12*, p. 3.

27 Name withheld, *Submission 21*, p. 1.

28 Name withheld, *Submission 40*, p. 1.

> debt serviceability would come from 90 to 100% of the holding. Covenants on some titles will see 60% of the land being available to service that debt.[29]

3.32 There are also restrictions on clearing the regrowth of previously cleared land. The legislation varies across jurisdictions as to the types of vegetation included or the age of the regrowth and the extent of the vegetation cover which may be cleared. Generally, once regrowth vegetation exceeds certain limits it is treated as remanent vegetation for the purposes of the legislation and thereby, to various degrees, acquires a protected status.

3.33 The impact of regrowth was a major concern for many submitters. Many provided the committee of photographic evidence of growth on their properties. One set of photographs was provided by Mr Greg Moody a landholder in NSW. Mr Moody stated that Invasive Native Scrub (INS), if not removed, slowly takes over, starving the soil of moisture and nutrients. The result is a barren wasteland devoid of groundcover which is extremely erosion prone. Mr Moody indicated that 'onerous covenants that are continually placed on our operation…We are expected to manage INS by HAND METHODS or SPOTSPRAY….on the size of our holding this is like picking clover out of the MCG with a pair of tweezers!!!'[30]

Photo 1: Before - effect of Invasive Native Scrub.

29 Mr G Moody, *Submission 209*, p. 1.

30 Mr G Moody, *Submission* 209, p. 1.

Photo 2: After – positive results of intervention.

Source: Mr G Moody, Submission 209.

3.34 According to Property Rights Australia (PRA), the most commonly reported finding in relation to Queensland woodland, following the introduction of native vegetation regulations, is that there has been an increase in tree density and a simultaneous decline in grass yields at an increasing rate. PRA argued that the cessation of clearing comes at a significant economic loss. Furthermore, the continuation of grazing in Queensland's rangelands will be dependent on appropriate management of woodland thickening. PRA concluded that 'any regulatory regime which removes the ability to maintain the tree-grass balance will ultimately result in the eventual loss of all grazing utility and a reduction in biodiversity through the excessive proliferation of woody species'.[31]

3.35 AgForce Queensland also argued that restrictions on clearing have negatively impacted on grazing in Queensland and detailed the potential impact of thickening and regrowth on the beef industry:

> Based on a beef industry worth about $3.7 billion to the Queensland economy each year, the livestock production from the State's grazed woodlands would be currently valued at just under $1 billion per year. At the present rate of tree/shrub thickening and in the absence of intervention to limit the process, it is estimated that current livestock carrying capacity

31 Property Rights Australia, *Submission 14*, p. 9.

> on such land (3 M cattle equivalents) would fall to negligible levels in just 50 years.[32]

3.36 Landholder, Mr Ben Nicholls provided the committee with the example of his negotiations with the local Catchment Management Authority which resulted in a loss of land for production purposes:

> There is an 800 acre paddock with 80 trees. Most of those trees are small western cedar trees, which are small scrubby little bush. We left them there for fodder trees years ago when we developed the place. There are probably about 60 of those and 20 larger trees. To develop this—I should not use the word 'clear' because it is not; it is all cultivation country that we have been farming for years—I have to give covenants over the paddocks that I want to do plus give over a total of about 280 hectares to the government with full covenants but still pay the rates and still do all of that. I can gaze it for 30 days a year. I am not allowed to graze it below six inches. I am not allowed to take any regrowth out of it. Anyone who knows that central western division where I am knows that it will go back to scrub. It will be absolutely unproductive country.[33]

3.37 Mr Nicholls went on to comment on the potential consequences of lack of productivity on land 'locked up' by the native vegetation legislation:

> Look, there are about 20,000 hectares locked up in what I am doing. So in our little area there is a huge amount of productivity being taken and our towns are shrinking, our towns are dying. That is calamitous.[34]

3.38 Mr Peter Jesser stated that 53 per cent of his 2 237 hectare sheep and cattle farm was locked up under native vegetation legislation with the result that:

> Our potential carrying capacity has been reduced from around 3000 DSE (Dry Sheep Equivalent) to 2500 DSE because we cannot manage the locked up vegetation effectively. Our potential earning capacity has been reduced by about 25 per cent. We estimate the reduction in value of our property to be about $300,000…[35]

3.39 Mr James Smith, who owns three properties, stated that his ability to produce grain had been severely hampered by the native vegetation legislation:

> I have been restricted in my grain production due to the native vegetation act. On one of my properties there has been 40 acres locked up and not to be used…

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32 AgForce Queensland, *Submission 7*, p. 13.

33 Mr B Nicholls, personal capacity, *Committee Hansard*, 8.4.10, p. 80.

34 Mr B Nicholls, personal capacity, *Committee Hansard*, 8.4.10, p. 82.

35 Mr P Jesser, *Submission 163*, p. 1.

> There is also 600 acres of timber country that can not be cleared for grain production.[36]

3.40 There is also an impact on productive land abutting native vegetation through competition for water, encroachment of tree roots, and lack of control of invasive species and feral pests. Mr Ian Cox commented on his experience:

> The trees are so thick that little grows beneath them. Only the weeds multiply around the perimeters which are then hard to control and the prickly pear is free to do as it pleases. The trees are very intrusive on the ground I try to farm as the root uptake competes with the crops and unless we have an extremely wet season the crop fails for at least a 50metre space along the trees. Added to this, the scrub makes an excellent refuge for all feral pests and kangaroos which then feed on any emerging crop thus causing even greater crop losses.[37]

3.41 Mr Charles Armstrong of the NSW Farmers' Association indicated that there was an unintended consequence of the regulation which may further impact on the level of productivity: with otherwise productive land tied up under the native vegetation legislation, farmers are often reduced to over-developing land currently in use. Mr Armstrong stated:

> To carry on the business of farming without further developing the farm means that you are going to exploit what you are currently farming. Let us bring it down to paddocks. You are going to go on farming the same paddock over and over again because you cannot develop the next paddock and relieve the pressure on it. It is another of these disconnect features: people making the legislation or drawing up the rules having no idea of how we as farmers operate.[38]

3.42 A further impact of the decline in productivity of the agricultural sector was outlined by Mr Max Rheese of the Australian Environment Foundation. Mr Rheese argued that food security may be undermined which could then impact on regional economic security:

> There seems to be a disconnect between the intent of native vegetation laws and the clearly recognised need to assure confidence and security in food production and the management of private land to produce good environmental outcomes…The continuing reduction in a landholder's ability to manage soil, water, native vegetation and weeds on his own property threatens to undermine productivity, regional economic stability and confidence.[39]

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36 Mr J Smith, *Submission 278*, p. 1.

37 Mr I Cox, *Submission 119*, p. 1; see also Mr S Hamilton, *Submission 108*, p. 1.

38 Mr C Armstrong, NSW Farmers' Association, *Committee Hansard*, 8.4.10, p. 50.

39 Mr M Rheese, Australian Environment Foundation, *Committee Hansard*, 8.4.10, p. 68.

3.43 Similarly, Mr Armstrong, NSW Farmers' Association, noted that each Australian farmer provides food for 150 Australians and 650 people overseas (projected to increase to 850 people). Mr Armstrong stated that it was not the food security of Australia that was so important, rather 'the security of the global picture in terms of people who may not get access to the food that we can supply'. He concluded that Australia has a vital role to play in ensuring food security.[40]

3.44 However, some submitters emphasised positive impacts resulting from restrictions on native vegetation clearing. Mrs Catherine Herbert, who voiced support for native vegetation legislation in Queensland, argued that retention of 30 per cent native vegetation assisted productivity:

> I believe that it has been demonstrated that, if you retain at least 30 per cent of native vegetation on land, it actually assists productivity in a number of ways, it provides ecosystem services, shelter belts for stock, frost protection for grass and deep nutrient recycling. So where landholders are required to maintain vegetation of which there is no more than 30 per cent left on their property then compensation is not the issue because in fact production is being assisted by maintaining its vegetation.[41]

3.45 Moreover, Mr Ian Herbert of the Capricorn Conservation Council challenged the position that there had been a decline in productivity and land value:

> The second point is that agricultural employment and the cattle herd in Queensland have increased since the total ban on clearing came in in December 2006. So, on a macro scale, you cannot tell me that there is any diminution of productivity. Thirdly, land values likewise have not reduced on a macro scale. There might be some individual cases, but on a macro scale there has been no reduction in land values.[42]

3.46 Mr Grosskopf, of the NSW Department of Environment, Climate Change and Water, also commented on the control of invasive native species and noted that in NSW, permits have been issued for over 1.6 million hectares of INS to be treaded with a range of treatments, including cropping.[43]

3.47 Mr Grosskopf went on to emphasise that in NSW, the decision making framework changed as new science became available and that 'we have done that with invasive native scrub in western New South Wales and we are doing it with biodiversity measures and threatened species measures right now'. The NSW

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40 Mr C Armstrong, *Committee Hansard*, 8.4.10, pp 35–36; see also Mr J Cotter, AgForce Queensland, *Committee Hansard*, 9.4.10, p. 32.

41 Mrs C Herbert, personal capacity, *Committee Hansard*, 9.4.10, p. 66.

42 Mr I Herbert, Capricorn Conservation Council, *Committee Hansard*, 9.4.10, p. 86.

43 Mr T Grosskopf, NSW Department of Environment, Climate Change and Water, *Committee Hansard*, 8.4.10, p. 14.

government has completed a $3.4 million investment in the science of native scrub.[44] Ms Walmsley of the ANEDO also stated that the NSW legislation is underpinned by some 'very good science' which takes into account salinity, water, biodiversity and impacts. Further 'there is some incredibly good science underpinning what areas should be conserved and what areas should be used for production for the overall health of the landscape'.[45]

Restrictions on farming practices

3.48 A further issue raised was the long term consequences of restrictions on farming practices with the Victorian Farmers Federation stating that 'regulations or planning restrictions that impeded the capacity to adapt are likely to result in poor environmental outcomes'.[46]

3.49 Individual farmers provided the committee with examples of restrictions to innovative farming practices. Mr Geoff Patrick commented that the restrictions on any improvement in grass production either introduced or native can only have a negative influence on production and soil health. Soil health is mainly dependent on residual grass being converted to soil carbon which also improves water retention. He continued:

> Those people who think or believe that grass species introduced to a different area is a negative idea are ill informed. A lot of our native grasses have developed to adapt to land that has been neglected or in many cases exposed to regular fire etc and are unsuitable for soil repair and stock feed. They have evolved into quick germination with rapid maturity species intent only on survival, providing little litter for soil production or animal feed over a very short time.[47]

3.50 Mr Ben Nicholls also commented on his attempts to improve his farming practices through the introduction of tramline farming. He noted that the introduction of tramline farming would require the clearing of individual trees and the inability to do so 'is forcing me to stay in old fashioned farming systems using large gear, which I do not want to continue using on this country. It is stopping me being viable over the long term.'[48]

Conversion for leasehold to freehold

3.51 The committee was provided with many examples of caveats imposed on landholders who have changed their land title from leasehold to freehold. Such

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44 Mr T Grosskopf, NSW Department of Environment, Climate Change and Water, *Committee Hansard*, 8.4.10, p. 15.

45 Ms R Walmsley, *Committee Hansard*, 8.4.10, p. 33.

46 Victorian Farmers Federation, *Submission 382*, p. 2.

47 Mr G Patrick, *Submission 135*, p. 2.

48 Mr B Nicholls, *Committee Hansard*, 8.4.10, p. 80.

caveats include a limit or ban on certain activities including bans on cutting dead wood, lighting fires and growing particular grasses. Mr William Newcomen commented:

> The proposed freehold agreement from the NSW Land and Property Management Authority, places 873 hectares in a covenant which includes such restrictions as the prohibition of any clearing of native vegetation, tillage or application of herbicide or establishment of non-native crops or exotic pasture species or the logging of native vegetation.
>
> Some of the land which has been covered by this proposed covenant is improved pasture which has some exotic pasture species amongst the grasses or has saltbush plots on it.[49]

3.52 The NSW Farmers' Association commented that in some cases in NSW, caveats that chemicals cannot be used to control noxious weeds as they might damage native plants are being added to freehold titles.[50] Mr Roger McDowell argued that the caveats entailed in conversion to freehold not only restrict productivity but also mean that landholders cannot make their land drought resistant:

> The caveats include bans on cutting dead wood, lighting fires, and the growing particular grasses which are capable of outcompeting undesirable weeds and other detrimental vegetation. These caveats will place land holders in a position where they cannot make their land productive and drought resistant, and therefore they will remain reliant on government assistance during droughts.[51]

3.53 Some witnesses stated that the caveats were in some instances so onerous that the viability of properties was placed in jeopardy. Another farmer stated they had recently purchased a leasehold rural property which was in the process of conversion to freehold title. As a consequence, 'the application to freehold contained covenances which restricted the use of certain areas of this property, making these areas **no long viable** as a rural enterprise'.[52]

3.54 Ms Louise Burge described the implications for landholders in NSW who didn't convert their land to freehold title as well as for those who didn't want to accept the respective caveats and sought to remain under a leasehold arrangement:

> Although many properties have converted from perpetual to freehold, example exists of where landholders on the advice of solicitors, did not convert as their legal advice did not indicate any risk from maintaining the status quo.
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> The Government has now substantially increased perpetual lease rentals in excess of 1000% and much more in many cases. Farmers are left with the

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49 Mr W Newcomen, *Submission 97*, p. 1.

50 Mr C Armstrong, NSW Farmers' Association, *Committee Hansard*, 8.4.10, p. 65.

51 Mr R McDowell, *Submission 116*, p. 1.

52 Name withheld, *Submission 81*, p. 1.

> choice of paying exorbitant rental increases and accepting draconian covenanting arrangements. Those wishing to convert face excessive rental fees beyond the income capacity of the property in some cases. The alternative is to buy out the lease, or convert, but the Government is imposing covenant conditions that remove existing use rights.[53]

3.55 Mr Armstrong of the NSW Farmers' Association also highlighted the potential increase in the rental for those who don't accept the caveats under the freehold title:

> Why I say it is worse than that is the penalty: if you do not accept the caveat or the negotiated position that might follow from that, the potential increase in the rental to maintain it as a perpetual lease is in the vicinity of about 5,000 per cent in some cases.[54]

3.56 Witnesses commented that there was a disincentive to convert from leasehold to freehold because of the caveats now being placed on freehold titles. Mr Viv Forbes also argued that this was short-sighted as leaseholders placed lesser priority on improving their leased landholdings. He commented that freehold land is beautifully maintained and that 'private ownership of land gives people an incentive to maintain and conserve its value'.[55]

Other impacts

3.57 A number of other impacts were identified by submitters including that of constraints on the ability to access finance and an inability to invest in new technologies resulting from a lack of financial confidence and certainty. It was acknowledged, moreover, that some landholders are 'internalising' the involved costs in managing land restricted under the native vegetation legislation including the payment of rates.

3.58 Mrs Kerr of the National Farmers' Federation contended that:

> …the vast majority of farmers are actually internalising that cost. Where they do not move off their land or seek to move into other businesses or other farms or other areas, they are actually internalising that cost. There is a whole lot of information and data on that—the Productivity Commission report on regulatory red tape, for example, documents that quite widely. So it is not just the cost of moving away or doing other things; it is the internalisation by many farmers of those costs.

3.59 In terms of the rates alone, Mr Robert Zonta stated that for 170 hectares of land held under the native vegetation legislation which is therefore unproductive, his rates amounted to $4,000 a year.[56]

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53 Ms L Burge, *Submission 320*, p. 32.

54 Mr C Armstrong, NSW Farmers' Association, *Committee Hansard*, 8.4.10, p. 65.

55 Mr V Forbes, Carbon Sense Coalition, *Committee Hansard*, 9.4.10, p. 23.

56 Mr R Zonta, *Submission 162*, p. 2.

3.60 In relation to the internalisation of involved costs, a number of landholders submitted that they were forced to work off-farm to cover losses.[57] Others contended that they had sold land as a means of covering their ongoing costs whilst others still were forced to sell.[58]

3.61 Mr Paul and Mrs Gwenda Johnston contended that forced sales are:

> …occurring quite often because the property will no longer service the debt that was originally borrowed to set it up, mainly because the forecast of the income has not been able to meet the budget because of native vegetation restrictions applied to them after purchase not allowing for the development of the property to service the debt.[59]

Impact on land value

3.62 In its 2004 report, the Productivity Commission estimated that the economic impact of broadscale clearing restrictions could be substantial:

> Any reduction in expected net farm returns will roughly translate into a commensurate decline in current property values. Evidence was received from a number of participants about the increasing gap between the values of uncleared and cleared land, where the gap cannot be explained by the costs of clearing and differences in land quality.
>
> Furthermore, a reduction in anticipated returns – or simply an increase in the risk premium because of the uncertainty surrounding the impact of native vegetation regulations – will also affect farm investment and the willingness of finance providers to lend.[60]

3.63 The evidence the committee received indicates that position has not changed since the Productivity Commission reported and land values continue to decline as a result of native vegetation laws.

3.64 Mr John Cotter of AgForce Queensland commented to the committee it is not only the immediate devaluation of that land to the individual which is of a concern but also the ongoing productive capacity and the ongoing, growing value. He went on to state:

> If you look at land values in Queensland from 2001 to now, that land that was locked up in 2001 and 2002 has probably maintained its value or diminished in value, while the rest of the valuations across the state have probably gone up by 200, 300 or 400 per cent, and will in the next 25 years. So, speaking as someone who has had a lifelong involvement with the land,

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57 Ms S Thomas, *Submission 183*, p. 1, Mr G Moody, *Submission 209*, p. 2.

58 Mr C Armstrong, NSW Farmers' Association, *Committee Hansard*, 8.4.10, p. 40.

59 Mr P & Mrs G Johnston, *Submission 217*, p. 2.

60 Productivity Commission, *Impacts of Native Vegetation and Biodiversity Regulations*, No. 29, 8 April 2004, p. XXXI.

> it is that ongoing, growing value that is being diminished and done away with.[61]

3.65 Whilst the NSW Farmers' Association conceded that there is 'no comprehensive quantitative data regarding the diminution of land asset value and productivity on farmers', the committee received numerous submissions from landholders detailing such losses.[62][63] A small sample of the evidence provided by individual landholders is as follows:

Western Australian landholder:

> Unencumbered, our property, based on comparable market values, would be worth approximately $2 million at this point in time. Due to the fact that the property is tied up in native vegetation and DRF rulings, it is virtually valueless.
>
> If we had been able to clear the 400 acres as originally approved, comparable figures put annual profit at approximately $50 per acre in real terms, or $20,000 per year. Over the 12 year time frame, this equates to $240,000 in lost income.[64]

New South Wales landholder:

> The remnant vegetation area on my farm would be worth $250 per hectare if lucky, compared to cleared grazing land worth $750 per hectare.[65]

Queensland landholder:

> We have had approximately 600 acres affected by the Vegetation Management Act. When we purchased this land under freehold tenure we believed that meant we had the right to develop this land. Since these laws have been introduced the value of the affected land is negligible. An identical neighbouring cleared block recently sold for $24,000 per acre while our land would be virtually worthless. This would be a net loss of $14.4m. There has been no compensation paid. We still pay rates on this land which is in a word 'frozen'.[66]

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61 Mr J Cotter, AgForce Queensland, *Committee Hansard*, 9.4.10, p. 45.

62 NSW Farmers' Association, *Submission 236*, p. 13.

63 See for example, Name withheld, *Submission 21*; Name withheld, *Submission 23*; Mr G Miller, *Submission 24*; Mr Max Dench, *Submission 25*; Name withheld, *Submission 32*; Mr William Grey, *Submission 37*; Mr Wade Bidstrup, *Submission 39*; Mr John Burnett, *Submission 44.*

64 Name withheld, *Submission 21*, p. 1.

65 Name withheld, *Submission 32*, p. 1.

66 Mr M Peterson, *Submission 261*, p. 1.

3.66 Property Rights Australia provided the following detailed case:

Case study: Property 'A'

Property "A" consists predominately of mulga land types and is located in the Charleville Area within Murweh Shire. This property has the following attributes:

Average rainfall: 460mm (18.5")
Area: 18,989 ha
Tenure: freehold
Country description: Land systems on the property are mulga and poplar box dominant, with areas of beefwood, ironwood, corkwood, silver leaf ironbark and kurrajong. Soils are predominantly deep red earths.
Highest and best use: cattle grazing
Water: watered by an equipped bore and a number of earth dams
Improvements and development: The property is reasonably improved for grazing with fencing, yards, water facilities and buildings. About 7,846 ha (41%) has been cleared with the balance of 11,134 ha (59%) comprising remnant regional ecosystems containing standing timber.
Vegetation map status: A property map of assessable vegetation (PMAV) has been registered over the property. This indicates 7,846 ha is mapped as category X vegetation.
CALA assessment: In June 2006, NRMW assessed the area affected to be 11,048 ha or 58% of the property. A later PMAV over the property increased the area of assessed category X vegetation (able to be cleared) which effectively reduced the affected area (CALA) to 7,643 ha or 40% of the property. This reduced CALA area of 7,643 ha represents the development potential of the property that has been lost; this has been used to assess the diminution in market value.
Carrying capacity (present development): 1 AE to 20.0 ha (949 AE)
Carrying capacity (potential): 1 AE to 10.0 ha (1,898 AE)

Assessed diminution in market value:

1. Assessed market value present development with potential: 18,980ha @ $105 per ha improved ($2100 *per* Beast Area Value) – $1,992,900

2. Less assessed present market value present development without potential 18,980ha @ $65 per ha improved ($1300 *per* BAV) – $1,233,700

Reduction in market value: $759,200 This represents a 38% reduction in market value

Source: Property Rights Australia, *Submission 14,* pp 22–23.

3.67 The NSW Regional Community Survival Group detailed the diminution of land asset value amongst its members. In relation to the findings of a survey of 103 landholders responsible for 523 834.4 hectares of which 307 137.11 hectares or 59 per cent was affected by invasive native scrub (INS), the group stated:

> At the time of the survey, average land values for improved country were between Three hundred and seventy dollars ($370) and Four hundred and eighty five dollars ($485) per hectare. Unimproved country affected by INS had a commercial value of between Fifty dollars ($50) and One hundred and twenty five dollars ($125) per hectare.
>
> On today's market improved country in our region is valued at between Five hundred and fifty dollars ($550) and Seven hundred and fifty dollars ($750) per hectare. The value of unimproved country that is affected by INS now has a commercial value of between Twenty dollars ($20) and Ninety dollars ($90) per hectare. This disparity in value has emerged exclusively due to

> the impacts of NSW State legislation and the increasing degradation of those areas significantly impacted upon by INS.[67]

3.68 Other submitters noted that while their property value may have increased, it had not reached the full potential.[68]

3.69 Such views were echoed by the Productivity Commission in its 2004 inquiry report on native vegetation and biodiversity regulations:

> Native vegetation and biodiversity regulations have reduced the values of properties on which the income-earning potential has fallen because permission to clear native vegetation has been refused, or because there is uncertainty about the future ability to clear.[69]

3.70 However, in a letter to the committee, Mr Paul Henderson, Chief Minister of the Northern Territory stated that:

> …there is no evidence of diminution of land asset values in the Territory as a result of land clearing laws or proposals for greenhouse gas abatement measures. Indeed, in the only area of the Territory where close control of land clearing has been shown to be necessary to protect non-production values and especially river condition, I am informed that there have been considerable increases in the market value of land.[70]

3.71 It is clear that the impact of these regulations varies dramatically across the country and even within states, depending on the location of the property involved as well as the local impact of the regulations. The lack of comprehensive data prevents state-wide or national assessments of the impact of these regulations on land value, but also does not necessarily undermine the legitimacy of such claims.

Impact of assessment and compliance regimes

3.72 Much of the evidence in relation to the assessment and compliances regimes centred on their implementation. However, there was also comment questioning whether the basis of the assessment and compliance regimes actually reflected the intention of the legislation.

3.73 In relation to the latter issue, Mr Max Rheese of the Australian Environment Foundation, pointed to the Wentworth Group of Concerned Scientists' comments on

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67 NSW Regional Community Survival Group, *Submission 16*, p. 2.

68 Mr B Tomalin, *Submission 172*, p. 2.

69 Productivity Commission, *Impacts of Native Vegetation and Biodiversity Regulations*, No. 29, 8 April 2004, p. LIII.

70 Letter from Mr Paul Henderson, Chief Minister of the Northern Territory, dated 5 March 2010. See also, Department of Natural Resources, Environment, The Arts and Sport, *Submission 396*, p. 2.

the NSW *Native Vegetation Act 2003*. The Wentworth Group noted in 2002 that the legislation had failed to achieve its objectives arguing that:

> Clear distinction needs to be made between the need to stop broadscale clearing of remnant native vegetation and the need to control shrub invasion in the semi-arid pastoral areas of Australia.[71]

3.74 Mr Rheese commented that such a distinction was largely absent in the application of native vegetation legislation.[72] The Australian Environment Foundation also commented on the lack of a national framework:

> Australia does not have a national framework for achieving conservation outcomes on private land. In general funding programs tend to be short term or follow electoral cycles. In the absence of a National Stewardship Program, Australia has relied on laws and regulations to achieve conservation outcomes.
>
> This simplistic approach has not adequately assessed the benefits to the environment achieved through collaborative partnership with private landholders. There are a range of opportunities where working with private landholders could deliver improved species monitoring and open up pathways to on-farm education activities. A regulatory focus to achieve outcomes also limits the potential for private landholder engagement with threatened species recovery programs.[73]

3.75 Other witnesses commented that the regimes have become 'tree-centric' rather than looking at the environment as a whole. Mr Nicholls commented:

> It is tree-centric. It is not an environmental, holistic approach to native veg, to the environment; it is just tree-centric. It is definitely not the way forward.[74]

3.76 This view was supported by the Carbon Sense Coalition:

> Trees, like every other species on earth, are continually giving birth to suckers and seedlings which immediately seek to dominate any unguarded soil space.
>
> Strangely though, in a very lop-sided vegetation management policy, most controls are now being directed at allowing still more trees to invade food producing grasslands and open forest. They do not need help – trees

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71 Wentworth Group of Concerned Scientists, *Blueprint for a living continent*, 1 November 2002, pp 10–11, http://www.wentworthgroup.org/uploads/6.%20blueprint_for_a_living_contintent.pdf, (accessed 16.4.10).

72 Mr M Rheese, Australian Environment Foundation, *Committee Hansard*, 8.4.10, p. 67.

73 Australian Environment Foundation, *Submission 201*, p. 11

74 Mr B Nicholls, personal capacity, *Committee Hansard*, 8.4.10, p. 82.

> relentlessly invade most grasslands if not subject to competition, fire or the axe.[75]

3.77 In regard to tree growth, particular concern was raised about trees as a threat to grassland and in turn, therefore, food production. For example, Mr John Stewart held that:

> Also, if we are going to have 36 million people in this country we will need to think about getting some grass growing too. If we have grass, we can convert that into food. I just think we need to have a balance, not to blindly say to everyone, 'Go and plant trees.'[76]

3.78 The Carbon Sense Coalition argued along similar lines in relation to the eucalyptus:

> Australia's main tree species, the eucalypts, produce no food for humans except honey and grubs, and compete strongly for land against all food producing species, especially native grasslands supporting grazing animals. Both black and white settlers have seen the danger posed to their food supply by invasion of eucalypt scrub into productive grasslands.[77]

3.79 The committee was also provided with examples where landholders had proposed initiatives to conserve native vegetation and manage their land responsibly but which, because they did not fall within the strict frameworks of the native vegetation regimes, were not permitted. Mr Nicholls's experience is one case in point:

> I offered, if I could take out these individual trees on this cultivation country, to plant a corridor to replace that. I was not allowed to do that. I wanted to connect the river corridor with a large timbered area on the property. It was another wildlife corridor, which, as I said, we have 80 kilometres of. So I was trying to do the right thing. But that was not what they want; they want control of those trees and of that land. There are only 80 trees on 800 acres.[78]

3.80 In relation to the implementation of the assessment and compliance regimes, concerns about the broad rules, complex application process, inadequate flexibility to take regional and local conditions into account, mistakes, the need for reassessment and concerns in relation to mapping and the expense were raised with the committee.

Assessment and compliance across states and territories

3.81 In NSW, as noted in Chapter 2, clearing remnant native vegetation or protected regrowth requires approval under the *Native Vegetation Act 2003* (NV Act) unless clearing is a permitted activity. Approvals can be sought from the local

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75 Carbon Sense Coalition, *Submission 17*, p. 8.

76 Mr J Stewart, personal capacity, *Committee Hansard*, 8.4.10, p. 90.

77 Carbon Sense Coalition, *Submission 17*, p. 11.

78 Mr B Nicholls, personal capacity, *Committee Hansard*, 8.4.10, p. 81.

Catchment Management Authority (CMA) which applies an Environment Outcomes Assessment Methodology when assessing an application to clear. Voluntary Property Vegetation Plans (PVPs) are negotiated between the landholder and CMA. Clearing proposals can form part of a PVP and incorporate offsets to meet the 'improve or maintain' environmental outcomes test required under the NV Act.[79]

3.82 In Queensland, clearing remnant vegetation on a regional ecosystem map or remnant map requires development approval unless it is an exempt activity. An application has to be made to the respective department for a development approval. The department then uses regional vegetation management codes to assess applications for clearing native vegetation.[80] Similarly, in Western Australia, a permit is required from the respective department unless the vegetation in question is subject to an exemption.[81]

Implementation of assessment and compliance regimes

3.83 Whilst the assessment processes and compliance regimes in each state and territory vary, concerns of a similar nature were raised across the country. Underlying such concerns was the belief that the local expertise of farmers, many of whom had farmed their land over decades and had therefore a vested interest in sustainable farming, as well as the specificity of local conditions were inadequately considered.

3.84 In relation to Victoria, the Victorian Farmers Federation (VFF) commented that the regime ignored that the stocks of native vegetation across the state, and even within regions, are not equal. The VFF stated:

> The amount of land clearance that has occurred in the northern and central parts of Victoria is much greater than in the North East and East Gippsland. The impact of the removal of a 5 large trees in North Central, in most cases would be of more significance than the removal of 5 large trees in East Gippsland yet the exemptions treat them as the same.[82]

3.85 Many other witnesses also argued that the assessment regimes were inflexible and failed to take local conditions into account. Mr Graham Kenny stated:

> In selected circumstances, you can apply to undertake thinning in certain regional ecosystems. But what invariably happens is that, when you get down to the nitty-gritty, the code becomes overly restrictive – you have to jump through all these hoops to access the code and then tick the boxes –

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79 NSW Department of Environment, Climate Change and Water, *Submission 15*, p. 4.

80 Queensland Department of Environment and Resource Management, *Regional vegetation management codes*, http://www.derm.qld.gov.au/vegetation/regional_codes.html (accessed 22.4.10)

81 WA Department of Environment and Conservation, *A guide to the assessment of applications to clear native vegetation under Part V of the Environmental Protection Act 1986*, http://www.dec.wa.gov.au/content/view/3553/2082 (accessed 22.4.10)

82 Victorian Farmers Federation, *Submission 382*, p. 2.

> and you just cannot get a permit. They say that you can just apply for a permit and you can do thinning, but then they just close it off through the code being overly restrictive. What happens is that the thickening continues and productivity suffers as a result.[83]

3.86 The Cobar Vegetation Management Committee commented that the laws do not allow for day to day or season to season land management decisions to be made in a timely manner.[84] AgForce Queensland argued:

> Our concern is that this forces the retention of vegetation in an arbitrary manner, and is not based on appropriate scientific assessment. Intent is a blunt tool which takes no account of condition. For example, ongoing land management of issues such as fuel loads and fire regimes as well as pest and weed management on a landscape that could become entirely unproductive.[85]

3.87 Many landholders indicated that the assessment regimes are a formulaic assessment which did not take into account all circumstances. Mr Kenny contended that:

> The lesson I can see in this is that, in applying regulation to the management of landscapes, the simplistic tick-a-box assessment codes do not provide sufficient flexibility to deal with the infinite degree of diversity in situations that arise at a property level throughout a state as big as Queensland.[86]

3.88 This view was shared by Mr Adrian and Mrs Ellen Smith, who argued that there is a need for some form of native vegetation regulation, but assessment should be on a 'per holding basis as opposed to a whole catchment based approach'.[87] However, other witnesses noted that in some instances assessments per holding have resulted in perverse outcomes particularly where vegetation types on properties are captured within the scope of the native vegetation laws are not rare or endangered. Ms Dixie Nott gave evidence on this point:

> The vegetation types on my property are around 97 per cent intact in the local region. They are hardly rare or endangered. One of the reasons quoted for the necessity of the regrowth legislation was to protect endangered regrowth vegetation and landscapes that badly need trees. I do not think my property badly needs trees.[88]

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83 Mr G Kenny, personal capacity, *Committee Hansard*, 9.4.10, p. 92.

84 Cobar Vegetation Management Committee, *Submission 13*, p. 2.

85 AgForce Queensland, *Submission 7*, p. 6.

86 Mr G Kenny, personal capacity, *Committee Hansard*, 9.4.10, pp 92–93.

87 Mr A & Mrs E Smith, *Submission 29*, p. 1.

88 Ms D Nott, personal capacity, *Committee Hansard*, 9.4.10, p. 71.

3.89 The committee was also provided with examples of apparently inconsistent assessments; where one land owner was assessed differently from a neighbour with seemingly similar land.[89]

3.90 Other submitters raised concerns regarding the costs involved in trying to secure a permit to clear native vegetation. Mr Suryan Chandrasegaran noted that:

> Obtaining a permit is a costly and time-consuming process, and there is no guarantee that the permit will be granted.[90]

3.91 Others detailed the complex and time-consuming negotiations they had been drawn into to obtain permission to clear land. Mrs Sharmaine Hurford submitted:

> We applied for a permit to clear on the 13th of September 2002. After several extensions a negative decision was made on the 31st of March, 2004. We applied for compensation on the 13th of November 2006. We were informed we were not entitled to compensation because we had applied under the previous legislation which was introduced after we purchased.
>
> An application for a Fodder Permit for the 4,225 Ha was made on the 13th of February 2007. A decision was made on the 2nd of May, 2007. We were granted a restricted permit for approximately 1,000Ha. This permit is complex with the area actually able to be utilized even further reduced.[91]

3.92 Such views reflected the findings of the Productivity Commission in its 2004 inquiry report which stated that the 'focus of the regimes on preventing clearing of native vegetation often seems several steps removed from achieving desired environmental outcomes'. Moreover, the Productivity Commission stated in recommendation 10.5 that greater flexibility 'should be introduced in regulatory regimes to allow variation in requirements at the local level'.[92]

3.93 In response to concerns regarding the regulatory framework, in 2005, COAG encouraged the continued examination on the part of state and territory governments of appropriate regulations related to native vegetation and biodiversity. In 2006, COAG agreed to reduce the regulatory burden across all three levels of government including through measures to ensure 'best practice regulation making and review' as well as action to address the six specific regulation 'hotspots' where cross-jurisdictional overlap is impeding economic activity. The same year, COAG agreed to add environmental assessment and approval processes as an area for cross-jurisdictional regulatory reform.[93] However, evidence before this committee

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89 Mr M Peterson, *Submission 298*, p. 1.

90 Mr S Chandrasegaran, *Submission 20*, p. 1.

91 Mrs S Hurford, *Submission 33*, p. 1.

92 Productivity Commission, *Impacts of Native Vegetation and Biodiversity Regulations*, No. 29, 8 April 2004, p. XLVIII.

93 Department of Agriculture, Fisheries and Forestry, *Submission 371*, p. 21.

suggested that the regulations remain too rigid and in some instances, counterproductive.

Reassessment and appeal processes

3.94 Concerns raised in relation to mapping focused on inaccuracies and the onus on landholders to prove such inaccuracies.[94] Mr John Burnett provided evidence of his experience in relation to mapping:

> Mapping inaccuracies are a huge problem with current legislation: the vegetation in many of the areas has been responsibly controlled in the last 3 years; some areas are regrowth, which has been cleared and are in fact now labelled 'remnant vegetation'. All costs associated with rectifying problems with the government maps are borne entirely by the landholder.[95]

3.95 Dr Lee McNicholl argued that there were substantial inaccuracies in mapping and with the process of contesting the inaccuracies:

> If you want to contest the maps you have to go to the expense yourself to get on-ground truthing, with GPS coordinates, and document the whole thing. The onus is back on you to prove that the maps are wrong, at your expense.[96]

3.96 Mr Carl Loeskow held that Property Maps of Assessable Vegetation which landholders have to provide to have their Regional Ecosystem Map reassessed, have cost landholders between $3,000 and $20,000. He also contended that:

> Lost productivity in times delays while incorrect maps are investigated and ground truthed and then amended. These added costs have been placed on some producers who have been battling drought.[97]

3.97 Another landholder expressed frustration with the bureaucratic response:

> The current Native Vegetation laws seem to be viewed in isolation of the whole ecological climate of the farm. For example – Government officials tell farmers they have "Illegally cleared" land when there has been naturally occurring events such as fire and wind storms which cause management problems for Workers carrying out the day to day tasks necessary to the keeping of livestock and managing pastures.
>
> These same officials do not look at the fact that the same farmer may have already been actively engaged in Landcare and Rivercare and has fenced off waterways, prevented and controlled erosion of the riverine environment,

94 See for example, Mr J Andrew, *Submission 147*, p. 1.

95 Mr J Burnett, *Submission 44*, p. 2.

96 Dr L McNicholl, personal capacity, *Committee Hansard*, 9.4.10, p. 82.

97 Mr C Loeskow, *Submission 75*, p. 2.

> undertaken extensive fire reduction measures to prevent those naturally occurring events wrecking such havoc on his land.[98]

3.98 Others raised concerns regarding the inadequacies of review mechanisms, highlighting that in Western Australia and at the Commonwealth level, there are no such review mechanisms. Mr Glen McLeod, Lawyer with the Pastoralists and Graziers Association of Western Australia continued:

> In Western Australia there is a ministerial appeals system. I think it has no credibility whatsoever because it is the only major administrative merits appeal in Western Australia that does not go to the state administrative tribunal…No-one can really have much confidence in an appeals system which is to the very minister who is responsible for the people who are making the measures and issuing the various proclamations that affect people's land. Again, it is question of credibility. As far as the Commonwealth is concerned, there is not even a ministerial system. The minister makes decisions, and there is no formal appeals system at all in the Commonwealth system under the EPBC Act.[99]

Conflict between legislative regimes

3.99 The further issue of inconsistency in application was also raised by the President of the NSW Farmers' Association. Mr Armstrong commented that more than one piece of environmental legislation impacted on property:

> Lastly, ensure consistency of legislation. Our farmers are out there and there are totally conflicting cases of legislation particularly in relation to the Threatened Species Conservation Act where, on the one hand, a mining company can clear a threatened species without impunity and knock them all over in the case of eucalypt trees and, on the other hand, a farmer right next door cannot clear one. That is inconsistent, it makes it incredibly frustrating for private enterprise to operate and that is what Australia has been built on.[100]

Relationships between landholders and officials

3.100 In evidence, there were many comments concerning the relationship between landholders and state officials. Many of these comments were positive. For example, Mr Cotter from AgForce Queensland stated that policy change had occurred in Queensland and many hectares of land had voluntarily come under the states Nature Refuge Scheme. Mr Cotter commented:

> The reason we achieved the change in that legislation was to prove to the policymakers that it takes a balance within the vegetation and the nature

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98 Name withheld, *Submission 42*, p. 1.

99 Mr G McLeod, Pastoralists and Graziers Association of Western Australia, *Committee Hansard*, 20.4.10, p. 18.

100 Mr C Armstrong, NSW Farmers' Association, *Committee Hansard*, 8.4.10, p. 38.

> regime to achieve a good, sustainable outcome. Over the last three or four years, landowners in this state have voluntarily put forward 1.7 million hectares of land, in conjunction with the nature refuge scheme—where they have had, mind you, very little compensation. They have agreed to preserve those valued areas in coordination with government to maintain those values. So there is a huge amount of goodwill within the land manager community to look after these specific areas.[101]

3.101 Mr Grosskopf from the NSW Department of Environment, Climate Change and Water also commented on the positive relationships between landholders and the department:

> I would contest that the number of farmers that are actually working with us is significantly larger than it has been in the past and that people can get on with the business of farming. Back in 1998, when I first became involved in this area of work, the level of contest between these ideas and conflict with the regulation of native was significantly greater.[102]

3.102 Mr Grosskopf went on to state that adjustments are made to address concerns raised by landholders. However:

> …the regulation of native vegetation is a contested area. It is an area where a number of private landholders are very unhappy with the role of government in regulating native vegetation, be it in the urban environment or in the rural environment. But it is an area where there is a legitimate role for government to continue to put controls in place.[103]

3.103 However, the committee also received extensive evidence that pointed to a poor relationship between landholders and officials. Drawing on landholder experiences in relation to the Queensland *Vegetation Management Act 1999*, Mr Brett Smith noted the lack of consultation with landholders before the legislation was enacted and raised concerns that the local and specific knowledge of landholders in relation to their land was not adequately taken into account. He argued that this resulted in a lack of recognition of sustainable land practices employed by landholders including that of leaving individual trees and conservation clumps.[104]

3.104 Mr Nicholls echoed the frustration of many landholders who felt that they were dictated to by official measurements and computations rather than being part of an ongoing dialogue:

> What is happening is that everything—the trees et cetera—is measured so it can go into a computer. It is all very much 'Go out and put the tape measure around it.' The people who come out are just basically working for the computer. You do not actually get any option to negotiate anything; the

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101 Mr J Cotter, AgForce Queensland, *Committee Hansard*, 9.4.10, p. 33.

102 Mr T Grosskopf, *Committee Hansard*, 8.4.10, p. 17.

103 Mr T Grosskopf, *Committee Hansard*, 8.4.10, p. 17.

104 Mr B Smith, *Submission 28*, p. 1.

> computer tells you what to do. If the computer is tweaked at all it can have huge ramifications—just by changing the distance trees are apart. I have been farming some country with 60-foot implements. That is fairly wide. It is still considered open forest. There is no way you can grow wheat in open forest. The computer is saying, 'You can't touch that. That's open forest.' We have been farming it for years. So, no, they've got no idea.[105]

3.105 The committee also received evidence that the relationship between the respective bureaucracies and landholders had declined to the point whereby the climate of engagement was adversarial.[106] The Pastoralists and Graziers Association of Western Australia stated that the relevant government agencies:

> …tend to regulate with the view that they know what is best, when in many cases it can be shown that the owner's position is at least equally valid. It is difficult to have that view considered particularly for smaller, non corporate owners because the process is convoluted and expensive.[107]

3.106 A number of submitters commented on difficult discussions with departmental officials and the consequences of what they viewed as an ever-present threat of a fine.[108] Following negotiations with local departmental officers and 'several letters contradicting the last one in relation to what is to be done to my excluded land', Mr Tudor Ivanoff contended:

> I am scared now to even cut down a dead tree that is dangerous in case I get fined. My day to day activities have been impacted by the big threat of a big fine.[109]

3.107 Mr Dale Stiller argued that the native vegetation laws had led to a loss of trust between landholders and officials:

> It was a two-way learning street where landholders and agency staff could work together. If there was a problem out there and there were new practices that could be brought in, they worked together. That trust has been lost. Through the years, with this type of approach, much of that trust has been lost. The way that government has approached drafting the legislation, the lack of consultation and the imposition of draconian law onto landowners had destroyed that relationship.[110]

3.108 Mr Stiller also argued that a lack of knowledge on the part of landholders of their rights had contributed to difficult situations:

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105 Mr B Nicholls, personal capacity, *Committee Hansard*, 8.4.10, p. 83.

106 Mr D Park, WA Farmers Federation, *Committee Hansard*, 20.4.10, p. 52.

107 Pastoralists and Graziers Association of Western Australia, *Submission 12*, p. 2.

108 See for example, Mr Andrew Baker, *Submission 187*, pp 2–3.

109 Mr Tudor Ivanoff, *Submission 67*, p. 2.

110 Mr D Stiller, personal capacity, *Committee Hansard*, 9.4.10, pp 73–74.

> In the early days there was a complete lack of knowledge by landholders of what their rights were. They just took at face value what the compliance police told them. Situations were allowed to arise that should not have happened. The compliance officers I believe are allowed to come on your place if they have the right paperwork—I do not know whether they call it a warrant or whatever. If they do not have that you are allowed to tell them to get off the place. Everything that you say is used against you.[111]

3.109 Mr Stiller also raised a point in relation to the onus of proof in relation to native vegetation laws in Queensland. He commented that he believed that:

> …you basically have to prove your innocence in this case which is a complete reversal. It is a very disturbing departure from the norms of law in this country.[112]

3.110 The committee is awaiting as a response to a question regarding this issue from the Queensland Government.

3.111 The Pastoralists and Graziers Association of Western Australia noted:

> Few landowners would argue against the need for measured policies in respect of native vegetation and land management. Many have contributed substantially to conservation via tree planting and better farming techniques.
>
> Instead of being recognised for innovation and climate change credits which they have generated for the nation, rural landowners are being increasingly penalised in the name of 'community interest,' through damaging State actions in collaboration with the Federal Government via COAG and other avenues.[113]

3.112 AgForce Queensland highlighted in its submission that certainty of 'position in the landscape, and the rights than an industry player has to their resources – in this case their land' as well as certainty of product, process and market were critical.[114] The Tasmanian Farmers and Graziers Association expressed the concern that native vegetation legislation had 'created confusion, particularly regarding the referral processes, obligations of the landowner and definitions such as change in land use'.[115]

3.113 Other submitters including p&e Law noted the need for greater collaboration and consultation between governments at all levels and landholders.[116] This concern

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111 Mr D Stiller, personal capacity, *Committee Hansard*, 9.4.10, p. 78.

112 Mr D Stiller, personal capacity, *Committee Hansard*, 9.4.10, p. 77.

113 Pastoralists and Graziers Association of Western Australia, *Submission 12*, p. 4.

114 AgForce Queensland, *Submission 7*, p. 18.

115 Tasmanian Farmers and Graziers Association, *Submission 36*, p. 5.

116 p&e Law, *Submission 5*, p. 5.

was highlighted by the Productivity Commission in its 2004 inquiry into native vegetation regulations:

> A crucial thrust of the Commission's recommendations is that policies that fail to engage the cooperation of landholders will themselves ultimately fail. In addition, greater transparency about the cost-benefit trade-offs involved in providing desired environmental services would facilitate better policy choices.[117]

Private native forest management

3.114 According to the Australian Forest Growers (AFG), native vegetation legislation across the country is 'often complex, obstructive to production, and discourages the acceptance of private native forestry as a viable land use'. The AFG argued that such legislation has a negative impact on land asset value:

> The imposition of exclusion laws or limited access as a result in a change of local, State or Federal policy results in a decline in asset value as land which was once productive is now legislated as land that must be 'locked up and left' with no commensurate compensation or even stewardship payment.[118]

3.115 The AFG held that whilst in some timber production regions, more than half of the processing sector's wood intake is from private native forest resources, these 'commercial private native forest values are poorly recognised in public policy, yet make an important contribution to the economic welfare of landholders, rural communities and regional economies'.[119] According to the AFG, native forest management legislation should be consistent across all jurisdictions:

> AFG seek that legislation and regulations that govern private native forest management is streamlined i.e. that compliance with codes of forest practice constitutes compliance with all Commonwealth, State and local regulations, along with controls affecting the regeneration, management and harvest of private native forests.[120]

Impact on families

3.116 Evidence was received of the impact of financial hardship and uncertainty leading to considerable personal distress in farming communities.

3.117 One farmer who detailed the decline in productivity of his land as a consequence of clearing restrictions stated:

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117 Productivity Commission, *Impacts of Native Vegetation and Biodiversity Regulations*, No. 29, 8 April 2004, p. XLVI.

118 Australian Forest Growers, *Submission 6*, p. 2.

119 Australian Forest Growers, *Submission 6*, p. 3.

120 Australian Forest Growers, *Submission 6*, p. 3.

> The stress of dealing with all of the above caused health issues for both of us. I can't put a dollar figure on that, but the impact was significant. The people in the Government Departments we were dealing with didn't even stay in the same office position, but the results of their decisions stayed with us for always.[121]

3.118 For older farmers, the decrease in land values has had a detrimental impact on retirement plans. One farmer in his seventies stated:

> [we] have looked upon this property as our superannuation. It seems our super payout could be considerably less than hoped for and that we could be dependent on the Australian Government Pension for the rest of our lives.[122]

3.119 Others reflected on the impact on younger generations:

> The impact of the Vegetation Management laws on our family has been profound. I can remember the day I heard the government announcement as if it was yesterday. I was totally guttered, not only for myself, husband and parents in law, but for our children. This day would change the future of our family entity forever. We no longer had the ability to plan for the future, in our generation or that of our children's. I think I cried for days. It was like a part of me had died.[123]

3.120 Reflecting on the number of submissions from landholders who are stressed, Mr Dale Stiller stated before the committee:

> In fact, I do some across some people who are traumatised enough by this whole process to be too afraid to even put in a submission to this inquiry.[124]

3.121 The underlying theme across all such submissions was that in restricting farming activity, the regulations erode what landholders believe are their property rights, and that they are being forced to meet a significant portion of the cost of public conservation initiatives whilst deriving few, if any, benefits from such action.[125]

Unintended consequences for the environment

3.122 Of great concern to submitters was the apparent lack of understanding of the long term environmental consequences of native vegetation laws on the land. Dr Bill Burrows argued that bans on broadscale tree clearing and control of designated regrowth affect a substantial part of Queensland's grazing land.[126] Indeed, AgForce

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121 Name withheld, *Submission 21*, p. 2.

122 Mr D & Mrs E Butler, *Submission* 134, p. 2; see also Mr J Cash, *Submission 56*, p. 2.

123 Name withheld, *Submission 40*, p. 1.

124 Mr D Stiller, personal capacity, *Committee Hansard*, 9.4.10, p. 73.

125 See for example, Cobar Vegetation Management Committee, *Submission 13*.

126 Dr B Burrows, *Submission 297*, p. 1.

Queensland, Property Rights Australia and Dr Burrows held that restrictions on thinning or clearing woodland 'thickening' have inadvertently led to soil erosion and loss of biodiversity on the land whilst negatively impacted on grazing and therefore productivity.[127]

3.123 Dr Burrows outlined the consequences of woodland thickening:

> Tree thickening on grazing land greatly reduces potential pasture (and hence livestock) production. In turn this lowers carrying capacity and property viability. Tree thickening also reduces rainfall infiltration, run-off and stream flows. It markedly changes the flora and fauna composition (biodiversity) of affected areas. Thickening also increases mustering problems and adds to difficulties in managing feral animals.[128]

3.124 Ms Carmel Walsh provided the following example:

> When the NSW Native Vegetation laws came into effect we had the management and improvement of 1/3 of our property taken away from us. This area of land is primarily invasive scrub which we had intended to remove in order to plant native grasses for ground cover and/or stock feed to be able to run some livestock.
>
> Since the introduction of these laws the scrubby areas have increased and any ground cover that was there has been denuded; a major decrease in native animal population has also been evident due to no natural grasses and herbages. Erosion is at a peak with the formation of large gullies resulting in some of the bigger trees (gums etc) that should remain will in actual fact fall over due to the erosion of the soil from around the base of them, also large amounts of top soil being washed away resulting in large amounts of sedimentation being deposited into natural waterways.
>
> If we cannot reverse this process in the very near future vast tracks of not only our land but land over the whole western area will further become scrub infested, barren, uninhabitable, and worthless for all life forms including native animals.[129]

3.125 Prevented from managing invasive species 'woody weed', Ms Louise Burge contends that many parts of Western NSW have been left a 'barren wasteland of little value to biodiversity or farm production'. She continued:

> Invasive or dominance of particular species types, become 'closed' stands and prevent grasses and other diverse species growth. Bare grounds results which is then often subject to erosion after large/or flash flood rain events.
>
> It has been estimated in recent years, that on loamy red earth soils (eastern section), an area of approximately 6.04 million hectares, approximately

127 AgForce Queensland, *Submission 7*; Property Rights Australia, *Submission 14*; Dr B Burrows, *Submission 297*; Mr J Cotter, AgForce Queensland, *Committee Hansard*, 9.4.10, p. 34.

128 Dr B Burrows, *Submission 297*, p. 2.

129 Ms C Walsh, *Submission 53*, p. 1.

> 5,128,000 ha has been infested with invasive wood weeds (timber and shrub species).[130]

3.126 Mr Viv Forbes of the Carbon Sense Coalition also argued that native vegetation legislation was destroying native grasslands and stated that: 'We are destroying one set of native vegetation with another much less useful one'.[131]

3.127 Other witnesses commented that they had observed changes in the flora and fauna following the introduction of the native vegetation laws, for example, as trees cannot be thinned, there has been a shift from open woodland fauna to scrub species.[132]

3.128 Many farmers whose properties abut national parks or other Crown land commented on the problems of vegetation management of productive land. Mr Geoff Patrick commented:

> We live in an area surrounded by National Park and forest which has been 'locked up' for the supposed benefit of native animals and community. Our property is a haven for mammals, reptiles and birds in stark contrast to the surrounding area which is becoming void of the same. The restrictions imposed by the native veg act is causing our property to deteriorate and degenerate and my best guess is that in 25 years about half of our 4500 acres will become as useless as the surrounding national park.
>
> I am aware that there are many who believe that “locking up “ areas is good for all however I am also aware that most of those never venture out of the city. I have been living and making a living farming for most of my life and on a daily basis watch the kangaroos and emus venture out of the parks to feed. Why, because there is nothing in there for them to eat.[133]

3.129 Submitters commented on the problems of controlling invasive species. While it is the landholder's responsibility to control weeds etc, the inability to clear some trees makes it unsafe to use spraying equipment and other means to control invasive species.[134]

3.130 The Carbon Sense Coalition stated that all native vegetation had become a liability for landowners with some opting to plant exotic plants which they have authority to remove, harvest, prune, propagate or poison over native plants which attract restrictions.[135] Mr Viv Forbes commented:

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130 Ms L Burge, *Submission 320*, p. 26.

131 Mr V Forbes, Carbon Sense Coalition, *Committee Hansard*, 9.4.10, p. 25.

132 Mr G Verri, *Submission 101*, p. 1.

133 Mr G Patrick, *Submission 135*, p. 1.

134 See for example, Mr A & Mrs S Kenny, *Submission 129*, p. 1.

135 Carbon Sense Coalition, *Submission 17*, p. 11.

> Native plants—eucalypt plants specifically—are a liability on any property now. On my property, if I see a eucalypt a few inches high it does not get any higher. I can get rid of it when it is that height; you will never see me. But once it gets bigger I am not allowed to touch it anymore. Landowners are creating liabilities for themselves. But I can plant an albizia or a tipuana. Tipuana is the best tree I have ever had on my property. It is a beautiful, exotic tree. It is shady, it improves the soil, it drops its leaves in winter and lets the sun through, it grows quickly and I can cut it down whenever I like.[136]

3.131 A further matter noted by Mr Ron Bahnisch was that when the Queensland government foreshadowed placing a ban on land clearing, a large amount of clearing was conducted, some of which may not have been undertaken if the ban had not been pending:

> We purchased heavy machinery and for twelve months cleared all the country that was feasible.
>
> Given a choice, some of this land probably would never have been cleared.
>
> It is just an example of how the fear of compulsion will lead to perverse outcomes.[137]

3.132 A further issue that was canvassed extensively in evidence was the impact of native vegetation laws on fire management. The Australian Environment Foundation (AEF), for example, commented that historic practices of low intensity mosaic cool burning on private land was a dual purpose management tool. This practice reduced the impacts of high intensity wildfires through management of highly flammable understorey species. Such practice also enabled a range of grass species to flourish, enhancing the productive value of the land to farmers. Mosaic burning practices by farmers prior to 1990s was a relatively common practice in many landscapes. The AEF concluded:

> The introduction of native vegetation laws shifted public opinion and historic management practises and the use of low intensity fires became more difficult. Australia's recent bushfire history from 2002 to 2009 should encourage policy makers to revisit options for vegetation management through the use of prescribed fire across all land tenure.[138]

3.133 However, not all witnesses considered that the native vegetation laws could lead to adverse outcomes for the environment. Mr Ian Herbert of the Capricorn Conservation Council, for example, questioned the view that there is soil erosion where regrowth has taken place and trees have taken over:

> I would dispute that there is soil erosion because of the trees coming up. I contend that the one factor that is not being considered sufficiently in all of

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136 Mr V Forbes, Carbon Sense Coalition, *Committee Hansard*, 9.8.10, p. 28.

137 Mr R Bahnisch, *Submission 317*, p. 1.

138 Australian Environment Foundation, *Submission 201*, p. 5.

> this is stocking rates. Where stocking rates are sufficiently low to allow ground cover – and I do not mean just grass ground cover; I mean leaves, twigs, all sorts of vegetation that is on the ground to break up the rain – that prevents the soil erosion. I would take people back to pre white man. How much soil erosion was there off brigalow country before it was cleared in the first place? I do not know if we can say that there was a lot.[139]

3.134 Mr Herbert also stated:

> I will just give you one fact about brigalow because it is the predominant ecosystem in the Central Queensland region, going right down to the Darling Downs. Originally there were seven million hectares of brigalow. It is down to less than 10 per cent at the moment, and that is why it is called endangered now. I know a lot of rural people say that it comes up and thickens and everything, but it is very hard. Scientists from DPI have been trying to re-establish brigalow as an ecosystem—not just the trees but the whole brigalow ecosystem. It is extremely difficult to re-establish.[140]

Support for reform

3.135 A number of landholders and their representatives argued that the regulatory approach was ineffective in achieving the desired sustainable environment outcomes. The Northern Territory Cattlemen's Association commented that a regulatory approach to vegetation management and biodiversity conservation is expensive with high transaction costs in terms of administering, monitoring and enforcing the legislation. These costs are borne by landholders and by the broader Australian society.[141]

3.136 The need for change in the approach to native vegetation conservation was supported by witnesses with Mr Kenny of Property Rights Australia stating for example that:

> The regulators appear to have approached the problem from the point of view, 'What do we have to do to stop land clearing?' rather than, 'What do we have to do to implement a responsible approach to land management which preserves the productive capacity and at the same time preserves biodiversity?'[142]

3.137 The preferred alternative was that of environmental stewardship initiatives. Mrs Deborah Kerr, the National Farmers Federation's Manager of Natural Resource Management argued that environmental stewardship enabled active management of environmental outcomes rather than a 'lock up and leave' approach which much of the

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139 Mr I Herbert, Capricorn Conservation Council, *Committee Hansard*, 9.4.10, p. 85.

140 Mr I Herbert, Capricorn Conservation Council, *Committee Hansard*, 9.4.10, p. 86.

141 Northern Territory Cattlemen's Association, *Submission 383*, p. 3.

142 Mr G Kenny, Property Rights Australia, *Committee Hansard*, 9.4.10, p. 4.

current legislation requires farmers to do.[143] She argued that the National Water Initiative, an intergovernmental agreement between Commonwealth and states and operational since 2004 made provisions for compensation to affected entitlement holders for reduced reliability and was a good model to draw on:

> The provisions are called risk assignment. The risk assignment clauses state that the state and Commonwealth governments and irrigators agree that, for any change in reliability due to climate variability or climate change, the entitlement holder, including the Commonwealth, will bear the risk of that change. If the change is due to government policy, governments have agreed to fund that 100 per cent. If it is in relation to new knowledge, irrigators or entitlement holders wear the first three per cent, the next three per cent is shared—two per cent by the state government and one per cent by the Commonwealth, and there is a caveat on that with New South Wales—and thereafter the Commonwealth and the state governments wear that fifty-fifty. If you are looking for a model for compensation as something different to market based instruments, then that is a model that is already agreed, signed and being implemented as we speak.[144]

3.138 The Environment and Property Protection Association (EPPA) also voiced concern that a sustainable management plan be established:

> Land clearing needed to be stopped until a sustainable management plan could be produced. This plan should have provided compensation for loss of income and included a management plan so that sustainable production/grazing could occur while protecting tree species and meeting the greenhouse gas abatement requirements. Landholders should be employed as custodians of these areas to control weeds, sucker growth and feral animals. Regional natural resource management (NRM) groups should be involved in developing sustainable management plans and independent valuers should be employed to determine compensation arrangements in conjunction with NRM groups.[145]

3.139 AgForce Queensland promoted a cooperative voluntary national resource management policy as opposed to regulation, which ensures that clearing does not cause degradation, maintains or increases biodiversity, maintains ecological processes, allows for ecological sustainable land use, and ensures equity and comprehensiveness across all tenures.[146] AgForce Queensland argued that stewardship programs have proven far more effective and productive in producing environmental outcomes than regulatory systems. Drawing on a number of practical examples of successful stewardship programs, AgForce Queensland stated:

> Environmental stewardship programs require some terms for formal agreement between a landholder and the third party to manage the land.

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143 Mrs D Kerr, National Farmers Federation, *Committee Hansard*, 8.4.10, p. 55.

144 Mrs D Kerr, National Farmers Federation, *Committee Hansard*, 8.4.10, p. 59.

145 Environment and Property Protection Association, *Submission 9*, p. 1.

146 AgForce Queensland, *Submission 7*, p. 11.

> This agreement usually sets the conservation outcomes by defining management objectives for the land and is often incorporated in property planning Thus it can be seen that the benefits of voluntary environmental stewardship programmes, with proven environmental outcomes, far outweigh the social, economic and environmental costs of a regulatory approach.[147]

3.140 Highlighting financial and market-based incentives, Growcom suggested that the industry required the opportunity to apply voluntary industry-led initiatives where possible to address natural resource management issues and that:

> Financial and other support for industry based programs such as stewardship and ecosystems services, when the public benefits of natural resource management outweigh private benefits, and when the community's expectations of natural resource management or biodiversity conservation restrict growers' farm management beyond current recommended practices.[148]

3.141 AgForce Queensland argued against a regulatory regime in favour of stewardship:

> …the notion of stewardship, whereby a landholder is rewarded, either monetarily or in-kind, for additional public good that goes beyond the 'duty of care' has over the last decade been recognised as the suitable mechanism by which to obtain public good outcomes while providing sufficient business certainty. It rewards good stewards, providing them with certainty and unlike the legislative option, does not disenfranchise landholders who were otherwise doing a good job.[149]

3.142 Other submitters were in favour of greater use of market-based instruments for vegetation management. Whilst a number of states have implemented such approaches including Victoria and NSW, which serve as an alternative to legislation or grants, DAFF noted the complexities involved:

> To operate effectively, these programs require good information and a legislative framework to underpin them. Particular challenges include estimating the quality and quantity of environmental outcomes that result from landholder actions, ensuring landholders undertake the agreed land management actions despite the difficulty in monitoring individual actions and ensuring any negative environmental impacts of land management are accounted for.[150]

3.143 However, drawing on case studies conducted by Australian Bureau of Agricultural and Resource Economics (ABARE), DAFF recognised that the costs of

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147 AgForce Queensland, *Submission 7*, p. 17.

148 Growcom, *Submission 10*, p. 4.

149 AgForce Queensland, *Submission 7*, p. 11.

150 Department of Agriculture, Fisheries and Forestry, *Submission 371*, p. 10.

conserving a given level of native vegetation could be lowered if, through market-based policy instruments, trade-offs between agricultural development in one area and increased native vegetation conservation in another were allowed:

> In other words, the considerable variation in costs of conserving native vegetation within and across regions suggests that there may be scope to achieve the desired level of environmental outcomes at lower cost to the farm sector if more flexible policy instruments were adopted. All of the ABARE studies suggest that the adoption of a more flexible approach in the way in which environmental targets are met, may improve environmental outcomes that are of benefit to society in ways that minimise the costs incurred by private landholders.[151]

3.144 The committee recognises that such an approach is also consistent with the Kyoto Protocol given that its mechanisms are:

> …based on the principle that the benefit to the climate of reducing greenhouse gas emissions is the same regardless of where they are reduced.[152]

3.145 The National Farmers' Federation supported the current environmental stewardship program under the federal *Caring for our Country* initiative. Under the program, direct payments are given to landholders to 'maintain and improve the quality and extent of high public value environmental assets listed under the *Environmental Protection and Biodiversity Conservation Act 1999*'.[153] However, it also raised concerns regarding the future funding of the program. Mrs Kerr continued:

> The National Farmers Federation are on record as saying that that program needs to be expanded geographically and to cover more ecological communities listed under the federal EPBC Act. It is going into its last year of funding in 2010-11 and we need to look at how we can fund that into the future. That is a really good example.[154]

3.146 In terms of the comparative size of the *Caring for our Country* initiative, the Wentworth Group of Concerned Scientists held that the initiative had a budget of $400 million, the investment amounted to less than $2 per hectare if spread across the continent. By comparison, it noted that the estimated cost of repairing the damage to Australia's natural resources is estimated at over $80 billion.[155]

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151 Department of Agriculture, Fisheries and Forestry, *Submission 371*, p. 22.

152 Department of Climate Change and Energy Efficiency, *National Authority for the Clean Development Mechanism and Joint Implementation*, http://www.climatechange.gov.au/en/government/initiatives/national-authority-cdm-ji.aspx (accessed 164.10).

153 Department of Agriculture, Fisheries and Forestry, *Submission 371*, p. 10.

154 Mrs D Kerr, National Farmers' Federation, *Committee Hansard*, 8.4.10, p. 45.

155 Wentworth Group of Concerned Scientists, *Submission 2*, p. II.

Conclusion

3.147 The evidence received by the committee points to a number of significant negative impacts of native vegetation laws on landholders. The negative impacts relate to diminution of productivity levels and land value. That evidence is not dissimilar to the findings of the Productivity Commission inquiry and research conducted by ABARE. As noted in the introduction of this chapter, the negative impacts vary for individual landholders.

3.148 The committee acknowledges that while there are examples of landholders and government officials working together to improved environmental outcomes, the ever-tightening regulations in relation to native vegetation have contributed, in some instances, to the apparent demise of good relationships between landholders and government. Examples of inflexible application of assessment and compliance regimes, lack of consultation with landholders and unwillingness to take into account local knowledge and conditions have been provided in evidence. In some cases, the problems are of such significance that families and whole communities have been affected negatively.

3.149 The committee holds the view that the relationship between landholder and government is paramount to ensuring positive environmental outcomes and maximising productivity. As was put to the committee on many occasions, farmers know their land and wish to ensure that it remains healthy and productive. Many espoused their support for sustainable environmental outcomes and their willingness to contribute to achieving that goal within regimes that are flexible and that recognise the competing priorities of government environmental goals and landholders' concerns in an equitable way.

3.150 Notwithstanding the outcomes of the current consultation in relation to *Australia's Native Vegetation Framework* for the nationwide management and monitoring of native vegetation, therefore, the committee suggests that steps be taken to rectify the deteriorating relationship between landholders and respective bureaucracies.