Chapter 4

Compensation arrangements to landholders, the appropriateness of the method of calculation of asset value and viable alternatives

Introduction

4.1 This chapter considers the current compensation arrangements for landholders resulting from the imposition of native vegetation and legislated greenhouse gas abatement laws, the appropriateness of the method of calculation of asset value and whether these arrangements are adequate. This chapter also considers environmental stewardship arrangements and other incentive schemes and initiatives as complementary to compensation or as viable alternatives.

4.2 Many landholders and their representatives who provided evidence during this inquiry were in favour of compensation for loss of productivity and land value that resulted from native vegetation legislation. Many held strong views that such laws force them to bear the financial burden of public conservation objectives. Indeed, the commonly held view was that landholders have otherwise productive land 'locked up' for the public good and endure loss of productivity and land value as a result whilst also having to bear the cost burden of managing that unproductive land. Whilst some landholders argued for compensation to be paid for loss of productivity and diminution of land value suffered to date, there was common interest in environmental stewardship initiatives into the future which would support landholders, financially and otherwise, to meet publicly beneficial environmental objectives on their land.

Current compensation arrangements

4.3 In relation to compensation per se, the Productivity Commission noted in 2004 that compensation for the impacts of native vegetation regulations remained the 'exception rather than the rule':

> In South Australia, between 1985 and 1991, compensation was offered to landholders whose clearing applications were rejected and who agreed to set aside the land under a heritage agreement. A similar, if somewhat more limited, scheme has operated in Western Australia.[1]

4.4 The compensation arrangements in South Australia were amended to remove the compensation provisions. According to the Legal Services Commission of South Australia, the previous compensation provisions 'had the effect of increasing the number of applications and decreasing the resources of the Environment

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

Department'.[2] Landholders may now receive financial assistance to help manage the land, a rate rebate and fencing assistance to manage native vegetation on their properties.[3]

4.5 In Queensland, the Government provided $150 million over five years through a vegetation management structural adjustment package. The package was introduced in 2004 to assist farm businesses affected by the introduction of the new Vegetation Management Framework in 2004.[4] The package consisted of $130 million for landholders, especially primary producers, to exist the industry; $12 million over four year to be give out under competitive tendering processes to maintain and preserve high value non-remnant native vegetation and other areas that are not protected; and $8 million over four years to support best management practice.[5]

4.6 The New South Wales Government has developed the Native Vegetation Assistance Package to help farmers who experience financial hardship as a result of the *Native Vegetation Act 2003*. Nine sustainable farming grants to farmers totalling $947 000 were provided. A further $400 000 in sustainable farming grants remains available for private native forest operators. Exit Assistance amounting to $17.6 million was delivered by a revolving fund administered by the Nature Conservation Trust. Four properties have been purchased. This scheme is available for all landholders until 30 June 2012 (funds pending).[6]

4.7 In Western Australia, landholders who voluntarily enter into conservation covenants receive some assistance and incentives.[7] Ongoing conservation advice is available to landholders to assist them in their conservation efforts, up to $500 is made available for the landholder to seek independent legal advice at the time of entering into the covenant, some funding is available for fencing and other management and landholders may receive rate reductions.[8]

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2 Legal Services Commission of South Australia, *Law Handbook*, 'Native Vegetation Act 1991', http://www.lawhandbook.sa.gov.au/ch18s05s02s02.php (accessed 26.4.10).

3 South Australia Department of Environment and Heritage, *Ecosystem Conservation - Conserving Biodiversity - The Heritage Agreement Scheme*, http://www.environment.sa.gov.au/biodiversity/ecosystem-conservation/heritage_education.html (accessed 29.4.10).

4 Queensland Department of Environment and Resource Management, *Annual Report 27 March – 30 June 2009*, p. 35, http://www.derm.qld.gov.au/about/pdf/derm09-land-veg.pdf (accessed 27.4.10).

5 Preservation Society of Wildlife Queensland, *Conservation*, http://www.wildlife.org.au/conservation/issues/2005/vegetation2.html (accessed 26.4.10).

6 NSW Department of Environment, Climate Change and Water, *Submission 15*, p. 6.

7 Squelch, Dr J, *The Agricultural Industry*, 'Land Clearing Laws in Western Australia', Vol. 9, 2007.

8 WA Department of Environment and Conservation, *Nature Conservation Covenant Program*, http://www.dec.wa.gov.au/content/view/120/453 (accessed 27.4.10).

4.8 In Tasmania, where landholders are prevented from clearing threatened native vegetation, the *Nature Conservation Act 2002* sets out the processes and criteria for compensation.[9] The conservation compensation committee responsible to assess the claim for compensation must consider the extent to which the duty of care that the landowner is being required to exercise regarding the conservation of natural and cultural values on the relevant land exceeds the duty of care required under the Forest Practices Code on the date of the relevant conservation determination.[10]

4.9 It was acknowledged in evidence that whilst section 51(xxxi) of the Constitution binds the Commonwealth in relation to compensation, there are no requirements for the states to legislate for compensation in similar circumstances contained in the Commonwealth Constitution as this remains a matter for state Parliaments and Constitutions. Notwithstanding this fact, Mr Charles Armstrong, President, NSW Farmers' Association, articulated the complexity of awarding compensation in NSW:

> …state parliament has to pass legislation relating to each and every case. There is a principle of compensation on just terms, but it becomes an act of parliament. It requires an act of parliament in whatever issue to actually carry that. The situation, of course, is that you are looking at a multitude of individuals who are being affected by this process, and then a determination of compensation and so on. We are not absolving the state government from responsibilities, and the enactment of legislation to block the loophole in section 51 relates also to the enactment of legislation for fair and reasonable compensation.[11]

Adequacy of current compensation arrangements

4.10 Whilst there was recognition of the existence of funding initiatives at both Commonwealth and state level, the commonly held view of landholders reflected the findings of the Productivity Commission that compensation was generally not forthcoming. Witnesses stated that in the jurisdictions where there was compensation, that it was generally seen as inadequate for the perceived losses borne by landholders. In particular, witnesses voiced the view that compensation was not available for what they saw as a restriction of their property rights which amounted to a 'taking' by the relevant state or territory government.

4.11 In Queensland, the committee heard that the government had provided $150 million to compensate landholders. Mr Ron Bahnisch of Property Rights

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9 Forest Practices Authority, *Information on Land Clearing Controls in Tasmania*, http://www.fpa.tas.gov.au/fileadmin/user_upload/PDFs/Botany/Land_Clearing_Information_Sheet_feb_08.pdf (accessed 27.4.10).

10 *Nature Conservation Act 2002*, subpara. 42(2)(c)(vb).

11 Mr C Armstrong, NSW Farmers' Association, *Committee Hansard*, 8.4.10, p. 49.

Australia commented that the criteria of the Queensland Government's compensation scheme was such that it was not all taken up.[12]

4.12 Mr John Cotter, Agforce Queensland, also commented that the level of compensation in Queensland was inadequate, with many property owners significantly disadvantaged by more than $100 000. Mr Cotter stated that 'in the long term, the devaluing of that land and the loss of potential production of that land even now, 10 years later, would have been a greater amount than anywhere near $100,000'.[13]

4.13 One Western Australian landholder provided evidence of his experience of seeking compensation. After seeking approval to clear approximately 40 per cent of 1 000 acres to run 50 head of cattle, the landholder was forced to sell farm machinery and all cattle associated yard and materials whilst waiting on the decision from the respective department. The farmer was offered compensation but stated:

> The Department of Agriculture offered us $100,000 in 2007. But the offer came with so many stipulations that it would have cost us $145,000 to accept…So we declined the offer. We have been told that by refusing that offer, we gave up all rights to pursue the case further. We have not pursued it because our health was suffering, and we decided that was more important that continuing to fight this headless monster.[14]

4.14 In relation to 'takings', for example, the Coalition for Agricultural Productivity stated that:

> Compensation arrangements are avoided in almost every case, as most of the affected property avoids being classified as "takings." The Government should have to pay just terms compensation for blighting of property as well as taking.[15]

Calls to improve compensation arrangements

4.15 During the inquiry, landholders and their representatives argued that adequate compensation was necessary as native vegetation laws had resulted in harm in three main areas: diminution of land asset value; adverse impact on productivity; and restriction on property rights. Landholders also argued that compensation should be made available in recognition that they are being required to manage land for the public good.

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12 Mr R Bahnisch, Property Rights Australia, *Committee Hansard,* 9.4.10, p. 6.

13 Mr J Cotter, AgForce Queensland, *Committee Hansard*, 9.4.10, p. 42.

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

15 Coalition for Agricultural Productivity, *Submission 11*, p. 2.

Compensation for loss of land value and productivity

4.16 The committee has outlined the evidence provided in relation to loss of land asset value in Chapter 3. In relation to loss of productivity, the NSW Farmers' Association stated:

> Farmers value both native vegetation and biodiversity and voluntarily retain certain native vegetation in mosaic patterns on their land. Where this retention goes beyond a reasonable duty of care, however, the Association believes that farmers must be paid for the conservation service at a rate that compensates for the lost value of production.[16]

4.17 Growcom held a similar view:

> Growcom supports the provision of financial compensation to landholders whose properties become subject to any newly introduced laws that prohibit them from clearing vegetation, including regrowth, on areas that were able to be cleared and used for growing crops previously. As removing areas from production reduces the value of that property to any future buyer, we see it as a matter of equity that landowners be compensated for any such government policy.[17]

4.18 The Western Australian Farmers Federation (WAFarmers) supported compensation by stating:

> WAFarmers believes that there needs to be realistic provision for equity adjustment (compensation) for the loss of potential and real productive capacity on freehold land in the name of public good and to encourage investment in securing and preserving areas of native vegetation, or re-establishing native ecosystems.[18]

4.19 Whilst arguing for adequate compensation, Mr Armstrong of the National Farmers' Federation put a figure on the loss in potential income as a result of native vegetation legislation:

> In New South Wales, no compensation was offered to farmers to cover the lost income and land value of areas of land locked up and sterilised from production. Again, the Australian Farm Institute did some work in this regard, as did the Productivity Commission and ABARE, and the estimate is that there is a $600 million per year loss in potential income as a result of these laws. There are no arrangements in place to compensate farmers for that loss of land value and existing rights resulting from native vegetation legislation or other biodiversity conservation policy.[19]

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16 NSW Farmers Association, *Submission 236*, p. 6; see also Australian Forest Growers, *Submission 6*, p. 4.

17 Growcom, *Submission 10*, p. 5.

18 WA Farmers Federation, *Submission 4*, p. 5.

19 Mr C Armstrong, National Farmers' Federation, *Committee Hansard*, 8.4.10, p. 36.

Compensation for a change in property rights

4.20 An argument strongly voiced by many submitters was that native vegetation laws had restricted their property rights and therefore compensation should be provided. Many submitters viewed that they owned the land but governments were no longer allowing them to utilise it in the ways they wished and in effect had 'stolen' it by stealth.[20] Indeed, a common view was that landholders had effectively lost their rights of ownership but had retained all the responsibility that ownership entailed and therefore they should be compensated for the change in property rights.

4.21 Mr Robert and Mrs Sally Colley stated this view:

> It is extremely frustrating to own something but be dictated to as to how to use it. This land is **owned** by us but we can't do what we want with it (even though we consider the request to clear the land was reasonable and modest and that we can demonstrate good management and great pastoral care and sensitivity over generations). Nor have we been compensated for our loss. We have been forced to forego income, with no compensation or acknowledgement or apology.[21]

4.22 Mr Ken Jones also articulated a view shared by many landholders before this inquiry:

> Native vegetation laws and legislated greenhouse gas abatement measures, to varying degrees, impose restrictions and limit what were prior legitimate commercial activities of private landholders.
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> At the same time private landholders are still required to manage and maintain the land while being denied the opportunity for commercial benefits from the expenditure of their time, money and other resources. e.g. suppressing invasive weeds etc.[22]

4.23 Using the analogy of development flats, Mr Armstrong, the NSW Farmers' Association, argued a similar case:

> It is really not just country property; it is all property. The problem is that most, if not all, enterprise in Australia has been based on the notion of private ownership. People are not going to invest and continue to invest in private ownership of property and run those properties as private enterprises to the benefit of Australia as a whole if we continue to have this uncertainty, where the rules are changed five minutes after you have purchased the property. We have been using the example to simplify it even further than the development flats—the case of someone who has just bought a three-bedroom home, where they are very proud of their purchase and everything, and the government or a compliance officer knocks on their door the next morning and says, ‘Sorry, you’ve got to lock up the third

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20 See for example, Name withheld, *Submission 84*, p. 1; Name withheld, *Submission* 213, p. 1.

21 Mr R and Mrs SColley, *Submission 336*, p. 2.

22 Mr K Jones, *Submission 30*, p. 1.

> bedroom.' That is exactly what is happening, in a very simplistic way, on farms. It is a very complex issue. There are plenty of examples where loss of value has occurred through both threatened species and the Native Vegetation Conservation Act.[23]

4.24 AgForce Queensland provided evidence of what it argued was a shift in the concept of land ownership, arguing that the current official attitude is one which recognises ownership as 'akin to something more like stewardship' which is reflected in the current policy discourse of 'public good on private land':[24]

> AgForce contends that while the exact rights of freehold title must be at times subject to public scrutiny, serious and continual erosion of these rights should be subject to significant debate and are best achieved through a stewardship model. This is a basic right which ensures that landholders are not continually forced to carry the burden of whatever public good which the government of the day has decided on a political whim to change their minds on.[25]

4.25 The view that common law rights of land ownership had been eroded was held by p&e Law. Mr Lestar Manning commented 'it has got to the extent now where you can buy a property and you cannot deal with it for the purpose for which you bought it'.[26] p&e Law noted that without a change in approach, potential impacts may include increased loss of equity in property; lack of certainty which would increasingly undermine investment confidence; declining local access to suppliers and support services; reduced options in terms of succession and young people leaving the rural sector.[27] The respective outcomes may, according to p&e Law impact on cultural heritage, food security, biosecurity, biodiversity and the capacity to manage the environment.[28]

Provisions relating to acquisition of property

4.26 The question of land title and acquisition of property in relation to compensation was central to the inquiry. The common sentiment amongst landholders and their representatives was articulated by p&e Law:

> These common law interests in land have been taken away from landholders without any just compensation under the guise of regulation on the premise that no property has been transferred to government and therefore no acquisition has occurred.[29]

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23 Mr C Armstrong, NSW Farmers' Association, *Committee Hansard*, 8.4.10, p. 39.

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

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

26 Mr L Manning, p&e Law, *Committee Hansard*, 9.4.10, p. 60.

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

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

29 p&e Law, *Submission 5*, p. 7.

4.27 The committee received evidence which held the view that there had been no acquisition of land under the various native vegetation laws and therefor compensation was not payable. Mr Tom Grosskopf put the position of the NSW Government that generally there has been no acquisition of land and therefore no compensation:

> The approach in New South Wales has been that there is no acquisition of property. We did have a structural adjustment package attached to the Native Vegetation Act, where four farmers were assisted to exit their properties, to the value of $17.6 million paid to farmers. In that case, there was a clear demonstration that the properties had become unviable as a result of an inability to clear. There was a hardship test and a set of financial circumstances examined and explored by our Rural Assistance Authority and then an offer at market value was offered to those properties. Those properties are now going through a process of having management plans established and conservation covenants put on them and then they will be revolved back into the market. A property which was purchased for $1.2 million up on the North Coast was resold, following conservation covenants being established on the property, for exactly the same as the purchase price.[30]

4.28 The Australian Network of Environmental Defender's Offices (ANEDO) questioned whether compensation is payable for the imposition of native vegetation laws arguing that such a position is not legally tenable as:

> It has long been accepted under the common law and through High Court decisions that Government *regulation* of activities that can occur on private property (such as whether land may be cleared or not) does not constitute an *acquisition* of property and therefore no right to compensation is activated.[31]

4.29 Drawing on an example of zoning laws in local plans, the ANEDO stated that whilst a particular zoning may limit the development activities on a parcel of land and may therefore affect land prices, this is 'not tantamount to an acquisition of land as the zoning does not affect the property rights in the land itself':

> Therefore, a state government implementing native vegetation laws to control or prohibit land clearing as a result of Government policy to regulate and protect natural resources is clearly not an acquisition for which compensation is payable.[32]

4.30 ANEDO noted that there was no legislation in any jurisdiction other than the Northern Territory with provisions requiring compensation for the acquisition of property or any lesser modification of any property right. Thus, such jurisdictions can

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30 Mr T Grosskopf, Department of Environment, Climate Change and Water, *Committee Hansard*, 8.4.10, p. 9.

31 ANEDO, *Submission 3*, p. 2.

32 ANEDO, *Submission 3*, pp 2–3.

acquire on any terms they choose. ANEDO also highlighted that whilst there is no acquisition of property involved in the imposition of native vegetation laws, '*even if* there was an acquisition, there is no right to compensation under state constitutions'.[33]

4.31 However, drawing on the example of the Newcrest mining case, ANEDO recognised that there are some circumstances where regulation of land may need to provoke reconsideration of the longstanding legal principle that regulation of property does not trigger compensation as it does not amount to acquisition:

> In that case the right to mine under mining tenements was taken away but not the mining tenements themselves. In reality, although it was regulation, it amounted to sterilisation of those mining tenements, because there was no other way to use that property, for example.[34]

4.32 In recognising the difficulties for landholders in relation to the restrictions imposed on them by the native vegetation legislation, Ms Walmsley of ANEDO held that:

> We can understand the frustration, but this is where the government and different organisations need to work with farmers to work out different uses of the land, whether it is a private conservation or whether there are payments for ecosystem services, so that the farmer can get income from that land, even if it is not in the particular way that was originally envisaged.[35]

4.33 Some landholders argued that restrictions on land use in many instances which resulted in loss of land for production purposes constituted a form of acquisition. The AFG continued:

> For example, New South Wales has just terms laws but this only applies when the property is acquired but not when the land use is restricted. Restricting land use can, depending on the restrictions, be just the same as a loss in area available for use, i.e. a loss due to acquisition.[36]

4.34 Mr Lestar Manning of p&e Law argued that the High Court had noted in the past that if regulation goes as far as to sterilise the land, then it can be tantamount to a taking of that land.[37] He held that regardless of whether acquisition had taken place, however, property rights should be recognised:

> When a farmer buys a piece of land to farm which is vegetated and then is told he cannot clear the land, that goes to the fundamental root of that title. There is common law dealing with what is called the profit a prendre, which is an ability typically to take something from the land rather than to

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33 ANEDO, *Submission 3*, p. 3.

34 Mr Ghanem, ANEDO, *Committee Hansard*, 8.4.10, p. 21.

35 Ms Walmsley, ANEDO, *Committee Hansard*, 8.4.10, p. 24.

36 Australian Forest Growers, *Submission 6*, p. 4.

37 Mr L Manning, p&e Law, *Committee Hansard*, 9.4.10, p. 56.

> keep something on the land. It is a legal mechanism which is available to be used and has been used in Queensland through the Forestry Act to provide for carbon sequestrated in trees. Those basic property rights are affected by the regulation of land. I am saying that, to treat the farmers and rural communities fairly, there needs to be a recognition that, irrespective of whether or not there is an acquisition in that strict legal sense, what needs to occur is that it has to be dealt with as a property right, which then would be dealt with under acquisition of land act provisions in each state.[38]

4.35 Mr Manning concluded:

> There is an injustice; the state vegetation-clearing laws in Queensland have imposed restrictions on rural communities. In fact, one can see even in some speeches to the legislation in the state parliament that the laws are quite clearly designed to impact only on rural, Indigenous or agricultural pursuits. That is discriminatory.[39]

4.36 ANEDO highlighted public policy reasons along with the legal position as to why compensation should not be provided for the imposition of native vegetation laws. These include the possibility that a climate is created whereby governments are reluctant to regulate property for fear of financial repercussions leading potentially to a stagnation of environmentally beneficial action. Other possible ramifications include complex and costly litigation over what particular regulations require compensation and the attribution of rights to compensation could, according to ANEDO, lead to environmental degradation as landholders could use their land in anyway they see fit.[40]

Compensation in relation to maintenance of a public good

4.37 Many landowners were vocal on the need for compensation for what they saw as maintaining a public good for the benefit of the community as a whole but at their expense. It was noted that landholders were still required to pay rates, to undertake weed control and other routine management activities without compensation.[41] Mr Wade Bidstrup commented:

> Surely if this land is locked up for the public good then the government should pay the rates, maintain the fences and ensure that weeds and feral animals are controlled, not to mention compensate the landholder fairly for the loss of production attributable to that land and/or compensate the landholder to the market value of the land. If the government is not prepared to do that than it should be prepared to pay the landholder to

38 Mr L Manning, p&e Law, *Committee Hansard*, 9.4.10, p. 55.

39 Mr L Manning, p&e Law, *Committee Hansard*, 9.4.10, p. 62.

40 ANEDO, *Submission 3*, p. 4.

41 See for example, Mr Neville Brunt, *Submission 32*, p. 1; Environment Capital, *Submission 202*.

> maintain the land, given that for all intents and purposes he/she no longer owns it given that they have little say in how it is operated.[42]

4.38 Both the National Farmers' Federation and the NSW Farmers' Association commented on this issue. The NSW Farmers' Association argued that the 'flawed' landscape conservation investment model results in a situation where regulation is used to force private investment for the public good, upon a small part of the community, mainly farmers. The cost shift reflects the lack of a mechanism to fund what is desired by the public as a whole. The NSW Farmers' Association concluded that:

> This fact is masked by populist debates that focus on land-clearing laws, rather than highlighting the larger problem of funding for community aspirations, and the fairness or feasibility of using regulation to force some to pay (often unwillingly) whilst the rest of the community stand by.[43]

4.39 Mrs D Warm, National Farmers' Federation, commented:

> …if we do want to achieve certain environmental outcomes for the public good then the public have to contribute to maintaining those outcomes; and if they do not wish to, then obviously part of that role has to be programs and compensatory measures. So we have identified a range of solutions to ensure that, if those public outcomes are sought, there are mechanisms whereby the farmer is compensated or provided with opportunities to assist. However, there needs to be balance, and that balance needs to ensure that we maintain the productivity outcomes we need for farming in Australia, that we have food and fibre available for domestic and international consumption and use and so that we can continue to maintain very strong, viable regional communities in this country.[44]

4.40 Mr Claude Cassegrain also argued for compensation:

> Inter alia, the State native vegetation laws effectively transferred the control over the flora and fauna from us to the State allegedly for the good of society generally but without compensation for us.[45]

4.41 The argument was also put to the committee that farmers were contributing to the reduction of Australia's greenhouse gas production through the retention of trees and should be compensated as they are forgoing potential income in doing so.[46]

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42 Mr Wade Bidstrup, *Submission 39*, p. 1.

43 NSW Farmers' Association, *Submission 236*, p. 7.

44 Mrs D Warm, National Farmers' Federation, *Committee Hansard*, 8.4.10, p. 54.

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

46 Mr Strong, *Committee Hansard*, 8.4.10, pp 85– 86.

The appropriateness of the method of calculation of asset value in the determination of compensation arrangements

4.42 The AFG took the view that compensation arrangements should be developed by the Commonwealth and state governments in consultation with landholders for activation when 'there is a decline in a landholders' asset value or available productive use as a direct result of legislation and include robust socio-economic impact analysis'.[47]

4.43 The National Farmers' Federation argued that

> …when it comes to compensation we are looking at market based mechanisms. It is impossible for a government to come in, regulate and then say, 'We're going to give you this amount because we think that this is the amount that is just, or on just terms.' That needs to be arrived at through a collaborative approach using, as we have recommended for a market based mechanism, something like the environmental stewardship program to come to realise an agreed amount that is acceptable to both parties. This has broader ramifications.[48]

4.44 Mr John Butcher commented on compensation arrangements and stated that a universal compensation rate would not be appropriate as this would not distribute compensation in a fair manner. He went on to argue that the method of calculation must take into account each individual case with landholders being required to apply for and justify the level of compensation sought. Compensation should take into account the lost productive capacity and be paid on the length of time that the landholder was affected. Landholders should also be compensated for the future upkeep of the affected land and should not have to pay rates for that area affected, unless they can be allowed to make some use of it.[49]

The need for reform

4.45 A substantial number of submissions before the inquiry came from persons directly affected by the native vegetation legislation, namely landholders. Many argued that the legislation dealt them a double blow, maintaining that productivity had fallen and land under the native vegetation legislation had declined in value whilst the financial burden for maintaining land subjected to native vegetation restrictions remained squarely with them. The NSW Farmers' Association put it another way:

> The flawed landscape conservation investment model results in a situation where regulation is used to force private investment for the public good, upon a small part of the community…Regulation is covertly being used to

47 Australian Forest Growers, *Submission 6*, p. 4.

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

49 Mr J Butcher, *Submission 263*, p. 3

> shift the costs to some people because collectively we have not created a mechanism to fund what is desired by the public as a whole.[50]

4.46 Indeed, many landholders argued that whilst compensation for diminution of land asset value and productivity should be forthcoming, emphasis needed to be placed on reforming the current system to enable landholders to meet public conservation objectives on their land into the future without bearing an unreasonable financial burden for doing so.

4.47 AgForce Queensland argued that in order to manage their natural resources, landholders needed certainty to give them confidence to invest in sustainable management practices and then financiers the confidence to invest in such investment. It added that:

> During the last decade particularly, landholders resource security or property rights, has increasingly come under significant threat from Federal and State Government policies. What has become difficult to resolve are the increasingly strident calls for private landholders to forgo their commercial aspirations in favour of public benefits for which there is no acknowledgement, let alone financial assistance, structural adjustment or compensation.[51]

4.48 The impact on confidence in the market was highlighted by p&e Law which called for a national scheme to rectify the 'unequitable burden on rural communities' in relation to native vegetation laws, greenhouse gas abatement and climate change:

> This scheme must recognise the common law right of land owners (beneficial title) to the trees, vegetation and soil in which carbon is temporally sequestrated.
>
> If it does not recognise common-law right the sovereign risk (later government legislation taking away rights without acquisition) will deter confidence in any market created.
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> If it does not recognise common law right there will be limited capacity to enable landowners to be equitably compensated for the carbon temporaly sequestrated in the trees, vegetation and soil of their land as a result of regulation and prohibition of clearing native vegetation.[52]

4.49 The NSW Farmers' Association warned that 'forced investment by landowners in things that give them no economic return must reach limits of practicality and effectiveness'.[53] It held that whilst compensation was required where the costs of public goods have been transferred onto farmers, the priority for reforms should rest

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50 NSW Farmers' Association, *Submission 236*, p. 7.

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

52 p&e Law, *Submission 5*, p. 3.

53 NSW Farmers' Association, *Submission 236*, p. 6.

with the establishment of laws and planning systems that enable sustainable development in regional Australia:

> Primarily it is about the investment of public and private capital in sustaining the future of our continent and our community. The current 'business model' for conservation on private land – based on punitive regulation and billion dollar incentive schemes such as the Caring for Country Program – is demonstrably wasteful, socially destructive and counterproductive. As numerous studies have found, it does not work, and cannot be expected to work.[54]

4.50 Mr Armstrong of the National Farmers' Federation highlighted the need for policy reform alongside compensation:

> We implore you to recommend the provision of just terms compensation in all cases where private landholders are required by law to provide public conservation services. This just terms compensation must complement policy reform capable of restoring balance and economic intelligence to the policy framework affecting farmland and natural resources. Our members need laws and planning systems that enable sustainable development in regional Australia and that support farming communities in designing their own future.[55]

4.51 The principle that landholders be financially compensated for managing public conservation objectives on their land was supported by the Productivity Commission which held that publicly demanded conservation should be paid for:

> Over and above agreed landholder responsibilities, additional conservation apparently demanded by society (for example, to achieve biodiversity, threatened species and greenhouse objectives), should be purchased from landholders where intervention is deemed cost-effective.[56]

4.52 Many landholders before this inquiry supported this view including Mr Geoff Hewitt who said:

> …the costs of this [vegetation management] to the affected landholders is real and significant. It is entirely unacceptable that this cost is imposed by Governments in order to achieve community wide benefits without the wider community sharing the cost. It must be remembered that veg management practices were not just tolerated by past Goverments, in many cases they were required under the terms of State Government Leases.[57]

4.53 The NSW Farmers' Association argued that rather than engage in expensive structural adjustment to deliver biodiversity conservation undertakings, governments

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54 NSW Farmers' Association, *Submission 236*, p. 4.

55 Mr C Armstrong, National Farmers' Federation, *Committee Hansard*, 8.4.10, p. 37.

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

57 Mr G Hewitt, *Submission 105*, p. 1.

elected to force farmers, through native vegetation legislation, to conserve native vegetation and thereby establish 'proxy national parks on private land'.[58] The association's President, Mr Armstrong continued:

> In relation to biodiversity policy and native vegetation, we have demonstrated in our submission that the current biodiversity policy applying to Australian farmers is designed to create proxy national parks on private land at no cost to the public purse—and, in so doing, offset increases in fossil fuel emissions from coal fired power stations, which have increased more than 50 per cent since 1990. With regard to forestry, the regional forest agreement process was used to convert a significant proportion of the crown forest estate to national park. The program was underpinned by a structural adjustment program, with several hundreds of millions of dollars of compensation provided to timber mills and forestry workers, including for retraining and exit schemes. In contrast, when delivering promises to protect native vegetation on private farms, governments took an entirely different approach to that taken to forestry.[59]

4.54 The National Farmers' Federation stated that farmers currently provide, 'either voluntarily or by legislation, a range of environmental outcomes on behalf of the entire community yet they bear up to 100% of the cost with little public recognition' and that:[60]

> In the case of conservation of native vegetation, landholders may face identifiable costs in terms of opportunity cost of production on the land foregone and the ongoing maintenance costs of managing the land to retain its conservation values.
>
> As a consequence landholders are under ever increasing pressure to meet community expectations for the preservation of environmental values. However, at the same time there is little made available for the landholder in terms of recompense for loss of property rights, productive land or future development potential.[61]

Environmental stewardship initiatives and other mechanisms

4.55 The concept of an environmental stewardship arrangement whereby landholders were supported both financially and by way of other resources to manage and protect native vegetation on behalf of the Australian community was strongly supported in evidence before this inquiry. Mr Denzel Clarke, as one case in point, suggested that landholders be paid to manage native vegetation on their land as an alternative to compensation:

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58 NSW Farmers' Association, *Submission 236*, pp 5–6.

59 Mr C Armstrong, NSW Farmers' Association, *Committee Hansard*, 8.4.10, p. 36.

60 National Farmers' Federation, *Submission 265*, p. 30

61 National Farmers' Federation, *Submission 265*, p. 27.

> If the State Federal Governments believe native vegetation is more valuable than productive grazing land or farming land they should prove it and place a value on native vegetation and an annual earning yield. The commercial market says native vegetation has no value. Governments should pay a yearly rental of 10% of the average land value to the property owner to manage the protection of the native vegetation.[62]

4.56 Many stakeholders argued that establishing or expanding environmental stewardship arrangements was a viable way forward for both landholders and wider community. Mr Angus Atkinson, who argued in favour of an environmental stewardship approach, drew on the example of a pilot stewardship program called the WEST 2000 Plus's Enterprise Based Conservation EBC established under a joint Commonwealth and NSW government funded program to assist landholders in the Western Division to highlight the effectiveness of stewardship programs:

> The EBC program paid landholders for managing parts of their property for conservation. As a result over 70,000 hectares was managed per year for less than $140,000. This program clearly showed that landholders do not need compensation but that a well designed Government program can deliver better environmental outcomes than ineffective and expensive legislation.[63]

4.57 The Cobar Vegetation Management Committee argued in favour of what it called a 'native vegetation management levy' which would operate like the Medicare levy and would 'compensate individual landholders for their inputs, lost production and reduced land asset value'.[64]

4.58 However, ANEDO held the view that incentives which encouraged landholders to conserve and protect the high conservation value of their land should be pursued and supported in favour of compensation for the imposition of native vegetation laws which it considered inconsistent with legal principles.[65]

4.59 WAFarmers, which has previously called for compensation for restrictions on farmers' property, noted the counter-argument that compensation would lead to a transfer of resources from the taxpayer which would not deliver a measurable improvement in agricultural productivity, environmental outcomes or social welfare.[66] WAFarmers took the view that as current land clearing restrictions are not delivering on these aspirations, alternative arrangements could encompass 'market-based incentives, taxation based or through the allocation of public funds, or some combination of all of these'.

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62 Mr Denzel Clarke, *Submission 216*, p. 2.

63 Mr Angus Atkinson, *Submission 335*, p. 2.

64 Cobar Vegetation Management Committee, *Submission 13*, p. 3.

65 Australian Network of Environmental Defender's Offices, *Submission 3*, p. 2.

66 WA Farmers Federation, *Submission 4*, p. 5.

4.60 ANEDO supported the establishment of a comprehensive legislative scheme to promote incentive mechanisms and facilitate payments for ecosystem services and in drawing on the example of structural adjustment packages in the fishing and timber industries, stated:

> In addition, in certain circumstances, structural adjustment schemes may be appropriate as an acknowledgement that although there is no right to compensation, certain landholders and businesses will suffer economic and social hardship from environmental regulation.[67]

67 Australian Network of Environmental Defender's Offices, *Submission 3*, p. 4.