

The Senate

---

Finance and Public Administration  
References Committee

---

Native Vegetation Laws, Greenhouse Gas Abatement  
and Climate Change Measures

April 2010

© Commonwealth of Australia 2010

ISBN 978-1-74229-288-5

The Senate  
Parliament House  
Canberra ACT 2600  
Phone: 02 6277 3439  
Fax: 02 6277 5809  
E-mail: [fpa.sen@aph.gov.au](mailto:fpa.sen@aph.gov.au)  
Internet: [http://www.aph.gov.au/senate/committee/fapa\\_ctte/index.htm](http://www.aph.gov.au/senate/committee/fapa_ctte/index.htm)

This document was produced by the Senate Finance and Public Administration Secretariat and printed by the Senate Printing Unit, Parliament House, Canberra.

# Membership of the Committee

## 42<sup>nd</sup> Parliament

### Members

Senator Scott Ryan, Chair	LP, Victoria
Senator Helen Polley, Deputy Chair	ALP, Tasmania
Senator Doug Cameron	ALP, New South Wales
Senator Helen Kroger	LP, Victoria
Senator Rachel Siewert	AG, Western Australia
Senator John Williams	NATS, New South Wales

### Participating Members for this Inquiry

Senator the Hon Bill Heffernan	LP, New South Wales
Senator the Hon David Johnston	LP, Western Australia
Senator Barnaby Joyce	NATS, Queensland
Senator the Hon Ian Macdonald	LP, Queensland
Senator Fiona Nash	NATS, New South Wales
Senator Steve Fielding	FF, Victoria

### Secretariat

Ms Christine McDonald, Committee Secretary  
Ms Jane Thomson, Principal Research Officer  
Ms Tegan Gaha, Executive Assistant



# Table of Contents

<b>Membership of the Committee .....</b>	<b>iii</b>
<b>Chapter 1 .....</b>	<b>1</b>
<b>The terms of the inquiry .....</b>	<b>1</b>
Introduction .....	1
Conduct of the inquiry .....	1
Acknowledgments .....	1
Structure of the report.....	2
<b>Chapter 2 .....</b>	<b>3</b>
<b>Overview of native vegetation, land use and regulatory frameworks in Australia .....</b>	<b>3</b>
Native vegetation.....	3
Land use in Australia.....	5
Land clearing .....	6
Regulatory framework.....	7
Land clearing and deforestation .....	20
Deforestation and greenhouse gas emissions .....	22
<b>Chapter 3 .....</b>	<b>23</b>
<b>The impact of native vegetation laws and legislated greenhouse gas abatement measures on landholders.....</b>	<b>23</b>
Introduction .....	23
Impact on agricultural activity.....	24
Impact on land value .....	39
Impact of assessment and compliance regimes .....	42
Impact on families .....	53
Unintended consequences for the environment.....	54
Support for reform.....	58
Conclusion .....	62

<b>Chapter 4 .....</b>	<b>63</b>
<b>Compensation arrangements to landholders, the appropriateness of the method of calculation of asset value and viable alternatives.....</b>	<b>63</b>
Introduction .....	63
Current compensation arrangements .....	63
Adequacy of current compensation arrangements .....	65
Calls to improve compensation arrangements.....	66
The appropriateness of the method of calculation of asset value in the determination of compensation arrangements.....	74
The need for reform.....	74
<b>Chapter 5 .....</b>	<b>81</b>
<b>Conclusions and recommendations.....</b>	<b>81</b>
<b>Additional comments from Government Senators.....</b>	<b>87</b>
<b>Howard Government’s role in supporting anti land clearing laws .....</b>	<b>87</b>
<b>Dissenting Report by Australian Greens.....</b>	<b>93</b>
<b>APPENDIX 1 .....</b>	<b>95</b>
<b>Submissions and Additional Information received by the Committee.....</b>	<b>95</b>
<b>APPENDIX 2 .....</b>	<b>107</b>
<b>Public Hearings and Witnesses .....</b>	<b>107</b>

# Chapter 1

## The terms of the inquiry

### Introduction

1.1 On 4 February 2010, the Senate referred to the Finance and Public Administration References Committee for inquiry and report by 30 April 2010:

- (1) The impact of native vegetation laws and legislated greenhouse gas abatement measures on landholders, including:
  - (a) any diminution of land asset value and productivity as a result of such laws;
  - (b) compensation arrangements to landholders resulting from the imposition of such laws;
  - (c) the appropriateness of the method of calculation of asset value in the determination of compensation arrangements; and
  - (d) any other related matter.
- (2) In conducting this inquiry, the committee must also examine the impact of the Government's proposed Carbon Pollution Reduction Scheme and the range of measures related to climate change announced by the Leader of the Opposition (Mr Abbott) on 2 February 2010.

### Conduct of the inquiry

1.2 The inquiry was advertised in *The Australian*, *The Land*, *Weekly Times* and *Country Life* and through the Internet. The committee invited submissions from the Commonwealth and State and Territory Governments, interested organisations and individuals.

1.3 The committee received 354 public submissions and 44 confidential submissions. A list of individuals and organisations that made public submissions to the inquiry together with other information authorised for publication is at Appendix 1. The committee held public hearings in Wagga Wagga on 8 April, Rockhampton on 9 April and in Perth on 20 April 2010. Details of the public hearings are referred to in Appendix 2. The submissions and Hansard transcript of evidence may be accessed through the Committee's website at [http://www.aph.gov.au/senate\\_ca](http://www.aph.gov.au/senate_ca).

### Acknowledgments

1.4 The committee would like to thank the individuals and groups who contributed to the inquiry. In particular, the committee would like to acknowledge the many individuals who provided information concerning their particular circumstances. While the committee is unable to deliberate on individual cases, the information

provided built a picture of the issues arising from the implementation of native vegetation laws and greenhouse gas abatement measures.

### **Structure of the report**

1.5 The committee's report is structured as follows:

- chapter 2 provides an overview of native vegetation, land use and regulatory frameworks in Australia;
- chapter 3 covers issues raised in evidence in relation to the impact of native vegetation laws on a range of matters including land value and productivity, families as well as a discussion on compliance and assessment regimes;
- chapter 4 addresses compensation arrangements; and
- chapter 5 provides the committee's conclusions and recommendations.

1.6 The report focuses therefore on the first item in the terms of reference.

1.7 The second item in the terms of reference required the committee to examine the impact of the Government's proposed Carbon Pollution Reduction Scheme and the range of measures related to climate change announced by the Leader of the Opposition on 2 February 2010.

1.8 While the committee did receive some evidence in relation to this element of the terms of reference, this was not the focus of the overwhelming majority of submissions, which primarily addressed the impact of native vegetation laws.

1.9 The committee does not believe it received sufficient evidence and information to undertake considered deliberation on this matter. The committee has therefore decided not to make any comments regarding this element of the terms of reference.



## Chapter 2

### Overview of native vegetation, land use and regulatory frameworks in Australia

2.1 This chapter considers the current state of Australia's native vegetation, land clearing and respective legislative and regulatory frameworks.

#### Native vegetation

2.2 According to the consultation draft of *Australia's Native Vegetation Framework*, native vegetation is defined as all vegetation that is local to a particular site or landscape, including all terrestrial and aquatic plants both living and dead.<sup>1</sup> However, across states and territories, the definition of what constitutes native vegetation differs. The NSW *Native Vegetation Act 2003*, for example, defines native vegetation as 'remnant vegetation, protected regrowth or non protected regrowth'.<sup>2</sup> The Queensland *Vegetation Management Act 1999* defines 'Vegetation' as a 'native tree; or a native plant, other than a grass or mangrove'.<sup>3</sup>

2.3 It is stated in the consultation draft that 'native vegetation sustains Australia's biodiversity'.<sup>4</sup> The Commonwealth Department of Agriculture, Fisheries and Forestry (DAFF) provided the following comments on the importance of native vegetation:

Native vegetation is an important primary production asset providing a range of economic benefits, such as fodder for stock and sustainable forest operations. It also provides other benefits such as clean water, habitat for maintaining beneficial insects for integrated pest management, stock shade and shelter and prevention of soil and water degradation.<sup>5</sup>

2.4 The NSW Department of Environment, Climate Change and Water noted, moreover, that:

Effective retention and management of native vegetation is also critical in the control of erosion, land degradation, water quality and impact of salinity on agricultural urban and aquatic environments. Retention of existing native vegetation is the most cost effective way to protect these critical environmental assets.<sup>6</sup>

---

1 Department of the Environment, Water, Heritage and the Arts, *Australia's Native Vegetation Framework*, Consultation draft, February 2010, p. 11.

2 NSW Department of Environment, Climate Change and Water, *Submission 15*, p. 2.

3 *Vegetation Act Management 1999* (Qld), s. 8.

4 Department of the Environment, Water, Heritage and the Arts, *Australia's Native Vegetation Framework*, Consultation draft, February 2010, p. 7.

5 Department of Agriculture, Fisheries and Forestry, *Submission 371*, p. 1.

6 NSW Department of Environment, Climate Change and Water, *Submission 15*, p. 1.

2.5 Some witnesses commented on the extent of the loss of native vegetation in Australia. DAFF stated that approximately thirteen per cent of native vegetation has been cleared since 1750 (the internationally recognised benchmark for pre-European native vegetation in Australia), of which eight per cent has been replaced with non-native vegetation.<sup>7</sup> While some 87 per cent of the pre-European native vegetation cover has been retained, its condition is variable, fragmented and often degraded. The consultation draft noted that some vegetation types are reported as having less than 10 per cent of their original cover with some of those down to less than one per cent.<sup>8</sup>

2.6 The wide-scale clearing of native vegetation was recognised as contributing to the decrease in the number of native species, land degradation and the disruption of many ecosystems. The 2006 Australian State of Environment Committee commented on the impact of native vegetation clearing and stated that:

The most visible indicator of land condition is the extent and quality of vegetation cover. Nationally the picture is deceptive – about 87 per cent of Australia's original native vegetation cover remains, but its condition is variable and masks an underlying issue of the decline of many ecological communities. Some ecological communities occupy less than 1 per cent of their original extent as a result of clearing for agriculture, and many others are highly fragmented. In addition, the components of many ecosystems, especially the understorey in forests and woodlands, have been severely disrupted.<sup>9</sup>

2.7 The Nature Conservation Council of NSW also commented on clearing of native vegetation:

Loss of native vegetation impacts land values in many ways. Subsequent hydrology and salinity changes impact the productivity of the soil, micro climate changes can affect rainfall, loss of scenic amenity can impact non-agricultural and values, loss of fauna that depend on the vegetation for habitat can impact nutrient cycles and pollination. Often the impact is felt away from the area that is cleared. The unmanaged action of one landholder may have significant flow on affects for other land areas. Many land managers understand this and manage the land with conservation practices in mind, however this is not always the case.<sup>10</sup>

---

7 Department of Agriculture, Fisheries and Forestry, *Submission 371*, p. 1.

8 Department of the Environment, Water, Heritage and the Arts, *Australia's Native Vegetation Framework*, Consultation draft, February 2010, p. 7.

9 2006 Australian State of the Environment Committee, *Australia State of the Environment 2006*, Independent report to the Australian Government Minister for the Environment and Heritage, p. 69.

10 Nature Conservation Council of NSW, *Submission 8*, p. 3.

---

## Land use in Australia

2.8 Sixty per cent of Australia's land is privately owned and/or managed by different types of landholders including farmers engaged in agricultural production.<sup>11</sup> According to the Commonwealth government, 70 per cent of Australia's land is managed by farmers.<sup>12</sup>

2.9 For the purposes of this inquiry, the term landholder is used generically to describe both freehold owners and leasehold owners of land.

2.10 In 2006–07, approximately 55.3 per cent of Australia was managed by agricultural businesses with the majority of them (67.9 per cent) engaged in grazing on land other than improved pasture. Of the land managed by agricultural businesses:

- 16.2 per cent was used for grazing on improved pasture;
- 8.9 per cent for crops;
- 3.4 per cent was used for conservation; and
- 3.2 per cent for other uses including forestry.<sup>13</sup>

2.11 The committee received evidence of the importance of the agricultural sector not only nationally but as an export industry. According to the NSW Farmers' Association, Australian farmers produce 93 per cent of the food eaten in Australia whilst also exporting 61 per cent of the total agricultural production overseas.<sup>14</sup> The President of the NSW Farmers' Association, Mr Charles Armstrong, commented on the level of agricultural productivity in Australia and its importance to security:

The Australian Farm Institute has done some work in relation to the importance of Australian farmers in terms of feeding. We feed 150 Australians per farmer and, right now, 650 people overseas – projected to go to 850. The important thing about security is really not about supply of food within Australia; it is really about the security of the global picture in terms of people who may not get access to the food that we can supply. With our highly efficient agricultural systems, Australia has a vital role to play. In short, the world needs Australia to keep producing food.<sup>15</sup>

---

11 Australian Government, *What is caring for our Country?*, *Sustainable Land Practices*, <http://www.nrm.gov.au/about/caring/sustainable.html> (accessed 1.4.10).

12 Australian Government, *Caring for Our Country Business Plan 2009–10*, p. 1.

13 Australian Bureau of Statistics, *Natural Resource Management on Australian Farms*, 4620, 2006–07, p. 7.

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

15 Mr C Armstrong, NSW Farmers' Association, *Committee Hansard*, 8.4.10, pp 35–36.

## Land clearing

2.12 Between 2000 and 2004, 1.5 million hectares of forest (including both native and non-native vegetation) was cleared across the continent. The 2006 State of the Environment Committee noted that after forest regrowth, the net change was a loss of 287 000 hectares.<sup>16</sup>

2.13 Whilst agriculture has a long history of land clearing in Australia, in recent decades, clearing has declined and farming communities have contributed to revegetation for environmental reasons.<sup>17</sup> According to the Australian Bureau of Statistics, approximately 1.4 million hectares of vegetation activities on private land was undertaken in 2005–06 including 101 hectares of new plantings and 1.3 million hectares of regeneration or enhancement vis-à-vis fencing to prevent grazing.<sup>18</sup> Reductions in land clearing rates since the early 1990s have, according to the Commonwealth Department of Climate Change and Energy Efficiency (DCCEE), resulted from factors including:

...commodity price fluctuations, climatic events and the introduction of new land clearing regulations as awareness of environmental degradation resulting from inappropriate clearing increases.<sup>19</sup>

2.14 According to the DCCEE, land clearing rates in Australia are influenced by factors including market forces, technology change, climatic events including drought as well as government policy.<sup>20</sup>

2.15 There has been much comment on the impact of land clearing of native vegetation. The Wentworth Group of Concerned Scientists, for example, stated:

The clearing of native vegetation is one of the primary causes of land and water degradation and loss of biodiversity in Australia. Broadscale land clearing has led to extensive erosion and salinisation of soils. Erosion and the removal of the vegetation in riparian zones has also reduced the quality of water that runs off the landscape and this in turn has damaged the health of our rivers, wetlands and estuaries. The clearing of native vegetation is also a prime cause of the loss of Australia's unique biodiversity.<sup>21</sup>

---

16 2006 Australian State of the Environment Committee, *Australia State of the Environment 2006*, Independent report to the Australian Government Minister for the Environment and Heritage, p. 70.

17 Department of Agriculture, Fisheries and Forestry, *Submission 371*, p. 2.

18 Australian Bureau of Statistics cited in Department of Agriculture, Fisheries and Forestry, *Submission 371*, p. 2.

19 Department of Climate Change and Energy Efficiency, *Submission 235*, p. 4.

20 Department of Climate Change and Energy Efficiency, *Submission 235*, p. 4.

21 Wentworth Group of Concerned Scientists, *Submission 2*, p. 1.

---

## Regulatory framework

2.16 State and territory governments have responded to the challenge of the clearing of native vegetation with the establishment of regulatory regimes to control clearing and manage native vegetation, on both public and private land. They hold, therefore, primary responsibility for the legislative and administrative framework within which natural resources including native vegetation rests.

2.17 Mr Ian Thompson, Executive Manager, DAFF stated of the role of states and territories:

Each state and territory has its own suite of policies and legislation for native vegetation, and some of the key similarities include things like: broadscale land clearing is only allowed with a specific permit or licence and often the use of voluntary measures and various assistance schemes to implement that legislation. Some of the key differences relate to the types of native vegetation that might be covered, whether there are objectives referring to climate change, and whether the legislation is coordinated by overarching legislation or incorporated into pre-existing legislation.<sup>22</sup>

2.18 According to the Productivity Commission, the main impetus for the establishment of clearing restrictions has been land degradation and a concern in many jurisdictions that 'levels of remnant native vegetation – especially on private leasehold or freehold land – were approaching critical levels for habitat and biodiversity maintenance'.<sup>23</sup> The Productivity Commission also recognised that such regulation is borne out of a commitment on the part of all Australian governments, through the Natural Heritage Trust, to reverse the decline in the quality and extent of Australia's native vegetation cover.<sup>24</sup>

### *National Framework for the Management and Monitoring of Australia's Native Vegetation*

2.19 In December 1999, the Australia New Zealand Environment and Conservation Council (ANZECC) released the *National Framework for the Management and Monitoring of Australia's Native Vegetation* (the framework) as part of a commitment on the part of the Commonwealth, state and territory governments to reverse the long-term decline in quality and extent of Australia's native vegetation cover. Meeting in December 2001, the National Resource Management Ministerial Council (NRMMC)<sup>25</sup>

---

22 Mr I Thompson, Department of Agriculture, Fisheries and Forestry, *Committee Hansard*, 20.4.10, p. 37.

23 Productivity Commission, *Impacts of Native Vegetation and Biodiversity Regulations*, Report No. 29, April 2004, p. XXIV.

24 Productivity Commission, *Impacts of Native Vegetation and Biodiversity Regulations*, Report No. 29, April 2004, p. XXIV.

25 From 2001 the work of the ANZECC was subsumed by NRMMC. Australian Government, *PIMC-NRMMC*, <http://www.mincos.gov.au> (accessed 10.4.10).

environment and water across all jurisdictions, reaffirmed the commitment of all jurisdictions to the framework.

2.20 The framework is designed to provide a means through which native vegetation management commitments on the part of Commonwealth, state and territory governments can be progressed and provides a 'consistent multilateral or national approach for sharing information and experience (particularly related to best practice) over the full range of management and monitoring mechanisms'.<sup>26</sup>

The Framework establishes a series of benchmarks for best practice native vegetation management and monitoring mechanisms...It also establishes a national monitoring and public reporting mechanism to demonstrate progress towards reducing the broad-scale clearance of native vegetation, and increasing revegetation.<sup>27</sup>

2.21 In terms of native vegetation, the stated outcomes of the framework are:

- a reversal in the long-term decline in the extent and quality of Australia's native vegetation cover by:
  - conserving native vegetation, and substantially reducing land clearing;
  - conserving Australia's biodiversity; and
  - restoring, by means of substantially increased revegetation, the environmental values and productive capacity of Australia's degraded land and water;
- conservation and, where appropriate, restoration of native vegetation to maintain and enhance biodiversity, protect water quality and conserve soil resources, including on private land managed for agriculture, forestry and urban development;
- retention and enhancement of biodiversity and native vegetation at both regional and national levels; and
- an improvement in the condition of existing native vegetation.<sup>28</sup>

---

26 Natural Resource Management Ministerial Council, Department of the Environment, Water, Heritage and the Arts, *National Framework for the Management and Monitoring of Australia's Native Vegetation*, 2001, Use of the National Framework, <http://www.environment.gov.au/land/publications/nvf/framework2.html> (accessed 25.3.10).

27 Natural Resource Management Ministerial Council, Department of the Environment, Water, Heritage and the Arts, *National Framework for the Management and Monitoring of Australia's Native Vegetation*, 2001, Use of the National Framework, <http://www.environment.gov.au/land/publications/nvf/framework2.html> (accessed 25.3.10).

28 Natural Resource Management Ministerial Council, Department of the Environment, Water, Heritage and the Arts, *National Framework for the Management and Monitoring of Australia's Native Vegetation*, 2001, Desired native vegetation outcomes, <http://www.environment.gov.au/land/publications/nvf/framework3.html> (accessed 25.3.10).

---

2.22 In April 2008, the NRMCC confirmed the importance of the Native Vegetation Framework as the national policy document for achieving:

- a reversal in the long-term decline of Australia's native vegetation, and
- an improvement in the condition of existing native vegetation.

2.23 The NRMCC directed that a review of the framework be finalised. It endorsed the draft *Australia's Native Vegetation Framework* on 5 November 2009. In February 2010, the NRMCC issued a consultation draft for public comment. The consultation was completed on 7 April 2010. According to the Commonwealth Department of the Environment, Water, Heritage and the Arts (DEWHR), the revised framework will be a guiding national policy document that will:

- guide the ecological sustainable management of Australia's native vegetation and help align efforts to address the increasing challenges of climate change and other threats; and
- take into account new approaches to biodiversity conservation, and align with the revised National Strategy for the Conservation of Australia's Biological Diversity and Australia's Biodiversity and Climate Change: A strategic assessment of the vulnerability of Australia's biodiversity to climate change.<sup>29</sup>

### ***Commonwealth legislation***

2.24 The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) specifies the areas of Commonwealth responsibility for protecting specific matters of 'National Environmental Significance' (NES) across the country and in the surrounding ocean. Any action that is likely to have a significant impact on a matter of national environmental significance requires an assessment and approval under the EPBC Act.

2.25 The 1997 Council of Australian Governments (COAG) Heads of Agreement on Commonwealth/State Roles and Responsibilities for the Environment identified the eight NES:

- World Heritage properties;
- Ramsar listed wetlands;
- national heritage places;
- listed threatened species and ecological communities;
- migratory species;
- nuclear activities;
- Commonwealth marine environment; and

---

29 Department of the Environment, Water, Heritage and the Arts, *Native vegetation policies*, <http://www.environment.gov.au/land/vegetation/policies.html> (accessed 26.3.10).

- Great Barrier Reef Marine Park.<sup>30</sup>

2.26 DEWHR noted that whilst the EPBC Act does not directly regulate native vegetation or contain greenhouse gas abatement measures, it does 'on occasion affect native vegetation clearing but only in the context of regulating actions that are likely to have significant impacts on matters of National Environmental Significance'. According to DEWHR, to date, these have been small in number (63 of the 3409 referrals from the agricultural and forestry sector made under the EPBC Act between July 2000 and March 2010).<sup>31</sup>

2.27 In relation to land clearing, the EPBC Act allows for the lawful continuation of existing land use if it commenced before the EPBC Act came into force on 16 July 2000, 'as long as the use has continued uninterrupted or regularly from before this date and is not an enlargement, expansion of intensification of use that results in a substantial increase in the impact of the use on the land'.<sup>32</sup>

2.28 Where the affect of a minister's decision under the EPBC Act, including those related to native vegetation clearance, constitutes an acquisition of property, subsection 519(1) provides that:

If, apart from this section, the operation of this Act would result in an acquisition of property from a person that would be invalid because of paragraph 51(xxxi) of the Constitution (which deals with acquisition on just terms) the Commonwealth must pay the person a reasonable amount of compensation.<sup>33</sup>

2.29 Further, subsection 519(3) states in relation to determining compensation:

If the Commonwealth and the person do not agree on the amount of compensation to be paid, the person may apply to the Federal Court for the recovery from the Commonwealth of a reasonable amount of compensation fixed by the Court.<sup>34</sup>

2.30 According to DEWHR, no formal claims under section 519 have been made to date.<sup>35</sup>

2.31 The EPBC Act provides a list of Key Threatening Processes (KTPs) defined as a process that 'threatens or may threaten, the survival, abundance or evolutionary development of a native species or ecological community'.<sup>36</sup> If a KTP has been listed,

---

30 Department of Agriculture, Fisheries and Forestry, *Submission 371*, p. 3.

31 Department of the Environment, Water, Heritage and the Arts, *Submission 264*, p. 2.

32 Department of the Environment, Water, Heritage and the Arts, *Submission 264*, p. 2.

33 *Environment Protection and Biodiversity Conservation Act 1999*, ss. 519(1).

34 *Environment Protection and Biodiversity Conservation Act 1999*, ss. 519(3).

35 Department of the Environment, Water, Heritage and the Arts, *Submission 264*, p. 2.

36 *Environment Protection and Biodiversity Conservation Act 1999*, ss. 188(3).



---

the minister has to determine whether to develop a Threat Abatement Plan (TAP) which establish a national framework to guide and coordinate the Commonwealth's responses to listed KTPs. TAPs are developed where the minister considers that implementation is an effective means of abating KTPs. DEWHR noted that in April 2001, 'land clearance' was listed under the EPBC Act as a KTP. However, the then minister accepted advice from the Threatened Species Scientific Committee that development of a respective TAP was not necessary given the number of relevant national and state strategies and programs that already address the issue.<sup>37</sup> DAFF continued:

The Threatened Species Scientific Committee recommended that a threat abatement plan was not considered a feasible, effective or efficient way to abate the process. Recognising that each state and territory needs an appropriate response to this key threatening process the Committee further advised the Minister for the Environment that the Commonwealth should encourage and support land management quality assurance and planning mechanisms at the appropriate scales to ensure the conservation of biodiversity, especially threatened species and ecological communities.<sup>38</sup>

### ***Commonwealth non-regulatory framework***

2.32 The Natural Heritage Trust (the trust) was set up by Australian Government in 1997 to help restore and conserve Australia's environment and natural resources. One of the Trust's five specific projects was the Native Vegetation Initiative. The trust provided funding for projects at the regional level, as well as at the state and national levels through four programs: Landcare; Bushcare; Rivercare and Coastcare. The community component was delivered via the Envirofund. DAFF provided the committee with details of the trust including the bilateral agreements between the Commonwealth and state and territory governments and the outcomes of phases 1 and 2 of the trust.<sup>39</sup>

2.33 On 1 July 2008, *Caring for our Country* was launched as the Australian Government's new environmental management initiative. It aims to achieve an environment that is 'healthy, better protected, well-managed, resilient and provides essential ecosystem services in a changing climate'.<sup>40</sup> *Caring for our Country* integrates previous federal natural resource management initiatives including the

---

37 Department of the Environment, Water, Heritage and the Arts, *Submission 264*, p. 3.

38 Department of Agriculture, Fisheries and Forestry, *Submission 371*, p. 4.

39 Department of Agriculture, Fisheries and Forestry, *Submission 371*, pp 5–9.

40 Australian Government, *What is Caring for Our Country?*, <http://www.nrm.gov.au/about/caring/index.html> (accessed 9.4.10).

Natural Heritage Trust, National Landcare Program, Environmental Stewardship Program and the Working on Country Indigenous land and sea ranger programs.<sup>41</sup>

2.34 *Caring for our Country* establishes national priorities and outcomes to 'refocus investment on protection of our environment and sustainable management of our natural resources'.<sup>42</sup> The six national priority areas for the first five years (2008–2013) include:

- the National Reserve System;
- biodiversity and natural icons;
- coastal environments and critical aquatic habitats;
- sustainable farm practices;
- natural resource management in northern and remote Australia; and
- community skills, knowledge and engagement.<sup>43</sup>

2.35 The Australian government is engaged in a range of other non-regulatory native vegetation initiatives. In 1992, COAG endorsed the *National Strategy for Ecologically Sustainable Development* which recognised conservation and restoration of native vegetation as one of Australia's key challenges and established a framework for intergovernmental action on the environment. In 1996, COAG subsequently recognised the importance of native vegetation in other strategies it endorsed including the *National Strategy for the Conservation of Australia's Biological Diversity*.

2.36 In 1997, COAG agreed in principle to the *COAG Heads of Agreement on Commonwealth/State Roles and Responsibilities for the Environment*. Designed to establish a more effective framework for intergovernmental relations, the agreement applied to matters of National Environmental Significance (NES); the environmental assessment and approval processes; listing, protection and management of heritage places; compliance with state and territory environmental and planning legislation; and better delivery of national programs.<sup>44</sup>

2.37 The 1997 COAG Heads of Agreement set out 23 additional matters of NES where the Commonwealth has 'interests or obligations' including the conservation of native vegetation and fauna, reducing greenhouse gases and enhancing greenhouse

---

41 Department of Agriculture, Fisheries and Forestry, *Submission 371*, pp 13–18; Australian Government, *What is Caring for Our Country?*, <http://www.nrm.gov.au/about/caring/index.html> (accessed 9.4.10).

42 Australian Government, *What is Caring for Our Country?*, <http://www.nrm.gov.au/about/caring/index.html> (accessed 9.4.10).

43 Australian Government, *Caring for Our Country Business Plan 2009–2010*, p. 4.

44 Department of Agriculture, Fisheries and Forestry, *Submission 371*, p. 5; Department of the Environment, Water, Heritage and the Arts, *Submission 264*, p. 3.

sinks. In 1999, in recognition of the COAG Heads of Agreement, such matters of NES were excluded from the list of protected matters that would trigger an assessment and the approval processes of the EPBC Act as 'there was other legislation and other tools such as the Natural Heritage Trust which addressed these NES matters'.<sup>45</sup>

2.38 The Australian government participates in additional national agreements and strategies to improve native vegetation management, many of which are implemented subject to bilateral or multilateral agreements with other jurisdictions.<sup>46</sup>

### *The regulatory framework of the states and territories*

2.39 DCCEE commented on the development of native vegetation regulatory frameworks across the states and territories:

Land clearing has long been recognised as a cause of undesirable impacts on natural resources, including biodiversity loss, soil erosion and dryland salinity. In recent decades state and territory governments have progressively adopted regulatory frameworks for management of native vegetation, in accordance with their Constitutional responsibility for land management. The contribution of land clearing controls to greenhouse gas emissions mitigation has been recognised relatively recently, and is not a primary consideration in those regulatory frameworks.<sup>47</sup>

2.40 Most states and territories introduced regulatory controls in relation to land clearing in the late 1980s and 1990s. All jurisdictions now have established systems whereby permits or approvals must be obtained by landholders wanting to clear native vegetation on their properties.

2.41 In its 2004 report on the impact of native vegetation and biodiversity regulations, the Productivity Commission noted that the 'application and breadth of controls varies significantly across jurisdictions with different requirements applicable to leaseholders and owners of freehold title'. It noted further that:

'Native vegetation' comprises grasses and groundcover as well as trees in New South Wales, South Australia, Victoria and Western Australia; native grassland is excluded in Queensland and (currently) in Tasmania from general permit requirements, although grasses may be protected under threatened species legislation and the Australian Government's Environment and Protection and Biodiversity Conservation Act.<sup>48</sup>

2.42 The following provides a brief overview of state and territory native vegetation regulatory frameworks.

---

45 Department of Agriculture, Fisheries and Forestry, *Submission 371*, p. 5.

46 Department of Agriculture, Fisheries and Forestry, *Submission 371*, p. 4.

47 Department of Climate Change and Energy Efficiency, *Submission 235*, p. 5.

48 Productivity Commission, *Impacts of Native Vegetation and Biodiversity Regulations*, Report No. 29, April 2004, p. XXV.

---

*New South Wales*

2.43 In New South Wales (NSW), where over 60 per cent of native vegetation has been cleared, thinned or significantly disturbed since 1788, the regulatory framework for native vegetation has evolved over a century of legislation:

- 1901: Western Lands Act;
- 1938: Soil Conservation Act;
- 1979: Environmental Planning and Assessment Act;
- 1995: State Environmental Planning Policy No. 46;
- 1998: Native Vegetation Conservation Act;
- 2003: Native Vegetation Act;
- 2005: Native Vegetation Regulation; and
- 2007: Private Native Forestry Regulation.<sup>49</sup>

2.44 In terms of implementation, under the *Native Vegetation Act 2003* (the Act), clearing remnant native vegetation or protected regrowth requires approval unless the clearing is a permitted activity. The minister has delegated the approval for clearing to the local Catchment Management Authority (CMA), except for Private Native Forestry, where the relevant department is the delegated authority. According to the NSW Department of Environment, Climate Change and Water, CMAs can 'only approval clearing of remnant vegetation or protected regrowth when the clearing will improve or maintain environmental outcomes' whereby 'improve or maintain' means that for clearing to be approved, it cannot result in reduced environmental outcomes.<sup>50</sup> The impact of clearing is measured against four environmental considerations including water quality, soils, salinity and biodiversity (including threatened species).

2.45 The objectives of the Act include that to 'provide for, encourage and promote the management of native vegetation on a regional basis for the social, economic and environmental interests of the State'. It also seeks amongst other things, to 'improve the condition of existing native vegetation, particularly where it has high conservation value'.<sup>51</sup>

2.46 The Department of Environment, Climate Change and Water noted that since the implementation of the Act in December 2005, there has been an overall reduction in the area of land approved for clearing in NSW: in 1999 over 160 000 hectares of land was approved for clearing compared to less than 2000 hectares in 2008 and 2009

---

49 NSW Department of Environment, Climate Change and Water, *Submission 15*, p. 1.

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

51 *Native Vegetation Act 2003*, ss. 3(a) and 3(d).

---

respectively under the Act. 1 677 379 ha have been approved for invasive native shrub treatment.<sup>52</sup>

2.47 A review of the Act was undertaken in 2009. The review found that major stakeholders generally agree with the environmental framework set up by the Act and its general philosophy and concluded:

This report identifies the depth and complexity of issues faced in the management of native vegetation in NSW. Whilst no fundamental change in the nature of the Act's framework appears to be needed, this review identifies areas for change that could enhance the current operation of the Act.<sup>53</sup>

### *Queensland*

2.48 The *Vegetation Management Act 1999* (the Act) was proclaimed in September 2000 and regulates clearing on freehold and leasehold land in Queensland. The Act was amended in 2004 and 2008. The aim of the Act is to 'protect Queensland's rich biodiversity and address economic and environmental problems like salinity, soil degradation, erosion and declining water quality'.<sup>54</sup>

2.49 The Act makes certain land clearing 'assessable development' under the *Integrated Planning Act 1997*, for which a permit must be sought, and phased out of broadscale clearing of remnant vegetation by December 2006. It gives most protection to remnant vegetation, that is vegetation which has either never been cleared or has regrown to a specific canopy and height and density to be considered to have the same value as if it had never been cleared.

2.50 The vegetation management framework, through the Act, regulates the clearing of native vegetation mapped as either:

- remnant vegetation on a regional ecosystem map or remnant map; or
- regulated regrowth vegetation identified on a regrowth vegetation map.

The framework also protects woody vegetation on state lands.<sup>55</sup>

2.51 Clearing of remnant vegetation can only occur under a permit or if an exemption applies. Clearing of regrowth can only occur if it is for an exempt activity or the clearing is done in accordance with the regrowth vegetation code.

---

52 NSW Department of Environment, Climate Change and Water, *Submission 15*, p. 7.

53 NSW Department of Environment, Climate Change and Water, *Review of the Native Vegetation Act 2003*, 2009, p. 18.

54 Queensland Department of Natural Resources, Mines and Energy, *New vegetation management laws in Queensland – an overview*, May 2004.

55 Queensland Department of Environment and Resource Management, *Vegetation management framework*, November 2009.

2.52 Landholders may negotiate and confirm boundaries of assessable regrowth through Property Maps of Assessable Vegetation (PMAV).

2.53 Under the 2004 amendments, financial assistance of \$150 million over five years was provided to assist landholders affected by the change to the tree clearing laws. A ballot for the balance of the 500 000 hectares able to be cleared was held in September 2004.

2.54 In 2009 the Queensland Government committed to a moratorium on the clearing of endangered regrowth vegetation while it consulted with stakeholder groups about ways to improve vegetation clearing laws. The moratorium applied to all native woody vegetation within 50 metres of a watercourse in priority reef catchments of Burdekin, Mackay Whitsundays and Wet Tropics and endangered regrowth vegetation across the state, on both freehold and leasehold land. The moratorium covers a million hectares of endangered vegetation.<sup>56</sup>

2.55 In 2009 the Act was again amended. In addition to the existing controls on clearing of native vegetation, controls were introduced for clearing of 'regulated regrowth vegetation'. The new legislative framework requires that clearing of regulated regrowth vegetation only occur in accordance with the Regrowth Vegetation Code and where the chief executive of the Department of Environment and Resource Management that administers the Act has been notified.<sup>57</sup>

### *Victoria*

2.56 The laws for native vegetation conservation and management in Victoria are contained in the *Flora and Fauna Guarantee Act 1988* (the FFG Act), the *Planning and Environment Act 1987* (the PE Act) and the *Catchment and Land Protection Act 1994* (the CLP Act).<sup>58</sup>

2.57 The objectives of the FFG Act are to preserve threatened species and communities and to identify and control processes that may threaten biodiversity. Under the Act threatened species or ecological communities of flora and fauna may be listed with the approval of the minister. Upon listing, an action statement is prepared to identify actions to be taken to conserve the species or community or to manage the potentially threatening process. The minister may also make interim conservation orders to conserve critical habitat of a taxon of flora or fauna that has been listed or

---

56 Queensland Department of Environment and Resource Management, *Annual Report, 27 March – 30 June 2009*, p. 35, <http://www.derm.qld.gov.au/about/pdf/derm09annual-report.pdf> (accessed 26.4.10).

57 Queensland Department of Environment and Resource Management, *What is the new regrowth vegetation code?*, [http://www.derm.qld.gov.au/vegetation/regrowth\\_vegetation\\_regulations.html](http://www.derm.qld.gov.au/vegetation/regrowth_vegetation_regulations.html) (accessed 27.4.10).

58 Rural Law Online, Native Vegetation, *Victorian Laws*, <http://www.rurallaw.org.au/handbook/xml/ch03s09.php#Ch16Se1311> (accessed 26.4.10).

---

nominated for listing, as threatened or potentially threatened. Compensation is payable to landholders for financial loss suffered as a direct and reasonable consequence of the making of an interim order and of having to comply with that order. The FFG Act provides for the implementation of a flora and fauna guarantee strategy.

2.58 The purpose of the PE Act is to establish a framework for planning the use, development and protection of land in Victoria in the present and long-term interests of all Victorians. The Act allows for the minister to prepare or approve standard planning provisions (the Victorian Planning Provisions (VPP)). The VPP require that in planning schemes established under the PE Act, a planning permit must be obtained from local councils to remove, destroy or lop native vegetation. Native vegetation includes all plants indigenous to Victoria, including trees, shrubs, herbs and grasses. Exemptions are available to the requirement to obtain a permit, many of which facilitate normal rural management practices including clearing growth less than 10 years old where the land is being re-established or maintained for the cultivation of pasture; clearing of fire breaks up to six metres wide; and clearing of dead vegetation.

2.59 Landholders may enter into a voluntary Property Vegetation Plan (PVP) with the Department of Sustainability and Environment (DSE) which considers how all the vegetation on a property will be managed over the next 10 years.<sup>59</sup>

### *South Australia*

2.60 The *Native Vegetation Act 1991* (the Act) was proclaimed on 18 April 1991 and controls the clearance of native vegetation in addition to assisting the conservation, management and research of native vegetation on lands outside the National Parks and Wildlife Service (NPWS) parks and reserves system. The major features of the Act are:

- appointment of a Native Vegetation Council (the NVC) which is responsible for decisions on clearance applications and for providing advice on matters pertaining to the condition of native vegetation in the State to the Minister for Environment and Conservation;
- provision of incentives and assistance to landholders in relation to the preservation, enhancement and management of native vegetation;
- encouragement of research into the management of native vegetation; and
- encouragement of the re-establishment of native vegetation.

2.61 Under the Act, all property owners, in matters not covered by an exemption, are required to submit a proposal to the NVC seeking approval to clear vegetation. In deciding whether to consent to an application to clear native vegetation, the NVC must refer to the Principles of Clearance which relate to the biological significance of the vegetation and whether clearance may cause or contribute to soil or water

---

59 Rural Law Online, Native Vegetation, *Victorian Laws*, <http://www.rurallaw.org.au/handbook/xml/ch03s09.php#Ch16Se1311> (accessed 26.4.10).

degradation. In its deliberations on clearance applications, the NVC also considers practical aspects of farm management and it may consent to clearance under specified conditions.

2.62 The Act provides for the establishment of Heritage Agreements over areas of native vegetation on private land. In general Heritage Agreements include the following provisions:

- the owner maintains the land as an area dedicated to the conservation of native vegetation and native fauna on the land; and
- the Minister releases the owner from the payment of rates and taxes on that land and may construct fences to bound that land.

2.63 The landholder retains legal ownership of the land under a Heritage Agreement. A Heritage Agreement is registered on the title of the land and passes on to, and is binding on, any subsequent owners for the term of the agreement. Agreements are generally written in perpetuity.<sup>60</sup>

#### *Western Australia*

2.64 In Western Australia (WA), the *Environmental Protection Act 1986* (the Act) directly affect native vegetation management. The Act applies to all land in WA, including rural land; urban land; Crown land; roadside vegetation; pastoral leases; land the subject of a mining lease; and land the subject of public works. Native vegetation means indigenous aquatic or terrestrial vegetation, and includes dead vegetation.

2.65 Clearing of native vegetation is not permitted unless:

- a permit to clear has been issued; or
- the activity is of a kind that is exempt from the clearing laws.

2.66 Under the Act, ten clearing principles must be observed when deciding to grant, or refuse, a permit. The principles include that native vegetation should not be cleared if:

- it comprises a high level of biological diversity;
- it comprises the whole or a part of, or is necessary for the maintenance of, a significant habitat for fauna indigenous to Western Australia;
- it comprises the whole or a part of, or is necessary for the maintenance of a threatened ecological community;
- it is significant as a remnant of native vegetation in an area that has been extensively cleared; and

---

60 Native Vegetation Council, *Annual Report 2007–08*, [http://www.dwlbc.sa.gov.au/assets/files/nv\\_annual\\_report\\_07\\_08.pdf](http://www.dwlbc.sa.gov.au/assets/files/nv_annual_report_07_08.pdf) (accessed 26.4.10).



- 
- the clearing of the vegetation is likely to cause appreciable land degradation.<sup>61</sup>

2.67 Conditions on permits may be imposed to prevent, control, abate or mitigate environmental harm or to offset the loss of the cleared vegetation.<sup>62</sup> Clearing is not generally permitted where the biodiversity values, land conservation and water protection roles of native vegetation would be significantly affected.

2.68 Exempt activities include clearing that is caused by the grazing of stock on land held under a pastoral lease.

### *Tasmania*

2.69 In Tasmania, land clearing controls apply to all land, both public and private, and to forest vegetation and threatened non-forest vegetation communities. There are no controls under the *Forest Practices Act 1985* (the Act) on clearing of non-forest vegetation that is not threatened.

2.70 The Act requires of landholders a certified forest practices plan to authorise land clearing to clear trees or to clear and convert threatened non-forest native vegetation. However, under the FP Act, clearing and conversion of threatened native vegetation is not permitted unless under exceptional circumstances.<sup>63</sup>

2.71 Exemptions from the requirement to have a Forest Practices Plan to authorise land clearing include small scale clearing of up to one hectare per property per year provided that the land is not considered 'vulnerable' and time volumes removed or cleared do not exceed 100 tonnes.

### *Northern Territory*

2.72 In the Northern Territory (NT), the *Pastoral Land Act* constrains vegetation clearance for the purpose of agricultural activities other than those related to the primary purpose of pastoral land, that is, pastoralism.<sup>64</sup>

---

61 WA Department of Environment and Conservation, *Native vegetation clearing in Western Australia*, Native Vegetation fact sheet 1, [http://www.dec.wa.gov.au/component/option.com\\_docman/task,doc\\_download/gid,2938/Itemid,1025](http://www.dec.wa.gov.au/component/option.com_docman/task,doc_download/gid,2938/Itemid,1025) (accessed 27.4.10).

62 WA Department of Environment and Conservation, *Native vegetation clearing in Western Australia*, Native Vegetation fact sheet 4.

63 Forest Practices Authority, *Information on Land Clearing Controls in Tasmania*, Fact Sheet, September 2007, [http://www.fpa.tas.gov.au/fileadmin/user\\_upload/PDFs/Botany/Land\\_Clearing\\_Information\\_Sheet\\_feb\\_08.pdf](http://www.fpa.tas.gov.au/fileadmin/user_upload/PDFs/Botany/Land_Clearing_Information_Sheet_feb_08.pdf) (accessed 27.4.10).

64 Northern Territory Department of Natural Resources, Environment, The Arts and Sport, *Submission 396*, p. 2.

2.73 The *Planning Act 1999* regulates the planning, control and development of land. Permits may be approved for the clearing of native vegetation and may include a schedule of conditions. The NT Land Clearing Guidelines (2010)<sup>65</sup> establish standards for native vegetation clearing. The guidelines recognise that decisions to clear native vegetation are significant because clearing will lead to at least some change in landscape function. The guidelines seek to manage clearing in a way that promotes the greatest possible net benefit from use of land cleared of native vegetation. The guidelines are recognised formally under the *Planning Act 1999* and referenced in the Northern Territory Planning Scheme.

#### *Australian Capital Territory*

2.74 Native vegetation in the Australian Capital Territory is controlled by the *Land (Planning and Environment) Act 1991* and the *Nature Conservation Act 1980*.<sup>66</sup>

### **Land clearing and deforestation**

2.75 The Kyoto Protocol rules define deforestation as 'the direct human-induced conversion of forested land to non-forested land' in relation to land that was forest on 1 January 1990. According to DCCEE, the Australian definition of a forest for the purposes of Kyoto Protocol accounting specifies a 'minimum area of 0.2 hectares, with at least twenty per cent tree crown cover and the potential to reach a height of maturity of at least two metres'.<sup>67</sup> DCCEE noted that:

Deforestation occurs when forest cover is deliberately removed and the land use changes to pasture, cropping or other uses. Deforestation represents a subset of total land clearing activity.<sup>68</sup>

2.76 DCCEE provided the following graphs illustrating the trend in deforestation activity across Australia. The total area of forest cleared annually includes first-time transition of forested land to other land use and clearing of regrowth on land that was previously forested (reclearing). DCCEE stated that reclearing has increased in proportion to first-time conversion since 1990.

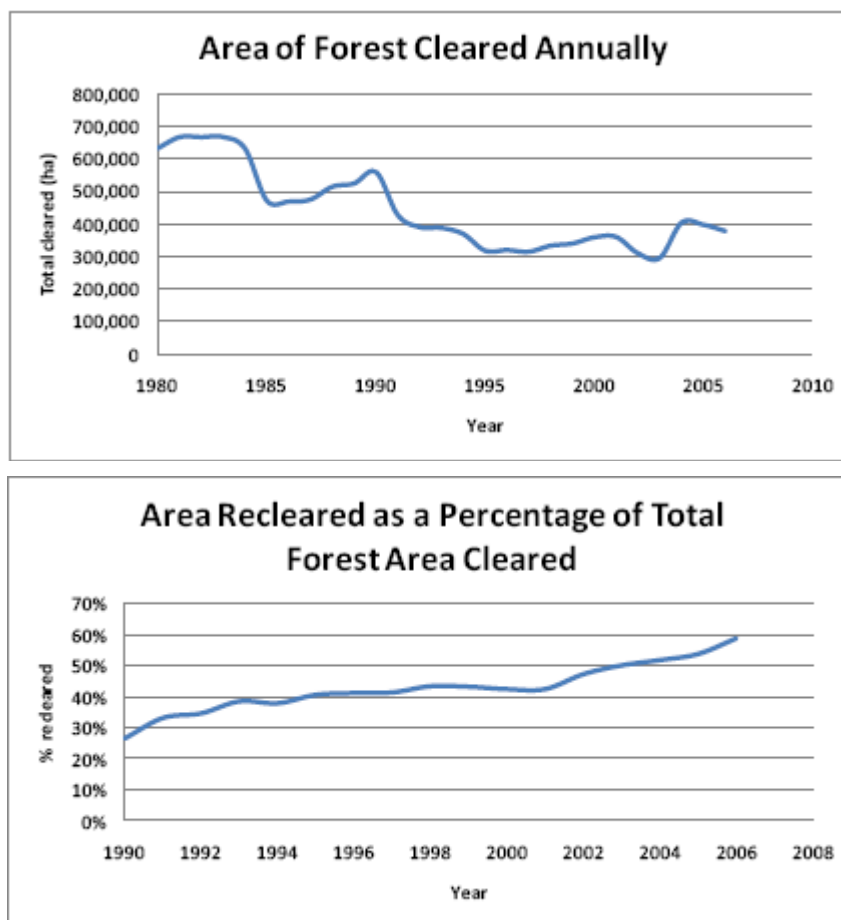
---

65 Northern Territory Government, *Land Clearing Guidelines*, 2010, [http://www.nt.gov.au/nreta/natres/natveg/guidelines/pdf/landclearingguidelines\\_2010.pdf](http://www.nt.gov.au/nreta/natres/natveg/guidelines/pdf/landclearingguidelines_2010.pdf) (accessed 26.5.10).

66 Environmental Defenders Office, *Outline of Legal Approaches to Land Clearing*, <http://www.edo.org.au/edosa/research/mark's%20land%20clearing%20paper.htm> (accessed 29.4.10).

67 Department of Climate Change and Energy Efficiency, *Submission 235*, p. 3.

68 Department of Climate Change and Energy Efficiency, *Submission 235*, p. 3.



Source: Department of Climate Change and Energy Efficiency, *Submission 235*, p. 3.

2.77 In 1992, the Commonwealth, state and territory governments signed the National Forest Policy Statement (NFPS) which provides a national policy framework for forest management and sustainable timber production on public and private land. The NSW Department of Environment, Climate Change and Water stated that the NFPS:

...seeks to achieve ecological and sustainable forest management (ESFM) and promotes the use of codes of practice to ensure a high standard of forestry operations on private land and to protect the environment.<sup>69</sup>

### ***Private native forest management***

2.78 Private native forestry is defined by the NSW Department of Environment, Climate Change and Water as the 'management of native vegetation on privately owned land for the purposes of obtaining forest products on a sustainable basis'.<sup>70</sup> According to the Australian Forest Growers, approximately 38 million hectares or

69 NSW Department of Environment, Climate Change and Water, *Submission 15*, p. 8.

70 NSW Department of Environment, Climate Change and Water, *Submission 15*, p. 8.

almost a quarter of Australia's native forest estate including woodland, tall eucalypt forests and rainforests is privately owned.<sup>71</sup>

2.79 The harvesting of timber on private land for commercial purposes is regulated in every state and territory jurisdiction with the exception of South Australia and the Australian Capital Territory.<sup>72</sup>

2.80 In NSW, where there is an estimated 8.5 million hectares of native forests in private land, the NSW Department of Environment, Climate Change and Water held that private native forestry is important to the timber industry and to maintain environmental values including biodiversity, water and soil quality, carbon and to prevent land degradation.<sup>73</sup>

### **Deforestation and greenhouse gas emissions**

2.81 In 1990, national emissions from deforestation declined from 132 million tonnes (Mt) carbon dioxide equivalent (CO<sub>2</sub>-e) to 77 Mt CO<sub>2</sub>-e in 2007. DCCEE noted that much of the reduction in emission from deforestation since 1990 took place before consideration of greenhouse gas emission targets.<sup>74</sup>

2.82 DCCEE noted that the international greenhouse gas emissions accounting framework under the Kyoto Protocol specifies which emissions sources and sinks count toward Australia's target for the first Kyoto commitment period (2008–12). Once land has been deforested, greenhouse gas emissions and removals on that land remain in the national deforestation accounts. Emissions from reclearing, if the land returned to forest following the initial land use change, are included in emissions estimates. Emissions and removals from forest harvest and regrowth where no land use change occurred are not included, in accordance with the Kyoto Protocol rules.<sup>75</sup>

2.83 Emissions over the first Kyoto commitment period are projected to be 49 Mt CO<sub>2</sub>-e per annum. This represents a 63 per cent decline from the 1990 level. The projections take into account the anticipated effects of recent Queensland and NSW Government vegetation management legislation reforms.

---

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

72 NSW Department of Environment, Climate Change and Water, *Submission 15*, p. 8.

73 NSW Department of Environment, Climate Change and Water, *Submission 15*, p. 8.

74 Department of Climate Change and Energy Efficiency, *Submission 235*, p. 4.

75 Department of Climate Change and Energy Efficiency, *Submission 235*, p. 4.

# 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.<sup>1</sup> 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.<sup>2</sup>

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

---

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.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup>

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:

---

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.<sup>6</sup>

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'.<sup>7</sup> 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.<sup>8</sup>

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'.<sup>9</sup> 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'.<sup>10</sup>

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

---

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'.<sup>11</sup> 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.<sup>12</sup>

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.<sup>13</sup>

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.<sup>14</sup>

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.<sup>15</sup>

3.16 Mr Anthony and Mrs Suzanne Kenny added:

---

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.<sup>16</sup>

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.<sup>17</sup>

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'.<sup>18</sup> 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.<sup>19</sup>

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.

---

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.<sup>20</sup>

### ***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.<sup>21</sup>

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.<sup>22</sup>

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.

---

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.<sup>23</sup>

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.<sup>24</sup>

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.

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.<sup>25</sup>

---

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.<sup>26</sup>

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.<sup>27</sup>

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.<sup>28</sup>

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

---

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.<sup>29</sup>

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!!!'<sup>30</sup>

*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'.<sup>31</sup>

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.<sup>32</sup>

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.<sup>33</sup>

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.<sup>34</sup>

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...<sup>35</sup>

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...

---

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.<sup>36</sup>

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.<sup>37</sup>

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.<sup>38</sup>

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.<sup>39</sup>

---

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.<sup>40</sup>

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.<sup>41</sup>

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.<sup>42</sup>

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 treated with a range of treatments, including cropping.<sup>43</sup>

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

---

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.<sup>44</sup> 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'.<sup>45</sup>

### ***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'.<sup>46</sup>

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.<sup>47</sup>

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'.<sup>48</sup>

### ***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

---

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.<sup>49</sup>

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.<sup>50</sup> 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.<sup>51</sup>

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'.<sup>52</sup>

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.

The Government has now substantially increased perpetual lease rentals in excess of 1000% and much more in many cases. Farmers are left with the

---

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.<sup>53</sup>

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.<sup>54</sup>

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'.<sup>55</sup>

### *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.<sup>56</sup>

---

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.<sup>57</sup> Others contended that they had sold land as a means of covering their ongoing costs whilst others still were forced to sell.<sup>58</sup>

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.<sup>59</sup>

### **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.<sup>60</sup>

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,

---

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.<sup>61</sup>

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.<sup>62</sup><sup>63</sup> 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.<sup>64</sup>

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.<sup>65</sup>

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'.<sup>66</sup>

---

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.<sup>67</sup>

3.68 Other submitters noted that while their property value may have increased, it had not reached the full potential.<sup>68</sup>

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.<sup>69</sup>

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.<sup>70</sup>

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

---

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.<sup>71</sup>

3.74 Mr Rheese commented that such a distinction was largely absent in the application of native vegetation legislation.<sup>72</sup> 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.<sup>73</sup>

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.<sup>74</sup>

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

---

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\\_continent.pdf](http://www.wentworthgroup.org/uploads/6.%20blueprint_for_a_living_continent.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.<sup>75</sup>

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.'<sup>76</sup>

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.<sup>77</sup>

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.<sup>78</sup>

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

---

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.<sup>79</sup>

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.<sup>80</sup> Similarly, in Western Australia, a permit is required from the respective department unless the vegetation in question is subject to an exemption.<sup>81</sup>

### *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.<sup>82</sup>

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 –

---

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](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.<sup>83</sup>

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.<sup>84</sup> 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.<sup>85</sup>

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.<sup>86</sup>

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'.<sup>87</sup> 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.<sup>88</sup>

---

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.<sup>89</sup>

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.<sup>90</sup>

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 13<sup>th</sup> of September 2002. After several extensions a negative decision was made on the 31<sup>st</sup> of March, 2004. We applied for compensation on the 13<sup>th</sup> 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 13<sup>th</sup> of February 2007. A decision was made on the 2<sup>nd</sup> 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.<sup>91</sup>

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'.<sup>92</sup>

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.<sup>93</sup> However, evidence before this committee

---

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.<sup>94</sup> 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.<sup>95</sup>

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.<sup>96</sup>

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.<sup>97</sup>

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.<sup>98</sup>

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.<sup>99</sup>

### ***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.<sup>100</sup>

### ***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

---

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.<sup>101</sup>

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.<sup>102</sup>

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.<sup>103</sup>

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.<sup>104</sup>

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

---

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.<sup>105</sup>

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.<sup>106</sup> 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.<sup>107</sup>

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.<sup>108</sup> 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.<sup>109</sup>

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.<sup>110</sup>

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

---

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.<sup>111</sup>

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.<sup>112</sup>

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.<sup>113</sup>

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.<sup>114</sup> 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'.<sup>115</sup>

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

---

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.<sup>117</sup>

### ***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.<sup>118</sup>

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'.<sup>119</sup> 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.<sup>120</sup>

### **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:

---

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.<sup>121</sup>

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.<sup>122</sup>

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 gutted, 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.<sup>123</sup>

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.<sup>124</sup>

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.<sup>125</sup>

### **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.<sup>126</sup> Indeed, AgForce

---

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.<sup>127</sup>

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.<sup>128</sup>

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.<sup>129</sup>

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).<sup>130</sup>

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'.<sup>131</sup>

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.<sup>132</sup>

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.<sup>133</sup>

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.<sup>134</sup>

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.<sup>135</sup> Mr Viv Forbes commented:

---

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.<sup>136</sup>

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.<sup>137</sup>

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.<sup>138</sup>

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

---

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.<sup>139</sup>

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.<sup>140</sup>

### **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.<sup>141</sup>

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?'<sup>142</sup>

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

---

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.<sup>143</sup> 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.<sup>144</sup>

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.<sup>145</sup>

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.<sup>146</sup> 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.

---

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.<sup>147</sup>

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.<sup>148</sup>

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.<sup>149</sup>

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.<sup>150</sup>

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

---

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.<sup>151</sup>

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.<sup>152</sup>

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*'.<sup>153</sup> 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.<sup>154</sup>

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.<sup>155</sup>

---

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 16.4.10).

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.

# 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.<sup>1</sup>

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

---

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

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

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.<sup>4</sup> The package consisted of \$130 million for landholders, especially primary producers, to assist the industry; \$12 million over four years to be given 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.<sup>5</sup>

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).<sup>6</sup>

4.7 In Western Australia, landholders who voluntarily enter into conservation covenants receive some assistance and incentives.<sup>7</sup> 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.<sup>8</sup>

- 
- 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](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.<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup>

### **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

---

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](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.<sup>12</sup>

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'.<sup>13</sup>

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.<sup>14</sup>

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.<sup>15</sup>

### **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.

---

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.<sup>16</sup>

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.<sup>17</sup>

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.<sup>18</sup>

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.<sup>19</sup>

---

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.<sup>20</sup> 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.<sup>21</sup>

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.

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.<sup>22</sup>

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

---

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.<sup>23</sup>

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':<sup>24</sup>

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.<sup>25</sup>

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'.<sup>26</sup> 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.<sup>27</sup> The respective outcomes may, according to p&e Law impact on cultural heritage, food security, biosecurity, biodiversity and the capacity to manage the environment.<sup>28</sup>

#### *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.<sup>29</sup>

---

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 therefore 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.<sup>30</sup>

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.<sup>31</sup>

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.<sup>32</sup>

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

---

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'.<sup>33</sup>

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.<sup>34</sup>

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.<sup>35</sup>

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.<sup>36</sup>

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.<sup>37</sup> 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

---

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 sequestered 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.<sup>38</sup>

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.<sup>39</sup>

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.<sup>40</sup>

***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.<sup>41</sup> 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.<sup>42</sup>

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.<sup>43</sup>

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.<sup>44</sup>

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.<sup>45</sup>

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.<sup>46</sup>

---

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'.<sup>47</sup>

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.<sup>48</sup>

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.<sup>49</sup>

### **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.<sup>50</sup>

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.<sup>51</sup>

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 sequestered.

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.

If it does not recognise common law right there will be limited capacity to enable landowners to be equitably compensated for the carbon temporally sequestered in the trees, vegetation and soil of their land as a result of regulation and prohibition of clearing native vegetation.<sup>52</sup>

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'.<sup>53</sup> It held that whilst compensation was required where the costs of public goods have been transferred onto farmers, the priority for reforms should rest

---

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.<sup>54</sup>

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.<sup>55</sup>

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.<sup>56</sup>

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 Governments, in many cases they were required under the terms of State Government Leases.<sup>57</sup>

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

---

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'.<sup>58</sup> 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.<sup>59</sup>

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:<sup>60</sup>

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.<sup>61</sup>

### ***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:

---

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.<sup>62</sup>

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.<sup>63</sup>

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'.<sup>64</sup>

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.<sup>65</sup>

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.<sup>66</sup> 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'.

---

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.<sup>67</sup>

---

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



# Chapter 5

## Conclusions and recommendations

5.1 The committee believes that there are legitimate concerns about the impact of the current native vegetation laws upon a small group of Australians, namely landholders in rural and regional Australia. It is unreasonable that the burden of broad environmental objectives is borne by a small number of Australians. Where the current native vegetation laws have resulted in reduction of property value for landholders, this is unjust and it is inappropriate that this burden is borne by individual landholders. This situation should be addressed to better balance competing objectives, the cost burden of achieving these and to redress the current situation.

5.2 While land clearing and native vegetation laws have developed over several decades, aspects of these laws remain a contested element of public policy. There will, therefore, be ongoing debate about the appropriate restrictions placed on land use where that competes with broader community environmental objectives.

5.3 The committee notes that Australia currently enjoys substantial environmental benefits that are the result of preservation, management and restoration efforts conducted by agriculturalists and pastoralists.

5.4 In recent decades, laws focused on preventing broadscale land clearing have become much more specific and involved a greater degree of government and bureaucratic control over landowners' utilisation and management of their land. Laws preventing broadscale land clearing with the objective of limiting wider environmental degradation have become focused on the management of vegetation, including on individual properties. Previously unregulated or exempt activities are now much more subject to bureaucratic oversight or regulation.

5.5 This represents a significant change in the relationship between a landholder and their own property as well as between the landholder and governments, in this case primarily state governments.

5.6 A significant burden of this shift has been borne by those involved in agricultural or pastoral activities – both in terms of new regulation and the necessary cost this has entailed as well as the potential and varied economic and opportunity costs.

5.7 Evidence received during this inquiry confirms that there is considerable angst and concern at the impact of native vegetation laws by those upon whom the laws impact, primarily agricultural and pastoral producers in regional and rural Australia. This is not limited to economic or financial issues, and encompasses personal and family costs. It is clear from the number of submissions and some of the individual examples that have been presented to the committee that there is substantial scope to

improve the operation of these laws to the satisfaction of all stakeholders and reduce these personal costs.

5.8 It also became clear to the committee from evidence presented that there is a lack of trust and cooperation between affected landowners and various state government agencies in the planning, implementation, management and enforcement of native vegetation laws.

5.9 It was also clear that many landowners believed and felt that the negotiation and consultation process prior to the introduction of laws, or changes of laws, was inadequate.

5.10 Nevertheless the committee believes that it would be in the best interests of landowners, government agencies and the broader Australian public in achieving necessary land use regulation, if the processes involved were built upon trust, cooperation and understanding to achieve outcomes that protect the environment generally but at the same time maintain secure and sustainable food production in Australia.

5.11 These concerns raised with the committee by affected landholders and representative organisations include:

- the opportunity cost of land lost to production (both previously uncleared and/or unutilised or that which has previously been cleared and/or utilised);
- the loss of real or potential property value due to the introduction of these restrictions on land use;
- restrictions that effectively remove the right to continue to utilise land in a manner in which it has previously been used;
- the lack of compensation for these 'losses';
- enforcement and compliance mechanisms utilised by State Governments under these regimes and opportunities for review of determinations;
- the application of these laws to individual properties, including restrictions on what appear to be quite minor changes to vegetation, including with respect to very small patches of vegetation or even single trees;
- the long-term environmental impact of these laws, specifically whether they will achieve their stated objectives of improving native vegetation cover and environmental outcomes; and
- the ongoing liability of landholders for land they own but over which they do not have effective control, including the payment of rates and management of noxious plants and feral animals.

5.12 Furthermore, the issue of compensation for future restrictions on land use also needs to be addressed.



---

## *Compensation*

5.13 While the committee does not believe that it is always inappropriate for government to regulate the use or utilisation of private landholdings, there comes a point at which regulation of land may be so comprehensive as to render it of a substantially lower economic value to the landowner. In such circumstances consideration should be given to compensation being provided to the landowner in recognition of this.

5.14 The committee notes that in its 2004 report the Productivity Commission considered the issue of compensation and made two recommendations. First, that landholders should bear the costs of actions that directly contribute to sustainable resource use and hence, the long-term viability of agriculture and other land-based operations. Second, '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'.<sup>1</sup>

5.15 Just as the ongoing protection and nurturing of the environment is the responsibility of all Australians, introducing imposts which unreasonably diminish the value of an asset should trigger compensation for the people involved.

5.16 In short, where the community has a need for a private asset, then the cost of acquiring that should be borne by the community.

5.17 The committee believes that the passage of further laws and regulations that govern and restrict the use of agricultural and pastoral land should be considered in the context of the economic cost and burden borne by the landholder as well as environmental objectives that are desired by the broader community.

5.18 Where future legislation or regulation reflects an outcome desired by the broader community and the cost of this will be borne by the landholder, the committee considers that the Productivity Commission's recommendations in relation to compensation provide an equitable basis for compensation payments to landholders.

5.19 Where the cost of compensation for past legislative and regulatory actions is prohibitive, consideration should be given to reducing the current impediments upon landholders as a remedy.

5.20 Many submissions expressed concern at the reductions in effective property rights. The committee strongly believes that effective property rights are critical to a market-based economy. When these rights become uncertain, this reduces the likelihood that others will undertake significant investments in purchasing or utilising property as the rights to use this property may be substantially limited in whole or part

---

1 Productivity Commission, *Impacts of Native Vegetation and Biodiversity Regulations*, 2004, p. XLIX.

at a later date. The committee is strongly of the view that it is inappropriate for government regulation or activity to pose this risk to landholders.

### ***Recommendations***

5.21 Considerable evidence before the inquiry highlighted the unintended consequences of native vegetation legislation particularly in relation to restrictions on land clearing.

5.22 The Committee recognises the need, therefore, for a nationwide assessment to determine the impact of such legislation on biodiversity and environmental sustainability and the legitimate objective of maximising agricultural production based on the best available science.

#### **Recommendation 1**

**5.23 The committee recommends that COAG re-examine the native vegetation legislation and its 2006 recommendations with a view to establishing a balance between maximising agricultural production and best practice conservation.**

#### **Recommendation 2**

**5.24 The committee recommends that the Commonwealth initiate, through the Natural Resource Management Ministerial Council, a national review to assess the impact of various native vegetation legislative and regulatory regimes, particularly those at the state level. In undertaking such a review, the following issues should be specifically addressed:**

- **the liability of landholders complying with native vegetation laws for the payment of rates or taxes for land that is not available for productive use;**
- **the right of landholders to manage competing environmental objectives over land where restrictions have been imposed, for example the management of noxious weeds and pests in protected native vegetation areas;**
- **the institution of inexpensive, accessible, timely and independent administrative appeals processes against decisions of enforcement agencies or officials regarding the granting of permits or institution of regulatory regimes over private land;**
- **the application of statewide regulations where there are distinct and notable variations in both the environmental conditions and objectives across regions within states;**
- **the burden of these laws on newer farming areas and communities as opposed to more established ones; and,**
- **the imposition of caveats by state authorities which prevent or restrict the existing use of land when converting title from leasehold to freehold.**

5.25 Where the imposition or outcomes of respective native vegetation legislation impacts the provisions of the *Environment Protection and Biodiversity Conservation Act 1999*, the Commonwealth will be responsible then to investigate.

5.26 The committee recognises the need for action across all jurisdictions in relation to stewardship initiatives. Towards this objective, it appreciates that a shift in the approach away from regulation to that of stewardship implies reorienting the focus of the relationship between landholder, land and government.

5.27 Whilst evidence before the committee emphasised the need to dismantle the regulatory framework, the committee recognises that to work effectively, stewardship initiatives require extensive consultation and collaboration.

### **Recommendation 3**

**5.28 The committee recommends a review of best practice in relation to stewardship initiatives across the country with a view to re-orienting future regulatory activities.**

**Senator Scott Ryan  
Chair**



# **Additional comments from Government Senators**

## **Howard Government's role in supporting anti land clearing laws**

Government Senators note that the previous Government actively and publicly pressured both New South Wales and Queensland State Governments to pass laws preventing the broad scale clearing of native vegetation as the Commonwealth Government does not have the constitutional power to pass such laws. This fact is not disputed by Coalition Senators or by farmers' associations and other participants making submission at the inquiry, even though the Coalition Senators have studiously attempted to ignore the Howard Government's role in anti land clearing laws.

Numerous statements by Howard Government Environment Ministers such as Senator Robert Hill and later Dr David Kemp demonstrate the Howard Government's desire to push for a stop to land clearing.

For example, Minister Hill said to the Senate:

"Five years ago, the Governments of Australia set the goal of reversing the decline in the quality and extent of our native vegetation by June 2001..."

"The exceptionally high rate of land clearing in Queensland is still the single most substantial factor in the failure to achieve the national goal... While a number of States have effective regulatory systems for land clearing in place, the main reason why the national goal has not been achieved is that many States have not contributed sufficiently to the national endeavour. The goal cannot be achieved as long as Queensland land clearing rates remain at current levels, and New South Wales clearing rates also remain too high. Significant improvements in other States and Territories are also required."<sup>1</sup>

Minister Kemp continued this pressure on the states when he became Minister for the Environment:

"Every other Australian state in its bilateral agreement with the Commonwealth on the Natural Heritage Trust has undertaken to protect of concern vegetation on private land. The only government that has not done so, so far, is the Beattie government....."

"I do not think anyone in this country who cares for the environment does not believe that vegetation clearing, at the rate that it is going, is a very significant environmental problem, particularly in two states – Queensland and New South Wales – with Labor governments that have had the capacity

---

1 Statement to the Australian Senate, Senator Robert Hill, Minister for Environment and Heritage, 27 September 2001.

for quite some time to address this issue. It was not until the Natural Heritage Trust and the National Action Plan for Salinity and Water Quality were put in place by this government that solutions to these problems have become possible.”<sup>2</sup>

Minister Hill further made certain Commonwealth Government funding to the states contingent on laws restricting land clearing being passed in priority areas:

“Commonwealth funding for the (National Action Plan for Salinity and Water Quality) is contingent on the States and Territories committing to implement the whole package of measures outlined in this Agreement, which includes policy reform relating to land and water resource management.”

“The Agreement commits the States and Territories to put in place controls which at a minimum prohibit land clearing in the 21 priority catchments and regions where it would lead to unacceptable land or water degradation.”<sup>3</sup>

When New South Wales and Queensland State Governments passed these laws, the Howard Government took credit:

“I was delighted to record in the House only a week or so ago that, via the agency of the Natural Heritage Trust and the National Action Plan for Salinity and Water Quality, a complete halt will now be put on broad scale vegetation clearing in New South Wales. That is something that the Commonwealth is very pleased about. I know that landholders and environment and conservation groups are also very pleased about it. It is something we have been seeking, along with regional reform, to push the New South Wales government into for some time.”<sup>4</sup>

Both Ministers made it clear that the reason that they wanted these laws to be introduced was because clearance of native vegetation was “a fundamental cause of dry land salinity”, to provide “multiple productivity, biodiversity and greenhouse returns” and “to help us meet our greenhouse emissions abatement commitments”<sup>5</sup>

For example, Minister Hill stated:

“Reducing the rate of land clearing in Queensland remains one of the most significant opportunities to address our greenhouse emissions. The Commonwealth has offered Queensland unprecedented financial assistance

---

2 MPI on land clearing, Dr David Kemp, Minister for the Environment and Heritage, 26 November 2003

3 Statement to the Australian Senate, Senator Robert Hill, Minister for the Environment and Heritage, 27 September 2001

4 MPI on land clearing, Dr David Kemp, Minister for the Environment and Heritage, 26 November 2003.

5 Statement to the Australian Senate, Senator Robert Hill, Minister for the Environment and Heritage, 27 September 2001

---

to implement an improved land clearing regime that would deliver substantially reduced clearing rates and a significant greenhouse outcome beyond that resulting from the existing Queensland legislation and reform commitments. In order to meet our greenhouse commitments, certainty of outcome is essential. The delivery of this certainty and a sustained reduction in greenhouse emissions can only be achieved through the implementation of statewide caps on clearing of native vegetation."<sup>6</sup>

Years later, former Treasurer Peter Costello proudly acknowledged that the Commonwealth stopped land clearing to meet its Kyoto target:

“This was all designed to stop land clearing and we stopped land clearing and it’s helped us to meet our Kyoto target. If I may say so, Australia actually did something practical.”<sup>7</sup>

### **Effect on farmers and funding support offered**

While initially welcomed by the New South Wales Farmers’ Association as “a great step forward for farmers in NSW”<sup>8</sup> when first introduced, the laws have become unpopular among the farmers’ organisations. It appears that some of the farmers’ frustrations are legitimate, for example, where state laws are perhaps unduly inflexible, even where environmental benefits of native vegetation would be maintained offsetting, by moving the vegetation to another area of the farm. Furthermore, there does not appear to be an appeals mechanism at a state level that would allow farmers to appeal decisions in a cost-effective way. Farmers should not need to go to court to appeal an administrative decision that affects the way they are able to use their property.

However, it should be noted that while the Queensland and New South Wales state governments offered significant financial support to farmers affected by these laws, there was no financial support that can be found from the then Howard Government.

Questions remain unanswered as to why the Howard Government reneged on an agreement with the Queensland Government to jointly offer a \$150 million assistance package to farmers. A media release issued ON 22 May 2003 by Minister Kemp explained that Howard Government ministers David Kemp (Environment and Heritage); Warren Truss (Agriculture, Forestry and Fisheries); Ian Macfarlane (Industry, Tourism and Resources) and Ian Macdonald (Fisheries, Forestry and Conservation) met with Mr Larry Acton of Agforce, Mr Gary Sansom of Queensland Farmers’ Federation (QFF) and other primary industry leaders to outline the native vegetation laws and discuss the financial assistance to farmers. The package offered

---

6 Statement to the Australian Senate, Senator Robert Hill, Minister for the Environment and Heritage, 27 September 2001.

7 Transcript of Interview with Kerry O’Brien, the Hon Peter Costello MP, 7.30 Report, ABC TV, 6 June 2007

8 "Plan to End Broadscale Land Clearing" AAP, 15 October 2003.

at that meeting “met the Commonwealth Government’s objectives of a substantial reduction in the clearing of remnant vegetation, in greenhouse gas emissions and the additional protection of the biodiversity of ecosystems”, according to Minister Kemp. The media release also stated: “The Commonwealth indicated it is willing to consider alternatives to the proposal that achieve the Commonwealth’s objectives in an assured, timely and cost effective manner.”

However, ultimately, no such funding was provided by the Howard Government when the laws were passed by the Queensland Government. The Queensland Government apparently paid all \$150 million itself. It is unfortunate that the committee was not able to ascertain the reason behind this back flip by the Howard Government – industry leaders do not appear to understand the reasons for the decision.

In addition, in New South Wales, a similar amount of funding went directly to financial assistance for farmers affected, usually in the form of incentive schemes, although a portion was spent on compensation for farmers whose land was rendered unsuitable for agriculture due to the extend of native vegetation protected.

The comments provided in this report by other senators refer to “unintended consequences” of the native vegetation laws being passed. However, it is indisputable that there were several prominent reports from reputable organisations such as the Productivity Commission and the Australian Bureau of Agricultural and Resources Economics available at the time that the Howard Government was “pushing”. The Productivity Commission report, for example, analysed the financial impact these laws would have on farmers in certain regions. Furthermore, Queensland farmers’ association, Agforce, was very clear very early about its opposition to the laws in Queensland. Some other farmers’ organisations did not appear to develop an opposition, apparently on the basis that they realised the laws were aimed at meeting the Howard Government’s Kyoto target, despite the Howard Government making it clear it wanted these laws to meet “greenhouse gas abatement commitments”.

The committee also received evidence of farmers’ meetings being held to discuss their concerns with the laws.<sup>9</sup> For example, one witness said there were hundreds of people at a public meeting in Dubbo in 2003 and participants “tried very hard to get this (issue) on the national agenda at that time, as did other people and groups.” Despite the fact that National and Liberal party members under the Howard Government, such as Senator Nash, appeared to have done nothing to communicate their concerns to their senior Howard Government ministers. It is therefore quite concerning that these same Senators are now claiming that the effects of these laws on farmers were unforeseen or unintended.

---

9 Evidence submitted at Wagga Wagga hearing by Mr Max Rheese, Executive Director, Australian Environment Foundation



---

## Compensation

Some farmers wanted compensation for what they argue is an abrogation of property rights. As the National Farmers Federation noted, this issue is subject to a High Court Appeal.<sup>10</sup> It would therefore not be appropriate to comment on the issue of compensation for the laws passed by the states prior to the Rudd Government's term and with the support of the Howard Government.

Government Senators note that the Opposition has ruled out providing compensation. In an interview with *The Australian's* Matthew Franklin, Senator Barnaby Joyce, the then Opposition Finance Spokesperson said, "If you are going to compromise their capacity to utilise their assets, you should compensate them."<sup>11</sup> Matthew Franklin wrote that Senator Joyce then "contacted *The Australian* again shortly after the initial interview to stress that he accepted that compensation would be too costly." The Leader of the Opposition, Mr Tony Abbott, also said on the same day of the farmers rally at Parliament House on 2 February 2010 "we are not proposing any additional policies directly on the subject of land clearing."<sup>12</sup>

## Impact of climate changes policies on farm use

Witnesses before the committee consistently agreed with the statement that there has been no change to land management regulations under the term of the Rudd Government. However, some farmers' associations, particularly the National Farmers' Federation and the NSW Farmers' Federation, argued that, while the Rudd Government did not orchestrate these laws like the previous Government did, the ratification of Kyoto amounted to a "cashing in" of the carbon credits.

However, submissions from the Department of Climate Change and Water make clear that the ratification of Kyoto does not result in the Government removing or acquiring any existing rights that farmers might have to carbon on their land. Furthermore, in relation to the Rudd Government's proposed Carbon Pollution Reduction Scheme, no liabilities for greenhouse gas emissions from deforestation or agriculture will be imposed, but the CPRS package included measures to promote voluntary action to reduce greenhouse gas emissions from these sources. Participation in offsets for avoided deforestation or in reforestation is purely voluntary. Furthermore, the CPRS, had it been passed by the Senate, would not have imposed any constraints or penalties for land clearing.

---

10 Transcript of Wagga Wagga hearing

11 "Barnaby Joyce attacked over land use claim", *The Australian*, 18 December 2009, accessed at <http://www.theaustralian.com.au/politics/barnaby-joyce-attacked-over-land-use-claim/story-e6frgczf-12258115537771> (accessed 27 April 2010)

12 Leader of the Opposition, Press Conference, Parliament House, Canberra, 2 February 2010 accessed at <http://liberal.org.au/latest-news/2010/02/02/Press-Conference-direct-action-on-climate-change.aspx> (accessed on 25 April 2010)

## **Conclusions and recommendations**

On the basis of the evidence presented to the inquiry, Government Senators believe that farmers concerns relating to the administration of the native vegetation legislation warrant further scrutiny.

Government Senators therefore support the essence of the recommendations. The Natural Resource Management Ministerial Council (NRMMC) should review state native vegetation laws with a view to:

- Ensuring, where practical, that the laws are sufficiently flexible in each state to allow farmers to offset clearing where that leads to an equal or enhanced environmental outcome
- Introducing into each state a cheap and quick mechanism for merits review of decisions to refuse permission to clear land
- Ensuring that native vegetation policies encourage and allow for effective weed and pest control
- Devising a strategy to ensure that the land is not effectively ‘locked up’ and left without maintenance
- Ascertaining whether farmers can access affordable technology to assist farmers to manage native vegetation – for example, satellite imagery
- Establishing uniform protocols across the states to guiding enforcement and investigative procedures
- Establishing training for Government officers carrying out these duties
- Making available helpful and relevant information to the public to assist landholders to understand processes and aims of the laws
- Reviewing incentive-based programs available to landholders, such as environmental stewardship programs or access to sustainable agriculture grants, that allow landholders to earn income for protecting high quality native vegetation to ensure that policy settings across governments assist farmers to deliver environmental outcomes
- Ensuring native vegetation laws reflect scientific data regarding the best means to ensure enhancement of our natural environment while also enhancing productivity at the same time.

**Senator Helen Polley**  
**Senator for Tasmania**

**Senator Doug Cameron**  
**Senator for New South Wales**

# Dissenting Report by Australian Greens

## Senator Rachel Siewert

I am unable to support the conclusions and recommendations of the majority report on this inquiry. The report reaches its conclusions and recommendations without having considered the context of the development of the various state and territory legislation, the massive loss of biodiversity and rate of extinction of plant and animals species in Australia, and the impact of land clearing on Australia's carbon emissions.

According to the Department of Environment, Water, Heritage and the Arts over the last 200 years Australia has suffered the largest documented decline in biodiversity of any continent. Despite efforts to manage threats and pressures to biodiversity in Australia, it is still in decline.

Further Australia's *Biodiversity Conservation Strategy 2010-2020 Consultation* draft says:

"We observe and note report after report of the downward trend in our biodiversity."

The *Australia State of the Environment 2006* report found that biodiversity is in serious decline (Beeton et al. 2006) and the second environmental performance review of Australia by the Organisation for Economic Co-operation and Development (OECD 2008), reports that despite improved efforts the downward trend in the conservation status of some species continues.

The Wentworth Group of Concerned Scientists outlines the impact of clearing native vegetation saying:

"The clearing of native vegetation is one of the primary causes of land and water degradation and loss of biodiversity in Australia. Broadscale land clearing has led to extensive erosion and salinisation of soils. Erosion and the removal of the vegetation in riparian zones has also reduced the quality of water that runs off the landscape and this in turn has damaged the health of our rivers, wetlands and estuaries. The clearing of native vegetation is also a prime cause of the loss of Australia's unique biodiversity."

The cost of repairing our degraded landscape and natural resources is estimated to be \$80 billion.

The majority report has not considered the billions of dollars that have been invested in land repair and natural resource management, nor has there been adequate consideration of the various incentives schemes that have been and are available at the Federal, state and territory level.

This has been a one-sided review which unfortunately was in a sense pre-determined by the limited terms of references for the inquiry. It should be noted that the Greens did not support these limited terms of reference.

While I agree that stewardship programs and market based incentives need more development and funding, I strongly disagree that these should replace regulation of land clearing. Rather, these programs should complement the regulatory process. In fact there is a need for a much higher level of investment in natural resource management and environment programs.

I also agree it would be desirable to facilitate better relationships between landholders and Government agencies, but would point out that this must be a two way process. I note that state agriculture departments used to play an essential role in the extension of agricultural practices and providing assistance with land degradation issues – but that funding and support for these activities has been substantially cut back over the last three decades

I have been engaged in the debate on land clearing for over 25 years. During that time many landholders have recognised the need for regulatory reform and better land management practices. They have developed innovative land management techniques and practices, and engaged with the various natural resource management programs. Unfortunately there are some that refuse to accept the need for change and that unless we do we will not arrest and reverse the major land degradation and biodiversity loss Australia is suffering. If we are going to enhance the sustainability of our regional economies and communities it is essential that we address land degradation and Australia's rate of biodiversity loss.

**Senator Rachel Siewert**

**Australian Greens Senator for Western Australia**

# APPENDIX 1

## Submissions and Additional Information received by the Committee

- 1 National Native Title Council
- 2 Wentworth Group Of Concerned Scientists
- 3 Australian Network of Environmental Defenders Offices' (ANEDO)
- 4 The Western Australian Farmers Federation (Inc.) (WAFarmers)
- 5 pe Law Planning, Environment Native Title Law Specialists
- 6 Australian Forest Growers
- 7 AgForce Queensland
- Additional Information*
- Answers to Questions on Notice, 27 April 2010
- 8 Nature Conservation Council of NSW
- 9 Environment and Property Protection Association (EPPA)
- 10 Growcom
- 11 Coalition for Agricultural Productivity
- 12 Pastoralists and Graziers Association of WA
- 13 Cobar Vegetation Management Committee
- 14 Property Rights Australia
- Additional Information*
- Answers to Questions on Notice, 26 April 2010
- 15 NSW Government Department of Environment, Climate Change and Water
- Additional Information*
- Supplementary Information, 27 April 2010
- 16 NSW Regional Community Survival Group
- 17 The Carbon Sense Coalition
- Additional Information*
- Opening Statement by Mr Viv Forbes tabled at a public hearing, 9 April 2010
- 18 Name Withheld
- 19 Mobandilla Land Company Limited
- 20 Suryan Chandrasegaran
- 21 Name Withheld
- 22 Colin Ely
- 23 Name Withheld
- 24 Gregory Miller

25	Max Dench
26	Name Withheld
27	Name Withheld
28	Brett Smith
29	Adrian Smith
30	Ken Jones
31	Alex Davidson
32	Name Withheld
33	Sharmaine Hurford
34	North Australian Indigenous Land and Sea Management Alliance (NAILSMA)
35	Confidential
36	Tasmanian Farmers Graziers Association
37	William Gray
38	Name Withheld
39	Wade Bidstrup
40	Name Withheld
41	James Tedder
42	Name Withheld
43	Name Withheld
44	John Burnett
45	Name Withheld
46	Name Withheld
47	Doug Menzies
48	Name Withheld
49	Name Withheld
50	Name Withheld
51	Name Withheld
52	Karen Van Lent
53	Carmel Walsh
54	William Lloyd
55	Dixie Nott
56	John Cash
57	Doug Cameron
58	Ted and Margaret Sullivan
59	Name Withheld
60	Name Withheld
61	Name Withheld
62	Confidential
63	Confidential

---

64	Julie Claydon
65	Tim Chirgwin
66	Lawrence Reynolds
67	Tudor Ivanoff
68	Name Withheld
69	Name Withheld
70	Ian Herbert
71	Name Withheld
72	Name Withheld
73	Confidential
74	Name Withheld
75	Carl Loeskow
76	Peter Blake
77	Peter and Julia Anderson
78	Julene Haack
79	Colan McGree
80	Ken Stone
81	Name Withheld
82	William McLennan
83	James Dedman
84	Name Withheld
85	Name Withheld
86	Joseph Holmes
87	Confidential
88	Charles Coldham
89	Name Withheld
90	Name Withheld
91	Confidential
92	Ian McClintock
93	Ian Strawbridge
94	Barry Neil McRae
95	Richard Golden
96	Name Withheld
97	William Newcomen
98	Name Withheld
99	Kimberley House
100	Thomas Hughes
101	Gary Verri
102	Kevin Scarlett
103	Confidential

104	Phillip Wilson
105	Geoff Hewitt
106	Ron Snape
107	Confidential
108	Scott Hamilton
109	John Fairfax
110	Caroline Harris
111	Desley Brown
112	Daniel Wegener
113	Josh Borowski
114	Greg Clarke
115	Confidential
116	Roger McDowell
117	Scott Cooper
118	Janet Cox
119	Ian Cox
120	Nick Schenken
121	Ben Baccia
122	Marie and Rudy Keller
123	Lucia Morham
124	Barry Brooks
125	Judy Ward
126	Barry McIlwain
127	Colin and Patricia Muller
128	Confidential
129	Anthony and Suzanne Kenny
130	Ray and Edna Mephram
131	James Ramsay
132	Peter Johnston
133	Robert and Jennifer Lawrie
134	Don and Elma Butler
135	Geoff Patrick
136	T G Price
137	Terry Wood
138	Cathy Wegener
139	Neil McDonald
140	Janelle Cox
141	Craig Cox
142	Donald Pye
143	Graham Davies



---

144	Ron Brown
145	Name Withheld
146	Nathan Rogers
147	John Andrew
148	Ron Lindsay
149	Justin Parry
150	D S Horsburgh
151	Neil Cameron
152	Kylie Deshon
153	David Rolfe
154	Dan Moran
155	Peter Neal
156	Paula McIver
157	Bevan O`Regan
158	Anthea Howe
159	Susan Bradley
160	Nigel Cox
161	Anne Kermode
162	Robert Zonta
163	Peter Jesser
164	Frederick Fletcher
165	Gayle De Costa
166	Donald Johnston
167	Glenice Douglas
168	Keith Dance
169	Gordon Williams
170	Alan Ellis
171	John and Sandra Stenzel
172	Brian Tomalin
173	Coralyn Brownhall
174	Warren Page
175	William Mark
176	Alexander and Irene Brierty
177	Andrew Schmidt
178	Heather Kleidon
179	Robert Miller
180	Mike Kena
181	Name Withheld
182	Andrew Littleton
183	Sue Thomas

184	Josie Oates
185	Bob Such MP
186	Kim Brain
187	Andrew Baker
188	Confidential
189	Name Withheld
190	Ben Rees
191	Robert Cousin
192	James Constable
193	Pauline Wilkins
194	Trevor Costigan
195	Graeme Easy
196	Margaret O'Regan
197	Rodney Jones
198	William Buckley
199	Alwyn Whalen
200	Joy Sheather
201	Australian Environment Foundation
	<i>Additional Information</i>
	Opening Statement by Mr Max Rheese tabled at a public hearing, 8 April 2010
202	Environmental Capital
203	Rebecca Meynink
204	Confidential
205	John Modra
206	Jill Lyons
207	Name Withheld
208	Adrian Newton
209	Greg Moody
210	Kenneth Ryan
211	Bruce Ralston
212	Name Withheld
213	Name Withheld
214	Duncan Robertson
215	Donald Woods
216	Denzel Clarke
217	Paul and Gwenda Johnston
218	Patrick Dunne
219	Ben Holmes
220	Peter Richards

---

221	Lyn Bolin
222	Margaret Hodgson
223	Confidential
224	Barry Johnstone
225	JP and MP Hann
226	Ron Thorp
227	Dale Murray
228	P Stewart
229	Belinda and Michael Petith
230	Carol Petith
231	Marilyn Bidstrup
232	Name Withheld
233	John Cook
234	Property Rights Reclaimers Moree
235	Department of Climate Change and Energy Efficiency
236	NSW Farmers' Association
	<i>Additional Information</i>
	Answers to Questions on Notice, 27 April 2010
237	John and Rosalie Bell
238	RA and RJ Frazier
239	Craig Underwood
240	Kevin Mitchell
241	John Monckton
242	Kevin Austin
243	Peter and Sue Joliffe
244	Jim Beale
245	Edgar Burnett
246	Confidential
247	Bron Squire
248	Bruce Tennyson
249	R J Hodgson
250	Richard Gass
251	Denis Moore
252	Darryl Sippel
253	Lynn Blyton
254	Bob Moore
255	Kenneth Withers
256	Wayne Withers
257	Peter Wright
258	Name Withheld

259 Name Withheld  
260 Name Withheld  
261 Max Peterson  
262 John Oates  
263 John Butcher  
264 Department of Environment, Water, Heritage and the Arts  
265 National Farmers' Federation  
*Additional Information*  
Answers to Questions on Notice, 27 April 2010  
266 Barbara Clark  
267 Bob Katter MP  
268 Confidential  
269 Ken Cameron  
270 Wayne and Patricia Naughton  
271 Ron and Elizabeth Stanford  
272 Jim Swanson  
273 E Clark  
274 L Johnston  
275 Confidential  
276 N Webber  
277 Peter Smith  
278 James Smith  
279 W Constable  
280 Christopher Jaques  
281 Beverley Cox  
282 Neville Brunt  
283 John McGrath  
284 Peter Gallagher  
285 Darryl Lavender  
286 Milton Christian  
287 Joy Cunningham  
288 Ruth Downey  
289 Confidential  
290 Confidential  
291 John Tredrea  
292 Blair Smith  
293 Australian Resource Security Inc  
294 Confidential  
295 Rolf Rebner  
296 Alan Hartley

---

297	Bill Burrows
298	M Peterson
299	Noel Kenny
300	Barry Hoare
301	B J Burns
302	Joanne Rea
303	Don Meynink
304	Wendy Stoney
305	Bruce Brierley
306	JA and CM McConaghy
307	PV and JR Wall
308	R Jensen
309	Malcolm Kater
310	Ian Hampton
311	Noreen Jackson
312	Confidential
313	V Burnett
314	The Quinn Family .
315	Shoalhaven Landowners' Association
316	Phillip Sheridan
317	Ron Bahnisch
318	Lloyd Fleming
319	I and A Lethbridge
320	Lousie Burge
321	Confidential
322	Rouse Hill Heights Action Group Inc
323	Wilf MacBeth
324	Confidential
325	Confidential
326	Confidential
327	Confidential
328	Confidential
329	Confidential
330	Confidential
331	Confidential
332	W Hamilton
333	Giacinto and Teresa Quarisa
334	Confidential
335	Angus Atkinson
336	Robert and Sally Colley

337	Alan and Shirley Hall
338	Geoff and Lynn Hunter
339	Samuel and Lynette Conlon
340	F Hesper
341	Confidential
342	Jessie Dunne
343	Ian Beale
344	Paul Flippo
345	Claude Cassegrain
346	Tony Styles
347	Kevin Ramke
348	Tony Bye
349	Baden Ellis
350	Confidential
351	Lisa Orchin
352	Rod Young
353	Dale Stiller
354	Rosemary Hook
355	Ann Barry
356	M Peterson
357	Name Withheld
358	Confidential
359	Confidential
360	Confidential
361	Confidential
362	Ken Whalen
363	Peter Griffiths
364	Richard Tanner
365	Cynthia Sabag
366	Confidential
367	Brenda Bryant
368	Brian Duffy
369	Douglas Arnott
370	Robin Haeusler
371	Department of Agriculture, Fisheries and Forestry
372	Ian Scott
373	Rob Youl
374	Lee McNicholl
375	Tony Hart
376	Confidential

---

377	Rex Andrews
379	June Weston
381	Kevin Smith
382	Victorian Farmers Federation
383	The Northern Territory Cattlemen's Association (NTCA)
384	The Griffin Group
385	Shirley Burns
386	Regrowth Foresters Association
387	Jamie Fisher and Associates
388	Confidential
389	Confidential
390	Confidential
391	Joe Holmes
392	Catchment Coach
393	Confidential
394	Confidential
395	Confidential
396	Northern Territory Government Department of Natural Resources, Environment, The Arts and Sport
397	Patrick Ariens
398	Richard Busby





# **APPENDIX 2**

## **Public Hearings and Witnesses**

**Thursday, 8 April 2010**

*Council meeting Room, Civic Centre, Wagga Wagga*

**Committee Members in attendance:**

Senator Scott Ryan (Chair)

Senator Helen Polley (Deputy Chair)

Senator Doug Cameron

Senator Helen Kroger

Senator John Williams

Senator the Hon Bill Heffernan

Senator Barnaby Joyce

Senator Fiona Nash

**Witnesses**

**NSW Department of Environment, Climate Change and Water**

Mr Tom Grosskopf, Director, Landscapes and Ecosystems Conservation

Dr David Curtis, Principal Policy Officer

**Australian Network of Environmental Defender's Offices** *via teleconference*

Ms Rachel Walmsley, Policy Director

Mr Robert Ghanem, Policy Officer

**NSW Farmers Association**

Mr Charles Armstrong, President

Mr Rod Young, Chairman of the Conservation and Resource Management Committee

**National Farmers' Federation**

Mr Charles Mcelhone, Manager- Economics and Trade

Mrs Denita Wawm, General Manager, Workplace & Corporate Relations

Mrs Deborah Kerr, Manage, Natural Resource Management

**Australian Environment Foundation**

Mr Max Rheese, Executive Director

**Mr Ben Nicholls**

**Mr John Stewart**

**Mr Garth Strong**

**Mrs Jan Strong**

**Friday, 9 April 2010**

***Elizabethan Room, Leichhardt Hotel, Rockhampton***

**Committee Members in attendance:**

Senator Scott Ryan (Chair)

Senator Doug Cameron

Senator Helen Kroger

Senator Barnaby Joyce

Senator the Hon Ian Macdonald

**Witnesses**

**Property Rights Australia**

Mr Ron Bahnisch, Chairman

Mr Graham Kenny, Consultant

**Carbon Sense Coalition**

Mr Viv Forbes, Chairman

**AgForce**

Mr John Cotter, President

Mr Andrew Wagner, Policy Director

**p&e Law**

Mr Lestar Manning, Partner

**Mrs Catherine Herbert**

**Mr Ian Herbert**

**Mr Graham Kenny**

**Dr Lee McNicholl**

**Ms Dixie Nott**

**Mr Dale Stiller**

---

**Tuesday, 20 April 2010**

***Committee Meeting Room 2, Perth Legislative Assembly, Perth***

**Committee Members in attendance:**

Senator Scott Ryan (Chair)

Senator Helen Polley (Deputy Chair)

Senator Rachel Siewert

Senator the Hon David Johnston

**Witnesses**

**Wentworth Group of Concerned Scientists**

Mr Peter Cosier, Director

**Pastoralists and Graziers Association of Western Australia**

Mr Leon Bradley, Spokesperson on Climate

Mr Robert Klassen, Committee member and landholder

Mr Gary Peacock, Chairman, Private Property Rights and Natural Resource Management Committee

Mr Glen McLeod, Lawyer

**Mr Craig Jefferson Underwood**

**Department of Agriculture, Fisheries and Forestry**

Ms Margaret Allan, Acting General Manager

Mr Ian Thompson, Executive Manager, Sustainable Resource Management Division

Dr Rosemary Lott, Senior Policy Officer, Sustainable Agriculture Policy Section

**Department of the Environment, Water, Heritage and the Arts**

Mr Peter Burnett, First Assistant Secretary, Approvals and Wildlife Division

Mr Terry Bailey, Assistant Secretary, Strategic Policy, Approvals and Wildlife Division

**Department of Climate Change and Energy Efficiency**

Mr Ian Carruthers, First Assistant Secretary, Adaptation, Land and Communications Division

Mr Barry Sterland, First Assistant Secretary, Adaptation, Land and Communications Division

Mr Tas Sakellaris, Assistant Secretary, Coverage and Legislation Branch

**Western Australian Farmers Federation**

Mr Alan Hill, Director of Policy

Mr Dale Park, Climate Change and Natural Resource Management Spokesman

**Coalition for Agricultural Productivity**

Mrs Janet Thompson, Representative, Coalition for Agricultural Productivity

Mr Matt Thompson, Representative, Coalition for Agricultural Productivity

**The Hon Murray Nixon**

