

## Policy initiatives for public good conservation programs

Determining the economic value of the natural areas set aside for conservation assists in determining appropriate mechanisms for their protection. This economic value is distinct from monetary or income-generating aspects and is concerned primarily with maximisation of social well-being. This embraces the concept of 'the public good'.<sup>1</sup>

### Introduction

- 6.1 The Committee has reviewed the policy approaches abroad and the approach taken in Australia. The conclusion reached is that the approach taken in Australia is not producing the public good conservation outcomes required. In the process, it is inflicting a great deal of distress upon some landholders and fomenting resentment within the rural community. The Committee concluded that the reason for this is that some policies were not based on an accurate understanding of the 'real world' and the capacity of individual landholders to participate.
- 6.2 In this chapter, the Committee sets out the policy initiatives that are required to promote public good conservation. These initiatives assume and extend those recommended in its earlier report, *Co-ordinating catchment management*. The Committee notes that at the time of finalising the present report, there has not been a response from government to *Co-ordinating catchment management*. However, the Committee does note that a number of initiatives recommended in *Co-ordinating catchment management*

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1 Submission no. 1, p. 2.

are being implemented by Commonwealth and state governments. As well, a report by a private sector organisation has endorsed the Committee's recommendation for a national authority to oversee environmental programs and accredit program providers.<sup>2</sup>

- 6.3 In the course of the current inquiry, three issues arose repeatedly. Some current land use practices are unsuitable to the Australian environment. This is why the environment has become degraded. As a result, some Australian land use practices must be modified so that they are ecologically sustainable. Second, so much degradation has occurred that a substantial repair program is required. Third, making the transition to an ecologically sustainable land management system and then maintaining land in that state is often beyond the financial capacity of some landholders, at the present time. For financially pressed landholders, environmentally sustainable land management practices are viewed as unaffordable costs. As a result, landholders will require various forms of assistance to engage in ecologically sustainable land use.
- 6.4 Public policy that will provide the basis for public good conservation programs must, therefore, aim for these four inter-connected results:
- Changing current land use practices in order to stabilise environmental degradation and prevent additional degradation occurring;
  - Repairing environmental degradation, where this is feasible;
  - Providing for the ongoing management of the environment; and
  - Recognising a landholder's capacity to participate.
- 6.5 As the Committee concluded in its report *Co-ordinating catchment management*, substantial financial support will be required from the community to attract private sector support and thereby address the environmental problems facing the nation. This view was reinforced repeatedly in the current inquiry. For example, Mr Steve Hatfield Dodds of Environment Australia testified:

While in some cases the private or individual benefits from that conservation activity will outweigh the costs, there will often, or usually, be cases where the conservation activity will not be undertaken unless there is some cost sharing with the broader community.<sup>3</sup>

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2 Business Leaders Roundtable, *Repairing the Country*.

3 *Transcript of Evidence*, p. 91.

- 6.6 It is true that enormous sums of money will be expended over the coming century in an effort to contain and reverse environmental degradation. Much has been made of the large amounts of finance that must be provided to address environmental degradation.
- 6.7 However, rather than seeing such expenditure as dead-weight costs, the Committee believes that this problem presents an enormous opportunity. In particular, it presents an opportunity to re-configure and restructure land use in this country, and in doing so, create new industries, and transferring existing ones to a more ecologically sustainable footing. It will enable Australians to expand existing markets and to open new ones.
- 6.8 The Committee believes, therefore, that the current environmental problems provide an opportunity not only to repair the country but also to revitalise rural and urban communities. The benefits will be not merely economic, but social and cultural. If we take the initiative in the challenge that environmental degradation presents, the nation will be the better for it.
- 6.9 To do so means that we must be willing to use a full range of policy options, from direct funding to various economic instruments, such as creating markets in environmental services. Submissions made this point repeatedly. The Productivity Commission advised the Committee:
- Policy options designed to encourage land owners and farmers to change land use practices include the use of direct payments for their production of (environmental) public goods, tax concessions and acquisition subsidies. Such programs should be set at levels that are sustainable over the long term. Consideration should be given to the development of broad principles for sharing the cost of conservation.<sup>4</sup>
- 6.10 Making a similar point, Mr Steve Hatfield Dodds from Environment Australia testified:
- In some instances it may be appropriate to provide assistance to conservation activities that are required to meet current standards or to address social costs. These may include situations where sources of degradation are diffuse—they are non-point sourcing and cannot be readily identified; cases where there is a desire to support transition to the sustainable use of resources; cases where remediation or conservation activities are beyond the financial resources of some landholders and, as is often the case, where the current degradation was caused by historical unsustainable resource use, not necessarily by the individuals involved at the

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4 Submission no. 189, p. 13.

moment, and that use was considered appropriate at the time or was supported by government policy.<sup>5</sup>

- 6.11 This chapter has two parts. In the first part, policy principles that will ground public investment in public good conservation programs are set out. The over-arching consideration is that these principles should work so as to attract private investment and foster public good conservation, while at the same time eliminating the alienation that landholders may feel as a result of the misdirected, current policy arrangements.
- 6.12 In the second part, the Committee sets out the specific policy initiatives that are required to give effect to these principles.

## **Appropriate policy principles for public good conservation**

- 6.13 The following principles reflect the themes that emerged during this inquiry and its predecessor. In the Committee's view, if a proposal fails to recognise one of these principles, then it is highly likely to be counter-productive: either it will not deliver the results required or it will alienate landholders and reduce the level of voluntary compliance with public good conservation programs, that is necessary for their success.

### **Principle 1: Landholder rights in respect of land use.**

- 6.14 Two issues dominated submissions and testimony from landholders: the erosion of the rights that they believed they had in respect of land management – what many referred to as their 'property' rights - and the fact that landholders are required to undertake what they believed to be considerable public good conservation activities at their own expense.
- 6.15 The current situation was summed up by an official from the Western Australian Department of Agriculture:

It comes down to a question of ideology. Yes, the question has been debated many times, and long and hard. Even within political parties there are quite divergent views, with some people saying there should be compensation, there should be a property right, and others believing there should not be. The legal situation under our legislation is that there is no property right and there is

no legal requirement to pay compensation under the Soil and Land Conservation Act ...<sup>6</sup>

- 6.16 The result of this situation is that bureaucrats fail to appreciate the effect upon landholders of the uncertainty surrounding their rights, as this comment from the Native Vegetation Working Group makes clear:

... while clearing controls have disrupted the business plans of a number of landholders, and in some cases have rendered the farming operation (existing or proposed) unviable, the imposition of controls fits into the category of a business risk, no different from the everyday risks facing all businesses.<sup>7</sup>

- 6.17 The Committee believes that this uncertainty is unacceptable. Landholder rights concerning land management activities are important so that landholders can feel secure in their actions and investments. This was made clear in submissions and testimony. For example, the Western Australian Pastoralists and Graziers Association advised the Committee that:

Without the reasonable certainty that ownership will be respected in the long run, only short-term investment is undertaken, discount rates rise, and economic growth is curtailed.<sup>8</sup>

- 6.18 Insecurity concerning land use rights may foster various environmentally dangerous activities, such as a focus on short-term profits, rather than longer-term environmentally beneficial land management practices. It can promote the creation of perverse incentives that lead to environmentally degrading activities.
- 6.19 Evidence received indicated that insecurity concerning property rights can also deprive landholders of access to finance that would otherwise fund changes to more environmentally appropriate practices.
- 6.20 Some landholders indicated that a failure to provide security of property rights has acted as a deterrent to additional investment and disrupted plans put in place decades ago, in good faith, that aimed to secure succession and independence in retirement.
- 6.21 The Committee believes that property rights should be clearly understood between landholder and the Crown. An agreement should specify the entitlements, if any, that a landholder will have if the Crown seeks to vary those rights and the process that will be undertaken if they are to be

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6 *Transcript of Evidence*, p. 382.

7 Native Vegetation Working Group, *Final report*, p. 2.

8 Submission no. 49, p. 3.

varied. This will enable a (prospective) landholder to assess the level of risk associated with acquiring a holding.

- 6.22 Moreover, clarifying property rights is essential in order to reduce the level of perceived risk associated with managing land. The reason is that investment in ecologically sustainable agriculture will occur only if property rights are certain; uncertainty concerning property rights can lead investors to invest elsewhere. In order to promote investment by private landholders and other investors, such risk must be reduced to the level that is required to address the environmental problems facing the nation, and fuel the transition to the ecologically sustainable use of Australia's landscape systems.

## **Principle 2: All land holders have a duty of care to manage land in an ecologically sustainable manner**

- 6.23 In this section the duty of all landholders to manage land in an ecologically sustainable manner will be discussed. The Committee has noted that a landholder's capacity to do this is often limited by their own financial capacity. Sometimes, in such cases, as the Committee will shortly explain, public funds may need to be provided. Where this is the case, only those landholders who have in place an accredited land management plan should be eligible for public funding.
- 6.24 As noted earlier in this report, the notion of a 'duty of care' is ill defined. The fact that it is ill-defined has produced a degree of anger, resentment and uncertainty amongst landholders. Moreover, since landholders do not know more or less precisely what they are permitted to do or not do, perverse incentives are being created.
- 6.25 The Committee believes that each landholder's duty of care should be defined. The Committee is not attracted to the legal notion of a duty of care because it could leave a gap between what a landholder was required to do by a statutory legal obligation, as currently understood, and what was required ecologically.
- 6.26 The Committee received evidence from Dr Murray Raff that landholders are entitled, in the common law, 'to make beneficial use and enjoyment of the land and not anti-social use and sick or desperate use'.<sup>9</sup> In Dr Raff's view, landholders have rights over their land use, but also legal responsibilities to their land. Other people, including other landholders, have responsibilities in respect of land held by other people. The limits of this entitlement are unclear in the common law at present. They could be clarified by statute, or by a case moving through the courts. There is
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9 Private briefing, 16 August 2000.

potential for the common law notion of a duty of care to be extended to environmental matters. It may impose upon landholders an even greater degree of responsibility in respect of the ecologically sustainable use of land than other options, such as a legislated standard. The Committee, recognises various potential matters that would need to be considered, for example: inter-jurisdictional questions in which actions performed in one jurisdiction crystallise as a harm in another; or the difficulty that sometimes arises in trying to identify a specific cause, attributing it to a particular person and then proving that the person's action caused a particular harm. The Committee believes that the courts are the proper forum to test the feasibility of determining the degree to which the common law duty of care applies to environmental issues.

#### **Recommendation 4**

- 6.27 **The Committee recommends that the Government fund an appropriate test case when one is identified, in which a landholder has been harmed by the way in which another landholder has used his or her land.**
- 6.28 The Committee prefers a general notion: in order to be eligible for public funding, each landholder has a duty to manage the land under their control in an ecologically sustainable way. What this involves in practice will vary from place to place. It will be necessary therefore, to evaluate each landholding and determine what specific actions should be implemented and which should be refrained from. This evaluation will provide a 'base line' for each holding. It will provide the foundation for the development of a management plan, based on the management imperatives outlined in the integrated/regional management plans recommended in the Committee's previous report, *Co-ordinating catchment management*.
- 6.29 **Having set this base line, the capacity of each landholder to meet the duty of care can be evaluated and, on the basis of that, specific programs and assistance packages can be developed.**
- 6.30 The Committee believes that such an approach will solve a number of major problems.
- It will remove the uncertainty that many landholders feel and which was apparent throughout this and the preceding inquiry.

- It will consider the landholders' financial capacity to implement necessary natural system management activities.
- It will enable management authorities to develop some indication of the resources and programs necessary to address the environmental problems facing the nation.
- It will enable government and other bodies funding conservation activities to develop efficient auditing processes to ensure that appropriate programs are being implemented.

### **Principle 3: Policies and programs must focus on outcomes**

- 6.31 The Committee concluded in *Co-ordinating catchment management*, and again in the present inquiry, that the present approach to conservation is not always producing the results anticipated. The reasons are that there is a lack of funding and appropriate administrative structures, and a failure to implement programs that motivate and provide landholders with the capacity to implement sustainable natural systems management practices, of which public good conservation activities are one type.
- 6.32 The present approaches to public good conservation are sometimes confusing and inconsistent, largely because they rest upon a number of assumptions about landholders that may not be true in practice. Moreover, as the Committee has concluded, they also rely upon the collection of information about the causes of environmental degradation that it is not always possible to obtain.
- 6.33 The evidence from submissions and from hearings is that the best policy approach is one that aims at specific outcomes, and then develops policies and programs that will lead to those outcomes being attained. For example, if a particular area requires conservation activities, then it is unrealistic policy where incomes are low to require all landholders to meet ongoing costs of managing that area without transitional support. This insight has been identified in other reports, which have found that rebates and incentives have minimal effect when landholders have a low taxable income base, or the rebates come after the expenditure.<sup>10</sup> Direct financial assistance is required in such cases.
- 6.34 Aiming for outcomes is not merely a matter of adopting appropriate policies. It involves providing landholders with the motivation and the capacity – financial and material – to attain the outcomes wanted. It was a concern raised by many of the landholders who provided evidence that
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10 Steering Committee, Natural Resource Management Policy Statement, *Steering Committee report to Australian governments on the public response to Managing natural resources in rural Australia for a sustainable future*, Canberra: Commonwealth of Australia, July, 2000, p. 18.



they were expected to undertake public good conservation at their own expense. This was breeding discontent, anger and non-compliance amongst some who provided evidence.

- 6.35 Moreover, there is little point in imposing upon a landholder a duty of care or restrictions in land use that reduce on-farm income, when the landholder may not have the financial wherewithal to fulfil the requirements imposed. Therefore, as the inquiry discovered, landholders must have available to them a range of financial incentives that motivate conservation activities and, in the case of low-income landholders, make such activities a viable possibility, through direct purchase of eco-services and conservation outcomes.
- 6.36 Finally, current taxation concessions for landcare activities are untargeted. The Committee believes that public funding and support must always be linked to the adoption and implementation of an approved natural systems management plan.

#### **Principle 4: Repairing past damage is a shared responsibility**

- 6.37 It is inequitable for the landholder of today to be wholly financially responsible for environmental degradation that has occurred as a result of prior activities, particularly where they were undertaken with government consent or at government direction. If a landholder managed the land with the best of intentions and according to the then existing land management practices, it is wrong for that person to be later held to be blameworthy.
- 6.38 The issue remains, however: who should be responsible for providing finance to address environmental degradation? The public of today is presently benefiting from the environmentally degrading practices of the past. It is reasonable that the general public should make some contribution.
- 6.39 In *Co-ordinating catchment management* the Committee recommended that the government examine the feasibility of an environmental levy to fund public good conservation programs. The Committee reiterates that recommendation. The Committee also notes the support for a levy amongst submissions to this inquiry and the general public.
- 6.40 However, a levy is just one way the public can finance public good conservation. When the public good conservation financing system is fully operational, it will use a variety of funding options, because each has the capacity to be adapted to specific purposes and produce various results more efficiently and reliably than other measures. In order to obtain a comprehensive coverage, it will therefore be necessary to use a variety of

approaches. The Committee discusses some of these options later in this chapter.

### **Principle 5: All programs must be tailored to the needs of the circumstances**

- 6.41 The ecological problems facing the nation differ from place to place. As well, the social arrangements, land tenure arrangements and density of population differ between states, regions and catchments. As a result, the most appropriate solution will differ from place to place.
- 6.42 The Committee considered this issue in *Co-ordinating catchment management*. The Committee recommended the creation of regional and local bodies that would work with landholders to develop site specific plans.
- 6.43 An issue that emerged repeatedly in the current inquiry was the inequity being generated by the current arrangements. Not only did it appear to some landholders that similar landholders were being treated differently, but many land use regulations were themselves iniquitous, especially when a person was deprived of the capacity to make a living, but little or no assistance was provided to change management practices.
- 6.44 Just as there should be a consideration of the ecological aspects of each case, the Committee believes a consideration of each landholder's financial capacity and level of knowledge is necessary to achieve effective natural systems management outcomes.
- 6.45 The Committee believes that it is essential for effective conservation programs, and to garner the support of landholders, that each landholder's circumstances be taken into account and that programs be tailored to fit each specific case.

### **Principle 6: All programs must be based on the latest and best scientific data**

- 6.46 In *Co-ordinating catchment management* the Committee discussed the need for accurate information that is freely available to the community. Such information will provide one of the foundations upon which effective and appropriate conservation programs are based. The Committee made a number of recommendations to ensure that information is collected and provided to stakeholders.
- 6.47 Moreover, the importance of accurate and accessible information was again made clear to the Committee in the course of this inquiry. Landholders need to know what is environmentally safe and what is

dangerous in respect of their land and land management practices. They need to know what they can do and what practices they should change.

- 6.48 Finally, it was clear to the Committee that some landholders did not accept the need to change land management practices, or the reasons why their formerly acceptable land management practices had to change.
- 6.49 The Committee believes that the most effective way to foster and extend support amongst landholders for conservation measures and to implement appropriate measures is to base all programs on the best possible information that is freely available to stakeholders.

### **Recommendation 5**

- 6.50 **The Committee recommends that public good conservation policy be based on the following six principles:**

**Principle 1: Landholder rights in respect of land use;**

**Principle 2: All landholders have a duty of care to manage land in an ecologically sustainable manner;**

**Principle 3: Policies and programs must focus on outcomes;**

**Principle 4: Repairing past damage is a shared responsibility;**

**Principle 5: All programs must be tailored to the needs of the circumstances; and**

**Principle 6: All programs must be based on the latest and best scientific data.**

### **Specific policy initiatives**

- 6.51 Over the past twenty years, a plethora of government agencies, statutory authorities and expert groups, along with private sector groups and NGOs, have produced many reports advocating various policy initiatives and programs to foster the ecologically sustainable use of Australia's environment. Many have been concerned to use 'market forces' to procure conservation outcomes. There has been a belief that the discipline imposed upon the preferences of people by the realities of the market will deliver

conservation outcomes more cheaply and reliably. Ultimately, it will do so by altering their behaviour.<sup>11</sup>

- 6.52 While market mechanisms will have an important role to play in addressing the environmental problems facing the nation, other approaches will be required as well.
- 6.53 Moreover, the many reports that have been published approach the problems from a theoretical perspective, and landholders claim that such reports do not adequately take account of their views concerning what they consider would be useful approaches to delivering conservation outcomes.
- 6.54 This inquiry has spoken to landholders.<sup>12</sup> In the section that follows the initiatives that landholders themselves believe will promote public good conservation are examined and recommendations made.
- 6.55 Throughout this inquiry, similar themes emerged in submissions from landholders and in evidence presented at hearings. There was a need, landholders told the Committee for:
- Financial assistance and other incentives to motivate landholders to undertake public good conservation activities;
  - Financial assistance where landholders are required to undertake ongoing management of land that has been withdrawn from productive use. This could include for example, rate relief, stewardship payments, or assistance with fencing;
  - Compensation for loss of land-use rights, or where land value falls, where income is lost, or where a landholder is prevented from using land entirely;
  - Better access to finance to enable landholders to re-configure their businesses;
  - Removal of anomalies in the taxation system; and
  - Assistance to develop new products and markets.

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11 See, for example, *Transcript of Evidence*, p. 547.

12 Some other reports have consulted with stakeholders include the Allen consulting Group / Business Leaders Roundtable, *Repairing the Country*, p. 114; Steering Committee, Natural Resource Management Policy Statement, *Steering Committee report to Australian governments on the public response to Managing natural resources in rural Australia for a sustainable future*, Canberra: Commonwealth of Australia, July, 2000.

- 6.56 The Committee believes that a small number of policy initiatives will address these points. The recommendations made, however, are intended to operate within the compliance framework recommended in *Co-ordinating catchment management*. In particular, the Committee believes that conservation plans should be accredited by an approved authority, certification that the plan has been implemented should be obtained in order to protect the public investment, and public investment should be linked to the development and implementation of such plans.

### **Provide incentives to undertake public good conservation activities**

- 6.57 Landholders advised the Committee repeatedly that they were willing to undertake public good conservation activities but required financial support to do so. For some, such support is necessary because they do not possess the financial base to undertake the activities. The choice is one between the environment or practical economics. This was acknowledged by the NSW government:

The imposition of additional conservation requirements on farmers with fixed resources may alter the capacity of the business to make the profits necessary to remain viable. If those conservation requirements provide some public benefit then there may be a case for government assistance.<sup>13</sup>

- 6.58 For others, it was seen as an equity issue:

The principle is quite simple: the public has to pay for the goods it wants and takes, just like any private person would have to.<sup>14</sup>

- 6.59 The point is clear: in order to motivate landholders to choose public good conservation activities over other, just as feasible alternatives and in some cases, enable landholders to undertake public good conservation activities, incentives and assistance must be provided.<sup>15</sup> These may be financial assistance, information, material, or expertise – or some combination of these.

- 6.60 Moreover, the Committee received evidence that the current approach to allocating incentive measures effectively reduced their availability and accessibility for some landholders. Barriers faced by some landholders in obtaining incentives must be reduced and the process made faster and more workable.

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13 Submission no. 234, p. 3.

14 Submission no. 156, pp. 9-10.

15 This is reflected in many documents generated by government agencies and authorities, for example, N Barr and J Cary, *Influencing improved natural resource management on farms*, Bureau of Rural Sciences Discussion Paper, Canberra: Commonwealth of Australia, 2000, p. 3.

- 6.61 The conclusion the Committee makes, therefore, is that the level, type, availability and accessibility of incentive measures must be increased in order to motivate public good conservation activities.

### Provide transition assistance to ecologically sustainable forms of production and management

- 6.62 As noted in *Co-ordinating catchment management* and throughout this inquiry, Australian land management practices will have to change enormously. As a result, the types of crops and livestock that are raised and products produced must be expanded and land use will become more diverse. Many landholders and those working closely with them were well aware of this and called for adjustment assistance programs.<sup>16</sup> The Committee believes that such assistance may be justified because it will re-configure Australian land use and generate new opportunities for rural communities. Moreover, it will to some extent alleviate the burden of public good conservation activities on landholders, by increasing their resources and capacity to finance public good conservation activities.
- 6.63 The Committee saw at first hand the enormous potential for diversification in land use practice and the importance of assistance. The Committee inspected Banrock Station in the Riverland district of South Australia. The 1 750 hectare property had been intensively farmed for approximately 100 years. It was purchased by BRL Hardy Ltd in 1994. The property has the following components, as shown in Table 6.1.

**Table 6.1 Banrock Station**

Vineyards	250 ha
River Murray floodplains and wetlands	900 ha
Mallee woodland	600 ha
River Murray frontage	12.5 km

*Source* Mr Tony Sharley, Manager, Banrock Station

- 6.64 When BRL Hardy Ltd acquired the property, it was suffering from the impacts from prolonged farming and grazing. A local conservation group had carried out some wetland work with the previous owners. BRL Hardy continued the wetland work and returned much of the property to its natural state through de-stocking and revegetation. Part of the proceeds from wine sales went towards these projects.

16 See, for example, *Transcript of Evidence*, p. 445.

- 6.65 Some of the proceeds from wine sales are donated to other conservation initiatives. To date, sales of Banrock Station wines have contributed more than \$200 000 to Landcare Australia. Banrock Station has formed partnerships with groups including Wetland Care Australia, Landcare Australia, Greening Australia, the Bookmark Biosphere Trust, Australian Trust for Conservation Volunteers, schools and other community groups, and government agencies, in order to help restore the 'natural capital' of the station.
- 6.66 Wines produced on Banrock Station are sold in Europe and the United States, where it is labelled to clearly identify the wine and manufacturer as a supporter of wetland conservation projects. Banrock Station attracts domestic visitors and many visitors from abroad, most particularly through the developing eco-tourism market. To meet this demand, Banrock Station has a visitors centre, attracting in excess of 38 000 visitors between January and June, 2001. People can see at first hand the mutually beneficial interaction of business and conservation.
- 6.67 At Narrogin in Western Australia, the Committee saw plans for the development of oil mallee cultivation and an associated industry. Oil mallee can be used to mitigate salinity, provide habitat for native fauna, and promote biodiversity. As well, oil mallee can be used for renewable energy generation, and to produce activated charcoal that is used in industrial processes, eucalyptus oil, and biomass for animal food.<sup>17</sup>
- 6.68 There will be costs associated with the transition from the present system of land use and management to a system that is environmentally appropriate. In effect, the costs arise because the landholder is moving from an ecologically unsustainable land management system to one that meets the duty of care all landholders have. Landholders should be assisted with these costs to speed the process and provide an incentive to undertake the process.
- 6.69 Moreover, considerable and ongoing research will be required to identify and develop opportunities and then commercialise them. Governments have a central role in this process by facilitating research and assisting with transition costs. Such direct funding is ultimately an investment by the entire community in its future.
- 6.70 A variety of different vehicles can be used to deliver direct incentive measures. Funds could be provided to the states under approved management plans. Non-government organisations could be engaged, by the Commonwealth, as funds administrators. Unless the funding vehicle is well designed and focused, such approaches may add to the piecemeal

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17 The Allen Consulting Group / Business Leaders Roundtable, *Repairing the Country*, p. 65.

and fragmented approach that the Committee indicated in *Co-ordinating catchment management* was reducing the effectiveness of the present catchment management arrangements. It may be better to consolidate direct funding programs into a single, dedicated organisation. One approach that the Committee is especially attracted to is for the Commonwealth to establish a rural conservation development fund, that would not only research and assist in the development of ecologically sustainable rural industries but would assist landholders in the transition to environmentally sustainable land management practices. The Committee notes that a similar proposal has been made in the report prepared for the Business Leaders Roundtable, *Repairing the Country*, by the Allen Consulting Group.<sup>18</sup>

## Recommendation 6

- 6.71 **The Committee recommends that the Government establish a rural conservation development fund or similar funding vehicle to provide a comprehensive and accessible scheme of incentive measures including:**
- **Funds for research into new and environmentally friendly rural industries; and**
  - **Direct financial assistance to landholders, for the transition from environmentally degrading land use systems to ecologically sustainable land use systems that are in line with a landholder's duty of care, and include:**
    - ⇒ **Financial incentives;**
    - ⇒ **Direct payments to purchase eco-services;**
    - ⇒ **Access to information and expertise; and**
    - ⇒ **Access to materials (for example, heavy machinery, seedlings, fencing material and so on).**

## Pay management costs when land is removed from production for public good conservation reasons

- 6.72 Many landholders advised the Committee that they were often required to cease using land for income generating purposes but still faced considerable ongoing management costs, for a variety of reasons: in some cases, from land withdrawn due to mandated ecologically sustainable

18 *Repairing the Country*, p. 115-119.



land management practices; in other cases, through government regulation. In some shires, rate rebates were available and in some states landholders received remissions of various taxes and charges; some states also provide assistance with fencing and other land management activities. However, such assistance was patchy, and not consistent across the country. It was also considered inadequate.

- 6.73 Landholders complained that they did not receive payment for the time and effort that they put into managing land reserved for environmental reasons. As well, landholders abutting crown land or a national park advised the Committee that they often had to contend with incursions from wild dogs, other feral animals and weeds, and meet the cost of dealing with these problems.<sup>19</sup> In effect, this too was a cost from public good conservation. Furthermore, many landholders voluntarily undertake conservation measures, often removing land from production for conservation purposes, for which they receive limited assistance. In some cases, this may reduce their profitability.
- 6.74 Evidence received by the Committee also indicated that the available information about the economic benefits and costs of implementing conservation measures is ambivalent. The NSW Farmers' Association advised the Committee that although the proponents of biodiversity conservation measures said that there are 'such significant and direct benefits to farmers from locking up their land to protect biodiversity that it ... makes economic sense for them to do so', in the 'vast majority of cases', according to the Farmers' Association, 'this is simply not so'.<sup>20</sup>
- 6.75 The Farmers' Association reported a study of eight farms in south-east Australia that had significant areas of native grasslands. When just 2.5 per cent of these properties was fenced for conservation, losses of between \$16 and \$42 per hectare were experienced. The Farmers' Association reported that the study concluded that 'none of the actions which might maintain or improve conservation management ... are unambiguously profitable'.<sup>21</sup>
- 6.76 The Association reported a similar result from research conducted at Charles Sturt University that examined options to conserve remnant native vegetation. In that research, the conclusion was that 'conservation practices may not be economically rational in the short, medium or long-term, as the direct and opportunity costs associated with the conservation practices clearly outweigh the benefits'. The report concluded that 'Any policy approach to achieve conservation objectives for remnant native

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19 See for example, *Transcript of Evidence*, p. 447.

20 Submission no. 177.

21 Submission no. 177, p. 15.

vegetation clearly requires significant financial incentives for landholders to undertake conservation activities'.<sup>22</sup>

6.77 According to the Farmers' Association, the conclusion from the available evidence is that:

... the private returns arising from additional areas of conservation on private land are, at best, negligible. Further confirming this, a recent report titled *National Investment in Rural Landscapes* estimated that 100% of the benefits derived from land clearing controls and from the protection of rangeland biodiversity is public good benefit.<sup>23</sup>

6.78 A landholder, Mr Bill Sloan, provided information about the costs and benefits of public good conservation measures on his property.<sup>24</sup> Mr Sloan advised the Committee that, in order to sustain a viable farming operation, viable remnant vegetation was required. Mr Sloan told the Committee that maintaining remnant vegetation was beneficial in a number of different ways. For example, it helped control rising water tables, provided habitat and food for native flora and fauna, provided corridors and islands so that birds and small mammals could expand into new areas, sheltered beneficial insects and birds which control crop and pasture pests, provided shade and shelter for livestock, provided a source for seed and provided a more visually pleasing landscape.

6.79 Mr Sloan advised the Committee that 'on average it costs ... approximately \$6 323 per year to protect and enhance remnant vegetation' on his property.<sup>25</sup> These costs included shire rates, cost of fencing, and insurance. Mr Sloan indicated that he was committed to continuing his activities, but he also advised the Committee that through his conservation activities he had lost about \$4 984 200 in potential income over a thirteen year period.

6.80 The cost to landholders of landcare activities and the level of benefit they derived appears to require additional investigation. For example, landholders participating in a pilot salinity control scheme noted that the salinity problems they were addressing required a long-term funding approach and that the loss of production from putting grazing and cropping aside for revegetation had not been considered.<sup>26</sup>

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22 Submission no. 177, p. 15.

23 Submission no. 177.

24 Submission no. 155.

25 ABARE advised the Committee that preliminary figures for the 1998-1999 tax year indicated that 45 257 broadacre and dairy farms had land care expenditure and this was an average of \$7338 per farm. See submission no. 173, p. 9.

26 *The Land*, 23 August, 2001, p. 9.

- 6.81 Other information available to the Committee indicates that some landholders have found that, rather than being an overall cost that reduced the profitability of their rural enterprise, ecologically sustainable land management practices may provide in time financial benefits and increased profitability.
- 6.82 For example, Greening Australia has reported a study that indicated that there are potential long-term returns on capital comparable with other potential uses of land, when farm forestry is integrated into dryland farming systems. This occurs when farming practices are altered through the introduction of timberbelt 'alley farming'. Greening Australia reports that the study claimed that the potential returns will come from a combination of increased crop and pasture yields due to the shelter effect of timberbelts, plus the value of timber harvested in thirty years. The shelter effect increases yield by reducing evaporation due to lessened windspeed, and reducing soil movement which can be damaging to newly emerged crops in light soils.<sup>27</sup>
- 6.83 Greening Australia also provided a case study which indicated that integrating biodiversity into diary farms in high-rainfall areas in Victoria could produce direct 'on farm benefits'. These ranged from pest control to healthier and more productive cows. Windbreaks, according to the case study, can improve pasture production by up to 20 per cent and increase the efficiency of converting grass to milk by 10 per cent by reducing the energy required to maintain the cow's basic metabolism. Windbreaks can also reduce mortality rates of calves or unwell livestock from climate extremes. An increased amount of shade has also been shown to increase milk production and improve milk composition, according to the Greening Australia case study.<sup>28</sup>
- 6.84 Additional research to clarify this matter should be done. However, the Committee believes that, in general across the nation, the current public good conservation arrangements are inequitable and unacceptable. It is unreasonable for the community to expect landholders to meet the cost of managing land in those cases where they derive little or no benefit. In time, other ecologically sustainable land uses may be developed, and the

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27 Greening Australia, *Alley Farming Network*, Update 16, December, 2000, reporting the final report of the *Farm forestry feasibility study for North Central and Wimmera Catchment Authority Areas and Buloke Shire*, (Mat, 1999). See also I Guijt and D Race, *Growing successfully: Australian experiences with farm forestry*, p. 5, which reports a study of a property, 'Lanark' which indicated that revegetation of 18 per cent of the farm had not reduced production.

28 Greening Australia, *Case study: Integrating biodiversity on dairy farms in high-rainfall Victoria*, Bushcare support, 36 month progress report (April-June, 2001); supplied to Committee by way of personal communication with the secretariat.

land currently withdrawn from production may once again generate income, for example, through harvesting of excess fauna and flora.<sup>29</sup>

- 6.85 The Committee believes that landholders should receive assistance – a stewardship payment and technical assistance – for managing land beyond what is required by sustainable systems management and a landholder’s duty of care, and which has reduced income generating capacity or where the income generating capacity of the land has been eliminated altogether. Such payments should be available to landholders who are required to alter land use and also to those landholders who voluntarily alter land use, provided, in this case, there is a conservation benefit in doing so and an approved conservation plan is in place.
- 6.86 Moreover, if a landholder is required to manage a considerable area of land, it may be necessary to examine the need for some sort of financial assistance for the time and labour expended, as agreed, to achieve nominated public good conservation outcomes.

### **Effective assistance for ongoing land management costs**

- 6.87 The most difficult issue from a public policy point of view is to determine how to efficiently and reliably deliver assistance to landholders while also ensuring ongoing preservation of areas of conservation value.
- 6.88 The Committee recognises that some states have made considerable efforts to provide effective assistance programs to landholders who alter (or in some cases, are required to alter) land management practices. For example, South Australia has a Heritage Agreement Scheme.<sup>30</sup> This scheme provides assistance with fencing, release from rates and taxes on the area covered by the agreement, management works that aim to protect and improve the conservation value of the heritage agreement area, and access to advice from the Department of Environment and Heritage. The agreement is registered on the land title.<sup>31</sup>
- 6.89 The current Heritage Agreement Scheme is a modification of an earlier scheme that operated under the *Native Vegetation Management Act 1985*. This Act provided for compensatory payments from the South Australian Government to farmers who entered into heritage agreements. These payments were equivalent to any reduction in the market value of land

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29 Such prospects are crucial. Research in 1997 indicated that large commercial farmers were more interested in conservation for land protection and production resources than nature conservation. See G Barlow, ‘The Big Farmer Issue’, *Weekly Times*, Victoria, 18 July 2001, p.19.

30 Submission no. 246, p. 4.

31 Government of South Australia, Department of Environment and Heritage, ‘The Heritage Agreement Scheme’, a pamphlet provided by South Australian Government representatives to the Committee at its public hearing at Adelaide, 22 February, 2001.

resulting from a clearance application being refused and the landholder agreeing to enter into a heritage agreement on the affected land. In effect, landholders were compensated for foregoing a stream of potential future income for the sake of a public benefit.

6.90 The South Australian Government advised the Committee that:

The success of these initiatives in protecting native vegetation in the State's agricultural region is measured by the fact that there are now more than 1,100 heritage agreements in place, protecting approximately 550,000 hectares of native vegetation (almost exclusively in agricultural areas). This represents about 20% of remnant vegetation in the agricultural region and about 3.7% of the agricultural region itself. Through this scheme, South Australia has the largest area of private land under long term conservation of any State in Australia.<sup>32</sup>

6.91 The Committee concurs therefore with the view advanced by the Government of South Australia in its submission:

... the South Australian Government does recognise however, that there is a need for more support to be given to landholders to manage areas covered by heritage agreements beyond the requirements normally expected of other land managers. The South Australian Government also considers that the use of heritage agreements either on a voluntary basis, or as a compensatory mechanism where environmental measures are imposed on landholders, may be extended to apply to other initiatives where biodiversity or natural resources are to be protected.<sup>33</sup>

6.92 The Committee notes that other government agencies and bodies support heritage agreements and ongoing payments to landholders for management of conservation areas.<sup>34</sup>

6.93 The Committee also notes that arrangements that operate on similar lines to heritage agreements are available in other Australian jurisdictions, for example, the Tasmanian RFA Private Forest Reserve Program<sup>35</sup> and the Voluntary Conservation Agreements in NSW.<sup>36</sup> In operation, they provide for a landholder to enter into a conservation covenant. Like a heritage agreement, a conservation covenant is registered on the title to the land,

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32 Submission no. 246, p. 4.

33 Submission no. 246, p. 4.

34 Productivity Commission *A full repairing lease*, pp. 343-345.

35 In Tasmania landholders may receive a modest financial consideration for agreeing to place a perpetual covenant on land they manage. See submissions no. 244, p. 1 and 245, p. 1.

36 See <http://www.npws.nsw.gov.au/wildlife/vca.htm>, downloaded 22 July, 2001.

and it specifies what activities will take place on the land, in perpetuity. Unlike a heritage agreement, which is between the landholder and the Minister for Environment and Heritage, some conservation covenants may be agreed between government or non-government agencies, as is the case in Victoria and Western Australia.<sup>37</sup> The effect, however, is the same: land use is changed, in perpetuity.

- 6.94 The Committee notes the Prime Minister's announcement on 20 August, 2001 that the government intends to amend the income tax laws to provide for income tax deductions to landholders who enter into perpetual conservation covenants for no consideration, provided that the agreement is made with deductible gift recipients. Such deductions will be available for covenants that are supported by state legislation and accredited by the Commonwealth Minister for the Environment. This follows other amendments to the taxation laws which provide income tax deductions, which may be averaged over five years, for donations of property, and amendments to the capital gains tax laws to encourage conservation.<sup>38</sup>
- 6.95 Most Australian states and territories have arrangements in place whereby a landholder can enter into an agreement to manage land in a specified way. Some jurisdictions provide financial incentives to landholders to enter into heritage or covenanting arrangements, and the Commonwealth provides financial assistance. For example, under the Tasmanian RFA Private Forest Reserve Program, landowners receive a lump sum to keep native bush. The financial benefits include an up-front 'consideration' or payment – and a periodic 'management payment'. The amount of the up-front payment is related to the forest type and its conservation importance, land values and management system. It is usually about one third of the market value of the land.<sup>39</sup>
- 6.96 Other states and territories are not as advanced. The agreement to impose a covenant represents a donation of land by the landholder, and involves the landholder foregoing financial benefits and monetary value inherent in the land. In general, landholders are not at present eligible for taxation concessions in respect of the value embodied in the donation.

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37 Productivity Commission, *Constraints on Private Conservation of Biodiversity*, Canberra: Commonwealth of Australia, 2001, p. 20

38 The Hon. John Howard, Prime Minister, 'Tax Incentives to Encourage Conservation', Press release, 20 August, 2001.

39 See [http://www.privaterfa.tas.gov.au/q\\_and\\_a/index.html#paid\\_2\\_keep](http://www.privaterfa.tas.gov.au/q_and_a/index.html#paid_2_keep), downloaded 22 July, 2001.

6.97 However, the system of establishing a covenant over land title and the area covered by heritage or covenanting agreements varies between jurisdictions as shown in Table 6.2 and indicates that less than 0.1 per cent of the total land area of Australia is managed under these arrangements.<sup>40</sup>

**Table 6.2 Area covered by conservation covenants / heritage agreements**

State / territory	No. agreements	Area (ha)	Legal mechanism	No. per annum
New South Wales	96	7 000	National Parks and Wildlife Act	10 – 15
Victoria	359	15 186	Victorian Conservation Trust Act	20 – 30
Queensland	74	35100	Nature Conservation Act	More than 20
South Australia	1 200	600 000	Native Vegetation Act 1991	Less than 10
Western Australia <sup>41</sup>	In excess of 1 560	In excess of 2 750	National Trust of Australia (WA) Act 1964-1970 Soil and Land Conservation Act Transfer of Land Act 1893	More than 40 in 2001, under all legislation
Tasmania	24	2 732	National Parks and Wildlife Act 1970	In the 3 <sup>rd</sup> year of operation 62 approvals for 7,500 ha.
Northern Territory	2	11 000	Leasehold conditions	-
Australian Capital Territory	Unknown	Unknown	Leasehold conditions	Unknown
<b>Totals:</b>	<b>In excess of 3 315</b>	<b>In excess of 673 768</b>	<b>N/A</b>	<b>In excess of 100</b>

Sources *Australian Bureau of Statistics: Australia's environment: Issues and trends, 2001. Cat no. 4613.0, p. 62; Productivity Commission, Constraints on Private conservation of biodiversity, Canberra: Commonwealth of Australia, 2001, p. 20; C Binning and M Young, Talking to the taxman about nature conservation, National R&D Program on Rehabilitation, Management and Conservation of Remnant Vegetation, Research report 4/99, Environment Australia: Canberra, 1999, p. 52; Submission no. 246. NSW figures [http://www.epa.nsw.gov.au/soetest/soe/soe2000/cb/cb\\_6.3.htm#cb\\_6.3\\_h019](http://www.epa.nsw.gov.au/soetest/soe/soe2000/cb/cb_6.3.htm#cb_6.3_h019), accessed 22 July, 2001; Tasmania: communication from Private Forest Reserves to Committee secretariat. Western Australia: communication from National Trust (WA), Department of Land Conservation and Department of Land Conservation and Land Management to Committee secretariat; Queensland: communication from Queensland Parks and Wildlife Service to Committee secretariat*

40 Australian Bureau of Statistics: *Australia's Environment: Issues and trends, 2001*, Cat no. 4613.0, p. 62.

41 This does not include five properties totalling some 450000 ha owned and managed by the Australian Wildlife Conservancy (AWC). The AWC does not use covenants. See A Hodge, 'Paradise Acquired', *The Australian*, 4 August, 2001, p. 25.

- 6.98 Programs that provide assistance to a landholder only on condition that the landholder also enters into a conservation covenant involving a perpetual restriction on the land use provide many advantages to landholder and community alike. For the landholder, it provides certainty. The landholder knows what activities can be carried out and which can not. The landholder receives a payment and other assistance to help with managing the land placed under the covenant. The community knows that the concessions provided are focused on obtaining conservation outcomes and that these outcomes cannot be undermined at some future date. It should be stressed that such assistance is provided only while the land cannot be used to generate income to the landholder. In effect, the community is paying the landholder for an eco-service.
- 6.99 The cost of such a scheme is likely to be modest. Dr Carl Binning and Dr Mike Young estimated the cost to revenue in the fifth year of operation of providing payments to 1 024 landholders to enter into a covenant to be between \$15.8 million - \$38 million. The cost of revenue in the fifth year of operation of providing payments for the costs associated with the ongoing management of land under a conservation covenant was estimated to be about \$1.1 million for 2 355 covenants.<sup>42</sup>
- 6.100 The Committee concludes that conservation covenants, when accompanied by financial assistance and technical assistance for ongoing management costs, represent an important and economical way in which land use can be changed. The land placed under covenant must be assessed to ensure that it should be conserved by way of a covenant and no other ecologically sustainable use can be made of the land or developed on it in the near future. Payment must be linked to acceptance of the covenant and a management plan. This will enable scarce public funds to be targeted to those areas of high need, while also ensuring that the benefits derived from the investment will flow into the future.
- 6.101 Moreover, payments and assistance should be available not only to landholders who are required to enter into a covenant, but also those who voluntarily offer to do so in a manner that advances public good conservation outcomes.
- 6.102 As is often the case, some way may be found in the future to use the land in an ecologically sustainable way. If income is subsequently generated from the land, for example, by way of the sale of an eco-service or harvesting of native flora, then the management assistance should be reduced.
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42 C Binning and M Young, *Talking to the Taxman about Nature Conservation*, National R&D Program on Rehabilitation, Management and Conservation of Remnant Vegetation, Research Report 4/99, Environment Australia: Canberra, 1999, pp. 37 and 41.



- 6.103 This Committee has previously identified the central role that local government will have in the effective administration, development and delivery of ecologically sustainable development programs.<sup>43</sup> In particular, local government already possesses a considerable infrastructure and legal authority that can be expanded and adapted to promote sustainable land management activities. A number of other reports have also noted the importance of local government in effective, sustainable land management, especially the capacity of local government to focus incentives and target specific geographical areas of highest environmental need.<sup>44</sup>
- 6.104 This Committee has noted an impediment that may prevent local government being as effective as it could be: boundaries may not coincide with ecological divisions, which can lead to co-ordination problems and less effective administration.<sup>45</sup> It may also lead to higher administrative costs.<sup>46</sup>
- 6.105 This Committee has recommended that local government boundaries be aligned with ecological divisions and that state governments ensure that local governments exercise their powers so that they are consistent with national principles and targets for the ecologically sustainable use of Australia's catchment systems.<sup>47</sup> More can be done, especially by providing financial support to local government so that rates can be removed on land placed under a conservation covenant and by streamlining land management laws administered by local authorities.

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43 *Co-ordinating catchment management*, pp. 116-117.

44 ABARE, *Alternative policy approaches to natural resource management*, Canberra: Commonwealth of Australia, 2001, p. 37; C Binning, M Young, E Cripps, *Beyond roads, rates and rubbish: Opportunities for local government to conserve native vegetation*, Nation R&D Program on rehabilitation, management and conservation of remnant vegetation, Research report 1/99, Canberra: Commonwealth of Australia, 1999; E Cripps, C Binning, M Young, *Opportunity denied: Review of the legislative ability of local government to conserve native vegetation*, Nation R&D Program on rehabilitation, management and conservation of remnant vegetation, Research report 2/99, Canberra: Commonwealth of Australia, 1999.

45 *Co-ordinating catchment management*, p. 117.

46 A point also made by ABARE in *Alternative policy approaches to natural resource management*, Canberra: Commonwealth of Australia, 2001, p. 37.

47 *Co-ordinating catchment management*, p. 117.

## **Recommendation 7**

### **6.106 The Committee recommends that the Government:**

- **introduce a scheme to provide tax concessions in respect of the management costs, to landholders who are required to or who voluntarily reserve land of conservation value for public good conservation reasons by placing a covenant on the land;**
- **remove disincentives in Commonwealth laws, including taxation laws, faced by landholders who are willing to enter into covenants, in particular by providing taxation concessions in respect of the value of the covenant;**
- **provide rate relief directly to local government for landholders who have entered into covenants;**
- **provide ongoing financial assistance to landholders to manage land that has been placed under a covenant, provided that no other financial benefit is being derived from the land (for example trading in excess fauna and flora); and**
- **make agreements with the respective jurisdictions in the Commonwealth for the streamlining of land management laws so as to facilitate the development of covenants.**

### **Where land use is removed altogether, pay compensation**

6.107 The dominant issue in submissions from landholders was that the public good conservation measures imposed upon landholders had deprived them of various land use rights. As a result, it can be argued that landholders are, at a minimum, morally entitled to compensation for the loss of these rights and the benefits that would have flowed from them. Expressing the views of many landholders, the Institute of Public Affairs advised the Committee:

Compensation should be required when government takes any right – whether partial or full title. ...

Compensation is required when governments act not to secure rights but to provide the public with some good – for example, a wildlife habitat or the preservation of historic buildings – and in doing so take away some otherwise legitimate use.<sup>48</sup>

**6.108** The PGA advised the Committee in similar terms:

In short, a public benefit should be purchased at public, not private, cost.

... it may be said that private persons, like governments, may not significantly take or destroy the rights of others without incurring the obligation to compensate.<sup>49</sup>

**6.109** The economic and social costs of public good conservation measures that reduced the rights of landholders over the land they manage were set out clearly in a number of submissions and by witnesses – as was the basis of claims for compensation. For example, Mr Graham Dalton of the Queensland Farmers' Federation testified:

They have it [the right to develop the land they manage] at the moment in law. That is now being removed, because a new standard is coming in. We are saying that that will remove the economic capacity of that property to develop income. In some cases, it is very significant. It will put families out of business, because they can no longer clear. We are being told that the possibility is arising of not being able to clear regrowth. Regrowth is part of the normal farming cycle. People prefer trees to the grasslands that they are replacing. The economic impacts are going to be significant. We are saying that, if Australian people want to remodel the landscape or remove a development that now exists, that should be compensable. I repeat: if someone puts a roadway through suburban South Australia, that loss of property rights is compensated. The analogy is in fact fairly simple and is very similar.<sup>50</sup>

**6.110** In contrast to landholders and their representatives, witnesses from government agencies and some NGOs did not support compensation. Dr Christopher Reynolds advised the Committee that:

The question really then becomes, do you compensate someone for complying with a duty of care? The analogy seems to me to be this: it is a bit like a truck driver saying, 'I should be compensated for driving reasonable hours at a reasonable speed,' and none of us

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48 Submission no. 156, pp. 9 and 10.

49 Submission no. 49, p. 246.

50 *Transcript of Evidence*, p. 142.

would really accept the logic of that kind of argument. No more should we accept the logic of an argument of a landowner who says, 'I ought to be compensated for not degrading my land. I ought to be compensated for not farming unsustainably.' That is the limit of a duty. It really prevents people from acting negatively rather than requiring people to act positively.<sup>51</sup>

6.111 Mr David Hartley testified in a similar vein:

... should people be compensated for not causing environmental damage? If there is clear evidence that removing trees or any other native vegetation is going to cause environmental damage, surely people have a responsibility to do that without compensation. No-one compensated me when they brought in laws about pollution on cars and the problems that that must have caused a lot of people in the transport industry—speed restrictions.<sup>52</sup>

6.112 The Queensland Conservation Council advised the Committee that it:

... does not support any public funds directed towards compensation. Instead, the Council supports the provision of public funds to deliver pre-determined public good outcomes.<sup>53</sup>

6.113 When public good conservation controls were first imposed in Australia in the mid-1980s, compensation was provided in the state that took the initiative, South Australia. The South Australian government advised the Committee:

... the *Native Vegetation Management Act 1985* ... provided for enhanced financial assistance for farmers who entered heritage agreements. This involved compensatory payments from the South Australian Government, which were equivalent to any reduction in the market value of land resulting from a clearance application being refused and the landholder agreeing to enter into a heritage agreement on the affected land. In effect, landholders were compensated for foregoing a stream of potential income into the future for the sake of a public benefit. It is recognised however, that the conservation of these areas of native vegetation also provides private benefits via factors such as the control of salinisation and erosion.

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51 *Transcript of Evidence*, p. 466. Dr Reynolds is the Legislative and Legal Policy Consultant, South Australian Department for Environment and Heritage.

52 *Transcript of Evidence*, p. 383.

53 Submission no. 116, p. 2.

- 6.114 The South Australian government advised the Committee that the introduction of this legislation dramatically reduced broad acre clearance in South Australia. It also produced a substantial reduction in clearance approvals and a significant increase in the number of farmers entering into heritage agreements, as a result of the enhanced assistance arrangements.<sup>54</sup>
- 6.115 The *Native Vegetation Management Act 1985* was replaced by the *Native Vegetation Act 1991*. The major difference between these Acts is that, under the 1991 legislation, there is no automatic provision for payment of compensation for loss of market value of properties as a result of clearance applications being refused and heritage agreements being established. Compensatory payments for reductions in the market value of land is now a discretionary payment, recommended by the Native Vegetation Council, to the Minister for Environment and Heritage.<sup>55</sup> The South Australian government advised the Committee that the restriction in access to compensation was:

... justified on the grounds that landholders in the agricultural zone had been provided with sufficient time to seek payment for any loss in the market value of their properties due to clearance refusals. The validity of the decision to reduce the level of assistance offered was also supported by the fact that some landholders had started to apply for clearance on areas that they would not normally have cleared in order to receive payments offered upon entering into a heritage agreement.<sup>56</sup>

- 6.116 Witnesses from other states also supported this assertion, indicating that compensation 'sent the wrong signals' and could result in inequities:

Too often politicians when pushing things can send the wrong signals because expectations in the rural areas can rise very high. When those expectations are not met, then there is a really bad feeling towards those who announce them. With compensation, if the word 'compensation' came up, there would be a very general expectation that the remaining bush on particular farms could then be put up for clearing and they would be compensated when they had been told no.

I have heard of examples of two farmers alongside one another; one wants to clear the remaining bush on his farm and will seek compensation, if it is made available. The one alongside has a great feeling for that remaining bush and believes it should be

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54 Submission no. 246, p. 3.

55 Submission no. 246, p. 3.

56 Submission no. 246, p. 3.

protected forever. That person would not be compensated—in fact, would be penalised—for doing what I would say would be the right thing.<sup>57</sup>

- 6.117 There are two issues that the Committee believes have to be addressed. The first is whether compensation would amount to ‘paying someone to do the right thing’. The second concerns the inequity of compensating one landholder and not another, depending on their attitude to protecting the ecological integrity of an area.
- 6.118 Characterising compensation as ‘a payment to do the right thing’ misconceives the nature of the landholders’ complaints. They do not seek payments to be ecologically responsible but rather they seek payments for the loss of rights that they were granted and which, until recent times, they were encouraged and sometimes required to use. Their whole lives were built on these presumptions and the removal of those rights effectively and drastically remodels a person’s entire life. Therefore, the compensation landholders seek is for a loss of longstanding rights, in the same way that a person, whose property suffers a significant loss of value because a neighbouring building blocks sunlight, has a moral right to compensation. A similar compensation program occurred when flight paths were changed in Sydney and a number of houses were sound-proofed.
- 6.119 Landholders who have embraced natural systems management contrast their position with those who have not, and they believe that ‘a payment to do the right thing’ is an accurate characterisation.
- 6.120 Moreover, there would be an inequity if one landholder were compensated while another was not, and the receipt of compensation depended upon their respective attitudes to protecting the ecological integrity of an area. However, eligibility for compensation does and should not depend upon a person’s attitude to the environment. It depends upon what the person has lost. If both stand to lose the same sorts of rights, then they are equally entitled to receive compensation. It is then up to the landholder whether the compensation is accepted.
- 6.121 It is important to note the expectations of landholders when they acquired their holdings. Landholders expected to be able to use and, in many cases, were told they had to use, the land for a productive purpose. They feel that this expectation generated rights to use the land, and removal of those rights generates the need for compensation.

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57 *Transcript of Evidence*, p. 444.

- 6.122 It is not clear that landholders are entitled to compensation for the loss of some land use rights. Citizens have their rights altered frequently, yet there is no basis for thinking that they are entitled to compensation. Alteration of a right – in this case, the right to use land to generate income – does not, by itself, generate an entitlement to compensation.
- 6.123 In order to generate a right to compensation, the alteration has to be of such a nature that the person is deprived of the reasonable capacity to generate income. Their right to use the land has to be extinguished. To use an analogy: a person entirely deprived of their motor car (provided they have not committed some crime) is entitled to compensation; a person who is told to drive it in a more safe manner, is not. The reason is not that a person fails to be entitled to compensation for doing the right thing. The reason is that they can still make some use of the car and, because they can, there has not been a total loss to them. This is what landholders are required to do when they are asked to manage their land in a more environmentally appropriate manner.
- 6.124 Moreover, the community is not in a position to compensate every citizen when some of their rights are altered. It appears to be a part of our culture that compensation is payable by the community when a person's right to do something is extinguished entirely.
- 6.125 Therefore, the Committee does not support the proposition that landholders automatically are entitled to compensation for alterations in land use aimed at achieving sustainable natural systems management mandated by government.
- 6.126 The Committee has canvassed funding assistance for adjustments to land use elsewhere in this report.
- 6.127 The Committee does believe, however, that where a property has become economically unviable through mandated changes in land management, then the landholder should have the option of selling the land to the community. However, where a property could still be viable if management practices were changed, then transition assistance should be provided, much as houses under flight paths were soundproofed. For this reason, the right to compensation is not generated by a deprivation of a right; it is generated by the deprivation of viability; a total extinguishment of the capacity to use the land in the way intended. It is this that generates the right to compensation, but grounds the case for transition assistance.

## Recommendation 8

6.128 **The Committee recommends that the Commonwealth, in co-operation with the states and territories establish a revolving fund to purchase and manage land holdings where:**

- **there has been a significant fall in value of a landholding owing to the imposition of public good conservation requirements; and**
- **the property has become unviable**

**for the purpose of resale as a financially viable business operated according to ecologically sustainable land use practices, as specified in a covenant.**

## Reform taxation laws, state and local charges to remove anomalies

6.129 Many submissions complained that landholders still faced many taxes and charges in respect of land used for conservation purposes and from which a landholder derived reduced income, or could not derive income at all. Moreover, some submissions indicated that there were various anomalies operating within the existing taxation arrangements.

6.130 The anomalies and disincentives in the present taxation arrangements have been highlighted by this Committee in its report, *Co-ordinating catchment management*, and also by many experts, including Dr Carl Binning and Dr Mike Young in *Talking to the taxman about nature conservation* and their other publications<sup>58</sup>, the Productivity Commission<sup>59</sup> and the Allen Consulting Group, Business Leaders Roundtable.<sup>60</sup>

6.131 This view is supported by the Final Report of the Native Vegetation Working Group, presented to the Western Australian Government in January, 2000:

Conservation is among the most highly-taxed land-uses in Australia ... land that is managed for business purposes and monetary donations to charities receive more favourable taxation treatment than land that is owned and managed for the protection

58 For example, C Binning & M Young, Ian Potter Foundation. *Philanthropy: Sustaining the land*, Melbourne, 1999.

59 *Constraints on Private conservation of Biodiversity*, Ch. 5.

60 *Repairing the Country*, esp. p. 113.



of high conservation-value native vegetation in the public interest.<sup>61</sup> ...

There is a need to remove the significant imposts and penalties that landholders with large areas of vegetation still face. These imposts need to be replaced with positive incentives that draw investment dollars into bush conservation and management.

The costs and impediments include measures such as local government rates, which apply to all landholders, and specific costs such as land tax, which only apply to some landholders, particularly those who manage the land largely for conservation values.<sup>62</sup>

6.132 At a Commonwealth level, AFFA advised the Committee that:

Tax concessions for investment in preventing and treating land degradation, are provided under subdivision 387-A of the Income Tax Assessment Act 1997. Landholders are provided with an immediate tax deduction for preventing and treating land degradation where this is part of earning an income from a business on rural land. The deduction recognises that primary producers are reliant on their natural resources for their business operations, and that preventing and treating degradation of the resource base is an essential cost involved in their profitable operations. While the tax deduction is aimed at promoting sustainable management of individual farm businesses the activities that are supported can also provide significant off-site benefits.<sup>63</sup>

6.133 The present arrangements contain a number of problems. The Committee was advised in one submission that, prior to 1997, the taxation arrangements contained a significant anomaly which needed to be amended:

Amend ... Landcare taxation arrangement under section 75B. Tax concessions are available to install watering points. However this may lead to overgrazing. This inturn may lead to claims through section 75D to correct the land degradation due to overgrazing.<sup>64</sup>

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61 *Final Report*, p. 3.

62 *Final Report*, p. 18.

63 Submission no. 238, p. 5.

64 Submission no. 82, p. 6

- 6.134 This section has been replaced by Subdivision 387 A and 387-B of the *Income Tax Assessment Act 1997*. However, the anomaly appears to remain.
- 6.135 Another problem that was identified was that the landcare deductions are available only in respect of land used for carrying on a primary production business, or for the purpose of producing an assessable income.<sup>65</sup> Where land use changes, and a landholder no longer uses the land solely to generate income or for the purpose of carrying on a business, then only a 'reasonable amount' may be claimed as a deduction.<sup>66</sup>
- 6.136 The effect of the restrictions in these sections is that taxation concessions are available only in respect of land that is used to generate income. The same condition applies with respect to the deductions for expenditure in relation to the installation of 'facilities to conserve or convey water'.<sup>67</sup> In both cases, since there is no income to offset the costs, or attract a taxation concession, expenditure incurred by landholders becomes a dead weight cost.<sup>68</sup> However, many conservation activities occur on land that is not used to generate income. The result is that landholders face a disincentive from undertaking conservation activities. This consideration was behind this suggestion made by the Conservation Council of the South-East Region and Canberra:
- Extend the 34% landcare rebate to land managed solely for conservation purposes. If conservation were given business status, the operators would be treated like primary producers and land could be negatively geared with all associated costs depreciated or claimed as tax deductions.<sup>69</sup>
- 6.137 Furthermore, the present taxation concessions are largely untargeted. This means that a landholder can claim a deduction (or rebate) in respect of any landcare work, with the exception of the erection of a fence, which must be done 'in accordance with an approved management plan for the land'.<sup>70</sup> As a result, the areas of greatest environmental need on a property may

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65 *Income Tax Assessment Act 1997*, sec. 387-55(1) (a) and 387-55 (1) (b).

66 *Income Tax Assessment Act 1997*, sec. 387-70.

67 *Income Tax Assessment Act 1997*, sec. 387 B.

68 See the discussion by the Productivity Commission, Constraints on private conservation of biodiversity, esp. p. 64 and 73. It may be possible for landholder to add the cost of conservation measures to their CGT base and use the expenditures then to reduce any capital gains tax they pay when their property is sold, (Productivity Commission, *Constraints on private conservation of biodiversity*, p. 74). However, they face considerable opportunity costs until the time they do sell and they face the requirement to maintain the viability of their enterprises in the meantime – two key benefits of 'up front' deductions.

69 Submission no. 82, p. 6

70 *Income Tax Assessment Act 1997*, 387-60 1(a).

not be targeted. For example, a landholder may conduct landcare activities on land that is not income producing, while land of higher conservation value may be kept in production leading in the long run to greater environmental degradation.

- 6.138 Providing incentives for conservation through the taxation system is considered by many landholders to be an effective policy.<sup>71</sup> The Allen Consulting Group /Business Leaders Roundtable report claimed that tax concessions have ‘proven to be an effective way of leveraging private investment in other activities that share similar “externality related” problems to the environment’ and suggested a more ‘aggressive’ deductibility regime.<sup>72</sup>
- 6.139 The Committee recognises that there are many landholders who undertake conservation activities voluntarily which reduce their income or which remove land from production. At present, landcare tax concessions are only available for land used for an income generating purpose. The Committee believes that all land, including land that is not being used to generate income, should be eligible for landcare taxation concessions, provided that the land is covered by an approved conservation plan.
- 6.140 Moreover, the Committee believes that the landcare tax concessions should be targeted and extended to all land managed under an approved conservation plan. The reason is that it is important that deductions be targeted and allocated on the basis of environmental need, in order to maximise the effect of any public investment.
- 6.141 The most efficient way for this outcome to be produced is for every landholder to develop a land management plan that must be certified as ecologically appropriate prior to applying for, and being granted, taxation concessions. Such plans should be reviewed at five year intervals. There are several reasons for this:
- First, to ensure that the concessions remain targeted at environmental problems;
  - Second, the general community will not accept open-ended access to taxation concessions that are designed for the improvement of the environment; and
  - Third, it is unreasonable for a landholder to expect a taxation concession and not be subject to eligibility conditions. All other citizens who obtain a concession or benefit from government must satisfy

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71 *Repairing the Country*, p. 120.

72 *Repairing the Country*, pp. 16, 129.

eligibility criteria, and it is only fair that those seeking these taxation concessions do too. Land that has been placed under a covenant has had to meet various eligibility conditions and the covenant involves by its nature a management plan. Uncovenanted land can also be placed under a management plan.

- 6.142 This Committee<sup>73</sup>, and more recently the Productivity Commission<sup>74</sup>, has identified a number of other disincentives facing investment in conservation activities by individuals, for example, donations of cash or other assets, land, bargain sales of land, or bequests. Moreover, the current landcare taxation concessions are available only to landholders. People who are not landholders but would like to invest in conservation activities do not have available to them options that provide a tax concession. They do not thereby have an incentive to invest in conservation.
- 6.143 These matters must be addressed by government. The Committee believes that disincentives and the anomalies in the current arrangements should be removed.

### Recommendation 9

- 6.144 **The Committee recommends that Subdivisions 387 A and 387-B of the *Income Tax Assessment Act 1997* be amended to provide the capital allowances, at present only available in respect of conservation activities on land used for income generating purposes:**
- **be increased; and**
  - **be available automatically for all landholders who place land under an approved covenant; or**
  - **be available only to landholders who operate that land under an approved management plan:**
    - ⇒ **which provides for ecologically sustainable land use or**
    - ⇒ **which provides for transition to that usage system;**
    - ⇒ **irrespective of whether those activities are on income producing land or not; and**
    - ⇒ **which is reviewed at five yearly intervals.**

73 See *Co-ordinating catchment management*

74 *Constraints on Private Conservation of Biodiversity*.

**Recommendation 10**

**6.145 The Committee recommends that the government ask the CSIRO to prepare a report for presentation to Parliament, no later than 30 June, 2002, on any taxation anomalies and disincentives within the current taxation arrangements in respect of promoting conservation activities by landholders, non-landholding individuals, charities and private sector organisations, and to recommend changes, with costings, where known.**

6.146 The Committee received evidence of another anomaly in the taxation system concerning the application of capital gains tax (CGT) provisions to payments made to landholders who enter into conservation covenants.<sup>75</sup> Landholders who acquired land prior to 1985 do not pay income tax if they harvest timber on their property or CGT if they dispose of their landholdings. The Committee was advised by the Tasmanian Farmers and Graziers Association (TFGA) that this resulted in landholders who placed a covenant on their land, under the Tasmanian RFA Forest Conservation Program, and received some sort of consideration for doing so, facing a taxation liability:

... in Tasmania landowners who accept a financial consideration for having a covenant placed in perpetuity on their land are subject to capital gains tax. If this landowner is a pre-September 1985 owner they can opt to log this forest under a "Stanton" or lump sum agreement and pay neither CGT nor income tax. While the latter is their right it is ridiculous that the benevolence of some landowners is being negated by a Tax Law anomaly. While the Private Land Conservation Program is unable to offer commercial rates for forested land, the CGT anomaly is a significant disincentive.<sup>76</sup>

6.147 Some of the areas of habitat most at risk are of a commercial nature. As a result of this anomaly, TFGA advised the Committee:

Successful conservation outcomes are being hindered as pre 1985 owners can sell their wood and not be subject to CGT. However, if the same owner enters into an agreement with the government to protect the forest community, any payment will represent a taxable capital gain.<sup>77</sup>

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75 Submissions no. 244, 245.

76 Submission no. 245. See also Submission no. 244.

77 Submission no. 245. See also Submission no. 244.

- 6.148 The amount of money involved is small, the Committee was advised, and the landholders are making a considerable financial sacrifice in placing a perpetual restriction on their land use:

Although these landowners are receiving a sum of money as a 'consideration', the amount that is offered is a fraction (about one third) of the market value of the land, and an even smaller fraction of the commercial value of timber on the land. Most landowners could make greater profits by harvesting their timber.<sup>78</sup>

- 6.149 This anomaly, the Committee was advised, led to an inconsistency in government policy and very poor conservation outcomes:

Landowners, who decide to covenant their forests in perpetuity to contribute to Australia's CAR reserve system, are making a generous donation to the public good. The current application of capital gains tax to the relatively small sum of money that they receive as a 'consideration' is a significant disincentive and inequitable treatment of people wanting to make a philanthropic contribution to the nation's public good.<sup>79</sup>

- 6.150 The Committee was also advised that 'the inconsistency between the Government's policy of encouraging philanthropy among private landowners on the one hand, and current capital gains tax legislation on the other, has been a matter of concern to landholder organisations' such as the Tasmanian Farmers and Graziers Association, for some time.<sup>80</sup>

- 6.151 The Committee was deeply concerned about this evidence. Consequently, the matter was raised with officers of the Department of the Treasury when they appeared before the Committee on 5 March, 2001.

Mr Geoffrey Francis testified:

... I am aware of the issue broadly. As I understand it, some money was allocated from the budget to put in place conservation covenants and there was a capital gains tax treatment on that. Whilst a simple examination of the tax system would suggest that there is a distortion favouring not entering into the environmental covenant, that can ultimately be fixed up at the other end, simply because you have to purchase the covenant at a higher price provided individuals are aware of the tax treatment they face. It is really a question of were those land-holders adequately informed of the tax treatment that they would be subject to before entering into that particular agreement. They were voluntary agreements.

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78 Submission no. 244.

79 Submission no. 244.

80 Submission no. 244.

You would expect individuals to seek advice on the tax treatment that they would face ...<sup>81</sup>

I would say, in counter to that [that there is a disincentive in the present arrangements], that where the government was seeking a specific objective, it means, given there is a tax disincentive there, that these covenants were voluntary for people to enter into—they would be seeking a higher price for the covenant based on their tax treatment.<sup>82</sup>

- 6.152 The Treasury agreed to take the matter as a question on notice and provide a formal response. The Committee received a response on 11 April, 2001.<sup>83</sup> The Treasury explained the rationale for subjecting the ‘consideration’ received to CGT. The receipt of a ‘consideration’ gave rise to an assessable capital gain ‘... because the taxpayer had received money or property for creating a contractual (or other legal or equitable) right in another entity. Because the tax liability relates to a newly created right, landowners cannot obtain a pre-1985 exemption’.<sup>84</sup> The Treasury then went on to provide additional reasons in support of applying CGT to the ‘consideration’ received for entering into a covenant:

... advantages accrue to landowners who enter into a covenant. The landowner can opt to receive an ongoing management payment for the upkeep of the covenanted area. Under the Tasmanian covenants landowners can also negotiate some level of continued rights over the land (eg grazing rights, the right to gather firewood etc).

A landowner entering into a covenant retains ownership of the land and will thus earn a further consideration on the sale of the land. In some cases this is expected to be higher than would be the case in the absence of the covenant ...

Where landowners voluntarily enter into covenants the Government considers it imperative that they be fully informed of the resultant taxation consequences. In this way, landowners can seek, through the process of negotiating a price for the covenant, such remuneration as is appropriate to offset their subsequent taxation liability.<sup>85</sup>

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81 *Transcript of Evidence*, pp. 562 – 563.

82 *Transcript of Evidence*, p. 563.

83 Exhibit no. 10.

84 Exhibit 10.

85 Exhibit 10.

- 6.153 The formal response from the Treasury and the arguments put forward are at odds with other evidence received by the Committee. For instance, it is not open to a landholder to ‘ramp’ up the price of the covenant to cover the CGT impost, as the Treasury assumes. The *Tasmanian RFA Private Reserve Program Negotiators Manual* states:
- Potentially there are 100,00 ha required for the system. With \$30M available, the average price which can be paid is \$300 per hectare, far less than the market value of most forested land in the state.
- The program has to attempt to structure payments on a scale which takes account of reservation priorities rather than market values.<sup>86</sup>
- 6.154 Moreover, discounts are applied to the ‘consideration’ for timber harvesting, for example, for firewood and grazing rights.<sup>87</sup> As well, the *Manual* states clearly that landholders are to be advised that there may be a CGT implication and to obtain their own independent advice.<sup>88</sup>
- 6.155 Apart from failing to properly understand the nature of the Tasmanian program, the Treasury appears to justify the CGT policy on the basis that:
- landholders can continue to extract some benefit from the covenanted land; and
  - sale of the land in the future, that has a covenant over it, may lead to a higher price being paid.
- 6.156 Again this response is somewhat at odds with other evidence. The ‘consideration’ paid is for the alienation of some but not all rights over the land and the transfer of the alienated rights to another ‘entity’. It is wrong to go on to justify a tax on the basis that the remaining rights may generate some benefits. Any landowner who benefits from his or her land is entitled to do so – and pay tax at the appropriate rate for taxable income generated. And this would still occur. The fact that a landholder may continue to derive some benefit from the land is, therefore, beside the point, as it will be subject to tax, as appropriate.
- 6.157 Moreover, the rights that landholders continue to enjoy in respect of the covenanted land do lead to a discount on the amount of ‘consideration’ paid. Therefore, the benefit has been taken into account when the value of the ‘consideration’ is calculated. Imposing CGT on the continued rights is to doubly tax the landholder.
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86 Sec. 2: Payments for Covenants and Management Agreements, p. 6.

87 Sec. 2: Payments for Covenants and Management Agreements, pp. 12 – 15.

88 Sec 5: Covenants and Agreements, p. 31.



- 6.158 Using the Treasury's line of reasoning, the CGT impost represents in part a taxation on these other residual benefits, rather than the 'consideration' paid for the loss of some rights. In other words, the Treasury appears to be claiming that the CGT impost is rightfully applied not only to the 'consideration' but also to the residual benefits that are themselves taxed at some future time if they generate income. This would represent not only double taxation but a shift in the purpose of CGT.
- 6.159 Furthermore, justifying a tax on the basis of the future value that may attach to an asset is poor policy in this area because of the volatility of property markets and the effect of covenants on value is largely unknown.
- 6.160 Following the Treasury's appearance and subsequent advice to the Committee, the Treasurer, the Hon. Peter Costello MP announced on 15 June, 2001 changes to the CGT treatment of funds received in respect of a conservation covenant.<sup>89</sup> The Treasurer announced that:

Under these amendments, at the time of entering into the covenant the landowner will apportion the cost base of the property between that part subject to the covenant and the remaining property. The covenant will then be treated as a part disposal of the property. CGT will be payable on the difference between the consideration received and the cost base apportioned to the covenant. When the land is subsequently sold, any capital gain will be calculated on the difference between the sale price and the remaining cost base of the property.

The capital gain made from the covenant will attract a pre-1985 exemption, or the 12 months CGT discount for individuals, trusts and complying superannuation entities, where applicable. In addition to these benefits, small business landowners who enter into conservation covenants may be able to access the small business CGT concessions.

The change will be of immediate benefit to landowners who have negotiated covenants with the Tasmanian Private Forest Reserve Program, as well as being relevant to landowners throughout Australia.<sup>90</sup>

- 6.161 These changes do little to assist the Tasmanian RFA Private Reserve Program. Landholders who purchased land after 1985 will still be subject to CGT, thereby creating an incentive to realise the commercial potential of the land rather than conserve it under a covenant.

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89 The Hon. Peter Costello MP, 'Capital Gains Tax Amendments and Private Conservation', Press Release, No. 044, 5 June, 2001.

90 The Hon. Peter Costello MP, "Capital Gains Tax Amendments and Private Conservation", Press Release, No. 044, 5 June, 2001.

- 6.162 Moreover, determining CGT liability requires comprehensive consideration of the business arrangements of the landowner and a valuation of the property. To do so would require the services of professional accountants, taxation consultants and valuers (although landholders can perform a valuation themselves, based on 'reasonably objective and supported data'). Given that, in many cases, the amount of financial consideration being paid to landowners in the Private Forest Reserves Program is only a few thousand dollars, the time and expense – to individual landholders or the Program itself – of determining valuation and taxation liability in this way is impractical and imposes a barrier to participation.
- 6.163 Dr Steven Smith, Manager, Private Forest Reserves (RFA) Unit, Department of Primary Industries, Water and Environment, Tasmania, advised the Committee that landholders could approach the Australian Taxation Office (ATO) for a ruling as to their taxation liability. However, the Committee was told that the ATO had been unable to give such advice to many landowners who have asked for private taxation rulings. None has yet been given to any landowners in Tasmania, although a considerable number of requests have been made. One landowner has been waiting for a private taxation ruling since 15 February 2001.<sup>91</sup>
- 6.164 The psychological effect of the CGT treatment on landowners has been overlooked. The Committee was advised by Dr Smith that increasing numbers of landowners are angrily withdrawing from negotiations with the Program, when they realise that even small amounts of financial considerations will be treated as capital gain, regardless of the generosity of the landowner in foregoing property rights. As of 25 July, 2001, 90 landowners have agreed in principle to register conservation covenants with the Program, however only 24 covenants have actually been registered. Capital gains tax appears to be the main reason for this increasing discrepancy. One landowner who was prepared to place a perpetual conservation covenant over 90 ha of important native forests, and receive a consideration of a mere \$6,250, withdrew when he realised that he would be required to pay some of that amount as CGT.<sup>92</sup>
- 6.165 Moreover, the CGT concessions for small business are not available to all landowners targeted by the Program. If landowners do not operate a small business on their land, they are not eligible for a small business taxation concession. If their neighbours covenant exactly the same area of the same forest type, and operate small businesses on their land, they will be

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91 Dr Steven Smith, communication with secretariat.

92 Dr Steven Smith, communication with secretariat.

eligible for taxation concessions from 50 to 100 per cent depending on their circumstances. This is iniquitous.

- 6.166 The approach that has been taken to the application of CGT to the 'consideration' received for entering into a conservation covenant represents a disincentive to landholders because the opportunity cost and reduction in value are not offset by the 'consideration' paid. When all is taken into account, such payments are token.
- 6.167 Moreover, instead of thinking of payments for entering into a covenanting agreement as 'income' they should rather be seen as payments for eco-services. It may be necessary for the government, at some stage to consider whether payments for eco-services should be treated differently by the taxation system, in a systematic manner.
- 6.168 At present, the Tasmanian RFA Private Forest Reserve Program is Australia's only program directed at developing a voluntary private land conservation reserve system. The Committee was advised that other states are likely to follow with similar programs.<sup>93</sup> It is imperative that inequities, and anomalies in the taxation treatment of payments received by landholders who enter into conservation covenants or similar instruments, are removed. Moreover, it is essential that the system of administration is more straightforward and does not rely upon landholders facing additional expenses because they must consult taxation advisers or wait long periods of time for rulings from the ATO.

### Recommendation 11

- 6.169 The Committee recommends that any financial consideration paid to a landowner for registering a perpetual conservation covenant on land title not be assessed either as income or as capital gain, provided that the covenant has been agreed as part of an approved covenanting program.**

**The Committee further recommends that the taxation and administrative arrangements attaching to the development of a covenant be streamlined and made much less complex.**

6.170 The local government system in Australia provides an immediate point of contact between landholders and land management controls. Local government derives a portion of its revenue from rates applying to land and other charges levied over land or environment use. In some parts of Australia, landholders who engage in conservation activities can obtain a rate rebate in respect of the land being managed under a conservation plan, or a covenant. In other parts of Australia, local government does not provide a remission of rates for land being managed for conservation purposes. This was a source of considerable resentment amongst some landholders who made submissions to this inquiry. Moreover, some councils have the power to impose environment levies in an attempt to reduce human impact on the environment.

6.171 There are, however, inconsistencies in the approach taken between local government areas and jurisdictions. For example, Mr Paul Bateson, from Environs Australia, the Local Government Environment Network, told the Committee about the inconsistencies between Australian jurisdictions. He said:

One of the things that is impeding local government though is the legislation in many states. There are a lot of inconsistencies such as the option of using local environmental levies. In Queensland you can use them very readily, in New South Wales it is a little harder and in Victoria it is virtually impossible. Management agreements such as covenants, rate rebates, along with the land taxes, valuation methods and local rates are, in general, heavily biased against the conservation of native vegetation on private lands. It is a disincentive to private landowners to do their bit.<sup>94</sup>

6.172 Mr Bateson did provide examples of local councils that had embraced rate rebates and environment levies as complementary mechanisms:

Queensland councils generally have taken more of a view of the opportunities that come out of offering rate rebates. Some of them have used levies to top up, to be able to provide rate rebates or make some adjustments. Queensland councils probably have the highest take-up of rate rebate schemes and environmental levies in Australia. In Victoria quite a few councils offer rate rebate schemes.<sup>95</sup>

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94 *Transcript of Evidence*, 341-342. Mr Bateson is the National Local Government Bushcare Facilitator.

95 *Transcript of Evidence*, p. 350.

- 6.173 It is clear to the Committee that not only must the approach taken to taxation concessions at a national level change, but also at a state and local level too. However, Mr Bateson pointed out the difficulties that face local governments in providing concessions for conservation activities:

There are great differences between the levels of commitment, interest and capacity. Compare, say, a high rate base urban council that is well educated and has a whole lot of factors that encourages it to commit to sustainable initiatives with a small wheat belt council that might have 10 staff, a rate base of \$3 million and all the pressures. It is barely dealing with its own roads.<sup>96</sup>

- 6.174 Ms Leanne Wallace, from the New South Wales Department of Land and Water Conservation testified along similar lines:

In some of the coastal areas you have very large and well resourced councils that are in a very strong position to be able to deliver outcomes very clearly on the ground. In other areas, particularly in the western parts of the state, you have very poor rate bases and very poorly resourced councils that do not have the skills and experience to be able to do that and they are having great difficulty coming to terms with the range of environmental legislation that they have to deal with where the powers have been delegated to them.<sup>97</sup>

- 6.175 Mrs Jenny Blake, a landholder and local councillor, indicated that even with some form of subvention to local councils, low-rate-base councils could still find such rate remission scheme difficult to implement. She also cast doubt upon the assistance that rate rebates provide to landholders. Mrs Blake advised the Committee that:

Putting on my Councillor hat – I see tremendous difficulties for low rate base municipalities in administering rate incentives/compensation because in the Golden Plains for instance we would almost need another full time person to make determinations and monitor the process. The ratepayers would not win as any reduction could not compensate adequately and the cost of another employee is a further rate burden.

In my view rate incentives will in no way ever adequately compensate landholders for the loss of incomes from the retention of broad acre native vegetation.<sup>98</sup>

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96 *Transcript of Evidence*, p. 345.

97 *Transcript of Evidence*, p. 356.

98 Submission no. 197, p. 8.

- 6.176 Related to the issue of local government rates is that of land tax. Many jurisdictions charge land tax and this is payable by landholders. Land used for primary production is exempt from land tax in all jurisdictions, and that covered by a conservation agreement is exempt from land tax in New South Wales and South Australia.<sup>99</sup>
- 6.177 Dr Carl Binning and Dr Mike Young have estimated that the cost of remitting both state land tax and local government rates for all landholders reserving land for conservation purposes will average about \$1 000 per landholder per year involved in the scheme.<sup>100</sup>
- 6.178 Remission of local rates and state government land taxes is not intended as compensation for loss of production. The remission of rates and land taxes may, in many cases, be a symbolic gesture. However, many submissions did mention local government rates explicitly, and it is clear that the failure to remit them is a matter that causes many landholders to be disgruntled. Moreover, while the sums are small, for landholders on low incomes, they can represent real incentives and assistance with conservation activities. The Committee believes that financial assistance should be provided by the Commonwealth to local and state governments to remit state land taxes and local government charges in order to facilitate public good conservation activities.

## Recommendation 12

- 6.179 **The Committee recommends that the government investigate a scheme to provide financial assistance to local government to provide a rebate of local government rates (including the cost of additional employees) provided that the:**
- **states and territories also contribute to the scheme;**
  - **land that is managed in accordance with an approved conservation management plan or the land has been placed under a covenant;**
  - **landholder is not deriving any taxable income from the land for which the rebate is sought; and**
  - **councils with smaller rate bases should receive special consideration to help foster conservation activities in their areas.**

99 C Binning and M Young, *Conservation hindered*, p. 24.

100 C Binning and M Young, *Conservation hindered*, p. 43.

## Foster ecologically sustainable industries

- 6.180 Consumer demand for products from ecologically sustainable land use is growing significantly. In one market area alone, involving organic produce in Europe, the market increased from US\$4.0 billion in 1993 to US\$6.8 billion in 1995, the last year for which figures are available. The development of organic agriculture is targeted under the reform to the European Union's Common Agricultural Policy,<sup>101</sup> and some countries have targeted it as an area of investment. Denmark, for example, is working to have all Danish farmers adopt organic production methods by 2005.<sup>102</sup>
- 6.181 Furthermore, the Committee has noted already the potential to develop new industries and the need to develop transition assistance. The measures mentioned already are large scale developments. However, the potential for profitable and ecologically friendly land use is not confined only to large scale projects, and there are other examples of opportunities that are being ignored.
- 6.182 For example, when used for its potential to support an apiary, some woodland types of Australian native trees (box or iron bark) can produce equivalent or higher returns from the apiary products (honey, wax, and pollination services) than cleared grazing lands in the same location. This provides an opportunity for revegetation with indigenous species for apiary production that will at the same time provide salinity control and biodiversity services.<sup>103</sup>
- 6.183 Another example is the potential to use indigenous flora and fauna in place of introduced crops and livestock. The harvesting of possums and kangaroo is well established. Another example of opportunities can be seen by a comparison between the costs and benefits of wheat compared to wattle.

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101 European Commission, *Directions towards sustainable agriculture*, Comm (1999) 22, pp. 9 – 10.

102 *Repairing the Country*, p. 83.

103 *Repairing the Country*, p. 53.

**Table 6.3: Wheat vs Wattle – An Economic and Environmental Scorecard**

	<b>Wheat</b>	<b>Wattle</b>
<b>Economic Performance</b>		
Expected production (dryland farming)	1 - 2 tonnes/ha	1 - 2 tonnes/ha with current varieties
Expected price	\$2000/tonne	Higher than wheat due to superior food properties
Annual production costs	Substantial	Relatively low
Initial establishment and capital costs	Substantial	Relatively high
Cash flow variation (and cause)	Substantial (price and yield variation)	Substantial (although yields more drought resistant)
Carbon credit potential	-	Moderate
<b>Environment Performance</b>		
Dryland salinity	Exacerbates	Mitigates
Soil erosion	Subject to wind and water erosion, and compaction	Resists wind erosion, some protection to adjacent land
On-farm biodiversity	Reduces	Enhances (c)
Chemical use, including fertiliser	Substantial	Minor (d)

Source: *Repairing the Country*, p. 53.

**6.184** The potential to re-configure land use in Australia to take advantage of new opportunities and also produce conservation outcomes is significant. Partnerships between government, research institutions, the private sector and landholders are necessary. The Committee believes that the role of government is central. On a whole of government basis, it must bring interested parties together and provide, where appropriate, assistance with research funding, project development funding and transition assistance so that landowners can re-configure their production processes.

### **Recommendation 13**

**6.185** The Committee recommends that the Commonwealth government work with COAG to identify, develop and foster ecologically sustainable rural industries.



- 6.186 One area where Australia does very little is in the controlled trade of its native fauna and flora. It is estimated that on the illicit market glossy black cockatoos will fetch \$30,000 overseas, while a taipan snake sells for \$9,000. A lungfish can attract up to \$15,000.<sup>104</sup> Three smugglers apprehended at Melbourne in January this year were in possession of 60 native reptiles estimated to have a value of \$20,000 on the domestic market and \$60,000 overseas.<sup>105</sup> The illicit trade in Australian native fauna is estimated to be worth about \$60 million per annum.<sup>106</sup>
- 6.187 Demand overseas is considerable. For example, one report indicated that there are 4,000 parrot breeders in the United Kingdom alone and that each year they breed “tens of thousands” of Australian parakeets.<sup>107</sup>
- 6.188 Native animals are not the only targets of smugglers. Native flora as well is smuggled abroad to satisfy an increasingly demanding market. For example, three foreign nationals were apprehended at Sydney airport trying to leave with two species of endangered plants banned for export and at least 15 varieties of native Australian plants that required permits to be exported. The people apprehended were involved in the nursery growing business in their home country.<sup>108</sup>
- 6.189 The Northern Territory has already developed a policy of sustainable wildlife use. It encourages landholders to set aside areas of natural habitat where animals can breed and a percentage of them can be collected and sold. The landholders receive a return and can see an economic point to conserving areas of native habitat. According to newspaper reports, the ‘Territory wildlife authorities believe [that] the Federal Government’s blanket export ban on live native animals taken from the wild contributes to a proliferation of the smuggling trade’.<sup>109</sup>
- 6.190 Dr George Wilson of Australian Wildlife Conservation Services, provided a private briefing to the Committee. Dr Wilson outlined a proposal to develop a native wildlife trading venture, that was based on the utilisation of wildlife from natural habitats. This market based preservation system would foster and extend the preservation of natural habitats by landholders. Under Dr Wilson’s proposal, groups of landholders would work together to restore natural habitat and conserve remaining habitat to

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104 S Kearney, ‘Smugglers profit from rare fauna’, *The Sunday Telegraph*, 3 December, 2000. See also J Centenera, ‘Smugglers resort to lizards in undies’, *The Canberra Times*, 30 November, 2000.

105 R Baker, ‘Reptiles found in airport bags’, *The Age*, 31 January, 2001.

106 A Bradley, ‘Traders in cruelty’, *The Sunday Telegraph*, 6 May, 2001.

107 Rural Industries Research and Development Corporation, *Sustainable Economic Use of Native Australian Birds and Reptiles*, RIRDC Research Paper 97/26, Canberra: RIRDC, 1997, p. 63.

108 AAP Wire Service: “NSW: Three face court for exporting native plants”, 18 May, 2001.

109 D Schulz, “The birds of a paradise for local smugglers”, *The Sunday Age*, 15 October, 2000.

provide a place where native wildlife would flourish and excess populations could be harvested. Such a scheme could provide landholders with an incentive to retain, extend and protect native habitat, thereby producing a variety of eco-services at minimal cost to the taxpayer. In fact, as profitability increases, so too will income tax receipts.

- 6.191 The Committee was provided with an example of a market-based preservation system, and its effects, operating in the United States. Dr Hugh Lavery, Chairman and Principal Adviser, Australian Environment International Pty Ltd, testified that:

... the International Forest Company, which sweeps across the south of the United States and which now has, effectively, a banking licence to look after the red cockaded woodpecker, one of their endangered species. They have set aside 3,000 acres of forest to manage a core population of some 30 pairs of red cockaded woodpeckers on the basis that they can trade the rights of any excess number over that 30—they have to be demonstrated, of course, and they are monitored—for those who might wish to develop forestlands or timber country elsewhere. ...

... Those trading rights are worth around \$US10,000 a pair. It has allowed an income stream to look after the woodpecker and maintain it in perpetuity against forest felling elsewhere. It is a system which, of course, is only as good as the precision of the monitoring, but the general view in North America now is that the erosion of wetlands has ceased and that they are now moving into a net gain of wetlands by virtue of the trading which, particularly on the southern coast of Texas and Louisiana and into Florida, is now extremely active.<sup>110</sup>

*Case Study 1: Farmers as honorary rangers – Namibia<sup>111</sup>*

In Namibia the state has privatised environmental management and anti-poaching functions to local communities (but not the regulation and enforcement).

Since the late 1960s, Namibian legislation has allowed commercial landowners on private lands the right to manage and use wildlife on their land. In effect, this strategy entailed devolving some of the State's responsibility for conservation to the private landowners.

One of the consequence of allowing commercial farmers the right to manage wildlife on their land was that:

- the number of game species increased by 44 per cent;
- the number of animals and biomass by an estimated 88 per cent; and
- there was the development of an economically significant game farming, hunting and tourism industry that required very little support from the Government.

In 1995, tourism was the third largest contributor to Namibia's economy, and the only sector experiencing strong growth.

6.192 An approach such as this serves several purposes. Not only does it provide landholders with an income stream, but it also reduces the smuggling of native flora and fauna. Smuggling fauna is especially heinous, as it is a trade that involves cruelty and inflicts considerable suffering upon the animals, causing many to die during the smuggling operation. Once government regulates the sale of native flora and fauna, smuggling becomes economically unviable.

6.193 Moreover, in order to be eligible to collect fauna or flora, landholders must maintain the land in as near a natural state as possible, thereby promoting general ecological values and biodiversity. Finally, if such markets could develop, land that is at present retired from productive use could once again generate income and the landholders would not then be dependant upon management or stewardship payments to the same extent.

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111 Information provided by Dr George Wilson, Australian Wildlife Conservation Services, communication with Committee secretariat.

*Case Study 2: Wild life management and environmental protection in Southern Africa*<sup>112</sup>

In South Africa, wildlife is traded as live animals by the provincial national park services and game ranch producers. Auctions are held regularly. Commercial companies operate as game capture specialists and transport animals to restock farms

Many properties, including adjacent to the Kruger National Park, have got rid of their cattle and formed conservancies. They now manage their wildlife in a joint management operation. By allowing the relatively free development of game ranches, the area given over to this form of biodiversity conservation is now 2.5 times the area of national parks. There are now more than 5000 such properties in South Africa, 16 million hectares or 13 per cent of the land area. With the area of mixed farms the area is 33 per cent of the land area. The wildlife populations are higher than for the last 150 years and former cropping and cattle farms are returning to the natural habitat.

The other planks to the income generated by wildlife are eco-tourism and sale of live animals to other people setting up game ranches.

Although game ranching is a novel approach to wildlife conservation for Australians, it is not very different from many aspects of game management operations in Europe that are centuries old. An example is the management of grouse and red deer in Scotland, but with extensive fences to restrict animal movements.

- 6.194 The Committee notes that Australia is a party to international conventions and agreements regarding the protection of endangered species and reducing trade in them. For example, under the Convention on International Trade in Endangered Species (CITES), more than 124 nations now regulate trade in endangered species. Under this convention trade is either prohibited or restricted, although it appears that signatory nations are prepared to allow some trade where this would promote conservation.<sup>113</sup> The World Wildlife Fund for Nature (Australia) is also reported to have suggested that wildlife utilisation may prove to be an important mechanism for achieving the conservation of the natural environment. This would involve developing an ecologically sustainable

112 Information provided by Dr George Wilson, Australian Wildlife Conservation Services, communication with Committee secretariat.

113 Rural Industries Research and Development Corporation, *Sustainable Economic Use of Native Australian Birds and Reptiles*, RIRDC Research Paper 97/26, Canberra: RIRDC, 1997, pp. 15 and 99.

framework for commercial wildlife use and utilisation and this should occur only where there is a net conservation advantage.<sup>114</sup>

- 6.195 The Committee also notes that the issue of the commercial utilisation of native Australian flora and fauna was considered by the Senate Rural and Regional Affairs and Transport References Committee.<sup>115</sup> However, to date there appears to have been little practical response to allow landholders to develop programs that both promote conservation and also permit, where ecologically appropriate, commercialisation of native Australian flora and fauna.

*Case Study 3: The Deer Commission for Scotland*<sup>116</sup>

One example of the integration of public conservation and private economic interests in wildlife can be seen in the work of the Deer Commission for Scotland. The Commission is the executive non-departmental public body charged with furthering the conservation, control and sustainable management of all species of wild deer in Scotland, and keeping under review all matters, including welfare, relating to wild deer.

As well as exercising a range of regulatory functions (Deer Control Agreements, Authorisations), the Commission publishes guidelines, consults and advises widely on deer management issues including annual cull targets, works with other agencies on wider policy issues, and advises Government on all deer matters in Scotland.

The Deer Commission seeks to balance a range of competing interests, so as to promote ecologically sustainable land and deer management. The Commission notes in its 1999-2000 Annual Report: 'at its simplest, the so-called "deer problem" can be described in terms of the fact that for many people and in many circumstances deer constitute a problem, causing damage and disruption which is economic, social and environmental in nature. At the same time deer can be a valuable economic, social and environmental asset, as well as being (other than exotic species) a component of natural biodiversity. Finding and maintaining a reasonable balance between these contradictory attributes has been and remains a major public challenge.'

114 RIDC, *Sustainable Economic Use of Native Australian Birds and Reptiles*, pp. 99 - 100.

115 Parliament of the Commonwealth, *Commercial Utilisation of Australian Native Wildlife*, June, 1998.

116 <http://www.dcs.gov.uk/htm/frames1.html>, 17 September, 2001.

The Commission is empowered to use a number of different management approaches. The Commission can issue 'Authorisations' which allow culling of deer where they are causing damage to agriculture, woodland and the natural heritage or in the interest of public safety.

The Commission can use of 'Control Agreements'. Within an area, individual owners or managers sign up to an Agreement which sets clear population and cull targets, allows for the monitoring of deer, crops and habitats, and ensures continuing dialogue between the Commission and the owners, managers and people with other land interests.

The Commission works with individual landholders to develop management plans. For example, the Commission collaborated with Scottish Natural Heritage and the Forestry Commission to help Glenfeshie Estate develop a Deer Management Plan in support of their Woodland Grant Scheme application. The Plan is aimed at restoring native woodlands within Glenfeshie from river to natural treeline and delivering other social and economic objectives such as sport, recreation and local employment.

#### **Recommendation 14**

**6.196 The Committee recommends that the Commonwealth government develop a licence based system, that would permit landholders to use Australian native flora and fauna for commercial purposes provided that such use is permitted only as part of an ecologically sustainable land use program and only where there is a net conservation advantage.**

**The Committee further recommends that, in order to develop this system, the penalties for smuggling native flora and fauna be substantially increased.**

6.197 As rural industries develop overseas markets, the community will be faced with ensuring that adequate infrastructure is available. The Committee has referred to the need to develop rural infrastructure in its report, *Co-ordinating catchment management*. However, much more remains to be done. For example, the agreement to finally complete the Alice Springs to Darwin rail link is a welcome development in ensuring that produce can be transported quickly and efficiently to a port near what in time will be Australia's largest market: Asia. Other products may require the development of regional airports capable of handling aircraft that can quickly and efficiently transport perishable produce to overseas markets. The Tasmanian built "Seacat" also provides an efficient way to transport

large quantities of perishable goods from Darwin into markets located in Asia, for example, Jakarta, Hong Kong, Singapore, Bangkok, Kuala Lumpur and Shanghai.

- 6.198 The Committee wishes to signal these issues and suggests that government should begin to develop appropriate plans that will ensure that rural and regional infrastructure is capable of being developed quickly, so as to take advantage of emerging markets.

## Develop legislative structures

- 6.199 The development of appropriate legislative structures was considered in the Committee's report *Co-ordinating catchment management*. The Committee reaffirms those recommendations. However, additional information has been provided to the present inquiry that highlights a number of other areas where legislative action is required.

- 6.200 While conservation activities will be implemented by individual landholders, the effectiveness of those activities will depend upon the capacity of communities across a catchment to work together to provide consistent coverage. Management of the landscape must be co-ordinated. Moreover, some of the initiatives will require large areas of land to be included in a program if a conservation project is to work. For example, Dr Barry Traill, from Birds Australia, said on the ABC program *Earthbeat* that:

People often think about reserves, Oh there's a couple of hundred hectares of bush, that should be enough. It's not. Reserves in the thousands or tens of thousands of hectares are a basic requirement for most species. For example, in my home area around Chilton in Victoria, we're losing birds despite having a 5,000 hectare National Park in the district, so that's not big enough, even that's not big enough for some birds. It is for most, but not for some.<sup>117</sup>

- 6.201 The Committee received evidence that indicates that there is at present considerable weakness in existing legislation to produce a co-ordinated approach. Two issues emerged. First, if a landholder has a neighbour who is unwilling to undertake conservation measures, then the willing landholder can be faced with additional costs and have their efforts undermined by that neighbour. For example, if the neighbour refuses to control pests or weeds, then the landholder can be faced with additional expenses. This can be referred to as the 'abutment problem'.

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117 *Earthbeat, How Much Native Bush is Enough?*, ABC Radio National, Saturday 20 January 2001, <http://www.abc.net.au/rn/science/earth/stories/s224276.htm>; downloaded, 23 July, 2001.

- 6.202 Second, if a group of landholders want to implement a conservation plan over a large area and all landholders in that area need to be involved, but one landholder refuses to participate, then the entire project may be at risk. This might be referred to as the agglomeration problem.
- 6.203 The abutment issue is especially evident where national parks adjoin privately managed land. The Committee received a substantial amount of evidence from landholders whose land adjoined national parks. These landholders complained of feral weeds and dogs coming on to their land and destroying their crops and livestock. While these landholders were required to implement land management practices that reduced weed and pest populations, government agencies were not required to do the same. However, abutment issues can arise when any landholder fails to take appropriate measures to control feral weed and animal populations.

### Recommendation 15

- 6.204 **The Committee recommends that the Commonwealth enter into negotiations with the states and territories for them to enact complementary legislation, where such legislation is lacking, that will enable landholders facing incursions of weeds or pest animals from adjoining properties to compel adjoining landholders to manage their land so as to reduce such incursions.**

**The Committee further recommends that all crown land should be managed so that such incursions do not occur and the Commonwealth negotiate with the states and territories for those jurisdictions (including the Commonwealth itself) to adopt such a policy.**

- 6.205 The other issue is the agglomeration issue: how to garner the support of all landholders in an area for the implementation of a regional strategy. Mr Luke Pen provided an example of this problem:

[The] Blackwood River ... is a very broad river system in the wheat belt, mostly—very flat with very little slope. The main problem is actually getting water to move very far. It would be wonderful to be able to get it [salty water] out to the ocean, but the problem we have there with respect to drainage is that because it is a catchment approach all the landowners along that conduit for water have to be in agreement, and there is a great deal of fear of having excess water and wanting to get rid of it, and there is an equal amount of fear among those landowners who fear they are going to receive it because they are in the lower part of the



landscape. Very often drainage applications are hung up on one or two landowners who are very afraid of having to manage that water, especially the landowners who have properties close to receiving water bodies, very broad lake systems.<sup>118</sup>

6.206 Mr Matt Giraudo recounted a similar problem in South Australia:

There was a case in the scheme where a keystone land-holder—somebody in an area at the end of the line—decided he did not want to play. There are courses of action that you can take, but at the end of the day there is the timing problem, there is the problem that it has to come in on budget, et cetera. History has been that, where land-holders have not wanted to play, they have found an alternative, although they can go through the process of compulsory acquirement. That becomes a legal battle, becomes expensive, and it has unknown outcomes which are more risky. If you have a project that you want to come in on time and on budget, going through lengthy legal proceedings is not conducive to that.<sup>119</sup>

6.207 The way that such problems are solved at present usually involves protracted negotiations. Legal solutions can take long periods of time to travel through the courts.

6.208 These problems are likely to become more important as regional environment plans develop, and depend for their success on all landholders in an area taking part. If a duty of care is legislated, as is likely to occur, then adjudication systems will be required to specify what this requires of specific landholders. It is important, the Committee believes, that work begin as soon as possible to develop appropriate solutions.

6.209 One solution is to develop an environmental arbitration system that can register enforceable agreements and make enforceable determinations where agreement is not reached. In such cases landholders would be eligible to enter the program on the same basis as the other landholders. The Committee believes that this matter should be investigated further.

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118 *Transcript of Evidence*, p. 376.

119 *Transcript of Evidence*, p. 506.

## Recommendation 16

- 6.210 The Committee recommends that the Australian Law Reform Commission be asked by the Commonwealth government to conduct an investigation into the options for the Commonwealth alone, or in concert with the other Australian jurisdictions, to establish an environmental arbitration and adjudication system to resolve disputes arising under environment and land management legislation.**

### Develop market mechanisms only where appropriate

- 6.211 Much of the policy development intended to address environmental degradation has focused on harnessing market mechanisms to deliver conservation outcomes. The three most familiar are carbon credit trading, salinity credit trading and water rights trading. However, a recent report by the NSW Government Salinity Experts Group identified no less than 22 economic and market based instruments that may have application to environmental problems. The Salinity Experts Group comprised ‘leading financiers and economists’.<sup>120</sup>
- 6.212 There are a number of different ways that a market may operate. For example, the NSW salinity strategy described the way a market in salinity credits could operate, but this could apply equally well to carbon credit trading or even water rights trading:

To address salinity more generally, we could organize a scheme based on management targets for the landscape, such as reducing groundwater recharge. People would gain credits when they managed their land in a way that decreased the amount of recharge, for example through investing in planted forests, changing pastures and cropping practices, or undertaking revegetation. Businesses, councils or land managers who were seeking to manage their land in a way that increased salinity could be required to buy credits to offset the impact of their actions.

Individuals or groups could also buy credits and choose to take them out of circulation to reduce the overall level of salinity.<sup>121</sup>

120 Salinity Experts Group, *Report to the NSW Government on Market-Based Instruments*, September 2000.; <http://www.treasury.nsw.gov.au/salinity/report1.pdf>, accessed 19 July, 2001

121 NSW Salinity Strategy, p.36; quoted in A Gardner, ‘Salinity Credits’.

- 6.213 The underlying idea is that a property right is created in respect of some desirable ‘object’, for example carbon credits, salinity credits or mega-litres of water, and the owners be permitted to sell them:

The market in credits enables the property holders to trade the credits, thus providing for the efficient allocation of the credits according to their economic value and creating incentives to individual property holders to improve their land management so as to generate credits to sell.<sup>122</sup>

- 6.214 Credit trading can be used as a basis for a market in eco-services, as Dr Gardner explains:

Another use of credits is emerging in the proposals for dryland salinity management. This is the idea of giving credits to landholders that manage their land to satisfy public interests in the reduction of salinity and the provision of other ecological services. The landholders are paid stewardship fees to manage their land for these public interest purposes. The fees could either be paid by public authorities from public revenues raised by appropriate levies or paid by persons who are recognized either as being in debit or a beneficiary of the ecological services.<sup>123</sup>

- 6.215 While such approaches may appear attractive in a market orientated economy such as ours, and are already used in some instances with apparent success,<sup>124</sup> caution should be exercised. Property rights need to be defined, and to do that accurate measurement of carbon or salinity or water is required. Moreover, if the aim is to reduce salinity or water usage and increase carbon sequestration, then appropriate regulations must be put in place to ensure that the market does attain this goal.<sup>125</sup> As well, Dr Gardner notes: ‘There are many issues to clarify in this emerging use of credits, not least of which is the difficulty of calculating the effects of vegetation management on the causes of dryland salinity’.
- 6.216 There is little doubt, however, that such instruments, where appropriate and where properly regulated, can deliver conservation outcomes. The major problem that faces landholders appears to be that policy makers are relying on market and economic instruments rather than developing a

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122 A Gardner, ‘Salinity Credits’, National Dryland Salinity Program 2000 Conference, 17 November, 2000, Centre for Commercial and Resources Law, The University of Western Australia.

123 A Gardner, ‘Salinity Credits’.

124 For example, the Hawkesbury-Nepean Bubble which regulates nutrient discharge, the Hunter river salinity scheme, the Murray Darling Basin salinity and drainage scheme, and the salinity trading trial in the Macquarie catchment, Salinity Experts Group, *Report to the NSW Government on Market-Based Instruments*, p. 48; *Repairing the Country*, p. 83.

125 See Salinity Experts Group, *Report to the NSW Government on Market-Based Instruments*, p. 50.

range of responses. As a result, appropriate regulatory structures are not being developed, nor sober assessments of the practicalities of market based approaches.

- 6.217 One such analysis was reported by the European Union in a report of evaluating the agri-environmental programs introduced in 1992. This report examined the effectiveness of tendering for the provision of eco-services.<sup>126</sup> A form of tendering operated in the UK for several years prior to the report. Schemes using tendering programs were oversubscribed for the available budget.
- 6.218 In the UK scheme, the offers from farmers were ranked according to certain criteria and the best offers were accepted within the available budget. However, farmers only bid with their landscape — the payments for each measure were fixed at rates approved in the program. This system has the advantage of distributing funding according to priority criteria and the disadvantage of imposing high administrative costs.
- 6.219 The UK review of tendering reported that the difficulties included:
- the risk that farmers established or, in subsequent rounds, tended towards a floor price or ‘going rate’;
  - assessing quality of bids in terms of environmental benefits;
  - a reduction in value for money if acceptance were based only on bid price;
  - high administration costs; and
  - a risk of deterring farmers by offering a complex scheme.
- 6.220 The advantages cited centred on the higher value for money, provided the practical difficulties could be overcome. The greatest difficulties noted by the UK lay in securing the quality of environmental benefit, which can vary significantly between farms. Reductions in use of inputs (for example, fertilizer) may be more difficult to attain.
- 6.221 The Committee believes that, in the short term more direct approaches to addressing environmental degradation and reducing the effects of public good conservation measures on landholders are likely to prove effective. These include such measures as direct outlays, purchases of eco-services and taxation concessions. The Productivity Commission<sup>127</sup> and the recent report by the Allen Consulting Group Business Leaders Roundtable also supports this view.<sup>128</sup>
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126 Evaluation of Agri-environment Programmes, pp. 114-115.

127 *Constraints on Private Conservation*, p. 63

128 *Repairing the Country*, p. 106.

- 6.222 Nevertheless, market instruments should be examined and the most straightforward be implemented, not in substitution of other means of assisting landholders with implementing ecologically sustainable land management systems, but in conjunction with the other measures suggested in this report. This is consistent with the approach of this report which is to focus on results, not theory.

### Recommendation 17

- 6.223 The Committee recommends that the Commonwealth government maintain a neutral position in terms of the preferred approach to attaining conservation outcomes and assisting landholders to attain them, and that the most promising market-based approaches to addressing environmental degradation be examined and developed alongside the more direct approaches recommended in this report.**

### Provide access to finance

- 6.224 Landholders complained that, as increasingly stringent conservation measures have been imposed, their access to finance has been restricted.<sup>129</sup> This has resulted in landholders being unable to obtain adequate finance to move to more environmentally appropriate management programs. In some cases, it has produced perverse results, where landholders persist with environmentally degrading practices in order to stay in business.
- 6.225 Moreover, as the Committee found in *Co-ordinating catchment management*, there is a pressing need for enormous additional government expenditure on the environment. Consequently, the issue of providing landholders with easier access to finance must be addressed, even though government expenditure in this area will continue and increase. However, where possible, measures should be adopted to facilitate and encourage the development of private sector finance.
- 6.226 Finally, as rural industries are developed and new opportunities present themselves, access to venture capital and finance will become increasingly important.

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<sup>129</sup> See, for example, *Transcript of Evidence*, p. 266.

- 6.227 One suggestion to assist landholders and entrepreneurs to obtain access to financial services is the use of a 'revolving fund'. A revolving fund involves the allocation of a capital fund to purchase land that has conservation significance or retire land from use. When such land is purchased, a covenant is placed on it, and a management plan developed and implemented. After the land has been re-configured, it is then sold to sympathetic purchasers.<sup>130</sup>
- 6.228 Revolving funds have enormous potential to protect areas of significance without exposing the community to ongoing costs of maintenance and other risks. Furthermore, the age of Australia's farmers is increasing. Revolving funds provide a means whereby landholders who wish to retire can do so, and young people who wish to take up farming can enter the industry.

### Recommendation 18

- 6.229 **The Committee recommends that the Commonwealth government develop a proposal for a revolving fund to purchase land that has conservation significance or retire land from use, including model legislation and costings, and that this proposal be presented to Parliament no later than 30<sup>th</sup> June 2002.**
- 6.230 As useful as revolving funds are, there is a pressing need for access to finance for those landholders who do not wish to sell their properties. Traditional sources of finance consider rural industries uncertain and inherently risky. Consequently, other ways to finance rural transition and development should be developed.
- 6.231 The Committee did not receive clear suggestions from witnesses or submissions on the preferred options amongst landholders. Nevertheless, drawing on discussions and other evidence it has collected, a number of options can be developed.
- 6.232 One option that should be investigated is the creation of an ecologically sustainable development finance authority to provide access to finance on condition that the landholder develop and implement an ecologically sustainable management plan. Such an authority would use public money (with or without private investment) to purchase environmental outcomes that in themselves are likely to be income producing. If the Committee's

130 ANZECC *National framework for the management and monitoring of Australia's native Vegetation*, 1999, p. 30; *Repairing the Country*, p. 94

recommendation from *Co-ordinating catchment management* is implemented, that catchment management authorities are created and a system of accredited partner organisations is developed, then the finance authority would have a means of providing funding directly to landholders while also ensuring the highest standard of prudential operation.<sup>131</sup>

- 6.233 The private sector should not be ignored, however. There is potential to use tax deductions and rebates to attract investment from the private sector, much as the Australian film industry did from the 1970s to the present day.
- 6.234 The Committee has already noted that the present taxation arrangements in relation to conservation activities are poorly targeted, difficult to control, and tend to favour landholders with higher incomes. At present, only landholders are eligible in respect of their own land. The problems can be addressed by redesigning the way the taxation concessions operate, specifically, by attaching eligibility conditions to the use of the tax concessions and allowing non-landholders to be eligible for taxation concessions under certain circumstances.
- 6.235 Consequently, if conditions are attached to a taxpayer's eligibility for a deduction or rebate, such as that the funds must be invested in an accredited conservation project that also transforms land use, then the taxation concession can be sharply focused, and the number of investors increased.
- 6.236 Moreover, there is potential to use the developing non-government sector to act as eco-service brokers. For example, Australia has a number of NGOs that encourage individuals and companies to conserve private land. These include the Australian Bush Heritage Fund, Trust for Nature (Victoria), and Land for Wildlife.
- 6.237 The Australian Bush Heritage Fund, founded in 1990, is a national independent, non-profit organisation focusing on the protection of the Australian bush. To date, the Fund owns and manages 13 reserves throughout Australia, and works with state governments and other agencies to encourage preservation of bush on private lands.<sup>132</sup>

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131 This suggestion is not dissimilar to that in *Repairing the Country*, pp. 118 – 120.

132 'Australian Bush Heritage Fund Profile', Australian Bush Heritage Fund, February 2001, pp. 1.

- 6.238 Trust for Nature (Victoria) is a non-profit organisation aimed at permanently protecting remnant bushlands.<sup>133</sup> The Trust purchases land through a revolving fund scheme, imposes a conservation covenant, and sells it. The funds from the sale go back into the revolving fund and are used for further land purchases.
- 6.239 The Land for Wildlife Scheme, run on a state-by-state basis, aims to encourage and assist private landholders to provide habitats for wildlife on their properties. Land for Wildlife is co-ordinated through the Natural Heritage Trust's (NHT) Bush for Wildlife initiative, which aims to ensure better integration and co-ordination of wildlife habitat conservation throughout Australia. The scheme provides landholders with advice in order to balance production advice available through traditional landcare schemes.<sup>134</sup> Membership is free, voluntary and is not legally binding.<sup>135</sup>
- 6.240 Earth Sanctuaries Limited (ESL) is a publicly listed company that has conservation as its core business. ESL owns or manages 10 sanctuaries and has been doing so since 1985. ESL has at present 92,000 ha under land management. Another 10 properties are currently being prepared for operation.<sup>136</sup>
- 6.241 Opportunities to contribute to public good conservation are not as well developed in Australia as they are in the US and the UK. Mr Stuart Whitten has compared the opportunities for non-government contribution in the US and England to the Australian situation:

While there are several similar groups in Australia, their landholdings are relatively small (none hold more than 100, 000 hectares except Birds Australia who recently purchased a 262 000 ha property in the Northern Territory). Although the fledgling organisations in Australia are growing rapidly (for example Bush Heritage has acquired several properties in each of the last three years) they do not have access to the range of tools available to US and to a lesser extent, English NPOs ...<sup>137</sup>

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133 'Trust for Nature (Victoria)', downloaded from [www.tfn.org.au/page1.htm](http://www.tfn.org.au/page1.htm), accessed 5 June 2001.

134 P Hussey, 'Making room for nature: The Land for Wildlife scheme', *Landscape*, p. 51

135 'Land for wildlife', [www.land.vic.gov.au/4a256.../oa5fla73670bbaf04a2568310021eaad?OpenDocument&ExpandSection=](http://www.land.vic.gov.au/4a256.../oa5fla73670bbaf04a2568310021eaad?OpenDocument&ExpandSection=), accessed 5 June 2001.

136 *Repairing the Country*, p. 58.

137 'If you build them, will they pay? – Institutions for private sector nature conservation', School of Economics and Management, University of New South Wales.



**Recommendation 19**

**6.242 The Committee recommends that the Commonwealth government, in co-operation with the states and territories:**

- **investigate an ecologically sustainable development finance authority for the purpose of providing to landholders low interest loans for transition to ecologically sustainable land management systems and the development of ecologically sustainable industries; and**
- **if found feasible, request the Commonwealth Parliament to enact legislation to provide for the establishment of private sector ecologically sustainable investment corporations, to provide investment capital for ecologically sustainable industries. Investment in such corporations should:**
  - ⇒ **be open to landholders and non-landholders alike;**
  - ⇒ **attract a 150 per cent tax deduction up to a maximum of \$1,000,000 for any one investor; or**
  - ⇒ **in the case of low income investors, a 100 per cent tax rebate, up to a maximum of \$2,000 per individual per tax year; and**
  - ⇒ **attract a concessional capital gains tax rate.**

**6.243** On the whole, the landholders who provided evidence to this inquiry believed that they had experienced adverse effects from conservation measures that have been implemented over the past twenty years. This evidence also indicated that some landholders had successfully improved the environmental sustainability of their land use practices. The evidence from Commonwealth and state governments and their instrumentalities and agencies was supportive of the present arrangements. The Committee also notes that many states have trial programs in operation, testing techniques and administrative approaches. The Committee believes that additional research should be done into the effectiveness of different approaches to improving the sustainability of management of natural systems and the effects upon landholders, both here and abroad. The Committee would like to see this matter taken up when the Parliament resumes in 2002, and believes that the appropriate minister should ask this Committee to undertake such a study.

**Recommendation 20**

- 6.244 The Committee recommends that the Minister for Environment and Heritage ask the Committee to conduct an inquiry into the effectiveness of different approaches to attaining public good conservation outcomes, and further inquire into the effects upon landholders, land use, cultural value, and rural communities, both here and abroad, of those approaches.**

The Hon Ian Causley MP

Committee Chair

19 September 2001