The Parliament of the Commonwealth of Australia

Public good conservation: Our challenge for the 21st Century.

Interim report of the inquiry into the Effects upon Landholders and Farmers of Public Good Conservation Measures Imposed by Australian Governments

House of Representatives
Standing Committee on Environment and Heritage

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Canberra

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Contents

Foreword vii
Membership of the Committee xi
Terms of reference xiii
List of abbreviations xv
List of recommendations xvii

THE REPORT

1 Overview 1

Introduction 1
Inquiry background 9
Conduct of inquiry 10
Relationship to *Co-ordinating catchment management* 10
Structure of the report 12

2 Policy ideas and framework for public good conservation. 15

Introduction 15
Who manages the land? 16
What is public good conservation? 17
Is the distinction between public and private goods useful? 20
Property rights 24
Duty of care 31
What is a duty of care for the environment? 35
The limits of a landholder's duty of care 38

Difficulties with a legislated duty of care based on the common law 42
Ideas in action – Cost sharing principles 46
Conclusion 53

3 Impact on landholders of public good conservation measures 57

Introduction 57
Cost of programs to landholders 58
Impact on property value. 63
Access to finance 64
Uncertainty surrounding a landholder's land-use rights 65
An alternative view 67
Conclusion 67

4 Public good conservation measures abroad 69

Introduction 69
The European Union 71
Result of the 1992 reforms of Common Agricultural Policy (CAP) 73
Agenda 2000 Reform of the CAP and additional agri-environment measures 74
Other European Union support programs 76
Agri-environment schemes in England 78
Agri-environment schemes in the United States 80
Opportunities for non-government contribution 82
The United States 82
England and the United Kingdom 83
Taxation arrangements 84
Legislative and regulatory approaches 88
Conclusion 88

5 The policy foundations of public good conservation 91

Introduction 91
Limitations of the current policy approach as perceived by some landholders 92
Is there sufficient knowledge to implement cost - sharing systems? 92
Does a landholder's own self-interest provide a sufficiently motivating reason? 96
Is the current approach to cost sharing an effective policy? 98

Does current policy accurately reflect the nature of land use? 105
Do international agreements preclude outcome-oriented natural systems management policies?109
Should incentives be used to promote conservation activities?.. 110
Do current policy approaches acknowledge existing public good conservation activities by landholders?.. 116
Do current policy approaches contain incentives that lead to inappropriate land management practices? 117
Do current policy approaches contain inequities?... 120
Conclusion 125

6 Policy initiatives for public good conservation programs 127

Introduction.. 127
Appropriate policy principles for public good conservation.. 130
Principle 1: Landholder rights in respect of land use. 130
Principle 2: All land holders have a duty of care to manage land in an ecologically sustainable manner 132
Principle 3: Policies and programs must focus on outcomes.. 134
Principle 4: Repairing past damage is a shared responsibility.. 135
Principle 5: All programs must be tailored to the needs of the circumstances........................ 136
Principle 6: All programs must be based on the latest and best scientific data 136
Specific policy initiatives.. 137
Provide incentives to undertake public good conservation activities 139
Provide transition assistance to ecologically sustainable forms of production and management140
Pay management costs when land is removed from production for public good conservation reasons... 142
Effective assistance for ongoing land management costs 146
Where land use is removed altogether, pay compensation 152
Reform taxation laws, state and local charges to remove anomalies 158
Foster ecologically sustainable industries.. 173
Develop legislative structures.. 181
Develop market mechanisms only where appropriate 184
Provide access to finance 187

APPENDICES

Appendix A – List of submissions 193

Appendix B – List of exhibits 203

Appendix C – List of public hearings 207

Appendix D – Inspections and discussions 215

Foreword

There is little doubt that Australia faces an environmental crisis. There is also little doubt that the consequences of failing to act in an appropriate way will be crippling to our society and our economy.

The large cities of our country all depend upon the products of rural Australia. They rely upon the water generated in the nation's catchments and the eco-services our countryside provides. The entire nation derives economic benefit from the tourism industry that rests to a significant extent on the natural beauty inherent in our country's landscape.

The entire community must, therefore, act sooner rather than later to address the environmental problems facing the nation. The Committee reached this conclusion in its report *Co-ordinating catchment management* and affirms it in the present report.

Given the nature of the environmental problems facing the nation, all landholders will have to significantly change the way that they manage land. This process is already under way, but much more needs to be done.

A major part of this process is that landholders are, increasingly, required to undertake conservation works from which they can anticipate little or no immediate benefit. Even in the medium and longer terms, they may derive only limited benefits. The major beneficiaries will be 'off site' and usually will be the general community.

Conservation activities that a landholder undertakes, either voluntarily or as a requirement of managing land, which benefit someone other than the landholder undertaking the activities are public good conservation activities.

This inquiry was provided with evidence that public good conservation activities raised two major issues for landholders and ultimately for the entire community. These issues are not trivial matters and it was clear that they must be addressed at the highest levels of government.

First, a large number of landholders have often been required to meet a significant portion of the cost of public good conservation programs, even though they derived limited or no benefit from the activities. This has led to calls for financial assistance for landholders so that they can implement public good conservation programs.

Second, landholders are often required by one or other level of government to undertake public good conservation measures. The Committee was advised that such regulations are considered by some landholders to erode what they have been led to believe are their property rights. This has led to calls for compensation for the putative property rights that landholders believe have been taken from them.

The evidence the Committee received indicated that the present policy arrangements were not addressing these concerns. As a result, less public good conservation was occurring than was desirable given the depth of the environmental problems facing the nation. Moreover, the landholders who made submissions to the inquiry and who gave evidence indicated a high level of frustration and reported anger and resentment in the rural community as a result of what were perceived to be inappropriate policies.

The evidence suggested to the Committee that nothing short of a re-configuration of land use practices in Australia is required. Crops and products produced at present will need to be produced in different and more sustainable ways. New industries will need to be developed and new markets may well be created.

The major drivers of the re-configuration of Australian land use will be landholders.

This inquiry discovered that landholders in this country were eager to change their land use system, because they care about their land and they care about the future. Often, however, they do not have the resources to do so.

Evidence provided to the Committee indicated that if landholders do not possess the financial capacity to undertake the conservation works required, then the works are unlikely to occur and the environmental problems facing the nation will remain and only get worse.

Moreover, the Committee considers that the problems facing land use in Australia present opportunities to our farming community and the nation. Those opportunities will be realised only if the transition from dangerous land management practices to sustainable land use practices is managed sensibly and pragmatically.

The present inquiry found that this was not occurring to the extent required.

The Committee saw clearly that the challenge for governments is to ensure that the requirements on landholders and community are fair and equitable and that landholders have access to the necessary information and financial resources to make the transition. Furthermore, governments also have to ensure that their policies are practicable.

The recommendations in this report aim to attain these outcomes. For this reason, the present report is a companion report to the Committee's earlier report, *Co-ordinating catchment management*. In that report, the administrative structure required was set out and recommendations made. Moreover, the Committee recommended that the government examine the feasibility of using a national environmental levy to provide the public component of the financial resources that addressing environmental degradation required. The Committee affirms those recommendations.

In this report, further policy initiatives are recommended. The Committee believes the recommendations contained in the two reports provide a comprehensive system that will not merely halt and reverse environmental degradation, but revitalise rural Australia and provide employment opportunities to rural and urban Australians. Just as importantly, the recommendations in the two reports provide what Australians want and have come to consider theirs: a sustainable and environmentally responsible lifestyle unequalled anywhere in the world.

The Hon Ian Causley MP
Chair

Membership of the Committee

Chair	Hon Ian Causley MP	
Deputy Chair	Mr Anthony Byrne MP	
Members	Mr Phillip Barresi MP	Ms Jane Gerick MP
	Mr Kerry Bartlett MP	Mr Harry Jenkins MP
	Mr Bruce Billson MP	Hon Dr Carmen Larwrence MP (to 27/11/2000)
	Ms Ann Corcoran MP (from 27/11/2000)	Mr Patrick Secker MP (from 29/3/2001)
	Mrs Chris Gallus MP (to 8/3/2000)	Mrs Danna Vale MP

Committee Secretariat

Secretary	Mr Ian Dundas
Inquiry Secretary	Dr Andrew Brien
Research Officer	Ms Katherine Harrington
	Dr Sarah Hnatiuk
Administrative Officers	Ms Marlene Lyons
	Ms Jeannie Brooks

Terms of reference

The House of Representatives Standing Committee on Environment and Heritage will enquire into and report on:

- the impact on landholders and farmers in Australia of public-good conservation measures imposed by either State or Commonwealth Governments;
- policy measures adopted internationally to ensure the cost of public good conservation measures are ameliorated for private landholders;
- appropriate mechanisms to establish private and public-good components of Government environment conservation measures; and
- recommendations, including potential legislative and constitutional means to ensure that costs associated with public-good conservation measures are shared equitably by all members of the community.

List of abbreviations

Abbreviation	Meaning
ABARE	Australian Bureau of Agricultural and Resource Economics
ABS	Australian Bureau of Statistics
AFFA	Agriculture, Fisheries and Forestry Australia
ANZECC	Australian and New Zealand Environment and Conservation Council
ATO	Australian Tax Office
CAP	Common Agricultural Policy
CRP	Conservation Reserve Program
CSIRO	Commonwealth Scientific and Industrial Research Organisation
EA	Environment Australia
EAGGF	European Agricultural Guidance and Guarantee Fund
ECU	European Currency Unit [‘Euro’]
EEC	European Economic Community
EPA	Environmental Protection Agency
EQIP	Environmental Quality Incentives Program
ERDP	England Rural Development Program

EU	European Union
FSA	Farm Service Agency
MAFF	Ministry for Agriculture, Fisheries and Food
NRCS	Natural Resources Conservation Service
PGA	Pastoralists and Graziers Association
RFA	Regional Forestry Agreement
SCARM	Standing Committee on Agriculture and Resource Management
UMCCC	Upper Murrumbidgee Catchment Coordinating Committee

List of recommendations

Policy ideas and framework for public good conservation

Recommendation 1 30

The Committee recommends that when programs are designed that aim to promote public good conservation, the generally perceived moral rights of landholders are acknowledged and taken into account in the design of programs

Recommendation 2 56

The Committee recommends that:

- the Commonwealth seek agreement with the states and territories for a commonly accepted definition in principle of a landholder's duty of care;
- this definition be that landholders have a duty of care to manage the land in their charge in a way that is ecologically sustainable, given the particular geographical location, and based upon latest scientific information;
- all legislation in all jurisdictions be amended to incorporate this duty of care, as a minimum standard of land management; and
- all Commonwealth funding for public good conservation activities and ecologically sustainable use of Australia's resources be dependent upon the recipient accepting this duty of care

The policy foundations of public good conservation

Recommendation 3 126

The Committee recommends that the policy foundations for public good conservation funding be focused upon attaining good conservation outcomes while addressing the equity issues revealed in this inquiry

Furthermore, the Commonwealth should work with the states to recast the existing cost-sharing principles so that they focus on achieving conservation outcomes, while including a full recognition of the equity concerns of landholders raised in this inquiry

Policy initiatives for public good conservation programs

Recommendation 4 133

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.

Recommendation 5 137

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.

Recommendation 6 142

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).

Recommendation 7 152

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.

Recommendation 8 158

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.

Recommendation 9 162

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.

Recommendation 10 163

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.

Recommendation 11 169

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.

Recommendation 12 172

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.

Recommendation 13 174

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

Recommendation 14 180

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.

Recommendation 15 .... **182**

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.

Recommendation 16 .... **184**

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.

Recommendation 17 .... **187**

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.

Recommendation 18 .... **188**

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 30th June 2002.

Recommendation 19 191

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.

Recommendation 20 192

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.

1

Overview

> … private and public good conservation measures are actually connected or two sides of the one coin. There is no escaping the simple fact that what hurts our physical environment ultimately ends up hurting every single one of us, sooner or later.[1]

Introduction

1.1 This is an interim report. The issues surrounding the capacity of landholders to implement environmentally sustainable management of the natural systems in their care, and their participation on public good conservation programs, are very complex. However, an early response from the Committee is required. Most of the evidence presented to the Committee came from landholders who were dissatisfied with current arrangements and who believed that the contributions asked of them raised financial concerns.

1.2 The Committee has not been able to analyse the financial circumstances of the landholders as these relate to their farming enterprises and the link between farm viability and the take-up of sustainable production practices, natural systems management principles and public good conservation activities.

1.3 In some cases, the landholders went so far as to say that the rights they believed they had as property owners had been diminished without compensation. These landholders deserve a considered response and as much information as can be reasonably provided to them.

---

1 Submission no. 52, p. 3.

1.4 The Committee received some evidence from government agencies but these agencies did not, in most cases, assess the impact of the large array of existing policies, programs and regulations that impinge on private land use practices. In some cases, these measures are intended to enhance sustainable land use. From the evidence provided it has not been possible for the Committee to evaluate these policies and programs in any systematic or comprehensive way.

1.5 In presenting this report, the Committee is mindful that without a comparative analysis of existing domestic and international programs, it has not been able to identify the elements of successful and effective programs that should be carried forward into public good conservation policy recommendations.

1.6 The Committee has therefore largely limited its report to discussing possible responses to the issues placed before it by the landholders who gave evidence.

1.7 The inquiry terms of reference limited the Committee's evidence gathering to specific areas of interest, and the terminology involved – such as 'public good conservation' and 'duty and of care' – failed to provide an agreed basis for consideration of the issues. These concepts are discussed in this report but clear and agreed definitions have proved elusive. Inevitably, these terms are used with some imprecision. The Committee has decided therefore, for the purposes of making a timely report, to go beyond the pursuit of definitions and to respond to the evidence presented to it.

1.8 The Committee wants to respond to the evidence it has received. Clearly there is a perception among some landholders that their concerns need to be aired and that something needs to be done. The Committee agrees, and has therefore decided to present its findings in this interim form. In so doing, the Committee acknowledges that there is a need for more work to be done to explain why some landholders are more able than others to participate in public good conservation programs, or more easily make the transition to more sustainable management of natural systems. The best way forward will be clearer when more work has been done to answer this question.

1.9 At the end of the report the Committee makes a recommendation for further inquiry. It is hoped that this will allow the interim findings, conclusions and recommendations made in this report to be taken to the next stage. The Committee has done what it can to draw conclusions and make recommendations based on the evidence it has received. The Committee wants to make it clear that the findings outlined in this report may warrant further consideration in the light of the proposed

continuation of the inquiry. The Committee may well want to add to its findings or make further recommendations.

1.10 Australia is experiencing an environmental crisis.[2] Governments at all levels, non-government organisations and many individuals have implemented a considerable number of programs to address the environmental problems facing the nation and foster the transition to a system of ecologically sustainable land management.

1.11 Many individuals, groups and communities have given much hard work. There have been some localised successes. However, as this Committee has previously reported, the environmental problems facing the nation still have not been addressed by systemic, national co-ordinated programs.[3]

1.12 The issues considered by the Committee in this inquiry are complex and, in preparing this report, the Committee has relied heavily on the evidence presented in submissions and at public hearings. This evidence is overwhelmingly from landholders who believe that they have been adversely affected or who are having difficulties in pursuing better conservation outcomes on their properties. There is scope for more research on the impacts of government programs and the options for facilitating private conservation, but this has been beyond the capacity of the Committee in the context of this inquiry. The conclusions and recommendations presented in the following chapters reflect the concerns of the landholders as expressed in this evidence.

1.13 Efforts to lay the foundation for a national and comprehensive approach appear at times to be thwarted by regional differences. One example is indicative. In October 2000, the Prime Minister, the Hon John Howard MP, announced a national action plan to address salinity and water quality in Australia.[4] Funding would be provided to the states and territories,

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2 Senator the Hon. Robert Hill, *Natural Heritage Trust - Repairing the damage*, Media Release, 18 June 1997, http://www.ea.gov.au/minister/env/96/mr18jun96.html; *Growing a sustainable economy*, An address to the CEDA "State of the Nation" Conference, 22 June, 2000, Canberra, http://www.ea.gov.au/minister/env/2000/sp22jun00.html; *Achieving the triple-bottom line*, An address to the John Stuart Mill Society, Adelaide, June 13, 2000, http://www.ea.gov.au/minister/env/2000/ sp13jun00.html; T Hatton (CSIRO Land and Water), A Campbell (Chair, National Dryland Salinity Program) and D Wheelwright (Deputy Chair, Lachlan Catchment Management Committee), *Salinity crisis – how big, who pays?*, National Science Briefing, 23 June, 1999; G Harris (Chief, CSIRO Land and Water), *Damaged Landscapes*, National Science Briefing, 2 April, 1998; Allen Consulting Group, *Repairing the country: Leveraging private investment*, A report prepared for the Business Leaders Roundtable, Canberra: August 2001.

3 See *Co-ordinating catchment management*, Canberra: Parliament of the Commonwealth, 2001.

4 The Hon. John Howard MP, Prime Minister, *Our vital resources: A national action plan for salinity and water quality in Australia*, www.pm.gov.au/news/media_releases/ 2000/media_rel_474_sup.htm, accessed 8 August, 2001.

provided that the other jurisdictions in the Commonwealth agreed to provide matching funds and accept various targets, approaches, governance frameworks and programs. As of 7 May 2001 only three of the eight jurisdictions in the Commonwealth had signed the agreement – South Australia, Queensland and the Northern Territory.[5]

1.14 The importance of all Australian jurisdictions entering the agreement offered by the Commonwealth is thrown into focus when the extent of environmental degradation is understood. For example, the effect of salinity alone is enormous. According to the *Australian dryland salinity assessment 2000*, compiled by the National Land and Water Resources Audit:[6]

- Approximately 5.7 million hectares are within regions considered to be at risk or affected by dryland salinity. It is estimated that within 50 years the high risk area will increase threefold to 17 million hectares.
- About 20 000 km of major road and 1600 km of railways are in regions mapped to have areas of high risk. By 2050 this will increase to 52 000 km of road and 3600 km of railway.
- Up to 20 000 km of waterways could be significantly affected by salt by 2050.
- 630 000 hectares of remnant vegetation and associated ecosystems are within regions considered to be at risk of dryland salinity. This is projected to increase by up to 2 million hectares by 2050.
- 200 rural towns are likely to suffer damage to infrastructure and other community assets from dryland salinity by 2050.

1.15 These figures refer only to the effects of dryland salinity. There are, however, numerous other, and as serious, environmental problems.[7]

1.16 Recounting figures such as these may disguise the impact that the environmental problems facing the nation will have on our national economy and the lives of our fellow citizens.

1.17 For example, in the Murray-Darling Basin, agricultural production is valued at about $10 billion per annum. This is approximately 40 per cent of the gross value of Australia's agricultural production. Mining and mineral production contributes about $1.66 billion, or about 5 per cent of the Australian total. Wood and paper production, according to 1991-1992

5 AAP Report, 'SA: Federal govt doubts states' commitment to salinity plan', Monday, 7 May, 2001.

6 Canberra: Commonwealth of Australia, 2001, p v.

7 A partial recounting occurs in the Committee's report, *Co-ordinating catchment management*, Canberra: Parliament of the Commonwealth, 2001.

figures, accounts for about $1.218 billion. The value of tourism and the recreation industry in the Murray-Darling Basin is valued at about $3.44 billion. In 1991-1992, there were some 3 280 manufacturing locations, which employed over 62 400 people, with sales of produced goods exceeding $10.750 billion, or 6.4 per cent of the Australian total.

1.18 In the 1996 census, the Murray-Darling Basin had a population of almost two million people, or almost 11 per cent of the total Australian population. Outside the Murray-Darling Basin, another million Australians are heavily dependent on the River Murray for their water supply.[8]

1.19 The social and economic consequences that will arise if the environmental problems facing the nation are not addressed will affect the entire nation. As the Committee noted in its earlier report:

> The expectation within the community is that legislators will act – sooner rather than later; decisively, rather than timidly. Australians want the talking to stop and the action to begin.
>
> Furthermore, they do not want a piecemeal approach, but a national approach, co-ordinated at a national level, and founded upon a national policy to which all stakeholders should subscribe and in which all Australians have the opportunity to participate.[9]

1.20 Many of the reasons for the failure to address environmental degradation by way of systemic and co-ordinated programs have been previously identified by this Committee, as well as in a number of reports and inquiries by other parties.[10] The solutions required are now broadly agreed

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8 South Australian Select Committee on the River Murray, *Final Report*, Adelaide: Parliament of South Australia, 2001, pp. 22-23.

9 *Co-ordinating catchment management.*

10 Industry Commission, *A full repairing lease*, Canberra: Commonwealth of Australia, 1998, C Binning, M Young and E Cripps, *Beyond Rates, Roads and Rubbish: opportunities for local government to conserve native vegetation*, National R&D Program on Rehabilitation, Management and Conservation of Remanent Vegetation, Research Report 1/99, Environment Australia: Canberra, 1999; E Cripps, C Binning, and M Young, *Opportunity denied: Review of the legislative ability of local government to conserve native vegetation*, National R&D Program on Rehabilitation, Management and Conservation of Remanent Vegetation, Research Report 2/99, Environment Australia: Canberra, 1999; C Binning and M Young, *Conservation hindered: The impact of local government rates and State land taxes on the conservation of native vegetation,*, National R&D Program on Rehabilitation, Management and Conservation of Remanent Vegetation, Research Report 3/99, Environment Australia: Canberra, 1999; C Binning and M Young, *Talking to the Taxman about Nature Conservation*, National R&D Program on Rehabilitation, Management and Conservation of Remanent Vegetation, Research Report 4/99, Environment Australia: Canberra, 1999; Steering Committee, National Natural Resource Management Policy Statement, *Managing natural resources in rural Australia for a sustainable future*, Canberra: Commonwealth of Australia, December, 1999; Steering Committee, National Natural Resource Management Policy Statement, *Steering Committee report to Australian governments on the public*

across the community and enjoy bi-partisan support.[11] Even contentious suggestions, such as the need for an environmental levy, appear to have broad community support, with one newspaper poll suggesting that over two thirds of those polled would support such a measure.[12]

1.21 As important as initiatives such as an environmental levy, national laws or a national catchment management authority may be, it remains true that environmental degradation occurs on a whole of landscape basis. In contrast, land management occurs according to a framework determined by people. This may include state and territory – jurisdictional – boundaries, municipal, county and shire boundaries, and ultimately, property boundaries.

1.22 In many cases, the ultimate responsibility for land management - who actually delivers a program to a specific area – will fall to the landholder managing a specified portion of land. Management programs developed and approved at a higher land management level will only be effective if landholders have the financial capacity and the requisite information, and are willing to implement the programs.

1.23 Moreover, landholders will often have to implement conservation measures for which they believe they receive little or no direct benefit at the time, or where they do not anticipate a benefit in the future. In some cases, the conservation activity required will produce a smaller benefit than some other, less sustainable activity.

1.24 Some benefits will not accrue to landholders but may be felt some distance away and, in the case of some conservation measures, in other jurisdictions. A case in point is the need for landholders in the Murray-Darling Basin to make a transition to more ecologically sustainable land use practices, in order to preserve the health of the river system and the access of downstream river communities to potable water.

1.25 Such activities are often referred to by the phrase 'public good conservation'. What this phrase means will be discussed at greater length in chapter 2.

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response to Managing natural resources in rural Australia for a sustainable future, Canberra: Commonwealth of Australia, July, 2000.

11 The Committee's *Co-ordinating catchment management* received support from both Government and non-Government Members and farming and environmental groups.

12 *Melbourne Herald-Sun*, 28 February 2001.

1.26 Evidence received during this inquiry suggested that there are at present many public good conservation programs in operation. This evidence is supported by the statement by the Minister for the Environment and Heritage, Senator the Hon. Robert Hill, *Investing in our natural and cultural heritage.*[13]

1.27 The programs listed by Senator Hill include activities to protect Australia's atmosphere, which includes greenhouse programs; programs to conserve and manage biodiversity; and programs for Australia's coasts and oceans, inland waters, the land, natural and cultural heritage and Antarctica. A number of well-known programs fall under these broad themes, for example, Landcare, Bushcare, Coasts and Clean Seas, as well as Endangered Species. These programs have funded more than 10 300 projects. The programs, and the projects they fund, receive varying amounts of money through the Natural Heritage Trust (NHT). In addition to the NHT, which will continue until 2007 to provide funding for projects to address environmental degradation, there is now also the National Action Plan for Salinity and Water Quality.

1.28 Evidence also suggested that landholders are keen to undertake more, if they are in a financial position to do so and have easy access to information and expertise.

1.29 As well, the evidence indicated that much of the effort needed to repair the environment would include public good conservation works. As a result, the amount of public good conservation would need to increase if environmental degradation is to be addressed and reversed on a whole of landscape basis.

1.30 Evidence given to this inquiry suggested that some landholders were experiencing considerable hardship as a result of the burdens that public good conservation programs, mandated by one or other level of government, had imposed upon them. A lack of information and, importantly, a lack of financial capacity, according to the submissions received, limited the degree to which landholders could engage in conservation activities.

1.31 In addition, many submissions indicated that landholders considered it unfair that they should undertake public good conservation activities when they derived only limited benefits or no benefit at all, and often did not possess the financial capacity to carry out the works required.

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13 22 May, 2001, pp. 63-75. Released as part of documentation accompanying the 2001-2002 Commonwealth Budget.

1.32 As a result, according to evidence received, in many cases the necessary encouragement (and motivation) for landholders to undertake any form of conservation activity, whether public or private, did not occur. Therefore, the foundation of a comprehensive approach to addressing environmental degradation was being eroded through policies that fail to motivate landholders.

1.33 The Committee makes the point that it is not unreasonable for the community to expect property owners to bear some of the cost of transition to new management practices. This occurs when businesses in urban areas are required to comply with new environmental protection laws, or householders are prevented from burning autumn leaves. Another example is the transition to unleaded petrol. It is important to keep in mind the size of the transition, the nature of it and the capacity of a property holder to bear it. Often there will be a transition time or an assistance program to attain specified outcomes quickly. The issue that faces the Committee is to determine the criteria to use to specify what cost is reasonable and what is not, and what will motivate compliance and what will not, in order to attain the conservation outcomes needed.

1.34 In addition, what this inquiry revealed, and what will be shown in this report, was that many landholders appear to believe that the potential effect of public good conservation requirements has not been fully understood in the design of much conservation policy. In fact, one of the major reasons that systemic programs have not been successfully implemented across landscapes is that the administration of the present arrangements intended to foster public good conservation are in many important cases not encouraging conservation. This will be discussed in chapters 3 and 5.

1.35 Acknowledging the importance of public good conservation and the need for more effective policies are the missing ingredients in developing a comprehensive approach to ecologically sustainable land use. Consequently, this report examines the criticisms that have been made of existing public policy in this area, and makes recommendations that address them, to thereby better promote the ecologically sustainable use of Australia’s natural systems.

1.36 All levels of government must address with greater energy and urgency the environmental problems facing the nation and, in particular, the implementation of appropriate and effective policies. Policy delivery must be revised to focus on obtaining outcomes. Institutions must be created to ensure that programs are devised and delivered, and funding must be raised equitably and allocated appropriately. The Committee, therefore,

reaffirms the recommendations made in its report, *Co-ordinating catchment management.*

1.37 This report takes the process begun in *Co-ordinating catchment management* to completion, by taking account of the realities of land management, and recommends policy settings that will promote public good conservation to foster the ecologically sustainable management of Australia's environment.

1.38 The Committee acknowledges that it has not considered the human cost of public good conservation measures. It notes that submissions made reference to personal stress, family tensions and the need for off-farm incomes to maintain the viability of farms subject to public good conservation measures.[14] The Committee has seen, from testimony, evidence and meetings, that landholders and their families experience considerable personal strain, and public good conservation measures only add to those pressures. While noting that many landholders are under considerable strain, and not wishing to dismiss or ignore it, the Committee has focused this report on the policy and program changes necessary to alleviate the stresses landholders experience from public good conservation measures.

Inquiry background

1.39 On 8 December, 1999, the Minister for the Environment, Senator the Hon Robert Hill, wrote to the Chair of the House of Representatives Standing Committee on Environment and Heritage, the Hon Ian Causley MP, requesting the Committee undertake an inquiry into the impact on landholders and farmers of public good conservation measures imposed by state and Commonwealth governments.

1.40 At the time, the Committee was conducting an inquiry into catchment management.[15] The Committee found there were considerable linkages between the inquiries, and agreed that some of the matters arising from the catchment management inquiry would be further addressed in the public good conservation inquiry.

14 For example, submission no. 124, p. 5; submissions no. 170, 177.

15 The report of that inquiry, *Co-ordinating catchment management*, was tabled in the House of Representatives on 28 February 2001.

Conduct of inquiry

1.41 The inquiry was advertised in national newspapers and newspapers with a rural and regional focus in April 2000. The inquiry generated a considerable amount of interest across the community. At the finalisation of the report over 260 submissions had been made and over 100 exhibits received.

1.42 Submissions were made by state and Commonwealth government agencies and authorities, peak industry bodies, policy lobby groups, community groups involved in conservation activities, and many individuals. Submissions from individuals included landholders as well as other people who had particular expertise. The scope of the information received ensured that the Committee had access to a diversity of views, experiences and expertise.

1.43 The Committee conducted a program of public hearings and visits to different parts of Australia. The Committee held public hearings in Melbourne, Brisbane, Sydney, Perth, Adelaide and Canberra. In all, over 80 witnesses were examined.

1.44 The Committee also visited regional areas to view public good conversation activities and meet members of regional communities engaged in public good conservation programs. These visits provided the Committee with direct information from people implementing conservation activities, and the Committee was able to see first hand the benefits and burdens on landholders of public good conservation requirements.

1.45 The regional areas visited included country Victoria (Edenhope and Colac), regional areas of Queensland (Nambour and Cardwell), western New South Wales (Nyngan), Narrogin in Western Australia, and the Riverland district in South Australia.

Relationship to *Co-ordinating catchment management*

1.46 The inquiry into catchment management revealed that effective conservation strategies in Australia were hampered by a piecemeal approach that resulted in a lack of co-ordination between catchment regions, between catchments and between jurisdictions.

1.47 In the report arising from that inquiry, *Co-ordinating catchment management*, the Committee made specific recommendations for the creation of a nationally co-ordinated approach that had access to ongoing and adequate

levels of funding. In effect, the Committee's report set out the institutional arrangements that are necessary in order to effectively plan and implement programs that will deliver the ecologically sustainable use of Australia's environment and its resources.

1.48 In the course of the catchment management inquiry, it became apparent that there were deficiencies in the current policy approaches to conservation that had been adopted in all Australian jurisdictions. Conservation outcomes were not being reliably promoted or encouraged, and considerable hardship was being imposed upon landholders who did not, in many cases, possess the information and financial capacity to meet the new and additional burdens of ecologically sustainable land management.

1.49 In the course of the Committee's inquiry, it also became clear that remedies would occur not only through appropriate institutions and funding, but also through programs that promoted conservation outcomes. However, while these activities would of necessity generally be focused on specific geographic locations, typically within the control of a single landholder, the intended beneficial results could potentially occur hundreds or thousands of kilometres away. The benefits arising from conservation works would often accrue to people other than the landholder undertaking the conservation work. This raised issues of equity and motivation.

1.50 The public good conservation inquiry provided the Committee with the opportunity to examine these issues. In particular, the Committee has been able to examine policy anomalies in this area. The Committee will recommend changes that will address the equity and motivational issues that have been put to it.

1.51 The present report focuses on the cost to landholders and farmers of mandatory public good conservation measures. It also examines the measures that have been adopted overseas. The report reviews the current policy settings and provides recommendations for reform, so that more public good conservation programs are implemented. The aim is to construct these programs so that they are less of a burden on individual landholders.

1.52 As a result, the present report identifies the policy shortcomings in the current policy arrangements and recommends remedies as well as effective programs for the environmental problems facing the nation.

1.53 Together, the two reports will set out the institutional and policy arrangements that Australia requires to address the environmental challenges facing the nation.

1.54 The proposals made in these two reports address an ongoing tension: using our natural environment to contribute to our national prosperity, while at the same time ensuring that the environment is repaired, preserved, and protected for our own future and the benefit of future generations. They too must be able to enjoy our unique heritage and prosper from it.

1.55 We must act now, not only for their sakes, but because the problems are immediate and will affect our own immediate future and prosperity.

1.56 However, as is clear from these two reports, only sensible, practical programs, based around what people can reasonably achieve, focused on obtaining outcomes, and adequately supported both financially and through national institutions, will assure the outcome the nation wants.

Structure of the report

1.57 The inquiry into public good conservation raises many diverse issues. There are conceptual issues, such as the meaning of the phrase 'public good conservation', and the entitlements and rights that property ownership and control are thought to convey. This is particularly important as mandated public good conservation programs appear to many who made submissions to this inquiry, to undermine what some landholders believe to be traditional and accepted notions of property rights.

1.58 As well, there are practical issues. For example, the effect on landholders of policies that have been implemented, and the design of appropriate policies in order to ensure public good conservation outcomes are attained while not imposing hardship on landholders, will be examined. This report deals with these issues.

1.59 In chapter 2, the notion of public and private good is examined. As well, the nature of land tenure in Australia and property rights and responsibilities over land are discussed.

1.60 Chapter 3 focuses on the impact of public good conservation measures on landholders. The majority of landholders who provided submissions to the inquiry had experienced considerable hardship and dislocation as the direct result of what they regarded as poorly formulated or improperly implemented conservation programs imposed upon them by one or other tier of government.

1.61 In chapter 4, public good conservation measures that have been implemented overseas are examined. The Committee does not claim that this examination is exhaustive. In order to limit the examination to a manageable size, the Committee focused on public good conservation measures in the United States, the member nations of the European Union and also at the level of the European Union itself.

1.62 As noted, the Committee heard claims that poorly formulated or ill-conceived policies were imposing adverse effects on landholders. In chapter 5, the Committee examines these policies and identifies a number of policy developments that are required to promote public good conservation, without imposing unreasonable burdens upon landholders.

1.63 In chapter 6, the policy developments identified in chapter 5 are translated into recommendations for specific programs that will promote public good conservation, while preventing undue hardship falling on landholders and clarifying their land use rights and obligations.

2

Policy ideas and framework for public good conservation.

> The notion of a public good is not new and its extension to use in conservation is not unnatural. It is important to get the concept right at the outset because, when one comes to saying, 'How do we address conservation issues,' we have to be careful not to be driven too heavily by the public good theory because it was developed in the specific context of pure public goods and has extended from there.[1]

Introduction

2.1 All public policy rests upon ideas. These ideas should be clearly articulated and appropriate to the issues that the policy is supposed to address, so that the outcomes required may occur as intended. Moreover, clear ideas and definitions are required so that the expectations of different stakeholders may be aligned.

2.2 Evidence provided to this inquiry indicated that the ideas underpinning the policies and programs for public good conservation are not always clearly defined and the resulting programs are not always sharply focused on producing the outcomes wanted. This has caused, the Committee was advised, tensions between policy makers and landholders and, in some cases, contributed to hardship for some landholders. The evidence indicated that the tension between the current directions in public good conservation policy and the effect of these policies upon landholders appears to be exacerbated by a fundamental disagreement between the

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1 Mr Ted Evans, Secretary of the Treasury, *Transcript of Evidence*, p. 543.

major stakeholder groups. The disagreement centres on the definition of key terms, such as 'public good', 'duty of care' and 'property rights', and the policies that flow from the meaning that is attributed to those terms.

Who manages the land?

2.3 The terms of reference focus this inquiry on the effects of public good conservation measures on landholders and farmers. 'Landholder' does not refer to a single sort of relationship to land, but one that has many facets.

2.4 Evidence indicated that landholders can be classified by way of their land use. For example, there are farmers, graziers, market gardeners, foresters and miners. Landholders can also be classified by way of their tenure; that is the legal relationship they have to the land that they manage.

2.5 Dr Murray Raff, a constitutional and property law expert, advised the Committee that all land is held from the Crown, via one or another type of tenure.[2] The most familiar is freehold tenure. There are other sorts of tenure, such as crown leases and mining rights.

2.6 The purpose for which land is used can vary widely. Some landholders manage land on a 'for profit' basis; others on a not-for-profit basis; and others on a combination of these reasons. An example of a not-for-profit landholder is the National Trust of South Australia[3] or any of the Crown lands that are held as national parks or other forms of reserve in public or Crown ownership and managed by an agency of either a Commonwealth, state or territory or local government.

2.7 The Committee received submissions and evidence from landholders in all these categories. The Committee did not focus on one or other type of landholder. Rather, the inquiry examined the way that public good conservation measures affected *any* sort of landholder. In particular, the inquiry looked at the way that the landholders' use of the land over which they have tenure may have been affected as a result of the public good conservation measures imposed upon them by one or another level of government.

2 Private briefing, 16 August, 2000.

3 See submission no. 258 and *Transcript of Evidence*, pp. 488-499.

What is public good conservation?

2.8 A major point of tension in the submissions and evidence received by the Committee was the definition of 'public good conservation'. The Committee was advised by Environment Australia that 'conservation'

> … refers to the management of natural resources to protect biological diversity and the ability to provide flows of various values and services. These include the capacity of natural resources to provide:
>
> - a range of marketable goods (such as water, food, fibre, available energy, and genetic resources);
> - non-marketed or non-commercial use benefits (such as cultural and recreational use);
> - ecosystem services supporting both production and the natural environment (including global water and carbon cycles, pollination services, insect control, water purification, groundwater recharge, and fishery spawning grounds); and
> - other indirect-use and non-use values (including existence and bequest values, and ethical and spiritual considerations).[4]

2.9 Many submissions would agree with some or all of this definition. It seemed to the Committee, from submissions and testimony, that although the definition may not disputed by all stakeholders, where people mainly disagree is over the extent to which a landholder has a responsibility to meet each element of the definition. This is discussed further in following chapters.

2.10 Some submissions took a strict, technical, economic definition. For example, the Pastoralists and Graziers Association of Western Australia advised the Committee that:

> A public good is a thing or circumstance that provides amenity to individual people but from which they are not excluded and therefore cannot be charged. Often this is because people cannot practicably be excluded. Streets lights are a commonly employed text book example. It is a much-abused term. Prevention of salt encroachment upon <u>neighbouring</u> property, visual amenity and much else are inherent public goods, that is, there is no way yet known of establishing private property rights and hence incentives to conserve them. The preservation of a rare species might or might not be inherently a public good depending upon the circumstances.[5]

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4 Submission no. 231, p. 4.

5 Submission no. 49, p. 3. Emphasis in original.

2.11 The CSIRO supplied a similar definition:

> In economic theory, a public good is described as a non-able good whose production (e.g. by a landholder) cannot be appropriated for exclusive use (e.g. by a willing buyer). These public goods have two essential characteristics – consumption of the good by one party cannot exclude consumption by others, and the potential cost of excluding non-payers exceeds the value that any one consumer might place on the good (and be willing to pay for it). These two characters combine to create a market failure whose resolution usually requires multi-lateral bargaining, as opposed to the more typical bilateral market transaction for private goods.[6]

2.12 The Institute of Public Affairs supported the substance of these definitions:

> Public goods are best thought of as goods from which people cannot readily be excluded. As a result, unlike food, warmth and shelter, their provision cannot easily be left to individuals pursuing their own separate interests. Clean air is often cited as the classic example.[7]

2.13 The key feature of the technical definition of 'public goods' is that no one can easily be excluded from consuming the good, once it is available,[8] for example, because it is impracticable to provide public goods to one person exclusively as any person may obtain access to them. As a result, there is an incentive for an individual consumer to consume the good but not pay for it; that is, there is an incentive to 'free ride'. As a consequence of this, there is no incentive for suppliers to manufacture the good because there is no effective way to get a consumer to pay for it and therefore, an effective market cannot develop. The overall result is that insufficient levels of public goods may be supplied, and market failure results.[9]

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6 Submission no. 154, pp. 2-3.

7 Submission no. 156, p. 1.

8 Typically, a particular good is a 'public good' because it meets two conditions. The first is that it has a particular nature that prevents it being provided exclusively; for example, fresh air. The cost of making the good exclusive is so greater than any individual would be willing or capable of paying to obtain the good. The second attribute is, that consumption by one person does not reduce the consumption of the good by any other person. This is the so called "non-rival" condition. (See B Aretino *et al*, *Cost sharing for biodiversity conservation: A conceptual framework*, Productivity Commission, staff research paper, Canberra: Commonwealth of Australia, 2001, p. vi; ABARE, *Alternative approaches to natural resource management*, Canberra: Commonwealth of Australia, 2001, pp. vi and 12; Productivity Commission, *Report on government services 2000*, Canberra: Commonwealth of Australia, 2001, p. 4.) However, as ABARE notes in its report, *Alternative policy approaches to natural resource economics* (p. vi), 'Public goods will also usually be nonrival but that will not always be the case'.

9 This account is also reflected in B Aretino *et al*, *Cost sharing for biodiversity conservation,* p. vi; ABARE, *Alternative approaches to natural resource management*, pp. vi and 12; Productivity Commission, *Report on government services 2000*, p. 4.

2.14 Evidence collected by the Committee indicated that this technical, economic definition should be contrasted with a commonsense definition of "public good". The Committee itself began with a commonsense definition[10] and it was this definition that was reflected in the vast majority of submissions from landholders and community groups and even some government agencies.[11] For example, Mayne – Wilson & Associates advised the Committee that 'public good = a good or service provided or funded by the public sector on the basis of a perceived benefit to the community'.[12] Environment Australia advised the Committee that public good conservation:

> … refers to conservation activities where all the benefits, or a significant portion of the benefits, are not able to be captured by the individual undertaking the activity.[13]

2.15 In testimony, Mr Steve Hatfield Dodds representing Environment Australia advised the Committee that:

> Public good conservation is considered to occur where all, or a significant proportion of, the benefits of conservation are not captured by the individual that undertakes that activity …[14]

2.16 The difference between the commonsense definition and the technical definition is that the technical definition takes potential exclusivity (or lack of it) as the defining feature, whereas the commonsense definition focuses upon who in practice is likely to, or as a matter of fact does, derive a benefit from some activity. Irrespective of whether the good can be made exclusive, if the benefit of producing it flows without charge to someone other than the producer, then it is a public good, in commonsense terms, rather than a private good.

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10 See the Committee's *Issues Paper* for this inquiry, http://www.aph.gov.au/house/committee/environ/pubgood/issuespp.pdf. In the issues paper the Committee stated that:

For the purpose of its inquiry, the Committee will take the term, 'public good conservation' to mean conservation activities undertaken by private land users which bring environmental benefits to the community at large. In some cases, such activities are carried out to the detriment to the landholder, as in the case of legislated prohibition on clearing land that the landholder wishes to cultivate or stock. Alternatively, conservation activities may be good for the landholder as well as for the wider community; retaining native vegetation as a wind break would be an example... In this case, elements of private and public good result from the single activity.

11 For example, submission no. 231 (Environment Australia).

12 Submission no. 1, p. 2.

13 Submission no. 231, p. 4. The idea that a public good provides a benefit to the broad community is also explicitly stated in submission no. 202, p. 1, which in other respects adopted the economic definition.

14 *Transcript of Evidence*, p. 91.

2.17 This leads the Committee to observe that those people making submissions who adopted a technical, economic definition have failed to understand that the inquiry is examining conservation undertaken by individuals *for* the public good, not conservation *of* public goods created by public agencies.

Is the distinction between public and private goods useful?

2.18 The next question that arises is whether the distinction between public and private goods is useful when allocating the cost associated with conserving the environment. The Committee received evidence that the there was no neat division between the respective responsibilities and beneficiaries of public good conservation activities:

> … when the owner of land takes measures to conserve the environmental quality or sustainability of land the environment is the immediate beneficiary. The owner, and his or her descendants, will always benefit because the land has benefited and the long term interests of all are enmeshed. Wider society will also benefit for similar reasons from the conservation of environmental quality …[15]

2.19 The South Australian Government advised the Committee that 'the distinction between private and public good components of government imposed conservation measures and the valuation of these components is not a straightforward matter' but that it is necessary to draw such a distinction 'in order to equitably assign the cost of these measures between private individuals and the public at large'.[16]

2.20 Similarly, Environment Australia stated in its submission that:

> Most conservation activities, including those occurring on private land, provide public benefits to some degree. However, the character of conservation activities, and the balance between public and private costs and benefits, varies significantly between different resources and environmental functions.[17]

15 Submission no. 25, pp. 1, 4. Submission 52 appears to make a similar point. See paragraphs 4 and 6, pp. 2-3.

16 Submission no. 246, p. 10. A point also made by the New South Wales Farmers' Association, see Submission no. 177, p. 3.

17 Submission no. 231, p. 5.

2.21 Environment Australia then observed that:

> … determining the public element of the conservation activity is often difficult as there is very rarely a simple division between public and private conservation costs and benefits. For example, while the costs of re-vegetating a property (or conversely, the benefits of land clearing) may occur entirely on-site, the benefits (or costs, in the case of land clearing) will be distributed among a number of parties.
>
> … Cost-sharing principles vary widely and will result in different cost-sharing outcomes, recognising underlying responsibilities for management and conservation outcomes, and evolving community expectations. In practice, however, cost-sharing arrangements for public good conservation measures have usually been based on relatively arbitrary formula or lengthy negotiations. This suggests that there may be benefits from the development of more sophisticated rules of thumb, based on some general categorisation of public good activities.[18]

2.22 In the same vein, the Australian Bureau of Agricultural and Resource Economics (ABARE) linked the attribution of costs to the distinction between public and private goods, but also indicated the difficulty of attributing costs on this basis. ABARE wrote:

> Identifying and valuing the private and public benefits from landholders' conservation efforts is an important step in identifying any underlying rationale for government intervention in the provision of such services. This can be a complex task especially when the effects and costs of changes in biophysical outcomes are poorly understood or non-market effects are involved …[19]

2.23 The complexity of the task was well attested in this comment from Mr Rei Beumer:

> … as far as public-good conservation measures are concerned, it is pointed out that the issue of private benefit and public-good benefit is often not clear cut. Even when a conservation measure is deemed to have only private benefits, there is often a public benefit associated therewith – e.g. laser-levelling of irrigation bays means more efficient use of water, therefore less water use and increased production. This means that the farmer saves on water costs and receives a higher return from crops and therefore laser-

18 Submission no. 231, pp. 5 and 10

19 Submission no. 173, p. 9.

> levelling is deemed to be for private benefit. There is, however, a flow on effect for the public-good in that less water used means more water available for other uses, including environmental, and higher production means more input to the local community in terms of produce, jobs and wealth. This is not to suggest that laser-levelling should be flagged as a public-good conservation measure, but just to highlight that there is generally a public-good benefit flow-on effect from the implementation of conservation or environmental measures.[20]

2.24 The practical difficulty of attributing costs was also revealed to the Committee during hearings by Mr Matt Giraudo, Wetlands Project Officer, Mid-Upper South East Local Action Planning Committee of South Australia:

> Remnant vegetation in this case is worked out on the benefit from windbreaks. There is a little note down there, 90 per cent of revegetation projects were windbreaks. .... The economists have sat down and figured a cost and a return and, on the basis of that return, say, 'There is some benefit to the land-holder.' There is also a benefit to the land-holder through localised recharge control. Then there is the benefit to the wider community.
>
> They have gone through it [the cost share ratios] a couple of times. It has been a protracted exercise and it is difficult to do in a lot of cases because you are trying to separate out public versus private good obviously. They give you the ballpark figure basically. For agro-forestry basically the land-holder is doing pretty well out of it, but for protecting remnant veg he is not getting much, whereas the broader community is. They are our cost share now. Basically what you will find is they are reasonably good except that with remnant veg when the economists sit down and do it they say it is about a 90 per cent public benefit and about a 10 per cent land-holder benefit. In that case, and when you look at these, the land-holders are losing out.[21]

2.25 The difficulty was also brought out in a submission from the CSIRO:

> An important issue that is related to the provision of public goods, especially when environmental management considerations are central to their production, is determining the extent to which private self-interest is also being catered to. A naïve assumption underpinning much economic theory is that private producers will at least cater optimally to their own self-interest. Moreover, this

20 Submission no. 187, p. 3.

21 *Transcript of Evidence*, p. 513.

> will be done within an environment of near-perfect (or well-informed) knowledge of the transformation processes that link the outputs to all of the inputs associated with production. However, in the case of the environmental inputs to beef production, these linkages are neither well-defined or known with any certainty. … Therefore, part of the return to investments in environmental management, whether imposed or voluntary, will be captured by the private landholders themselves. Whether this private gain (insurance) is substantial or not is not really known.

2.26 The CSIRO also advised the Committee about the consequences for the rural community of trying to allocate costs on the basis of a distinction between public and private benefit:

> This raises an issue that is a source of major contention with private landholders when defining and exploring the impact of providing public goods. Many landholders accept that there is necessarily a "duty of care" to maintaining their land resources in good condition and they do place private values on certain ecosystem services (e.g. clean water, shade, shelter, soil fertility, wildlife, rural amenity etc). Indeed, most landholders aspire to pass their resources on to future generations in better and more productive states than when they were acquired by the present generation of managers. It remains an open question, therefore, what is the magnitude of the flows of benefits that would fairly be apportioned between the private landholders and the wider community were these respective private and public values known.[22]

2.27 The issue that prompted this inquiry and which was reflected in the evidence from landholders is that many believe they are increasingly required to undertake activities on land that they manage, and do so at a cost to themselves, when the landholders performing the work are not the prime beneficiaries of the required actions. The evidence indicated that, as a matter of practice, the landholders believe that they may not be able to derive a benefit from some activity, at all or in any reasonable time, leaving the landholder to foot the bill while someone else derives the benefit.

2.28 Evidence provided to the Committee by state and Commonwealth agencies indicated the reason for this. It is generally accepted at a state and Commonwealth level that public investment should not be provided to projects where it is possible for individuals to derive a private benefit from a project (because the good conserved is in theory a private good); or

22 Submission no. 154, p. 6.

where the landholder has a duty of care, unless the landholder pays for their benefit themselves.[23] The approach adopted appears to ignore not only the practical considerations involved in deriving private benefits from conserving the natural environment, but also the fact that as a matter of practice a landholder may not derive a benefit from an activity.

2.29 The Committee recognises that the practice of allocating costs on the basis of disentangling public and private goods, as defined by economic theory, is fraught with difficulties. The Committee does believe, however, that a more practicable approach can be developed. The Committee will outline its preferred approach in chapter 6.

Property rights

2.30 Over the past two decades the laws governing land use in all Australian jurisdictions have changed markedly. Practices formerly encouraged, subsidised and often made a condition of becoming a landholder are now prohibited.

2.31 It was suggested to the Committee in submissions to this inquiry and from testimony that many landholders consider that the practices, that they were permitted or required to do when taking up the management of land, conferred upon them rights to act in certain ways.

2.32 Evidence to this inquiry indicates that the most common way that these rights to use land are thought of by landholders is that they constitute a type of property right. This point was made, explicitly or implicitly, in many submissions, and these words are indicative: 'Over the last 20 yrs the property rights of rural landowners have been eroded by Government legislation'.[24]

23 See Standing Committee on Agriculture and Resource Management, *A discussion paper on principles for shared investment to achieve sustainable natural resource management*, 1998. This was provided to the Committee by the Department of Agriculture, Fisheries and Forestry – Australia, submission no. 238, attachment 2. The discussion paper states that 'Shared investment by government is not relevant where … private benefits are sufficient' (pp. 3, 4) and 'Government only contribute to activities or parts of projects where there are significant public benefits. Users, both existing and future, are expected to pay for activities that increase their wealth or the income stream they can expect to receive', p. 4. These principles have been endorsed by Commonwealth agencies, such as AFFA (submission no. 238), and state governments, for example, Western Australia (submission no. 243, p. 2), New South Wales (submission no. 234, p. 4).

24 Submission no. 99, p. 1.

2.33 This view was reiterated in many submissions and in testimony. For example, Mr Graham Dalton, Executive Director of the Queensland Farmers Federation, told the Committee that:

> Our members have bought properties. They have acquired them for the sole purpose of turning them into a farm and developing them. They have that development right. That development right is now being taken away for a range of reasons, some of which are environmental, some of which are scientifically based, such as greenhouse. Some are probably aesthetic and some are probably ideological; the people of Australia like trees rather than grasslands. We are saying that that development right is being removed. The property is worth less as a result of the removal of that property right. That loss of value should be compensated. That is fairly simple stuff. It equates to this: if someone took your backyard, you would be compensated for it. The people of Australia are taking our economic backyard as well. That is not a hard concept.[25]

2.34 It is clear that at the core of the relationship that landholders believe they have to the land that they manage, is that all landholders are property holders. The Committee was advised that the changes in the laws governing land use involved therefore an alteration of a landholder's property rights:

> The central principle is that property is not a singular concept. Property is a *bundle* of rights and different owners can co-exist by owning different services on the same piece of land – the normal case in Australia for mining rights and is also found with water rights. But if any of these rights is taken away the owner is deprived of something.[26]

2.35 The rights that landholders who made submissions to this inquiry claim in respect of the land include not only what they could do at the time of acquisition, but also what they anticipated or expected to be able to do. The rights some landholders claim have been lost include not only rights to use land as it is currently used, but also the right to develop land as they expected or intended to be able to do.

25 Mr Dalton, *Transcript of Evidence*, p. 141.

26 Submission no. 156, p. 9. See also, Mr Graham Dalton, *Transcript of Evidence*, p. 136 and National Farmers' Federation, submission no. 216, p. 3.

2.36 This view was reiterated in other submissions. For example, the PGA wrote that:

> Whether in cash, shares, superannuation policies, machinery, leasehold and freehold land, mining, forestry and fishing titles or any of thousands of other forms, property has these features:
>
> - It is always a bundle of rights—the right to possess, to occupy, to build upon, to plough, to graze, to fish, to extract minerals, to give, sell, lease, etc., etc.
> - Its value is the value of its attendant rights.
> - It is brought into private ownership by work and by saving.
>
> Should the Crown remove a property right the property in question is inevitably reduced in value.[27]

2.37 The PGA repeated this in testimony provided to the Committee:

> … whether your property is in cash, shares, a superannuation policy or you have put your savings into land, it is in fact, in the end, a bundle of rights. My background is agriculture, so I will take an agricultural example. I am said to own a farm, but if I am not allowed to grow sheep on it or crop it, its value falls away to almost nothing. Some property rights have a lot of value attached to them, some only modest rights attached to them.[28]

2.38 Many examples were provided to the Committee of the gradual, incremental removal of perceived property rights.[29] The examples provided by the PGA are indicative:

> Some examples of the taking of private property rights that have actually occurred within Western Australia in recent times illustrate the point. A paddock that by an order to preserve remnant vegetation could not be cleared and farmed was reduced to little value to its owner. A piggery denied the ability to dispose of waste is now empty. Properties in the Peel region were hugely devalued when denied the right to use their river frontages. Others were devalued by the erection of power pylons that at least took away their owner's visual amenity.[30]

2.39 These comments reinforce the view put to the Committee by many landholders that there has been a gradual and incremental removal of land-use rights, and this is creating considerable anger and hardship in the rural community. Landholders feel that their property is being

27 Submission no. 49, p. 1.

28 *Transcript of Evidence*, p. 393. See also submission no. 49, p. 1.

29 The effect of such removals will be explored in chapter 3

30 Submission no. 49, p. 1.

expropriated without consultation and without adequate recompense, either for the value of the land, the income that could have been derived from the land, or for the ongoing management costs for land from which they can no longer derive benefit.

2.40 Witnesses challenged the nature and extent of the property rights that landholders claimed in respect of the land they manage. For example, Mr David Hartley,[31] testified that:

> 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 …[32]

2.41 This is true in all other Australian jurisdictions, as the Committee discovered when it considered evidence from Dr Raff: [33]

> In Common Law systems there is no such thing as *absolute* property in land. One does not own the land, one holds an estate or an interest in it.[34]

2.42 According to Dr Raff, the Crown has 'ultimate or radical title' to the land and all people who possess property do so by virtue of having some sort of estate or interest in a tenure from the Crown. There are various tenures that a person may hold, such as freehold, leasehold, or life estate. This does not alter the fact, Dr Raff advised, that 'there is no absolute property in Australia; all freehold land is still held of the Crown'.[35]

2.43 Dr Raff also explained to the Committee that the expectations that landholders may have had when purchasing the land does not give rise to a legal claim for compensation if land use changes and the expectations become unrealisable. The purchase of land is still governed by the legal doctrine of *caveat emptor*, Dr Raff advised. He said that it is the responsibility of the purchaser to ensure that the property being purchased will meet their expectations. Dr Raff said that if a person purchased land that had to be fundamentally altered to be used in a particular way, then the purchaser was taking a risk that they were able to achieve that. There was no legal enforcement of the purchasers' expectation that they would be able to develop the land as they anticipated, Dr Raff told the Committee. [36]

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31 Executive Director, Sustainable Rural Development, Agriculture Western Australia.

32 *Transcript of Evidence*, p. 382.

33 Submission no. 25 and private briefing on 16 August, 2000.

34 Submission no. 25, p. 2.

35 Private briefing, 16 August, 2000.

36 Private briefing, 16 August, 2000.

2.44 Dr Raff also advised the Committee that the law did not confer upon a landholder a right to use land as he or she pleased.[37] A landholder is entitled to make beneficial use and enjoyment of the land they manage, not anti-social, sick or desperate use. Owners have in law, Dr Raff said, responsibilities to their own landholdings. Dr Raff also said that owners have responsibilities to neighbouring land and these can be enforced through the common law by way of actions for nuisance or trespass.[38]

2.45 In hearings and in submissions, the issue of compensation was raised. Landholders told the Committee that if the rights that they believed they had, in respect of the land they managed, were altered and they suffered some sort of loss, then they were entitled to compensation. Some submissions advised the Committee that they believed the *Constitution* of the Commonwealth provided this right to compensation.[39]

2.46 Dr Raff advised the Committee that 'mere regulation of the use of land does not generally create an entitlement to compensation'.[40] Dr Raff went on to explain that:

> According to the British constitutional principles we have inherited in Australia – the common law of the Constitution – there is no automatic entitlement to compensation even if the full title to the land is taken from the private citizen. The entitlement is created by legislation at the State level and at the Federal level by section 51 (xxxi) of the Australian *Constitution*, which is given effect by the *Lands Acquisition Act 1989 (Cth)*. In Australia we do not have a constitutional declaration of human rights which would otherwise protect private property rights – it is generally thought that the common law is sufficient. In the absence of these legislative provisions there would be no entitlement to compensation if the Crown *resumed* the title to land according to its powers of eminent domain implicit in the doctrine of tenures, according to which, all estates and interests in land are held ultimately of the Crown.[41]

2.47 Dr Raff advised the Committee that a 1997 High Court judgement held that there would be compulsory acquisition of land under section 51 (xxxi) of the *Constitution* if there was complete economic sterilisation of the land[42]. This judgement applied to a mining lease rather than freehold land.

37 Submission no. 25, p. 2.
38 Private briefing, 16 August, 2000.
39 Submission no. 49, p. 1.
40 Submission no. 25, p. 1 ; Private briefing, 16 August, 2000.
41 Submission no. 25, p. 2.
42 Private briefing, 16 August, 2000.

The principle set out would seem to suggest that if the land had some sort of continued economic use, then the controls imposed upon it would not amount to compulsory acquisition under the 'economic sterilisation' test developed by the High Court.[43]

2.48 The result is that the sorts of controls being imposed upon landholders do not in general prevent the land that they manage being used for some sort of economic purpose. Consequently, there is no right guaranteed by the *Constitution* of the Commonwealth to compensation for any rights to land use that may be resumed by public good conservation laws as currently understood. In any case, section 51 (xxxi) binds only the Commonwealth Government, not the states.

2.49 The Committee accepts that in law the property rights that many landholders believe they have in respect of the land they manage, are limited, or do not exist to the extent commonly believed or argued for by some landholders. However, where landholders took up land on specified conditions or on commonly held assumptions, that they were encouraged to maintain, the Committee does believe that landholders *do* have various perceived moral rights that entitle them to receive greater consideration than they do at present when land use permissions change. It appears from the evidence provided to this Committee that these perceived moral rights have been overlooked at times in the design of programs intended to promote public good conservation. As a consequence, many landholders are angry, alienated and experiencing hardship, because their plans have been thwarted and what they believe to be their rights have been removed.

2.50 In particular, those landholders, who acquired land before the changes in the laws relating to land use commenced or advanced to their present stage, have been disadvantaged. The Committee heard from a number of landholders who indicated that they had purchased land or leased land many years ago, intending to progressively clear the land and place it under various forms of production. Some indicated that the land represented a form of superannuation to them. At the time the landholder acquired the land, there was no indication that landholders would be restricted in the uses to which they could put land under their management. Even when some restrictions had been implemented, the extent to which restrictions would grow could not have been foreseen.

43 Private briefing, 16 August, 2000.

2.51 The Committee does not, therefore, believe that it is entirely reasonable to agree with the simplistic conclusion of the Western Australian Native Vegetation Working Group which stated in its final report that:

> While clearing controls have disrupted the business plans of a number of landholders, and in some cases may 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.[44]

2.52 Risks that can be foreseen can be planned for; risks that cannot be foreseen can be insured against. Neither option is available in this case and ordinary landholders are vulnerable to changes of government policy much more so than other businesses. Moreover, many land management controls were implemented over a relatively short time frame. Landholders may have acquired the land they manage many years ago when the land management requirements were quite different. It would have been difficult to foresee the extent to which land use laws would change. Furthermore, the extent of changes in permissible land use has in many ways been mandated by the advances in science and understanding of the environmental problems facing the nation. This has often necessitated swift action that no reasonable person could have foreseen even a few years before. It is a misleading analogy, therefore, to suggest that the risk of increasing regulation of land use is an everyday business risk like fire or on-the-job-accidents.

Recommendation 1

2.53 **The Committee recommends that when programs are designed that aim to promote public good conservation, the generally perceived moral rights of landholders are acknowledged and taken into account in the design of programs.**

44 Native Vegetation Working Group, *Final Report*, Perth: Agriculture Western Australia, 2000, p. 2.

Duty of care

2.54 Underlying land management policy in all jurisdictions of the Commonwealth is the belief that landholders have a duty of care towards the land they manage.[45] The notion that a landholder has a duty of care, and that this duty of care provides the foundation for acceptable land stewardship, has been enshrined in legislation in Western Australia, South Australia, Victoria, and Queensland.[46]

2.55 The purpose behind attributing to landholders a duty of care is to provide a basis for determining the point where the responsibility for private investment in public good conservation activities may cease and public responsibility for investment should begin.

2.56 With this approach to attributing responsibility for funding conservation measures, financial assistance would normally only be available to landholders for environmentally necessary activities that go beyond the landholder's duty of care. Financial assistance would not be paid to landholders to meet their duty of care for sustainable land management.[47]

2.57 This was reflected in a considerable amount of information provided to the Committee. For example, Dr Carl Binning and Dr Mike Young asserted that the costs incurred in meeting a landholder's duty of care should be counted as part of the normal costs of production. No financial public support should be provided, while landholders should receive public funding for necessary actions in excess of their duty of care.[48] The

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45 Environment Australia stated in its submission that 'The ANZECC [Australian and New Zealand Environment and Conservation Council] National framework for the management and monitoring of Australia's native vegetation was developed by State, Territory, and Commonwealth governments through the Standing Committee on Conservation of the Australian and New Zealand Environment and Conservation Council (ANZECC). The framework has been endorsed by all levels of government through the ANZECC process. The ANZECC framework includes broad guidelines on "duty of care"…' (Submission no. 231, p. 18). See also Australian and New Zealand Environment and Conservation Council, *National framework for the management and monitoring of Australia's native vegetation*, Canberra: Commonwealth of Australia, 2000, p. 10.

46 Industry Commission, *A full repairing lease: Inquiry into ecologically sustainable land management*, Canberra p. 136; Submission no. 238, p. 1; *Transcript of Evidence*, p. 132.

47 ANZECC, *National framework for the management and monitoring of Australia's native vegetation* , p. 18; Submission no. 231, p. 19.

48 C Binning and M Young, *Motivating people: Using management agreements to conserve remnant vegetation*, National research and development program on rehabilitation, management and conservation of remnant vegetation, Research report 1/97, Canberra: Environment Australia, 1997, p. 15.

Government of South Australia also supported this approach and advised the Committee that it:

> … recognises that while it is reasonable that landholders should undertake their duty of care responsibilities at their own expense, where they are expected to exceed a reasonable duty of care, the issue of compensation arises.[49]

2.58 Using a duty of care as a basis for allocating responsibility for funding has been explored by the Standing Committee on Agriculture and Resource Management (SCARM). In 1998, SCARM endorsed a set of principles for shared investment by the public and private sectors to attain sustainable natural resource management.[50] These principles have been endorsed in evidence to this inquiry by the Commonwealth Department of Agriculture, Fisheries and Forestry[51], the New South Wales government[52] and the Western Australian Government.[53] They are also generally endorsed by the Australian and New Zealand Environment and Conservation Council.[54]

2.59 SCARM proposed that the investment of public funds in public good conservation activities was not appropriate when a duty of care applies. SCARM stated that:

> Landholders and other resource users have a *duty of care* to take all fair and reasonable measures to ensure that they do not damage the natural resource base.[55] In many circumstances, this legal or moral requirement will cause landholders to pay all costs associated with on-ground works because such works are part of their duty of care. Such expenditure is a requirement of their stewardship role and no funding support or compensation need apply to these investments. In these situations the role of government is often in education, research and advice to support and raise landholders' awareness of their *duty of care*.
>
> Where a landholder or their manager employs exploitative or damaging practices that are inconsistent with a *duty of care* then such users should be responsible for making good any damages

49 Submission no. 246, p. 1.

50 *A discussion paper on principles for shared investment to achieve sustainable natural resource management practices*, submission no. 238, attachment 2

51 Submission no. 238, p. 7.

52 Submission no. 234, pp. 3-4.

53 Submission no. 243, pp. 3-4.

54 See ANZECC, *National framework for the management and monitoring of Australia's native vegetation*, p. 18.

55 In the original there is a footnote at this point. The material in the footnote has been incorporated into the text of this report at para. 2.72.

> incurred as a result of their actions, be those damages on-site or off-site. If it is cost-effective and feasible technically to trace quantifiable off-site damage to a specific source, then the full cost of ameliorative works should be borne by the polluting firm or landholder (impactor pays principle). In these situations the role of government is to regulate, advise and police exploitative management, rather than co-fund the activity.[56]

2.60 This approach is supported in principle by peak industry groups such as the National Farmer's Federation:

> NFF supports the concept of duty of care. This duty of care could be defined in terms of actions applied by farmers on their land to farm it as sustainably as current knowledge and technology allow.[57]

2.61 Using the duty of care as the criterion for determining the responsibility for funding public good conservation projects was also supported by Dr Jennifer Marohasy, Environmental Manager of Canegrowers. Dr Marohasy testified that:

> Our policy does not support compensation for the protection of vegetation that should be retained because it is on land vulnerable to degradation or the protection of vegetation that should be a land-holder's duty of care. But where vegetation is being protected solely for community benefit that is beyond duty of care, then there should be fair and equitable compensation.[58]

2.62 The evidence provided to the Committee indicated that, although the notion that landholders have a duty of care and its purpose in public policy is widely supported, the notion itself is unclear. For example, the lack of clarity attaching to the notion of "duty of care" was referred to by the North Conargo Land Management Group, which complained about the poor definition.[59] The lack of clarity in the definition was also pointed out to the Committee by the National Farmers' Federation:

> The concept of a duty of care is increasingly used by Government and by the conservation movement to justify placing the burden of public good conservation on farmers. However, while duty of care is frequently referred to in discussions on this topic, it seems

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56 Standing Committee on Agriculture and Resource Management, *A discussion paper on principles for shared investment to achieve sustainable natural resource management practices*, submission no. 238, attachment 2

57 Submission no. 216, p. 4.

58 *Transcript of Evidence*, p. 131.

59 Submission no. 127, p. 2.

> that interpretation of the concept is somewhat subjective and less well defined than it might be.[60]

2.63 This view was also supported by the South Australian Government which advised the Committee that it recognised 'that consistent application of the duty of care principle is not a simple matter'.[61] The view of the South Australian Government was reiterated by Dr Christopher Reynolds, Legislative and Legal Policy Consultant, South Australian Department for Environment and Heritage. He advised the Committee that:

> The problem with the concept of duty of care is that it has a number of meanings and a number of different contexts. It is a term that is regularly used in common law, for example, as an element of a negligence action. It is also increasingly finding its way into statutes ...[62]

2.64 This problem was also acknowledged in testimony from officials of the New South Wales Department of Land and Water Conservation. Ms Leanne Wallace, the Department's Executive Director, Regional and Commercial Services, testified that:

> The New South Wales government Department of Land and Water Conservation has been working with the Native Vegetation Advisory Council attempting to define 'duty of care'. There are different ways you can define it. You can define it from a legal perspective or from the perspective of pure moral responsibility. The big question is where it stops being your duty as a land-holder and where what you are doing becomes part of a benefit to the broader community. That will differ depending on what you are doing and what area of the state you are in. No matter how you define 'duty of care', how it applies on the ground is going to vary across the state. That is an issue for us in terms of how we put duty of care into place.[63]

2.65 Ms Sarah Lewis, Policy Development Officer, South Australian Farmers' Federation testified before the Committee in a similar vein:

> Certainly a farmer has a duty of care to manage his or her land on a sustainable basis environmentally and economically. Where it crosses the line and becomes more a public good are definitely issues of setting aside areas of vegetation on that property through

60 NSW Farmers' Association, submission no. 177, p. 17.

61 Submission no. 246, p. 1.

62 *Transcript of Evidence*, pp. 464 – 465.

63 *Transcript of Evidence*, pp. 359 - 360.

either heritage or setting it aside voluntarily. Yes, it is a bit of a fine line.[64]

2.66 From the evidence provided to the Committee it appears that while all the key stakeholders agree that landholders have a duty of care, they do not agree on what a landholder's duty of care amounts to and, as a result, there is disagreement over who has the responsibility for meeting the costs of various conservation activities.

What is a duty of care for the environment?

2.67 In 1998 the then Industry Commission published *A full repairing lease: Inquiry into ecologically sustainable land management*in, which it recommended that a statutory duty of care for the environment be enacted[65]. The Industry Commission proposed a duty that would 'require everyone who influences the management of the risks to the environment to take all "reasonable and practical" steps to prevent harm to the environment that could have been reasonably foreseen'.

2.68 The Industry Commission proposed that the duty of care would not be confined to landholders but that it would apply also to all those who manage any other natural resources, for example water and vegetation, and others 'who indirectly influence the risks of environmental harm that resource managers confront'. Moreover, the duty would apply in respect of harm that a person may cause to the living as well as future generations. The commission's proposal would not require the remediation of environmental harms that that have been caused through past actions.[66]

2.69 The Industry Commission's proposal represented an extension and codification of the common law duty of care. The common law does not recognise and has never recognised that a duty of care may be owed to the environment of itself. Duties of care in the common law are owed to other people and to their property, and breaches of a duty of care occur when another person is harmed either by way of harm being done to their person or to their property.[67]

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64 *Transcript of Evidence*, p. 520.

65 Canberra: Commonwealth of Australia, 1998, p. 134. The Industry Commission was later replaced by the Productivity Commission.

66 Industry Commission, *A full repairing lease: Inquiry into ecologically sustainable land management*, pp. 134–135; A Gardner, "The duty of care for sustainable land management", *Australasian Journal of Natural Resources Law and Policy*, 5, 1998, pp. 29–63.

67 Industry Commission, *A full repairing lease*, p. 134; G. Bates, 'A duty of care for the protection of biodiversity on land', Canberra: Productivity Commission, 2001, p. 15.

2.70 Dr Christopher Renyolds amplified the commission's proposal and testified that:

> Under common law, duties of care have been owed to a limited group of people, normally neighbours, but if imposed under statute, then the duty is owed more widely. It could be owed to the community, it could be owed conceptually to the environment itself. It could be owed to future generations in terms of who might have the duty of care. I am sort of emphasising the Productivity Commission's ideas in its report *Full repairing lease* in 1999. The duty of care should certainly, if it exists, apply to owners and occupiers, but arguably it could go broader than that to also apply to people whose dealings affect the land— contractors, for example. If an aerial sprayer, for example, manages to degrade land or damage the land in some way through their activities, then arguably the duty of care should be cast broadly enough to apply to those activities as well.[68]

2.71 The approach of the Industry Commission has been maintained in publications of the commission's successor, the Productivity Commission. The Productivity Commission has defined a duty of care as:

> An obligation not to harm another person or their property. In the context of conservation, it is a legal obligation requiring individuals to not use their land, or permit it to be used, in a way that interferes with another person's right to use and enjoy their land.[69]

2.72 In its discussion paper on the principles for shared investment, SCARM agreed with this approach to defining a duty of care, namely that a landholder's duty of care should be considered an extension of the common law duty:

> "Duty of Care" has been defined as the common law duty of care, which applies to everyone who may harm another as a consequence of their actions. Duty of care applies to harm that might be caused to both a) those who are living at present; and b) those who are yet to be born. Essentially resource managers should have a duty to take all "reasonable and practical" steps to prevent their actions causing foreseeable harm to the environment.
>
> Land holders are "stewards of the land" and land is only held in trust for subsequent generations. The duty is about preventing harm being caused or about to be caused to the environment.

68 *Transcript of Evidence*, p. 464–465.

69 Aretino *et al*, *Cost sharing for biodiversity conservation*, p. v.

2.73 An expanded, common law duty of care was also set out in the *National framework for the management and monitoring of Australia's native vegetation*:

> A 'duty of care' with regard to native vegetation management could reasonably be expected to include protection of endangered species and/or ecosystems, protection of vegetation on land at risk of land degradation, e.g. from salinity or erosion, protection of riparian vegetation, protection of vegetation on lands of low agricultural capability and protection of vegetation on acid sulphate soils. Depending on regional circumstances, duty of care may invoke other management actions or priorities.[70]

2.74 Dr Christopher Reynolds also supported an expanded notion. He testified that:

> In a natural resources sense it seems to me that a duty of care is a duty not to damage or degrade land or water. It is a duty to act sustainably rather than unsustainably. It is a duty that applies to things that occur simply on your property—for example a contaminated site would be that—but it also applies to things that affect other people's property or a common resource like rivers or aquifers.[71]

2.75 Apart from government and semi-government agencies, non-government organisations also supported the expansion of a landholder's duty of care in this direction. For example, Ms Felicity Wishart, representing the Queensland Conservation Council, testified that:

> The Queensland Conservation Council's view is premised on the whole notion of ecologically sustainable development and the principles that underlie that. They are principles such as maintenance of biodiversity. So we would want to see a duty of care include protection of the biodiversity, say, within a property and recognition of the off property, or the biodiversity beyond that. That would be one principle. The principles would be things like the maintenance of natural capital. We would also seek protection and nurturing and, in a sense, the maintenance of things like the soils and the water supplies that pertain to that property.[72]

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70 ANZECC, *National framework for the management and monitoring of Australia's native vegetation*, p. 17; submission no. 231, p. 18.

71 *Transcript of Evidence*, p. 465.

72 *Transcript of Evidence*, p. 191.

2.76 Although this account of the duty of care in the context of natural resource management has, according to SCARM, only limited statutory backing in Australia at present, it was noted by SCARM that this may change in the future along with the common understanding of its meaning.[73]

2.77 It would appear from evidence available to the Committee that the common law notion of duty of care is, however unofficially, supported in a very broad sense in those areas of government dealing with the formulation of policy and programs. For example, Mr David Hartley said, in response to a question from the Committee as to whether the government agency he directs had ever considered the division between the duty of care of a property owner to maintain and look after the environment and responsibility of the general community, that:

> This is something that we have thought about a lot. I believe that all farmers do have a duty of care to ensure that there are not any off-site impacts resulting from their farming operations, such as erosion running off into streams, causing siltation and eutrophication, and that it is not going to cause rising watertables on adjoining property ...[74]

The limits of a landholder's duty of care

2.78 Under the extended common law duty of care, a landholder has a duty to take all actions that are reasonable and practicable to ensure that their land management actions do not harm the environment, other people or their property. The limits of "reasonable and practicable" is a matter of dispute. Dr Alex Gardner, a legal academic, wrote in a published paper that he provided to the Committee that:

> The limit of "reasonable and practical steps" is taken from the common law and balances the risk and severity of harm that may occur against the cost and inconvenience of preventing it. The test is an objective test of what a "reasonable person" would require and would, in the absence of relevant specific standards, be determined in light of custom and practice in that industry. The requirements of reasonable and practical steps would vary with the circumstances of the case, having regard to the present state of the environment and the time over which the actions may be taken. The duty holder could choose the least costly means of

73 *A discussion paper on principles for shared investment to achieve sustainable natural resource management practices*, n. 3, submission no. 238, attachment 2.

74 *Transcript of Evidence*, p. 371-372.

> managing a risk, only incorporating new technology when it is cost-efficient to do so.[75]

2.79 Inter-governmental organisations have acknowledged that drawing such a line is difficult. For example, the Australian New Zealand Environment and Conservation Council reported that

> Determining where 'duty of care' stops and 'public conservation service' begins is a difficult issue. We suggest that the dividing line should be drawn between those management practices required to achieve landuse objectives at a landscape or regional scale and any additional practices required to sustain sites of unique conservation value. Hence, a public conservation service is provided when the community's interest lies in securing active and ongoing management of a particular site.[76]

2.80 This definition was supported by Dr Carl Binning and Dr Mike Young. They delimited a duty of care in these terms:

> … essentially a requirement for sustainable land management. It is not possible to define any particular threshold as social and economic issues need to be considered in addition to environmental thresholds. Pragmatically, we suggest that the dividing line be drawn, at this stage in Australia's development (not biological evolution), between the management practices required to achieve sustainable land-use objectives at a landscape or regional scale and any additional practices required to sustain particular sites of unique conservation value.[77]

2.81 The positions of the various governments and governmental agencies in the Commonwealth can be contrasted with the attitude towards a landholder's duty of care taken by landholders themselves and peak landholder organisations. Not surprisingly, landholders and peak landholder organisation took a somewhat different view. For example, the National Farmers' Federation advised the Committee that, in its view, a duty of care comprised the following elements:

> 1 it provides a mechanism for land owners undertaking current actions to farm more sustainably to be recognised (such as landcare projects, farm forestry),
>
> 2 provides an incentive for land owners who have not shifted to more sustainable practices to do so, and

75 A Gardner, 'The duty of care for sustainable land management'.

76 ANZECC, *National framework for the management and monitoring of Australia's native vegetation* , p. 17; submission no. 231, p. 18.

77 C Binning and M Young, *Motivating people*, p. 15.

> 3 should provide a bench mark from which the community is able to identify actions that they wish to see undertaken in a region, which go beyond the duty of care, for example conservation of biodiversity on private land and therefore has a public good component which should be funded by the government on behalf of the wider community.[78]

2.82 Peak landholder organisations disagreed with extending the common law notion to include the protection of the environment in general. They tended to suggest that a landholder's duty of care was limited to the land directly under the landholder's control and immediate harm to others that may be caused. A landholder's duty of care did not, in their view, include wider environmental considerations, such as biodiversity. For example, the New South Farmers' Association advised the Committee that:

> Farmers do not wish to deny their 'duty of care' however this concept implies avoiding actions that may damage another's property or person. Actions such as pollution control come under a duty of care but the preservation of biodiversity clearly does not.[79]

2.83 This point was explained to the Committee by Dr Marohasy who testified that:

> Duty of care for a cane grower is very different to protection of native vegetation for community benefit. They are two very different things. When you are talking about on-farm operations, we are committed to continuing improvement. … We are hoping that down the track from a marketing perspective we may get a premium for our sugar because it is produced clean and green, with no impacts downstream. …
>
> When you are talking about tradeable rights and native vegetation that the community wants to protect because of its intrinsic value, we are not talking about duty of care any more, we are talking about vegetation that needs to be protected and managed for the benefit of the Australian community. For us it is not a continuum. There is duty of care and there is native vegetation that needs to be protected for the community benefit.[80]

2.84 Mr Mick Keogh, Policy Director, New South Wales Farmers' Association, was asked by the Committee how the Association differentiated between what farmers considered to be good management as far as the

78 Submission no. 216, p. 5.

79 Submission no. 177, p. 3.

80 *Transcript of Evidence*, p. 146.

environment is concerned and what is termed 'public good conservation'. He replied that:

> Legally that differentiation is established in the concept of duty of care and nuisance. So if something that you do on your property creates a nuisance or a harm to someone else's property, the law has regarded that you are in breach of your duty of care and that you, therefore, are required by regulation to stop doing that. That is a well-tried legal precedent that has been established for quite a long while. Where land-holders, in particular, believe regulations go well beyond that is on issues like biodiversity, where no-one has been able to point out to an individual land-holder what private benefit they get from the conservation of biodiversity. … We believe that certainly in relation to biodiversity and threatened species the sorts of regulations we see go well beyond that duty of care ...[81]

2.85 Mr Paul Bidwell, General Manager, AgForce, Queensland testified that, in his view, the extent of a person's duty of care was linked to the economic viability of a farming enterprise:

> … private duty of care is anything that has an impact on the bottom line for that enterprise. I will give you an example. It makes good economic sense to retain riparian strips, shade clumps, windbreaks—those sorts things. There have been trials done, through various departments of primary industry across Australia, which show that an impact gives you a positive bottom-line effect by leaving an amount of vegetation for those purposes. So that is private benefit.[82]

2.86 Mr Bidwell expanded on this and claimed that the duty of care of landholders was limited only to what occurred on their own land:

> Just as an example of the difficulty we have got in discussing where the duty of care lies, I will deal with tree clearing, which causes salinity. If, on my property, I am told by the scientists that if I clear these trees I would have a salinity problem on my property, we are saying that is duty of care. It makes no sense for me to go and clear it. But if I clear trees on my property, which causes Senator Hill to have salty drinking water, so the externality, we are saying that is not a duty of care.[83]

81 *Transcript of Evidence*, p. 297.
82 *Transcript of Evidence*, p. 132.
83 *Transcript of Evidence*, p. 137.

2.87 This view was expounded clearly in AgForce's submission:

> AgForce defines conservation activities and measures that have on-farm economic benefit as "private benefit" (e.g. wind breaks and shade clumps and strips). Furthermore, these activities and measures comprise the landholder's "duty of care". That is, landholders can reasonably be expected to undertake and comply with these activities and measures. In many cases these activities and measures will be undertaken voluntarily. …
>
> Measures, which do not have an on-farm economic benefit beyond the duty of care (eg. retaining endangered vegetation communities), are of "public benefit".[84]

Difficulties with a legislated duty of care based on the common law

2.88 The evidence provided to this inquiry indicates that there is little agreement between key stakeholders concerning the meaning of duty of care. Moreover, it appears that it may well be difficult to obtain agreement between stakeholders, because the very task of defining duty of care is itself fraught with problems.

2.89 Examples of the difficulties that emerge when defining duty of care were provided to the Committee by Ms Leanne Wallace. Ms Wallace advised the Committee that in New South Wales legislation is written in such a way that a definition is not required, because it was difficult to allow for the incorporation of new information that may affect what a duty of care might involve:

> We do not use the term 'duty of care' in the New South Wales legislation [Native Vegetation Conservation Act]. It is difficult to articulate. We do not have a ready solution as to how you give that certainty but, at the same time, take account of the fact that you will get new information. Things change, and you have to be able to take action as things change. That means that there is less certainty. It is difficult to enshrine certainty in legislation over a very long period of time.[85]

84 Submission no. 123, p. 1.

85 *Transcript of Evidence*, p. 362.

2.90 There are, however, other difficulties that emerge when attempting to define duty of care using some modification of the common law definition. Under the common law approach, the specific actions that a landholder would be required to perform – what actions fall under the duty – are determined by what is reasonable and practical. This is explained by the Productivity Commission in its submission:

> A duty of care seeks to have natural resource managers — from small farmers to government agencies — meet the cost of protecting the environment where and when it is expected to be economically efficient to do so from a community perspective. The main effect of 'reasonable and practical' is that the requirements for a particular duty holder will vary with the circumstances in each case. This allows a balancing of the risk and severity of the potential harm to the environment with the costs of preventing it.[86]

2.91 The common law test of 'reasonable and practical' may lead landholders to do the minimum and not engage in the latest technological advances. As well, this test, even if 'objective', will naturally attract litigation. In fact, landholders and government agencies may disagree over what is reasonable and practical and end up going to court to resolve the matter, rather than focusing on the main task: the ecologically sustainable development and use of Australia's land.

2.92 Moreover, what is 'reasonable and practical' can vary from landholder to landholder, even if they face the same problems. As a result, two similar landholders may, if each is to meet the duty of care that attaches to their respective land, have to expend different amounts of time, energy and money while receiving differing levels of support. This may well fuel feelings of inequity.

2.93 Another problem was noted by Mr Gerry Bates, writing in a consultancy report for the Productivity Commission. Mr Bates observed that:

> An alternative to providing ongoing sharing of costs may be to adjust what is considered 'reasonable and practical' under duty of care required of resource users. The difficulty with this approach is that the statutory scheme may be compromised if standards for fulfilment of the duty fall below best practice.[87]

86 Submission no. 189, pp. 9-10.

87 'A duty of care for the protection of biodiversity on land', Canberra: Productivity Commission, 2001, p. 32.

2.94 The point can be illustrated this way. Appropriate or best environmental practice may be higher than the practices that a landholder has a duty to do, as measured by what is reasonable and practical. If governments are unwilling to meet the shortfall, and there is evidence that they are not willing,[88] then coherent programs to address Australia's environmental problems will not emerge; programs may not be undertaken or may not be completed.

2.95 There is also a potential conflict with other policy approaches, such as ecologically sustainable development. This also could lead to the overall public good conservation effort being undermined. The potential for conflict has been noted by Mr Alex Gardner:

> My only concern with this limit [i.e. that a landholder has to take reasonable and practical steps] is how it corresponds with the objectives of ecologically sustainable development, especially the precautionary principle.[89]

2.96 Moreover, no statute can exhaustively set out the variety of cases that will in time be covered by it. As Mr Gerry Bates explained, the courts, of necessity, will have to interpret the statute and in doing so will draw on the doctrines of the common law:[90]

> A duty of care incorporated in a statute can be more precise about the circumstances in which the duty will arise. However, because courts are heavily influenced by the common law, any introduction of a duty of care into statute will need to define (as clearly as possible) the circumstances in which it is intended to arise, how it may be broken , what defences are possible, and what remedies may be available. … Lack of clear definition may result in judicial interpretation along the lines of current common law thinking.[91]

2.97 Current common law thinking does not, as noted already, recognise a duty of care directly to the environment, but only to people. On the one hand, a poorly drafted law may not create a duty of care towards the environment to the extent wanted. On the other hand, a law that does effectively create such a duty could be so overly complex that it would be unworkable and may create more problems than it remedied.

88 See this Committee's previous report, *Co-ordinating catchment management*, Canberra: Parliament of the Commonwealth, December, 2000.

89 A Gardner, 'The duty of care for sustainable land management'.

90 'A duty of care for the protection of biodiversity on land', p. 15.

91 'A duty of care for the protection of biodiversity on land', p. 20.

2.98 Finally, the proposals for codification rest upon two assumptions:

1 that the harm that a landholder is doing can be identified and quantified separately from some earlier action the landholder has performed or that some other landholder has performed; and

2 that there is sufficient knowledge of environmental processes to enable a calculation to be done to assess what is reasonable and practical, and so balance the risk and severity of the potential harm to the environment with the costs of preventing it.

2.99 In many cases, the harm being done to the environment is not the result of one single action. It is often the combined result of many actions. It may well be impracticable and difficult to apportion with accuracy responsibility for a problem in the lower reaches of a catchment to a particular action by a particular landholder in the upper reaches of the catchment.

2.100 The result of this is that it would be difficult to determine what actions by landholders in recent times caused what harm. It may be possible to say that the actions are harmful; however, unless the extent of the harm can be measured by identifying each individual landholder's harmful actions, the extent of the landholder's responsibility cannot be determined and consequently the costs of remediation cannot be apportioned.

2.101 In order to determine what is reasonable and practical, a cost-benefit analysis must be carried out for any proposed action. However, the cost to future generations of failing to undertake remedial action in a particular location is not known, because we do not yet know with certainty how all the natural systems in Australia interact, and the consequences of many land use practices are only now becoming evident. As a result, it is difficult to perform the cost-benefit calculation that the codification of the duty of care requires. It is difficult therefore to determine what a particular landholder's duty of care is.

2.102 After considering these matters, the Committee concludes that a comprehensive and equitable codification and extension of the common law duty of care would be difficult to develop for the purposes of allocating available resources and apportioning costs for public good conservation programs.

2.103 The Committee does believe that establishing clearly a landholder's duty of care, on a generally agreed basis, could provide certainty for all stakeholders concerning the actions they can and cannot perform in respect of the environment. The Committee will discuss this further in chapter 6.

Ideas in action – Cost sharing principles

2.104 The ideas considered in this chapter have been brought together in a set of cost-sharing principles. In 1998, SCARM endorsed a set of principles to be used to determine the cost sharing arrangements for conservation activities that were intended to achieve sustainable natural resource management practices.[92] These principles have been endorsed during this inquiry by the Governments of Western Australia[93] and New South Wales,[94] and Commonwealth administrative departments, the Department of Environment and Heritage[95] and the Department of Agriculture, Fisheries, and Forestry.[96] The SCARM principles also underpin other natural resource management frameworks, such as the *National framework for the management and monitoring of Australia's native vegetation*, and they appear to underpin the approach to cost sharing used in South Australia.[97]

2.105 The approach to cost sharing embodied in the SCARM principles has two components. The first sets out the principles that are to be used to determine whether a proposed conservation activity will be eligible to receive public funds at all. The second component sets out the principles to be used to determine the respective shares of the cost of a public good conservation activity, in those cases where some public funding is found to be appropriate.[98]

2.106 According to the SCARM principles, public funding may be inappropriate:

- When applying regulatory or legal solutions alone may not be cost-effective and joint investment in the short-term may be preferred.
- Where government contributions can facilitate a faster change in management practices towards a more sustainable system.
- When additional investment is required to further improve an on-site or off-site environmental value, when the on-site benefits may be insufficient to make the investment attractive to the resource user.[99]

92 Submission no. 238, p. 7.
93 Submission no. 243, pp. 2-3.
94 Submission no. 234, pp. 3-4.
95 Or as it is usually known Environment Australia, submission no. 231, pp. 10-13.
96 Or as it is usually known, AFFA; submission no. 238, attachment 2.
97 Submission no. 246, pp. 10 – 12.
98 Submission no. 243, p. 2.
99 This information is condensed from: AFFA, submission no. 238, attachment 2.

2.107 However, the SCARM principles indicate that using public funds for public good conservation activities is considered not to be appropriate where:

- a duty of care applies;
- arivate benefits provide a sufficient incentive;
- there are more appropriate approaches;
- there are too few benefits to justify the cost.

2.108 According to the SCARM approach to cost sharing landholders have a duty of care. This is the core of the SCARM approach; it is used as the major criterion for determining whether a conservation project is eligible for public funding. According to the SCARM approach, landholders should be expected to meet the costs of achieving acceptable environmental standards; in other words, their duty of care. Assistance should be reserved for activities that go beyond a landholder's duty of care.[100]

2.109 Where a landholder deliberately violates the duty of care attached to the land they manage, then the landholder should meet the cost of repair:

> Where a landholder or their manager employs exploitative or damaging practices that are inconsistent with a *duty of care* then such users should be responsible for making good any damages incurred as a result of their actions, be those damages on-site or off-site.[101]

2.110 SCARM explicitly rules out providing public funds to landholders in order to procure remedial conservation actions that will enable a property to attain a duty of care standard. The role of government is to 'regulate, advise and police exploitative management, rather than co-fund the [remedial] activity', even when the landholder is unable to fund the conservation activities:

> … it needs to be recognised that poor enterprise viability or management is not a justification for governments to substitute public funds for landholder funding of remedial works.[102]

100 See paragraph 2.59, above.
101 Submission no. 238, attachment 2, p. 3.
102 Submission no. 238, attachment 2, p. 4.

2.111 The practical operation of the “duty of care” criterion was set out by the NSW Government:

> In terms of principles for government involvement … individuals should be expected to meet the costs of conservation activities that are required to achieve generally expected environmental standards, and assistance should be limited or targeted to circumstances where parties are moving beyond those expected standards. To ensure that the most affected groups are treated reasonably and equitably, implementing this principle should take account of the evolution or changes to these perceived responsibilities and standards, particularly the notion of land-holder duty of care.[103]

2.112 If a project is considered eligible for public funding, the second set of principles is used to determine the share of costs between the public sector and the private sector. The first principle used is:

- Government [should] only contribute to activities or parts of projects where there are significant public benefits. Users, both existing and future, are expected to pay for activities that increase their wealth or the income stream they can expect to receive.[104]

2.113 The SCARM discussion paper then provides a lengthy note, diluting the effect of this principle:

> Public benefit alone may not be sufficient reason for government investment, particularly in cases where there is a clear responsibility - duty of care - for particular activities Public benefit is a condition of government funding, not a purpose.
>
> However, there are situations where improvement in environmental amenity bestows significant public benefits such as protection of rare or endangered flora or fauna and public funding may be applicable. There are also cases where market incentives result in under-investment in knowledge about environmental conditions or less than socially optimal generation of environmental amenity. In these cases there may be a clear role for public funding, rather than sole reliance on private funding.[105]

103 *Transcript of Evidence*, p. 91.

104 Submission no. 238, attachment 2.

105 Submission no. 238, attachment 2.

2.114 A second principle limits the level of support that can be provided:

- Government should, in general, contribute to works only up to a level sufficient to trigger the necessary investment towards self-correcting, self-perpetuating natural resource management systems that operate effectively.[106]

2.115 This principle is also followed by a note, limiting the operation of the principle:

> Public funds should not be applied in such a way that they substitute for the responsibility of others nor weaken others' perception about their own resource management responsibilities.[107]

2.116 A third principle sets the scope of any evaluation of a conservation project:

- Before government will contribute to any land, vegetation or water management activity, the activity must be technically sound, produce outcomes consistent with identified priorities, and the benefits must justify the costs. In considering costs and benefits, economic, social and environmental factors all need to be adequately considered.[108]

2.117 The SCARM approach also contains a number of principles that are designed to ensure that the costs of conservation are recovered from the users of eco-services. The effect of the application of these principles is to further restrict access to public funding. The principles are used by those preparing projects for funding consideration and those assessing the projects. The principles are that 'impacters' (or polluters) pay for damage caused and beneficiaries – whether direct or indirect - pay for eco-services received:[109]

- All natural resource users and managers have a duty of care not to damage the natural resource base. Users should be responsible for making good any damages incurred as a result of their actions.
- Where polluters or impacters can be identified, the full cost of the impact prevention and control attributable to them, including the cost of required activities, should be borne by them.

106 Submission no. 238, attachment 2.

107 Submission no. 238, attachment 2.

108 Submission no. 238, attachment 2.

109 Submission no. 238, attachment 2, p. 6. According to the SCARM principles, 'Direct beneficiaries are landholders (public or private) whose potential income and/or capital value will be increased as a result of the activity', while 'Indirect beneficiaries are those who will enjoy qualified benefits, such as improved biodiversity, recreational benefits'.

- Where the work being undertaken will not benefit the landholder(s) or resource users and there is no duty of care, particularly a financial benefit (in the form of production or potential future capital gain), it is appropriate for beneficiaries to reimburse private individuals for the cost of actions over and above those generally expected of a private resource user in the region. This beneficiary-reimburses principle ensures that the public pays for public benefit in a manner that does not entitle a person to withhold opportunities to realise these benefits from the public.

2.118 Even if a potential project passes all these hurdles, it may still fall at the last, which provides a categorical limitation on eligibility for public funds:

- There should be no public money invested in a project that will be dependent on continued subsidy or public payment, unless there is a clear and inalienable responsibility for government in addressing the issue.[110]

2.119 SCARM also sets out a number of principles that "should be used at a local level when developing the mechanisms for shared investment appropriate for the proposed activities". The most significant is that:

- Due recognition should be given to labour or other in-kind contributions from landholders when the input into the project is above the expected land management activities of the property. This input should be considered part of the landholders' contributions.[111]

2.120 The Committee received evidence that the cost allocation approach embodied in the SCARM principles, when put into practice is confusing and unclear. This appeared to be occurring in South Australia, as Mr Matt Giraudo testified:

> I know this year Bushcare money has been withheld from a lot of projects in South Australia and is still being withheld now. It is very difficult. We have had the problem with this Devolved Grant Scheme of trying to implement the scheme and not really knowing what your income stream is at any point in time. When you are two-thirds of the way through the financial year and you are still unsure about your income stream, it makes it very difficult. We are in the situation now where we have had to put a hold on the project and we were very much in the position of losing the momentum.[112]

110 Submission no. 238, attachment 2, p. 6.

111 Submission no. 238, attachment 2, p. 6.

112 *Transcript of Evidence*, p. 511.

2.121 At the same hearing Mr Giraudo told the Committee about the protracted cost allocation exercise:

> The economists have sat down and figured a cost and a return and, on the basis of that return, say, 'There is some benefit to the landholder'. There is also a benefit to the landholder through localised recharge control. Then there is the benefit to the wider community. I was not involved in the actual economics of doing it. It has been done a couple of times, first when the project was done and then they sat down and did it state-wide for all the devolved grant schemes …
>
> … They have gone through it [the cost allocation process] a couple of times. It has been a protracted exercise and it is difficult to do in a lot of cases because you are trying to separate out public versus private good obviously. They give you the ballpark figure basically. For agro-forestry basically the land-holder is doing pretty well out of it, but for protecting remnant veg he is not getting much, whereas the broader community is. [113]

2.122 Moreover, the 'principles' themselves are principles in name only, because they fail to provide clear directions to guide action or policy development. For every principle, there is, in the SCARM paper, a list of exceptions and 'ouster clauses', providing a rationale to evade the operation of a particular principle. As well, because many of the criteria rely upon subjective judgements, it is difficult for landholders, landcare organisations and officials to determine which projects are likely to receive funding and which are not.

2.123 In addition, given the way some principles are cast, it is possible that they could be used to deny public funding to worthwhile public good conservation projects because of 'high principle', rather than a sober evaluation of the public good conservation outcomes wanted. A case in point is the 'test' to be applied to determine whether a project is eligible for public funding:

> One test for the extent to which a public payment should be made is the extent to which the proposed payment would increase land values. If the result is payment for work to provide public benefits that can not be provided profitably by private entrepreneurs then there may be no increase in land value as a result of the proposed cost-sharing arrangement.[114]

113 *Transcript of Evidence*, p. 513.

114 Submission no. 238, attachment 2, p. 5.

2.124 The idea embodied in this test, and underpinning the SCARM approach, is that any person who receives a benefit or could be thought to receive a benefit from a conservation activity, which should pay for the benefit and public funding should not be provided. The SCARM principles appear more concerned to prevent landholders obtaining an unearned benefit, even at the cost of not supporting worthwhile conservation activities,which may not occur without some financial support.

2.125 Moreover, the SCARM approach is based upon the public providing the minimum by way of funding while obtaining the maximum in benefits. The Committee has already noted the SCARM principle that 'Government should, in general, contribute to works only up to a level sufficient to trigger the necessary investment towards self-correcting, self-perpetuating natural resource management systems that operate effectively'. The Productivity Commission described this approach as the 'Public "free riding" on the delivery of public benefits provided through private initiatives". In addition, the Productivity Commission described this as 'good policy because it embodies an efficient use of public funds'.[115]

2.126 That this is the way the policy operates has not been lost on landholders. A number of submissions referred to the public forcing landholders to undertake public good conservation activities while not providing adequate or appropriate payment. Moreover, while it may be in the view of some "good policy", many landholders who submitted evidence to the committee suggested that it is also a policy that is fostering considerable resentment and anger amongst landholders.

2.127 The approach being pursued in Australia stands in contrast to that taken in the United States and in the European Union where there is a conscious policy to procure public good conservation outcomes even if in the process some individuals may obtain for themselves some benefit. The underlying assumption appears to be that the overall public benefit will justify the creation of some private benefit to landholders.

2.128 Mr Steve Hatfield Dodds from Environment Australia testified that:

> While in some cases the private or individual benefits from … 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.[116]

115 B Aretino, *Cost sharing for biodiversity conservation*, p. 17.

116 *Transcript of Evidence*, p. 91

2.129 This assessment by Environment Australia of the SCARM approach would appear accurate:

> Cost-sharing principles vary widely and will result in different cost-sharing outcomes, recognising underlying responsibilities for management and conservation outcomes, and evolving community expectations. In practice, however, cost-sharing arrangements for public good conservation measures have usually been based on relatively arbitrary formula or lengthy negotiations. This suggests that there may be benefits from the development of more sophisticated rules of thumb, based on some general categorisation of public good activities.[117]

2.130 The Committee will develop such an approach in the last chapter.

Conclusion

2.131 Evidence provided to this inquiry and recounted in this chapter indicates that there is considerable uncertainty at present over what actions landholders are permitted or required to take in respect of the land they manage. Moreover, the cost-sharing principles that are often used to determine levels of public subvention are not focused on outcomes, but more narrowly on attributing responsibility. These principles rely upon fundamental ideas (such as duty of care) that evidence provided to this inquiry indicated are unclear and disputed by stakeholders.

2.132 It is the Committee's view that there must be certainty regarding the duties of landholders and the duties of the community. Such certainty would enable programs to be developed, funds to be raised and actions to be implemented. At present, the programs that should address public good conservation measures are not being developed as fast as is needed.

2.133 The need for, and advantages of, certainty were reflected in evidence. Dr Reynolds testified that:

> If I was in a position of having a duty of care in this context, I would want certainty. One of the best ways of achieving certainty is for landowners and occupiers and managers to agree on how a duty of care is discharged. If you can get that agreement then of course you can find formal mechanisms easily enough to incorporate them within statutes. For example,

117 Submission no. 321, p. 10. The Productivity Commission also advocates the use of 'rules of thumb' in certain situations; see B Aretino *et al*, *Cost sharing for biodiversity conservation: a conceptual framework*, p. 36-38.

> you might allow a statute that imposes a duty of care to call up a code of practice and then say that compliance with that code is deemed to discharge the duty of care. … So within that process as well there is lots of opportunity and scope for negotiation and discussion.[118]

2.134 As noted earlier, the common law definition of 'duty of care' or any legislated extension of it, in the Committee's view, has limitations in the extent to which it assists in the promotion of public good conservation. Likewise, the definition of duty of care adopted by some landholders and peak organisations is similarly limited.

2.135 Nevertheless, the Committee does believe that the term has some merit. The term can, potentially, be used to set out the sorts of actions that must be engaged in or not engaged in, so that the ecologically sustainable use of Australia's landscape occurs. However to be useful, duty of care must be clearly defined.

2.136 People do have duties to ensure that their actions do not harm others or others' interests, even if we cannot identify which particular action produces the harm or if the harm emerges out of a series of actions over a long period of time. This means that a landholder's duty of care does not cease at the farm fence, but extends into the neighbour's property and ultimately down the catchment and even, in some cases, further afield.

2.137 Another factor in developing a definition of 'duty of care' is that the actions a particular landholder will need to perform, to discharge his or her duty of care, will vary from location to location and region to region. There is support for this view from witnesses, For example, Mr Paul Bidwell testified that

> … You cannot have a state wide duty of care, from the grazing industry's perspective at least, because things need to be done differently in different parts of the state. So what is a fair standard in the gulf country is not a fair standard in south-east Queensland or for the Channel Country.[119]

2.138 In a similar vein, Ms Leanne Wallace testified that:

> You cannot define it in words. You have got to define it in the way that actions have been put in place on the ground. You have got to say, 'In this area of the state, you will need to retain X per cent of native vegetation on your property as your duty of care. If you retain more than that, then it is a public benefit and we will pay you to manage that'. That is the level of detail that you need to get

118 *Transcript of Evidence*, p. 468-469.

119 Mr Paul Bidwell, *Transcript of Evidence*, p. 135.

> down to, so that people understand what it means for them as an individual land-holder on their property. That will vary across the state. We have got some regions of the state where there is only five per cent of the vegetation cover left on the whole of the landscape. That is a bit different to the north west where you have got substantial areas of vegetation left. The duty of care there will be different because of the nature of the vegetation.[120]

2.139 The Committee endorses the approach of defining 'duty of care' from a policy perspective; that is, in terms of the outcomes that are wanted. In this respect, the Committee supports the observation of Ms Leanne Wallace, who testified that:

> … it gets down to the issue of whether you define 'duty of care' in a legal sense or from a policy perspective and actually articulate what it means on the ground.[121]

2.140 This is the approach that appears to be supported by the South Australian Government. The Committee was advised by the South Australian Government that:

> Given the emergence of the duty of care principle as a conservation measure imposed by statute, the South Australian Government considers that a consistent national approach to the application of this principle is required. The Government also considers that this principle can be given greater clarity when expressed in the form of behavioural standards that apply to individuals.[122]

2.141 The Committee agrees with this approach. Given these sorts of considerations, the Committee comes to the conclusion that landholders do have a duty of care to manage the land in their charge in a way that is ecologically sustainable, given their particular geographical location, and based upon the latest scientific information. This approach imposes scientifically ascertainable behaviour requirements upon landholders. It sets clear criteria to determine what actions should be performed and what should not, whether a landholder has sufficient information and wherewithal to carry out the actions required, and what additional support from the community is necessary. What this will mean, in any particular location, will depend upon the specific circumstances.

120 *Transcript of Evidence*, p. 360.

121 *Transcript of Evidence*, p. 360.

122 Submission no. 238, p. 2.

Recommendation 2

2.142 **The Committee recommends that**

- **the Commonwealth seek agreement with the states and territories for a commonly accepted definition in principle of a landholder's duty of care;**
- **this definition be that landholders have a duty of care to manage the land in their charge in a way that is ecologically sustainable, given the particular geographical location, and based upon latest scientific information;**
- **all legislation in all jurisdictions be amended to incorporate this duty of care, as a minimum standard of land management; and**
- **all Commonwealth funding for public good conservation activities and ecologically sustainable use of Australia's resources be dependent upon the recipient accepting this duty of care.**

3

Impact on landholders of public good conservation measures

> We have approximately 500 acres of bushland which cannot be cleared … before the regulations came in this was worth approximately $125.00 per acre. Now it is battling to be worth $10.00 per acre. This is an injustice that I have had to suffer. It's alright for all those people in the cities who want to save trees etc but I am the one who bears the cost of it. I am the one responsible for the rabbits in that area, I am the one responsible for the weeds, I'm the one who has to do the fencing around the area. I believe that I should have been entitled to some form of compensation or even better still they could have bought the land at valuation, the cost of saving native vegetation would have been borne by all the community.[1]

Introduction

3.1 'Public good conservation' refers to conservation activities where the activity promotes the welfare of a person or people other than the person who undertakes the activity. Many landholders undertake such activities voluntarily, out of a concern for the land they manage. In many cases, however, landholders may be required by one or other level of government to carry the conservation activities. In such cases, landholders may not receive any, or may receive only limited, assistance to meet the costs associated with implementing public good conservation programs.

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1 Submission no. 38.

3.2 The Committee received a considerable amount of evidence from all parts of the Commonwealth in which it was claimed that some landholders were experiencing considerable burdens and were not in a financial position to carry out public good conservation activities mandated by one or other level of government. This comment from Mr Mick Keogh of the New South Wales Farmers Association is indicative of the many submissions and the testimony received from landholders:

> … they [landholders] would normally do, to some degree, measures that impose some sort of conservation values on land as part of their routine operations, but there is a limit to which they can do that. I guess the point we are making is that, for every hectare of land given up, there is that amount of gross income given up in terms of the money that a farmer can make. We believe that certainly in relation to biodiversity and threatened species the sorts of regulations we see go well beyond that duty of care …[2]

3.3 In this chapter the experiences of landholders in meeting their mandated public good conservation obligations are set out. The problems brought to the Committee's attention fall into a number groups, which will be examined in turn.

Cost of programs to landholders

3.4 A major effect of public good conservation measures on landholders has been the additional financial burden that they have been required to shoulder by the mandatory land management practices imposed over the past two decades.

3.5 The financial costs are of two broad types: outlays that a landholder must make to implement the public good conservation land management practices. These are in effect transition or adjustment costs.

3.6 A second type of cost is the ongoing outlays that landholders must make to maintain natural systems on land that may have reduced productive capacity or which may have been removed from production entirely. These are in effect management costs.

3.7 The Committee was advised that these costs have acted as a barrier to undertaking public good conservation measures and, where public good conservation activities have been undertaken, these costs have often reduced farm income and the landholder's quality of life. Some landholders have said in evidence that they are being treated as second

2 *Transcript of Evidence*, p. 297.

class citizens. This comment from Mrs Helen Mahar of Ceduna, South Australia, encapsulated the feelings of many landholders:

> For me, the cost of "public benefit" conservation can be counted tangibly in denial of sufficient cropping land to be viable, in … grazing income losses, and in costs incurred through trying to negotiate as asked (travel, phone, legal advice). As well as the intangible values like loss of trust in democratic conventions of due process, rule of law, and public service probity. And in doubts about the wisdom of trying to do the right thing in a complex, sensitive land management situation.[3]

Transition costs and loss of income

3.8 As the Committee reported in *Co-ordinating Catchment Management*, in order to deal with the environmental degradation facing the nation, a massive repair program must be implemented. This will involve all landholders and require considerable investment. Much of that initial investment will involve transition costs: the costs of moving from the current agricultural management systems to those based upon the principles of the ecologically sustainable use of Australia's catchment systems.

3.9 The extent of these transition costs was revealed to the Committee in a number of submissions. For example, the CSIRO gave this analysis of financial costs for landholders involved in grazing activities in South-Eastern Queensland:

> The task of replanting landscapes and restoring the riparian buffers is clearly a major one, and is likely to represent an insurmountable barrier to action by private landholders, especially when replanting (250 seedlings/ha @ $3-10/ tree) and stock exclusion options (fencing $1500-2500/km, off-river waters @ $500-1000/waterpoint) are required.[4]

3.10 The Western Australian Native Vegetation Working Group stated in its *Final Report* that:

> Virtually all catchments in agricultural areas are recognised as being already below their optimum level of deep-rooted perennial vegetation. It is possible to revegetate for hydrological purposes for between $800 and $2 000 per hectare. Replanting for biodiversity purposes is a much more expensive option and is

3 Submission no. 78, p. 5.
4 Submission no. 154, p. 5.

likely to cost a minimum of $4 000 per hectare, and as much as $15 000 - $20 000 per hectare.[5]

3.11 The Mid Upper South East Local Action Planning Committee stated that, even with assistance, farmers would continue to shoulder the major cost of land rehabilitation in mid upper south east South Australia. The Local Action Planning Committee provided the cost share arrangements that operate in mid upper South Australia:

Table 3.1

	NHT	State government	Landholder
Agro-forestry and fodder	6.7%	3.3%	90%
Native revegetation	35%		65%
Remnant Vegetation	30%	10%	60%
Wetland protection / rehabilitation	20%	20%	60%

Source: submission no. 85, p. 2.

3.12 During its inspections of public good conservation activities at Narrogin, Western Australia, the Committee held discussions with local landholders. The Committee was advised by Mrs Heidi Cowcher that a revegetation project undertaken in the Narrogin area, the Hotham-Williams Western Power Greening Challenge, had involved expenditure of $4.46 million, over 1999-2000. The project involved some 600 000 hectares, 200 landholders and 4 000 volunteers. The financial contributions made by stakeholders were:

- From landholders: $2.36 million (on average $11 800 each)
- From the NHT: $1.68 million
- From Western Power $420 000.

3.13 This was the cost of replanting vegetation. Funding was not provided for drainage, perennial species, commercial species, species for timber production and flower production. Such activities could double the landcare benefit, the Committee was advised. [6]

3.14 The transition costs include not only the costs of moving from one type of land management to another, but also lost income. For example, Mr D A C Laurie of the Deloraine Pastoral Company advised the Committee that the cost to farm income of not developing one property

5 Native Vegetation Working Group, *Final report*, pp. 2, 19. The Working Group also indicated that it understood that 'mining companies such as Alcoa can spend $15 000 - $20 000 per hectare to revegetate mine-sites with an approximation of the original bush', (p. 19).

6 Presentation to the Committee, Narrogin, WA, 19 February, 2000.

would amount to some $135 000 per annum and on another property operated by the company, the lost production would amount to $30 000 per annum.[7] This loss was said to arise from the potential production foregone as a result of disallowing "improvement" of 600ha of the 1680ha property. Where landholders voluntarily undertake conservation measures, and recognise the benefits, they may also incur considerable costs. One landholder, for example, advised the Committee that "protection and enhancement" of remanent vegetation that occurs on 1917ha of his 5750ha property, has cost $4 984 200 over 13 years. This includes direct costs arising from fencing, weed and pest control, rates, as well as the loss of potential income. The landholders advised the Committee that they also recognised that a number of benefits arose from protecting remanent vegetation including long term sustainable land use.[8]

3.15 Another area where landholders experience considerable costs is in obtaining professional assessments of their land management options or applications for development. Such assessments usually involve paying specialist consultants. For example, Mr John Webb of the Euroka Station Partnership advised the Committee that in preparing one application for development the cost to the partnership was $143 000. Mr Webb also advised that the cost of preparing a 'Species Impact Statement' for one development being considered was estimated to be about $50 000.[9]

On-going management costs

3.16 After transition to more ecologically sustainable land management practices has occurred, landholders are faced with funding the costs of ongoing management. Ongoing management costs arise where public good conservation measures are imposed or entered into voluntarily but ongoing finance is not provided to assist with the measures. Often landholders are left to manage land that does not produce any income, or if it does, the income produced does not meet the management costs. This comment is indicative:

> The normal costs of management of VCA [voluntary conservation agreement] land can be considerable. The building and maintenance of fencing, weed and feral animal control may in some instances approach the costs of operating a viable rural enterprise. Not to acknowledge this fact is a serious disincentive to

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7 Submission no. 96. Such claims were made in other submissions, for example, submissions no. 97, 119; 170, 177.

8 Submission no. 155, p. 2. Other landholders advised the Committee that on 48.6 ha they had spent on average $4 803 per annum on public good conservation measures over the past 29 years.

9 Submission no. 142, pp. 4, 7.

> the conservation of remnant vegetation and is to ignore reality. Many landholders cannot afford or are unwilling to bear the cost of conserving vegetation.[10]

3.17 Moreover, land in many parts of Australia that has been removed from production is subject to higher levels of local and state government rates and other charges, compared to land used for agricultural production. In other areas, although there may not be differential charges, landholders may still be required to pay local or state government charges. Liability to local and state government charges in respect of land that is not generating income presents an ongoing burden to landholders and a significant disincentive to undertaking public good conservation measures.[11]

3.18 Other ongoing costs include weed and pest control. The Committee was advised that:

> Costs of weed and pest controls are borne by the landholder. By law, the landholder is still responsible for the costs of weed and pest control on land covered by these restrictions. It is difficult, if not impossible, to recover these management costs on land which falls under restrictive legislation.[12]

3.19 Such expenses occur not only in respect of land that is directly under a landholder's control. A landholder may experience costs from weeds and pest animals that come onto their holding from adjoining or abutting properties or from crown land.[13] Ms Noeline Franklin advised the Committee that:

> Wild dogs protected in NP&W [National Parks and Wildlife] reserves are decimating 'native' wildlife and stray over the region harassing wildlife and livestock seeking safe haven on private land.
>
> Weeds on crown land are a seed nursery for the region, swamp wetlands affect quality runoff [and] out-compete native vegetation. Grazing, herbicide, fire can't be used for suppression…[14]

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10 Submission no. 145.

11 See, for example, *Transcript of Evidence*, pp. 414, 447; submissions nos. 137; 170.

12 Submission no. 138, p. 2; see also, for example, submission no. 61, *Transcript of Evidence*, p. 447.

13 Or from roadsides, see submissions nos. 31, 105.

14 Submission no. 158. The points made by Ms Franklin were supported by the NSW Farmer's Association, Cooma Branch, see submission no. 157.

3.20 Landholders can also experience costs where they wish to prevent their own livestock going into areas reserved for public good conservation programs. For example, Ms Sarah Lewis, representing the South Australian Farmer's Federation testified that:

> I am dealing with one issue at the moment where a fence is in a state of disrepair, out of old age, and the land-holder approached the National Parks and Wildlife for some assistance in repairing the fence because his animals were getting into the park and causing damage. It was environmental damage and he was losing production... He was looking for a fifty-fifty fencing cost arrangement. He was happy to erect the fence himself but he had huge problems in getting such assistance. There is a fund for fencing assistance but he was having considerable problems and it was very frustrating for him and it was causing environmental damage so it was not for the public good at all.[15]

3.21 The Western Australian Native Vegetation Working Group observed that:

> The incentives generally fall well short of the actual costs of ownership, and particularly fail to significantly meet the costs of management to maintain conservation values for the public good. This is particularly serious where landholders and groups seeking to adopt innovative ownership and management options find themselves facing policies, procedures and regulations that were framed some decades ago when clearing was promoted through government policy.[16]

3.22 The Committee agrees that the cost of changing to sustainable natural systems management practices, and the ongoing management of public good conservation areas has not been adequately understood by policy makers, and that landholders are experiencing considerable financial losses from mandatory and voluntary conservation measures alike.

Impact on property value.

3.23 The Committee received a considerable amount of evidence indicating that public good conservation measures reduced the value of properties.[17] An example of the loss of value on one property in Western New South Wales was provided by the Five Ways Landcare Group:

> The devaluing of the capital value of landholdings is one of the hidden costs associated with these measures. For example, a

15 *Transcript of Evidence*, p. 519.

16 *Final Report*, p. 18.

17 Egan Valuers in WA, *Transcript of Evidence*, p. 421; submissions no. 96, 138, 153, 170.

> property of 3107.59ha was purchased in 1994 for $105 000 for development purposes. From 1911, when the settlement lease was taken up, until 1994 an area of 120ha had been cleared, leaving 2980ha of modified timber and vegetation. From 1994 to 1999 a further 280ha were cleared, to a total of 400ha, leaving 2700ha. Under the current plans for maintaining remnant vegetation, no substantial clearing will be allowed, so the 2700ha now has a limited capacity to produce a return on investment to the landholder. It was the intention of the landholder to develop the property to a level of 2000ha cleared, leaving 1100ha in its current state (modified timber, regrowth and vegetation). If this additional development occurred the commercial value of this property would be increased to $456 000. This one landholder is forgoing $351 000 in capital improvement on his land investment.[18]

3.24 The Committee also received some evidence that under certain circumstances, for example where native bush is retained in an urban environment, the value of land overlooking or adjacent to the remanent vegetation, may be increased.[19]

Access to finance

3.25 As public good conservation measures have been imposed, landholders have found themselves deprived of access to finance that would assist in the transition from environmentally degrading activities to activities that are ecologically sound.[20] In this regard, the Committee was told by Mr Gary Anderson from Arno Bay in South Australia that:

> We purchased in good faith a “development farming property”. Our bank, stock firm and others who advised us were happy that the farm was potentially viable. We were offered finance for purchase and development. In 1983 clearing restriction commenced in South Australia. When the full impact of the Native Vegetation Act became known it was clear that [we] would be permitted to cultivate 25% only of our farm’s total potential arable area. As a consequence, the banks lost all interest in us as we were deemed to be “not potentially viable”.[21]

18 Submission no. 124, p. 2.

19 For example, *Transcript of Evidence*, pp. 423-424.

20 For example, see *Transcript of Evidence*, p. 266.

21 Submission no. 61, p. 3. See also submission no. 134, which makes a similar point.

3.26 There have also been newspaper reports that changes in water allocation rights can now have a positive and negative effect on the financial assessments that banks make of the financial viability of farms.[22] The Committee wrote to the Australian Bankers' Association for comment, but no response was received.

Uncertainty surrounding a landholder's land-use rights

3.27 One of the major effects upon landholders of public good conservation measures has been the imposition of new regulations and constraints in land use planning. This also affects many of their other plans, such as passing on a viable business to their children and also making adequate provision for their own retirement from active farming.

3.28 Mr B J Burns from Albany (WA), advised the Committee that he had a total of 8 000 acres of which he is now not permitted to clear 6 000. He told the Committee that this land represents his superannuation. Mr Burns wrote in his submission that the land he manages is now covered by a perpetual clearing ban and had he known this when he acquired the land he would not have purchased it.[23]

3.29 Uncertainty also arises because landholders do not know what rights they have over the land they manage. Dr Wendy Craik, then Executive Director of the National Farmers' Federation testified that:

> There is no doubt that many farmers these days are at a point where they would like to have some certainty in their property rights so they know what they can do.[24]

3.30 It was argued in evidence provided to the Committee that current policy arrangements fail to take account of the long term planning that landholders undertake. This was demonstrated clearly in testimony to the Committee. Mr John Lowe testified that:

> We have a very lovely area of bushland which we have protected, and we have received national awards for our standard of farming. It comprises about 20 per cent of our lease, right in the middle of the lease. We are told that we cannot use it in the way we have been using it before. Talking to the people in the ACT Wildlife and Monitoring Section, we have four different opinions about how we should use it, including one from one person in the same area of the department who says it is not of high value at all,

22 K Murphy, 'Ban acts on water reform', *The Australian Financial Review*, 27 February, 2001, p. 5.

23 Submission no. 213.

24 *Transcript of Evidence*, p. 227.

> and that with what we will be offered under our new lease that whole area will be subject to a withdrawal clause without compensation.
>
> It is impossible to plan in agriculture for horizons of five years—you cannot do it.[25]

3.31 This failure was criticised in other jurisdictions. Mr Ian Lobban from the Victorian Farmers' Federation, testified that:

> In theory at least farmers are required to obtain permits if they are contemplating cropping or re-sowing paddocks containing native grass which is more than 10 years old. This is absolutely impractical and an unacceptable situation to impose upon farmers because quite often farmers have to plan well ahead—what paddocks they are going to crop, what acreage they are putting in—and perhaps they have to adjust their stock numbers accordingly. It is totally unrealistic to think that they can make those adjustments and then, at the last moment, when they are ready to plough a paddock they find that maybe they are not permitted to do so or someone holds them up.
>
> Real inequities arise in this area. We are currently dealing with a situation where a farmer has taken out a lease with the aim of cropping the land. Subsequently, the Department of Natural Resources and Environment has decided that the land contains native grassland which needs to be preserved. This has prevented the farmer from continuing with his plan to crop the land, yet he is still locked into the contract to lease the land with no means of generating an income to service that contract. This is a case in point where conservation for public benefit is very clearly costing individuals money.[26]

3.32 Uncertainty concerning what a person may or may not do reduces the confidence of a landholder to invest in new forms of production and new technology. In order to justify the risk, a landholder may well require a higher rate of return or need to purchase expert advice. If that is not in evidence, the landholder may persist with production methods that are environmentally degrading.[27]

25 *Transcript of Evidence*, p. 265.

26 *Transcript of Evidence*, p. 24.

27 *Transcript of Evidence*, p. 395.

An alternative view

3.33 The Committee notes that some witnesses disputed the complaints of landholders. For example, the New South Wales government provided the Committee with this assessment of the impact of public good conservation measures on landholders:

> In many cases … there are also significant private benefits from additional conservation activities, in the form of increased productivity, increased property value or opportunities for greater diversity of land use. This is illustrated by a recent study[28] in the Gunnedah area that found that maximum pasture yield is obtained when 34 per cent of tree cover on a property is retained. Furthermore, a number of other studies have found that approximately 30 per cent tree cover is vital to both production and the maintenance of native species.[29] These findings demonstrate that in some cases there may be very little "gap" between private and public good.
>
> The impacts of conservation measures on landholders are therefore often specific to an individual landholder, because they depend on the state of resource degradation, the financial status of the business, the assistance provided to implement the change and the personal and business plan for the farm. The Inquiry would benefit from case studies developed with farmers to identify the specific impacts of conservation measures in a range of situations.[30]

Conclusion

3.34 The Committee recognises that the weight of evidence suggests that there has been considerable and sometimes negative effects upon some landholders, particularly those landholders who cannot afford the costs of transition to more sustainable land use practices. The view expressed in the NSW Government submission is at variance with the evidence this Committee encountered.

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28 S C Walpole, "Assessment of the economic and ecological impacts of remnant vegetation on pasture productivity", *Pacific Conservation Biology*, 5 1999, pp. 28-35.

29 S C Walpole, "Assessment of the economic and ecological impacts of remnant vegetation on pasture productivity".

30 New South Wales Government, submission no. 234, p. 3.

3.35 Even where the landholders have voluntarily entered into public good conservation agreements, the ongoing management costs of land reserved for the public good impose a financial burden that is unlikely to be off-set by increased income from other activities.

3.36 The Committee has not considered the human cost of public good conservation measures. Some submissions did make reference to personal stress, family tensions and the need for off farm incomes to maintain the viability of farms subject to public good conservation measures.[31] However, it is known from many other studies that landholders and their families experience considerable personal strain, and public good conservation measures only add to those pressures. This was apparent from the submissions and the testimony received.

31 For example, submissions no. 124, p. 5.

4

Public good conservation measures abroad

> Another approach to resource management … by countries in the European Union and Japan involves the concept of the "multifunctional character of agriculture and land". This involves a recognition that in addition to agricultural production there are other unpriced benefits from agriculture including environmental values, rural amenities, cultural values, rural employment and rural development.[1]

Introduction

4.1 Policies designed to promote public good conservation abroad differ markedly from the approach taken in Australia. In Australia, there is an emphasis on a limited range of policy measures. These include most prominently: regulation prohibiting various actions, and 'cost sharing'. They also include directing funding to those projects where the landholder is thought not to have a duty of care towards the land, establishing artificial markets, and providing the minimum of public support in order that public good conservation outcomes can 'free ride' on the actions of private individuals.[2]

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1 AFFA, submission no. 238, p. 6. Norway, Switzerland and Korea. D. Givord, 'Defending the European rural and agricultural model at the WTO'; www.rural_europe.aeroll.be/rural_en/ biblio/model/art02.htm.

2 B Aretino *et ali.*, *Cost sharing for biodiversity conservation: A conceptual framework*, Productivity commission, staff research paper, Canberra: Commonwealth of Australia, 2001, p. 17; SCARM, *A discussion paper on principles for shared investment to achieve sustainable natural resource management practices*, submission no. 238, attachment 2.

4.2 In the case of cost sharing, costs are shared between the private and the public sector based upon an assessment of the level of the benefit each stakeholder is likely to receive from a conservation program. The basic principle is that the beneficiary pays, and the prime beneficiary is usually considered to be the landholder.

4.3 As discussed in chapter 2, the SCARM principles provide that:

> Landholders and other resource users have a *duty of care* to take all fair and reasonable measures to ensure that they do not damage the natural resource base. In many circumstances, this legal or moral requirement will cause landholders to pay all costs associated with on-ground works because such works are part of their duty of care. Such expenditure is a requirement of their stewardship role and no funding support or compensation need apply to these investments. In these situations the role of government is often in education, research and advice to support and raise landholders' awareness of their *duty of care*.[3]

In this chapter, the Committee contrasts this approach with that adopted overseas.

4.4 The approach adopted in Europe and the United States involves implementing programs based on broad scale environmental funding to purchase desired outcomes.[4]

4.5 Both the UK and the US have a number of programs aimed at encouraging conservation on private lands. These programs are often combined with tax incentives such as deductions, exemptions and credits, and regulations such as air and water pollution levels, to create a flexible range of measures. In addition to providing incentives for landholders to undertake conservation works, it is also possible for individuals and companies to contribute to conservation on private lands.

4.6 The Committee recognises the difficulties in examining aspects of overseas public good programs, due to a number of factors including differing political structures, geography, history, cultural values and population size. However, the Committee examined public good conservation programs abroad with a view to considering the implementation of public good policies appropriate for Australia.

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3 Submission no. 238, attachment 2, p. 3.

4 C Binning and M Young, *Motivating people: using management agreements to conserve remnant vegetation*, National Research and Development Program on Rehabilitation, Management and Conservation of Remnant Vegetation, Research Report 1/97, Canberra: Commonwealth of Australia (Environment Australia) 1997, p. 21; NSW Farmers' Association, submission no. 177, p. 4.

4.7 The Committee received little evidence in relation to overseas public good conservation programs,[5] and undertook its own research in this area. The Committee wishes to note that the following information is by no means exhaustive, and indicative only of general policy directions.

4.8 The overseas approaches to public good conservation that are examined are those in the European Union, and then specifically the United Kingdom. Then the approach in the United States is examined.

The European Union

4.9 What has been referred to in this report as public good conservation programs are known in European Union (EU) countries as 'agri-environmental' programs. These programs have evolved from modest beginnings in the mid-1980s, and have become increasingly prominent in the reforms of the Common Agricultural Policy (CAP) that occurred in 1992 and again under Agenda 2000.[6] The agri-environment policies implemented in 1992 represented a policy shift for the EU. The new arrangements under Agenda 2000 grew directly out of the 1992 initiatives and their perceived success and seeks to carry them further in an attempt to obtain greater conservation outcomes.

4.10 One of the measures accompanying the 1992 reform of the CAP was an agri-environment regulation.[7] This regulation provided for programs to encourage farmers to carry out environmentally beneficial activities on their land. Farmers were paid the costs and reimbursed income losses for providing the environmental service. In addition to the land management measures, the regulation provided for training and demonstration projects to promote the use of environmentally beneficial techniques and good farming practice.

4.11 Under the 1992 regulation, member states were required to apply agri-environment measures throughout their territories, according to their environmental needs and potential. Agriculture departments in all Community member states faced pressure to implement programs that contained a wide variety of environmental objectives. The purpose of making implementation of the regulation mandatory was to prevent a repetition of the response of members states to the earlier agri-

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5 Exceptions being submissions no. 177 and 231, attachment E, and exhibit 7 provided by the NSW Farmers Association.

6 Buguñá Hoffmann (ed.), *Stimulating positive linkages between agriculture and biodiversity : recommendations for the EC-Agricultural Action Plan on Biodiversity*, Tilburg: European Centre for Nature Conservation, 2000, p. 25-6.

7 Regulation ECC 2078/92

environment regulation enacted in 1985. That regulation was largely ignored by member states in the south of the EU.

4.12 As well, the new regulation contained a wider range of measures intended to address the environmental concerns of all EU member states. Two broad types of environmental objective are evident:

- to reduce the negative pressures of farming on the environment, in particular on water quality, soil and biodiversity; and
- to promote farm practices necessary for the maintenance of biodiversity and landscape, including to avoid degradation and fire risk from under-use.

4.13 The main elements which characterise agri-environment agreements are:

- farmers deliver an environmental service;
- agreements are voluntary for the farmers;
- measures apply only on farmland;
- payments cover the income foregone, costs incurred and necessary incentive; and
- undertakings must go beyond the application of good agricultural practice.

4.14 The measures that the 1992 regulation called for included:

- substantial reductions in the use of fertilisers and pesticides (or maintenance of reductions already made);
- the wider use of organic farming methods;
- a reduction of livestock numbers per forage area;
- an increase in the use of environmentally friendly farming practices;
- the rearing of local or traditional breeds in danger of extinction;
- the upkeep of abandoned farmland or woodland;
- land management for public access and leisure;
- reversion of intensively used land, such as arable or grass for silage to biologically diverse, but unprofitable extensive grassland;
- creation of nature zones taken out of production;
- continuation of traditional environmental land management in zones liable to neglect; and

- maintenance of landscape features which are no longer agriculturally viable.

4.15 The regulation also allowed for all agricultural land to be included in agri-environment programs rather than, as had been the case, only environmentally sensitive land.

4.16 The 1992 agri-environment regulation established the principle of 'paid stewardship' across the EU, and it was broadly supported by environmentalists.

4.17 The programs were managed by regional or national authorities under a decentralised system of management, subject to approval by the Commission for each program.

4.18 The 1992 regulation also provided for co-financing of agri-environment schemes from the guarantee section of the European Agricultural Guidance and Guarantee Fund (EAGGF), thus setting the agri-environmental measures on an equal footing with the CAP's productivist programs. The costs were part-financed from the EU budget.[8] Expenditure from the EAGGF guarantee fund in 1997 amounted to 1.5 billion euros. This was about 4 per cent of EAGGF guarantee expenditure.

Result of the 1992 reforms of Common Agricultural Policy (CAP)

4.19 The requirement on member states to apply the 1992 regulation throughout their territories according to their needs stimulated a very rapid expansion of agri-environment initiatives and measures. The EU's 5th Environmental Action Program adopted in 1992 aimed to have 15 per cent of farmland in the EU under agri-environmental programs by year 2000. The agri-environment programs that accompanied the 1992 reform of the CAP delivered 20 per cent of farmland to agri-environment contracts by 1998. This amounted to one farmer in every seven in the EU participating in those agri-environment programs.

4.20 There is evidence, adduced by the EU, that the programs on the whole had a positive effect. These included:

- reductions in the use of N-fertiliser and better application techniques;
- positive activities for nature protection;

8 Part-payment from the EAGGF was first introduced in 1987. However, this development must be seen in the context of the mounting pressure in 1992 on the CAP's budget, caused through overproduction. It marked the initial acceptance that supporting environmentally friendly farming practices might also help to curb surplus production.

- programs to maintain and improve landscape features have been shown to have positive results in maintaining elements no longer relevant to farm production;
- increase in employment is recorded in some cases, for example where labour intensive environmental management replaces a low-labour intensive activity; and
- contributions to income have been substantial in the case of farmers in marginal areas where continued farming is necessary to provide the environmental benefits. However, the income effects are relatively insignificant in more profitable and intensive areas.

4.21 Evaluation reports also indicate that programs provided value in terms of environmental benefits. The cost to the Community budget is relatively modest: 4 per cent of EAGGF guarantee section. This points to a high level of value for money. The reports also note that the reductions in inputs may require further analysis as some of the reductions may be due to other factors. As well, the Commission of the European Communities observed that adoption of programs was generally low in highly productive and intensive agricultural areas.[9]

Agenda 2000 Reform of the CAP and additional agri-environment measures

4.22 Since ratification of the Maastricht Treaty (1992), there has been a legal obligation on the Union to take account of environmental protection requirements when drawing up and implementing community policies. This is an obligation that was reinforced by the Treaty of Amsterdam on 1 May 1999. The current developments in agri-environmental programs are to be seen in the context of these decisions to include environmental considerations when other policies, including the CAP, are formulated and implemented.[10] In practice the most recent developments in agri-environment programs in the EU are part of the EU's Agenda 2000.[11]

9 European Commission, *Directions towards sustainable agriculture*, Comm (1999) 22, p. 16; European Commission, *State of application of regulation (EEC) no. 2078/92: Evaluation of agri-environment programmes*, 1998.

10 European Commission, *Indicators for the Integration of Environmental Concerns into the Common Agricultural Policy*, Comm (2000) 20.

11 Agenda 2000 is an action program adopted in 1999 which has the objectives of reforming key EU policies including the CAP, policies concerning the environment and integrating them into all EU policies; the challenges arising out of regional economic differences and the enlargement of the EU through the admission of new states; and adopting a new financial framework. European Commission, *Europe's Agenda 2000: Strengthening and widening the European Union*, 1999, v.31.8.

4.23 The current approach to public good conservation in the EU is based upon what is referred to as the 'European model of agriculture'. The fundamental components of this model are:

- 'Sustainability' this refers to the goal that agriculture should meet the needs of the present without compromising the ability of future generation to meet their needs. It entails preserving the overall balance and value of the natural capital stock. It also involves taking a long term view of the real socio-economic costs and benefits of consumption and conservation.
- 'multifunctionality' agriculture has roles and purposes in addition to the production of goods and foods. These are so called 'non-trade' purposes. They include conservation of biological diversity and the environment in general; maintenance of farmed landscapes and landscape features, preservation of cultural features, including historical remains and land uses of cultural significance; preservation of rural ways of life; a fair standard of living for the agricultural community; and recreational purposes. Multifunctionality typically includes sustainability.

4.24 Under the Agenda 2000 reforms to the CAP, member states are required to undertake environmental measures they consider appropriate to their circumstances. The underlying rationale of the Commission's proposals for integrating environmental concerns into agriculture rests on two principles :

- Farming, as is the case for any economic sector, should attain a basic standard of environmental care without specific payment. This should be contained within the scope of good farming practice (which includes many matters other than environment) and comprises observance of regulatory standards and an exercise of care which a reasonable farmer would employ. This is the 'reference level';
- Wherever society asks farmers to provide an environmental service beyond the reference level, and the farmers incur cost or income loss, society must expect to pay for the service.[12]

4.25 There are two components to the Agenda 2000 reforms that provide for agri-environment programs, based upon these principles.

4.26 First, the integration of agri-environment goals into the CAP via the operation of various direct support schemes. Under the EU rules applying to direct support schemes, member states must lay down environmental

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12 European Commission, *State of application of regulation (EEC) no. 2078/92: Evaluation of agri-environment programmes*, 1998, p. 115; http://europa.eu.int/comm/agriculture/envir/programs/index_en.htm, 6.7.2001.

requirements or standards of good farming practice that they consider to be appropriate. States may make direct payments to farmers dependent on compliance with those requirements. The requirements may be for meeting generally applicable environmental requirements or they may make the payments dependent upon meeting specific conditions.

4.27 Activities within this element of the reforms to the CAP could include direct payments to reduce production of grain or livestock in environmentally sensitive areas or compensation for setting aside areas of land for environmental reasons.

4.28 Second, the implementation of a rural development policy that has as a core element, agri-environment programs. The rural development policy is often referred to as the 'second pillar of the CAP'. It includes specific agri-environment measures. These programs provide payments for commitments going beyond good agricultural practice. They constitute an important environmental tool, being compulsory in all rural development programs for the member states (although participation is optional for farmers) and based on a conscious, voluntary commitment by farmers to greener agriculture.

4.29 Aid is usually granted to farmers who undertake programs for a minimum of five years, it is granted annually and the amount is calculated according to the income lost, any additional costs resulting from the activities and whether a financial incentive is required to entice participation.[13]

4.30 Under the rural development policy, farmers in so called 'less favoured' areas (areas that are subject to environmental problems) are also eligible for compensatory payments to make good the costs and income losses sustained from implementing EU environment protection measures. Financial support is also available for forestry.[14]

Other European Union support programs

4.31 In addition to the specific agri-environment measures associated with the CAP, other EU programs contain agri-environment measures or the potential for them to develop, with assistance. The Amsterdam Treaty sets out the basic principles of balanced and sustainable development and a high level of environmental protection. The structural funds constitute important financial instruments to support the implementation of

13 European Commission, *Fact sheet: The CAP reform:- A policy for the future.*

14 European Commission, *Fact sheet: CAP reform: Rural development.*

community policies consistent with these principles. To put these policy objectives into practice in the context of the structural funds program, the regional development strategies, which are designed by member states, contribute to the further incorporation of environmental considerations into priority sectors, such as transport, energy, agriculture, industry and tourism.[15]

4.32 Natura 2000 is a European network of areas, proposed under the Birds Directive and the Habitats Directive, where human activity must be compatible with the conservation of sites of natural importance.

4.33 Based on the experience gained through agri-environmental measures, there may be a link in the future between Natura 2000 and EU agriculture. By paying for a service provided by farmers to society, the EU support helps to diversify agricultural income, particularly in animal-rearing areas and areas of diversified farming. It therefore contributes to managing potential Natura 2000 sites.

4.34 Several member states and regions are now giving priority to Natura 2000 sites by co-financing agri-environmental measures. The opportunities that the EU have identified for a close collaboration between agriculture and agri-environment programs include:

- farmers are remunerated for the environmental services they provide in a transparent way which their fellow citizens can understand; and
- related activities become more attractive, e.g. the direct sale of meats, cheeses or wines labelled as coming from Natura 2000 sites.

4.35 According to the EU, Natura 2000 could become a clear sign of the multifunctionality of agriculture in the third millennium.[16]

4.36 It is important to note that the EU does not consider that the payments made to farmers for agri-environmental services to constitute subsidies. According to the EU, a subsidy is a payment designed to improve the competitive position of a supplier or producer. Agri-environmental payments are payments for services provided to the community and, while such payments do contribute to a farmer's income, they do so in respect of paying for services provided. Such payments are similar, according to the EU, in economic nature to the income contributions a farmer receives by selling produce.[17]

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15 See, European Commission, *Fact sheet: CAP reform: Rural development* and http://europa.eu.int /comm/environment/agenda2000/structural.htm

16 http://europa.eu.int/comm/agriculture/envir/report/en/n2000_en/report_en.htm

17 European Union, *State of application of regulation (EEC) no. 2078/92: Evaluation of agri-environment programmes*, p. 107.

Agri-environment schemes in England

4.37 Agri-environment schemes have been introduced in England, and are undertaken primarily through the Department for Environment, Food, and Rural Affairs (DEFRA), formerly known as the Ministry for Agriculture, Fisheries and Food (MAFF).

4.38 DEFRA launched the England Rural Development Program (ERDP) in October 2000, and will spend £1.6 billion over a period of seven years on programs to assist rural areas.[18] The program also receives funding from the EU.[19] Agri-environmental schemes include the following programs.

- **The Countryside Stewardship Scheme**. Under this scheme farmers and land managers enter 10-year agreements to manage land in an environmentally beneficial way in return for annual payments. Grants are also available for capital works such as hedge laying, planting, and repairing dry stone walls.[20] Payments vary according to land management options, and can range between £4–£525 per hectare.[21] This scheme operates outside Environmentally Sensitive Areas (ESA) (described below).
- **The Environmentally Sensitive Areas Scheme**. This scheme aims to encourage farmers to safeguard areas where the landscape, wildlife or historic interest is of national importance. There are currently 22 ESAs in England, covering 1.1 million hectares, or 10 per cent of agricultural land.[22] Landholders enter into a 10-year agreement with DEFRA to follow specific management practices designed to conserve and enhance the landscape, historic and wildlife value of the land. Payments vary on the type of management required and can range between £8–£500 per hectare.
- **The Organic Farming Scheme.** The scheme aims to encourage the expansion of organic production through providing landholders with financial assistance during the conversion process.[23]

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18 'England Rural Development Programme', www.maff.gov.uk/erdp/docs/erdpdocsindex.htm, accessed 21 May 2001.

19 'England Rural Development Programme 2000-2006', www.maff.gov.uk/erd/docs/national/exesummary/funding.htm, accessed 21 May 2001.

20 'Countryside Stewardship Scheme', www.maff.gov.uk/erdp/guidance/cssdet/csshome.htm, accessed 18 May 2001.

21 'England Rural Development Programme', www.maff.gov.uk/erdp/docs/erdpdocsindex.htm, accessed 21 May 2001.

22 'Environmentally Sensitive Areas Scheme', www.maff.gov.uk/erdp/guidance/esasdet/esashome.htm, accessed 18 May 2001.

23 'Organic farming scheme', www.maff.gov.uk/edrp/schemes/landbased/landbasedhome.htm, accessed 18 May 2001.

- **Hill Farm Allowances**. This scheme aims to compensate hill farmers for the difficulties of farming in less favoured areas. While this is predominantly aimed at retaining the rural characteristics of the English countryside, rather than environmental considerations, landholders are required to observe 'Good Farming Practice' conditions, as outlined by the Government.[24]

4.39 Other relevant schemes administered by DEFRA are listed below.

- **Rural Enterprise Scheme.** This provides targeted assistance to support the development of more sustainable, diversified and enterprising rural economies.
- **The Vocational Training Scheme.** This provides funding for training in a number of areas, including environmental and conservation skills.
- **The Process and Marketing Grant Scheme.** This provides grants for projects that can meet particular objectives, one of which is the protection of the environment.
- **The Energy Crops Scheme.** This scheme aims to promote the planting of crops that have the potential to reduce greenhouse gas emissions and or be used in the generation of renewable energy.[25]

4.40 The Department of Forestry, in conjunction with DEFRA also runs a number of schemes.

- **The Woodland Grant Scheme.** This scheme provides grants to create new woodlands and encourage good management and regeneration of existing woodlands in England. The landowner agrees to look after specified woodlands and to undertake approved work to a satisfactory standard for 10 years.[26] Grants are awarded in two instalments – 70 per cent when planting is completed and a further 30 per cent after five years. Basic grants for the establishment of new woodlands are either £700 or £1350 per hectare depending on the type of woodland planted. The British Parliament has provided for a total expenditure of £139 million over a period of seven years (2000-2006).[27]

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24 'Hill Farm Allowances' www.maff.gov.uk/erdp/schemes/landbased/hfas/hfashome.htm, accessed 18 May 2001.

25 'England Rural Development Programme', www.maff.gov.uk/erdp/docs/erdpdocsindex.htm, accessed 21 May 2001.

26 'What is the woodland grant scheme?', www.maff.gov.uk/edrp/schemes/landbased/landbasedhome.htm, accessed 18 May 2001.

27 'Farm Woodland Premium Scheme', www.maff.gov.uk/erdp/guidance/fwpsdet/fwpshome.htm, accessed 18 May 2001.

- **The Farm Woodland Premium Scheme.** This scheme is run in conjunction with the Woodland Grant Scheme. The Premium Scheme provides annual payments to landholders of up to £300 per hectare for 10 or 15 years while agricultural lands are converted to woodlands. The payments are designed to offset the agricultural income forgone until landholders can make a financial return from timber production. The British Parliament has committed a total of £77 million on this scheme for the period 2000-2006.[28]

Agri-environment schemes in the United States

4.41 Since the 1985 Farm Bill, assistance given to farmers has been tied to achievement of conservation goals. The US is at the eighteenth round of the Farm Bill. Funds available under this round are allocated through an auction system, where farmers must compete with each other to receive government funds. Farm Bill legislation requires that funds be allocated on a competitive basis. To receive funds allocated under the Farm Bill, farmers must now provide environmental services for their land under specific programs.

4.42 In the US, support for the agricultural sector has a long history that goes back to the Great Depression in 1933. In its initial phase, the aim of US farm policy was simply to support farm incomes. The need to support farm income stems from the agricultural sector's history of chronic excess farm capacity.

4.43 US agri-environment schemes are run primarily through the US Department of Agriculture's Natural Resources Conservation Service (NRCS) and the Farm Service Agency (FSA). The schemes are regulated under the conservation provisions of the 1996 Farm Bill, which authorised more than US $2.2 billion over six years until 2002.[29] Schemes include:

- **The Conservation Reserve Program (CRP).** This program protects highly erodible and environmentally sensitive lands with grass, trees, and other long-term cover. Up to 36.4 million acres can be enrolled in the program at any one time,[30] with funding provided for assistance with annual rental payments. Up to 50 per cent cost sharing is available for long-term resource conservation. Participants enrol in CRP contracts for periods between 10 and up to 15 years.[31]

28 'Farm Woodland Premium Scheme', www.maff.gov.uk/erdp/guidance/fwpsdet/fwpshome.htm, accessed 18 May 2001.

29 'Summary', www.nhq.nrcs.usda.gov/OPA/FB96OPA/Sum96FB.html, accessed 18 May 2001.

30 'Summary', www.nhq.nrcs.usda.gov/OPA/FB96OPA/Sum96FB.html, accessed 18 May 2001.

31 'Conservation Reserve Program', www.fsa.usda.gov/dafp/cepd/crp.htm, accessed 18 May 2001.

- **The Conservation Reserve Enhancement Program.** This program extends the CRP by establishing state and federal partnerships. These provide landholders with incentive payments to install specific conservation practices for periods of between 10 and 15 years. [32] For example, the US Federal Government has provided the state of Illinois with US $250 million to preserve land along waterways throughout the Illinois river watershed.[33]
- **Environmental Quality Incentives Program (EQIP)**. This program funds technical assistance and cost-sharing for conservation practices in priority areas, with 50 per cent of the funds dedicated to conservation associated with livestock operations.[34] The program establishes 5 to10 year contracts with landowners who agree to manage areas according to set criteria in return for technical assistance and payments of up to 75 per cent for the cost of conservation practices.[35] The program is funded at US $200 million annually.
- **The Wetlands Reserve Program.** This program has an enrolment cap of 975 000 acres, of which one third of must be in permanent easements, one third in 30-year easements and one third in restoration only cost sharing arrangements with a minimum 10 year duration.[36]

  The US Government provides 50-100 per cent of costs depending on the type of management arrangement entered into.[37] Under this program the landholder is still entitled to lease the land for undeveloped recreational activities such as fishing or hunting. The landholder is also entitled to request that additional activities be evaluated to determine if they are compatible uses for the site, such as cutting hay or grazing livestock.[38]

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32 'Conservation Reserve Enhancement Program – questions and answers', www.fsa.usda.gov/dafp/cepd/crepqnas.htm, accessed 18 May 2001.

33 'Conservation Reserve Enhancement Program', www.fsa.usda.gov/dafp/cepd/crep.htm, accessed 18 May 2001.

34 'Environmental Quality Incentives Program – Fact Sheet' www.nhq.nrcs.usda.gov/OPA/FB96OPA/eqipfact.html, accessed 18 May 2001.

35 'Summary', www.nhq.nrcs.usda.gov/OPA/FB96OPA/Sum96FB.html, accessed 18 May 2001.

36 'The 1996 Farm Bill's commitment to conservation', www.nhq.nrcs.usda.gov/OPA/FB96OPA/OviewFB.html, accessed 18 May 2001.

37 'Summary', www.nhq.nrcs.usda.gov/OPA/FB96OPA/Sum96FB.html, accessed 18 May 2001.

38 'Wetlands Reserve Program – questions and answers', www.nhq.nrcs.usda.gov/OPA/FB96OPA/WRPQ%26A.html, accessed 22 May 2001.

- **The Wildlife Habitat Incentives Program.** This program provides technical assistance and cost sharing of up to 75 per cent to help landowners improve fish and wildlife habitat on private lands.[39] While the funding arrangements are similar to EQIP (listed above), this program is not tied to priority areas.
- **Emergency Conservation Program.** This program provides emergency funding for land owners to rehabilitate farmland damaged by natural disasters, such as hurricanes or floods. The US Government provides up to 64 per cent of the costs of restoration.[40]

4.44 US states have implemented a number of mechanisms to conserve private lands. For example, some states have created market based mechanisms to enable trade in endangered species, which, if implemented successfully, can lead to preservation and creation of wildlife habitats. Dr Lavery, chair of Australian Environment International, gave evidence to the Committee regarding the trade in red cockaded woodpeckers in the US:

> The most intriguing one that I know of relates to 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.[41]

Opportunities for non-government contribution

The United States

4.45 Over 1 500 land trusts support conservation on private lands in the US. These trusts buy land, and resell it after imposing conservation covenants. The Nature Conservancy is the largest of these conservation organisations, and protects over nine million acres of ecologically significant land.[42] The Nature Conservancy has become one of the top ten charities in the US.

39 'The 1996 Farm Bill's commitment to conservation', downloaded from www.nhq.nrcs.usda.gov/OPA/FB96OPA/OviewFB.html, accessed 18 May 2001.

40 'Emergency Conservation Program, downloaded from www.fsa.usda.gov/pas/publications/facts/html/ecp00.htm, accessed 18 May 2001.

41 Transcript of evidence, p. 155.

42 'Philanthropy: Sustaining the Land', The Ian Potter Foundation, Melbourne 1999, p. 6.

Individuals and corporations provide 80 per cent of its funding.[43] The annual turnover of the Conservancy exceeds $US 450 million.[44] Additionally, several other US private sector organisations have also conserved over one million hectares. [45]

England and the United Kingdom

4.46 The National Trust was the first organisation in the UK to be given a statutory duty to conserve wildlife and earth science features, through the National Trust Act of 1907.[46] The National Trust was founded in 1895 as an independent charity to hold and manage in perpetuity, for the benefit of the nation, countryside and historic buildings in England, Wales and Northern Ireland.[47] The Trust, while not specifically a nature conservation organisation, owns and manages 240 000 ha of land in the UK, with many of the properties over 500 ha in size. The Trust is the largest private owner of agricultural land in England, Wales and Northern Ireland.[48]

4.47 The Trust has over 600 staff, and over 15 000 volunteers.[49] Most of the Trusts agricultural land is leased back to farmers under agreements which allow the Trust and their tenants to work out terms to suit their circumstances.

4.48 Other private agencies include:

- **The Wildlife Trust**. The Wildlife Trust cares for more than 3000 nature reserves, covering 74 000 hectares. The Wildlife Trust has more than 343 000 members and 22 000 volunteers.[50]

43 'Philanthropy: Sustaining the Land', The Ian Potter Foundation, Melbourne 1999, p. 6.

44 'Philanthropy: Sustaining the Land', The Ian Potter Foundation, Melbourne 1999, p. 6.

45 S Whitten, 'If you build them, will they pay? – Institutions for private sector nature conservation', paper presented at the 45th Annual Conference of the Australian Agricultural and Resources Economics Society, Adelaide, January 2001, p. 1.

46 'Grazing for nature conservation on National Trust land', www.ntenvironment.com/html/nat_con/Papers/grazing1.htm, accessed 24 May 2001.

47 'Guidelines on Management Agreement Payments: The National Trust's response', www.ntenvironment.com/html/land_use/papers/manage01.htm, accessed 24 May 2001.

48 'The National Trust: A nature conservation organisation', www.ntenvironment.com/html/nat_con/papers/intro1.htm, accessed 24 May 2001.

49 'The National Trust: A nature conservation organisation', www.ntenvironment.com/html/nat_con/papers/intro1.htm, accessed 24 May 2001.

50 'Protecting wildlife for the future', www.quiet-storm.net/wildlifetrusts/mainframe.php?section=aboutus, accessed 24 May 2001.

- **The Wildfowl and Wetlands Trust**. The Trust is the largest international wetland conservation charity in the UK, and promotes the conservation of wetlands by providing safe havens for birds, protecting wetlands, and creating wetlands.[51]
- **The Woodland Trust.** The Woodland Trust is a UK charity dedicated solely to the protection of the UK's native woodland heritage. The Trust acquires and manages woodland for wildlife and public enjoyment. The Trust protects over 1000 sites covering 17 5000 hectares and over the last ten years, has invested over £60 million in woodland conservation. The Trust has 200 000 active supporters, including 70 000 members.[52]

Taxation arrangements

United States

4.49 Giving tax concessions, tax deductions, or tax credits to individuals or companies can facilitate donations of money and/or land for public good conservation purposes. The US has a range of financial mechanisms to encourage conservation on private land, including:

- cash donations;
- donations of assets – ie shares;
- donations of land; and
- bequests.[53]

4.50 Other financing options are available in the US that involve using the tax system as motivation for public good conservation. These include:

- Bargain sales of land to conservation trusts. In this situation, the gap between full market value and the price paid by the charity is considered a donation and is therefore tax deductible.
- Landswaps and exchanges. A land trust exchanges land of high conservation value for land or other assets of similar value.
- Capital gains roll over for voluntary acquisitions. If land is compulsorily acquired by the government, landholders receive a 12 month capital gains relief in which time they may acquire replacement assets.

51 'About WWT' downloaded from www.wwt.org.uk/about/about_bod.htm, accessed 24 May 2001.

52 'Who we are', www.woodland-trust.org.uk/findoutmore/who.htm, accessed 24 May 2001.

53 C binning and M Young / The Ian Potter Foundation, *Philanthropy: Sustaining the Land*, Melbourne, 1999, p. 8.

- Donation of land with retained right of occupation. Land is donated to a conservation trust with the provision that the current owner can live on the land until his or her death.
- Financial options annuities and trusts. These include options for the purchase of high conservation value land, payment of annuities to people who donate land or other assets, the use of tax free bonds and sales of shares in conservation lands.[54]

4.51 A comparison of US and Australian tools available for conservation, including changes required to Australian taxation arrangements to make them similar to US arrangements, is given in Table 4.1. This table was published in ‘Philanthropy: Sustaining the land’, The Ian Potter Foundation, Melbourne, 1999.

54 ‘Philanthropy: Sustaining the Land’, The Ian Potter Foundation, Melbourne 1999, p. 9.

Table 4.1 Comparison of Australian and American Tax Treatments

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

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

Source ‘*Philanthropy: Sustaining the land, The Ian Potter Foundation, Melbourne, 1999, pp. 11-12.*

United Kingdom

4.52 Income and transfer tax exemptions are available in the UK if a site (including land and/or buildings) of 'pre-eminent' national, scientific, historic or artistic interest is donated to a recognised charity.[55] Individuals can get income tax and capital gains tax relief on gifts of assets such as land or stocks to recognised charities, including wildlife charities. Companies can get corporation tax relief, for gifts of the same types of investments. Companies can get this relief in addition to relief from corporation tax on capital gains on gifts to authorised charities of shares, securities and other assets.[56]

Legislative and regulatory approaches

United States

4.53 The US Farm Bill provides funding and authorises programs for the undertaking of public good conservation on private land. However, the Farm Bill does not focus on regulatory approaches, instead concentrating on the removal of funding if landholders to do not abide by management agreements. The US Environmental Protection Agency is responsible for a number of laws that may affect landholders, and undertakes a number of programs which can affect landholders, including air, water and pesticide programs. [57] These laws tend to focus on point source pollution, including the 1955 Clean Air Act, the 1973 Endangered Species Act, the 1965 Shoreline Erosion Protection Act, the 1974 Safe Drinking Water Act and the 1976 Toxic Substances Control Act.[58]

Conclusion

4.54 In its report, *Co-ordinating catchment management*, the Committee:

> … acknowledged that there are many initiatives addressing and many reports highlighting the problems facing our catchment

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55 'Relief for heritage assets. Part 3' www.inlandrevenue.gov.uk/rha/rha3.htm, accessed 31 May 2001.

56 'IR78: Giving shares and securities to charity' www.inlandrevenue.gov.uk/pdfs/ir178.htm, accessed 31 May 2001.

57 'Chapter 1- Environmental Protection Agency', www.epa.gov/epahome, accessed 25 May 2001.

58 'Introduction to Laws and Regulations', www.epa.gov/epahome/lawintro.htm, accessed 25 May 2001

> systems. There has been, until recent times, little systematic and co-ordinated action. There is at the time of tabling this report, no nationally co-ordinated approach.[59]

4.55 The Committee also clearly provided its support to the initiatives of the Government in respect of salinity and water quality:

> The Committee therefore welcomes the announcement by the Prime Minister, the Hon. John Howard MP, of *Our Vital Resources: National Action Plan for Salinity and Water Quality in Australia*. The action plan proposes the first co-ordinated, national approach to the problems of salinity and water quality. The plan provides the Commonwealth with the lead role in facilitating, in co-operation and agreement with the states, solutions to these problems. The Prime Minister said that unless the Commonwealth took the lead role, the problems 'will never be fixed because there are competing and colliding state interests that only the facilitating, co-ordinating leadership role of the Federal Government can overcome'.[60]

4.56 The Committee concluded, however, that the arrangements for managing catchment systems are:

> … based on inadequate information and ongoing monitoring, are poorly co-ordinated and do not provide for effective harmonisation of programs between jurisdictions. As a consequence, what would be effective programs in one area can be undone by poorly conceived actions in another. Moreover, while specific local programs have been implemented, whole-of-catchment programs are not developed or implemented. The approach is piecemeal and embodies considerable inefficiencies.[61]

4.57 A considerable amount of the evidence collected in this inquiry indicates that the conclusion the Committee reached in *Co-ordinating catchment management* apply generally to public good conservation programs. It appears from the evidence that, despite some local successes and some landholders who have made the transition to sustainable land use practices, there are many landholders who cannot afford to make the transition and programs that are not as effective as they could be.

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59 *Co-ordinating catchment management.*

60 Prime Minister, The Hon. John Howard, Press conference transcript on the launch of *Our vital resources: National action plan for salinity and water quality in Australia*, Parliament House, Canberra, 10 October, 2000.

61 *Co-ordinating catchment management.*

4.58 This is not through a failure on the part of the many thousands of people who participate regularly in public good conservation measures. It is a failure on the part of policy makers to design policies and programs that are appropriate to the problems at hand.

4.59 As an example, the Committee notes that, similar to Australia, the power to legislate in respect of environmental matters in the US lies predominantly with the individual states. Consequently, Australia and the US share a number of the same structural difficulties, including ad-hoc programs and unco-ordinated approaches between many of the states.

4.60 However, the Committee notes that when, in the 1930s, the United States was faced with the 'Dust Bowl', an environmental and agricultural catastrophe, the US Federal Administration established a permanent agency to focus national efforts to tackle the problem. The result, the US Department of Agriculture's Natural Resources Conservation Service, provides support in various forms to landholders undertaking conservation works.[62]

4.61 The Committee concludes that our public good conservation effort has much to learn from the programs, policies and approaches undertaken abroad. In particular, we must adopt an approach that aims to obtain outcomes and devote more financial resources to the environmental problems facing the nation. What is clear from overseas experience is that not only is funding provided, but genuine attempts are made to alleviate and mitigate the effect of change upon landholders that is occasioned by changes to farming practice caused by environmental problems and the need for public good conservation outcomes.

4.62 Therefore, the Committee iterates the recommendations from its report, *Co-ordinating catchment management*, that a national catchment management authority should be established to foster public good conservation and that the government should examine the feasibility of an environment levy to fund the effort required to remedy the environmental problems facing the nation.

62 For a detailed description of the US approach, see the Inquiry into public good conservation, NSW Farmers' Federation, Submission no. 177, p. 22. See also appendix F.

5

The policy foundations of public good conservation

> There will be some farmers that you would expect to be able to meet it [a newly imposed environmental standard] fairly easily; there will be some farmers that may face greater difficulties. So there will be an adjustment process.
>
> At the end of the day, if some farmers cannot meet those costs [of imposed environmental standards] it is likely that they will cease farming. That in turn has an effect on supply to the market, which will bring the cost back to consumers, in any event. The fact that the government or other regulators may be imposing costs on farmers creating an adjustment pressure may require governments to pay adjustment assistance. But, as to who should pay for the new environmental standard, is a separate issue. The adjustment process is really separate from the fact that a new standard is being imposed.[1]

Introduction

5.1 All governments within the Commonwealth have acted to address environmental degradation. In the course of doing so they have faced the same problem: how to obtain public good conservation outcomes with finite public financial resources. The result has been the development of a public policy framework that attempts to obtain the greatest public good conservation result from the available public financial contribution.

1 Mr Geoffrey Francis, Department of the Treasury, *Transcript of Evidence*, p. 545

5.2 This framework – or funding model – is used to allocate the financial responsibility for public good conservation activities between different stakeholders, typically, the landholder and the community. This is called 'cost sharing' or 'shared investment'. This approach attempts to separate the public benefit of a public good conservation activity from any private benefit.

Limitations of the current policy approach as perceived by some landholders

5.3 The current policy approach, and efforts to apply the SCARM principles, appear on the evidence to contain a number of defects. Some of the defects are the assumptions upon with the policy is based. Other defects are the anomalies the policy generates which lead to poor public good conservation results.

Is there sufficient knowledge to implement cost - sharing systems?

5.4 The current policy approach generally appears to be based upon the capacity of governments (or their agencies) to attribute financial responsibility for public good conservation activities on the basis of actions performed. This in turn requires the accurate identification of the effects of actions that affect the environment, as well as identifying the person or people who perform the actions. As ABARE noted:

> Identifying and valuing the private and public benefits from landholders' conservation efforts is an important step in identifying any underlying rationale for government intervention in the provision of such services.[2]

5.5 At a minimum, the following information must be obtained:

- the environmental effects of a particular activity;
- responsibility for those effects – who did the action; and
- the beneficiaries of an activity – who benefited from the action.

5.6 The Committee collected evidence that indicates that it is doubtful that it is possible in many cases to identify, with the level of precision required, environmental effects, responsibility for effects and the beneficiaries of any action. It is therefore difficult to assign respective shares of the costs of

2 Submission no. 173, p. 9.

conservation activities in a way that satisfies landholders and the community.

5.7 For example, ABARE advised the Committee that:

> This [assigning the respective shares of the costs of conservation] can be a complex task especially when the effects and costs of changes in biophysical outcomes are poorly understood or non-market effects are involved …[3]
>
> … there are several problems with the use of benefit cost analysis for actions that involve environmental and conservation issues. It can be quite complex to identify all the goods, services and amenities associated with conservation activities. In addition to the primary benefits and costs, there are likely to be secondary effects that would need to be valued. For example, providing water for environmental flows may also contribute to secondary benefits such as mitigating instream salinity levels or improving the quality of drinking water.
>
> Furthermore, the valuation of non-market effects of alternative courses of action has always posed problems, even since the development of a variety of techniques.[4]

5.8 In the same vein, the Productivity Commission has said that:

> Measuring the costs of degradation may not be straightforward, making it difficult to design or set the correct cost share under an 'impacter pays' approach. … it may not be technically possible or cost effective to identify and charge impacters, for example, where biodiversity loss results from past practices or where the cause of biodiversity loss is 'non-point source' degradation …[5]

5.9 In respect of attributing costs to beneficiaries, the task is little less problematic (than that of attributing costs to impacters), according to the Productivity Commission:

> … identifying specific beneficiaries (other than the individual undertaking a conservation action) under the 'user pays' component may be no less difficult, especially where the precise value of biodiversity enhancement is difficult to assess or where intangible benefits are involved.[6]

3 Submission no. 173, p. 9.

4 Submission no. 173, pp. 2-3.

5 B Aretino, et al, *Cost sharing for biodiversity conservation*, p. 28.

6 B Aretino, et al, *Cost sharing for biodiversity conservation*, p. 32.

5.10 This flaw in the current approach was identified in submissions. For example, Plantations Australia advised the Committee that:

> Conservation activities carried out by landowners cover a spectrum, from those which are primarily aimed at ensuring the sustainability of the owners production system through to those which provide a significant benefit to the wider community generally, a public good. Allocating the costs of these conservation activities in an equitable manner is therefore difficult because of the need to identify the beneficiaries.[7]

5.11 These difficulties are not merely theoretical, but are evident in practice. This point was made in testimony by Mr Steve Hatfield Dodds. He testified that:

> In practice, this definition is easier to say than to implement because often it is not easy to draw a boundary around those conservation activities or to separate conservation activities from other activities, particularly where conservation outcomes relate to the way management practices are undertaken rather than specific and identifiable actions which are conservation actions themselves.
>
> It is also difficult to identify and assess the public dimensions of any particular action because they occur at different geographic scales and often involve long time lags. Retaining remnant vegetation, for example, may contribute to reduced erosion and provide shade for livestock at the farm level, but the potential public benefits include reduced nutrient run-off, improved water quality, reduced salinity, increased amenity for tourists and local people, and improved transpiration and groundwater impacts. Then there are the direct or indirect impacts of enhanced biodiversity such as enjoyment of the native wildlife and insect and pest control, and, finally, at the global scale, carbon sequestration and reduced greenhouse gas emissions. So it is quite difficult to identify that range of benefits and then to assess the magnitude of those for a particular action.[8]

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7 Submission no. 56, p. 4.

8 *Transcript of Evidence*, pp. 91-92.

5.12 The Upper Murrumbidgee Catchment Coordinating Committee (UMCCC) advised the Committee that a survey it conducted revealed that 'there is (sometimes intangible) public good in nearly all conservation works, but valuing/measuring it is very complicated'. The Coordinating Committee went on to observe:

> In most cases valuation requires lateral thinking and economic skills beyond that available to many landholders and landcare groups and there are many areas of public good where valuation in any meaningful way is almost impossible (eg retention of biodiversity, landscape appeal). Attempts to put a monetary value on such parameters are likely to be met with a sceptical community reaction and are at present not dealt with in any more than a very rudimentary way on funding application forms. The UMCCC suggest that attempts to attribute public and private benefits should only be attempted in areas where clear methodology and transparent processes are available.
>
> The UMCCC questions whether the exercise of valuing public benefits is going to have worthwhile result or does it simply keep accountants and economists occupied?[9]

5.13 The CSIRO challenged the assumptions underlying cost sharing, and also went on to state that the uncertainty in this area was of continuing concern to landholders:

> An important issue that is related to the provision of public goods, especially when environmental management considerations are central to their production, is determining the extent to which private self-interest is also being catered to. A naïve assumption underpinning much economic theory is that private producers will at least cater optimally to their own self-interest. Moreover, this will be done within an environment of near-perfect (or well-informed) knowledge of the transformation processes that link the outputs to all of the inputs associated with production. However, in the case of the environmental inputs to beef production, these linkages are neither well-defined or known with any certainty. In extremes cases, land and water degradation that impacts both on private and public interests remain issues of continuing concern. Therefore, part of the return to investments in environmental management, whether imposed or voluntary, will be captured by the private landholders themselves. Whether this private gain (insurance) is substantial or not is not really known.

9 Submission no. 207, pp. 4-5.

> This raises an issue that is a source of major contention with private landholders when defining and exploring the impact of providing public goods. Many landholders accept that there is necessarily a "duty of care" to maintaining their land resources in good condition and they do place private values on certain ecosystem services (e.g. clean water, shade, shelter, soil fertility, wildlife, rural amenity etc). Indeed, most landholders aspire to pass their resources on to future generations in better and more productive states than when they were acquired by the present generation of managers. It remains an open question, therefore, what is the magnitude of the flows of benefits that would fairly be apportioned between the private landholders and the wider community were these respective private and public values known.[10]

5.14 The Committee concludes that the present approach to cost sharing is based upon obtaining information that in many cases is not available. Where the information is available, the cost of, and time involved in, undertaking the cost-apportioning exercise may be so great as to undermine any determinations made. Where defensible information is not available to support a cost-apportioning exercise a level of uncertainty and arbitrariness may develop and may foment resentment amongst landholders.

5.15 Furthermore, where the information is readily available and where it can be easily used, for example in some sorts of salinity trading, the use of the 'impacter pays' approach may be warranted, other things being equal. However, as a basis for a comprehensive approach to apportioning costs, the current system does lack the most important element – clear information. As a result, it is incapable of fostering the confidence amongst landholders that the system requires in order to operate effectively.

Does a landholder's own self-interest provide a sufficiently motivating reason?

5.16 As mentioned already, in the evidence from the CSIRO, cost-apportioning exercises tend to assume that landholders will always do what is least costly and what will maximise their own interests. This is the rationale

10 Submission no. 154, p. 2

behind the principle that, where private benefits provide a sufficient incentive, public funding is not appropriate.[11]

5.17 However, the Committee received many submissions from landholders who had voluntarily engaged in public good conservation activities while meeting the cost themselves.[12] The Upper Murrumbidgee Catchment Coordinating Committee reflected the views expressed in many submissions from landholders, concerning the factors that motivated them to undertake conservation activities:

> (i) financial for landholder: "none initially", "not in short term", "some reduced stock loss", "higher land value due to aesthetic appeal", "increased asset value" "none yet only loss in grazing land but farm value will increase in time".
>
> (ii) intangible benefits to landholder: "satisfaction", "sense of accomplishment", "doing something for the environment", "demonstrated it could be done independently", "providing a balanced landscape", "approval of various government departments", "learning new techniques", "satisfaction you have contributed".[13]

5.18 The SCARM principles stipulate that public funding is not appropriate when it is thought that a landholder has a sufficient motivation from private (economic) benefits. However, some landholders will often persist with environmentally dangerous practices in order to stay in business, even if in the long run environmental factors force their farms to fail. Other landholders will stay in business ,even though their incomes are very low and they do not have the financial capacity to move to more environmentally efficient, and ultimately more economically viable, land management practices.

5.19 The point that emerges from the evidence is that many factors motivate landholders, and not simply the maximisation of personal financial advantage. Landholders have to possess the wherewithal to move to more environmentally friendly land management practices, and other strong, countervailing motivations must not exist.

5.20 As a result, if the SCARM principles (which embody a view of landholders as perfect economic agents) are used purely to determine what projects are invested in and which are not, it is likely that many projects will be denied funding because there is a mis-match between the motivation the policy

11 The explanation provided for this principle in the SCARM paper states that: 'Where the landuser invests in on-ground works that provide site-specific financial benefits sufficient to make the investment attractive, then investment by government is not applicable' (p. 4).

12 For example, Submission no. 155.

13 Submission no. 207, p. 3-4.

attributes to landholders and the reasons that motivate landholders in reality. Worthwhile conservation activities may not take place because none of the stakeholders wants to do them. The current policy approach makes that outcome all the more likely.

Is the current approach to cost sharing an effective policy?

5.21 The approach to cost sharing underlying much policy is that those landholders causing environmental damage should pay for any damage they cause, and the beneficiary of conservation activities should contribute towards the cost. These cost-sharing principles are commonly called the polluter (or impacter) pays principle and the beneficiary pays principle.

5.22 A research paper prepared by staff of the Productivity Commission examined the conceptual framework for cost sharing for biodiversity conservation using these two principles.[14] The paper suggests that, under the polluter (or impacter) pays principle, any person whose activities have a negative effect upon the environment should, in proportion to the effects of their activities on the environment, meet the cost of activities that ameliorate or prevent damage to the environment. This principle generally implies that, unless governments are themselves polluters, they will not share any of the costs of conservation undertaken on private land. The cost of remedial activities will be borne by the person who makes the impact on the environment and in proportion to their impact upon the environment.[15]

5.23 The research paper notes that one of the benefits of the polluter (or impacter) pays principle is that it is very efficient, because it forces producers and consumers to bear the full costs of their actions in internalising the costs of harming the environment. The research paper observes that:

> Depending on the characteristics of supply and demand, this in turn may raise the price of goods and services that damage the environment. This could improve resource use efficiency by removing production and consumption biases towards goods and services that previously 'overused' underpriced environmental resources.[16]

14 B Aretino, *et al.*, *Cost sharing for biodiversity conservation: A conceptual framework*, Canberra: Commonwealth of Australia, 2001, p. 5; Productivity Commission - Staff Research Paper.

15 B Aretino, *et al.*, *Cost sharing for biodiversity conservation*, p. 15.

16 B Aretino, *et al.*, *Cost sharing for biodiversity conservation*, p. 16.

5.24 The beneficiary pays principle requires that anyone who benefits from an activity contributes to the cost of undertaking that activity.[17] Under this principle, where an individual or group of people benefit from some conservation activity, then they should meet the cost of the benefit received. Where the general community benefits, it may be appropriate for the cost to be borne by the community in general. The Productivity Commission research paper observes that this principle is relevant to encouraging voluntary conservation, when resource users do not have an obligation under existing property rights to adopt ecologically sustainable use of Australia's landscape, or where landholders do not have a financial incentive to undertake conservation work.[18] The beneficiary pays principle has two components. First, the user pays principle, which requires anyone who derives a direct, private benefit from an activity to contribute to the cost of undertaking that activity. The second is the beneficiary compensates principle. This principle requires anyone, including the general community, who derives an indirect benefit from an activity to contribute to the cost of undertaking it. Where the general community benefits, payments would be made on its behalf by government. Where benefits are localised, the community group who are required to pay may be the local council representing a beneficiary community, or a localised group of landholders, rather than the broader general community. As the research paper notes:

> By requiring direct beneficiaries to share some of the costs of conservation, the 'user pays' component of this principle also reduces the call on government funding for conservation under the 'beneficiary pays' principle.[19]

5.25 The research paper also indicates how these two principles can be used to attain environmental outcomes through minimal public funding, as the report states, 'Public free riding on the delivery of public benefits provided through private initiatives is considered good policy because it embodies an efficient use of public funds':

> The minimum expenditure required from governments for conservation largely reflects whether the 'impacter pays' or the 'beneficiary pays' principle is adopted. If the 'impacter pays' principle is adopted, the private sector meets the costs of biodiversity conservation and government's cost share is generally zero (unless the government is also an impacter). Under the 'beneficiary pays' principle, the minimum amount of government funding necessary may be greater than zero but need not

17 B Aretino, *et al.*, *Cost sharing for biodiversity conservation*, pp. 18-19.

18 B Aretino, *et al.*, *Cost sharing for biodiversity conservation*, p. 19.

19 B Aretino, *et al.*, *Cost sharing for biodiversity conservation*, p. 20.

necessarily cover the full value of public benefits. Even low levels of government funding may be sufficient to encourage additional conservation by the private sector. However, governments should only provide funding where the benefits of doing so exceed the costs.[20]

5.26 The research paper sets out the limitations of these principles. For example, it is stated that the 'impacter pays' principle:

> … requires costs to be identified, measured and apportioned across impacters. Costs incurred in meeting legal requirements, for example, would be the responsibility of individuals under the 'impacter pays' principle. Measuring the costs of degradation may not be straightforward, making it difficult to design or set the correct cost share under an 'impacter pays' approach …
>
> While the 'impacter pays' principle can be used to internalise the costs of biodiversity loss, governments may choose not to apply it in all cases because:
>
> - it may not be technically possible or cost effective to identify and charge impacters, for example, where biodiversity loss result from past practices or where the cause of biodiversity loss is 'non-point source' degradation; and/or
> - adoption of the 'impacter pays' principle is considered to impose excessive burdens on resource users.[21]

5.27 Implementation of the 'beneficiary pays' principle also faces a number of difficulties. The authors of the research report state that:

> By requiring direct beneficiaries to share some of the costs of conservation, the 'user pays' component of this principle also reduces the call on government funding for conservation under the 'beneficiary pays' principle.
>
> However, by requiring beneficiaries to pay for conservation, this principle can imply payment of subsidies from government, which … could reduce incentives for firms to develop or adopt 'environmentally friendly' technologies. This is because their adoption by firms would result in a reduction in subsidy payments to them in the future.[22]

20 B Aretino, *et al.*, *Cost sharing for biodiversity conservation*, p. 17.
21 B Aretino, *et al.*, *Cost sharing for biodiversity conservation*, p. 28.
22 B Aretino, *et al.*, *Cost sharing for biodiversity conservation*, pp. 20 – 21.

5.28 The research report also states that the "beneficiary pays" principle has been criticised for being inequitable, and it has been described as the 'victim pays' principle because:

> … in those cases where it requires those who 'suffer' the consequences of biodiversity loss to pay to stop the activities that cause the suffering or harm. … This is because the 'benefits' of conservation often occur as costs of harm avoided.[23]

5.29 The research report also noted some other difficulties in applying the beneficiary pays principle:

> AACM argues that it can be easier to identify beneficiaries and thus apply the 'beneficiary pays' principle than to identify impacters and apply the 'impacter pays' principle. However, identifying specific beneficiaries (other than the individual directly undertaking a conservation action) under the 'user pays' component may be no less difficult, especially where the precise value of biodiversity enhancement is difficult to assess or where intangible benefits are involved.[24]

5.30 The research paper also sets out a general caution for any cost-sharing system about the cost of determining the respective responsibility for shares of the costs:

> As a general rule, the more detailed the method for valuing and attributing benefits, the more expensive and time consuming that method will be. The most appropriate method will reflect a trade-off between the cost of using the method and the scale of the net benefits expected to accrue.[25]

5.31 Cost sharing, as presently carried out, also faces a number of other difficulties. One difficulty that appears repeatedly in evidence is that the benefits of conducting a conservation activity appear to occur 'off site' and accrue to people other than the landholder undertaking the activities and meeting the financial and labour costs. As a result, landholders have insufficient motivation to undertake the sorts of public good conservation works required or, more broadly, the transition to ecologically sustainable use of Australia's landscape. For example, the Productivity Commission research report referred to above states that:

> The costs of conservation include the direct financial costs of conducting on-ground activities and the forgone rate of return from alternative uses of the land and resources used for

23 B Aretino, *et al.*, *Cost sharing for biodiversity conservation*, p. 22.

24 B Aretino, *et al.*, *Cost sharing for biodiversity conservation*, p. 32.

25 B Aretino, *et al.*, *Cost sharing for biodiversity conservation*, p. 33.

> conservation. The majority of these costs are likely to be incurred by individuals (such as landholders) at a local or property level where on-ground activities are implemented. Yet many benefits of biodiversity conservation (for example, environmental stability) are experienced at a national, as well as local, level. Further, while the current generation may bear the costs of biodiversity conservation, the long term nature of environmental improvements means that future generations accrue the benefits, at least in part. (Similarly, the current generation could reap any short term benefits of resource degradation and pass the longer term costs on to future generations).
>
> Because different parties bear the costs and benefits of biodiversity conservation, some on-ground activities that are desirable from a national perspective may not occur because they do not generate net benefits to those implementing them — that is, they are not privately profitable. As a result, insufficient conservation may occur from a social perspective.[26]

5.32 The fact that landholders face the costs of conservation measures but do not reap the rewards was also put to the Committee by the NSW Farmers' Association:

> The conclusion 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.[27]

5.33 One suggestion for addressing this issue is for the costs to be passed on to consumers. This was the suggestion of the then secretary to the Treasury, Mr Ted Evans:

> Farmers, it can be fairly said, are the ones who cause the damage to the land. I think that cannot be disputed. But they do not do that for their own good. They do it because they are producing something for consumers. The benefit of what the farmers are doing goes primarily to the consumers, not to the farmers. And we can identify that benefit.
>
> If there is a cost involved in the production beyond, say, the farmers' wages and profit, if there is a conservation cost to

26 B Aretino, *et al.*, *Cost sharing for biodiversity conservation,* p. 5.

27 Madden, Hayes & Duggan, National Investments in Rural Landscapes, a report prepared for the National Farmers Federation and the Australian Conservation Foundation, 2000.

> maintain the land and to repair it, one could fairly say that that ought to be borne by consumers. There is no need for taxpayers to become involved. That would be a first step because here we have something that does indeed have some public good attributes—the land is a natural resource and belongs ultimately to the public, but its use is for the benefit of consumers.
>
> A starting point as to who should pay for maintaining the quality of the land ought to be consumers. It can become complex, but it is a good starting point to recognise that maintenance of the quality of the land is a cost of production, like any other.[28]

5.34 Mr Evans testified that the rationale underlying using this approach is to create a change in the behaviour of consumers and landholders. The idea is that if the full cost to the environment is reflected in the cost of agricultural products, then the cost may well be higher than comparable imported products.[29]

5.35 The European Commission has noted that landholders may be driven to more environmentally dangerous practices in order to produce more and lower costs so that they can stay in business:

> Pressures on farming, derived mainly from technological developments and liberalisation of markets, cause farmers to modify their farm practices to maintain and advance their businesses. Common trends include intensification, specialisation and concentration in profitable areas and marginalisation and even abandonment in difficult areas. These trends are likely to lead to a reduction in the provision of environmental and cultural public goods.
>
> The application of new inputs, machinery, seed varieties, bloodlines, as well as improved efficiencies in processing, storage and handling facilities for commodity products, allow farmers the tools to increase production and reduce costs. In the absence of policy instruments to mitigate the message from the market, farmers are forced to focus on narrow economic concerns in considering whether to adopt new techniques. For all but a few (philanthropic) commercial farmers, the provision of public goods will hardly enter the equation.
>
> Pressures on price lead farmers either to cut costs or to increase yield (or both). If this process is unchecked by public policy, farmers can be tempted to adopt any means to increase yields and

28 *Transcript of Evidence*, p. 543.

29 *Transcript of Evidence*, 544-547.

> output. This process may lead farmers to destroy landscape features, in order, for example, to enlarge field size, and increase use of inputs, notwithstanding the negative impact on nutrient-adverse wild plants and the risk of pollution events. In addition, many farmers may find themselves on a competitive and technological treadmill: the fact that one farmer in a region derives economic benefit from using a new technique, means that all farmers have to follow in order to maintain their competitivity.[30]

5.36 Some evidence before the Committee suggests that attempting to cost share by passing some of the environmental costs of production onto consumers through product prices, may not achieve the hoped-for results.

5.37 Furthermore, a practical flaw in the 'cost flow-on' approach is that it is vulnerable to shifts in commodity prices. This was pointed out to the Committee by the Goulburn Broken Catchment Management Authority:

> Problems with the cost-share (for example, the fencing incentive of $1.20/m provided under the Commonwealth's Bushcare Program represents as low as 10% of the total cost of the project) and a long period of depressed commodity prices has made investment in public-good activities by most landholders impossible from a short-term survival business management perspective.[31]

5.38 The other side of this issue is that if commodity prices rise then the domestic market may be deprived of agricultural produce, and this will lead to an increase in prices and possibly inflation. Cost sharing can therefore expose the domestic economy to various destabilising pressures.

5.39 The Committee believes that the view of the Conservation Council of the South East Region and Canberra is to the point:

> … the Commonwealth spends far too much time worrying about public versus private benefit. We believe that the Government should provide financial assistance to landholders to undertake activities that have a public benefit, in this case improve Australia's public good conservation effort, whether or not there are additional private benefits. Many excellent proposals that would have enormous public benefit have not been funded under the NLP and NHT because of the perception that there will also be private benefit to the landholders involved.[32]

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30 European Commission, *Agriculture's contribution to environmentally and culturally related non-trade concerns*, International Conference on Non-Trade Concerns in Agriculture, Ullensvang, Norway, 2-4 July 2000.

31 Submission no. 206, p. 3. Also noted in submission no. 197, p. 5.

32 Submission no. 82, p. 6.

5.40 The Committee concludes that where costs can be easily and transparently identified, and attributing costs will not lead to a reduction in the conservation effort or market instability, landholders should contribute towards the costs of conservation activities. Since these activities will be largely implemented by landholders, the landholders' uncompensated time and effort will often be contribution enough. At the end of the day, attributing costs must be seen not as an end in itself, in order to prevent a landholder obtaining an unearnt benefit, but rather as a tool to use to procure a conservation outcome.

Does current policy accurately reflect the nature of land use?

5.41 Underlying the current approach to funding public good conservation activities are assumptions about the way that land is used. According to AFFA:

> Australia is promoting internationally our 'landcare' approach of assisting local and community landcare groups to assume responsibility for the sustainable management of their own resources. The landcare approach is then complemented with government efforts to facilitate action, provide leadership and target public investment in the public interest.[33]

5.42 According to AFFA, the underlying approach is that assistance from governments to implement systems of sustainable land use must be such that the assistance does not act to unduly distort trade by subsidising agricultural production. This approach involves empowering local communities so that they are the agents and beneficiaries of change from ecologically unsustainable forms of land management to sustainable ones, while not supporting their economically productive use of the land. A distinction is drawn, therefore, between the economically productive use of land (and ways in which production may be promoted), and other non-economic uses of land.

5.43 The approach to land use adopted in Australia is contrasted, AFFA advised the Committee, with that adopted in Europe:

> Another approach to resource management being promoted in international fora by countries in the European Union and Japan involves the concept of the "multifunctional character of agriculture and land". This involves a recognition that in addition to agricultural production there are other unpriced benefits from

33 Submission no. 238, p. 6.

> agriculture including environmental values, rural amenities, cultural values, rural employment and rural development.[34]

5.44 AFFA informed the Committee that this approach to land use was seen as a subterfuge for hidden subsidies:

> The concept of multifunctionality being promoted by the EU and Japan is seen as a mechanism to justify the continued subsidisation of agricultural production. Australia has opposed this approach on the basis that where governments need to act to protect the environment or to promote public good conservation this should be done in a way that promotes ecological sustainability and does not unduly distort trade by subsidising agricultural production.[35]

5.45 It is outside the terms of reference of this inquiry to assess the claim made by AFFA that the concept of 'multifunctionality' is used by the EU as a mechanism to justify the continued subsidisation of agricultural production. The Committee does note that the EU has made a commitment to reduce the subsidisation of agricultural production, as a key element in the reforms of the EU's CAP.[36] However, concerning the nature of land use, it appears to be well accepted by stakeholders that land use in Australia is multi-functional: that, in effect, we practise in Australia, multipurpose land management. For example, the Productivity Commission advised the Committee that:

> Nature conservation involves a number of activities including the protection, continuance or restoration of flora and fauna, land and water, ecosystems and landscapes. Nature conservation may be important for both its use and non-use values. Use values may include direct consumption and recreational benefits, while non-use values may incorporate existence, aesthetic and cultural values[37]

5.46 The *National framework for the management and monitoring of Australia's native vegetation* states that:

> The benefits of improved approaches to native vegetation management and monitoring are not only environmental. Important social and economic benefits are also derived from sustainable native vegetation management.[38]

34 Submission no. 238, p. 6.

35 Submission no. 238, p. 6.

36 European Commission, *Fact-sheet: The CAP reform – A policy for the future.*

37 Submission no. 189, p. 2.

38 *National Framework for the management and monitoring of Australia's native vegetation*, p. 2.

5.47 The National Framework then goes on to list the environmental, social and economic benefits that accrue from native vegetation management. The National Framework states that:

> Social benefits include:
>
> - providing places of scenic beauty;
> - providing sites for tourism and recreation;
> - providing places for research, education and scientific purposes;
> - maintaining the distinctive Australian landscapes.[39]

5.48 The National Framework then concludes that:

> Native vegetation contributes to the natural values, resources and processes of biodiversity, soil and water resources, hydrology, land productivity, sustainable land use, and climate change. It also contributes to natural and cultural heritage, and indigenous people's interests.[40]

5.49 Underpinning this framework is a basic set of principles including:

> Recognition that all vegetation management should be based on the overall goal of Ecologically Sustainable Development which recognises environmental, economic and social values.[41]

5.50 The concepts of 'multifunctional land use' and 'ecologically sustainable development' are not necessarily in conflict. What has been asserted in evidence provided to this inquiry is that Australia does not adequately support landholders in respect of the non-productive land management duties that they have. As a result, landholders in this country face considerable costs from mandatory public good conservation measures that are not faced by landholders in either the European Union or the United States.

5.51 Evidence provided to this inquiry indicates that the additional costs faced by Australian landholders reduces the viability of Australian farms. This evidence also suggests that, in order to remain competitive and to stay in business, Australian landholders are sometimes forced to engage in environmentally dangerous practices. Conservation policies in this country, in effect, impose a duty upon our landholders, provide a subsidy to foreign producers of agricultural products and, in doing so, degrade the Australian environment.

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39 *National framework* , p. 2.

40 *National framework* , p. 2.

41 *National framework* , p. 11.

5.52 Even though the multi-purpose nature of ecosystem use is recognised in some quarters, evidence was provided that it is often ignored in practice. The Five Ways Landcare Group advised the Committee that:

> … there is great consideration placed on the social benefits of conservation measures, but a determined refusal to pay for this consideration. Words such as *providing* and *maintaining* all imply that some maintenance of these sites will be required, some ongoing commitment by the landholder to preserve this native vegetation. Funds are freely available for research into the retention of native vegetation and all manner of conservation issues that will support the Government's position on conservation; education of urban dwellers to the benefits and scenic attributes of this wonderful vegetation – it would seem that the need for the maintenance aspect of our 'unique Australian landscape' will be borne by the individual landholders![42]

5.53 The social and wider implications of ecosystem use are also ignored when applications to clear are considered, as this evidence from Mr David Hartley of the Western Australian Department of Agriculture indicates:

> **Mrs VALE**—Could I ask through you, Mr Chair: is it a consideration, when you get a notice of intent to clear, as to the viability of that particular property for the farmer if he is refused? Is that taken into account in addition to the environmental considerations that you look at—the land degradation, et cetera? Is the economic loss to that particular farmer a consideration that is part of your decision-making process?
>
> **Mr Hartley**—No, it is not. Under our legislation, we are required to make a decision on the basis of land degradation, and the social or economic implications of that are not considered.[43]

5.54 The Committee is not suggesting that social or other considerations could provide a justification for clearing land or providing a subsidy for agricultural production. Rather, the evidence suggests that a refusal to clear land should take account of the social and other effects upon landholders. As will be suggested in the next chapter, if those effects are serious enough, then the landholder should be eligible for various forms of assistance to mitigate the effect of a land clearing refusal.

5.55 The evidence provided to the Committee indicates that the current policy leads to a narrow focus on attributing responsibility and cost allocation when conservation activities are planned and evaluated, and funding

42 Submission no. 124, pp. 6-7.

43 *Transcript of Evidence*, p. 379.

principles are developed. A broader conception of land use, as reflected in the evidence received, would appear to suggest different approaches to funding and a greater likelihood of positive outcomes for public good conservation.

5.56 The Committee believes that policies and the way that they are implemented must be consistent with the practices in, and aspirations of the community. With respect to the use of land, policies to promote public good conservation should see land as providing a diverse range of ecological and social services. These are services that the community has shown a willingness to support and to fund through taxation, and that willingness should be reflected in the diversity of programs supported.

Do international agreements preclude outcome-oriented natural systems management policies?

5.57 Information provided to the Committee by AFFA suggests that a major consideration in developing principles for public funding of public good conservation activities is that the funding not be seen as, and not operate to be, a subsidy for agricultural production.[44] The argument is that public support for conservation activities could constitute a subsidy for production, and undermine the strong position Australia has taken in international trade negotiations to promote trade liberalisation and free trade. This consideration is also reflected in research conducted by the CSIRO:

> Consistency with national competition and trade policies required that costs associated with meeting a landholder's 'duty of care' are incorporated into and seen as normal costs of production. In the course of achieving consistency and redefining obligations, transitional arrangements can be justified.[45]

5.58 Research conducted by the Committee indicates that public support for conservation measures is unlikely to violate any free trade agreements or World Trade Organisation rules. Nor would targeted subventions constitute a subsidy for production. For example, the World Trade Organisation states on its internet site that:

> Measures with minimal impact on trade can be used freely — they are in a "green box" ("green" as in traffic lights). They include government services such as research, disease control, infrastructure and food security. They also include payments made directly to farmers that do not stimulate production, such as

44 Submission no. 238, p. 6.

45 C Binning and M Young, *Motivating people*, p. 15.

certain forms of direct income support, assistance to help farmers restructure agriculture, and direct payments under environmental and regional assistance programs.

Also permitted, are certain direct payments to farmers where the farmers are required to limit production (sometimes called "blue box" measures), certain government assistance programs to encourage agricultural and rural development in developing countries, and other support on a small scale when compared with the total value of the product or products supported (5% or less in the case of developed countries and 10% or less for developing countries).[46]

5.59 On the basis of this information, the Committee concludes that the support required in Australia to foster the development of public good conservation activities and the transition to ecologically sustainable land management practices would not undermine the free trade stance adopted by successive Commonwealth governments; nor would it jeopardise Australia's ongoing opposition to subsidies for agricultural production.

Should incentives be used to promote conservation activities?

5.60 In general, the present policy arrangements contain few positive incentives to motivate landholders to engage in public good conservation activities, or to make the transition to sustainable natural systems management practices.

5.61 Many submissions from landholders called for positive incentives to promote conservation activities.[47] Such incentives are seen by landholders as distinct from compensation for lost production or compensation for income lost through the inability to use land as intended. For example, the CSIRO advised the Committee that, 'Present incentives for tree retention and planting, while appreciated, are totally inadequate for the purpose of promoting large-scale investment in conservation on private land'.[48]

5.62 When farm incomes are considered, the need for incentives becomes more apparent, because many landholders are not in a financial position to undertake the conservation activities required. For example, ABARE estimated that in 2000-2001, 49 per cent of broadacre farms in Australia had cash incomes less than $25 000 and in the same year ABARE estimated that 76 per cent had profits of less than $25 000. In Western

46 World Trade Organisation, '*Agriculture: fairer markets for farmrs*', http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm3_e.htm#SPS

47 Submission no. 154, p. 9

48 Submission no. 154, p. 9.

Australia, which has significant salinity problems and requires substantial remedial action, 87 per cent of farms had profits of less than $25 000.[49] The following table makes the point clearly.

49 ABARE, *Australian Farm surveys report, 2001: Financial performance of Australian farms, 1998-1999 to 2000 – 2001*, Canberra: Commonwealth of Australia, 2001.

Table 5.1 Average per farm income and farm business profit 1998 – 2001

Agricultural Activity	Farm cash income – 1998-1999	Farm business profit – 1998 – 1999	Farm cash income – 1999 – 2000	Farm business profit – 1999 - 2000	Farm cash income – 2000-2001	Farm business profit – 2000-2001
Wheat and other crops	87,000	22,471	94,820	8,090	93,300	9.800
Mixed livestock - crops	46,168	-13,323	58,380	-5,860	58,600	- 5.900
Sheep	14,874	-30,420	27,060	-20,020	42,800	- 4.700
Beef	42,276	-7,431	42,090	-4,400	51,800	9.100
Sheep – beef	21,255	-27,396	30,410	-17,550	36,700	- 2.800
Broadacre	45,389	-9,361	52,570	-6,630	58,100	1.500
Dairy	67,920	4,855	70,420	-7,350	57,100	- 9.000

Source ABARE, *Australian farm surveys report, 2001: Financial performance of Australian farms, 1998-1999 to 2000-2001*, Canberra: Commonwealth of Australia, 2001, p. 4.

5.63 This information would support the view put to the Committee by Ms Bernadette Lawson that, without incentives, public good conservation activities would be diminished:

> … My experience has shown that land-holders will protect an area of vegetation if they are not going to lose anything. If they are going to gain something by pushing a tree over, then they will push that tree over with no regrets. It comes down to economics versus the environment.[50]

5.64 The cost of public good conservation is brought out clearly in this example, provided by Mrs Jenny Blake:

> We have a friend along a southern NSW river with a piece of land identical in soil type but half is native vegetation, the remainder has been cleared. The cleared land has the potential to yield $1,000/acre/year whilst the native vegetation yields $10/acre/year. The financial loss in that instance is huge.[51]

5.65 Failure to provide adequate incentives is often blamed for the poor implementation of public good conservation programs by private landholders. The NSW Farmers' Association referred to research conducted by Charles Sturt University that examined options to conserve remnant native vegetation. The Association advised that:

> 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 vegetation clearly requires significant financial incentives for landholders to undertake conservation activities." [52]

5.66 The Farmers Association went on to provide additional support for its view, claiming that the situation had been summarised by other researchers who had concluded that 'Biodiversity conservation, particularly in relation to core areas, places much greater demands on landholders than land conservation, while at the same time offering little, if anything, in terms of immediate market rewards.' [53]

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50 *Transcript of Evidence*, p. 509. Ms Lawson is a revegetation project officer for the Mid-Upper South East Local Action Planning Committee of South Australia.

51 Submission no. 197, p. 8.

52 Submission no. 177, p. 15. Miles, Lockwood, Walpole and Buckley. Report 107 CSU. 1998.

53 Submission no. 177, p. 15. D Farrier, in "A role for Private Landowners in Conserving Biological Diversity", University of Wollongong, 1996.

5.67 The Productivity Commission reinforced this conclusion in its submission:

> Generally, private sector nature conservation has tended not to occur where the links between the conservation and commercial gains are unclear — where environmental services have no apparent role in commercial activities. For instance, there has been little financial incentive for private agencies to conserve flora and fauna of non-commercial value, or to conserve 'in situ' ecosystems where their private benefits are unclear (even if they have an intrinsic value to many in the community).[54]

5.68 AFFA also indicated that landholders may not implement public good conservation measures because of their inability to capture a benefit:

> Public good conservation … is a concern for governments because markets based on private interests alone tend to result in an under-supply of these goods. The source of the market failure is that those who bear the costs of providing these public goods aren't able to fully capture all the benefits derived from them.[55]

5.69 A similar reason was provided by ABARE, who also suggested a remedy, intervention by government:

> … one reason why investment in conservation on private land may not be made is that these actions may generate significant external benefits which are not captured by the individual bearing the cost of the investment. In the presence of these external benefits, relying solely on market based incentives for individuals to invest in public good conservation is likely to lead to a less than socially optimal level of such actions. This provides an underlying rationale for government intervention.[56]

5.70 For the CSIRO, the solution was also intervention by government, using incentives or regulations:

> Economic theory suggests that landholders may (or may not) over-supply private goods, but are more likely to under-supply public goods in the absence of appropriate incentives or regulations.[57]

54 Submission no. 189, p. 3.

55 Submission no. 238, attachment 3, p. 1.

56 Submission no. 173, p. 9.

57 Submission no. 154, p. 2

5.71 Although economic considerations provide significant barriers to landholders engaging in public good conservation activities, they are not the only barriers. The CSIRO also advised the Committee:

> The economic theory related to public good provision suggests that, even in the presence of perfect knowledge, private landholders will be reluctant to promote public good outcomes beyond a point which is also consistent with their own self-interest. However, economically rational limits are not the only barrier to public good investment. Many serious management and personal factors are also involved.[58]

5.72 The effects of these other barriers can also be mitigated through the provision of financial and other forms of incentive, such as management assistance, information and assistance from extension officers.[59] Typically, however, the incentives envisaged are small, targeted payments used to motivate landholders to engage in public good conservation by reducing the negative financial effect of such activities.[60]

5.73 Evidence provided to the Committee would seem to suggest that the failure to provide realistic and motivating incentives may have led to a situation where public and private good conservation activities do not occur to the extent required by the environmental problems facing the nation. For example, even if a landholder is considered *by officials* to have sufficient financial incentive to engage in conservation activities that may also produce a public benefit, the landholder may nevertheless refrain from such activities. The landholder may not, for example, be in a financial position to undertake the activities, or does not perceive a benefit.

5.74 The Committee concludes that, under the present policies, the incentives available generally fall well short of the actual costs of land management and what is required to motivate public and private good conservation activities.[61] In particular, they fail to address in any realistic way the costs of transition to sustainable land use and the consequent ongoing costs of management to maintain conservation values for the public good.

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58 Submission no. 154, p. 7.

59 The crucial role that information, access to assistance and extension officers play in promoting conservation activities was noted in the Committee's report *Co-ordinating catchment management*. Recommendations to remedy the deficiencies in respect of these matters were also made in that report.

60 For example, assistance with local government rates on land that is used wholly or predominantly for non-productive conservation purposes, and assistance with fencing, weed and vermin control, and maintenance costs.

61 A point also made by in the *Final report* of the West Australian Native Vegetation Working Group, p. 18.

5.75 Moreover, the Committee concludes that the failure to provide an adequate incentive regime is a defect of public policy in respect of promoting public good conservation. The result is that much less public good conservation is carried out than would be the case with more soundly based policy.

Do current policy approaches acknowledge existing public good conservation activities by landholders?

5.76 Over 230 of the submissions to this inquiry came from private landholders or landholder groups or associations. These submissions detailed many conservation works undertaken by landholders on a daily basis. Often the projects attracted minimal public investment. Moreover, as is apparent from chapter 3, it is also clear that landholders often undertake conservation activities that involve a benefit to the wider public, and which also involve a loss of income in the short, medium and longer term to the landholder.

5.77 Landholders making submissions complained about the failure of the existing policy approaches to acknowledge the considerable public good conservation activities that many landholders had voluntarily undertaken and the costs involved.[62] For example, the NSW Farmers' Association said in its submission that:

> There are many examples where farmers have acted beyond their duty of care and voluntarily made significant contributions of land (the farmer's major asset) to conservation. It is sad that these actions are rarely acknowledged and on occasion demands are simply made for a greater contribution.[63]

5.78 These complaints reflect the differing understanding of public good conservation issues by various agencies. For example, the Committee was advised by the Productivity Commission that:

> There is ample evidence around Australia that landowners do (voluntarily and without compensation) undertake some relatively small and inexpensive conservation measures. The success of the Landcare movement, for example, is built on voluntary initiatives (not necessarily driven by direct financial returns) but with some financial support from governments. Nonetheless, given that Landcare is a voluntary program, there are limits to its ability to effect change.[64]

62 For example, see submission no. 133.

63 Submission no. 177, p. 3.

64 Submission no. 189, p. 3.

5.79 In contrast, AFFA advised the Committee that:

> The level of private investment in improved natural resource management and/or quality has been substantial. A survey by the Australian Bureau of Agricultural and Resource Economics of landcare expenditures for 1998-99 indicates that average landcare expenditures by farmers are about $4,400 a year, about 4 per cent of farm operating costs. In addressing private resource management issues, a coincidence of interest can occur where private investments may also produce a level of public good conservation benefits.[65]

5.80 It appears that public good conservation activities undertaken by landholders are not being acknowledged when agencies apply the existing cost-allocation principles, focused as they are on the duty of care and ensuring that no landholder receives an 'undeserved' benefit. Moreover, the failure to acknowledge the efforts of landholders is a matter of considerable friction between landholders and bureaucrats, as is evident in the submissions from landholders.

Do current policy approaches contain incentives that lead to inappropriate land management practices?

5.81 Poorly targeted incentives unintentionally induce behaviour in landholders that degrade the environment.[66] Typically, a perverse incentive occurs when a landholder is motivated to perform an action that degrades the environment, because the anticipated result will provide a greater benefit than refraining from performing the action. The Committee was told about a number of perverse incentives that have been created by existing policy approaches.

5.82 Existing policy provides, as has been set out in this chapter and chapter 3, some limited forms of financial assistance of restricted availability, that are reinforced by increasingly stringent regulations concerning landuse. The effect is that landholders are not permitted by law to engage in certain landuse practices; however, they are not provided with assistance to move to new forms of production or with ongoing land management expenses. Landholders bear the cost themselves.

5.83 An example of the result of this approach was provided to the Committee. In New South Wales, the proportion of native grasses on an area of land triggers controls on land use. Even though this approach is designed to protect native grasslands, it leads instead to environmentally dangerous

65 Submission no. 238, p. 5.

66 Environment Australia, submission no. 231, p. 8.

land use practices, as Mr Mick Keogh, from the NSW Farmers' Association, testified:

> [In] … the grasslands in New South Wales where, if more than 50 per cent of the grass on the ground happens to be native, that is classified as native vegetation and potentially unable to be touched. So you have landholders who are very restricted in what they can do. They face the ridiculous option of having to flog mercilessly any of the areas that they can prove to be 'out' in order to generate enough income because they cannot do anything on the other areas. We do not think that is a good conservation outcome; it is certainly not good from the point of view of the equity of the individual involved.[67]

5.84 An example of a similar problem was provided by the Pastoralists and Graziers Association of Western Australia:

> Of more immediate concern are the perverse incentives given to landholders by the fear that they may lose property rights. Farmers today burn or plough in anything they suspect of being rare from fear that they will lose the use of the land upon which it resides and the situation could be made worse from an environmental perspective.[68]

5.85 Mr John Hyde of the PGA expanded on this approach in testimony:

> It is poor environmental management. I am a farmer, and what do I do if I discover a funny furry thing while I am having a smoko in the middle of the night off my tractor? I say nothing about it.
>
> I keep ploughing. Of course you do. You are not going to tell anyone that you might have something strange on your property, because you might lose the property and, from an environmentalist's point of view, this is plain crazy.
>
> This is not an exceptional attitude. If you have something unusual, and mostly you just suspect it is unusual—you do not know—you keep ploughing, mate. And that is very widespread, I assure you, Mr Chairman.[69]

67 *Transcript of Evidence*, p. 302.

68 Submission no. 49, p. 3.

69 *Transcript of Evidence*, p. 395.

5.86 The result of stringent environmental legislation and inadequate support for land reserved for public good conservation activities resulted in a 'shoot, shovel and shut up approach'. Mr Mick Keogh testified that:

> … by and large, this regulatory approach leads to what is colloquially termed a shoot, shovel and shut up approach. In other words, to give you a simple example, if there is a threatened species present on your property and you are aware of it, the best outcome economically for you is to shoot it, shovel it under the ground and shut up about it, because otherwise you potentially face the situation where the productive capacity of your land and the income you can generate off your land will be restrained and basically you will bear the cost of the preservation of that threatened species for the benefit of the wider community.[70]

5.87 The Committee was advised that this is what happened in the United States before financial incentives were introduced:

> In the US where the term 'shoot, shovel and shut up' came from, that was as a result of some of their threatened species legislation. They woke up to this. They therefore introduced a system of incentives in recognition of landholders' rights. And as a result of that, they have turned the situation around. People can be proud of the high quality habitat they have got. They actually earn more money for high quality habitats. Not only do the rare bits get protected, but the rare bits become less rare because more people try and nurture landscapes through and return it.[71]

5.88 Another poorly targeted incentive relating to the regulations supporting land use concern the so called '10 year' rule. The *Native Vegetation Conservation Act 1997 (NSW)* provides for clearing of native vegetation, when the vegetation is regrowth less than 10 years of age and the land has been previously cleared for the purposes of cultivation, pasture or forestry plantation. The Five Ways Landcare Group advised the Committee that:

> Regrowth of eucalypts, wilgas, wattles, and other species is so vigorous in the red soils of the central western plains that we are now compelled to remove them all within ten years. There is no opportunity as we have done in the past, of letting some areas grow with the view to selectively clearing 15, 20 or 30 years later. The risk of having a clearing application refused has caused the

70 *Transcript of Evidence*, p. 294.

71 *Transcript of Evidence*, p. 295. The Institute of Public Affairs also refers to the 'shoot, shovel and shutup' consequence of financially unsupported conservation measures imposed on landholders. See submission no. 156, p. 2.

> aggressive removal of all regrowth younger than 10 years. This is the antithesis of the aim of the government policy![72]

5.89 Another landholder advised the Committee about the effect of the ten year rule on his farming practice:

> I have shortened my rotation to keep the grass segment of the pasture under ten years. This has increased my workload and increased my cost of production, due to an increase in my cropping area at a time when grain prices are low. My beef cattle are more prone to bloat in a lush season, as more of my pasture paddocks are legume dominant, and I have less grass areas I can safely run them on.[73]

Do current policy approaches contain inequities?

5.90 The dominant theme underlying submissions and testimony from landholders is what they described as the 'inequity' inherent in the present arrangements. The need to avoid inequities, in contrast, appears to underlie much policy development. As the Productivity Commission advised the Committee, 'The issues of public good conservation have far reaching implications that test the skills of policy makers in defining and prioritising problems and then devising appropriate equitable solutions'.[74] The attempt to devise a cost sharing scheme is, in part, driven by the concern to apportion the costs of public good conservation in an equitable way.[75] The result is that, while policy makers advocate approaches and principles that they consider equitable, the evidence from landholders indicates that the current approach is seen to be permeated with inequity.

5.91 The feelings of inequity experienced by landholders are palpable. One landholder in South Australia provided a submission in which he stated:

> Our immediate neighbours operate a farm of identical size and topography to ours. In fact the only difference is that all regrowth on their property was completely cleared prior to 1983. They do very well while we live in poverty. Some of this difference in situation can be attributed to the following: for every acre we crop, they crop 20; for every cow we run, they run 5. Moreover, they have access to bank finance, assistance from government schemes (e.g. Eyre Peninsular Regional Strategy), have obvious economies of scale advantages, ability to employ labour and obtain

72 Submission no. 124, p. 4.

73 Submission no. 81.

74 Submission no. 189, p. 13.

75 See, for example, submission nos. 231, 238, 246.

> Centrelink administered employment incentives and training assistance. …
>
> One wonders how there could be a more obvious and blatant case of injustice and discrimination than the current South Australian legislation which denies a farming family the use of 75% of their property while denying adjacent neighbours 5% and 8% respectively.
>
> The 75% of our farm harbours excessive numbers of kangaroos and foxes which feed mostly on the 25% of the land we are permitted to cultivate.[76]

5.92 The inequity of the present arrangements was a theme of the NSW Farmers' Association's submission. The Association captured the equity considerations succinctly:

> When being told an asset can no longer be counted on for productive use, offering funding to fence it off is little consolation and does nothing to address the question of equity or the continued viability of the business.[77]

5.93 Mrs Jenny Blake suggested that inter-generational inequities have arisen. Mrs Blake advised the Committee:

> It is interesting to note that in some instances those whose forbears cleared all the significant areas are the most vocal when calling for the retention of native vegetation but they do not have to wear the economic implications – they can do what they like with their cleared ground; it is only those of us who have been either stupid or responsible who are financially disadvantaged as a result of our commitment to the environment.[78]

5.94 The inequities that are believed to have arisen between landholders, as well as the inequity that emerges from a failure by government agencies to acknowledge public good conservation activities, were put to the Committee by the Five Ways Landcare Group:

> There is a very definite trend toward locking up any remaining vegetation (especially regrowth) as a counterbalance to the overclearing that has taken place in other locations – there has been little attempt by any government department to order replanting of trees in sensitive areas, just this singleminded determination to keep all existing trees. This simply shifts the weight of responsibility from the landholder that has cleared

76 Submission no. 61.

77 Submission no. 177, p. 13.

78 Submission no. 197, p. 5.

> extensively to the landholder who has taken a more moderate approach to developing his holding over a longer period of time. Many landholders have either preserved areas on farms and/or have only progressively cleared small amounts each year. There is no recognition of this approach. In fact they may be penalised for it as they may now have some of the last patches of remnant vegetation or may be surrounded by what others believe is excessively cleared country. To disallow further development without significant forms of compensation is a huge impost on the very landholders who have been the most conservation-minded farmers of the past at the expense of their more aggressive neighbours.[79]

5.95 The Five Ways Landcare Group went on to express the feelings embodied in many submissions from landholders. Landholders feel that they had been singled out for unfair treatment:

> All governments place a low priority on compensating or reimbursing farmers for their conservation measures – these activities are demanded by Governments that would not take this action against any other group or entity in the country.[80]

5.96 One landholder put his concern in these words, the sentiment of which was shared in other submissions:

> The West Australian Government is forcibly using my land for conservation purposes, and not paying me for the use of it. This conservation is for the public good. Many other farmers have over-cleared, and made money in the past decades – thus paying income tax to the Federal Government. The Government has benefited – so too has the public welfare.[81]

5.97 The perceived inequities between agricultural industries was noted by the NSW Farmers' Association who advised the Committee that:

> In Australia the precedent has already been set. The forestry industry with 25 times less employees than agriculture has been offered compensation of $120 million for the impacts of conservation initiatives by the Commonwealth's Forest Industry Structural Adjustment Program in addition to significant State contributions.[82]

79 Submission no. 124, p. 5.
80 Submission no. 124, p. 8.
81 Submission no. 213.
82 Submission no. 177, p. 4.

5.98 The Pastoralists and Graziers Association of Western Australia suggested that 'People who have invested their savings only to have the value of their property devalued by changing the rules that apply to it have been unfairly treated'. Mr John Hyde, representing the PGA, expanded on this line of thinking in a public hearing, and testified that the gradual removal of the rights of landholders to manage land was imposing a serious injustice upon them:

> The Crown normally does not take the whole bundle [of property rights]; it recognises that it should not. But the practice has developed of stripping off the individual rights. It has not happened to me but it has happened to many people I know. Taking the right to say, 'Clear the land and crop it,' has reduced [a landholder's] bundle of rights to very little value, but he is still the nominal owner of the land. That is every bit as egregious as taking, in a case that we are familiar with, six or seven out of his 10 paddocks. It is the same loss, and that is his savings. That is what his family has been putting away. Instead of putting it into a super policy or something like that, he has put it into land. It is not fair.[83]

5.99 The importance of equity considerations was acknowledged by Commonwealth and state government agencies. For example, Environment Australia advised the Committee that:

> Equity considerations include both fair processes and fair outcomes. Equity is important both for its own sake, and because programs and policies that are perceived to be equitable enjoy greater support, and require less external compliance efforts. Equitable cost sharing also helps to generate necessary financial resources.[84]

5.100 As well, the Productivity Commission also acknowledged the importance of equity considerations in the development of agri-environment policies.[85]

5.101 In testimony, Mr David Hartley of the Western Australia Department of Agriculture sketched the inter-generational equity issues from the point of view of a policy maker:

> There is an inter-generational equity issue here, in that it is unfair to expect future generations to carry the burden of mistakes that we are making now. Similarly, it is wrong to expect the current generation of farmers to carry the burden of decisions that were

83 *Transcript of Evidence*, p. 393.

84 Environment Australia, submission no. 231, p. 9.

85 B. Aretino, *et al*, *Cost sharing for biodiversity conservation*, pp. 18, 21, 30.

> made by previous generations of farmers, in many cases on the advice of governments. That is an issue that we do have to come to grips with: how the current generation have to make decisions to protect the future generation but also need to be assisted with the mistakes of previous generations. That is a very difficult thing.[86]

5.102 The inequity of governments imposing public good conservation measures on landholders, while exempting themselves, was also raised in government and landholder submissions. For example, the Native Vegetation Working Group reported that, in its view:

> … a serious inequity would exist if government policies expected landholders to protect and manage privately-owned bushland and undertake significant revegetation work, but did not also act to ensure those areas directly under government control were also well-protected and managed.[87]

5.103 What emerged during the course of the inquiry was a difference of opinion between landholders and landholder groups, and policy makers and governments over the nature of 'equity'. This is demonstrated in this comment from the Native Vegetation Working Group:

> … it would be inequitable to provide assistance packages for landholders prevented from clearing without also providing similar packages to those who voluntarily stopped clearing their properties many years ago, when problems of salinity and biodiversity loss first became apparent.[88]

5.104 The Committee notes that 'equity' involves tailoring the treatment a person receives to that person's particular circumstances so that right is done by that person. For this reason, assistance provided to a landholder who refrained from clearing some years ago would differ from a package provided to a landholder who did clear. There is no reason in equity to provide a similar assistance package to both.

5.105 However, even if specific assistance packages differ, the point is that all landholders should receive some assistance, if needed, that is tailored to their particular circumstances in order to assist them with public good conservation activities and the transition to ecologically sustainable land management practices.

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86 Mr David Hartley, *Transcript of Evidence*, p. 372.

87 Native Vegetation Working Group, *Final report*, p. 10.

88 *Final report*, p. 9.

Conclusion

5.106 The object of public good conservation policy is to procure outcomes that advance conservation values and the transition to ecologically sustainable land management practices. The evidence provided to this Committee indicates that more needs to be done across Australia to develop appropriate programs and encourage transition to ecologically sustainable land management practices, that promote the development of public good conservation while managing the effect upon landholders and rural communities. The evidence received by the Committee suggests that there is a perception that in the effort to allocate the cost of public good conservation activities, some Australian governments have lost sight of the goal: promoting public good conservation outcomes and the transition to ecologically sustainable land management practices. It would appear from some of the evidence that the practice of cost allocation has become an end in itself rather than a means to procure an end.

5.107 As this inquiry found, the existing approaches to cost allocation are not as straight-forward or appropriate as assumed.

5.108 Moreover, evidence indicates that the present cost allocation processes and the particular approaches taken has led some landholders to feel distress and experience hardship. Others have expressed anger and injustice. Moreover, the current approaches have fostered the development of poorly targeted approaches. Policy makers have not effectively recognised the problems inherent in the current approach and have not revised their policies and programs in ways that would be more acceptable to landholders. The Five Ways Landcare Group summed up the feeling expressed in many of the submissions from rural Australia:

> For too long the extremes in all sections of our community have had too great an influence on decisions that are made that affect our entire social and economic fabric – it is time that commonsense and moderation are introduced into the discussions and policies that are being made.[89]

5.109 Commonsense and moderation should underpin the policies that aim to foster public good conservation and the transition to ecologically sustainable land management. These policies must be directed at clearly identified goals. In the next chapter, the Committee sets out such an approach.

89 Submission no. 124, p. 8.

Recommendation 3

5.110 **The Committee recommends that the policy foundations for public good conservation funding be focused upon attaining good conservation outcomes while addressing the equity issues revealed in this inquiry.**

Furthermore, the Commonwealth should work with the states to recast the existing cost-sharing principles so that they focus on achieving conservation outcomes, while including a full recognition of the equity concerns of landholders raised in this inquiry.

6

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'.[1]

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*

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.[2]

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 unfordable 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.[3]

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.[4]

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

4 Submission no. 189, p. 13.

> moment, and that use was considered appropriate at the time or was supported by government policy.[5]

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

5 *Transcript of Evidence*, p. 92

> no legal requirement to pay compensation under the Soil and Land Conservation Act …[6]

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.[7]

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. [8]

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'.[9] 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

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.[10] 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

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.[11]

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.[12] 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.

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.[13]

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.[14]

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.[15] 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.[16] 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 the $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.[17]

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

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.[18]

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.[19] 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'.[20]

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'.[21]

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

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'.[22]

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.[23]

6.78 A landholder, Mr Bill Sloan, provided information about the costs and benefits of public good conservation measures on his property.[24] 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.[25] 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.[26]

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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.[27]

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.[28]

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.[29]

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.[30] 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.[31]

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

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. [32]

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. [33]

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

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[35] and the Voluntary Conservation Agreements in NSW.[36]. 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,

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.[37] 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.[38]

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.[39]

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.

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, 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.[40]

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[41]	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 3rd year of operation 62 approvals for 7,500 ha.
Northern Territory	2	11 000	Leasehold conditions	-
Australian Capital Territory	Unknown	Unknown	Leasehold conditions	Unknown
Totals:	**In excess of 3 315**	**In excess of 673 768**	**N/A**	**In excess of 100**

Sources *Australian Bureau of Statistics: Australia's environment: Issues and trends, 2001. Cat no. 4613.0, p. 62; Productivity Commission, Constraints onrPrivate 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, 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*

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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. [42]

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 Remanent 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.[43] 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.[44]

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.[45] It may also lead to higher administrative costs.[46]

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.[47] 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.

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.[48]

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.[49]

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.[50]

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

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.[51]

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.[52]

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.[53]

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.

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.[54]

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.[55] 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.[56]

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

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.[57]

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.

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[58], the Productivity Commission[59] and the Allen Consulting Group,Business Leaders Roundtable.[60]

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.[61] …
>
> 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.[62]

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.[63]

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.[64]

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.[65] 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.[66]

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'.[67] 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.[68] 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.[69]

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'.[70] 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.[71] 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.[72]

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

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[73], and more recently the Productivity Commission[74], 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.[75] 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.[76]

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.[77]

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.[78]

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.[79]

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.[80]

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 convenants 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.

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 ...[81]
>
> 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.[82]

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.[83] 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'.[84] 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.[85]

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.[86]

6.154 Moreover, discounts are applied to the 'consideration' for timber harvesting, for example, for firewood and grazing rights.[87] 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.[88]

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.

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.[89] 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.[90]

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.

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.[91]

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.[92]

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

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.[93] 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.

93 Submission no. 244.

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.[94]

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.[95]

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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.[96]

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.[97]

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.[98]

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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.[99]

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.[100]

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 form 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,[101] 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.[102]

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.[103]

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.

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

	Wheat	Wattle
Economic Performance		
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
Environment Performance		
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.[104] 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.[105] The illicit trade in Australian native fauna is estimated to be worth about $60 million per annum.[106]

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.[107]

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.[108]

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'.[109]

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

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.[110]

110 *Transcript of Evidence*, p. 155 – 156.

Case Study 1: Farmers as honorary rangers – Namibia[111]

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.

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[112]

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 13per 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.[113] 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.[114]

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.[115] 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[116]

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.[117]

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 Januaury 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.[118]

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.[119]

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.

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'. [120]

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.[121]

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. [122]

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.[123]

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,[124] 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.[125] 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.[126] 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[127] and the recent report by the Allen Consulting Group Business Leaders Roundtable also supports this view.[128]

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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.[129] 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.

129 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.[130]

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 30th 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.[131]

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.[132]

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.[133] 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.[134] Membership is free, voluntary and is not legally binding.[135]

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.[136]

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 …[137]

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

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

135 'Land for wildlife', www.land.vic.gov.au/4a256…/oa5fla73670bbaf04a 2568310021eaad?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

Appendix A – List of submissions

Submissions

Number	Organisation
1	Mayne - Wilson & Associates
2	Mr & Mrs W A & J Higginson
3	Mr Greg Burrows
4	Mr Allen L Briggs
5	Not assigned
6	Ms Sue Walston
7	Mr C Nason
8	Mr Trevor Naley
9	Mr Ross McPhie
10	South East NSW Horticultural Producers Association
11	Ms Jane Blackwood
12	Tallaganda Shire Council
13	Mr Rix Wright
14	Mr John Rogers
15	Mr John Andrew
16	Mr Malcolm Donaldson
17	Mr Graham Donaldson
18	North Central Catchment Management Authority

19	Mr S K Blackburn
20	CSR
21	James & Louise Foster
22	Mr Ron Taylor
23	Mervyn & Bernice King
24	J C Turner
25	Dr Murray Raff
26	Community Solutions
27	ACT Sustainable Rural Lands Group Inc
28	K S Lloyd
29	Richmond Regional Vegetation Committee
30	Mrs Lyndsey E. Paul
31	Mr & Mrs John & Kerry Parker
32	Mr & Mrs Colin & Kay Seib
33	Mrs Vicky Rick
34	Mrs Ann Read
35	H G Hunter
36	Mr Russell Turkington
37	Mr Bill Yates
38	Mr Warren Wait
39	Confidential
40	West Wimmera Shire Council
41	Mr John Warner
42	A E & J M McLean
43	Mr John Little
44	Dr Barbara Randell
45	Mr John Hallman
46	M R & D S Clapham
47	Mr Rodney Suttor

48	Barung Landcare Association Inc.
49	Pastoralists and Graziers Association of Western Australia (Inc.)
50	Mr Stuart Whitten
51	Ms Elizabeth Shannon
52	Ms Tina G Lesses
53	Mr & Mrs Joe & Georgie Crowe
54	R & K Reed
55	Mr David Marsh
56	Plantations Australia
57	Mr Don Fleming
58	Mr T G Price
59	NSW Farmers Association, Barmedman Branch
60	Mr Noel Ryan
61	Mr Gary Anderson
62	Western Australian Farmers Federation Inc.
63	Mrs Anne Stoneman
64	Victorian Apiarists' Association Inc.
65	Mr Brendan Crowe
66	Tasmanian Farmers' and Graziers Association
67	West Bogan Landcare Group
68	CANEGROWERS
69	Twynam Investments Pty Ltd
70	Mr Kevin O'Donoghue
71	Mr Allan Haley
72	J Clayton
73	Mr Neville Brunt
74	Mr Steve Douglas
75	Mr Roy Dickson
76	Mr & Mrs Gerard & Denise O'Brien

77	Macquarie Marshes Environmental Landholders
78	Mrs Helen Mahar
79	Logan United Citizens Inc
80	Mr Lloyd Berger
81	Mr & Ms Rod & Juleen Young
82	Conservation Council of the South-East Region and Canberra Inc.
83	Confidential
84	MIA Council of Horticultural Associations Inc.
85	Mid Upper South East Local Action Planning Committee
86	Trust for Nature (Victoria)
87	Mrs Merle Bardwell
88	Mudgee District Environment Group Inc.
89	Mr Tom Smith
90	Mrs Jane Manchee
91	Mrs Peggy Hann
92	Mr & Mrs John & Barbara Dunnet
93	Aire River Drainage Advisory Committee
94	NSW Farmers Association, Gulgong Branch
95	Mr Ronald Stoneman
96	D Laurie
97	Mr Peter Weston
98	Mr Denis Haselwood
99	J & S Doyle
100	E S. Falkiner and Sons Pty Ltd
101	Mr Michael Price
102	Ms Diana Champion
103	Ms R Vulcz
104	One Tree Hill Landowners Association Inc.
105	Mr John Brodie

106	Ms Anna Renkin
107	Macquarie River Food & Fibre
108	Mr Nic Gellie
109	Queensland Farmers' Federation
110	Draft Port Stephens Council Comprehensive Koala Plan of Management Consultative Committee
111	Ms Carla Cowles
112	Condamine Catchment Management Association Inc.
113	Australian Environment International Pty Ltd
114	Brisbane Valley - Kilcoy Landcare Group Inc.
115	Ms Dawn Parker
116	Queensland Conservation Council
117	Macquarie Marshes Catchment Committee
118	Bay Islands Development Inc
119	Mr Richard A Doyle
120	National Farm Forestry Roundtable
121	Mount Lofty Ranges Southern Emu-wren Recovery Program
122	Otway Planning Asociation Inc.
123	AGFORCE Queensland
124	Fiveways Landcare Group
125	Ms Jenny McLellan
126	Murrumbidgee Irrigation Ltd
127	North Cornargo Land Management Group
128	Inverell-Yallaroi Regional Vegetation Committee
129	Diamond Creek Landcare
130	Mr Mark Douglas
131	Mr Roger Grund
132	Mr Steven Lawson
133	Ms Margaret House
134	Mr Robert Anderson

135	The Advisory Board of Agriculture
136	South West Private Property Action Group
137	Ms Beth Schultz
138	Mr & Mrs R & S Colley
139	Peel Preservation Group Inc.
140	Mr Jim McDonald
141	Tasmanian Landcare Association
142	Euroka Station Partnership
143	Lockyer Catchment Co-ordinating Committee Incorporated
144	Mr Adam C Clark
145	R G Dixon
146	Mr John Morley
147	Mr Robert Warner
148	Mr Brian Smith
149	Ms Wendy Murray
150	Mr Bob Swain
151	Mrs Maureen Campbell
152	Environment Institute of Australia
153	Mr Gordon Banks
154	CSIRO
155	Mr Bill Sloane
156	Institute of Public Affairs
157	NSW Farmers' Association, Cooma District Council
158	Ms Noelene Franklin
159	Australian Conservation Foundation
160	Mr Trevor Wilson
161	Mr Paul Fisher
162	Auspine Limited
163	Mr Jason Crowther

164	Mr Peter Hepburn
165	Mr Bruce Bashford
166	Ms Susan Mitchell
167	Mr Keith Williams
168	Mr N I Clutterbuck
169	Mr Richard Savage
170	Ashley Prout
171	Mr Robert Sing
172	Mr Leon Ashby
173	ABARE
174	Mr David Grace
175	Ms Sally McKay
176	Desert Uplands Build-Up and Development Strategy Committee
177	NSW Farmers' Association
178	Mr James Fitzsimons
179	Maranoa Balonne Catchment Management Association Inc.
180	Mr H J Challis
181	Nature Conservation Council of NSW
182	Australian Forest Growers, NSW Chapter
183	Mr Richard Bootle
184	Mr B Ritchie
185	Sunshine Coast Rural Landholders Assoc. Inc.
186	NSW Dairy Farmers' Association Limited
187	Mr Rei Beumer
188	South Australian Farmers Federation
189	Productivity Commission
190	Mr David Hodgkinson
191	Mr Peter MacPhillamy
192	Mr Keith & E Watters

193	C A & C C Scott
194	Australian Property Institute.
195	Mr Clive Cottrell
196	Mrs Nerida Reid
197	Mr and Mrs K J & J M L Blake
198	Australian Forest Growers
199	Professor R G H Cotton
200	Australian Macadamia Society Limited
201	Environs Australia
202	Local Government Association of Tasmania
203	Mr Phillip Hone
204	Mrs Rosalind Stafford
205	Maryvale "A" Team Association Inc.
206	Goulburn Broken Catchment Management Authority
207	Upper Murrumbidgee Catchment Coordinating Committee
208	L N & M R Abbott
209	Mr John Dival
210	Gorton Timber Company Pty Limited
211	Ms Patty Kassulke
212	Mr Henry Haszler
213	Mr B J Burns
214	Noel & Lynette Dunn
215	Mr Philip Logan
216	National Farmers' Federation
217	Goulburn Field Naturalists Society
218	Northern Rivers Water Management Committee
219	Mr Iven McLennan
220	Mr F W Heuke
221	Mr Dyson Devine

222	Mr Jim Ferguson
223	Mr & Mrs Dennis & Tania Hall
224	Coolabah Landcare Group Inc.
225	Australian Local Government Association
226	ACT Government
227	Manduka Community Settlement Cooperative
228	Mr James Gardiner
229	Mr Robert Caldwell
230	R F & J R Collins
231	Environment Australia
232	Victorian Farmers Federation
233	R J & E Lancaster
234	New South Wales Government
235	Victorian Government
236	Native Vegetation Advisory Council of NSW
237	Mr F H Brown
238	Department of Agriculture, Fisheries and Forestry Australia
239	Mr Barry Hall
240	Wimmera Catchment Management Authority
241	Frank & Shirley Probert
242	Victorian Farmers Federation
243	Western Australian Government
244	Tasmanian RFA Private Forest Reserve Program
245	TFGA Forestry
246	South Australian Government
247	Cobar Combined Landcare Committee
248	Goulburn Broken Catchment Management Authority
249	NSW Apiarists' Association Inc.
250	Mr Paul Fisher

251	South Australian Water Corporation
252	Melbourne Water Corporation
253	Water Corporation (W.A.)
254	S Kidman & Co
255	Noel & Lynette Dunn
256	Soil and Land Conservation Council Western Australia
257	Mr Jon Nevill
258	Dr Barbara Randell
259	Mr & Mrs Paul & Kathryn Verrica
260	Mr Alan Tate
261	Friends of Newland Head Conservation Park
262	Mr Ian Chapman
263	Australian Environment International Pty Ltd
264	CLEG of Hallidays Point
265	Blake, Jenny (supplementary submission to no 197)
266	Confidential

Appendix B – List of exhibits

1 Documents tabled by Victorian Apiarists' Association Inc. at a public hearing in Melbourne on 22 August 2000:

Beekeeping Generates Income from the Natural Environment without Destroying Habitat; and

D M H Gibbs & I F Muirhead, *The Economic Value and Environmental Impact of the Australian Beekeeping Industry: A Report Prepared for the Beekeeping Industry*, February 1998.

2 Documents tabled by the Goulburn Broken Catchment Management Authority at a public hearing in Melbourne on 22 August 2000:

Goulburn Broken Native Vegetation Plan: Volume 1: Goulburn Broken Native Vegetation Management Strategy, Final, and *Volume 2: Native Vegetation Retention Controls - Regional Guidelines for the Goulburn Broken Catchment*, Draft, Goulburn Broken Catchment Management Authority, August 2000; and

Goulburn Broken Catchment Management Authority, 'Tackling flood problems on the Lower Goulburn River and floodplains', pamphlet, undated.

3 Documents provided by CSIRO at a meeting in Canberra on 30 August 2000:

Native Vegetation Institutions, Policies and Incentives.

4 Documents tabled by Agriculture, Fisheries and Forestry at a public hearing in Canberra on 4 September 2000:

Steering Committee Report to Australian Governments on the Public Response to 'Managing Natural Resources in Rural Australia for a Sustainable Future: A Discussion Paper for Developing a National Policy, July 2000.

5 Documents tabled by the CANEGROWERS at a public hearing in Brisbane on 11 September 2000:

'Canegrowers' principles for vegetation management';

T. Buono, *A Report on the Number of Trees Planted in Queensland Cane Growing Regions from Jan 1997 - December 1999 with Projections to 2002*, December 1999;

Canegrowers, 'Riparian management: Is there a rat in your hip pocket? Rat control … and 19 other good reasons to revegetate', Canegrowers & Land and Water Resources Research and Development Corporation;

Canegrowers, *One Million Trees for Queensland Cane Catchments: Funding Application to the Natural Heritage Trust for the 1998-99 Round*, March 1998;

S Tapsall, D Couchman, J Beumer & J Marohasy, *Cane Growers On-farm Maintenance of Drains with Marine Plants: Fish Habitat Code of Practice for Use with Strategic Permits Issued under Section 51 of the Fisheries Act 1994*, Fisheries Group, Queensland Department of Primary Industries, January 2000; and

Code of Practice: Sustainable Cane Growing in Queensland.

6 Documents tabled by Bay Islands Development Inc. at a public hearing in Brisbane on 11 September 2000:

Statement by Mr Olsson;

Southern Moreton Bay Islands Planning Study, 'Proposed acquisition areas' (map of Russell and Karragarra Islands);

Map of Russell Island showing areas where bird, vegetation and other studies were carried out;

Letter to Mr Olsson from Gerry Morvell, Assistant Secretary, Environment Assessment Branch, Environment Australia, dated 2 August 2000;

Letter to Mr D Lynch, Secretary/Treasurer, Russell Island Development Association Inc. from the Queensland Parliamentary Commissioner for Administrative Investigations (Ombudsman), dated 21 October 1994; and

Table showing captures in small mammal traps.

7 Documents tabled by the NSW Farmers' Association at a public hearing in Sydney on 20 November 2000:

NSW agricultural statistics, Year to 30th June 1998; and

United States Department of Agriculture, 'Conservation Reserve Program Sign-up 20 – Environmental Benefits Index', Fact sheet, September 1999.

8 Documents tabled by the Native Vegetation Advisory Council of NSW at a public hearing in Sydney on 20 November 2000:

Native Vegetation Advisory Council, *Draft Native Vegetation Conservation Strategy*, November 2000;

R Gillespie, *Economic Values of the Native Vegetation of New South Wales*, Background paper no. 4, Native Vegetation Advisory Council, November 2000;

A Rawson & B Murphy, *The Greenhouse Effect, Climate Change and Native Vegetation of New South Wales*, Background paper no. 7, Native Vegetation Advisory Council, November 2000;

J Lambert & J Elix, *Social Values of the Native Vegetation of New South Wales*, Background paper no. 3, Native Vegetation Advisory Council, November 2000;

P L Smith, B Wilson, C Nadolny & D Lang, *The Ecological Role of the Native Vegetation of New South Wales*, Background paper no. 2, Native Vegetation Advisory Council, November 2000;

M Sheahan, *Arrangements and Opportunities for Native Vegetation Management in New South Wales*, Background paper no. 6, Native Vegetation Advisory Council, November 2000; and

A series of Native Vegetation Advisory Council fact sheets relating to the above publications:

No 2, 'The ecological role of the native vegetation of New South Wales';

No 3, 'Social values of the native vegetation of New South Wales';

No. 4, 'Economic values of the native vegetation of New South Wales';

No. 6, 'Arrangements and opportunities for native vegetation management in New South Wales'; and

No. 7, 'The greenhouse effect, climate change and native vegetation of New South Wales.

9 Documents tabled by Environs Australia at a public hearing in Sydney on 20 November 2000:

'A bush partnership … ', pamphlet;

Australian Local Government Association, *National Local Government Biodiversity Survey; National Local Government Biodiversity Strategy Implementation Project Stage 1*, Executive summary, October 2000;

Submission by the Municipal Association of Victoria to the Victorian Public Accounts and Estimates Committee Follow up Inquiry into Environmental Accounting and Reporting, 4 September 2000; and

Environs Australia Newsletter, *Local Environs*, 11(3), September 2000.

10 Document provided by the Department of the Treasury:

Response, dated 10 April, 2001 to questions taken on notice at the public hearing, 5 March, 2001, re: capital gains tax on public good conservation projects, especially covenants.

11 Document provided by One Tree Hill Landowners Association Inc.:

Primary Industries and Resources SA, *Mount Lofty Regional Revegetation Strategy*, Chapter 3, 'Key players in revegetation and related activities in the Mount Lofty Ranges', Endeavour Press, 2000, pp. 6-12.

Appendix C – List of public hearings

Tuesday, 22 August 2000 - Melbourne

Department of Natural Resources and Environment, Victoria

Mr Rod Gowans, Director, National Parks, Flora and Fauna

Goulburn Broken Catchment Management Authority

Mr Carl Binning, Steering Committee Member, Ecosystem Services

Mr Rod McLennan, Consultant, Biodiversity Committee Coordinator

Ms Dianne McPherson, Board Member

Institute of Public Affairs

Dr Alan Moran, Director, Deregulation Unit

Maryvale "A" Team Association Inc.

Mrs Leanne Martin, General Member

Mr Christopher Moody, Secretary

National Farm Forestry Roundtable

Mr Peter McKerrow, Facilitator

Mr Angus Pollock, Chairman

Victorian Apiarists' Association Inc.

Mr Gavin Jamieson, State Executive Member

Mr Robert McDonald, Resources Committee Chair

Victorian Farmers Federation

Mr Ian Lobban, Chairman, Land Management

Ms Kate Lockhart, Executive Officer, Land Management

Monday, 4 September 2000 - Canberra

Australian Property Institute

Mr John Sheehan, Vice President (NSW)

Mr Grant Warner, Director, Policy and Research

Department of Agriculture, Fisheries and Forestry-Australia

Mr Tom Aldred, Acting Assistant Secretary, Natural Resource Management Policy Task Force

Mr Peter Franklin, Assistant Secretary, Natural Resource Management Strategies

Mr Charles Willcocks, Assistant Secretary, Landcare and Natural Heritage Trust Branch

Environment Australia

Mr Jim Donaldson, Director, National Strategies Section

Dr Don Gunasekera, Assistant Secretary, Policy and Accountability Branch

Mr Steve Hatfield Dodds, Director, Environmental Economics Unit

Monday, 11 September 2000 - Brisbane

Individuals

Mrs Lyndsey E. Paul

AGFORCE Queensland

Mr Paul Bidwell, General Manager, Policy

Australian Environment International Pty Ltd

Dr Hugh Lavery, Chairman and Principal Adviser

Australian Forest Growers

Mr Harvey Bryce, Member

Mr Allen Dennis, Member

Mr Ian Mott, National Councillor; President, South Queensland Branch

Mr Kevin O'Donoghue, Member

Bay Islands Development Inc

Mr Ian Olsson, Chairman

Mr Michael Quain, Secretary

Mr Norbert Schlaefer, Member

CANEGROWERS

Dr Jennifer Marohasy, Environment Manager

Queensland Farmers' Federation

Ms Brianna Casey, Senior Research Officer, Environment and Natural Resources

Mr Graham Dalton, Executive Director

Queensland Conservation Council

Ms Felicity Wishart, Coordinator

Wednesday, 4 October 2000 - Canberra

National Farmers' Federation

Dr Wendy Craik, Executive Director

Ms Anwen Lovett, Director, Environment

Monday, 9 October 2000 - Canberra

ACT Sustainable Rural Lands Group Inc

Mr David Coonan, Vice President

Mr John Lowe, President

Mr Evan Tully, Treasurer

Environment ACT

Mr Bill Logan, Senior Project Officer, Biodiversity, Environment Planning and Legislation

Wednesday, 11 October 2000 - Canberra

Australian Conservation Foundation

Mr Charlie Sherwin, Biodiversity Campaign Coordinator

Monday, 20 November 2000 - Sydney

Department of Land and Water Conservation, New South Wales

Ms Leanne Wallace, Executive Director, Regional & Commercial Services

Environs Australia: The Local Government Environment Network

Mr Paul Bateson, National Local Government Bushcare Facilitator

Native Vegetation Advisory Council of NSW

Ms Rebekah Gomez-Fort, Executive Officer

Mr Neil Inall, Chairman

New South Wales Apiarist Association

Mr Gregory Roberts, State President

NSW Farmers' Association

Mr Matthew Crozier, Director, Conservation and Resource Management

Mr Mick Keogh, Policy Director

Twynam Agricultural Group

Mr Nicholas Gill, Group Commercial Manager

Mr Mark McLean, Southern Regional Manager

Tuesday, 20 February 2001 - Perth

Agriculture Western Australia

Mr David Hartley, Executive Director, Sustainable Rural Development

Egan National Valuers (WA)

Mr Phillip Logan, Senior Valuer

Pastoralists and Graziers Association of Western Australia (Inc.)

Mr Geoffrey Gare, Communications Director

Mr John Hyde, Chairman, Property Rights Committee

Soil and Land Conservation Council Western Australia

Mr Keith Bradby, Policy Officer

Mr Mike McFarlane, Community Member

Ms Christine Wardell-Johnson, Executive Officer

South West Private Property Action Group

Mr H J Challis, Vice Chairman

Mr Ted Coulter, Secretary/Treasurer

Mr Peter Wren, Chairman

Western Australian Department of Conservation & Land Management

Mr Kieran McNamara, Director, Nature Conservation

Water and Rivers Commission

Dr Luke Pen, Program Manager, Restoration and Management

Water Corporation of Western Australia

Ms Veronica Oma, Principal Environmental Officer

Western Australian Farmers Federation Inc.

Mr Garry English, Spokesman, Landuse and Conservation

Mr Douglas Parker, Acting Executive Director

Thursday, 22 February 2001 - Adelaide

Individuals

Ms Tina G Lesses

A G & S A McKay

Ms Sally McKay, Partner

Auspine Limited

Mr Geoffrey Bankes, Consultant

Department for Environment and Heritage, South Australia

Mr Neil Collins, Manager, Biodiversity Partnerships

Mr Stefan Gabrynowicz, Environmental Economist

Dr Christopher Reynolds, Legislative and Legal Policy Consultant

Mr Craig Whisson, Acting Executive Officer, Native Vegetation Council

Department for Water Resources, South Australia

Mr Stephen Wills, Manager, State Policy, Water Policy Division

Friends of Newland Head Conservation Park

Mr Ronald Taylor, Project Officer

Mid Upper South East Local Action Planning Committee

Mr Matt Giraudo, Wetlands Project Officer

Ms Bernadette Lawson, Revegetation Project Officer

National Trust of South Australia

Dr Caroline Crawford, Joint Nature Conservation Manager

Dr Barbara Randell, Chairman

One Tree Hill Landowners Association Inc.

Mr James McDowall, Committee Member (also Committee Member, Adelaide Hills Landowners Association)

Mr Bill Sims, Secretary

Primary Industries and Resources SA

Mr Geoffrey McLean, Principal Economic Consultant, Sustainable Resources

South Australian Farmers Federation

Ms Sarah Lewis, Policy Development Officer

South Australian Water Corporation

Mr Glyn Ashman, Acting Manager Water Resources, Bulk Water Division

Ms Cathryn Hamilton, Manager Environmental Management

The Advisory Board of Agriculture

Mr Rodney Bell, President

Monday, 5 March 2001 - Canberra

Department of the Treasury

Mr Frank DiGiorgio, Manager, Environment Policy Unit, Business Income and Industry Policy Division

Mr Edward Evans, Secretary

Mr Geoffrey Francis, Analyst, Environment Policy Unit, Business Income and Industry Policy Division

Appendix D – Inspections and discussions

Canberra - Wednesday, 16 August 2001

Briefing on the law and related concepts of private property rights

Dr Murray Raff, University of Melbourne

Edenhope and Colac, Victoria – Monday, 21 August 2000

Inspections at Edenhope

The committee, accompanied by officers and councillors of the West Wimmera Shire, inspected a property near Edenhope farmed by Mr Noel Etherton.

Meeting and discussions at Edenhope with:

Mayor and Councillors of West Wimmera Shire

Landholders

Wimmera Catchment Management Authority

Meeting and discussions at Colac with:

Colac-Otway Shire Councillors and officers

Otway Planning Association

Landholders

Brisbane and Nambour, Queensland – Tuesday, 12 September 2000

Meeting and discussions at Brisbane airport with:

CSIRO Tropical Agriculture

Landholder from Mundubbera

Meeting and discussions at Nambour with:

Barung Landcare Association

Brisbane Valley – Kilcoy Landcare Group

Manduka Community Settlement Cooperative

Landholders

Forester

Sunshine Coast Rural Landholders Association

Cardwell, Queensland – Wednesday, 13 September 2000

Meeting and discussions at Cardwell with:

Landholders

Residents

Power to the People Action Group

Cardwell Properties Pty Ltd

Canegrowers

Cardwell Shire Mayor, Councillors and officer

Nyngan, New South Wales – Tuesday, 21 November 2000

Inspections

The committee inspected properties near Nyngan which are farmed by Mr Doug Menzies ('Iona') and Mr and Mrs Joe and Gabrielle Holmes ('Loxley').

Meeting and discussions at Nyngan with:

Macquarie Marshes Catchment Committee

Macquarie Marshes Environmental Landholders

Coolabah Landcare Group

Cobar Combined Landcare Group

Fiveways Landcare Group

West Bogan Landcare Group

NSW Farmers' Association

Landholders

Narrogin, Western Australia – Monday, 19 February 2001

Inspections

The committee inspected a property near Narrogin farmed by Mr and Mrs Michael and Kay Brown ('Jindalee').

Meeting and discussions at 'Jindalee', near Narrogin with:

Landholders

Meeting and discussions at Narrogin with:

Landholders

Catchment management groups

Renmark, South Australia – Wednesday, 21 February 2001

Inspections

The committee inspected 'Wilabalangaloo', a National Trust property, and Banrock Station.

Meeting and discussions at Banrock Station with:

Landholders

Land and water management officials

Landholder and catchment management groups

Canberra - Wednesday, 6 June 2001

Briefing on the commercial use of native plants and animals

Dr George Wilson, Australian Wildlife Tours