



## SUBMISSION

# Senate Finance and Public Administration Committee Inquiry

# Native Vegetation Laws, Greenhouse Gas Abatement and Climate Change Measures

March 2010

PO Box 274  
Deakin West ACT 2600  
Ph: 03 5762 6883  
Fax: 03 5762 3069  
Email: [info@aeftweb.info](mailto:info@aeftweb.info)  
Website: [www.aefweb.info](http://www.aefweb.info)

## **Terms of Reference**

(1) The impact of native vegetation laws and legislated greenhouse gas abatement measures on landholders, including:

- (a) any diminution of land asset value and productivity as a result of such laws;
- (b) compensation arrangements to landholders resulting from the imposition of such laws;
- (c) the appropriateness of the method of calculation of asset value in the determination of compensation arrangements; and
- (d) any other related matter.

(2) in conducting this inquiry, the committee must also examine the impact of the Government's proposed Carbon pollution Reduction Scheme and the range of measures related to climate change announced by the Leader of the Opposition (Mr Abbott) on 2 February 2010.

---

The Australian Environment Foundation submission refers to Section (1) a, b, c, d of the terms of reference of the Senate Inquiry.

The submission does not address section 2 of the Terms of Reference.

### **Submission comments on Terms of Reference:**

The Senate Inquiry into Native Vegetation Laws, Greenhouse Gas Abatement and Climate Change offers an opportunity to review the management of native vegetation legislation, the effect of that legislation on biodiversity values which may affect the health and productivity of private landholdings and any inequities affecting the stewardship of the landscape.

The terms of reference for the Senate Inquiry, section (1) (a), (b), (c) focus on the impacts of native vegetation laws to landholders and impacts on private assets.

The terms of reference have not considered the impacts of vegetation laws on partnership based conservation programs and their viability under the legislation.

## **Impact on Australia's Natural Environment:**

Australian societal attitudes have been progressively shaped to value trees. This negates broader understanding of the importance of floristic diversity and the ecological needs of diverse species. In some States, for example New South Wales and Queensland, native vegetation laws may place higher importance on trees than a balance of grasses and understorey species. This is particularly evident in NSW through the Native Vegetation Act 2003 and similar laws and regulations in Queensland

A key component of these views may be the design of the Kyoto Protocol and the specific inclusion of the Australia Clause', which enabled Australia to meet its international obligations.

Another aspect is Australia's progression toward measuring environmental achievements through the number of hectares placed into conservation reserves. This may not be an effective measurement of environmental achievements and without appropriate management of these reserve areas, environmental outcomes sought, may not realistically be achieved.

There have been a number of key drivers of Australia's change to how it has traditionally managed its environment. This submission will not attempt to address the wide range of environmental laws and issues but will comment specifically on Australia's reliance on native vegetation laws to achieve a range of policy objectives.

## **Background**

### **(i) 1992 United Nations Conference on the Environment & Development (Rio de Janeiro)**

Australia endorsed and signed the Global Statement of Principles on Forests. This included Australia's signature to a number of conventions relating to biological diversity and climate change.

The agreement identified that:

Nature conservation objectives were to be achieved in three ways:

Parts of public forests to be set aside for conservation reserves

Complimentary management on other forests outside reserve areas

Management of private forests in sympathy with conservation goals

The signing of this international convention has shaped many of Australia's environmental policies, including native vegetation and biodiversity laws. The application of the policy outcomes, have proven economically costly for individuals and tax payers in general while the true benefits to the environment have never been fully analysed.

Such agreements have underpinned a fundamental shift in how Australia manages its natural environment and an increasingly urbanised population is not positioned, to adequately assess the environmental benefits claimed.

The Australian Environment Foundation contends that Australia should interpret agreed principles under the 1992 United Nations Conference on the Environment & Development (Rio de Janeiro) in a manner that specifically address the unique environmental and conservation needs of the Australian landscapes.

### **(ii) The 1997 Kyoto Protocol**

Australia signed the Kyoto Protocol in 1997 but did not ratify the international agreement. During negotiations Australia lobbied for inclusion of a specific clause in the Kyoto Protocol that was to provide a unique benefit to Australia. The "Australia Clause" (article 3.7) enabled Australia to claim emissions credits from land use changes, using 1990 as the baseline.

Despite Australia not ratifying the Kyoto Protocol, the Federal Government did implement policies to reduce Australia's Greenhouse emissions. This primarily involved the application of the Australia Clause. Using afforestation and prevention of deforestation strategies, Australia has identified it will meet its Kyoto targets (108% of its 1990 baseline measurement) in the reporting period. The Australian Environment Foundation argues that environmental benefits claimed, have not been scrutinised objectively.

The focus on native vegetation laws to prevent deforestation in certain regions, may have produced perverse environmental and ecological outcomes. The consequences of which may deliver long term substantial changes to the ecology of habitat types and regions. The focus on tree canopy cover to deliver on the 'Australia clause' under the Kyoto Protocol, failed to address the broader needs of the environment and dependent species.

The Kyoto Protocol captured a range of vegetation types that met the definition of a Kyoto forest. This included all vegetation types that were > 2 metres high, 20% canopy cover and 0.2 hectare. Using the 1990 baseline measurement for land use change, laws that restricted removal of native vegetation, provided Australia with emission credits.

These laws have had enormous social and economic impacts on Australian private landholders, in particular farmers. The greatest effect of these laws can be seen in western parts of New South Wales and Queensland where vegetation thickening can significantly impact on productivity.

The true impact of the Kyoto Protocol on the environment has not been comprehensively determined. Unmanaged vegetation thickening has changed the balance of species in some landscapes leading to long term ecological changes. There are insufficient studies to determine the impact on biodiversity within landscapes subjected to the dominance of certain species types.

### **(iii) Australia's 2020 Plantation Forestry Vision and Australia's National Forest Policy**

Australia's 1992 National Forest Policy and subsequent Regional Forest Agreements (RFA's) established a substantial shift in direction for how Australia sources its timber supplies.

In conjunction with the 1992 United Nations agreement and 1997 Kyoto Protocol, the Australian Government also implemented its Plantation for Australia 2020 Vision. This policy aimed to treble Australia's 1996 plantation levels.

Australia's National Forest Policy is reflected across a range of land tenures. Under this national policy, it is important to incorporate appropriate management regimes that specifically address Australia's climate and forestry types.

Fire played a pivotal role in the natural environment prior to European settlement. Lightning and indigenous fire management practises influenced biodiversity and ecological values in eucalypt forests.

This submission does not seek to address broader issues of National Forest Estate Management and fire regimes. However it is worth noting that management of public and private forested land will influence broader ecological issues across all land tenure. For example, specifically the issues of fire and weed management.

Native vegetation laws that inhibit or restrict appropriate management regimes should be reviewed to achieve more comprehensive ecological outcomes.

Historic practises of low intensity mosaic cool burning on private land was a dual purpose management tool. This practise reduced the impacts of high intensity wildfires through management of highly flammable understorey species. Such practise also enabled a range of grass species to flourish, enhancing the productive value of the land to farmers. Mosaic burning practises by farmers prior to 1990's was a relatively common practise in many landscapes.

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

Consistent with the goals identified in the 1992 Global Statement of Principles on Forests, NSW native vegetation laws introduced a range of conservation goals on private forest reserves. It is important that adaptive management options enable a range of objectives to be achieved. Selective harvesting of trees within the bio-diverse conditions of a native forest can have both productive and ecological benefits.

Biodiversity goals and species diversity within native forests can be maintained, subject to appropriately applied forest harvesting regimes. Therefore Australia’s forest policies that seek to primarily source timber resources from plantation, should not overlook the benefits that selected harvesting provides in native forests.

Native vegetation laws that seek to limit select harvesting in native forests on private land should balance the need to service Australia’s long term timber demand.

The image shows a table titled "Australia's changing emission inventory" with a red circle highlighting the "Agriculture" row. The table compares emissions in 1990 and 2004, along with the percentage change. The "Agriculture" row shows a 2.2% increase from 91.1 in 1990 to 93.1 in 2004. Other rows include Energy, Industrial processes, Landuse change, forestry, and Waste, with a total of 564.7 in 2004 compared to 551.9 in 1990.

Sector	1990	2004	% change
<b>Energy</b>	287.5	387.2	34.7
Stationary	195.7	279.9	43.0
Transport	61.7	76.2	23.4
Fugitive emissions	30.0	31.0	3.4
<b>Industrial processes</b>	25.3	29.8	18.0
<b>Agriculture</b>	91.1	93.1	2.2
<b>Landuse change, forestry</b>	128.9	35.5	72.5
<b>Waste</b>	19.2	19.1	-0.7
<b>TOTAL</b>	<b>551.9</b>	<b>564.7</b>	<b>2.3</b>

Source: Australian Farm Institute

## **1. The Impact of Native Vegetation Laws and legislated greenhouse gas abatement measures on landholders**

The Australian Environment Foundation encourages this inquiry to consider the adverse impacts on the environment that can result from specific aspects of native vegetation laws.

Primarily the social and economic costs of native vegetation laws and greenhouse gas abatement measures are felt by individuals, in particular farmers.

The true costs of these laws however, go far beyond the individual with local and regional economies and the viability of communities at risk through lower productivity. This in turn has a social cost on the affected communities.

### **The Native Vegetation Act 2003**

In December 2005, the *Native Vegetation Act 2003* replaced the *Native Vegetation Conservation Act 1997*. The objects of the *Native Vegetation Act 2003* are:

- (a) to provide for, encourage and promote the management of native vegetation on a regional basis for the social, economic and environmental interests of the State, and
- (b) to prevent broad-scale clearing unless it maintains or improves environmental outcomes, and
- (c) to protect native vegetation of high conservation value having regard to its contribution to such matters as water quality, or the prevention of salinity or land degradation, and
- (d) to improve the condition of existing native vegetation, particularly where it has high conservation value, and
- (e) to encourage the revegetation of land, and rehabilitation of land, with appropriate native vegetation, in accordance with the principles of ecologically sustainable development.

The Wentworth Group (2002) noted that:

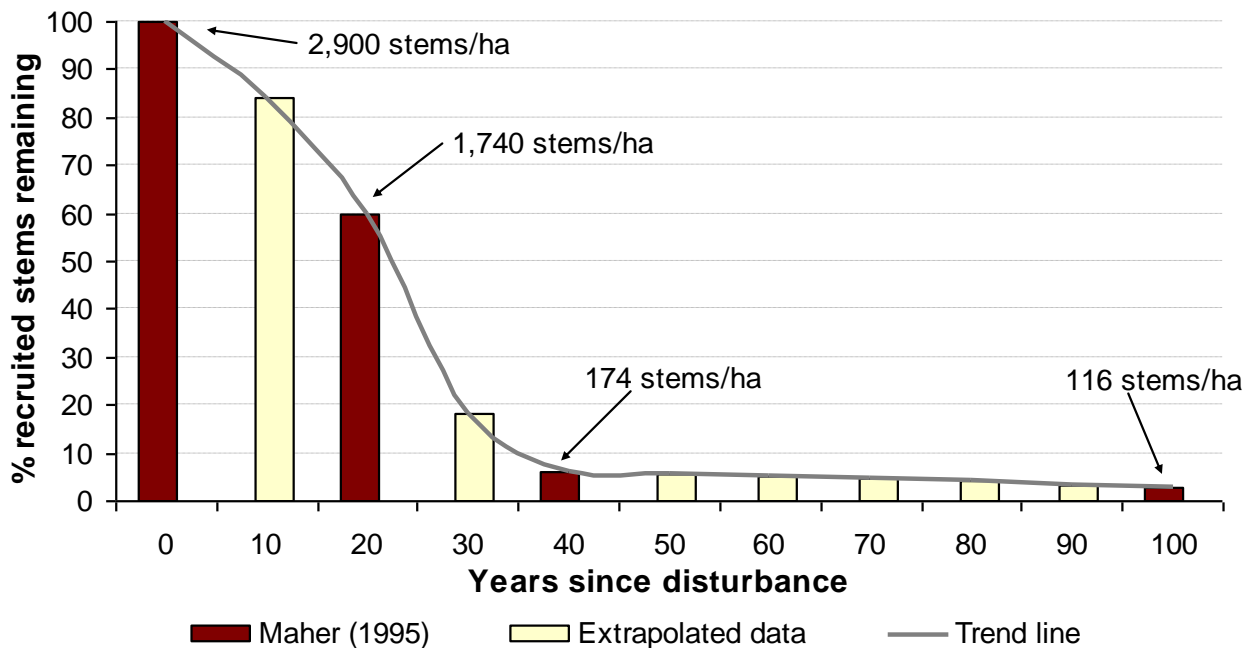
*"Clear distinction needs to be made between the need to stop broad-scale clearing of remnant native vegetation and the need to control shrub invasion in the semi-arid and arid pastoral areas of Australia".*

It would appear clear from the recent experiences of Western Division landholders in the implementation of the Act that distinction is anything but clear. In practice the Act does not appear to give adequate weight to native grasses as appropriate vegetation and favours the retention of trees, whether beneficial to the environment or not.

Kerle (2005) also made the point that with the advent of European settlement and the associated impacts on the landscape, Australia has become a managed landscape, and as a result there has been a shift from 'nature' conservation to 'biodiversity' conservation. This is reflected in the procession of inquiries that have taken place and regulations that have been developed over the past century relating to native vegetation management, particularly in western NSW. Future activities and energies need to be directed towards addressing the needs and balance of conservation and land management in NSW.<sup>1</sup>

---

<sup>1</sup> Documenting the science behind the Invasive Native Species Tool Halsall & Associates



Source: Adapted from Maher (1995)

The prospect facing landholders who cannot meet the clearing criteria of the Act are illustrated in the above graph. A period of 40 to 100 years must elapse for native vegetation to self thin and return to equilibrium to advantage productivity and the environment.

**(a) Diminution of land asset value and productivity as a result of such laws:**

The full impacts of native vegetation laws and legislated greenhouse gas abatement measures are yet to be realised. The Australian Environment Foundation does not seek to make comment on the specific cases of individual’s land asset devaluation or individual productivity decline. Instead overall comments are made in this section.

The Australian Government Productivity Commission Report (2004) in its conclusions, states that “over the past twenty years or so, legislation to prevent clearing of native vegetation on private land has been relied upon heavily to achieve biodiversity and other environmental objectives. The current evaluation suggests that this approach has serious design and implementation deficiencies, in many cases leading to inefficient, ineffective and inequitable outcomes.”

The report also recommends:

Recommendation 10.1

“Before introducing new or amending existing native vegetation and biodiversity policies, a comprehensive regulatory impact statement or its equivalent should be prepared that includes an assessment of the problem being targeted, expected costs and benefits of the proposed policy, and an assessment of alternative instruments. This assessment should be made public.”



### Recommendation 10.2

“All native vegetation and biodiversity policies should be subject to ongoing monitoring and regular independent reviews of all costs and benefits in the light of articulated objectives. Reviews of performances should be published.”

### Recommendations 10.4 includes

“consideration of economic and social factors where applications to clear otherwise would be rejected on environmental grounds (a ‘triple bottom line’ approach), with reasons for decisions to be given and reported.”

### Recommendation 10.5 includes

“Greater flexibility should be introduced within existing regulatory regimes to allow variation in requirements at regional levels. To this end:

Greater use should be made of the extensive knowledge of landholders and local communities.”

The Productivity Commission Report has identified costs and impositions on many private landholders. The report should be used to assess the true costs to Australia of disenfranchising those who could most assist with delivering many of the environmental benefits sought by Government policies.

Engaging Australians on a voluntary basis is a very cost effective way to deliver widespread environmental benefits across all land tenures. Australia’s design of native vegetation laws has however, not assessed or considered the adverse implications to voluntary conservation aims.

Adverse experience or impacts of native vegetation laws can often lead to generational resentment and disengagement of individuals from participating in voluntary conservation partnerships.

The Australian Environment Foundation questions the emphasis on blanket biodiversity gains purported to be achieved through inflexible vegetation laws. Landscapes of open grasslands interspersed with wooded areas or open woodlands, achieve higher levels of biodiversity. Species may inhabit a range of habitats in particular foraging may occur in more open woodlands or grassland areas. Dense closed stands of timber in dryer regions of central and western parts of NSW or Queensland will not support the understorey species on which many species rely.

Over the last decade, there is an increasing presumption that biodiversity can be measured by hectares in conservation reserves or through restrictions on vegetation stands on private land. This overlooks the need to maintain a balance of vegetation types and classes necessary to support a range of animals and birds.

The impact of native vegetation and biodiversity laws on both the environment and private landholders can readily be identified in the western parts of New South Wales or Queensland.

The Western Division of NSW extends over an area of approximately 32 million hectares.<sup>2</sup>

Many changes have occurred since European settlement in the Western Division all leading to substantive changes in vegetation. Early explorers settled in higher rainfall periods within the first 50 years of the 1800’s. Initial over stocking, the introduction of the rabbit and the removal of traditional indigenous burning practices all combined to allow the onset of woody weed invasions when suitable rainfall conditions prevailed.

---

<sup>2</sup> D Condon: Notes: Extent of Native Scrub Problem in the Western Division

Natural or indigenous fire events were either abandoned or became ineffective in controlling scrub encroachment because of constraints on burning through settlement. A contributing factor was the lack of understorey grasses that previously propelled fire at a level to balance vegetation types. In more recent years, traditional fire management practises to manage vegetation, was caught up under the class of ‘clearing’.

Given the history of changed management practises since European settlement, areas within the Western Division have become subject to infestations of what are referred to as ‘woody weeds’<sup>3</sup>.

Raising awareness of the environmental, social and economic costs of ‘invasive woody weeds’, has been difficult, prolonged and at considerable expense to landholders and communities. There is now an increasing awareness of the environmental and economic impact of encroaching scrub, the extent of which has been enhanced by restrictive legislation.

The historical changes that have occurred since European settlement will now require adaptive management to regain a balance between native vegetation species types and composition in specific locations. Since the 1990’s, restrictive native vegetation laws have prevented a range of management options. Landholders in the region argue that cost effective management options are essential to restoring the balance of vegetation types in areas of the landscape subject to encroachment by invasive scrub.

Some flexibility has been introduced in New South Wales with amendments to the Native Vegetation Act – specifically to address invasive species. However these changes still have limitations and may not be flexible enough to address the specific needs of the environment or private landholders.

As many of the vegetation types and size of vegetated areas fall under the definition of a Kyoto forest, they remain subject to Australia’s over arching policy position to meet Australia’s greenhouse emission abatement options. The Senate inquiry should consider balancing the needs of the environment subject to ‘woody weed infestations’ and the requirements under Australian greenhouse gas abatement commitments.

Australia’s policy position on greenhouse gas emissions via vegetation controls has not had a comprehensive or holistic environmental assessment. A reliance on native vegetation laws in the long term may prove to have an overall negative effect on the environment when consideration is given to the net effect of all actions. A key criticism is Australia’s reliance on native vegetation (deforestation) policies may have prevented more comprehensive policy positions to encourage alternate energy options and efficiency gains. It can be argued that a reliance on native vegetation laws to meet greenhouse commitments has produced perverse environmental outcomes in some areas.

Many landholders in affected regions wish to restore the balance of shrubs, trees and grass species and to address the dominance of woody vegetation. Native vegetation laws will require modification to ensure the ability of farmers to restore grasses and maintain productivity values to invest in other environmental activities such as noxious weed control. To restore landscapes and to control noxious weeds, farmers require sustained income. Increasing limits on farm production and uneconomic options for controlling invasive species will not be beneficial to the environment in the long term.

There are many examples of where farmers have actively worked as a group to design and develop solutions to achieve a balance between the environment and production. Their enthusiasm and funding approach paves the way for constructive environmental partnerships in the future. However despite many groups investing considerable time and resources in designing plans, often with the aid of environmentalists, agencies or Landcare groups, such innovative plans may well be shelved due to the

---

<sup>3</sup> D Condon: Notes: Extent of Native Scrub Problem in the Western Division

inflexibility of native vegetation laws.

Specific examples of community based planning in western areas of NSW include:

Cobar Vegetation Management Committee

Lower Pian/Pagan Creek Conservation Group

Southern Mallee Regional Guidelines – Southern Mallee Regional Planning Committee

Australia does not have a national framework for achieving conservation outcomes on private land. In general funding programs tend to be short term or follow electoral cycles. In the absence of a National Stewardship Program, Australia has relied on laws and regulations to achieve conservation outcomes.

This simplistic approach has not adequately assessed the benefits to the environment achieved through collaborative partnerships with private landholders. There are a range of opportunities where working with private landholders could deliver improved species monitoring and open up pathways to on-farm education activities. A regulatory focus to achieve outcomes also limits the potential for private landholder engagement with threatened species recovery programs.

Photo: Encroachment of Cypress Pine at Nyngan





Photo: Nyngan - absence of grass cover and resulting gully erosion



#### Nyngan/Cobar

One example at Walgett, the Lower Pian/Pagan Creek Conservation Group typifies where enthusiasm and sound planning can take years to achieve even a small percentage of the original plan intent, or alternatively, plans are not proceeded with at all. Successful management as depicted below provides more biodiversity benefits than a monoculture of woody weeds.



Submissions to the Productivity Commission and its final report identified a wide range of on farm impacts of vegetation laws. These range from managing individual trees to managing infestations of a wide range of native species.

Restrictive inflexible laws on biodiversity and vegetation may also prevent appropriate and timely management of an emerging weed threat. In the case of early infestations of Lippia in Western parts of New South Wales, a comprehensive assessment could have prevented much wider infestations and risks to the entire Murray Darling Basin.

Cultivation was and still is, seen as an effective management tool for Lippia control. There are views that native vegetation laws prevented the control of Lippia in its early infestation period. Arguably, it may have required a balance in decisions to weigh up the wider threat of Lippia spread and the small scale loss of smaller areas of native trees or grasses as a result of initial Lippia control.

This example identifies the need to balance environmental outcomes in a wider sense. A cost benefit scenario taking into account the broader needs of the environment may have established that in certain instances, flexible management decisions on native vegetation in a region would have produced a more cost effective and sustainable environmental outcome.

## **Bushfires**

The Australian Environment Foundation recognises the specific terms of reference for this Senate inquiry. Therefore the concept of fire management is referred to in terms of private property management and related environmental impacts.

This submission does not seek to explore the wider issue of fuel reduction on all land tenure. However it is acknowledged that a revised approach to fire management should occur on both public and private land.

In many parts of Australia's farming landscape traditional cool burning in mosaic events was regularly practised. The over emphasis on vegetation laws designed for Kyoto or perceived biodiversity benefits, have often overlooked the environmental value of traditional cool burning practises.

Laws that prevent, what many farmers believe are sound environmental practises can lead to sustained resentment of Government process. This can further create gaps between Government and private landholders and thus put at risk future partnership arrangements that could deliver a wide range of benefits to the environment.

There have been numerous reports on Bushfires in Australia's history. Several reports such as the Stretton Report on the 1939 Bushfire, The McLeod Report on the 2003 ACT Bushfire and pending report on the recent Victorian bushfires, should provide lessons that can benefit broader environments across all land tenures.

The Australian Environment Foundation encourages the adoption of traditional prescribed burning practises to deliver benefits to a fire dependent environment.

## **Balanced Environmental Outcomes**

In assessing applications by landholders for managing or clearing native vegetation, the Australian Environment Foundation submits that improved flexibility can potentially deliver more comprehensive environmental outcomes. The foundation strongly supports the need to implement native vegetation and biodiversity laws, but there is a need to have an adaptive approach.

NSW native vegetation laws and the Environmental Outcome Assessment Methodology Program do not equally balance the range of environmental issues. There have been identified cases where a single issue on a particular species type, may prevent an overall environmental gain for the whole of property. The assessment tool may determine that the number of individual trees with hollows cannot be offset, or that the weighting for biodiversity values is valued in isolation to other environmental considerations such as salinity.

Having the ability to negotiate a solution may deliver more long lasting environmental goals, particularly if during the assessment process, the farmer is then encouraged to participate in other voluntary conservation programs.

Many farmers currently demonstrate a keen interest and level of concern with land management issues and the environment. Harnessing and utilising this enthusiasm may best be achieved with a flexible approach to vegetation laws

There are cost effective long term benefits to the environment through Governments building better relationships with private landholders. Australia reliance on a regulatory approach has not adequately addressed the most effective pathways to achieve outcomes that are affordable and equitable.

## **(b) Compensation Arrangements to landholders resulting from imposition of such laws**

The Foundation acknowledges the imposition on individual landholders from a range of biodiversity and native vegetation laws.

It is likely that future Australian or State Governments will not have sufficient budgetary scope to make the necessary expenditure to achieve many environmental goals. Therefore utilising the energy and capabilities of private landholders may prove to be the most efficient and cost effective long term option that will bring benefits to a range of environments and will require a more flexible approach to biodiversity and native vegetation laws.

This will require a fundamental review of native vegetation laws to determine the most effective method for achieving conservation outcomes on private land.

As has been demonstrated in the preceding table, landholders have borne the brunt of Australia's Kyoto commitment by a wide margin. This has largely transferred the majority cost of meeting international agreements inequitably to a single group within the community.

Under the basic concept of property rights, where rights are expropriated by the state for the benefit of the state, compensation is applicable for diminished use of property. State vegetation laws currently diminish the value of property and production capability, but offer no compensation.

If the state sees the need to enact legislation that diminishes the value of private land for the benefit of the state, then individual landholders must be compensated for diminution of rights through state actions.

As most land area in most states is under private stewardship and the need for biodiversity protection is seen as a critical land management issue the present inequitable system does not provide a sound basis for engaging those in direct stewardship of the land.

A progressive incentive system is more likely to achieve the outcomes sought with more social equity than through the present regulatory regime.



**(c) The appropriateness of the method of calculation of asset value in the determination of compensation arrangements**

The Australian Environment Foundation does not make any recommendations in this section.

**(d) Any other related matters**

Australia's National Reserves System using the CAR criteria (Comprehensive, Adequate and Representative) seeks to retain areas of representative ecosystems in conservation reserves.

In addition to these reserves, Government may wish to include connectivity as a key principle to build on the reserve system. Invariably this will involve natural assets on private land.

There is an opportunity to review how this is best achieved and consider incentive schemes for landholders to provide a service to the state through their stewardship of the land.

## **REFERENCES**

Australian Government Productivity Commission Report 2004: *Impact of Native Vegetation and Biodiversity Regulations*

Condon D – Notes: *Extent of the Invasive Native Scrub Problem in the Western Division of NSW*

Jurskis V, *Decline of Eucalypt Forests as a Consequence of Unnatural Fire Regimes*  
Australian Forestry 2005 Vol 68 No. 4

Jurskis V; Bridges B; de Mar P; *Fire Management in Australia: the lessons of 200 years*; State Forests of NSW

Lower Pian/Pagan Creek Conservation Group – *Landscape Vegetation Plan*

Cobar Vegetation Management Committee *A Vegetation Management Plan for Areas Invaded by Native Trees and Shrubs in the Cobar Peneplain*, March 2006

Halsall and Associates: *Documenting the science behind the Invasive Native Species Tool*