

Chapter 11

Private conservation – a valuable contribution

Introduction

11.1 Private land owners and managers are increasingly playing a role in nature protection and conservation. While over 10 per cent of Australia's landscape is made up of national parks, reserves and other protected areas, private land owners can effectively increase this percentage by also engaging in and contributing to conservation measures on land under their control and ownership.

11.2 While individual land owners and managers can and do play a significant role to this end, there are also a number of dedicated private organisations whose aim is to secure and manage private landholdings specifically for the purpose of ecological conservation.

11.3 It is apparent that governments and other organisations generally recognise the valuable contribution that private conservation efforts make in complementing the overall objectives of a comprehensive reserve system in Australia. There are various ways that private conservation activities are encouraged, through financial assistance and other government programs.

11.4 Questions have been raised as to whether enough is being done by governments with respect to encouraging private conservation efforts. This chapter will examine the contribution that private conservation efforts make to the conservation estate in Australia, and this will then lead to a discussion of the adequacy of government initiatives for encouraging such efforts.

The role of private conservation

11.5 Facilitating conservation on private land is important because the preservation of Australia's natural heritage necessitates a landscape-wide approach, one that recognises the importance of ecological connectivity.¹ As Mr Graeme Worboys from the IUCN pointed out to the committee:

That connectivity—core protected areas perhaps managed by government; private property protected areas linking in—will mean that animals and plants have some hope for the long term. That is in a context of very large increases in population around the planet in the next 30 years and in the context of pretty significant climate change forecasts based on science and what they call biome shifts; in other words, a lot of the plants and animals will be without a home through latitudinal changes because the vegetation

1 The Wilderness Society, *Submission 131*, p. 4. See also chapter 9 of this report.

habitats will move. So there needs to be that connectivity to keep biodiversity extant.²

11.6 This 'whole of landscape' approach has been actively promoted by various Non-Government Organisations (NGOs), including Greening Australia and the Wilderness Society through their *WildCountry* Science Council.³

11.7 Conservation on private land is also important because, as the Foundation for National Parks and Wildlife argues:

Many under-represented ecosystems and wildlife corridors occur in areas of high land value out of the reach of Governments to purchase.⁴

11.8 Non-profit organisations have mobilised significant private sector funding for conservation. For example, it is estimated that two organisations – the Bush Heritage Fund and the Australian Wildlife Conservancy – have raised more than \$20 million in private donations in 2005-06.⁵ Accordingly, increasing the role of non-government organisations will increase the level of resources for conservation.

11.9 The Gilligan report also noted that non-government proposals add significantly to the overall NRS outcome because of their capacity to attract private philanthropy. For example, conservation NGOs had purchased 28 properties for addition to the NRS, representing a total area of 1 244 088 hectares, and leveraging NGO funds of \$17 063 080, to March 2006.⁶

11.10 Private conservation initiatives can access charities and philanthropic organisations, bringing those resources to bear on nature conservation objectives 'in a way not possible with public protected areas'.⁷ This leveraging extends beyond Australia's domestic community with international organisations such as the US Nature Conservancy supporting private land conservation in Australia.⁸ Private conservation organisations have also argued that they can negotiate competitively in the market for properties.⁹

2 World Commission on Protected Areas, *Committee Hansard*, 31 March 2006, p. 53.

3 World Commission on Protected Areas, *Submission 137*, p. 20. The Wilderness Society, *Submission 131*.

4 *Submission 144*, p. 7; Natural Resource Ministerial Council (2004) *Directions for the National Reserve System – A Partnership Approach*, Australian Government, Department of the Environment and Heritage, Canberra, pp 38–43.

5 Australian Wildlife Conservancy, *Submission 220*, p. 4.

6 Gilligan, B, *The National Reserve System Programme 2006 Evaluation*, Syneca Consulting Pty Ltd, November 2006, pp 53–54, 70.

7 Australian Bush Heritage Fund, *Submission 188*, p. 3.

8 Australian Bush Heritage Fund, *Submission 188*, p. 3; Dr Michael Looker, Director, Australian Program, The Nature Conservancy, *Committee Hansard*, 20 October 2006, pp 32–36.

9 Foundation for National Parks & Wildlife, *Submission 144*.

Where private and public conservation meet

11.11 The idea that a system of private conservation should complement core public reserves was a recurrent theme in submissions to the inquiry. Speaking on private conservation in general the Wilderness Society stated that:

Core reserves must be complimented by appropriate off-reserve management that together ensure connectivity of key ecological patterns and processes, particularly at larger space/time scales.¹⁰

11.12 The need for a partnership approach was also highlighted by the National Parks Association of NSW who stated:

It is best if they (privately run conservation organisations) complement, rather than compete with Government land management agencies. This may mean that they identify different roles or emphasis in the establishment of the reserve system, or agree to co-operate where there are similar objectives attempting to be met. This may involve a sharing of resources and expertise, or even sharing management.¹¹

11.13 Mr Atticus Fleming, Chief Executive of the Australian Wildlife Conservancy also emphasised the need for government and non-government organisations to work together in conserving Australia's biodiversity:

there is a lot of potential to raise funds from the private sector for conservation in Australia...We do not want that replacing what the government is doing; we want that to be on top of what the government is doing".¹²

11.14 Inland Queensland is an example where private conservation initiatives are significantly enhancing the public reserve system. Queensland has relatively little land in reserves: just under five per cent of the land area, the lowest proportion of any Australian state or territory (see chapter three). Its major outback reserves are significant, but limited in number.¹³ However the Bush Heritage Fund now operates three additional reserves in the region totalling around half a million hectares.¹⁴

11.15 Partnerships and effective coordination between private conservation groups and governments are critical to the effectiveness of private conservation. Successful

10 The Wilderness Society, *Submission 131*, p.5; See also Department of Conservation and Land Management, Western Australia, *Submission 135*, p. 8; Department of Environment and Heritage, SA Government, *Submission 194*, p. 13; Birds Australia, *Submission 105*, p. 12; The Wilderness Society, *Submission 131*, p.5.

11 *Submission 130*, p. 14.

12 *Committee Hansard*, 20 October 2006, p. 40.

13 The main inland reserves are Astrebla Downs, Bladensberg, Boodjamulla, Diamantina, Idalia, Simpson Desert and Welford, totalling around 2.3 million hectares.

14 Australian Bush Heritage Fund Reserves, web site, <http://www1.bushheritage.org/default.aspx?MenuID=69>, accessed January 2007.

partnerships are occurring between private non-profit conservation organisations such as the Gondwana Link. The Gondwana Link is a landscape scale project, linking two major areas of biological importance – the Stirling Ranges and the Fitzgerald River National Parks on the central south coast of Western Australia.¹⁵ The south coast of Western Australia is one of the world's 25 biodiversity hotspots. It is a collaborative project between the US Nature Conservancy, the Australian Bush Heritage Fund, Greening Australia, in addition to other NGOs, the local and Indigenous communities and commercial interests.¹⁶ The success of the project is dependent on that collaboration and:

It also has some very good conservation practitioners involved who show great vision and leadership in what they are doing and work extremely well with all of the groups. Working with the farming groups, the Indigenous groups and with the other NGOs is really the key to making that project work.¹⁷

Private conservation organisations

11.16 Complementing the work of government and non-government programs facilitating private conservation, independent non-profit conservation organisations are taking a 'whole of landscape approach' to protect land of high priority for conservation at the national level.

11.17 The initiatives of both the Bush Heritage Fund and the Australian Wildlife Conservancy, described below, demonstrate that the private sector can protect large blocks of land. However, the committee notes the concerns of some submissions over the long-term risks of private conservation organisations buying and managing large tracks of land for conservation:

Private conservation organisations in Australia and overseas are beginning to buy and manage wildlife habitat themselves. These efforts, however, are still at an experimental stage, tying the future of the properties to the fate of the organisation. A financial crisis of the care-taking organisation often puts the land and the wildlife at risk of being sold on.¹⁸

11.18 Mr Atticus Fleming of the Australian Wildlife Conservancy is also aware of these concerns and told the committee that the structure for accountability of charities needs to be improved:

If you get government funding for a property, you need to be able to demonstrate that the public funds are being used well. If you have the

15 Greening Australia, *Gondwana Link*, <http://www.greeningaustralia.org.au/GA/WA/OngroundAction/Integratedlandmanagement/GL.htm>, accessed 16 November 2006.

16 Dr Michael Looker, The Nature Conservancy, *Committee Hansard*, 20 October 2006, p. 35.

17 Dr Michael Looker, The Nature Conservancy, *Committee Hansard*, 20 October 2006, p. 36.

18 Foundation for National Parks and Wildlife, *Submission 144*, p. 5.

regulatory structure for charities in the right way and if you have the processes in place to ensure covenants can be placed on these properties, then you go a long way to ensuring they are secured into the future.¹⁹

The Bush Heritage Fund

11.19 The Bush Heritage Fund currently protects over 670 000 hectares of land in twenty-four reserves throughout Australia.²⁰ Bush Heritage's 2025 goal is to protect of 1 per cent of Australia's landmass through acquisition or management.²¹ Some \$4.2 million has been raised from the public and spent on acquisition, (matching \$4.6 million funded by the NRS program as at December 2005; \$3.1 million has been raised from the public and spent on management of NRS supported reserves since 1999; on-reserve volunteer support has provided more than 5000 people days work on NRS supported reserves, equating to an additional \$750 000 of in-kind on-ground conservation support in the last five years.²²

11.20 The Bush Heritage Constitution explicitly states that Bush Heritage reserves must be acquired and managed for conservation. In its history, Bush Heritage has never sold any of its reserves and where possible all of its properties are protected under a covenant.²³

11.21 Over half of the properties that the Fund owns are adjacent to national parks, which according to Mr Doug Humann, Chief Executive Officer, Australian Bush Heritage Fund, in many cases is not merely a coincidence.²⁴ The Fund seeks to work in partnership with public land managers and being next door to a national park may mean long-term cost-savings for public land managers and the Fund through joint feral animal and weed control programs and joint management programs.

The Australian Wildlife Conservancy

11.22 The Australian Wildlife Conservancy operates a four-tiered conservation strategy – establishing wildlife sanctuaries, implementing practical, on-ground conservation programs, conducting scientific research and public education.²⁵ The Conservancy currently owns and manages 15 properties covering 1 108 000 hectares. The Conservancy's operational budget is approximately \$5 million. In the last three years, over 90 per cent of total expenditure (including capital) has been incurred on conservation programs. The Conservancy has received 'significant' funding under the

19 *Committee Hansard*, 20 October 2006, p. 43.

20 *Submission 188*, Attachment 1, p. 1.

21 Australian Bush Heritage Fund, *Submission 188*, p. 2.

22 Australian Bush Heritage Fund, *Submission 188*, p. 6.

23 *Submission 188*, Attachment 1, p. 1.

24 *Committee Hansard*, 5 June 2006, p. 13.

25 Australian Wildlife Conservancy, *Submission 220*, p. 1.

NRS – six of the 15 Conservancy's properties have received some funding from the NRS Programme.²⁶ AWC sanctuaries currently protect more than 55 per cent of all Australian mammal species; and more than 60 per cent of all Australian bird species.²⁷ Like the Bush Heritage Fund, the AWC operates at a landscape level and its Mornington Wildlife Sanctuary, at over 300 000 hectares, is the largest non-government nature reserve in Australia.²⁸

11.23 Mr Atticus Fleming told the committee that the on-the ground work that the Conservancy has done in seeing what outcomes can be achieved when a property is de-stocked 'is an example of the private sector filling a gap where the government had not been able to deliver up until this point'.²⁹ He also emphasised the support that the Conservancy has received from government agencies and the importance of continuing partnerships to produce positive biodiversity conservation outcomes.

11.24 Other organisations are also involved in acquiring property for conservation purposes. Under its 'Buying the Bush' program the Trust for Nature also buys properties which it retains and manages or transfers to the National Parks System.³⁰ The Nature Conservancy (TNC), which was founded in the United States, also works in Australia. TNC currently works with four key NGOs – the Australian Wildlife Conservancy, the Bush Heritage Fund, Greening Australia and Trust for Nature in Victoria in assisting in the acquisition of important habitats. Over recent years TNC has provided \$13 million for the work of these organisations, essentially for land purchase.³¹

The benefits of private conservation

11.25 There are a number of benefits that can be secured through the involvement of private organisations and individuals in conservation. Partnerships between private organisations and governments have been successful and mutually beneficial. Private non-profit land conservation organisations have benefited from the 2:1 formula of the National Heritage Trust's National Reserve System Program. Through programs like this, public and private monies both go further in the pursuit of conservation objectives. Government agencies have also benefited from funding for specific projects by private non-profit organisations such as the Foundation for National Parks and Wildlife.³² Partnerships are not only focused on funding but also areas of

26 Australian Wildlife Conservancy, *Submission 220*, pp 2–4; Mr Fleming, AWC, *Committee Hansard*, 20 October 2006, p. 37.

27 Australian Wildlife Conservancy, *Submission 220*, p. 3.

28 Mr Atticus Fleming, Australian Wildlife Conservancy, *Committee Hansard*, 20 October 2006, p. 38.

29 Australian Wildlife Conservancy, *Committee Hansard*, 20 October 2006, p. 38.

30 Trust for Nature, *Buying the Bush*, <http://www.tfn.org.au/>, accessed 16 November 2006.

31 Dr Michael Looker, TNC, *Committee Hansard*, 20 October 2006, p. 32.

32 Foundation for National Parks & Wildlife, *Submission 144*, p. 2.

research. For example, the Foundation for National Parks and Wildlife told the committee:

The National Parks and Wildlife Service also provided us with a list of priority properties for acquisition....We have had a lot of use of their expertise. They know the on-ground factors of national parks and acquisitions very well—they walk all over them. And the National Parks and Wildlife Service has some very good sites to identify—bioregions, underrepresented pieces of land and land which would have high conservation and/or management values.³³

11.26 Private organisations can introduce flexibility in acquisition strategies that can be more difficult for public bodies to achieve. The Trust for Nature in Victoria, a semi-independent conservation body, has experience of joint purchases and management of land for conservation with the Victorian Government. As Dr Michael Looker told the committee:

In one case we did a joint purchase. We purchased grassland up in the north of the state, in the Riverina, which the department maintained and retained. We bought half of that. Part of it was not useful for biodiversity; it was a grazed paddock. We were able to sell that as part of the deal because we were independent and able to do that, but it had to be purchased in one whole. There are arrangements and deals to intermesh in the market place that could be very worthwhile and achieved by government and our organisations working together.³⁴

11.27 NGOs can also help ensure conservation takes place on private lands without the lands having to be purchased and managed at taxpayers' expense. Thus, as well as government programs operating throughout Australia in promoting conservation on private land, trusts operating at arms length from government are facilitating covenant programs and revolving funds.

11.28 The Trust for Nature, the Nature Conservation Trust NSW and the National Trust of Australia (Western Australia) facilitate covenant programs which operate in essentially the same way as other government programs – landholders can place covenants on the title of their land to protect the land in perpetuity from activities which may threaten the conservation value of the land.³⁵ The Trust for Nature is the only covenant program operating in Victoria. The Nature Conservation Trust NSW was only recently set up in 2001 to provide a relatively independent biodiversity conservation covenanting option for private landholders.³⁶ The National Trust of Australia's (Western Australia) covenant program complements the Department of

33 Mrs Leonie Gale, *Committee Hansard*, 12 May 2006, p. 37.

34 The Nature Conservancy, *Committee Hansard*, 20 October 2006, p. 35.

35 Trust for Nature, Conservation Covenants <http://www.tfn.org.au/>, accessed 16 November 2006, NSW Government, *Submission 152*, p.43.

36 NSW Government, *Submission 152*, p. 40.

Environment and Conservation (Western Australia) and Department of Agriculture and Food (Western Australia) programs.

11.29 The Trust for Nature, the Nature Conservation Trust NSW, the Nature Foundation SA Inc. and the National Trust of Australia (WA) all operate revolving funds which allow them to purchase properties and on-sell them with a covenant attached - the money raised from the sale is used to purchase further properties for conservation.³⁷ In this way, nature conservation is enhanced without ongoing costs to taxpayers, but also without the private conservation groups having to tie up their limited resources in permanent acquisitions.

11.30 The Gilligan report into the effectiveness of the NRS Programme, while recognising many of the benefits of private conservation, found that non-government proposals have a higher processing cost and successful proponents require more follow-up support than state or territory agencies.

NRS Programme staff estimate that typically it may take an order of magnitude (ten times) more staff resources in 'life cycle' costs to establish conservation areas on non-government land. The costs are particularly high for proponents with little experience in managing conservation areas.³⁸

11.31 However, Mr Atticus Fleming, Chief Executive of the AWC argued that:

In a lot of ways, organisations like AWC and Bush Heritage have the capacity to be a little bit more flexible and efficient in the way that some of that money is directed to on-ground activities. It is not a criticism of government, it is just an observation on the way the private sector and the non-profit sector operate and the accountability mechanisms that need to be built into the way governments operate.³⁹

Management of conservation on private land

11.32 On-going management has become an important focus of government and non-government private conservation initiatives.⁴⁰ For example, the Department of Environment and Conservation NSW's Conservation Partners Program includes

37 Trust for Nature, *Revolving Fund*, <http://www.tfn.org.au/>, accessed 16 November 2006; NSW Government, *Submission 152*, p.43; Dr Tony Fleming, Department of Environment and Conservation NSW, *Committee Hansard*, 12 May 2006 p. 19; Department of Environment and Heritage SA, *Submission 194*, p. 13; Mr Thomas Perrigo, National Trust of Australia Western Australia, *Committee Hansard*, 1 September 2006, p. 60.

38 Gilligan, B, *The National Reserve System Programme 2006 Evaluation*, Syneca Consulting Pty Ltd, November 2006, p. 54.

39 *Committee Hansard*, 20 October 2006, pp 39–40.

40 NSW Government, *Submission 155*, pp 27–28; Queensland Department of Premier and Cabinet, *Submission 175*, p. 13; Trust for Nature, *Stewardship Program*, <http://www.tfn.org.au/>, accessed 16 November 2006.

'ongoing landholder support, such as planning, monitoring and review, information and technical services, capacity building and networking opportunities'.⁴¹

11.33 The AWC operates on the basis of operational plans for each property which specify actions to be taken which the Conservancy then reports against quarterly. Mr Atticus Fleming emphasised the need to establish field objectives:

you can put a lot of resources into a management plan or a management planning process that does not necessarily translate into good on-ground outcomes. It is much more important to get straight to what you are going to do on the ground and then do it. That is why most of our staff is in the field and why most of our money goes into the field.⁴²

11.34 The Bush Heritage Fund also focuses on having people on the ground the manage their properties, as Mr Doug Humann stated:

If you do not have staff in remote areas or adequate staff in areas that require a high concentration of natural resource management skills then you are not going to get the job done effectively.⁴³

11.35 The Bush Heritage Fund is currently working on a three-year program to establish effective benchmarks, to assist them to advise anyone undertaking private land conservation management whether their investment is effective for biodiversity conservation.⁴⁴

Government programs for encouraging private conservation

11.36 Governments have used a range of instruments to encourage conservation on private land, helping to establish connectivity between Australia's protected areas.

11.37 The Department of Environment and Conservation NSW offers a range of alternative options for landholders wanting to conserve their land through a Conservation Partners Program coordinated state-wide in the Conservation Partnerships Unit. The options include Conservation Agreements which give perpetual legal protection to the property registered on the land title (thereby offering the highest level of protection for the land). In the case of Wildlife Refuges the status is noted on the land title and remains with a change in ownership. The third option – property registration – is not legally binding, and does not change the property's legal status. Registration ceases when the property is sold. This offers the least protection

41 NSW Government, *Submission 155*, p. 40.

42 Mr Atticus Fleming, Australian Wildlife Conservancy, *Committee Hansard*, 20 October 2006, p. 42.

43 *Committee Hansard*, 5 June 2006, p. 11.

44 Mr Doug Humann, Australian Bush Heritage Fund, *Committee Hansard*, 5 June 2006, p. 4.

for the land of the available options.⁴⁵ More than 1200 landholders across NSW have formal conservation commitments through the Conservation Partners Program covering in excess of 1.7m hectares of land.⁴⁶

11.38 The Queensland Environmental Protection Agency (EPA) operates a program within its Nature Refuge Unit which allows landholders to enter into a voluntary conservation agreement with the Queensland Government which leads to the establishment of a nature refuge. These agreements are:

tailored to suit the management needs of the particular area and of the landholder. In most cases, the agreement allows for the ecologically sustainable use of natural resources to continue. A nature refuge can cover part or all of a property protecting wildlife and wildlife habitat and emphasising the conservation of biodiversity as an important part of property management.⁴⁷

11.39 In excess of 180 landholders across Queensland manage nature refuges covering more than 412 000 hectares.⁴⁸ The Queensland Department also operates a program called Nature Assist which allows landholders to receive grants for activities which either 'maintains or improves the natural values' found on their property.⁴⁹ Under Nature Assist landholders may also be eligible for 'Green Rewards' – a refund of the transfer duty and/or land tax payable on the area of land protected under a perpetual nature refuge agreement.

11.40 The South Australian Heritage Agreement program was established over twenty-five years ago. There are now in excess of 500,000 hectares of land under Heritage Agreements.⁵⁰ The Heritage Agreement program has operated as a voluntary covenanting scheme but has also been used by the South Australian Government to

45 See NSW National Parks and Wildlife Service web site, *Conservation Partners Program*, http://www.nationalparks.nsw.gov.au/npws.nsf/Content/conservation_partners, accessed 15 November 2006; The DEC NSW's Conservation Agreements operate under s 69 of the *National Parks and Wildlife Act* (NSW) 1974.

46 NSW Government, *Submission 152*, p. 28.

47 Queensland Department of Premier and Cabinet, *Submission 175*, p. 13. The QEPA's program operates under the *Nature Conservation Act* (Qld) 1992.

48 Queensland Department of Premier and Cabinet, *Submission 175*, p. 13.

49 See Queensland Government Environmental Protection Agency web site, *Nature Assist*, http://www.epa.qld.gov.au/nature_conservation/nature_refuges/nature_assist/, accessed 15 November 2006.

50 Department of Environment and Heritage, SA Government, *Submission 194*, p. 13. The current Heritage Agreement Scheme operates under the *Native Vegetation Act* (SA) 1991.

manage vegetation clearance.⁵¹ The Department also operates a number of programs to conserve biodiversity through its regional biodiversity plans.⁵²

11.41 The Department of Environment and Conservation, Western Australia (DEC WA), is supportive of the 'promotion of landscape scale conservation, which integrates both on and off-reserve conservation' and is complementary to, rather than substituting for, formal public reserves.⁵³ Currently, the Department operates a conservation covenant program which allows landholders to enter into covenants that are restrictive in nature via the *Transfer of Land Act* (WA) 1893. The DEC, WA also facilitates the *Land for Wildlife Program* which allows landholders to receive advice on how to conserve their land without altering the legal status of the property.⁵⁴ The Department of Agriculture and Food (WA) also operates a conservation covenant program under the *Soil and Land Conservation Act* (WA) 1945. The Western Australian biodiversity conservation strategy, which is in preparation, is intended to include strategies and mechanisms to promote and strengthen off-reserve conservation measures.⁵⁵

11.42 The Tasmanian Forest Conservation Fund (FCF) is a joint initiative between the Australian and Tasmanian Governments. It was established as part of the Tasmanian Community Forest Agreement 'targeting old growth and under reserved forest communities on private land'.⁵⁶ The Protected Areas on Private Land program operates alongside the FCF and is a joint initiative between the Natural Heritage Trust's National Reserve System Program, the Department of Primary Industries, Water and Environment, Tasmanian Graziers Association and the Tasmanian Land Conservancy.⁵⁷ Its aim is 'to promote and facilitate voluntary conservation agreements

51 For a more detailed description of the SA Heritage Scheme see House Standing Committee on Environment and Heritage, *Inquiry into public good conservation*, pp 146–147, <http://www.aph.gov.au/house/committee/environ/pubgood/report/chap6.pdf>, accessed 15 November 2006. The current scheme is a modification of an earlier scheme that operated under the *Native Vegetation Management Act* (SA) 1985.

52 South Australian Department for Environment and Heritage, *Biodiversity Conservation – Plans for Biodiversity Conservation*, <http://www.environment.sa.gov.au/biodiversity/bioplans.html>, accessed October 2006.

53 Department of Conservation and Land Management, Western Australia, *Submission 135*, p. 8.

54 Department of Environment and Conservation, *Land for Wildlife*, http://www.naturebase.net/orc/land_for_wildlife.html, accessed October 2006.

55 Department of Conservation and Land Management, Western Australia, *Submission 135*, p. 8.

56 Australian Government, Department of the Environment and Heritage, Tasmanian Forest Conservation Fund <http://www.deh.gov.au/land/forestpolicy/fcf/>, accessed 16 November 2006.

57 Department of Primary Industries and Water, Tasmania, *Protected Areas on Private Land Program*, <http://www.dpiw.tas.gov.au/inter.nsf/WebPages/SSKA-6B56K5?open>, accessed 16 November 2006.

between the Tasmanian Government and private landowners with important natural values on their properties'.⁵⁸

11.43 There are three areas in which the committee believes valuable contributions are being made, and in which there were calls for further improvements. These are the use of conservation covenants; conservation on pastoral lands; and providing tax reform and support for private conservation actions.

Conservation covenants

11.44 Often private land ownership is believed to imply the right to do whatever a landowner wishes with their land. However, land ownership is considerably more complicated – it consists of a 'bundle of rights', not all of which are necessarily held by the landowner.⁵⁹ There are many partial interests in a parcel of land, both public and private. Conservation covenants represent the acquisition of partial interests in private land by a covenanting body. A covenant 'prevents an owner from acting in certain ways' on their own land,⁶⁰ and can be used to ensure conservation management conditions are met.

11.45 Conservation covenants have been entered into in every Australian state, and the committee believes they now number well over 2000. Most covenanting bodies are state authorities; however this does not have to be the case. In several states, there are schemes established under statute but at arms-length from government that administer conservation covenants, including the Nature Conservation Trust in NSW, the Trust for Nature in Victoria, and the National Trust of Australia (WA) in Western Australia.

11.46 The committee notes that the *Directions for the National Reserve System* state that 'covenants and revolving funds can be very cost-effective ways of ensuring a degree of security is given to lands with significant conservation values' and directed that:

Covenanting and the use of revolving fund arrangement to be implemented (in all jurisdictions by 2005) as part of the NRS where appropriate and managers of revolving funds to be encouraged to give priority to implement NRS objectives.⁶¹

58 Department of Primary Industries and Water, Tasmania, *Protected Areas on Private Land Program* <http://www.dpiw.tas.gov.au/inter.nsf/WebPages/SSKA-6B56K5?open>, accessed 16 November 2006.

59 Steven Bick and Harry Haney, *The Landowner's Guide to Conservation Easements*, Kendall Hunt, Dubuque, Iowa, 1996, p. 2.

60 M.D.Young and N. Gunningham et al., 'Reimbursing the Future', *Biodiversity Series Paper No. 9*, CSIRO Division of Wildlife and Ecology, the Australian Centre for Environmental Law, and Community Solutions, January 1996 p. 118.

61 Natural Resource Management Ministerial Council, *Directions for the National Reserve System: A Partnership Approach*, Commonwealth of Australia, 2005, p. 43.

11.47 Conservation covenants are most valuable if they have long term security. Critical to the degree of security is whether a covenant runs on the title of the land, rather than depending on the agreement of just the present owner. If a covenant is registered with the Registrar-General it runs on the title of the land and will be binding on current and successive landholders.⁶² Requiring that covenants be registered also ensures a level of public scrutiny. In NSW, Victoria and Queensland, a conservation agreement only becomes binding on successive purchasers of the land if the agreement is registered with the Registrar-General.⁶³ The Tasmanian and Western Australian legislation provides certainty that a covenant will bind subsequent owners by stating that a covenant comes into force on registration with the Registrar-General.⁶⁴ In South Australia, the Minister or party who enters into the agreement can request that the Registrar-General note the agreement in the registrar,⁶⁵ which is in practice always done.

Recommendation 12

11.48 The committee recommends that every jurisdiction implement, where appropriate, legislative or administrative reforms that ensure that conservation covenants are registered on the title of the land.

11.49 The committee heard ideas for establishing a uniform system of covenants to provide consistency between programs.⁶⁶ This discussion also raised the possibility of allowing private conservation organisations to hold and enforce covenants in addition to their current focus on purchasing properties.⁶⁷

11.50 The Commonwealth should try to facilitate a system to encourage greater communication, co-ordination and co-operation between the States and Commonwealth to identify the strengths and weaknesses of covenanting programs across Australia and explore opportunities to implement initiatives which build on those strengths and address weaknesses.

11.51 In particular the Commonwealth could address the possibility of implementing a uniform standard for the on-going management and monitoring of covenants. Different programs have worked for different reasons in each of the states

62 B. Edgeworth et al, *Sackville and Neave Property Law: Cases and Materials* 7th edition, Butterworths 2004, p. 952.

63 *Nature Conservation Trust Act (NSW) 2001*, s. 37; *National Parks and Wildlife Act (NSW) 1974*, s. 69F; *Victorian Conservation Trust Act (Vic.) 1972*, s. 3(A)(11); *Nature Conservation Act (Qld) 1992*, s. 51.

64 *Nature Conservation Act (Tas.) 2002*; *Transfer of Land Act (WA) 1893*.

65 *Nature Vegetation Act (SA) 1991*, s. 23B.

66 Dr Michael Looker, The Nature Conservancy, *Committee Hansard*, 20 October 2006, p. 34; Mr Atticus Fleming, Australian Wildlife Conservancy, *Committee Hansard*, 20 October 2006, p. 44.

67 Dr Michael Looker, The Nature Conservancy, *Committee Hansard*, 20 October 2006, p. 34.

and no one program may provide the best model, however a standard could be implemented, building on the strengths of all programs, to help ensure that covenants are perpetually secure.

11.52 Tax reform may also be used to benefit conservation covenants, an idea examined separately below.

Private conservation on pastoral leases

11.53 Private conservation organisations including Birds Australia, the Bush Heritage Fund and the Australian Wildlife Conservancy face a number of constraints in carrying out conservation activities on pastoral leases. Mr Doug Humann, Chief Executive Officer of the Australian Bush Heritage Fund, described the issue of reform of pastoral lease conditions as 'one of the two or three most important issues in the country at the moment'.⁶⁸

11.54 Mr Atticus Fleming also raised the issue of pastoral lease reform with the committee:

In each state there is the same general issue, whether it is through a conservation agreement or another instrument, and that is uncertainty about the extent to which you can effectively commit to de-stocking and put a conservation covenant on the pastoral lease in perpetuity or for the duration of the lease.⁶⁹

11.55 The Productivity Commission has analysed the issue of pastoral lease reform.⁷⁰ The Commission points to two central factors restraining private conservation on leasehold land:

- Pastoral leases are controlled and administered by a land tenure system designed to facilitate pastoralism with limited scope to alter the primary purpose of a lease to other activities such as conservation.
- The uncertainty surrounding property rights held by the Crown through resumption provisions, and by traditional owners through native title.⁷¹

11.56 Mr Doug Humann summarised the arguments for and against pastoral lease reform:

On the argument that there is a loss in rural production: there needs to be a balance of land use across the country. In some places you do have intensive rural production; in other places there is less intensive rural

68 *Committee Hansard*, 5 June 2006, p. 6.

69 Australian Wildlife Conservancy, *Committee Hansard*, 20 October 2006, p. 44.

70 Productivity Commission, *Constraints on Private Conservation of Biodiversity*, Commission Research Paper, 2001, pp 11–17.

71 Productivity Commission, *Constraints on Private Conservation of Biodiversity*, Commission Research Paper, 2001, p. 11.

production. In other places there is no rural production whatsoever in terms of grazing sheep and cattle, or agriculture. And of course you need a balance of conservation use. Another argument is that you will lose people from local and regional areas and that the local and regional economies will suffer. The way my organisation approaches the acquisition of pastoral leases is that we place permanent residents on the properties and they form part of those regional communities. Indeed, over time one would hope that they could contribute more than that single family unit, and we would encourage more people to visit those places and contribute, if only marginally, to some of the rural economies.⁷²

11.57 The committee recognises the importance of viable economic activity in pastoral lands. However, as Mr Humann notes, well-managed conservation activities need not detract from that economy – they may even contribute to it. The important thing is for governments to undertake pastoral lease reform that will ensure that there are no artificial barriers to private conservation on pastoral lands. Some of Australia's pastoral regions are amongst the most under-represented in the reserve system, and it would be tragic if the administration of these areas prevented conservation initiatives from being progressed by private individuals or organisations.

Encouraging private conservation: the case for tax reform

11.58 A number of submissions raised the need for changes to Australia's current tax provisions to encourage greater community support for conservation.⁷³ The Allen Consulting Group stated that:

Australia's tax provisions for charitable gifts have been largely developed to deal with gifts of money. In 1999, the Howard Government amended these provisions to allow for gifts of property...there is considerable scope for providing recognition and tax support for types of gifts that are excluded, while ensuring that these gifts are genuinely philanthropic (providing no material benefit to the donor).⁷⁴

11.59 The United States of America (US), in particular, provides generous tax support for philanthropy including tax deductions against state and federal income tax, generous capital gains tax exemptions and roll-overs, deductions for conservation covenants, concessional treatment of gifts of various financial instruments (such as annuities) and a variety of tax effective charitable trust structures.⁷⁵ The Nature

72 Australian Bush Heritage Fund, *Committee Hansard*, 5 June 2006, pp 6–7.

73 Foundation for National Parks & Wildlife, *Submission 144A*; Preservation Society of Queensland, *Submission 113*, p.7; The Wilderness Society, *Submission 131*, p. 12; Australian Bush Heritage Fund, *Submission 188*, p. 7; Australian Wildlife Conservancy *Submission 220*, p. 5.

74 Foundation for National Parks & Wildlife, *Submission 144A*, Attachment 2 – Dr Stephen Hatfield Dodds, (2002), 'Building a Stronger Coalition' *The Allen Consulting Group*, Paper Prepared for The Steering Group on Incentives Encouraging Private Conservation.

75 Bush Heritage Fund, *Submission 188A*, p. 6.

Conservancy in the US raised over US\$1 billion in the last financial year from their supporters.⁷⁶

11.60 A number of tax incentives have been introduced by the Commonwealth to encourage private land conservation. Firstly, a tax incentive that provides for a person who places a covenant on their property to receive a tax deduction on the difference, if any, between the value of the property before and after the covenant is placed. Secondly, the government has now introduced a five-year apportionment for gifts to environmental organisations. Where a person makes a very sizeable donation of \$200,000, for example, they can apportion it over five years and thus gain a benefit on their tax. Thirdly, it is now possible for people to make charitable gifts of property to environmental organisations. Previously people could make gifts of property to arts and educational institutions but that was not afforded to environmental institutions.⁷⁷

11.61 In 2002, a report prepared by The Allen Consulting Group made several recommendations directed at encouraging private conservation, including:

- enhanced, targeted additional tax support for donations of property;
- strengthening positive income tax treatment of 'living bequests';
- allowing tax deductibility of partial gifts of property;
- considering switching the tax benefit vehicle from tax deduction to tax rebate; and
- creating mechanisms to improve the tax effectiveness of implementing conservation covenants; and
- allowing tax deductions for specific types of in-kind support for public good research.⁷⁸

11.62 Several of these tax reforms were commented upon during the inquiry. Mr Doug Humann, CEO of the Bush Heritage Fund, suggested that the government should recognise philanthropic support offered through 'bargain sales' or 'part gifts' of property to eligible community organisations by at least recognising the discount provided as a gift for tax purposes.

The bargain sale of land is an activity undertaken by The Nature Conservancy every day of the week in the United States. I will give you an example of how it works. Say you have a property valued at \$200,000. You are keen for that property to go to an organisation such as mine. You do not wish for the entire \$200,000 and you choose to sell the property to us for \$100,000, but because it was valued at \$200,000 you can take the

76 TNC, *Committee Hansard*, 20 October 2006, p. 32.

77 Mr Humann, Bush Heritage Fund, *Committee Hansard*, 5 June 2006, p. 5.

78 Foundation for National Parks & Wildlife, *Submission 144A*, Attachment 2 – Dr Stephen Hatfield Dodds, (2002), 'Building a Stronger Coalition' *The Allen Consulting Group*, Paper Prepared for The Steering Group on Incentives Encouraging Private Conservation, pp 10–21.

difference, of \$100,000, as a tax deduction. We believe that would be a huge incentive for people to give further consideration to the manner in which they dispose of land of high conservation value. I can only report to you the benefit of that in the United States.⁷⁹

11.63 Mr Humann also suggested that the government should encourage 'living bequests' by clarifying that they are deductible (or rebateable) under the income tax gift provisions.

The living bequest mechanism—and we have a number of cases where this could be used immediately—is for where somebody is asset rich but cash poor, sitting on a property that, again, might be for commercial purposes but it has conservation values. They are very concerned, as are most of the people who we buy land from, that the property is maintained in perpetuity. They wish to live on it for the rest of their lives but they need some benefit. They can sell it to an organisation such as ours, retain the benefit of living on it for the rest of their lives and receive a deduction for the proceeds. Of course, under the tax act at the moment you cannot receive a tax deduction where you gain a benefit, so it is not possible presently for that mechanism to be utilised. Although there is some legal opinion that there is the capacity for this to operate under the current tax law, I have not seen a case of it being presented.⁸⁰

11.64 The committee also heard that the imposition of substantial stamp duty is a disincentive to donations of land to conservation organisations. Mr Gillis Broinowski, Director, Foundation for National Parks & Wildlife, told the committee that:

...in the past when people donated land through the foundation to add to a national park they were not subject to stamp duty. Now, after the GST came in and after stamp duty and all those things were rewritten, they do attract stamp duty. It is an anomaly and our state ministers are arguing for the regulations to be changed. But in the meantime recent donations of land, which have been quite substantial— some millions of dollars worth of land donated through the foundation—have attracted stamp duty, and we are lobbying to have that refunded.⁸¹

11.65 The Foundation for National Parks & Wildlife also advised the committee that a 'hand-in-hand approach' needed to be taken between state governments to assess the implications of different types of tax legislation in order to make it a 'user-friendly' process for donors.

11.66 The committee also heard that tax reform is also needed to ensure that:

79 *Committee Hansard*, 5 June 2006, p. 5. See also Bush Heritage Fund, *Submission 188A*, pp iii, 11–14.

80 Bush Heritage Fund, *Committee Hansard*, 5 June 2006, p. 5.

81 *Committee Hansard*, 12 May 2006, pp 33–34.

The holder of a pastoral lease receives a tax deduction for the reduction in value of his or her lease if a covenant is placed on the lease land (or part of it). Currently, a tax deduction is only available only in relation to the placement of a covenant on freehold land.⁸²

Recommendation 13

11.67 The committee recommends that all governments, in consultation with the ATO and private conservation organisations, examine improved tax treatment for private initiatives that provide long-term, secure conservation benefits.

82 Australian Wildlife Conservancy, *Submission 220*, p. 5; Mr Atticus Fleming, Australian Wildlife Conservancy, *Committee Hansard*, 20 October 2006, p. 40.