

## Chapter 2

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

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

#### Native vegetation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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## Land use in Australia

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

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

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

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

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

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

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

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

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

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

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

## Land clearing

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

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

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

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

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

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

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

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

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

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

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

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

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## Regulatory framework

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

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

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

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

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

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

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

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

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

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

comprising ministers of primary industries, national resources, environment and water across all jurisdictions, reaffirmed the commitment of all jurisdictions to the framework.

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

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

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

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

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

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

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

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

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

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

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

### ***Commonwealth legislation***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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*New South Wales*

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

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

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

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

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

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

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

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

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

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

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

### *Queensland*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### *Victoria*

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

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

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

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

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

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

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

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

### *South Australia*

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

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

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

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

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

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

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

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

#### *Western Australia*

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

2.65 Clearing of native vegetation is not permitted unless:

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

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

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

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



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

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

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

### *Tasmania*

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

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

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

### *Northern Territory*

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

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

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

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

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

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

#### *Australian Capital Territory*

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

### **Land clearing and deforestation**

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

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

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

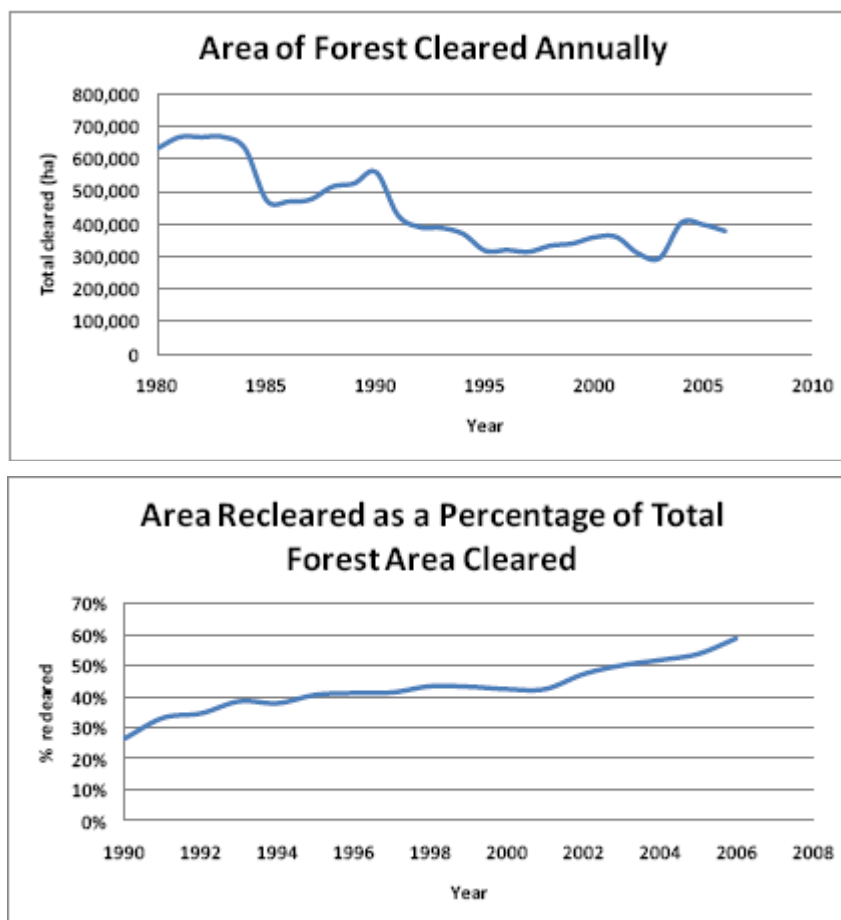
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65 Northern Territory Government, *Land Clearing Guidelines*, 2010, [http://www.nt.gov.au/nreta/natres/natveg/guidelines/pdf/landclearingguidelines\\_2010.pdf](http://www.nt.gov.au/nreta/natres/natveg/guidelines/pdf/landclearingguidelines_2010.pdf)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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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