

# Chapter 5

## Conclusions and recommendations

5.1 The committee believes that there are legitimate concerns about the impact of the current native vegetation laws upon a small group of Australians, namely landholders in rural and regional Australia. It is unreasonable that the burden of broad environmental objectives is borne by a small number of Australians. Where the current native vegetation laws have resulted in reduction of property value for landholders, this is unjust and it is inappropriate that this burden is borne by individual landholders. This situation should be addressed to better balance competing objectives, the cost burden of achieving these and to redress the current situation.

5.2 While land clearing and native vegetation laws have developed over several decades, aspects of these laws remain a contested element of public policy. There will, therefore, be ongoing debate about the appropriate restrictions placed on land use where that competes with broader community environmental objectives.

5.3 The committee notes that Australia currently enjoys substantial environmental benefits that are the result of preservation, management and restoration efforts conducted by agriculturalists and pastoralists.

5.4 In recent decades, laws focused on preventing broadscale land clearing have become much more specific and involved a greater degree of government and bureaucratic control over landowners' utilisation and management of their land. Laws preventing broadscale land clearing with the objective of limiting wider environmental degradation have become focused on the management of vegetation, including on individual properties. Previously unregulated or exempt activities are now much more subject to bureaucratic oversight or regulation.

5.5 This represents a significant change in the relationship between a landholder and their own property as well as between the landholder and governments, in this case primarily state governments.

5.6 A significant burden of this shift has been borne by those involved in agricultural or pastoral activities – both in terms of new regulation and the necessary cost this has entailed as well as the potential and varied economic and opportunity costs.

5.7 Evidence received during this inquiry confirms that there is considerable angst and concern at the impact of native vegetation laws by those upon whom the laws impact, primarily agricultural and pastoral producers in regional and rural Australia. This is not limited to economic or financial issues, and encompasses personal and family costs. It is clear from the number of submissions and some of the individual examples that have been presented to the committee that there is substantial scope to

improve the operation of these laws to the satisfaction of all stakeholders and reduce these personal costs.

5.8 It also became clear to the committee from evidence presented that there is a lack of trust and cooperation between affected landowners and various state government agencies in the planning, implementation, management and enforcement of native vegetation laws.

5.9 It was also clear that many landowners believed and felt that the negotiation and consultation process prior to the introduction of laws, or changes of laws, was inadequate.

5.10 Nevertheless the committee believes that it would be in the best interests of landowners, government agencies and the broader Australian public in achieving necessary land use regulation, if the processes involved were built upon trust, cooperation and understanding to achieve outcomes that protect the environment generally but at the same time maintain secure and sustainable food production in Australia.

5.11 These concerns raised with the committee by affected landholders and representative organisations include:

- the opportunity cost of land lost to production (both previously uncleared and/or unutilised or that which has previously been cleared and/or utilised);
- the loss of real or potential property value due to the introduction of these restrictions on land use;
- restrictions that effectively remove the right to continue to utilise land in a manner in which it has previously been used;
- the lack of compensation for these 'losses';
- enforcement and compliance mechanisms utilised by State Governments under these regimes and opportunities for review of determinations;
- the application of these laws to individual properties, including restrictions on what appear to be quite minor changes to vegetation, including with respect to very small patches of vegetation or even single trees;
- the long-term environmental impact of these laws, specifically whether they will achieve their stated objectives of improving native vegetation cover and environmental outcomes; and
- the ongoing liability of landholders for land they own but over which they do not have effective control, including the payment of rates and management of noxious plants and feral animals.

5.12 Furthermore, the issue of compensation for future restrictions on land use also needs to be addressed.

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## *Compensation*

5.13 While the committee does not believe that it is always inappropriate for government to regulate the use or utilisation of private landholdings, there comes a point at which regulation of land may be so comprehensive as to render it of a substantially lower economic value to the landowner. In such circumstances consideration should be given to compensation being provided to the landowner in recognition of this.

5.14 The committee notes that in its 2004 report the Productivity Commission considered the issue of compensation and made two recommendations. First, that landholders should bear the costs of actions that directly contribute to sustainable resource use and hence, the long-term viability of agriculture and other land-based operations. Second, 'over and above agreed landholder responsibilities, additional conservation apparently demanded by society (for example, to achieve biodiversity, threatened species and greenhouse objectives), should be purchased from landholders where intervention is deemed cost-effective'.<sup>1</sup>

5.15 Just as the ongoing protection and nurturing of the environment is the responsibility of all Australians, introducing imposts which unreasonably diminish the value of an asset should trigger compensation for the people involved.

5.16 In short, where the community has a need for a private asset, then the cost of acquiring that should be borne by the community.

5.17 The committee believes that the passage of further laws and regulations that govern and restrict the use of agricultural and pastoral land should be considered in the context of the economic cost and burden borne by the landholder as well as environmental objectives that are desired by the broader community.

5.18 Where future legislation or regulation reflects an outcome desired by the broader community and the cost of this will be borne by the landholder, the committee considers that the Productivity Commission's recommendations in relation to compensation provide an equitable basis for compensation payments to landholders.

5.19 Where the cost of compensation for past legislative and regulatory actions is prohibitive, consideration should be given to reducing the current impediments upon landholders as a remedy.

5.20 Many submissions expressed concern at the reductions in effective property rights. The committee strongly believes that effective property rights are critical to a market-based economy. When these rights become uncertain, this reduces the likelihood that others will undertake significant investments in purchasing or utilising property as the rights to use this property may be substantially limited in whole or part

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1 Productivity Commission, *Impacts of Native Vegetation and Biodiversity Regulations*, 2004, p. XLIX.

at a later date. The committee is strongly of the view that it is inappropriate for government regulation or activity to pose this risk to landholders.

### ***Recommendations***

5.21 Considerable evidence before the inquiry highlighted the unintended consequences of native vegetation legislation particularly in relation to restrictions on land clearing.

5.22 The Committee recognises the need, therefore, for a nationwide assessment to determine the impact of such legislation on biodiversity and environmental sustainability and the legitimate objective of maximising agricultural production based on the best available science.

#### **Recommendation 1**

**5.23 The committee recommends that COAG re-examine the native vegetation legislation and its 2006 recommendations with a view to establishing a balance between maximising agricultural production and best practice conservation.**

#### **Recommendation 2**

**5.24 The committee recommends that the Commonwealth initiate, through the Natural Resource Management Ministerial Council, a national review to assess the impact of various native vegetation legislative and regulatory regimes, particularly those at the state level. In undertaking such a review, the following issues should be specifically addressed:**

- **the liability of landholders complying with native vegetation laws for the payment of rates or taxes for land that is not available for productive use;**
- **the right of landholders to manage competing environmental objectives over land where restrictions have been imposed, for example the management of noxious weeds and pests in protected native vegetation areas;**
- **the institution of inexpensive, accessible, timely and independent administrative appeals processes against decisions of enforcement agencies or officials regarding the granting of permits or institution of regulatory regimes over private land;**
- **the application of statewide regulations where there are distinct and notable variations in both the environmental conditions and objectives across regions within states;**
- **the burden of these laws on newer farming areas and communities as opposed to more established ones; and,**
- **the imposition of caveats by state authorities which prevent or restrict the existing use of land when converting title from leasehold to freehold.**

5.25 Where the imposition or outcomes of respective native vegetation legislation impacts the provisions of the *Environment Protection and Biodiversity Conservation Act 1999*, the Commonwealth will be responsible then to investigate.

5.26 The committee recognises the need for action across all jurisdictions in relation to stewardship initiatives. Towards this objective, it appreciates that a shift in the approach away from regulation to that of stewardship implies reorienting the focus of the relationship between landholder, land and government.

5.27 Whilst evidence before the committee emphasised the need to dismantle the regulatory framework, the committee recognises that to work effectively, stewardship initiatives require extensive consultation and collaboration.

### **Recommendation 3**

**5.28 The committee recommends a review of best practice in relation to stewardship initiatives across the country with a view to re-orienting future regulatory activities.**

**Senator Scott Ryan  
Chair**

