RESPONSE

to the

Public Hearings in Perth on
17th February 2004 and

SUBMISSION

to the

Western Australian Government on the
Productivity Commission Draft Report

on the

Impacts of Native Vegetation and
Biodiversity Regulations

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The PGA thanks the Commission for the opportunity to comment on this important submission from The Western Australian Government.

The submission saddens the PGA. Its authors seem contemptuous of the human rights of agriculturists and some others. Ownership of a farm is most importantly the right to farm it from which most of its value derives. In the belief that this right was inviolate, farmers have invested their savings, often the savings of most of a lifetime, into agricultural land. Owners of houses, superannuation policies, cash deposits or equities would not have their rights of possession and the value of their savings taken without compensation. Why should a small group of unlucky people who have put their savings in uncleared land have their rights taken without their being compensated for their loss?

All that these farmers is ask is that the public compensate them for the loss of their savings, taken to serve a public good.

The PGA believes that very many of things that the WA Government contends are wrong. The PGA has numbered the more important of these 'errors' in the text of the WA Government submission *(see pp 8 – 63).* This PGA submission refers point by point to the correspondingly numbered sections in the WA Government Submission *(attached after page 7).*

1) Does the WA Government Submission have the authority of Cabinet? If so, the PGA expresses its surprise as much as its disappointment. It is not consistent with statements that Ministers have made to representatives of the PGA.

2) It is not clear how that generalisation *per se* can reinforce prejudice. The PGA thinks the WA Government must mean that the Draft Report relies on and implicitly supports principles that they do not accept. In spite of all that the WA Government final submission says on the subject, the principles that concern it are not in fact those that are explicit in the Commission's Charter. The Commission has followed its charter in letter and principle but it has been guided also by more fundamental principles which the PGA suspects the authors of the WA Government submission do not accept. They see the way that society actually functions (and perhaps should function) in very different terms from those accepted by the authors of the Draft Report and the authors of this submission.

The WA Government's authors seem to have little faith in a society in which order and the wellbeing of all is achieved by the interaction of individuals guided by institutions (morals, habits, practices and laws) that most accept. Instead of accusing them of prejudice, the PGA merely suggests that such a society is counter-intuitive to them, and the PGA accepts that they are not alone in that world view

They analyze social questions (those that concern the way that people interact) in terms of collectives and rely upon command which necessarily presumes an elite capable of commanding wisely. They probably assume that majoritarian practices from which they gain their authority/standing insures a large measure of that wisdom. Democracy is certainly better than its alternatives but the PGA does not see it guaranteeing the wisdom that should allow an elite to cancel the institutions upon which the PGA believes social order and progress depend, of which individual justice and private ownership are two.

The PGA does not deny that voluntary personal interaction in a market may fail to produce an optimal community-wide outcome, but command also may fail to produce an optimal community-wide outcome. The Government's authors would probably accept this highly generalised statement but the PGA has far more fear of government failure and less of market failure than do they. More seriously, the PGA does not wish to see the institutions upon which we believe a desirable social order actually depends undermined. If the WA Government prefers the term, then these are PGA 'prejudices' and, regrettably, the gulf between the PGA and the State would seem to be immense.

3) In spite of believing that sometimes the benefits of remnant vegetation do not outweigh the costs, while sometimes they do, the PGA does not ask the Commission to assess whether on average or in aggregate they do. Such a calculation would involve the collection of a prohibitive amount of as yet unmeasured data and assessment of as yet disputed science. In any case the calculation would be irrelevant. What matters is that in each particular case the benefits should exceed the costs.

4) The PGA certainly does not deny that the impact of past clearing has given rise to the salination of a great deal of valuable land or that past clearing has been detrimental to several species. Nevertheless, clearing created the Western Australian wheatbelt which continues to be a huge resource with increasing overall productivity. The question now is, however, what can and/or should be done about the loss of productive land to salt. That is the subject addressed by the Draft Report and should be the subject matter of the Final Report.

5) The PGA does not believe that it is the role of the Commission to 'reflect' Commonwealth policy but that its role is to advise the public and its governments on the choice of policies that will best serve the long-term community interests. Nevertheless, the various intergovernmental agreements are important elements of the background against which these policies are implemented.

The WA Government is signatory to several intergovernmental agreements including the Intergovernmental Agreement on the Environment (IGAE), National Strategy for Ecologically Sustainable Development (NSESD), and the National Strategy for the Conservation of Australian Biological Diversity (NSCBD). The PGA argues that these

intergovernmental agreements are invoked by the WA Government selectively to serve their regulatory approach to native vegetation and biodiversity conservation.

The WA Government continues this selective approach in their Final Submission to the Draft Report. For example, when commenting on the central role of the Commonwealth and national policy, they say that the IGAE states with great clarity 'conservation of biological diversity and ecological integrity should be a fundamental consideration.'

However they ignore the fact that the IGAE also states the following with equal clarity:

a) the Parties to the Agreement acknowledge that the efficiency and effectiveness of administrative and political processes and systems for the development and implementation of environmental policy in a Federal system will be a direct function of …. the extent to which the total benefits and costs of decisions to the community are explicit and transparent; and at 3.2

b) This requires the effective integration of economic and environmental considerations in decision-making processes, in order to improve community well-being and to benefit future generations: and at 3.4

c) … ensuring that measures adopted should be cost-effective and not be disproportionate to the significance of the environmental problems being addressed; and most importantly in Schedule 2 of the IGAE at 5 states;

d) Within the policy, legislative and administrative framework applying in each State, the use of natural resources and land, remain a matter for the owners of the land or resources, whether they are Government bodies or private persons.

The NSESD has within its seven guiding principles, apart from the much quoted 'precautionary principle', the principle that 'decision making processes should effectively integrate both long and short-term economic, environmental, social and equity considerations' and adds that; 'These guiding principles and core objectives need to be considered as a package. No objective or principle should predominate over the others.'

The NSCBD states at 1.5.1 that incentives for conservation should 'Ensure that adequate, efficient and cost effective incentives exist to conserve biological diversity. These would include appropriate market instruments and appropriate economic adjustments for owners and managers, such as fair adjustment measures for those whose property rights are affected when areas of significance to biological diversity are protected.'

6) It is not in fact 'obvious' that subsidising revegetation and allowing land clearance at the same time is not cost effective. The circumstances of the individual subsidies and bans vary, and the landholders' costs must enter each equation.

7) While conceding that consultation is difficult for any authority to achieve, the unworkable regulations currently proposed as the Environmental Protection (Clearing of Native Vegetation) Regulations 2003 are indication enough that consultation has not been effective.

8) The manner in which the authorities shifted their ground from salinisation to biodiversity in the Underwood case is indication of the lack of environmental objectives. The PGA believes that the ultimate objective was to prevent Underwood from clearing his land and not, as first claimed, to prevent salinisation which was unlikely or, as was later claimed, to preserve biodiversty that was well represented in neighboring Crown reserves.

9) Whatever the assessment of the 'ultimate' impact of regulation, the 'total' impact has not been assessed. The personal and community costs inflicted as a first-round consequence upon each landholder are not calculated or at least not made available to anyone.

10) The PGA does not claim that landholders do not have both a legal and social obligation to obey bad law as well as good. The Inquiry is, however, a democratic procedure aimed at improving the law. The WA Government's point is not relevant.

11) The contention here is substantially wrong and contains a serious *non sequitur*. Long standing policy and practice, covering all sectors, do provide for buying public goods from private rights holders. The intergovernmental agreements on the environment recognise the need for equity for the private landowner. The common law, town planning law in metropolitan Perth and laws governing the acquisition of easements and area for public purposes do provide for compensation. Changes to superannuation rights 'grandfather' existing rights holders. Extreme situations such as hot war aside, it is widely accepted that rights should not be taken by other private interests or, without compensation, by the Crown. The PGA does not contend that a landholder or anyone else who imposes significant loss upon another that is not his right to impose, such as for instance the legitimate ceasing of a commercial activity, should not compensate that other. (The PGA concedes that uncompensated trivial impositions are common.) Why should environmental public goods be different to others?

    It cannot follow from long standing policy and practice, even if this exists, that the

most just and/or most fair way to achieve environmental goals is not to purchase the relevant rights.

12) The PGA is not clear what 'sustainable' means in this context. Surely it is not intended to preserve the *status quo* ruling out the improvements in soils structure that are being achieved now or the possibilities that perennial crops or pastures may one day be employed to lower the water table or cereals genetically engineered to tolerate much more salt will be grown. Perhaps they mean merely that the physical environment should not be made less beneficial to future generations of humans. If so, why not say so!

Yes the current generation does have a duty of care to future generations but by what criterion are these public officers a better judge of it than those people who have a direct interest and direct knowledge? At least arguably, it does not serve future generations well to undermine key elements of the social environment. Experiments with doing so in the immediately past century were dismal failures. Both change over time but perhaps the social environment is more 'fragile' than the physical environment.

13) The Government must mean administratively not economically absurd but, even so, the administrator would not have to make such a calculation. All that has to be calculated is the loss to the individual losing his rights. All the spillover effects cited are caused by those who have already cleared and should, if it is wished to punish them (the costs would not at this stage be internalised) levy a further tax on all cleared land.

14) The positive impacts on the landholder of keeping native vegetation are already internal and no regulation is required to achieve them.

15) Of course salinity is a problem. The issue is, however, whether it will be best reduced by an uncompensated taking from a few unlucky people.

16) It follows from this paragraph that further clearing bans will have minimal impact on salinisation in the wheatbelt. The PGA goes further, however, to ask whether the 20% or 25% of trees or other deep rooted perennials would not have to be extremely well sited to achieve a major impact. The PGA suspects that in practice much more perennial vegetation would be required. (Lucerne, the perennial that comes most quickly to mind, survives if grazing is minimal in summer but it does not do well enough.)

17) Some scientists argue that the impacts of rising water tables are mostly on-site. In some situations salting has been reversed by digging drains and/or by clearing vegetation and other obstructions from waterways.

18) Only a bureaucrat would assume that the normal business planning cycle does not extend to the next generation. Even where there are no children the owner is interested in the value of his holding to others.

19) Precisely, the individuals' individual impacts are small.

20) They have replanted gums but only seldom those native to the area because they obtained their seedlings from a government nursery—wisely in the PGA view.

21) The PGA does not claim that in Western Australia the sector is seriously hampered by clearing bans. A relatively small number of individuals bear a considerable burden and this is unfair.

22) Again, if such benefits exist, regulation is at best superfluous and may misdirect the investment.

23) Whether the information and analysis is 'new' is perhaps debatable, but the Draft Report goes to considerable length to describe a suite of policy options that the Commissioners regard as being an improvement on current and intended practice.

24) Yet again the WA Government seems to assume that landholders must be compelled to do what is in their own interests to do.

25) There is ample evidence that at least the mining industry does not accept that the costly delays imposed on development are all necessary. The fact that its members comply with the law cannot reasonably be interpreted as evidence that they agree with it.

26) If the WA Government believes that the Commission's analysis is inadequate then surely it, with its resources, should offer analysis that is less superficial and better substantiated. Here it does not offer even a reference.

27) If 'Western Australia' so feels, then it is up to 'Western Australia' to legislate accordingly but the cost should be born by 'Western Australia'.

28) The PGA and others are all in widely varying degree 'stakeholders', but some stakeholders possess 'rights' for which they have paid. It is not reasonable to take these rights transferring them to other stakeholders. The other stakeholders should, if the transfer yields net benefits, pay for them.

29) To the extent that this is indeed the case, the PGA applauds the change. It will indeed be an improvement if the second parties who cannot obtain relevant information now are to be informed. The PGA refers the Commission again to the Underwood example.

30) The PGA believes that the social and economic impacts are always at least relevant and that therefore the Chief Executive Officer (CEO) of the Department of Environment should always have regard to them. For reasons outlined above the PGA believes that perceptions of justice are a 'social' impact.

31) Although the Office of Appeals Convenor is a considerable safeguard, appeal to the Minister is not consistent with rule-of-law principles and runs the risk of having that office accuse of partiality.

32) Where the applicant is seeking a new right it should bear the cost but where the issue is the taking of an existing right those who benefit should bear the cost.

33) The Crown cannot manage the reserves it has now and land under its management often breeds weeds and pests as well, of course, as the intended species.

34) Currently circulating draft regulations do not allow for normal day-to-day farming activity. Please see the PGA Submission to Derek Carew-Hopkins A/CEO Department of the Environment -- attached at the very end of this document after the WA State Submission to your Inquiry.

35) If the potential purchaser of a property landholder may avoid significant overpayment by discovering the clearing will not be permitted, then his gain is at the expense of the existing landholder. The presence of this paragraph implies recognition that significant costs are in fact imposed on individuals.

36) Surely the means of compensating those who 'bear greater hardship than others' should be achieved before the taking occurs. What is more, the means seem to us to be the obvious ones of monetary compensation for loss, the purchase of the relevant rights.

37) In the absence of a buyer for the public good, market-based mechanisms did not exist. We hesitate to accuse the authors of the Submission of 'prejudice' but ask how they could believe that it did.

38) Even if 'incentives' as the term tends to be used in the bush were not notoriously subject to rorting, any 'incentive' that is less than a landholder's cost will not produce equity and most often little cooperation.

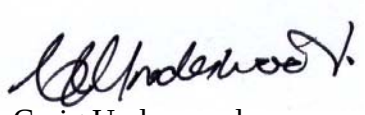
39) While it is true that the Commission has not provided quantitative analysis the most basic economic theory supports the opinion that the recommendations it makes in the Draft Report will tend toward environmental management maximising the benefits to costs ratio for the whole community. At Box 24 it does briefly explain some of the underlying theory. The WA Government does not directly challenge Box 24.

Conclusion:

Except for its brief discussion of duty of care, the PGA contends that the WA Government misses the essential point of the Inquiry; namely, what are the most appropriate procedures for the Governments that wish to reduce the increase of salinity and preserve biodiversity to adopt. The PGA does not accept that command and control methods can be adequately informed, sufficiently diverse to achieve efficiency even if unheard of resources were devoted to them, are fair now or without compensation for loss of only existing rights can be made so. Finally it should not be assumed that the bureaucrats themselves, the Commission or farmers will be entirely free from 'prejudice' but the PGA does not understand how the accusation advances the argument.

The PGA has not had time to go back to *A Full Repairing Lease* to check the validity of our impressions, but the PGA did not read it as the WA Government obviously has. The PGA only repeats a request we made to you verbally, namely, that the Final Report be very clear when expressing what it intends.

At several points the WA Government implies that the, in our opinion undesirable, procedures are forced upon it by Commonwealth law. The PGA does not does not accept this is the case and is of the opinion that WA Government chooses not to adopt the provisions of the intergovernmental agreements that imposed economic, scientific, and equity disciplines on their regulatory processes. The Commission might explore the issue.



Craig Underwood
Chairman Private Property Rights Committee

**SUBMISSION OF
THE WESTERN AUSTRALIAN GOVERNMENT**

on the

PRODUCTIVITY COMMISSION DRAFT REPORT

on the

IMPACTS OF NATIVE VEGETATION AND BIODIVERSITY REGULATIONS

The **[1]** Western Australian Government welcomes the opportunity to provide a submission in response to the Productivity Commission's Draft Report 2003 ("the Draft Report") into the Impacts of Native Vegetation and Biodiversity Regulations.

INTRODUCTION

Western Australians place great value on the richness of the State's biodiversity and native vegetation and the subsequent conservation and management of this resource.

The Productivity Commission's Draft Report raises serious concerns for the Western Australian Government. Key findings contained in the Draft Report are simplistic and **[2]** generalised to the point where they may contribute to reinforcing prejudices rather than assisting in understanding complex issues and improving policy and regulatory regimes.

This submission consists of four sections:

1. A 'general comments' section that places the Draft Report in the context of other recent Australian Government documents.

2. A 'statements of concern' section that highlights particular statements in the Draft Report that are of concern to the Western Australian Government.

3. A 'specific comments' section that identifies specific areas in the text that require elaboration or contain factual inaccuracies.

4. A section outlining discrepancies in relation to the evidence presented to the Productivity Commission by some of Western Australia's 'affected landholders'.

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1. GENERAL COMMENTS

The scope of the Productivity Commission Inquiry is sufficiently broad to enable a valuable assessment of the land clearing controls both in Western Australia and nationally (Draft Report, pp. V, VI). However, the Western Australian Government considers that the draft findings and recommendations (pp. XXVIII-XXXII, pp. 426-32) are inconsistent with the Commission's operating principles and general policy guidelines; those being:

- The provision of independent analysis and advice;
- The use of processes that are open and public; and
- To have overarching concern for the community as a whole, rather than just the interests of any particular industry or group.

The Commission states (Draft Report, p. XXXIII) that it "has not been asked to consider whether the benefits of existing regulatory approaches outweigh their costs" and that the focus of the inquiry is on the impacts on landholders and not to assess the benefits of native vegetation and biodiversity conservation as such (Draft Report, p. 4). However, it is difficult to see how the Commission, by taking such an interpretation, can fulfil the requirement of its reference to report on the impacts on sustainability and regional communities, including positive impacts. Also, how can the Commission report on the effectiveness of regulatory regimes in reducing the costs of resource degradation if it does not assess all such benefits? **[3]**

The Draft Report provides little recognition or examination of the reasons why clearing controls have been necessary, but places emphasis on the current regulatory situation (pp. 405-20). Nor does the Draft Report adequately address the major and severe impacts and economic costs on productivity, land and water degradation and biodiversity that have occurred as a result of excessive clearing in the past. **[4]**

The Commission has not adequately reflected the central role of Commonwealth **[5]** and national policy over an extended period in driving regulation to protect native vegetation. More than ten years ago, the Intergovernmental Agreement on the Environment stated national policy with great clarity: "conservation of biological diversity and ecological integrity should be a fundamental consideration." In our view it is an oversight that the Draft Report makes no reference to the *National Objectives and Targets for Biodiversity Conservation 2001-2005(2001)* published by the Commonwealth. Its first target (1.1.1) is that "By 2001, all jurisdictions have mechanisms in place, including regulations, at the State and regional levels that:

- Prevent decline in the conservation status of native vegetation communities as a result of land clearance; and
- Prevent clearance of ecological communities with an extent below 10 per cent of that present pre 1750.

The introductory text describes how States and Territories have "progressively strengthened legislation controlling clearing of native vegetation on private freehold and leasehold land (Draft Report, p. XXIII). This does not clearly acknowledge the role that the Commonwealth Government has played in instituting actions such as the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* ("EPBC Act") thus directly impacting on the drivers to protect biodiversity at the State level. The EPBC Act specifies that "Commonwealth approval is required for actions that are likely to have a significant impact on native vegetation containing species or communities of national environmental significance" and also contains other provisions to encourage improved management of native vegetation including conservation agreements. Other examples of the Commonwealth driving the agenda to control land clearing include the *National Land and Water Resource Audit (2002)* and the *National Objectives and Targets for Biodiversity Conservation 2001-2005 (2001)*, and very importantly, linking these to Commonwealth funding programs such as the National Heritage Trust.

The OECD report *Encouraging Environmentally Sustainable Growth in Australia (2001)* noted the importance of State regulation to support Commonwealth funding programs, pointing out that "subsidising revegetation and allowing land clearance at the same time is obviously not cost effective". **[6]** The report also considered the severe limitations to approaches based on property rights and market instruments, and its analysis, in contrast to the Commissions finding in favour of a much larger role for regional decision making, found significant problems with local devolution. While favouring increased use of market instruments, the OECD report states "the emphasis will continue to be on regulatory coordination".

In finding that there has been little formal consideration given to policy approaches other than regulation (Draft Report, 3.1), that "legislation has often been introduced with little or no consultation" (Draft Report, p. XXV),**[7]** that there is a "lack of clear environmental objectives" **[8]** and "little assessment of the ultimate impact of regulatory regimes**"** **[9]** shows that the Commission has not fully acknowledged the enormous amount of effort that has been devoted to these policy questions by all Governments, and stakeholders, over an extended period. Just one example is the intensive collaborative work of the national Ecologically Sustainable Development Working Group on Agriculture, Fisheries and Forest Use that led to clear statements of national policy on native vegetation as far back as 1992. Section 11 of the *National Strategy for Ecologically Sustainable Development (1992)* sets out policy, including reviewing relevant legislation relating to clearing to "ensure criteria for assessing land clearance applications integrate enhancement of productivity of all lands with biodiversity conservation, land protection, water management and landscape values". This policy is

confirmed in the *National Strategy for Conservation of Australia's Biological Diversity (1996)* (Objective 3.2).

The Commission has not sufficiently considered to what extent private landholders have environmental as well as production responsibilities, nor the role of Government to ensure that land development is sustainable. The Commission appears to be suggesting that, unless they accrue private benefits, landholders have no responsibility to meet what the *National Strategy for Ecologically Sustainable Development (1992)* describes as a core national objective: "to protect biological diversity and maintain essential ecological processes and life-support systems". However, existing national policy in this regard is clearly stated in the *National Strategy for the Conservation of Australia's Biological Diversity (1996)* (p.30): "Direct beneficiaries of the use of land and water resources have a responsibility to maintain or restore the biological diversity functions of those resources". The WA Government considers this statement better reflects the community's view that sustainable agriculture, in a holistic sense, is a collective responsibility. Western Australia's vision of sustainable agriculture, developed with extensive community consultation, is contained in the recently released *Hope for the Future: The Western Australian State Sustainability Strategy (2003).* **[10]**

The Commission's view that biodiversity and other community wide objectives should be 'bought' from landholders is inconsistent with long standing policy and practice, covering all sectors, that proposals for activities which cause environmental impacts (which clearing vegetation obviously often does) should be assessed, taking into consideration of all significant impacts, including cumulative, regional and intergenerational aspects, and that public and private decisions should avoid serious or irreversible damage to the environment (*Intergovernmental Agreement on the Environment, 1992*). **[11]**

In the Industry Commission's *A Full Repairing Lease - Inquiry into Ecologically Sustainable Land Management (1999)* the Industry Commission recommended building natural resource management policy around a "statutory duty of care for the environment. Everyone who could influence the risk of environmental harm should be required to take all reasonable and practical steps to prevent any foreseeable harm from their actions. This would promote more cost-effective measures to protect the environment." The Productivity Commission should again confirm that a landholder, like every other industry or individual, has a responsibility to conduct their activities in a sustainable way, without significant adverse impacts on the environment. **[12]** The Productivity Commission could then address the question that State Governments and stakeholders have been wrestling with in practice for many years: at what point do actions or impacts go beyond the landholder's general responsibility and thus justify assistance from the public purse?

The Draft Report is also inconsistent with the following national principles also set out in the *Intergovernmental Agreement on the Environment (1992)*: environmental factors should be included in valuation of assets and services, that the polluter [more widely,

the impacter] should bear the cost, and that the most cost effective approach is for those best placed to maximise benefits and minimise costs [the landholder] to develop solutions and responses. The application of these principles to natural resource management is discussed at length in *A Full Repairing Lease (1999).*

The Productivity Commission should consider the practical costs of a model where the offsite benefits to biodiversity, salinity, climate, water quality etc. have to be calculated for each landholder and paid for by Governments, and perhaps, as a logical corollary, the downstream and offsite impacts of salt, nutrients, pesticides, dust, smoke, greenhouse gasses etc. leaving a property also need to be calculated and recovered through Government or court action. Such a model is plainly socially and economically absurd. **[13]**

The Industry Commission considers these issues in some depth in *A Full Repairing Lease (1999)*, and recommended a package built around three pillars, one of which was a national regulatory regime to ensure resource owners and managers take into account the environmental impacts of their decisions.

The regulatory measures taken by the WA Government represent a balance between individual and community interests, between cost effectiveness and equity, between flexibility and certainty, between legal and administrative workability and the need to apply to a huge range of different circumstances. They have evolved over time in consultation with all parties, and will continue to evolve. Rather than merely repeating anecdotes of problems (what broadly applied legislation in any area does not result in some problems and anomalies?), and making such easily stated generalised recommendations as simplifying, rationalising, coordinating etc., it is our opinion that the Commission could provide a balanced comparison between the benefits of the legislation against the negative impacts and provide practical recommendations for improving specific regulatory instruments.

The Productivity Commission's task is "to assess and compare the cost effectiveness of current and alternative approaches in promoting the community's environmental goals and thus establish whether those goals can be achieved at less cost to landholders and/or society overall than current regulatory frameworks" (Draft Report, p. 4).

The Draft Report gives a consistent impression of being focussed on negative impacts rather than positive impacts and on 'affected landholders' views and interests rather than the needs of the wider community **[14]** (pp. XXVIII-XXXII, 426-32). Neither the Productivity Commission's policy and operating guidelines nor the terms of reference suggest this is the intended focus. Use of available quantitative data sets relating to native vegetation, revegetation condition of the natural resource base, rural production and financing has been very limited (Draft Report, p. XXIV, XXVI). It does not appear that West Australian 'affected landholders' evidence was critically evaluated by the Commission in making its various findings and conclusions (Draft Report, pp. XXVIII-XXXII, 426-32).

2. STATEMENTS OF CONCERN

Employment of Sustainable Farming Practices

The Draft Report states that "there is abundant evidence that Australian farmers are increasingly aware of and are employing sustainable farming practices" (p. 20). While this is correct in one respect, there is also abundant evidence that voluntary adoption of sustainable farming practices has not been and remains insufficient to achieve sustainable landscape outcomes. It is difficult to understand why the report omits this and does not consider the role of regulation, as part of a full suite of policy instruments employed, in bringing about the uptake of such practices. Instead, the section carries on (Draft Report p. 22) to describe only negative effects of Government policies.

The well-documented future expansion of salinity in Western Australia does not support the Commission's view in relation to sustainable farming practices. **[15]** The Western Australian Government feels that it is important that the Commission's analysis of the land clearing issue recognise that the emergence of secondary salinity following clearing is usually variable and long term (20 – 50 years) (see *National Land and Water Resources Audit (2002*)). The resulting secondary salinity is not easily reversed, despite the long-term investment in research and development and the best efforts by many innovative farmers.

Western Australian Legislation

The Commission found that legislation had diverse or no stated objectives and concluded that "objectives of the regimes be clearly stated so that landholders and the community understand what the regimes are intending to achieve" (Draft Report, p. 147).

While this is true of the drafting style of old legislation in Western Australia, the need for the legislation was widely debated by industry and community groups for several years prior to the legislation being proclaimed. For example, in the early 1970s, irrigation farmers were strongly pressing Government to control clearing in water supply catchments as water quality (salinity 700 – 1000 ppm) had declined to the extent that irrigated agriculture was being seriously affected. Public drinking water supplies were at times failing to meet World Health Standards.

Therefore, it could be argued that since the introduction of clearing controls in Western Australia, for both the gazetted water supply catchments and the general agricultural areas in the 1970s and 1980s, the avoidance of additional secondary salinity impacts on

public water supplies and agricultural land has always been clearly articulated as the prime focus. Unlike soil erosion, secondary salinity is very difficult and expensive to manage and requires a long-term commitment.

Retention of Native Vegetation

The Commission's views about the retention of native vegetation appears to underpin their entire analysis as outlined in the following example. "Regulation that requires the retention of native vegetation and the protection of biodiversity beyond the above levels will impose a net cost on the landholders affected. All jurisdictions appear to seek to protect native vegetation and biodiversity well beyond that needed to provide net benefits to landholders" (Draft Report, p. 110).

As already described, the Western Australia wheat and sheep belts are already feeling the effects of previous land clearing in the form of a serious secondary salinity problem that affects both private agricultural land, public water supplies, public and private infrastructure and nature conservation reserves. It is clear that the levels of remaining native vegetation in conjunction with the farming systems currently utilised are insufficient and unable to maintain a hydrological balance to either reverse or maintain the present level of secondary salinity (*Final Report of the Native Vegetation Working Group (2000)*). The problem is, according to all studies, only going to get worse (*Final Report of the Native Vegetation Working Group (2000)*). In these circumstances, regulation of clearing provides major benefits to landholders as a group and the Commission's finding that in aggregate the Western Australian Government seeks "to protect native vegetation well beyond that needed to provide net benefits to landholders" is clearly wrong.

Data for Western Australia shows that in most cases there is less than 5% native vegetation remaining on land suitable for agriculture (see *National Land and Water Resources Audit (2002)*). Until 1996, land clearing proposals were assessed according to the percentages of vegetation remaining on sub catchments. The minimum levels of vegetation considered to be necessary to maintain some sort of hydrological balance to avoid future secondary salinity problems was thought to be 20 -25% depending upon the rainfall zone. This was clearly much greater than levels occurring on most farms. **[16]**

Landholders accepted this assessment and in those shires where much less than 10% native vegetation remained, made serious investment in protecting existing remnant native vegetation and revegetating landscape at risk of secondary salinity.

It should be noted that the *National Objectives and Targets for Biodiversity Conservation 2001-2005 (2001)* calls for regulation to "prevent clearance of ecological communities with an extent below 30% of that present pre 1750". Does the

Commission regard this as an "arbitrary across the board requirement" (Draft Report, p. XXXIV) that "imposes unnecessarily large costs on landholders"?

Who Pays?

The Draft Report states, in relation to who should pay, that "where land holders individually or as a group are the principal beneficiaries of conservation effort, not only is there a clearer case for them to pay for that effort, but the case for intervention is correspondingly weaker. That is because generally speaking, landholders will seek solutions that yield private benefits, including solutions to local problems" (p. 26).

There are serious problems with this line of argument as its validity is dependent upon the assumption that the problems arising from clearing are both on site and reversible. **[17]** It is evident that viable solutions to salinity have not emerged in the past 50 years as the problem is large and continues to grow (see *National Land and Water Resources Audit (2002)).* In addition, where salinity is the key problem resulting from land clearing, the impacts are often off site, irreversible and emerge in the long term. For an individual business, the benefits of conservation are unlikely to directly accrue to them in the normal business planning cycle. **[18]** Therefore there are serious difficulties with the transfers of costs and benefits between individual landholders, broader groups of landholders or community.

A Full Repairing Lease (1999) explains: "Although the contribution of an individual producer to an environmental impact is often very small, the cumulative impact across many producers can be dramatic. Because ecosystems are enormously complex, the nature and severity of the environmental impacts of a given economic development varies widely over time and location. Sometimes the cumulative impacts can be global in their scope, others are national, but in the case of agriculture, most have a significant local or regional dimension. The complexity also means that impacts generally can be very difficult to estimate in advance." **[19]**

In Western Australia, landholders have replanted native vegetation **[20]** on a very large scale (in excess of 450 000 ha) with significant public and private investment. Studies to evaluate the effectiveness of those catchment scale plantings found that they were insufficient to either hold or reverse the extent of secondary salinity in the medium and low rainfall zones. The conclusions of those studies are that much greater levels of revegetation, in addition to the existing native vegetation would be required to hold and/or reverse Western Australia's salinity problem (*Salinity Investment Framework Interim Report – Phase 1 (2003) (DOE)).* **[21]**

As well as benefiting landholders directly, *A Full Repairing Lease (1999)* pointed out: "many of the services of natural capital have the characteristics of a *public good* — a number of people enjoy them automatically and simultaneously but the extent of their enjoyment does not affect that of anyone else. The larger the number of people affected

the more difficult it is for individuals to conserve natural capital for future generations, either on their own or in voluntary cooperation with others. For all these reasons, the market on its own is unlikely to conserve sufficient natural capital for future generations". The Industry Commission found that "In such circumstances, only government can ensure a just solution to what and how much natural capital should be left for future generations".

To reiterate the Western Australian Government's present policy position, as set out in the *Submission of the Western Australian Government to the Inquiry Into The Impacts Of Native Vegetation And Biodiversity Regulations (2003)* (p. 5), concerning the appropriateness of the current distribution of costs for preventing environmental degradation: "the Western Australian Government supports the application of the "impacter pays" principle in the area of native vegetation and biodiversity conservation. However, it also recognises that there may be a case for short-term adjustment assistance where there is a significant increase in a landowner's obligations which could not reasonably have been anticipated by the landowner".

Regulation and Adoption of New Technologies

The Commission's view that regulation may impinge upon landholders ability to "adopt new technologies" or "adapt to new opportunities – for example if trade liberalisation opens up further markets for Australian agriculture – may be restricted by vegetation clearance regulations" (Productivity Commission, 2003, p. 110) is flawed. This view does not appear to be based on any analysis of the agricultural sector's current use of the resource base, capacity to make further gains in production efficiency or grow either through intensification or expansion. Other than the few statements made by the 'affected landholders' there does not appear to be much evidence that the agricultural sector is being seriously hampered by the land clearing control regulation, especially in Western Australia (Draft Report, pp. 426-32).**[21]**

The Draft Report discusses the costs of offset plantings and concludes that they will have "negative impact on landholders" (p. 110). The Commission has ignored the benefits of offset planting that can accrue to landholders**.** **[22]** For example, clearing of grazing land to allow the establishment of large-scale viticulture developments dependent upon irrigation water harvested on the properties in landscape prone to salinity occurs in Western Australia, often with offset plantings as a condition. Offset plantings, when strategically located, have benefits in maintaining the water quality critical to the successful development of those projects.

In addition, there are opportunities for harvesting timber where fast growing plantation species are used. Returns from plantation forestry are presently better than grazing alternatives on land that is usually unsuited to viticulture development. The use of offsets with plantation species has been commonly used to maximise landholder returns while protecting water supplies in gazetted water supply catchments.

Clearing Controls

The Draft Report concludes that "what is clear is that relatively large numbers of landholders have been affected and for some, those impacts have been significant." (p. 111). This conclusion is apparently based on the ~100 submissions received from landholders and their representatives from around Australia, rather than any assessment of the implementation of clearing controls in terms of numbers of landholders who have indicated a wish to clear land, against the total numbers of landholders and the outcomes of the regulatory process (Draft Report, pp. 426-32).

Taken at face value, the Commission's conclusion is correct, however, it could also be interpreted to imply that relatively large numbers of landholders have been significantly impacted by land clearing control regulations.

For Western Australia, clearly any landholder that wishes to clear land is impacted by the clearing control regulations, as they have an obligation to notify their intent to clear.

Any analysis of Western Australian rural landholders would show that since the regulations were gazetted, less than 10% of all landholders have notified an intention to clear land (Watson, A. 2004, pers. comm., 29 January 2004). The greatest majority of those were able to clear some or all of their notified clearing. It could be concluded then that the impacts were negligible. As data in the Draft Report shows, the amount of clearing "permitted" during the past 7-8 years has declined (p. XXVI). A major reason for the decline in clearing activity in the period is that it coincided with a rapid expansion in secondary salinity following the large scale clearing of the wheatbelt in 1960s and 1970s.

By the early 1990s it was generally recognised by the community and by policy makers that the wheatbelt was already over cleared and that a serious salinity problem was evident (*Report from the Inter-Departmental Committee on Native Vegetation (2001).* In that environment, the numbers of clearing notices of intent registered from the wheatbelt declined significantly. Thus also did the aggregate of areas allowed to be cleared, from those regions but also the state generally.

Recommendations

The Western Australia Government does not consider that the Commission has sufficiently analysed and effectively evaluated the various tools and policy options as required under its terms of reference (3 (g)) "to make recommendations of a regulatory or non-regulatory nature that governments could consider to achieve desired environmental outcomes, while minimising the adverse impacts of the regulatory

regimes" (Draft Report, pp. 159-195). The descriptions and theoretical discussions do little to provide new information or guidance on the effective and efficient application or mix of those options. **[23]**

Western Australia already applies a suite of incentive and assistance measures to promote and achieve environmental outcomes across the various sectors as outlined in Table 1 for Western Australia.

Table 1: Western Australian Incentive and/or Assistance Schemes.

Scheme Type	Scheme Name
Technical Advice	- Land for Wildlife - Urban Nature - Woodland Watch -Regional Biodiversity Coordinators/Officer - Seed Management Services - Rivercare - Ribbons of Blue - WA Threatened Species and Communities Unit -Vegetation survey program - Bush Brokers - facilitation of private purchase
Training	- Skills for Nature Conservation - Rivercare - Ribbons of Blue
Financial Assistance	- Community Conservation Grants - Nature Conservation Covenant Program - Wetlands Conservation Program - Regional Parks Community Grants - Native Vegetation Trust Fund - Community Conservation Grants Program - Swan Alcoa Landcare Program - Priority Projects and Devolved Grants Schemes - Envirofunds Grants - Landcare Australia - Fishcare WA - Denmark Conservation Appeal - Auction for Landscape Recovery Pilot Project - Busselton Biodiversity Incentive Strategy - Conservation Zone Rates Rebate - Biodiversity Conservation Grants
Management Agreements	- Land for Wildlife - Woodland Watch - CALM Act Sect 16
Legal Protection	- Nature Conservation Covenant Program - Covenanting Program - Soil and Land Conservation Act covenant
Land Sale, Purchase or Donation	- Government conservation land purchase program - Bush Bank (WA revolving fund) - Bush Brokers (facilitation of private purchase) - Tax Deductible Donation - Subdivision for Conservation

3. SPECIFIC COMMENTS

This section, arranged under the Draft Report chapter headings, identifies specific areas in the text that require elaboration, contain factual inaccuracies or on which the Western Australian Government would like to specifically comment.

Note that the *Environmental Protection Amendment Act 2003 (WA)*, amending the *Environmental Protection Act 1986 (WA)* ("EP Act"), received assent on 20 October 2003. In part, the amended EP Act ("amended EP Act") came into operation on the 19 November 2003 (following proclamation on 18 November 2003). The remaining sections (37, 54(2), 55, 72(2) and (4), 75(3) and (4) and Part 9), namely relating to clearing controls and prosecutions for environmental harm, will receive proclamation and come into operation in 2004. Clearing regulations are currently being developed.

OVERVIEW

Native vegetation and biodiversity regulatory regimes under review

The introductory paragraph of this section (p. XXIII, para. 5) describes the changes and progressive introduction of legislative and regulatory regimes over time by States and Territories. The Western Australian Government believes, however, that the paragraph is misleading in that the Commonwealth's role in instituting legislation (*Environment Protection and Biodiversity Conservation Act 1999 (Cth)*), funding programs such as the Natural Heritage Trust and other processes to drive legislative change in States and Territories is ignored. While there is a limited mention of these significant national drivers further on in the section, their omission from the introductory paragraph creates a distortion, which requires rectification.

Table 1 (p. XXIV) does not clearly outline what information is being conveyed. The meaning of the figures is not sufficiently described. To minimise misrepresentation, there is a need to further clarify this information.

Impacts on landholders

Positive impacts for landholders from regulation

The text identifies that regulation may bring about education as a by-product (pp. XXXI – XXXII). The Western Australian Government would like to make it clear that it advocates the use of both regulation and educational processes in ensuring community understanding and adoption of sustainable and profitable land management techniques.

While the Draft Report briefly alludes to the benefits that native vegetation can provide to landholders (p. XXXI, para. 4), it gives the impression that biodiversity is a benefit to the community rather than the individual landholder. Evidence of this philosophy can be found on page XXXII (para. 2), page XXXVI (Box 5, last dot-point), page XXXIX (para. 6) and page XLV (Draft recommendation 8). This position fails to recognise that benefits from biodiversity can accrue to individual landholders **[24]** as documented in *Hope for the Future: The Western Australian State Sustainability Strategy (2003).*

Impacts on regions and other industries

The Draft Report states that the Inquiry has "received little evidence from the mining and infrastructure industries about the impacts of native vegetation regulations" (p. XXXII, para. 5). The Western Australian Government considers the Productivity Commission should recognise that it is difficult to quantify the overall implications of native vegetation and biodiversity regulations for the mineral and petroleum exploration and production industry sector and the implications will vary between different types of projects. Although there will be time and monetary costs (e.g. collection of information and rehabilitation research) incurred by companies in meeting requirements resulting from the environmental approvals process, industry has to a large extent accepted that these are a necessary part of ensuring responsible development. [25]

The Draft Report states that "In several jurisdictions, extractive industries are exempt from general native vegetation controls and are subject to industry specific legislation" (p. XXXII, para. 5). The Western Australian Government considers it is important that the Productivity Commission recognise that this is not the case in Western Australia.

The approvals process in this State for mineral and petroleum exploration and production includes the following principal legislation:

- *Environmental Protection Act 1986 (WA)*;
- *Conservation and Land Management Act 1984 (WA)*;
- *Wildlife Conservation Act 1950 (WA)* (to be replaced by the proposed Biodiversity Conservation Act);
- *Soil and Land Conservation Act 1945 (WA)*;
- Where applicable, the *Environment Protection and Biodiversity Act 1999 (Cth)*;
- Under the *Mining Act 1978 (WA)* and the *Petroleum Act 1976 (WA)* the Minister for State Development can apply environmental conditions in the approval process for mineral and petroleum projects; and
- State Agreement Acts for major projects are also developed to contain appropriate environmental clauses that ensure compliance with the environmental approvals.

It is also important to note that industry codes of practice provide guidance to mining and petroleum companies about managing environmental quality for exploration and production activities.

Ways of reducing adverse impacts

The Western Australian Government considers the argument outlined throughout this section (e.g. p. XXXIV, para. 2 and p. XXXIX, paras 3-4) that biodiversity outcomes could best be delivered through regional institutions and that such delivery would be 'less cost' is superficial and unsubstantiated. It is recommended that the Productivity Commission further analyse this proposition. **[26]**

Improve existing regulatory regimes

The Productivity Commission has suggested improvements to existing regulatory regimes. Western Australia is currently implementing the Keating Review recommendations in relation to the minerals and petroleum industries to ensure regulatory 'best practice'. The Keating Review provides a detailed analysis of the State approvals processes and relevant Commonwealth legislation affecting approval of mineral and petroleum projects in Western Australia. The Review's recommendations include advice to reduce complexity, improve timeliness and increase certainty in the approvals process.

In relation to the suggestion in the Draft Report that "statutory time-frames for assessing permit applications should be applied" (p. XXXIII, Box 3, dot-point 4), Western Australia feels that any such requirement should be coupled with appropriate requirements on the applicant to provide information that is adequate to allow assessment. **[27]**

Promote private conservation

The Draft Report provides examples of market and non-market mechanisms that could be used to encourage individual landholders to provide more environmental services (p. XXXV, para. 2). Whilst it is understood that the text aims to provide examples only, it is felt that the omission of mention of any role of State agencies in providing and/or administering such mechanisms ignores the reality of State involvement.

DRAFT RECOMMENDATIONS AND FINDINGS

Draft findings

The Draft Report identifies a number of issues in the draft findings that can be summarised into key areas as outlined as follows.

Review and assessment of regulatory processes

The following addresses draft findings 3.1, 3.2, 7.11, 7.14 and 7.15.

Findings 3.1 and 3.2 do not accurately reflect the situations in Western Australia. Within Western Australia, a number of reviews of the current system of native vegetation regulation have occurred including the *Final Report of the Native Vegetation Working Group (2000)* and the *Report from the Inter-Departmental Committee on Native Vegetation (2001).* Groups representing landholder, conservation interests and Government compiled these reports.

The result of these reviews was to identify inadequacies in the current systems, and propose an integrated strategy to address these. As part of the reviews, most aspects of the management of native vegetation were considered. A large proportion of the amendments in the amendments to the EP Act are a result of implementing recommendations from these reports.

In Western Australia, the costs and benefits of introducing clearing controls within selected water supply catchments to protect drinking water quality has provided social and economic benefit to the community who have continued access to safe drinking water.

The amended EP Act also requires that a review of the Act be conducted every five years. This provides an opportunity to assess these legislative processes to ensure they are effective.

Inter agency projects are currently in progress to look at methods of improving mapping data. Mapping data is generally only used for preliminary information and confirmed on site before a decision is made in relation to a clearing proposal.

Regulatory regimes are often complex involving multiple approval processes

The following addresses draft findings 3.5, 7.5, 7.10, 8.5, 8.9.

In Western Australia, the amended EP Act will streamline the approval process, reducing the number of referrals involving land clearing to the Environmental Protection Authority. The merging of the Department of Environmental Protection and the Water and Rivers Commission into a single Department (now referred to as the Department of Environment), will allow landowners to seek most environmental approvals from a single Department.

In addition, the Western Australian Government is currently working with key stakeholder groups **[28]** to design and distribute accurate and updated information on the proposed clearing provisions in the amended EP Act. This information will be tailored to individuals and organisations directly affected by the new legislation. An aim of the new process is to ensure it is simpler and more straightforward for proponents, promoting greater awareness of the values of native vegetation and ensuring compliance.

Varied public consultation – greater public consultation

The following addresses draft finding 3.3.

The two pivotal reports, the *Final Report of the Native Vegetation Working Group (2000)* and the *Report from the Inter-Departmental Committee on Native Vegetation (2001)*, which key members of the community were involved in compiling, have played an integral role in the design and implementation of new clearing provisions in the amended EP Act

In addition, the Western Australian Government, through the Department of Environment, is currently consulting with key stakeholder groups on the implementation of the provisions.

Transparency and accountability

The following addresses draft findings 3.6, 7.6, 7.8.

The amended EP Act will introduce a more open decision making process. The new legislation will require proposals to clear native vegetation to be advertised, and submissions from the public to be considered. All decisions will be made public, along

with the reasons for the decision and proponents and third parties may appeal these decisions. This will allow third parties to obtain information regarding permits and decisions and submit appeals and comments. **[29]**

Weighing environmental factors against social and economic

The following addresses draft findings 3.4, 3.7.

Under the amended EP Act, the object of the Act is to protect the environment of the State. The clearing provisions to be introduced under the Act must have regard to the intent of the legislation, a principle of which is the conservation of biological diversity and ecological integrity. The amendments to the EP Act, however, also recognise the need to address the social and economic impacts of protecting the environment.

Under the clearing provisions, the Chief Executive Officer (CEO) of the Department of Environment can have regard to the social and economic impacts of a clearing application, even if they are at variance with the assessment principles laid out in Schedule 5 of the amended EP Act. **[30]**

In addition to this, proponents or third parties can appeal to the Minister for the Environment to overturn a decision made by the CEO to grant or refuse a clearing permit. While the primary concern of the Department will be environmental in most situations, the appeal process allows the final decision-maker (the Minister) to further consider economic, social and environmental impacts. **[31]**

Timelines

The following addresses draft findings 3.8, 7.7.

In order for an accurate and comprehensive assessment process to take place, the time required to gather the necessary information is often unpredictable and hence setting a time period does not suit the assessment process. For example, areas of native vegetation can sometimes contain rare plants, endangered ecological systems or other complex issues where the information is not easy to collect.

Measuring assessment time against an arbitrary time frame would not show any indication of the performance of the regulatory agency. Since each proposal to clear is different and involves different issues, the amount of time necessary to consider the issues is often unknown.

It is important to note that when measuring performance, the complexity of the issues involved in the assessment must be considered.

Despite these issues, the Western Australian Government is aware of the uncertainty this produces for proponents and has committed to developing guidelines for timely assessment. These guidelines will be available to the public, as currently occurs for assessment under Part IV of the EP Act.

Appeals

The following addresses draft findings 3.9, 7.9.

Under the amended EP Act, appeals over decisions relating to approvals to clear native vegetation will be considered by the Minister, through the Office of the Appeals Convenor, which is a statutory office. The Appeals Convenor is independent to the regulatory agency and makes recommendations to the Minister on the outcome of an appeal.

Costs and negative impacts on landholders

The following addresses draft findings 3.10, 5.5, 6.5, 7.11.

As with any other type of development, proponents are required to submit information in support of their application such as plans and surveys. Application costs are a part of the capital cost of the proposed development and would generally be only a fraction of the total cost and potential economic benefit if the development goes ahead. Site information gathered also benefits the landholder in determining if the proposed development is likely to succeed. **[32]**

Requesting information from the proponent is also a mechanism for involving the landholder in the assessment process and assisting them in developing an understanding of the environmental impacts of their proposal. In addition, requesting information also provides an avenue for landholders to offer their own local knowledge of their area.

As with the introduction of any regulatory process, incentives and assistance measures must form part of the package. With the introduction of the new clearing provisions under the amended EP Act, an incentive and assistance package has also been introduced to provide additional support and resources for managing native vegetation.

In respect of finding 5.5, the issue of pest species is highly specific and difficult to discuss in a broader context. Landholders' activities, such as developing grazing land, may contribute or cause the pest problem**.** **[33]**

Ecological research shows that an area of land with many plant species is more productive and resistant to drought, pests, and other stresses than a comparable plot with only a few species. Native vegetation harbours beneficial insects and fauna that are able to help control agricultural pests biologically (Saunders, Hobbs & Erlich, 1993). The healthier an area of native vegetation, the less likely it is to contain exotic pest species. Addressing the cause of the problem, rather than removing the native vegetation and the habitat that the 'pests' live in is a more appropriate response.

The examples used in the Draft Report reportedly refer to native plant species considered to be pests as well as non-native species (pp. 101-02). While this can be so, the examples do not clearly establish this to be the case.

Poorly specified/inconsistent policies and objectives

The following addresses draft findings 5.1, 5.6, 5.7, 7.1, 8.1, 8.4.

The Western Australian Government has committed to a range of policy initiatives to address the protection and management of remnant vegetation. These initiatives are consistent with national policy for the protection of biodiversity outlined in the *National Objectives and Targets for Biodiversity Conservation 2001-2005 (2001).*

The Object and Principles of the amended EP Act state the Act is responsible for protecting the environment of the State with regard to five principles, which include the conservation of biological diversity and ecological integrity.

In addition to this, the amended EP Act has clarified the purpose of clearing legislation by introducing a set of ten principles which proposals are assessed against. These principles are listed in Schedule 5 of the amended EP Act. The principles clearly state when native vegetation should not be cleared. Decisions should generally not be at variance with the clearing principles. However variance is possible if there is a good reason and this reason is recorded and published.

As indicated in the scope of the Inquiry, assessing the benefits of native vegetation conservation was not a key focus (p. XXIII, para. 2). The Western Australian

Government is of the view that before the findings of the Inquiry can be verified, a comprehensive investigation of these benefits should be conducted.

In addition "broader environmental goals" (p. XLVIII, draft finding 5.6) are not defined in the Draft Report, nor does the Draft Report address how current regimes might be inconsistent with those discussed.

Property rights, duty of care and compensation

The following addresses draft findings 6.1, 6.2, 6.3, 6.4, 8.8.

Any refusal by the Western Australian Government to clear native vegetation is based on an assessment that environmental degradation of some form will occur as a result of the clearing. The most common result of over-clearing in Western Australia is salinity, which often renders the cleared land useless and has resulted in millions of dollars being spent to combat the problem.

In addition, the financial returns discussed in the draft findings are speculative and may not be realised if development occurred. Public perception that clearing legislation automatically prohibits all land clearing is misguided. Normal day to day farming activities, such as maintenance of fencelines, controlling weeds and clearing for fire prevention will be permitted in Western Australia without the requirement for a permit. **[34]**

Clearing for new developments and expanding existing enterprises is not a normal farming activity. Expanding a farming enterprise using new technologies, such as centre pivot technologies is a relatively new development and impacts from additional clearing need to be considered.

The new clearing provisions under the amended EP Act provide potential landowners with the opportunity to liaise with the Department of Environment to determine if vegetation on a property could be cleared if they bought the land. **[35]** This provides landowners with the opportunity to assess the situation before undertaking a business venture.

It is accepted that some landowners do bear greater hardship than others and this is a matter of equity that WA is endeavouring to address. The Government is committed to working with peak farming groups to develop criteria to identify those worst affected by the introduction of the clearing provisions and identify ways in which assistance can be provided to these individuals. **[36]**

In Western Australia, compensation has been available under the *Country Areas Water Supply Act 1947(WA)* ("CAWS Act") to landowners within a few salinity risk water supply catchments if an application for a clearing licence was refused. \\\\???

Illegal clearing

The following addresses draft findings 5.2, 5.3, 5.7

The key issue is that in the absence of an effective regulatory system (such as prior to the clearing regulations under the *Soil and Land Conservation Act 1945* ("SLC Act"), clearing rates were consistently much higher. Market-based and voluntary mechanisms were unable to prevent unsustainable clearing and clearing of areas of high conservation value. **[37]**

Pre-emptive clearing occurs when considerable publicity is given to proposed changes, and no consideration has been given to methods of limiting such damage. In Western Australia, a transitional provision was inserted in the amended EP Act to discourage unlawful clearing while the provisions of the Act were being debated in Parliament. This appears to have been largely effective. Under the provision, when the Act is in operation, the CEO of the Department of Environment can issue a retrospective revegetation conservation notice, requiring re-establishment of the vegetation. The Department of Environment will investigate and, where appropriate, order persons who unlawfully clear land to restore the vegetation.

Illegal clearing, like all illegal activities, is only likely to occur within a small segment of any population. It is for this reason that a range of effective legal sanctions must exist.

The new clearing provisions under the amended EP Act will also introduce a simpler, more streamlined application and assessment process. Landholders will be able to clearly understand how the system works and what the requirements are. It is anticipated that this is likely to increase compliance.

Greater flexibility

The following addresses draft findings 5.4, 7.3, 7.4.

The application of the Principles as laid out in Schedule 5 of the amended EP Act will allow assessments of environmental concerns at a local level, rather than applying blanket rules across the State. The new process will encourage local knowledge and input through invited comment.

Incentives and assistance measures

The following addresses draft findings 6.7, 7.2, 8.2, 8.3, 8.6, 8.7, 8.10.

Incentive and assistance packages are being further developed by the Western Australian Government. These packages will address issues such as fencing, rehabilitation and weed control, acquisition of land of high conservation value and an

increase in resources to programs providing advice and support to landowners on vegetation management.

It is unlikely that the permit system soon to be introduced in Western Australia will encourage fragmentation of vegetation. As part of the assessment, the significance of the vegetation in relation to the local area is considered. Native vegetation should not be cleared if it is a significant remnant of native vegetation in an area that has been extensively cleared.

As noted previously, regulation is only one tool in the overall management framework for native vegetation. Incentives are another important tool. **[38]** It is desirable that incentives complement the regulatory framework.

CHAPTER 3.3 - KEY FEATURES OF THE REGIMES

Box 3.2 Key definitions and requirements (*Western Australia)*

The summary for Western Australia contains several omissions and a significant error. In regard to the omissions, firstly, there is no mention that land owners and occupiers have an obligation under the SLC Act to notify clearing of more than one hectare for a change of land use. Secondly, no mention is made of the *Country Areas Water Supply Act 1947 (WA)* ("CAWS Act") that regulates clearing in six gazetted water supply catchments.

The text also incorrectly infers that the Commissioner of Soil and Land Conservation (the Commissioner) is operating ultra vires the SLC Act. The only grounds the Commissioner can object to a land clearing notification (under Regulation 4 of the *Soil and Land Conservation Regulations 1992*) is land degradation. If the Commissioner is alerted to other issues, such as biodiversity impacts or water quality issues, the proposal will be referred to the agency responsible for the legislation dealing with the issue. The Commissioner cannot and does not object to clearing on any other basis other than land degradation, though there is provision for consideration of other factors on appeal to the Minister for Agriculture (see below).

CHAPTER 3.4 - IMPLEMENTATION AND ADMINISTRATION

Assessment of applications to clear native vegetation

In the Draft Report, the Shire of Dandaragan argues that "the Western Australian Commissioner of Soil and Land Conservation does not balance the likelihood of land degradation resulting from the proposed clearing against the social and economic benefits that may result from the clearing" (p. 60, para. 2).

Other than on appeal to the Minister for Agriculture, the SLC Act does not allow for consideration of issues other than land degradation. The Commissioner does not have authority to consider the social and economic benefits of a clearing proposal.

Dispute resolution

The Draft Report infers that there is little opportunity for landholders to appeal against objections made to the Soil and Land Conservation Council (SLCC) (p. 64, para. 2). In correction, landholders actually appeal against the decision of the Commissioner of Soil and Land Conservation rather than the SLCC. The landholder submits an appeal to the Minister for Agriculture. The Minister establishes an Appeal Committee to report on the matter with the Minister's decision being final.

CONCLUSIONS AND DRAFT RECOMMENDATIONS

Draft recommendation 9.5

Draft recommendation 9.5 states that "greater use should be made of the extensive knowledge of land holders and local communities…" (p. 199).

In Western Australia, Land Conservation District Committees (LCDCs) have been invited to input into the assessment of every clearing proposal since the land clearing regulations were gazetted in 1986. This is a requirement under the assessment guidelines. In the majority of districts, land clearing has been 'off landholders' agendas' for approximately a decade, as the impacts of clearing became better understood. However, in those districts where land clearing still occurs, few LCDCs provide advice into the assessment process. These community groups have found it

difficult to combine landcare with regulation. They report that land clearing and drainage issues are divisive and they would rather not provide advice to the regulators responsible for making the decisions. (A Watson pers.com)

Draft recommendation 9.5 also states that "Subject to regional priorities, some across-the-board rules, particularly those currently applying to native vegetation regrowth, should be relaxed" (p. 199). It is the view of the Western Australian Government that the Productivity Commission has not taken into account the environmental basis for regulation of regrowth and is providing conclusions about the environmental merit of regulating regrowth without properly assessing environmental values.

Native vegetation in Western Australia is generally highly complex and unique. It has not been demonstrated that it is possible to artificially recreate a natural community with the environmental values of the original vegetation. However, where the standing vegetation has been removed and the vegetation regenerates from soil stored seed, bulbs, rhizomes and lignotubers, over time, the vegetation can return to the typical vegetation of the land. Such vegetation removal can occur through natural events such as fire, drought and flooding as well as through clearing. 'Regrowth' may have high value as native vegetation. In many areas, the only native vegetation remaining is 'regrowth'. It should also be noted that the term 'regrowth' is sometimes used by landholders to refer to any native vegetation that does not contain trees.

Limits of regulation

The Draft Report states that "continued reliance on regulation to achieve a range of broadly defined environmental goals appears unlikely to be the most effective least cost option from a whole-of-community perspective. In this case, compensation would merely shift an unnecessarily large burden from landholders to taxpayers. Ways should be found to minimise the cost burden, not just redistribute it" (pp. 200 - 01).

The Commission appears to have drawn this conclusion, despite providing little evidence that it has carried out any in-depth studies on effective 'least cost' options. While it has described a range of option/tools currently used in various states, no quantitative analysis is presented or discussed**.[39]** The analysis also overlooks the very significant Federal and State investment in conservation and biodiversity programs over an extended period. This investment includes capacity building in resource and risk management, demonstrations, direct assistance for fencing, revegetation, farming systems and new enterprise development to maintain or enhance the resource base.

SECTION G – WESTERN AUSTRALIA

This section also contains a series of factual errors concerning Western Australian legislation. These are outlined in relation to the relevant sections/legislation below.

G.1 Introduction and G.2 Current regulatory arrangements

In respect of the description of the current system of land clearing notifications, there are a number of inaccuracies in this section. Notices of Intent to clear are submitted to the Commissioner of Soil and Land Conservation (the Commissioner) rather than the Soil and Land Conservation Council (SLCC) (as stated on p.405, para. 1 and p. 406, para. 1).

The Draft Report also incorrectly states that the SLCC has primary responsibility for land clearing and that SLCC is an Inter Agency Group (p. 405, para. 4). The SLCC does not have a role with Notices of Intent to clear. The Commissioner has primary responsibility. The Commissioner meets with an Inter Agency Committee once a month (or as otherwise required), which provides advice to the Commissioner on matters under other relevant agency's legislation.

Soil and Land Conservation Act

The Draft Report incorrectly states that "Soil conservation districts are areas declared sensitive to degradation and in need of some restrictions on land use" (p.408, para. 1). The SLC Act provides for the proclamation of Land Conservation Districts (LCDs) by the Governor on the recommendation of the Minister for Agriculture. While the Minister has power to introduce regulation to restrict land use within LCDs, that power has not generally been used. A specific regulation 'prohibiting land clearing unless approved by the Commissioner' was gazetted for the Bruce Rock district, on the recommendation of the Bruce Rock community.

The Draft Report states that "The Commissioner has power under the Act to prevent the removal of individual paddock trees…." (p. 408, para. 5). This power has never been exercised in Western Australia.

The Draft Report makes many misplaced references to the Soil and Land Conservation Council (SLCC) in relation to Western Australian land clearing controls. The SLCC is appointed by the Governor on recommendation of the Minister for Agriculture. While the SLCC has many functions, including provision of advice to the Minister, it has no role in the assessment of Notices of Intent to clear under the SLC Act or licence applications under the CAWS Act. The Draft Report erroneously claims where an application to clear under the CAWS Act is refused, claims may be lodged with the SLCC for compensations (p.409, para. 2) Applications to clear under the CAWS Act are the responsibility of the Water and Rivers Commission (becoming the Department of Environment). The Commissioner may from time to time provide advice on land

compensation hazards, however the Commissioner is not the Decision Making Authority. Claims for compensation are not referred to the Commissioner; such claims are the responsibility of the Water and Rivers Commission.

The Draft Report states that "In 1991 soil and land clearing regulations were introduced that implemented new sub-catchment vegetation levels and salinity guidelines"(p. 409, para. 4). In 1991 there was an amendment to the 1986 regulation that inserted a two-year clause for the commencement of clearing. No new regulations were introduced that implemented sub-catchment vegetation levels and salinity guidelines. However, principles and guidelines were progressively introduced which considered vegetation levels when assessing notified clearing. Those guidelines were subject to exhaustive public consultation over an 18-month period and were published in March 1994.

Conservation and Land Management Act

Page 410, paragraph 3 should be amended to read "The Department of Conservation and Land Management (CALM was established by the *Conservation and Land Management Act 1984* (CALM Act) to administer the Act and the *Wildlife Conservation Act 1950.* CALM is responsible for the management of Western Australia's terrestrial conservation reserves, state forests, and marine parks and marine nature reserves, and for the protection of biodiversity throughout the State. CALM operates through a structure of nine regions throughout the State. It works with the Conservation Commission of Western Australia (in which terrestrial conservation reserves, State forest and timber reserves are vested) and the Marine Parks and Reserves Authority (in which marine parks and marine nature reserves are vested)"

Page 410, paragraph 4 should be amended to read "The CALM Act provides for conservation agreements over private and pastoral leasehold lands (s. 16). CALM may also purchase, in whole or in part, pastoral leases, freehold remnant vegetation and wetlands that are required for conservation purposes (s. 15) for future addition to the conservation reserve system".

Wildlife Conservation Act

Page 405, paragraph 1 should include reference at the end of sentence two to the "*Wildlife Conservation Act 1950* as an additional Act directly affecting native vegetation management".

Page 411, paragraph 3, sentences one and two should be amended to read, "The principal Western Australian legislation relating to biodiversity conservation is the *Wildlife Conservation Act 1950*; administered by CALM. All native flora is protected under the Wildlife Conservation Act."

Page 411, paragraph 4 should be amended to read "It is the Minister who declares flora to be rare. Declared rare (threatened) flora may not be removed by any person without the consent of the Minister, even if they reside on private land. The maximum penalty for removing protected flora without consent is $10 000 (s. 23F)".

Page 411, paragraph 6 should be replaced with "Any land in the State that is private land may be acquired by the Minister for Planning and Infrastructure under the *Land Administration Act 1997* for purposes listed in that Act (Note there are no compulsory acquisition powers for the Minister for the Environment).

Biodiversity Legislation

Page 416, paragraph 3 should be amended to read "It is envisaged that the proposed Act will be wider in its application than the WC Act, more open to community input and processes, contain more effective decision-making and enforcement mechanisms, incorporate mechanisms to facilitate community conservation efforts, and attempt to address the processes threatening the conservation of biodiversity".

Page 416, dot-point 4, the Minister's title should be amended to "Minister for the Environment".

Page 417, paragraph 2, sentence one should be amended to read "All decisions involving significant conservation risks must be authorised by the Minister, but more general cases of authorisation will continue to be administered by CALM".

G.4 Development of regulations

Page 418, paragraph 5 should be amended to read "As part of the consultation process for the proposed Biodiversity Conservation Act, CALM is undertaking several consultative sessions with interested groups such as indigenous, conservation and industry bodies, and Government agencies, on how the objective of biodiversity conservation can best be achieved. The consultation paper expressly requests suggestions that would help promote biodiversity conservation and sustainable resource use, and on the possible roles that the Conservation Commission and Marine Parks and Reserves Authority could be given".

Page 418, paragraph 6 should be replaced with the following "Following the closing date for public submissions in the Biodiversity Conservation Act consultation paper on 5 March 2003, CALM undertook a process of reviewing submissions (157 in total) and considering individual comments for possible inclusion in the drafting of the Biodiversity Conservation Act".

CALM has prepared a summary of public submissions document, which has been endorsed by the Minister for the Environment, and which summarises the key points raised in the submissions. This has been published and is available on CALM's website at http://www.calm.wa.gov.au/biocon_act_consultation.html.

G.6 Administration and implementation

Page 424, dot-point 3 should be amended to read "CALM, which is responsible for administering the CALM and WC Acts".

G.7 Impacts on landholders

Page 428, paragraph 2, sentence one should be replaced with "A number of property owners have expressed concern that clearing restrictions prevented their planned expansion of their farming enterprise and reduced their ability to be viable".

Page 431 paragraph 1 states that "Moreover, to be eligible [for WA Government run covenanting programs], landholders must enter into a conservation covenant that is binding in perpetuity on their bushland". Under the SLC Act, conservation covenants may be drafted to apply for a specified time period or in perpetuity. Most covenants were negotiated under the Remnant Vegetation Protection Scheme for a 30-year term.

4. DISCREPANCIES IN RELATION TO THE EVIDENCE PRESENTED TO THE PRODUCTIVITY COMMISSION BY SOME OF WESTERN AUSTRALIA'S 'AFFECTED LANDHOLDERS'

As background, the clearing regulation that requires landholders to notify their intention to clear has been in force since 1986. There was an amendment in 1992 that limited the commencement date of clearing to two years, for notifications received after 29 November 1991. In 2002 a further amendment removed the unlimited time for pre-1991 Notices. The proposed new clearing laws under the amended EP Act are not yet in operation.

The Draft Report states "landholders who purchased land prior to changes in native vegetation biodiversity legislation are particularly affected. **Collins** (sub. 182) gave evidence that clearing restrictions imposed on 1700 acres resulted in unplanned and premature sale of their land" (p. 427, paragraph 4).

Collins purchased his property in 1989, after the clearing regulation was in place. As Collins never notified the Commissioner for Soil and Land Conservation (the Commissioner) of any intention to clear, there has never been a land degradation assessment carried out on his property nor has there been a Soil Conservation Notice issued to restrict clearing. Collins was informed that if he intended to clear he would need to notify the Commissioner. If the notified clearing was subsequently objected, he would be able to apply to the Natural Resources Adjustment Scheme (NRAS), however he never notified.

Harris submitted that a soil conservation notice has had significant impacts on returns to the family farm (Draft Report, p. 428, para. 7 and trans. p.275). Harris advised that the "land owned and cleared by his son (12 months after submitting a Notice of Intent to clear) was placed under soil conservation notice even though there had been no objection from the Commissioner prior to clearing the land" (Draft Report, pp. 428-29). It should be noted that an advertisement was placed in the local paper, stating their intention to notify, however no notice of Intent was ever received and registered. Harris offered various explanations on different occasions as to why they did not progress their Notice of Intent to clear. They included their estimated $20,000 costs associated with the application, drought delaying development plans and financial reasons. Harris was advised informally by regional staff that clearing on that land was likely to exacerbate salinity.

The Commissioner investigated a report of "un-notified" clearing in the Harris property and the subsequent assessment indicated salinity was likely to occur as a result of the un-notified clearing. As a result, a Soil Conservation Notice was issued directing the landowner to refrain from clearing native vegetation on the property and to allow the

cleared land to regenerate. Harris does not accept the Commissioner's assessment of the salinity risks on the property. Therefore, the Department of Agriculture agreed to carry out drilling on the property and the resulting detailed hydrological study confirmed the extreme salinity risk associated with further clearing previously identified.

Beckingham submitted that the "changing nature of the clearing regulations has prevented him from clearing a significant proportion of his farm" (Draft Report, p. 429, paragraph 2 and trans pp. 276-7).

There has been no change to clearing regulation since Beckingham notified in April 1996 other than the removal of the "two-year" clause in 2002. Beckingham's 1996 clearing notification was objected by the Commissioner due to the risk of recharge leading to off-site salinity. Following a further review in 1997 the Commissioner had no objection to the clearing of 80 ha of regrowth. A Soil Conservation Notice was never applied to the land to restrict clearing. The Commissioner advised Beckingham that while new guidelines applied for the assessment of clearing notifications, the 1997 reassessment was carried out under the previous guidelines.

Wren claims that "although the SLCC found that clearing was unacceptable on parts of his land that had high biodiversity values it did not warrant purchase under the Natural Resource Adjustment Scheme (NRAS)". (Draft Report, p. 432, para. 1 and sub 119)

To be eligible for NRAS, an applicant must have had a Notice of Intent to clear rejected by the Government (i.e. either objected in total by the Commissioner or refused by the Environmental Protection Authority). Wren never submitted a Notice of Intent and therefore the Commissioner has never undertaken a land degradation assessment of the land. The Commissioner, not SLCC, was requested to prepare an Agreement to Reserve to protect native vegetation on the land as part of the WA Planning Commission's condition of subdivision. Wren refused departmental staff access to the land in order for an assessment to be carried out.

In addition, Wren submitted that consultation with landholders was lacking specifically in relation to the Leeuwin-Naturaliste Statement of Planning Policy (Draft Report, p. 419, para. 4). Community consultation during the preparation of the Leeuwin-Naturaliste Ridge Statement of Planning Policy (LNRSPP) was arguably the most comprehensive public involvement achieved to date in Western Australia over a regional land use policy. Consultation included workshops for the general public, interest group meetings, publication and responses on issues papers, a social assessment survey, public meeting, information days, panel hearings and individual meetings with landowners affected by recommendations for "Principal Ridge Protection" – high conservation value. Mr Wren and his wife attended many of these public events. As owners affected by "Principal Ridge Protection" and "Ridge Landscape Amenity" proposals, the Wren's had a private on-site meeting with representatives of the Western Australian Planning Commission (WAPC). The LNRSPP includes some conservation

constraints over a portion of the Wren's land, however in common with all lands in these categories, it does so in conjunction with positive incentives for achieving conservation by providing for limited subdivision or development opportunities linked to ceding or conservation covenants that secure the conservation values of the land in perpetuity.

Since approval of the LNRSPP in 1998, a number of affected landowners have taken advantage of this "win/win" approach. The Wrens have had a number of discussions with the WAPC, including an on-site visit from the then WAPC Chairman. Recent correspondence (8 January 2004) indicates the Wrens wish to re-commence discussions on subdivision/development opportunities and are in favour of ceding conservation land for addition to the adjoining National Park.

13 February 2004

Acting Chief Executive Officer
Department of Environment
PO Box 6740
East Perth WA 6892

Dear Mr Carew-Hopkins,

REF: DRAFT 13 - REGULATIONS TO SUPPORT NATIVE VEGETATION CLEARING PROVISIONS OF THE AMENDED ENVIRONMENTAL PROTECTION ACT 1986

I am pleased to provide the following submission on behalf of the Pastoralists and Graziers Association of Western Australia. A significant amount of information about this Association's position on Draft 13 was provided to three of your Department's Officers at a briefing held here at Pastoral House on the 28th of January 2004. I assume that all of this material has been provided to you. Hence this submission will, on the whole, not repeat what has already been put forward.

The strong objections to many of the Draft 13 provisions, and the Association's rejection of other earlier Draft Regulations originally presented by Messrs Banyard and Marsden of your Department, are in line with the undertakings of Minister Edwards that the new Act's powers and regulations were not intended to interfere with the day to day normal operations of farmers.

At the outset, while the PGA has welcomed the extended consultation process, it is very concerned about there being inadequate opportunity for getting input about Draft 13 from farmers, irrigators, pastoralists and graziers during the Christmas/New Year holiday period when many are harvesting and taking time-off with their families. A fair consultation process is needed.

The PGA will continue to oppose Regulations that place specific dimensions for clearing vegetation on normal farm operations such as the installation and maintenance of firebreaks, fire and vehicle access tracks, fence lines etc. There is so much variation in Western Australian conditions that this must be left to the farmer's discretion. The

PGA cannot agree to any Regulations until it knows what the proposed Codes of Practice for Land clearing will be.

The PGA submits that Draft 13 of the Regulations be amended to include:

- Automatic exemption (without having to apply) for all farm practices recognised as normal & reasonable in the opinion of the owner and occupier whose decision is conclusive, or compensation is agreed and paid
- Automatic exemption (without having to apply) to clear one hectare or less per year per property around buildings, sheds, hay storage areas, farm water supply dams and other infrastructure
- Automatic exemption (without having to apply) to clear any dead vegetation and live isolated paddock trees or regrowth as part of normal and reasonable farm practices
- Automatic exemption (without having to apply) to clear along fence lines as part of normal & reasonable farm practices
- Automatic exemption (without having to apply) to clear regrowth of any age as part of normal & reasonable farm practices
- Automatic exemption (without having to apply) to graze bushland and waterways as part of normal & reasonable farm practices
- Automatic exemption (without having to apply) to clear for maintenance of roads as part of normal & reasonable farm practices
- Automatic exemption (without having to apply) to put in and maintain access tracks across waterways as part of normal & reasonable farm practices
- Automatic exemption (without having to apply) to clear for firewood to give away or use for domestic purposes
- Removal of necessity for a Fire Control Officer or FESA Officer to write out firebreak orders etc
- Removal of application fees for all area permits and for all purpose permits (b) to pay all costs to test if environmental harm results from a NOI application being approved, and (c) provide the substantiated scientific evidence to the applicant, whether the findings are positive or negative
- Right of appeal to the Administrative Appeals Tribunal
- The State of Western Australia to indemnify owner or occupiers of all rural land from any claims for damages caused by any act or commission or omission resulting from their compliance with the Environmental Protection Act 1986 and its supporting regulations

Further, the PGA continues to oppose the introduction of this Act. Not only does it reverse rights in property ownership that have existed for centuries for us all, and now only remain for the urban landowner, it abandons conventional legislative practice. It prohibits everything unless it is authorised and then uses regulations to specify what can be done without authorisation. This is unacceptable law-making which creates the potential for a widening gap between how the Act and its Regulations could be interpreted and what the Government's legal powers are to implement and enforce them. For example, how to define 'potential land degradation' and how to prove that what is done today could cause land degradation in the future?

The farming community's commitment to the landcare ethic will progressively decline if the State Government continues to assert public ownership of private land through legislation such as this. The PGA believes the Act and its regulations contravene the basic rules of administrative law and the doctrines of natural justice, as well as equity provisions contained within various intergovernmental agreements signed by the State. The December 2003 findings and recommendations of the Productivity Commission's draft Inquiry into the impacts of native vegetation and biodiversity regulations address these failures.

The PGA has always understood that the Minister's intention with this legislation was to stop large scale, "unauthorised" land clearing – however, what is proposed goes far wider than that by unacceptably circumscribing and curtailing normal & reasonable farm practices.

Your consideration of this submission will be appreciated.

Craig Underwood
Chairman Private Property Rights Committee