



Productivity Commission Inquiry

Into

Impacts of Native Vegetation and Biodiversity Regulations

Submission by the
Australian **Conservation** Foundation

July 2003

Summary

The net impact of current vegetation and biodiversity regulations is extremely limited in scale and extent, to individual cases of demonstrable hardship. These should be identified and provided for with transitional financial assistance, under clear and equitable assessment criteria.

ACF believes that Australia's native vegetation and biodiversity protection regulations need strengthening in order to have adequate effect in achieving their objectives of protecting the public good and achieving sustainable landscape management. At present our national regulatory and institutional framework falls well short in its capacity to deliver ecological sustainability including healthy land, water and biodiversity.

Strengthened regulations must go hand-in-hand with other tools including transitional assistance, market measures, incentives, community education and voluntary conservation efforts. Institutional reforms and increased public and private investment in landscape repair and environmental management are also required if Australia is to achieve environmental health and a secure and prosperous future for regional economies and communities.

General comments on the Inquiry

ACF welcome the opportunity to provide information to this Inquiry. ACF is a national, membership-based community group. We strive to protect, restore and sustain the environment and to create a healthy, sustainable society. Our work has included an instrumental role in the rise of the landcare movement and in on-going vigorous advocacy for increased public and private funding for appropriate natural resource management and conservation in Australia¹.

The challenge of sustainability

This Inquiry presents a considerable challenge of satisfying somewhat narrow terms of reference (weighted towards the costs to one industry or sector) while at the same time adhering to the third of the Commission's operating principles, "to have over-arching concern for the community as a whole, rather than the interest of any particular industry or group". ACF are confident that the Commission will meet this challenge well, informed by the policy guideline of ensuring that Australian industry develops in ecologically sustainable ways. We have attempted to assist the Commission in this task through the information provided in our submission. We also offer the following definition of sustainability as a guide for the Commission's work².

Sustainability is meeting the needs of current and future generations through simultaneous environmental, social, cultural and economic improvements.

The core principles for sustainability are:

- To enhance individual and community well-being by following a path that safeguards the well-being of future generations;
- To provide for equity within and between generations; and
- To protect biological diversity and maintain essential ecological processes and life support systems.

¹ For recent examples see: The Virtual Consulting Group and Griffin NRM Pty Ltd 2000, *National investment in rural Landscapes: An Investment Scenario for NFF and ACF with the assistance of LWRRDC*; Sydney Morning Herald July 24th 2003, "\$2.5bn- the price of a bill of clean health for the nation's rivers", p. ?4.

² Adapted from ESDSC 1992.

Assessing “impacts”

Whether the Commission is examining “impacts” on property prices, productivity, investment in agriculture or other parameters, it is crucial that a distinction be made between the effects of factors such as weather conditions and drought, commodity markets, and overall economic conditions, and any effects specifically and demonstrably arising from the regulations at issue.

It is also very important that the Commission seek or generate hard evidence to verify any supposed impacts of regulation either on the agricultural sector as a whole, or at regional or property level. The Commission should take into account positive impacts also, including both qualitative and quantitative aspects of the public and private good, in determining the net effect of these regulations on landholders, the agricultural sector and society more broadly. This is an area of heated public debate, and not all statements regarding impacts of regulations are based on fact, so much as perceptions or assumptions.

To the extent that claimed “impacts” relate to the difference between a landholder’s *expectations* for clearing or other activities and their *actual* ability to undertake these activities under strengthened regulations, it should be noted that the impacts are temporary. Once the regulations are in place, landholders’ expectations must take into account the prevailing regulations.

Opportunity cost estimates are highly sensitive to a range of assumptions about future circumstances, which should be clearly stated, and given particular scrutiny by the Commission.

We note the Commission’s concession in the issues paper that “where legislation and regulations are of relatively recent origin, participants could provide estimates of likely future impacts”. We strongly urge that the bases of any such estimates be independently verified and supported with hard data as far as is possible.

Landholder perceptions vary across the country and across the demographic spectrum. Landholders of non-English speaking backgrounds, Aboriginal landholders, landholders of different ages and gender and from different states and regions may all have very different perceptions about the impacts of regulations. We urge the Commission to explore this carefully from a methodological point of view, so as not to skew the representation of landholders’ views.

Focus on environmental outcomes

We urge the Commission to also take this opportunity to collate and synthesise the wealth of relevant information and ideas in previous Commission work, including inquiries and staff research papers³. In this way, the Commission may forge recommendations providing for demonstrably sustainable landscape management in Australia, including the conservation of biodiversity, rather than focussing on the degree of perceived or real “impacts” on one sector. We present some ideas to this end in this submission, and have also attempted to answer some of the narrower questions raised by the terms of reference.

Successful environmental stewardship is a fundamental aspiration of Australian society. This is reflected in a plethora of social research, government policy and legislation⁴. The health, economic and cultural well being of this and future generations is underpinned by the health of the environment⁵. Yet the environmental health of Australia’s land, water and biodiversity are declining rapidly⁶.

It is therefore imperative that the protection and restoration of Australia’s landscapes and biodiversity be taken as a fundamental objective of this inquiry. Until environmental degradation is

³ For example: *Cost Sharing for Biodiversity Conservation: A conceptual framework* 2001; *Creating Markets for Ecosystem Services* 2002; *A Full Repairing Lease: Inquiry into Ecologically Sustainable Land Management* 1998.

⁴ For example: ABS 2003, *Yearbook Australia*; National Strategy for the Conservation of Biodiversity; EPBC Act.

⁵ PMSEIC 2002, *Sustaining our natural systems and biodiversity*; various National Land and Water Resources Audit reports; *Australia’s Biodiversity: An overview of selected significant components*.

⁶ SOE 2001, *State of the Environment Committee, Australian State of the Environment report*, CSIRO, Canberra; ABS 2002, *Measuring Australia’s Progress*, Canberra.

reversed, there can be no certainty, no real prosperity and there will be increasing impacts on Australia's agricultural regions and communities.

Agriculture occupies 60% of Australia's land mass and relies heavily on the use of natural resources. Agricultural practices have had, and are having, significant impacts on the environment both in terms of the severity and the extent of impacts⁷. It is therefore natural and necessary that public discussion of environmental issues and of government regulation to protect biodiversity and native vegetation should concentrate on farming regions and practices, to the degree that these are relevant to the substantive issues. Indeed we consider the current level of environmental and land use planning regulation of the agricultural industry to be low in comparison to other sectors such as manufacturing, housing and construction, and the commercial sector.

Response to Issues

Impacts on Landholders and Regional Communities

Negative impacts on landholders

General Observations

Although agriculture and pastoralism occupy around 60% of the Australian land-area, they account for just 3% of Australia's GDP⁸. Furthermore, 80% of agricultural profits come from only 1% of agricultural lands⁹. These facts suggest that even if there was some perceptible "impact" of native vegetation and biodiversity regulations on agricultural landholders, it is unlikely to be an impact of great economic concern at national level (although "impacts" at regional or property level may be discernible). This assumption is reinforced by the likelihood that economic drivers have led to the most productive lands being cleared (or otherwise affected) first, with the bulk of recent and current clearing occurring in less productive areas¹⁰.

While ACF do not have the resources to undertake detailed analysis, a brief discussion of farm performance at national level during the period 1998-9 to 2000-1 is instructive. Actual and estimated farm cash income, farm business profit and rate of return on farm capital all increased at national level, and in both Queensland and New South Wales, over this period¹¹. This was the period during which the Environment Protection and Biodiversity Conservation Act 1999 (Cwlth) was proclaimed and the Vegetation Management Act 1999 (Qld) was drafted and passed (though not proclaimed). It followed the strengthening of land clearing controls on leasehold land in Queensland (Land Act 1994), and in New South Wales (Native Vegetation Conservation Act 1997). There is no major, adverse "impact" of regulations discernible from the broad parameters above during this period.

In Queensland, where vegetation laws have been most contentious, total rural debt increased by \$2.59 billion between 1995 and 2000, and the gross value of production (GVP) also increased between 1994-2000 in line with debt¹². To the extent that debt reflects investment in agriculture, it appears that increasing investment occurred in this period immediately following strengthened

⁷ Industry Commission 1996, *Land Degradation and the Australian Agricultural Industry*; Office of the Commissioner for the Environment ?1991, *Agriculture & Victoria's Environment*, OCE, Melbourne; ABS 2003, *Yearbook Australia*; ABS 1996, *Australian Agriculture and the Environment*; NLWRA *Australian Agriculture Assessment 2001*.

⁸ ABS 2003, *Yearbook Australia*

⁹ NLWRA 2002, *Australians and Natural Resource Management*, NLWRA, Canberra

¹⁰ Environment Australia 2003, *Queensland land clearing proposal: potential benefits for biodiversity and Landscape Conservation*, p.2; Rolfe, J. 1999, *Report on the Long Term Economic Costs of Land Clearing in Queensland's Desert Uplands and Brigalow Belt*, Report prepared for the Queensland Conservation Council, August.

¹¹ ABARE 200, *Australian Farm Surveys Report 2001*. Australian Bureau of Agricultural and Resource Economics, Canberra.

¹² Moore Stephens HL 2002, *Rural Debt in Queensland Survey 2001*, Queensland Rural Adjustment Authority, Brisbane.

clearing controls under the Land Act, during which the Vegetation Management Act was drafted and passed (though not proclaimed) and the EPBC Act came into force. Although the Queensland Rural Debt Survey 2001 mentions weather, drought, commodity markets and overall economic conditions as factors influencing GVP and risk ratings of debt, it makes no reference whatsoever to vegetation protection laws or regulations. If these were a significant factor one would expect to see discussion in the survey report.

In contrast to this apparent lack of national and state level “impact”, ACF believe that at property level there will be unusual cases where real hardship is faced as a result of changes in regulations. These will need to be dealt with on a case by case basis, to ameliorate any significant, verifiable impacts demonstrably attributable to the regulations (see Attachment 1 for discussion of appropriate transitional financial assistance).

Would expected returns justify clearing?

The Commission asks for submissions regarding whether or not the expected returns would have justified clearing, but gives no guidance as to how such justification might be made. If key habitat for a critically endangered species were to be cleared to produce a high value crop (not an unfamiliar occurrence in native grassland ecosystems), just how much profit should the proposed crop be expected to return to justify the clearing? How should estimates and assertions about future returns and/or costs relating to loss of conservation values and ecosystem services be verified? There are no simple answers to these questions, which involve weighing up of economic, ethical, and societal values, and so we urge the Commission to provide clear descriptions of any criteria or assumptions in their analysis.

ACF believes that it is more constructive to accept the proper role of biodiversity and vegetation regulations in protecting people, property and the environment and to assess any financial assistance not in terms of claimed “impacts”, but in terms of what assistance might be needed to move forward, i.e. to:

- Keep demonstrably affected farm businesses viable, with once-off assistance for property and business planning and strategic restructuring to build a viable and sustainable business consistent with the regulatory requirements;
- Where new or strengthened regulations demonstrably render a farm business un-viable, provide exit assistance.

Uncertainty

On the matter of uncertainty around the introduction or operation of regulations, we understand that some technical difficulties may exist around the operational details of newer regulatory regimes. This is to some extent inevitable, as the regulations have created a demand for refinement of technical definitions, and as legal interpretations and precedents will evolve over time. Greater clarity in exactly what is to be protected and what activities are to be prevented would eliminate much uncertainty (see comments below on over-reliance on ministerial discretion). The Wentworth group has provided an interesting model for developing clear and certain operating environments for both regulators and landholders in NSW¹³.

It should be noted on this topic, that the equivocal nature of some regulations, and the incremental progress in strengthening of regulation (entailing repeated periods of uncertainty) can be partially attributed to lobbying from the agricultural sector. Whereas the evidence of land degradation, biodiversity decline and greenhouse emission problems arising from land clearing is incontrovertible, opposition to strengthening of land clearing regulations is common¹⁴.

This opposition, coming as it does from one of the most powerful lobbies in the country, presents great political difficulties in the process of devising and instituting vegetation regulations, and has

¹³ *A new model for landscape conservation in New South Wales* 2003, the Wentworth Group of concerned scientists report to Premier Carr, WWF, Sydney.

¹⁴ AGO 2000, Land clearing: A social history, National Carbon Accounting System Technical Report No. 4, pp. 2-5

seen repeated delays in adequate clearing controls being instituted in several states. The resultant regulations may be “watered-down” and ineffective, leading to subsequent and similar processes of public concern and review, and continued uncertainty. So, for example, landholders in Queensland may be understandably confused as to why the State and Federal Governments are now proposing to tighten land clearing controls, given repeated attempts to do this over the last decade. The reason is that opposition to *any* regulation has repeatedly led to the political failure of the reform process.

The point here is that certainty will only be achieved when the fundamental issues of land, water and biodiversity decline are addressed by adequate and effective regulatory regimes in concert with other policy instruments. Opposition to this process of reform will only add to the uncertainty for landholders so long as the conservation and land management problems underlying reforms continue.

Threats to investment in infrastructure

On the matter of threats to investment in infrastructure, the National Land and Water Resources Audit found that "Large decreases in the lifespan of road pavement occur when groundwater levels rise to within 2m of the pavement surface. Salt also destroys the properties of bitumen and concrete structures. Road and bridge damage caused by shallow, saline groundwater is a major cost at all levels of government."¹⁵ Nationally, 67,400km of roads are assessed as being at high risk from shallow water tables or as having high salinity hazard, 5000 kilometres of railways are at risk of salt damage and 219 towns across Australia are at risk of salt damage to infrastructure by the year 2050. The investment by Government, taxpayers and ratepayers, including landholders, in that public infrastructure is at risk.

More specific comments on biodiversity and vegetation regulations

ACF do not have the capacity nor information at this stage in the inquiry to rigorously examine the specific or likely effects or "impacts" of the wide range of legislation at issue. So perhaps it is most useful to discuss some general characteristics of biodiversity and vegetation legislation in Australia, including the history of its development and the implications for its likely "impact".

Both biodiversity and vegetation protection legislation have developed over the last several decades. They were developed (and are still developing) in recognition of the fact that while people and property have strong rights and are well protected under law, the environment and biodiversity in particular, had (and still have) very few rights and little protection in law. This driving recognition of a need to ensure that environmental and ecological values are balanced with economic and social values is exemplified in s.3A of the EPBC Act, which describes principles of ecologically sustainable development.

Biodiversity legislation

The first state biodiversity legislation in Australia was the *Flora and Fauna Guarantee Act 1988* (Vic). The basic contention behind the Act was that all Victorian species have a natural right to survive, flourish and continue their evolutionary development in the wild. This right is also essentially reflected in subsequent biodiversity legislation.

In order to protect this right, the FFG Act, along with other similar acts including now the EPBC Act, provide for:

- Identification and listing of those species and ecological communities which are threatened with extinction (and sometimes their "critical habitats");
- Identification and listing of threatening processes to these listed values
- Preparation of plans and strategies to address threats and recover species
- Protection of listed species and communities from actions which might threaten them

¹⁵ NLWRA 2000, *Australian Dryland Salinity Assessment 2000*.

In theory then, where a listed process or other activity undertaken by a landholder threatens a listed species or value, this type of legislation has the *potential* to affect that landholder's activities or aspirations. Such effects may include prevention of the proposed activity, conditions placed on the activity, or penalties for undertaking an activity in contravention of the legislation.

However, in reality, these acts are only very rarely used to prevent an action from occurring. In fact, the basic design of biodiversity acts, though largely well-intentioned and going some way towards better legal recognition for the existence and status of threatened species and other conservation values, comprise several generic problems in terms of their real ability to protect species. This may be relevant to the *effect* of these acts on landholders or other people, although better protection of species is not necessarily related to greater "impacts" as such. Some of the generic problems with biodiversity legislation are:

- Inadequate political will to fully and properly enact, implement, enforce, resource and administer the legislation;
- Challenges relating to differing technical definitions and technologies in different jurisdictions, for example definitions of ecological communities or of conservation status of species (albeit these technical difficulties should not be seen as insurmountable where the precautionary principle is included in legislation, as is the case with the EPBC Act);
- Failure to define and declare critical habitats (this only partly arises from technical debates, which again should not be insurmountable);
- Failure to systematically and iteratively address the challenge of discovering and defining the taxonomy, ecology and conservation status of all relevant species and communities (including both larger more charismatic species like vertebrates and vascular plants, and smaller more cryptic or less charismatic species);
- The tyranny of small decisions, with discretionary approval for successive actions which individually may have only a small effect on a listed value, leading to a greater incremental decline in that value over time. This failure to address cumulative impacts and to recognise the extinction process sufficiently early to avoid species or communities *becoming* threatened, is a fundamental problem (albeit non-regulatory measures may address this issue to varying degrees);
- Difficulties in generating and accessing information about listed values and proposed or actual actions on some land tenures;
- Lack of targets and benchmarks regarding desired and current condition and trend in condition of listed values.

All of this has meant that biodiversity laws have overwhelmingly failed to protect the values they were designed to protect. Partly as a consequence of this, they have had little effect on landholders.

To emphasise this point, the FFG Act and the EPBC Act are now examined in more detail as case studies.

The FFG Act

The following weaknesses of the FFG Act have implications for its effect on landholders:

- Not one Interim Conservation Order (ICO) has been made since the Act's inception in 1988, a period of almost 15 years. ICO's are the principle mechanism under the Act for regulating activities or uses which may harm a listed value, including activities and uses on private land. (the term interim refers to the fact that these orders only apply for a period of two years, which in itself is a weakness in the Act);
- Only one Critical Habitat Declaration (CHD) has been made since the Act's inception, and this declaration was revoked almost immediately. The site where the species (the Small Golden Moths Orchid) had most recently been recorded, which had comprised the core of the critical habitat area, was promptly developed as a storage area for shipping containers. CHDs are the means of identifying key areas for protection to ensure the survival and welfare of listed

species, including on private land, and CHDs are a prerequisite for the making of ICOs. There is no provision for the public to make nominations of critical habitat areas;

- Ill-conceived "compensation" is provided for, for any landholder who suffers financial loss as a result of the making of or having to comply with an ICO. The compensation provisions, forced through the Upper House of the Victorian Parliament, are very broad, and to a large degree are responsible for the fact that no ICO has yet been made (political obstacles around the making of CHDs are another factor here). It is reasonable to assume that if Government had to similarly "compensate" drivers for complying with the speed limit, there would be very few restrictions on vehicle speed in Victoria, much to the detriment of the public good.
- Provisions for protection of listed flora are very limited in their application on private land, to instances where the land owner's permission to take flora is not secured (such instances are very rare) and the flora has not been taken for the purposes of sale, and to where a critical habitat determination applies (none exist);
- The Act contains no specific provisions for the protection of listed fauna;
- There are no time frames under which the Minister must prepare or review action statements or management plans. As a result, action statements had not been prepared for around 78% of listed species as of late 2002;
- There is no provision for third parties to bring an action in relation to breaches of the offence provisions of the Act;
- The Act relies heavily on Ministerial discretion. As one example, this has led to a rejection of the Scientific Advisory Committee's advice to list the Grey-headed Flying Fox as vulnerable, without sufficient rationale for that rejection having been provided by the Minister in nature conservation terms. The subsequent listing of the species under the EPBC Act, and eventually, through a re-nomination and under a different Minister, under the FFG Act, highlight the poor reasoning behind the initial rejection.
- There is poor provision for the provisions and objectives of the Act to be considered and adhered to in the administration of other Acts and in the deliberations of various relevant decision-making bodies across Government.

These and other problems with the FFG Act have led to its very poor record of preventing actions which have a detrimental effect on listed values.

Partly as a consequence of these weaknesses the Act has little effect on private land. The degree to which, to the extremely limited extent that the Act affects private landholders if at all, that those effects amount to net impacts, and the specific extent and frequency of any impacts, is not known by ACF. But it is likely to be small.

The EPBC Act

The EPBC Act has been labelled as "un-Australian" and as "penalis[ing] farmers unfairly for going about their business of running a farm"¹⁶. In fact if one looks at the evidence of actions refused under the Act and of referrals from the agricultural sector, a very different picture emerges:

- As of April 2003 there had been a total of 895 actions referred to the Federal environment minister for his approval or disapproval under the Act. Of all the actions referred to date, only one has been denied approval This involved an application to kill Spectacled Flying-foxes in Queensland;
- Of those 895 matter referred to the Minister under the Act, less than 25 had come from the agricultural sector. That is less than 4% of total referrals. This is despite the fact that the bulk of land clearing (the greatest threat to biodiversity in Australia), which amounts to some 500,000 hectares a year, is associated with agricultural and pastoral activity;
- Only 3 critical habitat listings have been registered under the Act, and all pertain to small islands where no landholder would be impacted. We understand that, in any case, no offence is provided for where a person damages critical habitat on private land, but only where their action (whether taken on private

¹⁶ Agforce media release, November 1st 2001, "Challenge to Labor and Democrats to change unworkable and unfair environment legislation".

land or not) damages critical habitat on Commonwealth land. It is highly unlikely that this provision would impact on any landholder's activity while the only critical habitats listed are virtually inaccessible islands;

- Only twenty-six threatened community listings have been made under the Act, and recovery plans have only been listed for ten of those. This is despite the fact that the independent National Land and Water Resources Audit, in the Australian Terrestrial Biodiversity Assessment 2002 (commissioned by the Commonwealth) identified fully 2891 threatened ecosystems and other ecological communities across Australia¹⁷. While the few existing listings under the Act may potentially effect several landholders, the paucity of referrals and almost total lack of refused approvals implies that current and specific "impacts" are negligible.

It is not surprising then that the Hon David Kemp MP, Minister for the Environment and Heritage last month told the National Farmers Federation that "It is important to understand that the [EPBC] Act simply doesn't apply to most farming activity"¹⁸.

The low number of referrals from the agricultural sector is particularly relevant to the likely "impact" of the Act on landholders. Assuming that each referral related to only one landholding, then the direct effect of the EPBC Act to date may not stretch beyond 25 properties. That is, of around 140,000 farm establishments in Australia¹⁹, less than 0.02% were even "impacted" to the extent of filling out a referral form. The bigger effect of having one's proposed action fail to gain approval has only directly affected one farm out of 140,000. For further discussion of the impact of the EPBC Act including its failure to adequately protect land and water resources, see Attachment 2.

The spectacled Flying-fox case mentioned above has implications for and could potentially have an impact on other orchardists who aspire to electrocuting or otherwise killing large numbers of a species where the resultant decline of that species has or is likely to have a significant impact on the values of a world heritage area. In such (probably rare) instances, the impact on landholders will depend amongst other things on the degree to which non-destructive crop protection measures are available, the availability of alternative land uses and the degree to which the landholder is effected by the species at issue.

It is worth noting however, that in her finding in *Booth vs Bosworth* regarding this issue, Justice Branson of the Federal Court of Australia said:

"It would be a rare case in which a Court could be satisfied that the financial interests of private individuals or even the interests of a local community, should prevail over interests recognised by the international community and the Parliament of Australia as being of international importance"²⁰

In this spirit, we submit that the Commission should ensure that it takes into account the likely impact on the environment, people and property of proposed actions, should those actions have gone ahead, where those actions were demonstrably prevented by relevant regulations. In the case of *Booth v Bosworth*, this entailed the likely electrocution of some 18,000 animals per annum from a total population of no more than 100,000, and related impacts on the values of the wet tropics world heritage area.

The EPBC Act has clearly not had a large impact on landholders, either in relative or absolute terms. Nor has it or will it have a major impact in actually protecting biodiversity or native vegetation unless several weaknesses in the Act are addressed. This is evidenced by the continuing high rates of land clearing in Australia since the Act's proclamation. The Act's weaknesses result in the failure of the Act to achieve its objectives, particularly those objectives described in s. 3 (1) (c) & (e). Briefly, the weaknesses with the Act which are most relevant to this inquiry are:

- The lack of a "matter of national environmental significance" trigger for broad-scale land clearing;

¹⁷ NLWRA 2003, Australian Terrestrial Biodiversity Assessment 2002, p. 63.

¹⁸ Hon David Kemp MP, Minister for the Environment and Heritage, speech to the NFF Conference, June 5th 2003.

¹⁹ ABS data for 2000-01, Technical notes 7121.0 *Agricultural Commodities Australia*, November 2002

²⁰ *Booth v Bosworth* [2001] FCA 1453 (17 October 2001), paragraph 155.

- The lack of a "matter of national environmental significance" trigger for actions that have a significant impact on environmental flows and/or river health;
- Lack of prohibitions relating to key threatening processes such as land clearing, and over-reliance on Ministerial discretion in approvals as well as in other decisions such as preparation of threat abatement plans;
- Ability for the Commonwealth to hand over approvals powers to the states under bilateral agreements;
- Lack of statutory targets relating to biodiversity conservation and vegetation retention and management, to guide decision making and evaluation of the Act's efficacy;
- Lack of requirement to obtain approval from the Federal Environment Minister for actions with a significant impact on vulnerable communities.

In ACF's view, these legislative weaknesses along with the Commonwealth's failure (so far) to provide adequate policy and financial measures to address land clearing and biodiversity decline and similar failures on the part of several territory and state governments, have resulted in clear breaches of Australia's obligations under the United Nations *Convention on Biological Diversity*.

The extensive level of land clearing in particular, especially in Queensland, New South Wales, Tasmania and the Northern Territory and the threat to biodiversity that this poses, contravenes the objectives, and the following specific articles of the Convention:

- **Article 6(b)**, which requires contracting parties to integrate, as far as possible and as appropriate, the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies.
- **Article 8(c)** which requires contracting parties to regulate or manage biological resources important for the conservation of biological diversity whether within or outside protected areas, with a view to ensuring their conservation and sustainable use
- **Article 8(d)**, which requires contracting parties to promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings.
- **Article 8(k)**, which requires contracting parties to develop or maintain necessary legislation and/or other regulatory provisions for the protection of threatened species and populations.
- **Article 14(e)**, which requires contracting parties to promote national arrangements for emergency responses to activities or events, whether caused naturally or otherwise, which present a grave and imminent danger to biological diversity.

In 2001, ACF developed a proposal to reform the EPBC Act in order to achieve a national goal of reversing the decline in the quality and extent of Australia's native vegetation. This goal is already reflected in the *Natural Heritage Trust of Australia Act 1996* although patently not able to be achieved through the provisions of that Act in the absence of stronger controls on land clearing²¹. Our 2001 proposal comprised reiteration of the goal, strengthening of the Commonwealth's head of power through inclusion of a land clearing trigger in the EPBC Act and reflection of the goal in state legislation and regulations. Relevant Commonwealth financial assistance was to be dependent on states meeting their shared responsibilities under native vegetation bilateral agreements, with approvals powers retained by the Commonwealth²².

This 2001 proposal was not adopted by the Commonwealth. If it had been, it would have built on the partnership approach already inherent in the Act, underpinning it with a firm goal and clear regulatory provisions including appropriate prohibitions. It is broadly compatible with more recent proposals in NSW²³ and Queensland²⁴ for reforming and strengthening vegetation management regulations and policy (we note that these measures if implemented in full would go some

²¹ *Midterm review of the Natural Heritage Trust Bushcare Program 1999*, executive summary, p. VI.

²² ACF 2001, *Controlling land clearing in Australia: A framework for Federal leadership and shared responsibility*, ACF, Melbourne.

²³ *A new model for landscape conservation in New South Wales 2003*, the Wentworth Group of concerned scientists report to Premier Carr, WWF, Sydney.

²⁴ Described in *Talks on Queensland Land Clearing proposal*, media release, Hon David Kemp MP, Minister for the Environment and Heritage, 22nd May 2003.

considerable way towards achieving the national goal, at least as far as two states were concerned). Our 2001 proposal would give the Commonwealth a clearer ability to address land clearing issues where a bilateral or unilateral agreement or action could not be negotiated or initiated, or failed for whatever reason. It would also have clarified the mutual responsibility not only for regulation, but for providing financial assistance in order to achieve the shared goal by an agreed date (July 2005 was proposed).

ACF admit there are "many ways to skin a cat", but our great concern is that while the current, flawed approaches prevail, and while debate drags on about which new measures to apply in controlling land clearing and protecting biodiversity, land clearing continues apace. Which brings us to vegetation protection legislation and its actual or potential impacts.

Vegetation Protection Legislation

Regulation is *essential* in controlling land clearing. ACF are not aware of any state, territory or significant region in Australia or overseas where land clearing has been successfully controlled in the absence of regulatory approaches. Voluntary, "partnership" and incentive-based approaches can achieve some success in *revegetation*, but these approaches are not sufficient in addressing clearing *per se*. Commodity market fluctuations can also produce shifts and temporary reductions in clearing activity, along with increases in activity, and market mechanisms may have some utility²⁵, but regulation of clearing is a necessary, if not always sufficient, element in any approach²⁶. (The limitations of market mechanisms for biodiversity conservation are nicely described in the Commission's Staff Research Paper *Creating Markets for Ecosystem Services* (2002)).

A national Newspann commissioned by ACF in July 2000 made it clear that the Australian community as a whole *expects and supports* government regulation of land clearing²⁷. The poll found that around three quarters of Australians (74%) of voting age were strongly or partly opposed to land clearing, while only 2.4% of respondents were strongly in support of land clearing. Most Australians (82.4%) supported the introduction of laws to control land clearing (even amongst respondents who are partly in favour of land clearing 73% still want to see clearing control laws set in place). Seventy-four percent of respondents were in support of the Federal Government providing financial assistance to farmers to control land clearing. There were generally only minor differences between responses from capital city respondents and those outside of capital cities. For example, 83.1% of capital city respondents were partly or strongly in favour of national laws to control land clearing, while 81.3% of those outside capital cities held the same views.

Regulations are also (or at least can be) *effective* in controlling land clearing²⁸. The degree of effectiveness varies from jurisdiction to jurisdiction depending on the legislative and regulatory provisions. This implies that the degree of effect which regulations have on some landholders' activities also varies from jurisdiction to jurisdiction.

Factors which may limit the effectiveness of vegetation protection legislation (and thereby its effect on some landholders) include the following:

- Whether land clearing is regulated on all land tenures;
- The degree to which adequate prohibitions are included, versus reliance on Ministerial discretion in approvals;
- Whether or not adequate, binding standards and decision-making criteria are included;

²⁵ The OECD has suggested that Australia should consider taxing land clearing according to the environmental damage that it is evaluated to cause (OECD 2001, *Encouraging environmentally sustainable growth in Australia*, Economics Department working paper no. 309, OECD, Paris.

²⁶ Binning C. & Young M. ?2001, Native Vegetation Institutions, Policies and Incentives, CSIRO Wildlife and Ecology, Canberra.

²⁷ Results of telephone poll of 1200 respondents representing 14,240,000 Australians over the age of 18 years, conducted by Newspann over the 28th to 30th July 2000, as commissioned by ACF.

²⁸ AGO 2000, Land clearing: A social history, National Carbon Accounting System Technical Report No. 4, pp. 2-5

- The degree of reliance on regional committees to decide targets and standards for regulation;
- The degree to which any exemptions to the regulations are limited and appropriate;
- The adequacy of administration and enforcement.

The third observation with which to introduce the topic of vegetation regulations is that they are *cost-effective*²⁹. Regulations, coupled with appropriate transitional financial assistance, can rapidly secure public and private good outcomes in a way that is second-to-none, in terms of return on investment.

It is beyond the scope of this submission to go into a detailed critique of all relevant legislation. However, we estimate that land clearing in Australia still exceeds 500,000 hectares a year, with concomitant land degradation, environmental, economic and social repercussions, indicating that much can be done to strengthen current vegetation protection legislation and improve its cost-effectiveness.

Some selected comments on the limitations of regulatory regimes, implications for the likely effectiveness of them, and likely impact of those regimes on landholders follow:

The Vegetation Management Act 1999 (Qld)

This act controls clearing on freehold land in Queensland. It affords real protection only to endangered regional ecosystems (those native vegetation types which have already been cleared to below 10% of their pre-European settlement extent), and vegetation in bioregions where less than 30% of the original native vegetation remains (no such bioregions exist currently). All other native vegetation on freehold land may be cleared either under exemptions or subject to a discretionary permit system. This includes threatened regional ecosystems classified as “of concern” (these are protected on leasehold land under the Land Act 1994). It also includes lands “vulnerable to degradation” or of “high conservation value” (unless these have been formally declared under the Act and the clearing code for that declaration does not permit clearing—currently a rare circumstance).

Some strengthening of the “performance requirements” under the act was introduced following release of salinity hazard maps for several major catchment areas in Queensland. These additional measures still fall short of an adequate response to the threat of salinity, with, for example, regrowth vegetation still excluded from protection despite being no less important in reducing leakage to ground-water than remnant vegetation.

Some further weaknesses in the Act in terms of its ability to achieve its purposes are:

- No secure protection is provided to “of concern” or “not of concern” regional ecosystems, which make up the bulk of native vegetation on freehold land;
- There is no limit on the size of areas that can be cleared under permit, with applications and approvals in the hundreds and thousands of hectares not uncommon;
- Little if any protection is afforded to regrowth bushlands, despite their contribution to biodiversity conservation, carbon storage and sequestration and groundwater control;
- There is no provision for a scaled reduction in clearing over time;
- It relies heavily on regional committees to set standards for clearing, but draft plans prepared by these committees leave the way open for some 19 million hectares of bush to be cleared, and have proposed protective declarations for very few high conservation value areas or areas vulnerable to land degradation. For further analysis of the regional committee process in Queensland including our perspective on the proper role of regional committees in native vegetation regulation, please see Attachment 3).

²⁹ Environment Australia 2003, *Queensland land clearing proposal: potential benefits for biodiversity and Landscape Conservation*, p. 16; PMSEIC 2002, *Sustaining our natural systems and biodiversity*.

ACF would be happy to provide further information to the Commission as to the weaknesses and problems with the Vegetation Management Act should that be helpful. Suffice for the moment to observe that 378,000ha was cleared in Queensland in 2000-01, the year *following* the Act's proclamation, and that up until the recent moratorium, large numbers of clearing permits continued to be issued by the Queensland Government, covering large areas of clearing. The Act is simply inadequate to the task of protecting the environment and the welfare of communities and community assets affected by clearing, and major reforms are needed along the lines of the Queensland and Federal Governments' proposal. For further discussion of land clearing in Queensland including ACF's rationale for seeking an end to broadscale clearing of remnant vegetation and ACF's joint submission in response to the current Federal/State proposal, see Attachments 4 & 5.

New South Wales

The New South Wales Native Vegetation Conservation Act 1997 has also demonstrably failed to control broadscale clearing³⁰ leading Premier Carr to examine the Wentworth Group's model for dealing with the issue as a basis for discussions towards implementing reforms³¹. This model centres on the need to end the clearing of remnant native vegetation.

Some of the key problems with the NSW legislation have been:

- An absence of clear state wide standards and targets and over-reliance on regional committees for setting standards for clearing control
- Extremely poor enforcement
- Wide exemptions
- Wide Ministerial discretion in permit approvals

Large numbers of clearing permits are still issued, and some 60,000 hectares of native vegetation is still cleared each year in NSW as a result, suggesting that any supposed "impacts" of this Act will not relate to its prevention of broadscale clearing.

Northern Territory

In the Northern Territory prior to December 2002 there were no state-wide controls on land clearing, but only weak controls applying to pastoral lands and the Litchfield shire (these areas are excluded from new interim controls, on the basis that they are subject to previous regulations). Interim Territory-wide controls have been in place since then, although land clearing is still occurring at high levels, especially in the Daly River Basin, where the Government is actively promoting land clearing.

Permanent controls on clearing are scheduled for introduction in the near future. However, the active promotion of clearing in the Daly Basin by the NT Government does not bode well for their efficacy in preventing the biodiversity loss and land and water conservation debacle which clearing has brought about in southern Australia.

ACF are not aware of, nor do we believe that the interim controls could be having any "impact" on landholders which might be in any way considered unreasonable or significant. We are deeply concerned that the active clearing in the Daly Basin is going ahead to the detriment of landscape and river health. Clearing in the NT is generally associated with significant water development, a conservation issue in itself. The clearing in the Daly Basin is also likely to be to the detriment of the tourism and recreation industries which rely heavily on the health of the Daly River and estuary ecosystems. There is inadequate scientific research into the values of the region, the functioning of regional ecosystem processes and the threats posed to those values and functions by clearing and

³⁰ NSW Auditor-General 2002, Performance Audit- DLWC- Regulating the Clearing of Native Vegetation

³¹ Wentworth Group 2003.

associated water development. For the Government to press ahead with broad-scale development under these circumstances is unconscionable.

Tasmania

In Tasmania, the incremental clearing of already highly depleted vegetation communities continues in the absence of effective statutory land clearing controls. Conversion of indigenous native vegetation to exotic or native timber plantations is the primary driver of land clearing in the state.

These examples are evidence that landholders' aspirations regarding land clearing are largely unfettered in many jurisdictions, and the likely "impact" of existing regulations in these areas will reflect that situation.

More effective clearing controls were established in areas where broad-scale clearing had largely ceased due to lack of fertile land left to clear (e.g. Victoria and the southern part of South Australia). In these areas, the effect on landholders of clearing controls reflects the effect on society more broadly: clearing had progressed well beyond what any reasonable person might conceive as sustainable levels, and the regulations were indeed far too late to arrest the resultant land degradation and biodiversity decline problems. In any case, controls have been in place in these jurisdictions for many years, and there can be no suggestion of any shock or insult to what are now common everyday understandings of regulatory requirements and land stewardship mores.

Costs of managing native vegetation

As to the costs of managing native vegetation retained due to regulation, these would, with rare exceptions, have been borne prior to any regulation, and so cannot be attributed to the regulations themselves, but are on-going property management costs. The exceptions may be where biodiversity values are very high, on-going management costs are also high and where little private benefit exists in carrying out management *necessitated by the regulations*. In these cases there is an argument for financial assistance related to the regulations, to assist the landholder in producing public goods.

The Commission should look critically at any assertions regarding the costs of managing remnant vegetation resulting from regulations. It has been put to ACF on several occasions that the solution to soil erosion problems in remnant vegetation being grazed by stock is to clear the remnant vegetation, and that clearing controls would therefore entail a cost in terms of on-going erosion. This is specious where the erosion is actually caused by the stock (most cases). If stocking rates and stock management practices are leading to erosion, it is the stock which needs better management, not the vegetation (albeit the legacy of many years of poor stock management can at times place an unfair burden on later land owners). Native vegetation does not cause erosion, and neither the vegetation, nor the regulations designed to protect that vegetation should be blamed for soil erosion problems, quite the contrary.

There is of course a broader and very legitimate question of how Australia should support and pay for appropriate pro-active management of native vegetation to nurture its many values³². Payment for ecosystem services, private investment in sustainable land management and related issues are dealt with further on in this submission.

Adapting to or limiting "impacts"

The Commission inquires on ways in which landholders can adapt to or limit the actual or perceived impacts of regulations. Familiarising oneself with those regulations and the relevant guidelines is the first step, in order to allay any exaggerated perceptions of potential impacts and to avoid any potential penalties for breaching those regulations. Those who rely on media reports or public statements of those involved in political debates for information about regulations are likely to gain a skewed impression of regulatory provisions and impacts.

³² NLWRA 2003, Australian Terrestrial Biodiversity Assessment 2002; Productivity Commission 2002, *Creating Markets for Ecosystem Services*, staff research paper.

Another important step is for landholders to benchmark and monitor land, water and biodiversity resources and values on their properties, along with relevant management practices, to determine whether certain provisions might apply. Property management planning and environmental management systems are useful tools for guiding monitoring activity, avoiding any sovereign risk relating to regulation and for efficient, prudent and productive management of land and water resources. In the case of environmental management systems, ACF believes these are best linked to clear environmental performance standards and independent performance audit (we are happy to provide more information on this topic should the Commission require it).

In most cases, thorough independent advice on property- or enterprise-level natural resource management goals and systems, while representing a financial investment, will return good value to the landholder in a number of ways including:

- Protecting the enterprise's asset in land and water resources, reducing risks relating to land degradation, water quality decline, and decline in ecosystem services such as pollination, and enhancing resilience and productivity in the face of drought and climate change;
- Greater security of market access for the enterprise's product, both in Australia and overseas;
- Producing efficiencies in production and accounting systems.

Some examples of approaches designed to capitalise on these benefits are emerging amongst leading pastoral companies. Stanbroke Pastoral Company and Australian Agricultural Company have adopted policies of ending the clearing of remnant native vegetation and of striving to protect environmental values of regrowth vegetation and the properties as a whole (Attachments 6 & 7).

These initiatives may also benefit landholders through avoiding any potential risk to access to investment relating to land degradation, and we urge the Commission to investigate this possibility.

Positive impacts on landholders

The Prime Minister's Science, Engineering and Innovation Council explored cost/benefit issues in sustaining Australia's natural systems and biodiversity. They found, for example, that preventing broadscale land clearing of high biodiversity value in Queensland would bring "collateral benefits" in carbon credits and prevention of erosion and salinity, above and beyond the benefits of protecting biodiversity, valued at twenty times the cost of such action³³. Environment Australia built on PMSEIC's work in calculating the collateral benefits of the current proposal to phase out clearing of remnant vegetation in Queensland at 100 times the cost. Note too, that the cost described by EA comprises mostly financial assistance for landholders to ensure and equitable, as well as an extremely cost-effective investment by Government³⁴.

Many of the benefits of protecting biodiversity and controlling land clearing accrue to landholders themselves, although this is not often acknowledged. For example:

- The impacts on landholders of climate change caused by emissions including from burning and rotting bushlands, are likely to be considerable. For instance, CSIRO have projected that rainfall may drop by up to 35% by the year 2070 in south-eastern Australia and Tasmania³⁵. This would not only have dire implications for dryland farmers, but would reduce flows in river systems, with implications for irrigation farmers. Climate change is also likely to lead to increased incidence of extreme climatic events like storms, floods and droughts, to which landholders are particularly susceptible, both through direct impacts, through risks to investment and insurance premiums;
- Reduced cover of native vegetation is likely to lead to more rapid run-off of surface flow, increasing flood incidence and erosion, both of which affect landholders;

³³ PMSEIC 2002, *Sustaining our natural systems and biodiversity*.

³⁴ Environment Australia 2003, *Queensland land clearing proposal: potential benefits for biodiversity and Landscape Conservation*, p. 16.

³⁵ CSIRO climate change projections for Australia, www.dar.csiro.au/cc/default.htm

- Dryland salinity's impacts are felt disproportionately by landholders, with reduced productivity in affected areas, reduced capital value of land, impacts on stock, domestic and irrigation water supplies being just some of the impacts;
- Loss of biodiversity can have serious implications for pollination services, pest control and the health of soils, entailing higher costs for landholders in artificial pollination, pest control and fertiliser application.

As PMSEIC point out, the costs of land and water repair are enormous, and prevention of these problems through controlling land clearing and other causes of land degradation is much the most cost-effective way forward for Government. ACF argues that, in the upshot, it is the best way forward for landholders as well.

Of course, it is important to point out that the benefits of biodiversity and vegetation regulation will not be felt until these regulations are made much more effective in addressing land and water decline and biodiversity conservation. The EPBC Act for example has achieved almost nothing in terms of reversing landscape decline or protecting farm assets and landholder interests from the actions of those few landholders who insist on continuing with grossly unsustainable land clearing.

Quantifying the benefits of regulations is made even more difficult by the fact that land degradation and biodiversity decline occur across such wide geographical regions and through long time-periods. Clearing by one landholder may impact on a downstream irrigator in terms of salinity or water quality issues, silting of a dam, or loss of ecosystem services, but in most cases these impacts will be caused by the actions of several people over a period of years, perhaps decades. The expression of dryland salinity can occur decades after a clearing event, and species loss can occur through a long process of "ecosystem decay" or "extinction debt" following clearing and fragmentation³⁶, as is occurring for example in the Adelaide hills.

Landholders and regional communities may also benefit either directly or indirectly from increased growth in tourism and recreational industries due to protection of the assets on which nature based tourism depends. Protection of infrastructure from rising water-tables and salt damage, and protection of dams and water storages from sedimentation due to soil erosion, will also benefit landholders, if only through reducing the costs to local government and infrastructure authorities, thereby avoiding increased rates and charges.

Landholders may benefit from some increase in funding for acquisition and management of conservation values, if these values are identified through processes required under regulations. Improved awareness and protection of a property's biodiversity assets and landscape amenity can also stimulate greater pride and interest in that property on the part of the landholder.

This may partly account for the many landholders who are already taking action to protect and restore native vegetation and biodiversity on their properties³⁷. It is entirely possible that awareness and activity in biodiversity and native vegetation conservation is stimulated by the institution of regulations, as the regulations focus attention on resource decline issues which had until then been unrecognised by some landholders or communities. This in itself is a benefit.

Impact on property values

ACF have no special expertise in this area, but we note commentary in *The Rural Review*³⁸, which shrugs off any concern, with the following statements (ACF's emphasis in *italics*, Herron Todd White's in **bold**):

"The moratorium on tree clearing has caused an uproar in Queensland *but it was bound to happen*. With perhaps two-thirds of Queensland never having been cleared and the vast majority of the

³⁶ Ford, H. et al. 2001, Why have the birds in the woodlands of southern Australia declined?, *Biological Conservation* **97**: 71-88.

³⁷ Senator Robert Hill, "Minister's Message", Environment Australia, *Work in Progress: Australia's Commitment to the Environment*, page ii.

³⁸ Herron Todd White 2003, *The Rural Review* Rural Supplement, 1 June 2003; 1 July 2003.

balance cleared, the major question centres around treatment of regrowth. While *a few individuals* will be hit hard, presumably they will [be] properly compensated.”

‘Most pastoral lands in North Queensland are sufficiently productive without tree clearing and coastal farming lands are already developed. We are therefore of the view that **the current moratorium will have limited impact [on] the rural sector in North Queensland.**’

‘[Prior to the introduction of the Vegetation Management Act, when there were no controls over land clearing on freehold land] While *there was no direct market evidence showing that purchasers were paying a higher price for freehold tenure*, it was a marketable feature...’

‘The demand for property remains strong and so far we detect no slackening in price for most commodities, but particularly beef cattle properties.’

While one would not necessarily expect a firm involved in the property market to “talk the market down”, there is certainly no alarm or outrage evident in these statements or analyses regarding the impact of regulations on property values and demand, in fact quite the contrary. However, extensive references are made to commodity markets, economic conditions and outlook, weather and drought as key factors in the property market.

In addition, the National Land and Water Resources Audit suggests that land degradation (control of which is a key objective of vegetation regulations) has reduced the capital value of farms in Australia by some \$14 billion³⁹.

Government measures to mitigate negative impacts

The first point to note is that environmental regulations are themselves a government measure to address the negative impacts of land degradation on landholders, as well as on the public good.

Government measures to assist landholders manage land sustainably in accordance with regulations are diverse and substantial, comprising billions of dollars over the last decade. They include:

- Assistance for sustainable land management projects through the Natural Heritage Trust, revolving land purchase funds, conservation advisory services like Victoria’s Land for Wildlife scheme and many similar programs at both state and national level;
- Government mapping of native vegetation communities and of areas vulnerable to land degradation to assist landholders in meeting requirements to protect native vegetation and prevent degradation;
- Government research, development and extension work on sustainable land management techniques, native vegetation and biodiversity conservation to assist landholders in understanding and complying with regulatory requirements;
- Assistance through explanation of regulatory requirements provided on government websites and in printed information;
- Assistance with Property Management Planning, business planning and establishing Environmental Management Systems (the latter in a developmental stage) to help landholders accommodate regulatory requirements into their enterprises;
- Transitional financial assistance, or structural adjustment, linked to specific regulations.

On the latter point, we have attached our response to the recent proposal for transitional assistance and strengthening of land clearing controls in Queensland, for the Commission’s information. In essence we support the provision of financial assistance to landholders unduly affected by the proposed regulations, but urge that further funding be provided for a selective permit acquisition scheme, and to protect important areas of regrowth and urban bushland (currently excluded from the package).

³⁹ NLWRA 2002, *Australians and Natural Resource Management*, p. 110.

ACF did not support financial assistance for landholders during the initial debate over the Vegetation Management Act 1999 (Qld) unless stronger provision was made in the Act for protection of native vegetation, beyond merely endangered regional ecosystems.

ACF hope to provide further information on the adequacy of transitional assistance from government during the course of the Inquiry.

On the adequacy of broader government measures to stimulate and support sustainable land management and biodiversity conservation, there is a clear need for greater investment, identified in a range of reports and inquiries⁴⁰.

Impacts on non-landholders and regional communities

We urge caution on the part of the Commission in distinguishing any changes in demand for regional services, labour or machinery, or in access to finance due to environmental regulations from those due to drought, commodity price fluctuations, and so forth. Specific evidence should be sought to verify any purported impacts of a given regulation on specific loans, contracts or transactions. Extrapolations from individual instances to regional “impacts” should be avoided.

ACF believe that apart from land clearing or “development” activities themselves, existing regulations will have had little impact even at the regional scale, with verifiable net impacts limited to individual properties with unusual or exceptional circumstances. Transitional assistance is warranted in such instances.

Although demand for land clearing equipment and services may decline following introduction of vegetation regulations, this is nothing to lament. Regulations are one expression of society’s standards. Just as demand for cars designed to use leaded petrol is declining as the use of leaded petrol is regulated, so demand for land clearing services is declining as the environmental and economic repercussions of the practice generate further regulation.

This should be seen as a welcome shift in regional goods and services, so long as the land clearing pressure does not merely shift into other jurisdictions where weaker regulations prevail. We believe this may be happening in the Northern Territory due to increased regulations in Queensland. This phenomenon, if confirmed, is a strong argument for a consistent approach to land clearing regulation across the country.

Efficiency and Effectiveness of Environmental Regimes

Environmental regulation seeks to promote a healthy functioning environment both for the benefit of society and for the benefit of the environment itself. This regulation has emerged over the last few hundred years in response to air and water pollution problems, land degradation, resource depletion and concerns about the loss of species and natural integrity.

The Commission asks about the link between “targeted activities” and these environmental objectives. Where land clearing controls are concerned, the link could not be clearer. Many, many reports and scientific papers have identified that land clearing (sometimes referred to as deforestation or habitat destruction) is the greatest threat to biodiversity at both global and national level⁴¹. The following quote from the Global Biodiversity Assessment illustrates this well:

⁴⁰ The Virtual Consulting Group and Griffin NRM Pty Ltd 2000, *National investment in rural Landscapes: An Investment Scenario for NFF and ACF with the assistance of LWRRDC*; NLWRA, Australian Terrestrial Biodiversity Assessment 2002.

⁴¹ NLWRA, Australian Terrestrial Biodiversity Assessment 2002; Endangered Species Advisory Committee 1992, *An Australian National Strategy for the Conservation of Australian Species and Communities Threatened with Extinction*, Australian National Parks and Wildlife Service, Canberra; Ehrlich, P. R. 1988, “The loss of diversity: causes and consequences”, in Wilson, E. O. & Peter, F. M., 1988, *Biodiversity*, National Academy Press, Washington DC; Cogger, H., *et al.*, (2003). *Impacts of Land Clearing on Australian Wildlife in Queensland*. Compiled by World Wide Fund for Nature (Australia) Sydney; World Conservation Monitoring Centre 1992, *Global Biodiversity, Status of the Earth’s Living*

"Among the causes of extinction, environmental change is the most important, especially when it involves the loss of habitat. ...[and] The most important reason for population extinctions, especially on small spatial scales, is habitat destruction"⁴²

The Australian Terrestrial Biodiversity Assessment 2002 makes this equally clear at national level, with the following statements:

"The most common threatening processes for threatened species are vegetation clearing, particularly in Queensland and New South Wales..."

"Similar processes affect threatened ecosystems. Vegetation clearing and increased fragmentation of [native] vegetation remnants are the most significant threats in eastern Australia. (p. 44).

"... clearing threatens ecosystems near Darwin and is related to developments for horticulture and improved pastures (p. 50).

"Overall, the clearing of land for agriculture appears to have had the greatest non-climatic influence on bird species... The most urgent actions identified by this and other studies are to end the clearing of native vegetation (p. 79)

"The [regions] identified as important because of their endemic species and high irreplaceability in south-west Western Australia and in the Murray-Darling Basin coincide with bioregions which are amongst the most extensively cleared, fragmented, and salinised in Australia... this is of great concern for the on-going persistence of the acacia and eucalypt species of special value in these regions..." (p. 100)

"...urgent action is required to halt the clearing of all threatened ecosystems as well as broad-scale clearing within the Murray-Darling Basin (p. 64).

"In many parts of Australia the opportunities for a fully Comprehensive, Adequate and Representative [nature] reserve system no longer exist and elsewhere, particularly associated with areas being rapidly cleared, the options are rapidly diminishing" (p. 126).

The links between land clearing, biodiversity decline, greenhouse gas emissions and dryland salinity are further described and fully referenced in Attachment 4.

Although land clearing is the greatest threat to Australia's terrestrial biodiversity, many other threats to biodiversity exist. The following is a list of the broad threats (this list is not intended to be comprehensive nor to represent all state, regional or local level threats) drawn from recent national overviews⁴³.

- Land clearing;
- Habitat fragmentation (includes "edge effects", "ecosystem decay");
- Grazing pressure;
- Changed fire regimes;
- Feral animals; exotic and environmental weeds, pathogens and diseases (e.g. cinnamon fungus, mundalla yellows, exotic and/or genetically modified viruses);
- Changed hydrological regimes including: ground and surface water flow regimes; effects on ground-water dependent ecosystems; salinity; salt water intrusion;
- Water quality decline (sediment, nutrients, pollutants, thermal);
- Firewood cutting and collection;
- Native forest logging;
- Climate Change;
- Changes to other ecological processes (e.g. nutrient regimes, soil chemistry, pollination, speciation).

Resources, Chapman & Hall, London; World Resources Institute 2000, *World Resources 2000-2001, People and Ecosystems*, WRI, Washington DC; Vitousek, P. M. *et al.* 1997, "Human domination of Earth's ecosystems", *Science* 277:494-499

⁴² United Nations Environment Program 1995, *Global Biodiversity Assessment*, Cambridge University Press, Cambridge.

⁴³ SOE reports, NLWRA, PMSEIC.

In addition to the above, there are institutional (and economic) factors which are contributing to the failure of efforts to protect biodiversity from the threats above. These include:

- Lack of independent oversight of conservation efforts;
- Lack of a "whole of government" approach to conservation and sustainability;
- Poor standards, targets and accountability for outcomes;
- Inadequate and poorly directed public and private funding
- Failure to adequately value biodiversity in the economy
- Weak laws, which are failing to regulate threats to biodiversity

Further discussion of the institutional barriers to achieving conservation and sustainability outcomes can be found in the "Tela" paper, *Institutions for Sustainability*, by Stephen Dovers⁴⁴. Solutions to some of these problems are discussed elsewhere in this submission.

Are the stated objectives of regulation appropriate?

Regarding the stated objectives of vegetation protection regimes, we feel it is important to address the issue of "threshold" or "reductionist" approaches. Regulators are often tempted to set land clearing targets in the form of crude percentages of vegetation cover beyond which clearing is not permitted. Several problems arise in developing and applying such thresholds, including:

- The half full/half empty problem, wherein regional committees, regulatory officers or landholders may see the target as a license to clear any native vegetation remaining above the retention threshold. Although usually intended as targets for *minimum* retention and/or for *revegetation*, in practice these percentage targets may actually facilitate and encourage clearing, providing a defence against accusations of having failed in one's duty to protect vegetation, land, water or biodiversity.
- These targets are rarely sensitive to changes in regional circumstances. While retention of X% may be adequate at a given time, changes in climate or weather patterns, hydrological processes, ecological processes or patterns or economic conditions may subsequently render a target unsuitable.
- Targets are to a large degree arbitrary. Despite some scientific basis in research into the relationship between species decline and degree of land clearing, the decision about the specific percentage cut-off is arbitrary, with some species decline occurring in areas or regions where only a very small proportion of vegetation has been cleared. This is also true as regards dryland salinity, where *any* reduction in leaf area index may lead to leakage to groundwater⁴⁵.
- Lack of scientific basis for target setting in some regions, particularly in northern Australia. Most studies of species decline and land clearing have been based on evidence from fragmented landscapes, and little is known about the nature of the specific relationship between clearing and species decline in relatively intact landscapes. It is possible that if appropriate studies were conducted, a steep decline in species diversity would be associated with even very small amounts of clearing, due to initial shocks to ecological systems. Weed and pest animal species not present in the intact landscape but which are favoured by clearing may take a heavy initial toll on species unused to their predation or competition for resources. There also may be loss of a small number of highly disturbance-sensitive "keystone" species whose role in the ecological function of the area is important for the survival of other species. Research into these possibilities should be a priority.
- Targets are often developed without reference to ecological and hydrological functions at landscape scale. Retaining sufficient habitat for a majority of species may be seen as a worthy goal. But if clearing down to that level upsets the hydrological balance so as to cause dryland salinity or to alter flows on which wetland or ground-water ecosystems depend, then the ultimate goal of biodiversity conservation may be undermined.
- In the wet-dry tropics, even small alterations to vegetation or hydrological systems may have profound impacts on ecological values.

⁴⁴ Dovers, S. 2001, *Institutions for Sustainability*, Tela paper, ACF, Melbourne.

⁴⁵ Hatton, T. J. and Nulsen, R.A. 1999, Towards achieving functional ecosystem mimicry with respect to water cycling in southern Australian agriculture, *Agroforestry Systems*. **45**:203-214.

The concept of protective management, outlined in the Australian Terrestrial Biodiversity Assessment reflects concepts in other recent studies, pointing to the effectiveness and cost-efficiency of protecting relatively intact landscapes from *any* land clearing or degradation, and of addressing the causes of land degradation, rather than attempting to restore degraded landscapes⁴⁶. Further rationale for protection of native vegetation beyond mere threshold approaches can be found in Attachment 4.

As long as existing regulations are weak and imperfect (see earlier discussion), their ability to achieve their environmental objectives is compromised. This is not to say that regulatory approaches to protection of the environment are inherently flawed, but only that the regulations currently in place in Australia are not ideally designed.

Overall however regulations have reduced land clearing (albeit not adequately), despite often strong opposition from farmers⁴⁷. For example, land clearing in Victoria and South Australia has reduced significantly since clearing control legislation was introduced, as the following table illustrates:

	Average annual land clearing rate (hectares)	
	1980 – 1990	1991 - 1995
Victoria	21,770	2000 - 3000
South Australia	28,800	1370

Land clearing rates before and after statewide regulations in Victoria and South Australia⁴⁸

This demonstrates the capacity of regulation for reducing land clearing and protecting the environment, although most states' regulatory regimes (including those of Victoria and South Australia) still require considerable strengthening and refinement.

It is crucial that state of the art, regular satellite mapping of native vegetation cover change be instituted in all jurisdictions, to monitor progress towards meeting regulatory objectives. The quality, regularity and methodology of such mapping varies from jurisdiction to jurisdiction at present, with Queensland the only state to conduct regular comparative statewide land cover surveys. Mapping of change in all native vegetation types is ideal, including sparse woodlands and non-woody vegetation.

Perverse environmental outcomes?

On the matter of panic clearing, it must be said at the outset that this occurs *prior* to the introduction of clearing controls, as an expression of landholders' recognition of the effectiveness of clearing control regulations. So let there be no confusion about this: land clearing regulations are effective, and do not result "in a greater reduction of native vegetation and/or biodiversity than would have occurred in their absence".

Rather, accelerated and often ill-considered clearing has occurred during times when governments have announced an intent to strengthen clearing regulations, but have failed to place interim controls or moratoria on clearing during the period between their announcement and the actual proclamation of permanent regulations. This "panic clearing" happens prior to and in the absence of regulations. The great tragedy of this is that despite advice describing the risks of panic clearing

⁴⁶ NLWRA 2003; PMSEIC 2002; Mackey, B & Nix, H, Cape York Peninsula Statement of Significance, accessed at <http://www.env.qld.gov.au/environment/environment/capeyork/introduction.html>.

⁴⁷ AGO 2000, Land clearing: A social history, National Carbon Accounting System Technical Report No. 4, pp. 2-5.

⁴⁸ AGO 2000, p. 11.

and the measures which have shown to be effective in averting it, governments do not always see fit to implement such measures. So it is not the regulations, but the way that they are introduced which can lead to a temporary acceleration of land clearing or the clearing of areas which may otherwise have been left intact.

The Commission asks whether any of the regulatory regimes have created incentives for non-compliance. ACF are at a loss to understand how this might come about. All of the regulations provide *penalties* for non-compliance, including financial penalties and jail terms. While some people choose to ignore this and to continue with illegal clearing or other breaches (just as some people refuse to wear seat belts or to pay taxes, in “defiance” of civil society and the rule of law), this cannot in any way be attributed to the regulations themselves.

In fact, issues of compliance and enforcement are something of “red herring” in some states, given the current rates of legally permitted land clearing. It is true that there has been and is still an unacceptable amount of illegal land clearing and other breaches of both biodiversity and vegetation protection regulations⁴⁹. However, the great bulk of land clearing in Australia is carried out under permits issued by government, and permitted under the current weak biodiversity and vegetation regulations at state and federal level. Better enforcement of these laws will make only a marginal difference in terms of meeting the objectives of conservation and sustainable land use.

Cost-effectiveness

The declining environmental trends referred to above demonstrate that many of the relevant regulations have patently not achieved their objectives, let alone at reasonable cost. Unless the regulatory flaws described above are rectified and much greater resources applied to enforcement and in some cases transitional assistance, conservation outcomes will continue to elude regulators.

Where strong regulations and appropriate transitional assistance are applied however, ACF believe that very cost-effective conservation outcomes can be achieved. This assertion is supported by recent analyses by the Prime Minister’s Science, Engineering and Innovation Council and Environment Australia⁵⁰.

South Australia provides a retrospectively example. Some \$85 million in financial assistance was allocated on the introduction of clearing controls in that state, and clearing dropped off by around 26,000ha a year, based on the decade prior to and following the introduction of regulations. ACF estimate that the value of the carbon spared from emission into the atmosphere following clearing, would be at least triple the amount of financial assistance⁵¹. This does not even include a value for the biodiversity protected and land degradation avoided through clearing controls in SA.

For every hectare of native vegetation planted by landcare groups and volunteers, up to 100 more are cleared⁵². Australia’s Federal and state governments are bound to the shared target of reversing the decline in the quality and extent of Australia’s native vegetation, but this clearly cannot be achieved under these circumstances. The enormous costs of tree planting and environmental restoration necessitated by land clearing should be taken into account by the commission when assessing the cost-effectiveness of regulations to control land clearing and other unsustainable practices.

These costs, as well as the costs of enforcement and administration of land clearing permit systems are largely borne by the public, via state and Federal government agencies (although landholders will have some costs relating to compliance). This could be regarded as inequitable, in

⁴⁹ NSW Auditor-General 2002, Performance Audit- DLWC- Regulating the Clearing of Native Vegetation

⁵⁰ PMSEIC 2002; EA 2003.

⁵¹ Based on methods used by Access Economics in *Greenhouse Implications of Increased rates of Land Clearing*, May 2000, Canberra.

⁵² ACF 2001, Land Clearing Versus Bushland Re-planting in Australia: Statements, statistics and references, briefing paper, ACF, Melbourne.

that the sector responsible for 90% of land clearing, which already entails big costs to the public in land degradation, is supported by the public through enforcement and administration costs and funding of the land repair bill. This is an argument for securing conservation outcomes through outright prohibitions on the clearing of remnant native vegetation rather than continuing to fund complex permit systems which allow broad-scale clearing to continue, and environmental repair programs which clearly cannot keep up with the damage caused by clearing.

Adequacy of Assessments of Economic and Social Impacts

We note that while environmental regulations often undergo socio-economic impact assessments when being formulated or implemented, the regulations themselves are an attempt to subject societal and economic activities to *environmental* impact assessment. To require economic impact assessment of the environmental impact assessment of economic activities seems rather circular and somewhat ridiculous.

Nevertheless we accept the need for equity in the implementation of environmental regulations, policies and measures, just as we accept the need for strategic environmental assessment of other government regulations, policies and activities⁵³.

We refer the Commission to the “issues in estimating impacts on landholders” outlined in the submission to this Inquiry by the World Wide Fund for Nature (WWF), and to WWF’s critique of Sinden’s *Costs to Farmers of Protecting Native Vegetation in the Moree Plains*⁵⁴, for discussion of socio-economic assessments.

ACF hope to provide more information on the adequacy of socio-economic assessments over the course of the Inquiry.

Transparency and Community Consultation

Development of regulatory regimes

ACF do not have the capacity to conduct research into the wide variety of consultation and transparency methodologies, practices and requirements of each jurisdiction in Australia relating to the formulation and implementation of the regulations at issue.

We urge the Commission to actively seek advice on these matters from both the agencies responsible for undertaking consultation, and from those who might have been consulted or had opportunity to have input. It is important to describe clearly the actual, rather than the perceived processes and opportunities for consultation which have and are occurring.

As regards the EPBC Act, this was the biggest change to environmental impact assessment legislation for over twenty years and the basis for its approach was agreed at COAG. This first COAG decision was not open or transparent and ACF commented on its insufficiency at the time. Subsequently there were drafts of the legislation which were available broadly for public comment and ACF made submissions, with other environment groups, to these.

Implementation of regulatory regimes

See Attachments 3 & 5 for discussion of the role and utility of regional committees in implementing regulations. ACF also draw the Commission’s attention to the importance of developing and packaging the data in the National Land and Water Resources Audit for practical use by regional committees.

⁵³ Dovers, S.R. and Connor, R.D. 2002, *Strategic Environmental Assessment: Policy Integration as Practice or Possibility?* Project ANU 24, case study 4. Report to Land & Water Australia. Canberra: Centre for Resource and Environmental Studies, Australian National University.

⁵⁴ WWF 2002, *Costs to Farmers of Protecting Native Vegetation in the Moree Plains: A Critique of Sinden, J.A. (2002)*, WWF, Sydney.

Consistency Between Commonwealth and State/Territory Regimes

Some discussion of this is provided earlier in this submission. ACF are of the opinion that reducing duplication is a worthy goal so long as this is not done in a way which compromises environmental standards and outcomes. We believe the current relationship between Federal and state regulations leaves a lot to be desired in this regard, and we refer you to our paper on a framework for shared responsibility in regulating land clearing in Australia⁵⁵.

Options to Reduce Adverse Impacts of Environmental Regimes

We have attached several papers that are directly relevant to producing an effective, cost-efficient and equitable mix of policy and regulation towards landscape and biodiversity conservation ends.

Our paper on rights and responsibilities in land and water management is clearly relevant, containing as it does recommendations aimed at delivering secure outcomes for the environment and equitable adjustment for the agricultural sector. The cost-effectiveness of this approach is described in several references which we have noted.

Indeed, should recent proposals for vegetation reforms and accompanying financial assistance in Queensland and NSW be implemented, this Inquiry's interest in impacts of native vegetation regulations may be rendered to some degree redundant. Both proposals, in the two states where vegetation protection is currently most contentious, contain provisions for addressing equity and adjustment concerns relating to impacts on landholders.

Additional approaches to conserving native vegetation and/or biodiversity

Our responses to the dot points on page twenty-four of the issues paper are as follows:

- *Removing regulatory impediments to increased private sector conservation (e.g. restrictions on harvesting or trading in flora or fauna).*
The example given is particularly poor. While increased private sector conservation can be a great thing, it needs to show cognisance of the limitations of the private sector's role. The Commission's staff research paper on creating markets for ecosystem services is instructive in this regard, and should be drawn on. It is imperative to keep the fundamental objectives of biodiversity conservation in mind. Trading in wildlife has been known to cause severe declines in biodiversity, and ACF would not support such measures. However, purchase of private lands of high conservation value by private individuals or organisations who are prepared to place secure conservation covenants on that land is a very positive measure. Harvesting of native flora is a complex issue and we do not have time to address it fully in this submission. We do note however that harvesting of native forest timbers has diminished the structural integrity and habitat quality of native forest ecosystems across Australia. We are therefore sceptical of assertions about any need to remove impediments to harvesting of native flora.
- *Addressing regulations which encourage removal of vegetation*
This is an important task. Any tax deductibility for expenses incurred during inappropriate land clearing operations should be removed. Indeed the OECD has suggested that Australia should tax land clearing according to the damage that it causes. Addressing any perverse taxation or other subsidies relating to vegetation or biodiversity conservation is an important step towards sustainability. It is also important to remove any encouragement of land clearing or activities which may impact on biodiversity from lease conditions. We understand that conditions of leases in the Northern Territory at times still actively encourage land clearing, and we believe that this is inappropriate and should be rectified.
- *Incentives*
We support a wide range of incentives for protection and management of native vegetation and biodiversity

⁵⁵ ACF 2001, *Controlling land clearing in Australia: A framework for Federal leadership and shared responsibility*, ACF, Melbourne.

- *Education and Advice*
We actively support the provision of education and advice about sustainable agricultural practices and biodiversity conservation
- *Tender/auction systems*
We believe these have great potential to achieve cost-effective conservation outcomes, and are following the Bush Tender trial in Victoria with great interest
- *Transferable land clearing rights*
We oppose these because of a range of difficulties surrounding the definition, transferability and irreplaceability of biodiversity values inherent in native vegetation⁵⁶. In any case, transferable clearing rights imply substantial continued land clearing, and this is not acceptable to ACF. We would be happy to expand on this point should the Commission wish.

We contend that a wide range of market, voluntary and incentive-based measures can contribute to efficient achievement of conservation outcomes, however these are useful adjuncts to regulatory measures, and not alternatives, as regulations are an essential part of the policy mix⁵⁷. A discussion of the full range of useful policy instruments is beyond the scope of this submission.

The Commission Inquires about other approaches which would be likely to form useful adjuncts to the regimes under examination, and about funding sources. We present some ideas on this below.

Leveraging Private Investment in Landscape Repair

In May 2000, the ACF and the National Farmers Federation launched the report *National Investment in Rural Landscapes*⁵⁸ (Attachment 8), describing the scale of public and private investment needed to move towards ecological sustainability in Australia's rural landscapes at \$65 billion over ten years.

Building on this work in 2001, the Business Leaders Roundtable, comprising Southcorp, ABN AMRO, Berri, Elders, Macquarie Bank, CSIRO and ACF, engaged the Allen Consulting Group to devise a framework to actually bring about large-scale private investment in sustainable land and water use.

Allen's report, *Repairing the Country: Leveraging Private Investment*⁵⁹, proposed the creation of new institutions linking capital markets to commercially driven investment projects through land users, businesses and natural resource managers. The report draws on existing policy tools well known in sectors such as health and education.

The approach involves:

- Improved access to private capital through tax-preferred investment vehicles (statutory investment companies);
- A Land Repair Fund to administer a range of programs and tax concessions;
- Accreditation for sustainability plans to ensure projects are consistent with national and catchment-based policies and objectives;
- Taxation – an integrated package of offsets and concessions tailored to make environmental investments more attractive; and
- Seed funding for innovative commercial ventures that achieve environmental benefits.

⁵⁶ Creating Markets for Ecosystem Services 2002

⁵⁷ Binning C. & Young M. ?2001, Native Vegetation Institutions, Policies and Incentives, CSIRO Wildlife and Ecology, Canberra; Young M, Howard B, Gunningham N, Grabosky P, McCrone E 1996, *Reimbursing the Future. An evaluation of motivational, voluntary, price-based, property-right, and regulatory incentives for conservation of biodiversity* Biodiversity Series No. 9, DEST Commonwealth of Australia

⁵⁸ The Virtual Consulting Group and Griffin NRM Pty Ltd 2000, *National investment in rural Landscapes: An Investment Scenario for NFF and ACF with the assistance of LWRRDC*

⁵⁹ Allen Consulting 2001, *Repairing the Country: Leveraging Private Investment*, ACF, Melbourne.

The new investment climate created would drive efficiencies in water, energy and natural resource use, development of appropriate infrastructure and promote ecologically and economically efficient productivity in rural Australia, as well as profitable new land uses such as ecosystem services. We envisage that this will create welcome opportunities for investors (diversification of portfolios), entrepreneurs, community and catchment groups, as well as individual landholders.

The report showed that with strong leadership from the Federal Government and public investment of about \$3.6 billion over a decade (mostly in foregone revenue), business could be encouraged to invest at least \$12.7 billion in accredited sustainable agriculture and land use.

ACF believes that the establishment phase of a leveraging fund (a pooled development fund) and a national/regional accreditation framework that incorporates biodiversity criteria are the two key components of leveraging private investment in sustainable landscape management. These could be established at relatively small cost to government, but would create important drivers for efficient and profitable investment in land and water repair.

Ratification of the Kyoto Protocol

Another simple way to stimulate opportunities for private investment in sustainable production in rural landscapes is for the Federal Government to ratify the Kyoto Protocol of the United Nations Framework Convention on Climate Change. Ratification would ensure access for Australia to investment through a regulated market which would be compatible with sound native vegetation management.

A national land and water repair levy

A national levy on taxable income has been suggested as one way to fund the public sector element of the leveraging initiative outlined above. Such a levy could also contribute to other costs relating to biodiversity conservation and native vegetation management, but should be seen as augmenting, rather than replacing existing environmental funding.

National Institutional Reform

The continuing downward trend of environmental indicators, despite the emergence of a swathe of environmental regulations, funding programs and policies over recent decades, suggests that not only is funding inadequate to the task of sustainable land management and biodiversity conservation, but that institutional reforms are required⁶⁰.

ACF are developing detailed analysis and proposals relating to the institutional requirements for a strong cooperative federalist approach to biodiversity conservation, natural resource management and sustainability more broadly. We will provide details of this during the course of the Inquiry once our analysis is complete.

Briefly though, Australia's current institutional arrangements seem unable to provide:

- Sufficient drivers for robust action and public and private investment in the environmental arena
- An adequate set of shared bilateral and multilateral goals
- Accountability for delivery of outcomes
- Sufficient, long-term funding for environmental repair and management
- A whole-of government approach (environmental management is left to environment Ministers, although the activities and policies of other portfolios are often in conflict with environmental objectives)
- Strong and transparent leadership, governance and oversight of efforts to achieve sustainability
- Truly independent institutions to guide and monitor progress

⁶⁰ Dovers, S. 2001, Institutions for Sustainability, Tela paper, ACF, Melbourne.

This situation ultimately leads to poor delivery of environmental outcomes⁶¹, poor accounting for performance⁶², lack of political will to provide adequate funding, policy and regulation (as evidenced by the problems described in this submission), and continuing environmental degradation.

The implications of this stretch to compromising our ability to meet international obligations, as referred to earlier in discussion of the Convention on Biological Diversity. Other relevant international environmental agreements are the Convention to Combat Desertification, the Framework Convention on Climate Change, the World Heritage Convention and conventions relating to migratory birds such as Ramsar.

National-level policy and program objectives are also compromised, including the goals of the Natural Heritage Trust and National Action Plan for Salinity and Water Quality in reversing negative biophysical trends such as vegetation loss and water quality decline. Lack of transparency and public input to the deliberations of Ministerial Councils and Boards, protracted delays over bi-lateral negotiations, and problems in natural resource pricing are partly symptomatic of institutional failure.

As a result of failed bilateral arrangements and poor leadership from the Commonwealth, for example, many management plans for Ramsar wetlands are weak and lack actual funding and implementation. Restoration of environmental flows to rivers and wetlands is slow and fraught with arguments over targets and funding. Vegetation protection targets are repeatedly missed, with land clearing far outstripping bushland restoration and compromising the prospects of establishing a comprehensive protected areas system, and Commonwealth involvement in protection of estuaries and freshwater biodiversity is poor.

ACF believe that to address these and other failings and promote environmental sustainability across Australia, national institutional reforms are required. The institutional arrangements developed in the 1990's around National Competition Policy provide the best template for these reforms.

To this end, ACF make the following proposals⁶³:

- An independent, statutory National Environmental Sustainability Council should be established, tasked with developing a robust national environmental reform agenda for the key broad-scale environmental problems facing Australia (including climate change, land and water degradation, biodiversity loss, and the protection of Australia's oceans);
- This reform agenda should be developed for approval by the Council of Australian Governments, and should include:
 - National principles and targets for each of the key broad-scale problems (enshrined in legislation)
 - A review of all Commonwealth and State laws for inconsistency with these principles and targets
 - National laws for each of the key broad-scale problems
- Large scale general-purpose Commonwealth funding should be made available to the States over twenty years, on the condition that the States satisfactorily implement this reform agenda;
- Commonwealth payments to the States should be funded through a twenty year national environment levy on taxable income (or similar long-term, secure revenue source at the appropriate scale).
- The National Environmental Sustainability Council proposed above should be tasked with assessing State progress in meeting the reform targets and, based on its assessments, making

⁶¹ Mid-term Review of the Natural Heritage Trust, accessed at www.ea.gov.au

⁶² ANAO 2001, Performance Information for Commonwealth Financial Assistance

⁶³ Wells. K. in prep., Greening the Australian Federation: A proposal for national institutional reform to promote environmental sustainability across Australia.

recommendations to the Federal Treasurer on whether or not Commonwealth funds should be made available to individual States;

- The powers, functions and resources of the Australian National Audit Office should be strengthened to enable ANAO to adequately assess the Commonwealth's own performance in implementing the reform agenda described above.

Continue and strengthen the National Land and Water Resources Audit

Finally, we submit that the world-leading work of the National Land and Water Resources Audit should be continued and strengthened with increased funding and an independent statutory basis. With adequate funding and independence, the Audit's work in providing unimpeachable data and analysis of environmental benchmarks and trends will form a priceless part of any institutional framework.