

# Constraints on Private Conservation: Some Challenges in Managing Australia's Tropical Rainforests

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# Constraints on private conservation: some challenges in managing Australia's tropical rainforests

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Private sector conservation in Australia has attracted increasing attention in recent years. Not only has Landcare attracted broad based natural support, but innovative new organisations such as Earth Sanctuaries and the Australian Bush Heritage Fund (ABHF) have received considerable public media attention (see PC 2001a). Parliamentary inquiries have considered the potential for private sector conservation, for example: the Commonwealth inquiry into the commercial utilisation of wildlife (Rural and Regional Affairs and Transport References 1998); the Commonwealth inquiry into public good conservation (Standing Committee on Environment and Heritage 2001) and regional inquiries such as the inquiry into the utilisation of Victorian native flora and fauna (Environment and Natural Resources Committee 2000). Additionally, academic literature on private sector conservation has expanded (see, for example, Bennett 1995a and Binning and Young 1997, 1999a and 1999b for an introduction).

The Productivity Commission has recently conducted a suite of research projects examining the role of the public and private sectors in conserving biodiversity (Aretino et al. 2001; Bates 2001; Productivity Commission 2001a, 2001b). Through this research, it became apparent that both the public and private sectors have an important role to play in conserving biodiversity *in situ* (that is, diverse native flora and fauna in their natural habitat). While not overlooking the important role the public sector must play, an efficient and effective framework for conservation should recognise that the private sector can contribute to public conservation and also alleviate some of the demands upon of the public sector. However, conservation by the private sector appears to be constrained by some elements of land tenure, native wildlife legislation, the competitive neutrality framework and taxation arrangements (PC 2001a). Some aspects of these arrangements are especially relevant to the conservation of tropical rainforests in Australia. The objective of this paper is to consider these constraints.

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## 1. Australia's wet tropics and private sector conservation: some facts

The wet tropics bioregion of Australia covers an overall area of 1 850 000 hectares across Queensland and the Northern Territory. Almost 900 000 hectares of this comprises the Wet Tropics World Heritage Area, of which more than half consists of national parks and timber reserves. The majority of the tropical rainforests located in the wet tropics region are located in a narrow coastal strip that extends north from Townsville in areas that experience rainfall over 2000 millimetres per annum (Department of Natural Resources 1999).

Interest in conserving the wet tropics rainforests partly reflects an increased understanding about the importance of tropical rainforests for climate, soil stability, biodiversity and its potential source of commercial products, such as pharmaceuticals. Owing to the time and difficulties involved in re-establishing tropical rainforests, a key approach to conserving tropical rainforests must be *in situ* conservation.

### Property rights and *in situ* conservation by the private sector

In Australia, *in situ* biodiversity conservation has traditionally been viewed as the province of governments. Nationally, around 7 per cent of the Australian landmass is designated as a public nature conservation reserve (AUSLIG 2001).

Involvement by governments in conducting *in situ* biodiversity conservation has conventionally been viewed as a response to insufficient private conservation — arising because some aspects of biodiversity display ‘public good’ characteristics that can deter individuals from conserving them. For example, biodiversity confers benefits on the community by contributing to environmental stability, thereby contributing to the existence, option and bequest values of habitats and species. These benefits are ‘non-rival’<sup>1</sup> and ‘non-excludable’<sup>2</sup> in nature, making it difficult for individuals to successfully recoup the costs of their supply (see Tietenberg 1992). The existence of such public good characteristics has commonly been identified as a key cause of excessive deforestation and environmental degradation.

While it is unlikely that the private sector could meet all the biodiversity conservation needs of Australia, it nevertheless contributes substantially to it. Biodiversity conservation currently undertaken by the private sector partly reflects altruistic or philanthropic desires to protect the environment and secure it for future

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<sup>1</sup> Enjoyment of benefits by one individual does not reduce the benefits available to others.

<sup>2</sup> Once available to one individual, the benefits are available to others to enjoy.

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generations. But, while some aspects of biodiversity display public good characteristics, others do not and, for these aspects, the private sector may have incentives to conserve biodiversity. For example, where individuals or companies are able to control access to a region — as might be the case with a private sanctuary — it may be possible for firms to successfully recoup conservation costs by charging tourists to visit the area and view the native flora and fauna. (See PC 2001a for examples.)

Examples of philanthropic and commercial *in situ* conservation by the private sector include:

- investment in activities to conserve native wildlife and habitat or to help solve environmental problems;
- donating land for placement under a conservation covenant or agreement to ensure it is not developed in the future (this may involve public assistance); and
- sponsoring conservation programs or other campaigns to conserve native wildlife.

### **Increasing importance of private sector conservation**

The involvement of the private sector in supplying *in situ* biodiversity conservation is becoming increasingly important in Australia for two main reasons — concerns about the potential of public sector reserves to effectively protect biodiversity; and recognition of the significant influence private sector managers have on land use decisions.

#### *Concerns about public sector reserves*

Concerns about the ability of public sector reserves to adequately protect biodiversity stem from observations that public reserves may:

- be poorly selected and thereby poorly represent biodiversity;
- be too small on their own to maintain viable populations of individual species and ecological processes necessary to sustain natural communities in the long term;
- face high costs;
- suffer off-reserve degradation encroachment (Bennett 1995a; Bennett 1995b; Binning and Young 1999a; Coveney 1991; Farrier 1995; McNeely 1994; Pressey 1995; State of the Environment Advisory Council 1996; Sherwin 1997).

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This latter concern about the potential for off-reserve degradation encroachment is likely to be especially relevant to the wet tropics given the extent of private land ownership and control in the region (see section on land tenure issues below).

### *Private land management*

Private land in Australia is broadly categorised as Crown leasehold or freehold land (see AUSLIG for information). The property rights to Crown leasehold land, predominantly made up of perpetual and term pastoral leases (AUSLIG 2001), are shared by the lessee and the Crown, and perhaps by traditional owners. The Crown retains a range of powers over Crown leases, including powerful resumption provisions (see below). Where native title is applicable, activities on the leased land need to be consistent with the *Native Title Act 1993* and the *Native Title Amendment Act 1998*.

Property rights to private freehold land confer relatively exclusive rights to the holder of the deed or title to the land. The Crown retains only limited resumption rights to the land (mainly for minerals resources) and there are fewer and less pervasive provisions with respect to native title (refer to *Native Title Act 1993* and *Native Title Amendment Act 1998*).

Currently, around two thirds of all Australian land (about 500 million hectares) is under the control of private landholders and resource managers in the form of either freehold or leasehold land (AUSLIG 2001) (table 1). Of all privately controlled land, freehold land makes up about one-third nationally and private Crown leaseholds the rest. In Queensland, the importance of private sector control over land is especially significant. Queensland has the highest proportion of land in Australia under private control, with 91 per cent of the State consisting of either private freehold or leasehold (Crown) land (AUSLIG 2001).

## **2. Land tenure issues**

Two land tenure issues are relevant in facilitating private conservation in and around the wet tropics region:

- problems and challenges in undertaking private conservation on pastoral leases; and
- administrative and institutional arrangements for encouraging, facilitating and managing conservation agreements on private land.

## Conservation on pastoral leasehold land

Several private groups pursuing conservation activities on pastoral leases have emerged in recent years. These include non-profit groups such as:

- Birds Australia, a private conservation group aimed at conserving Australia's native birds;
- the Australian Bush Heritage Fund (ABHF), a private conservation group aimed at protecting highly threatened and/or significant flora and fauna; and
- the Australian Wildlife Conservancy (AWC), a private conservation group that is seeking to enhance and protect biodiversity.

Table 1 **Private land in Australia, by category and jurisdiction**  
thousand square kilometres

<i>Jurisdiction</i>	<i>Private Crown leasehold<sup>a</sup></i>	<i>Freehold</i>	<i>Total private land</i>	<i>Total private/total land %</i>
Queensland	939.8	627.2	1 567.0	91
New South Wales	308.9	405.5	714.4	89
Victoria	0.1	155.2	155.3	68
South Australia	418.4	158.4	576.8	59
Northern Territory	666.6	6.4	673.0	50
Western Australia	899.9	205.1	1 105.0	44
Tasmania	-	27.2	27.2	40
Australian Capital Territory <sup>b</sup>	0.9	-	0.9	38
<b>Australia/total</b>	<b>3 234.6</b>	<b>1 585.0</b>	<b>4 819.6</b>	<b>63</b>

<sup>a</sup> Does not include Aboriginal freehold and leasehold land held by designated Aboriginal communities, with special conditions attached to the titles. <sup>b</sup> All freehold land in the Australian Capital Territory has been resumed and vested in the Crown, preventing its sale or disposal as freehold land.

Source: AUSLIG (2001).

They also include businesses who conduct commercial conservation such as Earth Sanctuaries Ltd (PC 2001a) or those which conduct businesses dependent on conserved areas, such as commercial wildlife tours (see below).

These private conservation groups face a number of constraints in pursuing conservation activities on pastoral leasehold land. A central factor appears to be that pastoral leases are controlled and administered by a land tenure system designed to facilitate pastoralism with limited scope to alter the primary purpose of a lease to other activities such as conservation. Another factor is uncertainty surrounding property rights held by the Crown through resumption provisions, and by traditional owners through native title.

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While there are only few pastoral leases within the wet tropics region, the area contains many private holdings that affect biodiversity levels. For example, the Wet Tropics Management Authority (1999) claims that the Wet Tropics Heritage Area alone contains more than 300 freehold and leasehold titles and that the Area holds more than 2500 immediate neighbouring landholders. All of these properties can be important to the future of the tropical rainforests and the diverse set of values associated with them. For example, they may contain pockets of rainforest with related resources such as groundwater and forest ecosystems being shared across property boundaries.

### *Adding/varying uses on pastoral leases to reflect conservation*

Each State and Territory has legislation setting out the provisions and conditions governing pastoral leases (Binning and Young 1997). In all jurisdictions, the terms of a pastoral lease generally preclude activities on the leasehold land other than pastoralism and activities associated with pastoralism.

Currently, there is no form of lease tenure that recognises conservation as a primary land use in the way that a pastoral lease recognises pastoralism. However, each State and Territory has the legislative ability to grant exemptions to the pastoral lease provisions or to add additional purposes to existing leases. In Queensland, applications made by lessees outlining the proposed change in land use are assessed by the Lands Minister who has the discretion to grant approval.

### *Destocking a pastoral lease*

An important constraint to private conservation on pastoral leases appears to be the limited opportunities that are available to alter stocking provisions. All pastoral leases have some level of grazing or stocking provision attached to their title which requires the lessee to use the land for pastoral purposes unless an exemption is granted.

In central Queensland, the ABHF is seeking greater control over the level of stock that it is required to graze on the recently purchased Carnarvon Station pastoral lease (ABHF 2001). The lease currently requires the property to be grazed 'sustainably' (ABHF, pers. comm., 14 May 2001). Within the constraints of this requirement, the ABHF is establishing grazing trials to help determine the future management objectives for the property.

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### *Resumption provisions*

Under lease provisions in each State and Territory, certain property rights associated with pastoral leasehold land remain the property of the Crown. This typically includes ownership of timber and soil and the authority to resume the land for specified activities. In Queensland, under the *Land Act 1994*, most leases contain a provision that all or part of a lease may be resumed with 6 months notice.

The existence of such resumption provisions enables governments to accommodate future uses of land that are more valuable to society than current ones. Such provisions are infrequently exercised. Nevertheless, while other more valuable uses of land are not apparent, resumption provisions can create uncertainty where individuals or groups are making decisions to invest in pursuing conservation objectives. For example, in Queensland, the ABHF took into account the likelihood of resumption of a leasehold property (Carnarvon Station) before a decision to purchase the lessee rights was made (ABHF, pers. comm., 15 February 2001).

### *Native title*

The Commonwealth Native Title Acts (*Native Title Act 1993* and *Native Title Amendment Act 1998*) are arguably the most significant development in the management of pastoral leases since the inception of this form of tenure in the mid-1800's. Where lessees wish to diversify their activities on a pastoral lease by altering lease purposes by, for example, adding purposes such as conservation and tourism, these must be consistent with the rights of holders of native title (refer to *Native Title Amendment Act 1998*).

Uncertainty about the effect of native title was noted by the Queensland Government's Submission to the Industry Commission inquiry into ecologically sustainable land management:

Diversification into alternative activities on pastoral and grazing leases could involve native title considerations which would affect such activities (Queensland Government 1997, p. 16).

Any uncertainty about the effect of land use provisions could delay efforts by individuals to participate in private conservation of land.

## **Voluntary conservation agreements and land tenure**

One mechanism to facilitate the conservation of biodiversity on private land is the use of conservation agreements (covenants, easements and other agreements) that



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enable values associated with the conservation of biodiversity to be formally recognised and bound to land tenure.

There is a growing demand in Australia for such agreements from individual landholders and conservation groups such as Birds Australia and the ABHF (see PC 2001a). This growing demand highlights the need for efficient and effective administrative and institutional arrangements.

### *Conservation agreements for the protection of biodiversity*

Three issues that may be important for private conservation efforts in the wet tropics are the role of conservation trusts to facilitate and manage conservation agreements, the establishment of agreements on pastoral leases and the effect of Crown resumption provisions on the uptake of agreements.

In broad terms, a conservation agreement is a legally binding contract or agreement between a landholder and a third party such as a government or conservation trust, regarding the use and management of a piece of land for a fixed term or in perpetuity (Binning and Young 1997). Agreements usually take the form of a conservation covenant or easement. Covenants place restrictions on the landholder's use of the land while easements confer the right to do something on another person's land or restrict the way in which the landholder can use the land (Industry Commission 1998). Conservation agreements have been extensively used in several countries other than Australia such as New Zealand, the United Kingdom and the United States (PC 2001a).

In Australia, each State and Territory has legislation that allows for conservation agreements to be established on private land. Queensland National Parks and Wildlife offer formal conservation agreements through their Nature Refuges Program whereby landholders can negotiate a binding agreement over their land for conservation purposes. As of March 2001, 55 such agreements had been negotiated covering about 16000 hectares (Queensland Parks and Wildlife Service, *pers. comm.*, 14 March 2001). Queensland also operates a Land for Wildlife scheme which allows landholders to register their properties if areas within the property are actively managed for nature conservation. These 'agreements' are non-binding (Binning and Young 1997).

### *The potential role of a Queensland conservation trust*

Notwithstanding the benefits of the Nature Refuges Program and Land for Wildlife Scheme operated in Queensland, there may be merit in establishing a statutory conservation trust similar to the Victorian Trust for Nature (refer to Trust for Nature

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2000a) to encourage, facilitate and manage conservation agreements in Queensland. In particular, the use of non-profit conservation trusts to oversee conservation on private land can be helpful in harnessing private funds for conservation, as well as in potentially avoiding some of the distrust that landholders may associate with government conservation agencies (Industry Commission 1998). Accordingly, the Beattie Government, as part of its recent election platform, promised that such a statutory conservation trust body would soon be established in Queensland to facilitate private conservation (Beattie 2001).

### *Conservation agreements on pastoral leases*

Historically, conservation agreements have focused on private freehold land. However, there is an emerging interest among holders of pastoral leases to establish such agreements. For example, Birds Australia and the ABHF have negotiated or are currently negotiating agreements in South Australia, Queensland and the Northern Territory (PC 2001a).

While there may be legislation that enables covenants and other agreements to be established on pastoral leases, as for freehold, negotiating agreements for pastoral leases is complicated by the fact that property rights to the land are split between the Crown, lessees and traditional owners (where native title is applicable).

Even before a conservation oriented lessee can contemplate establishing an agreement for a property, the prevailing lease conditions must first be amended to recognise the conservation objectives for the land. Any changes to the lease conditions and pattern of land use may also need to be consistent with native title (PC 2001a). Furthermore, while it may be possible to alter the lease conditions and have these recognised as part of a conservation agreement, the Crown still retains significant resumption rights for pastoral leases (PC 2001a). These may act to discourage lessees from committing to the process of negotiating an agreement (see below).

With conservation agreements on private freehold land, non-profit trusts may be well placed to facilitate conservation agreements on leasehold land and encourage interested lessees to undertake actions to promote conservation. They may also be able to better arbitrate and ‘bridge the gap’ between the Crown, lessees and traditional owners.

### *The effect of resumption rights*

The Crown retains resumption provisions for private land that cannot be removed by binding private land tenure to a conservation agreement (for example, see

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*Queensland Land Act 1994*). Such provisions enable governments to accommodate future uses of land if they are more valuable to society than current ones. However, they may act to discourage landholders from entering into an agreement on the premise that the threat of resumption counters the purpose of the agreement and thereby reduces the value of the land as a conservation property. The Trust for Nature (2000b) in a submission to a Victorian Government Review of Proposed Amendments to the *Minerals Resources Development Act 1990* said:

The fact that Trust for Nature covenanted land is not exempted from exploration in the *Minerals Resources Development Act*, as is the case for land that is a reference area under the *Reference Areas Act 1978*; land that is a National Park, Wilderness Park or State Park under the National Parks Acts ... is of the greatest concern to the Trust, its covenantors and potential covenantors. We have on file record of a covenant not signed on important habitat because of the land owners perception of the devaluation of the covenant due to the lack of this exemption in the act ... (Trust for Nature 2000b, p. 3).

The Trust for Nature recommended that conservation covenants should be exempted from mineral exploration in Victoria and that such reforms:

... would provide much needed surety in nature conservation on private land that recognises the contribution that conservation of private land makes to the whole of the community ... (Trust for Nature 2000b, p. 3).

However, if the value of alternative uses of land exceeded the value of lost conservation, the option of resumption may still be in the interest of the community. The benefits from exempting conservation land from resumption would need to be considered in light of this.

### **3. Queensland native wildlife legislation**

Commonwealth and State/Territory regulatory frameworks for native wildlife can affect the extent of conservation undertaken by the private sector. Queensland native wildlife legislation controls the taking, keeping, use and trade of native wildlife by the private sector. In 2001, the Queensland Government commenced a review of Queensland native wildlife legislation which is due to report in late 2001 (McKinnen, A., Queensland Parks and Wildlife Service, Brisbane, pers. comm., 29 August 2001). Existing Queensland native wildlife legislation would appear to constrain some private sector conservation and may impede the achievement of the purpose of the legislation — conservation of nature.

#### **Ownership issues**

While holders of native wildlife have some rights over their animals in Queensland (for example, variously to hold, trade, display or breed the animals), they do not

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have complete ownership of native wildlife as any use outside the conditions of a licence or permit would require a further application for another licence or permit (PC 2001a).

For example, Queensland, on behalf of the Crown, appears to assume rights and responsibilities associated with ownership of captive native wildlife lawfully imported into Queensland, and ownership of any resulting captive-bred native wildlife. It also appears that the rights and responsibilities associated with ownership of captive native wildlife would pass to another state or territory if that wildlife was exported from Queensland to another region where different administrative arrangements applied (PC 2001b).

The legal status and the conditions attached to native wildlife ownership could deter investors in conservation — for example, from seeking to breed native animals to repopulate regions — because of uncertainty about ownership. The option of assigning wild native animals to the Crown, and captive-bred native animals to the person responsible for keeping them, could be explored as a way of reducing uncertainty (PC 2001a).

### **Licensing system**

The Queensland native wildlife legislation appears to be more complex than necessary and this may create difficulties for private sector agents who seek to conserve native wildlife (PC 2001a).

Queensland currently operates eleven different types of licence (that is, commercial wildlife, recreational wildlife, recreational wildlife (specialist), international wildlife, commercial wildlife harvesting, recreational wildlife harvesting, wildlife demonstrator, wildlife exhibitor, wildlife farming, museum and herbarium) for eight different schedules of native wildlife. It also operates eight types of permit (damage mitigation, educational purposes, keeping of protected or prohibited wildlife, rescue of wildlife, scientific purposes, wildlife movement, commercial whale watching and clearing) (PC 2001b).

Despite the large number of specific licences and permits, private conservation initiatives, especially for threatened native wildlife, do not easily ‘fit’ within the current system of licences and permits, as there is no specific category of licence for these activities. This is because of the design of the licensing system and the specific purpose of the different licence and permit categories. If regulation is necessary, the approach should be to specify the desired outcomes that are to be achieved, rather than prescribing the end use through discrete licence or permit categories (PC 2001b).

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An educational or scientific permit would appear to be the only way that private conservation initiatives may receive approval to take and keep rare or threatened native wildlife from the wild. However, there are restrictions on these permits that may prevent them from being granted to private conservation initiatives. For example, an applicant for a scientific permit might need to demonstrate that they are either:

- associated with a recognised scientific organisation, or a professional organisation involved in scientific research or ‘a non-profit community organisation with a genuine interest in the conservation of wildlife; or
- are completing postgraduate training in scientific research or has achieved a satisfactory level of competence in scientific research (s113 of the *Nature Conservation Regulation 1994*).

The permit system therefore only allows a narrow range of purposes with no allowance for activities outside this definition potentially constraining a range of private conservation-related activities.

### **Inter-jurisdictional issues**

Inconsistent native wildlife legislation across jurisdictions can affect conservation-related activities by the private sector. For instance, although the licensing systems that apply in each State are broadly similar, there are some significant differences between them. Some jurisdictions, such as South Australia, have a more flexible and non-restrictive system where applications can be made to keep any native fauna. Other jurisdictions, such as Queensland and Western Australia, have restrictions and controls that appear to be more complex than necessary and that may unduly constrain private conservation initiatives. For example, in the crocodile industry, the Northern Territory and Western Australia allow farming of crocodile eggs whereas Queensland does not. Western Australia also provides for the transfer of native wildlife permits from one person to another whereas Queensland does not. These differences may not allow businesses in the industry to compete on an equal footing (PC 2001a).

The Senate Inquiry into the commercial utilisation of native wildlife was concerned that ‘duplicated and onerous administrative procedures were unnecessarily hindering legitimate industries in Australia’. The Inquiry recommended ‘that State and Federal Governments together review all administrative procedures relating to commercial utilisation of native wildlife in Australia with a view to increasing their efficiency’ (Rural and Regional Affairs and Transport References Committee 1998).

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## 4. Competitive neutrality

One form of biodiversity conservation by the private sector is the establishment of private reserves. Since most reserves to protect biodiversity have traditionally been public, an important issue for firms wishing to establish private reserves is how well their reserves will be able to compete with their public counterparts.

Private reserves may be operated on a charitable basis — as is the case of private reserves created by Birds Australia — or on a commercial basis — as with Earth Sanctuaries (Aretino et al. 2001). An example of a commercially operated private sanctuary in Australia's tropical rainforests is Carrowong fauna sanctuary near Cairns (Carrowong 2001a; Halstead 1998). The region in which the sanctuary is located contains rare vine trees, around 130 bird species and a variety of threatened species such as the southern cassowary and northern platypus. As part of its business, Carrowong offers the public nocturnal walks to view the flora and fauna of the forest (Carrowong 2001a; 2001b).

A major influence on competition between public and private firms in Australia is the National Competition Policy that aims to accelerate and broaden progress on microeconomic reform in recognition of the benefits it can bring. An important aspect of the national competition policy is 'competitive neutrality'.

Competitive neutrality is the principle that government businesses should not enjoy any net competitive advantage simply because they are publicly owned (see Commonwealth Competitive Neutrality Complaints Office 1996 for information). In practice, it means that government jurisdictions are required to identify government owned businesses that are potentially subject to competitive neutrality principles and nominate specific measures for these businesses to ensure that each is competitively neutral. The measures might include, for example, requiring government businesses to recover the full costs of the goods and services they provide, or requiring businesses to undergo commercialisation (PC 2001a).

In reality, competitive neutrality is limited to certain government businesses. Competitive neutrality is not, for example, intended to apply to government businesses which conduct non-profit, non-business public sector activities, or where the costs exceed the benefits (Commonwealth Competitive Neutrality Complaints Office 1996).

In addition, competitive neutrality can only apply to businesses that are considered to be 'significant'. The meaning of 'significant' varies across jurisdictions. For example, in New South Wales, Western Australia and South Australia, government guidelines suggests that public enterprises earning commercial receipts of over \$2 million per year could be significant, while guidelines for the Commonwealth

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Government suggest that a business earning over \$10 million per year could be significant (although Government Business Enterprises, other share-limited trading companies or business units, are always significant, regardless of turnover).

In Queensland, significance for competitive neutrality may initially be determined on the basis of expenditure. Thus, a public business may be declared significant if it has a current expenditure greater than \$15 million per year (for non-water and non-sewerage enterprises) or \$25 million per year (in the case of water and sewerage enterprises) (Queensland Government 1996).

Other determinants of significance may include:

- whether a government firm charges for goods and services;
- whether an independent manager runs the government business;
- the position of the government business in the local market; and/or
- the existence of an actual or potential competitor in the market (PC 2001a).

Ultimately, application of competitive neutrality is determined on a case-by-case basis.

### **Difficulties in applying competitive neutrality to private sanctuaries**

There are difficulties in applying competitive neutrality to public reserves in the wet tropics. In Queensland, no conservation services such as public sanctuaries have to date been nominated as significant for competitive neutrality purposes (Godfrey. L. Queensland Competition Authority, Brisbane, pers. comm., 28 August 2001). This could mean that public sanctuaries are able to enjoy competitive advantages over private sanctuaries. In other regions (notably South Australia), a complaint can be lodged against a business not listed as significant and an assessment can be made of its significance and whether competitive neutrality measures should be applied. In Queensland, the declared list of significant businesses cannot be altered by complaint as significant businesses are determined by the Minister responsible for the *Queensland Competition Authority Act 1997*, the Premier and the Treasurer (Godfrey. L. Queensland Competition Authority, Brisbane, pers. comm., 29 August 2001).

Although there is little to suggest that competitive neutrality provisions will be applied to public reserves in Queensland in the near future, opportunities for change exist. Nevertheless, even if public reserves in Queensland were opened to competitive neutrality, difficulties exist in applying it to reserves. For example, government businesses that are required to undergo commercialisation to achieve competitive neutrality may be required to earn a positive rate of return. (This can

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provide incentive for managers to achieve full cost recovery and lead to more efficient outcomes.) However, proof of achieving a positive rate of return relies on the ability of managers to accurately value assets.

In practice, it can be difficult to accurately value wildlife and habitat assets because there are no observable markets for these assets. Also, it can be difficult to separate commercial and non-commercial operations so that commercial operations can be subjected to competitive neutrality measures while non-commercial activities are excluded. In particular, it can be difficult to distinguish government ‘community service obligations’ (excluded from competitive neutrality obligations) from other business strategies. Community service obligations are the non-profit activities that government business enterprises undertake. In public reserves, community service obligations may include the requirement for public sanctuaries to discount admission price for particular community groups such as school children and senior citizens (PC 2001a). However, many private businesses also discount charges for senior citizens and students to increase admissions. It can thus be difficult to determine when price discrimination is related to commercial or community purposes (PC 2001a).

These issues are likely to be increasingly important to the protection of tropical rainforests in a time when ecotourism in the wet tropics is increasing. An estimated 4.8 million visits per year take place at different sites for tourism and recreation in Australia’s wet tropics (Manidis Robert Consultants and Taylor Environmental Consulting 1994). Around 50 companies are estimated to offer regular tours to sites in the Wet Tropics World Heritage Area (Young et al. 1996).

To date, only one complaint against a public sanctuary — the Cleland Wildlife Park (CWP) in South Australia — has been upheld in Australia. In this case, the relevant Competition Commissioner deemed the government business ‘significant’ and suggested that full cost reflective pricing be applied to Cleland within a framework of commercialisation (box 1).

## **5. Tax provisions**

Existing tax arrangements may potentially influence the type and amount of private conservation activities undertaken. Tax arrangements are sometimes used to encourage particular conservation activities (see ‘environmental altruism’ below). However, some tax arrangements create distortions and disincentives that discourage private conservation efforts (PC 2001a).

Potential distortions may occur when tax arrangements treat similar activities, organisations or individuals inconsistently. For example, the different treatments of donations to environmental organisations may affect the relative costs (and



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therefore attractiveness) of alternative types of donations and may consequently influence the type and amount of environmental altruism undertaken (PC 2001a).

Inconsistencies exist in tax treatments of conservation-type expenditures (such as weed and pest control) between land managed for conservation and other uses. Tax arrangements also distinguish between similar activities undertaken for different reasons, even though the community-wide benefits of the conservation activities do not depend on why the activity is undertaken (see below). The arrangements may encourage tax payers to make choices over the use of their land to take advantage of (or avoid) unfavourable tax treatments (PC 2001a).

**Box 1      Competitive neutrality and public sanctuaries — the case of Cleland Wildlife Park**

Cleland Wildlife Park is a division of the South Australian Department of Environment and Heritage, part of the National Parks and Wildlife Service. The Park offers walking trails through the bush, animal displays, refreshments and information for the public, as well as participating in a range of species recovery programs and education programs.

Competitive neutrality complaints against Cleland were brought by Earth Sanctuaries Ltd in 1998. Earth Sanctuaries owns a private sanctuary, Warrawong, close to Cleland which holds displays of native animals, provides guided tours and provides refreshments and accommodation. Earth Sanctuaries claimed that Cleland enjoyed unfair competitive advantages in competition because it operated under different regulatory arrangements. For example, it argued that Cleland was allowed to have species that Warrawong was denied, such as koalas.

Upon investigation, the South Australian Competition Commissioner deemed Cleland a 'significant business' for competitive neutrality purposes and identified clear similarities between the operations of Earth Sanctuaries and Cleland Wildlife Park. The Commissioner decided that the application of competitive neutrality principles was likely to generate net benefits to the community, mainly through improving competition and contestability in the market. The Commissioner suggested that full cost reflective pricing be applied to Cleland within a framework of commercialisation. The South Australian Department for Environment and Heritage would then be obliged to establish Cleland Wildlife Park as a separate business unit within the Department, necessitating the generation of separate financial statements. It would also be required to undertake its own analysis to confirm the appropriate competitive neutrality principles to apply. In response, the South Australian Department of Environment and Heritage has proposed undertaking full cost recovery. In the meanwhile, admission charges to Cleland have increased and some staff functions have been eliminated.

*Source:* Aretino et al. (2001); Cleland Wildlife Park (2001); Competition Commissioner of South Australia (1998); PC (2001a); South Australian Government (2001).

These problems may be magnified by other government measures (such as agricultural assistance) and/or tax treatments that actively encourage other land uses

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that may impact on biodiversity. Existing tax concessions that lower the relative operating costs of commercial activities may make those businesses relatively more attractive and, consequently, draw more resources to them and, potentially, away from biodiversity conservation.

### **Environmental altruism**

Under existing tax provisions, monetary donations to environmental charities are tax deductible, as are donations of land valued over \$5000. However, implicit ‘donations’ such as conservation covenants are either not recognised or are untested (PC 2001a). The Prime Minister (Howard 2001) recently announced proposed changes to existing arrangements that may address some of these concerns.

Other inconsistencies in tax provisions for conservation relate to the sale of land to environment and heritage organisations at a discounted price (a so-called ‘bargain sale’). The Ian Potter Foundation suggests that, together, deductions for the ‘donation’ component of bargain sales (the difference between the full market value of the land and the concessional sale price) and exemptions in capital gains tax for the portion of land value donated are the ‘single most effective private conservation instrument currently applied within the United States’ (Ian Potter Foundation 1999, p. 9).

Existing gifting arrangements do not allow a gifting deduction for the ‘donation’ component of bargain sales (House of Representatives Standing Committee on Environment and Heritage 2001). This potentially creates a distortion over choices between different donation types, especially for landholders unable to donate the land outright (Ian Potter Foundation 1999).

### **Conservation expenditures**

There are key differences between the tax treatment of many expenditures on land used to generate income (including primary production) and land used for private conservation which generates no income. These differences arise because tax deductibility only applies to income-producing expenditures — that is, expenditures to manage land used for business are seen as business inputs and are tax deductible — while expenditures to manage land used for private conservation activities that do not generate income are considered private consumption. Taxpayers choose to undertake private conservation activities in competition with all other purposes to which their funds could be put (PC 2001a).

These distortions can potentially affect the relative costs of managing land for conservation as well as alter the relative risks and cash flows of alternative activities and therefore investment decisions. Remaining uncertainty about future rulings on

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taxation is also a concern to private landholders contemplating conservation initiatives (PC 2001a).

Under existing income tax provisions, the tax treatment of expenditures related to conservation activities (such as weed and pest control) on land managed for conservation purposes may be different to the tax treatment of identical activities undertaken by other businesses conducted on rural land (including primary production). This is because:

- ‘up-front’ tax deductions for income or business-related expenses and capital expenditure on landcare operations are only available if a commercial business is carried out on the land — the deductions do not apply to landholders who only wish to protect the land (and do not use the land for the purpose of gaining assessable income); and/or
- landholders who only wish to undertake private conservation activities may not have access to the special ‘concessions’ available to primary producers. Special tax concessions available to primary producers include a three-year deduction for expenditure on water facilities, special tax offsets for low income primary producers worth 30 per cent of the amount spent on water facilities and landcare (up to a maximum of \$5000 for each type of expenditure) and special provisions to allow a taxpayer to spread or defer the tax profit in certain circumstances, such as where landholders are forced to dispose of livestock resulting from the destruction of pasture or fodder by drought, fire or flood.

Instead of having access to these up-front tax deductions or special concessions, conservation-focused landholders can add all reasonable costs of land management, including the costs of interest payments on the purchase of land, to the cost base of the land and so can deduct these costs from any capital gain or loss at the time of sale of the property. This may create a disincentive for biodiversity conservation because of the type and timing of the allowable deductions (PC 2001a).

Taxation arrangements thereby distinguish between similar activities undertaken for different reasons. As a result, resources may be drawn into (or may be discouraged from moving away from) those areas receiving tax-favored treatment. This may affect the relative risk and cashflow of private conservation activities and deter landholders who are not involved in businesses (including primary production) from undertaking private conservation activities (Binning and Young 1999b).

## 6. Conclusions

The private sector has an important role to play in contributing to biodiversity conservation *in situ*. However, this contribution currently appears to be constrained

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by elements of land tenure, native wildlife legislation, the competitive neutrality framework and taxation arrangements. Some aspects of these constraints may be inhibiting the conservation of Australia's tropical rainforests.

The pastoral lease system and competitive neutrality in Australia may need to be re-examined to ensure that conservation is not unnecessarily constrained through inconsistent or inefficient provisions. Current reviews or developments in Queensland native wildlife legislation or taxation may facilitate some private conservation but the nature of likely outcomes is not yet clear.

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