

Submission to Productivity Commission on the Impacts of Native Vegetation and Biodiversity Regulations

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Introduction

Trust for Nature was founded thirty one years ago through the Victorian Conservation Trust Act 1972. The Victorian State Government established the organisation as an independent body with its own Board of Trustees dedicated to protecting natural heritage on private land through land purchase and by accepting donations of freehold property. In 1979 Trust for Nature was given the statutory power to enter into legally binding voluntary covenants with landholders. Covenants enshrine conservation values on property titles in perpetuity, limiting and/or prohibiting property rights such as entitlements to clear vegetation or graze livestock for the current and all subsequent owners. Trust for Nature is the 'sole provider' of statutory covenants for nature conservation in the State of Victoria.

As a mechanism for protecting native vegetation on private land in Victoria Trust for Nature covenants pre-date major legislative initiatives for biodiversity protection such as the Fauna and Flora Guarantee Act 1988 and the current Native Vegetation Retention Controls administered through the Planning and Environment Act 1987. The first covenant was registered in 1987. There are now 500 covenants registered, protecting over 20,000 hectares of largely threatened habitat on working farms, lifestyle 'bush blocks' and on rural/urban fringe properties. A further 300 covenants have been approved by the Board of Trust for Nature, awaiting final registration, representing another 15,000 hectares.

Trust for Nature provides extension on the need for conservation on private land, and facilitates the negotiation of covenants for landholders through its Covenant Program as implemented through the work of ten Regional Managers based in each of the Catchment Management Authority (CMA) areas in Victoria. The ten Regional Managers also implement Trust for Nature's Stewardship Program. They help landholders develop management plans for their covenanted habitat and support on-going monitoring of covenants. They also give advice and support to landholders purchasing existing covenanted land so that new owners fully understand the conservation values of the properties they are buying. In addition, Trust for Nature's Revolving Fund allows the organisation to purchase properties of high conservation value and then sell them with a covenant attached to interested buyers; in this way, committed landholders are aligned with threatened habitat while monies recouped from the sale of property are 'recycled' for purchase of further high conservation value properties.

Discussion

Voluntary and legislative measures for protecting biodiversity and native vegetation on private land represent respective ends of a spectrum. One approach emphasises education and negotiation for encouraging interest in conservation while the other relies on the power of regulation to stop the most damaging threatening processes such as land clearing. Trust for Nature believes that a regulatory framework is important but fundamentally flawed if not supported by extension and incentives such as those represented by the Trust's Covenant and Stewardship programs. There is perhaps a relationship between the sudden momentum for covenants from the late eighties onwards and the appearance of new biodiversity legislation during the same period. This is a proposition that has not been formally evaluated but regulations do seem to have established a framework and legitimacy for private land conservation that has inspired certain landholders to make doubly sure, as it were, that the spirit of new regulations will apply more thoroughly on their land through placement of a Trust for Nature covenant on Title.

In this way legislation does not hinder the work of Trust for Nature but instead provides an outline of the most basic responsibilities of landholders. This then allows landholders who value the significance of their properties for nature conservation beyond these basic responsibilities to use covenants as a means for increasing the level of protection. For its part Trust for Nature recognises that it is relatively easy to legislate to stop private landholders obliterating vegetation with a bulldozer, but another thing altogether to regulate people's interest in their remnant vegetation as a complex (fragmented) piece of habitat (full of "beauty and inspiration" [ANPWS 1993:1]) so that they care for it, through fencing, appropriate burning, weed removal and so on. These management tasks are even more complex once the faunal implications of managing bushland are taken into consideration.

Trust for Nature realises that balancing what constitutes 'public conservation service' (ie. altruistic conservation practices requiring public support) and 'duty of care' (ie. 'bottom-line' responsibilities for protecting biodiversity) is a complex task as discussed in Binning (1997: 159). Legislation does not usually offer 'protection' in the form of management. Regulation for management would treat fragmented habitat as a mosaic of diverse patches with differing degrees of senescence, invasion by exotic organisms and so on, and then stipulate actions within the context of eventual 'landscape restoration' as a guiding goal. This is the strategic approach taken by Trust for Nature in its use of Regional Vegetation Plans as developed by the ten CMAs in Victoria to guide targeted extension for its Covenant Program.

In the context of the impact of regulatory regimes for biodiversity protection the contribution of Trust for Nature voluntary covenanters to improved management of habitat on private land must be emphasised. By 'donating' land through covenants for nature conservation, managed at their own expense, covenanters provide:

- Approximately \$1,000,000 worth of in-kind management of habitat across Victoria per annum.
- An approximate 'donation' of \$150,000,000 worth of property (if purchased on the open market rather than protected through covenants)
- 'Free' extension to other landholders on the need for nature conservation on private land.

Supported by Trust for Nature Regional Coordinators through the Trust's Stewardship Program covenanters help 'normalise' the spirit of much native vegetation regulation in local communities by demonstrating that they have voluntarily negotiated *their own* 'regulations' on their land above and beyond the requirements of legislation. Trust for Nature is therefore building the community's capacity to take ownership of improved management of native vegetation and biodiversity rather than simply react negatively to regulations.

Incentive projects conducted by Trust for Nature prove the efficacy of this approach. For example, the Worldwide Fund for Nature received funding from the Commonwealth's Natural Heritage Trust to develop projects with community NGOs such as Trust for Nature for protection of endangered grasslands and grassy woodlands. Trust for Nature developed several projects through this 'devolved grant' system for grassy ecosystems. Over \$100,000 in incentive payments were made to landholders for better management of this habitat type linked to covenants and management agreements.

In farming areas grasslands are subject to destruction and degradation from over-grazing and cropping despite having regulatory protection. Confusion and suspicion about what actually constitutes a native grassland amongst landholders combined with a lack of resources for compliance and enforcement of legislative requirements is offering little protection for remnant grasslands and even less improved management of these areas.

However, by combining on-ground extension with incentive payments Trust for Nature recently negotiated 16 covenants and management agreements in the Birchip and Campaspe Plains area of the Victorian Mallee within a three month period, covering over 700 hectares of endangered grassy

ecosystems. Payments were linked to lessening or eliminating stock grazing, weed and pest animal control, or one-off and minimal payments for income foregone from between \$2000-\$5000. All the sites are on working farms and the covenants represent partnerships with the farmers involved to improve management of these endangered ecosystems. This funding originated from a WWF grant dubbed 'Grassy Conservers 3'. This project did not use a competitive tendering 'auction system' for determining the rate of payments for ecological management (as occurs in the Bush Tender scheme run by the Victorian Department of Sustainability and Environment) but was nonetheless based on the principles of negotiation for provision of service.

The Victorian Civil and Administrative Tribunal (VCAT) sometimes refers applicants who are refused vegetation clearing permits to Trust for Nature, 'obliging' them to negotiate Trust for Nature conservation covenants or at least expressing a preference for these landowners to negotiate a Trust for Nature covenant over a Section 173 agreement as applied through local planning provisions. While in the final analysis all Trust for Nature covenants are voluntary these VCAT recommendations highlight the perceived benefits for landholders of developing their own covenants rather than having regulation alone apply to their 'duty of care' responsibilities for land management. The danger in this style of ruling is that the voluntary nature of conservation covenants is diminished. In these situations Trust for Nature would prefer that better resourcing of regulatory measures could be used to ensure that landholders comply with basic responsibilities for biodiversity conservation, while a strong educational/extension element along with compliance would encourage landholders to consider Trust for Nature covenants as an alternative to development.

Conclusion

As discussed in the Issues Paper for this Inquiry much recent biodiversity legislation aims to help achieve more sustainable management of Australia's native vegetation and biodiversity in the context of landscapes where the traditional main land use is agriculture, not nature conservation. The management of fragmented ecosystems is technically complex and in most cases better management of biodiversity is utterly dependent on the interest and enthusiasm of private landholders. Paradoxically, in some situations, remnant vegetation and its associated conservation values, are an artefact of some past or present agricultural regime. Further, this regime may have been developed by a farming family that still owns the land in question. It is therefore vitally important to give us much 'ownership' as possible to landholders who manage habitat on behalf of the wider community. This ecological and social complexity increases the need to use law for creating institutions that adopt adaptive learning as their goal rather than establishing total 'command and control' (Dovers and Mobbs 1997:44-45). Trust for Nature aims to be such an institution working within the context of well-resourced regulatory regimes for biodiversity conservation.

References

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Binning, C. E. (1997). Beyond Reserves: Options for Achieving Nature Conservation Objectives in Rural Landscapes. In N. Klomp & I. Lunt (Eds.), *Frontiers in Ecology* (pp. 155-168). Oxford: Elsevier Science Ltd.

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