Thank you for the invitation to the ACT Sustainable Rural Lands Group Inc. to make a submission to the Productivity Commission on the Draft Report "Impacts of Native Vegetation & Biodiversity Regulations".

In our e-mail to you of 24 July 2003 the key (policy level) points raised were:

- In Australia environmental outcomes are almost always shown as a cost on a business balance sheet rather than an investment or assets. To change this Governments must assign realistic value to matters such as preservation or enhancement of native vegetation and biodiversity. These values must be bankable.

- Ability to manage with certainty and be self determinate are essential if farming is to adapt to the dual demands of productivity and environmental sustainability.

- Urban encroachment carries a very high cost and many organizations that try to claim environmental credentials on one hand either support or are the developers raping and taking the land for urban expansion when environmental factors strongly suggest infill and urban renewal is more sustainable. ACT Government is a good example of this policy conflict in action.

- Command and control legislation does not encourage cooperative and good balanced long term management. We can demonstrate this by examining historical practices in the ACT from the 1930's.

- Public good must be supported by appropriate support from the public purse.

- Inter-generational sustainability needs to advance while looking both forward and at history with healthy regard to financial sustainability. Australian legislation generally falls well short of supporting these goals.

The report makes good inroads in identifying key issues around long term agricultural sustainability, but we doubt the report on its own will temper the enthusiasm of some regulators to command and control farmers without regard to the financial or personal impacts of those affected. The Commonwealth Government needs to examine what it can do to repair and deter adverse state based regulation. Sustainable farms are important to this country's well being.

We wish to provide the following comments on the draft report:

Page XXVII, Last Paragraph. The reference to the effects of the ACT Government's policy relating to clearing controls is not correct for all rural leases in the ACT. Where the Government has already acquired the right to treat (clear) timber and is re-leasing the land the comment may be correct. However, where the lessee owns (through prior purchase) the right to conduct timber treatment (remove trees etc) and owns the cleared value the reference is wrong. The report must note this difference.

Page XLV, Draft Recommendation 8. This really does capture the problem and solution well. Education and cooperation at the local level can make very positive contributions where the benefits flow to those cooperating together in an acceptable way (true land care at the farm gate level). However, broader community desires should be purchased from landholders (on a fair and equitable basis).

Page 27 Last Paragraph. We would ask the Commission to examine this issue more closely as it appears they are basing the statement:
"no legal obligation on Government to compensate for regulatory takings as opposed to compulsory acquisition of property" on common beliefs (increasingly not supported by new case law) arising from the Tasmanian Dams Case.

The concept that a regulator (bound by just terms) can restrict but not take a title is flawed. That Case has unique circumstances and the Constitutional limitations of the Heads of Power

used in the Case need to be considered - international treaties and corporations powers in the Constitution are limited. The portability of the Tasmanian Dams Case decision is being constrained increasingly as other matters are decided in the courts. In considering the portability of that case the particular details of the flow of affects and benefits in the original matter need to be considered against what is the case in hand. Where individuals, organizations or groups may benefit from the taking there is not doubt it is unjust and beyond the Commonwealth's powers.

In your report you note that no challenge has been made to some of the regulatory taking laws. One way for the Commonwealth to assist in resolving the matter of who should pay is to provide funding support for a test challenge. This approach has been used by the Crown in the past and should not be discounted lightly now as away of influencing State and Territory regulatory escalations (reduction in rights) without financial offset.

Comment on the situation in the ACT
Page 483 J.1. Note that prior to Self-Government the Commonwealth Government had provided for renewable long-term (50 year) rural leases from 1955. These leases provided robust property rights and the Crown specifically withdrew from conducting command and control land management activities. This was in response to the lessons learned from prior short-term titles that demonstrated the less desirable effects of minimal lessee equity and Crown directives to lessees regarding land care - in other words command and control failed to provide for sustainable outcomes. However, in the few years leading up to Self-Government through to 1999 most rural occupancies issued were not long term. This led to two classes of title and two very different outcomes. "Good" leases with good out comes and poor titles with poor outcomes. The ACT Governments current policy (from 1999) attempts to move those with poor title towards better titles and better outcomes. However, it has also terminated renewal rights for the old 50 year (ie the "Good") leases with the greatest lessee equity without offsetting compensation, destroying their sustainability.

Page 484 Land Management Agreements. The ACT Government input fails to record that the Agreement can be varied against the lessee's will, the only appeal is to the Minister, direct financial penalties can be applied and non-compliance can result in forfeiture of the lease. In our view this approach does not consider the demonstrated failure of the earlier command and control approach from the 1920s to the mid 1950s.

Page 486 Environmental Impact Assessment. This is not correct as it cannot apply retrospectively and there are current leases that contain imbedded developmental rights that are retained, although the ACT has tried to terminate these rights by unjustly taking way renewal rights.

Page 489 Licences for removal of native vegetation and fauna. The position reported is not correct as it cannot apply retrospectively. There are current leases that contain imbedded rights that are at odds to some of the examples stated eg the right to collect and use wind fallen timber is specified in some leases.

Page 492 Social and Economic Impacts. The position described does not provide natural justice and procedural fairness to adversely affected landholders.

Page 492 J.4 Impacts on landholders. This situation prescribed is only correct for people entering into a lease that provides a better bundle of rights that in an existing occupancy or short term lease. It is wrong and misleading where the only options offered a lessee degrades or removed rights purchased in their earlier "good" leases. There remains significant unresolved differences of opinion in this areas between the adversely affected lessees and the ACT bureaucracy.

The following example demonstrates the inequity of the land management control "offsets" offered by the ACT for further rural leases. Please note all ACT land in the virgin state is reserved to the Commonwealth regardless of tenure be the lease rural, residential, community group or commercial.

Where a lessee has title to 'timber treatment' (ie land clearing) they will also own all other improvements to their property other than the virgin state of the land.
The 99 or 20 year leases at nominal on-going rent on offer in the ACT require a capitalised rent payment based upon carrying capacity, that is, the Crown's equity in the land to which a 15% discount is then applied to offset land use conditions that apply within this offer for new leases. Carrying Capacity of rural land is often measured in Dry Sheep Equivalents (DSE)

- If the Crowns equity is 100% a 15% discount will be significant (eg, for an acre of good grazing land 15% of 6 DSE x $156 = $140) and it may well provide some relief for the impacts of the restrictions on land use through land management controls in the new lease.

- On the other hand where the Crowns equity is limited to the virgin state of the land the discount is also limited (for a comparable acre of good land, where 5.8 DSE is owned by the lessee already, the Crowns interest is limited to 0.2 DSE, the calculated discount is 15% of 0.2 DSE & $156 = $4.68). This paltry discount does not adequately address the financial costs of restrictions on land use and impost of land management conditions in any further lease. It is clearly inequitable relative to the case above.

Page 493 J.5 Summary. The summary is misleading and incorrect for some lessees. As demonstrated above the costs of the ACT regime are not distributed equitably nor are they "largely being born by the community at large". A discount of less than $5/acre is not going to be an equitable offset for the current and future unknown burdens that can be imposed in the next 99 years. It is not equitable to provide one lessee with $5/acre and another with $140/acre in offsets for the same land management requirements.

Yours sincerely

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