

Native Vegetation Inquiry  
Productivity Commission  
LB2 Collins Street East  
MELBOURNE  
VIC 8003  
Fax: (03)9653.2302  
E-mail: native [vegetation@pc.gov.au](mailto:vegetation@pc.gov.au)

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**PRELIMINARY SUBMISSION  
TASMANIAN CONSERVATION TRUST  
PRODUCTIVITY COMMISSION INQUIRY**

**IMPACTS OF NATIVE VEGETATION  
AND BIODIVERSITY REGULATIONS**

Thankyou for your invitation to provide preliminary information and comment on the Productivity Commission's Issues Paper. While we appreciate the admonishment not to feel restricted by the Issues Paper, the sheer breadth of the Inquiry is both an opportunity and a problem. The TCT has kept its preliminary submission brief with respect to both information and comment in anticipation of some indication from the Productivity Commission as to the range of issues around which it would like to concentrate its inquiries. We have made some suggestions on this point.

The TCT's comments involve two different, but not wholly separate, interests: a) improving delivery of, and sustaining, biodiversity conservation outcomes in Tasmania; and b) ensuring comprehensive implementation of the Commonwealth's Environment Protection & Biodiversity Conservation Act 1999 (EPBC Act) as the framework within which such outcomes can best be achieved not only in Tasmania but throughout Australia.

**Building on Past Work and Current Commitments**

From this perspective, the TCT is very much of the view that the most important documents from which the Productivity Commission should base its approach to its Inquiry are:

1. The Convention on Biological Diversity (done at Nairobi in May 1992, opened for signature in Rio de Janiero in June 1992 and entered into force in December 1993);
2. *'The National Principles for the Provision of Water for Ecosystems'*, ARMCANZ/ANZECC Sustainable Land & Water Resources Management Committee Subcommittee on Water Resources, Occasional Paper SWR No.3, July 1996;

3. The 1997 COAG Heads of Agreement on Commonwealth Roles and Responsibilities for the Environment (identifying thirty (30) issues with a significant environmental component where governments are agreed that the Commonwealth has an interest);
4. *'Environmental Requirements of the [COAG Water] Framework'*, National Competition Council, 2000 (based on relevant past COAG agreements, see *'Water Resource Policy'*, NCC Compendium of National Competition Agreements, Second Edition, June 1998);
5. The Environment Protection and Biodiversity Conservation Act 1999 (and subsequent regulations, amendments, administrative rules, etc. and potential for further elaboration); and
6. The then Industry Commission's own Report, *'A Full Repairing Lease: Inquiry into Ecologically Sustainable Land Management'*, Industry Commission, 1999 (please note that references in this submission refer to the IC's Draft Report of September 1997).

There is also a plethora of subsequent and consequent national policies, plans, strategies and research agendas that should be included in any starting point for the Commission's Inquiry. In particular, we would like to draw the Commission's attention to the *"National Objectives and Targets for Biodiversity Conservation 2001-2005"*, Environment Australia, 2001. It should be noted with respect to this latter document that, while the objectives and targets may have been agreed by officials and ministers, the Tasmanian and Queensland governments have not yet formally signed off on the document.

The TCT would also like to commend to the Commission, the three more recent documents:

- *'Sustaining our Natural Systems and Biodiversity'*, A report to the Prime Minister's Science, Engineering and Innovation Council [PMSEIC], S. Moreton et.al., CSIRO & Environment Australia, Canberra, May 2002.
- *'Blueprint for a Living Continent – a way forward from the Wentworth Group of Concerned Scientists'*, WWF(Australia), Sydney, November 2002.
- *'A New Model for Landscape Conservation in New South Wales – the Wentworth Group of Concerned Scientists Report to Premier Carr'*, WWF(Australia)', Sydney, February 2003.

While the approach outlined in these three documents may not have been formally accepted by PMSEIC or adopted by the Howard government, it does represent an emerging consensus within the scientific and conservation communities that this is 'the way to go'.

It seems to the TCT that **the Productivity Commission's current Inquiry should give priority to inquiring into and recommending how best this approach can be elaborated, modified, extended and communicated to enable such a consensus to be expanded to include the landholding community** and what role should be played not only by regulations but also by other measures in developing and securing such a consensus.

We also think it is important to pay tribute to the pioneering work in this area precipitated by *'Reimbursing the Future – an evaluation of motivational, voluntary, price-based, property-right, and regulatory incentives for the conservation of biodiversity,'* Dr Mike Young et.al., Biodiversity Series Paper No.9, Department of Environment, Sport & Territories, Canberra, January 1996.

Subsequent to the publication of this report, two further series of related documents were published:

- *'Motivating people: -'* Carl Binning and Mike Young, National R&D Program on Rehabilitation, Management and Conservation of Remnant Vegetation, Research Reports 1 & 2, 1997.
- *'Beyond Roads, Rates & Rubbish', 'Opportunity Denied', and 'Conservation Hindered',* Land & Water Resources R&D Corporation, Research Reports 1-3, 1999.

Based on this enormous accumulation of thinking and experience, **the critical questions for the Commission's current Inquiry should be to get more focused, specific and prescriptive with respect to the matters covered in the earlier Industry Commission Report and the Wentworth Group's proposed approach to such matters.**

It is very much the hope and expectation of the TCT that the EPBC Act, as the Commonwealth's intended and emerging omnibus environmental legislation, can be maintained and elaborated to become the framework that any "... single unifying statute in each jurisdiction ..[to].. replace the various statutes that currently govern natural resources and the environment." [Industry Commission, *'A Full Repairing Lease'*, Draft Report, Sept.1997, p.xxiii] would be expected to conform to.

It is our hope and expectation that the EPBC Act can and will be dynamically maintained to provide the 'best practice' regulatory regime that the nation continues to expect and that COAG (or the new Natural Resources Management Ministerial Council) has agreed to from time to time. It is worth noting, in this context, that the Convention on Biological Diversity has the following objectives:

*"... the conservation of biological diversity, the sustainable use of its components and fair and equitable sharing of the benefits arising out of the utilisation of genetic resources ..."* [CBD, Article 1.]

The provisions of this international agreement, and the flexibility inherent in the EPBC Act as its principal implementing measure within Australian jurisdiction, thus provide a comprehensive and convenient framework for achieving the core of what the nation expects of, and from, the management of its natural resources. The CBD is as much a sustainable use convention as it is a commitment to convention.

On the basis of this approach, any State or Territory legislative regime, whether unifying or otherwise, would be expected to at least match the provisions of the EPBC Act and thus obviate the need for Commonwealth 'intervention'. Any gaps or deficiencies in such State and Territory regimes, however, would then provide opportunities for the 'interventionist' exercise of residual responsibility to ensure compliance with Commonwealth legislation and national expectations.

Furthermore, the EPBC Act is structured and intended to allow elaboration to ensure that nationally agreed 'best practice' outcomes can be institutionally established and individually implemented by, among other means, pushing State and Territory governments to drive continual improvement of their regulatory regimes to ensure harmonisation with the Commonwealth regime and delivery of agreed national outcomes.

This approach is currently being used to turn a nationally agreed approach to controlling access to genetic resources into a nationally consistent regulatory regime to give effect to the letter and the spirit of the Convention on biological Diversity. A similar approach to improve and unify the national approach to weed management and control is in the early stages of elaboration, based on an EPBC Act regulatory power. The TCT can see no good reason why any biodiversity conservation/ sustainable use/ natural resource management issue cannot be addressed in a nationally coherent manner using the same approach.

## **Environmental Management Systems, Best Practice and Duty of Care**

Obviously, the use of regulatory measures to achieve sustainable outcomes in the use of natural resources needs to be balanced with appropriate encouragement of and support for those in the community who are responsible for achieving and maintaining such sustainability of uses, conservation of resources and equity in the distribution of benefits. The time has come to translate such 'motherhood' notions into concrete measures that can be developed into packages to be applied in specific circumstances.

While we appreciate the thinking behind the Industry Commission's recommendation that "the proposed regulatory reform [should place] greater reliance on self-regulation – to minimise the deficiencies in 'command and control' regulation." [IP, *A Full Repairing Lease*, Draft Report, Sept.1997, p.xxiii], reality and experience should be given due weight alongside adherence to theoretical notions when seeking a balance between the two. On the basis of the TCT's experience to date, we are deeply concerned that self-regulation, without independent, effective and active regulation to ensure compliance, readily degenerates into no more than mere window dressing.

Indeed, much of our support for the EPBC Act is based on the potential for an independent role for the Commonwealth as an 'umpire' to enforce the agreed rules should the 'games' being played between state agencies, landholders, markets and traders move 'out of bounds' – as they are wont to do. It seems self evident to us that, had the National Competition Council not had strong political backing, strong regulatory powers and coherent intellectual arguments when dealing with water reform issues, environmental flows would still be no more than a theoretical notion confined to academic textbooks.

Environmental Management Systems [EMS] have a role to play in delivering sustainability and conservation outcomes on the ground – but only if clearly designed and explicitly intended to do so. Traditionally, EMS have been 'process' based. That is to say, they are designed to give reassurance that stated objectives will be achieved reliably by the accredited entity with an acceptably low risk of failure.

To be effective as a tool in the field of natural resource management [NRM], however, EMS must be ‘performance’ based. That is to say, they must be able to deliver credible assurances to regulators, markets and wider communities that agreed concrete outcomes on the ground will be reliably – and transparently - achieved and maintained.

The concepts of ‘Duty of Care’ and ‘Best Practice’ have much to commend them in this context. Duty of Care should be used as a concept to reflect the ‘bottom line’ of performance that every landholder is expected to reach and should be underwritten by regulation. In other words, there must be penalties for non-compliance with one’s duty of care – and a reasonable expectation of enforcement. Best Practice, however, should reflect the wider community’s aspirations for natural resource management outcomes. Ensuring landholders contribute appropriately to achieving such outcomes, however, should be a matter for ‘incentivation’ not regulation (except insofar as regulation may be needed to maintain the credibility of any accreditation or certification scheme required to credibly assert compliance with such elevated standards and expectations).

While it is theoretically convenient and administratively simple to implement government and community expectations at the property level through Property Plans or other landholder-specific commitments, **many natural resources and elements of biodiversity require organisation and delivery at geographic and social scales greater than the individual property. This is where adaptation of conventional EMS to natural resource management needs some careful thought that should be a priority for the Productivity Commission** in this current Inquiry. Landholders are predictably and understandably reluctant to rely on the performance of their neighbours and peers in order to get – and retain – accreditation or certification of their management regime for their property.

## **Funding the Task**

Maintaining and restoring natural resources in Australia to acceptable levels of biodiversity conservation and sustainability of use is universally acknowledged as being an enormous task beyond the means of many individual landholders and largely beyond the means of the wider landholding community. It seems to the TCT that what is now needed is a coherent framework within which the variable scales at which resources must be managed to deliver biodiversity conservation and sustainable resource use outcomes and at which relevant management decisions are made can be reconciled. There is obviously a wide continuum of potential impacts and constraints upon individual properties of securing both ‘duty of care’ and ‘best practice’ outcomes. To ensure that such impacts and constraints are not unfair, governments should be expected to establish two kinds of funds:

- **Structural Adjustment Funds.** These are designed to facilitate consolidation to maintain and improve viability of remaining landholders – payment for retirement of land where constraints render current commercial use unviable; and retirement of landholders where constraints render existing properties commercially non-viable.

- **Landholder Assistance Funds.** These are designed to fund programmes to assist landholders in modifying and adapting their property management plans and strategies to allow maintenance of ongoing commercially viable enterprises that also securely deliver explicit conservation and sustainable use outcomes expected by the wider community.

The Commonwealth should be expected to ensure that such funds are adequately resourced and replenished but it should be left to others to establish and run the programmes and institutions designed to manage and disburse funds and to deliver associated support and advisory services and provide technical support and training.

**These funds should be derived from an environmental levy. Just what should be levied, however, is a difficult question. Finding the right balance between tolling wealth, produce and income and sharing the burden between producers, traders and consumers for such a levy is worth a separate Inquiry in its own right.**

It is the TCT's view that such an environmental levy should be financed from a variety of sources explicitly to transparently establish that it is the responsibility of the whole community to marshal the resources for the chosen task. Find the right balance between such fundraising elements would then require some serious assessment of adequacy, fairness, equity and efficiency. This would be a most suitable subject for a Productivity Commission Inquiry, should it recommend to the government that such a levy was necessary and the government should accept its advice.

Whether the Commonwealth's current commitment to establishment of Regional NRM Committees to develop and oversee implementation of Regional NRM Strategies will significantly facilitate progress towards stated conservation and sustainability goals remains an open question. On the basis of experience to date, it would appear that the Commonwealth's inability to be concrete, clear and specific with respect to what it wants delivery of at the regional level is likely to set up regional bodies for failure. Attitude and cultural problems associated with such regional bodies coupled with poor monitoring and regulatory regimes further increases chances of failure – if not the detection and reporting of it.

Despite these concerns, the TCT is keen to see some reasonable period of time be given to see if such regional NRM arrangements can make a significant contribution to national expectations. We would therefore like to suggest to the Productivity Commission that this Inquiry give particular attention to how the Commonwealth could improve its engagement with, support for, and monitoring of, regional delivery of its NRM programmes and improve compliance with its regulatory regime.

Given recent experience with monitoring of landclearing in Queensland and here in Tasmania, the TCT is keen to see the Commonwealth invest in the capacity to remotely and independently monitor and report on what is happening on the ground based on satellite data and imagery. In this respect, we would like to draw to your attention the recent publication: *Landscape Change in the Meander Valley: A Case Study for Monitoring and Reporting of Land Use Modification, Vegetation Condition and Biodiversity Loss*, Report to Meander Valley Council and Environment Australia by Sean Cadman, 2003.

## Climate Change

A critical issue that needs to be put into the already complex mix of biodiversity conservation and sustainable use of resources matters is 'climate change'. The extent to which past norms cannot be relied upon to predict the future is a serious – but largely undescribed – problem. Regionally discrete variation in climate in response to global warming can already be reliably predicted by CSIRO and while some impacts can be reliably predicted (especially some related to hydrology), a substantial and focused research effort will be needed to refine identification of impacts and implications not only for biodiversity conservation but also for sustainability and appropriateness of established uses.

The TCT understands that Environment Australia will shortly be publishing a report on Biodiversity and Climate Change based on the outcome of a CSIRO/Biodiversity Advisory Committee workshop last year and a series of subsequent discussions and consultations. **The TCT would like to suggest that the Commission immediately contact Dr Rhondda Dickson at Environment Australia with a view to securing a copy of the report at the earliest opportunity.**

## Tasmanian Issues

With respect to Tasmanian aspects of the wider Productivity Inquiry, there are three specific issues that we would like to bring to the Commission's attention that the TCT believes have a significant bearing on the capacity of any mix of regulation and 'incentivation' to deliver and maintain biodiversity and sustainable use outcomes.

### 1. Exemptions from planning and environment legislation

Tasmanian statutes are riddled with exemptions as a result of special pleading by powerful resource interests keen to insulate themselves from the interests and expectations of the wider community. Any strategic resource management strategies based on unifying statutes at state or Commonwealth level are destined to fail in Tasmania at least for as long as such a comprehensive network of exemptions exists.

Currently, the forestry, mining and aquaculture industries enjoy broad exemption from otherwise generic planning and environment legislation. For the assistance of the Commission, please find enclosed a copy of the TCT's submission to Federal Minister for Environment & Heritage on the subject of the Tasmanian Assessment Bilateral under the EPBC Act. The table annexed to this submission identifies the range of deficiencies and inadequacies of such legislation as identified by the TCT. [Please note that, through an oversight on our part, the table is deficient in failing to identify problems with the *Mineral Resources Development Act 1995* which was intended to – and does – deliver the same degree of 'resource security' enjoyed by the forest industry in Tasmania.]

A list of the specific concerns over exemptions with respect to the forest industry was drawn up by way of a concluding Law Reform resolution from an Environmental Defenders Office (Tasmania) Conference held on 23 August 2002.

A copy of this resolution was reproduced in the TCT's Newsletter No.284 of October 2002, a copy of which is also enclosed.

We note with some frustration that the problem with respect to forestry is significantly exacerbated by exemption clauses inserted into the EPBC Act at the behest of the Tasmanian forest industry interests that prevent application of the approval provisions of the Act to "forestry operations ... undertaken in accordance with a regional forest agreement." [S.38(1), EPBC Act 1999]. As we presume the Commission is already aware, the 1997 Tasmanian RFA is little more than a Commonwealth promise not to apply its environmental laws to forestry activities.

## **2. Compliance and enforcement**

Both self-regulatory and notionally independent enforcement measures are generally ineffective, if not actually derelict, in Tasmania. The situation is significantly exacerbated by glossy assertions of responsible compliance and enforcement. The TCT does not want to go into details at this stage but merely to draw to the Commission's attention the issue of the need for the Commonwealth to assert and exercise a responsibility to ensure that relevant regulatory provisions are complied with and that responsible agencies ensure such compliance. The need for timely and transparent reporting needs little emphasising.

Far more seriously, it has been extraordinarily difficult to get the Tasmanian state government to actually honour the conservation commitments made in past agreements. Such agreements include the Salinity National Action Plan Bilateral Agreement, the 1997 Tasmanian Regional Forest Agreement, and the 1997 NHT Partnership Agreement, and the NHT2 Partnership Agreement (agreed in April 2003 but only announced yesterday). Our written admonishments and complaints have log fallen on deaf ears at both levels of government.

The TCT urges the Commission to give serious consideration to working out how to analyse and address the issue of institutionalised non-compliance not only by state governments and their agencies with respect to commitments to the Commonwealth but also by those agencies and the schemes, programmes and private entities they are supposed to administer and/or regulate.

In urging a generous balance between regulation and 'incentivation', due consideration must be given to problems associated with non-compliance.

## **3. State contributions to incentive measures and removal of disincentives**

Tasmania has long earned the epithet – the mendicant state. It has been very hard to get successive Tasmanian state governments to match Commonwealth offers of financial contribution to resource conservation and sustainable use programmes. A significant proportion of what money has been contributed by the Commonwealth for NHT 1, and Landcare before it, has been shamelessly misappropriated by state agencies through cost-shifting. The TCT urges the Commission to give serious consideration to how to ensure that any monies made available by the Commonwealth do actually contribute to achieving the outcomes for which the monies were nominally made available.

## **Further engagement**

The TCT is most appreciative of the Productivity Commission's commitment to working in this area of conservation and sustainability in the use of the nation's natural resources and we look forward to ongoing involvement in this current Inquiry. In particular, we look forward to the opportunity to present a submission at the Commission's planned public hearing in Hobart on 11 August 2003.

Yours sincerely,

Michael Lynch  
Director