



Parliament of Tasmania

JOINT STANDING COMMITTEE

ENVIRONMENT, RESOURCES AND DEVELOPMENT

CONSERVATION ON PRIVATE LAND

Members of the Committee

Mr Doug Parkinson MLC (Chairman)

Ms Lara Giddings MHA

Mr Steven Kons MHA (*until 2/2/04*)

Mr Jeremy Rockliff MHA (*since 27/8/03*)

Mr Greg Hall MLC (Deputy Chairman)

Mr Paul Harriss MLC

Mr Nick McKim MHA

Mrs Sue Smith MLC

Secretary: Mrs Sue McLeod

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Introduction

1.1 APPOINTMENT AND TERMS OF REFERENCE

The Joint Standing Committee on Environment, Resources and Development was established for a two-year period from 6 December 2000. The Committee adopted the following terms of reference at its meeting on 25 June 2003.

To inquire into and report upon the preservation of natural and cultural values on private land in Tasmania, with particular reference to -

1. The current arrangements for preserving those natural and cultural values and their amenity.
2. The manner in which further options might be developed to assist private property owners conserve natural and cultural values on their land; and
3. Other matters incidental thereto.

The membership of the Committee currently consists of four members of the Legislative Council – Mr Parkinson (Chairman), Mr Hall, Mr Harriss and Mrs Smith; and four members of the House of Assembly – Ms Giddings, Mr McKim and Mr Rockliff (replaced Mr Gutwein on 27 August 2003).

The Committee has general jurisdiction over the following areas : Government Business Enterprises; regulation of business, commercial and industrial relations; economic and finance development; environment and land use planning; natural resources – forestry, mining and fisheries; energy; tourism; transport; and primary industry.

This report arises out of concerns expressed to the local member in relation to the conservation on private land, particularly in the Mole Creek Karst area.

The report begins by outlining three case studies that, between them, illustrate the range of issues raised in the many submissions and oral evidence provided to the Committee. This is followed by three chapters that discuss the evidence presented in relation to the three terms of reference for this inquiry.

1.2 PROCEEDINGS

Advertisements were placed in the three regional daily newspapers calling for submissions and evidence. In addition invitations were sent to key stakeholder organisations and individuals.

Thirty five witnesses gave verbal evidence to the Committee and are listed in Appendix 1. Forty three written submissions were received and are listed in Appendix 2. Documents received into evidence are listed in Appendix 3.

In taking evidence the Committee commenced public hearings in Hobart on Monday, 11 and Tuesday, 12 August 2003 before proceeding to the midlands area where a public meeting was held at the Oatlands Council Chambers.

From Oatlands the Committee proceeded to the Meander Valley region where, in addition to visiting the Karst cave system and a number of associated private landowners at Mole Creek, it held public hearings at the Deloraine Community Centre on Wednesday, 13 and Thursday, 14 August.

The Committee then proceeded to the Circular Head region where public hearings were held at the Circular Head Council Chambers on Friday, 15 August 2003.

All public hearings were well attended and evidence from members of the public enthusiastically given.

1.3 ACKNOWLEDGEMENTS

The Committee acknowledges and thanks all those who contributed to this report and particularly those landowners around Tasmania who so warmly received the Committee and co-operated with its task.

The Committee would also like to thank the following Local Councils who assisted with meeting venues either by making their own Chambers available or by providing other premises suitable for meeting members of the public and for taking evidence :

The Southern Midlands Council
The Meander Valley Council
The Circular Head Council

The Committee gives special thanks to its Research Assistant, Mr Tom Wise and to its Executive Secretary, Mrs Sue McLeod, whose dedication and ability to assist the Committee in organising its tasks were invaluable.

Executive Summary

A key factor in the Committee's decision to undertake this inquiry was the conflict over conservation issues on private land in the Mole Creek area. A number of landowners in the area have had concerns over the impact on their land because of its proximity to the extensive karst system. Evidence was presented by these landowners in both written and oral submissions and the Committee also made an on-site inspection of several of the properties involved. Subsequently, relevant evidence was presented by the State Government in a written submission and in verbal evidence.

The evidence taken in relation to the Mole Creek problem provided a useful illustration of many of the issues that were brought to the Committee's attention during the inquiry. In order to provide a context in which to consider the general and specific issues, the Mole Creek karst matter has been presented as one of three case studies.

The other two subjects outlined as case studies relate to the ongoing dispute surrounding the proposed logging of an area of land in the Recherche Bay area in the south of the State, and the restrictions on logging an area of forest in the Circular Head district as a result of the presence of Aboriginal artefacts.

The three case studies show that there are a number of common elements among the concerns expressed about the current arrangements for preserving natural and cultural values and their amenity.

It was apparent that, notwithstanding the fact that in most cases legislation was in place to deal with the issues confronting landowners and others, the actual outcomes were often unsatisfactory. The Tasmanian legislation referred to in evidence included the Land Acquisition Act 1993, the Forest Practices Act 1985, the Historic Cultural Heritage Act 1995, the Aboriginal Relics Act 1975, the Nature Conservation Act 2002, the National Parks and Reserves Management Act 2002 and the Threatened Species Protection Act 1995.

Other measures and mechanisms available within the State to protect natural and cultural values include the Natural Heritage Trust, the Private Forest Reserves Program, the Regional Forest Agreement, the Forest Practices Code, the Land for Wildlife Program, Bushcare, the Australian Bush Heritage Fund and the Tasmanian Land Conservancy.

The adverse economic impact caused by legislation protecting natural and cultural values appears to have prompted almost all submissions to address financial issues of one sort or another.

A major concern was the need for fair and reasonable or adequate compensation for landowners disadvantaged by the need to preserve natural and cultural values on their land. *The Forest Practices Act 1985* and the associated Forest Practices Code provide a compensation mechanism for

those landowners unable to harvest timber for conservation reasons. The *Threatened Species Protection Act 1995* also has provision for landowners to be compensated in cases of financial loss from measures to protect threatened species.

Evidence presented to the Committee indicated that the compensation processes were lengthy and there were disputes over the calculation of the amount of money offered to the landowner. Complicating the issue of compensation was the limited funding available to meet the expectations of landowners.

Similar concerns were expressed by other witnesses in relation to the compensation offered to landowners who undertook to protect natural and cultural values by means of a covenant on the land title. The legislation enabling this form of protection, the *Nature Conservation Act 2002*, has only recently been passed by the State Parliament, but as indicated in Chapter 1 of this Report, is only interim legislation.

Many witnesses agreed that payment of some form of compensation to affected landowners was appropriate, although few were specific or in agreement about the way compensation should be calculated. There was a general perception among landowners that the methods of calculating compensation are unfair and inequitable. Generally, this centres on the different amounts paid for apparently similar properties in cases of compulsory acquisition of land by government.

The *Local Government Act* does not make any provision for compensation for decisions that adversely affect the use of private land. However, some municipal councils do provide rate relief to landowners who set aside land to protect natural and cultural values.

It was apparent that landowners are often bewildered by the diversity of legislation, programs, policies and agencies involved directly or indirectly in the general issues of protecting natural and cultural values. They felt that they did not have the knowledge and skills to engage with specialist officers in a range of Government agencies. Complicating the issue was a perceived lack of consistency in the information landowners received from different agencies in relation to the same issue.

There was overwhelming evidence about the extremely long time taken to resolve conservation issues once they had been identified. Under current arrangements there are no timeframes to deal with the processes involved in protecting land for conservation reasons. In some cases, such as the matter of Britton Brothers outlined in Case Study No. 3, the unresolved issues go back more than fifteen years. Many other witnesses gave evidence in relation to problems that had begun in the mid-1990s and remain unresolved today.

In considering the development of further options to address the problems raised in the evidence it received, the Committee was mindful of the current review of legislation governing national parks, reserves and nature conservation. The Committee believes that the implementation of its

recommendations in relation to further options can be achieved through the mechanisms provided by existing legislation.

The most important fundamental is that landowners be seen as equal partners in the process of conservation and that government officials should make even greater and more targeted efforts to engage landowners in a positive and open manner.

It is apparent that there is enormous goodwill among landowners to protect and preserve those valuable natural and cultural assets of which they are custodians. The Committee cannot emphasise strongly enough the need for all relevant Government agencies and individual officers to take whatever steps are necessary to harness that goodwill.

It is that partnership between landowners, governments and the broader community that underpins the Committee's options and recommendations.

3 March 2004
Parliament House, Hobart

Doug Parkinson MLC
Chairman

Recommendations

The Committee recommends that :

1. The Tasmanian Government establish a rolling or revolving fund for the purpose of funding the conservation of natural and cultural values on private land by means of purchase, covenant and re-sale of parcels of land identified as worthy of protection.

The Tasmanian Government negotiate with the Commonwealth Government to secure matching funds for this rolling or revolving fund and tax deductibility for corporate and private donations to the fund.

2. The Premier's Local Government Council investigate amending the Local Government Act 1993 to enable municipal councils to compensate private landowners for any financial losses resulting from actions of councils to protect natural and cultural values on private land.

3. The Tasmanian Government establish a Private Land Conservation Unit to oversee and manage all State Government policies, processes and decision-making in relation to the conservation of natural and cultural values on private land.

4. The Tasmanian Government amend all relevant legislation to include fixed time limits for decisions and other associated processes that may restrict, for natural or cultural conservation reasons, the ability of private landowners to use their land for productive purposes.

Such amendments include a provision that disputes not resolved within the fixed time limits be automatically referred to an independent arbiter appointed under the relevant legislation to rule on the matters in dispute.

5. The Tasmanian Government publish a single, plain English reference work, accessible on the Internet, containing all relevant information, legislation, policies, rights, obligations, options and processes in relation to conservation on private land.

A hard copy version of the proposed reference work be provided free of charge to any private landowner at the start of any process that may result in restrictions on the use of their land for natural or cultural conservation purposes.

6. The Tasmanian Government undertake, as a matter of urgency, a review of the Aboriginal Relics Act 1975 with a view to ensuring that it properly protects items of Tasmanian Aboriginal cultural heritage.

Amendments or new legislation resulting from the review include provision for compensation to be payable to private landowners who may incur financial losses as a result of the operations of the Act.

7. The Tasmanian Government undertake a review of the Historic Cultural Heritage Act 1995 with a view to ensuring that it properly protects items of Tasmanian cultural heritage.

Chapter 1

Background and Case Studies

1.1 Background

The Committee inquiry into the issue of conservation on private land comes at a time when the Tasmanian legislation dealing with this issue is under review by the State Government. Interim legislation was passed by both Houses of the Parliament in late 2002 to give effect to administrative changes resulting from the establishment of a new Department of Tourism, Parks, Heritage and the Arts. This legislation, the *National Parks and Reserves Management Act 2002* and the *Nature Conservation Act 2002*, made some substantive changes to the existing legislation it superseded, but the Government explicitly noted that both Acts were of a temporary nature only. In his Second Reading speech on the Bills in the House of Assembly, the Minister for Primary Industries, Water and Environment stated:

I wish to make it absolutely clear that the Government does not suggest that these two bills provide the optimum framework for the nature conservation in the State. These must not be seen as anything more than interim measures to facilitate the new administrative arrangements.¹

The Minister went on to point out that 'a wide-ranging review of the legislation will continue.'²

The Committee hopes that the evidence it has taken in this inquiry and the recommendations it presents in this report will help in ensuring that the current review results in legislation that meets all the needs and expectations of stakeholders and the broader Tasmanian community.

A key factor in the Committee's decision to undertake this inquiry was the conflict over conservation issues on private land at Mole Creek. A number of landowners in the area have had concerns over the impact on their land of its proximity to the extensive karst system in the Mole Creek district. Evidence was presented by these landowners in both written and oral submissions to the Committee, which also made an on-site inspection of several of the properties involved. Subsequently, relevant evidence was also presented by the State Government in a written submission and in verbal evidence by the Secretary of the Department of Primary Industries, Water and Environment, Mr Kim Evans.

The evidence taken in relation to the Mole Creek problem provides a useful illustration of many of the issues that were brought to the Committee's attention during the period of this inquiry. In order to provide a context in

¹ Hon. Bryan Green, Minister for Primary Industries, Water and Environment, *House of Assembly Hansard*, 21 November 2002, p. 40.

² *Ibid.*, p. 41.

which to consider the general and specific issues in this report, the Mole Creek Karst matter is therefore presented as one of three case studies outlined in this chapter.

The other two subjects to be outlined as case studies relate to the ongoing dispute surrounding the proposed logging of an area of land in the Recherche Bay area in the south of the State and the restrictions on logging an area of forest in the Circular Head District as a result of the presence of Aboriginal artefacts. Both are subject to ongoing negotiation and consultation between the State Government and the stakeholders so it is not the Committee's intention to intervene by making specific recommendations on either of these issues, nor in relation to the Mole Creek Karst. However, the Committee's recommendations in relation to its Terms of Reference may have some implications for the resolution of the conflicts presented in the three case studies.

It should be noted that the presentation of these three case studies will provide only a summary of the evidence given to the Committee.

1.2 Case Study 1: Mole Creek Karst System

The Mole Creek Karst System is located in central north Tasmania, approximately 30 minutes from Deloraine. According to the Tasmanian Parks and Wildlife Service (TPWS) there are two hundred known caves and other karst features in the area, which also includes the Mole Creek Karst National Park. The TPWS claims the National Park protects some of the finest and most visited cave systems in Tasmania. Karst is a Slovene/German word used to describe landscapes formed from the chemical erosion of rocks such as limestone.³ In addition, the area contains many other highly-regarded natural features and wildlife habitat.

The central north region of Tasmania also includes some of the most productive agricultural land in the State, as well as extensive areas of forest. Farming began in the region during the early decades of the 19th Century and in the Mole Creek area agricultural activity has taken place on parts of the karst landscape for many generations.

A number of property owners in the area have become concerned in recent years that their proximity to the karst system and changing community attitudes on environmental and conservation issues have begun to impinge on their use of their land.



Figure 1 – Example of fencing and plant requirements for conservation measures on private land

³ Parks and Wildlife Service Tasmania, *Visiting ... Mole Creek Karst National Park*, p. 1.

A group of these landowners formed the Mole Creek Karst Private Landowners Group. The organisation gave evidence to the Committee, as did a number of its members as individual witnesses. The Committee also inspected a number of farming properties in the Mole Creek area to see first-hand the associated karst features.

The concerns of landowners covered a wide range of issues, although there are a number of common elements to the evidence that was presented.

First and foremost was the fear that, because of an expansion of measures to protect the karst system, their traditional farming activities were being increasingly restricted, to such an extent that their properties could no longer be used for agricultural and associated purposes. For example, in the group's written submission four of the six members seeking to give verbal evidence listed restrictions on farming as the first issue of concern.⁴ This level of concern was also reflected in the verbal evidence given by members of the group. Several referred to the impact of guidelines issued by the Department of Primary Industries, Water and Environment (DPIWE) about acceptable farming practices on land associated with karst systems. For example, in relation to a recommended buffer of 35 metres around sinkholes, Mrs Deidre Smith told the Committee that 'if we were to follow the DPIWE guidelines as far as fertiliser is concerned, there would be no fertiliser on our property, because we cannot get 35 metres between sinkholes.'⁵ Similar concerns were expressed by other witnesses from the group. Later, in response to a question from the Chairman about how the property was currently being used, Mrs Smith replied:

At the moment we run 12 sheep for our own meat. We have four head of cattle for our own meat, but because of the restrictions that were placed on us nine years ago as far as the forestry was concerned – that was to be part of our income – without that income we had to sell the cattle we had. My husband now has to work and the farm just sits there.⁶

While these witnesses acknowledged that the DPIWE guidelines were recommendations only, they also expressed the concern that they would become mandatory and so make their farming operations non-viable. Mr Craig Flowers told the Committee that:

... everything is just happening, and before you think, this is what is going to happen next and sure enough that is what is going to happen next. It is like these recommendations. You sit there and read these reports and in 10 years time they will

⁴ Mole Creek Karst Private Landowners Group, *Written Submission*, Reference No. JSC/ERD4, 21 July 2003, p. 1.

⁵ D. Smith, *Transcript of Evidence*, 13 August 2003, Ref. No. 3/11/16/18, p. 27. A sinkhole is a depression or opening in the ground that usually leads underground to a cave system.

⁶ *Ibid.*, p. 28.

become legislation. If they are going to protect the karst they will have to become legislation ...⁷

A similar view was put by Mr Glen Anderson who quoted from the Tasmanian Nature Conservation Strategy 2002-2006 recommendation to 'enable legislative endorsement of codes of practice including a duty of care component to make compliance mandatory and external to compensatory mechanisms.'⁸ He went on to tell the Committee that 'if the 35 metre restrictions are brought in and made mandatory, we basically put the cows on the road and shut the gate because there is no way we can fence off 35 metres around each sinkhole.'⁹



Figure 2 – Mr Glen Anderson shows Members of the Committee the sinkholes on his property.

In their written submission the Andersons were quite explicit in asserting that 'the restrictions placed and proposed to be placed on our property severely affect our farming enterprise.'¹⁰ Mr Anderson went on to detail the impact, writing:

⁷ C. Flowers, *Transcript of Evidence*, 13 August 2003, Ref. No. 3/11/16/18, p. 11.

⁸ G. Anderson, *Transcript of Evidence*, 13 August 2003, Ref. No. 3/11/16/18, p. 34. In his written submission, Mr Anderson gave a web site reference for this document as <http://www.dpiwe.tas.gov.au/inter.nsf/WebPages/JCOK-5KZTT4/open>. His submission states that the quote comes from dot point 4, recommendation 6, under the section headed Statutes and Planning. See G&C Anderson, *Submission by G&C Anderson, "Circular Ponds", Mayberry*, Written Submission Reference No. JSC/ERD 11, p. 3.

⁹ *Ibid.*, p. 38.

¹⁰ G&C Anderson, *Submission by G&C Anderson, "Circular Ponds", Mayberry*, Reference No. JSC/ERD 11, p. 4.

These effects range from the time and expense of attending meetings, writing letters, compiling submissions, researching government papers, showing people over our property & time spent on the phone. The legislative restrictions restrict the ongoing viability & productive [sic] of our farm as any value in further development may be short lived or even illegal.¹¹

Another major issue that came through repeatedly in the evidence from the Mole Creek group was the quality of information from and communication with State Government agencies. Landowners expressed concern about the inconsistency of information from different Government agencies and even from within agencies. They also felt that some offices in dealing with them were heavy handed and bureaucratic.

Numerous examples were given in evidence to the Committee. Mr Flowers said he had been threatened with prosecution under animal welfare legislation when he reported to DPIWE that a cow had fallen through a sinkhole into a cave and sought their assistance and advice.¹²



Figure 3 – The sinkhole where Mr Flowers said the cow fell into the cave

Mr Rodney Stagg, President of the Meander Resource Management Group, Timber Communities Australia, who gave additional evidence to the Committee on behalf of the Smiths and another landowner in the karst area,

¹¹ G&C Anderson, *Submission by G&C Anderson, "Circular Ponds", Mayberry*, Reference No. JSC/ERD 11, p. 4.

¹² C. Flowers, *Transcript of Evidence*, 13 August 2003, Ref. No. 3/11/16/18, p. 13.

stated that he and the landowners 'have been trying to get some sort of consensus in dealing with government ministers, in dealing with bureaucrats from within three departments in getting some sort of compensation package.'¹³ He reiterated the point later, stating that 'it makes it very difficult to try to deal with the three different departments and it has been addressed here this morning before how frustrated landowners are.'¹⁴

Mrs Kathleen Wells responded to a question from the Chairman about official information that:

We have never had anything at all unless we have written and asked for things. We wrote to Bryan Green and asked for specific clarification and he sent us his latest press release which did not really cover the issue at all.¹⁵

Mrs Wells also related her experience in relation to officers failing to inform her or her husband that they wanted access to their property. She told the Committee:

We've had people coming on to look for endangered species of plants. When the sinkholes were first mapped we had no indication that anyone was coming to do that. We walked out one morning and found someone pegging things all over our backyard. That's the sort of thing all of us have got issues about.¹⁶



Figure 4 – Forestry on the Wells' Property

¹³ R. Stagg, *Transcript of Evidence*, 14 August 2003, Ref. No. 17a/b, p. 47.

¹⁴ *Ibid.*, p. 48.

¹⁵ K. Wells, *Transcript of Evidence*, 13 August 2003, Ref. No. 3/11/16/18, p. 4.

¹⁶ *Ibid.*, p. 1.

Mrs Sally Martin told the Committee that ‘my opinion of Parks is very dismal because I haven’t had anything good to report from them in helping us get our problems solved.’¹⁷ She continued:

I am just trying to make the point that any information they give you is conflicting. You never get the real story, so we never know where we stand. It is a cruel game they play with us. It is unreal.¹⁸



Figure 5 – Mrs Sally Martin points out the issues of concern relating to the caves on her property at Mole Creek

Mr and Mrs Anderson, in their written submission, stated:

One of the main problems with this situation is that no one from the Premier down & up to the Commonwealth level wants or has the jurisdiction to fix the problem. In the meantime we are left in limbo, while various departments run for cover behind each other.¹⁹

Mrs Smith related her experience in relation to a plan to log part of their property in 1994. The logging was initially approved, but shortly after work began, that approval was withdrawn. In verbal evidence to the Committee,

¹⁷ S. Martin, *Transcript of Evidence*, 13 August 2003, Ref. No. 3/11/16/18, p. 16.

¹⁸ *Ibid.*, p. 17.

¹⁹ G&C Anderson, *Submission by G&C Anderson, "Circular Ponds", Mayberry*, Reference No. JSC/ERD 11, p. 4.

Ms Smith said that '... it was Bill Manning who came to our property and told the [logging] contractor to leave and when I asked why he said it had nothing to do with us, we were just the landowners ...'.²⁰

The other major area of concern to the Mole Creek landowners was the issue of compensation. This general issue covered compensation for restrictions on land use, including through covenants, and compensation for compulsory acquisition. A lack of fairness, equity and transparency were often highlighted, as was the problem, perceived or otherwise, of overlapping responsibilities among Government agencies.

Mr Flowers' experience with the compensation offered under the Private Forest Reserve program illustrates the problem faced by landowners in setting aside part of their land for conservation purposes. He told the Committee:

I had about \$107,000 or \$127,000 worth of timber there, and this program offered me \$23,000 and that was on a caveat. That was to leave the timber there and lock up the ground for ever and a day. I thought that was a bit light on, put it that way.²¹

Similar evidence was presented by Mrs Smith, who told the Committee about a proposed covenant on part of her property to protect a rare eucalypt. She stated that 'it is around 50 acres and they have offered us \$20,000 to put a covenant on that. A covenant is something that ties it up forever and a day.'²² Mrs Smith said that proposal was rejected. As she told the Committee:

We haven't continued conversations with that because the covenant makes us responsible for everything, from rates through to public liability. We are thinking that if we are there for another 20 years, \$20,000 is only \$1000 a year for the upkeep and all the expenses and it is just not enough. Plus the fact that that particular piece that they are talking about ... cuts one part of our property off from the other.²³

²⁰ D. Smith, *Transcript of Evidence*, 13 August 2003, Ref. No. 3/11/16/18, p. 26.

²¹ C. Flowers, *Transcript of Evidence*, 13 August 2003, Ref. No. 3/11/16/18, p. 8.

²² D. Smith, *Transcript of Evidence*, 13 August 2003, Ref. No. 3/11/16/18, p. 30

²³ *Ibid.*, p. 31.



Figure 6 – Forestry on the Smith Property

Mr Stagg highlighted the issue of inconsistency in the amounts offered in compensation. He told the Committee ‘just what value is placed on this property, this property and this property when some have been purchased at \$4000 [a hectare] with a barbwired fence separating them and virtually next to nothing for that one.’²⁴ He stated that, in relation to some properties already purchased by the State Government, it had been admitted that the price paid was too high. In Mr Stagg’s view ‘... that’s not the landowner’s problem out there ... and others now have an expectation of “We should be treated in exactly the same manner”’.²⁵

The areas of concern highlighted by the members of the Mole Creek Karst Landowners Group were repeated by other landowners who gave evidence to the inquiry. Some of these will be mentioned in the following chapters of this report.

In its evidence to the Committee, the Tasmanian Government pointed out the complexities in resolving many of the issues of concern to the landowners in the Mole Creek Karst area. In its written submission, the Government addressed the Mole Creek issue specifically, noting the conflict that had arisen as a result, in particular, of the 1999 identification of Priority One (or high quality) karst sites. The submission observes:

²⁴ R. Stagg, *Transcript of Evidence*, 14 August 2003, Ref. No. 17a/b, p. 53.

²⁵ *Ibid.*

The existence of priority one karst on private land has, in some instances, led to opposing land use objectives: from a community perspective, to protect the karst values and, from a landowner's perspective, to realise the agricultural and productive timber values associated with the land.²⁶

In some cases, as noted above, these opposing views were resolved by the acquisition of land by the State Government under the National Reserve System (NRS) program or through the compensation provisions of the *Forest Practices Act 1985*. Seven properties were purchased using funds under the NRS program, but under revised Commonwealth Government funding arrangements introduced this year the program is now much less attractive to the State Government as an affordable means of resolving the Mole Creek karst issue.²⁷

It seems clear that this change in the financial arrangements is at least partly responsible for the present disputes between the Government and landowners, some of whom do not qualify for forestry-related compensation or, if they do qualify, see the amounts being offered as inadequate. This is exacerbated by their perception, noted above, that neighbours whose properties were purchased under the NRS program were given a better compensation package than they were now being offered for similar land.

However, the Government submission does include an undertaking that it will continue to work with landowners to achieve an acceptable resolution of the situation. The written submission states:

The Government remains committed to the conservation of priority one karst values in Tasmania and will continue to work with owners of land associated with these values. The Government will endeavour to secure amicable and equitable agreement with landowners including through the use of the compensation provisions of the *Forest Practices Act 1985*.²⁸

This approach was reiterated by Mr Evans in his verbal evidence when he stated:

You'll understand from your research and taking hearings that this is not an easy situation and one for which there is no common solution. The issues operate on a number of levels and in a number of ways and we need to work through solutions relating to each specific example. it is through things like the development of the integrated catchment strategy for Mole Creek and other work that we are doing with landowners on a bilateral basis that we would hopefully work through those problems.²⁹

²⁶ Tasmanian Government, *Written Submission*, October 2003, Ref. JSC/ERD 52, p. 28.

²⁷ *Ibid.*, p. 29.

²⁸ *Ibid.*

²⁹ K. Evans, *Transcript of Evidence*, 14 October 2003, Ref. No. 52, pp. 5 & 9.

Mr Evans pointed out that the development of the Integrated Catchment Strategy was a co-operative venture that involved a broad range of local representatives from the Mole Creek area. He said:

We are also trying to work co-operatively on a separate initiative to develop an integrated catchment strategy for Mole Creek karst. That is something that is under development and involving Forestry, Parks and Wildlife Service and private landowners – being led by my agency with local government – to determine how we might work better together across a range of tenures subject to karst issues. That strategy of course won't be a legislative strategy; it will be an advisory document. It is not a precursor to legislation but it is intended to identify some practical solutions for how you might manage karst in parallel with the use of the land.³⁰

The Committee also noted Mr Evans' evidence that a representative of the Mole Creek Karst Landowners' Group had recently been included as a member of the advisory group that would develop the Catchment Strategy.

We did set it up so that all those with an interest were represented through the steering committee but the community felt that its representation was inadequate physically through the Mole Creek karst private landowners group and they've specifically now been invited on. This is about engaging stakeholders and making sure there's ownership and hopefully we can do that now that we've got that group represented on the steering group.³¹

Mr Evans also responded to questions from the Committee to reassure the Mole Creek landowners in relation to the DPIWE guidelines about land use in karst areas. He said:

I think some people are reading more into the advice that is provided on the web site than may be the case. ... Bear in mind that those advisory documents are guidelines; they are not prescriptions. ... The web site is meant to be no more than an advisory tool to assist landowners to manage their land in a more sympathetic way in terms of protecting the karst value.³²

In response to suggestions that landowners also had concerns that the DPIWE guidelines would become law, Mr Evans went on to say:

We are acutely aware of those concerns. Those concerns have been raised directly with me and with the Minister. I

³⁰ K. Evans, *Transcript of Evidence*, 14 October 2003, Ref. No. 52, p. 7.

³¹ *Ibid.*, p. 9.

³² *Ibid.*, p. 7.

know they have been raised with senior officers from the department. We have consistently given advice that they are only guidelines. They are not prescriptions; there is no intention of making them law but the landowners do have that fear.³³

In response to a question from the Committee regarding the number of landowners with priority 1 karst that have issues unresolved, the Secretary of the Department of Primary Industries, Water and Environment responded :

The Government is currently negotiating a covenant with one landholder in relation to the refusal of a Private Timber Reserve and consequent compensation. This is the only case where a right to compensation exists.

Other landholders will have dealings with Government from time to time on matters relating to use of adjacent Crown land and concerns about trespass. Some landholders may continue to be unsatisfied with past offers for land purchase but those offers have now lapsed and the Government is no longer seeking to purchase those land parcels.

DPIWE provides advice through various avenues on how landholders can best manage karst on their properties and some landholders are concerned that these advisory recommendations will become statutory requirements. I have no knowledge of any intention to introduce such requirements.³⁴

The Committee accepts the position of the Government at this time on the issues surrounding the Mole Creek karst area. The Committee recognises, however, that if the guidelines did become law there would be an adverse impact on landholders in the area, which would then require issues of fair and reasonable compensation to be resolved.

³³ K. Evans, *Transcript of Evidence*, 14 October 2003, Ref. No. 52, p. 7.

³⁴ K. Evans, Written Response to questions on notice dated 27 October 2003, p. 1.

1.3 Case Study 2: Recherche Bay

The current controversy over a proposal to harvest timber in the Recherche Bay area adjacent to a site of early European occupation involves three main protagonists, namely the landowners, the Tasmanian Government and a group of concerned local residents. All three gave evidence to the inquiry on the issue.

In their joint written submission, the Recherche Bay Protection Group and the Far South Historical Society focussed on the perceived inadequacies of the Historic Cultural Heritage Act 1995 and the resulting weakness of the Tasmanian Heritage Council in protecting some cultural heritage assets.

However, in their verbal evidence both groups gave greater prominence to the historical significance of the site and impact of the proposed logging at Recherche Bay. Ms Wren Fraser-Cameron told the Committee that late last year 'we, as historians and artists and local residents, heard that one of the most significant historical cultural sites in Tasmania had somehow got so far through the process that a forest practices plan for woodchipping had been imposed over this historical site.'³⁵ It was accepted that the private timber reserve process, including approval by the local Council, had occurred in 1996, but 'quite often these notices go in, as you know, it could be ANZAC Day or it might be Easter or it could be the week before Christmas. So the ordinary citizen ... can overlook things like that.'³⁶

A great deal of emphasis was placed on the potential for significant damage to be caused to the historical sites on the property, such as the gardens, observatories, gravesites and other evidence of the French occupation of the area. 'To go in and clearfell a place like this you would obliterate all the evidence of this having taken place and destroy for all time the opportunity to learn more and to be in awe of the landscape and of what took place there.'³⁷

Ms Wren Fraser-Cameron said the timber on the property was only suitable for wood chip and that, because of its location, the property 'doesn't grow the upright trees that are suitable for saw-logging or downstream processing, so principally it is a woodchip plan.'³⁸ She said that, during discussions with the landowners and the logging company, 'they were quite adamant that they were going to go as close to the high tide mark as they were allowed to because that is where the most trees are.'³⁹ Mr Greg Hogg told the Committee that any logging that had taken place on the property in the past was 'only in a very minor way.'⁴⁰ In response to the contention that the timber may not be worth the \$2.2 million the landowners had allegedly indicated they may accept

³⁵ W. Fraser-Cameron, *Transcript of Evidence*, 12 August 2003, Ref. No. 13, p. 1.

³⁶ *Ibid.* p. 14.

³⁷ *Ibid.*, p. 4.

³⁸ *Ibid.*, p. 2.

³⁹ *Ibid.*, p. 8.

⁴⁰ G. Hogg, *Transcript of Evidence*, 12 August 2003, Ref. No. 13, p. 10.

for the property, Ms Fraser-Cameron said of the logging plan that 'I think it was a view to coastal subdivision of sea change blocks.'⁴¹

Ms Fraser-Cameron also expressed concern over the proposal to build a road through the Southport Lagoon Wildlife Sanctuary to allow access to the property and the timber. She told the Committee that 'there is a land use conflict happening here because to access that area you have to go through, by about 4.5 kilometres or more, the Southport Lagoon conservation area. So you put a road through a public area, an area that has been set aside for wildlife conservation.'⁴² In addition to the impact on wildlife, Ms Fraser-Cameron pointed out that 'for them to pursue that land-use option [logging] they would have to be able to take advantage of the public domain. That is not something that is available to the normal citizen, to allow these things to work for their benefit and not for the greater good.'⁴³

Notwithstanding this concern, Ms Fraser-Cameron expressed some support for the landowners, saying 'I empathise with the Vernons because they are quite cognisant of the history of this. I know that the Vernons would like some answer in which they are not seen to be the vandals in this. They felt reasonably that they had made a choice which was the only one open to them.'⁴⁴

Mr Hogg summarised the core issue as one of a failure of the planning system. He told the Committee:

I think the issue is that this is essentially a failure of a planning system because the heritage values of land aren't probably taken account of. As we say, the current problem ... need not have arisen if section 7(1)(h) [of the Tasmanian Heritage Act] had required the [heritage] council to identify or to keep proper records of places of historical cultural heritage significance.'⁴⁵

In addition to changes to legislation and the operations of the Heritage Council, the solution, in Ms Fraser-Cameron's view, was that 'there should be, in instances like this, mechanisms within Government to purchase and compensate landowners.'⁴⁶

One of the two owners of the land, Mr David Vernon, in his verbal evidence to the Committee said the property had been in his family for more than 50 years. He said the site covered 144 hectares (approx. 350 acres) and was covered in regrowth forest that had been previously harvested and processed at sawmills on the property. A whaling station had also occupied part of the property.

⁴¹ W. Fraser-Cameron, *Transcript of Evidence*, 12 August 2003, Ref. No. 13, p. 16.

⁴² *Ibid.*, p. 2.

⁴³ *Ibid.*, p. 10.

⁴⁴ *Ibid.*, p. 6 & p. 7.

⁴⁵ G. Hogg, *Transcript of Evidence*, 12 August 2003, Ref. No. 13, p. 6.

⁴⁶ W. F. Cameron, *Transcript of Evidence*, 12 August 2003, Ref. No. 13, p. 6.

The area under discussion is landlocked by the Southport Lagoon Wildlife Sanctuary, which has caused one issue of concern to the owners. In 1996 a licence was granted for an access road to be built through the Sanctuary to the property. Mr Vernon told the Committee this licence was cancelled in 2001 as a result of a change to legislation, but advice of this was not passed on to him or his brother, the other owner of the land. Some work had commenced on the road and this has since halted, although discussions are continuing with the State Government on seeking a satisfactory resolution.⁴⁷ However, Mr Vernon pointed out that 'we have spent significant amounts of money on trying to resolve the issues surrounding our access. That comes out of our pocket and basically over something ... that hasn't been caused by us.'⁴⁸

Mr Vernon said the timber proposed to be harvested is 'good –quality forest and it is something we have been working on for about 15 years.'⁴⁹ Mr Barry Chipman confirmed this view in relation to the quality of timber on the property :

A couple of months ago we took a sawmiller down there and he was drooling at the mouth. It is beautiful regrowth, it is straight, every tree is a sawlog.⁵⁰

Mr Vernon went on to say that a 100 metre buffer zone had been put in place around the property 'for things like visual impact, for cultural historical aspects and those sorts of things so that the areas that are around the edges of the property could be preserved.'⁵¹ This buffer was put in place in 1999-2000, prior to the current controversy, and included the contentious French Garden site.⁵²

Discussions with what were described as 'Green fundamentalists' proved fruitless, with Mr Vernon asserting that 'all they did was send us rude letters and one of them actually accused one of our foresters of being a murderer ...[in relation to] wildlife.'⁵³ Mr Vernon also presented material indicating that the Recherche Bay Protection Group was advertising its intention to take visitors on to the property to inspect the historic sites without the permission of the landowners.⁵⁴ He went on to tell the Committee:

We have been generous in the way we have allowed people with a need to go in there but these people are just taking a whole range of privileges that they do not have. these people are just wanting to have a belief that it is their right to

⁴⁷ D. Vernon, *Transcript of Evidence*, 14 August 2003, Ref. No. 27, p. 28.

⁴⁸ *Ibid.*, p. 37.

⁴⁹ *Ibid.*, p. 29. In relation to the quality of the timber, Mr Barry Chipman, who accompanied Mr Vernon, told the Committee that 'a couple of months ago we took a sawmiller down there and he was drooling at the mouth. It is beautiful regrowth, it is straight, every tree is a sawlog.' See B Chipman, *Transcript of Evidence*, 14 August 2003, Ref. No. 27, p. 29.

⁵⁰ B. Chipman, *Transcript of Evidence*, 14 August 2003, p. 29.

⁵¹ *Ibid.*, p. 30.

⁵² B Chipman, *Transcript of Evidence*, 14 August 2003, Ref. No. 27, p. 30.

⁵³ D Vernon, *Transcript of Evidence*, 14 August 2003, Ref. No. 27, p. 31.

⁵⁴ *Ibid.*, pp. 33-34.

just go and visit this place. Already on that property people have been going in there and taking logs out of the foreshore area, cutting them down.⁵⁵

Mr Vernon indicated that he and his brother were not looking for compulsory acquisition of the land by the Government or for some form of compensation. In his own words, 'this project will provide certainty for our families into the future and create a long term, well-managed property that we can justifiably be proud of.'⁵⁶

In summarising his feelings on the position he and his brother were in, Mr Vernon told the Committee that 'we do not particularly like playing this political game but we are being forced to and I think probably a lot of landowners feel exactly the same. We have been made to look like the bad guys in some respects in this, which is not fair.'⁵⁷

The written submission from the Tasmanian Government specifically, although only briefly, addressed the Recherche Bay issue. It noted that the listing of two sites in the area on the Tasmanian Heritage Register is being considered by the Tasmanian Heritage Council, as is a recent application to register a much larger area of land around Recherche Bay. According to the submission, permanent listing on the Heritage Register would prohibit all activities, except forestry, that would impact on the values of the site. However, the submission went on to make an important point about this exception. It said:

Forestry activities must be conducted in accordance with the Forest Practices Code, which requires that the relevant processes required under *the Historic Cultural Heritage Act 1995* will be delivered in accordance with procedures agreed by the relevant agencies.⁵⁸

Mr Evans reiterated this point in his verbal evidence when he said:

I think what this is intended to say is that forestry is exempt in that the Forest Practices Code itself deals with the cultural heritage issues in requiring that the relevant processes under the Historic Cultural Heritage Act will be delivered in accordance with the procedures agreed by the relevant agencies. The last sentence, I think, is the key here which is about ensuring that you only need to go to one place for one approval but I think the linkage is intended to be clear.⁵⁹

Mr Evans also told the committee that a new timber harvesting plan was being prepared for the Recherche Bay area. Specifically, he said:

⁵⁵ D Vernon, *Transcript of Evidence*, 14 August 2003, Ref. No. 27, p. 34.

⁵⁶ *Ibid.*, p. 36.

⁵⁷ *Ibid.*, p. 35.

⁵⁸ Tasmanian Government, *Written Submission*, October 2003, Ref. JSC/ERD 52, p. 30.

⁵⁹ K. Evans, *Transcript of Evidence*, 14 October 2003, Ref. No. 52, p. 42.

All I am aware of is that the owners of the land have asked Gunns to prepare a new forest practices plan, that each and every one of the [Forest Practices] Board's specialists has visited the site, including the current archaeologist.⁶⁰

He reiterated this in later verbal evidence, when he said:

Again, my understanding is that the property owners have asked for a forest practices plan to be prepared. I do know that the specialists from the Forest Practices Board have all visited the site, they have all looked at the values of the site, not just the cultural heritage values but the broader values and how those values might be protected within a forest practices plan.⁶¹

As with the Mole Creek Karst issue, the State Government's written submission included a reference to securing an outcome in relation to Recherche Bay that appropriately balanced the competing expectations of all stakeholders. It said:

The provisions of the Historic Cultural Heritage Act 1995 and the Forest Practices System intersect to allow Government and relevant stakeholders to work through the appropriate balance between the considered protection of cultural heritage and the legitimate pursuit of the productive values of private land.⁶²

The Forest Industries Association also addressed the Recherche Bay issue in terms of possible compensation during verbal evidence presented by its representative Mr Terry Edwards.

Mr Edwards told the Committee that:

In that instance, the land was given to those two sons by their father, as I understand it, and they have managed it with a particular view in mind, which they now wish to exercise. They are being in whole or in part prevented from exercising that right. In my personal opinion, and that of FIAT I suspect, we would say they ought to be compensated for the immediate loss but they also ought to be compensated for the ongoing loss.⁶³

Since taking evidence, the Tasmanian Heritage Council, on 19 November 2003, recommended that the Minister –

Declare, under section 29(3)(b) of the Historic Cultural Heritage Act, for a period of two years, the area which is the

⁶⁰ K. Evans, *Transcript of Evidence*, 14 October 2003, Ref. No. 52, p. 38.

⁶¹ *Ibid.*, p. 41.

⁶² Tasmanian Government, *Written Submission*, October 2003, Ref. JSC/ERD 52, p. 30.

⁶³ T. Edwards, *Transcript of Evidence*, 15 October 2003, Ref. No. 38, p. 8.

land mass to the low water mark of the north-east peninsula, to be a heritage area on the grounds that it does contain and may contain further places of historic cultural heritage significance, in particular relating to the expeditions of Bruni D'Entrecasteaux.⁶⁴

The Tasmanian Heritage Council also recommended 'that all necessary steps be taken to minimise activities which could diminish the heritage significance of the area'.⁶⁵

The Minister is now waiting to receive the Council's formal report before taking further action.

⁶⁴ Premier Jim Bacon, *Hansard*, 25 November 2003.

⁶⁵ Premier Bacon, *Ibid.*

1.4 Case Study 3: Circular Head

The written and verbal evidence provided by Britton Brothers, a Smithton-based timber company, addressed one issue, namely a timber harvesting prohibition on 148 hectares of land which they had purchased for the specific purpose of logging operations.

The block was acquired by Britton Brothers in 1982 and in 1985 an Aboriginal quarry was found on the site. In pre-European days the quarry was used as a source of stone with which the Aborigines made cutting and scraping tools. Although the quarry site was in a small area of the property it was not possible to simply isolate it and harvest timber from the remainder of the land. This was as a result of the discovery of scatterings of the stone being found over parts of the entire property.⁶⁶

An appeal lodged with the Forest Practices Tribunal enabled some limited logging to take place on about half of the land, although in order to protect the integrity of those scatterings in the subsoil no regeneration was permitted.

In verbal evidence to the Committee, Mr Glenn Britton, put the value of the timber remaining on the land at approximately \$500,000, although he added that this was 'without whatever it might be worth to our company or the community in a value-added four months we'd bring it in and process it.'⁶⁷ In the company's written submission more specific information on this point was provided. 'The economic implications of that decision were enormous. In terms of the quarantined area alone the volume of timber that was locked up was in excess of 23,000 cubic metres worth around \$500,000 in stumpage and \$3 million in value added terms to the Company and the State.'⁶⁸

Mr Britton said that while ongoing discussions were being held with the State Government, 'we have made several approaches to the Government for a resolve of this, either a swap of land for somewhere else in the district or compensation for the loss and so far it hasn't gone anywhere.'⁶⁹ He went on to say that 'while there is some sort of positive attempt to resolve that between the Government and the Aboriginal community I believe, there is no result imminent in the foreseeable future, which is worrying.'⁷⁰

As far as his company's position was concerned, Mr Britton told the Committee:

Quite frankly we are not in the game of compensation, we would prefer to have the access to the resource that is there. However, we do also understand the issue of the Aboriginal artefacts but by the same token we don't believe that's Britton's problem. It's an act of government legislation that has brought this about so therefore government should make

⁶⁶ G. Britton, *Transcript of Evidence*, Ref. No. 9, p. 17.

⁶⁷ *Ibid.*

⁶⁸ Britton Brothers Pty Ltd, *Written Submission*, Reference No. JSC/ERD9, 22 July 2003, p. 2.

⁶⁹ G. Britton, *Transcript of Evidence*, Ref. No. 9, p. 17.

⁷⁰ *Ibid.*, p. 18.

a decision and support the private landowners disadvantaged by the impact of this legislation.⁷¹

The relevant legislation, according to the written evidence presented by the company, is the *Forest Practices Act 1985* and the *Aboriginal Relics Act 1975*.⁷²

Later evidence highlighted the time taken so far without a resolution to the matter. 'I think that we have been fairly patient with this. It is nearly 18 years now since it first came up and it is very frustrating when there is no action. In a lot of instances quite frankly no one gives a stuff. That is the part that is disturbing about all this.'⁷³

Britton Brothers' written submission proposed one means of resolving the difficulty they and other landowners faced. They wrote:

We believe that government should make an in-principle decision to support those private land owners disadvantaged by the impact of legislation and define a process through which that disadvantage will be addressed.⁷⁴

The State Government's written submission did not directly address the problem being faced by Britton Brothers. However, in discussing the protection mechanisms in the *Aboriginal Relics Act 1975*, it did make the following point:

An order [to protect a site containing Aboriginal relics] cannot be made over private land unless the owner of the land consents to the making of the order.⁷⁵

During Mr Evans' appearance before the Committee, the link between this provision and the Britton Brothers' situation was drawn to his attention and a clarification sought. In a subsequent letter to the Committee, Mr Evans outlined the position by detailing the following sections of the Act :

Section 7 provides for the declaration of Aboriginal Protected Sites; it includes the requirement for the consent of the owner before a declaration order can be made in relation to private land.

Section 14 provides for the protection of Aboriginal relics wherever they occur. There is no requirement for consent in this case – it is forbidden to damage, remove (etc) any Aboriginal relic.⁷⁶

⁷¹ G. Britton, *Transcript of Evidence*, Ref. No. 9, p. 18.

⁷² Britton Brothers Pty Ltd, *Written Submission*, Reference No. JSC/ERD9, 22 July 2003, p. 2.

⁷³ G. Britton, *Transcript of Evidence*, Ref. No. 9, p. 21.

⁷⁴ Britton Brothers Pty Ltd, *Written Submission*, Reference No. JSC/ERD9, 22 July 2003, p. 4.

⁷⁵ Tasmanian Government, *Written Submission*, October 2003, Ref. JSC/ERD 52, p. 28.

⁷⁶ K. Evans, Written Government response to questions on notice dated 27 October 2003, p. 4.

The Committee noted that, according to the State Government submission, 'the Parks and Wildlife Service is responsible for the management and maintenance of protected sites.'⁷⁷

The Committee also noted with some concern that, according to its written submission, 'the Government recognises that the *Aboriginal Relics Act 1975* is not adequate to protect Aboriginal cultural heritage and is committed to reviewing the Act.'⁷⁸ The issue of reviewing the Act was raised with Mr Evans during his appearance before the Committee and he responded that 'a review process hasn't been initiated but my understanding is that it is Government's ... intention to review the *Aboriginal Relics Act*.'⁷⁹

⁷⁷ K. Evans, Written Government response to questions on notice dated 27 October 2003, p. 4.

⁷⁸ Tasmanian Government, *Written Submission*, October 2003, Ref. JSC/ERD 52, p. 28.

⁷⁹ K. Evans, *Transcript of Evidence*, 14 October 2003, Ref. No. 52, p. 32.

Chapter 2

Term of Reference 1

To inquire into and report upon the preservation of natural and cultural values on private land in Tasmania, with particular reference to –

(1) The current arrangements for preserving those natural and cultural values and their amenity.

2.1 Introduction and Key Issues

As the three case studies demonstrate, there are a number of common elements among the concerns expressed about the current arrangements by those who gave evidence to the Committee. It is important, therefore, that this chapter be read bearing in mind the evidence outlined in the three case studies.

It was apparent that, notwithstanding the fact that in most, if not all cases, legislation was in place to deal with the issues confronting landowners and others, the actual outcomes 'at the farm gate' were often unsatisfactory. The Tasmanian legislation referred to in evidence included the *Land Acquisition Act 1993*, the *Forest Practices Act 1985*, the *Historic Cultural Heritage Act 1995*, the *Aboriginal Relics Act 1975*, the *Nature Conservation Act 2002*, the *National Parks and Reserves Management Act 2002* and the *Threatened Species Protection Act 1995*.

Other measures and mechanisms available within the State to protect natural and cultural values include the Natural Heritage Trust, the Private Forest Reserves Program, the Regional Forest Agreement, the Forest Practices Code, the Land for Wildlife Program, Landcare, Bushcare, the Australian Bush Heritage Fund and the Tasmanian Land Conservancy.

According to reserve management consultant, Mr Greg Blake, there are 36 Acts of parliament throughout Australia that have some role in protecting natural and cultural land values. Mr Blake told the Committee:

There is a whole scatter of legislation that deals with a whole lot of stuff in different States and different jurisdictions. Planning schemes are sometimes in conflict with the state legislation. There is a huge amount of diversity there. It grew like topsy and no-one knows how it relates to each other. So there is not much continuity, although there are now significant attempts to create that continuity.⁸⁰

⁸⁰ G. Blake, *Transcript of Evidence*, 11 August 2003, Ref. No. 6, p. 9.

Representatives of the Southern Midlands Municipal Council provided a possible explanation as to the reasons for this plethora of legislation not being able to deliver satisfactory outcomes on the ground. The Mayor, Councillor Colin Howlett, told the Committee that 'we find that legislation is normally worded fairly broadly and we have different people in the bureaucratic system who put their own interpretation on legislation and sometimes the interpretation that was never intended to develop the outcomes that it does.'⁸¹ The Council's Manager, Development and Environmental Services, Mr Damian Mackey, referred to 'the uneven distribution of adverse impacts of regulations that control natural and cultural values.'⁸² He went on:

Basically it comes down at the end of the day that private rights are being impinged for the common good and it is pure luck as to whether a private landowner gets caught with this. When regulations come in that impinge on those [farm assets] it is a real adverse economic impact on the farming operation and, as I said, it just comes down to plain luck.⁸³

It is this adverse economic impact caused by legislation protecting natural and cultural values that appears to have prompted almost all submissions to the Committee to address financial issues of one sort or another.

2.1.1 Compensation

For example, a major concern expressed by witnesses was the need for fair and reasonable or adequate compensation for landowners disadvantaged by the need to preserve natural and cultural values on their land. *The Forest Practices Act 1985* and the associated *Forest Practices Code* provide a compensation mechanism for those landowners unable to harvest timber for conservation reasons. The *Threatened Species Protection Act 1995* also has provision for landowners to be compensated in cases of financial loss from measures to protect threatened species.

However, the evidence presented to the Committee showed that the compensation processes were lengthy and there were disputes over the calculation of the amount of money offered to the landowner. Complicating the issue of compensation was the limited funding available to meet the expectations of landowners.

For example, Mr Terry Edwards of the Forest Industries Association of Tasmania (FIAT) said of the compensation processes under the Regional Forest Agreement that:

Those processes have taken a long time. I think also a number of landowners have been concerned at the rate of

⁸¹ C. Howlett, *Transcript of Evidence*, 12 August 2003, Ref. No. 31, p. 17.

⁸² D. Mackey, *Transcript of Evidence*, 12 August 2003, Ref. No. 31, p. 7.

⁸³ *Ibid.*

compensation that is being offered and therefore the negotiations may be more protracted than would otherwise be the case. But I think that is the real crux of the issue – that the negotiations and agreement process takes quite some time and the establishment of covenants on private land is not a quick process.⁸⁴

Similar concerns were expressed by other witnesses in relation to the compensation offered to landowners who undertook to protect natural and cultural values by means of a covenant on the land title. The legislation enabling this form of protection, the *Nature Conservation Act 2002*, has only recently been passed by the State Parliament, but as noted in Chapter 1 of this Report, is only interim legislation.

The Tasmanian Farmers and Graziers Association, in its written submission, drew attention to the way in which compensation was assessed. It wrote that 'compensation needs to be based on the actual commercial cost of measures to individual farmers, not some notional valuation done by Government valuers.'⁸⁵

This theme was also reflected in comments about compensation in the written submission from the Forest Industries Association of Tasmania. The Association's position was predicated on the belief that landowners have a general right to use their land as they wish, with compensation payable for any restriction of this right.

This debate must of necessity proceed from a basis that a landowner, provided they act within the law, has a general right to utilise property in the most productive means possible and any imposed restrictions must lead to reasonable compensation. If private landowners are required to contribute to the "common good" the cost of that contribution must be borne by those who impose such a requirement whether it be Commonwealth, State or Local Government.⁸⁶

The Association suggested that the calculation of any compensation must not just address the short-term 'loss of income and amenity.'⁸⁷ It said:

Considerations should extend beyond the immediate loss of utilisation rights and must consider longer term foregone income potential, reduced asset value on eventual sale and increased management costs.⁸⁸

⁸⁴ T. Edwards, *Transcript of Evidence*, 15 October 2003, Ref. No. 38, pp. 2-3.

⁸⁵ Tasmanian Farmers and Graziers Association, *Written Submission*, 6 August 2003, Ref. No. JSC/ERD 34, p. 6.

⁸⁶ Forest Industries Association of Tasmania, *Written Submission*, 12 August 2003, Ref. No. JSC/ERD 38, p. 11.

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

The same approach was suggested in verbal evidence from the FIAT representative, Mr Edwards, who told the Committee that:

... any rate of compensation has to be fair and equitable. It has to take into account the value of the land but it also has to take into account the ongoing loss of amenity, the ongoing loss of ability to use the land for other reasons and also the ongoing cost of management.⁸⁹

The Tasmanian Conservation Trust representative, Mr Alistair Graham, noted that both the *Forest Practices Act* and the *Local Government Act* 'have the capacity to regulate use without compensation and this is a touchy issue.'⁹⁰ However, he was opposed to the use of direct financial compensation as a means of dealing with the costs borne by landowners as a result of decisions restricting the use of their property. He said that 'at the moment all we are really seeing is a mendicant culture being developed. In other words, landholders know all they have to do is sit around and wait for some-one to pay them [to] do the kinds of things that they were going to do anyway.'⁹¹

Mr Graham went on to emphasise that 'the government doesn't have a right to compensate and we would strongly resist any moves to impose such an obligation on government.'⁹² There was an acknowledgment that some support was required, but that it should be in the form of restructuring assistance. He also noted that 'if we make those payments under the existing set up in Tasmania, there isn't enough money in the bank to pay.'⁹³

Another witness, Mr Keith Hammond, also spoke against the concept of compensating farmers for not using productive land. He told the Committee:

I am very concerned about compensation and trying to cover the bases by compensation. I am not sure that is an answer that can really work. It ends up costing the taxpayers and the Government a lot of money. It certainly has in the United States and in Japan where we have had some dealings over the years. In the United States they had a reserve program ... where people could put land into reserve, it was laid down with pasture could not be grazed and they were paid so much an acre per year.It has been an ongoing scenario and it has cost countless billions of dollars to the Federal Government and they are still in that situation where they have their reserve programs.⁹⁴

It was suggested by one witness that not all landowners would expect compensation. Mr Paul O'Halloran told the Committee:

⁸⁹ T. Edwards, *Transcript of Evidence*, 15 October 2003, Ref. No. 38, p. 3.

⁹⁰ A. Graham, *Transcript of Evidence*, 11 August 2003, Ref. No. 5, p. 5.

⁹¹ *Ibid.*, p. 4.

⁹² *Ibid.*, p. 13.

⁹³ *Ibid.*

⁹⁴ K. Hammond, *Transcript of Evidence*, Ref. No. 48, pp. 15-16.

In terms of compensation, adequate compensation needs to be paid to private owners of forest and it wouldn't be all private owners of forest. I own 40 hectares of forest and there is no way that I would want compensation for that forest because I am happy just to be part of it I want to keep it. And I will keep it.⁹⁵

Many witnesses agreed that payment of some form of compensation to affected landowners was appropriate, although few were specific or in agreement about the way compensation should be calculated. As can be seen from the case studies, there is a general perception among landowners that the methods of calculating compensation are unfair and inequitable. Generally, this centres on the different amounts paid for apparently similar properties in cases of compulsory acquisition of land by government.

As the General Manager of Meander Valley Council, Mr Paul Ranson, pointed out to the Committee, 'I have only heard anecdotal evidence ... but it seems the issue is more about lack of consistency in the way it's approached. That seems to be the main argument that the compensation pay is not necessarily consistent from one case to another.'⁹⁶ It seems reasonable to believe that this will always be a point of contention, given that landowners place different values on their property than would a professional, dispassionate valuer.

This issue was put in focus by Mole Creek landowner, Mrs Deidre Smith, who responded to a suggestion that she could try to sell the land by telling the Committee:

I've considered it. My husband has a fit every time we talk about it because it's his home. It's where he grew up, it was his parents – I don't know what would happen if we can't live there. I don't know where we're going to live. I should imagine that we probably won't be married because I couldn't handle it. I just couldn't stand it. He couldn't stand to be anywhere else either.⁹⁷

Clearly, no amount of money could truly compensate anyone with such a close personal attachment to an area of land.

As mentioned above, the *Local Government Act 1993* does not make any provision for compensation for decisions that adversely affect the use of private land. However, some municipal councils do provide rate relief to landowners who set aside land to protect natural and cultural values. For example, the Vegetation Officer of the Meander Valley Council, Mr Stuart Brownlea, told the Committee:

We now have 21 land-holders who have undertaken conservation covenanting voluntarily on their land, had it put

⁹⁵ P. O'Halloran, *Transcript of Evidence*, 13 August 2003, Ref. No. 14, p. 65.

⁹⁶ P. Ranson, *Transcript of Evidence*, 14 August 2003, Ref. No. 33, p. 5.

⁹⁷ D. Smith, *Transcript of Evidence*, 13 August 2003, Ref. No. 3/11/16/18, p. 30.

on their title and in recognition of that in June 2000 the councillors decided that it was appropriate to offer a rates rebate scheme that had been piloted in one or two other municipalities and we decided that we'd show recognition, provide a per hectare rebate within set limits for land-holders who were willing to undertake conservation covenanting. So once their covenant is registered on the title we then move to give them a rates rebate of \$5 per hectare between \$50 and \$500. A minimum of \$50, a maximum of \$500.⁹⁸

Mr Brownlea added that 'we have a couple of land-holders I believe who've come close to wiping out their rates ... for large land-holders it would be probably more a quarter [of their rates]. For some of the lifestyle 10 hectare properties it could be significant.'⁹⁹

2.1.2 Information, Communication and Consultation

Another recurring theme in the evidence presented about current arrangements related to how landowners were dealt with by Government agencies, especially in relation to information, communication and consultation.

As has already been noted there is a diverse range of legislation, programs, policies and agencies involved directly or indirectly in the general issue of protecting natural and cultural values. It was apparent from the evidence that landowners are often bewildered by this diversity and not technically equipped to deal with it in a way that properly protects their interests. They simply do not possess the knowledge and skills to engage with specialist officers in a range of Government agencies and nor should they be expected to. The case of the Mole Creek Karst System and the affected landowners provides a stark example of this.

Complicating the issue is the common complaint from witnesses about a perceived lack of consistency in the information landowners received from different agencies in relation to the same issue. As the case studies also demonstrate, three or four agencies may be involved in dealing with one single issue on one property. The officers from these agencies are, quite rightly, dealing with these issues to secure the best outcome for their agency in line with relevant legislation. Especially in cases where compensation is payable, it is understandable that Government officials will seek outcomes that make the least impact on taxpayers funds which are subject to many competing demands from the broader community.

The core of the problem is defining who the client is for the Government officers involved – the agency or the landowner. The landowners' position was summarised by the TFGA in their written submission. They wrote:

⁹⁸ S. Brownlea, *Transcript of Evidence*, 14 August 2003, Ref. No. 33, p. 4.

⁹⁹ *Ibid.*

There is widespread apprehension among farmers, with regard to both the good faith of Government and to the good sense of the approaches it takes, in relation to conservation measures. Specific examples include a perception that “academics” have an undue influence in decisions relating to the conservation of natural values, and a perception that Government may be attempting to avoid paying for its fair share of the cost of protecting identified values.¹⁰⁰

The Tasmanian Conservation Trust, on the other hand, believed the expertise of those the TFGA regards as “academics” was often ignored by Government in making decisions on conservation issues. Mr Alistair Graham told the Committee that -

‘...we are talking about senior professional officials who are driven to the point of retiring early in tears of frustration by simply not being able to participate in the life of government on the issues for which they are professionally responsible as a result of the climate of opinion that is enforced upon the bureaucracy by the government of the day.’¹⁰¹

Emphasising the value of the work being done by professionals in conservation, he went on to draw the Committee’s attention to the work of the Wentworth Group. He told the Committee that ‘we are talking about a bunch of scientists – they are senior academics, they are senior officials in government departments, they have spent their entire professional lives dealing with these issues in Australia.’¹⁰²

However, Mr Graham also made the point that the involvement of landowners in the conservation process was essential and this had been accepted by the constituency represented by his organisation. He said:

Over the last 15 years there has been a revolution in thinking within the conservation movement to accept that if you actually want to save landscape from collapse, if you want to conserve biodiversity we have to engage with all landholders. The most important thing about the Wentworth Group’s manifestation and its work is that it is seriously and genuinely committed to engaging with all landholders irrespective of 10-year land use or whatever.¹⁰³

Evidence such as this made it clear to the Committee that the issue of fully engaging landowners in the conservation process was important in ensuring that the conservation outcomes were properly met and the economic impact on landowners was properly addressed.

¹⁰⁰ Tasmanian Farmers and Graziers Association, *Written Submission*, 6 August 2003, Ref. No. JSC/ERD 34, p. 4.

¹⁰¹ A. Graham, *Transcript of Evidence*, 11 August 2003, Ref. No. 5, p. 5.

¹⁰² *Ibid.*, p. 6.

¹⁰³ *Ibid.*

A related aspect of concern for landowners who gave evidence was the process by which land with natural or cultural heritage values was identified and the information was communicated to the owner. The three case studies provide a number of examples where an identification process took place without any reference to the landowner and, in some cases, led to a change in status that materially affected the way in which the particular land could be used.

Other witnesses gave similar evidence. For example, the Manager, Development and Environmental Services, at the Southern Midlands Council, Mr Damian Mackey, told the Committee that:

It seems to us that when decisions are being taken to introduce regulations that can control cultural and natural values or protect cultural or natural values on private land, that expert evidence, if you like, is being sought by the decision makers from one side of the argument. Consultation is the key part of any move forward, we consider, with landowners and with potential experts who may have a different view to the ones perhaps the Government might be listening to.¹⁰⁴

The TFGA also addressed this issue in its written evidence to the Committee. It wrote that ‘government must fully justify claims that natural or cultural values on farm land warrant conservation before imposing measures to protect them.’¹⁰⁵ It asserted that ‘there is a marked tendency in parts of the community, and in particular parts of the scientific community, to fall back on the “precautionary principle” as justification for ambit measures, regardless of impact on landowners.’¹⁰⁶ It also said that ‘there must be provision for farmers to be fully informed on any investigation which is proposed or under way, and which could impact on their businesses.’¹⁰⁷

2.1.3 The Ticking Clock

There was overwhelming evidence presented by landowners about the extremely long time taken to resolve conservation issues once they had been identified. Under current arrangements there is no timeframe or set timelines to deal with the processes involved in protecting land for conservation reasons. In some cases, such as the matter of Britton Brothers outlined in Case Study No. 3, the unresolved issues go back more than fifteen years. Many other witnesses gave evidence in relation to problems that had begun in the mid-1990s and remain unresolved today.

The TFGA highlighted this issue in their written submission. They wrote:

¹⁰⁴ D. Mackey, *Transcript of Evidence*, 12 August 2003, Ref. No. 31, p. 8.

¹⁰⁵ Tasmanian Farmers and Graziers Association, *Written Submission*, 6 August 2003, Ref. No. JSC/ERD 34, p. 4.

¹⁰⁶ *Ibid.*, p. 5.

¹⁰⁷ *Ibid.*, p. 9.

Farmers should be able to expect clear and unambiguous process from Government when establishing what they can and cannot do with their land, and they should be able to expect prompt decisions from Government. A farmer should also be able to expect that decisions will automatically go his way if there is unreasonable delay in decision making.¹⁰⁸

Elaborating on this point in verbal evidence, natural resource management consultant, Mr Ian Whyte, told the Committee that 'a lot of angst from landowners comes from having to deal with apparently open-ended situations. We've got very good examples with applications for dams that have been sitting there because nobody is there to process them and they just sit there and another season goes by.'¹⁰⁹

In relation to the current use of strictly defined timelines for decision-making he said:

... this sort of thing has started to come in to legislation as a discipline ... to prevent Ministers ducking the issue, avoiding a decision and therefore keeping something in limbo for potentially years. It's in place now and I'd have to dig up examples but I can get them, where a clock starts ticking and it's calculated when the legislation is drafted ... But once that clock starts ticking at a particular point in time the Minister has a pressure on him or the government has a pressure on it to make a decision, to make a decision one way or the other but it can't avoid making a decision. If it does not make a decision the proponent gets an automatic approval.¹¹⁰

¹⁰⁸ Tasmanian Farmers and Graziers Association, *Written Submission*, 6 August 2003, Ref. No. JSC/ERD 34, p. 9.

¹⁰⁹ I. Whyte, *Transcript of Evidence*, 14 August 2003, Ref. No. 34, p. 45.

¹¹⁰ *Ibid.*, p. 44.

Chapter 3

Term of Reference 2

To inquire into and report upon the preservation of natural and cultural values on private land in Tasmania, with particular reference to –

(2) The manner in which further options might be developed to assist private property owners conserve natural and cultural values on their land.

3.1 Introduction

In considering the development of further options to address the problems raised in the evidence it received, the Committee was mindful of the current review of legislation governing national parks, reserves and nature conservation. It is also aware that a range of other legislation is available to deal with the issues raised by witnesses, such as the *Threatened Species Protection Act 1995*, the *Forest Practices Act 1985*, the *Nature Conservation Act 2002* and the *Historic Cultural Heritage Act 1995*. The Committee believes that the implementation of its recommendations in relation to further options can be achieved through the mechanisms provided by such existing legislation.

There is no doubt that there is, at the very least, a strong perception among very many landowners that, in relation to conservation issues, they rank low in the estimation of governments at all levels and the bureaucracies that serve them. Whether this perception is also reality is a matter for debate, but it is incumbent on governments to deal with it urgently and effectively to ensure that efforts to protect and preserve natural and cultural values on private land do not suffer. Landowner distrust, negative attitudes and outright opposition to such efforts will never allow the full expectations of the community to be met and, as a result, there is a risk that many important natural and cultural treasures may be lost forever.

The most important fundamental is that landowners be seen as equal partners in the process of conservation and that government officials should make even greater and more targeted efforts to engage landowners in a positive and open manner.

It is apparent from evidence before the Committee that there is enormous goodwill among landowners to protect and preserve those valuable natural and cultural assets of which they are custodians. The Committee cannot emphasise strongly enough the need for all relevant Government agencies and individual officers to take whatever steps are necessary to harness that goodwill.

It must also be said that landowners need to recognise that officers of government agencies are charged with the responsibility of implementing community expectations in relation to conservation issues, even where they involve private land. While it is always difficult to overcome negative perceptions and the residual tensions from past disappointments, it is in the landowners best interest also to approach these issues in an open and co-operative manner.

From a community perspective it is important to recognise that the responsibility for the protection and preservation of natural and cultural values cannot be left to individual landowners and governments. Any measures in this area will come at a financial cost and, almost without exception, witnesses told the Committee that the community must shoulder its share of that cost. Conservation mechanisms exist in legislation, policies, programs, codes of practice and other initiatives as a direct result of the demands and expectations of the broader Tasmanian community. In that light, the Tasmanian community must accept that it has a role to play in enabling landowners to deal with the consequences of those demands and expectations.

It is that partnership between landowners, governments and the broader community that underpins the options outlined in this chapter.

3.2 Future Options

This report has highlighted the key issues presented in evidence to the Committee. The large number of written submissions and oral presentations given by witnesses inevitably dealt with a wide range of matters, often in great detail. It is not the role of this Committee to provide detailed solutions for every individual case put before it, as would a court or other tribunal. However, the Committee believes the implementation of the options presented in this report will provide a better framework to help resolve most of the problems put before it.

3.2.1 Financial Matters

As this report has shown repeatedly, funding issues were often at the heart of the concerns of landowners and other witnesses who appeared before the Committee or made written submissions. Most prominent were compensation for financial losses as a result of conservation measures imposed on landowners and the need to meet the costs of ongoing maintenance of areas of land set aside for conservation.

It was suggested by more than one witness that an effective means of dealing with the first of these issues would be the setting up of a revolving or rolling fund to enable the purchase of land with a view to placing a conservation covenant on the title and then re-selling the property. The funds raised by the sale of the property would be paid into the fund for the process to begin again. Such funding mechanisms have already be shown to be effective by the

Australian Bush Heritage Fund and the Tasmanian Land Conservancy, with the latter providing evidence to the Committee of its successful implementation in this State, albeit in a limited way.

The immediate difficulty is the provision of the initial seed funding and this is compounded to some extent by the prospect that, at least in the early stages, there could be great demands placed on the fund. The competing demands for State Government funds would seem to favour a joint arrangement with the Commonwealth in providing the one-off allocation necessary to establish the fund. The principle of the revolving fund is that it becomes self-sustaining over time so further imposts on government would be very unlikely.

Given earlier comments about the need for the Tasmanian community to help bear the cost of such conservation measures, the State Government should be encouraged to consider an allocation from land tax contributions to set up this project. To minimise the impact on the land tax contributions, the allocation could be scheduled over a three to four year period. When combined with matching Commonwealth funds, such an approach would allow the setting up of a substantial financial resource to compensate landowners for costs incurred.

The Committee therefore recommends that:

The Tasmanian Government establish a rolling or revolving fund for the purpose of funding the conservation of natural and cultural values on private land by means of purchase, covenant and re-sale of parcels of land identified by the community as worthy of protection.

The Committee further recommends that:

The Tasmanian Government negotiate with the Commonwealth Government to secure matching funds for this rolling or revolving fund and tax deductibility for corporate and private donations to the fund.

A number of witnesses, including municipal councils, gave evidence that local government would be given an increasing role in protecting natural and cultural values through planning schemes and other land use powers. This has become more likely with recent Commonwealth-State agreement on the need to protect non-forest vegetation. According to the evidence presented by the State Government, responsibility for the conservation and protection of non-forest vegetation will soon be in the hands of local government and measures are in place to ensure this happens within the next two to three years.¹¹¹

A problem in relation to this issue, and one identified in evidence to the Committee, is the lack of compensation mechanisms within the *Local Government Act 1993* for decisions that restrict existing private land use and result in financial loss. In his verbal evidence, Mr Evans specifically noted in

¹¹¹ Tasmanian Government, *Written Submission*, October 2003, Ref. JSC/ERD 52, pp. 14-15. See also K. Evans, *Transcript of Evidence*, 14 October 2003, Ref. No. 52, pp. 3-4.

response to a question from the Committee about the bilateral agreement that 'it is not proposed that there be any compensation.'¹¹²

Mr Evans did point out to the Committee that it was not the intention under the bilateral agreement to deny landowners the right to use non-forest vegetation areas such as the native grasslands in the Midlands. He said:

Bear in mind we are not talking about locking away grasslands and never using them. The reality is that the best form of protection of these native grasslands is by actively grazing them. We need to be cognisant of the fact that we can destroy those native grasslands with things like fertilisers. We want to work with landowners to protect those native grasslands. We would do that by way of getting landowners to develop vegetation management agreements.¹¹³

Mr Evans emphasised the intention to work co-operatively with landowners and allow properly managed use of non-forest vegetation where it was appropriate. He told the Committee:

We believe this way enables us to get the best bang for the buck and deliver the best conservation outcome. It is not an overly-threatening process; it is not through State governments coming in and saying they are going to whack in land-clearing legislation. It is about an approach which involves landowners, local government, State Government trying to co-operatively move forward.¹¹⁴

However, notwithstanding Mr Evans' evidence, the Committee believes the lack of compensation provisions in relation to non-forest vegetation seems to be unreasonable and inequitable in light of, for example, the existing compensation provisions in the *Forest Practices Act 1985*. The extension of local government responsibility to conservation of natural and cultural values that causes a cost to landowners should, therefore, be accompanied by legislative changes allowing compensation for such action. Of course, any such legislative change must recognise that de facto compensation can already be paid through the use of council rate relief so measures must be included to prevent "double-dipping".

The Committee therefore recommends that:

The Premier's Local Government Council investigate amending the Local Government Act 1993 to enable municipal councils to compensate private landowners for any financial losses resulting from actions of the council to protect natural and cultural values on private land.

¹¹² K. Evans, *Transcript of Evidence*, 14 October 2003, Ref. No. 52, p. 29.

¹¹³ *Ibid.*, pp. 29 & 30.

¹¹⁴ *Ibid.*, p. 31.

The Committee recognises that councils have the power to levy special conservation rates on all landowners within the municipality. Again, This recognises the obligation of the local community to bear the cost of the conservation demands it places on a few landowners.

Notwithstanding this recommendation, It must be noted that not all witnesses endorsed the concept of a such a levy. For example, Mr Edwards, of FIAT, told the Committee that:

... we say it is the responsibility of the State to preserve these natural and cultural heritage values, not the responsibility of each and every member of the community, other than through our normal taxation regime. We would not be in favour of the creation of a specific levy or tax to achieve these objectives.¹¹⁵

3.2.2 Information and Administration

There is a need for leadership and direction for the implementation of the various legislation, policies and programs that directly or indirectly influence the preservation of natural and cultural values.

It was clear from the evidence that a major difficulty for landowners was the need to deal with a number of different Government agencies with different legislative authority on what was often a single conservation issue. As shown in the report, this created a lack of certainty and transparency that undermined landowner confidence in governments and their officials.

The importance of a single reference point, consistency of information and certainty of process cannot be emphasised too strongly. To further facilitate such outcomes, a whole of government unit could be established to co-ordinate and manage all conservation on private land issues. A single unit handling a similar issue, the Shacks Sites Project, has already proved successful.¹¹⁶

A Private Land Conservation Unit would have landowners as its principal client group, although it would serve as a point of reference for government agencies and municipal councils as well.

This one-stop shop approach should deliver greater certainty and confidence to everyone involved in conservation issues on private land. Ultimately, it is only through the development of such confidence that co-operative relationships can be established and agreed conservation goals achieved.

The Committee therefore recommends that:

¹¹⁵ T. Edwards, *Transcript of Evidence*, 15 October 2003, Ref. No. 38, p. 4. Mr Edwards noted later that when he referred to 'the State' in such cases he 'meant the broader "State", being Australian and State governments.' See T. Edwards, *Transcript of Evidence*, 15 October 2003, Ref. No. 38, p. 5.

¹¹⁶ Further information on this Tasmanian Government project is available on the Internet at www.dpiwe.tas.gov.au/inter.nsf/WebPages/SSKA-53WB5V?open

The Tasmanian Government establish a Private Land Conservation Unit to oversee and manage all State Government processes and decision-making in relation to the conservation of natural and cultural values on private land.

The Committee noted with interest the recent State Government initiative to develop a Natural Resource Management Framework and the establishment of regional management committees as part of this framework. Complementing the work of these committees will be the Tasmanian Natural Resource Management Committee which will advise the State Government on relevant matters. The broadly representative nature of the Council and the management committees was seen, by the Committee, as a particularly positive element of this initiative.

While the Framework is 'currently in its infancy' and will have a much broader role than just the conservation of natural and cultural values, the Committee strongly supports the concept, believing it has the potential to make a very valuable contribution on conservation issues in the future.

However, as the Government submission itself noted, 'the Framework does not replace policies and processes'.

The second key problem for landowners was the open-ended nature of the processes that identified and protect sites that had natural and cultural values. The case studies presented in this report and the evidence along similar provided by a number of other witnesses make it clear that the resolution of private land conservation disputes takes far too long.

It is unacceptable that any Tasmanian should have to wait five, ten or fifteen years to settle any dispute, let alone one not of their making and that often imposes a significant financial cost on them. While governments may contend that complex issues should not be dealt with hastily or that limited resources impede rapid decision-making processes, it is a matter of fairness, equity and natural justice that delays are not unreasonable.

To prevent such unreasonable delays, fixed time limits for decisions and other processes should be incorporated into all legislation that may restrict, for natural or cultural conservation reasons, the ability of private landowners to use their land for productive purposes. Such a system of timelines already exists in some legislation, most notably in relation to local government planning approvals and a number of Federal Government decision-making processes. The current Meander Dam approval process involving the Federal Environment Minister was one relevant example put to the Committee.

The Committee therefore recommends that:

The Tasmanian Government amend all relevant legislation to include fixed time limits for decisions and other associated processes that may restrict, for natural or cultural conservation reasons, the ability of private landowners to use their land for productive purposes.

Such amendments include a provision that disputes not resolved within the fixed time limits be automatically referred to an independent arbiter appointed under the relevant legislation to rule on the matters in dispute.

Of course, any extension of the role of local government in dealing with conservation on private land should also incorporate time limits along similar lines to those already used for planning decisions.

Another major problem area identified by many witnesses concerned the delivery of information, especially in relation to processes and options. Sometimes this information was conflicting or incomplete depending on which government agency was involved at a particular point in the process and it was not unknown for landowners to be given different information by officers within the same agency.

It has already been pointed out in this report that, in addition to government agencies, there are a number of other community-based organisations and programs involved in conservation issues on private land. These range from Landcare and Bushcare to the three regional Natural Resource Management (NRM) bodies established under the Natural Resource Management Framework. Such organisations provide a valuable network to support the effective management of conservation issues on private land. However, they also add to the perception among individual landowners of a complex and conflicting array of groups, programs and processes that they must confront over what appears to them as a simple and straightforward matter to deal with.

From a fairness and equity point of view, landowners must be fully informed where action is proposed that may impinge on their use of the land or where some financial loss may be incurred by them. The difficulty for them now is that there is no single reference point that can give them the information they need. As a result, many are forced to seek costly legal advice to deal with what should be a normal, straightforward administrative process.

In addition to a commitment by all government agencies to fully consult landowners and engage them as equal partners in the conservation process, a single reference work should be available to anyone involved in that process. A handbook, accessible on the Internet, should be compiled with all relevant information, legislation, policies, rights, obligations, options and processes in relation to conservation on private land. This handbook should be a whole of government document that could also serve as a useful resource for government officials.

Written in plain English, it could help ensure that the process does not become bogged down in legal or bureaucratic technicalities. Any landowner directly involved in a conservation process involving their land should be provided, early in the process, with a hard copy version of the handbook free of charge. This would assist meaningful consultation and negotiation, as well as minimising delay in resolving issues.

The Committee therefore recommends that:

The Tasmanian Government publish a single, plain English reference work, accessible on the Internet, containing all relevant information, legislation, policies, rights, obligations, options and processes in relation to conservation on private land.

The Committee further recommends that:

A hard copy version of the proposed reference work be provided free of charge to any private landowner at the start of any process that may result in restrictions on the use of their land for natural or cultural conservation purposes.

3.2.3 Aboriginal Cultural Heritage

In its written submission the State Government acknowledged the inadequacies of the Aboriginal Relics Act 1975 in protecting Aboriginal cultural heritage. Evidence put to the Committee would also suggest that it is inadequate in properly dealing with the interests of landowners whose property is found to contain Aboriginal relics.

The Government submission pointed out that it is committed to reviewing the Act.

Given that this legislation has been in place for almost thirty years and is clearly unable to achieve its objectives, the review and redrafting of the legislation should be treated as a significant priority for immediate attention. It is important that, if Tasmania is to properly protect the remaining cultural heritage of the island's original inhabitants, then workable and effective legislation is in place to do so. The bicentenary of permanent European settlement would seem an appropriate time for that legislation to be developed. As part of the development of new legislation, consideration should be given to including provision for adequate compensation for private landowners whose land is acquired or in some other way alienated for the purpose of protecting sites of Aboriginal cultural heritage value.

The Committee therefore recommends that:

The Tasmanian Government undertake, as a matter of urgency, a review of the Aboriginal Relics Act 1975 with a view to ensuring that it properly protects items of Tasmanian Aboriginal cultural heritage.

The Committee further recommends that:

Amendments or new legislation resulting from the review include provision for compensation to be payable to private landowners who may incur financial losses as a result of the operations of the Act.

3.2.3 Cost to Government

As has been mentioned previously, the financial resources of all governments are limited and subject to a wide range of competing demands. A great deal of taxpayer funding is already expended on issues relating to conservation on private land. The tasks necessary to manage these issues are already being carried out by government, but in an unco-ordinated and time-consuming way.

It is not expected that the measures outlined in this report would have a significant, if any, negative impact on Government revenue. Any costs that may be involved should be off-set by improved efficiencies in processes and in the reduced time taken to resolve disputes.

In relation to the cost of compensation, the establishment of a Private Land Conservation Fund on a rolling or revolving basis should also minimise any additional cost to taxpayers. Certainly in the medium to long term, the operations of the revolving fund should eliminate any need for recurrent government expenditure on this issue.

List of References

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2. Anderson, G., *Transcript of Evidence*, 13 August 2003, Ref. No. 3/11/16/18.
3. Bacon, Premier Jim, *Hansard*, 25 November 2003.
4. Blake, G., *Transcript of Evidence*, 11 August 2003, Ref. No. 6.
5. Britton Brothers Pty Ltd, *Written Submission*, Reference No. JSC/ERD9, 22 July 2003.
6. Britton, G., *Transcript of Evidence*, Ref. No. 9.
7. Brownlea, S., *Transcript of Evidence*, 14 August 2003, Ref. No. 33.
8. Chipman, B. *Transcript of Evidence*, 14 August 2003.
9. Edwards, T., *Transcript of Evidence*, 15 October 2003, Ref. No. 38.
10. Evans, K., *Transcript of Evidence*, 14 October 2003, Ref. No. 52.
11. Evans, K., *Written Response to questions on notice dated 27 October 2003*.
12. Flowers, C., *Transcript of Evidence*, 13 August 2003, Ref. No. 3/11/16/18.
13. Forest Industries Association of Tasmania, *Written Submission*, 12 August 2003, Ref. No. JSC/ERD 38.
14. Fraser-Cameron, W., *Transcript of Evidence*, 12 August 2003, Ref. No. 13.
15. Graham, A., *Transcript of Evidence*, 11 August 2003, Ref. No. 5.
16. Green MHA, Hon. Bryan, Minister for Primary Industries, Water and Environment, *House of Assembly Hansard*, 21 November 2002.
17. Hammond, K., *Transcript of Evidence*, Ref. No. 48.
18. Hogg, G., *Transcript of Evidence*, 12 August 2003, Ref. No. 13.
19. Howlett, C., *Transcript of Evidence*, 12 August 2003, Ref. No. 31.
20. Mackey, D., *Transcript of Evidence*, 12 August 2003, Ref. No. 31.

21. Martin, S., *Transcript of Evidence*, 13 August 2003, Ref. No. 3/11/16/18.
22. Mole Creek Karst Private Landowners Group, *Written Submission*, Reference No. JSC/ERD4, 21 July 2003.
23. O'Halloran, P., *Transcript of Evidence*, 13 August 2003, Ref. No. 14.
24. Parks and Wildlife Service Tasmania, *Visiting ... Mole Creek Karst National Park*.
25. Ranson, P., *Transcript of Evidence*, 14 August 2003, Ref. No. 33.
26. Smith, D., *Transcript of Evidence*, 13 August 2003, Ref. No. 3/11/16/18.
27. Stagg, R., *Transcript of Evidence*, 14 August 2003, Ref. No. 17a/b.
28. Tasmanian Farmers and Graziers Association, *Written Submission*, 6 August 2003, Ref. No. JSC/ERD 34.
29. Tasmanian Government, *Written Submission*, October 2003, Ref. JSC/ERD 52.
30. Vernon, D., *Transcript of Evidence*, 14 August 2003, Ref. No. 27.
31. Wells, K., *Transcript of Evidence*, 13 August 2003, Ref. No. 3/11/16/18.
32. Whyte, I., *Transcript of Evidence*, 14 August 2003, Ref. No. 34.

List of Witnesses

Appendix 1

Bowden, Mr Richard
Britton Timbers
Circular Head Council
Dornauf, Mrs Jenny
Fish, Mr Donald
Forest Industries Association of Tasmania Ltd
Hammond, Mr Keith
Huon Resource Development Group, Timber Communities Australia
Innes-Smith, Mr Peter and Mrs Maida
Jones, Mr John
Maddock, Mr John
McConnin, Mr Alfred
McGlone, Mr Brett
McNab, Mr John
Meander Resource Management Group, Timber Communities Australia
Meander Valley Council
Mole Creek Karst Private Landowners Group
Northern Midlands Council
O'Halloran, Mr Paul
Recherche Bay Protection Group and The Far South Historical Society
Reserve Design and Management
Rollins, Mr David
Schwabe, Mr Helmut
Sheridan, Ms Gwenda
Southern Midlands Council
Southern Tasmanian Caverneers Inc
Tasmanian Conservation Trust
Tasmanian Farmers and Graziers Association
Tasmanian Government
Tasmanian Land Conservancy
TasNature

TFGA Forestry Committee
Timber Communities Australia
Vercoe, Mr Jarrah

1 PRIVATE WITNESS

Written submissions taken into evidence **Appendix 2**

Anderson, Mr Glen and Mrs Christine
Australian Bush Heritage Fund
Australian Government, Department of the Environment and Heritage
Britton Timbers
Dudley, Mr Todd
Forest Industries Association of Tasmania Limited
Giblin, Mr Max
Greening Australia
Gunns Limited
Huon Resource Development Group, Timber Communities Australia
Innes-Smith, Mr Peter and Mrs Maida
Jansen-Riley, Ms Victoria
Jordan, Mr John and Mrs Dianne
Lord, Mr Bruce
Maddock, Mr John
Martin, Mr Noel and Mrs Sally
Meander Resource Management Group, Timber Communities Australia (2)
Meander Valley Council
Mole Creek Karst Private Landowners Group
Northern Midlands Council
NRM North
O'Halloran, Mr Paul
Recherche Bay Protection Group and The Far South Historical Society
Schwabe, Mr Helmut
Sheridan, Ms Gwenda
Smith, Mr Malcolm and Mrs Diedre
Southern Midlands Council
Southern Tasmanian Caverneers Inc
Tasmanian Conservation Trust
Tasmanian Farmers and Graziers Association
Tasmanian Government

Tasmanian Land Conservancy

TasNature

The Leonard Family

Timber Communities Australia

Vandenburg, Mr John

Vercoe, Mr Jarrah

Ward, Mr Jamie

Wells, Mr R and Mrs K

Wild Cave Tours and Mole Creek Caving Club

2 PRIVATE SUBMISSIONS

Documents taken into evidence

Appendix 3

Facsimile to Kathleen Wells dated 31 October 2002 identifying Priority 1 Karst on property

Mole Creek Area Tenure Map

Map of Wells' property

Letter dated 10 December 2002 from Minister for Primary Industries, Water and Environment regarding karst on Mr Flowers' property at Mole Creek

Letter dated 14 June 2000 from Richard Barnes, FRA Private Land Reserve Program, DPIWE regarding the forest values on Mr Flowers' property

Letter dated 25 July 2003 to Minister Green from Craig Flowers regarding the value of Mole Creek karst

Timber Valuation – C Flowers – Liena Road

Map – Craig Flowers – Liena Road

Photos x 2 – Craig Flowers Property

Aerial Maps x 2 – Craig Flowers – Liena Road

List of Priority 1 Karst Properties – Mole Creek

Letter dated 24 February 2003 from the Minister for Primary Industries, Water and Environment regarding part of the Martin property that has been identified as Priority 1 Karst

Map – Mole Creek Area Tenure

Facsimile from Jennifer Dyring, Department of Primary Industries, Water and Environment dated 28 October 2002 re valuation of land and enclosing map

Mole Creek Karst National Park, Wet Cave area Meeting Agenda 5/2/97

Letter dated 20 January 1997 from Greg Middleton, Parks and Wildlife re Wet Cave (Mole Creek Karst National Park) Private and Commercial Cave Tours Crossing Adjacent Land

Letter from John Holmes, DELM to Wild Cave Operators – Licence to operate – National Parks, State Reserves and Crown Land

Letter to Wild Cave Tours from Noel and Sally Martin stopping tours on their land

Letter dated 3 July 2001 to Minister for Primary Industries, Water and Environment re Mole Creek Karst National Park and Conservation Area – Management Plan

“Three survive ordeal in cave”, The Advocate, Tuesday, August 7, 2001

Photos x 5 – Noel and Sally Martin

Minutes of Meeting – 17 July 2002 at Caveside Hall re Mole Creek Karst Private Land Owners Group

Property Rights and the Environment

Flora and Fauna Values of the Hillier Property

English Nature – Service Standards, Sites of Special Scientific Interest, Judicial Review Judgement on Breckland Farmland SSSI

About the Tasmanian Land Conservancy

The Orchids of Tasmania – brief x 2

LJ Hooker Property Brief – Parkersford Road, Port Sorell

Letter dated 26 May 2003 from Peter Tonelli to the Threatened Species Unit, Parks and Wildlife Service re Hillier property

Logging at Bannon Bridge

Presentation from Paul O’Halloran to the Joint Standing Committee on Environment, Resources and Development

Submission from Jenny Dornauf, Meander Valley Councillor and farmer to Joint Standing Committee on Environment, Resources and Development

Comparison of Native Forest Management Options

Freehold land is being Kneecapped – Peter and Maida Innes-Smith

Behind the Veneer

Letter dated 19 March 1997 to the Forest Practices Board from Mr Simon Allston, Principal Crown Counsel regarding S.8(2)(d) and S.8(2)(e) of the Forest Practices Act 1985 in relation to the Threatened Species Protection Act 1995.

Forest Practices Plan for Recherche Bay