



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

FINANCE AND PUBLIC ADMINISTRATION REFERENCES
COMMITTEE

**Reference: Native vegetation laws, greenhouse gas abatement and climate change
measures**

THURSDAY, 8 APRIL 2010

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SENATE FINANCE AND PUBLIC ADMINISTRATION

REFERENCES COMMITTEE

Thursday, 8 April 2010

Members: Senator Ryan (*Chair*), Senator Polley (*Deputy Chair*), Senators Cameron, Kroger, Siewert and Williams

Participating members: Senators Abetz, Adams, Back, Barnett, Bernardi, Bilyk, Birmingham, Mark Bishop, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Bushby, Cash, Colbeck, Jacinta Collins, Coonan, Cormann, Crossin, Eggleston, Farrell, Feeney, Ferguson, Fielding, Fierravanti-Wells, Fifield, Fisher, Forshaw, Furner, Hanson-Young, Heffernan, Humphries, Hurley, Hutchins, Johnston, Joyce, Ludlam, Lundy, Ian Macdonald, McEwen, McGauran, McLucas, Marshall, Mason, Milne, Minchin, Moore, Nash, O'Brien, Parry, Payne, Pratt, Ronaldson, Scullion, Sterle, Troeth, Trood, Wortley and Xenophon

Senators in attendance: Senators Cameron, Heffernan, Joyce, Kroger, Nash, Polley, Ryan and Williams

Terms of reference for the inquiry:

To inquire into and report on:

- (1) The impact of native vegetation laws and legislated greenhouse gas abatement measures on landholders, including:
 - (a) any diminution of land asset value and productivity as a result of such laws;
 - (b) compensation arrangements to landholders resulting from the imposition of such laws;
 - (c) the appropriateness of the method of calculation of asset value in the determination of compensation arrangements; and
 - (d) any other related matter.
- (2) The impact of the Government's proposed Carbon Pollution Reduction Scheme and the range of measures related to climate change announced by the Leader of the Opposition (Mr Abbott) on 2 February 2010.

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Committee met at 9.11 am

CHAIR (Senator Ryan)—Good morning. The committee is commencing its inquiry into native vegetation and greenhouse gas abatement laws and climate change measures. I would like to make a couple of opening remarks before we commence. Firstly, thank you for travelling here today. I understand some of you have travelled substantial distances. I would like to set out a couple of ground rules to facilitate the operation of what we are trying to do. This is a public hearing and people are very welcome to observe the proceedings. However, not being actually part of the proceedings, there is no right for people observing to speak, interrupt or contribute while the committee is hearing from a witness giving evidence.

The hearing today will commence with evidence from a number of organisations and officers of the New South Wales Department of Climate Change and Water. Following the lunch break, members of the audience will have the opportunity to speak to the committee. In order that this is undertaken in an orderly manner, at 12.30 pm Ms Tegan Gaha from the committee secretariat will be available outside the hearing room to take the names of those wishing to give evidence. To allow time for as many as possible to speak, this will be limited to five minutes per person. When speaking to the committee, the normal parliamentary rules apply. Witnesses must complete a Hansard form and will be provided with information on parliamentary privilege and the protection of witnesses and evidence. The committee has limited time today, so it may not be possible to hear from everyone seeking to give evidence. If you do give evidence, you may also still put in a submission to the inquiry. The details of how to do this are on the committee's website and are available from the secretariat.

I welcome officers from the New South Wales Department of Environment, Climate Change and Water. I also remind witnesses that the Senate has resolved that an officer of a department of the Commonwealth or a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. The committee has the New South Wales government's submission. I will now invite you to make a short opening statement, and at the conclusion of your remarks I will invite members of the committee to put questions to you.

[9.13 am]

CURTIS, Dr David, Principal Policy Officer, New South Wales Department of Environment, Climate Change and Water

GROSSKOPF, Mr Thomas Andrew, Director, Landscapes and Ecosystems Conservation, New South Wales Department of Environment, Climate Change and Water

CHAIR—Do you wish to make an opening statement?

Mr Grosskopf—If I may. The legislative framework for the management of native vegetation in New South Wales is currently framed to deliver three key things. The first is to protect important vegetation in the landscape. The second is to let farmers get on with the business of farming. The third is to work with farmers to achieve balanced outcomes, ensuring that there are balances between the protection of important environmental and natural resource management outcomes and economic development and the continued support for rural and regional communities.

I will just expand on those three points very quickly. The first is about protecting what is important. The New South Wales statute, the Native Vegetation Act 2003, makes it clear that any regrowth younger than 1 January 1990 in the central and eastern divisions and younger than 1 January 1983 in the western division can be cleared without reference to the government. The management of that younger native vegetation is completely within the control of the landholder. If it is older than that then an agreement with a regional body—our catchment management authorities—is required to find a way forward in terms of the management of that vegetation, be it clearing, be it thinning to benchmark or be it the control of invasive native scrub, which we more commonly know as woody weeds. So there are a number of avenues that give farmers the opportunity to manage the landscape and their existing businesses without reference to government, but there are also controls put in place for the older vegetation in our landscape—that which provides habitat, that which protects soil from erosion by wind and water and that which protects water quality. That vegetation is protected through a framework of negotiated outcomes working with landholders. Since the act commenced we have had some 1,677 property vegetation plans or those negotiated consents in place in New South Wales. That represents an active engagement with about one in 25 to 30 farming establishments in New South Wales, so we are working with a lot of landholders to find a balanced outcome.

The second point I want to make and build on is that we let farmers get on with the business of farming. I mentioned the regrowth date already and that, for things that are regrowing in our landscape, there is the ability to continue to intervene in that part of the landscape. But we also provide for a wide range of exemptions to deal with things like management for bushfire, the provision of power lines and other farm infrastructure and also a range of RAMAs, routine agricultural management activities, that allow farmers to continue to undertake their activities. Those are things like gaining construction timber from vegetation on the property and clearing along fence lines—six metres on either side of a boundary fence line in the central and eastern divisions and 20 metres on either side of a fence line in the western division. Those are just some examples of those routine agricultural management activities that require no reference to the

state government. There are also provisions in there for the continuation of existing farming activities.

The last bit is about working with farmers to deliver a balanced outcome. The Native Vegetation Act 2003 was developed after an extensive period of consultation with not only the farming sector but also conservation groups and the scientific community in an attempt to build the most robust, comprehensive and user-friendly framework for the management of native vegetation. We continue to work with the farming community to develop improved outcomes through that framework through things like a review of the arid invasive native scrub tools to enhance the way that that can be managed in the landscape. We are currently undertaking a review of the biometric or biodiversity measurements that we use to underpin our decision making in that area as well. So we continue to work to improve the operations of our existing framework.

Senator HEFFERNAN—Could you describe—

CHAIR—Sorry, Senator Heffernan; I have a set of questioners. I will go down that. First, have you completed your opening statement?

Mr Grosskopf—Thank you.

CHAIR—I will mention to the people here that the committee has agreed to allow the standard rules of media access to today's inquiry, so there will be media present during much of the hearing. I call Senator Cameron.

Senator CAMERON—Mr Grosskopf, the Native Vegetation Act 2003 came about as a result of another two inquiries, as I understand it, and various decisions by the federal government to take steps to stop native vegetation clearance. Is that correct?

Mr Grosskopf—No. The Native Vegetation Act 2003 is the implementation of the Wentworth Group report which was provided to the New South Wales Labor government in the run-up to the 2003 election. Following that election, the Native Vegetation Implementation Group, which was chaired by Ian Sinclair and brought the stakeholders to the table, provided 41 recommendations to the New South Wales government, and that was then translated into the Native Vegetation Act. The relationship with the Australian government in relation to vegetation controls in New South Wales dates back to the agreements on national biodiversity strategies et cetera. There was the National Strategy for the Conservation of Australia's Biological Diversity, in 1996, and then, on from there, the NAP and NHT intergovernmental agreements and the National Objectives and Targets for Biodiversity Conservation 2001-2005. All of those different agreements have underpinned a range of actions in New South Wales to manage native vegetation.

Senator CAMERON—Did the Howard government signing off on the Kyoto agreement and having the Australia clause implemented in that agreement have any implications for New South Wales?

Mr Grosskopf—Not that I am aware of, no.

Senator CAMERON—What implications did the federal laws that were implemented by the Howard government have for New South Wales?

Mr Grosskopf—That is a broad question. In terms of the formulation of the Native Vegetation Act 2003 or the Native Vegetation Conservation Act 1997 or of SEPP 46, which contained our first state-wide vegetation clearance controls, in 1995, I am unaware of any direct relationship between the EPBC Act, the federal statute, and the motivation for those controls.

Senator HEFFERNAN—Does that pick up the invasion—

CHAIR—Senator Heffernan, I have—

Senator HEFFERNAN—This is just a bullshit bureaucratic answer, in my view.

CHAIR—Senator Heffernan, that language is not appropriate for *Hansard*.

Senator HEFFERNAN—We are only here for three-quarters of an hour.

CHAIR—We did start late and we will be making up that time. I will ask Senator Cameron to continue, and, Senator Heffernan, we will come to you for some questions after that.

Senator CAMERON—Are you familiar with the bilateral agreement between the Commonwealth of Australia and the state of New South Wales in 2003 to deliver the Natural Heritage Trust?

Mr Grosskopf—Only in its general terms.

Senator CAMERON—That agreement was signed off by the Hon. Warren Truss, who was the Minister for Agriculture, Fisheries and Forestry; the Hon. David Kemp, the Minister for Environment and Heritage; and the Hon. Robert Carr, the Premier of New South Wales. Is that your understanding of this?

Mr Grosskopf—Correct.

Senator CAMERON—In relation to the national outcomes in this agreement—an agreement signed off between the federal government and the New South Wales state government—there was an agreement to implement effective measures to control the clearing of native vegetation. Is that correct?

Mr Grosskopf—That is my understanding, yes.

Senator CAMERON—What was your department's involvement in policing that agreement to make sure it worked?

Mr Grosskopf—In 2003 the responsible department was known as the Department of Infrastructure, Planning and Natural Resources. The role of that department was to administer the existing legislation and to bring about the development our new native vegetation act. The drivers for that change in our regulatory framework were primarily driven by a level of

dissatisfaction with the operation of the existing regulatory framework and a lack of effectiveness in its ability to deliver outcomes on the ground both for the farming community and for conservation. That is my view.

Senator CAMERON—But there was a recognition by both the then state government in New South Wales and the Howard government that the issue of native vegetation clearing had to be dealt with?

Mr Grosskopf—Absolutely.

Senator CAMERON—It had to be dealt with for a number of reasons. One of the major reasons was the environmental issue.

Mr Grosskopf—Absolutely.

Senator CAMERON—Secondly, it had to be dealt with as part of Australia's commitment to reduce its greenhouse gas footprint. Is that correct?

Mr Grosskopf—In terms of the New South Wales statute, the primary drivers for the controls were based around protection of biodiversity, protection of water quality, the prevention of salinity and the prevention of soil erosion. They are the key drivers. They are the measures on which we make an assessment of any clearing application. That motivation is driven by the strong desire for and the clear benefits that can be gained from the prevention of further land degradation. For example, there are extremely high costs to restore it post damage.

Senator CAMERON—But during the period of negotiating this agreement, we had the Australia clause in place, which was the Howard government's attempt to use native vegetation as a tool to reduce the country's carbon footprint. Is that correct?

Mr Grosskopf—That is my understanding of the Australian government's position, yes.

Senator CAMERON—What I put to you was that there were the environmental issues in terms of native vegetation but there was also the carbon footprint position of the Howard government. That put pressure on state governments to deal with the issue of native vegetation. Is that correct?

Mr Grosskopf—The motivation for the states to deal with native vegetation and the management of native vegetation was principally in my view in relation to the matters of biodiversity, water quality, soil erosion and salinity—and avoiding the high cost of reparation of landscapes. The relationship between the Australia government and the state governments in relation to carbon is beyond my area of expertise or knowledge.

Senator CAMERON—It is quite clear from the Howard government's position. Peter Costello, in 2007 on the *7.30 Report* talked about land clearing and he said this:

Yeah well, it's—that's—but this was all designed to stop land clearing and we stopped land clearing, and it's helped us to meet our Kyoto target. If I may say so, Australia actually did something practical.

So it is quite clear from the Howard government's statements that their driver was to reduce the carbon footprint, as distinct from what you are saying about the state governments' position was, which was to do with the environmental issues. You can take that from that statement.

Mr Grosskopf—Yes, I think that your statement is valid. But it is not an area of my knowledge. I cannot add anything further to it.

Senator HEFFERNAN—I wish to move a point of order.

CHAIR—Yes, Senator Heffernan.

Senator HEFFERNAN—Can I get some rules here? Can we have a vote on how much time we get to ask questions? Senator Cameron, to his credit, is just trying to make the point that all governments of all persuasions have had a hand in the law as it stands at the present time. This committee is looking into what we are going to do about the flaws that have developed from something that everyone has had a hand in. I want to have a crack at it. You could go on all bloody day.

Senator POLLEY—On the point of order, we have limited time available to all of us to participate today. I would suggest that we adhere to the normal standing orders and get on with it rather than filibuster and use up the valuable time that we all have to put questions.

CHAIR—It is the standard practice of these committees, Senator Heffernan, that the time is divided equally between the government and the opposition, and Senator Cameron has been allotted some time—

Senator HEFFERNAN—Could I move that we divide the time into thirds, because I would like to have a crack at it too. Could we have a vote on that?

CHAIR—Can we continue at the moment. You will get your time to ask questions, Senator Heffernan. But I do not think that it is appropriate that we put that to a vote in a public meeting. Senator Cameron, I would ask you to continue.

Senator CAMERON—Thanks. The intergovernmental agreement to implement the national action plan—are you aware of that agreement?

Mr Grosskopf—Yes.

Senator CAMERON—Robert Hill, the minister for the environment in the Howard government, on 27 September 2001 said:

Commonwealth funding for the Plan is contingent on the States and Territories committing to implement the whole package of measures outlined in this Agreement, which includes policy reform relating to land and water resource management.

So there clearly was a push by the Howard government to put financial pressure on the states to participate in this reduction of the carbon footprint.

Mr Grosskopf—My view is that, as an investor in natural resource management, the Australian government is protecting its investment through that type of clause. Basically, the Australian government and the New South Wales government, through that bilateral agreement, were committing many millions of dollars to working with landholders to prevent salinity and to deal with water quality, erosion and biodiversity issues. It is a well-established fact that the prevention of further land degradation or the prevention of the destruction of biodiversity is a hell of a lot cheaper than restoration, and those funds were going into both restoration and protection. It is sensible that that bilateral agreement would include clauses to make sure that the policy settings protect that which remains and enhance that which is in a state of degradation.

CHAIR—Senator Cameron, can I just take this opportunity to remind you of the terms of reference of the inquiry, of which we have copies available. I appreciate that you are free to ask the questions you choose, but they do need to be specifically relevant to the terms of reference for this inquiry.

Senator CAMERON—I must say that I am right on point with the terms of reference. If you look at the terms of reference—with the greatest respect, Chair—they go through (a), (b), (c) and (d), and (d) is ‘any other related matter’.

CHAIR—And I have granted a lot of latitude, Senator Cameron. I am just taking the opportunity to remind you of the terms of reference.

Senator CAMERON—And I am clearly on point. Unless you rule against me, I am on point in relation to this.

CHAIR—Senator Cameron: continue. You are taking up your own time.

Senator CAMERON—So there was financial pressure on the state government from the Commonwealth government to implement land clearing laws?

Mr Grosskopf—There was a financial incentive established through the bilateral agreements for the National Action Plan for Salinity and Water Quality and for the Natural Heritage Trust to ensure that both governments’ investments were protected.

Senator CAMERON—Was there state legislation to implement this legislation which flowed from the Australia agreement, which flowed from the intergovernmental agreements? Was there legislation then implemented in state parliament?

Mr Grosskopf—I am unaware of a direct relationship between the Australia clause in the Kyoto agreement and any legislation in the state in relation to native vegetation.

Senator CAMERON—The issue of compensation has been raised. I note that some of the recent debate on compensation has been interesting. The Leader of the Opposition, Mr Abbott, told a farmers’ rally on 2 February that it would not matter what the Prime Minister thought or what the minister for agriculture thought about the issues you are raising; ‘They owe it to you to give you a fair go,’ the leader of the opposition has been quoted as saying to the rally. But on the same day at a press conference he said, ‘We would prefer to see high environmental value timber

preserved, but we are not proposing any additional policies directly on the subject of land clearing.' You are not aware of any push for changes to the land clearing laws?

Mr Grosskopf—No.

Senator CAMERON—Senator Joyce was quoted in the *Australian* on 18 December as saying:

If you are going to compromise their capacity to utilise their assets you should compensate them.

That is in relation to land clearing. Matthew Franklin wrote that Barnaby Joyce:

... contacted The Australian again shortly after the initial interview to stress that he accepted that compensation would be too costly.

Can you give me an idea as to what the department's view is in relation to compensation? If Senator Joyce is arguing in public for compensation but then he rings privately—

Senator HEFFERNAN—Can I raise a point of order? It is in the rules of this committee and Senate committees that we do not ask officers of the government for their opinion on policy.

Senator CAMERON—It is not a policy issue.

CHAIR—I have asked Senator Cameron to come to the point of his question, because I have not got the question yet.

Senator CAMERON—I will come to the point. The point is that it then comes to this issue of regulation versus acquisition and compensation. We have got the Nationals and the Liberals saying one thing publicly but then having to face the reality of the issue of regulation versus acquisition. Why did the state government come to a view that there should be no compensation for the regulation that comes in on these issues?

Senator HEFFERNAN—That is commentary on policy. You do not have to answer that.

CHAIR—I think he is asking not for a comment on policy but rather whether Mr Grosskopf is willing to answer about the rationale behind it. I think that is within order. But it is up to you, Mr Grosskopf.

Mr Grosskopf—I must admit I am getting a little bit confused as to exactly the nature of the question.

Senator CAMERON—The question is on the issue of regulation versus acquisition. You understand that debate, don't you?

Mr Grosskopf—Yes.

Senator CAMERON—Your department operates on the basis of regulation not being compensatable. Is that correct?

Mr Grosskopf—Because there is no acquisition of property.

Senator CAMERON—That is the point I am coming to. If there is no acquisition of property then the regulation does not allow for compensation. Is that correct?

Mr Grosskopf—The approach in New South Wales has been that there is no acquisition of property. We did have a structural adjustment package attached to the Native Vegetation Act, where four farmers were assisted to exit their properties, to the value of \$17.6 million paid to farmers. In that case, there was a clear demonstration that the properties had become unviable as a result of an inability to clear. There was a hardship test and a set of financial circumstances examined and explored by our Rural Assistance Authority and then an offer at market value was offered to those properties. Those properties are now going through a process of having management plans established and conservation covenants put on them and then they will be revolved back into the market. A property which was purchased for \$1.2 million up on the North Coast was resold, following conservation covenants being established on the property, for exactly the same as the purchase price.

CHAIR—Senator Cameron, this will be your last question.

Senator CAMERON—Are you aware of any proposals from the federal government that would change the legal infrastructure that is in place in relation to land clearing? Are you aware of any change to what the Howard government put in place?

Mr Grosskopf—No.

Senator WILLIAMS—You have officers in your department—I call them ‘tree police’—who travel around to farms and might inspect actions. What are they called?

Mr Grosskopf—We have a range of regulatory and compliance officers.

Senator WILLIAMS—Compliance officers—that is them. The Native Vegetation Act was in many respects about banning widespread clearing. Is that correct?

Mr Grosskopf—It places a ban on broadscale land clearing unless environmental outcomes are improved or maintained.

Senator WILLIAMS—If someone pushes down one or two trees on their property, their freehold land, you would not call that widespread broadacre clearing, would you?

Mr Grosskopf—I would not call it widespread broadacre clearing but, under the definition under the Native Vegetation Act, the clearing of remnant vegetation—which is vegetation older than 1 January 1990 in the central and eastern divisions or 1 January 1983 in the western division—is called broadscale clearing.

Senator WILLIAMS—So if someone pushes over one or two trees they can face the compliance inspectors—they can have action taken against them. Is that correct?

Mr Grosskopf—Theoretically, yes.

Senator WILLIAMS—Okay. Do these compliance inspectors set targets of how many farmers will be charged in a year?

Mr Grosskopf—No.

Senator WILLIAMS—They don't? That is interesting. I have affidavit in front of me from a solicitor who is defending a farmer who went out to simply take away some blackberry bushes, noxious weeds—there were rabbit warrens under, which he dug up to destroy the vermin—and then he happened to push a couple of trees over. He is now being charged. The affidavit from his solicitor says when he asked your compliance officer why he charged my client, the compliance officer said, 'Our department must have so many prosecutions per year.' That is in a sworn affidavit. Why would your officer say, 'We must have so many prosecutions per year'?

Mr Grosskopf—I cannot answer why another person said anything.

Senator WILLIAMS—Does it concern you that he said this?

Mr Grosskopf—Yes, it does.

Senator WILLIAMS—Because it appears to me as though this is a revenue-raising issue to get money into your department to perhaps pay for your tree police. That is my concern. I find it very concerning that one of your department's officers, sworn in an affidavit by a solicitor, says, 'We must have so many prosecutions per year.' I find that appalling. I have no reason to doubt it, especially when a statement is sworn. I am not going to release names or the issues about it.

I want to take you to another issue on the North Coast of New South Wales. A few years ago the government encouraged people to change their titles from, say, perpetual lease to freehold lease. I know of a 1,200-acre property up there where the owner bought the land, had been running cattle for about 100 years of. He moved to transfer the title to freehold land. When he got the agreement back—it might have been three per cent of the value of the property; it was not a huge amount of money to transfer that title—there were caveats placed on that land. Are you familiar with that?

Mr Grosskopf—Yes, I am.

Senator WILLIAMS—The caveat on this land is that he cannot run livestock; it must be natural grasses and native animals. So here we have a situation of 1,200 acres of beef-producing land for 100 years and when he changes the title now he cannot run beef on it. Surely that is diminishing his income and the value of his property, wouldn't you think?

Mr Grosskopf—Yes.

Senator WILLIAMS—Okay. If he does not continue with the change in the land to freehold title, he goes back to the perpetual lease title, he then has to lease the property at commercial lease rates—probably five per cent of the value of the property—to run cattle. That is the situation. Do you believe that to be true?

Mr Grosskopf—I am not aware of the specifics of this situation, but the scenario that you have described, that seems to be the logical conclusion, yes.

Senator WILLIAMS—That is as I have been informed. Here is a person that has bought the land in good faith—a family owned it prior to this person for many generations, ran cattle for 100 years or so—and now when he goes to change the title, he is no longer allowed to run cattle on that cattle property. Yet there is no compensation. To me that is very unfair. He should be totally compensated for the loss of income for future years to come and for the devaluation of his property. That is the situation, as I see it. What is the situation as your department sees it?

Mr Grosskopf—The conversion of crown lease to freehold is a process which is delivered through—they have just recently changed their name, I am sorry—our previous department of lands. I am not aware of the specifics of this case or of the specifics of the compensation or the financial arrangements associated with that program. So I cannot comment.

Senator WILLIAMS—Is it true that the department's report on the review of the 2003 New South Wales Native Vegetation Act says that the social and environmental impacts have been taken into account?

Mr Grosskopf—Yes.

Senator WILLIAMS—How does the department analyse or intends to analyse social and economic impacts of native vegetation laws, greenhouse gas abatement and climate change? How do you analyse it?

Senator HEFFERNAN—And if you don't, can you table the document?

Mr Grosskopf—There is no specific report on the social and economic impacts. The consideration of social and economic impacts within the Native Vegetation Act are borne out through the range of mechanisms associated with the construction of the act—things like the regrowth date, the continuation of existing use and the flexibility within the system to change the regrowth date or to take into recognition the long-term rotations of some farming and forestry practices.

Senator HEFFERNAN—So there is no paperwork there to back that up?

Mr Grosskopf—No. The social and economic considerations—

Senator HEFFERNAN—It is in someone's head.

CHAIR—Senator Heffernan, please let him answer.

Mr Grosskopf—The social and economic considerations were discussed and negotiated between all of the stakeholders, and that resulted in the construction of the act.

Senator HEFFERNAN—No paperwork.

Mr Grosskopf—No.

CHAIR—Hang on, Senator Heffernan.

Senator NASH—Mr Grosskopf, could I ask you to take on notice and provide to the committee the list of those stakeholders?

Mr Grosskopf—Certainly.

Senator WILLIAMS—So the department has done a report on the review of the 2003 Native Vegetation Act and it says that the social and economic impacts have been taken into account but there is nothing in writing. Is that what you are saying?

Mr Grosskopf—That is correct.

Senator WILLIAMS—Do they consider the impacts on towns, regions and small communities? Is there anything in writing about the social and economic effects on those towns and regional communities?

Mr Grosskopf—No.

Senator WILLIAMS—So you have done a report and there is nothing in writing—there is nothing considering the impacts on towns and communities. Was it just a brief discussion? I cannot believe there has been a report done but there is nothing in writing.

Mr Grosskopf—As I stated earlier, the social and economic impacts were considered through the process of the construction of the act.

Senator WILLIAMS—Was there anything put in writing during those considerations, or was it just discussed around a table by a minister and a few departmental chiefs?

Mr Grosskopf—I would have to go back to the minutes of the Native Vegetation Reform Implementation Group to explore that issue.

Senator WILLIAMS—Could you please take that on notice and look at what the minutes to see what was discussed? I just find it amazing. I have given an example about changing land title and people getting gutted from an industry that has been there for 100 years, with no compensation of course, and about the affidavit example, where one of your departmental tree police said, ‘We must have so many prosecutions per year.’ We will be following that up, I assure you.

Senator CAMERON—Chair, I have a point of order. I am not sure what ‘tree police’ are.

Senator WILLIAMS—The compliance inspectors; I am sorry.

CHAIR—Can I ask a clarification question. Mr Grosskopf, can you just confirm that in the consultation process there was no written report with respect to the social and economic impacts of the provisions that Senator Williams outlined?

Mr Grosskopf—Not to my knowledge.

CHAIR—If you could take on notice whether there was a written report, that would be handy.

Mr Grosskopf—Certainly.

Senator HEFFERNAN—Would there be contemporaneous notes?

Mr Grosskopf—I have undertaken to take that on notice.

Senator HEFFERNAN—Were you in the meeting?

Mr Grosskopf—No.

Senator HEFFERNAN—Do you guys deal with the Western Division?

Mr Grosskopf—Yes.

Senator HEFFERNAN—I am the only person in this Senate who has won the crop competition—I won it last year—and has a place in the Western Division, so the dirt under my fingernails is real. Can you describe to me the Cobar district 100 years ago? Is this guy here, Dr Curtis, something to do with vegetation?

Mr Grosskopf—David works with me in our area.

Senator HEFFERNAN—Can you describe what used to happen in the Western Division 100 years ago?

Mr Grosskopf—I am not exactly sure how to answer your question.

Senator HEFFERNAN—What was out there? What did it run—what was the vegetation?

Mr Grosskopf—The vegetation that existed in the Western Division was not that dissimilar to what exists now. There has been an increase in invasive native scrub, or woody weeds.

Senator HEFFERNAN—Say 120 or 130 years ago, the Western Division ran a lot of cattle. It was a grassy plain. There was no invasive scrub. The nature of the country has completely altered now with the invasion of scrub. A lot of that country will run one to 15 or 20 now. Where do you draw the line on what is the way nature designed it to be? And, by the way, the reason that country altered was overstocking. How do you draw that line when a bloke at Mount Hope wants to clear country that regrew 50 or 60 years ago, with bloody mulga and mallee wattle?

Why can't he put in 1,000 acres of lucerne instead of having a paddock of scrub? This is country that regrew 20, 30 or 40 years ago.

Through you, Mr Chair, I just want to put a couple of things on the record. There is what I call bandicoot country—although I usually use the 'S' word. When you buy a farm, the market sorts out the value of the farm. That guy, Spencer, up in the mountains has the bottom end of the Brindabella Ranges. That is what I call serious bandicoot country. It would have made a good wind farm. It is not suitable for clearing at all. It is just rock, trees and rubbish, and there is no topsoil. But we have got into an argument—for some reason he should not be able to clear the land. I do not agree with that at all. I think Landcare was a great movement in New South Wales, and I am sure Senator Williams and Nash would agree with that. If you had come out to a farm in June 50 years ago and said, 'We think you ought to do this, that and the other with those paddocks,' they would have hunted you off the place. Now they look over the fence and see what the other bloke is doing to see if they are up to speed with the latest science. Governments of all persuasions have cocked this up. Let's sort it out. I have 10,000 acres of saltbush that has died in the last four or five years and gone back to roly-poly. How do you blokes make a judgement on what is native and what is not native? Is the invasion of mallee and wattle natural, when it was not there originally?

Mr Grosskopf—Woody weeds, whether they are mallee, wattle or black roly-poly, are all native species that are Indigenous to that locality but they are creating a range of problems in relation to—

Senator HEFFERNAN—Yes, but 150 or 200 years ago—

CHAIR—Senator Heffernan, if you could let the witness complete his answer—

Senator HEFFERNAN—Yes, I know where he is going. We are short of time.

CHAIR—I am not as sure where he is going, Senator Heffernan. He is answering the question within a reasonable time.

Senator HEFFERNAN—Two hundred years ago that country was open country. You could argue that that was its natural state and it was higher producing, provided you could provide the water, than it is now as invasive scrub. So why can't I, if I am out there, clear some country and put a lucerne paddock in? I cannot get a permit under the present arrangements.

Mr Grosskopf—You can.

Senator HEFFERNAN—But there are plenty of people that cannot.

Mr Grosskopf—You can, and we have issued permits for over 1.6 million hectares of INS to be treated, with a range of treatments, including cropping.

Senator HEFFERNAN—In the 50-year forecast for Australia, they are saying in 50 years time in the Murray-Darling Basin, which represents 6.2 per cent of Australia's run-off, or 23,000 gigitalitres—and 38 per cent of that comes from two per cent of the landscape just to the east and south of Wagga—there will be a decline of the run-off of between 3,500 and 11,000 gigs. There

will be increased rainfall in an anticlockwise movement across the north, so some of the pastoral station country in the northern and the southern Kimberleys will become farmable. That is what the science is saying. If all this is true, we will have to reconfigure Australia. In the Murray-Darling Basin in most years, there will be zero allocation for general-purpose water, if the science is 40 per cent right. In your thinking—and this was Senator Williams's great question—in the social, no-paper trail decision making, have you allowed for the reconfiguring of rural Australia if the science is right?

Mr Grosskopf—Yes, our framework does change based on—

Senator HEFFERNAN—So what is the plan, if you have—

CHAIR—Senator Heffernan, again, I would like to hear Mr Grosskopf's answer. He only got about eight words out.

Senator HEFFERNAN—The answer was yes.

CHAIR—He was also providing a short explanation.

Senator HEFFERNAN—Righto—provide the explanation.

Mr Grosskopf—We continue to change our decision-making framework based on new and available science. We have done that with invasive native scrub in western New South Wales and we are doing it with biodiversity measures and threatened species measures right now.

Senator HEFFERNAN—Okay, so you have done it in western New South Wales. What does the 50-year science say for north-west western New South Wales, if you have done the calculation?

Mr Grosskopf—I cannot answer that question.

Senator HEFFERNAN—But you say you have done it, and you are the boss.

Mr Grosskopf—We continue to review the science at regular periods and change the framework to make sure—

Senator HEFFERNAN—But you say you have made allowances for the changing landscape and the need to reconfigure the way we have settled Australia. What is your plan for north-west New South Wales over the next 30 or 40 years? You cannot do this, 'Oops, we've got to do it tomorrow.' You have to have a long-term plan.

Mr Grosskopf—Our plan is to continue to invest in the science, and we have just finished a \$3.4 million investment in the science of native scrub. We review that science and we then implement it through our regulatory framework.

Senator HEFFERNAN—Is that against the variation in rainfall?

Mr Grosskopf—I cannot answer that question.

Senator NASH—In your opening statement you spoke about three key things: protecting the important vegetation, allowing farmers to get on with the business of farming and achieving balanced outcomes. Is that a reasonable paraphrasing of what you said?

Mr Grosskopf—Yes.

Senator NASH—How successful do you think you have been in achieving those three things?

Mr Grosskopf—The measures we have at the moment, which are contained in our submission to you and in the report, say that we are in a better place than we have been for some time and that the trends are—

Senator NASH—From your perspective, do you think you are being successful in achieving those three targets?

Mr Grosskopf—Yes.

Senator NASH—If you believe you are being successful, why do you think there is such a huge outcry of disagreement from the farming community on your point about allowing them to get on with the business of farming and there being balanced outcomes? There has obviously been a significant level of concern within the farming community. We have seen it with the rally in Canberra and the more than 300 submissions to this inquiry. Why is there such a disconnect between what you see and what the agricultural community sees?

Mr Grosskopf—I believe we are in a better place than we have been—

Senator NASH—No, that was not my question. You say farmers are getting on with the business of farming and achieving balanced outcomes—you say you are achieving that—but a significant proportion of the farming community would not agree with you. So why is there a disconnect? Why are there two very different views coming forward to the committee from the two different sides?

Mr Grosskopf—I would contest that the number of farmers that are actually working with us is significantly larger than it has been in the past and that people can get on with the business of farming. Back in 1998, when I first became involved in this area of work, the level of contest between these ideas and conflict with the regulation of native was significantly greater.

Senator NASH—You are still not answering my question. I take your point that some farmers are happy and there has been greater working together, in your view, since then. But there is a significant group in the farming community that you are not achieving balanced outcomes and that farmers are not able to get on with the business of farming. So, if you think it is great, what reason do you give for those farmers completely disagreeing with you?

Mr Grosskopf—I think it is better than it has been and it continues to get better. I think we are basically coming from two different positions. I do sit down with the New South Wales Farmers Association on a regular basis and talk to them about the regulatory framework, and I do take on board their feedback. I also go and meet with farmers in a range of environments—be

it Warren, Walgett or elsewhere—and talk to them about our framework and listen to their concerns. We do make adjustments in relation to the concerns that are raised.

Senator NASH—Let us take the rally in Canberra as an example. All of the farmers there were saying they are completely dissatisfied with the way it is working. Are they all just wrong? Do they just not get how good it is?

Mr Grosskopf—No, I am not saying that. I am saying that the regulation of native vegetation is a contested area. It is an area where a number of private landholders are very unhappy with the role of government in regulating native vegetation, be it in the urban environment or in the rural environment. But it is an area where there is a legitimate role for government to continue to put controls in place.

Senator NASH—If you recognise that a proportion of farmers are unhappy, how can you say you are achieving balanced outcomes?

Mr Grosskopf—Because not everybody's aspirations are going to be met in the achievement of a balanced outcome.

Senator NASH—So a balanced outcome is okay as long as it is what you want and it does not really matter if they do not agree?

Mr Grosskopf—This has got nothing to do with what I want.

Senator NASH—But you are in charge of this. Surely you have a role to implement the policy, which you must have to be happy with if you have got targets to achieve.

Mr Grosskopf—No, my role is to implement the policy of the New South Wales government. Whether I am happy with it or otherwise is immaterial.

CHAIR—I have to ask you to wind it up, Senator Nash.

Senator NASH—Yes, Chair. I will move on because we are not getting very far here. Finally, there has been a significant level of concern about the land values being diminished as a result of the laws. Have you seen any evidence of land values falling since the native vegetation laws began?

Mr Grosskopf—No.

Senator NASH—Where do you get that information from?

Mr Grosskopf—You asked me if I have seen any evidence, and I have not seen any evidence.

Senator NASH—So you are not aware of whether or not they have?

Mr Grosskopf—No.

Senator NASH—I just want to make that absolutely clear: you have not seen any evidence of them falling?

Mr Grosskopf—I am not aware of any definitive evidence of a fall in land values from the Native Vegetation Act in New South Wales.

Senator NASH—Are you aware of any definitive evidence of values increasing, or are you just not aware at all about movement in values?

Mr Grosskopf—I am aware that there has been an increase in land values generally. My knowledge of that comes from my role as a director on the board of the Nature Conservation Trust, where we purchase and revolve properties. We have information provided through that board on the nature of rural land values.

Senator NASH—If a part of a farmer's property is off-limits and locked up without compensation, how can the farmer get full value from his land, or plant or infrastructure if the intrinsic nature of that land has changed? It obviously in many instances has changed the value of the land. How can a farmer expect to have the continuation of the current land value with the kinds of changes to farm practices and land management that have been imposed upon them through these laws?

Mr Grosskopf—If I understand your question correctly, the value of the land that is wooded—which has native vegetation on it—would be discounted because of the costs associated with the development of that land. The value attached to that land in terms of its agricultural production is speculative, so it is not a material loss.

Senator WILLIAMS—But it is an opportunity lost.

Mr Grosskopf—Absolutely. You are correct, Senator Williams. It is an opportunity lost.

Senator WILLIAMS—They buy the land for an opportunity and then cannot develop it.

Mr Grosskopf—Correct.

Senator HEFFERNAN—Mr Grosskopf, are you familiar with tall wheat grass?

Mr Grosskopf—No.

Senator HEFFERNAN—Tall wheat grass grows really well on saline flats, and there is now a move to call it an invasive weed. But you do not know anything about it?

Mr Grosskopf—No.

Senator HEFFERNAN—Do you recognise that, with science, you can actually improve land? I mean, I am not in favour of a lot of that scrub country out west being ploughed, because it just blows away, but do you recognise that you could clear that land, which was originally grassland? Lots of people who have legitimate cases, as the senators know, have been done over unfairly with bureaucratic decision-making. Do you recognise that, with science and the latest in

plant technology—and they have now discovered drought tolerance genes in plants and they are transposing them et cetera—you could actually clear that land and put it back into a long-term pasture that would be much more productive than wattle and scrub?

Mr Grosskopf—Yes.

Senator WILLIAMS—It's not native.

Senator HEFFERNAN—No, sure, it's not native. What you are putting back there is not native. But science has improved. For the global food task, which is going to double in the next 50 years, we are going to have to grow a lot more with a lot less water, fertiliser et cetera. So do you make allowances for people to say, 'I want to clear that scrub'? I do not understand the question.

CHAIR—Senator Heffernan, you said you would be quick. I am going to ask you to come to the point. Is that it?

Senator HEFFERNAN—We have a long way to go with this.

CHAIR—I appreciate it, but we are substantially out of time and we have our next witnesses waiting. I remind committee members that they can place questions on notice. I thank Dr Curtis and Mr Grosskopf for their time. I remind all witnesses that the committee is due to report to the Senate on 30 April, so answers to questions on notice would be appreciated as soon as possible to the committee secretariat.

[10.06 am]

GHANEM, Mr Robert, Policy Officer, Australian Network of Environmental Defenders Offices Inc.

WALMSLEY, Ms Rachel Louise, Policy Director, Australian Network of Environmental Defenders Offices Inc.

Evidence was taken via teleconference—

CHAIR—Welcome. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. The committee has your submission. I now invite you to make a short opening statement, and at the conclusion of your remarks I will invite members of the committee to put questions to you.

Ms Walmsley—The Australian Network of Environmental Defenders Offices, ANEDO, is a network of nine community legal centres in each state and territory. We specialise in public interest environmental law. We welcome the opportunity to speak to the committee on this issue. ANEDO supports the development of a comprehensive legislative scheme to facilitate payments to farmers for a range of verifiable ecosystem services. However, we have serious concerns about mandating compensation for environmental regulation. While ANEDO support the use of incentive measures that encourage landholders to conserve and protect the high conservation value land on their property, we do not support the provision of compensation for the imposition of native veg laws as this is not consistent with accepted legal principles.

Our submission responds to the term of reference (1)(b) and outlines, first, the long-accepted common-law position through High Court decisions that regulation of activities on private property does not constitute an acquisition of property and therefore no right to compensation is activated. Second, we note state constitutions do not provide for compensation. Third, we note there are compelling public policy reasons why government must be free to regulate for sustainable land management without fear of compensating claims. ANEDO does support incentive mechanisms and legislative schemes to facilitate payments for ecosystem services as an efficient and equitable alternative to compensation. Regarding the range of emerging markets in greenhouse gas abatement and other climate change measures, we support development of a robust legislative architecture that can facilitate payments to landholders for verifiable carbon sequestration.

CHAIR—Thank you. Do you have anything to say, Mr Ghanem?

Mr Ghanem—Not in terms of an opening statement.

CHAIR—If I could take the liberty of commencing with a couple of questions myself, I note that you said then, Ms Walmsley, and you said in your submission that the regulation of property does not require compensation, which I appreciate is necessarily a statement of fact. Do you hold that no regulation of property should trigger any compensation, under any circumstances?

Mr Ghanem—Yes, we would agree with that. As we said earlier, it is a long-accepted legal principle that there is no compensation unless property is actually acquired in terms of a transfer of title. We believe there are good and compelling policy reasons why that should be the case, because providing compensation for regulation would stifle any government action in the public interest. For example, that would create a precedent in terms of zoning laws where property has changed from, say, ‘residential’ to ‘environmental protection’. There are very good and compelling reasons why the legal position is correct and, as we said—

CHAIR—I appreciate that. I put it to you that there would be some regulation of private property that should necessarily provoke reconsideration of that principle. To use your zoning principle, if I bought a block of land in my suburb and the government changed the law and said I could not build a house on it, would you consider that to be reasonable use of that principle?

Mr Ghanem—Zoning has been recognised as being regulation. Whether it is reasonable is another question—

CHAIR—The point I am putting to you is that you seem to say that all regulation, by its nature, because it is legal, is reasonable. I put this to you: using the existing legal framework—and I accept your statement of fact—do you accept that it is not always foreseeable that the government would use that reasonably and that there are in fact circumstances where regulation of land use, whatever the circumstances, urban or rural, may need to provoke reconsideration of that longstanding legal principle?

Mr Ghanem—That is a fair point. In fact, the High Court agrees with you to some extent in the case of Newcrest Mining. In that case the right to mine under mining tenements was taken away but not the mining tenements themselves. In reality, although it was regulation, it amounted to sterilisation of those mining tenements, because there was no other way to use that property, for example. To take that analogy to native vegetation or zoning, there are other uses for the land, such as private conservation measures—

CHAIR—I suppose that is the point I am making: this principle is not absolute, is it? The principle is contestable on either a philosophical or a moral level. The point you make about the Newcrest case is also contestable on a legal level. It is not an absolute principle that the government can make regulations with respect to land use and not trigger either a legal requirement for compensation or at least an argument that there may be a moral argument for compensation.

Mr Ghanem—The High Court did say in the Newcrest mining case that there would be very few cases where that would be the case. For example, with Newcrest Mining the tenements were carved out of the radical title that the Commonwealth held. In effect, they were acquiring something of benefit. General government regulation, such as zoning decisions or imposition of environmental protection legislation, would not—

CHAIR—I appreciate the legal situation. The point I am trying to get to, and I will ask for the last time: do you hold that, with the legal framework, as established for many years and as you outlined in the Newcrest case, there is no foreseeable situation where government regulation of land use should trigger compensation provisions for the landholder?

Mr Ghanem—Only in the context where it can be established that the rights have been completely sterilised.

CHAIR—So if I buy a block of land to build a house on in a suburb of Melbourne and the government says I cannot build a house there but I can build a service station, that in your view would not trigger the claim for me to have compensation, because the land could be used for another purpose?

Mr Ghanem—Yes.

CHAIR—I am happy with that.

Senator POLLEY—Thank you for your submission. I feel that it would be helpful if you could give us a brief overview of the sorts of issues that you deal with in relation to native vegetation and the key issues of concern for your organisation.

Ms Walmsley—The EDO in New South Wales and our colleagues in other states have been involved in vegetation law reforms to different degrees. I can certainly speak to the New South Wales experience. We were involved in advising environment stakeholders in the development of the Native Vegetation Act 2003 and the regulations in 2005. Through that process we talked a lot to farmers who were also in the negotiations and recognised some of the flaws in previous legislation and the need to have robust legislation in place in New South Wales. That has been worked on in different states.

On the other side, the laws are in place but another concern for our organisation is focusing on the incentive programs and conservation programs that can be done in cooperation with land managers for good, sustainable land management. For example, the New South Wales EDO just published a guide to private conservation in New South Wales which sets out a range of land management options for farmers: how they can engage in private land conservation and what the different legal, tax and property rights implications are. Our organisation is interested in getting good laws in place for conservation and working with land managers to get good environmental outcomes on private land.

Senator POLLEY—Thank you for that. In your submission you talk about the importance of having incentive mechanisms rather than alternative compensation. Can you elaborate a bit further? Are there already enough programs in place there or do they need to be broadened and increased?

Ms Walmsley—There are a number of existing programs in place in each state and territory, but we think it is really important, with the emerging issues of climate change and the need for carbon sequestration, that good legislative architecture be put in place for these new and emerging markets to make sure that farmers can engage and claim benefits from good stewardship and can get appropriate payments for ecosystem services. I think there are excellent existing programs but, as noted in our submission on page 5, the current program includes voluntary agreements, property vegetation plans, philanthropic programs, rate relief, tax incentives and so forth. We would certainly welcome the development of new incentives schemes.

With regard to carbon sequestration and the new schemes there, it is important that any legislation that is developed ensures that any generation of carbon credits be subject to rigorous standards relating to monitoring, quantification, additionality, permanence and conformity with international carbon accounting rules and ecologically sustainable development. There is always room for more incentive programs. They have to be well targeted and transparent to ensure that they get the best environmental outcome.

Senator WILLIAMS—Mr Ghanem, I do not know if you heard earlier on, but in your submission you have the attitude that unless there is acquisition of the land there should be not be compensation. Is that correct?

Mr Ghanem—That is correct.

Senator WILLIAMS—I go to the case discussed with the department heads, our first witnesses this morning, about a person on the North Coast of New South Wales who had just purchased 1,200 acres of land from a family who had that land for many generations and ran cattle on it. I do not know what he paid for it. He went to transfer the title from perpetual lease to freehold lease. The state government of New South Wales pointed out four or five years ago that people could change their land titles. When he got the message back on that title of freehold, there were caveats put on that land saying they could no longer run cattle on that property. It had been a money-earning property running cattle for a hundred years. I do not have to tell you about the desperation of the need for food, especially in the future, as the world population grows. He bought it as a cattle property. He just went to change the title and now he cannot run cattle on it. Do you think he should be compensated?

Ms Walmsley—In that circumstance, when the farmer was purchasing the property, did their lawyer do a title search and note any caveats on the title at the time of purchasing?

Senator WILLIAMS—No, it was a perpetual lease and he just went to change the title to freehold; there were no caveats on it at all. Now it comes back from the New South Wales lands department that the title is to be changed to freehold, but here are the caveats on it. You are saying that he should not be compensated; correct?

Mr Ghanem—It depends on the context in which the caveat was imposed.

Senator WILLIAMS—Let me explain. The caveat clearly said that only native animals and native grasses can run on that property. You cannot run cattle on that property any longer. Do you think that landholder should be compensated for his loss of income now that he cannot run cattle on it but he can run furry native animals and native grasses? Perhaps the odd feral fox and wild goat and feral pig et cetera might intrude in there but he cannot run cattle and earn a living on it, which is why he bought the property in the first place. Do you think he should be compensated?

Mr Ghanem—Our comments are actually limited to where legislation is imposed that restricts the use of land. I do not know in what context that caveat was put in place. I am assuming it is not through—

Senator WILLIAMS—Nor did the purchaser of the land. I am giving you an example. Someone buys a property in good faith, knowing full well it is a cattle property and he intends to run cattle. When he goes to change the title he has two options: change the title to freehold and the caveats are put on, where he cannot run cattle any longer; or revert to the perpetual lease, where he has to then pay a commercial lease rate, about five per cent of the property each year, to the government to lease the property to run cattle. The rules are being changed halfway through the game. The goalposts are being moved. Do you think that person should be compensated because of that government action?

Ms Walmsley—It is very difficult to comment on cases when we have not seen the detail but, consistent with our submission, what we are saying is that not all land uses available for that farmer have been sterilised, just the grazing. Whilst there are still other land uses that that farmer could use, the position at common law is that there is not an actual sterilisation of all uses of that land. This is one of those unfortunate situations. We can understand the frustration, but this is where the government and different organisations need to work with farmers to work out different uses of the land, whether it is a private conservation or whether there are payments for ecosystem services, so that that farmer can get income from that land, even if it is not in the particular way that was originally envisaged.

Senator WILLIAMS—But the farmer has bought the land; he is a cow cocky and he wants to run cattle. He is facing these changes after he has bought the land in good faith. He cannot now run cattle on that property. He has lost his income. Can I ask for a yes or no answer, please. In your opinion, should that farmer be compensated for the changing of the regulations on that land or not?

Ms Walmsley—No. But he should be able to explore different land use options in order to get an income from doing good environmental services.

Senator WILLIAMS—Do either of you have any investment properties? Do you have a block of units? Do you have a house or anything?

Ms Walmsley—I do not have an investment property, no.

Mr Ghanem—I do not have one, but I do not see the relevance.

Senator WILLIAMS—Mr Ghanem, are you a solicitor?

Mr Ghanem—I am.

Senator WILLIAMS—Let's say you went and bought a block of land. What city do you live?

Mr Ghanem—I am in Sydney.

Senator WILLIAMS—Let's say you went and bought a block of land in Western Sydney, you got approval to build a block of five units and you are going to rent them out. When you construct that unit, everything is ticked off and all is hunky-dory with the local government planning authority et cetera. When you completed that building, if the government said, 'You can rent out three units but you must leave two vacant,' would that annoy you?

Mr Ghanem—It probably would, but the point that we are making here—

Senator WILLIAMS—Now you understand how the farmer feels when he buys a cattle property and cannot run cattle on it.

Mr Ghanem—The point that we are making is, for example, if you set a precedent in this manner, where does it end? People will say that they cannot build five storeys high; they can only build three storeys high. People can say that they cannot subdivide as many lots as they wanted to. We are very sensitive to the concerns and the frustrations that farmers have and we have emphasised in our submission that we do believe that structural adjustment payments may be warranted in certain circumstances. But we cannot comment on a particular situation without knowing more about the detail.

Senator WILLIAMS—You said, no, that the beef producer on the North Coast should not be compensated. I have got your opinion on that. In relation to this whole Native Vegetation Act, would you say these regulations have been brought in in the interests of all people in New South Wales or just the farmers?

Ms Walmsley—I am sorry, I am not sure what you mean.

Senator WILLIAMS—The Native Vegetation Act 2003 was surely brought in to protect native species, native vegetation et cetera in the interests of all people in New South Wales, not just the farmers. Would you agree?

Ms Walmsley—Yes.

Senator WILLIAMS—Well, why shouldn't all people of New South Wales pay for the loss of income and the devaluation of the land instead of just the farmers having to pay for that, if it is in the interests of all people of New South Wales?

Ms Walmsley—For the 2003 act, the government did put up quite a substantial amount of money to help farmers—for example, to have an incentive for a PVP, they get paid out of public funds to manage land under that PVP. I guess all of New South Wales taxpayers contribute to projects that are done with—

Senator WILLIAMS—How much money was involved in that?

Ms Walmsley—You would have to speak with the government about the exact amount of money, but I know when it was—

Senator WILLIAMS—Do you know a rough figure? Was it \$17 million?

Ms Walmsley—No, it was a lot more than that. You would have to get the actual figure from the government. The 2003 announcement, when Bob Carr announced the reforms, was for several hundred million—I think it was something like \$400 million—and that was going to be public funds going to farmers. There are benefits for the whole state, but there were public funds to be directed at land management under the legislation. You would have to check with the government for the exact figure.

Senator WILLIAMS—Okay. I have two further questions. You basically support in principle the Native Vegetation Act 2003 of New South Wales?

Ms Walmsley—Yes.

Senator WILLIAMS—It was to stop broad-scale or broadacre clearing of land in many respects. I am going to give you an example. I know of a farmer who has been charged. He went out to his paddock on his freehold land to dig out blackberry bushes, which are a noxious weed—okay?

Ms Walmsley—Yes.

Senator WILLIAMS—Under those blackberry bushes—and this is common—there was a rabbit warren. He dug up the rabbit warren with a rabbit ripper, as we have all done many a time. In the process he pushed over a couple of trees and now he is being charged. He was trying to protect his environment, under that act, and he could face a fine of up to \$50,000 for trying to do away with vermin, as in rabbits, to prevent soil erosion and get rid of blackberry bushes. He pushed a couple of trees out of the road to make some room to operate his machinery and he could face a \$50,000 fine. Do you support that in principle, when he was trying to protect the environment by doing away with noxious weeds and vermin such as soil-eroding rabbits and he now faces a \$50,000 fine? Are you satisfied with that situation under the act?

Ms Walmsley—There is a category of routine agricultural management activities which are listed clearly under the act and the regulations. They were designed so that a farmer could undertake routine activities like noxious weed management and everyday things and not attract enforcement under the act.

Senator WILLIAMS—Well, it has.

Ms Walmsley—I do not know the situation involved here, but I would be interested to know exactly how many trees and what degree of tree clearing there was. We have had conversations with the department in Sydney and in regional areas about their compliance hierarchy. They have tiers of it. For example, for a minor infringement they might just send a letter to the farmer saying, ‘Are you aware of this law?’ They might have penalty infringement notices if it is just a matter of a couple of trees. Serious enforcement actions in the court and the fines that you are referring to are generally only taken by the department for very serious cases of clearing. So we would have to look at the facts of this case, because there is the hierarchy of compliance. I would be very surprised if the full force of the act was being applied to just the clearing of a couple of trees when there was a related noxious weed management activity underway. You would need to look at the exact details of the case, and it was be the DECC legal team that could—

Senator WILLIAMS—Let me just say finally that the farmer’s solicitor asked the department inspector why he was doing this to the farmer, and the inspector’s quote—I have this in an affidavit in front of me from the solicitor—was: ‘The department must have so many prosecutions per year.’ That was the answer. It appears to me that the department want to have so many farmers charged to get revenue in, probably to pay for the costs of their wages, travel et cetera. I find it very alarming when a departmental inspector says to a solicitor: ‘We must have so many prosecutions per year.’

Ms Walmsley—You would have to ask the department about that.

Senator WILLIAMS—I did.

Ms Walmsley—In terms of the number of actual cases brought under the act, there have been more recently but for a number of years there were very few cases. You would need to ask the department about the statistics there.

Senator HEFFERNAN—We surrender on that answer—

Senator CAMERON—I am not sure whether Mr Ghanem or Ms Walmsley want to answer this question so I will just put it generally. The issue of the legality of the legislation: I just want to get your comment on some comments that the member for Calare, the honourable John Cobb, made recently. On January 2010 he said:

The Australian Government does not have the constitutional power to manage native vegetation—

and then he went on to say that it was a state issue rather than a federal issue, but ‘legislatively we cannot do a thing’. This was on 14 January 2010. Do you agree with that analysis from the member for Calare?

Ms Walmsley—The way that the federal system is set up, as you would know, is that native vegetation is generally dealt with, as is all natural resource management, by the states, and the Commonwealth can only intervene if, for example, there is a relevant international obligation that Australia must deal with. As you would know, the Environment Protection and Biodiversity Conservation Act can apply to certain agricultural issues, and I think there have only been 63 referrals under the EPBC Act that have actually related to agriculture or forestry. So they do have a limited capacity but there are clear constitutional restrictions on how much the Commonwealth can get involved in native vegetation management.

Having said that, I have just spent two days in Canberra at the Murray-Darling Basin Authority Water Forum and there was a lot of discussion there about the Commonwealth role in natural resource management. For example, if there is a COAG agreement, an intergovernmental agreement, then the Commonwealth can have a role and obviously can have a financial role as well.

Senator CAMERON—On 18 December Senator Joyce in an interview with the *Australian* said:

If you are going to compromise their capacity to utilise their assets—

and he was talking about farmers here—

you should compensate them.

Matthew Franklin then wrote in the *Australian* that Barnaby Joyce:

... contacted The Australian again shortly after the initial interview to stress that ... compensation would be too costly.

You have raised this issue of a flow-on if compensation was accepted in relation to the vegetation act—this is your regulation versus acquisition. It would open up a can of worms, wouldn't it?

Ms Walmsley—Absolutely, and that is why comments earlier about it being absolutely unworkable to stymie the government. If the government is afraid of doing any natural resource management regulation for fear of a massive compensation bill, then that situation would be unworkable.

Senator CAMERON—So Senator Joyce would be correct in his analysis that the compensation would be too costly?

Ms Walmsley—Probably.

Mr Ghanem—We cannot comment on the quantum of compensation in particular circumstances.

Ms Walmsley—It would depend on what exactly is contemplated—what activities and so forth—and we cannot put a figure on that.

Mr Ghanem—That would involve a complete change not only of the legislative regime but also a deviation from well-accepted principles in the High Court and beyond.

Senator CAMERON—The legislative regime that is in place has been the result of a number of agreements between federal and state governments and some well-established state legislation. Is that correct?

Mr Ghanem—Yes.

Senator CAMERON—Have there been any significant changes to legislation as it applies to native vegetation recently?

Ms Walmsley—In terms of New South Wales, the act was in 2003 and the regulations were in 2005. That has been the most recent raft of regulatory changes in this state. Certainly other states and territories are looking at legislation. For instance, the Northern Territory is looking at some stand-alone native vegetation legislation and different states have different cycles in the amendment process.

Senator CAMERON—But, to your knowledge, nothing has changed in the last almost five years?

Mr Ghanem—There have been some minimal changes to the Native Vegetation Regulations, for example, but there has not been a broad reform process, no.

Senator CAMERON—So the legislation and the agreements that were implemented by the Howard government, such as that on the National Heritage Trust, have been there for five years and basically set the rules. Is that correct?

Mr Ghanem—The rules that apply are determined by the legislation, not the funding agreement.

Senator CAMERON—But, if you reach a political agreement between a federal and a state government, and those agreements talk about compensation and obligations, they have implications for farmers, haven't they?

Ms Walmsley—We do not have expertise in the NHT arrangements and the political agreements between states; we have just focused on the legal arrangements in each state.

Senator CAMERON—I would like to take you to the National Heritage Trust Commonwealth agreement with the state government. One of the national outcomes is the implementation of effective measures to control the clearing of native vegetation, including the prevention of clearing of endangered and vulnerable vegetation, the limit of broadscale clearing and a substantial increase in the area and quality of national reserve systems. That is quite a powerful document that the state government and the Howard government signed up to, isn't it?

Ms Walmsley—Yes.

Senator CAMERON—So, in respect of the argument that we are getting now about land owners and the problems that they have got, those problems would have been there when the Howard government signed off the agreement with the state government. Is that your understanding?

Ms Walmsley—Yes. These are longstanding tensions.

Senator CAMERON—Are you aware of any arguments that were put forward at that time when the Howard government wanted to implement this in relation to problems that were arising for farmers?

Ms Walmsley—No.

Mr Ghanem—No, not particularly. We are not a campaign organisation either. We stick to the legal principles, so we are not really aware of any of the machinations of what happened.

Senator CAMERON—The New South Wales Farmers Association are arguing that there should be what they describe as a 'collaborative landscape planning model', as distinct from the model that we have at the moment. What is your view on that?

Mr Ghanem—ANEDO has done a lot of work recently with the EPBC Act 10-year review. It is the independent review that was shared by Dr Hawke. We actually provided a lot of information to that review panel about the use of strategic land management approaches as opposed to a site-by-site approach. We definitely support landscape scale tools such as strategic assessments, as long as they are based on comprehensive environmental assessment and community consultation processes.

Senator CAMERON—Are you aware that the Howard government signed off on Kyoto in terms of what was described as the 'Australia clause'? Are you aware of the Australia clause?

Ms Walmsley—Yes.

Senator CAMERON—Are you aware that Peter Costello, in June 2007, said:

Yeah well, it's—that's—but this was all designed to stop land clearing and we stopped land clearing, and it's helped us to meet our Kyoto target. If I may say so, Australia actually did something practical.

So in 2007, from the Howard government perspective, there was no misunderstanding that their approach was to try and reduce the greenhouse gas emissions and the carbon footprint. Is that correct?

Ms Walmsley—I believe so.

Senator CAMERON—Thanks.

CHAIR—Senator Heffernan?

Senator HEFFERNAN—Both of you are lawyers, are you?

Ms Walmsley—Yes.

Senator HEFFERNAN—In a metaphoric sense, if I were in charge, I would shoot two out of three lawyers. You represent the Australian Network of Environmental Defenders' Office, so you are environmentalists. Do you interpret the law on the environment?

Mr Ghanem—We are environmental lawyers, yes.

Senator HEFFERNAN—Amongst Australia's greatest environmentalists are its farmers, especially its progressive, science based farmers. Do you recognise in your interpretation of the law the global food task and the need to produce food?

Mr Ghanem—Sustainable food production is an important issue but it is a bit outside of what—

Senator HEFFERNAN—Okay. I realise you are a lawyer and you are confined to the books. In the break-up between the need to protect the environment—and we all want to do that; otherwise the planet will fall apart—and the need to produce food—and bear in mind that it is estimated that by 2050 30 per cent of the productive land of Asia will go out of production and 1.6 billion people on the planet will be displaced—don't we have to use the latest science to perform the food task? It is a pretty dumb answer; just say yes!

Ms Walmsley—I would just like to say that we absolutely recognise—

Senator HEFFERNAN—Okay. I do not need long answers. In respect of native vegetation laws, are you familiar with the Loddon study at the Loddon Valley in Victoria, in which they discovered that by putting trees at the top of the catchment they were increasing the salinity, not decreasing it?

Ms Walmsley—No.

Mr Ghanem—No.

Senator HEFFERNAN—Okay. Are you familiar with native species versus the latest of science based species, both of plants and crops?

Ms Walmsley—No.

Senator HEFFERNAN—Have you got your legal minds around the compromise that has to occur? The arguments that I have heard so far today are all about maintaining native vegetation and remnant vegetation, and not clearing trees when a lot of those trees are actually invasive. Can you recognise that if we came up with the right science against the background of the food task that we might have to use new species of crops and plants as opposed to native plants to perform that task?

Ms Walmsley—That is not our area of expertise as we are not scientists, and that is not really what our—

Senator HEFFERNAN—So you are interpreting the law for the environment but you are not familiar with the full scope of the argument. You are just familiar with the cold facts of the law, are you?

Ms Walmsley—No. You were specifically asking about new technologies for food production.

Senator HEFFERNAN—Yes, but in your interpretation of environmental law—

CHAIR—Senator Heffernan, can I ask that you give the witnesses time to at least explain. They have only had a few words. Ms Walmsley, please continue.

Ms Walmsley—If I can just address the issue that Senator Heffernan has raised, firstly, we absolutely recognise that farmers are the environmental stewards of Australia and they do fantastic work. That is why we work on projects about incentive programs and try and find ways to remove legal barriers to help farmers manage their land sustainably. There is actually a lot of common ground between the law reform work we look at and what farmers want. For instance, we helped the landholders in the Caroon case, we have done a lot of reviews of private conservation and we have worked on various incentives for farmers, so I do not think that there is quite the animosity that you are implying, Senator.

Senator HEFFERNAN—No, I am not implying there is.

Ms Walmsley—In terms of what you were saying about the international food requirements, we do not have scientific expertise on the latest food technology. Our response today is just about the terms of reference for this inquiry about the native vegetation laws.

Senator HEFFERNAN—Let's stick with the native vegetation laws. Do you think, in a cold-blooded sense, that if it were better to introduce science based species with the advent of new

science and new plant technology—and it is like GM; if you eat strawberries, they use more chemicals on strawberries now than they do on cotton, and that is science—we might have to revisit the native vegetation laws in favour of allowing the clearing of native vegetation to put a more worthy plant in there based on the science of the future and the changing weather? We are in Wagga at the present time, and the 30-year forecast for Wagga is that we are going to back from 21-inch to 18-inch rainfall. That means there will be some changed farming practices and the weather will be more event based. Can you, with your legal interpretation in defence of the environment, see a space for a rethink of the native vegetation laws in favour of a progressive set of values towards the global food task with the latest in technology in gene interpretation of plants and plant technology?

Ms Walmsley—No, the native veg laws are about native vegetation and conserving what is left of that. What you are talking about is introduced species, which is a different—

Senator HEFFERNAN—Yes, I recognise that. You do not have to go into a long explanation. So you think that it is more important to maintain non-productive native vegetation—for instance, at Junee. I come from Junee. I have one paddock left there that is wireweed, corkscrew and some buckwheat. Next door there is a loosened paddock with fescue, clover and a couple of other grasses. It would carry three times what the native paddock carries. Do you think it is important to maintain the lower carrying capacity? For the good of what?

Ms Walmsley—I think you are overlooking the benefits of native vegetation. There have been studies showing that, if you plant monocultures of new species, the water interception implications are massive. There are a whole range of environmental impacts.

Senator HEFFERNAN—Can I take you to the water interception. With a 20-inch rainfall, the difference in run-off between a monoculture forest, a loosened paddock, a native pasture and a wheat paddock, with modern zero-tillage technology, is of no consequence, because there is no substantial runoff.

Mr Ghanem—The Native Vegetation Act and its methodology deal with determining what are high-conservation-value areas of native vegetation.

Senator HEFFERNAN—I entirely recognise that, but isn't it more important—or would it be a higher priority—to have a compromise where we feed the nine billion people that are going to be on the planet by 2050, recognising that 30 per cent of the productive land of Asia, where two-thirds of the world's population will be, is going to go out of production? Wouldn't it be important to think, 'How are we going to feed these people?'. Are there plants that are more important in food production, as well as maintaining the landscape and the interception capacity of the landscape—and the birds and the bees and all the rest of it—with science rather than with what happened 2,000 years ago? Two hundred years ago, the Western Division of New South Wales, in lots of parts which are now wattle and mallee, was actually a grassy plain.

Ms Walmsley—Sorry—what is your question?

Senator HEFFERNAN—Can you, as environmental lawyers, recognise that part of the consideration of the native vegetation laws is that maybe we have to rethink them with a view to

the global food task? Thirty or 40 years ago, Walgett was sheep country at 10 bucks an acre, the same as Hay; it is now beautiful wheat country.

Ms Walmsley—Under the laws in New South Wales as they are currently drafted, as I am sure the department told you this morning, it is divided up between remnant and regrowth. The laws are designed to conserve the remnant that is left, but in areas of regrowth you can put all sorts of crops and land uses there. It would be a great advantage if the new crops addressed the food crisis.

Senator HEFFERNAN—But if the remnant—

Ms Walmsley—Part of vegetation law is to conserve the remnant vegetation—what is left of already highly diminished—

Senator HEFFERNAN—I applaud you for that. We are running out of time. But, if it came to the defining moment for the food task, there is lots of remnant vegetation land left that could be converted with the latest varieties and science to a much higher production regime. Are you saying that we would rather starve than do that?

Ms Walmsley—We are saying that the health of the productive land would actually deteriorate if you did more broad-scale clearing.

Senator HEFFERNAN—Say that again.

Ms Walmsley—The health of the productive land—the health of any catchment—depends on having some areas of the catchment with good native vegetation on them.

Senator HEFFERNAN—Yes, I recognise that. A lot of the Bethungra Hills in our district are what I call kangaroo country, and no-one is going to change that. But the soils that are suited to farming which are native remnant vegetation land are what I would call multipurpose country. Shouldn't we be able to use that multipurpose country against the background of science? The Kimberley is a really good example. If the science is right, north-west New South Wales and south-west Queensland are going to have increasing rain, where we are here is going to have decreasing rain and further south there is going to be a further decrease—up to 40 per cent in the runoff as a consequence of a 15 per cent reduction in rainfall. But in the Kimberley, which is now bound by pastoral leases, the nature of some of that country is going to change over the next 50 to 100 years. Shouldn't we, as sound environmentalists against the background of the global food task, say that we might have to change the law and allow some of that native vegetation country to be farmed if Mother Nature is saying, 'I'm changing the map, brother'?

Ms Walmsley—My final comment on this would be that the law as it is written in New South Wales is actually underpinned by some very good science. There is a methodology that takes into account salinity, water, biodiversity and impacts. There is some incredibly good science underpinning what areas should be conserved and what areas should be used for production for the overall health of the landscape. So there is science being used underpinning the law in New South Wales which we strongly support.

Senator HEFFERNAN—I surrender.

CHAIR—Thank you, Ms Walmsley and Mr Ghanem. If you took any questions on notice, we are required to report by 30 April, so any further information should be provided to the committee as soon as possible. Thank you for appearing today.

Ms Walmsley—Would you like us to send the private conservation information we referred to to the committee?

CHAIR—Yes, please.

Proceedings suspended from 10.50 am to 11.08 am

ARMSTRONG, Mr Charles Trench, President, New South Wales Farmers Association

KERR, Mrs Deborah, Manager, Natural Resource Management, National Farmers Federation

McELHONE, Mr Charles, Manager, Economics/Trade, National Farmers Federation

WAWN, Mrs Denita, General Manager, Workplace and Corporate Relations, National Farmers Federation

YOUNG, Mr Rod, Chairman, Conservation and Resource Management Committee, New South Wales Farmers Association

CHAIR—Welcome. The witnesses from the National Farmers Federation and the New South Wales Farmers Association have kindly consented to a request to appear jointly, so this session will cover two sessions that were scheduled individually. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. The committee has your submissions and I now invite both organisations to make short opening statements, at the conclusion of which I will invite members of the committee to put questions to you.

Mr Armstrong—Thank you for the opportunity to present this morning and also to welcome Rod as chairman of the CRM committee. New South Wales Farmers, as I am sure you all know, is a non-party political, voluntary industry body representing the majority of commercial farm operations throughout the farming community in New South Wales. Our members see property rights as one of the biggest issues facing agriculture, and your inquiry is not just relevant to our members; it is the heart of everything they do. What has happened and is happening is blatantly unfair. The quote from the Productivity Commission that is in our submission says:

... the current model is unfair, is ineffective in delivering environmental objectives and cannot deliver the sustainable use of land and water resources desired by the community.

That underlines the whole position that we are presenting to you.

The few points that I would like to highlight really focus around food supply or food security, survival of rural and regional Australia and modern environmental demands or aspirations. As far as food security goes, today there is a huge upside for agriculture due to increasing global demand for our product. Positioning Australia to take advantage of this demand, however, depends on getting the policy settings right. As recognised by the federal government in appointing a Minister for Population—and, incidentally, the Minister for Agriculture, Fisheries and Forestry as that minister—over the weekend, we face an enormous challenge in feeding and clothing a projected Australian population of 35 million by 2050. The dilemma, however, is that an increasing global population means increased domestic water consumption coupled with increased loss of agricultural land through urbanisation.

The Australian Farm Institute has done some work in relation to the importance of Australian farmers in terms of feeding. We feed 150 Australians per farmer and, right now, 650 people

overseas—projected to go to 850. The important thing about security is really not about supply of food within Australia; it is really about the security of the global picture in terms of people who may not get access to the food that we can supply. With our highly efficient agricultural systems, Australia has a vital role to play. In short, the world needs Australia to keep producing food.

In relation to biodiversity policy and native vegetation, we have demonstrated in our submission that the current biodiversity policy applying to Australian farmers is designed to create proxy national parks on private land at no cost to the public purse—and, in so doing, offset increases in fossil fuel emissions from coal fired power stations, which have increased more than 50 per cent since 1990. With regard to forestry, the regional forest agreement process was used to convert a significant proportion of the crown forest estate to national park. The program was underpinned by a structural adjustment program, with several hundreds of millions of dollars of compensation provided to timber mills and forestry workers, including for retraining and exit schemes. In contrast, when delivering promises to protect native vegetation on private farms, governments took an entirely different approach to that taken to forestry.

Turning farmland into government owned parks was never a practical option. Reserves are costly to purchase and costly to manage. Exempt from paying rates in New South Wales, reserves reduce the income of shires, with a consequent loss of local services. They also create liabilities in relation to fire, weeds and feral animals. Governments realised that the cheapest option, both financially and politically, was to simply force all farmers to conserve native vegetation. There would be no need for a complex and expensive structural adjustment process and no risk of a political backlash in urban Australia. On the contrary, governments realised that urban voters would be unlikely to see clearing bans from the point of view of affected farmers. Let us hope inquiries like this one can help turn that situation around.

In New South Wales, no compensation was offered to farmers to cover the lost income and land value of areas of land locked up and sterilised from production. Again, the Australian Farm Institute did some work in this regard, as did the Productivity Commission and ABARE, and the estimate is that there is a \$600 million per year loss in potential income as a result of these laws. There are no arrangements in place to compensate farmers for that loss of land value and existing rights resulting from native vegetation legislation or other biodiversity conservation policy.

Our case study of the Petrie family from northern New South Wales illustrates the dramatic effect of native vegetation legislation on existing use rights. Put simply, their sustainable farming operations have been undermined by bad policy. Our case study of the impacts of native vegetation and threatened species legislation in the Walgett region in the state's north-west also illustrates the importance of getting the policy settings right. The Rowntree family, along with 10 other families in the district, developed a sustainable landscape plan embracing biodiversity conservation within a balanced regional model. Native vegetation and threatened species undermine this model and undermine the environmental, economic and social benefits it would have brought to a drought-ravaged community with high unemployment.

A similar cost shift has occurred with regard to carbon emissions reduction. As the Climate Institute has argued, the clearing bans introduced across Australia in the 1990s enabled the government to requisition from farmers carbon credits worth billions of dollars in order to offset

increases in fossil fuel emissions. When the Kyoto protocol was negotiated, Australia insisted on inclusion of article of 3.7, the famous Australia clause. This clause allows nations to treat avoided land-clearing as an emission offset in the first commitment period. The clearing bans have enabled Australia to meet its Kyoto targets while, over the same period, increasing emissions from coal-fired power stations. Without the clearing bans, Australia would be in serious breach of the Kyoto protocol and facing a multibillion dollar carbon liability. The cost shift from the energy sector to the farm sector must be corrected, with due compensation to farmers.

It is also vitally important that the Senate fully understands the policy complications that have been introduced by coupling biodiversity conservation outcomes with greenhouse gas abatement outcomes. Our analysis is that the proposed Carbon Pollution Reduction Scheme would substantially affect the productivity and profitability of Australian agriculture and the food sector, affecting all Australians—city and country—by way of increased food prices and, in the longer term, damage to food security.

Mining is also a related issue, particularly in New South Wales. Mining and planning legislation fail to adequately protect agricultural land and water, and farmers' property, from the impacts of mining and coal seam gas extraction. Current planning processes are not up to the task of resolving the complex resource allocation and risk management questions that must be addressed when considering areas for mining or gas development. This is particularly the case when highly valuable agricultural, land and water resources are involved. Thanks to the Australian Farmers Fighting Fund in particular, the courts are increasingly recognising deficiencies in the law and in government process in relation to these matters. The recent Supreme Court decision on the Carroona mining access agreement is a good example.

The association is not opposed to mining. We simply want equal treatment under the law, a balanced approach to deciding where and how mining occurs, and just terms compensation to all affected landholders when the mining goes ahead. The great cost shift is perhaps what has been hidden. Both biodiversity and climate change policy in Australia have depended on shifting the cost of public environmental objectives onto farmers. Farmers have a duty of care, like any business operated to minimise environmental impacts of their operations, to operate sustainably; and it is in our interests to do so. But I do not believe farmers have a duty of care to host proxy national parks on their land or to provide free carbon credits to balance increases in emissions from coal-fired power stations.

We implore you to recommend the provision of just terms compensation in all cases where private landholders are required by law to provide public conservation services. This just terms compensation must complement policy reform capable of restoring balance and economic intelligence to the policy framework affecting farmland and natural resources. Our members need laws and planning systems that enable sustainable development in regional Australia and that support farming communities in designing their own future.

I thank the committee for tackling such a complex and diverse issue of such enormous importance to farm families and rural communities. I want to leave you with six one-line statements that I hope underline where we think things need to happen. First of all, just terms compensation. What has happened so far is clearly not fair. We need removal of impediments to sustainable development of farmland. We need enactment of legislation to stop governments

using a loophole to avoid their responsibility under section 51 of the Constitution. We need to bring back equal balance to social, economic and environmental needs. Government needs to establish net accounting rules for carbon in agriculture. We will go into more detail on that if you wish.

Lastly, ensure consistency of legislation. Our farmers are out there and there are totally conflicting cases of legislation particularly in relation to the Threatened Species Conservation Act where, on the one hand, a mining company can clear a threatened species without impunity and knock them all over in the case of eucalypt trees and, on the other hand, a farmer right next door cannot clear one. That is inconsistent, it makes it incredibly frustrating for private enterprise to operate and that is what Australia has been built on. Thank you.

CHAIR—I invite a representative of the National Farmers' Federation to make a statement.

Mrs Wawn—On behalf of the three representatives from the National Farmers' Federation we commend our submission to you. We do not wish to go into the detail of that submission but stress to the committee that the erosion of property rights through regulation by stealth over a period of decades, which has occurred and continues to occur, has had a significant cost implication for farmers in loss of production, red tape and the loss of value of properties. In the extreme, circumstances have arisen where the cumulative regulation results in farms being regulated out of existence and they end up upholding effectively an empty property right.

The NFF recognises that this property rights debate is a recognition of the existing right to use or access a natural resource in the context of a farmer's duty of care. It implies a responsibility on the farmer or landholder to utilise the resource in a responsible manner and in accordance with the principles agreed to in legitimate and equitable planning and consultative frameworks. In our submission we have identified a range of regulatory measures that are beyond the scope of this inquiry per se but we wish to provide a snapshot of the breadth of the property rights problem currently facing farmers in Australia.

To assist the committee in today's deliberations we have provided three experts in this area in relation to biodiversity and water in the case of Mrs Kerr, to carbon implications and its implications on land use decisions particularly relating to carbon credits and Kyoto in the case of Mr McElhone's role and in terms of legal perspective in my case. We will try and assist the committee in directing any questions to our particular representatives here today.

CHAIR—I will ask as I move to questions, if there are legitimate follow-up questions seeking further clarification of a question that has been asked, please feel free but if you are seeking to challenge a question everyone will be allotted time.

Senator KROGER—Thank you very much for your submissions. If I can preface my comments with an explanation of where I come from, I was born on a farm but just about everybody on this committee would consider me to be a city slicker now. I take that as an insult having been born on a farm. From the evidence we have heard even briefly this morning there seems to be—and this may be a real oversimplification of the situation—a very real disconnect in appreciation of property rights that are being administered, for want of a better word, by people who may not appreciate differentiation of country property if I could put it like that. My colleague made a parallel distinction this morning which I thought was quite a good one. In the

city if you bought four dumps that were flats with the intention of pushing them over and putting up four new properties as an income source but in the process of pushing them over the regulation changed and you were no longer able to build four new flats on that land and could only build two it dramatically would reduce your income from that property. You have bought the original property under a total different concept of what the possible use of it was.

What I am seeing from the evidence we have heard this morning is that that seems to be the case in the lot of situations across the board. I understand that is seriously oversimplifying very different instances. Senator Williams raised one this morning. In your submission, if I could go to that, you refer to a number of studies that have been done that look at the reduction in land asset value, but we heard only this morning from the New South Wales Department of Environment, Climate Change and Water that they were not aware of any adverse financial implications on property. I would like your response to that.

Mr Armstrong—Perhaps you have successfully underlined the real problem. Yes, the people who are making the laws and the people who are perhaps being satisfied politically by the people who make the laws have a major disconnect with the real operation of business. I am amazed that the department could suggest that they did not understand the loss in value. There is a submission that I know the committee has received that goes into very great detail about the loss of value of particular farms that were surveyed. There are eight or 10 pages of analysis of figures to show the loss in value as a result of the restrictions on the ability to manage the land and/or improvement. So that amazes me. We are having a meeting with DECCW very shortly about other particular issues but all are in relation to the review of the Native Vegetation Act that was conducted by the state government over the last four or five months.

There are a couple of other points. It is really not just country property; it is all property. The problem is that most, if not all, enterprise in Australia has been based on the notion of private ownership. People are not going to invest and continue to invest in private ownership of property and run those properties as private enterprises to the benefit of Australia as a whole if we continue to have this uncertainty, where the rules are changed five minutes after you have purchased the property. We have been using the example to simplify it even further than the development flats—the case of someone who has just bought a three-bedroom home, where they are very proud of their purchase and everything, and the government or a compliance officer knocks on their door the next morning and says, ‘Sorry, you’ve got to lock up the third bedroom.’ That is exactly what is happening, in a very simplistic way, on farms. It is a very complex issue. There are plenty of examples where loss of value has occurred through both threatened species and the Native Vegetation Conservation Act.

Senator KROGER—Thank you for that. It is a serious issue. The challenge that people such as Senator Ryan and I, who live in cities, have is ensuring that those whose livelihoods depend on farmers being able to produce what we consume appreciate the impact that this will have on us all individually. Having said that, are there any studies that have gone towards how many farmers have been forced to move off their land because of enforced unsustainable farming practices?

Mr Armstrong—I am not aware of any particular examples going to that extent, but I can tell you anecdotally that there are people in my district who have had to move because they have not been able to develop. Sure, there has been a drought for the last 10 years which has made it even

more difficult because you could not make investments within certain time periods, but a lot of that land is, if you like, new development land—new varieties, new progress, new tillage methods and all sorts of things—that enables, under normal circumstances, more sustainable development to occur in areas where it may not have been. And, yes, people have had to sell as a result of these laws.

Senator KROGER—Thanks, Mr Armstrong. I will leave it there. I could ask lots more, but I know that others—

CHAIR—I invite anyone else at the table to follow up on an answer.

Mr McElhone—I will just follow up on that because you have focused there on the asset value being affected by the productive capacity of that land being affected, which Charlie has outlined. But there is also that overlay of benefit to the government from making those decisions, and that is where it has really been convoluted by some of the carbon issues that have been associated with these decisions. So there is the value of the actual productive capacity, but then there is also the underlying value of what the farmers could have generated if they were able to make those decisions themselves. We have discussed in our submission a carbon price of \$45 a tonne. These decisions based in New South Wales and Queensland would equate to about \$3.5 billion in value of carbon credits for those farmers. That is on top of the productive capacity issues that Charlie is talking about. So you have got to remember: you are looking at this in its entirety; it is about the broader suite of value which can come from these regulatory decisions.

Mrs Kerr—The only other comment I would make in relation to the second question, about whether farmers have moved off their land, is this. Whilst that might have occurred, the vast majority of farmers are actually internalising that cost. Where they do not move off their land or seek to move into other businesses or other farms or other areas, they are actually internalising that cost. There is a whole lot of information and data on that—the Productivity Commission report on regulatory red tape, for example, documents that quite widely. So it is not just the cost of moving away or doing other things; it is the internalisation by many farmers of those costs.

Senator KROGER—And surely that is not sustainable in any long term.

Mrs Kerr—And that is our argument.

CHAIR—Senator Cameron?

Senator CAMERON—I am not sure who wants to answer these questions, but—

Senator JOYCE—How about I answer them for you?

Senator CAMERON—I think, Senator Joyce, you do have some questions to answer, but no! Do you agree that the laws that affect native vegetation really have not changed significantly for at least 2½ years?

Mr Armstrong—I think that is probably a fair comment, yes.

Senator CAMERON—Do you know a Mal Peters?

Mr Armstrong—Yes.

Senator CAMERON—He is a former president of the NSW Farmers Association. On 14 January in *The Land* he wrote this, and I would just like to get your comment on it: ‘The sleight of hand—

Senator HEFFERNAN—I’ll go after this; this is 20 minutes.

CHAIR—Senator Heffernan, let Senator Cameron—

Senator POLLEY—A point of order, Chair.

CHAIR—I am going to call Senator Heffernan to order. Senator Cameron, please continue.

Senator CAMERON—‘The sleight of hand that occurred when John Howard signed Kyoto in 1997 is the greatest kick in the guts to farmers ever perpetrated by a government in Australia. Few people know the Howard government flew the satellites over Australia, measuring all the native vegetation; flew them over 12 months later, measuring the amount of land farmers had cleared; and negotiated a deal with Kyoto, saying, if they stopped broadscale land clearing ... they wanted to count that amount of clearing in tonnes of carbon against Australia’s target of 108 per cent. For anybody who thinks that this is bulldust, please refer to article 3.4 of the 1997 Kyoto agreement.’ Has Mal Peters got that right or wrong?

Mr Armstrong—I will let the more technical people handle it, but before I throw over to them: in relation to the 2½ years, I detect an inference of, ‘What has happened, and why are we so upset about it now?’ What has happened is that the potential for a carbon pollution reduction scheme has come in on top of it, and therefore we have not only the native vegetation laws of 2½ years ago, and all that impact, but also a complete loss of asset value in the case of a carbon reduction scheme that Charlie McElhone has just referred to, in the sense that all that vegetation that was, in effect, locked up in 1990 now has a significant value which we, as farmers—who are still managing it and, in fact, managed it to get it to that stage—have lost.

Senator CAMERON—We can come to all that later.

Senator JOYCE—Why don’t we come to it now?

Senator CAMERON—I am happy to deal with those issues. But I am asking questions about native vegetation, and I would like you to deal with the questions on native vegetation. We won’t make speeches on the CPRS; that is fine. But if you do it with someone else then they can ask you that question. I would like to stick to native vegetation.

Mr Armstrong—Can I make just one other comment?

CHAIR—Senator Cameron, if you would like to move a point of order on relevance, please feel free to do so. The witness is allowed to answer the question in a way they see fit subject to senators seeking points of order on relevance. Witnesses should feel free to answer the questions as they see fit.

Senator CAMERON—There might be a few points on relevance then.

Mr Armstrong—I have one other issue before getting into the technicality of the native vegetation laws or those comments. This issue should not be seen as an attack on one particular government or one particular side of politics. This issue, in addition to the native veg issue, has been going on for probably a hundred years with respect to this denigration and erosion of property rights and the rights of people who invest in private enterprise. So please do not take offence—

Senator CAMERON—So Peter has got it wrong; it is not the greatest kick. That is what I am asking.

Mr Armstrong—I would suggest to you that, because it is so down to the personal level—unlike, say, the Tasmanian dams issue or the Mabo case—it is down to individuals and their enterprise and, therefore, yes, it is probably the biggest kick.

Senator CAMERON—Now you have answered that question. And the legislation in the states was influenced by the Australia clause in the Kyoto agreement. Is that correct?

Mr Armstrong—Yes.

Senator CAMERON—So the Howard government signed the Kyoto agreement or the clause—they did not ratify it but they signed the agreement—and that clause then had an influence on state legislation because they then came back and said, ‘We want to reduce native vegetation clearing to meet our commitments under Kyoto.’ Those are the submissions you have given the inquiry. Are those the facts?

Mr Armstrong—Those are the facts, except that there is a very big difference between signing it and ratifying it, and that is probably where the impact comes from.

Senator CAMERON—Sure. But by signing, the Howard government came back and then went through a range of negotiations with state governments that changed laws on native vegetation.

Mr McElhone—The issue here, as Charlie reinforced, is that this is an issue for successive governments both state and federal. No-one can totally abdicate themselves of all responsibility around this issue. We do acknowledge that article 3.7 in the Australia clause was negotiated under the previous government, but that was ratified and therefore cashed in with the current government. No-one can wash their hands of these decisions. As Charlie correctly said, this is a broader issue that has been going on for many years. I think that is important to recognise. If you want to isolate it to this native vegetation issue and the carbon rights around that, successive governments have to take some responsibility for it.

Senator CAMERON—I am not trying to isolate it; I am just trying to get a clear view, because the native vegetation clearance has been ventilated all morning.

Mr McElhone—All we are saying is that it is not clear-cut who is to blame for these decisions and the broader ramifications on farmers as they move forward.

Senator CAMERON—Isn't there a difference between who is to blame and who is responsible? The responsible government was the Howard government. Isn't that correct?

Senator HEFFERNAN—I would have thought it is what you are going to bloody well do about it. What are we going to do about it?

Senator CAMERON—You just wait your turn and don't be so rude.

Mr McElhone—I am trying to answer your question. All we are saying is that successive governments have had a part to play in the decisions around the Kyoto protocol, around the rules and the negotiated position, and that is having a bearing on farmers. It is as simple as that. That applies to successive governments, both state and federal.

Senator CAMERON—I want to go back to your saying that the Rudd government cashed in on this issue.

Mr McElhone—Absolutely.

Senator CAMERON—I want to take you to a quote from Peter Costello. In talking about land clearing, in June 2007 on *The 7.30 Report* he said:

Yeah well ... this was all designed to stop land clearing and we stopped land clearing, and it's helped us to meet our Kyoto target. If I may say so, Australia actually did something practical.

So it was not cashed in by the Rudd government. If you want to play politics, I am okay on that, but it was not cashed in by—

CHAIR—Senator Cameron, a point of order has been raised by two of my colleagues.

Senator NASH—The point of order goes to behaviour. You can at least not harangue the witness.

Senator WILLIAMS—Senator Cameron's comment was wanting to play politics. These people are here in good faith to answer questions. I ask him to leave the politics out of it.

Senator POLLEY—On the point of order, I do not believe there is any point of order. I think, Chair, that you have been fairly free in the way you have allowed the dynamics to unfold this morning. We continue to take points of order over interjections and comments. The reality is that there have been a lot of politics played in this hearing. I think it is time to move on and stop wasting time.

CHAIR—I am happy to rule on the point of order. There is no point of order. But I will ask Senator Cameron to allow the witness at least a chance to answer the question before the follow-up.

Senator CAMERON—I am happy to do that. In relation to Peter Costello's comments, he has clearly indicated that the Howard government cashed in on it. Is he wrong?

Mr McElhone—His language is about meeting the targets. The fact is that before we ratified we did not have financial obligations under the Kyoto protocol. It is only when you ratify that you actually have to meet the financial obligations. Therefore, the actual financial implications come into play once we ratify.

Senator CAMERON—What financial benefits does the Rudd government get out of it?

Mr McElhone—Eighty million tonnes worth of carbon credits which have not gone to Australia's national accounts as a result of those land-clearing bans, which is \$3.5 billion, as an example.

Senator CAMERON—So in reality people like Bob Carter have got it wrong. The Nationals can stand up at a rally after being in government for 11 or 12 years in Australia and say, 'We are all heroes.' He says they should be ashamed of themselves. He asks: who was in power when the land restrictions came in? He asks the question: was it the penguins? It was not; it was the Howard government, wasn't it?

Mr McElhone—As we say, successive governments have to take some responsibility for the decisions around this issue. Article 3.7 was negotiated at that time. As you say, we have been able to meet our targets as a result of that. I used the language 'cash those in' once ratification occurred.

Senator CAMERON—In terms of the current situation and this inquiry, Senator Joyce was quoted in the *Australian* as saying, 'If you're going to compromise their capacity'—that is, the farmers—'to utilise their assets, you should compensate them.' Then Matthew Franklin wrote that he, Senator Joyce—

Senator HEFFERNAN—This is the third time we have heard this this morning.

Senator CAMERON—contacted the *Australian* again shortly after the initial interview to stress that he accepted that compensation would be too costly. Have you done any assessment on the cost? Senator Joyce is playing up to a rally. Then he comes back and says: 'No, I've thought this over. It's a bit too costly.'

Senator JOYCE—Chair, I raise a point of order. Seeing as I am being verballed here by Senator Cameron—

Senator CAMERON—No, by your mates at the *Australian*.

Senator JOYCE—I think it is important that we get this correct. The issue is that compensation on top of the Labor Party's excessive debt at the moment would be impossible.

Senator CAMERON—What is the point of order?

Senator POLLEY—There is no point of order.

Senator NASH—That is a fair call.

Senator CAMERON—That is not a point of order.

Senator JOYCE—If you are not compensating, you might have to change the legislation and hand the asset back.

CHAIR—Senator Joyce, I think you know better than I that that was not a point of order. We will come to you very shortly and you will have a chance to raise those issues.

Mr McElhone—This comes down to what I said earlier about just terms. The question of compensation will vary for different farmers. That is what we are talking about when we are looking at trying to get environmental outcomes in regional Australia looking at market based mechanisms to appropriately realise the actual value of the decisions that are being made and giving that up to farmers on a voluntary sense to take that forward. We are seeing that now with some of the programs under the Environmental Stewardship Program, which we are very supportive of, which allows farmers to make their own decisions about whether that is an appropriate market value.

Senator CAMERON—So in relation to the Commonwealth and their capacity to do something, the member for Calare, John Cobb, said that the Australian government does not have the constitutional power to manage native vegetation. He said it was a state issue rather than a federal issue but legislatively we cannot do a thing. What is your response to that from the opposition? It seems to me that is in contrast to what Senator Joyce is arguing and others are arguing. There seems to be some confusion and division among the coalition opposition on this. What is your view?

Mr McElhone—Deb deals a lot with our NRM issues. Clearly there are a suite of federal programs which are aimed at getting the environmental outcomes in regional areas. Deb, do you want to elaborate more on that?

Mrs Kerr—Yes, the primary mechanism is the Environmental Stewardship Program at the federal level. That is a program that seeks a market return for farmers to actively manage environmental outcomes. They are particularly pertaining to box gum grassy woodland at the moment throughout the southern basin and the northern basin in New South Wales and into Queensland. Those programs are designed to actively manage vegetation on-farm, including things like pest and weed control, fencing, actively grazing of the vegetation and seeking to replant both the trees and understorey of the vegetation. So it delivers a better environmental outcome than a lot of the public lands which are left locked up and not actively managed for environmental outcomes.

The National Farmers Federation are on record as saying that that program needs to be expanded geographically and to cover more ecological communities listed under the federal EPBC Act. It is going into its last year of funding in 2010-11 and we need to look at how we can fund that into the future. That is a really good example. There are a number of other programs at a state level. For example, in Queensland, AgForce and Queensland EPA have a Nature Refuges program, which looks at similar sorts of outcomes to the Environmental Stewardship Program. They are just two examples of a wide range of programs. Bush Tender in Victoria is another example. There are lots of them out there which actively manage for better environmental outcomes from landholders.

Senator CAMERON—Can I go back to this issue of Kyoto. Are you aware that the Leader of the Opposition, Tony Abbott, indicated the other night that the Howard government should have ratified Kyoto?

Mr McElhone—I have not seen that.

Senator CAMERON—I will just draw your attention to ABC's *Q&A*. Go back and have a look at that. The Leader of the Opposition is on record saying that Kyoto should have been ratified. It is not as if it is something we've done.

Mr McElhone—Yes, absolutely.

Senator CAMERON—He is now saying that in hindsight he should have ratified it. Senator Robert Hill on 27 September—he was the minister for the environment in 2001—spoke about the intergovernmental agreement to implement the National Action Plan, which was a range of environmental issues. He said:

Commonwealth funding for the plan is contingent on the states and territories committing to implementing the whole package of measures outlined in this agreement, which include policy reform relating to land and water resource management.

What discussions and negotiations did the National Farmers Federation or the New South Wales Farmers Association have with the Howard government on this issue? What issues did you raise with them in relation to compensation and did you outline to them the issues you are raising here with us today? If not, why not? If you did, what was the response?

Mrs Wawn—We would need to take that question on notice. No-one present was working with the NFF at the time. Hence, rather than to make assumptions, I would like to look at our records to answer that correctly.

Mr Armstrong—Chair, could I also make a comment to Senator Cameron. I am sorry, but I viewed this particular inquiry as the opportunity for whoever is in government to take on the issue and solve the problem. If you are talking about value—what it is going to cost—there is no cost in a simple change of legislation to say give that vegetation that is on farms pre-1990 that is currently the property of the government back to the farmers and they will get a benefit if there is a carbon scheme of the value of that. There is no cost to government. It is up to you. You are the government at the moment. We are just looking broadly to propose the solutions to this problem.

Senator CAMERON—But it is fair and reasonable for us as members of this committee to understand the negotiations that took place between the farmers associations and the Howard government which brought us to this situation we are in now. I think that is a fair and reasonable issue for us to be able to understand. I do not want to be making recommendations here based on some negotiations that you have had on issues that you agree with. It is important that we understand what you said to the Howard government, what responses you got and what complaints you made. All of these issues are very important in terms of us being able to ground our recommendations in some historical perspective of what has happened.

Senator HEFFERNAN—Could I just follow up on that?

CHAIR—Let them answer first, Senator Heffernan.

Mr Armstrong—We will take that on notice. We will develop that argument for you, but it is not going to absolve the responsibility of the government now or a new government sometime later this year who is going to handle this issue.

Senator CAMERON—If you say that, how do we deal with John Cobb's view?

Mr Armstrong—As we lead up to the federal election, we will give you all the answers you need.

Senator CAMERON—You are at an inquiry now. You are here raising these issues. I am saying to you that the shadow minister is saying the government does not have the powers to deal with it. So why would we have to wait until the lead-up to the election?

Mr Armstrong—If you remember, I mentioned that one of the key messages was that we need to change the legislation so that the government has responsibility to act in the way that was intended in section 51. That is the first—

Senator CAMERON—Are there constitutional impediments to that?

Mr Armstrong—Absolutely.

Senator CAMERON—What are the constitutional impediments to doing that?

Mr Armstrong—No case that has come before the High Court has recognised that government has acquired property in all the issues we have been dealing with. That is where they have been able to, in effect, avoid responsibility and, in this case, pass that responsibility back to state governments.

Senator CAMERON—So the Howard government avoided that responsibility for years, did they?

Mr Armstrong—Every government since 1900 or thereabouts has avoided the responsibility.

Senator CAMERON—Including the Howard government?

Mr Armstrong—Yes.

CHAIR—Senator Heffernan, do you have a quick follow-up on that issue?

Senator HEFFERNAN—Yes, I do. Mr Armstrong, the point of taking back so a farmer, if we go to a carbon scheme, can trade the value of his trees that he now no longer owns actually is a major flaw. By the way, the ratification of Kyoto without the exemption for agriculture would put agriculture out of business.

Mr Armstrong—Exactly.

Senator HEFFERNAN—He does not understand. He is only playing politics. I want to know what we are going to do about it. In terms of taking back to the farmer the benefit in the event of an emissions trading scheme, the same thing applies to all the native title lands in the Northern Territory and Queensland. It is a serious flaw, which only Indigenous people have raised. Isn't it the same issue? There is a huge proportion of Australia for which the benefit is owned by the Commonwealth even though the land is owned by someone else.

Mr McElhone—Some of these issues have been before the courts and there are some ongoing issues there which will hopefully come up with some of the answers about compensation.

Mrs Wawn—Certainly our submission identifies a range of recommendations to this committee that are under the purview of the Commonwealth government in resolving some of these issues. We acknowledge that there are also issues at a state level, and obviously our state organisations are in discussions with state governments in respect of those issues. But we are also critically conscious of the increasing utilisation of IGAs and the impact that may have. Obviously those IGAs have been subject to consideration by the High Court in a number of instances, particularly around water, over the last six months or so. There is also another case pending before the High Court that will have a significant implication on the consideration of this committee.

Senator HEFFERNAN—What I am trying to—

CHAIR—Sorry, Senator, but we will come back to you later on. Before I move to Senator Joyce, I will ask a couple of short questions. As Senator Kroger outlined earlier, one of my concerns has long been a breakdown in what used to be familial relations between regional and urban Australia that led to an increased degree of understanding. My perspective is from having been brought up in the city, in Melbourne. Just to clarify: these regulations that take place, particularly around land clearing, do not just apply to virgin bushland or forest that has been there for a long time; they apply to regrowth areas that were previously used for another purpose but which have had invasive natural scrub, or other areas, so we are actually looking at diminution of potential land available for use on individual and private farms.

Mrs Kerr—That is correct.

CHAIR—The other thing I want to clarify is that, to me, particularly around land clearing and vegetation management, the primary burden on farmers has come from state legislation and regulation over the last decade or so.

Mrs Kerr—The land-clearing bans are actually at a state level, but the federal government has responsibility through the Environment Protection and Biodiversity Conservation Act, and that places onuses on farmers who have those listed ecological communities or species on their properties to—

CHAIR—But, outside those endangered and listed species of flora and fauna, this is an issue primarily of state legislation where it is not the Commonwealth responsibility under that act?

Mrs Kerr—The Commonwealth does not have responsibility for state legislation; you are quite correct there. But the EPBC Act does require farmers to comply with federal legislation, and they cannot clear that vegetation.

CHAIR—When we are looking at this problem, what sort of proportion do that act and the Commonwealth act represent as part of the problem?

Mrs Kerr—I think it is the combined effect of both on farmers.

CHAIR—The Commonwealth, as we know, is bound by section 51(xxxi) and the various cases that have developed around that. I have also got the impression that different states have come up with different regimes to deal with this, so that the states could have, and some have, chosen different compensation mechanisms, haven't they? Is it true that South Australia has a different compensation mechanism to New South Wales?

Mrs Kerr—I think all the states have taken different approaches, and we could probably provide some information on notice about that.

CHAIR—That would be appreciated. The point I am trying to get to is that it is within the power of the state parliaments legislating in this regard. Just because they are not bound by section 51(xxxi) does not mean that they cannot choose to provide compensation, does it? They could have undertaken this with a compensatory mechanism or with the suggestion you just made, Mr Armstrong, which is to make these parts of farmland the property of the owner. The states have chosen this path, haven't they?

Mr Armstrong—Yes, but the state government system, particularly in New South Wales, is quite different to the federal Constitution and section 51 because the state parliament has to pass legislation relating to each and every case. There is a principle of compensation on just terms, but it becomes an act of parliament. It requires an act of parliament in whatever issue to actually carry that. The situation, of course, is that you are looking at a multitude of individuals who are being affected by this process, and then a determination of compensation and so on. We are not absolving the state government from responsibilities, and the enactment of legislation to block the loophole in section 51 relates also to the enactment of legislation for fair and reasonable compensation.

CHAIR—I appreciate that. I suppose the point I am trying to make is that—to put it in terms that people who might not have experience with these regulations and farming might understand—if the state decides to appropriate part of a suburb to build a freeway or a new school, it can choose to provide compensation or it can choose not to. It is not being bound.

Mr Armstrong—Yes.

CHAIR—It could similarly do the same here, couldn't it? Whatever state it is around Australia and whatever the regulations, the states could have chosen to provide that compensation, but they have chosen not to. Is that the point you are suggesting now? That is what I wanted to clarify.

Mr Armstrong—As I understand it—and I will stand corrected—that is correct.

Mrs Wawn—In response to that, a thing we need to be cognizant of on this particular issue is that there have been a number of connectivity issues relating to intergovernmental agreements between the Commonwealth and the state governments, including money coming from the federal government to the state relating to the legislation.

CHAIR—It is a long time since I studied this, but, as to the absence of a constitutional protection, there is no state protection for trial by jury, but we have trials by jury. There is no state constitutional protection of the right against self-incrimination, but we have that legislated. The point I suppose I am trying to make here is that, firstly, the states could have chosen to act differently and, secondly, there was no Commonwealth condition upon that funding that made the states choose to act differently, was there?

Mrs Wawn—That is obviously subject to High Court deliberation.

CHAIR—I will hand over to Senator Joyce now, because I think we have reached a dead end on that. Senator Nash?

Senator NASH—I just have one question before I hand across to Senator Joyce, and it follows on from the New South Wales Department of Environment, Climate Change and Water, which was in this morning. The departmental official outlined for the committee that under the legislation there were three key areas that were targeted. They were that important vegetation be protected, that farmers were able to get on with the business of farming and that there would be balanced outcomes. He was very strident in his view that farmers were able to get on with the business of farming and that there were balanced outcomes. Do you agree with his view or do you have a different view?

Mr Armstrong—Absolutely not, and of course it is not the only area that we disagree with the department on. Having said that, it shows a lack of understanding. To carry on the business of farming without further developing the farm means that you are going to exploit what you are currently farming. Let us bring it down to paddocks. You are going to go on farming the same paddock over and over again because you cannot develop the next paddock and relieve the pressure on it. It is another of these disconnect features: people making the legislation or drawing up the rules having no idea of how we as farmers operate.

Obviously the balance is way out of kilter. I know I made the point that we are saying, ‘Let’s put social, economic and environmental needs all on one-third each instead of how it is at the moment, where environment is seen to be No. 1 and whatever—as in the case of water—is required for water to satisfy an iconic wetland or whatever will go and agriculture will have what is left over.’ The balance is way in favour of a particular ideology and a particular mindset. Yes, there are major problems.

Senator NASH—Thank you very much.

Senator JOYCE—I am just going to start at the top with a statement of the obvious. Who brought in the native vegetation laws? Was it a Labor government or a coalition government?

Mrs Kerr—State or federal? Are you talking state?

Senator JOYCE—State—the ones that stop me clearing my land.

Mr Armstrong—SEPP 46—I will stand corrected—was by the Labor government in New South Wales.

Senator JOYCE—Let us go to Queensland. Who brought them in? Labor?

Mr Armstrong—You can probably answer it.

Senator JOYCE—The Labor government.

Mrs Kerr—We do not have information about who was in government at what time.

Senator JOYCE—If we cannot afford compensation—and there were figures quoted in the paper of \$200 billion to \$300 billion—because of the excessive debt that this nation has now got hanging around its neck because of the current government, would it be possible therefore to change the legislation in some way so as to hand back the vegetation asset that has been divested from the individual?

Mrs Kerr—The draft federal vegetation framework—and submissions closed yesterday—actually excludes land clearing, the 1999 framework. I am happy to provide our submission to the committee to have a look at. We have stated there that perhaps it is an opportune time now to remove those land-clearing prohibitions, if you like, from the legislation so that farmers can get on with managing their land sustainably.

Senator JOYCE—So there is nothing stopping legislation being changed at a state level or influenced at a federal level so as to bring some sense of fairness and balance back to the farmer from whom that asset was stolen?

Mrs Kerr—It is up to the political will of the day, yes.

Senator JOYCE—Has there been a diminution in the value of current land or the potential value of rural land in certain areas because of native vegetation laws?

Mr Armstrong—Yes, absolutely, and it is quite substantial.

Mrs Kerr—And there have perhaps been some perverse outcomes because of them.

Senator JOYCE—Could you nominate some of those areas where you believe that the land values have been affected? We used to have a place north-west of Bourke where basically it was turned into a national park, because what was open grazing land is now just a mulga and butter bush forest.

Mrs Kerr—I think the NFF provided a number of case studies from our members to a Productivity Commission inquiry. We refer to those in our submission to this inquiry. We are happy to provide those to the inquiry for your consideration.

Senator JOYCE—So is it your strong view that there definitely has been a diminution in the value of assets—in fact, in some instances complete removal of the value of a land asset—by reason of vegetation laws?

Mr Armstrong—Yes.

Senator JOYCE—Under the Torrens title system, which underpins the whole ownership of land, is there ownership of the vegetation?

Mrs Wawn—It has been a long time since I did any specific property law relating to Torrens title. It is the land, and what is above it, to a certain point. I would have to take the question on notice.

Senator JOYCE—From my knowledge of it, the Crown has a right to timber appurtenant to the shingle beds for the construction of bridges but, apart from that, you own the lot.

Mrs Wawn—Thank you, Senator.

Senator JOYCE—In that instance, an asset owned by the farmer then became owned by the government without any compensation, without any acknowledgement whatsoever, of the change in the value of that asset and the ownership structure of that asset?

Mr Armstrong—Yes.

Senator JOYCE—Would COAG be able to work in such a manner as to fix/retrieve this asset? Do you see COAG as a mechanism that can sit down and start dealing with this vegetation theft in such a way as to reignite the debate and start being fair and decent to the people from whom this asset was stolen?

Mrs Kerr—The NFF did lobby in 2004 for an intergovernmental agreement at a COAG level on land management and biodiversity in particular which would complement the National Water Initiative. That was agreed at that time, and it failed to get up. So it is an option.

Senator JOYCE—So you also see capacity for it to dovetail with the Water Initiative to retrieve some respect for the landowner?

Mrs Kerr—Absolutely, and in 2004 we tried to do that.

Senator JOYCE—Do you think the farmers have picked up the bill for the coal companies' carbon abatement?

Mr McElhone—Absolutely—not just for coal companies but for Australian consumers as a whole.

Senator JOYCE—Can you think of any moral justification why a group not associated with the wealth of that industry should have to pick up the bill for that industry?

Mr McElhone—Absolutely not. In saying that, farmers are making a constant contribution to environmental outcomes. We are really keen to reinforce that. It is not about not continuing to make an ongoing contribution; it is also about getting recognition that the Australian community as a whole is the beneficiary of those decisions.

Senator JOYCE—I own a property. If the government says I can no longer clear the trees on my property—and in some instances that has happened—do I still have to pay rates for the section of my land where those trees are, which I can no longer use?

Mrs Kerr—Yes.

Senator JOYCE—Do I have to pay the insurance for that piece of country?

Mrs Kerr—Yes.

Senator JOYCE—Do I have to keep the weeds out of that piece of country?

Mrs Kerr—Yes, you have a legal obligation.

Senator JOYCE—If one of those trees on my property, which for all intents and purposes is owned by someone else, falls on the head of someone who is walking across my place—a shooter, a bushwalker or an environmentalist—who are they going to sue? Is it the government, or me?

Mrs Kerr—They will sue you, and we have referred to that in our submission to the vegetation framework.

Senator JOYCE—Are there any other forms that you know of where the government has acquired an asset but left all the liabilities of ownership—running costs, maintenance, insurance, repairs, the whole lot—with a third party?

Mrs Kerr—No, not off the top of my head.

Senator JOYCE—How do you think it would go if in urban Australia they took an asset from the individual—say, the third bedroom—but left all the legal liabilities to the person from whom the asset was stolen—that is, the house owner?

Mr Armstrong—I think the message would get through very quickly.

Senator JOYCE—So why do you think an absolutely indisputable clarion message that there is an injustice has not managed to collect the public sentiment to change the political will in such a way as to fix this problem?

Mr Armstrong—We as farmers have become a very small part of the electorate constituency, and that is where the dilemma has occurred. One point that you have left out is that there is an expectation by government that we as farmers will continue to manage the particular asset that actually belongs to them. So not only are all those liabilities still there but there is an expectation that we will maintain it in its current condition at our cost.

Mrs Kerr—The only other point I would make is that governments have come a long way, because it was only a few decades ago—half a century ago—that farmers were still required to clear the land at the government’s request. Now they are being told that they cannot clear the land and they have to replant it.

Senator JOYCE—That is the next point I am going to. On leasehold lands and on certain leaseholds, was it obligatory for the person who took up the lease to clear it in a particular manner in order to keep the lease; otherwise they had to hand it back?

Mrs Wawn—Yes, I think it was, in most instances.

Senator JOYCE—So they are not only stealing the asset of the person who owns it; they are managing to steal from the dead. They are stealing the life and the efforts of those who came before them, everything they committed their life to—to actually increase the value of that asset. So, on farms held by generations, there are people now who can look back at their grandparents and say, ‘You wasted a lot of your life, because the government has completely turned around on what you did.’

Mrs Kerr—I think I can provide an article, but there are certainly circumstances where the media have reported on farmers whose parents or grandparents have locked in biodiversity outcomes and now their children and grandchildren are regretting what they did, because of the punitive nature of some of these laws.

Senator JOYCE—What do you believe is the productivity of land where you are unable to deal with the regrowth? What happens to the productivity of that country?

Mr Armstrong—It declines to close to zero, depending on the conditions and where it is.

Senator JOYCE—So what is the relevance of a government that talks about productivity increases when it has a policy in place and is in collusion with state governments to actually decrease the productivity of the land?

Mrs Wawn—I think, in terms of that particular question, it is this issue of balance—that if we do want to achieve certain environmental outcomes for the public good then the public have to contribute to maintaining those outcomes; and, if they do not wish to, then obviously part of that role has to be programs and compensatory measures. So we have identified a range of solutions to ensure that, if those public outcomes are sought, there are mechanisms whereby the farmer is compensated or provided with opportunities to assist. However, there needs to be balance, and that balance needs to ensure that we maintain the productivity outcomes we need for farming in Australia, that we have food and fibre available for domestic and international consumption and use and so that we can continue to maintain very strong, viable regional communities in this country.

CHAIR—Senator Joyce, can I ask that this be your last question. We are going to the government and then we will come back to the opposition.

Senator JOYCE—Sure.

Mrs Kerr—Can I just add to Denita's answer? It is why we keep talking about the Environmental Stewardship program. It is about actively managing for environmental outcomes, not a 'lock up and leave' approach that much of the vegetation laws are requiring farmers to do. It is about better management and environmental outcomes.

Senator JOYCE—My final question is: do you believe it is just to discriminate against a minority group, farmers, because they are not vocal enough, and to discriminate against them in the most pertinent form—that is, to divest them of their asset and also completely interrupt and impose yourself on their future income stream?

Mr Armstrong—It is definitely not just, but it is also not just for government to acquire private property or incumbent private property in any circumstance, whether it is agricultural or wherever. That is the issue we are bringing to light. In conversions of title from perpetual lease country, which you referred to, to freehold country, we even have covenants added on to those titles that are way beyond the requirements of the Native Vegetation Act. And again we have got a perpetuation of this mindset that someone else knows better how to control or manage the asset.

Senator JOYCE—Thank you.

Mr Young—Can I just make a comment on that. The rural communities that are maintained by our farmers—the combination of the farmers and the rural communities—require long-term sustainable use of our natural resources and the only way that we can have long-term sustainable use is by the triple bottom line outcome—social, economic and environmental. The current legislation is not really caring for the environment but penalising our farmers and rural communities, because they are taking the use of the natural resources away from us.

Senator POLLEY—Thank you to both organisations for your submissions and for appearing before us today. Did either of the two organisations receive a report from the Howard government which, I understand, was circulated to farmers associations in 2003, which outlined the social and economic impacts of Queensland land clearing as a result of proposals being negotiated between the Howard government and the Beattie government at that time, which quite clearly stated that farmers would be hurt but it was the cheapest way to meet Kyoto targets? There are statements I could quote that relate to Senators Hill and Kemp in relation to greenhouse gas emissions. Did either of the organisations receive those?

Mrs Wawn—I am not aware, but I can take that question on notice and check our records.

Senator POLLEY—New South Wales?

Mr Armstrong—Again, I would have to take it on notice. I was not involved, except by being a farmer and impacted by it in terms of those sorts of issues at that time.

Senator POLLEY—If you could take that on notice, I would appreciate that. Earlier questioning related to how this issue can be resolved. It was suggested that COAG could be part of the vehicle for that process. I would like to ask whether, at any time, either of the organisations made a protest to the Howard government to use COAG as a method of resolving

these issues and, if so, could you provide or table any documentation that you provided to the Howard government?

Mrs Kerr—The NFF did engage in discussions with the Howard government for a COAG agreement for native vegetation. While I was not privy to those discussions, we are happy to take that on notice and provide the relevant documentation.

Senator POLLEY—Do you know why it failed?

Mrs Kerr—My understanding is that COAG could not reach agreement.

Senator POLLEY—I just want to clarify this for the record. Earlier evidence was given, I think, by Mr Armstrong in your opening statement. I think it has been referred to a number of times that at no time has the New South Wales government actually offered compensation. Do you stand by the evidence that you have now given to us? It is very important that we know whether your organisation is putting on the public record that no compensation has been offered by the New South Wales government at any time?

Mr Armstrong—There may be some particular aspects for which compensation has been offered but, in terms of the big picture and the major impact, to the best of my knowledge the answer is no.

Mr McElhone—Definitely none in relation to the carbon credits forgone as a result of those decisions.

Mrs Wawn—I would probably have to take it on notice, but I am aware of some provisions within the state legislation. I am not close to it because it was not national legislation; it was state legislation. I think there were some provisions in the state legislation whereby under certain circumstances compensation was available. But I would like to have a closer look at that state legislation, which I have not considered personally.

Senator POLLEY—If you could take that on notice, I would appreciate that. I think it would be most helpful. In relation, though, to New South Wales, to the best of your knowledge there has been no offer of compensation? Was there any offer from the former Howard government, which implemented this legislation, to compensate?

Mr Armstrong—We will have to take those details and come back to you on it. These are things that occurred well before any of us were involved and, obviously, I cannot be specific or totally accurate in answering those questions.

Senator POLLEY—Please take that on notice, because I think it is really important, after 10 or 12 years of this being a major issue for the farming community, that we get the facts on the record as to what compensation was offered and by whom. The other issue is for the national body. Can you explain to me, or do you have any knowledge in relation to, why the Howard government negotiated compensation in relation to Queensland but, after the Queensland state government passed their legislation, that was withdrawn?

Mrs Kerr—We would have to take that on notice too. We do not have any detailed knowledge of those negotiations.

Senator CAMERON—I understand that in 2003 there was an ABARE report on native vegetation circulated to farmers associations. Is that correct?

Mrs Kerr—What particular report?

Senator CAMERON—A report on native vegetation.

Mr Armstrong—There was a report. ABARE did do a study. I would suggest that the report I am referring to is 2004, but there was a study done on some of the impacts, looking at the western marginal sheep-wheat belt.

Senator CAMERON—Did it deal with the issue of Kyoto?

Mr Armstrong—I do not know. We will take it on notice.

Senator CAMERON—Can you look specifically at whether that report indicated that the best and most cost-effective way for the government to meet its Kyoto targets was to prevent land clearing. Are you aware of that?

Mr McElhone—I am aware that there was an ABARE report, but I do not have the details about the contents of that. But I know it related to this whole issue. I will have to take that on notice.

Senator CAMERON—The New South Wales Farmers Association have indicated in their submission something similar to that.

Mr McElhone—Yes.

Senator CAMERON—So maybe you can take us to that.

Mr McElhone—Yes, I am sure we have it.

Senator CAMERON—You are the federation and you are the association, aren't you?

Mrs Wawn—No, I am from the National Farmers Federation.

Senator CAMERON—Where is the association?

Mr Armstrong—Here.

Senator CAMERON—Can you deal with that issue that is in your submission, then?

Mr Armstrong—We have not made any reference in that submission to that ABARE report in relation to Kyoto to the best of my knowledge. But we can come back to you on that and clarify your question for you.

Senator CAMERON—Okay. I think it may have been Mrs Wawn—I could be wrong—who spoke about ‘regulation by stealth’ in the opening submission. Given that there is a plethora of Howard government press releases and discussions with farmers associations, how can you say that this is by stealth and that the situation we are in now has been done by stealth? There were discussions with the Howard government. In fact, there were discussions with Senator Truss, Senator Kemp and Senator Macdonald. It was all on the public record. So how is that by stealth?

Mrs Wawn—It is the cumulative effect of regulation, not just on biodiversity issues but also on a range of impacts on property rights of farmers, that was being referred to. In terms of any particular negotiations, discussions and transparency of state and federal legislation specifically relating to this issue, I am certainly aware that there were some general discussions, and obviously we were aware of legislation being introduced. Obviously there was lobbying on behalf of the farmer groups. Regardless of that lobbying, the legislation took place. In terms of those details, as was stated previously, none of the NFF representatives here today were involved at that time on any of those issues. So, in terms of detail and what commitments may or may not have been undertaken or comments, we will have to take that on notice and see what we can provide to assist with the senator’s questions.

Senator CAMERON—Perhaps you could also take on notice the question of a media release by Dr David Kemp, the Howard government environment minister, on 22 May 2003, where he outlined negotiations that took place between Commonwealth ministers, Agforce and the Queensland Farmers Federation. There was a whole range of issues on land clearing. It went to issues of financial incentives, incentives for improved management and incentives for best practice farm management. All of those issues were out there. It certainly was not being done by stealth, because you had some of the most senior rural based ministers in the Howard government talking to you guys about this issue. I would be interested to know what your public response was to that, what your response was to your members in relation to those issues and where you took it from the period 2003 to the defeat of the Howard government in 2007. What were you doing on these issues?

Mrs Wawn—Certainly in relation to that particular issue, we would have to check with our member organisation, Agforce, about the particular issues relating to Queensland. As they have made a submission in their own right, they may well be appearing before this committee when you attend in Queensland. They may be able to assist at that time.

Senator CAMERON—There is the general issue of compensation. Senator Joyce spoke about the need for compensation and was reported in the *Australian* as saying that it is all too expensive. What is your assessment of the amount of compensation that would need to be paid to satisfy the concerns that you are raising? Who would be responsible to pay it?

Mr McElhone—Basically, as we discussed in our submission, when it comes to compensation we are looking at market based mechanisms. It is impossible for a government to come in, regulate and then say, ‘We’re going to give you this amount because we think that this is the amount that is just, or on just terms.’ That needs to be arrived at through a collaborative

approach using, as we have recommended for a market based mechanism, something like the environmental stewardship program to come to realise an agreed amount that is acceptable to both parties. This has broader ramifications.

Mrs Kerr—Could I talk for a minute about water. The National Water Initiative, which is an intergovernmental agreement signed by the Commonwealth and the states in 2004, made provisions for compensation to affected entitlement holders for reduced reliability. The provisions are called risk assignment. The risk assignment clauses state that the state and Commonwealth governments and irrigators agree that, for any change in reliability due to climate variability or climate change, the entitlement holder, including the Commonwealth, will bear the risk of that change. If the change is due to government policy, governments have agreed to fund that 100 per cent. If it is in relation to new knowledge, irrigators or entitlement holders wear the first three per cent, the next three per cent is shared—two per cent by the state government and one per cent by the Commonwealth, and there is a caveat on that with New South Wales—and thereafter the Commonwealth and the state governments wear that fifty-fifty. If you are looking for a model for compensation as something different to market based instruments, then that is a model that is already agreed, signed and being implemented as we speak.

Senator CAMERON—Where is this—in New South Wales?

Mrs Kerr—No, for all states and territories and the Commonwealth.

Senator CAMERON—That is not sufficient—is that what you are saying?

Mrs Kerr—No. What I am saying is that the National Farmers Federation and all irrigator groups have agreed to that risk assignment framework—that compensation framework—as have all the state and territory governments and the Commonwealth. It is being implemented through the National Water Initiative, which the National Water Commission has carriage of.

Senator CAMERON—Coming back again, what would be the cost to the public purse?

Mrs Kerr—That is yet to be determined. But the Basin Plan, which we will see a draft of come mid-July and which will be finalised in mid-2011—

Senator CAMERON—Now—

Mrs Kerr—It is important that I explain this.

Senator CAMERON—You did not let me finish my question. What would be the cost to the public purse to have a similar scheme for native vegetation?

Mrs Kerr—The NFF and the ACF did some work some time ago. I was not privy to that work but I think the estimate was about \$9 billion, Australia-wide. I am not sure what the basis of that work was but we can seek to provide that to the committee.

Senator CAMERON—If government agreed to this \$9 billion, how would we deal with the arguments from Senator Joyce about debt? Would you be agreeable to the government going into more debt to pay that money?

Mr McElhone—The key thing here is if you cannot afford it you do not do it. We are saying: do not go into these decisions which affect the property rights of farmers if you do not have the money to appropriately compensate them for the loss of the property rights and property value.

Senator CAMERON—That is in the past; it has happened. You are claiming it has happened and you want to get some restitution. I am saying to you: if the restitution means that the government has to go into more debt to pay that, are the two associations that are here today prepared to accept that the government should go into more debt to do that?

Mrs Kerr—The NFF submission clearly states that legacy costs of these laws are being dealt with through the courts, and Denita could speak to that, if you like. What we are suggesting—

Senator CAMERON—But what you have said here is that there should be restitution, that there should be financial arrangements made. Some of the submissions say, ‘We want a system outside the courts.’ If you go outside the court system and it costs \$8 billion or \$9 billion or \$10 billion or \$12 billion to provide restitution on the issue of native vegetation, then I am simply asking: is that something the government should go into debt to pay? That is the question I am asking.

Mr McElhone—Yes.

Senator CAMERON—Yes? Is that your response?

Mr McElhone—It is obviously a complex question but, yes, if that is the price of appropriate compensation, then that is the price.

Senator CAMERON—So the issue of debt—

Mr McElhone—It is a broader issue.

Senator CAMERON—The issue of debt that has been raised by Senator Joyce does not matter in this case? You say simply: the issue of providing restitution is the thing to do?

Mr McElhone—Yes.

Mrs Kerr—There are a range of ways in which that can be done. We have submitted about market based mechanisms like the Environmental Stewardship Program. There are mechanisms like the risk assignment for water. There are all sorts of ways that that can be managed. Our formal submission talks about future compensation, not past, and I guess that issue is being dealt with through the courts. We have also talked about 2004 negotiations through COAG, and if that was to go back to COAG I am sure that they would come up with an appropriate arrangement for vegetation and other options.

Senator CAMERON—I raised the issue of the comments by the member for Calare, Mr Cobb, that basically this is not a federal government issue. I also raised the issue—

Senator HEFFERNAN—Time's up!

Senator CAMERON—You are not chairing this. When the chair tells me I cannot ask any more questions, that is when I will stop asking questions, not when you tell me.

Senator HEFFERNAN—Tell him!

CHAIR—Senator Cameron, I was about to say that when you have concluded this question you will need to wind up.

Senator CAMERON—That is good.

Senator HEFFERNAN—It's repetitive political bullshit!

CHAIR—Senator Heffernan, as we have commented before, that is not necessarily appropriate language.

Senator HEFFERNAN—But it is true.

Senator CAMERON—In terms of going down the track of compensation, how do we deal with that when John Cobb, the member for Calare, is saying there is no legal basis for the federal government to do it? How do we deal with it on that basis? We have also got Senator Joyce—I am not sure whether he was the shadow minister for finance at the time—doing a backflip, saying at one stage to farmers that they should get compensation but saying to the *Australian* that it is too expensive. How do we deal with these contradictions?

Senator HEFFERNAN—Take it on notice and let us get on with it.

Mrs Wawn—There are two aspects to that question. One is the issue that, yes, some of this is state legislation and state governments have responsibilities that we do not deny. There is also the responsibility of the federal government through its own legislation but also its interactions with state governments through a series of IGAs and some of its international obligations. Regarding the degree of responsibility from the various levels of government, as I said previously, some of that has been before the courts and is currently before the courts. In other instances, we believe that there needs to be a reconsideration of these issues at the COAG level, and obviously there needs to be continuing discussions with our organisations at both the federal and the state level to find solutions to these issues for the future.

Senator CAMERON—Have either of your associations raised any concerns about the statements of Mr Cobb or Senator Joyce with the coalition? Have there been any discussions with the coalition on how you can achieve a change to legislation through the support of the coalition? Is that being done?

Mrs Wawn—Not that I am aware of, but I would need to speak to our leadership on whether or not any of those issues have been raised with the coalition.

Senator CAMERON—Thanks.

Senator HEFFERNAN—We have been through all the political bullshit now. Let's get to a solution.

CHAIR—Senator Heffernan!

Senator HEFFERNAN—Part of the solution to compensation from a farmer's point of view ought to be allowing him to get the opportunity, rather than being compensated on the land, to get a quid out of the land—returning the rights to use the land against the background of the changing science on the climate, with new varieties, new techniques et cetera. If we were able to find a solution that was somewhere in the middle between the politics of the blame game and hard-core legal compensation and return, for instance, to Cameron Rowntree at Walgett the right to operate his degrading farm by better technology, better plant species et cetera, would that be adequate compensation?

Mr Armstrong—It is a possibility. There are a whole raft of problems within this concept that we are talking about and they are going to vary in terms of their impost on particular individuals. It is certainly not a simple question, but the short answer to your question is, yes, there are plenty of mechanisms there that to some extent would return the ability of the property operators to rescue some of the loss that they have suffered as a result of these bits of legislation.

Senator HEFFERNAN—When they go to the supermarket, people like Senator Cameron think, 'The milk's there; the meat's there; the vegies are over there'—that is all they know about it.

Senator Cameron interjecting—

Senator HEFFERNAN—You can tell they do not know; they are rabble. In fact, the challenge of the global food task will be met with science and responsible, environmentally sustainable use of the land and a compensation cheque is not necessarily the solution.

Mr Armstrong—My answer to what you are trying to say is, yes, giving opportunities to the managers of the land to operate it sustainably and gain a return for that will enable them to continue to manage the environmental assets that are there.

Senator HEFFERNAN—Part of coming to the determination of what is a fair thing in that regard might be a broad-scale informing, as the ETS debate did, of the dangers to agriculture under a Kyoto arrangement and understanding what the science is saying about what the future holds for the landscape of Australia, which, if it is correct, means we may well have to reconfigure the way we have settled rural and regional Australia—for instance, the proposition that you will lock up into a World Heritage area a lot of the Cape York Peninsula when in fact the science is saying perhaps we should be locking up some of the really marginal wheat country in South Australia. If the science is right, it is just going to become desert. To make informed decisions for farmers, isn't just as important as a compensation cheque an information database that says, 'This is what is probably going to happen over the next number of years; these are the varieties of crops'—

CHAIR—Senator Heffernan, we are pressed for time. Can we move to a question?

Senator HEFFERNAN—What I am trying to say is that there is more than one way to skin this cat.

CHAIR—I appreciate that; it is just that we are particularly pressed for time. This will be your final question.

Mrs Kerr—I think you are correct, Senator: farmers need to sustainably manage their landscaping in a very flexible way. The other thing that is not recognised quite widely is that families do value their land.

Senator HEFFERNAN—Hear, hear.

Mrs Kerr—You only have to look at the University of New England study that we have quoted in our submission, where it says that farmers protect the environment: (1) because they want to, (2) because they value it and (3) for production. The stewardship ethic that farmers have is very strong. Yesterday I was at a Murray-Darling forum talking about the new Basin Plan. We had an Indigenous person from the northern basin get up and say, ‘The farmers that I know of not only provide us with employment but they have a strong connection to their block, like Indigenous people have a connection to country, and that is not well understood by governments.’ I think that needs to be valued and appreciated. If farmers are given the tools, the knowledge, the R&D and the flexibility, they can manage this land sustainably for good outcomes for the environment, for production and socially.

Senator HEFFERNAN—So, in addressing this transition, do you think we will be able to convince the decision makers, the lawyers, the farmers and the environmentalists that, rather than the prospect of historic native vegetation which may have been there 2,000 years ago, in terms of the global food task there may be better species we can plant?

Mrs Kerr—There are a whole range of options for farmers. If we look at the vegetation framework, it actually quotes that 83 per cent of pre-European vegetation extent remains. There are some particular species that do not. In a climate change scenario, the resilience of some species is going to change and we are going to change where some vegetation is grown, but you are correct in a lot of ways: R&D will provide us with the tools to manage in the future.

Senator WILLIAMS—Mr Armstrong, just going back through a bit of history: 1995 saw the election of the Carr Labor government in New South Wales. At the time, we had the Keating government in Canberra. It was Mr Carr who said, ‘I will have the greenest government the state has ever seen.’ He then had a minister called Kim Maxwell Yeadon—John Laws referred to him as a jumped-up shop steward—who brought in SEPP 46, State Environment Planning Policy No. 46, which immediately put a stop to land clearing et cetera. That is where it all started in New South Wales, as far as broadacre, broadscale land clearing is concerned. Would you agree with that?

Mr Armstrong—I think you are probably accurate, yes.

Senator WILLIAMS—I will draw an analogy. Imagine if the state government made a rule that workers in New South Wales had to bank 10 per cent of their net income each week and then the federal Treasurer came out later and said: ‘What a great way Australia has lifted its savings. Look at the money in the bank.’ Would that be like what happened with the native vegetation clearing laws and the federal government claiming the credit—the states made the laws and then the feds claimed the credit? It is just like my analogy—the hypothetical case of the state making a law that says you have got to bank 10 per cent of your wages each week and then the federal Treasury claiming the credit. Is that how you see it?

Mr Armstrong—It is very close to it, except that it is a damn sight more than 10 per cent.

Senator WILLIAMS—Exactly. I want to take on a few things that I find quite alarming. With your permission, Chair, I would like to table this document. It is an affidavit—sworn on the Bible, of course—from a solicitor. Thank you, Senator Nash. We will just remove that piece off the top. It says that, during a conversation the solicitor was having with a farmer and a member of the Department of Environment, Climate Change and Water, the solicitor said to the public servant, the inspector of the department, ‘Why are you doing this?’ The farmer was charged over digging up some ground to remove blackberry bushes which had a rabbit warren under them. He was ripping them out and he just happened to take a couple of trees out. He was charged. The departmental employee, the inspector, said, ‘We must have so many prosecutions per year,’ hinting that they have got to charge so many people to get the money in to fund their jobs or whatever. Do you find that extremely concerning?

Mr Armstrong—If the department is trying to put targets for compliance people to be involved in what is a very delicate issue—and delicate for the management of the farmers who are trying to do their best in terms of production and environmental needs—yes, it is alarming.

Senator WILLIAMS—It is alarming, especially considering this farmer was trying to remove a noxious weed, in blackberry bushes, and clean up vermin, in rabbits, and now he is being charged for protecting his environment. I would like to table that affidavit.

CHAIR—Senator Williams, we will have to have a private meeting of the committee to discuss the tabling of that.

Senator WILLIAMS—Okay.

CHAIR—You have quoted from it. Would you like a private meeting afterwards?

Senator WILLIAMS—That is fine by me. Yes, we would.

CHAIR—Okay. We will do that.

Senator WILLIAMS—Mr Armstrong, I am going to go on to this issue of change of land titles. I heard of a case today where 1,200 acres—I believe it is on the north coast of New South Wales—has for some 100 years been a cattle property, and the New South Wales government has encouraged a change of title from perpetual lease to freehold. When the farmer, who bought the land in good faith to run it as a cattle property and produce beef and earn a dollar, of course, got the freehold title back for confirmation, he found there was a caveat put on that title which says

he cannot run cattle; he can only run native animals and grow native grasses. Now, this is a case where they go to change the title of the land they bought in good faith to be a cattle property and now they cannot run cattle on it. If he does not accept the freehold title and goes back to a perpetual lease, he will have to pay the commercial lease value of that property, about five per cent of the value, just as I would if I leased Senator Joyce's property. What contribution can you make to what I have just put to you?

Mr Armstrong—I will ask Rod Young to make a couple of comments, because he has got some pretty good, specific details. But I think it is worse than you have suggested it is, in that there is even a caveat in some cases that the department is adding on to that potential freehold title that chemicals cannot be used to control noxious weeds if they might damage a native plant. Now, what on earth is a farmer supposed to do? We are not in China. It is just not possible. Why I say it is worse than that is the penalty: if you do not accept the caveat or the negotiated position that might follow from that, the potential increase in the rental to maintain it as a perpetual lease is in the vicinity of about 5,000 per cent in some cases. Rod might take that a bit further.

Mr Young—The person from my committee who is actually dealing with the issue is not here today, but she and our president have been along to the state government and we are attempting to sort out the issue. There are a number of these cases, and we have got an assurance that this situation will be corrected. But it is obvious from what we can see that the bureaucracy has been dug in for a long while in New South Wales. It is a case of bureaucracy that has got out of hand, and we are trying to bring it to heel.

CHAIR—Senator Williams, this will need to be your final question.

Senator WILLIAMS—Okay. Mr Armstrong, if a licence is granted to carry out mining in an area and there are trees there, the mining company just takes the trees out—no questions asked. In metropolitan areas, around Sydney, for example, if they wish to develop a new subdivision the trees can be taken out and they can just put down bitumen and concrete et cetera.

Senator CAMERON—Not true.

Senator WILLIAMS—Have a look at the expansion of Sydney. But on the farm you are not allowed to do that. Now, as I put to witnesses earlier on from the Australian Network of Environmental Defenders' Offices, these native vegetation regulations were supposed to be for the benefit of all Australians but the price is paid only by the farmer. Should all Australians pay for these changes?

Mr Armstrong—Certainly, they should, particularly if it is going to be used as a carbon offset or to enable Australia to meet its carbon reduction targets on any carbon scheme, if one ever gets introduced. Again, it is a very serious issue, where the individual who purchased the property in good faith under the laws at the time and made certain decisions in relation to that investment finds down the track that they cannot do what they invested in doing and there is no recompense and no way of seeking compensation in relation to it.

Senator WILLIAMS—Thank you.

Mr Young—It is really going to come down to governments to decide whether the agricultural sector in Australia is going to be a service sector or continue to be a long-term, sustainable, productive sector.

Senator NASH—That is right.

CHAIR—I thank the representatives of the NFF and the New South Wales Farmers Federation for your submission and your detailed comments today and for agreeing to appear together. I think it was quite helpful to the committee to get both perspectives and go a bit deeper.

[12.50 pm]

RHEESE, Mr Max, Executive Director, Australian Environment Foundation

CHAIR—Welcome. On behalf of the committee please accept our gratitude for waiting. We are running a bit behind schedule, but we have had some quality submissions and also interviews with previous witnesses. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. The committee has your submission. I invite you to make a short opening statement and, at the conclusion of your remarks, I will invite members of the committee to put questions to you.

Mr Rheese—It could be argued that native vegetation laws and legislated greenhouse gas abatement measures are coincidental and separate in their intent, but their implementation results in the same or similar impacts on landholders and on the environment. The primary object of the New South Wales Native Vegetation Act 2003 is ‘to provide for, encourage and promote the management of native vegetation on a regional basis for the social, economic and environmental interests of the state’. The AEF contends that the act fails to achieve this objective. The Wentworth Group of Concerned Scientists, in 2002, noted:

Clear distinction needs to be made between the need to stop broad-scale clearing of remnant native vegetation and the need to control shrub invasion in the semi-arid and arid pastoral areas of Australia.

The AEF contends that distinction is largely absent in the application of native vegetation laws. The Kyoto protocol, as per the Department of Climate Change and Energy Efficiency, states the Kyoto protocol mechanisms:

... are based on the principle that the benefit to the climate of reducing greenhouse gas emissions is the same regardless of where they are reduced. The cost of taking action will vary from place to place, so the Kyoto Protocol enables the global community to reduce emissions where it is the most cost effective.

The AEF submits that Australia’s application of the Kyoto protocol is spectacularly successful in regard to no cost of compliance to over 99 per cent of Australian citizens in the first commitment period of the protocol. The majority of compliance costs of meeting our international obligations falls unfairly on less than one per cent of the community. The Wentworth group, again, stated:

The focus on climate change policy has centred on reducing greenhouse gas emissions from energy generation, manufacturing and transport because this is fundamental to any solution to climate change. But this has not been Australia’s focus in the reduction in emissions under the Kyoto Protocol.

I draw your attention to the table of the Australian Farm Institute, on page 6 of our submission. I believe a copy of that was handed to you this afternoon. You will note there that all emissions have risen, with the exception of land use change and forestry. Agriculture has only risen 2.2 per cent; land use change and forestry has fallen by 72.5 per cent. Again, the Wentworth group states:

If changed grazing and cropping practices resulted in the capture of just 15% of this potential—

—that is, the potential to store carbon in the soil—

carbon stores in Australia's agricultural soils would offset 140 Mt CO₂e—

that is, 140 million tonnes of CO₂ equivalent—

of Australia's emissions each year.

Without planting a single tree, it would improve the health of our farmland and Australian agriculture would become carbon neutral.

The reason I highlight that is that there are other means to achieve what is trying to be achieved by the Kyoto protocol. But tree canopy, rather than net biodiversity gain or carbon dioxide stored in the soil, has become the focus of both native vegetation laws and the Kyoto protocol. Why then are we focusing on tree canopy? Because it is easier to measure and regulate, rather than providing the best outcome.

The current situation in New South Wales and Queensland at least is that the application of a complex and confusing array of legislation compounded by a lack of understanding of the unintended consequences for the long-term biodiversity and pastoral management is a demonstrated decline in the quality of both. There seems to be a disconnect between the intent of native vegetation laws and the clearly recognised need to assure confidence and security in food production and the management of private land to produce good environmental outcomes. While most landholders would welcome an incentive based stewardship role for the environment, the current situation is taking them from an ownership role to an involuntary environmental stewardship on behalf of the state. This comes at a cost to productivity which affects their ability to manage their land for the long-term environmental interests of the state, as mentioned in the objects of the act. The continuing reduction in a landholder's ability to manage soil, water, native vegetation and weeds on his own property threatens to undermine productivity, regional economic stability and confidence.

Achievement of the best policy outcomes long term is more likely by cooperative incentive based schemes, rather than punitive regulatory measures, whether those outcomes Kyoto driven more biodiversity driven. The AEF contends that a viable, confident rural sector looking to the future will be the vehicle to drive gains in biodiversity protection and enhanced vegetation management. Effective biodiversity and land management will not occur without the cooperation of those who control the majority of the land.

If federal and state governments are hell-bent on achieving the objectives outlined in the current legislation for the benefit of the wider community and international obligations, then cost equity in achieving these objectives must be recognised. If biodiversity conservation on private land is to be given primacy over food production and individual property rights, policy intent must be clearly articulated and debated publicly. If this is not the policy intent, the unintended consequences need to be addressed by legislative amendment. The AEF has several recommendations it would like to submit to the committee, if that is okay with the committee.

CHAIR—Sure. I ask you to be brief because the more you speak now the shorter the opportunity for further discussion.

Mr Rheese—Yes. Recommendation (1) which the AEF puts to the committee is that the state governments amended native vegetation laws to introduce meaningful incentive payments to landholders for the management of biodiversity values on behalf of the community. Recommendation (2): that an urgent assessment is undertaken by state governments to determine whether implementation of native vegetation laws are having a negative effect on biodiversity. Recommendation (3): that the federal government investigate if the application and outcomes of native vegetation laws contravene the Environment Protection and Biodiversity Conservation Act.

Senator NASH—I do not think those recommendations are in your submission, Mr Rheese.

Mr Rheese—No, they are not.

Senator NASH—Would you mind tabling those recommendations?

Mr Rheese—I am happy to table those, if that suits the committee.

CHAIR—If you could circulate those to the committee secretariat when Ms Gaha returns, that would be helpful.

Senator NASH—Thank you.

Senator CAMERON—Mr Rheese, is the AEF an environmental organisation?

Mr Rheese—That is correct.

Senator CAMERON—You are the chief executive, are you?

Mr Rheese—I am the executive director.

Senator CAMERON—What is your environmental qualification?

Mr Rheese—I do not have any formal environmental qualifications. The board of the AEF is made up of a number of people who have various academic qualifications.

Senator CAMERON—Is your submission a joint board submission, or is it from you?

Mr Rheese—It is a submission that has largely been prepared by me. It has been forwarded to the board for—

Senator CAMERON—So you have no qualification but you did the submission.

Mr Rheese—That is correct.

Senator CAMERON—Do you operate out of the same address as the Institute of Public Affairs Australia?

Mr Rheese—That is incorrect.

Senator CAMERON—Where do you operate from?

Mr Rheese—We have a postal address, which is in Canberra. We have never operated from the same address as the Institute of Public Affairs.

Senator CAMERON—You argue that there should be meaningful incentive payments. What is the cost of meaningful incentive payments?

Mr Rheese—I do not know, but I have put it on the table that the incentive payments that we have seen so far under the likes of Landcare programs are so small that they are disincentive for landholders to actively manage their land to meet the intent of the native vegetation laws and still be viable.

Senator CAMERON—Do you have any view on the figure that the farmers' organisations put forward—somewhere in the region of \$9 billion?

Mr Rheese—I have no qualification as to what the amount of the incentive payment might be. I could not put a figure on that for you. What I am putting before you is that there needs to be meaningful incentives going forward. I see that as perhaps more valuable than compensation. I do not want to denigrate any calls for compensation, but if we really want to achieve some biodiversity outcomes that are going to be useful for the country then we have to offer incentives to the people who are managing the majority of that land.

Senator CAMERON—Could those incentives go into several billion dollars?

Mr Rheese—I believe they could.

Senator CAMERON—Where would the money come from for that?

Mr Rheese—That is job of government. With all due respect, the state governments and the federal governments of all persuasions have been complicit in bringing this arrangement around. I would suggest that the framers of the legislation did not have a good understanding of the likely unintended consequences that would result in farming communities and that it should be a primary consideration of both state and federal governments to make that sort of money available so that the farming community is viable to undertake the biodiversity outcomes that they obviously want to see through this legislation.

Senator CAMERON—You raised in your submission the issue of the Australia clause in the Kyoto agreement. Can you explain to me the problems you have with that?

Mr Rheese—It has put all the focus on gaining emissions from land use changes, and that has probably been detrimental up to this point in time. Without any further legislation, it has put the focus on obtaining that through the banning of land clearing, so it has obviously been very attractive for government to bring in this mechanism which has allowed them to meet their Kyoto obligations and therefore the Australia clause. This has been, relatively speaking, cost free for the government to do.

Senator CAMERON—When you say ‘the government’, are you talking about the previous government, the Howard government?

Mr Rheese—Yes, because they were—

Senator CAMERON—They were the architects of that.

Mr Rheese—They were the architects of that.

Senator CAMERON—Are you also aware that, after the Australia clause was signed, a number of government ministers issued press releases designed to put pressure on New South Wales and Queensland to implement native vegetation laws to reduce clearing to try and meet the reduced carbon footprint?

Mr Rheese—I am vaguely aware of that, yes.

Senator CAMERON—It was a public issue at the time. Was your organisation operating at that time?

Mr Rheese—No. This legislation that I have addressed this morning was one of the primary reasons for the formation of the Australian Environment Foundation in 2005.

Senator CAMERON—Do you have any relationship with any other environmental groups?

Mr Rheese—The Rivers and Red Gum Environment Alliance and the Victorian Lands Alliance.

Senator CAMERON—That is it?

Mr Rheese—Yes.

Senator CAMERON—None of the big ones?

Mr Rheese—No.

Senator CAMERON—In terms of the cost, if it cost several billion dollars and government said, ‘Okay, we’ll provide these incentives’—you run the incentive line, not the compensation line—would it be appropriate for government to increase debt if they had to to pay that?

Mr Rheese—What I think would be appropriate for the government would be to prioritise the debt that it has. The Australian Environment Foundation would argue that the primacy of getting good biodiversity outcomes and ensuring the security of food production is of the highest order and the government should be addressing that before it addresses other issues.

Senator CAMERON—You indicate in your submission:

The focus on native vegetation laws to prevent deforestation in certain regions, may have produced perverse environmental and ecological outcomes.

Has there been scientific study done of that?

Mr Rheese—There have been a number of studies. I would have to take that on notice. What I can say to you is that there are certainly a number of areas in New South Wales, in particular, where thickening rangelands have produced a monoculture or almost monoculture of invasive native species that has seen the disappearance of ground cover, which has then seen the disappearance of some species of birds—and so it flows.

Senator CAMERON—I am just having a look at your website now. Under ‘About Us’, you say what you do and you say:

Evidence - policies are set and decisions are made on the basis of facts, evidence and scientific analysis.

Have you applied that test to this statement?

Mr Rheese—I believe so.

Senator CAMERON—You believe so? Has there been a scientific study done, an evidentiary study?

Mr Rheese—I believe there has. I could not quote those to you. I am prepared to take that on notice. What I can say to you is that I have visited these areas, I have seen them, I have seen the evidence for myself and I have spoken with landholders in these areas west of Dubbo and in southern Queensland. There is no doubt in my mind the application of native vegetation laws is leading to perverse environmental outcomes. If you would like me to detail what scientific studies are available on that, I am happy to take that on—

Senator CAMERON—No. I am asking what scientific studies you have done or used to determine the statement on your submission.

Mr Rheese—The Australian Environment Foundation has not done any scientific studies on the effects of native vegetation laws.

Senator CAMERON—Your submission states, on page 15:

... a regulatory approach has not adequately addressed the most effective pathways to achieve outcomes that are affordable and equitable.

Can you outline what the most effective pathways are?

Mr Rheese—Offer an incentive to the landholder to manage the land and give him a return for doing that on behalf of the community. There are a number of programs which I am sure you are aware of—Landcare and whatnot. If the community sees this as important and they want to see an increase in tree canopy, which affects the productivity of private farmland, those same programs could be used to offer an incentive to those landholders, because all the evidence at

this stage points to many of those farm holdings not being as productive as they once were because of the effect of the legislation. If that is what the government would like and that is the pathway that the government wishes to go down then they need to offer a real and meaningful incentive to landholders to manage the land in those changed circumstances to make them viable, to make their communities viable and to offer real biodiversity outcomes.

Senator CAMERON—Why has this issue suddenly appeared on the horizon now? It has been around since 2003. What is your take on that?

Mr Rheese—We addressed this at a public meeting in Dubbo in 2003, which was at the local RSL club. There were hundreds of people. We tried very hard to get this on the national agenda at that time, as did other people and groups. It just did not make the front page. So I would say that the reason I am sitting here today is the fact that there is a Senate inquiry and that it has become more disastrous as time has gone on for landholders. We have had another two or three years of thickening range lands and it has taken time for that to manifest itself and get attention.

Senator CAMERON—Where did you say the meeting was?

Mr Rheese—The meeting was in Dubbo.

Senator CAMERON—There were hundreds of people. Did you then raise the concerns of these people with the local MP?

Mr Rheese—The local MP was in attendance. There were several MPs in attendance.

Senator CAMERON—Can you remember who was there?

Mr Rheese—Senator Nash was there. Kevin Humphries, the member for Barwon, was there. Dawn Fardell was there. Robert Brown MLC was there. There was another member whose name escapes me at the moment. There were a number of New South Wales parliamentarians present on that day. We followed up and our then chairman had a meeting with the New South Wales primary industries minister I believe at that stage.

Senator CAMERON—You said it did not make the front pages, but what did those Howard government members do to help and what views did they put to the meeting as to what they would do about it in 2003?

Mr Rheese—What did they put to that meeting?

Senator CAMERON—Yes. Did they say that the legislation was bad?

Mr Rheese—I don't think there were any Howard government members at that meeting.

Senator CAMERON—But you just said Senator Nash was there.

Mr Rheese—Yes, you are right. Senator Nash did not speak at the meeting.

Senator CAMERON—She did not speak at the meeting?

Mr Rheese—No, not as far as I can recall. Some of those other members of the state parliament did speak at that meeting.

CHAIR—Senator Cameron, your time is up. I have allowed you latitude. I am now going to be moving to Senator Joyce.

Senator CAMERON—I said nothing!

Senator JOYCE—Thank you very much, Chair. Let's just continue on with that point. Mr Rheese, to the best of your knowledge who organised this inquiry?

Mr Rheese—To the best of my knowledge this inquiry was advocated by you following the Peter Spencer affair. That is my understanding.

Senator JOYCE—So to say that someone from the coalition did not speak at a meeting—possibly they did not get an opportunity—completely belies the fact that we are pursuing the course right now of trying to ventilate this issue, progress this issue and get to a resolution on this issue.

Mr Rheese—Yes, and that is much appreciated.

Senator JOYCE—Senator Campbell has tried to denigrate the empirical capacity of your statement. Are you aware of Dr Christine Jones's work at the University of New England?

Mr Rheese—Not in any great detail, no.

Senator JOYCE—I will put it this way: Dr Christine Jones said, in line with what you are saying, that there is more carbon sequestered through summer grasses than through dry sclerophyll forests in a peer reviewed paper that was widely acknowledged and circulated. Would you say that Dr Christine Jones in that peer reviewed paper from the University of New England is a reputable source or some sort of dissident from the margins?

Mr Rheese—My understanding is that her work is valued.

Senator JOYCE—And that basically reinforces the position that you have been putting forward in your paper about the paradox that environmental laws do not so much sequester carbon but in some instances actually diminish the amount of carbon that is apparent.

Mr Rheese—Yes, and I draw your attention to the quote from the Wentworth Group of Concerned Scientists, who said the very same thing: without planting a single tree we could enhance the carbon store in the soil by changed grazing and cropping practices.

Senator JOYCE—Have you heard of the Food and Agriculture Organisation of the United Nations and their ominous predictions in their report *Livestock's long shadow—environmental issues and options*, which states that livestock are responsible for 18 per cent of global greenhouse emissions? Are you aware of that report?

Mr Rheese—I am aware of that report, yes.

Senator JOYCE—And you would be aware also that it is now, under Professor Frank Mitloehner of the University of California, being completely and utterly debunked and the figure is now about four per cent?

Mr Rheese—I am aware of the rebuttal of that report. It seems to be a well-founded rebuttal.

Senator JOYCE—Do you think that Professor Frank Mitloehner and the University of California are reputable sources or some dissident outreach of parochialism?

Mr Rheese—I think the work he has done is valued and his response to that UN report has been widely accepted.

Senator JOYCE—It would be fair enough to presume that some of the statements that were initially made that surrounded this debate were not so much empirical but emotive, and now, as the facts appear, they are debunking the premise on which a lot of the vegetation laws stood.

Mr Rheese—Absolutely, and the effect is self evident. I do not think anybody could see in 2003, when these regulations first came in, the extent to which this would affect the farming community. But it is now self evident.

Senator JOYCE—Maybe there were other motivations behind the people who were proposing the emphatic nature of some of these environmental laws. If, in the light of day as more evidence becomes available, a lot of the initial statements were erroneous, some might suggest that they were more than erroneous and that they were emotive and guided for a specific outcome. They might not have had as much to do with the environment as we suspected and may be driven by other motivations, long-held motivations, such as the interposing on the private individual's asset.

Mr Rheese—I would draw your attention to evidence that was given prior to mine that Premier Carr introduced these with some very strong statements as to what he would see as the outcome. My view is that what he has done on private land is what he has done on public land with regard to the vast increase in national parks in New South Wales and that they are just a reflection of what is happening on private land now. The public land management there means that biodiversity outcomes in many cases are degraded. In answer to your question, many of the things put forward are on the basis of ideology and are not what is going to produce good outcomes for the environment or for communities.

Senator JOYCE—‘On the basis of ideology.’ What has happened to the department of the environment over the last decade or so? Is it getting smaller or bigger?

Mr Rheese—Bigger as I understand it.

Senator JOYCE—Therefore, the benefactor of the environment—formerly the trees that were owned by the farmholder—is now the person who is the bureaucrat or administrator within that department.

Mr Rheese—Most probably.

Senator JOYCE—So they would have a vested interest in making sure that their primary desire—the desire for wealth—is ascertained by finding problems that they are going to go out and fix, demanding, therefore, more of the public revenue to be dedicated to their department so their department can get bigger.

Mr Rheese—I think that we see a manifestation of that in what has happened in the Riverina red gum forests in recent weeks. The forest has been locked up. The timber industry and recreational people have been put out. This has been done at the behest of the Greens to secure preferences for next year's election. It is a matter of public record; it has been through the Sydney papers.

Senator Joyce—Put everyone out of work.

Mr Rheese—It has nothing to do with the environmental management of the red gum forests.

Senator JOYCE—So it is not just the farmers who are being touched, duped and manipulated out of an asset—or not so much manipulated as straight out stolen from—it is also the Australian working family who is formally engaged in the industry that surrounds such renewable assets. They have also been thrown on the altar of the whimsical desires of an inner-urban vote at the cost of the livelihoods of Australian working families in such industries as timber.

Mr Rheese—I put it to you that the extent of national park declaration in New South Wales in the last 15 years has not produced measurable environmental outcomes that anybody could be pleased with.

Senator JOYCE—Are you aware of the Pilliga State Forest?

Mr Rheese—Yes, in passing I am.

Senator JOYCE—In such areas as Waubebunga, which used to support four timber mills and now has none, who has been the beneficiary of that? Is it the administrator in the department of the environment? Is it the working family who no longer has a job? Is it the farmer who now has imposed on them caveat after caveat of environmental legislation, apparently in a time when we have a Minister for Finance and Deregulation and all the deregulation has brought is a Kafkaesque nightmare of impositions on their assets that they had bought and paid for?

Mr Rheese—There has been no benefit to the local community. There has been no benefit to the Pilliga forest. There has been no benefit to the timber industry. There has been no benefit to tourism, though it was much touted. In each of these cases—Yanga Station, Pilliga, Coolah Tops National Park—the people of New South Wales were promised that the economic losses suffered by the rural communities would be offset by increased tourism.

Senator JOYCE—What a farce.

Mr Rheese—Yanga was promised 50,000 more tourists per year by Bob Carr. The current figure that we have there is less than 1,400 per year. Coolah Tops were promised 30,000, and the businesses are closing down. They are moving out because of reduced economic activity in the area.

Senator JOYCE—Labor bureaucracy.

Senator HEFFERNAN—I first recognise the new National Party candidate for Riverina, Michael McCormack. Welcome.

Senator CAMERON—Who is going to win, the Libs or the Nats?

Senator HEFFERNAN—This is a serious political exercise in this committee on this issue. Can we go to the solution side of it. Against the background of the doubling of the food task by 2050, a billion people on the planet being unable to feed themselves, 30 per cent of the productive land of Asia going out of production and 1.6 billion people possibly being displaced on the planet, what is in the fridge is going to be more important than what is in the garage. Against that sort of background and this argument that there is only one way to fix that, either with a compensation check or we are all ruined, isn't there the possibility of a combination of all of that? What is so important about native vegetation against the global food task? My place out here is only 25 miles away. There used to be no subclover and no lucerne. It was mainly spear grass and you got into serious trouble in the summer with spear grass. But now it is all lucerne, fescue, phalaris and the carrying capacity has gone up 10 times. The native vegetation is not an issue. Why are we looking at remnant native vegetation against the science of new plants? What is so important about native vegetation?

Mr Rheese—Nothing as far as securing carbon in the soil goes because carbon dioxide does not recognise whether the vegetation or the environment is native or non-native. So on that score there is no difference. That is one of the points that I touched on towards the end of my opening statement. If governments decide that they want to give primacy to biodiversity conservation and that is the way we are going to go, which I think is a very big step, then we have to figure out how we are going to feed ourselves and how we are going to remain an food-exporting nation.

Senator HEFFERNAN—So there has got to be a balance?

Mr Rheese—There has got to be a balance. The laws that have been brought in focus too much on tree canopy and there is no environmental benefit in focusing to the degree that they do on tree canopy. They should be looking at restoring grasslands. In restoring the grasslands they will make the properties productive. There is a solution and it is probably compensation and incentive payments. I stress the value of incentive payments because that is going forward. As one of the Senators pointed out before, we are already in this situation. To talk about trying to fix it up is one thing, but what are we going to do going forward?

CHAIR—This will have to be the last question. Senator Heffernan. We are up against the clock.

Senator HEFFERNAN—We have got to produce twice as much tucker with 30 per cent less land, a lot less fertiliser and a lot less water, and we are saying we are focused on either a compensation cheque or maintaining native vegetation, which is like saying we will keep the horse and cart in an era of space age technology. It does not make any sense, does it?

Mr Rheese—No. I think the intent of the legislation has to be looked at and whether the achievements of the legislation are matching the intent.

Senator HEFFERNAN—So rather than play all this politics about who is to blame and how many governments are involved—every government of all persuasions have stuffed up water and they have stuffed up this—let us look at a solution. Can I just say that Australia's farmers are our best environmentalists. At the end of the day, if we do not maintain the culture of the family farm, when Doug Cameron goes to the supermarket, it will be empty.

Mr Rheese—I agree.

CHAIR—I thank Mr Rheese for his submission and for appearing.

Proceedings suspended from 1.29 pm to 2.21 pm

NICHOLLS, Mr Ben, Private capacity

STRONG, Mrs Janifer, Private capacity

STRONG, Mr Garth, Private capacity

STEWART, Mr John Clive, Private capacity

CHAIR—We now have time set aside for members of the public to make statements to the committee. I ask that people keep their statements to no longer than five minutes so we can give as many people as possible the opportunity to speak. As the committee has already deliberated on the submissions provided by many of you, an oral statement is an opportunity to make a few additional points rather than to repeat what was in the original submission or to emphasise some points. Any comments that are made are on the public record and, as such, the rules pertaining to parliamentary privilege and the protection of witnesses apply. Information about these rules is available from the committee secretariat staff.

I would also like to emphasise that, in accordance with the terms of reference, during its examination of the subject of native vegetation and greenhouse abatement laws, the committee cannot deliberate on the cases of particular individuals that are under consideration by courts, tribunals or other bodies which may grant some remedy to those individuals. The committee will hear the details of individual cases but will only use these in its deliberations to build a picture of the issues arising from the laws. The committee will not recommend or comment on remedies for any particular person or situation. It may make recommendations in relation to issues that it identifies; however, it cannot force the Commonwealth or state parliaments to implement those recommendations nor make recommendations that are binding on other jurisdictions.

I would now like to call Mr Ben Nicholls. I understand, Mr Nicholls, that you have travelled quite a way. Thank you for taking the time.

Mr Nicholls—Thank you. I am from Tottenham, in central-west New South Wales. I would like to put forward first that I am an individual farmer, so I am at the coalface. I have been here listening to everything this morning. It has been about the big picture stuff. This is about zeroing in on me and my community. Our family have handled eight years of low rainfall without any government assistance, but when we come up against this native veg act we feel totally gutted. It has really had a big effect on us and on our community.

I will very quickly run through my submission, which I hope you have read. I am a sixth-generation farmer. I have been Landcare chair. We pride ourselves on our environmental and economic sustainability. That is what we have worked very hard to do. I have three sons who want to come back onto the land, so we are looking to go further—and hopefully that will continue. We have 80 kilometres of interconnecting corridors. We do not graze heavily, we rotational farm et cetera. What I am trying to get across to you is that our family is trying to do best practice for our property with respect to production.

In that vein we need now to go onto tramline farming. I suppose quite a few of you do not understand what tramline farming is. Senator Williams would. Tramline farming is the ability to run up and down compacted tracks, with GPS guidance, to farm. It allows us to reduce inputs greatly. It allows us to only compact the one area instead of running over the whole farm.

So I was on the North Lachlan Bogan Native Vegetation Committee and our property was used for the trial for the PVP planner, which is the one that is being used in New South Wales now to say whether you can clear or not by computer. We had a particular paddock that we used for this trial and it passed without any need for offsets. After that there was a big public meeting at Nyngan. I got up and particularly asked, 'Will that PVP planner be adjusted?' and we were told by the department, 'No, it will not be adjusted; what you see is what you get.'

After about two years, our next program was to go into tramline farming, so I went to the local CMA to get permission to take out individual trees. So they brought out the PVP planner, put us through the system and it said: 'No way. That paddock will not do. You cannot touch that paddock unless you do heaps of remediation work.' I said, 'Leave that one out.' There is an 800 acre paddock with 80 trees. Most of those trees are small western cedar trees, which are small scrubby little bush. We left them there for fodder trees years ago when we developed the place. There are probably about 60 of those and 20 larger trees. To develop this—I should not use the word 'clear' because it is not; it is all cultivation country that we have been farming for years—I have to give covenants over the paddocks that I want to do plus give over a total of about 280 hectares to the government with full covenants but still pay the rates and still do all of that. I can gaze it for 30 days a year. I am not allowed to graze it below six inches. I am not allowed to take any regrowth out of it. Anyone who knows that central western division where I am knows that it will go back to scrub. It will be absolutely unproductive country.

So it is a huge impost on my family. It is not only a cost impost; it is an emotional impost on me because I want to do best practice and I am not allowed to. We have come to a stalemate. I do not want to sign up to that and lose the value and the production. It is all costs. It is forcing me to stay in old fashioned farming systems using large gear, which I do not want to continue using on this country. It is stopping me from being viable over the long term.

CHAIR—Thank you for that submission.

Senator HEFFERNAN—Would you like us to hear the evidence from those people who are stopping you from using world's best practice on your farm? We would love to hear from them. If you give us—

CHAIR—Senator Heffernan, please.

Senator HEFFERNAN—I know. I am breaking the rules.

CHAIR—Thank you, Senator Heffernan. We do have a little more time than we previously expected. The initial program did not have questions to allow more time for community statements. Would the committee like the opportunity for five minutes of questions split between people.

Senator HEFFERNAN—Everyone will get their say, will they?

CHAIR—We have still got plenty of time to get through everyone. Is the committee happy with that?

Senator HEFFERNAN—Yes.

CHAIR—Senator Polly was the first one to ask if she could ask a question. I will allow a couple of minutes for each senator who wants to ask a question.

Senator POLLEY—I thank you for your submission and for appearing before us today, Mr Nicholls. As you said, we addressed the big issues this morning because we had the peak bodies here and we had the department here. Some of us on the government side actually do come from farming families and, rather than platitudes expressed this morning, we do actually understand. I am from a family that has farmed. It is critically important that we understand. I assume there was a lot of consultation with the peak bodies, although from the evidence this morning they have a bit of amnesia about what consultation actually took place. You are the people that we want to hear from firsthand, so is there anything else that you would like to elaborate on in terms of the disincentive for you and your family to continue farming under these arrangements? Can you also give us a solution for how you see things moving forward, knowing that there is obviously going to be a cost involved?

CHAIR—I forgot to ask the witness, given he was invited here, whether he was happy to answer a question. I will ask each witness this. Are you happy to answer a question from each senator?

Mr Nicholls—Very much so.

CHAIR—Each senator will have the opportunity to ask one question. Thank you.

Mr Nicholls—The way forward in our instance is not a costly thing. It will not cost the government one cent. I offered, if I could take out these individual trees on this cultivation country, to plant a corridor to replace that. I was not allowed to do that. I wanted to connect the river corridor with a large timbered area on the property. It was another wildlife corridor, which, as I said, we have 80 kilometres of. So I was trying to do the right thing. But that was not what they want; they want control of those trees and of that land. There are only 80 trees on 800 acres. That is a big patch of country, yet they want control over the lot of the. They were telling me what I could do on it. I could only winter-crop on it. As Senator Heffernan mentioned earlier this morning, we do not know what is ahead for us. I do not know what we might be growing in 20 years time. I cannot afford to lock myself or my family out of that. It won't be me; it will be my sons. That would not be just. That is the effect that is happening on us. It is not going to cost the government in my instance anything. I just want a sensible way forward, which this is just not.

Senator WILLIAMS—Thank you, Mr Nicholls. Mr Nicholls, I have seen tramline farming at the Northparkes mine. They just run a tractor over it once a year to so the crop. I have seen the level of humus increase in that soil. That soil does not crust any more—after years of fallowing and the old ways of farming. I have seen an increase in humus—70 per cent of humus is carbon—and the improvement of soil. You are saying now, because of these regulations under the Native Vegetation Act of the New South Wales parliament, this red tape is restricting you

from building the carbon in your soil, making your soil better, and growing better quality and higher yielding food to help all Australians? Is that what you are saying?

Mr Nicholls—Definitely, Senator. It is tree-centric. It is not an environmental, holistic approach to native veg, to the environment; it is just tree-centric. It is definitely not the way forward.

Senator HEFFERNAN—Could you provide the committee with the paperwork that puts you where you are and the people you have been dealing with, so we may call them, Chair, as a witness to give the other side of the story to see the logic behind it?

CHAIR—It is up to Mr Nicholls whether he would like to provide that material. It would be on the public record, I hasten to remind you of that.

Mr Nicholls—I am quite happy. We have got to get a way forward. We are at a definite stalemate. Can I have a second to talk about our community, which is really reeling under this. We have three or four different things. We have this lease to freehold with the covenants happening, which in our area affecting roughly 20,000 to 30,000 acres, so that his country that is not productive. We have the COT tree regime that is happening, where they are taking viable farming country on putting trees on it. That is out of our production, so that is less coming through our town. We also have forests being locked up at the moment. There is a whole thing happening in the state forest and they look like they will be locked up.

CHAIR—Mr Nicholls, I need to ask you to allow everyone an opportunity to be brief in answering the questions.

Mr Nicholls—I know. Look, there are about 20,000 hectares locked up in what I am doing. So in our little area there is a huge amount of productivity being taken and our towns are shrinking, our towns are dying. That is calamitous.

Senator CAMERON—Thanks, Mr Nicholls. I am not a farmer. The closest I got was 12 years living in Muswellbrook, and I don't think that makes me a cow cocky. This is a very, very important issue and I am pleased that you have made the effort to come down and I am happy that you are going to provide further information. One of the key debates this morning was this issue of compensation versus incentives. Do you have a position on that, because this government has inherited the position we are in now and it is up to us, I suppose, on the basis of what are you are saying, to try to clean the mess up. What is your view on compensation versus incentives?

Mr Nicholls—Personally, I am more for incentive. I think that is the way forward. In our particular case, it is not even that. As I said, we are not trying to broadscale-clear. It is got away from being to stop broadscale clearing; it is now about individual trees. That is where we have lost track. The broadscale clearing issue is a different issue to what I am up against; I up against being able to stay viable and improve my farming techniques.

Senator KROGER—Mr Nicholls, thanks very much for taking a day out to come and speak to us. I have a quick question, which may not be so quick to answer. On the basis of evidence we have received this morning, do you believe that the departments you are dealing with and the

personnel you are speaking to in relation to your personal farming issues have experience, understanding or an empathy with the various factors that you are trying to resolve and are they considering all the things you are dealing with in a balanced environmental and farming way?

Mr Nicholls—The short answer to that is no. What is happening is that everything—the trees et cetera—is measured so it can go into a computer. It is all very much ‘Go out and put the tape measure around it.’ The people who come out are just basically working for the computer. You do not actually get any option to negotiate anything; the computer tells you what to do. If the computer is tweaked at all it can have huge ramifications—just by changing the distance trees are apart. I have been farming some country with 60-foot implements. That is fairly wide. It is still considered open forest. There is no way you can grow wheat in open forest. The computer is saying, ‘You can’t touch that. That’s open forest.’ We have been farming it for years. So, no, they’ve got no idea. It is getting pushed from Sydney through to these people, because they are still tweaking that PVP. I know that for a fact.

Senator KROGER—Thank you.

Senator JOYCE—I have one question, so I have to make this succinct. If by some freak of nature you ended up as the boss and you ran Canberra for a week and you could do anything you wanted, but it was only in regards to this vegetation theft issue and the impost on your life, what exactly would you do, knowing that you also have the powers of COAG to coerce the states in certain directions if you wish to go that way?

Mr Nicholls—I would start from scratch. It needs to be started from scratch. There needs to be a mixture. There would be compensation for some areas that might be locked up and managed; there would be incentive programs to go ahead; and there will be other areas where, really, if the greater good to feed the world et cetera was to take out a few individual trees to keep someone productive, it would be a no-brainer. There has got to be a complete change in thought patterns on what we are. Are we tree-centric or are we going to feed the world. We can still have our environmental areas, which I have and I am proud of them. I don’t want to touch them, but I want to be able to farm. I am a farmer; I’m not a park ranger.

Senator HEFFERNAN—Very good.

CHAIR—Thank you, Mr Nicholls, both for your submission and your answers to questions, impromptu, and also for time you have taken to travel today. It has been very helpful to the committee.

Mr Nicholls—Thank you very much.

CHAIR—Before I call our next statement, can I ask anyone who wishes to make a presentation who has not done so yet to contact the committee secretariat over here. We want to manage the time to make sure as many people as possible get an opportunity to speak. Please do so as soon as possible. I call Mr Garth Strong. Mr Strong, as per the previous witness, you have five minutes to make a statement.

Mr Strong—I have a farm between Narrandera and Boree Creek. I want to mainly talk about compensation for land that has been revegetated. We are a farming family. I am a sixth

generation farmer and we have four generations on the current farm. We realise that climate change is a fact. We are trying to adjust our farming methods to meet the challenges of this century. Traditionally, it is a cropping property. We are pulling back on our cropping because we do not think it is really viable at the moment. We are going more into livestock and we are doing a lot of revegetation. We have done about 110 hectares of tree lines. They are not single tree lines; they are 50 or 60 metres wide. It is all native vegetation. We have collected seeds ourselves from the adjoining roadsides, so they are native plants indigenous to the area.

The problem is that we have quite a lot of land that we have revegetated, plus existing remnant vegetation on the property. We are still paying rates on it. That is virtually out of production. We are doing this for the common good of the country, for greenhouse gas reduction. We think we should be compensated for this, at least by reducing rates or eliminating rates on that country. Also, I think we should be compensated for the loss of production, for the service we are doing for the country. But nobody seems to be listening to this. I have never heard anyone mention this. This applies not only to us; it applies to all the other farmers such as the previous speaker. He should be compensated and should not have to pay rates on that country. He should be compensated. He is doing it for the country, not just for himself, and I think it should be taken into account.

CHAIR—Thank you. You mentioned that you are still liable for rates on all the land that you revegetate?

Mr Strong—Yes, and the rates are based on the production we can get out of the value of the land. I think the land is of value to the people. We are doing this for the common good—

CHAIR—Sure.

Mr Strong—and also to regenerate, keep these native plants and animals and associated stuff and still make a living out of the property.

CHAIR—You are happy to answer a few questions from committee members?

Mr Strong—Yes.

Senator CAMERON—You are not arguing that there should not be some conservation and native vegetation laws? The government has inherited the situation we are in, but you are simply saying to the federal or state government—you probably do not care which one it is—‘You have to compensate me for the losses’?

Mr Strong—Exactly.

Senator CAMERON—I do not want you to put a figure on it because, down the line, you may not want to have this on the record but, following the decisions of the Howard government and the state legislation, in terms of a percentage of your income, what sort of losses do you have?

Mr Strong—It would probably be, at least, 15 or 20 per cent.

Senator CAMERON—Could that be the difference between survival and—

CHAIR—Senator Cameron, we are allowing a question each. Please answer the question.

Mr Strong—The government is trying to reduce Australia's greenhouse gas production. The farmers, by retaining vegetation, are contributing to that reduction of greenhouse gases. We should be compensated for that because we are forgoing potential income by doing that. That is the point I am trying to make.

Senator CAMERON—Sure.

Senator JOYCE—Garth, which part of the legislation do you find the most onerous? Like the previous witness, are you coming up against the bureaucracy in its rawest form turning up to your place and demanding like little tin gods: 'This goes here and that goes there. Thou shalt not walk across the place; thou shalt only hop'?

Mr Strong—We have not really had a problem with these people because we are looked on as probably being fairly green anyway, so they are not bothering us. We keep inside.

Senator JOYCE—How do you know they exist? How does the onerous aspect of the legislation, which you clearly espoused here today, get enforced? Have you just read it and now you know it and that is what you are dealing with or did someone actually approach you and say, Garth, you cannot do that anymore; you have to do this?

Mr Strong—No, we have not had any problem with the legislation. It really has not affected me that much because we have been doing revegetation anyway. My only issue is they share the cost, because it does not come without cost.

Senator POLLEY—As I asked the previous who came before us, in terms of how you see compensation, where do you see that that money is going to come from? Do you think it is beholden upon the federal government, because it was the Howard government who introduced it, or do you see this as compensation that should come from the states as well as the Commonwealth?

Senator JOYCE—I raise a point of order. Senator Polley just made the statement that the Howard government introduced the vegetation laws. That is absolutely wrong.

Senator POLLEY—No, I did not.

CHAIR—Can I ask committee members to be aware of the fact that we are having community statements here. These are not people who have made submissions and been called as formal witnesses and hence have that preparation. So if we could turn down the political temperature and use this as an information-gathering session rather than a political session I think we would all benefit from that. There is no point of order, Senator Joyce; however, you have got it in the *Hansard*. Senator Polley, you could finish the question.

Senator POLLEY—For the sake of those people who were not here this morning, it is a fact that the government supported this hearing to look at ways that these issues, which were not

obviously clearly identified or articulated when the legislation was introduced, can be resolved. So I am seeking your input as to whether that compensation should come solely from the federal government or whether it is the responsibility of both federal and state governments.

Mr Strong—Rate relief would come from local government, I guess. I am not sure where all this money comes from that is paying for the Carbon Pollution Reduction Scheme—wherever that money is coming from.

Senator POLLEY—If I could pick up on what Mr Strong said in relation to the rates.

CHAIR—I allowed some leeway to Senator Cameron and Senator Joyce, so I will allow it to you as well.

Senator POLLEY—Thank you very much, Chair—I will remember that when I am back in the chair. Would rate reductions be a good way of compensating property and farmers and their families if it were something that could be negotiated with local governments? Would that be enough for you relating to your property?

Mr Strong—I think there are two parts. Rate reduction—fair enough—but that has to come from local government. Local government is always stretched for cash, so they would have to get more money from the state government, which in turn probably comes from the federal government. I do not know where the buck stops. The rates are one thing. The other thing is: what common benefit is this to the people of Australia? Greenhouse gasses affect everybody, so we are told, and we should be compensated for our part in their reduction. People are going to be charged for producing greenhouse gasses. We are in the Landcare CarbonSMART scheme at the moment. We have got some of our trees in that and I think we just sold 96 tonnes of carbon. We are getting \$11 a tonne or something like that back. The main point, getting back to it, is compensation. What is happening about compensation for what we are doing in keeping vegetation in the ground and increasing natural vegetation?

As well as that, perennial pastures come into it too. The whole issue of sequestering soil carbon needs to be addressed. That follows on with greenhouse gas emissions from livestock. From where I see it, when they got the figures for the amount of greenhouse gas apparently produced by cattle, all costs were thrown into the bin—the cost of growing wheat for feedlots, transport for meat, and the whole damn lot, which has really skewed the figures. The figures they got for the amount of greenhouse gas produced by livestock are completely irrelevant.

Senator HEFFERNAN—You own the trees and the land on which your carbon sink is, as opposed to some companies, like a CO₂ company that goes out and cons farmers by signing them up and then the landowner pays the rates in perpetuity, the CO₂ company gets the carbon credit and the farmer is the sucker. That is just another con in the system, like the price of fertiliser. I will come to a question. If you were to convert your carbon lineages, or your trees, wherever they are, into productive trees, like your brilliant saltbush lamb—this man has genuine saltbush lamb; he has sown a lot of old man saltbush—what would be wrong with all of those tree lines being saltbush instead of yellow box, grey box, mallee or whatever? If they were saltbush you could eat them occasionally and make use of them. Wouldn't that assist you in the loss of production?

Mr Strong—It would, only you cannot get greenhouse gas credits on saltbush.

Senator HEFFERNAN—Why not?

Mr Strong—I do not know. It is in the rules somewhere.

Senator HEFFERNAN—I think that is BS.

Mr Strong—As far as the trees go, they have to be trees planted after 1990, I think it is. You cannot put any vegetation on the property prior to that in the carbon credit scheme.

CHAIR—Thank you, Mr Strong, for both your submission and the time you have taken to travel here. We much appreciate your input.

Mr Strong—Thank you, senators, for your time.

CHAIR—I now call Mrs Strong to the table.

Mrs Strong—I am from Arcadia, Narrandera—about 30 kilometres south of Narrandera. My husband has briefed you on some points about how operation. We started our revegetation in the early 90s. 1992 was the date you wanted; anything planted prior to that does not qualify for carbon credits. In our collecting of seeds and setting up our own little nursery for our own purposes, we now have locally extinct species, because the last 10 years have seen many roadside species disappear. We also have some important grasses included in that. Regarding our areas under carbon credits, there are only 22 hectares of that, by the way, out of 1,850 hectares. It was an experiment and we are quite happy we did so. It is not a great money earner, but all the legal work was done for us and we are quite happy about that at the moment. In addition, we have to keep all our treed areas weed free. I spend a major part of my time, with a backpack or a little spray operation, spot spraying. We do not spray with the big sprayers very much anymore. I walk with the backpack and spot-spray weeds. We have managed to eradicate many weeds out of those areas. That is another cost to us. For feral animals we fox-bait and we also kill rabbits.

We are pretty upset about not getting compensation for those areas, or some acknowledgement, particularly from local government—but, again, I think that trickles down the line. People can keep passing the buck but it has to stop somewhere. Perhaps three levels of government is a bit hard to operate. If I had my way there would not be three levels of government in Australia, but that is another matter. My husband outlined most of what else we have done. We think it is really unfair that they calculate the livestock. If they put people into the calculation I am sure we would not fare too well either. It is part of the natural cycle of things. Nitrous oxide, I might say, is produced in many industries—and that is worse than methane by 400 times with respect to greenhouse gases. I know that methane is about 20 times worse than carbon dioxide, but I think it is part of the natural cycle. The fact is that we just have a lot of people to feed. The farmers of the world produce more feed than we need, but a lot is wasted. People are hungry because of politics, not farmers.

Senator KROGER—Mrs Strong, thank you very much. Can I say that you and your husband exemplify the Australian spirit, in that there is no greater environmentalist than a farmer who cares for their property. What you have done, on your own initiative, in collecting seeds and all

the local species, is indicative of that. Is the way that you are going sustainable? Do you think the way in which you are doing it, absorbing the cost yourselves, is sustainable? Obviously, you have a real personal interest in doing this. Do you think that approach is a sustainable way to go for a larger community?

Mrs Strong—This is the big question. It seems to be sustainable at the moment. My son manages the place. We are just the unpaid workers! He has a man he is able to employ. I do not know, but it seems to be working at the moment. By our calculations we should be able to hang in there, providing we do not do anything stupid or—

Senator HEFFERNAN—Providing it rains!

Mrs Strong—Yes, we need a bit of rain occasionally. We are hoping to set up our place so that we can manage with the rain that falls in summer. We are getting very different rainfalls. Apart from the fact that the last 10 years have been pretty dry, we have had summer storms. We have to work out a system that will deal with those rain events. Wagga had one a month or so ago. We are trying to set up so that we can deal with climate change, which we think is here. It is happening a little bit sooner than we thought, but we calculated in the early nineties that it was coming.

Senator KROGER—Thanks, Mrs Strong.

Senator CAMERON—Mrs Strong, you have heard all the debate this morning about the big-picture issues. It is good now to hear from actual people who are affected. You may not be able to answer this, but can you paint a picture of the psychological impact? We have heard lots about the financial impact, but what is the psychological impact and the impact on people's lives of this legislation? Can you paint a picture of that?

Mrs Strong—We have tried to work with the CMA. We are Landcare people. I am the public officer, secretary and a few other things in our local Landcare. So we have tried to work with the CMAs, especially now. Our property straddles the Murrumbidgee and the Murray. The CMA goes through the middle of our place, so we deal with both of them. We have worked with them, so psychologically it has not actually been too bad—they have been really helpful. We have managed to get a few grants from them for fencing. That is another thing we have to do: maintain the fences very well that they have put in. So, apart from everything else, we have to maintain those fences. So I think psychologically it has been quite good. In the middle of the drought we could go onto the high spot and our place was green, because it had all the saltbush and all the trees, so it was quite good from that point of view.

Senator JOYCE—There is one thing I want to touch base with you on. It was a passing comment, but I think it was very important. You mentioned that we should remove a tier of government. I agree with you. For the life of me, I cannot work out why we have three people, in some instances, doing the one job. As soon as we get around that corner, the country is going to be run a lot better. Do you believe that a local government would be a more effective bureaucracy, if you had to deal with one? Would there be greater empathy for the peculiarities of local environments that is probably not evident if someone is trying to operate it from afar?

Mrs Strong—Definitely not in our instance. Maybe in other shires, but not in our case.

Senator JOYCE—So which level of government would you get rid of?

CHAIR—You do not have to answer that question.

Mrs Strong—Not the federal government.

CHAIR—Very good answer, Mrs Strong!

Senator HEFFERNAN—Congratulations on the saltbush.

Mrs Strong—Thanks.

Senator HEFFERNAN—As I said earlier, we have 10,000 acres of it dead. What proportion of your place is sown out to trees—not saltbush?

Mrs Strong—The bits that we have revegetated, plus the bits that we have restored and areas that were never cleared. Probably 18 per cent is trees and native shrubs.

Senator HEFFERNAN—So you have a couple of rough hills.

Mrs Strong—A few areas like that, and round the homesteads. We have three homesteads with about 10 hectares around them, and an old school paddock.

Senator HEFFERNAN—Where you sow the trees down the fence lines, would it be possible to sow trees that are productive, like olive trees? I cannot for the life of me see why everyone is so fond of the particular trees that have no productive capacity.

Mrs Strong—We do not see it that way. We see it from a biodiversity point of view. We have heaps of birds and they keep our grasshoppers under control. The grasshoppers do not eat the saltbush either, if it is old. They only eat the very young stuff. We do not see it that way. There would be olives near the house and there is a citrus orchard, but I do not really want anything that is not a local native species in those tree lines, and that is why I go around with my backpack. To us, it is not a huge area. It is fantastic at stopping the winds that come across. If there is a bit of moisture, the best crops are right next to the tree line, if there is no moisture competition, because of all the humus in the soil, coming out of the tree lines. When the dust storms were blowing across, there was not much dust blowing off us, I can assure you. So it does its job, particularly with a mix of trees and shrubs.

CHAIR—Thank you for your submission and for taking the time to appear before us today, Mrs Strong.

Mrs Strong—Thanks very much, Senators, for your time.

CHAIR—I ask Mr John Stewart to come forward. Mr Stewart, tell us where you are from and then feel free to make your statement. If you are happy, I will ask senators to ask brief questions of you as well. Are you happy to answer some brief questions?

Mr Stewart—Yes. This is merely opinion, but I just wonder whether we are going overboard about trees. I think that, as farmers, we should be rewarded for ground cover, to keep our pastures there and to keep the ground covered. We tend to hear about trees all the time. It is great, but I have noticed that when people go out and say, ‘I’m going to plant some tree lots,’ they do that and then they plant the trees this far apart. It all looks lovely for a few years, but they do not keep growing; they fight for moisture. I am led to believe that trees sequester carbon when they are putting in roots and growing. If trees are all stuck together, all breathing and everything but not growing, they might not be storing much carbon. We should look at how thickly we are planting trees so that they grow better.

Also, if we are going to have 36 million people in this country we will need to think about getting some grass growing too. If we have grass, we can convert that into food. I just think we need to have a balance, not to blindly say to everyone, ‘Go and plant trees.’ Trees are good, but you cannot eat them—although you will not get a cold if you eat eucalyptus! Let’s say to the farmers: ‘Keep your pastures and grow tree lots, but not too thickly, so that we bring in carbon dioxide and oxygen and have photosynthesis.’ My problem is that we are just pushing trees too much. We need to look at the whole problem.

Also I have been—and this is also to do with the carbon—hearing that we should be eating kangaroos. I have kangaroos, and we get on quite well together. But I do not have too many. They come to the best pastures and they eat only the smaller stuff. They are selective eaters. Nature gave cattle these big stomachs so that they could break down roughage. They do an important job. Some of our native grasses grow tall and go to roughage. A kangaroo will not eat those; he will only eat the shoots down the bottom. We need to stop thinking, ‘We’re going to run a lot of kangaroos and change the way the digestive system of cattle works,’ because they have been here tens of millions of years, and they are doing a job.

I run cattle, and in the last year we had a nine-month dry season, so we have not got much feed at all. I have not seen my cattle belching much methane in those nine months. It is only when they are on the good thick clover in the spring that we get a lot of that. So maybe the figures they quote about cattle, for instance, that they produce 17 per cent of the carbon in the atmosphere, are not too right. I just question that. I think the figures are wrong.

CHAIR—You are right: they are wrong.

Mr Stewart—I just think we need a balance.

Senator JOYCE—It has come out recently from the University of California that it is not 18 per cent; it is about four per cent. That is yet another of these ideas that have been debunked in the whole methane and bovine ruminant argument. If you were changing the legislation and you had to do the trade-off between compensation and basically handing back to the farmer their asset, which is their vegetation, what would you do? How do you and your community see it? How would you deal with and redress the issue as it currently stands?

Mr Stewart—I must apologise—I was not here this morning and I do not know what is in the act, so I have not put my mind to that.

Senator JOYCE—What is the most onerous part of the act for you in your life?

Mr Stewart—I do not know the act.

Senator JOYCE—What about vegetation management, then? I know you are here for a purpose—what is the premier grievance that you think needs to be dealt with?

Mr Stewart—As far as farming goes, I have been in farming all my life. I love the land and love handing it on in a better condition than I found it in. I just do not like interference from the top—people trying to tell me what to do. Through my experience, I learn what does not work, what is bad and what is good. People think by legislating something they are going to do wonders. I think we need research and everyone learning together. I am just saying we should have balance. Let's not try and put people under the thumb and make them do this or that. That is all I would say. I have not researched the act, so, sorry, I cannot answer that.

Senator CAMERON—You have mentioned balance several times. I wonder whether you believe that there is a role for native vegetation laws that try to retain native vegetation or is there a problem with that from your perspective?

Mr Stewart—I do not have a problem with legislation, as long as everyone has input into it. I started my working life when I left school. I had a green block and I started ringbarking, poisoning and clearing. I have done all that. I would not be here today if I had not done that—I would be in some other profession—because I was able to grow the grass. It was all native timber. I replanted some natives and introduced some. I just think there has to be a balance. I am for legislation, but let everybody have a say instead of it coming down from the top telling us what to do.

Senator WILLIAMS—You say that you are all for legislation. What about when legislation actually restricts you from earning money and perhaps devalues your asset? Are you still for legislation then?

Mr Stewart—I would not be. In my opinion, that is bad legislation, isn't it? I would hope that would not happen. Isn't that why you are here?

CHAIR—As there are no further questions, thank you for your time and your frankness. We will take your advice about good and bad legislation. Thank you to Hansard, the secretariat and my Senate colleagues.

Committee adjourned at 3.12 pm