COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

FINANCE AND PUBLIC ADMINISTRATION REFERENCES COMMITTEE

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

TUESDAY, 20 APRIL 2010

PERTH

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SENATE FINANCE AND PUBLIC ADMINISTRATION

REFERENCES COMMITTEE

Tuesday, 20 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 Johnston, Polley, Ryan and Siewert

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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COSIER, Mr Peter Aubrey, Director, Wentworth Group of Concerned Scientists

CHAIR (Senator Ryan)—Good morning and welcome. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. The committee has your submission and I now invite you to make a short opening statement. At the conclusion of your remarks I will invite members of the committee to put questions to you.

Mr Cosier—Thank you very much for the invitation to speak to you today and to provide a submission to the inquiry. I would like to make a brief opening statement and then make myself available to answer any questions senators might have. First of all, I would like to discuss Kyoto and then, in closing, look towards the future of native vegetation management in Australia. The implication of the inquiry's terms of reference is that land-clearing laws in Australia were enacted to help Australia meet its Kyoto target and that, as a consequence, farmers should be compensated for a loss of property rights. I am not a constitutional lawyer, so I will not offer an opinion on constitutional law. What I can do is comment on the premise behind the reference.

Land-clearing laws were put in place well before any talk of climate change or Kyoto. New South Wales enacted laws to protect riparian vegetation and protected lands in 1938. Western Australia, Victoria and South Australia enacted broad-scale land-clearing laws in the 1980s and early 1990s. New South Wales followed in the mid-1990s, as has Queensland more recently. These laws were put in place to limit the environmental and economic damage caused by the overclearing of the Australian landscape over the past 200 years. The clearing of native vegetation is one of the primary causes of land and water degradation and the loss of biodiversity in Australia. Broad-scale land clearing has led to extensive erosion and salinisation of soils. Let me quote from a report by Allen Consulting Group in 2001:

> In announcing the agreement of the Commonwealth, State and Territory Governments to the National Action Plan for Salinity and Water Quality, the Council of Australian Government (COAG) communique stated that the total cost of land and water degradation is approximately $3.5 billion per year.

That same report estimated that the cost of repairing the damage from overclearing the Australian landscape is in the order, in 2010 dollars at least, of $80 billion.

Land-clearing laws were not enacted so that Australia could meet its Kyoto commitments—quite the opposite. Australia fought for the Australia clause because we had already put in place or had policies to put in place laws to end broad-scale clearing of native vegetation. In 1995, the policy of the then coalition opposition under John Howard was to achieve a 'no net loss' of native vegetation in Australia by 2001. When they came into government, the coalition aggressively pursued this policy, primarily through the Natural Heritage Trust. This policy had nothing to do with climate change; it was about protecting the Australian environment. We would, therefore, argue that there is no public policy case for weakening existing land-clearing laws. There is, in fact, a strong case for strengthening existing legislation such as restricting the clearing of native vegetation for urban development along much of the eastern seaboard and strengthening the inadequate regulatory controls in the Northern Territory and Tasmania. These are matters primarily for state and territory governments to resolve.

So, rather than focus on the past, our submission seeks to focus on the future. We believe that the future for Australian agriculture is to embrace the new carbon economy. A price on carbon presents a new economic opportunity which, if managed well, has the potential to transform the way we farm in Australia and the way we manage our natural landscapes. The reason is that healthy landscapes store vast quantities of carbon. If we plan wisely, a responsible emissions reduction target and a price on carbon represent an economic opportunity of unparalleled scale to address the challenges of repairing degraded landscapes, restoring river corridors, improving the condition of our agricultural soils and conserving Australia's biodiversity.

Attached to our submission is a copy of the Wentworth Group's document *Optimising carbon in the Australian landscape*, which outlines the opportunities terrestrial carbon presents in not only mitigating climate change but also repairing the degradation of our landscapes that has resulted from the clearing of native vegetation. We would be most pleased to discuss these opportunities with you.

Senator POLLEY—Good morning and thank you for your submission. Have you had the opportunity to read any of the other submissions that have come before us? There has been very strong evidence from the farming community and farm lobby organisations that this state legislation has been an impediment to the farming community and the community as a whole. Do you have a response to those comments and evidence?

Mr Cosier—Yes, I have had the opportunity to read some of the submissions. I guess my comments go back to my opening statement. As a community we need to balance the economic opportunities of an individual when those opportunities could impose economic and environmental damage on others. Nobody likes being told what they can and cannot do with their land, but we all recognise that, if we are to maintain a civilised society, we need laws. It seems to me that there are a minority of farmers who believe that they should be compensated if laws restrict the development of their property. I believe that is a mistaken belief because, under planning law in this country, nobody else in society has access to such compensation.

The laws that restrict native vegetation have been built on exactly the same principles as property law that applies to everywhere else in Australia. Governments set rules for what you can do and what you cannot do on your land. In urban Australia, there is almost nothing you can do with your property. I think the confusion occurs in the distinction between not being able to undertake a new activity on your land and not being able to continue to exercise your existing use rights. Planning law in Australia recognises existing use rights, but it also recognises that governments have the authority to restrict future development rights if the government believes that is in the broader community interest.

CHAIR—With your permission, Senator Polley, I will interrupt for a brief follow-up. Many of the submissions we have heard in this inquiry have outlined what many property owners have said are restrictions upon existing use, whether that relates to regrowth impacting on the use of particular parts of their property or parts of their property that they might have used on a rotational basis but are now being effectively locked up. Do you have a response to that? I know it is different in every state, but I would be happy for you to inform us of what your view is on that claim.

Mr Cosier—If my response sounds staggered it is because I am getting feedback on what I am saying. It is like an old trunk call. I will do the best I can.

CHAIR—You sound good at this end.

Mr Cosier—I do have considerable experience in native vegetation laws in New South Wales. I do not have such specific understanding of laws in other states, so I will restrict my comments if I may to—

CHAIR—It is in New South Wales that a lot of these have been raised.

Mr Cosier—The Wentworth group was actually involved in the construction of the new native vegetation laws in New South Wales in 2002-03 when we worked with then Premier Carr and the New South Wales Farmers Association and environment groups to implement a new regime of native vegetation management. That resulted in a new act of parliament for native vegetation, and I understand that you have received a submission and have had evidence from the New South Wales department on that issue.

When we were discussing those laws, the Premier commissioned the Hon. Ian Sinclair to chair a committee which looked at this issue—that is, what is a reasonable interpretation of existing use rights and what is a reasonable interpretation of the test that the government required, which is that broad scale land clearing should only take place if it improves or maintains environmental outcomes? I believe—and I think the evidence that you received from the department in the submission confirms it—that in broad principle the existing use rights of farmers to continue to farm their land has been maintained through these laws. As I am sure you would have heard, exemptions to land clearing applied to routine agricultural management activities such as clearing along fence lines, buildings and roads et cetera.

The big issue of course was, as you mentioned, the clearing of regrowth. This was an issue that was hotly debated at the time between environment groups and the Farmers Association. The Wentworth group fell on the side of the Farmers Association in accepting that the clearing of regrowth should be considered an extension of an existing use and we put time-bound limits on that issue. Effectively in New South Wales now the law says that if land was cleared in 1990 or has been lawfully cleared since 1990 then a farmer maintains in perpetuity the right to reclear that land. You could extrapolate from that that if society, for whatever reason, concluded that they would prefer some of that regrowth vegetation to be used for conservation purposes rather than production then the community would need to purchase that right from a farmer rather than regulate its control.

CHAIR—Thank you. I will hand back to Senator Polley.

Senator POLLEY—In relation to your experience with the New South Wales legislation, I would like to clarify something on the record. Evidence was given to us by the New South Wales branch of the National Farmers Federation that no compensation has ever been offered to farmers in New South Wales. Do you have any knowledge to the contrary?

Mr Cosier—I am surprised that they have that view. I need to be a bit cautious in recalling my memory because I have not been involved in the management of that program for the last four

years, but at the time we did establish a fund to provide the purchase of a property if a farmer considered their land to be made unviable as a consequence of the enactment of the new laws. It was my clear understanding that some farmers did access that fund and the government did buy that property.

Senator POLLEY—Thank you very much. There is a lot of understandable emotion around this inquiry. Evidence has been given to us of the impact on farming families and communities. Overwhelming evidence has been given to this committee that there should be compensation from both the federal government and the state governments. On one hand we have the now opposition saying that there should be compensation and on the other hand we have former finance spokespeople at least acknowledging that this would be a huge cost to all levels of government. Do you have a view on the compensation issue that you would like to put on the record?

Mr Cosier—Certainly. As I said, I do not wish to be interpreted as having any opinion on constitutional law, because I am far from a constitutional lawyer; but I do have extensive experience both in native vegetation management in New South Wales and in town planning, which was a former career of mine, so I have a reasonable practical understanding of the town-planning law in this instance. My opinion is that you should apply the same principles of planning law to every Australian. If you apply the principles of existing use rights, they should be applied to urban Australia as much as they should be applied to rural Australia. If you go down the path of compensating for the removal of future potential rights, that should apply equally to urban and rural Australia. We have not gone down that path in most instances, largely because it would mean that any development activity anywhere on the Australian continent would be subject to compensation. If the government brought in laws to restrict the height of buildings in Sydney, imagine the compensation costs that a large development corporation would request from government for the loss of future development rights. So, whilst I understand that there are farmers who are frustrated with the enactment of native vegetation laws, in my opinion what it is really doing is just bringing into the 21st century laws that have applied to urban Australia for the past 100 years.

Senator JOHNSTON—My question relates to the conclusions set out in your very fine submission. You say:

Terrestrial carbon presents our generation with an opportunity to not only help stabilise the world's climate system, but to also create an economic system that will improve the health of our farms and conserve the world's biodiversity, at a scale that would have been unimaginable even a few years ago.

You go on to say:

Left unregulated however terrestrial carbon also poses significant risks.

In the third last paragraph you say, referring to terrestrial carbon:

These carbon forest offsets have the potential to take over large areas of prime agricultural lands, impacting on food and fibre production, regional jobs and the security of Australia's fresh water resources.

I note that you have a very large number of footnotes referring to a lot of source material and information to support what I think is a good submission. But, with respect to the measurement of the impact of terrestrial carbon and carbon forest offsets, there is no reference to measuring the impact of such a policy. Surely we would need to assess and measure those risks—that is, risks to food, fibre production, regional jobs and our water resources—before we embarked on such a policy. Would you tell me what you would do as a first step to assess and manage this risk that you have set out.

Mr Cosier—Thank you very much, Senator. I would be delighted to talk about this. You might have to politely ask me to shut up, because I find this the most extraordinary opportunity that our generation, as I said in the submission, could even imagine a few years ago. The problem we have in restoring degraded landscapes in Australia is a simple one. We need to pay farmers to restore native vegetation. We have just been talking about the existing use rights issues. No fair-minded Australia would say to a farmer, 'Sorry, mate, we have overcleared the land, so you're going to have to put all the trees back and, by the way, you've got to pay for it.' No fair-minded person would say that. So the only way forward is to provide an economic vehicle to allow farmers to do that.

The potential only exists because of what I consider to be the landcare revolution that has taken place in Australia since 1990, which as everybody knows has transformed the way we think about and see our landscapes. But you rightly point out, Senator, that there is also a great risk that we could go in the other direction if we do not have a policy to sensibly plan this outcome. Imagine a scenario where the carbon price makes it more economic to plant monoculture trees across most of the intensively agricultural land of Australia and remove all food and fibre production—we take out the sheep, cattle et cetera. Imagine if that applied to the whole planet. We would have a gold rush of tree planting and then end up all starving, and then we would go and chop down the trees again. In a 30-year cycle we would achieve absolutely nothing in that process. So I fully support the implication of your question, which is: let's get this right; let's not make mistakes at one extreme or the other.

First of all we obviously need to give farmers this economic vehicle. We need a price on carbon that is sufficiently high to provide them with the means to do what I believe is possible. Equally, we need to make sure that in our own self-interest we do not take away prime agricultural land or agricultural land that has important regional economic and job creation potential. As I said, I could talk forever on this, but in short our suggestion is that before we embark on this gold rush of trees we do work—and I strongly encourage that this work be done at the local community level, probably through your regional natural resource management groups and local government—on an economic and social assessment of the potential of carbon forestry in those regions. I do know that some catchment management authorities are commissioning such work. That then gives you a very good handle to understand what the economic implications might be.

Senator JOHNSTON—How long do you think such work would take?

Mr Cosier—At the course level—there is an 80-20 rule first cut at a catchment scale—I do not believe it either is expensive or would take a long time. I think you could, with reasonable resources, have that process underway within six months. What I believe is important, though, is

that the local communities have time to digest and understand that information before they are forced into rushed decisions.

So we are suggesting a two-path process. First of all, local communities are given the authority by government, state and federal, to take on these economic and social considerations and are given resources to do it. At the same time, we ask our natural resource management groups around Australia, who have enormous intellectual property and professional capacity, to do the optimising mapping—where do we want trees; where do we want farms; where might we want both? With those two pieces of information, which I believe could be assembled within six to 12 months, we would be in a very good position to make some very wise decisions about the future of terrestrial carbon.

Senator SIEWERT—I will take up from where you left off. I would say that of the key things there is also the involvement of local planners. What we have seen a couple of times in Western Australia, when vast amounts of a particular local government area have been put down to trees, is families moving out, schools closing et cetera. How would we organise things on a broader scale? I absolutely agree with you that local communities have to be the place to start, but it has to be broader than just one shire council. We also need a regional planning approach.

Mr Cosier—Yes. That is the dilemma we have faced in Australia ever since we embarked on land management in this country. In my opinion, the landcare movement has evolved into this regional planning focus. We have 56 regional NRM groups across Australia, and their job, I believe, is to do the planning—to get the science in and get the planning done. In most states they do not have the statutory power to translate that into land-use zones, so you would absolutely need to involve local government. The problem with local government, and the reason we established the regional groups in the first place, is that many rural shires across Australia are too small in scale to deal with the landscape processes that we are trying to manage. I believe that we need to have a partnership between the NRM groups and local government in the planning process that I have been describing.

Senator SIEWERT—I will go back to the issue of clearing because of carbon rules in a minute, but I want first to finish up in this area. As I understand it, one of your propositions also is that we need a proper accounting process. If we are going into this process, surely we need a proper accounting process both for the carbon we already have and the carbon that we are going to be planting. Are we there yet?

Mr Cosier—We are a long way from there yet. In fact, we would argue that probably the greatest failure of public policy in the environmental policy area in Australia has been the lack of a set of environmental accounts. The reason we say that is that we have environmental debate in this country largely based on opinion rather than evidence because the information that we need to have an evidence based policy simply does not exist or is certainly not in a form that can be readily converted into public policy. So we have been advocating the establishment of regionally based environmental accounts that would sit next to our economic accounts. I am not suggesting that they be merged, because we believe it is the role of government and parliaments to make those choices, but we strongly argue that if we have regionally based environmental accounts that look at the condition of our natural resource assets and the change in the condition of those assets we will have a fundamentally different conversation in Australia about environmental management. Those accounts, if put in place, would also obviously underpin the decisions we

make with terrestrial carbon because we would then start, in real time, to monitor both the positive and the negative impacts that terrestrial carbon is having on the landscape.

Senator SIEWERT—I want to go back to the ongoing stoush over clearing and clearing laws, whether it is around carbon or whether it is around biodiversity and the protection of native vegetation for other reasons. As long as I have been involved in natural resource management, which is a very long time now, this fight has been going on. It seems to me that the fight has gone from stopping clearing for biodiversity reasons and keeping vegetation in the landscape to the issue of carbon sinks. Are we going to be fighting this in another 30 years? How do we come to a situation where we are no longer wasting time with this fight but are actually getting on with good land management and good carbon protection—we are putting trees in the ground et cetera? What are the levers we should be pulling to stop these arguments and have a focused approach to good land management, ensuring farmers are still on the land and we have a good food production system et cetera?

Mr Cosier—If we got a price on carbon tomorrow and that carbon price reflected a reasonable target—say a 15, 25 or 40 per cent target for Australia by 2020—you would then be looking at a carbon price, according to Treasury estimates, of between $30, $40 and $50 a tonne. That is well over the cost of revegetation in most parts of Australia. I think that single act alone would fundamentally transform the conversation, because all of a sudden our rural communities would be seeing an opportunity rather than simply focusing on the past. I believe that would be the single transforming event that would change this conversation in Australia.

Having said that—and, as I said, I can only really speak from my experience in New South Wales—I am a little surprised at this inquiry generally, because the native vegetation laws that have been enacted in New South Wales, in my opinion, have been very successful since 2005. As I read in the submission from the department, in the last four years the catchment management authorities have approved the clearing of over 7,000 hectares of native vegetation through a property vegetation plan, and in the area that was of greatest contention in New South Wales, which was the invasion of woody weeds out in western New South Wales, there has been approval for over 160,000 hectares of clearing of woody weeds. So I am a little surprised that we are again revisiting an issue that I believed had been put in the past. Of course there will always be individual circumstances that could and should be done better, but in the broad I believe that the native vegetation laws in New South Wales are working well. I would like rural Australia to focus on the future, and the future for them is a very, very exciting one provided we get a carbon price sufficient to drive this economic transformation.

CHAIR—You said a minute ago that, based on your experience with them, the New South Wales laws had been quite successful. We have received a substantial number of submissions from parties who feel aggrieved with these laws, particularly with their application, not just in a minor way but substantially. There seem to be a significant number of personal experiences not just of an argument over the application of laws but where there has been a significant personal, social and financial impact. One thing I mentioned earlier is that there appear to me, from this inquiry, to be enforcement and compliance issues. Enforcing laws like this should not create the sort of reaction that we have seen in some of these submissions. I would ask you to comment, through your experience, on how you think these laws are being applied. Are there compliance issues? Are there enforcement issues? Are there things that we should take into account with

respect to their impact on local communities and local families, apart from what you claim is the success of the laws on a broad, or macro, level?

Mr Cosier—As I said, I have not been involved in that issue for the last four years, so clearly I am not able to comment on existing individual cases at the moment. If I were in a position where I was asked to do that, my first action would be to contact the local catchment management authority and get their opinion, because they are the people who now are responsible for approving and refusing applications to clear native vegetation in New South Wales. That would be the first step I would take.

Obviously the first question is: are the claims that are being made by an individual reasonable or unreasonable? In my experience in land-use planning, there are a lot of people who are very unhappy with decisions made by local government with respect to town-planning laws, and we have a whole series of processes that deal with those dispute resolutions. Again, my first test would be: are the complaints reasonable or unreasonable? If they are reasonable then you would expect that the catchment management authority would take action to improve whatever it is—whether it is a delay in assessment or whatever.

I understand that in New South Wales there is a five-year review of the laws, and the decision-making process, the way we designed it, allows any individual to contest the science on which a decision is made. Again, if the science is proved wanting, as it may well be, then I would strongly encourage that the law be amended accordingly.

CHAIR—I can see the parallel between some elements of town-planning law and your aspiration to apply consistent legal principles across the country, but it strikes me that many of these laws are 30 years old or less and many of the restrictions relatively new by comparison to the experiences of urbanised Australians in the use of their property and that the transition may not have been managed well, even from the perspective of a supporter of these laws. I suppose what I am putting to you is that either the law or the mechanism by which it is enforced—something—is not working if there is such substantial anger and disillusionment from one of the major parties to its impact, in this case the property owners. Also, there does not seem to be the faith in the agencies of government or the regulators to act in a fair way. Do you have a comment with respect to that?

Mr Cosier—Yes, I am happy to comment on that. Yes, there are people who are angry. That does not necessarily mean that their opinion is valid. But let us take your case where their opinion is valid, which is quite possible, as I mentioned. In that case I would approach the catchment management authority. If there are submissions that you have received where you believe that there is a very strong case then perhaps it would be very useful if you were to contact the CMA and ask them what the situation is.

I also agree that the laws are relatively new, although in most states—in Western Australia, South Australia and Queensland—they are now approaching their 20th anniversary, so I believe a lot of those issues would be resolved. It is likely, logical, that the greatest contention will be in states where the laws are more recent, such as in Queensland and New South Wales, and there are two issues. The first issue is: are the laws sufficiently bedded down or are they still clumsy? That is one question. The second is: do all people in the community accept the validity of having laws imposed on their activities? I believe a lot of the tension is in the latter—that there are a

small number of farmers who still argue that they should not have laws applied to their property, and I would totally disagree with that opinion.

CHAIR—Thank you for your time and your submission, Mr Cosier.

Mr Cosier—Thank you.

Proceedings suspended from 10.20 am to 10.33 am

BRADLEY, Mr Leon, Spokesperson on climate, Pastoralists and Graziers Association of Western Australia

KLAASSEN, Mr Robert, Committee member and landholder, Pastoralists and Graziers Association of Western Australia

McLEOD, Mr Glen, Lawyer, Pastoralists and Graziers Association of Western Australia

PEACOCK, Mr Gary, Chairman, Private Property Rights and Natural Resource Management Committee, Pastoralists and Graziers Association of Western Australia

CHAIR—I welcome representatives of the Pastoralists and Graziers Association of Western Australia. 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. At the conclusion of your remarks, I will invite members of the committee to put questions to you.

Mr Peacock—I will give you a brief background on who we are. We have three representatives here that we feel are qualified to speak on various areas of today's inquiry. The PGA represents producers in both the agricultural and pastoral areas of Western Australia. We have done so for over a hundred years. We have had a private property rights committee for some 20 years. We are a not-for-profit organisation and are mostly volunteers. We have a fundamental belief in the integrity of private property rights. We believe they underpin this wonderful civilisation, democracy and economy that we have in Australia. We do not have to think too far outside the square to see where private property rights have collapsed and so have various nations. An increasing number of our members are having their rights compromised and we believe that that will only be magnified if an ETS is adopted as is currently suggested.

We thank the Senate very much for the chance to speak to you all today. We thank you for coming across the country. We are more than happy to communicate with you and all of your members into the future. I will now introduce our three speakers. Mr Leon Bradley is our climate change representative and Leon will put into perspective what this could mean to the average farmer. Mr Robert Klaassen is a farmer who has had 12 years dealing with this legislation and he will relay his personal experiences to you all. Then we have Adjunct Professor Glen McLeod from Murdoch University to hopefully help iron out some of the legal aspects of environmental law for you all. Again, thank you very much for your time and for making your way to Western Australia. I will hand over to Leon.

Mr Bradley—I am the climate change spokesman for the PGA, which was first established in 1907. I do not think they would have envisaged then that people would be so concerned about the climate that they would have to have a climate change spokesman. But it appears these days that we have developed so well and refined our skills so much that politicians can command the climate not to change and the seas not to rise and the earth not to warm up. But those are the wonders of modernity, I suppose. We represent members from the very far north who manage land in WA in the Kimberley down to the south-east at Esperance. We are all generating income,

preserving and improving the value of assets. It is a ceaseless challenge but we believe it is an honourable one.

The previous speaker from the Wentworth Group does not seem to think that we do much of a job. He believes that we need constant regimentation and supervision by the elite thinkers like him. He also does not seem to think that we are capable of planning. He talks about bigger and bigger planning agencies. But it is not a question of a plan or no plan, because farmers are perfectly capable of planning for themselves. Most of them are very intelligent and very professional and they make a living doing a very hard job. So it is not a question of a plan or no plan. It is whose plan. We believe farmers are the best ones, as the private owners of the land, to manage that land, because they bear directly any costs of the mistakes they make in their planning decisions. So I would just like to correct that point.

The other issue I would like to take up is that the previous speaker said that the Kyoto agreement had nothing to do with the climate change issue. But who can forget Senator Robert Hill crowing after he successfully negotiated Australia's arrangements in the Kyoto deal and saying that he had done it through leveraging our native vegetation clearing laws? That is on the public record and I think everyone would be aware of it. I am amazed to find that the Wentworth Group would try to pull a stunt like that. But I am probably not surprised.

To move on, it a constant challenge made increasingly difficult by government tree preservation controls, which is really what these native vegetation laws are about, as well as vegetation protection mandates. They impede farmers' ability to maximise their production and profitability. How anyone can dispute that, I do not know. At the same time it blights their major asset—their land. The losses inflicted on farmers by governments, state and federal, are substantial, ongoing and unrecognised, and some of our speakers today will acquaint you with that. We appreciate the opportunity to put our concerns before this Senate committee because it is not a subject that has received much coverage before.

In our view the hardship and injustice inflicted on farmers are only a harbinger of things to come for all the citizens in Australia. Today in WA, households by the tens of thousands are applying for relief to help pay for their escalating electricity bills. What will their position be when their electricity charges double or even treble, which they must according to Grant King of Origin Energy, as reported in the *Australian* the other day. Electricity costs will increase because government policies are making energy more costly to produce. At the same time they are making it less available and less reliable. Mr King was referring to mandates about so-called renewable energies driving up the cost of electricity production. He is also anticipating the effect of some sort of CPRS and other greenhouse gas abatement measures.

True, the CPRS proponents might say that he has included provisions to compensate householders, but what is such a promise worth when the governments, state and federal, have conspired for 15 years to deliberately avoid compensating farmers whose properties have been devalued and their ability to earn a livelihood completely destroyed in the worst cases—and you might hear about that today—all in the interest of preserving vegetation which, in the eyes of politicians, the bureaucracy, the enforcement agencies and groups like the Wentworth Group, takes precedence over farmers' lives and livelihoods and the forgone production which is lost to the community.

Ironically, Phil Jones, the former head of the Climate Research Unit and the lead author of numerous IPCC papers, now says that for 15 years there has been 'no statistically significant global warming'. That is from the lead author of the IPCC. 'No rain without pain', was Professor Garnaut's nutshell summary of his advice to the government on the CPRS, but if Phil Jones's concession is right, it has been 15 years of pain and not a single drop of extra rain.

A similar conclusion was reached by the fuel and energy Senate committee last May when they published their findings following an inquiry into the CPRS. It was subtitled: *Economic cost without environment benefit.* Since then the ultimate authority on all matters relating to the anthropogenic global warming issue has come under increasing scrutiny as a result of the 'climategate' scandal. The IPCC's claims that the earth was warming, that the warming is accelerating, that it is caused exclusively by man-made emissions of CO2, and is always bad, have been revealed for all the world to see to be not a result of industrial activity but a product of corrupt science. What would the subtitle of the fuel and energy committee's findings be when they knew that the wretched transformation of society that the environmentalists say they require was being legislated for and was based on little more than a hypothetical threat existing only in the minds of grant-seeking scientists and power-hungry officials?

While governments and bureaucrats are preoccupied with penalising agricultural production and punishing landholders to mitigate a phantom menace, real issues are neglected. Thirty-seven per cent of the earth's land surface area is devoted to agriculture to produce food for six billion-plus people. If we are to preserve the wilderness and forest that we now have, we need to double the food supply of the same area of arable land to feed the expected increase in population in the next 30 or 40 years. What will Australia's contribution be to this task of doubling food supply so that we can preserve existing wilderness?

CHAIR—Mr Bradley, I will have to ask you all to be brief with your submissions because people would like to ask questions.

Mr Bradley—I am just about there. Can I just wind this up, please—

CHAIR—Please do.

Mr Bradley—Government vegetation policies are taking agricultural land out of production. Farmers are being forced to submit to laws that, to them, seem arbitrary, capricious and unjust. In the longer run the result of these policies will be to compromise our ability to produce at current levels, let alone double them. As for all the controls that the Wentworth Group seek, they take away the farmer's ability to adapt and be flexible, to adjust and to innovate.

In conclusion, we at the PGA are convinced that the policies designed to combat so-called dangerous climate change are not justified by the evidence and that farmers are paying an enormous, unrecognised cost for these policies. I thank this committee for at least looking at the issue. I believe that one of the most urgent things needed in Australia is that a completely independent review of the climate change issue be conducted and that it survey all opinion from all competent science and examine all of the evidence in an objective manner before any more costs, damage, harm and injustice are imposed on Australian citizens—and, contrary to what the Wentworth group thinks, we are citizens, not subjects.

CHAIR—Do either of you wish to say anything? It will need to be brief, because we have limited time to allow other senators to ask questions.

Mr Klaassen—I will try to cut mine down as much as possible. Thank you again for allowing me the time to say my piece. I am a private landholder who put in a notice of intent to clear native vegetation in 1997. I entered the process and followed the guidelines of the bureaucrats. I have been trying to be particular about the publications of various government agencies and how they showed that they had a poor understanding of the law or that their intention was to deceive the lay landholder. They were successful with me to some extent; they were more successful with many others.

One of the central points that aggrieve me and, I think, society in general is that a perverse outcome of the administration of land clearing at the time, and up to the time of the amendments to the Environmental Protection Act in July 2004, has been that landholders who have taken the agencies on their word have done themselves an economic disservice, while those in the know about the administrative shortcomings have been at an economic advantage for the better part of a decade or more. I base this on the standing committee legal advice, which is paragraph 7.145 of the seventh report.

The lack of clarity and fairness has adversely affected the hopes and ambitions of many, ruining families and driving many off their farms, not for commercial or economic sustainability reasons but because of the ill-preparedness and hopelessness of trying to contend with the juggernaut of maladministration that strikes at the heart of landownership and equity. I might add that, quite importantly, the jobs of public servants operating under this regime would be extremely difficult, as incompetence always makes for more difficult work. The maladministration stems in many cases from agreements or initiatives in conjunction with the federal government of Australia—and that is tying it to your area.

In September 1997, I submitted a notice of intent to clear. This was a requirement under the Soil and Land Conservation Act. The commissioner then had 90 days to object on any grounds as defined by the act, which did not include biodiversity. The memorandum of understanding for clearing native vegetation relied on the soil commissioner issuing a soil conservation notice to prevent clearing from occurring in instances where the commissioner believed the notified intent should be assessed by the EPA, so he is restricted to certain things under his act but can refer it to the EPA. But he cannot put a soil conservation notice on on the grounds that he is referring it to the EPA. The memorandum of understanding relied on that to happen to prevent anything from happening.

The commissioner did not have the power to do this. In my case, he did not issue a soil conservation notice, but he did refer the notice of intent to the EPA after 90 days, when it became a proposal to clear land. I questioned the commissioner on his interpretation, but he would not be drawn to an answer, other than that the proposal now lay with the EPA and the Minister for Environment would decide on the proposal and conditions that would apply. Curiously, the minister could only inform decision-making authorities; she could not inform me of her decision. The soil commissioner had already dealt himself out of the proposal.

This situation is very different to many other acts as they relate to the Environment Protection Act, where the decision-making authorities generally withhold the permission until the EP Act

has run its course. In the case of the soil commissioner, you do not have to wait for approval. This is the central ground from where the perceived right to clear land stems, in my view. It was, in the eyes of many, a very real right until 2004 with the amendment of the Environmental Protection Act. I point out that that is different to your previous submission—that these things went back to 20 years ago or so. It is my belief that in late 2003 the right to clear land was removed by the state.

The Environmental Protection Authority's *Bulletin 966* of December 1999 has frank advice to the minister for the environment and provides a good snapshot of bureaucratic thinking and the dilemmas faced by the agencies. Some of the interesting points include point 3.2, 'Strategic initiatives since 1995':

… there have been a number of significant new policy initiatives which have a bearing on the issue. These include:

- the National Strategy for the Conservation of Australia's Biological Diversity.

It goes on to quote:

(l) arresting and reversing the decline of remnant native vegetation; and

(k) avoiding or limiting any further broad-scale clearance of native vegetation, consistent with ecologically sustainable management—

and so on. That is from the Commonwealth of Australia. Again, this ties the federal to the state, in my view.

The next point they make is about the national greenhouse commitments from the Kyoto conference, which would probably make Mr Spencer happy. They say:

- the establishment of the Natural Heritage Trust by the Commonwealth Government and its change of focus from the National Landcare Program which funded work on private land for private benefit to an emphasis on funding work on private land for public benefit, in a more regional context, in particular through the Bushcare initiative ...

Bulletin 966 goes on, in point 3.3, regarding the assessment experience using the memorandum of understanding, to say:

The mismatch between the two approval processes—that of the Commissioner for Soil and Land Conservation and that of the Environmental Protection Authority.

It goes on to explain that you put a notice of intent in, whereas with the other one you have to wait for approval. They do not mesh very well.

An interesting point is 3.4.1, dot point 5. I think this displays one of the systemic problems in all this bureaucracy. I quote:

- although the 1995 government position—

that is, the state government position—

removed the *presumed* right to clear and removed any ambiguity on that issue, there is still a perception in the farming community that clearing of ... land is a basic right even though it is not ...

I had trouble with this when I first read it, and I still have trouble with it. The EPA is an authority that advises the minister who advises cabinet. Cabinet has now advised the authority. All I can make out of this is that I still had a right to clear in 1995—the right persisted—but an authority said I did not. I worked as best I could do with every authority, but, at the same time, in all my experience, I was the only one looking after my interests. My interests did not enter the picture anywhere in 12 years.

Another document relative to the issue of the protection of remnant vegetation is the MOU itself. On page 2 it says:

In April 1995 State Cabinet endorsed a series of ... proposals to:

• *remove the presumed right to clear native vegetation in landscapes containing less than 20% of the original vegetation …*

At this point you have to ask: can a cabinet directive remove a presumed or, at the same time, real right without the process of legislature, as the EPA suggests?

In May 1998, the EPA told me they expected their report to be finished in three months. It may have been three months after they had it referred to them. It took three years. I was given no explanation as to why. I was expecting some sort of offer of negotiated settlement reflecting these values—conservation values, dollar values. The Crown held out that I was constrained from clearing and that no compensation was payable. However, no-one could say just how it was that I was constrained. I have a box full of correspondence to this effect. Fed up with the administration, which the minister for agriculture later called a dog's breakfast in a press release in August 2003, I proceeded to clear the land and develop it before the amended regulations came in. The land was inspected by the soil commissioner's office in 2004 and by the DEC in January 2005. I continued to develop it.

In September 2007, more than two years later, the DEC decided to prosecute me and issue a vegetation conservation notice. By this time I had put a lot of time and effort into the land. The magistrate found me not guilty and awarded costs. The appeal to lift the VCN continued until the Tuesday before this Easter. But the threat of prosecution, if I clear regrowth—which I believe I am entitled to do until it is 10 years old—still stands. My lawyers are at a loss. What happens next?

At the start of this fiasco, I was 39 years old with sufficient funds and energy to develop this farm into a sustainable enterprise. I am now 52 years old. I have spent over $100,000 in legal costs. I do not know where I got the money; you just do over that period of time.

Senator JOHNSTON—Where is your farm?

Mr Klaassen—North Badgingarra. I have spent well over $100,000 developing the land that the department insists I cannot touch. They were wrong then and they are wrong now. I have sold an investment property and leased out one-third of my farm to Forest Products Commission for 40 years to facilitate the administration by attrition. This kind of administration does not endear itself to cooperation by landholders. It is responsive to NGOs and lobby groups, which are in part funded by public money, but the interests of the individual are systematically

overlooked. This is perceived as bias by many landholders who are relegated to stakeholder status well behind the spin machines of the NGOs when matters relating to owners' property are concerned. In my experience, it is difficult to determine who is running the show.

The state administration looks to the federal government for funding on all kinds of initiatives, but when there is a shortfall or the funding does not appear, the conservation imperatives persist without proper funding. This is generally to the detriment of the landholder. I am happy to answer questions on any of that.

Senator JOHNSTON—I would like you to put a submission in, if I may suggest, because we would be interested in reading the whole story.

Mr Klaassen—I actually did put a submission in. I have a complaint with the ombudsman and I lodged that as the outline of my complaint. It was at rather short notice. It is actually quite a difficult topic for me to deal with. In 12 years there has not been a day when I have not had to deal with this in some way. There are days when I actually have to stop what I am doing because I cannot concentrate on it.

Senator JOHNSTON—Your submission covers all of the matters that you have talked about?

Mr Klaassen—It certainly covers the main matters of which I would complain about the process, yes.

CHAIR—It covers the material you have mentioned today, effectively.

Mr Klaassen—Not all the material. I guess what I am getting at here is that the system is broken and it needs to be fixed.

CHAIR—Mr McLeod, did you have a brief opening statement before we proceed to questions?

Mr McLeod—I will make it brief. As to my background, you have heard that I am an adjunct professor at Murdoch University. I am also a partner in a major law firm and have been practising environmental law in Australia, and I also practised as a partner in a major English law firm at the time they introduced their environmental legislation. I am here on a pro bono basis. Over many years I have heard stories such as Mr Klaassen's, and it has become a passion of mine to try to put forward a view of the law, as it were, to address the problems.

Earlier Senator Siewert asked a valid question. I will paraphrase, so forgive me if I do not get this quite right, Senator. She said, 'What will end the fight and stop the arguments? What will lead to a focused approach to good land management?' I think that is a highly valid question. The questions that arise for me, having heard so many stories, such as the ones that we have heard today, are as follows. The farmer asked the question: Firstly, why should I alone bear the burden of environmental conservation for the community's benefit? Secondly, can I be compensated for the loss of value?

When one is looking at an environmental measure, I think that there are three subsidiary questions. Firstly, what is the effect of the law or policy in a particular case? Secondly, is it needed? Thirdly, who pays for its consequences?

A very interesting distinction was made by the Wentworth group—and I do not wish to appear to be picking on the previous submitters—about town-planning laws. The question was posed: why should this be any different from town-planning laws? That gets to the heart of the problem, as I see it. Town-planning law is essentially about adjusting the rights between individuals in the community. Environmental law is very different. Environmental law is a species of public law that is concerned with restricting the right to use land in the public interest. Town-planning law, where it restricts the right to use land in the public interest, has well-developed mechanisms such as reservation and the payment of compensation. It is very simple really.

It was a very simple scenario right up until the early 1980s, when a lot of the conflict that we are hearing about really first started. If you want a particular legal landmark, it was the Tasmanian dams case of 1983, which concerned regulations made by the Hawke government, as you may be well aware. That is a very interesting case, but look at it in its historical context. Within a few years, the Western Australian government passed the Environmental Protection Act 1986. Mention was made of that act by the Wentworth group. It was suggested that that is well bedded down and that it provides some sort of precedent for the rest of Australia.

I respectfully suggest that that is wrong. One of the reasons that that is wrong is that clearing legislation was not introduced into the Environmental Protection Act in WA until only a few years ago, as was mentioned by the previous speaker. More to the point, it is wrong because it takes a long time in terms of our lives for these issues really to emerge. We are now seeing very real issues emerging because the federal and state environmental legislation does not contain the checks and balances that you have in the planning legislation, as an example.

In planning legislation you have, in all the states now, an independent right of appeal to an independent tribunal or court. You do not have that in the federal jurisdiction under the Environment Protection and Biodiversity Conservation Act and you do not have that under the Western Australian Environmental Protection Act 1986. So, far from the Western Australian act being the precedent for anyone to follow, I suggest that it is a very bad example. It is an appallingly drafted act and a very hard act to penetrate, as a lawyer. If I find it hard, I pity anyone else who would like to contend with that act.

I think this is really about having rational processes and good legislation that will allow people to feel that there is some justice and that they have some resort to an independent party, for example to hear appeals against clearing bans or to hear appeals against any other measure that might restrict their land use, as they have had for a long time under planning legislation and as is needed, I suggest, under both Commonwealth and state legislation.

I will just add one final point around that. There is a section in the EPBC Act relating to compensation. That is section 519. But there is no regulatory framework or structure which gives anyone any guidance as to how that would operate in practice. That sort of deficiency was the subject of comment in the Tasmanian dams case, and I think it is still an issue for us. For me, in the end this is not about, in a sense, whether or not the environment should be protected; it is

about the process by which we protect it and the avenues we give to individuals who are affected by the measures emanating from parliament.

CHAIR—Thank you, Mr McLeod. You mentioned there the lack of a right of appeal, which might occur in Victoria, where you appeal to the Victorian Civil and Administrative Appeals Tribunal.

Mr McLeod—Yes.

CHAIR—In Western Australia and at the Commonwealth level there is no such review mechanism. We cannot go to the ARC or the AAT at the Commonwealth level.

Mr McLeod—Thank you for the question. I will clarify. In Western Australia there is a ministerial appeals system. I think it has no credibility whatsoever because it is the only major administrative merits appeal in Western Australia that does not go to the state administrative tribunal. Why is that? I have never had a satisfactory answer on that point. No-one can really have much confidence in an appeals system which is to the very minister who is responsible for the people who are making the measures and issuing the various proclamations that affect people's land. Again, it is a question of credibility. As far as the Commonwealth is concerned, there is not even a ministerial system. The minister makes decisions, but there is no formal appeals system at all in the Commonwealth system under the EPBC Act.

CHAIR—I forget the name of the section, but a number of other submissions have mentioned it. That section does refer to a right to take action in the Federal Court if property has been acquired without just terms or compensation.

Mr McLeod—Yes. In Western Australia there is also a right to take action in the courts, but they are very specific legal challenges to measures that are taken. Everyone knows that there is a big difference between the right to take a concern to the High Court or to the Supreme Court on legal grounds and a merits based appeal that delves into the merits issues of the particular measures concerned. Does that answer the question?

CHAIR—It does, yes.

Senator POLLEY—Can I thank all four of you for your contributions this morning and for the submission. I would like to take up a couple of things that Mr Bradley mentioned in his opening comments, relating to how this legislation came into effect. Over our previous two days of hearings there has been a real attempt to cast aspersions and say that somehow, all of a sudden, the current government is responsible for all these evil things. I just want to, once again, reiterate the fact that this has been an ongoing process. I have information here, which we entered into *Hansard* at a previous hearing, in relation to the gloating by some former ministers of the Howard government about how they brought this legislation about. I want to tease that out a little more, if I can, and ask either the CEO or you, Mr Bradley, to comment on what consultation took place with your organisation prior to the instigation of this legislation. Did you have any meetings with the minister at the time or any input? Did you have any discussions with the Howard government minister, Warren Truss, or Senator Ian Macdonald?

Mr Bradley—I am not especially well prepared for that question. I was completely taken by surprise that someone would say that getting vegetation credits through the Kyoto arrangement was not a government initiative at the time that it was done. It was such a matter of public record that I cannot understand how anyone could dispute it. As for consultation on those issues, I was not with the property rights committee then; I was involved in other things. I do not know how much consultation there would have been. If the point you are trying to make is that conservative governments are not particularly strong on property rights, I would agree entirely with you. It is to their embarrassment and shame that they are not.

Senator POLLEY—I think it is already on the public record that former environment ministers Dr David Kemp and Senator Robert Hill were most open about it and were gloating—I think that was your word—about the fact that they put pressure on the states to implement this law. Mr Peacock, can you add anything about what consultation or what lobbying your organisation was involved in at the time?

Mr Peacock—I think that is fundamental to what all speakers have said today. As farmers we are often considered as stakeholders, and we join the queue with a large number of other stakeholders in our lobbying efforts, yet we are totally volunteer and unfunded. I left home at five o'clock this morning to be here and I will get home at 10 o'clock tonight. We did our best to put submissions in, but—and I cannot speak for the Senate or for the political powers that be—we find it very difficult to have a voice, we find it very difficult to get airtime and we find it very difficult to get to the level we need to lobby as successfully as other people do.

Senator POLLEY—Is there any explanation for that? I would have thought you were a pretty powerful lobbying group.

Mr Peacock—We are all volunteers and pay voluntary membership, and the organisation represents farmers from one end of the state to the other. We are all farmers. I am an active farmer; this is a sideline to my business. I am not funded by anybody. Nobody pays for my fuel, my phone or my internet access. No-one pays me to fly to Canberra or to drive to Perth to participate in these meetings. We do it on an ad hoc basis as we feel we can and to the best of our natural ability. But we are not professional lobbyists; we are farmers and this organisation is a body of people with like interests who come together to try to pursue and protect their interests.

Senator POLLEY—I think it is fairly clear from the evidence we have had before us that there is what I would, in good grace, call an unforeseen impact of this legislation. I am not one of those politicians who control the climate or the rain or anything, but I do not think that people would have necessarily legislated to bring this sort of hardship. It is pretty obvious to me. My family are not in farming now, but generations of us have been. I think I was one of the wise ones, or my father was, to move away from the land because of what was happening. We acknowledge there is an issue. Even though the government agreed to this inquiry, to me it should be an inquiry about getting results and resolving this issue. Rather than continually trying to make political gain in an election year, I believe we should make some necessary changes that will dramatically alleviate the hardship that has been presented to us in evidence. Would you briefly describe to us the measures we should take to resolve these issues.

Mr Peacock—I will paraphrase what Mr McLeod said. We genuinely believe that there needs to be a level of independent inquiry. We need the right to appeal. If we believe we have a legal

right and that right is taken away, we need either to be compensated or the right of appeal to an independent arbiter who can apply justice evenly. I might ask Mr Klaassen, who has dealt with this personally, to comment.

Senator POLLEY—Most people would have given up because they did not have a) the money or b) the drive to do it.

Mr Klaassen—The exact words were uttered by the appeal convener in 2001. The minister was going to decide that the EPA bulletin would recommend not to clear. I said, 'Who is she going to tell?' He said, 'The soil commissioner.' I said, 'But he has already let me clear.' This is more or less verbatim. The appeal convenor said: 'Go and ask him.' 'Why should I do that? He's already dealt with it.' He was a good guy, but he said, 'Really, this has to go court to let the court decide.' I said, 'I believe that is so, but why me? If you fund it, I'll be the guinea pig.' He said, 'Oh, I don't know,' and left it at that.

All along it has been a burden that I have had to bear, to pull the department. There are many times when these bureaucrats simply do not know the law. I am a farmer; that is my job. They are administrators of regulations; that is their job—and they do not know it very well. I have to come in from out in the bush, go to St Georges Terrace and say, 'This guy wants me to do this' and they say, 'You don't have to do that.' The soil commissioner sent me a letter. I asked him whether I was constrained by section 4—I think that was it. I said I started within two years and asked whether there was anything to stop me going ahead. He did not answer. He did not actually say 'no' but he did not give me a reason why I should not. Some time later the minister suggested that maybe I should have started with more than what I did. This guy recommended I get competent legal advice. That was a first time in my case—this was about 2002. I thought, 'Righto, I'll get competent legal advice.' It cost me $3,000. They said, 'Yep, no worries, Mr Klaassen; go ahead.' So I set about my business. I did not drop everything and flatten the lot. It is a fairly big area, at 450 hectares—4½ square kilometres. So I go about my business.

In the meantime there is this transitional law going on, because the new EP act is being formulated. There are retrospective elements being introduced and so on. I wrote to every minister, to every CEO, saying, 'I intend to continue my clearing process.' They wanted to establish conservation values. I sat back and let them come up with a value, but now they say there is no compensation payable. When I cleared there was, in my view, definitely a right to clear. There was no legislation taking that right away. That happened in 2004. I took the commissioner's advice, and spent $3,000 to get competent legal advice, because he could not give it to me. He could not give me his interpretation of the regulations. Others have actually said, 'Look, we don't know what laws are applying today'—and these are the regulatory authorities. What am I supposed to do—sit and wait until they have it sorted out?

Just the other week, in trying to lift this VCN, the appeals convener rang my solicitor. I was charged under section 45 or something, doing something that the minister decided should not be done, or words to that effect. As it turned out she did not give me a notice. The department said, 'If you didn't get a notice then, maybe we should give you one now.' The lawyers gave a very good reply; it was an excellent job. The bill for that was $8,000. So I am supporting the incompetence of a government department. I am a reasonably humble man. I have nearly done my dough. Somehow or other I might have to get to the High Court. I do not know how this is going to end. But the man in the department picks up the phone and I lose $8,000. If it were not

450 hectares—if it were five, 10, 15 or 20 hectares—I would have just written it off: forget the environment, just as a strictly legal thing. I would not have got into this position had I not stood back and said, 'Assess this proposal; make me an offer.' It is because I was trying to be environmentally responsible that I put up with this sort of maladministration, and it has got me into all manner of trouble.

Under the process as it stood, should someone have gone in there and barrelled the lot after the 90 days, there would have been no legal repercussions. Many people did that. It does not appear as unlawful clearing; it just happens—it is part of the process; it was legitimate clearing at the time. Some people were that outraged with the constraints that were there that there was actually an increase in illegal clearing. I think in the standing committee submission by the soil commissioner he noted that, as they tightened these things, the amount of illegal clearing increased. The illegal clearing was where people did not even put in the 90-day notice; they just went ahead and did it. There is a $3,000 fine—never mind: two bulldozers; one day's work. The system is not operating very well. The department has had trouble retaining staff, and I would suggest that they have trouble retaining staff because it is a lousy job they have to do. They have to take people's rights—and they are their rights—and say that they do not exist. It is a really difficult thing.

My neighbour lives 10 kilometres away. In a range of 30 kilometres I would have 10 or 12 families living there. I can think of three or four that have been badly affected and each one has his own story. In one case, the couple split up and the wife went off the deep end. It was only because they took on this clearing job—700 acres—and they had to do it all at once, because they knew that the wolves were at the door. The farm was only half developed and they had to go ahead and do it. They did it all lawfully, but it was too big a job and they could not get it done in time. They did not have the resources to pull it off and the pressure got so bad that the whole thing fell apart.

In another case, health issues forced a guy to sell his farm early. Another one had an add-on block and tried selling it to the government for what I would have considered half-price. But the government declined until recently. They rang up again and made him another offer recently, because he actually had it on the market. It is a blighted property because he cannot do anything with it now. He started 12 years ago also. The department rang back and said, yes, they could actually do that as they had got miniscule funding under whatever initiatives scheme it was and, as it turned out, Forest Products have got a 'you beaut' deal going with Synergy that enabled them to come up with some extra money so that they could buy the farm at market value. The guy is happy with that—poor bastard. He had 12 years of having a blighted property and was happy to take a discounted price.

I read an article in the paper about the South Fitzgerald River area where a guy sold it for some NGO green outfit and their response to criticism was, 'We bought it at market value.' It was a market value for half the farm. Because this system occurred—and I do not believe at all that it is supported by law—he has rolled over and thrown in the towel. He is a farmer; he is not a lawyer; he is trying to raise sheep or whatever. I think that the greens do it for what they believe are all the best reasons, and I am not knocking that, but the guy has done his dough.

CHAIR—Mr Klaassen, I am going to stop you there, because some of the senators have questions.

Senator JOHNSTON—Mr Klaassen, you have been in the Magistrates Court and you were charged with breaching a section of the EPA Act, weren't you?

Mr Klaassen—Yes.

Senator JOHNSTON—The magistrate found that the notice had an issue and the charges were dismissed—

Mr Klaassen—That is right.

Senator JOHNSTON—and you got costs.

Mr Klaassen—Yes.

Senator JOHNSTON—How much?

Mr Klaassen—I was awarded $17,000.

Senator JOHNSTON—Have they been paid?

Mr Klaassen—Yes.

Senator JOHNSTON—Good. How long ago was that?

Mr Klaassen—The magistrate handed down his findings in 2008.

Senator JOHNSTON—And the appeal period ran and no-one appealed.

Mr Klaassen—I appealed the VCN—you mean the magistrate's decision?

Senator JOHNSTON—Yes.

Mr Klaassen—Absolutely not.

Senator JOHNSTON—Then the department threatened you with another notice on the same terms and conditions to fix up the irregularity that had given you the dismissal. Is that what you are saying?

Mr Klaassen—When I was prosecuted I was handed the prosecution notice and within a day or so I was also handed a notice that there was a vegetation conservation notice put on my entire property. Normally these notices would have on them a set of conditions of things that you have to do or remediate or whatever. Mine says, 'Thou shalt not do any illegal clearing.' which none of us can do. I am at a loss, I do not know why—

Senator JOHNSTON—Why are you telling me that? Are you saying that because you had won the court case they then sought to punish you—is that what you are saying to us?

Mr Klaassen—I am saying that I cannot find any lawful reason why that VCN should have stayed, or, now that they have lifted it, why they should threaten prosecution if I cleared the regrowth.

Senator JOHNSTON—Right. So they are threatening you with further prosecution notwithstanding the magistrate's finding that they maladministered the process in the first instance.

Mr Klaassen—That is right.

Senator JOHNSTON—Are you saying that they are being vindictive?

Mr Klaassen—Certainly. If you are asking how I feel, I have certainly felt that I am being persecuted.

Senator JOHNSTON—Persecuted?

Mr Klaassen—Very much so. Violated.

Senator JOHNSTON—Yes?

Mr Klaassen—I think I may have said earlier that not a day has gone by in the whole 12 years where I do not spend some time thinking about what is going on.

Senator JOHNSTON—Have your lawyers taken up the persecution aspect of this with anybody?

Mr Klaassen—I do not believe so. I am sorry; it has been taken up with the Ombudsman.

Senator JOHNSTON—Where is that at?

Mr Klaassen—The Ombudsman is doing a formal investigation into the complaint.

Senator JOHNSTON—And that is current at the moment?

Mr Klaassen—That is current at the moment, and it could be up to 12 months.

Senator JOHNSTON—Thank you. Mr Bradley or Mr Peacock, you mentioned 'twig snapping'. Twig snapping is a very interesting expression. What do you mean by that? Can you give us some examples of where a farmer is prohibited from making twig-snapping alterations to his property?

Mr Peacock—I think the most famous case of that is the farmer in Narrogin, I think. He was clearing tracks so that the local conservation group could get in to look at some wetlands and he was actually charged under the act for breaking some branches.

Senator JOHNSTON—So he was clearing a track into some wetlands for the local conservation group to access his land and he was charged with an offence under the EPA?

Mr Peacock—Yes.

Senator JOHNSTON—Do we know the outcome of that?

Mr Peacock—Yes. I think it was dropped in the Narrogin Magistrates Court.

Senator JOHNSTON—But it got to court?

Mr Peacock—Yes.

Senator JOHNSTON—Are there any further examples of what you have described as 'twig snapping'?

Mr Peacock—I would think our organisation would be able to furnish you with a large number of examples.

Senator JOHNSTON—I would be obliged if you would, in situations where 'use of the land' has been subverted to minor infractions on vegetation such that they render the land virtually inoperable or put the owner of the land to great inconvenience and cost.

Mr Klaassen—There has been a flux of changes in regulation since 2003, but some that are causing problems are those that involve trees being within 50 metres of native vegetation. If they are out in the paddock, they have a different requirement. You cannot clear them; you need to get permission to clear them.

Senator JOHNSTON—You are saying that, if there is tree that is within a prescribed distance of native vegetation and the tree has some requirement for pruning or—

Mr Klaassen—If a farmer has a different system and the machinery is too wide, or if they are a tramline farming system, and the tree needs to be removed because it will be an impedance, he would need to go through the process to get permission to remove that tree.

Senator JOHNSTON—For one tree?

Mr Klaassen—Yes, for one tree.

CHAIR—For a single tree?

Senator JOHNSTON—For the *Hansard*, the witness said, 'Yes, for a single tree.' I would be obliged if you would provide us with examples of that, because I think it is a practical demonstration of where this has led to, and is leading to.

Mr Peacock—We are in a situation now as landholders where even powerlines, pipelines, railway lines, roads—I presume you could argue there is a public benefit from a powerline going

from, say, Perth to Geraldton or a pipeline from Dampier to Bunbury, and traditionally they would have taken the shortest possible route. We have a situation now because of this legislation where it is far easier for the government agency to put it through private land.

Senator JOHNSTON—And pay compensation and compulsorily resume the land?

Mr Peacock—Yes, adding a phenomenal amount of money to the cost of the project, presumably, and technical difficulty. Compensation is a difficult one to argue, but most of the people I know who have been involved in those situations feel that the compensation was very inadequate. Again, the process for those people to go through is quite long and not something that their business really wants to be involved in.

Mr Klaassen—To add to that previous point, I think the regulations also impact if the tree is a dead one.

Senator JOHNSTON—I was about to ask you whether it matters if the tree is dead or alive.

Mr Klaassen—It does not matter.

Senator JOHNSTON—So it still applies to a dead tree?

Mr Klaassen—I believe so.

Senator SIEWERT—I have lots of questions and we are running out of time, but I would like to go back to the issue of who bears the burden and the comments you made about the 1983 election. I happened to be working in Jerramungup in 1983 and was working on land conservation. I saw some pretty horrific sights down there in terms of massive problems with land degradation in that particular area. I think it is an oversimplification to say that the 1986 legislation came out of the Tasmanian dam proposal. You will be aware, as much as I am, of the huge debate that has been in the community for a number of years prior to the development of the EPA legislation. You will also be aware that the Soil and Land Conservation Act has been in this state for a significant period of time and that there has been a significant debate around how we deal with land degradation issues. Land clearing issues are part of that, and land clearing regulations, admittedly, are about protection of biodiversity on one hand but also about land management.

When you say, 'Who pays?' this is a two-way street. The state and the Commonwealth have paid and invested a significant amount of money in natural resource management. There is a debate about whether that is enough, and I for one would say, 'No, it's not.' It is not as simple as who bears the cost, in terms of whether it should be on the government's side or on the farmers' side. When we are looking at these issues we also need to look at the fact that we have a massive land degradation problem in this country, still. We have a massive loss of biodiversity in this country, and it is continuing to get worse. So we need to be framing this discussion with everything—not just private property rights. It is not as simple as that.

Mr McLeod—Could I just address that. First of all, for the record, I did not say that the 1986 Environmental Protection Act flowed from the 1983 issue—

Senator SIEWERT—The implication was that it was very recent.

Mr McLeod—Can I just make the point. The point is this: that was the time when community awareness about the very problems that you are mentioning was putting pressure on governments for legislation. The legislative response at the time was quite valid, and the point that was made by Senator Polley, I think, is that legislation can have unintended consequences. I also said that it takes time for those consequences to flow through, and that I what we are dealing with here now, and that is what has got to be addressed. Rather than trying to nitpick over history, I only mentioned the context in which the legislation was made to try to explain why, 30 or so years later, we need to address the problems of the sort we have heard here today which have arisen as a result. I did not once mention the term 'property rights'. To me it is really about proper process and aligning the environmental legislation properly with well-established principles, including, as I mentioned, the planning legislation. Why is it that Western Australia is the only state that does not have an independent appeals system, and why is it that the environmental system does not have a system of reservation comparable to the planning legislation that allows for the payment of compensation? No-one would argue that in all cases the restriction of land use gives rise to compensation. That would be a ridiculous argument. Therefore you would be compensating for building controls, you would be compensating for health regulations—any number of things. But this legislation needs to be aligned with the principles that underlie all the rest of our comparable legislation.

Senator SIEWERT—I tend to agree with you about the issues around appeals, and I think it would be fair to say that there are people from the conservation movement, and others, who would—probably even stronger than you—agree that it is an appalling appeals process, because most appeals, whoever they are from, get knocked back.

Mr McLeod—I agree with that. I think the point is to have an independent system. I might say, just putting my cards on the table, that I am a member of a number of environmental groups. This is not coming from a particular vested interest; it is about having a system that is rational—

Senator SIEWERT—A transparent system. The point is that it is not transparent. Unfortunately, I do not think we can move away from the issue around the history. I have been sitting here going through in my mind all the history of the development of the Soil Conservation Act, the EPA and the memorandum of understanding and how complex and difficult that was. So, yes, the system we have got is a dog's breakfast because we have tried to meet everyone's interests and get a system that works. I agree with you: it is extremely complex and there is definitely room for improvement. But we cannot improve it unless we understand where it came from. We have to understand the process of the development of the MOU and everyone's interests we are trying to meet. So I do not agree with you that we can leave the history behind.

Mr McLeod—I was not really suggesting that we leave it totally behind. I am as acquainted as anyone with a history of it. But there comes a time—and I think you have been saying this anyway—when we have to look at the real problems that are before us and ask what we are really going to do to rectify that. Knowing the complexities of the history is helpful but it is not an answer to the real problems that are presenting themselves now.

Senator SIEWERT—We need to review it—that is all.

Mr McLeod—Yes.

Mr Klaassen—I would like to respond to that. The Jerramungup situation is a little bit like the dust bowl in the United States, in that interference from the government in the first instance forced landholders to do stuff they probably would not otherwise have done. I am not saying that is always the case—and there are areas where errors are made. At the same time, if you tell a returned serviceman who has a patch of bush that he must clear 100 acres a year, he would not be able to do it at his leisure. It is a difficult job. He would not be able to craft a farm out of a piece of bush with that sort of requirement. I am just putting that as a balance to—

Senator SIEWERT—I think we could have a long debate about who was pushing the government to come up with those rules in the first place. It is probably a debate we should have later, but I do not think it is as simple as that.

Mr Klaassen—I am just saying that there is another side to it.

Senator SIEWERT—I agree that there is.

Senator POLLEY—Would a COAG process to make sure we have uniform legislation across the country be a step in the right direction?

Mr McLeod—I believe it would be. I think that is overdue. I set out some principles in a paper which I think has been submitted to you with our submission. Those principles should be made to apply in all of Australia. For example, it is wrong not to have an appeals system in Western Australia when there is an appeals system in every other state. COAG would be the right forum, I would respectfully suggest, to bring about that sort of change.

CHAIR—Thank you, gentlemen, for taking the time to come and see us today. It has been very helpful.

[11.38 am]

UNDERWOOD, Mr Craig Jefferson, Private capacity

CHAIR—Welcome. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. The committee has your submission. Mr Underwood initially made his submission on a confidential basis. The secretariat spoke to him this morning and, as he is appearing today, his submission will be made public. I now invite you to make a short opening statement. At the conclusion of your remarks, I will invite members of the committee to put questions to you.

Mr Underwood—My submission is based mainly on the national and state strategies from the international agreement signed by the Australian government. However, I would like to start off by saying I am not interested at all in the blame game of some of the earlier questions. That does not concern me at all. We have our elected members to act for everybody in Australia, and I take you at that cause. Previous speakers this morning have raised a number of questions I would like to quickly touch on. We have a number of dreadful cases in Western Australia, and no doubt the ones I have heard about in Victoria, New South Wales and Queensland are also dreadful. In particular, I would like to talk about Mr Klaassen, who has appeared before you today. I believe he is a classic example of persecution. Our justice system has found him not guilty, and he was awarded about 30 per cent of his real costs. Yet the Department of Environment and Conservation have put themselves above the courts by insisting that the vegetation conservation notice stays.

I know that things have changed, but we have to remember that there was a time in Western Australia when your land was taken from you if you did not clear at. That was under the conditional purchase scheme. That is factual agricultural history. Now, the whole situation has evolved into new legislation based on the back of these strategies, and we have seen the November 2004 amendments to the Environmental Protection Act. Probably the worst weeping sore in the side of successive Western Australian governments has been the case of Brian Burns at Jerramungup. That man has 6,000 acres down there, and I think he is allowed to use two acres for extractive industries for the local government. He has been to the Ombudsman and all over the place. I am amazed that the man is still alive. He is now getting quite old and probably cannot do anything about it. Where are we going to go in this state when we have situations like that? Mr Burns has his own personal national park! I refer to the EPA. We talk about acquisition of these lands and the biodiversity adjustment scheme, which is terribly underfunded. But section 4A(4)(1) of the EPA says ‘environmental factors should be included in the valuation of assets and services’. When these properties are blighted and they talk about acquiring the land for market value, the valuation system does not consider the EPA. Yet section 5 of the EPA says:

> Whenever a provision of this Act or of an approved policy is inconsistent with a provision contained in, or ratified or approved by, any other written law, the provision of this Act or the approved policy, as the case requires, prevails.

The EPA covers all acts in Western Australia, including the Valuation of Land Act. Yet we conveniently ignore these people. I think this is highly challengeable. What are the governments, both federal and state, going to do about men like Brian Burns and Rob Klaassen, who have

been systematically persecuted—no mistake. These are two very important parts of our local act and they have been wholly discounted.

We talk about WA Planning Commission laws or planning laws across Australia generally, and conservation and preservation, but I have never yet seen public open space, or reservations, for sale in a real estate agent's window. It simply has no market value. It is usually a condition of a development application, and that is the big difference between agricultural land and WA planning laws.

The state administrative tribunal in Western Australia does not have jurisdiction over the Environmental Protection Act. As we heard earlier, it has its own internal appeals convener. So when a planning situation that involves environmental factors goes to the administrative tribunal it cannot be wholly heard because environment factors do not come under its jurisdiction.

So those are a couple of pertinent points. It really gets down to: be aware of those that invoke an action when they themselves incur no risk. So all these policies that are to be read as law—EPA and WA planning—are made by an unelected board of members to an authority that advises the minister of the day. Here we have unelected people making law. It does not get discussed or debated on the floor of the parliament. It is simply gazetted by a willing—or conflicted—minister. Political deals go on every day; it is a fact of political life. So that is how these things get through: we have unelected people now making law. I think that has to be severely looked at if we are going to make any recommendations out of this.

My submission is based on the national strategy for the protection of Australia's biological diversity. That strategy was signed by the Prime Minister of the day and all state premiers and chief ministers. At the time, Paul Keating was Prime Minister and the Hon. Richard Court MLA was Premier of Western Australia. This was part of a COAG agreement. The states were then instructed to go off and form their own strategies consistent with and complementary to the national strategy. The first draft includes certain points I have raised in my submission about two million to five million hectares of privately held land to be under a voluntary conservation agreement. I can only imagine what the voluntary nature of these agreements would look like, given what we have heard today.

We now have an updated version of the strategy, which is along similar lines. Objective 151 of the national strategy says we should ensure that adequate, efficient and cost-effective incentives exist to conserve biological diversity. These would include the appropriate market instruments and appropriate economic adjustments for owners and managers such as fair adjustment managers for those whose property rights are affected when areas of significance to biological diversity are protected. It then goes through the priority that should be given to them. Isn't that what we have all been talking about here today? The national strategy clearly identifies that, yet the state strategies and the legislative changes that this strategy recommends have totally ignored that part of it. So are we going to ignore some and do the rest—bring in new legislation as this instructs, as we have seen?

These strategies were the result of an international agreement signed by the Australian government. Therefore, through this direct connection, I make the charge that the Commonwealth government, under section 51(xxxi) of our Constitution, is liable for actions that the states have to abide by to be consistent with and complementary to the document. That is not

to say we should go and buy everything. It has to be a negotiated arrangement and our legislation has to be amended to reflect that, if you cannot pay for it in some way, or negotiate a way around it, you do not have it. It does not have to cost the Commonwealth or the states anything. These things are already happening. So I do not see why agricultural land should not be included in that. If the WA Planning Commission want to resume or compulsorily acquire land, they do it, albeit not on just terms. Western Australia does not have just terms in its Land Administration Act. The problem with a lot of these policies—

CHAIR—I will have to ask you to bring your statement to a conclusion because the committee would like to ask you some questions before our time expires.

Mr Underwood—All right, I will just pick out some important points. There is an absence of any regulatory impact assessment statements on the social and economic impacts of these various pieces of policy and legislation. An agency can simply proclaim an area without an impact assessment statement on the economic and social reasons. The EPA does not consider the economic or social impacts. Through the vehicle of these strategies and the federal EPBC Act and the state and territory environmental planning and water legislation, under surveillance and enforcement and adaptive social learning by the overseers, there is no protection of property rights against interests taken. Our rights are a bundle of interests. When they start taking interests, how blighted does one title have to be before it is totally worthless?

I believe that you will end up with total control over all land use and the people on it. And once you have total control over the land use and the people on it you have economic control of whole industries, sectors or states. It is that economic impact that I do not think anybody has really properly understood within the agencies. It does get down to the cornerstone of democracy—are our secure property rights, security of tenure, security of investment. In some cases now banks recognise that property is so blighted they will not lend the full value on the land. In fact, they very quickly get to the safe lending margin, and that impacts on the saleability and tradability of that land, where a future purchaser could not borrow the full effect of that land to actually purpose it because it is so blighted by environmental constraints and water constraints.

I think it is high time that legislation changes and amendments be reflected to include just terms provisions everywhere and timely constraints. One of our senators here today is very familiar with my case background. I have been through the EPA, and that cost me five years of my life and almost my farm. I am now involved in water reserve for public benefit and private developers. It is amazing that some of these families hold themselves together. The finances quickly deplete and you become so weakened that you cannot afford to go through the courts or finance any successful appeals. I will finish there. I am sure questions will raise other points.

Senator SIEWERT—I am interested to explore the issues around appeals and whether you would see the issue going to one of the state tribunals or whether you would be interested in a land and environment court or something like that that New South Wales has.

Mr Underwood—I think the appeals tribunal suits Western Australia. I have heard some not so successful things about the land court in other states. We already have the State Administrative Tribunal. All we need is the jurisdiction to include the EPA. It is a reasonably financially achievable method of appeals.

Senator SIEWERT—So the simple thing you would recommend is that the EP Act be amended and the—

Mr Underwood—No.

Senator SIEWERT—So you take out the appeals—

Mr Underwood—The State Administrative Tribunal Act should be amended to include, in the conferral of jurisdiction, the EP Act.

Senator SIEWERT—Okay. Where I was going to with amending the EP Act was that you would still retain the appeals provisions but then make that subject to the appeals tribunal.

Mr Underwood—Without spending too much time on this, because of the very nature of the environmental appeals convenor and the service unit that services the EPA—that gives advice to the convenor, that makes advice to the minister, who then goes back to the convenor—it is a totally incestuous situation.

Senator SIEWERT—I understand the argument.

Mr Underwood—I do not believe that that works.

Senator SIEWERT—So you would scrap that altogether?

Mr Underwood—I do not believe that it is procedurally fair. I do not believe that it would in any way deliver natural justice. Most important, I think the State Administrative Tribunal is the end point. It is the noble cause corruption that gets you to that position in the first place. These agencies have to get a grip on their implementation and interpretation of the various laws so that we can at least have some chance of complying with them.

It gets down to interpretation by the agency people and their implementation of their interpretation—which I believe is totally wrong in some instances—so that we, basic farmers with a high education in agriculture, not law, can actually comply with these ridiculous laws and policies. It is just unworkable. We have all got good intentions, but there are certain people in the agencies who really are out of control, and I think that we need a strong direction, in policy, from government on how these agencies conduct themselves and what they are actually targeting. In the end, it will end up totally counterproductive.

You wonder why farmers cringe or threaten agency people when they come anywhere near their land and demand access to it. It is because they well know that they will enter a five-year or longer legislative risk area and probably come out of it very badly and probably lose a rather large percentage of their life savings in defending their accusations—only to be found not guilty and yet still have a vegetation conservation list on the whole property, not just the area in question.

We talk about property rights and the erosion of property rights—the bundle of rights—but you have got to consider what all Australians think of their freehold titles. That is a title given in fee simple. It is land alienated from the crown. Most people have been prudent enough with their

savings to actually acquire land in the first place, or hope to pay it off—and sometimes that takes a lifetime. Generally speaking, it is their ability to earn an income when you are talking agriculturally. It is generally their home. It is certainly their family legacy—to borrow against, to educate their children off farm into other careers. Most certainly for this era—men and women between 40 and 65—it is their superannuation. If I were to go and clip any of these state agency employees' superannuation by 50, 60 or 80 per cent, there would be massive strikes right across Australia.

That is exactly what is happening to our land values when they are smashed by these pieces of environmental planning and water legislation. Mr Burns' superannuation is smashed. Give him market value. What is it worth? Five shackles, because it is blighted and under protection already. There is no market for that land, except for some grant funded group that want to include it in the Gondwana link or similar. This is nothing short of government sanctioned theft. We have all got good intentions. Let's sort this out and try to bring these people along with you instead of persecuting and prosecuting.

Mr JOHNSON—Thank you, Mr Underwood, for your submission. When you talk about 'just terms', it is not good enough, is it not, to say 'just terms'. You talk about evaluation in a blighted state.

Mr Underwood—Yes.

Mr JOHNSON—What I mean by that is that first you get the notice and then the agency come along and say, 'We'll buy it, but it is not worth anything as a farm because we've just given you the notice.'

Mr Underwood—Exactly. The land has been regulated out of existence for any real valuation. The valuers are ignoring the environmental assets.

Mr JOHNSON—So it has to be in its non-blighted form, as a viable, going concern without environmental constraints, as normal working farm.

Mr Underwood—I think 'unaffected value' is probably the correct terminology. It has to be prompt and recognised in the first instance. A lot of these properties are still zoned as rural. Some of them are now in town planning scheme. I know a case in the Scott River where 50 per cent of a person's property is actually native vegetation in the Leeuwin Ridge area. The local government have now rezoned that land as conservation. So it has gone from rural to conservation. Can anybody tell me which is higher? Because you can be prosecuted and given a criminal conviction for damaging that native vegetation, to me, puts it at a higher value than rural; yet that is not reflected.

Consider what a criminal conviction is. I know of a 72-year-old farmer in the eastern wheat belt who was prosecuted for clearing rock poison from his bush because it was killing his breeding ewes. It was regrowth. It just happened to be on a property that he bought that was over 10 years old. This man has been prosecuted and found guilty and now has a criminal conviction. If he wants to fly to the US or UK or anywhere in the world, he will not get entry unless he has a sponsor, because they do not like criminals around the world these days. You cannot move; you cannot travel. Is this productive? Is this worth while? Are people going to be brought along with

you in protecting the environmental assets? Of course, not. There will be resistance all the way. Are there any questions on my submission regarding the strategies?

Senator POLLEY—Thank you for your submission and for coming before us, Mr Underwood. What approaches have you made to the state government here in Western Australia to change the legislation?

Mr Underwood—I will go back a number of years. I think I have actually asked successive ministers—I think it is now five successive environmental ministers—under section 99(v) or (t) in the EP Act, whether they could tell me, for a start—

Senator POLLEY—I have actually asked a question. Have you—

Mr Underwood—Yes, I have approached ministers.

Senator POLLEY—Have you approached the recently elected state government to change this legislation?

Mr Underwood—I have actually asked them to amend the Land Administration Act to include fair and just terms.

Senator POLLEY—And their response?

Mr Underwood—Favourable, but it has not happened yet.

Senator POLLEY—Is there any draft legislation that you are aware of?

Mr Underwood—Not that I am aware of that has been put before the sitting members. But I believe that there are people working on that very type of legislation. How far it gets will be proof in the pudding when it gets put before sitting members. Further to that—

Senator POLLEY—No; you have answered my question. We have got limited time.

Mr Underwood—There are quasi-reservations, where land is reserved but does not trigger the Land Administration Act. That was the core reason that we asked for the Land Administration Act to be amended.

Senator POLLEY—Have you made any approaches to the shadow federal minister for primary industries or the shadow minister for the environment?

Mr Underwood—No.

Senator POLLEY—Do you support an arrangement whereby this issue should be on the agenda for COAG? Do you believe COAG can actually resolve this impasse?

Mr Underwood—I think it certainly needs COAG attention. It certainly should have a high priority because it is affecting investment in the various states around Australia. One should ask

why New South Wales and Victoria are economic basket cases. It is because no-one has the confidence to invest there because they cannot get past the environmental hurdles or the length of time it takes to do environmental assessments, especially in the agricultural investment sector.

Senator SIEWERT—So it has nothing to do with the drought?

Senator POLLEY—I also understand that the—

Mr Underwood—Hang on. That is an important point, if I could answer Senator Siewert's question. Do you want me to answer Senator Siewert or—

CHAIR—You can answer Senator Siewert's interjection.

Mr Underwood—Farmers can deal with seasonal variations in climate—rain, drought et cetera—and they can deal with market fluctuations. You can budget for all those. You can put counter measures in. What you cannot budget for in monetary terms or in time frame terms is environmental agency or planning interference, because there is no time frame on it. You have no idea how long it is going to cost you; you do not know whether you are in a legislative risk or whether you will escape prosecution. That is a major concern.

Senator POLLEY—Do you support the native title legislation? Do you believe there should be any such legislation?

Mr Underwood—Native title?

Senator POLLEY—Native vegetation, sorry. We do not want to go back in history. Vegetation is a hot enough issue. Do you believe that there should be any legislation or do you believe that it should be open to the free market and left to the landholders and farmers to dictate how they preserve the environment?

Mr Underwood—That is a complex question. By the way, I thought your first question may have been outside the terms of reference.

CHAIR—I think Senator Polley corrected her question. So answer the question as she put it.

Mr Underwood—Native vegetation legislation is required—in the same way as pollution—in sections of the EP Act. It is certainly required, but the regulations are the really damaging part, apart from the criminal conviction bit, the inconsistencies and EPA boards making law. There does need to be some sort of legislation to protect those areas of significance and value to the state.

It should be remembered that only seven per cent of Western Australia is freehold land. The rest of it is under native title or is state government owned land. So we are talking about a small percentage of Western Australia. I think any agricultural land that has previously been cleared for agricultural purposes should automatically be allowed to be developed again for those food and fibre production purposes. At any one time, there is only around six weeks supply of grain in the world. We are part of the big picture now. There are international agreements. All these

factors should be considered when we are talking about an increasing population, protecting the environment and food production.

CHAIR—I want to clarify that the point you made about these particular laws was with regard to their enforcement, the vague nature of the laws, the lack of certainty and that they were therefore undermining the basic principle of the rule of law whereby you know the law and therefore you can comply with it and you have a right of appeal to an independent panel with regard to its enforcement.

Mr Underwood—I think interpretation by the agents of the law is highly questionable. The rest of that was quite accurate.

CHAIR—Thank you for your time today, Mr Underwood.

[12.10 pm]

ALLAN, Ms Margaret, Acting General Manager, Department of Agriculture, Fisheries and Forestry

BAILEY, Mr Terry, Assistant Secretary, Strategic Policy, Approvals and Wildlife Division, Department of the Environment, Water, Heritage and the Arts

BURNETT, Mr Peter Keith, First Assistant Secretary, Approvals and Wildlife Division, Department of the Environment, Water, Heritage and the Arts

CARRUTHERS, Mr Ian, First Assistant Secretary, Adaptation, Land and Communications Division, Department of Climate Change and Energy Efficiency

LOTT, Dr Rosemary Helen, Senior Policy Officer, Sustainable Agriculture Policy Section, Department of Agriculture, Fisheries and Forestry

SAKELLARIS, Mr Tas, Assistant Secretary, Coverage and Legislation Branch, Department of Climate Change and Energy Efficiency

STERLAND, Mr Barry, First Assistant Secretary, Adaptation, Land and Communications Division, Department of Climate Change and Energy Efficiency

THOMPSON, Mr Ian, Executive Manager, Sustainable Resource Management Division, Department of Agriculture, Fisheries and Forestry

Evidence was taken via videoconference—

CHAIR—Good afternoon. I will reopen this hearing of the Senate Finance and Public Administration Committee. I welcome witnesses from the Commonwealth Department of Agriculture, Fisheries and Forestry, the Department of Climate Change and Energy Efficiency and the Department of the Environment, Water, Heritage and the Arts, who are giving evidence via videoconference. I remind witnesses that the Senate has resolved that an officer of a department of the Commonwealth or of 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 to 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 your respective submissions. I now invite each department 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 I Thompson—I was going to provide an introductory statement and then each of my colleagues from the other departments will, too, and then we could perhaps go to questions.

CHAIR—Thank you very much. Please go ahead.

Mr I Thompson—The Department of Agriculture, Fisheries and Forestry has provided a submission which outlines Commonwealth and state responsibilities for native vegetation, programs in the area and recent research on profits forgone from possible agricultural production through native vegetation law. That submission primarily reflects the department's interest and involvement in native vegetation management on agricultural land.

One of the key points that we wanted to make was that the primary responsibility for legislation and administrative frameworks governing land clearing rests with the states and territories. Each state and territory has its own suite of policies and legislation for native vegetation, and some of the key similarities include things like: broadscale land clearing is only allowed with a specific permit or licence and often the use of voluntary measures and various assistance schemes to implement that legislation. Some of the key differences relate to the types of native vegetation that might be covered, whether there are objectives referring to climate change, and whether the legislation is coordinated by overarching legislation or incorporated into pre-existing legislation.

From the Commonwealth point of view, there are legislative responsibilities in meeting international obligations and protecting matters of national environmental significance, particularly under the EPBC Act, and representatives from DEWHA will talk about those. The Commonwealth also has an interest in initiating or participating in the development of cooperative approaches to dealing with environmental problems, particularly including habitat loss through land clearing, and it has approached this through the delivery of national initiatives.

The department assists farmers to adopt sustainable practices through national initiatives, including Landcare, the Caring for our Country program, and previous programs such as the Natural Heritage Trust and the National Action Plan for Salinity and Water Quality, and the states themselves have also had a role in those programs through bilateral agreements and funding arrangements. The broad goal of each of those initiatives was to maintain and improve natural resources, including native vegetation, and it was prosecuted by a range of financial assistance measures—for example, there was a national vegetation initiative within the Natural Heritage Trust which sought to reverse the decline in quality and extent of Australia's native vegetation cover, and the trust provided assistance to implement that measure. The Landcare program also helped to give effect to priorities on agricultural land to protect biodiversity and reduce land degradation, and it provided a range of grants to farmers and groups. Caring for our Country is the government's new environmental management program, which also includes opportunities for landholders to improve land management practices including for vegetation benefit.

The bilateral and multilateral agreements under which these initiatives operated provided broad policy directions, while it was up to the states to choose the appropriate suite of mechanisms to deliver them. The objectives were to be achieved through a range of tools, including regulation; collaborative policy; payments for stewardship or management activities; development of best management practices; and improving community knowledge, skills and engagement. The states and territories have made available adjustment schemes in some cases to assist private landholders affected by evolving legislation that controlled the clearing of native vegetation.

Our submission also refers to some recent research by ABARE, the Australian Bureau of Agricultural and Resource Economics, which has shown, using some case studies, that land-clearing restrictions in Queensland and parts of New South Wales and southern Australia, to improve environmental outcomes, could impose negative impacts on agricultural producers in that they could forgo potential increases in agricultural production and income.

The analyses suggested that the opportunities forgone as a result of the native vegetation laws could be higher for some producers than others. The suggestion was that the adoption of more flexible approaches to meet environmental targets would improve environmental outcomes and might be the most effective way of minimising costs incurred by private landholders.

The application of policy tools such as stewardship payments is designed to minimise the impact on private landholders where there is a high public benefit and low private benefit. Representatives from DEWHA and the Department of Climate Change and Energy Efficiency will provide further information on the EPBC Act and the Carbon Pollution Reduction Scheme.

Mr Burnett—I intend to briefly recap the key points that we made in our submission. In the context of this inquiry, our department's principal connection with the terms of reference is in our regulatory role under the Environment Protection and Biodiversity Conservation Act, or EPBC Act. The first key point made in our submission is that the EPBC Act does not directly regulate land clearing or native vegetation or greenhouse gas abatement. The act is built around the protection of what are called matters of national environmental significance. There are eight of these under the act. Several of them are relevant to native vegetation. The most obvious example is the protection of nationally listed threatened species.

Although the EPBC Act does not directly regulate native vegetation clearance, sometimes actions or approvals granted under the act affect native vegetation clearance indirectly. For example, if an area of vegetation is habitat for a nationally listed threatened species, it is possible that an approval might be required to clear that vegetation if the statutory test is met. The statutory test is whether the proposed action is likely to have a significant impact on a matter of national environmental significance.

At the end of the day, however, if you look at the statistics in our submission, the actual number of applications that have come before the environment minister or his delegate over the nearly 10 years of operation of the act is very small. We have got a paragraph of statistics there, but the last statistic is perhaps the most significant one: of the 3,400-odd matters referred under the act, only six of them are directly related to the clearance of native vegetation, and none of those was refused approval—or, to put it the other way round, all six were ultimately granted approval to proceed to clear native vegetation, although quite possibly under conditions.

Another point to make about the approval process under the EPBC Act, should it apply, is that there is a general protection in section 519 of the act relating to the acquisition of property on other than just terms. Effectively that provision repeats the constitutional protection against the acquisition of property on other than just terms and creates a right to apply for compensation should the act have the effect of acquiring property where a reasonable amount of compensation has not been paid. However, there have been no applications under that provision in the 9½, nearly 10, years of operation of the act.

The second area of the EPBC Act that is potentially relevant to this inquiry is the part that allows the minister to develop statutory plans, called 'threat abatement plans', for, as the name suggests, abating threats to nationally listed threatened species or ecological communities. It is a two-step process. The first step is to declare that a certain process is a key threatening process under the act, and the second step is for the minister to decide whether to prepare a threat abatement plan.

In the case of native vegetation clearance, back in 2001 the minister of the day did determine that land clearance, as it was termed in the statutory instrument, was a key threatening process. However, the minister of the day then also decided not to proceed to the preparation of a threat abatement plan. The net effect of that is that, although land clearance was declared to be a key threatening process under the act, it has no direct regulatory effect. It is not necessary for anybody to make any application. It simply stands as a formal acknowledgement that the clearing of land has an impact on nationally listed threatened species.

That is perhaps where I should leave it. Thank you.

CHAIR—Thank you very much.

Mr Sterland—I am Acting Deputy Secretary in the Department of Climate Change and Energy Efficiency but in my permanent position I head up the Emissions Trading Division, so I can answer questions in both areas of responsibility. The Department of Climate Change and Energy Efficiency leads development of domestic policy on reducing greenhouse gas emissions in international climate change negotiations. Australia is on track to meet its target under the Kyoto protocol of limiting annual carbon pollution to an annual average of 108 per cent of 1990 levels during the period 2008-12. The outcome is a result of reductions in greenhouse gas emissions from a range of sources and measures across jurisdictions. Important measures have included energy efficiency performance standards, the renewable energy target and regulation of land clearing.

Deforestation as described under the Kyoto protocol represents a subset of total land-clearing activity. It refers to the deliberate removal of forest cover and a subsequent change in land use to pasture, cropping or other uses over the Kyoto target period. Reductions in land-clearing rates have led to a decline in national greenhouse gas emissions from deforestation since the 1990 base year of the Kyoto protocol due to market trends and land-clearing restrictions that predated the Kyoto protocol, with some contributions from further adjustments to land-clearing regulation in recent years.

The Australian government's approach to reducing national greenhouse gas emissions over the longer term is to drive action across the whole economy. The Carbon Pollution Reduction Scheme is the government's main driver for national emissions reductions. The Carbon Pollution Reduction Scheme sets an overall legislated cap on emissions from a wide range of sources. The government is also investing in clean energy, improving energy efficiency and supporting business and households to take action. The government has excluded agricultural and deforestation emissions from liability for greenhouse gas emissions under the Carbon Pollution Reduction Scheme. The scheme includes an offset mechanism for recognising and rewarding eligible emissions reductions from these sources. The department's submission to the inquiry provides further information and context in relation to the committee's terms of reference.

CHAIR—Thank you.

Senator POLLEY—I thank the panel in Parliament House. I have a couple of questions in relation to this hearing. It is on the public record—it is being disputed by some, but others have drawn on it in their submissions—that the former, Howard government was very much of the mind to bring about this type of legislation to help with meeting the Kyoto clauses. Is there anyone from Climate Change or any of the other departments who wants to make comment in relation to the proposal that the federal government and the Queensland government were going to compensate farmers but, once the legislation was introduced, the Commonwealth withdrew any compensation? Does anyone have a comment to make on that?

Mr Sterland—I will start and Ian Thompson may wish to add something. The noise level was quite high during the question, but I take it that you are asking about the previous action in the context of the Queensland land-clearing legislation.

Senator POLLEY—That is right, and the fact that the Howard government and its ministers were very much of the mind to push through with this legislation. There was a fair bit of pressure put on the states to accommodate that. Is that your understanding?

Mr I Thompson—Perhaps I could start and Mr Sterland can fill in some of the detail. It is on the public record, I think, that a number of ministers made a number of statements in the context of negotiations around Commonwealth funding programs about a desire to improve vegetation management in Queensland and reduce land clearance. From my recollection and from the programs that we have been involved in, the objective of that was always stated—and I think it is in the bilateral agreement for Queensland—that it was to protect vegetation that was of concern or endangered and to reduce risks of land degradation or salinity from land clearance. I know that the public statements often referred to climate change benefits, and no doubt there could well have been some, but the programs were about natural resource management, environmental management, and vegetation and endangered species protection.

Senator POLLEY—In relation to the Department of Agriculture, Fisheries and Forestry, can you please outline to us the studies done by ABARE on the cost of land clearing to farmers? Were these done? Did the Howard government know? Was that all part of the pressure placed on these states? Was the Howard government aware of the economic damage that farmers could be facing?

Mr I Thompson—There was a range of studies undertaken by ABARE—we referred to them in our submission; some in Queensland, some in southern New South Wales and some in western New South Wales—which looked at particular case studies of the impact of land clearance on farmers' operations. There was also an inquiry by the Productivity Commission which looked at the impact of native vegetation clearance on agricultural productivity. They are all on the public record. All of those showed that, in particular circumstances, there could be quite high opportunity costs associated with land-clearing bans. They arose where farmers wished to change land use, from grazing through to cropping or from cropping to irrigation or the removal of trees to allow greater intensification. That data is on the public record and was on the public record from about 2005-06 onwards.

Senator POLLEY—My understanding is that the ABARE report on native vegetation was circulated to farmers associations in 2003. During the negotiations with the industry regarding compensation, was there any negotiation about compensation? Was that true? Did that go to any point in looking at the cost effectiveness of going down this path as part of the Howard government's target of signing up to Kyoto?

Mr I Thompson—I would have to take on notice whether there was an ABARE report in 2003. I know that that was raised in the Wagga discussions, and I have had a look through the reports that are available, but because it was so long ago we do not have access to anything that was not on the public record. So I am not aware of a 2003 report by ABARE. As I have said, there are the public ones that came a little bit later than that, which showed that there could be high costs, but they varied from region to region.

Senator POLLEY—You said you would take that on notice.

Mr I Thompson—I can take that on notice. I would not be able to comment on whether there was a discussion between the government and agriculture groups at the time. At the time, the department was working on the issue, but what discussions ministers may have had with lobby groups and industry representative organisations are matters to do with the previous government. I think questions like that would be better directed to the farmer organisations who may have been party to those discussions at the time.

Senator POLLEY—I ask each of the departments to respond on whether or not any actions have been taken since the Rudd government was elected that change the way farmers can use their land.

CHAIR—I ask for clarification of that question, Senator Polley. I assume you are referring to actions of the Rudd government, not actions that have been taken by anyone since November 2007.

Senator POLLEY—No, actions by the Rudd government to change the way farmers can use their lands.

Mr I Thompson—Certainly the Department of Agriculture, Fisheries and Forestry has put in place no regulations or direct drivers that would affect how farmers could use their land. There have been a number of documents prepared and released for public consultation that relate to land management—things like the Native Vegetation Framework, which was out for public consultation until 7 April, and the national biodiversity strategy, which was released for public comment last year. They are broad policy documents that provide a statement of intent and directions people might go. None of those have actually been put in place as yet; they have been released for public comment, and governments are still considering the implications. That is my recollection of it. If I had to check through everything, I would like to take that on notice. I would like to reserve the right to check that there is not anything that I might have missed, because I am not familiar with some areas—if you wanted to get into areas like animal welfare or something like that. Particularly related to environmental management of the land, I am fairly confident that there is nothing that our department has been involved in which has directly impacted on how farmers now use their land.

Mr Burnett—In terms of the Department of the Environment, Water, Heritage and the Arts, there have been no relevant changes to the EPBC Act or regulations that would affect the way farmers can clear land in that period.

Mr Sterland—In the climate change area, there have been no restrictions either introduced or proposed. In the proposed CPRS legislation currently before the parliament, there are incentives implicit in that regulation that farmers can voluntarily have access to. Depending on the development of robust methodologies, there could be incentives for avoided deforestation and land clearing, and offsets for other agricultural activities are also there. Of course, there are incentives for reforestation in certain circumstances, including regrowth forest. So there are incentives in proposed legislation. There would be incentives, if I am not mistaken, from my other portfolio colleagues in other areas of policy, but they are not restrictions, by and large. If my broad understanding is correct, there are various incentives for improved land use, but they do not amount to restrictions at the Commonwealth level. Would that be fair?

Mr I Thompson—That is correct. There are a number of payment incentives under Caring for Our Country—for example, stewardship payments or opportunities for farmers to apply for assistance for best management practices, or in the Barrier Reef, for instance, opportunities for farmers to receive significant incentives to change their land management or some of their practices to improve reef water quality. But they are voluntary actions and they are supported by incentives. Our programs operate along those sorts of lines.

Senator POLLEY—Thank you. It was actually the Rudd government that ratified Kyoto but it was the previous government, the Howard Liberal-National government, that met the targets but would not ratify the protocol. Can you advise the committee whether or not the federal Rudd government received any financial benefits from ratifying that agreement?

Mr I Thompson—Direct financial benefits, no. The ratification means that the Australian government faces obligations under the Kyoto protocol and has access to a range of means to meet those obligations including flexible market mechanisms under the Kyoto protocol. Because the government is on track to meet its Kyoto target, to the extent that that meets the target exactly it would not have financial consequences. If it were to underachieve, bearing in mind that there are still some projected years and there would be an excess of units—for example, after further decisions of government—that would have some financial benefit. If it were to slightly underachieve, there would be an obligation to make good on that with international purchases. So there are contingent financial consequences, but on current projections they are not major.

Senator POLLEY—There has been a fair bit of evidence to this inquiry in relation to the financial and emotional cost on the farming community, and that still most people who have come before us believe that there should be some native vegetation legislation. Are you aware of any other policies to address these issues out there in the public domain, or an alternative to this type of legislation?

Mr I Thompson—The other sorts of measures which are part of the package usually for implementing vegetation management improvement include things like taking a regional approach to vegetation management and seeking the voluntary setting aside of some land, or replanting other land and then allowing development of some parcels of land. There are also

incentive payments through various forms of programs, more particularly at the Commonwealth level, with the Environmental Stewardship Program addressing some matters of national environmental significance. A couple of the states are also running biobanking or bush tenders where farmers can offer up areas of valuable vegetation for purchase by the government or as offsets against essential land clearing that might be needed for infrastructure, or the like. So they are the other mechanisms—planning information or incentives or some forms of market based instruments.

Senator POLLEY—Do you have anything else to add about climate change as well in your knowledge of alternative policies on land use?

Mr Sterland—There are a couple of dimensions to that. The terms of reference mention both the CPRS and the opposition's policy proposal. There are also some other international approaches. For example, the New Zealanders have a different approach to the CPRS in this area. To reiterate the key elements in the CPRS, liabilities are placed on emissions in certain sectors of the economy which happen to make up about 75 per cent of emissions. Those sectors include virtually all energy emissions in transport, stationary energy—power stations and the like—industrial processes and waste. The 75 per cent of emissions are covered and face a liability under the scheme, and the emissions for deforestation and agriculture are excluded from liability and have access to incentive based mechanisms, as I mentioned: crediting arrangements for reforestation and for earning offsets from reducing emissions below what would be expected from a source.

From what is on the public record on the opposition policy, I would make a few analytical points. There is no mention, as far as I can see, of deforestation itself or crediting avoided deforestation activities. It has a different mechanism than the CPRS in crediting that abatement. It appears to be based more on a grant and contract approach than on a legislative framework as provided under the CPRS. Our experience in Australia previously with grant based and contract based abatement purchase has been that there are reasonably high transaction costs involved in those.

The final point that represents a significant difference, I think, is that the crediting arrangements under the CPRS would provide a market price to all abatement, so the prevailing carbon price would be affected by international circumstances. All crediting would receive that market price. The opposition's policy relies on what economists would call price discrimination and pays a lower carbon price to some sources of crediting, such as forestry and other land based crediting, and provides higher payment arrangements to other forms of abatement. There is a difference in the way that the crediting, so to speak, is applied under the different policies. They would be the key differences that relate to this committee's terms of reference.

Senator POLLEY—I have asked a number of the witnesses today whether they would support this going on the COAG agenda. In the view of the departments, could anything be gained by trying to resolve through COAG some of the outstanding issues that have been raised by farming organisations and individuals to make sure there is uniformity across the country in the way appeals are heard et cetera?

Mr I Thompson—For some issues COAG is the place to resolve some of these intractable issues that require central agency to Premier to Prime Minister type discussions. It is really a

matter for the states and Commonwealth together to place this at such a level of priority or intractability that it needs the highest level of discussion.

The approaches to vegetation management are to try and achieve a degree of uniformity in how they are managed and how things are defined so that farmers do not have to face different sorts of rules in operating farms on different sides of the border. An issue some people have raised is inconsistencies in definitions of native vegetation and endangered species. Some recommendations came out of the EPBC review about improvements in consistency, I think, in that area. Certainly some of the work in the consultations over the Native Vegetation Framework talked about improving consistency of legislation. In that sense, I cannot comment in detail on whether or not it should go on the COAG agenda. There are a number of other avenues, particularly through ministerial councils, where some of those issues can be worked on already.

Senator SIEWERT—I want to go back to the issue about the threat abatement plans and why a plan was not developed after land clearance was listed as a key threatening process. Why was it felt that there should not be a plan?

Mr Burnett—It was nine years ago, so unfortunately I do not have specific information before me as to why that decision was taken. I can say that, as a matter of general principle, when a minister is deciding whether or not to approve or develop a threat abatement plan under the EPBC Act, he or she has to address a number of statutory criteria. I will not bore you with those, but they are set out in section 271 of the EPBC Act. I suppose the key one criterion would be whether it is the most efficient and effective use of the resources that are allocated for conservation of the species and ecological communities. In other words, the minister needs to make a judgement at the time about whether a statutory threat abatement plan, a formal plan such as this, is the best way to deal with that particular threat or whether it is more appropriate to approach it under other more general policies such as Caring for our Country, cooperative policies or national frameworks with the states. As a generalisation, when ministers in the past have decided not to go ahead and develop a threat abatement plan it has tended to be for that kind of reason: there are other policies and processes in place that the minister feels would be the best way to address the threat.

Senator SIEWERT—Am I correct in understanding that the Commonwealth has to comply with the threat abatement plan? If you do not have one, how does the Commonwealth take into account land clearance issues during its decision-making process?

Mr Burnett—That depends on which sorts of decisions we are talking about. In terms of the approval decisions, or decisions under the EPBC Act on whether or not to approve a particular action, it is taken into account through the statutory criteria of whether the land clearing would be likely to have a significant impact on a matter of national environmental significance—for example, whether the particular area of vegetation is a critical habitat for a threatened species. That is in terms of statutory approvals. In broader terms, if, for example, the threat had been dealt with under the general policies such as the national framework and so on, just for general consistency the Commonwealth would look in specific decisions to act consistently with policies to which it would be a party such as a national biodiversity strategy, for example, or a national vegetation management framework.

CHAIR—With respect to the state native vegetation laws, the Commonwealth does not in any way oversee, authorise or police those, does it?

Mr Burnett—That is correct. The Commonwealth does not authorise, oversee or have any direct role in state native vegetation laws.

CHAIR—These are actions of state parliaments policed by state governments.

Mr Burnett—That is correct.

CHAIR—One of my colleagues earlier referred to using the term 'pressure' on the Queensland government with respect to the passage of its native vegetation laws. Are you aware of any such pressure and, if so, what form did such pressure take?

Mr Burnett—I am not personally aware of those circumstances, Senator.

Mr I Thompson—I am not aware of any pressure, but at the time the then government did make a number of public statements about what it was seeking to achieve through the delivery of its natural resource management programs in Queensland. Some of those did relate to protecting endangered vegetation communities and protecting vegetation that, if cleared, may lead to unacceptable land degradation. I do not know whether that could be interpreted as pressure, but they were the objectives that were being sought and the outcomes. That was in the statement.

CHAIR—That is the point I was trying to get to—pressure versus persuasion. I think that is a very important difference given that, as we have heard, these laws are the creation of state parliaments and policed by state bureaucracies. Finally, would you agree with the statement that the impact of these state laws varies drastically depending on the area in which one might find their particular property? We have heard substantial evidence that there is a great deal of variation in the impact these laws and their policing have depending on a region you may be with in a state or the type of land or property you may own.

Mr I Thompson—I think I said earlier that the assessed economic impacts of these do vary from place to place. They do vary depending on the potential for land use or land practice change that might be envisaged by farmers or might be being forced upon farmers by climate change or markets. So, in areas where agriculture is developing, the vegetation legislation would have a bigger impact. Where land use is not changing, they possibly do not have a major impact. So they are quite variable in their impact and perception by farmers.

Mr Burnett—Before we finish, could I please supplement my answer to Senator Siewert?

CHAIR—Go ahead.

Mr Burnett—Senator Siewert asked about the minister's decision on the threat abatement plan and so on. It has been drawn to my attention and it is in our submission—this is going back to the 2001 decision—that the Threatened Species Scientific Committee under the EPBC Act provided advice to the minister of the day on that matter and formed the view that the development of a TAP was unnecessary.

Senator SIEWERT—I am after why they said that.

Mr Burnett—I am sorry; I do not have any more information than that.

Senator SIEWERT—Thank you.

CHAIR—I would like to thank the many of you for making the trek up to the House, for your time and for your submission.

Evidence was then taken in camera but later resumed in public—

Proceedings suspended from 12.53 pm to 2.33 pm

HILL, Mr Alan, Director of Policy, Western Australian Farmers Federation

PARK, Mr Dale, Climate Change and Natural Resource Management Spokesman, Western Australian Farmers Federation

CHAIR—I welcome representatives of the Western Australian Farmers Federation. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. The committee has your written submission. I now invite you to make a short opening statement. At the conclusion of your remarks I will invite members of the committee to put questions to you.

Mr Hill—Western Australian Farmers Federation thanks the committee for the opportunity to appear this afternoon at the hearing. It is worth noting that, as I understand it, today we have only had representatives of agricultural organisations. I think that is probably a fair reflection of the level of interest in and the likely impacts of these issues for Western Australian stakeholders. Western Australian Farmers Federation believes that we have a fair issue looming in this country. We are continuously reminded that our population will rise by the middle of the century to about 36 million people. And, whilst all these future consumers should be a very positive prospect on the horizon for our farmers, our capacity to feed them is being continuously diminished.

Our farmers are currently losing productive land to issues such as salinisation and soil acidity and/or erosion. They are restricted in their access from opening up new land, and they face land use pressure from a range of sources. Among the factors is that they will decrease the area of land on which future food production can occur. Relating specifically to the first term of reference, WA Farmers Federation position is that we have a tremendous problem with current land clearing laws. In essence they restrict productivity and yet, as we have noted in our submission, they have not delivered the environmental benefits that they seek to in terms of land, species or biodiversity protection in Western Australia. Yet they keep being administered by agencies that do not have a tremendous track record. They are not delivering on their core business and, in some ways, we suspect that they do not have a tremendous regard for the capacity of our farmers as land managers.

Our submission talks about the direct and indirect costs to our farmers. Whilst they are difficult to quantify, one thing is certain and that is: should this inquiry not identify and recommend future policies that allow food production in partnership with actual environmental outcomes, the current problems will continue and perhaps get worse.

Western Australian Farmers Federation recognise the reality of climate change. We seek to be involved at the very highest levels of consultation to identify the practical methods for entry, including revisiting relevant Kyoto rules to recognise the Australian agricultural environment. Lastly, we believe that both federal and state governments should increase research funding into agriculture's role in greenhouse gas mitigation and abatement. We thank you for the opportunity to appear before you, and we welcome your questions and comments.

Senator SIEWERT—Can you tell us a bit more about why you think the laws are not working, and what would you like to see in terms of environmental clearing laws?

Mr Park—I think the classic problem is that when you have 'one rule fits all' you have got different areas that are affected differently. In Western Australia, for instance, the same laws on land clearing apply for shires like Merredin or the eastern wheat belt—where we have got one or two per cent remnant vegetation—and to shires like Ravensthorpe or Badgingarra, which have got over 50 per cent remnant vegetation. That is where we have got a real problem. Although we have got clearing bands in place, it does not actually address the problem. It does not address the problem that we have got in the wheat belt, where we have probably overcleared slightly. And people in other areas, who have still got country that, in our view, should be made into useful agricultural area, are not allowed to clear. For instance, in Badgingarra 43 per cent of the shire is owned by the government, is bush and will never be cleared. Yet the other eight per cent of the remnant vegetation is going to stay bush. Individuals have been more affected rather than the whole community. There are individuals who have got quite a lot of land that still should be cleared, and the people who cleared wall to wall are benefiting. That is our real problem with the way that it is structured.

Senator SIEWERT—In other words, you are saying that you should be allowed to clear still in Ravensthorpe and Badgingarra?

Mr Park—I think you should take into consideration what the areas are doing. To answer your question, yes, I think you should be able to. There are plenty of corridors—places like the shire of Dandaragan, for instance—where we have got six or seven national parks and then there are huge amounts of unallocated crown land as well. It is the same in places like the shire of Ravensthorpe. I suppose the other thing that disturbs a little bit is that even though DEC is supposed to look after these areas, they do not do a very good job of it.

Senator SIEWERT—'They do not do a very good job.' Have you looked at their budget?

Mr Park—I quite agree, but I am not responsible for their budget.

Senator SIEWERT—Do you lobby the government to improve their budget?

Mr Park—We certainly tell the government that they are not resourcing DEC well enough. Probably most of the Western Australian departments would have the same cry.

Senator SIEWERT—Yes, they probably would, but they are also not responsible for managing vast areas of national park.

Mr Park—No, but they probably are responsible for looking after the health of the state or the education of the state or whatever.

Senator SIEWERT—You made a comment about the law not working. Mr Hill, I think you linked that to our biodiversity protection. Correct me if I am wrong. The biggest identified cause of loss of biodiversity is massive destruction of habitat.

Mr Hill—I was really looking at the most recent reference that I have seen, which was the *State of the environment* report. That is quite critical of the agency's performance over the last 10 years. You started to talk, in all honesty, about the fundamental problem, and that is funding. We certainly have an issue with the difference between the planning and the implementation phases,

where there is a need for a range of plans which commit landholders to various activities or restrict various activities and then they are not followed through with real investment on the ground. There is no doubt. I take your reference to land cleaning and, if we go back far enough, we would have to say that that was driven certainly through government policy. But the issue is, if we look at the last 10 years, that what we see through documents like the *State of the environment* report is that on any indicator we are seeing a real decline and yet that is being used in some ways as an argument to restrict further land clearing. What we are saying is that, if we can see a demonstrated benefit from that, there might be more weight in that argument.

Senator SIEWERT—I am a bit staggered that we are facing massive land degradation issues and all those sorts of things. I do not think anybody has ever run the argument that just restricting land clearing is going to fix the massive loss of biodiversity and land degradation problems we have in this state. I would be extremely surprised if you could point out to me where somebody said that.

Mr Park—You are right, but what has happened is that we have had one bit of legislation that comes through that says, 'You are not going to clear any more land,' and, really, nothing else is being done. Therefore, the people who have got land to clear are actually paying the bill for everyone else. As I said, there are all the shires in the eastern wheat belt which were overcleared and nothing is being done about them.

Senator SIEWERT—The point here is that it is bad policy or bad implementation, which I think you also referred to, in terms of delivery of resources to address some of the underlying issues in terms of the fact that we now have a lack of adequate vegetation in the landscapes that you are talking about. Earlier today we were talking about stewardship payments. In my opinion, the funding for NRM is being misdirected, for example—it has been cut back in terms of hitting the ground. Those are the issues that you are talking about in terms of the policy not working?

Mr Park—NRM is an interesting one. There has been quite a lot of money spent on NRM, but when you go back and look through the country areas I am not sure that you can really see where a lot of it has hit the ground. The biggest benefit we got out of NRM funding is that we have a whole heap of young people who have gone back into the country and have gone on to BEOs and whatever of various organisations connected with the NRM. But, when we look at where the money was spent and the benefit we got out of that money, I have real doubts about whether we can show a positive cost benefit analysis on that.

One of the problems there was that there was this reticence about spending money where people would get some private benefit. And yet when farmers do things for either land reclamation or environmental reasons, it is a loss-loss situation for them: they spend the money and they are really not getting much or anything back—it is for the good of whoever. I think that we probably should have had a lot more concentration on being able to profit from land management activities. One of the classics that come to mind is broom bush and that sort of thing. If we could have had more projects like that, it would have been a lot better.

Senator POLLEY—Thank you, gentlemen, and thank you for your submission. Where does your organisation stand? Do you see the resolution of these issues as a matter purely of compensation?

Mr Park—Purely compensation?

Mr Hill—I do not know that it is. At the heart of the problem is that I do not know where we would get the funding for that size and scale. Going back to the previous point, if we look at an issue like land salinisation, part of the issue with that is that the response on ground has not been commensurate with the size of the problem. That is in some ways very much driven by a lack of financial resources. We simply know that, despite all the good efforts over time, the problem is growing in Western Australia. That, I suspect, is because we have just run out of the financial resources to deal with it. I think some of the scientific work has been done; we just lack the impetus to take it forward as a really primary issue for the state.

Senator POLLEY—So what is your solution? We have had a lot of evidence given verbally and we have received a lot of similar submissions. We have already established quite clearly on the public record, I think, the involvement of the previous federal government and the states' initiation into this type of legislation. What is the solution? How do we go forward? You can acknowledge that this legislation did not have any intention of causing what has been put to us as devastation to the farming community at various levels. How do we go forward and how do we resolve it? Even Senator Barnaby Joyce, when he was for a short time the shadow spokesman on finance, initially said, 'Yes, we've got to have compensation.' and then he went back to his office and he was told, 'No, that's ridiculous; it's not going to happen,' and then he changed his position. If it is not a matter of compensation and money, and there are programs where there is incentive rather than a carrot-and-stick scenario, is part of the solution—I think there are a number of elements here—that this needs to go before COAG, that there need to be uniform laws across the country?

Mr Park—I think compensation is part of the solution. That goes some way to spreading the load. As I said before, what has happened in Western Australia is that the load of clearing bans has been taken by most of the new farmers and in the new farming areas. So compensation will spread the load that people are carrying. I put this in a little bit with heritage buildings. We find a lot of people are quite happy to say, 'That heritage building should be kept,' but no-one is actually willing to put their hands in their pockets to either buy or look after that building. I think that a lot of our land care stuff goes into the same sort of area. There is a problem out there, and it has to be shared by all the community. I do not think the farming community are the ones that should be paying for it all. As to solutions, I am not sure. If we had solutions to things like salinity, I am sure a lot of it would have been done now. We have had all sorts of people doing anything from deep drains to WISALTS banks to planting trees, and we have not found the silver bullet yet.

Senator POLLEY—You may or may not have been part of the hierarchy of your organisation at that time, but what consultation took place between your organisation and the state government in Western Australia and also the federal government?

Mr Park—For?

Senator POLLEY—About your concerns before this legislation was introduced. Were you involved?

Mr Park—For the clearing?

Senator POLLEY—Yes, stopping the clearing of land. Were you as an organisation consulted at all? Were you involved in any dialogue with the state or federal government of the day?

Mr Park—You are right; it was before my time. It is interesting. People keep saying, 'Well, you've been consulted,' but then they run off and do exactly what they wanted to do in the first place. So excuse me for being a little bit cynical about some of the consultation that goes on. Often what happens is that, yes, we are consulted but then we are basically told, 'This is what's going to happen.' My recollection is that with the clearing bans they just decided that that was what should be happening and that was it. I was not involved at a high level at that stage, but my recollection is that we were fairly against it.

CHAIR—A couple of things have occurred to me in the course of this inquiry. There is the issue of the laws themselves. I want to come back to that. I would like to discuss compliance enforcement. We have had a number of submissions, in writing and verbally, that have outlined that there is almost a breakdown between the property owner, the farmer, and those who are seeking to enforce these laws. That breakdown can be based on the vagueness of the law. Therefore, it is hard for someone to determine what the law means. It can also be based on the fact that people coming from outside a community to enforce a law which is vague are not necessarily going to have a relationship with property owners and farmers that understands the unique characteristics of that community. Could you give us your perspective on the enforcement regime, culture and attitudes between the various government departments and the farmers and property owners?

Mr Park—Can we just go back and address the question that was asked before. The process that went through in Western Australia was a little bit like cooking a frog. It was done bit by bit. Monty House was the minister for agriculture at the time when the first lot came in. The regulations were changed. In 1988, I think, the regulations were changed so that you had to get permission. We were coming from a situation where the government was actually encouraging you to clear land and saying that you would not get freehold title until you had cleared a certain amount of land. Somewhere between 1988 and 1990 they changed it so that you had to apply for clearing permits. Then it slowly went on from those clearing permits and got more and more difficult as it went along. So that is what I mean by cooking a frog. It did not just go from people being allowed to clear everything to not being allowed to clear anything. There were stages on the way through. I think it would be fair to say that, during that process, landholders in particular were not clear on what their rights were or where they stood on each of those until they had been in a fair way.

CHAIR—Until they had been in the frypan for a while.

Mr Park—Yes. They were starting to get a bit warm and they suddenly realised. Often the reaction then was to turn up the heat a little bit more because obviously they had not quite been cooked yet. That takes us, then, to what sort of policing we have happening now. You are right in that what happens now is that people within DEC seem to have an agenda. I will give you an example. A block of bush was burnt at the back of my place. It was not on my property; it was next door. Three years later we had a visit from DEC saying, 'This bush has shown up on the computer as having been cleared. Can we have a look at it?' I said, 'Yes, you can go ahead and have a look at it. It hasn't been cleared. It was burnt.' So we have a real enforcement mentality rather than looking at what is best for the country.

CHAIR—Would you say the relationship between officials and property owners is it not as good as it could be, in the sense of it being confrontational?

Mr Park—It is certainly adversarial. There is no doubt about that at all.

CHAIR—In your organisation's experience, does that exacerbate the problems that these laws have caused? As I said before, I do not come from a farming background, but we have heard many examples of a difficult situation being made substantially worse by the culture of enforcement or the lack of a relationship between officials and property owners, which makes a difficult situation much tougher.

Mr Park—We have a couple of court cases going on here at the moment where the farmers' lawyers wanted to talk to DEC's lawyers and there has just been no consultation at all. A very negative aspect of all this has been trying to get around problems. In one case a fellow was served with a notice to actually get rid of weeds. He cleared a bit of it and he is now being prosecuted for land clearing. He could not get into it with boom sprays, and that is the reason he did it.

CHAIR—To clarify, there are examples, without using names, of people being directed to comply with one law, resulting in a breach of these laws.

Mr Park—Yes, that could be argued quite easily.

CHAIR—If you could take on notice to provide us a reference, a newspaper article or an example, that would be very helpful in the committee's deliberations. It strikes me that one of the changes that have happened over the last five or six years at the state level is that laws that started off as prevention of broad-scale land clearing have become much more about micromanagement of farming properties. We have heard an example from New South Wales where a tree in the middle of a paddock could not be removed, and we heard a similar example here this morning. Is that a fair characterisation of your journey through these laws—that they started off saying you cannot get two bulldozers and a chain, but that they have now come down to the point where they are managing portions of acres of scrub on properties?

Mr Park—Yes, and it is almost worse than that. The lack of information right through is not good. For instance, quite often people are told, 'You've got a rare and endangered plant here.' Then, when you start to talk to other landholders around the place, they say, 'But this stuff runs from Geraldton down to Northam. There are strips of it everywhere.' So one starts to wonder whether the research work has actually been done on these rare and endangered plants—whether they are actually rare and endangered, how many there actually are. The other thing is that burning regimes have changed quite significantly in the last 50 years, which also changes the prevalence of these various plans. If you ran a fire through some of this country, you might be surprised what comes back up after it. So there are problems on all sides. To be fair, a lot of farmers have not gone out to actually study the clearing regulations, and then of course when they get caught they have done the act and found that they were in breach.

CHAIR—Do they use mapping technology such as satellite photos in Western Australia to determine vegetation that needs to be protected? Is that the routine? Is there technology used other than site visits?

Mr Park—I cannot answer that question, but I would say that it would be quite difficult to do so, when you consider the biodiversity of quite a lot of Western Australia. Satellite imagery is not going to be able to tell you whether there is a certain plant there or not, because it is just hugely diverse.

CHAIR—We have had that issue raised in other states. That is the main reason I asked. One of the issues that has been raised a couple of times this morning is whether there should be uniform national laws about this. I would like to put to you an alternative and seek your expertise. In my experience in this inquiry one of the problems has been that you might have a law in New South Wales or Queensland, which is where we have been thus far, which is genuine in its intent—I appreciate that in New South Wales they treat the western area differently from the other areas—but that those two states themselves are so large and diverse and we have a problem with one law applying across those two whole states and that, in fact, a national law would be even worse from that perspective. Given what you have mentioned about the diversity in Western Australia and the impact on new farming and older farming areas, is it your view that you need more national consistency on the application of these laws or more local variation? I put to you the two ends of the spectrum.

Mr Park—Inherently, I go for more local variation. I believe that is a better way of going about it. As I said before, one rule that fits all is always destined to have problems in various areas.

CHAIR—Regarding whether the Commonwealth and the states agreed upon there being local variation and they all agreed that there was, for example, the right of appeal to an independent panel, like your state Administrative Appeals Tribunal, or whatever its official name is, I am not talking about that; I am talking about the application of the laws and how they are applied in different farming regions of Western Australia.

Mr Park—They are certainly being applied uniformly, I think, in Western Australia, but the effect is definitely on the newer farming areas.

CHAIR—Is that uniformity part of the problem?

Mr Park—I think the legislation is part of the problem in that there is a uniform law right across and, therefore, the people who are going to be pinged are the ones in new farming areas. From a farmer's point of view, we have real problems when we look at the reasons that you are supposed to have these laws, and the reasons do not seem to stack up with regard to the actual practice of putting them in place. There must be about seven or eight shires in this state that have 50 per cent or more remnant vegetation. Those of us in those shires look at the way they are being administered and think, 'There is a stack of bush out there where we are not going to have those problems, and yet the problems in overcleared areas are not being looked at at all.' Admittedly, it will cost a lot more money, but maybe that is the reason.

CHAIR—Finally, given that it is likely that there will be some native vegetation laws on the books for quite a period of time, I wonder what you think should be done to remove the burden that some farmers experience because of their location and what should be done to make these laws easier to work with so that they do not impact on agricultural productivity, personal financial situations and they are easier and more transparent to enforce? People today have

mentioned that there should be an independent appeal process, as every other administrative decision is subject to. Do you agree with that? Are there any other changes that should be made that go to the substance of the law and the procedure?

Mr Park—That would certainly help. One of the problems has been resources. There was a chap—his name escapes me; I think it was Bradbury—who was looking right at the beginning of all this, which must have been eight or 10 years ago, at having farmers who had big amounts of cleared country trying to make viable farms out of the ones that were there and taking the bush out. The state would own the bush. That sounded like a fairly reasonable idea to me, but he ran into problems because of the resources that the state government was willing to put into it. It would be better if there were consultation and people were prepared to have a look at the problem and say, 'How are we going to solve these problems?' rather than coming down heavy handed like they are doing at the moment. I read something recently that said there are 200 prosecutions pending at the moment out of DEC.

Senator SIEWERT—Are they all about clearing?

Mr Park—Clearing or related type activities. It will be those sorts of things. They are all related to the clearing pretty much—clearing vegetation of one sort or another.

CHAIR—Cultural change in DEC in terms of how they go about enforcement would be near the top of your list?

Mr Park—It is a bit hard to single out, say DEC, because within DEC you have got different parts. For example, just the other day there was a big fire at Eneabba, which is north of Badgingarra. People were rung. The question was asked, 'Is there any private land involved in this fire?' The answer came back, 'No, it is all DEC.' People were just saying, 'We are not going to be bothered.' The repercussions are actually happening to DEC and affecting DEC in a lot of other ways. The perception out there is that DEC is picking on various landowners, so, 'If that is part of December, we are not going to have anything to do with any other part either.' That is part of the problem we have got.

CHAIR—Thank you very much for your submission and your time. We are due to report on Friday week, so the committee will be finalising its report next week. If you took questions on notice, if you could get relevant information to us as soon as possible, that would help our deliberations.

[3.08 pm]

THOMPSON, Mrs Janet, Representative, Coalition for Agricultural Productivity

THOMPSON, Mr Matt, Representative, Coalition for Agricultural Productivity

CHAIR—Welcome. 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. At the conclusion of your remarks I will invite members of the committee to put questions to you.

Mr M Thompson—I have noticed today that there has been a problem with everyone giving short opening statements. I think part of the problem with that is that a lot of agriculturalists have been affected for 10 to 20 years of their lives by such legislation and it is very difficult to distil into a five-minute statement.

We are the Coalition for Agricultural Productivity, or CAP. We are the face of this coalition because we were producers put out of business by excessive regulation under the guise of environmental protection. There are many things that concern producers, but they are scared to speak out—frightened to put themselves on the radar screen. We are a voice for those producers.

CAP supports science based, free-market agricultural productivity. We believe that, with freedom, agriculturalists can continue to feed the world and care for our environment. We believe a role for government is to set minimum standards for environmental regulation. The pendulum has swung to the extreme, however, such that true environmental protection is now lost in the green noise. We also believe that our climate changes constantly but that humans are not responsible for that change. Carbon dioxide is not a pollutant. In fact, it is a naturally occurring compound essential for life on earth. Enacting legislation and policies that pursue a nonproblem, anthropogenic global warming, diverts resources away from adaptation to, and dealing with, true problems.

Our ability to produce food, not only in Australia but around the world, is severely threatened. The single largest threat to our ability to produce is the assault on the common-law right of private property ownership. These assaults take on multiple forms and methodologies. But, first, it is vital that we establish the importance of private property rights in any successful and therefore sustainable society. I will cut this part of my presentation short. I have a lot of supporting evidence as to why private property rights are the foundation on which successful and sustainable societies are developed.

Senator POLLEY—Mrs Thompson, if there is something that you would like to table rather than verbalise now, we can accept that.

Mrs Thompson—Yes; thank you very much. CAP is aware of several family stories in our state. Some of them put in a submission to your enquiry. There are families, by the way, who refused to put in a submission for fear of further reprisal. We cannot emphasise enough that many producers have been directly and quite negatively impacted by native vegetation laws and

the host of other legislative policies, conventions and regulations that are related to alleged protection of the environment. The effects of these overreaching regulations are widespread and wholly negative, and in the long—or maybe not so long—run, our society will reap what we have sown. Without respect for others' property, society cannot long prosper.

What is impinging upon private property rights? Once again, I will table what I have written down here. There is a host of things that are impacting on private property rights. I would say that, fundamentally, at the international level, all sovereign nations have, in most cases unwittingly, signed up for a voluntary assault on our rights. The key start point was the United Nations Conference on Environment and Development's Rio Earth Summit in 1992.

Throughout history and in modern day comparisons between societies, one thing is clear: economic success comes first and care for environment comes as a result. This is not due to inherent evil in people; it is due to the facts of life. Until we have met our needs of food, water and shelter and moved into the realm of leisure activity, we are unable to care about anything other than living for one more day. We cannot consume more than we produce. The Department of Environment and Conservation in our state exists today because society was so productive that we could afford the luxury of establishing a government department with a focus solely on environment, with no other considerations. At the time this department was established, as with all such beginnings, society deemed it important and necessary. But the department has evolved now to such a point that it is hindering the very economic activities that support its own existence. Bureaucrats are now making decisions about what producers can and cannot do, without any basis in science or fact—indeed, without consideration of true environmental outcomes. Many of these bureaucrats have never produced anything themselves and exist only because of the very producers they seek to regulate. When nonproducers have the power to tell producers what they can and cannot do, without that power having been voted for by the people of our democracy—as is the case with regulations—society is setting itself up for failure.

What is the cost to society? Without fail, the stories that CAP has collected in regard to loss of private property rights have one thing in common: it is the honest people of our society, the ones who try to do things right both environmentally and procedurally, that have been the most negatively affected by implementation of these environmental protection acts. These people are now cynical of their own government. 'If this is the way I get treated after doing the right thing all these years then I cannot recommend that anyone else attempt to do the right thing,' is a commonly heard phrase.

The economic cost to individuals is multifaceted. They are paying rates on land they cannot use. They cannot maximise return on their capital investment by operating that land in the way they expected to be able. They are not able to recoup their capital investment in timber, harvesting equipment, cattle, watering tanks, fencing, farming equipment et cetera for the same reason. They are unable to obtain bank financing because the land value has been eroded due to conservation notices being placed on titles, inability to clear et cetera. They are unable to pay back existing bank notes that were taken out under the assumption that the land would be productive. There are the direct costs of hiring attorneys, filing applications, showing government employees around, filing appeals, hiring consultants et cetera. There is also an economic cost to our state and federal treasuries. Tax revenue is reduced due to productive land being taken out of use, and then there is administering the legislation, responding to appeals,

paying employees to assess applications both in office and on site, responding to ombudsman complaints and FOI requests et cetera.

The social impacts of impinging on private property rights are immeasurable. I know you guys have heard about some of them in your three days of inquiries. I will summarise. There are suicides, sickness due to stress, marriage breakdowns, negative impacts upon children, delayed retirements, and less risk-taking in general due to the lack of support for responsibility-taking that exists within ownership and business formation. Sons and daughters are leaving farms due to uncertainty. There is a loss of community-building—and this relates back to Senator Ryan's earlier question, I think, about the twig snapping. It is now illegal for a farmer to without a permit cut up dead wood lying on his own property and donate it to a Rotary club for a wood raffle. Bureaucracy is killing common sense and communities themselves.

There is a political repercussion to this. We have lost another fundamental right as a result of the environmental extremism that ignores private property rights, and that is freedom of speech. Our organisation exists wholly due to this phenomenon. Individuals and organisations alike have learnt that one cannot criticise environmental policy or agendas without retaliation.

Finally, and most importantly, our environment is suffering because of these laws and excessive regulations. We submit that the best managed land in Western Australia is the seven per cent held in freehold, followed by the approximately 30 per cent held in pastoral lease, which is heavily under attack. There have been direct and indirect results of these laws, regulations and policies that limit the activity on, and thereby sterilise, private property. The first is direct. When people cannot clear land, the potential for proliferation of native species, wildfires, pests, diseases and declared weeds onto productive land increases.

There are three indirect ones I have listed. Governments are at this point in time providing disincentives to private landholders from planting and caring for native vegetation. Knowing that once it has been planted they will never be able to touch that land again, landowners are becoming hesitant to plant and nurture native species. Another indirect effect is that an application to clear 30 acres in the wheat belt was knocked back because the vegetation might—that was in the official assessment—in future provide habitat for the Carnaby's cockatoo. This was despite the owner's offer to put the 100 acres right next to it into a conservation reserve. As a result of idiotic decisions such as these, property owners have every incentive to not protect flora and fauna that are endangered or threatened, because if one of these is discovered in the property they know their property value will decrease. Finally, more productive societies are better able to manage their environment for positive outcomes. The Native Vegetation Act and others like it will lead to less economic activity, fewer productivity gains, less risk-taking and eventually less income for everyone. This in turn will lead to less income being spent on positive environmental projects, both at a public and at a private level.

I know you are interested in positive recommendations. I have written a few of them down. We feel that by far the most practical and simplest solution to the existing problems is to repeal the acts. I know that is different from what other people have told you. We believe that these acts are such a mess that time would be better spent to start over. That goes for any acts under which the sterilisation, blighting or taking of property is done without compensation. Most landowners simply want their land back. In addition to solving the significant problem that everybody in this

room faces the Australian governments would see an increase in tax revenue because more productivity would follow, land values would increase and rate bases would go up.

Secondly, compensation for past losses in productivity should occur. I know this is a common question throughout all three days of the inquiry. It is only right that owners be paid for what has been taken and productivity has been taken. These people are unequivocally owed compensation. As far as paying for that compensation—I will pre-empt your question Senator Polley—I believe that in looking at the expense budget and past actual expense figures of the federal government in Australia for 2008-09 the total expense budget was $323 billion. The figure that we are talking about in compensation to date is approximately $12 billion; that is obviously subject to a lot of debate. If you take $12 billion and spread it out over four years, it is $3 billion a year. Surely, we can find less than one per cent of our total expense budget to restore private property rights such that this nation can continue to be productive and effective far into the future.

In the absence of our first recommendation full compensation for the productivity losses and the value of land should be due to the landowners. In addition to the productivity losses people's land should be purchased from them, they cannot use it, it is not saleable. Very real economic, social and environmental damage has been caused by these acts and society cannot long endure such assaults on its foundation.

The principle of net gain of government controlled land should be reversed. Privately held and managed land is the best managed in this country. Wildfires, feral animals, weeds, diseases and pests are much more prolific on public land where no one person is responsible versus private land where owners have every incentive to keep these things under control. Governments would experience a twofold benefit—tax revenues would increase and costs to manage public lands would decrease.

We recommend that this committee recommend to state governments that all land currently in leasehold should be converted to freehold or second-best at least leasehold in perpetuity with the current leaseholder being offered first right of refusal. We would suggest that references to the precautionary principle within existing acts, policies and regulations should be removed. Finally, we do support the establishment of an independent tribunal to hear appeals independently of these overseeing organisations or departments. Thank you very much.

CHAIR—Thank you, Mrs Thompson.

Senator POLLEY—Thank you for your written submission and the verbal submission that you have given to us. I think you have been pretty clear and succinct in that you believe that there should be compensation and $12 billion when you say it quickly probably sounds quite feasible. It is another thing in terms of the budgetary restraints that we have. From the government's point of view, you already have the opposition who are very critical, to say the least, about infrastructure spending that was instigated because of the global financial crisis. If we then say that the compensation will come from the federal government it is then a matter of where that money will come from and that is when you find people duck for cover and do not want to know about it.

I am not sure either—to be quite frank with you—that a report and recommendations coming out of this committee would make recommendations to the states. We have no responsibility nor do we have any authority. In my experience since I have been in the Senate many committee reports are gathering dust on the shelves. I would not see in terms of a report that I would put together that it would even be worth the ink on the paper to make any recommendations to the state. There have been conflicts all throughout this hearing in terms of evidence about who has jurisdiction and what pressure was put on state governments by federal government.

Can you expand on this? I know you want the land back. How easy is that going to be in terms of meeting our responsibilities? I think most people—from my recollection of the witnesses who have come before us—say that there needs to be a balance between environment and the effects of climate change and good governance of the land. So where do we go to ensure that that balance is there? If we just give compensation, if we give the land back, how are we going to ensure that the issues that have been outlined today are addressed?

Mrs Thompson—Thank you for your question. I certainly appreciate the dilemma and the position that elected officials are being put in, in this entire inquiry. And it extends well beyond this inquiry. You touched on it—the number of inquiries that are gathering dust is a concern. One of the persons that I did finally convince to put in a submission originally said: 'I don't know if we will get anywhere with this—I've done a couple before but nothing came out of it; I think they put it in the too hard basket. We've been battling for 20 years now.'

The power is in your hands, and I know it is tough. But we are dealing with nation-destroying policies here. It is that important. All projects to be undertaken by the cooperation of people—that is, government—must be prioritised. If society deems that no native vegetation should ever again be destroyed, then the cost of that project must be considered. When landowners cannot use their land for whatever purpose they deem necessary or desirable in progressing that common goal for the people there is a real cost that must be paid. We submit that that cost must not be borne by less than one per cent of our population.

CHAIR—You make the point in your submission that, where there is a benefit to people, to the broader community, which the community, the parliament, has decided they want to keep, which is that of maintaining native vegetation, and the cost of providing that benefit is provided by a small number of people—in this case, farmers—you have suggested that these laws should be repealed. I will play devil's advocate here. One of the rationales, as I understand it, for these laws restricting farmers' ability to just clear land, over many years—and, as we heard earlier, these laws go back to at least the eighties—has been about the cost of clearing a particular part of land. It is a classic economic externality in the sense that it can cause problems such as salinisation and land degradation—costs which are borne by people other than the person owning the property. Do you think that there is any place for laws such as this, not only based on ensuring those who bear the cost are compensated but also based on the idea that sometimes restrictions can be justified because sometimes the cost of clearing and the cost of doing such things is not always borne by the beneficiary of it? So if we had large-scale land degradation as a result of individuals clearing properties, the cost of that may be borne by the wider community. It is sort of the reverse of the situation we have now, if you know what I mean.

Mrs Thompson—With all due respect, there is much misinformation as it relates to private property ownership and impacts of what I do on my property on other people. I submit today

that, if I cleared my land in total, that would not have an impact on my neighbour. We have a study that shows this, and I will volunteer to give you, on notice, a copy of that study. The person that is most impacted by mismanagement of land is the landowner himself. He stands to lose productivity and he stands to lose the value of his own land. There is much misinformation in which the use of science has been abused to the utmost in promoting misinformation and now commonly accepted premises such as the one you have just quoted.

CHAIR—Do you accept that there are such externalities that occur on occasion—with water courses, for example—where it is much larger than a string of properties that encompass a large area?

Mrs Thompson—Certainly and all the people in this room are people with good intentions. I am not an anarchist. I believe that we must all come together and government is a logical progression of the common action which we all deem necessary. But when we all deem that necessary, for whatever reason, we must pay for it. Otherwise, if it is not valuable enough for us all to agree to pay for it then it is not valuable to call a common good.

Senator SIEWERT—I have to be honest and say that I find some of your statements quite extraordinary.

Mrs Thompson—I expected that.

Senator SIEWERT—Is the issue around science, that it has all got it wrong? Most of the rivers in the south-west of WA are affected by salinity somehow. We have massive areas of salinity, as has been stated already. The predictions are that it is going to increase significantly, although for various reasons, one of them being that rainfall has declined in some areas in the south-west, it is not happening as fast as predicted. I presume you are not saying that salinity is not a problem. How would you suggest we pay for that when we know that salinity has been caused by the clearing of deep-rooted vegetation? Our rivers are saline. Who pays for fixing those? We have lost a hell of a lot of our wetlands and that affects the birds that use them. Salinity is going to impact not just on farmers' properties but on national parks, on wetlands et cetera. How do we pay for or accept responsibility for that damage?

Mr M Thompson—I think the contention addressed earlier in the meeting that the clearing of land and the government incentives requiring it to be cleared and so forth—clearly there are impacts of salinity in the river system, as you mentioned, but the person impacted most by dryland salinity is the person who owns the farm. They have the most to benefit by saving that land from going saline.

Senator SIEWERT—That is okay in theory but in principle it does not happen.

Mr M Thompson—The contention that the profit motive is going to cause them to destroy their own land I reject out of hand. I do not believe it.

Senator SIEWERT—Mr Thompson, look at some of the history of the development of WA and where salinity is now. It affects some people's farms and I would challenge your contention that people would fix that because I could not tell you how many farms I have been on where it has not been dealt with. It also affects people in the catchment. The person at the bottom of the

catchment or half-way down the catchment has no control of the person upstream or higher in the catchment. Are you saying that that does not happen?

Mr M Thompson—No, I did not say that. I said that the best caretakers of the land are the people who own it.

Senator SIEWERT—So what do we do in WA right now where we have a history of salinity? We have an increasing problem and we heard the Farmers Federation talking about the before. What do we do in that context? If we wipe the slate clean, there could be a different scenario, but the fact is we have multiple land degradation problems, we have a salinity problem and we have a loss of biodiversity problem. How do we pay for that? And by the way, the government is putting billions into NRM at the moment.

Mr M Thompson—I think the salinity problem is being addressed in many ways, which is the only way it is going to be solved. Farmers have been involved in tree planting; they have been involved in several different methods that were mentioned before. They are working as hard as they can to develop more methods, so are certain government programs. I think the problem is being addressed and it needs to continue to be addressed. Private property ownership is part of addressing that; it is not against addressing that.

Mrs Thompson—That is right. It is very important to recognise the fact that everyone in this room makes decisions today based on information available to us today. If a year from now we look back and think, 'We shouldn't have been doing that,' we will change. What keeps that change from happening the fastest is so much centralised control that individual farmers cannot make changes overnight. We get these legislation regulations on the books so that we cannot make good, effective, management decisions.

I would say the best possible thing for us to do is, first of all, not to come in from the top down and impose something upon landholders. Make sure that landholders genuinely continue to be involved in the solution, because they will be the first ones on the ground to come up with the solution. Second, make sure that they keep as much of their tax money as possible so they can spend it on solving their own problems, because if I solve a problem on my place then it will help everyone around me solve problems as well.

Senator JOHNSTON—Thanks very much for your submissions, Mrs Thompson and Mr Thompson. I am interested in the Coalition for Agricultural Productivity. Can you tell me a bit more about who the coalition actually is and how it came to be. I know that there are a lot of concerned people out there. Thanks for travelling up to Perth today to see us and tell us about your experience. Who are the coalition? Are they volunteers? Where do you get your funding, if you do get any funding? What are your activities? Are you an incorporated body? How did you come to be?

Mrs Thompson—We formed in the middle of last year as a direct result of personally being put out of business by excessive regulation that we deemed was linked to our speaking out on what we considered to be very important issues, primarily the climate change issue. Our membership is loose. We are taking on these big issues. We feel that whatever groups would retaliate against individual producers cannot do anything more to us, so we now have the freedom to speak out freely on behalf of all producers and to take on some of these very

important issues that are working against productivity, private property ownership and the future of our society as we see it. First of all, we do not get any funding. So far it has just been our own hard work and a small investment to get started. We have lots of people that are interested in supporting the concept.

Senator JOHNSTON—May I ask how many 'a lot' is.

Mrs Thompson—It is hard to quantify, really. For example, if we go to somebody in the pig industry and say, 'We need to make sure that we have somebody that can speak fluently about any issues that come up with regard to the pork industry,' they are involved. Whether they are officially a member or not is very loose.

Mr M Thompson—We do have an advisory board that we have met with. They are all agricultural people, in different phases of the industry. We try to keep people that give us submissions or advice confidential, for the reasons that we formed the group in the first place.

Senator JOHNSTON—What is the ultimate objective of the coalition?

Mr M Thompson—Our objective is to promote prosperity and free market agricultural production in Western Australia.

Senator JOHNSTON—I note that you have a submission on the file—it is not a public submission. You mentioned that you were in business but you are not now. If you do not want me to talk about that, I am happy for you not to talk about it. You say you are free to do things now. The inference and implication of being free to discuss things now opens up a whole new area. Tell me why you feel free to talk now. Is it because you are no longer in business or because you have nothing to lose? What is the issue that lies underneath that expression? I am rather interested in that, if you could help.

Mrs Thompson—It is simply that they cannot take anything more from us than they have already taken.

Senator JOHNSTON—In other words, you are out of business.

Mr M Thompson—We operated a licensed premise, and we believed that speaking out on certain issues could have affected the rolling licence and our ability to get a licence renewal. Now we are no longer operating and that is no longer a concern.

Senator JOHNSTON—So you felt you would be victimised if you spoke about the way the regulations were administered.

Mr M Thompson—Yes.

Senator JOHNSTON—You are now not subject to that vulnerability, so you can now speak out freely about what you perceive to be the problems.

Mr M Thompson—Yes.

Mrs Thompson—There are many people at all levels of production, and it is not just in food production. This goes so far beyond just us. It is much bigger than our story, it is much bigger than primary producers, it is much bigger than the agricultural food supply chain—this goes to the heart of all prosperity in our country, the heart of all production in our country.

Senator JOHNSTON—Do you mean from a perspective of government administration of the rules and regulations around agriculture?

Mrs Thompson—Rules and regulations around environment?

Senator JOHNSTON—Yes.

Mrs Thompson—As I said in my testimony, we are negatively impacting on the environment as a result of these laws and regulations that were meant to protect our environment. This has nothing to do with the environment. They have looked so far past real environmental protection that, in our case, it has become a witch hunt. There are abattoir owners and exporters, and right throughout all productive capacities people are afraid to speak out.

Senator JOHNSTON—Thank you.

CHAIR—Thank you, Mr and Mrs Thompson, for your evidence this afternoon.

Mrs Thompson—Thank you very much.

[3.41 pm]

NIXON, the Hon. Murray Davidson, Private capacity

CHAIR—We have now set aside time for members of the public to make a short statement to the committee. I ask that statements be kept to no longer than five minutes. Mr Nixon, I understand the committee now has your submission, so an oral statement is an opportunity to repeat or emphasise some key points. I need to go through some formalities. Any comments you make are on the public record and as such the rules pertaining to the parliamentary privilege and the protection of witnesses apply. Information on these rules are available from the secretariat staff.

I would also 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 these laws. The committee cannot recommend remedies for any particular person.

The committee may make recommendations in relation to issues that it identifies. However, it cannot force Commonwealth and state parliaments or governments to implement those recommendations or make recommendations that are binding upon other jurisdictions. Mr Nixon, please go ahead.

Mr Nixon—I have been a farmer for 50 years. I have been active in agricultural politics most of my adult life. I had the privilege of serving the agricultural region in the Legislative Council of Western Australia for eight years, the period when these alterations to the rules regarding land clearing first came into effect. From that point of view, I think I can give answers to some of the questions that I have heard put by members of your committee. I also chaired a standing committee of the legislative council for eight years. We brought down 59 reports and only one of those was anything other than unanimous, so I have had a fair bit of experience in the political field.

Firstly, thank you for letting me be here, and I apologise for the fact that my submission got lost in the ether. I have copies here. I could just read it, because I think I covered all the points, but if you would rather I enlarged on it because of time I am pretty happy to do that.

CHAIR—Please enlarge on it, because we will be able to look at the submissions in our deliberations. So just emphasise the key points.

Mr Nixon—The first point I want to make, which is in the submission, is that you are retreading a lot of old ground in that there have been a couple of very good Productivity Commission reports made on this issue. During my period as chair of the standing committee I commenced an inquiry into land clearing, property rights and the use and enjoyment of private property. It took something like three or four years before that addition, having had three

chairmen, was finally published under the name of the Hon. Barry House, who is now the President of the Legislative Council of Western Australia. I would advise you, if you have time, to at least read the summaries of those two documents.

One of the most interesting things is that the Productivity Commission report looked at landcare and came to the conclusion that the most satisfactory way of encouraging landcare was through tax credits. All the evidence was that many of the government programs in landcare had really been a waste of money. As a property owner, I am of the view that landcare is primarily the responsibility of the landowner, but the landowner certainly has to have the ability to undertake the landcare measures that are necessary. Of course the big advantage of tax credits is that the person who has a low income gets just as much government assistance as the person with a high income, and that is why things like 150 per cent tax deductibility will have little effect on landcare, if that is your objective.

Getting back to the main reason for this submission: when I was a member of parliament we were informed that the government wanted to introduce restrictions on land clearing and, as one of the members of an agricultural region of 65 shires—all the wheat belt—I took a vital interest in it. At the briefings it was made clear that it would be wise to introduce moves fairly quickly without a lot of debate, because otherwise people might clear land which it would be thought later on should not have been cleared. So the first object was to get the regulations in place, and the detail would be tidied up later.

The general rule was that if you lived in a shire with more than 50 per cent remnant vegetation and you had a property with more than 50 per cent remnant vegetation on it you should be able to clear. That sounded reasonable and, as a member for the wheat belt, I had a pretty good idea that most people believed that the wheat belt was perhaps cleared more than it should have been. It was pointed out that that was a government requirement, particularly with conditional purchase land. But I am old enough to remember the rabbit scourge, when the most beneficial thing you could do for the environment was clear the bush because at least then you could get the rabbits out. Fortunately, myxomatosis took care of that.

It was not bad environmental practice to clear the land, but the trouble was that there was not a lot of hydrological expertise at the time that demonstrated that if the trees were cleared the water table would rise and with it would come the salinity. And of course the other thing, which is often forgotten by the environmental movement, is that trees do not use saline water; all they do is use fresh water, and the more trees you have the less fresh water you have. Certainly today, in some of the areas that do not suffer from salinity, the trees, particularly pine trees, are having a tremendous effect on the availability of fresh underground water.

Getting back to the story: the way that the controls were introduced was through a memorandum of understanding between several government departments, the agricultural department being the lead agency. Having seen the publication, it became obvious that what was being introduced was different from what we had been briefed on. The memorandum of understanding said that on a certain date the cabinet had made the following proposals, so I applied for a copy of the cabinet minute to see whether it was in agreement with the MOU. Eventually, having followed it right to the top of the freedom of information tree, I had a copy of the cabinet minute—which, of course, I should not have had, but every government bureaucrat seemed to have a copy of the cabinet minute, and the freedom of information commissioner had

a copy. In the end I was able to get a letter. Because they would not give me a copy, I said, 'I would be satisfied with a statutory declaration that the MOU is in accordance with the cabinet minute', and I received a letter back saying, 'We have received legal advice that that would be most unwise.' So, clearly, the proof is that the MOU is not in accordance with the cabinet minute.

Then it goes back to the beginning. You have heard evidence today that the original agreement, which was signed by Prime Minister Keating, our then premier, Richard Court, and the others in the COAG agreement, spelled out that there would be compensation for those who were badly affected. Obviously, in the controls that were introduced through the MOU there was no mention of compensation, but it had become obvious that somewhere in the bureaucracy a decision had been made that there would be no more clearing. Even though the rules were that if you had 10 per cent rural you could apply, it was obvious that the decision was made that there would be no more clearing. Originally the suggestion was that it was to protect biological diversity, and some of it, 11 per cent—I think that was the figure—of all the vegetation that was there at white settlement, was supposed to be protected. But it was obvious that they were bulking it up. So, if you had an acre that had 10 red gums and five black boys, that was totally different to an acre that had five black boys and 10 red gums, and no matter what acre you put forward, because every acre in the world is different, there was a good reason for it not to be cleared. This eventually virtually prevented clearing taking place.

I had to represent several constituents who, in my view, had very valid reasons for clearing. I saw some of the hardship that was introduced and I saw firsthand that introducing clearing bans then affected the value of the property. In one case, where we were able to arrange the sale of a property into a national park, the Valuer General looked at one side of the property and then at the other side. Because one side was uncleared it had a market value of whatever it was—I cannot remember the exact figure, but let us say it was $200. It was therefore purchased for a very low price, and although the decision had been made that it was far too valuable to be cleared, far more valuable than agricultural land, when it came to a monetary payout the figure was much, much less.

I saw another example where permission was refused. About half of the property was under pine trees. It was the most eastern property in the agricultural region. It was bush all the way from there through to Alice Springs, and still there was no allowance for it to be cleared. So I have seen firsthand the inconvenience and real hardship that has been imposed on agricultural communities because, in my view, of the mismanagement of the scheme.

What I am unsure of is when the big idea of Kyoto came in. Quite clearly, as members of parliament we never heard a word about the Kyoto agreement and the prevention of clearing having an effect on meeting Kyoto arrangements, so I have a pretty good idea that it did not come out of any party room. I think somebody in the bureaucracy sat down and worked out the fact and said, 'Minister, look at this! What if we prevented clearing?'

I do not know for how long you can not clear. We know that the country that took most of the clearing bans was in Queensland. It was mainly brigalow country, country which, when it was managed by the Aboriginal community and subject to burning, was never very thick. In other words, virtually a new growth and a thickening had occurred. It was the Queensland graziers who really paid the highest price for Australia meeting its Kyoto agreement. When you see the

proposals that have been put forward recently that people be compensated for a slight increase in electricity charges to try and make it politically acceptable, I think it is most unfair indeed.

CHAIR—Thank you. Are you happy to take questions?

Mr Nixon—Yes.

Senator SIEWERT—I am aware that the Kyoto issue was under Minister Hill's term as environment minister.

Mr Nixon—He claimed credit for it.

Senator SIEWERT—There has been a lot of criticism of bureaucrats today, and I am not averse to sometimes having a go at bureaucrats. You said you think it was policymakers who came up with the idea, but isn't that normal government process? The government still has to agree and the government certainly, as you said with the people that were talking about Kyoto, took all the credit. We are busy beating up on bureaucrats without talking about the decision makers, who in this case are the government.

Mr Nixon—Yes.

Senator SIEWERT—Can you clarify that point a little bit?

Mr Nixon—When the clearing bans were sold to us, it was to protect biodiversity. I just have a feeling that there were two horses pulling the cart at that time. I do not know when it started. Nobody seems to know when it started, but the first I heard of Kyoto was in some excellent articles published by Mick Keogh, which you have probably read. That was really the first time that I had heard that Kyoto came into the exercise.

Senator SIEWERT—Nationally or in WA?

Mr Nixon—Nationally. The clearing bans here were clearly driven by the federal government. It was clearly driven by that biodiversity agreement. That was the beginning of it all. The only question which I do not know the answer to is whether at that stage there was also a thought that Kyoto could be met by using clearing bans.

Senator SIEWERT—I want to follow up on the soil conservation act and the issue of conservation notices. My early involvement in that process was about land degradation and the use of notices for land degradation purposes. The definition of land degradation was probably broadened a bit, but it was definitely about land degradation. In fact, I could name a number of cases down on the south coast where that was used. All day we have been talking about when bans came in and when they did not, and I think the fact has been ignored that it has been an iterative process and we have been trying to deal with massive issues of land degradation in WA. Was that your experience? I definitely did not think the feds were pushing WA.

Mr Nixon—There is a good argument that landowners can destroy their property if it is their wish. I refer you back to Sir Isaac Isaacs' ruling in the High Court. If you have not read it, it is worth reading. He said that freehold title is really like a chattel right and you can do whatever

you like with it, including destroying it. Taking it to the extreme, it is nobody else's business what you do on your property unless it interferes with somebody else. So that is where we start. No doubt you are aware of Whiteman Park. Some of it is green and very good grazing country and some of it is very beaten up banksia country. When you read the EPA's recommendations on Whiteman Park, you see the beaten up banksia country, which is pretty beaten up, described as pristine native vegetation and the very, very best of the grazing country described as degraded grazing land. So somewhere along the line there is a mindset that agriculture is bad for the environment. I am the first to admit that agriculture can be bad for the environment, but it is an essential part of our lifestyle. So what we have to do is do the best agriculture we can, but if you start off with the view that all agriculture is bad we are never going to have sensible laws.

CHAIR—Thank you, Mr Nixon. The committee has concluded its hearings into these issues. It will be reporting on 30 April, out of session. I thank all the witnesses who have appeared today, my colleagues, in particular the staff of the secretariat for their work processing all the submissions, and of course the staff of Hansard.

Committee adjourned at 4.00 pm