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TRANSCRIPT OF PROCEEDINGS

PRODUCTIVITY COMMISSION

INQUIRY INTO IMPACTS OF NATIVE VEGETATION AND BIODIVERSITY REGULATIONS

DR N. BYRON, Presiding Commissioner
DR B. FISHER, Associate Commissioner
PROF W. MUSGRAVE, Associate Commissioner

TRANSCRIPT OF PROCEEDINGS

AT CANBERRA ON MONDAY, 4 AUGUST 2003, AT 9.30 AM
Continued from 31/7/03 in Cairns

DR BYRON: Good morning, ladies and gentlemen. Welcome to the public hearings of the Productivity Commission's national inquiry into the impacts of native vegetation and biodiversity controls. My name is Neil Byron and I'm the presiding commissioner for this inquiry. My fellow commissioners are Prof Warren Musgrave on my left and Dr Brian Fisher on my right.

I'm sure you're familiar with the terms of reference for this inquiry, which we received a few months ago. In the last three months we've been travelling the country extensively talking to a range of organisations and individuals - farmers, farmers' organisations, environmental NGOs, state and Commonwealth agencies and so on - and I think about 150 submissions we've received into the inquiry and they're still coming in.

The purpose of these hearings is to provide an opportunity for interested parties to discuss their submissions further, put their view on the record and for the commissioners to perhaps draw out some further detail to supplement what was in the submissions. Following these hearings today, we'll be holding further hearings in Perth, Adelaide, Hobart, Sydney and Moree. Then we'll be working towards completing a draft document for public comment about the beginning of December and we'll be inviting participation on that and another round of hearings after all interested parties have had time to read and digest that report.

The commission always like to conduct these public hearings in an informal manner, but we do take a full detailed transcript that will be publicly available later and so comments from the floor are not helpful and can't be incorporated into the transcript. Although people giving evidence are no longer required to formally take an oath, the Productivity Commission Act requires people giving evidence to be truthful in their remarks. Participants are welcome to comment on issues raised in other submissions and there are sort of legal issues of privilege in making comments on other submissions while giving evidence. The transcript will be made available to all participants and will be available on the commission's web site as well.

At the end of today's hearings, I'll be inviting anybody else in the room who wants to make comments on the transcript to come forward or people to come back and make additional comments if they've thought of something during the day. I'd now like to welcome our first evidence from the National Association of Forest Industries. Ms Carnell, if you could just introduce yourself and Mr Townsend for the transcript and then if you'd like to give us a five or 10-minute summary of the submission and then we can have the discussion.

MS CARNELL: Thank you very much. Kate Carnell, executive director of the National Association of Forest Industries. I'm joined today by Phil Townsend, who is the deputy executive director of the National Association of Forest Industries. I

thought that, understanding that you've all read our submission, it might be appropriate to try to put it in context a little this morning, to start with.

As I know all the commissioners would be aware, the forest industry is a big industry in Australia. It delivers in excess of $15 billion to the Australian economy and employs over 85,000 people. The industry over recent years has done very nicely. The construction boom in Australia has produced some great outcomes for the timber industry generally, but the opportunities that exist in the Asia-Pacific region are just starting to show very real fruits. Significant export growth in areas such as China are producing some great outcomes for the industry generally. We've also, of course, seen some rises in the price we're getting for wood chips and other things in the Japanese market as well.

Generally, the industry is looking good, but the opportunities for the future are quite stunning. The Chinese market alone is growing exponentially. As you'd be aware, at this moment the Chinese community is using about 24 kilos of paper per head of the population. It's projected that that will move to 48 kilos by 2015 and will double again in 10 years after that. We've got to look at the fact that the Japanese economy uses over 400 kilos of paper per head of the population, the Australians about 250 kilos and so on. The Chinese economy then, in paper alone, has a huge need that simply can't be met by China or the surrounding areas. There is also a significant growth in the importing of timber products generally, both engineered and solid wood products. As the Chinese economy becomes more affluent, the need for wood, wood products and wood fibre products is increasing significantly.

I'm saying all of that because the only way that the Australian market can maximise our potential to service that huge market - both the Australian market, of course, and the Asia-Pacific market - is to utilise the forests that we've currently got efficiently for wood production, but probably more importantly to plant more trees - more plantations - in the environs. The opportunities to do that in medium rainfall areas and saline affected areas have great benefits for Australia, from a greenhouse and a salinity perspective as well as, of course, for export and regional jobs production.

This all sounds great, but the problems that exist are quite significant when it comes to legislation, regulation and interpretation of that regulation. I might pass on to Phil now just to run through the recommendations, to put them in perspective as well.

MR TOWNSEND: We see quite a number of opportunities for the forest industries, but what is holding us back at the moment in a number of areas is the legislative framework that we have to operate in. We generally find that governments and agencies within governments are trying to redefine sustainability

with each new piece of environmentally based legislation. Each piece of new vegetation management legislation has its own new requirements.

As Ms Carnell just pointed out, people are trying to interpret, implement and regulate their view of what the government has put together in legislation. We have no problems with the objectives of the legislation. It's generally the way it's then handled. In many cases, there isn't a clearly identified approvals process, so people who want to invest aren't sure what they're up against until they get into the approvals process itself.

We see it as an opportunity to include what we call the business study test, along with the impact statements that go with legislation before they come to the parliament, so we can find out other impediments in the nature of the legislation as it rolls out. We've given a number of examples in our submission to the inquiry. For example, the Plantations and Reafforestation Act in New South Wales almost prevents investment in new plantations occurring, because there are so many studies that you have to complete to get the approval to go ahead and plant and then to harvest.

We see that there should be some flexibility and not going down this rather in-depth approach to legislation prescribing what is sustainability. In the forest industries, we've developed the Australian Forestry Standard - that's between governments and industry - to say what sustainable forest management is. Why do we need to redefine it in all the pieces of legislation we have to perform under?

Where rights are taken away to use vegetation, there's no capacity then for compensation. Land-holders don't have an alternative. Under the prescriptive approach, they lose the rights to utilise the vegetation that exists or any vegetation they may plant. We see there's a number of difficulties with secondary legislation. What happened under the RFAs in each of the states, apart from Tasmania, and what's happened under the Renewable Energy (Electricity) Act are good examples of secondary legislation being put in place by parliaments to achieve other outcomes in terms of vegetation management.

Finally, our seventh recommendation points to a community consultation process. It's extremely important that that consultation process is run effectively, but what we find is it ends up being behind closed doors and what comes out in the consultation process doesn't get reported back through the final delivery of the regional development plans or regional veg management plans that come out of those processes.

MS CARNELL: Just to give you, I suppose, one example of what we're talking about - but it runs through a number of areas - I know most of you here today are

acutely aware of the regional forest agreement or RFA approach. As you'd know, a significant amount of taxpayers' money was used on significant consultations, significant scientific reports and so on. In fact, the general view is about $400 million all up. As a result of that, some 10 regional forest agreements were signed between premiers and prime ministers and so on.

As part of that process, a significant amount of forests that were available to the industry were made into reserves; a million hectares of old growth forests and significantly more of other conservation areas. The industry, although not happy about that, believed that the balance that had been achieved by the RFAs by making some areas available for commercial forestry and some areas in reserves, knowing the difference and allowing the industry to get on with it, was worth losing significant amounts of forest forever to the industry. What happened? What happened immediately was governments started to move on the boundaries for regional forest agreements. That in itself was bad enough, with extra areas being locked up in national parks, but the comment that Mr Townsend made about secondary legislation is what we'd like to, I suppose, stress today.

Commercial forestry is about using all the products from a forest. It's about producing sawlogs, being able to use wood waste for a number of different purposes and so on. What immediately happened, of course, was that some states moved, by regulation, to stop the use of wood waste from forests to produce renewable energy, so immediately you've got a problem. Immediately forests that are being managed commercially under a thousand bits of regulation and legally can't use two-thirds of their product potentially for a particular purpose. Why? Who knows! We won't get into why, but the fact is the sort of regulation as was passed in New South Wales before Christmas has made commercial forestry in a number of areas significantly more difficult.

The federal renewable energy legislation creates another whole range of requirements for the use of wood waste from legally managed commercial forests. The high value test makes it extraordinarily difficult to plant a plantation for renewable energy purposes in Australia, because we don't know how you can tell what values will be in eight, 10, 15, 20 years' time when a plantation is actually felled.

If you add to that some of the issues surrounding getting approval for a power facility based upon wood waste - I'll get Mr Townsend to talk about the Southwood approach - you can see where legislation starts running in on top of each other, layering, which causes a scenario which I'm sure nobody would suggest was all right. We end up with a scenario, as we've got at the moment, with a huge amount of wood waste that could become renewable energy in Australia, as it would in every other country in the world, lying on the forest floor and being available for the next major

bushfire.

MR TOWNSEND: Very briefly, with the Southwood project in Tasmania, the wood is available under the regional forest agreement. It's in a forest managed sustainably under the requirements of the RFA, as well as the state based legislation. There is the opportunity to use wood waste there. In terms of getting the power plant approved - going to what's called Southwood, which will have a fully integrated timber processing facility located in the forest - is the requirement to utilise some of that wood waste, but the regulator has taken the view that where an "or" is written into the regulations he believes it's an "and". Therefore, the project can't get accredited for delivering wood waste out of the sustainably managed native forest. This is a roundabout way to stop utilising vegetation for particular activities. It was never considered in the primary nature of the agreement itself.

MS CARNELL: That was trying to be very quick.

DR BYRON: It was. Thank you very much. There's quite a lot in the submission that you've covered there.

DR FISHER: We've heard a lot of evidence from others about conflict, not only between bits of legislation but within departments themselves. Is that your experience? Are you talking here about not only conflict between state and federal legislation and different bits of state legislation, but do you also have experience where the same department has different approaches?

MR TOWNSEND: A very good example that you just mentioned is in Western Australia, where there are pieces of the Wildlife Conservation Act duplicated in the Conservation and Land Management Act, looked after by different people within the one agency. There are two sets of requirements over people to use native vegetation. There are many examples where there are conflicts, both within the agency and between the agencies who are trying to deliver multiple outcomes.

DR FISHER: In your experience where's the most significant problem? Is it between bits of legislation or is it conflict within departments themselves, say at the state level?

MR TOWNSEND: I was going to suggest this is about redefining the sustainability all the time. When people try to enact pieces of legislation or interpret the legislation because there's a particular project that they have to give approvals to, then they go through and redefine what they think is sustainability. Different people within different agencies will have different views on what the sustainability is. It's never outlined clearly in the legislation, therefore it's up to the regulators to come up with their interpretation. This makes it almost impossible for industry. We see this

not only within states, but there are differences between local governments where they might have their own planning procedure, so you've got all sorts of problems just within one local area. Some of the forestry companies might operate across five shire councils in the major plantation regions and have five different planning requirements they've got to meet.

MS CARNELL: We've got investors at the moment with $1 billion in their pockets to plant plantations in Australia. When you try to explain to them that they've got to deal with federal legislation, state legislation, shire legislation - we can't actually tell them exactly what they're going to be required to do. We can give them an outline but we certainly can't give them any time frames. It's very hard to convince them that Malaysia doesn't look better.

MR TOWNSEND: If I can give another example, with the federal Environment Protection and Biodiversity Conservation Act, we mentioned briefly in our submission about the Tiwi Islands project and the afforestation there with acacia. Although there were a number of steps before it, when it came under the EPBC Act they ran into major difficulties because they would complete one set of approvals requirements, then they would be told, "Now we want to know about these sets of questions." Then on it went and became very difficult. When they finally got the project approved there were huge prescriptive requirements on them that they had to report against a whole range of things for a fairly lengthy period of time. It's very costly, never knowing if the approval would be maintained.

MS CARNELL: The problem in forestry, as you'd know, is it's a long-term investment. If you create too many costs up-front - if your costs of planting, your costs of getting your project up and running escalate - you've got no show of producing the sort of internal rates of return that investors need.

DR BYRON: There's uncertainty about being able to harvest the trees when they're ready.

MS CARNELL: That was going to be the next comment, and then having the chance that governments will do something to stop you being able to harvest, or being prescriptive of the way you might harvest.

MR TOWNSEND: Or taking away certain markets, as we were pointing out, under the Renewable Energy Act.

MS CARNELL: So it really comes down to - as it does, I suppose, in every industry - to invest and to get on with the job, industry needs a level of certainty. Investors need to be able to have - what would be lovely would be a single point of access to government but, if you can't do that, at least have an approach where

governments are willing to do a business impact study before they allow new and obtuse pieces of legislation or regulation to impact upon them.

MR TOWNSEND: I suppose what we're saying with that business study test is it needs to look at what is the other related piece of legislation. Is there overriding legislation that's going to impact or are there duplications that we're seeing continually arise?

DR BYRON: That leads into what I was wondering about - your comments about the redefinition of sustainability and so on. I was thinking about the existing process that the Commonwealth and all the states have of the regulation impact statements, which is supposed to go through and define the problem, to check that there really is a problem, to look at all the possible ways of intervening and then to sensibly decide which is the most appropriate form of intervention, if any, et cetera. It seems to me that we've been presented with many examples of where that sort of process is not followed but, rather, there's an ad hoc legislative prescription response to something that is thought may be a problem.

MS CARNELL: Probably a very obvious example of that were the regulations that were tabled and then passed in New South Wales just before Christmas with regard to use of wood wastes from native forests. These are native forests that are covered by regional forest agreements, so we've already got that bit. That particular regulation, which basically precluded the wood waste being used - let's be fair, it was political. The Greens put some pressure on the government with regard to use of wood waste. It ran off the back of a Mogo project that fell over and all of a sudden there was supposedly a problem that wood waste or use of wood waste was the driver for harvesting native forests but there was, and is, no indication that that's the case; certainly no economics to prove it's the case.

Foresters aren't stupid. They're not really going to cut down a tree that's worth thousands of dollars as a sawlog for something that's worth $10 as wood waste for a renewable energy facility. But legislation or regulation was passed, with no consultation, which has caused a whole range of ramifications.

DR BYRON: Have any of your members given you examples of where privately-owned native forests that might have been commercially saleable were restricted from sale because of something like threatened species legislation or new legislation that had such restrictive requirements that it made commercial operation impossible?

MR TOWNSEND: Yes. It even applies to plantations but there are cases where people just decide, "We won't manage our native forests with timber production because it's just getting too difficult." This even happens in the RFA areas where,

even though they were set aside under the RFAs, they still come under the Threatened Species Act and the National Parks and Wildlife Act - all the management activities. It's continually arising. Just as an example - and this is why they don't go down this pathway - the integrated forestry operations approval procedures in New South Wales just had another 61 pages of amendments introduced. How is anyone that's managing a piece of land supposed to understand 61 pages of amendments on what they're meant to deliver in terms of managing their forests and getting some money for timber production out of them?

MS CARNELL: One of the things we found in this area - particularly New South Wales, which seems to be the worst, although it exists everywhere - is traditionally a lot of farmers have used their forest in the back paddock, their bit of native forest or for that matter plantation, for cash flow during tough times. They've used it to pay the school fees when other things fail and so on. They've regularly managed their forest but not regularly harvested it. All of a sudden they're required to have significantly expensive management plans if they are to cut down one tree - if they are to even prune or manage the trees.

The levels of regulation and the cost of those required to do what they did, their grandfather did, their great-grandfather did - and that was look after their forests and use them from time to time when they needed to - makes the whole thing not a goer any longer. It's just too expensive and too difficult for those sort of farmers. There are an awful lot of those in the timber industry - of those sorts of operations, little but seriously important to us and, I have to say, to their farm operations.

PROF MUSGRAVE: Thanks for your thoughtful submission. It raised a lot of interesting points. One that really stands out is this question of the lack of consistency between the legislation in the different jurisdictions in state and local government and so on. In pages 3 and 4 you outline or identify a number of inconsistencies in the legislation but would you also have the same type of concern for implementation?

MR TOWNSEND: The inconsistencies are even more so, and what we find is that people in government agencies move to different jobs, and so you have a new person coming along who will interpret slightly differently and ask new questions and place new requirements on investors and people who are out there trying to operate in the timber industry.

PROF MUSGRAVE: If we were to pursue a greater degree of consistency, how should we go about this? Should we just try to codify the legislation to remove the inconsistencies or do we need to probe more deeply? Should we also try to get consistency that goes down to the level of implementation? Do we have a problem with planning?

MR TOWNSEND: There are a number of issues with planning but there's no utilisation of some of the existing things out there at the moment. In terms of the forest industry and understanding, say, for example, what the content of the Australian Forestry Standard is, it means that legislation doesn't have to go down too deep into the prescriptive approach. You can use the codified materials that are there already. From a state perspective you could use the codes of practice that have been developed. We don't have to go down too far and control and regulate, but cite the boundaries of what is required.

PROF MUSGRAVE: In our travels around and reading the submissions, there seems to be quite a fair degree of acceptance of the overall thrust of the legislation; the broad objectives of the legislation. But the difficulties seem to manifest themselves in the production of specific objectives at a more regional level, where there seems to be not so much a question of inconsistencies but a vagueness even - a lack of precision. You do refer to this at one stage on page 9. You refer to "a lack of clear direction on specific criteria". Is my description of the situation accurate in the sense that we have broad objectives that seem acceptable but at the more local specific level there's unhappiness?

MR TOWNSEND: Yes, and this is even going to come in with a new piece of legislation that's proposed for Western Australia under what's called the Biodiversity Conservation Act developed for that state. They neither have clear objectives or targets for maintaining biodiversity, so how do regulators know what they're meant to be trying to achieve? There's no biodiversity strategy or there are no targets on it but somehow they've got to regulate to deliver what they think the government is putting into legislation. There's that sort of process and there's no outline of what are the conservation tools that should be used. Is it locking it up? Is it putting it under some form of active management? Nobody knows, but these are missing from the legislation.

PROF MUSGRAVE: So procedures and strategies adopted at the local level tend not to be explicitly nested in the objectives that are outlined at a higher level. They don't follow precisely.

MS CARNELL: That's true. You get a different person in a different job and you've got a different set of implementation guidelines.

PROF MUSGRAVE: Okay. Now, just changing tack completely: you refer to the burdens imposed on individual firms and sectors of the industry by the legislation and the uncertainty and so on, but there is no detail in here of specific instances. I can understand it might be difficulty for you, for reasons of commercial in confidence and so on to provide specific instances, but could I just push a little bit on

that. Would it be possible for you to provide some particular examples?

MR TOWNSEND: Yes. We could give you more detail on where the legislation has created difficulty.

MS CARNELL: You want actual case studies of people who live on the wrong side of the agenda.

PROF MUSGRAVE: If that were to be possible, yes.

MS CARNELL: We can do that.

PROF MUSGRAVE: I think we'd like to get that, yes.

MS CARNELL: I'm sure there will be some people who - we know who they are.

PROF MUSGRAVE: Okay.

MS CARNELL: Of course there's some pretty well-known cases at a national level - it's still I think something Australians should be extraordinarily upset about, but woodchip boats head off to Japan every day from this country and we can't actually get a new paper and pulp mill operating: why can't we? It's very simple, because the actual regulatory process, approval process, other things are just slowly, extraordinarily unsure. We can't give people time frames, costs; we can't give them any guarantees that if they get through the process government won't do what they did to Wesley Vale. So we export woodchips and import paper.

PROF MUSGRAVE: Yes. Okay, I think - - -

MS CARNELL: It's a very high-profile one but it's very true.

PROF MUSGRAVE: Yes, indeed. Thank you. Brian?

DR FISHER: I just wanted to come back briefly to this question about regulators and interpretation. It seems that there's a bit of a universal problem here in the sense that we have legislation that is relatively broad because we've got a big - say, a big state; take Western Australia - it's a huge state with a large number of bioregions, a fairly complex set of arrangements or a fairly complex set of bioregions to "manage". If people decide they're going to manage them, then you have conflict between trying to have legislation written in the state parliament that's broad enough so it can be interpreted across the state but, at the same time, specific enough so you can manage something - say a forest in Albany.

What you seem to be saying is that there are all these regulators out there - and I'm sure there are - they have this broad legislation and they interpret it any way they see fit basically, but there's a conflict there. If we were to have really specific legislation - and we would need 5000 pieces of legislation, presumably, that was specific for small areas - to deal with the diversity of the problems that you've got, say, across Western Australia. How do you solve that problem? Other than getting rid of all of these regulators and all the legislation - that's one possible solution, but maybe that's not quite acceptable in the community.

MS CARNELL: In forestry, one of the ways to go is back to basics a little bit. Under the regional forest agreements an agreement was reached on a definition of what sustainable forestry was. If that became the basis of definitions in the act that would be a good step but, more importantly, as Mr Townsend said, with the Australian Forest Standards - which is, you know, a Standards Australia approach, third-party accreditation and so on - if somebody complies with that and is certified, why couldn't we say that they were actually sustainable and should be allowed to get on with the job without other legislative impediments?

There are methods of determining sustainability that are at a macro level that we've all agreed to; that states have all been part of working up - and I'm not suggesting that the AFS is the only standard by any stretch, it's not, but it's the one that's on the ground at the moment - isn't that a more effective way of determining the sustainability than trying to second-guess, through legislation and regulation, what's happening on the ground in what are, as you say, very diverse areas of Australia?

DR FISHER: Yes. I guess I'd be happy with that, but then obviously the mess that we've got at the moment is illustrative of some other set of issues out there. What I'm asking you is: why do you think we've got ourselves in this situation and how do we get ourselves out of it?

MR TOWNSEND: Can I give you a very good example - there are two good examples, actually. The Renewable Energy Act - with that, regulation 7 said, if you have something you can use on a sustainable basis, then go ahead and use that for renewable energy production. Then they've gone into another regulation and they've got all prescriptive and detailed and that's where it got into a real mess. They had it almost right, then they said, "Let's apply all these rules," and that made it extremely difficult for any project actually to get up in Australia to produce renewable energy from wood waste resources.

The other one is with the regional veg management committees. There's an approach to say you have a broad legislation, as you suggest, then you have these regional veg management committees, but the way they're set up and run is quite

poor. In many cases you'll have government-appointed people getting on those committees that haven't gone through any selection process; that a minister has decided should sit on the committee. When it comes down to the consultation process, they don't really engage with rural people; they will bring somebody out from the city, tell them all how to hold hands and hold beads and, "Let's think about the stars," or something, but don't talk with rural people about rural issues of management; they don't engage rural people.

When these consultations were held, for example, with the box ironbark forest in Victoria, we brought this up as a prime example of where the consultants wouldn't hold community meetings; they would only hold one-on-one meetings and they never reported back to that person what they were going to use in developing the management plan and then went off and developed their own management plan anyway. There was no real community engagement and there was no utilisation of what they got out of the community, so even though we think the community consultation process can be useful, it's not structured to help with the legislation and implementation.

PROF MUSGRAVE: Have you got any thoughts on how it might be structured?

MR TOWNSEND: Holding these broader meetings would be quite useful again to extract issues out of rural people and, I suppose within the legislation, having some guidelines of how you would use this information; how people should take information they get from the community and represent it back in something that they've actually said would be quite useful. In New South Wales, this is why we had plans developed for the Clarence and Richmond regions that have never gone anywhere. They got some issues from the community, put it into what they thought - or interpreted what they thought the community told them, put them in a plan and then presented it back and the community and said, "That's nothing of what we told you," and so the plans have never been implemented.

MS CARNELL: I think, though, there are some very good models for how community consultation can work and it is about community engagement. It isn't about governments putting mates on committees, or determining that you need to balance this group with this group, or if you don't put this group on, they will yell and scream, because they always do and so on. The way that a lot of those regional groups - all of them - are put together, I have to say the farmers or the foresters or the people who are actually doing it out there, managing the land, are rarely in the majority, are rarely really listened to. Let's be fair, they're the people who understand what's happening in their region and on their land.

PROF MUSGRAVE: I'm sorry, Brian, I cut in then.

DR FISHER: No.

DR BYRON: Part of what I'm getting out of what you're saying is that even where a code or a standard such as the AFS does exist, there are limits on the extent to which it's being used. It may be that governments or other parties don't really trust the AFS to deliver sustainable forest management standards and biodiversity outcomes and so they continue to prescribe, or to impose overlapping prescriptive standards on top of that. To what extent is it a question of communication and building trust, et cetera or to what extent is it just incompatibility?

MS CARNELL: Remember the Australian Forest Standard, the AFS, or the regional forest agreements before them, have been worked up with governments. With regard to the AFS they've all signed off on it only last year. They are joint funders of the process, both state and federal government along with industry. I think everyone has done about as much as they could to ensure there was buying in at every area. What then happened, though, is the people who did that are sitting over there, and the people who were putting in new regulations are sitting over here, and they don't actually talk to each other, so they wouldn't have a clue what's in that; wouldn't have a clue that the regional forest agreements had, after I understand many sleepless nights in agony, actually definitions of what things are like; what sustainability actually was or is.

DR BYRON: So it comes back to lack of communication between different arms of government. When one is accepted the RFA and the standards will deliver sustainable forest management outcomes and other arms of the same government don't accept that and therefore continue to follow - - -

MS CARNELL: They might even not know it exists. To that extent - and I'd have to say we know that's the case - haven't got a clue what's in a RFA or an AFS or whatever else, but are very happy to carry on regardless down a totally different path, even though significant amounts of taxpayers' money has been spent getting levels of agreement on important issues over here. Similarly, we've just been through a review of Plantations 2020, again, by (indistinct) every state and federal government on doubling the amount of plantations that we will have in Australia by the year 2020.

Everyone says, "Yeah, yeah, yeah." Is there any flow-on from that back to regulations implementation? How are you going to make that happen, or how are you going to facilitate that to happen? No, no flow-back at all. So in New South Wales, say, no plantations or virtually none are being planted because there's no interaction at all across government to implement their own policy.

DR BYRON: But is it also a problem that state governments have passed

legislation, such as threatened species legislation, that says, "If something is very endangered it must be preserved, protected," and the people implementing that legislation are expressly precluded from taking into account any economic or social consequences of that?

MS CARNELL: That's true.

DR BYRON: Their job is to protect the threatened species. If it means closing down an industry or a farm or a mill or whatever, that's not their problem. In fact, if they were to take that into account they would be misinterpreting the law that they've been given. Their job is threatened species protection, for example. I don't think we can necessarily blame the bureaucrats if they're following laws which may be inconsistent with other laws.

MS CARNELL: I was actually blaming government direction. You can't blame bureaucrats if they're not talking to each other, if no-one has told them they have to, and the woodchip we feel is a good example of almost being told that they're not allowed to. As you know through Threatened Species Act, the bane of the existence of lots of farmer foresters, particularly, and more broadly into the plantation and native forest areas - but it comes back to leadership and direction. I suppose government is making a decision that they really are committed to a particular set of outcomes that everyone understands across government.

DR BYRON: I didn't mean to imply that I was in favour of exterminating threatened species or anything like that, but the question is the manner in which that objective of looking after endangered and threatened species is pursued and that brings me back to my comment before, that there may be other ways of protecting endangered species that don't generate the same economic and social costs and dislocations, but we tend to not explore those other possible ways.

MR TOWNSEND: This is why we pointed to the business study test as being quite important for a piece of legislation and how it involves, not, as you say with threatened species – 'don't look at the economic' and where it fits with other pieces of legislation and how that might be occurring, and are there other options. A very good example, with the bushfires: just don't lock up and hope those things will survive. If something needs managing and locking away because it is a threatened or vulnerable species and managed in a certain way, then let's have the appropriate outcome to look after it.

We lost some important ecosystems in the bushfires of last year, some around Sydney for example where you're only allowed to go in for seven weeks a year, were just totally incinerated and are now charcoal. Whole ecosystems were wiped out because we didn't have management strategies sitting around the appropriate way of

looking after them.

DR BYRON: But that's also consistent with the argument that's been put to us, that land of high conservation value does need to be actively managed to deliver the conservation outcomes and simply a prohibition on commercial use or of grazing an area doesn't necessarily ensure that that land will be actively and positively managed. There's a difference between managing for conservation and no management at all.

MS CARNELL: You're speaking to the converted here. I think you just have to drive 20 or 30 minutes out of Canberra at the moment to see why active management is essential for the future of national parks. Again, you made the comment that with threatened species, the role of the people who implement that under the legislation is really clear; it's very clear and in many cases the role of National Parks and Wildlife is very clear. It's a damned sight easier to lock it up, and safer - you know, from a political perspective - to lock it up, than get involved in active management approaches.

With burn-offs, people complain about smoke - on it goes. A burn-out gets out of control and somebody gets into trouble, and so on. So locking it up is easier. Again, it's about not having really clear views on what the outcome that we want is. From National Parks, surely the outcome, above all else, is maintenance of ecology and biosystems. That's what we're trying to do. If that was the case, and everyone understood that, then we'd be actively managing our national parks, because you certainly don't maintain any of those things if you burn them down.

MR TOWNSEND: Could I just give a really good example - and we've known this to be the case on a number of farms, where they supply logs to the industry - where they've got the logs and they sit right next to a national park. But if we had that threatened species and just, as you say, "Look, it needs to be managed, because it is a threatened species, in a particular way" and whether that's a conservation outcome or a real active management outcome, that gives us the opportunity to look at how we manage the national park right next door, to make sure we don't have the threat of extinction coming out, or pests and animals coming out and affecting the other ones in the bit of the threatened ecosystem that we want to protect. So by the legislation talking to one another, now we get a better outcome in our national park, that looks after our threatened community which is on private land.

PROF MUSGRAVE: The business study test is therefore - it's more than what we might call a conventional benefit cost analysis?

MS CARNELL: Yes, it is, because it needs to look at - it is sort of a funny mixture of a cost-benefit analysis with a regulatory analysis which - - -

PROF MUSGRAVE: The process as well as the costs and benefits?

MS CARNELL: Yes.

PROF MUSGRAVE: Which then has implications for at least cost-effectiveness?

MS CARNELL: Yes.

MR TOWNSEND: I suppose just to get an idea of how expensive it's going to be for businesses to implement, if under, say, the Plantations and Reafforestations Act in New South Wales you have to go through a number of studies on cultural and heritage sites, on species impact, threatened species - and these studies become quite costly - is it going to totally preclude investment in plantations - even though we might want them in a location - because they're going to ameliorate the effects of salinity? Understanding all of those hurdles for the companies would be quite - - -

PROF MUSGRAVE: What degree of confidence do you have that we have a capacity to do this on a broad scale, as would be required? There's just so many applications of these pieces of legislation across the nation. Our experience in doing socioeconomic assessments of the impacts of native vegetation plants, for example, is not good. So does that give us faith and confidence that we could conduct this more ambitious and rather broader sort of assessment that you're referring to?

MS CARNELL: The reason I started by saying "from a forest industry perspective" is that this is an important industry, it's got huge growth potential. The Murray-Darling Commission have mapped at this stage over 1 million hectares of saline-affected areas in moderate rainfall areas - so not low rainfall - that could be commercially planted. If that was done, the saline benefits, the greenhouse benefits and benefits for jobs in rural and regional Australia are quite huge. Is that worth it? Is it worth getting the regulations right, to get the sort of investment that we need to make that amount of difference? Because it would make a huge difference - we think yes.

PROF MUSGRAVE: Yes. So you're saying the benefits of a well-run program of native vegetation, biodiversity and conservation management would justify a higher level of expenditure, including on this sort of assessment process?

MS CARNELL: We think if we don't do it - once you superimpose almost, water regulations on top of all the ones we've got at the moment, we're just going to screw industry - certainly our industry and I don't think the farmers are going to be much better - into the ground and totally stifle innovation. You only get away with doing what you've always done.

PROF MUSGRAVE: This implies a very ambitious program of planning, assessment and implementation with considerably greater levels of expenditure than we currently have. I notice you propose a levy to fund this sort of activity. But it would be a significant departure from what we do at the moment.

MR TOWNSEND: To suggest a levy was quite important because if we're going to take away the rights for people to utilise the vegetation that exists on that farmland, we've got to somehow compensate them. We just can't go and prescribe away their rights to do things. That's what was suggested on that approach.

Maybe this will help you, if I put the plantations and the 2020 Vision into some context. Even though all the states, the Commonwealth and industry, signed up for this 2020 Vision, no one state has yet put in place a state based plantation afforestry policy. There's no policy out there in any one state saying, "These are the impediments." So we've got this national approach, and out in the state we've got to deal with these certain things and that's going to have links to these other pieces of legislation, some of which include the maintenance of native vegetation on farm land, but nobody has gone down that path. They're out there and they say, "We've got a policy about plantations," but they haven't actually implemented it in a useful framework themselves, that then the legislation can run off.

DR FISHER: Isn't the problem that forest ministers went away and created their 2020 Vision and then environment ministers have gone away and got another vision, and those two visions are not necessarily consistent - - -

MS CARNELL: That could be the truth.

DR FISHER: - - - and whilst ever that's the case, we're not going to get delivery on the Forestry 2020 Vision, because there's a bunch of other activity that's running contrary to the delivery of the Vision? Isn't that the problem?

MR TOWNSEND: Yes. We see this exactly as you point out, and the interrelationship between pieces of policy - in every state now, state and regional development ministers are seeing that plantation forestry is the way forward for regional development. Repair the environment and come up with jobs in regional areas, and maybe even supply renewable energy. Again, three different objectives running under each government - conservation, afforestry and the regional development - but never connected in a strong way.

MS CARNELL: Yes, it is a big project, but it's not something that has to be done in a day. It's something that needs to have buy-in, at a COAG type level saying, "This is what we're going to achieve and we're going to make it work." If there's buy-in at that sort of level, for the absolute over-arching, I suppose decision-making

processes, the capacity to incrementally change over time is real. Unless we do that - you know, get that buy-in up at that level - all it will do is get worse. As water regulations come in, more water regulations come in, as water trading systems come in, as all sorts of other things sort of plug in all over the place, it's going to just make it harder and harder to operate efficient, sustainable agricultural businesses in Australia.

DR BYRON: I'm reminded of a Swiss friend of mine who says that in Switzerland everything that's not illegal is compulsory and everything that's not compulsory is illegal. There seems to be two ways of dealing with this: you could either say that the landowner has to go and prove that establishing a plantation is consistent with biodiversity conversation, Aboriginal heritage, water, mines, et cetera; or alternatively you can say, if it's freehold land, you're allowed to do pretty much as you wish unless there is evidence that you will cause some harm or nuisance by doing that.

MS CARNELL: Yes.

DR BYRON: That changes the burden of proof. The default is that you can do development, whereas at the moment the default seems to be you can't do anything unless you can prove that it's safe.

MS CARNELL: If the buy-in was that from a plantation perspective you can establish a plantation here - a set of rules on what you can do, that's fine. We don't mind a set of rules that everyone understands. You will need to ensure that you're certified under an acceptable certification scheme as you get up and running, and "By the way, if you stuff up, it's going to cost you a lot." In other words, penalties. Very happy about penalties. I think most people in these sorts of areas, in fact, all people who are putting the sort of money you put into plantations for the sort of length of time that you've got to have those trees in the ground, aren't fly-by-nights. They're in the business of attempting to do - and doing everything in their power to do the right thing.

DR BYRON: Which reminds me of the 61 pages of new amendments. I assume those amendments take effect immediately?

MR TOWNSEND: I would have to find out exactly when they come into being, but I could find out for you.

DR BYRON: No, but if you're halfway through a 30-year plantation - - -

MS CARNELL: Yes. That's true.

DR BYRON: - - - and the rules change, I presume there's no lead time that says, "These rules will apply as of the next rotation of trees."

MS CARNELL: No. They are from now. I think in our submission we made the comment about the Tiwi Islanders who ended up with a change of the legislation that they had to comply with, from the earlier legislation through to the EPBC Act, and had to start all over again in their compliance approaches.

MR TOWNSEND: Can we suggest that the Australian Forestry Standard isn't the only approach, but it does some of the things you were just talking about. The onus is on the landowner; they know now that they have to, all right, meet these requirements under the Australian Forestry Standard, and they're the prescriptive international requirements for delivering on sustainable forest management, but it's not telling you what you will do with every tree and every animal. It's telling you that you must take these things into account when you either manage a forest or plant a plantation.

MS CARNELL: And be subject to JAS-ANZ accreditation and be subject to somebody external coming to make sure that you are compliant.

MR TOWNSEND: I suppose it limits the audit trail. We're just seeing the audit trail growing, too. In the renewable energy side we see this all the time. Now you have to actually identify every log on every truck as to where it came from, to satisfy the regulator. People who are now using wood waste have to employ a person to follow the audit trail permanently on wood waste.

MS CARNELL: On every individual log.

MR TOWNSEND: So you have to count everything, and the audit trail is just becoming horrendous for people who wish to use their vegetation.

MS CARNELL: That's the reason Australia is the only country in the world - actually the only country in the world we can find that doesn't use wood waste to generate renewable energy at a significant level.

DR BYRON: A number of people have said to us in this inquiry and in others that if you want to have an internationally competitive industry, you need to have internationally competitive regulation; that it's hard to compete if you're suffering from excessive or inappropriate or unworkable regulation that basically ties your hands behind your back with red tape.

MR TOWNSEND: That's our problem. I was just going to suggest this was our problem for a pulp mill. We know that there's interest to build 10 world-scale pulp

mills in the Asia-Pacific region at some stage this decade, but Australia is last on the shopping list at the moment. Even though we've got the resource, they know the approvals process isn't clear and outlined, so they don't know what requirements they're going to face on the way through. We're talking about - as you would be aware - 1 and a half to $2 billion investment. We don't want the 10 here, but we have the opportunity to have at least one, maybe two pulp mills here in Australia. But that is definitely stopping investment.

MS CARNELL: The wood waste, too - just one of the more amusing anecdotes - we've recently been approached, actually on a couple of occasions, by French companies and European companies who want to buy wood waste, put it on ships, take it to France and generate electricity, and they can do it. In stupidity, it's up there. It shows that we've got a problem with regulation in Australia.

DR BYRON: Thank you very much for coming and thank you for your submission and the elaboration this morning.

MS CARNELL: Thank you very much.

MR TOWNSEND: We'll provide details, once we get samples back.

DR BYRON: That will be good. Thanks.

DR BYRON: Mr Gary Orr. Thanks for coming in, Mr Orr. If you could just introduce yourself for the transcript. We've read your submission, so if you can just give us a summary of that and then we can talk about it.

MR ORR: My name is Gary Orr. I'm owner and manager of a business called Rural Conservation Service. It's a partnership between my wife, Louise Conibear, and myself. I've run Rural Conservation Service since about 1988. The main reason for its existence is to help farmers grow trees on cleared agricultural land; that's the origin.

More recently we've bought a property called Mount Yaven. I have an aerial photograph of the property here, if I can just point it out to the commissioners. The property itself is more or less that square there that I'll be talking about, Ellerslie Nature Reserve, which is all that area there, including this small portion there.

DR BYRON: That's the road that goes through the nature reserve.

MR ORR: That's the road. For the commissioners - can I approach you?

DR BYRON: Thanks.

MR ORR: The photograph I've just handed to the inquiry is this area here. The two pieces of legislation that have affected the seed collecting business as well as our farming enterprises are the National Park Estate Southern Region Reservations Act of 2000 and the Native Vegetation Conservation Act 1997.

The first act was brought in to claim back grazing leases from private land-holders and turn them into conservation reserves. Next door to our property, it used to be Ellerslie State Forest, and it was logged in the past, mainly for railway sleepers and bridge material. It's not a sort of a high producing type forest that people would be interested in logging these days.

Our property has been selectively logged over the years as well. We had the grazing leases and our road access to the property was through that lease country. Under the act, it looks like farmers are being protected with the special provision as to access roads within national parks, but I'm finding it's quite bureaucratic or being interpreted by different National Parks people in different ways. While they say the access roads may continue, subject to this clause, to be used for the purposes for which the farmers used them prior to the introduction of the act - that you are protected - in the year 2005 the minister has to declare whether the road is, in fact, part of the national park or not part of the national park.

We lease a road reserve to our property, but that road reserve follows straight lines on the map, not the sensible way into the property, which is a two-wheel drive path as well. It's about nine kilometres from the Hume Highway to get to our property. There's a six kilometre or so dirt road through a farm called Yaven, and that's a public road. Then it goes for about two kilometres through the nature reserve until it reaches our property, so there's about two kilometres that is not public road.

Our problem with that is two things: we bought the property because we recognised, firstly, that it had 1500-odd acres of high conservation value land. We've also done surveys of plants and animals on the place. We've got a heap of rare and endangered plants and animals. The National Parks people have also done a survey and they've discovered more on their property.

I'd like to work with them, but you just feel like it's a little bit of a brick wall. They're talking about insurance problems at the moment; that if they open the road through to our place and if someone saw a wombat and if they crashed into a tree they're liable for the insurance or public liability, but that's not covered in the act. I think the politicians try to protect the farmers, but I think the legislation can be interpreted all different ways.

We're concerned about that. In the meantime, what we wanted to do was put a couple of cabins on our property and have people come in and enjoy both the nature reserve and our property, but now we don't feel like we can invest in the place like that, because the access to our property may be shut off one day. We can't get anybody to our place apart from a helicopter or something like that. National Parks, in fairness, have said that they have no intention of blocking our access through, but that's a verbal thing and I just need it in writing, just like laws are made in writing, and I guess when it all boils down it's what's on paper and what a judge thinks in a court of law and not what a person has told me 10 years ago or whatever.

That's a big concern of ours. I've mentioned in my submission there's other legislation that comes into impacts of vegetation and biodiversity regulations and what impacts they have; for example, cruelty to animals. A good thing that National Parks and we have been doing is controlling some of the feral animals. We've got a big feral goat population, and we're almost down to the last few now. Under the Cruelty Act, I think animal libbers have stopped National Parks doing aerial shooting of goats. We've spent the last three or four years or so controlling the feral goats, as well as the National Parks. We're down to the last few animals now. It would be really good if we could get rid of those, because those goats - especially through the drought - were just wiping out all the vegetation. I haven't mentioned that act specifically here, but later in my submission I talk about other acts that come into it.

You feel like you are drowning in red tape. We don't feel comfortable putting

too much money into this conservation and farming venture. When I say "farming", we've got a small herd of alpacas. That's just an income stream that we're getting off our property. There used to be between 600 and 1000 sheep on the place. They have caused some damage, although one wonders how much damage, because the conservation reserve had the full brunt of these sheep anyway and there are still rare and endangered plants and animals there.

The second piece of legislation that affects our business - it affects more the seed collecting side of the business - is to do with the Native Vegetation Conservation Act. My concern there is that under that act in the definitions of "clearing" they say, "In this act, clearing native vegetation means any one or more of the following" - and while most people would think bulldozing is the normal way to clear, they also say in this - "severing, topping or lopping branches, limbs, stems or trunks of native vegetation." To collect seed for growth on cleared agricultural land, you need the primary resource, which is the seed, and to do that - for eucalypts at least - you'd be lopping branchlets, then drying out the branches and extracting the seed. We do it in such a way that you'd never hurt the tree. You wouldn't lop every single branch off the tree so that it had no way to photosynthesise. Mind you, that probably wouldn't hurt a eucalypt anyway, because that's more or less what a fire does to it.

Our problem with that is that for us to collect a good quantity of seed that's got a number of parent trees - so the seed is good quality for your native vegetation revegetation project - you need to collect it from a number of trees and to do that you may do that over a large area. My understanding of the act is you've got to have someone inspect the trees and say, "Right, you can lop that branch or you can lop that branch," and it just becomes so bureaucratic it's almost impossible now to do it legally. I just wonder if land care groups across the country are doing exactly the right thing and getting permission off the then Department of Land and Water Conservation. They've recently changed their name, but I've lost track of the name now.

One of the reasons why we bought our property was to have the seed resource there. Under the act we can clear, I think, without permission about three acres of land and I've been told that, within that allowance of clearing, we can lop branches off our trees without having permission to collect seed. My concern is that if I go to another farm or if I'm collecting from roadside trees or something, with due permits and permission to do that from travelling stock reserves and that sort of thing, we get permission from the travelling stock reserve or even the National Parks to collect the seed, but then you've got these layers of other legislation and other departments that you have to see as well. That's my interpretation of the act. They're the two main acts that are affecting our property at the moment and are impacting on the way we invest our money now.

DR BYRON: Thank you very much. I was very surprised to read in your submission that clearing includes lopping branches. It seemed to me to be a very strange way of committing clearing. You say in the submission that people from the department have said, you know, you don't have to apply for a permit for every branch - you know, commonsense - but your observation was that commonsense may not be accepted if it came to a court of law.

Coming back to the first question about the access road, you said, "If NPWS delay this process long enough, we'll lose our access." Can you explain a bit more about why and how that would happen.

MR ORR: Under the act it specifically states, "Before 31 December 2005 the National Parks and Wildlife Minister must, by one or more orders published in the Gazette, declare which of the access roads to which this clause applies" - basically it's (a) - "are excluded from the national park or (b) are not so excluded from the national park or reserve." It's specified in the act that on a specific date the road either becomes part of the national park or not. If it becomes part of the national park, my understanding is they can lock that gate. The National Parks people can lock the gate and say that that road now is part of the national park. That's my understanding of it.

DR FISHER: Would that then have the effect of locking you out of your property, other than access by air? Is that correct, or are there other routes in?

MR ORR: There are many other routes in, but they're mainly four-wheel drive access routes. They all go through other private land. The main access in from the Snowy Mountains Highway is six kilometres of public road. It's a dirt road through a farm, but it is public road. Can I point to it on the map?

PARTICIPANT INDICATES POSITION ON MAP AWAY FROM MICROPHONE

MR ORR: There are many access roads in, but they're all four-wheel drive and they do go through private property. The Yaven access in is two-wheel drive. If we were to have, say, two or three ecotourist cabins there on our property people could enjoy the national park or whatever, if they can get to our place in their normal car. Without that, we'd have to rely on permission from our neighbours. At the moment we've got good relations with the neighbours, but of course that could change.

DR FISHER: The gazetted road on the parish map is gazetted along a boundary or something.

MR ORR: Correct, yes. For us to, say, bulldoze a road where it is gazetted that we

can go, it is very steep land and it actually would be, from an environmental point of view, not a good idea anyway. There would be erosion.

DR BYRON: But there is almost an implication in what you're saying that National Parks Service, if it wanted to, could virtually block you out, or squeeze you out.

MR ORR: I think so. That's my interpretation.

DR BYRON: Either deliberately or accidentally or unintentionally.

MR ORR: I think it would be more accidentally or, yes, unintentionally. I don't think the legislators really thought through all these different scenarios. I believe there are about five other people in our region that are in the same boat. They are affected by this access business. Just recently I got wind that one of their main concerns is the insurance and public liability, which is a fair enough thing. If someone has an accident on the road coming in, say it was an ecotourist thing and someone did have an accident - it's possible - that they then become responsible for our guests coming on the road.

I can't see it as being any different to someone driving down Northbourne Avenue and the Roads and Traffic Authority, or the equivalent in Canberra - are they responsible if someone has an accident? Unless they were negligent - - -

DR BYRON: I would have thought that would encourage the NPWS to want to make it a public road as soon as possible, unless they have something else on their mind.

MR ORR: I have written to the Gundagai Shire Council and they're happy to turn it into a public road - they're saying at our cost, and I'm not quite sure what that would be with surveying and what have you - but that may well be the case; that National Parks would support that portion of the road becoming a public road. I'm not quite sure.

DR BYRON: Have you got any evidence about a reduction in the value of your property as a result of these legislation changes?

MR ORR: I'm not sure if I have got any concrete documented evidence. I don't think our property would sell, at the moment, as a going sheep farm and wool producing property, albeit a marginal one. I don't think anybody would buy it at the moment until this issue is solved with the access. We're not really interested in selling it. We paid about $90 an acre for the place. A lot of farmers wouldn't be interested in the place. There is a lot of bushland. It's pretty rugged. It is marginal place. There's pockets of good soil.

Half of our reason for buying it was from the conservation point of view, but now I'm starting to feel like we've tried to do the right thing and we are being regulated against and it's not fair that we're carrying the burden, as individuals, for the conservation of the place. We are still happy conserving our native plants and animals. I feel reluctant actually telling National Parks - the people there - where I've actually found turquoise parrot nests or brown tree creeper nests. I wouldn't want to tell them where I've found them for fear that they would lock up that paddock. We have only got so many paddocks where we can actually graze our alpacas and there is, in fact, a rare bird that nests in one of them at least. So you don't feel comfortable working with them and I think that could be changed with the regulators.

DR BYRON: One of the things we have been talking about in the other hearings is whether there might be mechanisms that would actually encourage or help you to manage for those rare and endangered plants and animals you had found, rather than - other people have said to us that they feel there is only a downside if they tell the authorities what they have got. We are trying to think creatively about some way that would actually encourage you. Instead of having one or two nesting sites, that next year you might have twenty. Have you got any ideas along that line of some creative thinking?

MR ORR: Yes. I think so. I was talking to a Greening Australia person the other day about it. In the back of our place we have 400 acres of white box woodland - it would be really mixed box woodland but there is a lot of white box in there, and the understorey is pretty well intact. He was talking about stewardship payments. At the moment we have virtually paid for that land and virtually locked it up ourselves, although we are still managing it - you have still got to manage it for fires. In this area, lightning - it has burnt every year since we have been on the place from lightning strikes.

So there are the stewardship payments. Help with management of these endangered species - obviously National Parks have got a lot of expertise with those sort of plants and animals - fitting in with them, it would be great to get all the information on how to do the job better. Even the boundary issues, where there are plants and animals cross the boundary - plants by seed or whatever and animals walking across or flying across - those sort of issues we can work better on. From a financial point of view, if you were to lock up the land a farmer would need to have some sort of compensation for that land. It's not fair that they have to pay that and yet in town people aren't paying the true environmental cost of a loaf of bread. If a farmer has that back paddock to manage and conserve, then I think everybody in our community should be chipping in for that, whether it be through the market price of a loaf of bread, or through our taxes and incentive payments directly to the farmer for locking up that land.

PROF MUSGRAVE: Can we just pursue this line a little further and perhaps go back to the commonsense remark that you received from an officer of - was it land and water conservation or - - -

MR ORR: Yes, at the time.

PROF MUSGRAVE: It would seem to me an implication of that is that officer has been left sort of twisting in the wind; that he has some discretion, but no guidance from on high as to how to manage the situation you confront him with. Is that right?

MR ORR: I know the guy very well. I think he's sympathetic to the effects of all this legislation. I mean, he's the regulatory person who has to police the regulation. I remember the conversation really well and him saying, "We're not going to take you to court if we catch you lopping a branch or something for collecting seed. You've got to use your commonsense." That's where that saying came from, and I said, "Well, that's not written in the act – that people have to use their commonsense." I think he was sympathetic to that.

The people in that department have been working with farmers for years in a close relationship, working together within the soil conservation service, and they did great work. These days there seems to be more and more legislation for the environment and I think everybody wants a healthy environment, but making it so prescriptive is actually in some instances - and I believe in some of our instances it is actually against what we're doing.

PROF MUSGRAVE: Yes. You're an example of not being allowed to do anything unless you can prove it's safe, in a sense, as Neil said a little time ago. Would it, in your mind, be practical to aspire to you being able to develop a plan for your property which is calculated to meet defined conservation outcomes? If the officer that you were dealing with was able to say, "Well, we interpret the regulations to imply certain desirable conservation outcomes for your property," you could go away perhaps and then work towards developing a plan which could give you a blanket approval to cut branches.

MR ORR: I think that's a great idea and that's the way we're going to have to go.

PROF MUSGRAVE: In the absence of stewardship payments.

MR ORR: In the absence of stewardship payments and in the absence of creativity, if you like, with National Parks, on the ground, the rangers and what have you that you talk to about these things, because everybody is interpreting things differently. I think we're going to have to come up with the answers for them and put the solutions

to them within the act and provide them with and say, "Yes, as part of that we'd have to have a plan to show them that we are trying to do the right thing with conservation."

PROF MUSGRAVE: Yes. Thanks very much.

DR BYRON: I guess I'm struck with the observation that for someone like you and your wife - who are interested, well-informed and knowledgable about native vegetation biodiversity species, et cetera - it would seem to me like the ideal neighbour for National Parks, and perhaps vice versa. So it is surprising in some ways that, in spite of that sort of natural partnership that should be possible, there seem to be these sort of tensions that result from the way the legislation is worded; that it creates these uncertainties in interpretation.

MR ORR: You've hit the nail on the head. When this legislation first came out we were actually handed over our leases quicker than most other people and we encouraged National Parks then. In some respects we work really well with them; for example, with the goats - until recently because of problems – aerial shooting - there's a whole range of issues that we do work really well with them on. Nevertheless this one has been one that has caused angst, more for us rather than them. I guess it makes no difference to them personally whether we can get to our property or not. Those animals and plants - it's probably better that no-one is there, I guess, providing someone manages the place because there are issues. There are fires in the area as well.

It's a good point. I'd like to work closer with them and I am sure most farmers would want to work closer with them. But you do feel like there's a brick wall there now. I can make an example: when the forestry people and the Department of Land and Water Conservation people managed the property, they encouraged you onto their property - the state property - to control weeds and to control feral animals. I had to sign contracts to say that we would do that, whereas with National Parks it's different. We can't legally just go on there and control feral cats, for example.

We've have got a watering hole in the drought - it's the only watering hole in a huge area, where all the parrots and all these common birds come in - but also rare and endangered birds are coming in - and the cats and the foxes would also come in there. Our petrol shed is 10 metres away from the national park and there's a huge amount of build-up of fuel there. It's where the feral animals hide, waiting for all the native animals to come in on this one little watering hole that is left, apart from our dams and troughs for livestock. I did clean up any foxes or cats that we saw around there, but theoretically if the bullet went over the fence or if that cat jumped the fence - within five or 10 metres from this watering hole is the national park, so we're right

up against the national park.

In the fullness of time we'll be building a fence to make it a feral-proof fence; not enclosing our property, because we couldn't afford it, but to stop the feral animals - the predators, cats and foxes - pouncing on native animals at this waterhole. Possibly National Parks will help us build it for that reason. Yes, there could be a lot more that farmers and National Parks could work for, absolutely.

DR BYRON: It's interesting that you would have to invest a lot of money to build a fence to stop the feral animals coming out of the national park onto your property to achieve conservation outcomes.

MR ORR: Yes. That's the way it is. That could be argued with the wild dog population. People on Kosciusko with their sheep, they've got to actually move their sheep further away from the park, which basically allows the paddocks close to the park to regenerate more, which gives more cover to the wild dogs coming in. So they've got to move their sheep further back. There are some unusual ramifications for legislation that the legislators don't always think about on the ground.

PROF MUSGRAVE: Even some scope for commonsense perhaps.

MR ORR: Even some scope for commonsense, indeed.

DR BYRON: Thank you very much for coming, Mr Orr. We appreciate you've travelled a fair way to get here.

MR ORR: No, we didn't. I actually work in Canberra and my brother-in-law manages the property.

DR BYRON: Thanks for coming anyway.

MR ORR: Thank you.

DR BYRON: I propose now that we adjourn for a morning tea break and resume again at about 11.30.

DR BYRON: Thank you very much, ladies and gentlemen. We'll resume the public hearing of the inquiry into the impacts of native vegetation and biodiversity controls. The next evidence is from Mr Wheatley, Mr D'Arcy and Mr Page, if the three of you would like to come and sit up here. If you could introduce yourself, Mr Wheatley, and summarise your submission, then Warren and John. Then we can have a question and answer discussion between all of us.

MR WHEATLEY: Thanks, commissioner. My name is Len Wheatley. The people beside me I've just introduced. It's a little bit different to what I actually sent in as a submission. I ask the commission to identify the owner of native vegetation and biodiversity ecosystems made up on my land and water. These include living organisms that make up the aquatic ecosystems and the living soil structure which, as owner of the property, I make use of to grow crops and grasses for my livestock. This land has existing quarries and timber.

Excuse me, I've got to read this. My brain is not as good as it used to be. I believe because of the Bega Valley Shire Council's demands for rates on the properties, confirming our existing use rights - and remember that, existing use rights - to our land and water and to our ecosystems that create both land and water. Bega Valley Shire, in its de facto relationship, confirms that we own these environs of native vegetation and biodiversity ecosystems on land and water and the use of my property for quarrying and timber. That comes under existing use rights, I believe, too.

It is recorded in the Department of Land and Water extractive industries document that councils are responsible for recognition of existing use rights. I've got documents to prove that. It is stated that local government is the responsible body for determining existing use rights. I believe, on my records, that existing use rights controlled by local governments overrule state legislation. It's most legislation that comes under this recently. If this is true, as stated by the Department of Land and Water, then existing use rights and property rights on land and water and their ecosystems must be clearly identified by local government before native vegetation and biodiversity decisions can be made.

Where does this leave the current rules and acts on biodiversity and native vegetation that have been passed in state parliament? I would like to remind the commission of a significant case in the Land and Environment Court dated 28 March on existing use rights. Would you like me to read that to you?

DR BYRON: Yes, please.

MR WHEATLEY: All I've got to do is find it now.

DR BYRON: How long is it?

MR WHEATLEY: It's only short.

DR BYRON: A summary? A paragraph or two?

MR WHEATLEY: Yes. I'm just about finished that. If you like, I'll just finish that and come back to it.

DR BYRON: Okay.

MR WHEATLEY: That is the general nature of corrupt conduct. That's another one. "Read out 318." That's official on that. "Read out local government and duties disclosure." Excuse me for a minute. I want to point something out to you, which I'm going to give you a copy of. When I inquired about the Water Bill 2000 when it went through, I wanted to clarify - we'll talk about water for the moment. After reading the Water Bill 2000 information package, I can't find any proof of ownership by the state of New South Wales that it owned the water that falls on my property. There's a little bit more to that, but I've shortened it. This is a letter in return after the Water Bill 2000 went through. In simple terms, nobody owns the water and the state does not claim ownership. I want to know who does own it.

Let's go back to the existing use rights. Local government determines this on a Department of Land and Water paper. If local government determines that existing use rights apply, this means councils recognise the development and lawful use by the legislation being enacted. Our comment - this is as far as water goes - in non-title areas, riverbeds are often freehold land. Granting of its existing use rights is not for water resources to judge. The Department of Planning guidelines that council use when making decisions are not existing use rights. I'll just let you have that document for the moment.

I'll just step aside from that one for the moment and I can give you these documents. I'm talking about official instruments which are put out by the Department of Land and Water. 38 of the Fences Act:

> An official instrument means an instrument of a kind that is made and issued by a person in his or her capacity as a public officer. A person making a false instrument -

and it goes on. "Honesty in disclosures" - that's council.

> This chapter places obligations on councils and council delegates and staff of council to act honestly and responsibly in carrying out their functions.

That comes back to the existing use rights I was talking about.

> Corrupt conduct is any conduct of any person, whether or not a public official, that adversely affects or that could adversely affect either indirectly or directly the honest and impartial exercise of official functions by any public official, any group or body of public officials -

and it goes on to declare that. I'll just see if I can locate that and I'll let you have that one. I'll see if I can locate this other one now for you. That's the terminology written down as biodiversity. Unless you want to ask some questions, I'll let you go on to Mr Page, if you like, while I look this other one up.

DR BYRON: Okay, thank you. Could you just introduce yourself, please?

MR PAGE: Yes. My name is Warren Page. I'm from Bega. My background is engineering and real estate. Just as a bit of an intro, I grew up about 20 miles west of Eden. It was, and still is today, a rugged forested river valley, so I appreciate nature very much. I've included in my submission, which is before the committee, some qualitative suggestions to help preserve native vegetation. However, here today, having lived in the Bega Valley for over 40 years working in local government - engineering - and over the last 25 years as an active real estate agent, it is from this experience that my submission is made.

Land-holders' basic existing use rights have and are being adversely affected by the enforced application of environmental and planning regulations. In particular, I object to the manipulation by planning staff to use E and P regulations to achieve their own personal policies. I can give examples of this if you want them. I think there are a couple sitting around in here. I wish to draw attention to the unfair treatment of existing use rights by the application of environmental and planning controls. Over the last 30 years it has created a public perception that farmers in particular, together with other owners of undeveloped land, can be controlled in a manner that city owners or residents wouldn't tolerate.

I don't know whether it's the same case that Len is looking for, but a recent Environment and Planning Court case in Sydney is Mona Vale Pty Ltd v Pittwater Council. Several points were clearly established, without going through the whole thing. The first thing was that existing use rights continue and are not restricted by later environment and planning regulations. It's important to think about that. In fact, existing use rights are provided for in the environment and planning law and

they specifically allow for the expansion of a use, which can be a hotel or a farm or forest or quarry. It can be an intensified use. What's more, the use can be changed to other uses that would be otherwise prohibited under that act.

This all flows from existing use rights. One of the prime considerations in the court cases, if you read them, was to establish that the existing use was legally started under the laws at that time. Land was originally granted to use in this country and for the last 100 or 200 years for most rural land-holders its asset value and its use started with the title prior to most environment and planning laws. I'm not against the environment and planning laws. I'm trying to make the point: which came first?

Farmers often don't have the financial ability to take claims to court and so, over recent years - which is only 30 out of 200 - many planners have been able to enforce decisions that I believe have been wrong, which has led to a mind-set that environment and planning is all-powerful and, in particular, that the public has the right to dictate how a farmer or a landowner uses his land. I believe that's wrong.

Farmers' existing use rights deserve better recognition. The environment and planning law clearly provides for it. The wrong should be rectified using the same state and federal law or whatever and decisions that city land-holders enjoy. They've got the money, they fight and they win at court; the farmers haven't got the money and get beaten down or, more importantly, they don't feel they can even go in and object. They give up their rights of appeal because there's no way they can afford a big legal fight. A lot of the decisions that are made in our area anyway - quite a number of decisions are made that shouldn't be made and they exist because no-one can fight them.

That's the main thrust of my submission today; to try and draw attention to the consideration of what people have, before you try and control it more than you have already. That's the one thing that leads to a great deal of uncertainty, lack of value of property - because if you go to a bank and there's a proposed zoning hanging over it, try and raise money against it or get approval to develop further. It is really affecting it. I know Len's situation and his is one where a use was existing; it was confirmed by a council lease, where they were going to use it that way, and now it's prohibited. It was there miles before this environmental planning law came into place. He's a classic case and there are many others. Thank you.

MR D'ARCY: My name is John D'Arcy and I'm a farmer. I haven't actually compared notes with Warren but a lot of what he says is relevant to me. I just like to talk about the amount of false and ad hoc information that is used by government departments and professions. This information is usually used to the detriment of farmers with the onus of proof thrown back on them and there is no accountability in the public sector on how government departments will go to great lengths to cover up

and justify themselves.

I'd like to give you an example of this. It was in relation to our farm. My father had died and we were just splitting off parts of the farm to cover all the debts. We put in for a subdivision and, a month later, the council produced all these maps from National Parks. Just by coincidence nearly every threatened species appeared on our farm; there are some cases where they're only on our farm: three there on the one farm; two there; two there - every map. They just happened to be on our farm.

We asked National Parks to check this information. Instead all we heard was excuse after excuse. We went to council and we asked them to check it. This is what council said:

> Council would normally accept data information supplied from other government authorities on the expectation that the government authority would thoroughly check its information prior to circulating it.

This is what National Parks said:

> If a recipient believes the data may be incorrect, they are at liberty to obtain an independent survey at their own cost.

Obviously there was something wrong there, so we did a check. We asked, "How do you get these maps?" These were meant to be official National Parks maps. They said, "It's printed off a database in Sydney." We ran a check on the database for those animals on our property, everything that was seen on our property, and this is the result: these are all the animals that were found. There was a koala, a dingo, a platypus and a common death adder - yet these were the records: over 400 sightings were meant to be on our farm. If these were correct, every single one of them would be on here. Not one is on there. National Parks claimed, "It was because of rounding down" - yet the very coordinates are written here. There was no rounding down or anything.

We've been to ICAC, we've been to the ombudsman. We would produce the documents; those departments would ring ICAC, would ring National Parks or would ring Bega Council and they would give a verbal explanation over the phone. In relation to the koala that was meant to be on our property, it was meant to be sighted by a Mr Braithwaite. Forestry, on our behalf, contacted Mr Braithwaite and he said there were no animals there - Mr Braithwaite. But then it went on a bit further when National Parks continued to claim that the Forestry people - this is a letter that came back:

> Following your phone call yesterday I was contacted by Peter Ewing of

National Parks and Wildlife Service in relation to the same matter. I have once again checked my records. I wish to confirm the State Forests staff have not detected evidence of koalas on private property at Reedy Swamp. Mr Ewing stated, as you said, that the 1971 record came from State Forests. He said that the record was from database provided by National Parks and Wildlife by State Forests during the comprehensive regional assessment process. I told him that the record may have been in the State Forests database but State Forests had obtained data from many sources and that the original had most likely come from National Parks and Wildlife and, in particular, from the Lunney questionnaire survey. I have since confirmed this.

The Lunney survey was just ringing up people saying, "Have you seen koalas?" They just put them here, there, nearly everywhere. When I went and saw him I said, "Have you ever seen a koala in the Bega region?" He'd seen one. One that had a collar on it that National Parks took him to. Yet this person and National Parks write up policies; if you have a sighting near you, then you come under sec 44 - a long process, locking up land, you can't subdivide here because you've got koalas. The courts believe the National Parks documents.

As Warren said, the farmers individually don't have the money to fight it. For three years this went on and eventually there was a meeting down in Merimbula where they admitted all this information was wrong. But from day one - day one - it was wrong and anyone who looked at the records could see it but it was just set up, set up to put these animals everywhere. As soon as you do something on your farm they say, "Oh, you've got this animal. You must do a survey." It was a cheap method of getting someone to do a survey for National Parks and council and get a record on the list. That's all it was about.

I'd just like to go on to some other points. The environmental profession are unwilling to speak out and are more likely to write reports that are heavily biased towards the environmental impact; they are too reliant on National Parks and other government bodies to enhance their careers. By this I mean the professionals usually get grants from National Parks or the National Trust; they are sent out to write theses on their particular interest and they obviously come back with a biased approach of the interest.

Just to give an example on that, take the yellow-bellied glider: Bega is a fairly big shire but over a third is national parks and over a third is state forest. The Threatened Species Act says that you're not to threaten species to the risk of extinction. The whole point of the Threatened Species Act was to protect animals that were at risk of extinction, but what's happening is that people are writing reports to eventually get everything on that list. There are sightings, according to this,

everywhere. But have you ever read when a school is being built or a hospital is being built or someone is doing a subdivision that it's been stopped because of a yellow-bellied glider? If National Parks own over a third of Bega Shire and cannot protect a species like the yellow-bellied glider then there's something wrong. Things are just being put on there and eventually they'll have everything on the threatened species list.

Moreover, in the biodiversity part, there are a whole lot of endangered ecological communities being placed in Bega; there's the Bega Dry Grass Forest, the Brogo Wet Vine Forest, the Cannilow Dry Grass Forest, the dry rainforest of the south-east. They say this was a comprehensive study when they did the south-east region forest agreement. The truth is, these groups were done by an aeroplane. They're marked over all people's properties; no-one is told about it. It's sitting there on maps, just waiting for someone to do something. As soon as you go in to apply for an application, a development application, all of a sudden up they come. When I've looked them up, say, the Bega Dry Grass Forest, it's meant to have something like 30 different components in it.

Not one of them were listed as vulnerable on their own, but because they claim - from an aeroplane - that this group had all these components, it's an endangered ecological community. They based it on that since the 1800s there may have been, just for an example, 1000 acres of Bega Dry Grass Forest and now there's only 900 of Bega Dry, and if it continues to decrease at this rate, there will be none left. For a start, obviously there's going to be less forest because it's the best land that was cleared for farming. But if you take it from 1970 to 2000, when it was done, you would have found there's been a reversal, because in the Bega area farms are getting too small and uneconomical and the forest is actually creeping back onto people's places. So it's all written to achieve an objective.

There are too many of these laws that have been introduced by stealth. They sneak in and no-one knows about them. No-one knew what was going on about these ecological communities when they were being tested and people still don't know - three years later. They've been put in there and once they get there, they bring in a process called "threatening process". What's on the threatening process? Grazing, removal of leaves - all these things - which just still sit there waiting for the moment to be used. All law.

I have nothing against the environment and I don't know any farmer who goes out to destroy the environment. But what a farmer is told is, "You've got to get more efficient," which means to any farmer, "You've got to flog the ground harder." If you flog the ground harder, you cause more trouble. Farmers need to start getting a decent price for their product and then you'll start to see the environment within farms starting to improve because they'll have the money to get rid of the weeds,

they'll have the money to do all these different things.

The last one is that the responsibility of environment has to be shared equally with every Australian citizen. If someone's farm is vital for the environment, then they must buy that farm at market price and then maybe put the farmer there to manage it. It's not all on the farmer. It's got to be the entire community and a more even and fair basis.

Lenny brought up some laws there - the Crimes Act - about creating a false instrument. A false instrument is where a government body - like these maps - makes an instrument that they know other people are going to use and believe is correct. Council have stated they accept the information on the basis they believe it's been thoroughly correct. It's about time those laws were started to be introduced. The farmer and the individual also need to be protected from false and manipulated information. Like Warren said, people are using the laws to enhance their own philosophy. That's the lot.

DR BYRON: Thank you very much.

PROF MUSGRAVE: Firstly, we should ask you, Warren: you mentioned those instances of people using the regulation to advance their own agenda. You said you had some examples of sites.

MR PAGE: A classic example is a farmer - - -

PROF MUSGRAVE: I don't think there's any need for you to tell us now, but perhaps if you could provide us with some - - -

MR PAGE: I'd like to give you one briefly just to give you a good example. It was very recent. It was a real estate agent who came to sell a property and it couldn't be sold because there was a fight going on. The fight was the farmer had farmed for his family many years as a dairy farmer and he had a creek running right around his property. He was under (indistinct) restrictions so he couldn't sell his cattle. He was in a bind so he decided he'd have to sell the farm; they didn't want to, but they were breaking up the farm to pay the debts. The council took steps to ban repairing right to all the blocks that they were cutting off; not only the ones that they were cutting off which were 20, 60, 100-acre blocks, but they were also banning him from his pump that existed with his own farmhouse from the year dot. He had to go and fight that through other departments to overturn that council requirement.

That was a straight-out blatant use of bluff. I don't know what the right word is without getting rude, but he was forced to delay by probably a year, two years, in getting a return on that property; it could have meant him going bankrupt because

some person, manipulating the rules, was causing their own policy situation over the top and they were trying to create a new precedent in the area and say to all the other subdividers, "See, there it is. It's been done and you've got to do the same." That's the sort of thing in a farming community that goes around the saleyards like wildfire and everyone says, "Whatever you do don't do this or you'll get done." They want their things to go through; they don't want to be held up in court. That's the sort of thing that's gone on.

DR BYRON: Okay. Thank you.

DR FISHER: Just for clarification: these are planning regulations at the local council level we're principally concerned about there.

MR PAGE: Environmental rulings. They were saying that environmentally it had to be - yes, council are only implementing what the state tells them to implement, but the staff themselves have their own version of what they can do with it. What is more concerning - sometimes it sorts out a problem - but quite often these staff are in an area - when you've lived there for 40 years these staff are often there for a year, 18 months, two years and they cause great conflict and embarrassment to people and then they go to the next highest paid job. By then the damage is done and those people have suffered.

Some of those people should be dragged back by the whatever and put in court and then they would think more clearly about what they did to people before they did it. But at the moment there's this free-for-all where people feel disempowered by the system and it's predominantly - if you mention environment, you're not going to win; that's how people feel out on the public side of all this. If it's an environment issue you're not going to win; that's what the worry is.

DR BYRON: Yes. There are a number of people in other hearings who have made a similar point to what you've made, Mr D'Arcy, about the people who are administering some of this legislation have a great deal of flexibility and scope to administer it the way they choose to and that they're not necessarily held accountable for the social, economic or financial cost that they impose on people in exercising that discretion.

MR D'ARCY: Yes. When we saw these maps we knew something was wrong and it was obvious to anyone who saw them. We asked it to be checked. From the time you ask something to be checked - as far as I'm concerned - and that department doesn't want to check it, it just wants to send you a whole mass of excuses - for three years it was just a mass of excuses. They're as guilty as the person who changed it, or the person who put in the false information.

DR BYRON: Just to follow up on that, are you suggesting that the reason for all this was that they were just trying to get you to do the survey so that they didn't have to do the flora and fauna survey?

MR D'ARCY: Yes.

DR BYRON: Or is there something else behind it?

MR D'ARCY: No. Even the koala people who were interested in the environmental people down there also wrote in. I do actually have a letter they put in - too many koalas; they're everywhere according to this map of Bega. They even said that a lot of these sightings have been registered to professionals - in their name - and when they're contacted they didn't see them. But, my family has lived there all their life, you know, and there is just not this scope of koalas down there. I'm saying that when the threatened species came in - because they didn't have the data they were quite happy to throw out any sort of data. Then they went out and asked the people, "Did you see this? Did you see that?"

Harriet Swift - she's on the environmental network - they know about all these things. The farmers know nothing until all of a sudden it hits them. But they know all the procedures and that - there are something like 400 sightings here that were meant to have taken place on our property, yet it wasn't in the National Parks record, in their computer database, yet it was plotted on their map. Have they got two databases? Some of them were even being put in, according to this, a year after the date that they got the maps. There's something wrong. They continually try to make out, "They didn't show up on that document because they were" - you're a National Park - is anyone from National Parks? They say "rounding down" - you've got your square where you sight it, so say you sight it there, when you round it down it comes down to here onto this coordinate. Right?

DR BYRON: Yes.

MR D'ARCY: They were trying to make out that all her sightings were somewhere else, but they rounded them down and they came down onto this coordinate and that's why it didn't show up on that document. If you look at the coordinates that are on this, they're already on that. If they're already on that, they should have come up. It's just been one pack of - and another thing, even when they finally admitted that some of these animals hadn't even been seen they then said, "But your area is known to be an extraordinary habitat, with an extraordinary number of endangered animals." How did they know that? From nothing. It's just a double sword.

When you're dealing with people - the people sitting in Sydney in the ombudsman's office, in the ICAC office - who do they believe? They believe

National Parks. "You're a whingeing farmer." There's also this environment love thing in Sydney: everyone out there is destroying the environment, National Parks are doing a wonderful job. But in fact all this is false information. Like Warren, people are afraid - if we had koalas it would be great, wouldn't it? You didn't have to worry about losing your farm because you've got koalas, people would encourage it and look after it. But it's this thing - if people saw koalas they're probably more likely to go out and shoot them in order to be able to farm. That's the situation that's coming.

PROF MUSGRAVE: So did you represent yourself to the ombudsman and ICAC, or did someone make a representation on your behalf?

MR D'ARCY: No, a representative of the councillors - a section of the councillors represented me. This is the majority thing that got the Bega Council sacked because they were accusing the staff of giving them false information - and yet they got the sack.

MR WHEATLEY: The council got made redundant and they put an administrator in, over that case.

DR BYRON: I didn't know that.

PROF MUSGRAVE: But as I read it, you're questioning the quality of the science that is underpinning the data?

MR D'ARCY: Yes, but not only the quality of science, it's what that's doing - the end result.

PROF MUSGRAVE: Then the subsequent result?

MR D'ARCY: The end result, yes.

PROF MUSGRAVE: Yes, so there are two points you're making. I'm hearing what you say. ICAC and the ombudsman didn't go along with the suggestion that the science wasn't up to par, or was it the use issue?

MR D'ARCY: No, ICAC wrote back. ICAC won't give you any information, right.

PROF MUSGRAVE: Right.

MR D'ARCY: They said they only investigate a certain number of issues. I think it's only .9 per cent of issues that go in that they investigate. But the ombudsman

wrote back a report - and this is the extent of their investigation: they rang the National Parks person, the actual person who was involved, and they rang the Bega person who was involved. The Bega person just told them over the phone - didn't write back - just said that he could recall the maps coming in a round tube. Yet I've got documents where they've held an investigation and no-one knew how they got them. Yet that's all they have to tell the ombudsman; any excuse and the ombudsman will agree. The ombudsman made out that these sightings had been checked when in fact they hadn't been checked and it was obvious they hadn't been checked, because the woman who was supposed to have sighted them wrote - this is actually the ombudsman and I'll just point out a few bits - this is in relation to obtaining that:

> The legislation relating to threatened species had only been recently introduced when you and your family lodged your development application. From the information I have considered I understand a meeting of the South Coast Planners Group was held in February 96 where Mr Saxon -

he's the actual National Parks person involved -

> and a number of other officers from National Parks and Wildlife Service gave presentations about the Threatened Species Conservation Act and its implications for planners.
>
> Mr Saxon recalls that he was asked by staff from the Bega Valley Council if the National Parks could provide the council with general maps of threatened species locations over the whole council for the council's own use. The council officers wanted information to assist them in complying.
>
> Mr Barry recalls the maps being received at council in a map tube. I asked both Mr Saxon and Mr Barry for copies of any correspondence which confirmed either the request for the maps or the dispatch to council. Both said they recall the request had been informal and had arisen from an oral request, not any written communications.

There's another letter where it says Barry didn't know how they got there, yet that's all they have to tell the ombudsman, "No communication, no evidence of how they got there, no written documentation, just an oral request". For three years there is court action, everything based on false and misleading information. If they walk away scot-free it costs our family a lot, it costs other people a lot of time, it costs the councils probably credibility and everything else, but here individuals can walk away scot-free.

PROF MUSGRAVE: There was court action.

MR D'ARCY: Yes, the councils had passed it and then the environmental network took it to court saying they had all these animals on our property. I can actually send you the letters and the information. Then council came to us and said if we hand in our consent they would go and do all the work that they claim was required. So we agreed to that but as soon as we handed in our consent, it all started up again - and that's when the court finished. We said, "All right." They just went on with it. They set up their own ecologic - he found nothing in five days but they came back and said it was too difficult for him. They said, "If you build blocks across the other side of the road," and we asked, "Why, if you found nothing?" They said, "We just think it will benefit."

They just went on and on, then we had to get in two professionals ourselves to try and solve it. The first one went up there, found nothing, came back and told us there was nothing there, but then council saw him and rang him at home and he changed his whole thing and said, "I need to do some more traffic." This is after he told the lawyer, everyone, that there was nothing there; there were no problems. Council contacted him and all of a sudden he's got to change.

We went and got another person. He came down and he had this great big list of things he had to do. We said, "Why are you doing all that? That's not what's required." He said, "National Parks like me to do it." National Parks have nothing to do with development applications. They have things to do with Aboriginal sites, critical habitat and those issues, but they have nothing to do with development applications. They can give their opinion, they can do whatever they like, but they can't give false information and they can't dictate to people, who claim they're independent professionals, on what you've got to do and what you can't do.

DR BYRON: Has it all been sorted out now, eventually?

MR D'ARCY: Yes, after three and a half years, I think it is. A lot of money - - -

DR BYRON: Was that through going to the Environment and Land Court?

MR D'ARCY: No, no. As I said, they took us into line around - and council came to us and said if we hand in our consent that they're going to do all the things they reckon they had to do and pass it again but, instead of doing that, they sent their own person up for five days. He found nothing and then they came back and claimed it was too hard for him, so it went on for another two years.

DR BYRON: But you have actually got the consent?

MR D'ARCY: The consent went through, yes, end of 98.

DR BYRON: Sorry, you handed it back?

MR D'ARCY: No, we handed it in but it eventually went through.

DR FISHER: So it was approved and you've gone on with the development that you originally proposed?

MR D'ARCY: That's right, yes, but there is one - you know, people have been restricted where they can build, what they can do, even though we're telling them there is no reason because everything was done. There are no threatened species there, yet council still brings up this sort of information, saying that National Parks reckon this is a highly sensitive area. It still affects them, not us any more, but it affects those people and their rights. You have a right to expect from government partners the truth and full and correct information. It's just been used, like Warren said, to achieve their own goals and that's what it seems to be mostly all about - achieving their own goals.

The Threatened Species Commission - these are all the animals, pages of them - that have eventually been put on. National Parks, when you confront them, will admit to you that they're not vulnerable. How could the yellow-belly be vulnerable when a third of Bega is owned by National Parks - probably two-thirds of Eurobodalla national parks. I think a gentleman here earlier said he had yellow-bellied gliders. They're everywhere and the law says "to put the species at risk of extinction" but that's not how it's being carried out by National Parks; it's to put them individually at the risk of extinction. That's how they're treating it and this is costing people hundreds of thousands of dollars in some cases. There's no honesty, there's no credibility to what's being put in. It's just a one-sided agenda all the time.

DR BYRON: A number of other people, as I say, have made the point that decisions are being made on maps or species census and so on, which subsequently turn out to be inaccurate. It's no consolation but you're not the only one that's had this sort of problem. We're hearing that same sort of issue quite a lot as we go around the country.

MR D'ARCY: National Farmers took me to Sydney and they wanted to make an example of this case, and the advice they were given was that all government departments lie and that the government would throw too much money behind it. That's the reality of it and it's a fact.

MR WHEATLEY: Excuse me, can I just butt in and remind you that those acts I gave you are government acts where these fellows really - what I'm saying, they need taking to court to be prosecuted for making this false information under those acts. That's what they've done to me, virtually the same thing.

DR BYRON: Maybe we can come back to your example - the transparency you've got up there, Mr Wheatley.

MR WHEATLEY: One of you can read this while I'm doing this. That's when I wrote to the ombudsman's officer - all my complaints and they've never handled it. I didn't need a feasibility study on this quarry. On my place there's three quarries - we haven't got a transparency of this. We've had council, the amalgamated Shire of Bega (indistinct) opened number 1 gravel pit, number 2 gravel pit - we'll talk about that access road in a moment, and this is the rock quarry that's up there. Council leased it, this rock quarry - these are still under suspension at the moment because of misuse of these laws by a council staff member.

This rock quarry would employ that, and council paid for that. They paid me a lease on that for five years. They've done feasibility studies there, they've paid legal fees and God knows what they've paid. They even came in and said, "We want to put a tip on your property." They came in and excavated it twice. We're looking at something like $100,000 but they're importing their material. To get it this way they said, "You've got to prove who owns this road." Like that gentleman had the problem, we've got a problem with this road. This is private land but council maintained it to my boundary in 1989. When you inquire on how much money has been spent by council on our property, they haven't got any records. Wouldn't you like them running your business?

This is what Jim Snow, when he was in power, had to say - which I haven't got a copy of - first, "Council are told and is adamant that your quarry doesn't meet expectations". They did a feasibility study and the test is sitting in that folder - would it supply aggregate and road base. "I appreciate the evidence that indicates otherwise." That's what Jim Snow is saying. "The council is convinced that the product is not as good as they require." They're importing the stuff, RTAM - council is importing it from Nimmitabel down for roadworks and road base and aggregate. "Council is adamant it would cost a lot to acquire access to your property." That's rubbish; they already maintained it. It's just an incredible situation but I mean, now that it has enlightened - that is what the employee and what - as I said, council made this feasibility study. It cost them, I believe, $6000 to do the test and the feasibility study. That's what it would employ and that's what it would inject. Let's go through it.

Likely benefits of operating a quarry - maintain competitive pricing, which it

would do so. Stable employment for 10 people - I'm actually on a welfare benefit because they pushed me to where I had to go to mediation, I'd lost my farm, all through not telling the truth. I do a bit of woodwork, selling wood in the wintertime and incidentally TAFE used my place to do chainsaw courses, but nobody in the National Park goes through because they haven't got a permit of who owns the road, only me.

Guarantee employment; positive effect on the local economy - $1 million annually. Wouldn't that be good for them? It's been going on for - you know, encourage new investment and prototype, improve quality of roadworks and construction, which they haven't got - this type of material - other than me in the district - other than further down at Eden or Nimmitabel. The development - council paid for all that. And you wonder why a bloke gets mad. When I worked for council - I worked for them for 20 years - this is the type of thing I had to contend with. I'll let you read that. Can you read it?

DR BYRON: Yes, thanks. I'm sorry, I'm a bit confused. Can you just go back a bit and tell me what exactly the problem is with the quarry.

MR WHEATLEY: Look, there's nothing wrong with the quarry. All they do is come up with these excuses. There's nothing wrong with it. There's the two we've stated - one and two.

DR BYRON: No, what is your complaint about the quarry?

MR WHEATLEY: Council not using it to their capacity, as well as not being able to - under biodiversity regulations, I can't get it going. It's as simple as that. Unless it costs me an arm and a leg, I get no money.

MR D'ARCY: He's saying it should have been going from day one but they falsified everything and now these environment rules could never get it up anyway.

MR PAGE: His existing use was terminated by council - - -

MR WHEATLEY: Just let me finish here and I'll show you in a minute. This is what the Department of Land and Water officer who came out - not only went and took a look - that's what he had to say when he met with Mr Richmond. He once worked for council. What I'm showing you is how manipulation of the laws - and I'll explain Mr Richmond's case in a moment. He worked for council at the time and he was in control of quarries. He lives down the road, the trucks are going past his door. He was buying a property. I had to go back and search for the owner that sold him the property so as I could get my dates exactly right. I went to the ombudsman's office and he won't have a bar of it. Tell me when you've finished with that.

That was that. Here's what Mr Richmond had to say on that - take the note of the 12th. On 4 April he was looking at buying the property down the road. We talked about that existing use, right? He took it away. That's what I'm saying about these laws - notes that I gave you earlier. I did give a direction in 93. I did approach council. Remember, they opened two of the quarries. How can I supply them with information they had? You right there?

DR BYRON: Okay, yes.

MR WHEATLEY: I just want to show you what the Department of Land and Water does. That's a finding from - and incidentally, council gave me existing use rights, of all places, in the bloody creek. How can you have a past portion of existing use rights on your property? I haven't got that with me at the moment. I probably have in there, which I might find, but I just want to show you one other - Department of Land and Water documents again.

Councils are noted - North Coast and Grosvenor Creek below me - for extracting the rubble. They took more than 1 million cubic litres from downstream of me. Remember, they still had my quarry up till 93, they leased it, but they decided, "No, we'll give this fellow something. We'll take all the rubble out of the creek," and that was eroding my creek downstream. These fellows are stating who the problem is. The native vegetation - see there, the other side, vegetation - I've got another portion of that, I think.

I just want to show you why we need these materials. "The findings support a view that a new source of aggregate supply outside the river will have to be found in the very near future. Prime alluvial land is not going to be lost through increased riverbed and bank erosion." This is what the Department of Land and Water is saying - not me. If you just read through it - and it creates employment, it gives us building material. When the states and the federal governments do grants, may I point out to you it costs them extra. Road base for the yellowfinch bypass was probably 20 K's from me. They brought it from the other side of Orbost in Victoria, and not only that, they brought stuff within 5 K's of me from Bombala.

DR BYRON: So why is the council not - - -

MR WHEATLEY: I think you better ask the council that, not me. They manipulate the staff.

DR BYRON: Is it because they don't want to or they're not allowed to?

MR WHEATLEY: I'll tell you: I think it's a hate session between me and the

general manager of - - -

MR PAGE: I think the point Len was trying to raise about the termination of existing use rights was the planning staff in charge of terminating existing quarries or a property less than a kilometre from Len's gate, and had this quarry gone ahead, the trucks would have passed his property every day. It was very strange that suddenly this quarry that they were using terminated.

DR BYRON: A conflict of interest.

MR WHEATLEY: Yes, and you can't get it through anywhere.

DR BYRON: And you can't crack the system.

MR WHEATLEY: You can't go - - -

MR D'ARCY: There's a locked door on credibility when it comes to government.

MR WHEATLEY: I'm not making money but wouldn't it be better me not making money than feeding off the government? I mean, that's where farmers are at and I explained to you earlier where I had to wait and I wanted to have the opportunity to track everything down, and I couldn't do it. Now, I just find - it comes back to what Warren Page and John D'Arcy said, the credibility of these fellows. Now, whether you fellows can get it through to the government of the day, yes. I will just come around to where I was. I'll pick that one up. Whether you fellows can get through to federal parliament - where these fellows should be placed before a jury or a judge and said, "Well, explain yourselves," because from what you are telling me, it's right across the board.

MR D'ARCY: You can't have credibility and asking people to follow environmental laws. They're being used and manipulated and there's no credibility for bringing up false information. They'll take a farmer to court and ruin him because he may have ploughed some paddock or he has chopped down some trees, but what about the credibility of government and the individuals within government who are giving out false information to try and enhance that drive they've got to get something done? What about their credibility? If you want to make laws, make them equal both sides. Make them right across the board. Don't just use the farmer because they're independent people. They're easy to pick on unless they're a multi - or city farmer.

There has got to be credibility where you say, "Look, your land has got this species on it" or, "That's very important." Fair enough. If it's there, it has got to be protected, then buy that land, do the right thing, and maybe even employ that farmer

to look after it, because he's the one with the know-all of how to do it. Any farmer can look after his land if he has enough money to be able to look after it. Don't just squeeze him out of everything.

MR WHEATLEY: Just while we're on that - - -

PROF MUSGRAVE: I think we should just correct the impression that we have had widespread evidence of implications of criminal behaviour. We haven't. We've had suggestions of poor science; inadequate science; the lack of precision of design and environmental outcomes at a level of detail, but not that I recall criminal behaviour on the part of public officers. I think we should make that clear.

MR D'ARCY: But that's like a pickpocket saying he's just borrowing your wallet for a moment.

PROF MUSGRAVE: That may be true, but you seem to get the wrong impression from what we have said.

MR WHEATLEY: Well, my understanding was that - but just getting back to my case, this was from a chief planner and this is what he said at the time when a grant was - and it was never spent on Wheatley's farm, I'll tell you, that grant. They spent money later, but not that grant, and they needed it. That's what council ought to be looking at.

MR PAGE: I think the point has got to be made that - particularly farmers - with most of this action taking place on farmland, if you want the farmers to be positive, if you want more maybe vegetation and biodiversity saved, you've got to get down to council level with belief that you will not have the land physically taken from you or you will not be persecuted financially for that thing being on your land, then you'll have people react positively. While the environment we see continues, people will shoot - I doubt they would shoot a koala, but they're going to wipe out before the inspector comes that which may prevent their property being used, and that's the feeling that's out in the woods if you haven't heard it: they're not bothering to come because they don't think it's worth coming here. That's the emphasis I want to give you today. A lot of people aren't in this room today because they think there's no point in being here. At the local level they're getting their knees chopped off.

MR WHEATLEY: That's correct. That's what I run across too, because they weren't game to speak out.

DR FISHER: I think one of the concerns that has been expressed is this question about adverse impacts of the current regulations and legislation, so I think that point is well-made.

DR BYRON: The point is taken. Thank you very much, gentlemen.

MR WHEATLEY: Could I have my documents back when you copy them, please? If you need to copy them, keep them, particularly those law ones. If you want to keep them and copy them, do so.

DR BYRON: Thank you very much.

DR BYRON: We'll now resume. The next evidence is from Greening Australia, CEO, Dr Carl Binning. When you are ready, Carl, if you could just give us a brief summary of your submission and then we can maybe have a discussion on that.

DR BINNING: Yes, thanks Neil. I have brought along some papers from my previous life at the CSIRO, which is where I got my enduring interest in this topic. I really wanted to make three sets of comments by way of introduction: I wanted to reflect on Australia's biophysical landscape and what that means for legislation, because I believe that the issues are quite varied, depending on where in Australia you are.

Secondly, I wanted to reflect just quickly on the core categories of legislation we have in Australia and what I see are some of the key challenges in that legislation. The third and, I suppose, is a list of key issues which I think this inquiry probably needs to focus on and get right if it is to add value. I firstly just want to reflect on the fact that the way in which native vegetation legislation impacts on landowners and the Australian continent and its relevance is really dependent on what part of the landscape you are within, so I would probably pick out three key landscapes that are worth differentiating from one another: the first is the coastal zone and areas that have got close human settlement, and those areas - the key threat to native vegetation - is human settlement and, in particular, urban development, and that part of the world contains many of our most vulnerable ecological communities, particularly lowland coastal communities; also there's a whole myriad of estuary management issues.

The key issues there really relate to moving strategic urban planning to a 10-plus year time horizon and taking account of the core natural assets, and the key threat is really inappropriate land-use zoning and the regulation of local councils and the way that that then manifests itself is individual allotments triggering things like threatened species legislation and ending up in a whole myriad of planning processes, which really need to be applied over a higher and more strategic scale.

The second category I would highlight is probably what I would call "pristine areas" or "intact areas". These are areas where there really needs to be a key decision about whether they're going to be managed in perpetuity as assets - as environmental assets - to the Australian community or whether they are going to be developed, and that is a threshold decision and generally a decision for governments. You can look at the last 20 years of debate over the use of Australia's forests as evidence of that sort of area.

The next area is our agricultural zone and our intensively-managed agricultural zone and, in those areas which are probably the primary interest of Greening

Australia, those areas are generally well below what we would desire from a native vegetation perspective and, hence, there are a whole lot of issues, but the key issue there is, which areas are worth protecting and saving, which areas aren't worth protecting and saving, how much rehabilitation do we need to do, and to what extent should we allow trading in the landscape, so that if someone removes say a set of isolated, standing trees, what is the potential offset, and I will come back to that topic later.

The next area is the rangelands. In the rangelands we're really looking at, I suppose, grazing pressure, the allocation of watering points, and those sorts of things, and it really comes down to on-farm viability and the incentives created for those communities to become conservation managers, as well as, I suppose, rangeland farm managers. A final area which really moves into, how does the different legislation apply, is really those areas which are yet to be cleared but are open for productive use.

I suppose if we wanted evidence that some form of native vegetation regulation is required in Australia, we could really compare southern Australia to northern Australia, where, by any evidence, we have had over-development in the south of the country within our agricultural zones, and the challenge particularly you could reflect upon in Queensland over the last five to 10 years has been, can we create a regulatory framework which allows appropriate development of those landscapes; development that might maintain somewhere between 20 and 30 per cent of the vegetation.

Now, land being opened up in Queensland has not been able at this stage to reflect those sorts of good landscape design criteria, and so the challenge I think is to develop regulatory regimes that move us towards a mosaic of land use at a landscape scale that achieve that, I suppose, hoary question of sustainability, so I think the issues are really varied, depending on whether you are in and around Sydney or whether you're up in the north of Australia or whether you're down in the sheep-wheatbelt country of the Murray-Darling Basin.

The second thing I just wanted to reflect on very quickly was the legislation - how it has been constructed. There is a report by a guy called John Brasden from South Australia, written in the early 90s, looking at soil conservation legislation - why it hadn't been implemented, and that it really reflected sustainability criteria right back in the late 50s - and he identified a whole bunch of reasons why legislation consistently fails. I think some of the key reasons which I think are relevant to this inquiry are, the legislation is often aspirational and is not reconciled with other values and aspirations of the community for the same landscape. Hence the legislation often doesn't deal with trade-offs terribly well.

A really good example of this might be the application of threatened species legislation between Sydney and Newcastle on the New South Wales coast - Australia's fastest growing growth corridor. How and when and to whom should you apply that legislation - at what scale? Certainly above the individual allotment. The next reason is that legislation has really consistently failed to empower people and failed to provide incentive for people. It has also not been resourced in its most basic implementation - whether it's planning, enforcement - and so we tend to legislate for aspiration and then not resource its effective implementation, and it creates a whole bunch of perverse signals.

Then finally legislation often doesn't deal with the situation where structural adjustment is actually required and needs to be managed in a smooth and crisp way; an example of where that issue was dealt with relatively well is in the South Australian land-clearing legislation - the issue was turned around inside a period of three to five years because the need to facilitate an adjustment in landowners' responsibilities and entitlements was caught early and crisply managed by governments.

The final reflection just on the broad legislative framework is broad scale land-clearing controls. I think there can be little argument that in Australia we need that minimum safety net. I think you can compare, as I have said, the north of Australia to the south of Australia as evidence that that legislative safety net is required. I think the key challenges are to allow appropriate development to still occur whilst maintaining landscape integrity and, secondly, to manage the transition from a situation of allowance of land clearing to restriction of land-clearing rights, and it's really those issues of transition that have held up Queensland over the last five to 10 years.

Threatened species legislation - the second major class of legislation - I think has a good scientific process underpinning it, looking at what are our key ecological communities; what sort of state are they in. The move to a community level consideration from an individual species consideration, I think has been very constructive. However, really the point about adequate planning and adequate resourcing of the delivery of that legislation has been absolutely critical, so where threatened species are found there are huge disincentives to landowners.

Really there is an incentive to, what the Americans call "shoot, shovel, and shut up", and it's really moving from the planning process to, "What are we going to do about it and what are we going to implement?" - that is a critical step - and I would say to governments that the planning process associated with threatened species should be de-coupled from the regulatory process and there should be a trigger to essentially say, "You must now have a response from government about what you are going to do to recover this species."

Then, finally, urban planning. It's a huge sleeper in Australia, but the need to look at our coastal zone, and manage our coastal zone and get urban planning moving ahead from a biodiversity perspective, or from a native vegetation perspective, to consider which areas we strategically want to protect as core environmental assets in and around the areas that people live, and ensuring that they are appropriately zoned and therefore avoiding land-use planning conflicts in the future is really important.

To finalise my introduction. I have really identified, I suppose, five key challenges which I think are worth discussing. The first is particularly relevant in our agricultural landscapes, which is moving from strategic regional planning to property or paddock-scale planning, and what expectation we place on individual landowners in that process. I would argue the resourcing of the development of individual property plans that are accredited and provide resource security would be a very large stride forward.

The second point is the fundamental need for a safety net in the legislation. The third point is the need to provide triggers, but then once the triggers have been set off to provide very clear rules, guidelines for landowners to follow - I will just unpack that a little bit. If we set a trigger to say that clearing can't occur without a permit, if we apply for clearing what is the process we go through? What incentives are there and what trade-offs are allowed? I have no difficulty with triggering a regulatory process, but I think what we do post the triggering of that process is still fairly crude in Australia.

The fourth point is terribly important, which is that we need incentives that reward land managers that do the right thing. In the absence of positive reward for positive management, the environmental assets that the Australian community is seeking to protect won't be protected in the long run. The final point - which it may be worth reflecting on a bit more during discussion - is the need to address trade-offs in our landscapes, so that particularly in our very productive landscapes, our farming landscapes, the fact that a development may lead to some clearing of native vegetation - if that development is of sufficiently high value, there is no reason it shouldn't proceed, as long as we can have offsetting investment in that catchment, so that we yield a net gain to the environment.

The tools for assessing net gain to the environment are still relatively underdeveloped in Australia. I've brought along, as one of the things that I'll provide as a submission, a discussion of wetland banking in the US and its history and the potential benefits and disbenefits of that process. I thought I would leave it there. I hope that wasn't too garbled.

DR BYRON: Thank you very much, Carl. No, that was very clear and articulate.

There's quite a lot in there that we need to think about. Where to begin: in the categories of legislation you were saying that a lot of it doesn't deal well where structural adjustment is necessary and you compared that with South Australia. Could you elaborate a little bit more on what you think South Australia did well in terms of facilitating that adjustment?

DR BINNING: I think when you change the rules it's very important to acknowledge and accept that you're placing a burden upon people for change and that change must be facilitated, so in the theoretical work we call this transition arrangement or transition payment. The objective of those payments is to assist the landowner in meeting new requirements and, to some extent, compensating or offsetting the costs associated with implementation.

In South Australia they announced the land clearing controls overnight and then had a two to three-year period where people could apply for assistance because they had been adversely impacted upon by that legislation. It was well-designed in that the assistance was, although it looked backwards to see what the costs were upon the landowner, the actual payment was forward looking in terms of future obligations to management of that land. It was useful because it had a sunset clause which allowed a two to three-year period of adjustment for the landowners and, finally, it probably reflected just the reality that unless you win the case in the hearts and minds of - in this case - the South Australian community, your legislation ultimately won't be accepted and won't be enforceable. Hence it provided a very pragmatic solution to engaging in a debate and gaining acceptance of the South Australian community.

DR BYRON: In your list of key issues, one was a safety net. Could you expand a little bit more on that?

DR BINNING: I think it's quite clear that in the absence of any regulation, native vegetation is going to be overcleared. I would really point you, I suppose - depending on how far back you want to go in history - to the south-west of WA right through to the brigalow country, in the last three to five years in Australia - in Queensland. In the absence of that safety net and in the absence of a trigger, a regulatory trigger, too much land would be cleared and there will be no assessment of those parts of the landscape that are critical to maintaining ecosystem function, if you like, at one level right through to the protection of individual species. The safety net is required. I think the critical issue is what you do once that safety net triggers, and I think that's where we still have some distance to go in Australia.

DR BYRON: In Queensland last week we were in one bioregion where, from memory, it was 96 or 97 per cent of the total area of the region is still covered by native vegetation. I understand that the areas of the southern brigalow belt in south-west Queensland, sort of 90-plus per cent of the area of the bioregion is still

covered with native vegetation. I guess in those areas we're probably still well above the thresholds of impending ecosystem collapse, or of serious biodiversity losses. So you are talking about what do we do if and when we get near a 30 per cent or a 20 per cent threshold. Is that right?

DR BINNING: Yes, there are two separate issues: when you get near a threshold, absolutely. I think in country that hasn't been extensively developed to date - so I'm mainly reflecting on the north of Australia - there's another critical bit of work to do around land capability. In the absence of government control, particularly if you - the Desert Uplands is a good place to think about in Queensland. There has been a lot of pre-emptive clearing in the desert uplands because of the impending implementation of native vegetation clearing controls. Many from the biophysical base would argue that that land essentially is never going to be productive and is never going to be profitable.

The role of governments in that process is very fraught because I don't believe that governments should be in the business of picking winners, but nevertheless I think it is important to send - I suppose there's two sets of issues that governments need to go through: the first is to broadly assess land capability and to assess what are appropriate land uses on that land; secondly, to ensure that if development does occur, that it occurs in a way which allows for our landscapes to remain productive and viable in the long run. That would mean things like protecting and repairing zones, ensuring that all ecological communities, particularly those on better soil types, are adequately protected at probably a 30 per cent threshold, et cetera.

DR BYRON: Thinking of some of the areas we've been in Queensland where the land-holders have said to us that a large part of the country they would never even consider clearing or thinning simply because it wouldn't be worth the investment. The argument is that a lot of the country would never be cleared anyway simply because of its soil type, its topography, its location, its rainfall.

One particular place where we were last week, they said that at least two-thirds, maybe 80 per cent of the country the owners would never consider doing clearing activities, but they did have some ideas for what they called development, which in some cases called for either clearing or thinning of native vegetation, which they believed would greatly enhance the commercial viability of the property but they couldn't demonstrate that because they weren't allowed to even conduct the experiments that would demonstrate it. How does that fit in with your statement just then of confirming that future land uses would be viable - if we're not even making experiments?

DR BINNING: The short answer is we need to provide flexibility to run experiments and, as you head out further west into the leasehold country, the

dilemma of creating environmentally sustainable but also economically viable enterprises is far from a superficial one. The one thing you have to be very careful of is that if people say, "20 per cent of my property is worth developing," the likelihood is that all the farmers in the region, or all the land in the region, everyone will say it's that 20 per cent and it's likely to be a particular soil class and hence you'll run that ecological community into trouble from a conservation perspective.

Having said that, I think this an ideal example of where some trade-offs and trading might be tremendously useful. There was one example: a colleague of mine, David Freudenberger, was involved in a south-western part of New South Wales where a group of 20 leaseholders had come together. They had offered to put 30 per cent of their properties into conservation reserve in return for being allowed to more intensively develop 10 per cent of the combined properties. They were able, through an analysis, to show that they would get a much better production outcome and a much better conservation outcome as a consequence of that initiative.

As far as I'm aware, despite the department being very interested in that, it got completely clagged down in the regulatory process and wasn't able to come out the other end of it. Certainly my threshold comment on that would be to let the regulatory process trigger that there needs to be a response, but then if we can sharpen up our rules, if you like, so that individual landowners or groups of landowners can come to the table and put a proposition on the table which yields a net benefit to the environment, we should be allowing that sort of innovation and work to occur, because otherwise our landscapes just stagnate and nobody's a winner.

DR FISHER: The thing that I'm interested in is: how do we get to your nirvana? Basically your first proposition was that we need to move from strategic regional planning to property and paddock planning. It seems to me that we're a long way from even having decent strategic regional planning, let alone having a situation where some regulatory agency can sit down with a satellite map, or anything else that's accurate, and work down to a property level. When Neil was just referring to these business components in North Queensland last week - basically at 5000 feet the horizon is 80 nautical miles away and in every direction you can see trees. The farmers are faced with the situation where they're being told that they can't try and manage the landscape to deal with vegetation thickening.

When you see the thickening, it's clear that there's a problem and the historic records show that that country was open savanna woodland 100 years ago, so it's clear that there have been substantial changes in the environment and nobody seems to understand why. It's also clear now that a lot of that country is not productive and the ecology is changing. Nobody knows what it is going to change to. You basically now have conflict between the managers of that environment - the farmers - and the government.

The government doesn't seem to know actually what it wants, except it wants more trees but it doesn't know what type of trees and what style of landscape necessarily it wants. So we have this conflict developing now where the managers of the landscape basically are saying, "No, I won't even go to the government because if I do more than likely some other regulatory set of arrangements will be plonked on me, which will be undesirable." So we effectively have a stand-off in the community between those people that are on the ground who can actually manage on the ground and those people who are in George Street, or wherever, in whatever capital city we're talking about. What would you see as the way to translate ourselves from this effective stand-off position to the sort of world that you see as desirable?

DR BINNING: There are a few comments to make about that and the first is just an anecdote, which I think reflects the problem: I was at a workshop on environmental management systems the other day and an exasperated farmer got up about two-thirds of the way through the day and said, "You mean to say you guys want to come and tell me what to do on my property, but when you get there you can't tell me what to do?" This reflects a huge part of the dilemma, particularly the shift to regional planning within Australia. The response is that, particularly for biodiversity and native vegetation, it ain't rocket science and that we can move from the strategic to the property level in fact a fair bit faster than we can move from the strategic to the regional. I'll explain myself.

If you take an example in southern Australia, if you walk onto a farm with remnant vegetation on low-lying soils and it's in good shape, you know it is a key asset for the community. Up on the ridge lines there are a whole lot of areas to do with vegetation thickening and appropriate management of woodlands et cetera. Uses are well known and they are well documented. You can, with a bit of remote data, easily walk onto a property and set down the 10 actions that are going to yield the most benefit from the biodiversity perspective on that property. I would argue it is not dissimilar to the Wentworth Group style prescription; that if you go onto a property and find those 10 things and you get a commitment to invest in those over the next five to 10 years, you should be able to provide both security and clarity to that landowner. I think in many of our landscapes we can do that now.

If I move to your mulga lands example in Queensland, I think it's a little more difficult, because we actually don't know what we aspire to do, and we're very worried about the precedent we set in setting rules for one landowner, moving across to another.

What I would encourage governments to do in that sort of landscape is clearly articulate the outcome they are seeking, and then provide mechanisms through which landowners can apply to make changes in their land use, that they believe are

consistent with the outcomes governments are seeking. So I would advocate a shift to outcomes-based, I suppose, regulation, and that's pretty consistent with the integrated Planning Act in Queensland, which moves away from prescribed land use to zoning land for particular outcomes. Is that clear enough, Brian?

DR FISHER: I guess if I were to put myself in a farmer's position - if I can do that momentarily, with the permission of my colleagues here - it seems to me that what we're hearing is that the farm community feels that the commissars in the capital city have got some view about what they should be doing, and that there's a level of suspicion built up that leads people to believe that it's better actually to shoot and shovel, as you so aptly put it, than to say that you've got species X on your property, and we've heard evidence that now all around the country.

Now, if we've got to that position in Australia, it seems to me that we've got to a point which is pretty problematic. My real question is, how do you see us getting from that position of mistrust toward what you're talking about, which is, I think, clearly not where we are today.

DR BINNING: The very short answer to your question is, you need to provide incentive and reward for appropriate land management. I suppose the first comment I would make is, it's always useful in these debates to ask the question, "Should governments be intervening?" Again, if you look in southern Australia, the evidence for some form of intervention is pretty clear, in that we have a whole set of land uses for a whole myriad of reasons, which are revealing themselves to be inappropriate for the long-term biophysical health of the country.

People can argue to varying degrees, but I don't think anyone would argue that we've got big and serious issues in water management, vegetation management, the quality of Australian soils, et cetera. So intervention is required at some level.

The next, I suppose, step in that logic is what intervention. If you take threatened species, which is a pretty simple piece of legislation, if you're going to go to a property and say, "Oh, look, here's a threatened species. Now we're going to come and tell you how to manage your bit of land and we're not going to give you any money," you've set up a set of very negative signals to a landowner to protect and manage species. So the first reaction should be, "Wow, this is fantastic. You've got this amazing species on your property. What can we do to help you?" and then the second is to actually have the resources available to help those people manage those resources.

At the broader level in terms of, I suppose, sustainable land management, it's about articulating what the expectation, in the next three to five years, of landowners is going to be, and then empowering and resourcing them to undertake those actions.

I think the critical thing that is missing is the step of both empowerment and resourcing, in our debate. So we're quick to regulate towards an aspiration, but find it very difficult to then realistically say, "What would we expect of a landowner?" and, "What's a fair and reasonable way of sharing the costs of that?" The dilemma for the Australian community is that that bill is not a small bill, because if you think about - I suppose we've got a 1 or 2 billion dollar investment in natural resource management in Australia, running out over the next five to seven years, from the federal level at least. Now, at one level, that's an enormous amount of money, but on another level, how much freeway will it buy - not a huge amount. So we need to set up structures for steady and sustained investment into our landscapes over the next 30 to 50 years.

The final comment that I would make on this is not to underestimate the power of voluntarism and the power of incentives over and above a regulatory minimum. My view would be that regulations should essentially be focused on the "thou shalt not harm" part of the equation, and that voluntarism should be focused on the "thou shalt do positive action". It's about figuring out where the "thou shalt harm" stops and where the "thou shalt do positive action" begins that is the critical question.

DR FISHER: What do you think is the balance between market solutions and regulation? You seem to be suggesting to us that incentives are important, but there's always this underlying discussion about regulation.

DR BINNING: The first thing is, I wouldn't make a hard distinction between a regulation and market incentives, because they always have elements of one another in them. It really depends on what you are really essentially attempting to achieve - to divert into water policy, briefly and dangerously, for a moment - the regulation is essentially about the volume of water that you want to divert or you want to protect as environment flows. The market part of that set of tools is to allow tradeability.

If we apply that in the native vegetation world, I think once you slip below, let's say, a 30 per cent threshold for native vegetation within a catchment, it's perfectly fair and appropriate to apply a "no net loss" rule, but tradeability and the use of a market mechanism enables people to still do developments that might impact on vegetation, as long as they take offsetting actions. I think that is the clear niche for market-based tools; it's once the regulator has been decisive and set a cap allowing the flexibility to trade within that resource in the landscape.

PROF MUSGRAVE: Thanks, Carl, for your presentation, and we strongly urge you to write it down and get it to us in written form.

DR BYRON: It's coming.

PROF MUSGRAVE: Yes. When you were responding to Brian, you referred to putting structures in place to handle the problems that we are confronting, and you also referred to the millions of dollars that we are going to have to have available to us, which may or may not be getting close to enough. I wonder if you would comment on how well placed we are in terms of getting these structures in place before this sum of money comes and goes, and other sums of money may come and go. How long do we have to go - how far do we have to go before we can get these structures in place?

I ask this question in the context of our experiences of the last several weeks, talking to farmers at the coalface, and our discussions leave one with the impression of a legislation which, to some extent or other, is not sufficiently robust; it shows a lack of understanding, or leads to lack of understanding by those concerned with administering the regulation, of the problems on the ground.

It leads to - if we believe what we're told - a serious sense of unease about the soundness of the science that underpins some of the regulation or the administration of regulation that you see out there, and that's in distinct contrast to your assertion that the biodiversity legislation rests on sound scientific footings. We're being told out there in the field that the evidence the farmers perceive often is that the science is grossly inadequate. So we're getting conflicting signals here. So I just wonder how you respond to that, and then I've got two other sub-issues I'd like to bring up with Neil, if that's possible.

DR BINNING: Just a reflection on the science. I think the science is capable, but is poorly implemented.

PROF MUSGRAVE: Yes.

DR BINNING: So I think we have an adequate understanding for decision-making, but I think we've got ourselves in a frightful mess in, I suppose, trying to say we can't proceed until we have comprehensive regional plans that cut across all economic and environmental issues and potentially even social issues within a catchment, so we have to integrate farming practices with soil management, with water management, with salinity and with biodiversity, and get it all to meet certain .... targets. Well, gee, our science isn't up to that task yet. It's struggling.

But if I can run you through, I suppose, a set of pragmatic logic about how regulations might move from a statewide scale down to a property level, I think that would be useful. This sort of logic is underpinned by what I would call the 80 per cent rule, which is a rule that an ecological colleague of mine taught me, which is, if I'm 80 per cent confident that the actions that are proposed are going to yield a positive contribution, then they're actions that we can take with a fair degree

of confidence. There's some neat sort of modelling underneath that to describe why that rule works well in the long run. At a statewide level, you might say, "We don't permit broad-scale land clearing any more. Any land clearing above X hectares must trigger a response," and I think that's perfectly appropriate to trigger a response, because you've identified broad-scale land clearing as a potential problem in the long run. It's what you do once the trigger has occurred that's important to the individual.

The next question might then be, "Can that statewide requirement be refined or relaxed by regional planning processes?" and in most regions in Australia at the moment the answer is, "We don't know," or, "No. We haven't got adequate data," and I think that then saying, "Well, we'll wait till the regional data is right before we let anything happen" is where we are currently making a mistake. I think you can then drop down to the property scale and devise some fairly straightforward rule about the development of individual properties and the protection and management of environmental assets on individual properties.

I think the single most liberated thing we could do for the land-holder community in Australia is put together a very clear framework through which an individual property wants to do something that may trigger a regulatory process at a state level can have a whole-of-farm plan and then, on the back of that, get increased resource security for the future development of that property. I believe that in most landscapes in Australia we have the tools to do that. I think the one exception is really in those yet-to-be-developed areas as Brian alluded to earlier, where governments really haven't determined yet what appropriate land uses might be say, for example, in the mulga lands in Queensland. I think doing individual property plans up in that part of the world is going to be difficult without further thought. For most of southern Australia I think it is relatively straightforward.

PROF MUSGRAVE: We had some people here from the Bega area making a presentation before yours - one is still here, but two have left - and they I think would have entered into an animated discussion with you about our ability to proceed with on-farm planning, but let's - - -

DR BINNING: I'll just engage a little bit on that.

PROF MUSGRAVE: Yes, sure.

DR BINNING: If we can't translate what we want down to the property level farmers have got every right to get grumpy with us.

PROF MUSGRAVE: Yes, they were grumpy.

DR BINNING: Yes, and so the onus upon us is to say, "Based on our best

judgment of today, if you are having trouble as a farmer - if you have got clagged in the hundred bits of legislation that might affect you as an individual landowner in Australia and you are having difficulty finding your way out of it, we need to be able to commit to, if you like, case manage your property and develop a plan which, to the best of our knowledge, will meet our community aspirations - what the broader Australian community wants out of that land - and at the same time meet your needs as a landowner for meeting production purposes and, whilst we can argue extensively, my experience in a catchment like the Bega Valley is that we can relatively quickly put together a property plan which will demonstrate that environmental values are being appropriately managed. It may not go far enough for the landowner.

The final comment I would make about this is that we've probably spent about 200 years - or 150 years - in the majority of our landscape, practising agriculture with no rules effectively enforced on the management of that land and Australia is an old and fragile continent and so again, I suppose, this comes back to the point that we do need to accept, I think, as a community - and particularly as a land-holder community - that we are increasingly going to need to have regulatory structures in place around the management of land in Australia, and water resources. My view is that it should be left to the landowner, in essence, to be able to innovate and demonstrate that they are practising sustainably rather than putting a set of very tight restrictions on what can and can't be done at the property scale, because I think ultimately they're too inflexible.

PROF MUSGRAVE: You summarise some principles in relation to this regulatory framework within which the agricultural sector might operate and, from what I've heard, I felt pretty comfortable with a lot of it, but it seemed to me that there is this arena of regional planning and on-farm planning that you refer to, but you left dangling the question of what the structures would be associated with regional planning and farm-level planning, community planning, might look like, but you made quite clear in your presentation that we need these structures. I go back to my first question of, how far do we have to go before we have structures that are appropriate to the task. Are you comfortable with our record to date with regional planning and involvement of the community? Do you feel that we can move rapidly towards an improved set of structures?

DR BINNING: Regional planning is an elaborate experiment. Steve Dovers, one of my colleagues, recently wrote an essay, which started with two sentences, which are:

> The identification of the need for regional planning in Australia is not new. Australia's experience with regionalism is not good.

The historical evidence isn't strong - that we can coordinate and plan

effectively on a regional scale, so history - which is worth looking at - is a little bit against us. The biophysical case of the need for regional planning is very strong. However, I think at the moment we have decided to invest all our resources into the development of some regional plans, which are meant to be completely holistic and integrated, and this comes on the back of 20 years' investment and Landcare style investment, which is much more at the level of the small group than the individual.

The process is lost to most of those people because they don't understand and they haven't been engaged and, fundamentally, aren't all that interested, really. Secondly, I think there are a lot of the deeper sort of science questions. I haven't seen any regional plan yet that fully integrates all the competing values and aspirations for a catchment, and I would question whether it's possible or plausible. Nevertheless I think at a regional level we can move fairly quickly with all parties willing to identify those actions that are likely to yield the biggest benefits in the long run, but that's a very, very pragmatic approach.

It's an approach which isn't predicated on reaching Utopia in one step. It's about taking the first step towards Utopia and it's about practical recognition of what resources do we have and where is the community's willingness and understanding up to. I think that process needs to be allowed to run, but I would be very wary of making the regional process a regulatory process any time soon, because I don't think it is sufficiently mature.

I think you really need to move in terms of regulatory requirement from the state-wide level down to the properly level fairly quickly, and the tools we're missing in the context of your inquiry - as I have tried to emphasise during my presentation - are the ones that say, "I'm a landowner. I have triggered state-wide control of some sort on my property. I now want to know what I need to do about it in order to be allowed to proceed" and, if we can't clarify those rules, we should get rid of that piece of legislation. If you look to my staff in Greening Australia I can tell you with absolute confidence from a biodiversity point of view that they can go out to a property; look at a bit of bush, and tell you whether it is a decent bit of bush and whether it's regionally significant or not, and we can do that anywhere in Australia.

PROF MUSGRAVE: Which leads me to my last question, and this is a more empirical one. We've encountered the regrowth issue on several sites - and Brian has touched on a dimension of this and, that is, before European settlement we had one sort of landscape which was, of its nature - because of the setting of it - the culture of fire - or the existence of fire - being apparently very important, but let's say open savanna country; following European settlement we got another situation emerging, which leads to the regrowth problem, and we've encountered a few situations where management of regrowth will become an integral part of the management of holdings to the extent - at least in one site - that the regrowth is a

clear and defined, albeit rather lengthy stage, in a rotation - in a cropping, grazing, regrowth rotation. Regulation is interfering - on occasions quite severely - with the implementation of this rotation with consequences for the livelihood of some of the families involved. Now, this is principally in the north of New South Wales and in Queensland that we're seeing this. How extensive is the regrowth situation? I'm getting a feeling from what you're saying that maybe you wouldn't see much of it in the south of the country. Is that right?

DR BINNING: To answer your question directly, I think that it is really western division. It's in the arid country. The medium to high rainfall sheep-wheatbelt country is the country that I know best. It's not an issue in that sort of country, but western division of New South Wales, up through the mulga country in Queensland, it's a key issue. Once you get through the northern savannas you've got different issues around introduced grasses and all sorts of things, but wood thickening is clearly an issue in large parts of the country. That needs to be managed and it is often not caught by a crude, regulatory net.

PROF MUSGRAVE: Yes.

DR BINNING: Again that is why I would come back to saying - I think the key thing is that we're reflecting - both you and Brian reflected on, this is what this country looked like when humans settled it, and now it's thicker. Like many of the environmental community, I don't believe our management should be based on what it was. It should be based on what we want it to be.

PROF MUSGRAVE: Indeed.

DR BINNING: And hence we must define in our different landscapes in Australia what we are aspiring to manage towards, and it is from that that we can place expectations on people and debate where the costs should be borne, and so I think in southern Australia, in the sheep wheatbelt - which is where I'm biophysically strongest - we're essentially after landscapes which retain ecological function and integrity so that we can maintain productive soils; so we can maintain clean rivers with potable water, et cetera, and there is very little debate in the community about what our landscape aspiration is, but there is a fair bit of uncertainty and debate about how to get there.

I think the parts of the landscape that you and Brian have reflected on, we haven't defined what we want to manage that landscape as and, until you answer that question you cannot regulate the system. Again I would come back to - rather than saying to the landowner in that part of the world, "You can and can't do this," I would more put a regulatory requirement in front of them which says, "These are the values that you're required to maintain upon your property. You must put a plan up

that ensures that those values are maintained in the long term because your example of this cropping-grazing rotation - that sounds pretty innovative. Maybe it really does work. In that case we should have a good, crisp way of giving it the green light.

PROF MUSGRAVE: Thanks for that, and I am pleased you came to that conclusion because it gives me comfort. Certainly it seems to me that our legislation and the resultant administration and regulation seems to be grossly inadequate when you come to the regrowth-thickening problem and, perhaps from our over-casual observation at the moment, it would seem to me that the farmers would be better managers if we didn't have the regulation and the people administering it - but maybe that's too casual.

DR BINNING: No, I don't think so at all. I go back to some of the things I said in my introduction, and again I will leave you materials. Critical in the framework - and certainly critical to Greening Australia - is the need to empower and provide incentive to the individual. This is why I keep coming back in my presentation to the fact that at the state-wide level you need this minimum safety net, which is going to trigger a regulatory process. Now, because you are pulling a very blunt policy instrument, it is going to trigger some things correctly and some things incorrectly. It is what you do once the trigger, once the light has gone off which says, "We need to pay a bit more attention here" - it's what you do then that I believe is critical.

What we often do with land-holders in Australia is then say, "Well, you either can or you can't, depending on which side of the trigger you pull," whereas I would advocate a process which is more, if you have triggered a regulatory process you, as the landowner, then become responsible for putting a proposal to the regulator, which demonstrates that the outcomes sought are going to be achieved. Now, if you look at sort of large point source polluters in Australia, like the EPAs - you know large businesses regulated by the EPAs - they have shifted to that ground over the last 10 to 20 years from restrictive regulatory requirements to the regulator saying, "These are the sorts of outcomes we're seeking. You manage a process to get there and we will observe your process and accredit your process."

I don't for a minute believe that we can get agriculture to that point, but let's set our triggers cautiously and then put very, very clear processes in front of landowners that are affected by those triggers, so that they can move on with their day-to-day business, and I would certainly also be quite happy to provide 10-year resource security on an appropriately managed plan, so that they don't feel as though the goalposts are going to continuously be shifted - - -

DR BYRON: I think, Carl, the bulk of the complaints that have been made to us are about that process and how the goalposts do keep moving. You mentioned earlier about somebody who sort of case manages your property and in a number of

the case studies we have looked at it is not clear who is actually going to sign off, so having gone through the Agriculture Department and the Natural Resources Department and the EPA and the National Parks and the Mines, you then find that there is actually a water issue, as well, and that's the one that bites you. I fear about having a Rolls Royce property plan. If it was going to be so all-inclusive and all-embracing, that took care of salinity and biodiversity and soils and water and everything else, and if it was going to confer immunity from the government coming and interfering on your property for the next 10 years, I suspect it would take 10 years to get the plan approved or even to find out who you had to get the plan approved by, or whether the agencies would be willing to sign off on something that actually said, "If you comply with this plan we promise not to come back and annoy you for 10 years."

The more Rolls Royce the plan is going to be in terms of comprehensive and inclusive, I think the less probability it will ever come through the system. Am I being overly cynical there?

DR BINNING: We can't have it both ways, so I reflect back on my anecdote of the farmer who said, "Do you mean to say you want to tell me how to manage my property, but when you get there you can't tell me what to do?" Governments can't put landowners in that position, in my view. If we're going to regulate landowners we need to be clear about what they can and can't do up-front. Again, I would go through a process of attempting to get the triggers down to a bare minimum but then proactively enforce those triggers as a statewide regulatory safety net. Then, if we can't translate that into a farm plan, I suppose you need to reflect on whether we're being fair to the land-holder community.

I would really put the onus on governments. In a framework we developed for local councils four or five years ago we said the principal job for governments is to take the 100-odd pieces of legislation and translate it into a practical set of requirements for farmers over a five to 10-year time frame. Again, I think from a native vegetation point of view, the fragmented part of the country which I have specialised in, it's very easy to develop a plan which yields net benefit to the environment, and certainly in those cases it should be relatively straightforward to move forward. It's not without making mistakes, of course.

DR BYRON: I think on some of the properties we visited, the landowner thought that what they were doing would constitute net benefit to the environment, but not every aspect of this multidimensional thing that we call environment. It may be good for soil and water and native veg or something, but if there's one species of plant or animal that was disadvantaged by the proposed change, then somebody would come along and want to veto the change. We need to have a mechanism - net gain to the environment sounds obvious and simple and very compelling when you say it like

that, but I suspect that to try and operationalise it on the ground might be very difficult, given that it's multidimensional and not all aspects are correlated.

DR BINNING: I would encourage the committee to look at the process in South Australia, where they have the Native Vegetation Advisory Committee, I think, which signs off on significant clearing proposals and is constituted by a group of experts. They look at a plan and they approve whether it is going to yield a net benefit to the environment or not. I think it runs relatively crisply and smoothly; harder in larger states with bigger population bases. You may need several committees.

I suppose it's the constant dilemma, Neil, of the resources security debate in Australia. I need security to invest but from the other point of view, from the environmental perspectives, the precautionary principle would demand that we keep hedging our bets. My view would be that I would rather a smaller legislation that is effectively implemented than a broad set of legislation that is never implemented and just makes people grumpy and argue with one another. We're not after perfection here.

The final thing I would add is that I think it's perfectly fair and reasonable that if we give someone an approval upon which they're basing a five to 10-year investment, and we radically change the rules upon them, that we should compensate them. I'm perfectly comfortable with that. But we must allow mechanisms for letting rules be adapted and changed through time. An individual cycle, an individual property should be given the security to invest into the future. I've got no difficulty with that.

DR BYRON: Thank you very much. I think there's probably a lot more that we could talk about, but another time and place perhaps. Thank you very much for coming today and thank you for your submission. We look forward to reading the full version in detail. We'll now adjourn until 3.00.

(Luncheon adjournment)

DR BYRON: Thank you very much, ladies and gentlemen. We can resume the public hearing into the impact of native vegetation and biodiversity controls. We'd now like to call on Ms June Weston. Thank you very much. If you could just introduce yourself - and background for the transcript. Maybe talk for 10 minutes or so about your submission and then we can have some discussion on it, if you can just summarise it for us.

MS WESTON: Right, okay.

DR BYRON: Thank you very much for coming.

MS WESTON: Thank you. Can I apologise on behalf of Don McDonald. He was going to share this submission with me today but he's one of these farmers - we hear a lot of forward planning and saying that we should be able to plan for the future and be more predictable about where we're going, but he received word on Saturday night that he was shearing this morning, because that's where the shearers are up to. Somebody had wet sheep, they couldn't finish the shed they were in and they said, "You're on next," so he had to drop everything and get ready. This is why agriculture is unpredictable and why agriculture needs flexibility.

My name is June Weston. I'm a member of the Constitutional Property Rights Committee. I'm also a member of the New South Wales Farmers. I've had 10 years in local government. Planning is my passion. I'm absolutely passionate about local government and planning, and I've got all my experience through the 10 years I've had in local government.

We were very concerned after the year 2000, when we put several points of argument to the New South Wales Farmers, who we were working consistently with. For four years I was the regional 11 chairman, which takes in quite a big area of the Goulburn-Yass-Queanbeyan-Monaro electorate. We could see that New South Wales Farmers - we believed, those of us who were experienced in local government - were possibly leading us down the wrong track. Because they preferred not to give any credence to anything we said, we were asked by a significant number of landowners across New South Wales if we would form what we call the Constitutional Property Rights Committee.

We've met across the broad spectrum of New South Wales on a number of occasions and, if you've read my submission which I sent down, you will see that I've prefaced where I'm coming from today, in my belief - that I don't believe this commission can have an unbiased role in coming to conclusions on what the Native Vegetation and the Threatened Species and Biodiversity Acts have done to the impacts on agriculture. Where the Constitutional Property Rights is coming from, the Native Vegetation Act and the Threatened Species Act, as it applies to

agriculture, has been misplaced. This morning I rewrote something. May I read it? I'm too nervous to speak off the cuff and I miss the points.

DR BYRON: Please relax.

MS WESTON: What we would like to say - and this is coming from the Constitutional Property Rights, and Don would be endorsing this if he was here - the departmental attitudes towards implementation of SEPP 46 and the Native Vegetation Act before the existing use of the current approval has been abandoned is, we believe, the worst example of perpetuated misuse and abuse of parliamentary power and position any freehold rural landowner has been subjected to since colonisation.

The abuse, as we see it, at the end of the day amounts to a suppression of one human being's democratic, self-determining management of his investment right, and it is now postdetermined in the discretionary minds of the appointed and the authorised public servants under four ministers who, without experience, training or in-depth understanding of the principles of planning and development as they relate to land use, have tampered, have interfered with and have frustrated the legitimate ongoing business development.

Agriculture is a business which is already established. I believe it is beyond the capacity of the parliament to do what it has actually done in allowing the department to continue to perpetuate the mistake they made in 1995. I heard the gentleman this morning mention something about resource security - farmers have got to have resource security. Can I say without exception until 1995 we had resource security. It was fundamental to existing and continuing use that was the basis of our investment and there was never ever any suggestion that, once we had approval to use the land as it was zoned and designated, that security would be put at risk.

I'm happy to say that the Constitutional Property Rights Committee, I believe - through NAB, National Bank - following a meeting at Nyngan last year, prevailed on the local bank manager there to understand what existing use rights were, what continuing use rights were, what investment and mortgages were, and if he would take it back to his superiors to get a commitment that unless farmers - not only farmers, any business investor - have security of the investment, then this nation is going to go down the drain. Today, I have brought where I have got a lot of my work from. In legal terminology in Butterworth it describes abuse of power - and I have quoted it, but I can find it there if necessary:

> The exercise by an administrator of a discretionary power conferred by statute so as to exceed the scope of the power conferred.

An example of abuse is:

> (a) failing to take a relevant consideration into account; (b) making a decision so unreasonable that no reasonable person could accept it; (c) acting under dictation or direction; and (d) applying policy inflexibly - "thou shall" instead of "thou may".

Abuse of procedure in the EP and A Act is called procedural noncompliance, and in my 10 years of local government we were admonished always to make determinations in full accord with the procedural compliance. We weren't allowed to have a private opinion, to go outside that procedural compliance. If the zoning allowed it and the law allowed it, no matter whether we liked or disliked the proposal, whatever it might be, we had no choice but to approve that, unless we could show in a demonstrated way that the capability of the land itself was not sufficiently strong to take the development.

The abuse of procedure is called procedural compliance and it is referred to as misuse, unjust or unfair use of procedure - here, in the context of the Native Vegetation Conservation Act, a planning procedure for what is called statutory compliance, and they have gone outside it.

> Prejudicing other persons' lawful rights; altering the process through the misuse to deny that which was existing prior to the gazettal of SEPP 46 and, after its repeal, schedule 4 of the Native Vegetation Act 1979.

To go back to SEPP 46, it was a state environmental planning policy which was brought down at the instigation of one person. It only ever needs one person to bring down a SEPP. If a minister feels strongly enough, he can articulate it, but generally he lets it be known, or the director-general lets it be known, that it would be advisable that we should have a state environmental planning policy to cover this. So he brought down SEPP 46 which was supposedly, if you read it very carefully, a heritage document, and it said there are only very scarce remnants of native vegetation left in Australia and they must be protected. That's the basis of heritage. If you've got something that is heritage, you do protect it or you do at least try to manage it. The reality is, there's only 13 per cent freehold land in the whole of Australia, and that comes out of your own Productivity Commission into leasing/repair, back whenever that was. So that means 87 per cent of the national estate is crown or crown leased, as the western division is, which means the people in the western division manage their land in accordance with lease agreements. So when you come back to the 13 per cent of freehold land in a nation as big as Australia, it isn't a great deal of area.

Who did the study to say that there are only scarce remnants left? There was no study done; it was just a perception. And it was a calculated perception, a ploy, to show that farmers are rapists, environmental vandals; they don't look after the environment; they couldn't care less; all they do is misuse and abuse the land. Now, that went down beautifully in the city press. The propaganda was intensified and people started to believe what they were reading. In that scenario, the Department of Land and Water then started to interpret SEPP 46, but what they forgot to do was to look at SEPP 46 in relation to all the other acts which go with it. No subordinate environmental act or policy exists in isolation. They are all dependent on other acts - in this case, because it's land, the Real Property Act, the Conveyancing Act, the Land Evaluation Act, the Local Government Act and the EP and A Act.

The EP and A Act is the parent, and it says under section 26 paragraph 3 of the EP and A Act that a local environment plan is the principal land use instrument. That's where we come from, because back before we had planning as we understand it today, which was 1945, local government was the consent authority for all land use, and we picked up - which you will have read in the submission I sent to you - on the principles of the Magna Carta, the Bill of Rights, and more recently Sir Isaac Isaacs made a comment - I think from memory in 1924 - that the fundamental tenets of natural justice must prevail in ownership of property. If somebody is going to go out and put an investment into the ground to create an industry and help the economy, natural justice must prevail.

In the abuse of procedure, we come down then to fraudulent misrepresentation. Somebody in the Department of Land and Water in 1995 somehow or other got it wrong. I don't know for what reason, but they certainly got it wrong, because they didn't look at paragraph 10. Paragraph 10 in SEPP 46 will tell you that, notwithstanding all the other things, what approval was given prior to this policy remains and continues as if this policy had not been written. So I come to fraudulent misrepresentation. It says here:

> A false statement of fact made by a person who does not believe the truth, or one who is recklessly indifferent to whether it is true or not and who conveys that intention to another who will rely on it and use it.

In doing that, there is an abuse of our property rights, of our privileges, of our investment, of our security, of our business and our way forward. I can give you a personal example of that here, I believe. We've been through four ministers. In the eight years of the Native Vegetation Act and SEPP 46, we've been through four ministers - Kim Yaden, Richard Amery, John Aquilina - and now we're back to Bob Carr's carousel; it's gone full circle and we're back to Craig Knowles where it all started. Craig Knowles signed SEPP 46 and, as I've written to him and explained to him, either he was given the wrong information or he was very naive, but he signed

SEPP 46 and he let the application of it at that time run without question, even though we sought through Kim Yaden to correct that.

On 1 June 2001 we had a meeting in Bega called by the New South Wales Farmers Region 11, of which I was chairman, and it was called The Bush Battling Bureaucracy. We were trying to get a message out. We personally invited all the ministers and everybody who has an influence through the parliament on our day-to-day lives. Richard Amery refused to come to that meeting, or I should say he declined to come to that meeting - and I could go on a lot about Richard Amery but I might be held in contempt or whatever - but he let his director-general answer.

Everything I've said here today has been said. I looked at my file yesterday - and it's that big - of letters to Kim Yaden, Amery, the opposition, everyone I can think of, all with the same information, and if I could, may I just precis Bob Smith, director-general's, comments:

> Dear Mrs Weston, I refer to your recent letter concerning the Native Vegetation Act and its implication on freehold property and existing use rights, written following your attendance at North Lachlan Bogan Regional Vegetation Committee meeting in April. I am aware that you have written to the Honourable Richard Amery but on this issue he has asked me to respond on his behalf. I appreciate that you have gone to considerable lengths to support your views on the legal standing of the Native Vegetation Conservation Act. However, rather than respond individually to each of the points raised in your letters, and particularly as the entire thrust of your letter is based on property and existing use rights, I would offer the following general comments.

Then he goes on to say how the Native Vegetation is framed and how the SEPP 46 is framed. This is the nuts and bolts of it. He then informed me:

> Freehold possession does not absolve any landowner from the need to comply with legislation or planning instruments that stipulate what can and cannot be done on the land and the circumstances in which development consent is required.

He's absolutely spot-on. He's accurate. Freehold possession does not absolve us from rules and regulations or certain planning instruments. But then he went on and he said:

> The ancient common law property rights referred to in your letters have been impacted over the years by many different pieces of legislation, both state and Commonwealth, which have been enacted as a result of the

> prevailing public need or benefit. Issues such as biodiversity, conservation, greenhouse and threatened species are enshrined in the legislation.

Then he comes down to what I see as fraudulent misrepresentation, a false statement of fact made by a person who does not believe the truth, or one who is recklessly indifferent to whether it is true or not. He went through a whole lot of rigmarole there, and then he said:

> Rather than stall the process by debating the legal standing of the act, the government has committed to fast-tracking the regional planning process. I understand the North Lachlan Bogan Regional Vegetation Committee has agreed to develop a two-tiered regional vegetation management plan. The first tier, as I understand, will represent the short term and be built around the suite of initiatives and incentives currently in place and approved by the government.

What he is saying there is, "You have made some observations. I couldn't be bothered going into them. It doesn't matter whether they're legal or right or not. We're going to continue, and you can just wear it." It's interesting to know that Bob Smith is no longer with the department. I don't know where he is, but he's moved on.

We have the attorney-general's letter, which makes a mockery of Bob Smith, as the most senior public servant in the Department of Land and Water, who said, "The ancient common law and property rights referred to in your letters have been impacted by different pieces of legislation." He's virtually saying they no longer exist. The attorney-general said:

> You have asked me to respond to your recent letter concerning the imperial legislation of 1688 known as the Bill of Rights. I have carefully noted the contents of your letter and I can assure you that the 1688 enactment remains part of the law of New South Wales. Section 6 of the Imperial Acts Application Act 1969 specifically provides that the Bill of Rights remains part of our law. That same act also provides that the Magna Carta of 1297 remains part of the law of New South Wales. Section 6 of the Imperial Acts Application 1969 specifically provides that the Bill of Rights remains part of our law. That same act also provides that the Magna Carta of 1297 remains part of the law of New South Wales.

So then we come to where I've mentioned in my first submission, I believe, that the courts have determined it is a canon of construction for environmental law that departure from that previously permitted can only move sufficiently to obtain an

objective, but if the departure takes away natural justice, the court will rule in favour of natural justice, and that it why it is that environmental law and common law coexist.

The EP and A Act was built on common law because implicitly landowners had maintained a continuing use of their freehold lawful use - whatever that might have been, whether it was residential, rural, commercial, industrial, whatever - up until 1997. It was implicit. But in 1997, if I can refer to Winston Churchill - and I haven't got it here, but Churchill was a great believer in the Bill of Rights and the Magna Carta, and he said, "One day somebody overblown with his own arrogance, his own importance and his own permission of power, will undermine the rights of individual people, and while ever these tenets prevail, that will not be able to be done."

John Kennedy said, "The difficulty with lies is, if lies are perpetuated often enough, they soon become law and they soon become fact." We do have existing use rights, we have continuing use rights. These have been handed down inherently, historically and since 1979 in the EP and A Act they were a deliberate structure of the EP and A Act to underpin what is happening now and to stop what is happening now from happening. Maybe I should draw breath, should I? Can I just ask, without being rude, are any of you gentlemen broadacre owners of land?

DR BYRON: No.

MS WESTON: Right, okay.

PROF MUSGRAVE: Small acre.

MS WESTON: Okay. You own small acres.

PROF MUSGRAVE: One.

MS WESTON: Can I ask are any of you business investors? Do you have capital invested in a business in which you would employ and create an economy through whatever it is? You have, right. If you wanted to have open-heart surgery, would you come to me and let me perform open-heart surgery, even in clinically clean, sterile conditions, when I have had no experience or practice or real understanding, but academic learning from a book?

PROF MUSGRAVE: What would your response be if we said yes?

MS WESTON: I'd say, "Let me at it. Give me a go." I just cannot believe that we have come 193, 197 years since colonisation to 1995 without a whimper, without a

question, without argument, without even consideration of what was happening before 1995 was just and proper and was appropriate, and suddenly, after 1995 when they brought the SEPP 46 down, all hell broke loose. Suddenly we were told we didn't own the land, our investment had no security. If we wanted to plough a paddock, we had to get permission. If we wanted to clear vegetation - and that's the other crunch to native vegetation. I believe that the people who framed the native vegetation in SEPP 46 were so cunning and devious of what they wanted to stop - was the wholesale clearing of timber - but they thought, "We can't do that. That will create a hornet's nest, so we'll call it native vegetation."

But what they didn't realise was that native vegetation is grass and timber. There's absolutely no way that you can manage timber in exactly the same way as you manage grass. Then they come and they tell us that we haven't got existing use in the Native Vegetation Act because the Native Vegetation Act doesn't prohibit agriculture.

But think about it very carefully. If I believe all the garbage which has been put in front of me for eight years, and I don't - my family has carried on the same as we've always carried on. We've gone out across New South Wales and we've told people how to read and interpret the Native Vegetation Act, how to understand it. We've taken the EP and A Act, which I haven't got with me, and I've explained how you read the EP and A Act and how you tie it in with this, how you tie it in with local government, how you tie it in with zoning, with the Conveyancing Act and all the other acts, and we've told them to go out and do what they are legally entitled to do under the act, not what they've been force fed - propaganda - that applies now. This does not apply until the use of the land has been abandoned from agriculture and you go into another secondary use.

Agriculture is the primary development of all land. It is the first land, it is the alienation of land from the Crown to us. The parliament doesn't come into it until we finish with that contract that is registered in the Real Property Act and conveyed in the Conveyancing Act and valued through the Land Evaluation Act, and parliament to tell us now what to do with our land and how to use it doesn't come in until we change our use, and it is, I believe, significant and interesting and it shows tremendous understanding, I think, that National Parks and Wildlife in their act actually - apart from their schedules - and if you've read a schedule, the schedule says Savings and Transitional Regulations.

The savings means that if you had lawful approval before this came into being, you continue doing it. The regulations - the savings - the regulations may contain provisions of a savings or transitional nature consequent on the enactment of this act, provided to the extent to which any provision takes effect, it does not affect in a

manner prejudicial to any person the rights of that person existing before the date of its publication.

My investment is secure because while ever I am carrying out agriculture and practising agriculture and doing it on a regular basis, which is a rotational tilling of the soil and spelling it and doing all the market force and seasonal things that let us do these sorts of things, it doesn't come in. National Parks actually says in three places - I think one is section 81 - I can't quite remember because the National Park Act is about that thick. I wasn't going to carry it up four blocks. It says that it is a defence to the prosecution of harming a threatened species, whether flora or fauna, if the act was done while carrying out an approval - an approval - given under section 4 of the EP and A Act.

Section 4 of the EP and A Act tells us land is zoned into a particular groups, and you can have development under S76(1), you can have development without consent, you can have development with consent - that means it's conditional and they can put rules and regulations on, and if the rules and regulations are too hot, you've got the right of appeal and you go to the Land and Environment Court, or your third option is where the development is prohibited, and there are ways and means of overcoming that, but, for us, for all farmers, all broadacre rural people are under 1A zoning in your LEP.

It's under S76 of the EP and A at part 4, where you do not need development consent, but down through the years, since legislation has come in, the ministers progressively have signed the LEP, which is your local environmental plan, and now we have legislatively approved, lawful use of the land. We don't need consent because agriculture is something that you cannot consent to. Nobody is sufficiently experienced in all the facets and the activities which can be carried out singly on a parcel of land or in multiples.

We can carry out sheep in isolation if we so want, or we can have sheep and beef if we so want, or we can have sheep, beef and wheat if we so want, without development consent. If things are not going too well and you've got the soil for it, you've got the climate for it and you've got the water for it, you can even have aquaculture, water culture, you can have as many facets, and nobody is capable enough yet of being able to tell you whether that block of land is capable of sustaining a particular development.

Therefore in the LEP, when the local environmental plan is prepared by local government, and they get that right through the EP and A Act, the state is the boss cocky of planning, it tells you what you can do and what you cannot do, but under section 54 of the EP and A Act, it tells local government, "Go out and put your local environmental plans down. Go out and tell people what they can do with their land."

So in that procedure of compliance, procedural compliance, the council notifies that they are conducting a review or an amendment of the LEP, they reassess the agricultural land and, in their wisdom, they generally decide that the agricultural land remains as is, so you have continuous use.

If for any reason they wanted to stop us from having agriculture - and this is where the Native Vegetation Act fell down - had Kim Yaden been fair dinkum about what he wanted to do and needed to do when he brought SEPP 46 down and certainly when this was enacted, 1997, he would have personally written under section 97, I think it is, of the EP and A Act - and I think it's the equivalent number in the Local Government Act, but I could be wrong - but he would have been personally required under the act to write to each individual person in what is called an instrument in writing, to inform them it was the intention of the government to revoke or modify their continuing use.

He didn't do that. That has never been done. They just brought the act down, they brought the policy down, and they said, "That's the end of the matter. If you want to clear native vegetation you've got to go to DLWC and do it." We come back then to Bob Smith. Bob Smith makes the comment that the Native Vegetation Act was specifically structured to be applied in isolation; in other words it didn't need to go anywhere, to talk to anybody or consult with anybody. They just said, "If you want to clear native vegetation you come to us and we'll tell you whether you can or whether you can't."

In that scenario - being I'm silly enough, and probably about 200 people did - if that went to DLWC and said, "I want to clear native vegetation" and the bureaucrats in whatever regional office determine, selectively and discretionally determine - because there were no standards - that, "No, you're not going to" - and we know of one instance where they refused a young couple with a young family who wanted to improve the property that they had inherited from his father after he'd just died - they went and made an application to clear timber - as it turned out - because they wanted to sow oats or wheat or some crop to help them through the drought, and the department said, "No." They said, "On what grounds?" and they said, "You can't clear your timber because every property around you has been cleared; therefore you have to maintain your native vegetation for the biodiversity of the region."

I call that unjust. I call it an abuse of power. It's outside the miscellaneous provisions which say, "This act binds the Crown in the right of New South Wales and insofar as the legislative power of the parliament permits the Crown in all its other capacities." The parliament does not permit the Native Vegetation Act or any subordinate act to take away my existing use rights under any circumstances unless they do it through the statutory compliance of revocation and modification; that is, writing to each individual person and saying, "You've got approval to use your parcel

of land, which is valued" - on which you pay your local government rates, and I quote here from land valuation here that says - no. I have to go back. I have to go back to fee simple. What is freehold land? What is my Torrens title? What is my right - what is my lawful right - to use land? - and I come back to the words "fee simple" - and this is what Sir Isaac Isaacs quoted:

> It is an estate in land which is the most extensive in quantum, the most absolute in respect to the rights it confers of all estates known to law and for all practical purposes of ownership and it differs from the absolute dominion of a chattel in nothing except the visible, physical indestructibility of its subject.

Fee simple; my land is registered; I have the title; its value. The land and valuation notice - if anyone wanted any proof of that - says in words plain enough for anyone to read, "Fee simple absolute in unrestricted vacant possession." On those words, "Fee simple, unrestricted and vacant possession" my land is valued. That's my land and valuation notice. It has got a value there of $800,000 for 400 hectares - rural 1A zone that I can use for farming. The valuation in the Land Evaluation Act says:

> This valuation here will remain valid where it is assumed that the land may be used or may be continued to be used for any purpose for which it was being used or for which it could be used as the date that that valuation relates to and that such improvements may be continued or improvements may be made to the land, as required, in order that the use of the land as so zoned and valued can continue.

In paragraph 3 of 6A it says:

> Notwithstanding anything in subsection (1) -

that's what I have just read, subsection (1) -

> in determining the value of any land being land in which the valuation relates to there is a water right, where (a) the value of the land shall include the value of that water right and (b) it shall be assumed that the rights shall continue to apply in relation to that land.

So while ever I have that valuation to my rural 1A zoned land - which my local council has zoned and it has gone through the procedural compliance process of public notification consultation, public exhibition, re-exhibition, you name it, over a period of about two years - while ever that land is zoned for agriculture I can continue to use agriculture and I don't need anyone's permission to do anything

because, according to the Torrens title - which I have on that land:

> Torrens title is a system of land title where registration maintained by the state guarantees indefeasible title to the land.

Land is physically the surface of the earth, the soil beneath, arguably to the centre of the earth, unless modified by the deed of grant - and my deeds - I've got deeds at home. I was tempted to bring them, but they are too precious because two of them - one is from Queen Victoria and the other one is from Edward VII. I am pleased I didn't bring them out in the wind when I realised how far I had to walk because they couldn't fit in that -

> The air space above -

now wait for this. This is where we come into this. My land and the titles to the deed are registered way back in - whenever it was - 1830 -

> all things growing on or affixed to the soil, including buildings, trees, crops and all minerals, except where those excluded are both the terms of the grant.

We all know that after they discovered gold that any grant that was given by the crown excluded minerals that were nominated. Kerry Packer is one lucky person. His rubies were not identified as being excluded; therefore Kerry Packer has the benefit of the discovery of rubies on his place at Scone:

> For statutory purposes -

and this is what we are concerned about here, statutory purposes - not common law -

> the land -

that I have just described here -

> includes -

and I don't know how to say this word -

> messuages, tenements and hereditaments, both corporeal and incorporeal of any tenure or description.

Now, in the EPA Act you have incorporeal provisions which are not able to be tampered with because they go into the saving schedule to make sure that anything

that was going on before a subordinate act came down is continued. That then brings us to zoning, and I refer to this:

> Zoning is a way of controlling land development by designating areas for specific land uses. Zoning is a common feature of all local environmental plans and it is a principal land use planning instrument under section 26, paragraph 3 of the EP and A Act. It controls future development or redevelopment -

and I simply draw agriculture as a primary use of the land -

> whilst activities already established -

that's farming and grazing and agriculture -

> are granted existing use rights which ensure continuity and where, in the built environment -

if you have got an existing use in this building here you have got opportunity to expand and develop beyond what is physically here, provided the land is capable of sustaining the infrastructure in the built environment that you want to put on this building, so although they might rezone the whole of Northbourne Avenue and put it into whatever, if the people who actually own this at the day the new schedule comes in want to maintain the integrity of this building they have the right to do so. We come to ex-expropriation.

> Butterworths refers to this activity as one where there is a taking of a private property by a state right of sovereignty with or without compensation.

The state hasn't taken our title - they very cleverly haven't taken the title. That's the one thing they keep boasting about - that we still own the title and we still have the deeds, but they sure as hell have made it extremely difficult for us to continue using that which we have developed and put an investment into and, where they can, they are stopping us, from improving, expanding and carrying on the primary use of the first developed. Agriculture, I keep saying is the primary use of the first development. This is redevelopment of a primary use. All this was agricultural land once and until the farmers were finished with it, or until such time as - what happened in Canberra is what happened - if I can take you back to 1974 - was the Land Tenures Act in which Else-Mitchell J was the commissioner for that inquiry into land tenure.

They had a very lengthy inquiry there and, with the Bathurst and the Orange -

and the Albury growth development areas, there was a concept at the time that all rural land perhaps should follow the pattern of Canberra and that the government should own all areas to be developed, so that the government could control the development because they were better placed to control development than developers were. God forbid that that was happening because the state can't look after railways. They can't look after transport. They can't keep the schools going. They can't keep the hospitals going. Thank God for the private developer, I say.

Then we put all this in a nutshell and I see it as an error of law, where the error of law is one where misrepresentation or misapplication of a principle of law - and the most fundamental principle of law that we have is the existing-use provision and the continuing use provision, because that's what the EP and A Act was built on. The law hasn't changed; only the discretionary and selective interpretation leading to the misapplication and the misrepresentation, so in a nutshell what I am saying is for this inquiry to make valid conclusions of the impact of what the effect of the Native Vegetation and the Threatened Species Act has been has been to put the horse before the cart - or is it the other way around? - because until such time as all rural Australia changes its use in accordance with what the National Parks and the Threatened Species Act actually say in their own acts - that it is not an offence to harm - in fact the National Parks and Wildlife even goes one step further and says that if you pick a protected flower on freehold land it is not an offence.

What I would like the commission to do is to acknowledge the liberty of the existing use and continuing use provision. I would like them to understand that it has been abused and misused. I would like them to understand that there has been a misapplication and there has been a denial of justice from schedule 4 of our savings, and what I would rather the commission do, which only gives part of the story, because not all people have been affected by the Native Vegetation Act and the Threatened Species Act - a lot of us have gone out and done what we know we are legally entitled to do, and with the understanding of what we do know, the Constitutional Property Rights Committee has gone round the state.

We've been telling people publicly - we've taken ads out in the paper, we've been doing it for more than two years, but we've been writing letters for eight years. Not once has a minister pulled us up, not once has a minister ever corrected us. The closest we got is Bob Smith there, and he's no longer there, so if we're wrong, why haven't at least four ministers at some time or other told us, "You've got it wrong. You're inciting people to break the law," and that was one thing that Craig Knowles - sorry, not Craig Knowles; the director-general of Land and Water said in a recent meeting with them in Sydney, "What we worry about is inciting civil disobedience," and I said, "Where are we - the Constitutional Property Rights Committee - where are we inciting civil disobedience?" and he said, "Well, the classic example was at Nyngan last week, when all those people got their bulldozers and tractors out and

stopped DLWC from going onto the land of the owner to either deliver a notice or to inspect the vegetation."

I said, "Those people weren't inviting civil disobedience." I said, "Those people were acting on our instructions and what they were actually doing was standing up for the legitimate freehold rights as put down through local government, the EP and A Act, coexisting - common law coexisting with the EP and A Act, and maintaining the integrity of their industry, which is agriculture, business."

It's not land, it's a business, and those people had no right to go onto that freehold land unless they went through a process, and the process is that they have to write, inform the landowner that they want to visit on such and such a day, because the landowner has a right to be there. You don't mean to tell me that if you owned this and this was your law office or your accountant's office or it was your pharmacy that you'd be happy if I just walked in off the street and started pulling out drawers and things and going through papers without notification and without the owner of the investment and the industry being there.

The minute people step off the main road, which is a public thoroughfare, and the road reserve is a public thoroughfare, is Crown land - the minute they step over that boundary across the fence and come onto my land, they're in my office, they're in my place of work, they're in my business, they're interfering with my business investment, my day-to-day management. You ought to see the people that jump our fence to pick mushrooms. They think it's lawful to jump the fence, and you'll see them all over the paddock picking mushrooms, or at the moment, if they've got a ute or a four-wheel drive, getting loads of wood - dead wood lying on the - they'll jump the fence, and some of them are even so well prepared that they have a little chainsaw with them, and they cut it up and then they load it in - it's stealing.

That's my business, that's my investment, that's my private home, and it's wrong that we in this country - for God's sake, we had Anzacs who fought and died to protect our democracy and our freedom, and the bureaucrats are taking it away from us. I fear for the future of this country, I really do. I just wonder where we're going and I wonder who, sooner or later, is going to be strong enough to stand up and say, "This is wrong. These people have been abused and misused."

There's 200 people out there, I understand, still in the clutches of the court. Their cases haven't been finally processed, and we have two personal experiences, and this again is where a lot of this comes from: authorised officers, an appointment of an authorised officer. The minister may appoint any person - any person who is a public servant employed in the Department of Land and Water - as an authorised officer to determine the purposes of this act.

For God's sake, it took me 10 years in local government, and I'm still learning to understand the intricacies of the EP and A Act, the Local Government Act, the Conveyancing and the Real and Property. I know of one person who had her own hairdressing business, and she went to TAFE for a couple of years, got a certificate and ended up with a senior position with DLWC, telling us how to use our land. Now, these people have made flawed judgments, they've made errors of judgments. I think it was not very long ago, wasn't it, that a very notable public figure in Australia was said to have made a flawed - error of judgment and he got hounded out of office. He had to resign. I'm talking about the governor-general.

Now we've got flawed intelligence apparently influencing two prime ministers and a president round the world. We've got flawed judgment, errors of judgment, misjudgment and everything else bound up into that.

DR BYRON: Well, I'm afraid I'm - - -

MS WESTON: You're going to have to cut me short?

DR BYRON: I'm going to have to stop you there because we have gone a bit over time.

MS WESTON: That's all right.

DR BYRON: I think when you said just before that there are 200 people before courts, I'm sure that the courts will end up ruling on this issue about existing use. I can imagine that it could go all the way to the High Court but - - -

MS WESTON: Can I just say that of the 200 people who are before the court now, not one of them has gone on existing use, because (a) they didn't know about it, and (b) they were lulled into a sense of - what shall I say? - insecurity insofar as they didn't know what their existing - they didn't know an existing use right, they didn't know of the savings - - -

DR BYRON: Okay.

MS WESTON: - - - and when they get - the department issues a notice - we've got one fellow at the moment who was issued with a notice of $1.1 million for clearing three hectares of native vegetation without the consent of the council - three hectares! The whole of his property is what counts, which is 700 acres, and he was actually putting out a bushfire in peat - peat country - which burns underground, and in doing that he had a duty of care to his neighbours, he had a responsibility to the Bushfires Act, and in doing so he had to dig a trench round the whole of the area and fill the trench with water to stop the peat from burning underneath before he could put it out.

Now, the point of that exercise is that that man wasn't given any procedural - natural justice before they issued him with the notice. He was issued with the notice, and therefore the challenge to that at the moment is on the issue of the notice, which the department has admitted - most of it, they didn't have the power or the authority to issue that, but even though the judge has said, "Look, you've resolved all of this outside the court. Why don't you get together and finish the rest of it outside the court." the department is refusing to do that, so we've got to find another 35 or 40 thousand dollars to carry this on.

DR BYRON: Has the existing use defence been upheld in the court?

MS WESTON: It's never been an issue in rural areas because it never needed to be an issue in rural areas. It's been upheld in a number of cases in urban areas - in a number of cases in urban areas, where you have a rezoning in an urban area, where you might have a residential dwelling in what they want to do now is a mall or a shopping centre or whatever. You might have this little house standing in the middle of everything. Now, if that person digs their toes in, they can stay there, but usually what happens in that sort of a situation - the people who are doing the development make an offer too good to refuse, so they buy them out, and the existing use is gone and it all comes back in.

The issue of existing use has never happened to rural areas because it doesn't need to happen, it's never happened, and that's why it's never been challenged, because it's never needed to be challenged. Nobody has ever put this curious interpretation on it. And if you go back to the EP and A Act, the EP and A Act says it's possible that after the LEP does its work that you have development without consent.

So if agriculture is going to suddenly be conditional on consent, all these other things have got to come into play - of compensation. That's why the Crown or why Kim Yaden admitted - actually he admitted that they didn't do the right thing, and he said, "We didn't do the right thing, because if we'd told people what they were going to do, they would have gone out and wholesale cleared all the land and destroyed what it is we're trying to achieve." Farmers are not idiots. We only clear at a time what the seasons allow us to clear in order to let us dispel what's been behind us for a while and ready to rejuvenate and come back, and put new ground into production.

Farming is historically a continual rotational - and if, as you apply this here - if you apply for an application to clear vegetation and the department in its stupidity says, "No, we're not going to let you clear it," my land is useless. I can use it for absolutely nothing but grazing. Now, with a 10-year drought, the one thing you wouldn't want to be doing is grazing at the moment. Most of us haven't got enough

feed to keep our stock alive. We've sold them off, we've managed, we've done all the right things, but where people have broader expanses of land that has not got regrowth - a lot of it is regrowth - and they need to clear that off to put new pasture down and give the old pasture a spell - if we're not going to be allowed to continue to do what we've been doing for 200 years, this country is going to have no food before long. Thank you.

DR BYRON: Okay.

MS WESTON: I realise that I talk too much. My husband says I never use one word when ten will do. Thank you.

DR BYRON: Thank you very much for coming. We might just stop for a minute. I think the next presenter is here outside.

DR BYRON: Thank you very much, ladies and gentlemen. Can we resume the public hearing into impacts of native vegetation and biodiversity controls. The next evidence is from the National Farmers Federation, so if you'd like to come forward, introduce yourselves to the transcript as usual, and then if you could summarise the main points of your submission, which we've all read, and we can discuss it. Thank you.

MR ACTON: Thanks very much. It's Larry Acton. I'm the chairman of the Land and Vegetation Task Force at NFF, which is part of our Environment Working Group chaired by the president. We've got Charlie Beasley, who has been instrumental in putting together the report, and James Florent, who is the environment officer - policy officer with the National Farmers Federation now.

Just in introducing some comments, I guess I need to say that NFF is the national peak lobby group for farmers in Australia, representing something like 110,000 farmers or farming enterprises across the country and occupying a large part of the land mass of Australia. Farmers, I think it's fair to say, have a history of identifying and proactively managing environmental issues, in a lot of cases long before they become public knowledge. I think it needs to be said that there are a lot of farmers across Australia who are doing good environmental management practices, have been for decades in some cases, in a lot of cases unrecognised and certainly unsupported.

I guess the issues that have been drawn out in the submission that we put forward are varied and many but, just to summarise, I think the current legislative framework fails to acknowledge and address economic and social issues, and that's a major part of our concern. There's a mass or a myriad of complex levels of regulations that result, in a lot of cases, in an unacceptable uncertainty in terms of development potential for farmers across the country. I think our case studies, where we've got case studies from four of the major states - from Western Australia, Victoria, New South Wales and Queensland - in terms of demonstrating those uncertainties are very clear.

There's a delay and a considerable expense that hinders development of farm business management plans - one of the bases, I suppose, of good farm management but also good farm business management, which is an ethic that we certainly support very strongly. There's an excessive reliance on the command and control approach by Commonwealth and state governments and, unfortunately, that is alienating farmers, the principal stakeholders but also the principal managers of our resource. There's a failure to engage farmers. Services, in terms of extension services but also information systems and those sorts of basic support services that are required, first of all, for the administration but also, secondly, for farmers to gain access to for

better decision-making purposes, are all very much underresourced.

Farmers, we argue, are carrying an unfair share of the cost burden of conservation and that's a key point and I want to enlarge on that. It does create some perverse incentives and certainly the current use of management agreements in terms of protecting and managing the environment is failing, in our view. We believe that farmers need governments to provide certainty and this is the key, in our view: provide certainty in terms of utilising the natural resources on the farm. That's part of the agenda, the objective of the National Farmers Federation, and has been now for some considerable time. We argue that unless governments can provide that certainty in terms of ability to manage the land and water, or the natural resource, then investment certainty, succession planning and better sustainable environmental management for the future is very much at risk.

We believe that governments need to address the cost and the delay and the lack of integration between Commonwealth and state legislation particularly, but also intrastate in terms of across agencies within states. Finally, it's very important that the governments look at providing adequate funding packages and incentive programs to offset any reduction in property values, which we believe are demonstrated clearly in a number of case studies, but also to encourage voluntary stewardship arrangements which can manage the resource better in the long term more effectively on behalf of the community.

I think that's probably all I need to say at this stage. The National Farmers Federation has a very clear objective and is obviously pleased that the commission is looking at these issues. It's part of what we believe is a very essential part of providing certainty of access to land and water and ability to manage land and water in this country. We believe that's going to provide better investment environments for farmers and that, in turn, will provide more sustainable environmental outcomes for the community. I think that's all I'd like to say at this stage and I'm obviously happy to answer questions.

DR BYRON: Thank you very much and thank you for the extremely full and interesting submission and the dozen or so case studies that are attached to that, which I found fascinating reading - somewhat depressing.

MR ACTON: Just on that, I think it's clear that there are similar problems right across the country in terms of these issues.

DR BYRON: That was one of the things that I found particularly depressing; that it wasn't just north Queensland or southern Tasmania or whatever; you've drawn examples from all over the country, which suggests there's something more generic going on, not isolated cases. I guess we don't hear about cases that are not

contentious or controversial. Are there lots of happy, satisfied punters out there and we're just hearing about the few exceptions, or are these actually much more typical or representative?

MR ACTON: What we have done is select a number from many, many that have been put forward to us by the different state organisations and member bodies of the National Farmers Federation through the leadership groups in those organisations, but also through farmers putting those concerns that they've had to us in various forms and to various people through the process of gathering this information. I'm not totally aware of the collection systems in some of the states but certainly, as I think we talked about in Queensland, we surveyed and got a massive response.

There's documented evidence, which we can provide, of over 100 examples of similar things to what you've seen and heard, so I think it's widespread - and the concern with the way legislation is administered or, in what we would argue in some cases, the delays in administering and decision-making are very widespread.

DR BYRON: The four headings that I've written down - I'm not sure if they're the same as what you've got - seem to be very consistent with what we've been hearing as we've travelled around the country: the failure to integrate across and within jurisdictions; the complexities leading to uncertainties, delays and expense; the excessive reliance on command and control instruments and the failure to engage with farmers. I was wondering if we could sort of run through those four main broad headings, if that's okay.

A lot of the evidence that we've had so far has dealt with failures in integration within the jurisdiction, where three or four state government agencies are pursuing different objectives. You say it leads to complexity and delays and expense, and the buck gets passed from one to another. But the integration across, say, Commonwealth and state is not something that we've had a lot of discussion about yet. Is it common that the EPBC and particular state legislation are both dealing with the same issue and perhaps in different ways - you know, the brigalow and bluegrass movement?

MR ACTON: Bluegrass communities.

DR BYRON: Bluegrass being the obvious one.

MR ACTON: Yes.

DR BYRON: Are there other examples like that where the EPBC and state legislation are both being triggered? My understanding of the EPBC was that it's supposed to avoid that.

MR ACTON: Unfortunately there are. I think the mahogany glider issue in north Queensland is one, and it triggers another one again; it's the Nature Conversation Act in Queensland. At the moment the Victorian Farmers Federation and their members are dealing with an application to list some grassland communities in Western Grasslands. At this stage it's not a declared community, or a listed community, but similar concerns have been raised by people on the ground at the Victorian Farmers Federation and ourselves in terms of how that might be administered in the future. The example in here obviously is the Alistair Hughes and the Lowesby - two different issues, but you've just mentioned the brigalow and bluegrass in Queensland. Obviously, because I'm from there, I know them better. I haven't missed any others. That's basically it, I think.

Being relatively new, the legislation hasn't been tested because farmers have been so uncertain about what the outcome might be that they've not taken action and they haven't asked for the assessment in a lot of cases. We need to make the point that, in discussion with the current minister and through the provision of secondment from Environment Australia, we're trying to work through some of these things. But our experience, even using that secondment - and he was directly involved in the Lowesby and the Alistair Hughes issues. Those two people and those two properties are still waiting for any move to make an assessment by the state department. There's been no move yet to make an assessment, so there's a long way down the track before that will happen.

DR BYRON: In the submission that you made to the 1999 parliamentary inquiry that's attached to your submission, you sort of anticipated that the sticking points might come in terms of the bilateral agreements, the definitions of the regulations, and here we are a couple of years after the legislation has gone through. Do you think the problems you anticipated have actually eventuated?

MR ACTON: And in fact are worse than what we thought, because of a very distinct lack of preparedness by state jurisdictions to even want to hear about the EPBC. They want to just push it over there and say, "That's the Commonwealth's responsibility. It's got nothing to do with us." Obviously part of that reason is because the bilaterals haven't been worked through.

DR BYRON: Either the assessment bilaterals or the approval bilaterals?

MR ACTON: Yes.

DR BYRON: Does anybody else want to talk about EPBC at this stage?

PROF MUSGRAVE: Not so much the EPBC. I'd just like to comment on the

repeated use of the word "potential" under different umbrellas, that habitat has the potential for having a certain species in it, or there's a potential for this to happen, and so some farmers' applications are refused. Is that a widespread phenomenon? I guess those who use the word would call on the precautionary principle type thinking.

MR ACTON: That, I think, is a symptom of two things. One is that in a lot of cases the information and the science aren't available to make a specific clear decision, and one of the things that we are finding is that the state environment protection agencies in whatever state it might be - in different ways but certainly a very similar sort of approach - are in some cases coming in after there's been discussion by other agencies, and adding to the delay for one thing, and certainly are taking a very, very conservative approach to any potential activity or development process or whatever it might be that's in discussion at that time.

There certainly are a lot of examples - anecdotal, some of them, but more particularly complaints that we have on our desks across the country in the different states because of that. It is clearly a symptom of the fact that in a lot of cases groups are using the lack of specific knowledge to pressure environment protection agencies particularly to take that approach. The other thing is that quite a lot of - well, certainly my experience in Queensland is that there aren't enough agency people. They're overworked. They're not prepared to make clear decisions or specific decisions.

DR FISHER: It's a bit of a two-edged sword, isn't it, the question about the number of bureaucrats? Presumably if you have more of them, they might implement the legislation as they see it more assiduously.

MR ACTON: It's not only the number. One of the problems that is very clear is the different advice that's given by individuals. There's not consistent advice given. Certainly there aren't supporting information systems or, I believe, departmental or agency or even ministerial vision in terms of where they want to go, and that's also creating this level of uncertainty and lack of decision, which creates delay, which exacerbates the problem. But at the end of the day a lot of those agencies are driven from the cities. They have taken the local and regional support base away. A lot of the expertise that was there, those that had the practical knowledge in the past, because of changes in direction within a lot of those agencies a lot of those people have left, so we don't get the practically based people out there - that understand those situations in a lot of cases - first of all advising, and making decisions.

DR FISHER: One thing that interests me is that there's no doubt, going through these case studies and doing the visits that we have, that there's a bunch of bad implementation and non-optimal outcomes out there, a lot of inequity and questions

like that. But from an agriculture-wide point of view, you continue to see productivity in agriculture rising almost unabated. There are differences in the level at which it's rising between crops and livestock, but - - -

MR ACTON: And within.

DR FISHER: And within. I guess an interesting question is: is it too early yet? Has a lot of this legislation not been around long enough to see an impact on the more aggregate productivity numbers? Is that coming in the future, do you believe, or do you believe that farmers will actually get around this in some way?

MR ACTON: A couple of things there. First of all, I suspect that some of the productivity increase is happening despite what's going on, but more particularly it's happening on developed country, country that's already been developed, so the constraints of a lot of this legislation aren't impacting. Obviously a lot of the country is already developed to a certain stage, and the technology that's available, the research that the industries across the country are putting into better farm management practices, better water use efficiency, better environmental management and more sustainable production, particularly in cropping, is adding to that. It is certainly an evolving process. EPBC for instance has only been in place for a short period of time relatively. It hasn't yet shown an impact on production. We can pick those individual cases, sure, but in terms of across industry generally, I suspect that it is an evolving process, so it's going to be an accumulative process if it keeps going in the direction that it currently is.

DR FISHER: So in, say, broadscale beef production in Queensland, first of all if we were to wait, say, till 2015 and these processes go on the way they currently are, do you believe there will be a significant impact on both the level of production and farm productivity?

MR ACTON: In here we say that, for instance, in New South Wales farmers face something like 42 different individual regulations relating to resource management of their natural resources. In Queensland, I don't know whether it's 42, but it's certainly an A4 page of legislation that we are dealing with. So EPB certainly will have an effect, but the Nature Conservation Act, the Barrier Reef Plan, the Vegetation Management Act, the Plant Protection Act that's just gone through parliament, the Land Act, all in one way or another have a constraint. The one that is worrying Queensland at the moment, obviously, is the potential to lock up any further development opportunities - with the discussions that have been going on with the state and federal governments at the moment.

Now, that's a specific case, but I think that if those things remain as they currently are, if we don't get some sort of resolution of this inactivity of

decision-making and if information systems don't improve - and then, as well as that, there are some incentive packages in place - then there's no doubt in my mind at all that a significant reduction in that growth that you're talking about will occur. That's going to occur more in some parts of the country than others, but I would expect that gradually that will occur in other parts of the country too, and part of that will relate to whether or not these agency regulations start to affect current development, where property management starts to become an issue as well.

MR FLORENT: Can I just add to that. A lot of it is also the fact that both Commonwealth and state policies on greenhouse tend to target woody vegetation and the impact is on the clearing of woody vegetation, where the conversion of native pastures to other pastures and the potential impact on grazing in the future may show up in higher impacts later on as those sorts of issues start dropping down not just from woody vegetation but moving into the implications for other policies. I don't think it's all just legislation based; it's also policy based.

DR FISHER: Yes. What I'm struggling with is that the case studies give us some quite interesting and, frankly, quite frightening examples, but it's hard to take those from that point and then make some sort of projection about the impacts on, say, beef production in Queensland over the next 10 years. Do you believe that we have the empirical information necessary to make such a projection?

MR ACTON: I doubt it. I don't think it's going to be available, and once again we're starting to hypothesise to a degree. The important thing from our perspective is that there are land-holders, very obviously, who can be identified, who have already warned of a significant effect on their particular operation. There are obviously some that we haven't heard from. I got one on my desk yesterday, or through email. It came through to me yesterday. That's occurring all the time, and the more people hear about our concerns with these sorts of things the more we're going forward. We would be confident that there is going to be an effect, but to what degree and in what areas and on what industries specifically, I think you can make a general comment, but we have criticised that sort of thing in terms of other groups and scientists and I think it would be wrong to do that. There was that study done in northern New South Wales.

DR FISHER: The Sinden study?

MR ACTON: Yes. It certainly looked at the impact of these sorts of things on a particular shire and a region. There is concern by some of the local authorities. It's interesting, in Queensland once again - and I'm sorry I keep going back there, but certainly a number of them have sent letters saying that they're concerned about the impact on particular industries in their area, or more particularly their rate base, and things like that, because of (1) the uncertainty, (2) the impact directly, and (3) what

the future might hold in terms of all of that.

MR FLORENT: I guess it's also the word "potential". You alluded to it before. How is that word "potential" and the precautionary approach going to be impacted? As new proposals get put up, how are they assessed? Is it on the potential of their application or is it on, "Well, look, given the facts that we have in front of us at the moment, if you undertake these mitigating circumstances you may avoid having negative impacts on biodiversity"? It's the way you look at those proposals.

PROF MUSGRAVE: Also, I presume that in situations where regrowth is the issue, a shire is looking at the potential for absolute decline in the area as land becomes unproductive. As it thickens, it becomes uneconomic to clear, as opposed to clearing the remnant growth, which is a growth thing. On one hand you're losing potential growth; on the other hand you are realising potential loss.

MR ACTON: Which is why I mentioned before the property maintenance and the maintenance of any development that's been done in the past. It includes regrowth, obviously; it includes natural thickening; it includes encroachment into areas where woody vegetation hasn't been an issue in the past; all those sorts of things, which I understand you saw some of up north.

PROF MUSGRAVE: We did, yes.

DR BYRON: Those sorts of things can lead to absolute production losses as the timber thickens and so on, but there are other things which are perhaps a bit harder to measure; for instance, a loss of potential increases in production. In that, I am thinking of places that we visited in South Australia, Victoria and New South Wales where people wanted to put in, say, centre pivot irrigators which would have increased their agricultural productivity a great deal and yet they have been denied permission to do that because of individual paddock trees. The impact there might be that we fail to achieve future productivity gains. It's not that production goes down; it's just that we don't step up the way technologically we could.

MR ACTON: Yes. Very clearly that's an issue in the lesser developed areas, but also with regard to this maintenance of current development and the potential for that to be affected. There's certainly a level of concern in some of the states, and Queensland is a clear example again, where there's a lot of country that hasn't been developed, development is at a later stage in comparison to the rest of the country, and if you look at some of the states' submissions, they actually talk about loss of property value, which we talk about in the NFF submissions, but they also talk about lost production potential because of that very issue that you talk about. Once again, in some cases it's measurable, in others it's hard to measure.

DR BYRON: You would anticipate that properties where there is potential for technical improvement, those market values would be going up, and properties where that potential has been denied, the market value will either stay the same or go down.

MR ACTON: That's clearly the message from professional valuers that have done some work with us with some of these case studies. With others - and I have to say there are a number of other examples who for all sorts of personal reasons or philosophical reasons weren't prepared to have their cases made public, but I think the important thing is that that is definitely the case, and if you look at Lowesby, for instance, there's a particular personal situation there that has stopped them from maintaining country that was developed in the mid-80s, and it's now reverted - almost, but not quite - to what I would regard as a remnant situation and being caught up in the two lots of legislation.

All of the neighbours - and there are six neighbours to that property - would love to get hold of that property. The guy wants to get out and none of them want to take on the uncertainty of paying for something they're not sure whether they can touch. That's why some of the local authorities have said to us they are concerned about what might happen to the rate base. Some of the bankers are starting to say to us, although not so much publicly - I think we're getting to see some of that in terms of the water debate and there is certainty of access to water. With vegetation they're not coming out clearly and publicly yet but they're certainly saying to us, in some cases, that there is going to be a distinct change in the value of property that's fully developed or significantly developed to that which is not.

In my own personal situation, I think I might have mentioned previously, our manager has been looking for country; can't afford developed country; wants to buy country that he can develop, and there is a lot of concern about whether they should be actually taking on something like that. In some cases the people that are trying to sell have actually dropped their price significantly to do that.

PROF MUSGRAVE: Larry, you refer to incentives in the submission. There's an array of incentive arrangements that could be put in place. Have you got any thoughts on which incentives might be preferred in different situations, or even if you have preferences in general?

MR ACTON: I think you're right; there is a range of different circumstances, so there's a range of different answers to that. Obviously we're concerned at the moment about the way - management agreements we call them. They're supposedly voluntary covenants in some cases and all those sorts of things - and how they're being used the wrong way in negotiating processes for upgrades of title or for renewal of leases or for development approval processes. So it's a bit hard to answer that question without knowing a specific case, I believe, but there's obviously

potential.

A lot of agencies are acknowledging - if not publicly, certainly in discussion like this - that the best people to manage even crown land are land-holders, so one of the key things I would argue would be that in instances where development opportunity isn't available any more, for a range of reasons, that a stipend or a payment of some sort - an environmental protection payment of some sort - might be appropriate. But I don't want to give the impression that that's the solution to all circumstances. Protection of something that's obviously of some environmental value can be in a range of ways.

PROF MUSGRAVE: What about the situation where you have several land-holders occupying a tract of country which constitutes some ecosystem which is endangered in some way? How do you react to the suggestion that, if possible, that group of land-holders negotiates with government to make a deal, or meeting target specified by government, rather than the government dealing with individuals? Do you think that has a sniff of practicality to it?

MR ACTON: I'd be a bit nervous about that, mainly because I would expect that it would be unusual to find a group of land-holders like that who were at a similar stage of development across the ecosystem. It may be the case and, in that case, it's probably useful to be able to do it that way; to negotiate in that way. But my experience is that, particularly with endangered ecosystems that I observed in Queensland, there is a varying level of development and a particular individual will have developed their country so in actual fact they can probably maintain a viable operation in their area and at the same time, with some small support, protect the rest of the endangered species whatever it might be.

Then there would be others who, for whatever reason, haven't been able to get to that level of development and they in some cases, in our view, basically need to be bought out by the government because they have got no chance of making a viable business out of what they have.

PROF MUSGRAVE: I just thought that the group bargaining within themselves and then bargaining with government might conceivably end up negotiating an outcome which is a better outcome for both parties than might otherwise have been the case if the government is picking off individuals, but I take your point.

MR ACTON: I wouldn't like to say that that was the best way in every circumstance. There will undoubtedly, or probably, be something somewhere where that might work, but I wouldn't like to say that would be a general solution.

PROF MUSGRAVE: Okay.

DR FISHER: The question I was going to ask was you're basically saying that small group market sort of solution, where a bunch of farmers get together in the local memorial hall and come to a solution, will not necessarily work by itself because there will be no incentive for individuals who have fully developed properties to trade with those who have non-developed property.

MR ACTON: That would be the likely circumstance but I don't want to also kill the idea that a local group - because we've always believed that the people in a local catchment area or in a local area where there's a specific environmental value - that those people in a lot of cases can come up with the best solutions for the environmental issue, but also for the future of that locality. I don't want to kill the idea that it's not a potential way to go forward. I'm just not certain that we could accept that there won't be a lot of difficulty because of the differing level of investment development opportunity that might have been - and industry that may even be in that area.

DR FISHER: Let's imagine we had some far-sighted policymaker who had money that they'd been using for some other purpose, like exceptional circumstances, and then they decided that they could achieve multiple outcomes by doing something for the environment, something for the government, and you all went down to the local community hall there and the far-sighted policymaker turned up with some cash. Would the NFF be interested in that sort of approach?

MR ACTON: I'd be concerned about - I don't want to understate the impact of drought. Let me be clear on that. I do have a view that there are some government-funded programs that could perhaps be better utilised. I'm not suggesting that drought is one of them - sorry, in terms of being better utilised for the environment than where it's currently being spent, but I think that we have taken the approach that there needs to be a commitment in principle by government, and those principles then need to look at the underlying funding - I suppose "principles" is the word to use there again. At the end of the day, though, there needs to be discussion about the funding, sure, but I think we need to get it in the right order.

DR FISHER: So the only problem you had with my proposition was my mischoice of the funding source?

MR FLORENT: You also have to say is this a far-sighted Commonwealth person turning up with a far-sighted state person so there's complementarity across the board; so that you're not coming up with differing - you know, there's an agreement on one side, however you've got certain complications occurring down the other side, and then you've got local planning systems and other things thrown in. It's quite, as you know, a complicated scenario there.

PROF MUSGRAVE: One could say amen to that, particularly if it's going to be dollar for dollar, state and Commonwealth.

MR FLORENT: I also think, taking your point as well, it's the degree and the ability or willingness of compromise at that level when you're talking about farmers.

PROF MUSGRAVE: At the community level.

MR FLORENT: Yes, the degree of compromise. In a lot of cases, when you try and bring a group together and say, "Look, can you negotiate on this basis?" - that's fine if everybody is willing to give away a certain amount and the same amount. However, in most cases it's the old shopping trolley. There are certain products that are required for certain farmers and some are going to be more willing to compromise than others. Some may need some regulatory stuff, some more voluntary. It's really looking at how that fits in the chain. All you have to do is take one key area out of that landscape that's not willing to compromise, and your whole thing breaks down.

PROF MUSGRAVE: You're saying the market can't solve everything; farmers need a bit of regulation. Is that what you're saying?

MR FLORENT: No, I'm saying that you need to have a degree - you need to look at the situation. Again, your situation - where does the decision occur? Is it local, regional, national? Who's making that decision?

PROF MUSGRAVE: In closing on this, I might say that I have in mind the land and water management plans with the irrigation industry in New South Wales, where such negotiation with government worked but they were homogenous. There were significant pots of gold involved and there were considerable incentives to get closure, but it still took a long time and it was very difficult.

MR ACTON: I think the concept of that sort of local group negotiation is one that certainly can work but I think I've said it before: the confidence and trust in those sort of processes now has gone out the window.

DR BYRON: Could I come back to a point you raised before about the voluntary agreement. When I was reading your submission it seemed to me that the word "voluntary" is used in a number of different senses. One is where the landowner comes forward off his own bat and decides that he wants to put 40 hectares up the back under federal conservation. It seems to me that's the old-style Trust for Nature in Victoria. There's a second category where people are quite willing to enter into voluntary conservation contracts, provided there's some quid pro quo or payments or

incentives but it's willingly entered into and I think two examples of that are the Bush Tender scheme in Victoria, and in Tasmania there's the private forestry reserves under the RFA deal where it was all commercially negotiated and farmers set aside areas for perpetual conservation and are quite happy with it because they have been fully paid for it.

The third category, which I think is where the problem is, is where people are told, "You need to enter into a voluntary conservation agreement if you want to get your lease renewed, or you want to get a development approval." This is voluntary in the sense that you have a loaded gun at your head. I think that is where it is a serious misnomer to call them voluntary conservation agreements.

MR ACTON: That's right. I think we tried to demonstrate a number of instances where I suppose the last example that you gave is being used wrongly. They are not voluntary. There is no way in the world anybody could call them voluntary. It is a big stick approach. It is being used to leverage people to accept covenants, conditions and restrictions on their place that couldn't really be done any other way, by a government agency. I think the Blennerhassets - you saw the other day - are a really good example of that. There is the heritage agreement one in South Australia that we have put in, and the Victorian one. There are any number of examples of where that approach is being used to basically force people to comply with something they would never agree to do, because of them seeking a development opportunity, a renewal of lease, or whatever the instance might be. I think the whole issue of management agreements has been tainted by the way it has been administered across the country at this stage.

DR BYRON: Yes, there does seem to be a lot of opposition to even considering that. But I think there is a fundamental difference between one that you do off your own bat - people have said to us, "We'd never clear this country because it wouldn't be worth the effort of clearing it anyway and it's good shelter for the stock in winter," or something like that. But that's very different from being told, "You have to do this or else."

MR ACTON: I think I should also say that a lot of people are voluntarily doing that without any knowledge of government agencies in some cases, certainly without any financial support and without any public acknowledgment - again, in places all across the country. They are doing it because it's what they want to do. But they're not even having - in some cases, those are registered protection areas and in other cases they're just people in the district who know that Joe Bloggs over there won't allow certain things to happen in that area.

MR FLORENT: I think there is also another point on that. It depends on which piece of legislation, sometimes, you get the agreement under. There is also

annoyance when you see one farmer get a certain package handed down and, under another piece of legislation, suddenly you've got to do something and the management arrangements under that may not be as fruitful as the one that occurred previously. There is a degree of frustration associated with that.

DR BYRON: Yes, we have seen a few examples of that, too. You know, three properties get three very different treatments: one is generous and one is indifferent and one hostile. You talked about incentives. The fourth one I wrote down from your introduction was the failure to engage with farmers. One of the points we have already discussed is the loss of practical field staff in many agencies; people who were good at engaging farmers on a face-to-face basis out on the property. What other examples do you want to talk about, regarding failure to engage with farmers?

MR BEASLEY: In terms of the failure to consult, it's on a number of different levels. It comes from the very personal example of the farmers who - and the Blennerhassets who you met - were told, "I'm sorry, at this stage we don't want to consult with you until we've come to a decision." On a more endemic structural level, it would be the way that under environmental planning regulations in New South Wales, and Victoria as well, draft regional management plans are, under the planning regulations, treated as they are going to be coming into force, despite the fact that they are currently up for consultation, as evidenced by Arthur Sleeman's example, where his proposed development was stopped in that way.

The most shocking example is, of course, where there is a deliberate attempt to actually change the rules to stop a particular development, as shown by the tripod farmers lettuce-growing operation, where a vegetation protection overlay was introduced on the day of a VCAT hearing. That shows three very different levels - sorry, and there is one other level where we just don't have time to consult - as has happened in the Queensland examples - where it's said, "I am currently administering land the size of Tasmania. I don't have a lot of time to actually sit down with you and talk about your individual plan," and it's those four different types of lack of consultation that are the concern of farmers. But I suppose the most concerning is where there is deliberate attempts to actually go around - to deliberately not consult with farmers. The key theme that I think is coming through is a sense of frustration of, "How can we even possibly look at entering into voluntary management agreements and working with you and engaging you within the issue of environmental and sustainable management, where you are actually presenting us as the opposition from day one?" That would be the idea of where the key issue with engagement is.

On those various scales, even if it's just, "I don't have time," it is all tied in to that fact that there's a sense of, "Well, you're not engaging with us in the first place." I am sure you may come across this in New South Wales, where there are concerns

that the draft vegetation plans are being made but, when they're taken back to the departments, consultative agreements have been told, "I'm sorry, that doesn't actually fit with the more administrative guidelines that we have set up." The sort of anger that engenders in terms of, "Well, you're asking us to be involved in a consultative process and then actually telling us that you had come to a solution before that point and we're not interested necessarily in what has come out of that," is another key reason behind that sense of frustration.

MR ACTON: Can I give you an example: you mention the EPBC listing of brigalow and bluegrass and when that happened there were no administrative guidelines available, so when we were getting phone calls from people saying, "Can I plough a water pipe into this area of land?" there was nobody able to give an answer in terms of, "Is that a sufficient activity to create a significant impact on the bluegrass community?" We tried to engage with - this is going back to when the first listing happened - Environment Australia and basically it took a lot of public and private pressure to get them to come and sit down at the table and talk to us about some guidelines. Somebody at least started that process and when they sat down the first thing they said was, "You should think yourself very fortunate. We don't do this and this will be the last time we do it."

That attitude has changed within Environment Australia, I hope, at this stage, but it is symptomatic of the approach of some of the environment protection agencies around the country, particularly the EPA agencies around the country, who certainly don't want to engage with farmers at all. I guess another example is where 24 regional groups in Queensland, involving over 500 people from the community, from Landcare, from the environmental groups, from local government, indigenous representatives and land-holders, sat down and developed recommendations in terms of vegetation management across the state. Basically those were put in the cupboard and the door was shut and government started to negotiate another level of control and the people who involved weren't told that their draft plan was - they weren't told that it was accepted, rejected, considered, going to be considered, or where it sat in the process. Those sort of things more than anything have disengaged farmers and alienated farmers and, at the end of the day, they're not going to achieve environmental outcomes either.

DR BYRON: I wonder if a part of that comes - the people who are working in an environment protection agency or a National Parks service or whatever - their job is to implement a particular piece of legislation towards particular objectives. Other government agencies might have similar or quite different objectives, but they're working in a particular organisation who are tasked to follow a particular act. If their act says, for example, threatened species - if something is thought to be threatened or endangered it must be protected, full stop. It doesn't matter how much it costs or who it costs or whether it's social or economical or whatever, the legislation says it

must be protected. The legislation doesn't say, "Go out and talk to farmers and see if you can come up with a reasonable way of doing this." In a sense you can say they are just doing their job; they are implementing the legislation.

MR ACTON: I think I know what you're saying, except generally governments have a policy view about how those things should be administered and implemented and my response would be that you certainly have individuals who would use the letter of the law to the fullest extent in terms of how they approach consultation - if they approach consultation at all. At the same time, under the same jurisdiction, in another region of the state, a totally different approach can be going on under the same government, under the same agency, with the same regulation, but a much more engaging approach and generally the outcomes are fruitful and productive in that situation; whereas there are definitely individuals who have seized the opportunity that you speak about and have become little dictators in terms of the way they administer, and certainly don't consult people.

DR BYRON: So the same legislation and regulations can be implemented in very different ways, even within the same agency?

MR ACTON: I think that that comes back a lot to the resourcing of the process, obviously the policy and administrative direction of governments, but I still think this issue of information systems and resourcing the process is a major part of the constraints, that also those officers have in some cases, notwithstanding their philosophical approach - I suppose, is the best way of putting it - to their job.

PROF MUSGRAVE: So can we take that as implying that there might be some pockets of trust that remain, scattered around the countryside?

MR ACTON: Yes. But unfortunately they are far outweighed by the other.

PROF MUSGRAVE: Yes. It is going to take a lot of effort to rebuild it.

MR ACTON: I might have said to you in Brisbane that, to me, it's like driving a mob of cattle forward and they have bolted; they're going backwards and they're going flat out that way at the moment, and you've got to pull them up and turn them around before you can start to bring them back again. Unfortunately that's happening right across the country.

MR BEASLEY: It certainly hasn't helped when some of the examples you would have seen are where, "I can't give you an answer as yet as to your application that you have actually been waiting five years on, but I wish to remind you that if you go ahead you will be prosecuted this way, this way and this way." The classic example in Western Australia is the key example that they were constantly reminded of what

would happen if they did anything and that has also come up in the information and extension support section - the idea that there's a lot of generality in what you actually can do in the information - what you can do, but what is very specific is what you will be penalised with if you do go ahead with any action that doesn't fulfil the guidelines. That's where the story we discussed in that section talked about the failure to engage and actually create a whole-farm business approach and actually enable people to work within the legislation as opposed to threatening them with the sanctions afterwards.

MR ACTON: After five years.

MR BEASLEY: Yes, and that alone, sadly enough.

DR BYRON: That comes back to what you said, Larry, about the direction within the public service of when they're asked to help farmers make things happen or give reasons why farmers can't take actions.

MR ACTON: Okay, but that's a little bit of command and control approach rather than the outcome driven approach.

DR BYRON: Yes.

MR FLORENT: It's also giving the information behind that, as well; making sure that the information that the decisions are being made on is available to farmers to understand. They can only put in applications based on the information they have. If decisions are being made with greater information and then answers coming back which are a shock, then there has got to be a problem in the system, as well.

PROF MUSGRAVE: I sense we are coming close to the end. Can I just ask about the white box woodlands project. That reference you have - is that adequate to give us an insight into that exercise?

MR BEASLEY: Yes, on page 30. Elis and Lambert - yes, that actually has a discussion - - -

PROF MUSGRAVE: That will tell us about it.

MR BEASLEY: And from there it will direct you because that actual source is a compilation of the projects that they looked at and, from there, you will be able to identify that actual study.

PROF MUSGRAVE: Okay. Thanks.

DR BYRON: I think we probably could go on and on, but we are probably repeating familiar ground. Again, I would just like to thank you for a very thorough, stimulating and comprehensive submission. Is there anything else you would like to say in closing?

MR ACTON: I don't think so, unless perhaps to reinforce how important the National Farmers Federation sees this issue in terms of resolving hopefully the uncertainty but more particularly the financial burden that a lot of land-holders are carrying individually without any support, and the need for government to be advised as to the extent of this problem and the need to deliver some certainty and some funding package that can assist in this process.

Obviously we are looking forward to your draft report. Thanks for the opportunity to speak to you. I have to acknowledge that Charlie has done a lot of the leg work on this, so we are very fortunate for that. Thanks for your comments about our submission.

DR BYRON: Thank you, gentlemen. At this stage of the afternoon I usually ask if there is anybody else present who would like to come forward and say a few words. I am getting shakes of the head, so I think I can safely declare proceedings for today closed and thank you all very much.

AT 5.09 PM THE INQUIRY WAS ADJOURNED ACCORDINGLY

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