SPARK AND CANNON

Telephone:

Adelaide	(08) 8212 3699
Hobart	(03) 6224 2499
Melbourne	(03) 9670 6989
Perth	(08) 9325 4577
Sydney	(02) 9211 4077

TRANSCRIPT OF PROCEEDINGS

PRODUCTIVITY COMMISSION

INQUIRY INTO IMPACTS OF NATIVE VEGETATION AND BIODIVERSITY REGULATIONS

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

TRANSCRIPT OF PROCEEDINGS

AT HOBART ON MONDAY, 18 AUGUST 2003, AT 11.05 AM

Continued from 14/8/03 in Melbourne

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

The inquiry started with a reference from the Commonwealth Treasurer to us, and I'm sure that all of you here are familiar with the background that led up to the commission being asked to undertake this inquiry. Over the last few months we've talked to a wide range of organisations and individuals with an interest in the issues. We've now received about 160 submissions following the release of our issues paper in April, I think it was. The people we've met with have been land-holders, representative organisations, environmental NGOs and individual conservation people, state and Commonwealth agencies, shire councils and basically anybody else who wanted to talk to us about anything relevant to the terms of reference.

The purpose of these hearings is to provide an opportunity for interested parties such as you to elaborate on the submissions that you've sent in and put further views on the public record. Following these hearings, tomorrow we'll be having hearings in Sydney and on Wednesday in Moree in north-western New South Wales. We're working towards completing a draft report for public comment at the end of November, early December, and then we'll invite people to read and digest that and to come back to us with clarifications or corrections or comments after they've had time to think about it.

The commission likes to conduct our hearings in a reasonably informal manner but I do need to remind everybody that we do take a full transcript, and for this reason comments from the floor are not helpful because we don't necessarily know who the speaker is. At the end of each day's public hearings, I always ask if there's anybody else who would like to make any further comment, people who might think of something they meant to say but had forgotten or people who want to come back to us on something they have heard someone else say during the day, so there will be opportunities for anyone present to make further comments this afternoon before we close. Participants are no longer required to take an oath but they are required under the Productivity Commission Act to be truthful in their remarks.

The transcript should be available probably within a week or as soon as we can have it ready. The segments will be checked, sent back to individuals to make sure that there are no transcription errors, but then as soon as possible the transcript will be available on our web site and copies will also be available on request.

I'd now like to welcome our first evidence for the day from the Tasmanian Farmers and Graziers Association. Gentlemen, if you could each introduce yourself

so that the transcript makes clear whose voice is which, and then if you could maybe take five or 10 minutes to summarise the points that are in your submission - which Warren and I have both read - and then we can have a question and answer discussion about the issues you've raised. Thank you very much.

MR THOMPSON: Thank you, Neil. I'd like to introduce myself first. Brendan Thompson is my name. I'm president of the Tasmanian Farmers and Graziers Association. I'm a practising farmer, a dairy farmer, and a mixed farming operation in the north-east of the state.

MR WHYTE: My name is Ian Whyte. I'm the natural resource management consultant on the staff of the TFGA. I live in Hobart.

MR DOWNIE: My name is Robert Downie. I'm a farmer managing native forest east of Hobart. I'm also the landowner representative on the private forest reserve program and I also work part-time for Greening Australia, managing farm forestry.

MR THOMPSON: Firstly, just to Neil and to Matt, thanks for a little bit of shuffling, and some other people I think that did cooperate to change the hearing date in Hobart to today. Personally, I appreciate that greatly. Thank you for that. TFGA has had some previous contact with Neil and Matt, just a little bit of informal discussion about how the hearing process would take place when they were in Launceston a few weeks ago, and so we appreciate that as well. We have a case study here which is some supplementary information which we'd like to present, if you'd be prepared to accept that.

DR BYRON: Thank you.

MR THOMPSON: I'll ask Ian to hand that to you. At this point I don't intend to say a lot more. I'd like to invite Ian Whyte to walk you through our submission document and give you an outline of the main points that TFGA sees as important in approaching the issue, so, Ian, if you would like to take over.

MR WHYTE: The submission has, as you're aware, several sections. I'm not going to dwell on the introduction and the second section, which was a statement, a characterisation of farmer needs, a farmer's perspective, a commercial farmer's business perspective on the management of his property; go through to the TFGA position statements, where we've put down a number of points. Briefly they attempt to go through logically the needs for government to justify measures relating to conservation of natural values before they are applied on private property. For example, without dwelling unduly, the fact that public land has been used to capacity to reserve values before demands are put on what are effectively small businesses to pick up the slack.

The impact of conservation measures on farm businesses must be a fundamental consideration when those decisions are being taken so that decisions need to be taken in full cognisance of the impact that they are likely to have on those farm enterprises. If you're looking to reserve 1000 hectares on a 2000-hectare property, that has an impact; the same 1000 hectares on a 50,000-hectare property, somewhat less. So that element of impact needs to be considered.

Conservation measures must have clear and specific conservation outcomes, an extension of the justification argument, so they need to be linked, there needs to be a discipline on government before it implements something on private property that it is linked to specific outcomes. Conservation measures must deliver outcomes effectively. It's not enough simply to say that we've got that there and we're going to put in this range of measures if that range of measures is demonstrably not going to guarantee the protection of that value - for whatever reason, scientific reasons, whatever. Then there has to be a question mark over them, so it's a further element of discipline.

Conservation measures need to deliver outcomes, maximum economic efficiency, and that's full economic efficiency, regardless of who picks up the tab, community or landowner or anyone else. If we can, as a society, achieve the same ends, the same outcomes, at less economic cost, that's what we should be doing - an equitable distribution of the cost of measures between landowners and the community. At the end of the day we're talking about a public good. Landowners are part of the public but they're only one part and there needs to be a fair distribution of that load between the individual enterprise concerned and the community in general.

That summarises TFGA's position, characterises it. I've then put a brief section in on the current regulatory framework and basically that's comes down to two pieces of legislation within the state and the EPBC Act at a Commonwealth level.

The next section is perhaps the most important, from our point of view, and we have five points in there. These are key points of comment and we'll come back to these constantly through the hearing. Firstly, the point that current conservation measures have a real financial impact, a commercial impact on farmers: it may be small, it may be large, but the fact is that it doesn't matter how minor they are, they have an impact.

The impact comes in various ways. I think there tends to be a lack of appreciation of these points in much of government and certainly the community, so the additional impact, the additional costs, can come as operational cash outlays. If you protect a piece of native vegetation alongside a pasture or an otherwise cropped

area and you have wallabies that live in the vegetation, they're not going to pass up the opportunity of a free lunch. You build in an ongoing operation cost of protection of the crop or pasture as a result. You can effectively prevent productivity improvements to the extent that clearing of a piece of vegetation is forbidden, the establishment of a piece of pasture is forbidden as well. This is not to say whether or not that vegetation is to be cleared but the fact is, if it belongs to a farmer and it potentially can carry crop or pasture, to maintain it as vegetation prevents that development.

Finally, a straight reduction in the asset value of a farm which is a reflection of both of those things plus others: to the extent that a farm is not developed to its agricultural capacity, its value is reduced on the balance sheets, and that has consequential impacts in terms of collateral value for borrowings, for a whole range of things, so that there is a real cost and it is current. What we are talking about then is scale, not kind - degree, not kind.

The second point: government cannot rely on a duty of care approach to securing conservation goals. There's an automatic tendency to do this because it saves state treasuries and it prevents the handout of cash from governments. Cash is never something that they have in excess. On the other hand, duty of care is very much by its nature, for a public benefit, an approach to getting an individual enterprise or individual to pick up the cost of that.

To the extent that the margins of duty of care are shifted outwards and more of the protection measures are included under that heading, the community picks up less of that economic burden and the enterprise picks up more. From the point of view of natural justice, there needs to be a great deal of discipline applied to that. That is I guess really central in our proposition at the end of the paper in the recommendation. It's not an easy one to deal with but it's not impossible.

The third point, the formula for compensation: having decided where duty of care stops and community uptake of the cost starts, we are now into the realm of compensation calculations or financial assistance calculations. One way or another, where community starts to pick it up, that has to be an actual pick-up and that has to be on a commercial basis, not on government valuation bases which are inevitably conservative.

Again it's not necessarily going to be an easy thing to calculate but it's done elsewhere.. Commercial agreements - there are all sorts of standard ways of arranging fairness, reasonableness, in the distribution of costs. There need to be process disciplines on governments in resolving issues. One of the easiest ways - and in fact it is used at the moment in Tasmania - is for governments to keep an issue in limbo, effectively stopping landowners doing what they seek to do by postponing

a decision, and we know from various examples - pieces of legislation, both Commonwealth and state and elsewhere - that the principle of time limits on government decision is established and the principle that if government does not abide by those time limits the decision automatically goes the way of the proponents. There are precedents, in other words, involved in putting process disciplines on government.

Finally, opportunities to streamline process and reduce costs. A lot of the frustration to landowners comes in point of process rather than in point of actual outcomes, or restrictions on property management. That's not to reduce the need for duty of care and limitations and the other points, but the fact is that process can be streamlined at no loss of effectiveness and with a substantial pick-up in efficiencies, economic efficiencies. I give two examples in there; both of them relate to the forestry sector in Tasmania and both are patently working. I'll expand on that word "patently" in a moment.

The first of those is the forest practices system as a whole. Basically that system came in 15 or 18 years ago and it has been embraced by the forest industry. My background is in that industry. It's been embraced because, in a contentious area, it's an approach to applying disciplines to industry which have been designed in a way which still allows industry to work efficiently. Forest practices officers are, in many cases, employees of industry but in that capacity they're warranted officers of the crown; they're disciplined and they're held under that discipline; they are audited and they can loose that privilege. Patently that system is working.

I am well aware that within elements, for example, of the Tasmanian Conservation Trust, there is a high regard for the effectiveness of the forest practice system, whether or not that would be said publicly, because the proof of the pudding is that individuals have sought to have that system expand its brief to pick up non-forestry monitoring and protection systems.

The second example is the private timber reserve system, distinct from the forest practices system - linked but distinct. As the submission says, that's a situation where a landowner is awarded the privilege of freedom from day-to-day constraint on how he manages land subject to his managing it in accordance with state conservation requirements. There is a win-win in it and that's why it works. The landowner is freed of detailed frustrations, the state picks up an undertaking which it is in the interests of the landowner to honour in terms of how that land is managed and then there is a conclusion and a recommendation.

MR THOMPSON: Thanks, Ian. I would like to just reinforce the essential points of the TFGA submission to this inquiry. The prospect of changes to non-forest native vegetation, particularly, are extremely daunting to farmers in this state. There

is suspicion, there is fear, there is nervousness. This is something new and farmers feel that they possibly could be subjected to some pressures for no real benefit. They asked the question: what are we doing wrong? Why suddenly is it possible that we could see land that we've used productively and responsibly for a long period of time either restricted or completely taken away from the farm enterprise, which it has been part of for a long time?

I think, in starting my comments, that is the background; that many farmers feel they are coming from. They're not sure what this means and moves to implement legislation which could affect their properties is something they are very fearful of. So any move to protect natural and cultural values on private land which will constrain the use of that land by the owner, must be fully justified. It's not acceptable to the farm communities to say, "Well, there is some legislation here. We intend to implement it and you, unfortunately, will be the person or persons who feel the effect of it."

In terms of getting farmer acceptance of the need for any change to the use of their land or the vegetation that's on it, there needs to be a carefully constructed and managed process, so that they understand there are some benefits in what is proposed to be done, if anything. Standing behind the statutory processes of land acquisition, just because it's there, will meet with very, very strong resistance from the farm community. There is a bank of knowledge there in the farming community that should be drawn on as part of that process, to bring them into any of the proposed changes. For example, in the midlands in this state and in other areas, farmers have used the native pasture for 150 years.

They would believe they have used it quite successfully and responsibly and that there is no need for any change, so they would want to see some justification which they could support, rather than have rules imposed on them, because the community believes that it is in their benefit. So I think that's the starting point for all of this in a farmer's mind in this state.

Ian mentioned the effect of change and a really important point that he made, and I want to reinforce, is that if you've got a smaller property and a large slice of your area is either restricted or taken out of use then that has an enormous effect. If you've got a large property and the percentage is smaller, the effect is not so great. I think there needs to be a lot of attention paid to the concept of duty of care because it's quite easy for the community to say, "Well, farmers have all of the responsibility and they should bear all the cost."

Farming is not, in many instances, a lucrative business. There is a lot of capital tied up in it. They are all small businesses. It needs to be clearly determined that the duty of care has a limited extent and beyond that point the community must assist if

there are to be changes. That's not just in terms of compensation, because farmers are not in my view, looking for compensation. It can't be seen as a fix-all. The implications of change on farm are far reaching and are not restricted to the farm itself; they flow on into the community manyfold and for the word "compensation" to be used as a simple fix - "Let's take the land out, or let's restrict its use, pay you some money and that will be fine" - no, that won't be accepted. The implications for the communities in this state, in which farmers live, and the state economy, are far reaching.

Compensation, if it's necessary, must be at a commercial rate. The community must share the cost. They must relate to a lifetime of property ownership. In other words, the income stream that would have been generated from the use of land as it stands at the present time needs to be capitalised, so that there is a realistic payment to the landowner if there are to be changes. The community must share that. The public good issue is something that we must make sure is shared amongst all of the community and not just the farm sector.

TFGA has a major concern with the prospect of local government involvement in the management of non-forest native vegetation. We are concerned because we don't believe that local government is resourced well enough to handle this. We believe there are major prospects of conflict of interest in local communities in dealing with this. The expertise that is needed to manage changes in a way that - as I've outlined - where farmers are involved, have ownership and the support is enlisted - will take a major effort. It's not acceptable to TFGA, in our view, to have that burden placed on local government. There needs to be a mechanism where that can be managed. I'll leave it there. Rob, you would like to make some comments, I think.

MR DOWNIE: Yes, I'd like to provide an example of my own property which has been caught up in some of these sort of conservation issues. The property was passed down to me through the family. It's predominantly native forest with some plantation that has already been established and some sheep and cattle operations. In particular I'd like to talk about a coupe or 200-hectare part of the property that was cleared extensively about five or six years ago with the view to establishing plantation.

This area was assessed by the Private Forest Reserve Program as being not suitable for their requirements at all. Since it was cleared it's been allowed to naturally regenerate, because I wasn't in a position to push ahead and establish the plantation - financially I was constrained - and now that I want to establish a plantation, it's classed as clearing, even though there is only regrowth about two metres tall.

It has been caught up in a moratorium put on by the Forest Practices Board, that says significant parts of it have got priority vegetation that needs protection. It didn't need protection when there was money available through the Private Forest Reserve Program, so it's not of a high enough level that they're prepared to compensate me for, but they want to bring in regulation to control my use of it. To my mind, that's in direct conflict or contradiction with the regional forest agreement, which was not that long ago, that said there would be no non-voluntary mechanisms brought into play that would restrict landowner's use without compensation being payable.

So I've made decisions about how I'm going to develop and operate my farm which are now constrained by a process that is unaccountable. It's not a high priority area for reservation, it's very marginal; it's been cleared; trees were pushed over so that there is no remaining stumps or anything like that. It was basically ready to establish a plantation. Of this 200 hectares, there's already 30 to 40 per cent of it which was not going to be established to plantation - it was riparian areas, it was landscape values or it was too steep and stony.

So there my duty of care was very significant already on this block - 35 to 40 per cent of the block was not going to be touched. But now I'm being told that another 30 per cent of it is locked up by this moratorium. There is no clear indication as to when that moratorium - the moratorium is an interim measure and what is the outcome for it? This level of uncertainty doesn't allow me to plan and develop my property in the manner in which I expected to.

Another issue that I'm a party to is that in my role on the advisory committee for the Private Forest Reserve Program I'm aware of a continuing conflict between the science and what the bureaucrats want to get from the process. As an example, there is a scientific advisory committee advising that program, which clearly said that production and conservation values can be compatible and that it would be cheaper to get land if you allowed farmers to get some productivity from it. I'm talking about grazing productivity, but also about harvesting timber from these areas. Going back to my own property, it was totally ringbarked in the 1890s. There's not a single tree on the property more than 110 years old. Yet we've now got productive forest and some other areas on the property are classed as having significant conservation values.

So selective logging and processes like that can be very compatible with protecting the environment and allowing the landowner some production. To my mind, that's a win-win situation, but in the midlands the grazing of the grassy forest types is a real problem for Environment Australia to come to grips with - farmers actually making a living from it and yet, as Brendan said, the farming systems have been operating there for over 150 years and these are classed as icon properties for

biodiversity. So what's gone on in the past has been very successful at maintaining that balance - in some situations it hasn't - but the rush to lock up areas and throw away the key and not have any ongoing management of them is a real concern to me.

The lack of commitment, once areas have been protected, to any long-term maintenance of those, it appears to me that it's going to continually come back to being the farmer's duty of care. That's unacceptable, I believe, for future generations to be expected to maintain and protect those values single-handedly when they're not getting any productivity from those areas. I recognise that the cost of doing that is very significant, and we seem not to have enough public funds to even manage our national parks the way everyone would like, but why should we be going out there and creating more private parks on properties that are going to be under-resourced as well? So I believe that if we can combine production and conservations, it's very much a win-win situation. That's probably where we need to go.

DR BYRON: Thank you very much, gentlemen. I've got a number of questions, and no doubt Warren has a few, too, but if I can start with a question that we put to other farmers and graziers organisations. You say you've got about 5 and a half thousand members. Have you any idea approximately how many, or what per cent, are affected by the native vegetation and biodiversity controls and how they're affected, or how much they're affected? I don't expect great precision, but is it 1 per cent of farmers, or 20 per cent, or 50 per cent or 90 per cent? Are they typically affected in a relatively small way in the sense that they make 5 per cent less income each year, or are they affected in a catastrophic way, that 80 per cent of their property is now of zero commercial value and they have become bankrupt? I'm just making that up, but can you give us a bit more feel about the extent to which this legislation is affecting your membership.

MR THOMPSON: Perhaps if I can have a go at that one, I think there's a wide spread of effect across Tasmania, and it would vary from district to district. Immediately, in the restrictions of the use of non-forest native vegetation you go to the Midlands area, where graziers are fairly heavily reliant on those areas for grazing sheep for the production of fine wool; you go to the islands, where restrictions on land clearing, development of properties - and that's been illustrated in our case study that we have put to you today - have a major impact. In the more highly developed areas of the state, across the north-western area, the effect would not be so great, but I think that farmers are unsure of exactly what this means. So to be able to say to you, Neil, you've got half the farmers in the state affected to 50 per cent - no, I can't give you the answer.

DR BYRON: I didn't expect that.

MR THOMPSON: But in grouping them, the graziers in the Midlands would face

quite a significant impact in the use of property, the effect on the viability of their enterprises, then the effect on the rest of their enterprise by damage from vermin and so on, if land was locked up, and the islands. So I think it's best for us to say, if we group them like that to give you a feel -the Midlands, the most likely the greatest effect - that's my judgment; then the islands and the north-eastern and the north-western tip; and the northern belt, which is the most productive per hectare in the state, I would judge is least likely to be affected on what we understand this to mean at the present time.

MR DOWNIE: Just a quick point. Due to the geography of Tasmania, almost every property - except for that productive northern belt on the north-west coast - has a bush block, or runs off into native vegetation of some sort. So almost every farm is going to be affected; it's the degree of threat that's the problem.

DR BYRON: Last week, there was a newspaper report where the Western Australian minister for agriculture was quoted as saying that he acknowledged that the current land clearing controls were in a bit of a mess and that some land-holders had been denied due process and natural justice, et cetera. But then he went on and asked I imagine a question that some of his colleagues had asked him: why should taxpayers pay farmers for not damaging the environment? Now, I think that's a question that we're grappling with in this inquiry, too. Any thoughts on that?

MR THOMPSON: I certainly do have some thoughts on that.

DR BYRON: I thought you might.

MR THOMPSON: A long-held view that I have is that farmers are probably the best environmental managers, and they've got more at stake than anybody else. The community has an overview of what they should do, but their living and income is not determined by what farmers do. A farmer's living and a farmer's income is determined by what they do personally with the land that they own and use. So I see, firstly, that there's no good reason for a farmer - in this state, at least - to be damaging the environment, because it will come back to bite him or her, or the next generation. I have a strong objection to the view that any farmers damage the environment intentionally, because it comes back and hurts them. I want to reinforce the view that I expressed in my comments that the community must share in the cost of changes to the environmental management on the farm, because farmers are not able to, nor should they be subjected to, the need to cover the cost of change for public good solely on their own.

I believe that they are managing their properties in this state sustainably, in the main and, if the community believes that there are things that should be done that are not normal farming practices, or are to improve what the community sees as farming

practices, the community must contribute, but it must be justified that that change is necessary.

MR WHYTE: Can I just add a comment there. Coming back to that question, it occurs to me that a key point in responding is the level of justice in expecting a landowner to pick up the entire cost of something like that, particularly where the rules have been put in place relatively recently and where an enterprise has been kicked off and developed with perfectly legal, legitimate and socially acceptable goals as little as 10 or 20 years ago - and 10 or 20 years is not a hell of a long time in the development horizons of an enterprise - where someone goes in to purchase a block knowing the restrictions on clearing and the rest, I have some sympathy with the view that it shouldn't be a cost on the community.

But I'd suggest that's quite a small minority of properties. Most properties are where people have bought, or have inherited or invested in a plan which envisages clearing in that case and, all of a sudden, they're cut off at the knees - that transitional element, that element of respecting investments and property rights of people that have done so in absolutely good faith, legitimate processes, and then finding the rules changed.

DR BYRON: My third question: the private conservation reserves that I think all three of you have mentioned, I was wondering to what extent you think this could be a model for how conservation on private land might be done in other states. Would you recommend it to your colleagues interstate? I can't help thinking, having had a quick look at the King Island case study, if the private conservation reserve system applied to that, what sort of outcome would it have thrown up there? Is it a way of sorting out areas that are of high conservation value and coming to mutually acceptable management plans?

MR WHYTE: I think it has quite a lot of applicability interstate. Without knowing the detail or the circumstances, I say that because what we've got within Tasmania is a reasonably sophisticated range of things. My reference to the private timber reserves was, in fact, to the legitimisation - making secure - of a process which allows timber harvesting and management for timber - in fact, that's a precondition for the status - but it has to be done in a particular way, and that particular way takes explicit account of threatened species within the block of stream, bank erosion and 101 things which come in under the forest practices code. So, if you like, it's a working reserve. That's at one end.

We're looking - and I think the state has accepted, and the commonwealth for that matter - at the same sort of principle of a working reserve being applied in future to non-forest native vegetation. Grazing in a customary way is seen as consistent with the maintenance of conservation values as that's developed. Towards the other

extreme is a system of quite voluntary reserves, which are now occurring in somewhat exponential numbers, under a program called the Protected Areas on Private Land, the PAPL project, with which we are one of three partners; the state government is one and a conservation organisation is a third. What that effectively does is give landowners the opportunity to have part of their land, or as much as they want, given the protection of legal covenant on title for maintenance according to a particular management plan - generally, that means with minimal, if any, disturbance. There might be a little bit of firewood removed but, if that happens, it has to be done in accordance with an agreed plan which is linked to the covenant.

Beyond that, you've got the private forest reserve program, which Rob referred to earlier, where for particularly valuable pieces of vegetation there are funds available. The difference between the two programs is that the latter is predicated on funding availability; the former is not. What I think that illustrates - and I think it's a very healthy set of developments - is a spectrum looking to protect the focus on values rather than brick walls round areas. It's a suite of options which go from working reserves, where you're looking to protect particular values but otherwise allow more or less income to be derived, to the other end where, for a larger community input - the private forest reserve - you can purchase entirely a block, make it crown land under that protection system.

Its relevance interstate depends a little on circumstances, but I am aware that Dr Mike Young who is still active in the area, 10, 15 years ago in forums where I knew him and had to deal with him there, was looking at exactly the same thing for leasehold range lands in the western parts of New South Wales, for example, with essentially the same thing: looking to arrange packages where land leases in that case or owners picked up something they valued and wanted in return for delivering something which government wanted and which, without strong landowner motivation, could be destroyed with the drop of a match on a hot summer's day.

DR BYRON: Good. Yes.

MR DOWNIE: Could I just make a few points there? The private forest reserve program has been quite limited for a few reasons. One is it hasn't appealed to the big influential landowners because the dollars haven't been significant enough, I would suggest, but it has tended to appeal mainly to those already - the converted, or those who had a very strong environmental bent to start with. Ian has mentioned a range of products available, and that is what's needed. There's another very good product. Greening Australia has been running a fencing incentive scheme in Tasmania, which has been very cheap to run, but enters 10-year management agreements.

One of the biggest costs for the private forest reserve program has been the cost of convincing farmers to put on a covenant in perpetuity. If you can give them a

range of options of different sort of management systems, your dollars will go a lot further, is what I'd suggest.

MR THOMPSON: I would like to just add to that. The observation from TFGA's point of view is that where landowners have participated in these projects to put aside land on private property, it illustrates the point that we made earlier that there's some ownership, and those landowners are quite proud of what they've achieved. That's a far cry from what many farmers believe is likely to be a process which they don't understand, which they won't have any ownership or involvement or input into; that somebody from the government is likely to come along and tell them that this area of land needs to be locked up, restricted and so on, and that will be done under a legislative process rather than some form of ownership. There's a clear difference between the two, and I think the importance of what's happened so far is that people have been willing to get involved; decide what they would like to do and they're quite proud of it, rather than the other.

PROF MUSGRAVE: Thanks, Neil. Thanks for your submission and presentation. We could I think go on all day just having a discussion with you, but unfortunately we have others that we could probably equally spend a lot of time with.. Just getting to PAPL, what you described implies a fairly high degree of negotiation between the administering authority and the landowner. That takes money. How is it funded?

MR WHYTE: The program very broadly has a budget, and please take these as indicative. Let me explain: firstly, the program was set up about three and a half years ago. It was funded as an NHT1 project, but because it has worked as well as it has, the three partners together have put in a proposal for an extension, and that has been funded, initially for a year, but with an in-principle agreement for three years, to take it to a stage where it conceptually reaches a steady state. What we've said to the Commonwealth is, "This is working well now. In future we want it to be continuing and we want it to be free of Commonwealth handouts. We may go along for project funding but we don't want it dependent on that funding. Help us jump the quantum levels, given it's going as well as it is, and in three years' time we expect to be off that lifeline and running it independently."

The budget, as it has been - we're just in the transition from PAPL1, if you like, into PAPL2, the transition stage - is of the order of about half a million dollars a year. Of that, around 50 per cent or two-thirds has been Commonwealth direct cash funds. The balance has been largely in terms of staffing and the rest state government in-kind contribution - a little bit of cash here and there, but basically in kind, and in-kind contribution from the TFGA. We house and support one of the two field officers and the bush heritage fund, which does the same in the other part of the state, in the south of the state. So it has been very much cash from the Commonwealth; in kind from the three partners, with the state government picking

up the lump of that.

What we're looking for is developing it to a point where it generates its own funds by one of the so-called revolving door mechanisms through probably the conservation, possibly with assistance from state or TFGA, but likely the conservation group involved, to have a system of working funds with ongoing in-kind contribution largely from state but otherwise from the others.

DR BYRON: Thank you.

MR WHYTE: I might just make the point: it depends very much on the quality of the negotiators, but the thing that encourages us is that it has gone in the first year or two from largely lifestylers, who you would expect to want to put their bush block into this sort of thing to, if you like, mainstream farmers, including a previous president of the TFGA, not for entire properties but because they have an interest in doing it for pieces of their land.

PROF MUSGRAVE: Thank you. Would it be reasonable to observe, as I do on the basis of your presentation, that reform of process is up there with the issue of cost-sharing?

MR THOMPSON: That's true, yes.

PROF MUSGRAVE: That's pretty consistent with what we're hearing across the - - -

MR WHYTE: That's right and the cost of process obviously is a large part of the cost of the exercise.

PROF MUSGRAVE: Also the fear and loathing that you referred to, Brendan.

MR THOMPSON: Yes. It's a natural thing when there's change and you're not sure what it means, and particularly if that change may mean an effect on your business.

PROF MUSGRAVE: Yes. Could we go back to two of the really fundamental issues you raise? One is the duty of care and the other one was the precautionary principle. Let's start off with the duty of care and we'll get to the precautionary principles if time permits. It's a fairly nebulous concept, isn't it, I think that there's a high degree of acceptance across the stakeholders as to the concept as an abstract idea that landowners have some duty of care. It's defining it and describing it that is the difficulty and how we might go about such a definition is not even clear. So you've got the definition and the process of getting the definition. Two problems

there.

In your submission you refer to the duty of care being "no greater than some absolute minimum of the impact of conservation". That's on page 5, I think. Could you enlarge on that a little, because that in itself is fairly abstract?

MR WHYTE: I totally agree with you. Having said that it needs to be strictly limited, it's not going to be easy to formularise in any way, but I guess in approaching that nebulous aspect, it is a little like sustainable development, isn't it? The same one sentence which is all things to all people. In approaching that, it seems to us that there are ways of guiding the thinking. Two principles which occur to us are firstly what you might call the principle of prior knowledge I was using in responding to the last point of Neil.

To the extent where landowners have owned and have planned a development and use a program - management program - before measures, legislation and regulation is brought into place, they have, I would say, a much more reasonable claim to compensation than if they had bought that property or developed their investment plans after the new rules were in place. If a property is sold let's say in Tasmania in the last year when legislation regulations have been in place well and truly for clearing, it's a case of caveat emptor. The buyer knows or should know what he can legitimately expect.

PROF MUSGRAVE: Line in the sand.

MR WHYTE: Exactly. That's a principle. That's not going to resolve the issue totally, but if you build that in, you can stratify some of the cases which are going to occur. The second principle is the issue of relative significance, and this is an example I used earlier on and Brendan referred to also. Where a measure has a drastic effect on an enterprise which otherwise has reasonable prospects, there should be much more of a case for compensation than where it's going to have a marginal effect.

Each of those comes in with its own sliding scale of where do you draw a line. When is prior knowledge not that and where, in terms of relative significance, is the divider? But at the end of the day, nothing simple in any area of social law, and there's no reason not to approach it that way. The third point perhaps, and this is used in contract law, as you will be aware, and various other situations, is the concept of some form of ombudsman, some form of arm's length directed arbiter on what is reasonable and what's not reasonable. None of those by themselves - and his brief or her brief would be to come up really to define natural justice in respect of particular instances.

That answers the question in terms of providing some of what we think might be guidelines, but there's no arguing that it's going to be difficult to pin down exactly a protocol for deciding reasonable duty of care. I guess one of the things that is going to have to be fundamentally as important is that you don't have one definition for one person and something else for someone else, so the definition itself has to be carefully thought out.

PROF MUSGRAVE: I would wonder about that. I wonder if I could just push you a little further on that. The last two of the principles you outlined; judicial de quasi - judicial in concept - and indeed they're consistent with some of the American rulings on nuisance and compensation nuisance with government takings of rights and so on, and that is one way of going. There's no doubt about it, but one could think of a more organic process involving the actual people who are involved in the situation.

Let me describe a hypothetical, once again abstract situation, where you might have say a catchment which has a catchment-managing entity which is community-based, and it enters into a commitment with the state environmental authority as to what the environmental biodiversity outcomes might be that are delivered by that catchment. Then it's left to that body to deliver those outcomes through negotiation with the landowners within the catchment, and that negotiation leads to a definition of duty of care for the individual landowners in the catchment, which could produce the situation which you said we should avoid where you have a differing - well, perhaps not a concept of duty of care, but differing dimensions, characteristics of the duty of care for each landowner.

MR WHYTE: It's an approach which bears analysis and thought. Two things occur to me. Firstly, to go to that sort of approach presumes a level of, if you like, sophistication within a group of that sort. My initial response is careful, cautious and to a degree with trepidation, because I see the word "kangaroo court" coming up in my mind. I think that just as the whole jury system you'll be aware, is being questioned in respect of particular kinds of court issues around the Anglo-Saxon world because juries are 12 ordinary people, and where you're dealing with highly sensitive issues, they may or may not provide the best protection to what is often going to be a minority of the stakeholder groups in an area.

I think there are risks associated with having negotiated outcomes because it presumes a degree of fairness, protection for a minority, and a level of resourcing; sophistication within the group. So it's not automatically attractive. Having said that, in some other areas it may work well. Let me give you an example. There's a strong feeling on King Island that two particular vegetation types, which are restricted by definition in Tasmania as a whole but which are quite widespread on King Island, shouldn't warrant that much. There should be more flexibility in their

management on King Island. What we are seeing there is the terms of reference which might be applied to particular regional groups, the sort you're talking about. At what point do state or Commonwealth needs restrain that? I think it's worth looking at. I think it has to be looked at very carefully, for those reasons, before it's implemented.

PROF MUSGRAVE: Indeed; so that the constitution of such a community entity, if it was created, would be of paramount importance.

MR WHYTE: Paramount, and the protocols within which they work. There have to be those protections against lynch mobs, at the extreme; kangaroo courts.

MR THOMPSON: Conflict of interest. If I can just give a quick example. In dealing, in the early stages - which we're at in this state - with water issues, it's been my observation that the most successful group to deal with issues in a catchment is those who live in the catchment, and provided that group is balanced and has some basic guidelines to follow - and "balanced" is really important in the group - then I think there is some merit in that approach.

Beyond the point of agreeing what's needed at this time, I think we also need to grapple with what happens after the initial, "Yes, we establish the group. We work out what is agreeable and needed in a catchment," for example. What happens after that? If a landowner finds that some of his grazing, for example, is restricted and he has to stand by and watch the wallabies and so on eat the grass, and the weeds take over what was supposedly going to be protected, that's not a pretty sight for a farmer to observe. So, as well as just what we need now in how to manage it district by district, for example, or catchment by catchment, what happens needs to include how things follow.

We can have a quick fix and it might work initially, but beyond that, unless we map out what steps are required, how it's going to work, you're going to get some very angry people in the future as they watch things, in my view, not improve but degenerate. I think we need to be mindful of that.

PROF MUSGRAVE: That's a very consistent comment that we have also encountered, so thank you for that. Last one: if we can turn to the precautionary principle, I think we will have to be a bit brief, but in your submission on page 5 you say that there's a need to control the precautionary principle. I was wondering if I could push you to be a little more precise.

MR THOMPSON: You can certainly push me. As a landowner I have observed this happen, again in water, where in terms of environmental flows for streams, this was the only measure put forward. Science, precautionary principle - overkill.

That's my view; not backed up by anything else. And there's a real risk, in managing non-forest native vegetation and grazing and so on, that this approach could be the priority. I will say to you that farmers will reject that, because there's a much more practical and balanced approach needed, which includes precautionary principle but is not solely based on it.

MR WHYTE: Can I add a second concrete example? My background is in forestry. In the late 80s, early 90s, I was quite strongly involved in the implementation of national estate protection areas and arguing the toss within Tasmania, and almost the worst examples of precautionary principle that I have witnessed in this sort of area came with that. Examples are that a lot of the national estate areas then - and this is the late 80s - in Tasmania related to threatened species of one sort or another, and the nature of threatened species and rare and threatened species in particular is that you don't know where they are, and I know that a lot of the nominating process there was on a small-scale map with a pencil on quite a large area - "We know it's there. We need to look after it. This will do." What you get, depending on who the specialists are, is arguments over where you put the pencil line and nothing much about disciplining the process. It's quite understandable, as a tendency, to overprotect, particularly where you're not picking up the tab, so it needs a discipline on that. That needs to be, I guess, scientific and interpretive.

PROF MUSGRAVE: So once again you see the precautionary principle as being relevant, but its application - once again it's a question of process?

MR WHYTE: Process, justification, yes. By its nature, precautionary principle assumes you don't know. That's why you're taking precautions. On the other hand, you can overplay that. You have to be able to justify values at the least, yes.

PROF MUSGRAVE: It does say you don't know, after very considerable investigation, and also assessment of the implications of its activation.

MR WHYTE: Exactly, and assessment of the implications of likely management impact.

PROF MUSGRAVE: Indeed.

MR WHYTE: That was a major weakness, for example, in national estates. If you look at the appeal provisions, such as they were, in the national estate system, you could argue the presence or absence but you couldn't argue likely impacts. That was thrown out, and yet likely impact has a massive bearing on the whole concept of threat.

PROF MUSGRAVE: Indeed.

DR BYRON: To follow up on that, I can't think of any formulations of the precautionary principle that say, in effect, "Well, we're not sure, therefore we'll lock it up and forget about it." Every precautionary principle formulation that I am aware of talks about this being a provisional decision while more research is done to remove that scientific uncertainty.

MR WHYTE: And then you come straight back to process issues. Some of the nominations for the national estate - coming back to concrete examples which illustrate a point - those nominations were in that form, nomination form, for 10 years. The fact that it's simply a case of resources relative to task - and, by their nature, getting the additional information is not going to be easy because you're dealing often with nebulous issues there.

DR BYRON: But given all that, can you suggest how governments and landowners deal with that uncertainty? If we all agree that the protection and conservation of rare and endangered species is very important, we are trying to think of some process, given that if they're rare and endangered, by definition there are very few individuals out there and we're not sure where they come and how often.

MR WHYTE: Yes. A concrete example which I think has worked very well is the forest practices system. What happens there is that governments - and this is in respect of a particular sector and suite of potential threats - have resourced, with some very good specialists - which is funded by contribution but managed by government - specialists in respect of threatened species; plants, animals and so on. In other words, the approach that's been taken is to cast the net and paint in pink those areas where a particular threatened species is known to occur, such that if you want to do anything in there you can't necessarily not do it but you have to bring in an expert system of one sort or another and do a far more detailed - so it's a stage, it's a graduated response, which comes halfway between. It's a modification of or it's a lesser-impact form of precautionary principle. You've got a response for which a prerequisite is the resourcing, and sign on and auditing, and all the normal systems that you have.

MR THOMPSON: Neil, if I can just add something to that. From a farmer's point of view I think that the precautionary principle again frightens people. What are you trying to achieve? Are you trying to take things back to pre-white settlement? Are you trying to take things to a point where agriculture, productivity and the environment works together? I think that's really where we're going. So the precautionary principle has a place but it needs to be measured against what you're trying to achieve. If you say we want to go back to pre-white settlement, well, you will have a precautionary principle which is out of all reason. If you say we're going to achieve a balance here, then you will have a precautionary principle which is not

nearly so onerous, and I think that those things landowners can live with, as long as they understand it and so on. So how you apply a precautionary principle, what you're trying to achieve, is important, and in the issue that I have mentioned about water, it was way out of whack. It was almost back to pre-white settlement. It was seen as the environmental flow that was required in the stream compared to what was reasonable to achieve over time.

DR BYRON: I guess what many people have said to us in our other public hearings is that there is concern about the science underlying the imposition of land use controls and that people are not perhaps convinced that there really is a problem or that the controls that are proposed would actually solve the problem, which comes back to one of the first points that you made: that the measures should actually be effective and cost-effective.

MR THOMPSON: And justified.

DR BYRON: And minimise the cost and then argue about how to bear those costs. But I think one of the most upsetting things for a lot of other people is that areas are classified as potential habitat for a rare and endangered bird, and landowners will say, "Our family has been here for 120 years and they've never seen one" - that sort of argument. So, very briefly, it seems that the science underpinning the decisions has to be as good as we can get it, and that's why your forest practices example, Ian, seems to provide a mechanism for progressively finetuning the science as we home in on that.

MR WHYTE: I think that's correct. A further point is that science almost certainly by practice - maybe not by definition - tends to focus on the risks, the threats. You very rarely get PhDs on how you can log or farm so that you protect the particular orchid concerned. What you tend to get is more and more PhDs and postdocs and everything else on the needs of that orchid and where it actually occurs and what other species are there, rather than how you can deal with it. The parallel which occurs to me is greenhouse, leaving aside issues of the scale and the reality of it; that doesn't matter. The fact is that 90 per cent of the money going in to greenhouse research is how to stop it rather than how to accommodate it. It seems to me there is a degree of imbalance.

One of the strengths, I think, of the forest practices system - and I've been concerned with it for a long time - was a program of research which wasn't publicised necessarily widely but which was genuine high-quality research, done by a range of entities outside the forest practices system, looking at the specific dimensions of particular values in the context of particular threats: how could you do things to minimise impact, keep it to some sort of adequate level, rather than simply finding the values themselves. I'd add that on to that. Good science has to be

the fundamental prerequisite for this. Always there's going to be an element of precautionary. It has to be disciplined, and the resources have to be put into both grading the response and doing the extra work in addressing particularly how you can do things and whether you can do them, rather than what breakables there are in there.

DR BYRON: I think we're going to have to conclude, gentlemen. Any final comments that you'd like to make, to wrap up?

MR THOMPSON: Ian is just suggesting that we go through the final page of our submission, our conclusion and recommendations. Our recommendations are that:

> The Tasmanian and Commonwealth governments, together with those of other states, should initiate a review of the way in which conservation measures relating to native vegetation and biodiversity values are implemented, with special reference to establishing how the economic cost of conservation measures can be reduced, fair limits to the application of duty of care obligations on landowners, a fair approach to calculation of compensation where obligations are imposed on landowners beyond duty of care levels, and strict obligations on government to provide clear and timely response to landowner queries, with the default situation being that the landowner is able to undertake the proposed action.

MR WHYTE: I guess you might say that that addresses the issues raised by the other commissioner there: that we don't know the answers but it does need an in-depth - that's not to belittle in any way this inquiry, but this inquiry would logically be exploring a priori a lot of the sorts of issues which would go into that. But it's not something that's going to be generated quickly. It needs analysis along the lines of the issues that you raised earlier on. How do you set effective limits around precautionary principle and duty of care without removing the values which those support?

MR THOMPSON: I'd like to add to that by saying that, as always, the detail is difficult. You can agree on the principles, but getting the detail and making it work in practice is the challenge, and that I think is the next step - the detail, how it's going to work - so that there can be ownership and sharing in the decisions that are made rather than a legislative approach.

DR BYRON: Thank you very much, gentlemen.

DR BYRON: I now welcome our next participant. Could you introduce yourself and your affiliation for the transcript and then summarise the submission, which we have both read, and then we can discuss it. Thanks for coming.

MR GRAHAM: Thank you, Chairman. My name is Alistair Graham. I work for the Tasmanian Conservation Trust which is the premier statewide conservation group in Tasmania and performs here in Tasmania the same kind of function that is performed by the rather larger conservation councils in the larger states. I am also on the National Biodiversity Advisory Committee set up under the Environment Protection and Biodiversity Conservation Act to advise the minister on biodiversity matters relevant to the act and, like Rob Downie, I'm also representing the Tasmanian Conservation Trust on the advisory committee for overseeing the implementation of the private forest reserve program here in Tasmania as part of the implementation of the regional forest agreement on private land.

I also have some - more than a quarter of a century of experience in dealing with nature conservation issues at all levels from local to international, and was significantly involved in the creation of the Convention on Biological Diversity which was the basis for the Commonwealth's articulation of its responsibilities under that convention in the Environment Protection and Biodiversity Conservation Act.

Mr Chairman, I noticed in your introductory remarks you said we could have an opportunity at the end of the day to comment on some of the matters raised by other submitters. Does that opportunity also exist as we go along?

DR BYRON: Yes. You don't have to wait till then.

MR GRAHAM: Thank you.

DR BYRON: But the clock is ticking.

MR GRAHAM: I think the most important point I wanted to make is that we've been banging on for a long time about what ought to be done on private land for biodiversity conservation purposes in Australia, and in our submission we refer to what we regard as some of the more seminal and important documentation. I think one of the major points we wanted to communicate to the Productivity Commission at this time is that we think this is the time when the commission needs to get seriously focused on some really concrete suggestions to the Treasurer and the Commonwealth government about how to move on, how to actually get some programs together which are really going to deliver on the ground what we want to see happen.

As I know, it is no news to you, but one of the most exciting things which I

think has happened in this respect in recent times is the development of the Wentworth Group. I think it's a matter of public record that a group of Australia's foremost scientists and experts in the area of natural resource management were moved to act by yet another articulation of inappropriate strategies for development articulated by radio shock jocks and others who had opinions about which they knew nothing, and I think the resultant climate is remarkably different - that is to say, I think there is a climate of acceptance that there are some real problems out there that really do need addressing and here's a good framework for doing it. I think one of the most remarkable things about the Wentworth Group's proposals is that they do clearly recognise that the burden of making change needs to be shared throughout the community, and that is one thing that the Tasmanian Conservation Trust would like put on the record.

We believe there are two reasons for this. One is that it is only natural justice. It's the right and proper thing to do. But also, politically, if that's the price that has to be paid for action, then let's pay it, and I think we want to be profoundly pragmatic about this - that is to say, we need to do whatever it takes to move things on to get the measures in place that we can get general agreement on what needs to be in place in order to deliver sustainable outcomes. One of the points I want to make, having listened to the TFGA just now: while many land-holders I think are of good intent with respect to proper management of their land, I think it would be inappropriate to assume that that's where adequate knowledge rests with respect to what to do.

A wonderful local example of this is that when Landcare was first being rolled out in Tasmania there was a wonderful model in the foyer of the Primary Industry offices in Launceston about what a good property looked like and what a bad property looked like if you ran Landcare across it. Unfortunately, almost every measure that one would take to tidy up your land in order for it to be neat and tidy and good would have been counterproductive for biodiversity conservation. In other words, within the farming community, with all the will in the world, the conventional norms about what is the good and best thing to do is not necessarily the right thing to do for biodiversity conservation and in many cases can actually be profoundly antagonistic.

Another good case in point is that when it comes to removing snags from streams - many farmers have great difficulty resisting the urge to tidy up their streams but forget that this is prime, necessary, essential habitat for crustacea, including some of our most endangered freshwater species in Tasmania. In other words, there is a real need to put together what we know with what we care about in order to deliver a culture that not only cares but is adequately informed and adequately focused on doing the right job.

We noticed with some nervousness in the Productivity Commission's earlier

report on a full riparian lease that the Productivity Commission expressed a view that self-regulation was a good way to go. The trust would like to put on record its strong, informed dissent from that view, and I'd like to expand on that a little. It's very much our view that we need to have a good regulatory system underpinning whatever the operational norms are - that is to say that ultimately, as the TFGA were saying before, the caveat emptor needs to be real - that is, when you're doing due diligence on a proposal to buy a property or to change your management regime, it's necessary that you can go through the formalities of working out what those obligations are. I'd like to come back to how we can improve that system, but ultimately compliance with the law of the land should be regarded as a necessary prerequisite for getting the basic bottom-line framework for doing the right thing. At the moment that's not possible to be done.

The other one is that, in our experience, self-regulation doesn't really work too well, and I notice that the trust's name was used in vain by Ian, who is traditionally rather mischievous in these things. The Tasmanian Conservation Trust does not think the forest practices system is good. The fact that I don't have privilege from defamations prevents me from expressing my views on this matter, but let it suffice to say that it would be top of our list to fix to get proper decision-making in this state if we could remove the series of exemptions from the planning and environment laws of this state that put the forest industry in particular, but also the mining industry and the aquaculture industry, in the most amazingly privileged position in our society, which we regard as totally unacceptable and, for as long as that regime exists, it's unreasonable to expect sensible, sustainable resource management strategies to play out in Tasmania, and we refer to that in our submission with respect to Tasmanian issues.

Our experience with the forest practices system is that it's notional persiflage and doesn't actually deliver the outcomes that the wider community wants, and this is formalised by exemptions. As you will probably have noted, section 38 of the Environment Protection and Biodiversity Conservation Act formally exempts those activities carried out in accordance with the Tasmanian RFA from coverage of that legislation. What could be clearer to the wider community that the forest industry doesn't have an interest in complying with the sustainability norms that the rest of the community faces and, as I say, this is something that needs to be fixed and we very much urge the Productivity Commission to give serious attention to this.

One of the most important areas where I think the room to move forward exists is in the area of environmental management systems. We've all talked about duty of care and best practice till we're blue in the face, in countless fora. It is our view that there are some significant principles that we can sort out to help us take things forward. The most important one is that an appropriate environmental management system is one that gives assurances with respect to outcomes rather than processes.

EMSs were principally designed to certify the coherence and deliverability of internal management systems in order to satisfy people that organisations were coherent.

That's very nice but it doesn't actually say anything about outcomes. It only says that the organisation has a reasonable chance of delivering the outcomes it says it's going to deliver. For natural resource management we need to go beyond process certification to outcome certification, and this can deliver very different things, depending on who's asking what questions. I think, as we've all come across, there are countless entities out there in the marketplace who are seeking assurances of deliverability, to one extent or another, of producers, and I think it's very much the view of the trust that this offers enormous scope on how to move things forward.

For better or for worse, it remains our view that the pressure to comply with market expectations is actually far more effective at grabbing the attention of land-holders than government regulation or government policy. This we regard as unfortunate but observably true, in our experience. In other words, land-holders are far more attuned to adverse market reaction to their doing something that markets don't like than they are to adverse reaction from the wider community. That's a reality that we live with, regrettable as it might be, and I think the potential to use that reality, that is the sensitivity of land-holders to their markets to develop a real environmental management system, that can deliver what we want.

The political framework for doing this we think relates to being a little more gentle with land-holders with respect to duty of care. Classically, duty of care has meant, well, if we've got a law or something, then you have to comply with it at your own expense, and that is classically true and it has some logic to it, but we don't think it's fair or prudent in terms of trying to bring the land-holding community with us to where we want to be. In other words, where we want to be is best practice - that is to say, we can say here is a landscape where, if we don't get out management right, we're going to get salinity to be a problem. The only problem is that it's land-holders at one end of the catchment whose behaviour stuffs it up for land-holders at the other end of the catchment.

The same thing applies for many biodiversity issues. What one land-holder does in one place can actually interfere with the capacity of another land-holder to do the right thing in another place. In other words, under many circumstances it's not possible for individual land-holders to meet their biodiversity duty of care on their own property. In other words, we need to breed a culture of collective responsibility, and to do that I think we need to be very gentle on the land-holding community with respect to what we expect them to do without support, help and assistance from the wider community, and the political deal to do that I think is to seek to get agreement on what best practice is: what is it that our own local communities want, that our

own governments want through regulation, that our markets want through their own retail customer pressure? What is it that they want and how do we deliver it, and that I think is the challenge that faces us.

Certainly on behalf of the trust and our peers, I can say that we are prepared to go to whatever lengths it takes to marshal the resources to make that broad political contract so. In other words, if we can get the land-holding community to commit to delivery of best practice, marshalling the resources to make that happen is something that we think, if we can work together, we can deliver.

With respect to delivery, the issue of how we're going to fund this is live around the country and we are conscious of not wanting to prejudice, while encouraging, that debate and, hopefully, resolution. In our view, we need an outcome whereby the community through its governments provides two kinds of support for land-holders. As the TFGA has been saying, the same responsibility will play out differently on different properties, and taking a thousand hectares away from a small property is a much greater thing than constraining the use of a couple of thousand hectares on a bigger property. That's a predictable reality.

What we would like to see is a framework whereby we could have a structural adjustment find, where if we can get community agreement including the land-holding community that these kinds of changes are necessary in order to maintain and manage landscapes of biodiversity conservation, then some properties are going to go submarginal and uneconomic, and the right thing to do is to compensate them - sorry, "compensate" is not the right word, but help them out of the industry. This is something that's happened with the textile industry, the car industry; it's happened with other sectors of the rural sector; it's about to happen with the sugar industry.

This is a perfectly normal and ordinary thing for the Australia community, and it's our submission that it's an appropriate approach for the enormously important thing of ensuring sustainable landscapes and biodiversity conservation across Australia. If the community at large thinks this is important, then governments have an obligation to make it so, and we all have an obligation to make it fair in doing so.

Additionally, we think there is a need for what we call, for want of a better word, "land-holder support funds" - that is to say, whatever the land-holding community is on the land at any particular point in time, the wider community has a very significant responsibility to assist them in maintaining the viability of their operations while meeting biodiversity and landscape conservation outcomes that the wider community has set, and we're talking about setting these in very concrete terms as the TFGA referred to.

There is a scattering of these programs around already, and many many more have been referred to in different councils, different regions and different states across Australia through the various reports, which we referred to in the introduction to our submission. We're not short of ideas about what to do, what we're short of is packages where we have real political contracts that actually do something.

In terms of funding these funds, we want to suggest that we do need an environmental levy; just what should be levied, we would like to see remain an open question for some time to come because, as I said before, we accept absolutely that the responsibility for martialling the resources to do the job that the wider community expects is something that all elements of the community have to take some responsibility for. As we have suggested, we thought it might actually be a really good subject for a future inquiry for the Productivity Commission - to actually come up with some concrete measures to put to government about how that balance should be set. Because of the nature of the current live debate, the Conservation Trust, along with our peers, is inevitably in a position advocating that. The land-holding community and the producer community should bear their fair share of the task but, as we said before, we accept that somewhere along the line the rest of us, as citizens and as consumers, bear some of that responsibility.

One of the key issues we wanted to bring to you as an emerging and, in our view, largely ill-considered issue is climate change. As you heard from the TFGA just now, there is a significant dearth of attention being given to what to do with the inevitable and inescapable impacts of the past behaviour of our industrial society that we currently enjoy the benefits of. I would disagree with Ian in terms of what the money has been spent on. In our view, far too much time has been spent by CSIRO scientists trying to overly prove that the greenhouse effect is with us in defence of various sceptics' arguments that it's all just a bit of a greenie plot. In our view, there has been a very significant skewing of public research resources to proving that the effect is real to a much higher standard of proof than is warranted to justify action by the community. This is a wonderful example of the precautionary principle at work.

We are way past the point of action and, in our view, the priority now is to redirect those research resources to what kind of impacts we can predict on the basis of what we have done in the past. It's got nothing to do what might or might not happen if we sign the Kyoto Protocol, or get into technology improvement strategies, which we dearly hope might happen. But irrespective of that, we can now reliably predict, with a level of uncertainty - these are not things that are sure, like if you kick a brick it will hurt, these are things that can be predicted with sufficient certainty to justify collective action, because the impacts are going to very significant.

To take but one example, for instance, the likely warming effects in terms of increases in mean minimum monthly temperatures in the gulf country in outback

Queensland are going to be several fold more severe than impacts in other regions only a thousand kilometres away. In other words, there are some parts of Australia which are going to become unfarmable with existing strategies in our lifetime. Places like Tasmania are probably going to escape, luckily, serious early impacts, but other areas won't. We know these things with enough certainty to act. As I said in my submission, through my work with the Biodiversity Advisory Committee I have been involved in trying to bring these issues to the attention of government a little more rapidly than otherwise would be the case, and we would commend to the Productivity Commission that it should give some consideration to this issue.

As I referred to earlier with respect to the situation in Tasmania, the removal of exemptions and getting everybody to play by the same rules is the critical issue for us. With respect to the forest practices system, I have indeed had conversations with senior management of the Forest Practices Board about how the system should be improved, but what we regard as constructive attempts to move things along collaboratively should not be construed as support for the status quo. One of the significant issues that bothers us is that indeed - as Ian pointed out just now - many of those involved in compliance and enforcement within the forest practices system are actually working for organisations which are actually being regulated by the system. No-one should expect good results from a system like that.

Our views about compliance and enforcement are just as gloomy, negative and antagonistic as one would expect from such a self-regulatory system, and we urge you to do a bit of a reality check on the nice notion of self-regulation. Self-regulation only works well when the operators are actually committed to the outcomes. We don't have operators committed to outcomes in Tasmania, as you can see from their propensity to maintain exemptions from rules, regulations, standards and objectives that other people live by. This we regard as an open and shut case. If they really wanted to run a self-regulatory system, where they were committed to outcomes, then they would be comfortable to operate within the same rules as the rest of us.

When I was discussing this with the Forest Practices Board, the issue the trust explored - and, in articulating this, any kind of commitment or support from the Forest Practices Board should not be inferred - was harmonising what we want to do with local government planning schemes, and it is a very difficult issue. At the moment, with respect to forestry, which in Tasmania is most of terrestrial land use - and we're dealing with land that either is forest, woodland, or would be under natural circumstances - what we proposed doing was trying to get the information base that is already held within government, within the land-holding community and within industry, into coverages - that is to say, articulations of information in maps and information bases that can be delivered through local government to private land-holders.

We have an enormous amount of information held in such a way which at the moment we are simply not readily able to communicate in an admissible and useable form. There are things in train in Tasmania that will improve that, but things move awful slow here in Tasmania. We got a promise out of the state government before the election before last that threatened species habitat information would be provided to local government for their use in advising developers putting in development applications. That information is still not available for that use. It's hard to explain to outsiders just how hard it is to get systems in place to make information work in Tasmania.

Conceptually, if we can get that information made readily available to potential developers in a facilitatory way - that is to say, existing land-holders, or potential purchasers or property having ready access to information, where they can see what the potential biodiversity conservation load is on their property, or the property they're interested in - we've gone a long way to starting to sort out the issues. So many times the trust comes across well-meaning land-holders, who genuinely believe that they are doing the right thing by the environment on their properties but who simply don't have access to the information, whom we think on mature reflection would come up with a different conclusion from those farmers. If they had that information, they took their attitude through that information, they would come up with some very significant notions about how they might change what they're doing on their properties. If we can put that information base together with an EMS system that reflects marked expectations and the expectations of local communities, we think we'd have the framework for actually moving along here. That's all I wanted to say by way of preliminary remarks.

DR BYRON: Thank you very much, Alistair. Warren, would you like to go first this time?

PROF MUSGRAVE: Sorry, Alistair, I thought that was just a pause to take breath before you went on to your - - -

MR GRAHAM: It was, but I'm hoping for some good questions.

DR BYRON: Otherwise, you'll just have to bring it up at the end.

PROF MUSGRAVE: Thanks very much, Alistair, for your thoughtful and thought-provoking submission. You make a number of suggestions on issues that the commission could address. We're very grateful for that, but I wonder if the Trust would be able to go a bit beyond that in relation to a number of them. For example, you suggest that the commission devote attention to the organisation and delivery of geographical and social scales greater than the individual property - that's the

organisation and delivery of the management of environmental services, I think I recall. That relates to some of the discussion we had with the previous witnesses, and I wonder if the trust has any thoughts on the track down which the commission might go in thinking about this.

MR GRAHAM: Yes. The big issue here for us is what the Environment Protection and Biodiversity Conservation Act does in all this. In our view, the Environment Protection and Biodiversity Conservation Act is a really important opportunity to set some national benchmarks and bottom lines about what the wider community expects, and this should drive developing a very substantial information base. With a bit of luck, heritage will go on as an initial trigger under the Environment Protection and Biodiversity Conservation Act, which will be the last of the seven issues of environmental responsibility where all governments agree that the commonwealth has primary responsibility.

The 1997 COAG agreement identifies 30 issues of environmental responsibility that are shared between state and commonwealth governments; getting some articulation of those issues nationally is really important. As I say, six are already reflected as matters of national environmental significance under the EPBC Act; there should be seven by the end of the week, and there are a number that are coming along. Greenhouse will, sooner or later, become another one. Genetically modified organisms, there is a national approach for this which is somewhat less than a trigger under the EPBC Act. Land clearing is coming through as an issue, and water is an issue. We all know these issues are coming forward.

I think the commonwealth has an enormous responsibility to ensure that the way these issues need to be played out on the ground as they get further up the list of commitments by the commonwealth is a very important issue. In other words, we can see the land clearing issue coming up the agenda, but we can't see a coherent commonwealth approach to how the commonwealth would expect that agenda to be played out across the country, and it's left to anecdotal processes to do that. But right now we have enormous breakthroughs in Queensland, an enormous breakthrough in New South Wales and hopes of a breakthrough here.

If we take Queensland and New South Wales as examples, both those processes, which are seriously stakeholder buy-in, collective exercises, are effectively run from an information base that had to be cobbled together at the time. Even right now, those processes cannot be adequately informed by information about what the commonwealth thinks are the obligations of land-holders under the EPBC Act. We think that's a most unfortunate situation. In other words, we ought to be able to articulate now what implementation of the EPBC Act means and to be able to forecast what it's likely to mean.

For instance, the recent national land and water resources audit of biodiversity in Australia identified some 2800 threatened ecological communities and assemblages in Australia. In other words, the messages are coming through very clearly, from our conventional audit and assessment processes, that we have a big problem out there, but there is no coherent process from articulating that problem to translating it into what it means for people on the ground. In our view that needs to be sorted out.

It's a fairly routine information management exercise but no-one is really focusing on it because it obviously does have political and financial implications - like, it's a touchy area. But in our view it's time to actually get serious about this and accept some of those political sensitivities and get on with the job, because from our point of view nothing can be worse than the status quo where you have land-holders who think they are doing the right thing, who simply don't have the information to do the right thing. That situation has to be fixed as a matter of dire urgency.

Another issue is the conventional issue of Commonwealth-state conflict on these things. While the Commonwealth is asserting significant interest in environmental matters, the states quite rightly assert responsibility for land use, as the constitution provides for. This is reflected in all kinds of entrenched jealousies and ways of doing things between agencies which can best be described as somewhat unhelpful. In our view one of the things which the Productivity Commission could well give some time to is how the national obligations that one can see coming through from the development and implementation of the EPBC Act can best be harmonised with the obligations that exist through the development of comparable state legislation.

Those of us who are involved in the development of the EPBC Act very much hoped that that would be the case. In other words the EPBC Act would set benchmark norms across the country and would help state governments in meeting their obligations on the same issues. We're a long way short of having achieved that.

DR BYRON: Do you therefore anticipate that state legislation will emulate, if not duplicate what the EPBC Act does?

MR GRAHAM: In most cases the duplication is already there. It's not the legislation; it's the function. For instance, there is no functional point in having a different set of rules for what constitutes a threatened species or a threatened community. But, for instance, in Tasmania our domestic threatened species legislation doesn't recognise the notions of threatened community, whereas at the national level we do. In other words, we risk the very real prospect that over the next year or so it will be an offence under Commonwealth law to clear some threatened community that is recognised under Commonwealth law, but is not recognised under

state law and may actually even be exempted from - those posing the threat may actually be exempted from state laws.

As I'm sure your are aware, foresters are also exempted from the provisions of the Environment Protection and Biodiversity Conservation Act. But that aside, discontinuities can be predicted for the foreseeable future and, to some extent, with different administrations that we have in Australia. This is a reality we have to live with. Life will always be like that. Clashes between administrations will not go away, but we think there is a very significant responsibility on the part of the Productivity Commission, given its wide-ranging brief in these matters, to actually articulate how best these things should be taken for Australia as a whole. In our view, harmonising is really important. That is to say, what is on the list for special consideration at the state level should also be on a list for special consideration at a Commonwealth level, so the Commonwealth is supporting what the state tries to do. If there is a hole someone needs to say, "This is a problem that needs to get fixed."

PROF MUSGRAVE: Could we push you a little bit in relation to that. Actually, my next question was going to be whether you felt that the objectives of legislation, as they currently stand, are adequate. I think I know what your answer to that would be; that there could be some improvement.

MR GRAHAM: No, the objectives of the legislation are fine. Is that your question?

PROF MUSGRAVE: That would have been my question.

MR GRAHAM: No, the objectives we think are okay. But the legislation is designed to be a live animal. That is to say, new matters of national environmental significance can be added at any time. In other words, it foreshadows the reality we live with, which is from time to time different issues will pop up that need addressing by governments. The vehicle to address it is there.

PROF MUSGRAVE: Okay, so they're fine and they are fine for operationality; it's the operationalising that is where you are concerned.

MR GRAHAM: Very much so. I think there's no doubt whatsoever that the Commonwealth remains a bit aghast at the scale of the task involved in getting this information out to land-holders, and at taking on the responsibility of ensuring compliance with the legislation. We have an enormous way to go before there is any reasonable prospect of saying that the Commonwealth expects full compliance with this legislation and can ensure such compliance.

PROF MUSGRAVE: Okay. Your colleagues in the Australian Conservation

Foundation have raised with us their thoughts of a process for negotiation of outcomes between the Commonwealth and the states, which builds on the structures that were pioneered by the National Competition Policy. I presume you're familiar with that.

MR GRAHAM: Only in passing. The documents were too thick for me.

PROF MUSGRAVE: I was going to ask if you had any thoughts on that.

MR GRAHAM: Certainly from the point of view of the Trust and our colleagues, we have been delightfully taken aback at the way in which the national competition policy has made the proper use of water resources in Australia a real issue. There is no doubt whatsoever that the application of strong policy, strong law and serious principles - - -

PROF MUSGRAVE: And money.

MR GRAHAM: And money - serious principles has had a big impact. I think that is one of the reasons why we feel that law is really important. In order to precipitate real debate about how we are going to fix these things, the land-holding community needs to be able to see in concrete real terms what the government expects of it. It can't do that on biodiversity conservation at the moment. We would dearly love to see a situation where those factors of stick and carrot are similarly clarified for biodiversity conservation.

PROF MUSGRAVE: The ACF people, though, seem to have in mind a process separate from the National Competition Policy, but borrowing from it. Do you understand that?

MR GRAHAM: Yes, although I think, to be fair, water is a lot easier when you're talking about a resource which is well known and understood from a commercial utilisation point of view. Dealing with biodiversity conservation is profoundly more complicated and I think we need to be gentle on ourselves about how we take this forward - that is to say, you are not going to fix this with a big inquiry. What we need is some strong bounds and some good processes and some genuine buy-on by all stakeholders for a process which is going to take a long time. For instance, the first issue of fixing land clearing - that is to say, stopping doing the things which everybody knows are calculated to do as much damage to natural biodiversity as you possibly can, as in that's why you do it, to get out of the way so you can convert it to commercial use - even getting those primary no-no things sorted, taxing us to the limits of our political resources in Australia, the task should not be underestimated.

PROF MUSGRAVE: You seem to be laying considerable emphasis on the

Commonwealth providing landowners with adequate information and advice in relation to the pursuit of environmental goals. That must be terribly important, but some people suggest that the problem lies not so much at the level of the Commonwealth or relations between the Commonwealth and the states, so much as our failure to create robust institutions at the lower levels, still below the states, at the levels of communities, regions, catchments, institutions which would enable the effective delivery of desired outcomes. In other words, I'm suggesting that your emphasis while appropriate is inadequate.

MR GRAHAM: Yes, sorry. As we said in our submission we rather warily will support and - - -

PROF MUSGRAVE: That's one of the jobs you gave us to do, I think, to pay attention to that, yes.

MR GRAHAM: Yes, and as the Trust will - like the business of trying to develop regional delivery mechanisms for natural resource management is something the Commonwealth is keen on and, as you say, follow the money - it is really important. But the problem is there has to be clear articulation of what it is that is supposed to be delivered. Speaking a little bit out of turn, as a member of the Biodiversity Advisory Committee, we've expressed extreme concern to Environment Australia, who service the committee, that the Commonwealth is not ready to support regional delivery. It's simply not capable of articulating to regional communities what it wants.

We got the chairs of a bunch of regional committees from around Australia to come and talk to us about this issue, about how we can actually get delivery of biodiversity conservation outcomes in regional strategies. These guys are punch-drunk with documents. They are simply not fit - and there is no reason why we should expect them to be fit - to deliver biodiversity conservation outcomes. The amount of support that the nation should be properly expected to provide is much larger than that which is currently being provided.

For instance, the messages which have come from the Commonwealth to these committees doesn't yet say, "In your region, these are the listed matters that are covered by environmental laws." Even the basic, bottom line compliance with the laws of the nation - that information is not provided. It's not right. It's not fair to set up a bunch of well-meaning people from the community who really want to get in there and really want to do the right thing, and really want to come up with a reasonable strategy that is going to take their region forward, and they just don't know what it is - where "forward" is. Someone has to help them work that out.

The reason why we keep coming back to the Commonwealth is again, on our

experience, it's the Commonwealth which takes the environmental responsibilities more seriously than the states. That's just an observable reality. I went off and spent the best part of the last 20 years of my life organising the biodiversity convention, merely so that we could use - not "merely" but one of the artefacts that we predicted and expected, was that we could use the foreign affairs power under the Australian Constitution to get the Commonwealth committed to implementing that convention and that was the Environment Protection and Biodiversity Conservation Act.

I would have loved it if I had gone along to my government here in Hobart and said, "Please do these things." I still get laughed out of the house today. That is to say, the level of profound reluctance on the part of state government - or certainly in my experience in Tasmania, but that's largely reflected elsewhere - to do what the rest of the world, the rest of Australia and the rest of its own community wants is huge, and the gap is huge. We have an enormous problem between what people expect to happen and what state governments are prepared to help facilitate.

PROF MUSGRAVE: Just in conclusion, I wonder would the Trust contemplate anything less than the achievement of best practice but above duty of care as being acceptable as an outcome?

MR GRAHAM: Compliance with the law would make us very happy. It's very hard to communicate to people who are not involved daily in this the extent to which noncompliance with the law, with strategies and with policies, is normal. If there's ever, ever any problem in Tasmania, the law gets changed. The Tasmanian Conservation Trust has an informal performance criterion which is we precipitate at least one change to the law every year in order to prevent someone having to comply with a biodiversity conservation obligation. It's very easy to do, and that's the normal climate down here. I cannot communicate to you too strongly that, if it were not for the interests of the commonwealth, there would be nothing going on down here.

PROF MUSGRAVE: Can I take it from that that your answer to my question is yes?

MR GRAHAM: Yes. As I said before, in the bigger picture, to take the duty of care as being compliance with the law and no obligations on the state or the wider community to help land-holders do that, we don't think that's fair.. We understand that you can logically argue that, but we don't think it's right and we don't think it's politically prudent to do so. That is to say, if we want to bring the land-holding community with us, which we do, then we're going to have to be much more flexible and imaginative about the positive signals we sent to the land-holding community to make them want to come down that path.

DR BYRON: That sort of leads into one of the things that I was wondering about

in your submission. Most of the submissions and presentations, if not all, from environmental organisations seem to characterise land-holders as ecological vandals just waiting to bulldoze the last piece of biodiversity unless they're vigorously stopped by strong regulation, stringent enforcement and heavy penalties. Yet it seems to me - and your submission indirectly confirms this - that there are very different underlying paradigms or world views between people who favour production as opposed to biodiversity, if I could put it that crudely: in a water sense, people who think that if a drop of water gets to the mouth of the river, then it's an irrigation opportunity wasted, that sort of thing.

So we've got people like yourselves who are very highly motivated towards conservation outcomes, and we've got other people who are very strongly motivated towards making a living out of their farm, shall I put it that way. Ultimately, it seems to me, to move towards this more sustainable agriculture, sustainable landscapes and sustainable natural resource management, land-holders, governments and environmental groups are going to have to form some sort of common language and common picture and be able to work together very pragmatically on the ground. I think you are also suggesting that in your submission - that the path forward needs to be amicable rather than trench warfare. Any suggestions on how we start building that amicable long-term partnership that leads to sustainable development-type outcomes that are economically, environmentally and socially preferred?

MR GRAHAM: I think as we said in our submission first off, yes, we unreservedly accept that that's the kind of framework we need to move forward, but we do need to get some of the parameters right. That is to say, if we don't have good laws and a commitment to respect the law, then we're having a lend of ourselves. I think it's really important that we understand some basic fundamentals of getting together here.

DR BYRON: Coming back to your opening comments about self-regulation, I'm not suggesting for a moment that there should be no regulation, or that we should not have good laws, but the question is whether legislation, even good legislation vigorously enforced, is the right, the only or the sufficient answer. Sometimes, even if the state has the power to compel, coopt or demand, it might actually be pragmatically wiser not to exercise that power but to work towards something that's voluntary and cooperative - having volunteers instead of conscripts.

MR GRAHAM: We would be enormously supportive of that, yes. As is a general rule in any decent democratic society, with anyone who has big stick there's an obligation to talk softly.

DR BYRON: I'm suggesting that sometimes the big stick is best left in the closet downstairs if we've got other policy instruments, such as bush tender, or

environmental management systems, or any of the other things - voluntary, persuasive, land care, bush care and all the other cares. The question is therefore the right mix of policy instruments rather than just relying on a big stick. I think one of the problems with the big stick, when it comes to biodiversity and native vegetation, is that the people who have the most biodiversity on their private land at the moment don't feel that they should be bearing the brunt of the big stick. If a neighbour has got rid of all the native vegetation 20 or 30 years ago, and probably got a subsidy or a tax concession to do it, he or she no longer is impinged on native vegetation and biodiversity controls. So there's that element that people are putting to us of inequity, that the regulatory big stick is particularly hurting those who have been most successful in trying to do the right thing over the years.

MR GRAHAM: Yes, sorry. In that case, I think you misunderstand the position we're trying to put across in two respects. Firstly, the purpose of having good laws is not just to have a justification for a policeman to come and kick your door in at night. The purpose of having good laws is to clearly articulate what governments want, and that's an important point, that through the democratic process the expectations of the wider community can be reflected in something concrete that the people who are being addressed can get hold of - for instance, a list of threatened species under the Threatened Species Act.

The fact that it's in law gives you the right, expectation and opportunity to mobilise public resources to do something about it; if it's not in law, your justification for doing so is pretty flimsy and your capacity to project any kind of long-term commitment is pretty imaginative. In other words, you need to be able to use the law to project biodiversity conservation laws, in this case, to project to the land-holding community what the community expects by way of outcomes. We would completely agree with you that how you deliver those outcomes is something that needs to be given a bit of thought, and more carrot and less stick is always likely to deliver a better outcome. But the point of the law is to be able to say, "We are here to deliver that outcome, and we're not going to go away until that outcome is delivered. Now, how are we going to do it?" That's the important point.

If you don't have the law there, you don't have the basis for the start of the conversation. The important point is that you can look to the law as also the way in which the scientific community contributes to the debate. It not only gives on-the-spot, professional contributions to whatever process you set up, but evolving information will change views about what is important and what needs to be done. In other words, things will go on and off lists, new issues will pop up, and that's how you articulate that they're important - by sticking them in a law. With the EPBC Act, that was very much what we hoped we've served up to the Australian nation - a framework whereby we can do those things.

There's now an enormous exercise going on to articulate which threatened communities should be taken seriously across the country and, in our view, that's a really good thing to do. When that work has been done, anyone can say, "Okay, I accept that dealing with threatened communities is important. Here's the articulation of what I've got to work on and what I've got to deliver. Now, how are we going to do it?"

DR BYRON: I think part of the resistance to legislation, particularly on threatened species and threatened communities, is along the lines of being modelled on the American legislation. Once a species or a community is declared to be threatened or endangered, the law says that everything and anything that is required must be done. There is no defence that that would be prohibitively expensive, or that the social and economic costs and dislocations caused by doing that would be too high. It's been said to us that it's not consistent with principles of ESD because it doesn't look at social, economic and environmental issues simultaneously. It solely looks at environmental or biodiversity conservation outcomes and to hell with the economic and social implications.

MR GRAHAM: Yes, but I think, to be fair, the US Endangered Species Act, when it was first enacted in the 1960s, was indeed of that ilk. It's been reconfirmed twice since then, and it's not quite the same beast it used to be. With respect to the EPBC Act, the way that issue is dealt with is that the federal minister, in deciding whether or not to approve a controlled action, has to take economic and social matters into account. For instance, a very live and real issue for most of us here right now is the fate of the proposal to dam the Meander River, and that's being considered on exactly that balance. That is to say, the information on threatened species triggered the balance of Commonwealth concern, but the resolution will be on the basis of other matters. I think it would be fair to say that at least half or more of all the work that has gone into trying to resolve that issue relates to economic cost-benefit matters. In other words, precisely the concern you raise was one of the concerns that went into the formulation of the EPBC Act to deal with exactly those sort of issues.

PROF MUSGRAVE: To be a bit more provocative than Neil perhaps, you were talking about the big stick, and you talk about it in the sense of trying to avoid using the big stick: let's try and have incentives; let's try to temper the win if we can; and the importance of information and presenting information which puts the land-holders in a position where they understand the reason why they're asked by good law to do things. But I wonder if some of the issues here aren't more fundamental than that, in the sense that a strong, tops-down, regulatory approach is threatening to stimulate a reaction which is drawing on some people's fundamental rights in relation to property, natural justice and the like, which could mean that efforts from a commonwealth level to inform and persuade won't be sufficient, because they're not addressing this other very fundamental issue relating to the

foundation of our democracy which you've called upon. Many of the people who have spoken to us on our travels around the nation have touched upon this to a point which means that it can't be ignored.

MR GRAHAM: Yes, I think two things. As I said before, that's precisely and exactly why we think you should go easy with the concept of duty of care. That is to say, if we get too theoretically hairy-chested about interpreting duty of care to mean you have to comply with the law without any reasonable expectation of support or assistance from the state or the wider community, we'll go nowhere. I think that's a situation which we simply want to avoid. As I was trying to say before, the purpose of the law is to mobilise resources and to focus information. It's a backstop, but it's only a backstop; no-one wants to use the law unless you have to.

Unless we clearly articulate what we want, land-holders have every right to be confused and pissed off when something surprises them. It seems to us that it's really important that we are clear about articulating what we want. From our point of view, one of the bottom lines of that is that you can go to a law and say, "Okay, yes, here are the things that people think are sufficiently important to be the subject of legislation, and these are the things that ought to be on the table for any discussion." But in saying we shouldn't get too hairy-chested about duty of care, the thing we wanted to communicate was that we shouldn't translate the fact that it is law into an automatic requirement to use regulation to get an effect. We very much wanted to say, "Well, look, this is the law. This outcome is going to be delivered. Now, how is the best way of doing that?"

Certainly in my experience most land-holders are of good mind - that is to say, they clearly think, "Okay, the community wants this. Let's work out how we're going to work to deliver that." In some cases they spit the dummy and say no but in many cases they go, "Okay, we'll see if we can work this out." There are always going to be a few land-holders who go, "I don't care," and for whom the big stick will be a realistic option for delivering outcomes. But for instance with the way the EPBC Act is rolling out now: someone is clearing a bit of heath land up in the north-west of the state, which is known habitat for a whole bunch of species listed on the Commonwealth Act, and the information came to us. We passed it on to Environment Australia.

The proposition is not that he gets a bailiff round to lock up the bulldozer and close down the operation. The proposition is he gets sent a letter saying, "Hey, did you know that you're not supposed to be doing these kinds of things? This is why we want this heath land protected. You're not responding to that. What's the story?" So that the land-holder gets plenty of opportunity to make decisions themselves about how they want to relate to the community expectations, which is a long way short of actually using the big stick.

PROF MUSGRAVE: Thank you.

DR BYRON: Can I just come back to under the structural adjustment funds which you have mentioned before, which might hypothetically relate to an example like that one you were just mentioning if it turns out there's an area of high-conservation value and the answer seems to be that somebody should acquire the freehold land, what do you envisage happening to that after it's acquired from the landowner who it is being adjusted out of his industry? Would it become part of a national park? I guess what I'm wondering is, who's going to look after it? Having hundreds or perhaps thousands of little pocket handkerchief reserves scattered all through an agricultural landscape would probably be an absolute pain in the neck for somebody to have to look after.

MR GRAHAM: Music to my ears. I've been saying this to the department for years.

DR BYRON: Sorry.

MR GRAHAM: Oh that was widely accepted. I think the reason why we talked about two kinds of funds is that I think there's a credible decision that we made up front. If we're talking about a dairy farmer who's just marginally clearing a bit of bush, just like they've been doing for yonks. It's just what you do. When it's dry enough to use a bulldozer, you whack in there with a bulldozer, and when it's too wet, you just let the cattle run in there. That's sort of life. That's how they manage the place. We're sort of trying to say to them, "Hang on. This is the time to just back off this sort of way of treating the landscape."

If backing off means that they've got no realistic prospect of running a viable enterprise - like, for instance, if they've bought a dairy farm and they basically need to clear 20 hectares a year in order to maintain - that's their farm plan to do that - and they say, "Well, look, if we're going to change our farm plan like this, it's just not going to be viable. We're going to have to go," then to my mind the question is, either you say, "Get on with it and do it" or "We'll buy the property and dispose of it on the market" - that is to say, you've got neighbours who are looking for more land anyway, because that's what everybody is looking for, and that's the normal way in which structural adjustment funds work. We're not talking about doing anything unusual or abnormal.

In terms of what happens to the bush that remains, our deeply-held wish is that the resident land-holding committee takes on those responsibilities. In other words, the land-holding community internalises the responsibility for managing biodiversity conservation on their property in the same way as they internalise managing

potatoes. Many of them, have been coming to terms with internalising the responsibility of managing their native forest resources, rather than just ringing up on the phone and saying, "You do this," we're saying, "You do it." That's part of the support framework that we'd like to work with governments to set up; to support land-holders to make them informed and skilled and comfortable with doing that.

So that when they're a dairy farmer, they're not just a dairy farmer, but they're actually an orchard manager as well. They actually know where the orchards are on their property; they have some interest in the orchards on their property and they actually manage their property to conserve those orchards.

DR BYRON: Could I come back to my earlier question with the farmers and graziers? The private forest reserves, not the conservation reserves, that I think at the moment are unique to Tasmania, would you see them as a possible prototype to be emulated elsewhere in Australia as a way of strategically picking out areas of high-conservation value and then going and negotiating an agreement with the land-holder to make sure those values are protected without necessarily legally acquiring the title outright?

MR GRAHAM: I think it's a good idea. I wouldn't like to see it totally translated. In my view, the way it's run tends to make acquisition rather more expensive than it needs to be, but that's probably going a little close to my role within the advisory committee. It's a good idea, but I think the important point to remember is that the money was made available to extend the national reserve system to private lands in Tasmania. In other words, we're talking about the core reserved areas in the Australian landscape.

In other words, it's not the intent of government that this has to pioneer any collaborative relationship between production and conservation or whatever. It's to do the bare minimum: get that 15 per cent of vegetation types in a state where you can say in the longer term these areas are going to be as close to their natural state as you should expect. We're talking about just the core 15 per cent of your basic bottom line. This is what these areas will be like under natural circumstances. That's what that program is for.

We would be the first to acknowledge that that program is not sufficient for articulating the relationship between community and government and land-holders with respect to biodiversity conservation. It's what you might call the extreme end of the agenda. This is a reserve that we can put up in lights internationally and say, "This is a reserve that has got the same status and the same expectations of long-term management as your most prestigious national parks in the world." That's what the national reserve system is designed to deliver, and that's what the 30 million bucks in the RFA was designed to deliver.

The broader issue of how we articulate the relationship between the wider community and land-holders with respect to biodiversity conservation needs to be done elsewhere, and in my view the private forest reserve program should be regarded as a bit of peripheral exception. It doesn't go to the core of the job we have before us.

DR BYRON: Or is that the gold-plated end of the spectrum for your very high priority, strategically important, conservation areas that happen to be on freehold land, and do you have, as I think maybe you may have suggested before, a succession of different types of models going down to the voluntary Greening Australia fencing assistance type one for perhaps areas of less significance in terms of their conservation values? If it's extremely important, then would you put the full Rolls Royce gold-plated reserve model on that one, which is expensive, but guarantees lots of things and then you've got all the way down to the tin-plated one?

MR GRAHAM: I think I would have to start with taking you up on your gold-plated Rolls Royce metaphors. It's all really important - that is to say, we want a best-practice system for conserving biodiversity within productive land-holding systems. That deserves gold-plating as much as anything else. It's really important. One of the reasons why I raised climate change in this context, but not just, is that biodiversity conservation as a concept is far more pervasive across the landscape than many other nature conservation notions that have come out of the community over the last few generations.

Success can only be achieved by involving all land-holders in the overall effort, and we have to be clear about that: that is to say, no-one is immune from the responsibility and no-one should be left out of the support system that should be in place to help them meet that responsibility, and in an era of climate change, that's going to be inescapably so.

DR BYRON: The difference, I guess is, people have said to us in public hearings elsewhere that in terms of management on an individual farm - freehold property - they have to prioritise areas of importance, because much as they would like to preserve everything of conservation value, of every tree on the property, they have a constraint in that they have to earn enough to make a living, and therefore they have to prioritise, because they said to us last Friday, "We simply cannot save everything." It seems to me that you're saying that you would like to save everything everywhere all the time, and my proposition to you is that that's likely to be extremely expensive, perhaps unaffordable.

MR GRAHAM: Sorry, in that case I said it wrong. There is a conservation role and responsibility everywhere for everyone. That's not the same thing. Conservation

responsibility is not the same as saying there is no productive opportunity. As the TFG was saying just now, the reality of the matter is that most of the native grassland areas of high conservation value in Tasmania have been under customary productive use for generations. Wanting to secure that biodiversity conservation outcome doesn't involve significant intrusion on the status quo. It does potentially involve significant intrusion on exercising change of use options.

In other words, if you want to build a tourist resort or you want to plough it up, there are some obvious traumatic things one can do to a native grassland, which we would want to take issue with a land-holder with, but trying to set a system in place to maintain the status quo, we would like to think is not fundamentally too challenging. Although it has to be said, the pressures for change within a land-holding community are ubiquitous and perennial - that is to say, any political approach that says, "Okay, let's keep it like it is" is likely to put pressure on land-holders by foreclosing options and opportunities, and that is something I think we need to be a bit mindful of. But I think as the TFG said, "Here we have our best examples of native grasslands. Those who haven't ploughed are the ones we most want to embrace." Embrace is the right word. We actually want to say, "Hey, you're doing the right thing here. How can we help you make sure that this is here in two generations' time?"

DR BYRON: Yes, but working against that is arguments that are coming from others - perhaps here, perhaps in Sydney, perhaps in Canberra - who start from the premise that grazing on native vegetation is a bad thing; it must be stopped, even if the scientific evidence says that light grazing - controlled grazing of sheep on this particular type of ecosystem is actually demonstrated to not only be not harmful but may actually be beneficial to the target-endangered flora. That suggests to me that the need to have, not blanket national templates, but to be able to come down to specific cases.

MR GRAHAM: Very much so, but again I think the blanket national template still needs to be played out on a small scale. The national law provides for the listing of a particular species as threatened or a particular community, and the production of a recovery plan, and that's the key thing. It's just a process thing. It's the recovery plan, which is unique to the circumstances which defines those kind of things. With respect to biodiversity conservation, the requirement to be science-based is much stronger than many other issues, and certainly that's why I think the Wentworth Group initiative is so important and why we wanted to make such a thing of it in this submission.

When you can build a general consensus within the scientific community that this is the way to go, we're saying that all players in the community should give that some respect, and I think as we've said before, with respect to land-clearing controls,

we've got advice on the table with the Forest Practices system saying, "This is what the land-clearing control target should be in Tasmania." It has been stuck in the system for two years and it won't see the light of day unless we get a decent government policy somewhere that says, "Let's do the right thing."

Doing the right thing means making the most of the scientific expertise that you have available to you, and that's a discipline that impinges upon us and our colleagues as much as we think it should impinge upon the land-holding community and the industrial community. If we don't cherish scientific knowledge, understanding and advice, we do not have the capacity to conserve biodiversity.

DR BYRON: I'm afraid the time has got away with us. Have you got something really urgent you need to say?

PROF MUSGRAVE: No, I think lunch beckons.

DR BYRON: Alistair, any urgent final parting comments to wrap up?

MR GRAHAM: No. Again, we really appreciate the opportunity. The only thing I would say in conclusion: we had great difficulty with the terms of reference, working out which part of the planning we should confine ourselves to. We forwent talking about Antarctica and the southern oceans, despite the fact there were many issues that we might like to bring up in this context and I suppose we would like some reassurance that we're sort of on track in terms of where the commission wants to put its efforts.

DR BYRON: Your submission was very relevant. Thank you very much. I now propose that we break and resume at 2.15. Thank you very much.

(Luncheon adjournment)

DR BYRON: Thank you very much, ladies and gentlemen. We now resume the public hearing. Next, we have the Southern Midlands Council. Gentlemen, if you'd just like to introduce yourselves for the transcript and then summarise the submission, which we have and which we've read, we can discuss it.

MR HOWLETT: Mr Commissioner, my name is Colin Howlett. I'm currently mayor of Southern Midlands Council and I'd like to now ask my colleague to introduce himself.

MR MACKEY: My name is Damien Mackey. I am manager, development and environmental services at Southern Midlands Council. I also have an economic development role as well as a community liaison-type role.

MR HOWLETT: Mr Commissioner, may I from the outset thank the commission and the commission's support administration group for allowing us to put this submission in. It has been fairly difficult for us because - for reasons better known to ourselves - we didn't realise about the possibility of putting in a submission until a very late stage.. On behalf of my shareholders and staff, I'd certainly like to thank the commission for their help in allowing us to put the submission in on the deadline, and we do appreciate that. Thank you very much for that.

Mr Commissioner, before I start, I'd like to ask your indulgence. We do have two supplements in addition to the principal submission. One supplement is certainly the one which I'm going to present to you and Damien has another supplement which illustrates a case study of the subject matter. We do have spare copies, if you wish, and you allow these additional supplements to be accepted.

DR BYRON: Certainly. Thank you very much.

MR HOWLETT: Thank you. My comments are made as the elected mayor of the Southern Midlands Council in Tasmania. Our municipal area is approximately 2500 square kilometres, of which a significant area is utilised for wool production, beef production, intensive agriculture - including various varieties of grapes, stone and berry fruits, vegetables and essential oils - and many other rural pursuits.

The above farming activities are generally situated on privately owned land, which has varying degrees of importance in farm management and commercial value. Historically, privately owned land has been traded and purchased in democratic societies for many years. Where a public interest existed and acquisition of land was necessary, the process would ensure that a fair market price would be paid.

Traditionally, our culture and the law have evolved to allow private title

land-holders to use land as a right or be paid appropriate compensation where, for the benefit of the common good, land or rights applying to land are removed by the government of the day. In recent decades the federal government has increasingly sought to achieve biodiversity-related goals through mechanisms that have incrementally impinged on private title rights, without proper compensation. Such mechanisms often involve the provision of environmental cash payments to the states, conditional upon the states introducing certain legislation and regulations. Usually, there is no - or woefully inadequate - level of compensation accompanying such mechanisms, which are therefore viewed as being unjust and devious.

Native vegetation and biodiversity regulations generally have significantly more impact on private landowners in country areas than on their city counterparts, yet it is usually from city dwellers that the political push comes to introduce such regulations. In public workshops and meetings in which Southern Midlands Council has been involved, it is clearly evident that country people are becoming increasingly frustrated and angry at having to bear the entire cost of preserving values for the common good.

Moreover, biodiversity regulations are usually implemented without adequate consultation with those directly affected and through a heavy-handed regulatory approach. We submit that it is un-Australian to expect rural private property owners to bow to pressures and intimidation for the common good. Where governments find it necessary to interfere with private title rights for biodiversity reasons, the government must legislate to provide market value compensation for that benefit.

Mr Commissioner, I would submit that, through a couple of workshops with private landowners over the last few days, it has been put to us in the most forceful way that private title rights under the common law are sacrosanct and we should not be allowing private titleholders to have any disadvantage placed upon their private title rights and their commercial pursuits. It's also been submitted to us that, if that sort of situation occurred in urban Australia, there would be an outcry. Having said that, sir, I'll conclude at this point of time and I would ask my colleague Damien to continue with our submission. Sir, we do have a copy of this particular presentation that I've made, if you so desire.

DR BYRON: Thank you, Mr Mayor.

MR MACKEY: Thank you, Mr Mayor. Commissioners, I won't go through the submission that we have previously submitted word for word - I know that you've had time to read it - but I would like to go through and make some additional points, if I may.

The first point I'd like to make is that our council area is a predominantly rural

and agricultural area. It is what I call a genuine rural municipality. We don't have large sections of our population that are urban based. There are a few bits of residential land down the southern end, but largely we are a genuine rural municipality and there is generally an homogenous view on the matters that myself and the mayor are talking about today. I wouldn't say that we have a split council, although the mayor and I disagree on some issues. It seems to me that, as opposed to some other municipalities in our state, there is generally unanimous support for a lot of the positions that council come up with, particularly in regard to this issue involving rural property rights.

We do acknowledge the desire of the broader community for certain natural values on private land to be protected. The main point we'd like to make is that the voluntary approach should always be tried first. By the voluntary approach, I mean a voluntary/partnership approach such as that that's been employed by Landcare; the fencing off of significant areas of bushland in our municipality and the RFA Private Land Reserve Program, where it is a completely voluntary system and up to the landowners to be engaged with that and enter into agreements if they so wish.

The other thrust of our submission is that, where the voluntary approach has been tried and it is still decided by the elected representatives of the people that we do need to have regulations and legislation, there should be compensation paid where demonstrable adverse economic impacts exist for private landowners. We point out that each property is a commercial enterprise competing in a global marketplace and the impacts of new regulations on economic viability of farms is too often not accounted for.

Council does believe that the majority of Tasmanian landowners endeavour to responsibly manage their land, looking for the best outcome for both the land, their families and the broader community. If there is a problem that landowners would like to do the best thing but do not know how to do the best thing, then that's a problem that can be solved through information dissemination programs and education programs, not through a regulatory approach, as may have been suggested earlier in the day. Many of our landowners have demonstrated a willingness to be involved in voluntary programs aimed at preserving natural and cultural values on their land. Jumping straight to regulatory goals often achieves adverse outcomes, through sparking off panic clearing and so on in the case of protection of the forest values.

As I said, Landcare - the Natural Heritage Trust program - to date and RFA private land conservation programs are good examples, in our view, of successful voluntary programs. We do note the unfortunate recent agreement between the state and federal governments regarding future NHT funding, where the state government has committed to the introduction of regulatory mechanisms, through planning

schemes, to control the clearing of non-forest native vegetation. This, we submit, is going to significantly taint the good name that NHT programs have had in the past, where in the future we're going to move forward with the big stick approach attached to it.

We note that, by the state government agreeing to regulate this issue through changing local government planning schemes, it also conveniently places that on local government to do that rather than through some state government regulation system, such as forestry. I'm certain it will be the case that we will see regulations in local government planning schemes forced upon local councils, so you'll have the situation where the elected representative body at the local level is not in favour of regulations that it is being charged with enforcing. This creates significant problems, of course.

Just a quick point on landowners' rights. The right to farm is one that was very strong a couple of decades ago and has been gradually eroded. There is a line put by certain members in the community that there are no automatic development rights for any property owners anywhere and that to develop your property is a privilege, not a right, and it's a privilege that you must seek approval for. That's a line put by certain elements of the community, but it is a line that I know a lot of solicitors would strongly disagree with. If on Monday I have the right to build a house on my property and on Tuesday I wake up and the planning system has been changed and I cannot build a house on my property, then someone has taken away a right that I had. The same goes for clearing forests and so on. These are rights which are real and exist on private land and which the planning system, particularly - and other systems - has gradually moved to take away.

The point of democratic accountability, which is the third heading in our submission - it is the basic fundamental principle of living in a democracy that the only people who can take away my rights are the elected representatives. Elected bodies, whether it's a local government or a state government, make decisions and then it's the bureaucracy and certain statutory bodies below that that implement those decisions. We submit that, particularly where decisions implemented on the ground remove the rights of citizens, there must be a clearly traceable link back to a decision by the elected representatives.

In relation to Tasmania's planning system, which has been lauded as a great model system - the RMPS or the Resource Management and Planning System - it is our submission that there is a fundamental lack of democratic accountability that is creeping into the system. This is fundamentally because a key component of this system, being state policies, is largely missing. It's 10 years since this system came into effect. When this new system came in, which involved turfing out a whole lot of previous legislation and bringing in a whole suite of new legislation, it was touted

that there was a two-tiered planning system now in effect in Tasmania. There were state policies at the top and there were planning schemes at the second level. 10 years down the track, we only have three state policies and the state government seems committed to not creating any further state policies.

I'd like to quote from the Edwards report, which was a committee for the review of the state planning system, done by Edwards in Tasmania in April 1997. That said, in regard to state policies:

> State policies originally promoted as the cornerstones of the system have failed to appear - that is, except for one, the state coastal policy -

which was the only one existing at that time -

> and the state coastal policy has been criticised as being a poor example of what a state policy should be. What is required are documents that are a clear, concise statement of the future direction of the state. This lack of state direction has been interpreted as an unwillingness by the government to support a system which it was instrumental in introducing.

One of the key aspects of state policies which we must remember when I say that it is absolutely important that we get more of these, is because they must pass through both houses of parliament. They are approved by the elected representatives of the people at state level and therefore they are an appropriate mechanism through which the private rights of individuals can be altered.

The second reason why we need state policies is because there needs to be that direction from the elected representatives of the people to the system. The RMPS has as its objectives sustainable development.. That's in all the Acts and that sits up the top. But what sustainable development actually means is anyone's guess. What does it mean when it's applied on the ground, when planning schemes are being formulated? When the actual regulations that control land use and development in this state are being worked out and drafted, what does sustainable development actually mean?

Well, we know what it means in regard to prime agricultural land and water quality and state coastal systems, because we have state policies that tell us what they mean and we have state policies - that have been through state parliament - that tell us which rights of citizens have been determined by the elected representatives as important enough that they have to be changed or removed for the common good. But there is a huge sweep of other issues that need to be addressed by state policies. In this policy vacuum, we have non-elected, unaccountable bodies who are forced to become policy-making bodies.

Particularly I'm talking about the Resource Planning and Development Commission, which is charged with - it was meant to be simply a body of review, to make sure that the state policies are implemented properly when local governments are drafting their planning schemes; but in the absence of direction from the elected members at state level, it has been forced to become a policy-making body on the run. It has to do that because planning schemes are always coming up and being formulated and the RPDC has to get on with approving them and assessing them.

We have recently had a planning scheme approved from the RPDC and there were a great number of things which the elected representatives of the people at local level did not want in it. We can understand that, where there's clear direction from the elected representatives of the people at state level, those things have to be changed and the council couldn't have its way. But where we could see no clear link back to a decision by the elected representatives at state level to a decision by the RPDC to change the planning scheme that we had drafted, then we find that to be a non-democratic system.

One issue was the clearing of non-forest native vegetation. Council got a letter from the minister a couple of months ago saying that state government was now going to look at the issue of non-forest native vegetation and wanted to work with councils, in partnership, to address this issue. Someone forgot to tell the minister that, about a year before, the RPDC had decided on its own bat that there would be a state position on this and that it would be controlled by planning schemes, and our planning scheme was changed against the wishes of our elected representatives to include that. Now, whether it's right or wrong to include that or not is another argument, but the fact is that there was no clear decision by the elected representatives at state level to make that decision.

With the current state of a policy vacuum at state government level in regard to these issues, the RMPS is now particularly vulnerable to pressures from active minority groups to actively engage in the system and take full advantage of the opportunities provided in the system to enforce change on the system. We submit that there's no better way to find the view of the people than to ask their elected representatives. That's a basic principle that seems to be forgotten time and time again, short of taking a referendum on every issue that comes up.

So basically we would submit, and we acknowledge, that there are certain industry sectors which are outside the RMPS and they've already been mentioned: there's forestry, mineral exploration and marine farming, aquaculture. Council has no problem with that. The state government, the elected representatives of the people at that level, have indicated that they do not want those issues to be under the control of the RMPS and council has no problem at all with that. But if there was a

push for those issues to be brought into the RMPS we would say at the moment the RMPS is in no fit state to have such issues, of great importance to the state economy, brought within them with this policy vacuum existing and its vulnerability to pressures from minority groups.

Just a point, too: the importance of the elected representatives making all the big planning decisions is a basic tenet of planning - that is, that all big planning decisions are political decisions because they do involve changing people's rights.

So the long and the short of all of that is, we would like to see more democratic accountability brought back into the system and clear, traceable links going from actions on the ground by regulators to decisions by elected representatives; not saying that every action on the ground has to be specifically ticked off by elected representatives but certainly the general direction and the policy has to be there.

Another point that we'd like to make is the uneven distribution of adverse impacts when regulations are brought in. It is simply a matter of luck as to whether a property owner is hurt by new regulations when they come in. One property owner may have extensive areas of rare forest type which the community has determined must be protected and another farmer next door might have none. These farmers are competing against each other in the marketplace and one has a significant disadvantage that has been brought in. This in itself is another reason why adequate compensation should be paid where it can be demonstrated that there is an adverse economic impact on property owners.

We would also submit that most decisions within the RMPS certainly and generally in Tasmania do not adequately take into account economic and social values as well as natural values. They certainly take into account natural values and in fact most of the decision-making in this sphere seems to be centred on assessing the natural values and the economic and social values are add-ons, if you like, if they're considered at all, or are not considered.

In regard to the issue of compensation, as we've said we certainly support the view that there must be a culture of compensation coming back into the Australian community. If Australia had adopted a culture of compensation and general community support for landowners preserving natural values for the common good, like the Europeans do, then we would have an inbuilt mechanism to test which values are really important to the community. The community has to sit up and think, "We are going to have to pay some compensation if we want this particular value protected." Then that makes for some very hard thinking. With this culture of non-compensation that seems to be creeping in, it's very easy for sections of the community to jump up and say, "We want this protected and we want that protected," and it's easy for regulators to say, "Yes, we'll do that." But if we had a culture of

compensation, then that would change, we would submit.

If we look to the Europeans and we see how the community in Europe sufficiently values people on the land to the extent that they compensate those farmers - subsidisation is another word but, if we look at it holistically, there's a lot of money going from the community to people on the land to keep those people on the land and Australian farmers have to compete with them. If Tasmania was colonised by the French, which it could have been, and we had a French culture here, I would say that under the current circumstances you might see extensive blockades of the airports and the ports by farmers who are upset about their rights being taken away.

But Australian farmers don't do that. It's not in their culture. But that's an interesting comparison, I think, that we can think about how competing farmers in other parts of the world and how well the community values them and ensures that they are looked after. I'm not saying that our farmers are looking for handouts, but just that they are treated fairly. This, I guess, goes to that issue of the relationship between the broader community and landowners. We are in danger, if we listen to some segments of the community, of villainising landowners as people who want to extract every last cent and wreck the land for profit.

But as we've already said, we consider most Tasmanian landowners to be excellent custodians of the land and they're willing to do the right thing. As I said, if there's a problem that they're not doing the right thing because of ignorance, then that's an educational issue, not a regulatory issue. We've got some recommendations there in our submission. I'll just quickly go through those.

DR BYRON: I don't think you need to read them out.

MR MACKEY: Don't need to go through those?

DR BYRON: We've read them.

MR MACKEY: That's fine. We do have some case studies that I would like to provide as our second supplement to our submission, Mr Commissioner. In the short time we had available to us, we asked some farmers whether they could provide us with some details of cases that have affected them. We have two case studies here. These are really in the words of the farmers themselves, haven't been dressed-up in any sort of way to paraphrase their wording or whatever. This is pretty much what they're saying. I won't go through them in detail right now. You can take them away and look at them.

Basically, the first one relates to an area, a property which has a total area of

1690 hectares. The land already developed for agriculture is 800 hectares and there's 890 hectares of native forest and grasslands. The landowner would like to clear 45 hectares of forest located on potentially productive farmland and is willing to preserve the remaining 845 hectares of native forest and grassland, but this is subject to a moratorium under the Forest Practices Code, this forest type; and he has been advised that it's simply not worth his while putting in an application to do this. Down the bottom there, if you go through those figures, you can determine that there's approximate loss of capital value of $64,000 and approximate loss of yearly income of $29,000.

Example number 2, on the other page, relates to a particular farmer's experience in trying to get approval for a dam. It's gone on and on and on for a long time and during the process he has had to submit several new lots of additional information. The goalposts have been changed, the rules have been changed whilst the application was in the process of assessment. It has still not been resolved. Basically now, in order to get this dam approved, the onus is on him to pretty much do an entire catchment management study to look at the effects on the entire catchment. It's just a worthwhile example to see the sorts of regulations and imposts that are thrown up on farmers simply wanting to build a dam to extend the productivity of their land and being thwarted by increasing regulations which are changing through the process. That's all I have.

DR BYRON: Thank you very much for that, particularly for the supplement of the case studies. I must say that many of the points you've made, other people all round the country have been making similar points to us, so it's very interesting. I would have thought that maybe in Tassie all this was under control and that there weren't any issues here, but what you've highlighted to us is the fact that the same sorts of problems, issues and complications arise here. The two case studies likewise; we've had some similar ones in other jurisdictions, too. I just wanted to follow up on the related question of the right to farm and planning controls.

People in some other states have said to us that if an area is zoned agricultural, it's zoned for farming under the planning controls, can you just say, "Well, you know, farmers are professionals in growing things. They grow flora and fauna, some native some exotic; some for commercial, some non-commercially." But basically farmers grow things. Now, if he wants to stop growing A, B and C and start growing X, Y and Z, as long as it's not causing any harm to anybody else, why is it a planning issue? If he's still practising agriculture but with sheep instead of cattle or cattle instead of sheep, is it actually a planning matter at all? Is agriculture an existing use, and within agriculture you can rearrange it whatever way you like.

MR MACKEY: Generally we believe that it's the same use. For example, with our planning scheme we were developing, initially we had agriculture as a permitted as

of right use, but were directed to change that to a permitted use for most types of agriculture. Certain types of agriculture became a discretionary use, as directed by the commission, so that means that we've been directed to adopt the principle that, yes, you do have to put, in theory, an application in to council to do agriculture on your land but, as I said, that's something that was imposed on us. Generally we consider that agriculture is agriculture.

DR BYRON: No, I guess the reason for the question is that there's a suggestion that government agencies and planners and so on are sort of attempting to micro-manage what happens within a farm enterprise, that if the farmer wants to grow exotic trees instead of native trees, or if he wants to grow sheep instead of cattle or corn instead of potatoes, as long as it's not causing nuisance or harm to neighbours or, very broadly defined, to the region, to the district, why should the rest of us attempt to interfere.

MR HOWLETT: Mr Commissioner, that won't satisfy the anti-development groups who feel that there's far too much land now under cultivation for farming pursuits. Obviously it's the minority groups that want to change the culture and there are some minority groups out there that feel that there's far too much land under agricultural pursuits and they wish it to go back to native vegetation, so that's the worry we face, that we have these people who are complaining about too much land under agricultural use.

Now, it comes back to what Damien said a moment ago. Farmers say that they are too busy out there working their farms and trying to pay their taxes and provide an economic base for our state and for our nation, and they're saying that they want their elected members to make decisions for them. In our particular case, in the Southern Midlands Council case, we've had regimes forced upon us by bureaucracy that has not gone before the elected members of parliament, so they're making the decisions and we have little to no input into those decisions. We have a planning scheme now which is not the Southern Midlands Council planning scheme. We have a planning scheme which is a state bureaucracy planning scheme, in essence.

Our council was united on certain issues. We started off with approximately 20 issues and we wanted to negotiate those down. There were some that we were quite prepared to negotiate on but the last four or five were very serious and had a very significant impact on our municipal area, and at the end of the day we would not sign off on those because we saw the productivity of our particular municipal area being affected, we saw our towns becoming less vibrant and less competitive in terms of the global aspect, and therefore we would not sign off on them, and in due course the RMPS signed them off, and under the process we had no say in the matter, so we're now faced with a planning scheme which is not the Southern Midlands Council planning scheme. It's a planning scheme which has been structured by the

state bureaucracy.

DR BYRON: I think I understand that now.

PROF MUSGRAVE: I think you've provided us with a very interesting case study of a bureaucracy being involved in local planning decisions in ways which seem to lack appropriate authorisation through the conventional democratic process. Unfortunately that's all it is for us, as case study. We of course are not in a position to make recommendations to the Tasmanian government. But I was interested in your references to voluntary action in relation to resource management and in particular your references to Landcare and your concern that increasing regulation might degrade the currency, so to speak, of Landcare and NHT-related activity. In some areas we hear suggestions that the Landcare process is running out of steam. I gather from what you say that that's not the case in your area.

MR MACKEY: We've got an award-winning Landcare program that's very strongly supported by our council.

PROF MUSGRAVE: It's still going full steam?

MR MACKEY: Well, I think funding is going to be the big issue as we go into the future. But certainly it's still going quite strongly.

PROF MUSGRAVE: It seems to us that the issues that confront us are potentially extremely substantial and I think that some would say that current activities, such as we see out of Landcare and so on, are just nibbling at the edges. I'm sure Alistair would agree with that. If that's the case, that implies that we need to go beyond Landcare.

MR MACKEY: I think the voluntary partnership approach can be taken to another level. Farmers keep on telling us - or me - that they are responsible. They do want to do the right thing and they would love for someone to come out there and talk to them, from the state government; to discuss the issues on their land and which bits could be preserved and discuss what are these values that are existing on their land that the community may think are important enough to warrant some sort of protection. I think there's another level there where that approach can be taken and it could be a systematic level that can be put in place, perhaps in partnership with state and local government, private landowners.

One of the problems is that landowners are so confused about what they can and can't do from a regulatory point of view that there needs to be some kind of system where all this is brought together and whether it's to be some sort of system where whole-farm plans or environmental management systems for properties are

brought together with all these things in a voluntary partnership sort of approach with significant input from the statutory government, rather than just sitting back saying, "Well, if you want to get approval for this you've got to go and employ an expensive consultant."

If we can get all that into perhaps whole-farm plans that are really some sort of mechanism where they're certified, then that provides clarity for the landowner as they go into the future. They know what they can clear, what they can't clear. And it clarifies or brings together all these various regulations that are out there and which many landowners are quite confused about in terms of their rights and responsibilities.

MR HOWLETT: On the same subject, I think there are opportunities there because many farmers need bushland habitats, they need shelter belts for their farm animals and I think there are opportunities there that are much easier than we probably expect. The thing that they will want to negotiate is that they certainly won't want those areas locked up simply and fenced off to prevent stock from grazing on them, but essentially the habitat will be there and the bush will be there for protection of their livestock. I think there are opportunities there - not all, but there will be opportunities there to explore, to get some voluntary support in that regard.

PROF MUSGRAVE: Yes.

MR MACKEY: If I might add to that, I think if we're looking at protecting natural values on land, I think there's a lot of easy fruit, so to speak, that's out there to be picked, as long as somebody goes out there and starts talking to the landowners in a meaningful way and enter into negotiations in a partnership-type approach, to look at these issue on their land. And it's really got to be done on a property-by-property basis.

MR HOWLETT: And negotiated in a fair and equitable way. Alistair confused me there in his presentation earlier today because of one situation he was talking about, the carrot and the stick situation. I think first of all the first move should be by negotiation and get the contract very clear in the mind of the landowner. Then I think it's going to be much easier. However, if you go in with the stick in the first instance they don't have ownership of it and it's going to be very, very hard to police. As has been indicated earlier in discussions, it's really the future and the accountability of the maintenance of that particular area of land which needs to be taken into account as well. So it's not only the acquisition of it. It's the future maintenance of that area of land.

PROF MUSGRAVE: I think we're getting pressed for time, aren't we? There are

many things that we could explore, but we're in danger of losing our presiding commissioner in the very near future and I think we should give other people the opportunity to speak before he goes. So I'll draw my questions to a close, now.

DR BYRON: But we might want to get back to you by email to follow up on some of these issues that you've raised. Thank you very much for coming and for the effort you put into it.

MR HOWLETT: Thank you.

DR BYRON: The next evidence is Forests and Forest Industry Council of Tasmania, Mr Bird. Gentlemen, if you could each introduce yourselves for the transcript. Again, we have received your submission. We've read it and digested it, so if you could briefly summarise a few main points and then we can talk about it a little bit.

MR BIRD: My name is Trevor Bird. I'm general manager of the Forests and Forest Industry Council.

MR EDWARDS: My name is Terry Edwards. I'm the chief executive of the Forest Industries Association of Tasmania and an executive committee member of the Forests and Forest Industry Council.

MR DICKENSON: My name is Ian Dickenson. I'm a farmer and chairman of the Private Forestry Board of Tasmania and an executive member of the Forests and Forest Industry Council.

MR BIRD: I'll make a few points about our submission and then would like to pass over to Ian, who will speak to you about some case histories he has concerning conservation and alternatives, and then Terry Edwards will speak to you about the conservation outcome of the RFA and some Forest Practices Code issues. We agree that the primary focus for conservation must remain on public land, but when values do not occur in that domain it's necessary to seek them on private land. We make the point, as have many others before us, that that should not come at the full cost of the landowner either for management or in opportunities forgone, and this is a point that Ian will take up with you.

We find that Commonwealth regulation is targeting landowners increasingly, and the implementation of these regulations is being forced upon the state in either subtle or sometimes more ruthless ways. Strings are attached to grants, and one of the compelling requirements to get states into RFAs was the fact that there would be no possibility of exporting pulpwood in the future. Similarly, the strings attached to NHT2 and the permanent forest estate argument are another case in point, where the Commonwealth is using perhaps less than subtle means of bringing regulation to bear.

The Commonwealth we think, too, has other requirements that should be placed upon it. Having created reserves, it is the duty of the Commonwealth, we think, to provide adequate resources to manage those reserves. If public land management doesn't protect the values on those reserves, we will soon see the requirement for protection passing to landowners. We believe that we have a flexible system here in Tasmania. We have a private land CAR reserve system, which has been funded out of the RFA and NHT, and we believe that's working well.

We have a permanent forest estate system, where 95 per cent of forests will be maintained on public land and, on private land, all rare, endangered and vulnerable ecosystems will be 100 per cent protected through the forest practices system.

We also are of the view that there is a lot of doom and gloom about the environment from people who make it their business to practise in that way because it brings them support in other arenas. We think that we should at some time be accorded at least some praise for the good things that have been done. There have been many conservation and reservation issues resolved in the last 20 or 30 years, and there is very little record of those achievements and real understanding at a public level of the good things that have occurred. We think that that needs to be publicised better.

We are also of the view that the full impact of the reservation and conservation thrust that we have had in the last generation needs to be properly assessed. This is one such means of doing it, but we also think that there should be robust economic analysis of the economic and social impact of reservations that have been made on public land at least. So that quickly sums up the sorts of things that we dealt with in our original submission, and I'm now going to try to give maximum time to Ian Dickenson and Terry to lead with other information.

MR DICKENSON: Mr Commissioner, can I submit some additional information.

DR BYRON: Yes, we're always after more information.

MR DICKENSON: We submit this additional evidence just as an example of the sorts of decisions that farmers and private forest owners in the state make on a regular basis. You're probably already aware that the forest industry in Tasmania is extremely important to the economy, and the privately owned forest sector provides about half that resource with, we believe, quite a substantial ability to increase over time. What I've just put in front of you is a real-case scenario of a block of forested land that was on a property in the north-east of the state. The numbers are real. The forested block in this example was part of a much larger forested area on this particular property. In 1995, the property developed what we now know as property management plans, where it dealt with succession issues for passing the property to the next generation, and it deals with the long-term financial viability of the property, and then it comes down to the physical assets of the property and how that might be managed in the future.

The decision on this particular 299 hectares was: do we conserve, or do we harvest? This particular block was offered into the CAR reserve system. It is an amygdalina viminalis block. It had been managed as traditionally private forest had been managed up until the advent of the woodchip industry; in other words, the small

sawmillers had consistently gone through this block and harvested the sawmill-quality logs. So when the property changed hands 30-odd years ago, the forest was deemed to have no value from a commercial point of view. No-one 30 years ago was talking about the biodiversity issues, but in 1972, when the woodchip industry came to this state, many land-holders chose then to harvest these fairly low quality blocks.

This block was not submitted into the CAR reserve system, obviously, until after the RFA was signed, and then the letter that came back indicated that it was not of high enough quality to meet the CAR reserve criteria, so the landowner then proceeded to harvest it. Had this block been successful in meeting the CAR reserve criteria, the landowner would have received about $61,500, and that's based on the benchmark that the CAR reserve process is attempting to achieve - a target price of $300 a hectare. That didn't happen, so out of the 299 hectares, 205 hectares was harvested. If you go to the next page, which is headed 2A, Harvest 205 Hectares, this block yielded 53,104 tonnes of pulpwood and 2392 metres of sawlog. We just take this opportunity to explode another myth in the woodchip debate about the majority of our wood going for pulpwood. That is quite true, but you can't get sawlogs out of pulpwood quality trees. All the sawlogs were harvested 50 to 80 years ago.

If you run across the total bottom line, this particular block yielded a little over $5 million worth of product, and that number was arrived at by applying the FOB price of $78 a tonne to woodchip exports, free on board, and the sawlog is to the stage where it is a board or a piece of timber ready to go into either the building industry or the furniture industry. If you come along the percentage of the product price along the bottom, you'll see that there was 7.7 per cent, $388,000 spent on compliance costs, roading and management; 837-odd thousand dollars spent on harvesting; $448,000 on transport; processing, 2.6 million; and the landowner received 752,000 in stumpage to make up that total amount.

So that was the first harvest. The decision as to what to do with that 205 hectares in this particular property management plan was 102 hectares was to be developed for plantations, and that's on page 3 and headed 2B. On this block, we ended up with 50 hectares of nitans, 42 hectares of radiata and 10 hectares of macrocarpa. It's intended to manage this plantation to 35 years before it's harvested, and it will be thinned in 12 years. The numbers that are generated in those boxes on that page are from the computer program that Private Forest Tasmania uses called the Farm Forestry Toolbox, and we know how fast our forests will grow on certain soil types, et cetera.

At the end of the 35 years, we will have another gross value product of something in excess of $8 million, if you take it to the same stage that we took our

first cut to. By that time, we may have a pulp and paper mill, and so the numbers would be quite a bit larger than the 8 million at the bottom. The previous example of harvesting the native forest created about 10 man years' work. This exercise will create, we think, about 10 man years' work. Of the balance of this block that was not put into plantations, 103 hectares were developed for pasture. This pasture would either support a beef or a lamb enterprise, and we've done some fairly crude numbers on that. If you go to the farmgate price, on current beef prices we would generate about $60,000 per annum on the 103 hectares, but at current lamb prices on the sort of production figures that this soil and rainfall will support we would be looking at about $126,000 a year annual income off the 103 hectares.

Table 2D is simply the environmental services and values which are not realisable. They are talked about, but you can't realise those values at the moment. I think the conclusion we come to, of course - and Alistair raised it this morning and you're obviously aware - is the huge cost involved in dealing with these values of conservation on private land. The simplest way to deal with it is take people out of the equation, but we're not going to do that. We all want to live here and we want to stay in the businesses that most of us are in, but we are facing up to this issue of making sure it's sustainable.

The other numbers in table 9 give you the total, if you put the two together, for the two cuts, but that's just an example. I think that we need to demonstrate the impact that it can have by taking some of these areas out of production. The heartening thing about this exercise is that there are 71 hectares of that 299 that stayed in native forest and that will stay in native forest for various reasons. Obviously, the property management plan that's in place there is recognising that there are many other values on a property besides cutting and harvesting.

In summary, Mr Commissioner, these examples and these issues that have been raised - I'm sure all over Australia - with you are not going to be easy for us to deal with, but nonetheless we have to.

You will obviously be aware of the reports that were done for the Productivity Commission in 2001 by Gerry Bates; the duty of care and the sister paper to that, the cost sharing of biodiversity. Those two papers certainly raise all the issues; the issues about finding what property rights are and whether or not it's fair to change them, either by legislation over time or letting the courts deal with it. That's an issue, I think, that will cause farmers to be extremely interested.

The issue of duty of care for farmers is one where we have signed onto that in all sorts of ways since 1985. When the Forest Practices Act was first mooted in Tasmania, private forest owners were given the choice as to whether they were going to be in or out, and it made sense to many of us that we should be in. That wasn't

without some difficult debates within the farming community, because these environmental issues do frighten. We've demonstrated that we're not frightened to step up to the plate when it comes to duty of care and good stewardship of our land. That's been demonstrated, I think, during the development of the forest industry strategy and the RFA.

If I could just raise the issue about whether the impactor pays or the beneficiary pays, I guess my response to that would be that if the impactor is expected to pay - and you look along the diagram that I gave you on the percentage of people that are taking a div out of the forest product that comes off private land - you would have to question who is the impactor. Is it the harvester, is it the landowner, is it the processor or is it the pulp mill in Japan? The concept of having the impactor pay and then passing the cost on through the product, I think, will certainly concern people in agriculture, because we have no ability to pass on. We are residual price takers, in most cases, so I think we would be left holding the baby, so to speak.

Whatever rules are put in place need to be transparent and they need to build on the science, not the politics. We can give you lots of examples of where the thinking - and I don't want to get into a Canberra bashing exercise, but you'd have to wonder sometimes what makes people think in that particular place. There's a program sponsored by Centrelink called Environmental Management Systems Incentives Program. That will give the landowner three and a half thousand dollars to develop a PMS, but you have to have a taxable income under $35,000. Why are we linking someone's income to the question of conservation? It doesn't make any sense. I don't know how it got passed. I don't know how it ever came into existence. Examples like that frighten us, because we know the thinking is not sensible.

In respect to the way forward, I think that the property management plans that farmers have been doing do provide a way forward. It can only be done in a way that keeps people on board, and it won't be any different to herding wild cattle. If you put too much pressure on them, you won't get them where you want to go and you'll end up losing a bit of skin in the process. We do need to back off, and I will support what Alistair said this morning. We do need to take it as quietly as possible, but not losing sight of the goals that we - this issue that we talked about.

That is an example of a forest management plan that's put together for farmers in Tasmania. If people want to take the time to read that, all these colours down here are not to do with production - not all of them are to do with production forestry. This property has very seriously addressed the question of sustainability and the question of biodiversity and conservation. We think that there are some ways forward. It will require reasonable assistance from government to achieve that, but nothing like the compensation that might be envisaged if we get into a fight over it.

We know from experience that governments run a mile if they look like looking down the barrel of a compensation claim. In fact, during the development of the RFA, you weren't even allowed to mention the word. There were things like "adjustment schemes" and "research" and "support mechanisms", but never the word "compensation". That's not in the vocabulary of the bureaucrats that look after government. Two issues: (1) they couldn't afford to pay for it and (2) there wouldn't be sufficient resources put into managing what areas were conserved. That relates to the question to Alistair this morning about how you would manage all these areas. Unless you have the farmer supporting the management of those issues as a part of his property management plan, I don't think we will achieve it. They were my comments, thank you very much.

DR BYRON: Thank you very much.

MR EDWARDS: Thank you. I don't intend to take up very much time. I'd prefer to give the commission the opportunity to ask us some questions. I wanted to deal briefly, however, with the Tasmanian regional forest agreement. I noted in passing that the submission made by the Tasmanian Conservation Trust was a little disparaging towards the Tasmanian RFA outcomes, describing it - from memory - as an opportunity to escape from federal legislation or something similar.

I think those sorts of comments are probably less than useful in many respects, because the Tasmanian RFA, whilst not perfect, is certainly based on a triple bottom line approach to regulating the forest industry in Tasmania and, indeed, regulating the use of land, both public and private. I think it's also fair to say that most people will concede that the bulk of the concentration of the regional forest agreement to date has been on conservation outcomes, with little attention paid to economic or social outcomes. I think that's borne out by the recent five-year review of the regional forest agreement carried out by Tasmania's Resource Planning and Development Commission.

The passage of the Tasmanian RFA has removed significant land and forest areas from the forest industry in Tasmania and, as a consequence, has restricted that industry's opportunities to grow and, in fact, has caused some contraction. The RFA has imposed extensive reservation systems, which encompass some 40 per cent of Tasmania's land mass, which is some 2.7 million hectares, and 40 per cent of our forested area of the state as well, which is some 1.3 million hectares.

Those levels of conservation outcomes do come at a cost. In the context of my members - the members of the Forest Industry Association of Tasmania - that cost is largely in foregone opportunity and most of the forest communities that were locked up as part of the regional forest agreement were the highest value forests. Not only was it a quantum of forest taken away, it was the highest quality of forest as well,

and that has been at some considerable cost. In fact, the RFA on its own added some 458,000 hectares to the reserve community in Tasmania.

In respect to private land, the regional forest agreement put in place the private land CAR system, which had a target of some 100,000 hectares of forest communities being added to that reserve system. An amount of money was allocated to assist in that process - some $30 million - which the RPDC, in fact, have described in their five-year review as probably being inadequate to meet that target. By the five-year review, that targeted community of 100,000 hectares had not been met and the RPDC, in fact, found that there was only a very small addition to date to the private CAR reserve system. By 2003, I understand that's now 23 and a half thousand hectares and there's some further 20,000 hectares under active negotiation at this time. They're figures that have been obtained from Private Forest Tasmania.

In addition to those reserves, of course, there are a number of other legislative enactments that impact on forest communities and their being removed from access by the forest industry. In particular, the Forest Practices Code in Tasmania - which I note the commission has referred to in its background paper - does impose limitations on a landowner's capacity to harvest forest communities on their land. Those reserves are of a number of types, including wildlife corridors, streamside reserves, et cetera. I won't go right through the list. I'm sure the commission is very familiar with them. I also wanted to refer briefly to the duty of care facility within the Forest Practices Code, which imposes a 5 per cent duty of care threshold on private landowners. That rises to 10 per cent if some harvest of that land is available through selective logging processes.

That range of reservation requirements has been accepted by Tasmania's forest industry. I was going to say "readily", but that's probably overstating the fact. It's been somewhat imposed, but nevertheless we have been prepared to live with the outcome because we feel it's appropriate to try and achieve the balance of that triple bottom line that I referred to at the commencement. We have participated in all of the processes that led to those legislative enactments and, indeed, to the RFA itself. We feel, therefore, it's appropriate for us to accept the outcome, because the whole debate must be about trying to achieve balance.

However, when we talk about private land - and I've been briefed on what Alistair had to say this morning, but unfortunately I wasn't here to hear it - we say very clearly that any further imposition on private landowners must come at the expense of the community at large. It cannot be expected to be borne wholly and solely by the landowner. The Forest Practices Code, under its duty of care provisions, makes quite clear that any reservation above the 5 or 10 per cent threshold should be at the expense of the community. It should come out of the public purse, as it were. How that might be sourced I'll leave to others to find.

Maybe some of Ian's friends from Canberra might like to do some more thinking about how that can be resourced.

What we do say is it is entirely unreasonable for private landowners to be asked to fund the community expectation of higher levels of conservation than those that are already in place. We say what is there now is adequate. In fact, it is very extensive. In the case of Tasmania, as I said, we've got 2.7 million hectares of our land mass in reserves. We've got 1.3 million hectares of native forest in reserves. 1.8 million hectares of high conservation wilderness, or 95 per cent of that area, is in reserves. We say that they are adequate levels of protection and further cost should not be imposed on Tasmania through additional reservation levels.

Trevor mentioned in his submission that the permanent forest estate in Tasmania has recently been revised through the bilateral agreement with the Commonwealth relating to NHT2 funding, and we note that the commission has referred to the permanent forest estate provisions in Tasmania in the background paper.

The other issue that we ask the commission to bear in mind in its considering of the issues that are part of the scope of this inquiry is that the locking up of land comes at a considerable cost to the private land-holder. I do no more than just simply refer to Ian's document that he tabled as a demonstration of the foregone opportunity costs landowners are expected to bear as areas of land are removed from their management. I heard the term "right to farm" when I first came into the room this afternoon, and I think a landowner does have a legitimate right to expect to be able to utilise their property, providing it fits within the appropriate planning scheme and doesn't injure any other person. They do have that right to farm, and that should not be lightly removed. I think that's really the comments I wanted to make at the moment and give the commission an opportunity to, hopefully, question my colleagues and not me.

DR BYRON: Ian, the case study that you put forward in the supplement, I think, makes a pretty strong case that $300 a hectare isn't much compared to the commercial potential of managing that area as a succession of longish-term saw log rotation forest. I assume that was one of the main points you wanted to make - is how small the $300 a hectare is compared to the option, if harvesting is permitted.

MR DICKENSON: We need to understand that the farmers that are signing these covenants are doing it on a voluntary basis. They may well have other reasons and other values besides the value of their income from their forest. I don't know the specific examples of all those covenants, but they obviously have other reasons to do it. Some are being quite philanthropic about it. The main point we wanted to make, I think, was to demonstrate that it's not just the landowner that loses the opportunity.

If you look across that bottom line - and they are gross figures - there's nothing to do with profit in there. It's just gross numbers that were generated. There are varying degrees of profit across all those sectors and employment opportunities.

The main message was to say, yes, maybe $300 isn't enough, but they're making the decision for some other reason. I guess, in respect of that, the commission should be aware that people are signing permanent covenants in respect of these conservation areas, but the obligation to pay management fees, as I understand it, only lasts until the end of the RFA. Is that right, Alistair? No? Sorry.

DR BYRON: We'll come back to that later.

MR DICKENSON: Okay.

DR BYRON: One of the properties we visited a few weeks ago in the central midlands, I think, where the family who owned the property had quite happily signed up for a perpetual covenant and we were trying to get out of them how much it had cost in terms of what they might have produced on that land if they had been able to clear it, or all sorts of other things, and I think his point was, "Well, this farm has been here for 120 years and the reason that native veg is still there is because we're quite happy to have it there and that land wouldn't have produced much anyway." So I wouldn't say he thought it was money for old boots, but he had negotiated a package which he thought compensated him for the ongoing management responsibilities that he was accepting and that would be a sort of permanent liability against his title - that there may be some capital losses if the farm was ever sold - but he had come to a commercial reconciliation that he was happy with.

MR DICKENSON: Yes.

DR BYRON: I guess there are, as you say, a variety of reasons why people choose to enter this, perhaps not all of which are financial.

MR DICKENSON: No, that's right. Once you're faced with one of these co-reserve options on your property, there is a reasonable amount of peer group pressure, if you like, not to do the wrong thing. But, at the end of the day, it is voluntary, so people can walk away from it if they require.

DR BYRON: Perhaps this is a more general question to the three of you, but one of the messages - I'm trying not to put words into your mouth, but it seems to me that what you're saying is that governments have set up - the state government, with the support of the Commonwealth government have expanded the area of protected area in the state. That's actually fairly expensive to maintain and in every state we've been told that the national park services don't really have enough money to manage

the crown estate as well as they'd like to, but now we're also getting conservation areas on freehold land as well, and the question is, do we have the money to manage that if we don't really have enough money to manage the crown land that's already set aside for conservation purposes?

Does it become a competition where the money from state treasuries goes into helping the crown agency manage the crown land for conservation, or goes into paying freehold landowners to manage the native veg on their property for conservation? Is this a bit of a tussle between the two, if there is not enough money to go around?

MR EDWARDS: I think that's probably fair comment. From our point of view, the point that there is insufficient funding for the management of existing reserved areas is, I think, just patently true. Extensive additional reserves are going to, of course, exacerbate that situation. We saw the wildfires through Victoria and New South Wales and the ACT last summer and, whilst there are a number of inquiries under way, most pundits seem to believe that the build-up of fuel reserves in those forest communities contributed significantly to the spread of the fire in the way that it did move so quickly and so intensely.

We believe that a similar situation exists in Tasmania, where there is insufficient management currently of state reserves and, of course, that is exacerbated a number of times over in the private reserved area if insufficient management takes place. It's a case, I think, of ensuring that if we are going to move any further private land into reserves, it must be done in a way that ensures that the landowner is compensated in a way that encourages him to manage the land, not just for its multiple uses but also to ensure that it's kept clear of fire hazard as well.

DR BYRON: I guess that's one of the things I'm wondering about. You know, sometimes it almost looks like it's a question of how much of the map we can colour in green as having been set aside as some sort of protected area, and other people would say, "Look, hectares is too coarse a measure. What we really want to know is how effectively managed is that area that we've set aside in terms of controlling feral animals and weeds and achieving fire protection and making sure that the high conservation value flora and fauna, for which the area was set aside - that those values are actually being achieved." We want to make sure that we're actually delivering the outcomes on the ground before we go off to find new areas to colour in green on the map.

MR EDWARDS: Just in a small number of words, we would certainly punt for the quality rather than the quantity approach, and that is that reservations need to be effectively managed and we should be concentrating on that, rather than seeking to extend the conservation.

DR BYRON: Maybe we need both ideally, but with constraint - - -

MR EDWARDS: If we had a choice.

MR DICKENSON: From an agricultural and a private forest perspective, my answer would be that if the community feel so strongly about these conservation areas, and the conservation issues and the sustainability issues, then it would be nice to think that we can pick it up through the markets eventually. Some of us within the TFGA have been talking about property management plans that address all the issues, including all the cares that were mentioned this morning, including flock care and cattle care and accreditation systems for our crops. We've already got some of our vegetable processors in the state doing an audit on properties individually to see if they are sustainable from their perspective.

Eventually it would be nice to think that the market will pick it up and help us pay for it, but in reality those of us that have been working towards that over the last decade know that about the best you can expect from accreditation schemes is that they will keep you in the market. That is not a premium; that will just keep you in the market. So whether we like it or not, we're going to be fairly hard-nosed about it, I think, and it won't be any different to achieving the conservation issues.

MR BIRD: We have been like a dog chasing cars, in that we've put reserves away and we don't have the resources to adequately care for them. Perhaps one of the criteria that we should adopt, when making decisions about reservation, is that there be an adequately resourced management plan in place before we consider the size of the reserve.

DR BYRON: Because every time we set up a new reserve we're incurring a whole new set of contingent liabilities and recurrent expenditure. I don't want to talk jargon, but you know, it's going to have to be paid for.

MR BIRD: Yes.

DR BYRON: And that suggests that if there was a strategic process we really prioritise, what's the most urgent stuff that really needs to be kept and well managed to make sure it doesn't become extinct? You know, we look at getting the maximum bang for the buck for our conservation dollar.

MR DICKENSON: And we shouldn't lose sight of the fact that attitudes are changing. My father used to say to me, "Why are those trees still there? Is that land no good?" My children now say to me, "Why haven't we got more trees here, dad?"

DR BYRON: Okay, thanks.

PROF MUSGRAVE: Thanks for your submission. Could we talk a little bit about the RFA process. I must admit I am not an expert on it, but I just would like the benefit of your opinion on it as a model for wider resource management processes involving partnership arrangements between governments and communities and industries. My understanding is that they were developed after extensive economic, social and environmental analysis, that quite significant sums of money were involved, and that the processes were regional and involved regional consultation. They all seem to be very nice things but I think everyone would nominate there are satisfactory processes to follow - in the press - in resource management, but you've experienced it. What are your comments?

MR EDWARDS: I think I might defer to Trevor on that, on the basis that I wasn't here when the RFA was concluded. Maybe he's got better first-hand experience.

MR BIRD: Thanks, professor. We've been through a number of these exercises, whether they were the forests and forests industry strategy, or the RFA, or various smaller arrangements that came into being within regions and based on regional input on the way. You might say that even the local forest office, consulting with people in that district about its management plans and harvesting plans is, in effect, a small RFA, if you like.

We put a lot of effort into it, as you say. It was expensive. I think the salient feature was that everybody was involved - everybody was consulted - and whether they walked away because it didn't suit their objectives or not, they had full opportunity to participate in every way, and did so. So in that way it is a good model. We'll never keep everybody in the boat. I think that's part and parcel of modern-day society - that there are groups with different motives that won't be satisfied - but it was a very thoroughgoing study and there were a few hundred scientists involved and we did everything we could to the best of our ability and with the most modern means available to us at the time.

So we would think that similar sorts of study, whether they be on water or the Murray or salinity or whatever else, it's probably a good way to go. We would commend it to you. We weren't overly happy with the results but a compromise is a compromise and, having participated, we were happy to accept the outcomes because we had had some part to play in developing the result.

PROF MUSGRAVE: But they were fairly expensive.

MR BIRD: Yes. I couldn't hazard a guess.

PROF MUSGRAVE: Which would be a concern, because if we look at the realities of the situation, as far as native vegetation and biodiversity is concerned, there are governments which don't have enough money to manage the reserves they have properly - that's what we're told - and a perhaps resultant attempt to expand preservation activity by imposing regulation on landowners without, as you say, compensation for loss, implies a program which doesn't have enough funds to achieve the objectives that the body politic desires for it. In such a case, does the RFA process have a place?

MR BIRD: I'm not sure where you would be spending the money - on compensation or on more inquiries.

PROF MUSGRAVE: If we have such a bankrupt program - I say bankrupt financially - is there any point in even aspiring to an RFA-type process?

MR DICKENSON: When we set out to develop the forest industry strategy, it was very inclusive. Everybody had their fingerprints on it, but in those very early days we set out to put in place a mechanism that governments over time would feel comfortable with - if you like, putting a solid foundation in place built on the sciences so that it didn't matter what colour the government was, they would still support it, and when you're dealing with the environment, that's absolutely vital.

One of the difficulties I guess with the NHT program was that you have a political timetable trying to deal with an environmental time frame and, even if the funds are there, that's not an efficient way to do it. We all aspire to things we can't afford, and that's really where we're at with this issue, and we have to look at the job that needs to be done and then decide whether the community has got the dollars to do it. If we start looking at the budget line item first and trying to make the conservation issues fit it, we will fail. But we should do it honestly so that various political parties don't feel frightened to stand on it and debate it robustly with Canberra and Sydney and Melbourne populations that think when they've found a milk bottle they've found a cow's nest. If we don't do it that way we're selling out on the environment and those people who try and manage it.

MR BIRD: It's probably an appropriate time for me to give to you a short summary of some studies relating to forestry in Tasmania. They have all been conducted in my lifetime, which is probably giving away more information than I need to there, and I have taken the liberty of adding your expected outcome in 2004 to the bottom of the list.

DR BYRON: I imagine it takes a few pages.

MR BIRD: Only three.

PROF MUSGRAVE: It seems to have been quite uncontroversial.

DR BYRON: Yes. It does make you wonder how much on-the-ground action could have been achieved for the price of all that inquiring.

MR BIRD: Precisely.

PROF MUSGRAVE: Could I just switch tack a bit and ask, in your experience, in relation to regulatory regimes in relation to forestry, whether illegal clearing is a problem; in other words, is monitoring effective or partially effective?

MR DICKENSON: There's very little clearing going on in Tasmania at the moment. Alistair quoted an example this morning. I wasn't aware of that. I'm not aware that people are out with their bulldozers. I'm not sure that too many own them any more. There is certainly conversion of native forest to plantations and, in the example I gave you earlier, there is an area there going into pasture production, but that isn't without some serious thought and it's done legally.

PROF MUSGRAVE: As far as you can say, monitoring is not an issue.

MR BIRD: I'm not aware of it, and Tasmania being Tasmania, your neighbours will know what you're up to so it's very likely that everything that has happened is reported and the Forest Practices Board is there to make sure that plans are in place beforehand.

PROF MUSGRAVE: Okay.

MR EDWARDS: I'm also not aware of any illegal harvesting going on, and I would have thought my members would have made me aware of it given that they are required to comply with the law in all respects. They're usually fairly quick to let me know if someone else is getting away with a freebie.

PROF MUSGRAVE: But there are monitoring procedures that are actually in place. Are they audited?

MR EDWARDS: Yes.

PROF MUSGRAVE: Finally, in particular in your submission you referred to development work on economic and social indicators, the work that seems to be in process. Could you tell us what has been done or what's going on there?

MR BIRD: The work that I alluded to there is some of the trial work that was done

by ABARE on Montreal indicators as a means of assessing the implementation of the RFA, and there were a couple of studies done through polling of industry by both face to face and by telephone to try to determine exactly what employment and investment was in various sectors of the forest industry. That was, because of its very nature, not 100 per cent. There were some people who could have been respondents who thought, "Here comes an arm of the Tax Department" or something and so they didn't want to talk to another Commonwealth official.

Others were missed because they weren't on the radar of the people who were doing the work from Canberra. So it was an incomplete study, but it's the best we've had to date, and you will note that the Resource Planning and Development Commission did find it inadequate and thinks that this should be remedied so that those who make decisions are fully informed of the impact of further reactions in relation to reservation of land and changes in land use.

PROF MUSGRAVE: Just talking about the Resource Planning and Development Commission, I know forestry is exempt from the planning protocols and procedures in Tasmania, but I wondered if you had any comment on the Midlands Council comments about the vacuum in relation to state policy development for planning and the resultant pressure on the commission to fill that vacuum.

MR EDWARDS: I don't know that I'd subscribe to the view that there's a vacuum. The forest industry operates under a very extensive code, which is the Forest Practices Code, and operates also in conjunction with planning schemes. Land use is determined by councils through their planning schemes.

PROF MUSGRAVE: Yes. You're outside that planning process.

MR EDWARDS: We're outside the planning process but the councils still have the responsibility and do give land various uses. If forestry is not an approved activity, the forest practices plan or the Forest Practices Code can't authorise an activity on that land. The two do interact. There is a study going on between the local government industry and the forest industry at the moment to try and work through some of the clashes that occur at the edges of the two schemes where they tend to overlap, because it is quite a complex area and it's not easy to get one side or the other to give ground in that particular discussion. It is a difficult area.

Just moving back if I can for half a moment to the response Trevor gave you on the Resource Planning and Development Commission and the need to obtain better social and economic data, that was dealt with as recommendation 5.1 in the RPDC review which actually recommended that the parties, being the two governments, as a priority develop a process to obtain reliable data to inform social and economic indicators for the community. That was because they were convinced that there was

insufficient information available on those two types of indicator, whereas there was an extensive range of data available for conservation-related outcomes.

DR BYRON: On that note, gentlemen, I'm afraid we're going to have to leave it there for now but thank you very much for coming and for your submission and supplements. It has been most helpful. Thank you very much.

MR BIRD: Thank you.

PROF MUSGRAVE: You may have noticed we have lost our presiding commissioner, but I'm sure we can cope. At 5 o'clock I and my colleague also go up in a puff of smoke, so we must aim to finish by 5.00. Is that right? Yes. Mr Blake, could you identify yourself for the purpose of the transcript and then talk to us about what you want to talk about.

MR BLAKE: My name is Greg Blake and I run a small consultancy which is called Reserve Design and Management. For five years we've worked in the area of private land nature conservation across Australia. Previous to that I had personally a long engagement in this sector being a foundation board member of the Australian Bush Heritage Fund and, for five years, was a senior member of staff in that organisation. In my capacity in this organisation we assisted with the development of strategic plan development of the Australian Wildlife Conservancy and currently I am on the management committee and board of the Private Area and Protected Land Program in Tasmania, which is a cooperative agreement between the state, the Australian Bush Heritage Fund and the Tasmania Farmers and Graziers Association, to achieve private land nature conservation goals on private land. I am a board member of the Tasmanian Land Conservancy, which is an organisation in Tasmania which uses public moneys to achieve private land nature conservation outcomes.

Our business, Reserve Design and Management, does three things primarily: the first thing we do is facilitate the purchase of land for nature conservation; secondly, we do landscape scale plans and we work with groups and communities to produce strategies to overcome issues related to nature conservation; the third thing we do is work with landowners, private landowners, to undertake whole of property plans across Tasmania. Currently we are working on six properties which have a total area of about 65,000 hectares.

What I'd like to talk about today is not so much the role that prohibitive legislation plays in the achievement of nature conservation goals - although I recognise the significance and importance of those processes in achieving those goals - but rather the impediments to achieving some of the processes that we've been working with over the last four years. To give you some idea about the outcomes we've achieved, since my original engagement with this process, I've participated in the purchase of about 450,000 hectares of land, and currently we are working with Austrade to develop a process to extend our interest in that regard to individuals overseas.

We have an export development grant which is assisting us to look to Europe and to the United States and to South-East Asia to facilitate the purchase of land for purposes of achieving nature conservation outcomes. In that regard we have succeeded in interesting five clients, who are interested in participating in our process in Australia. We are very thankful about the participation of the federal

government's export enhancement program in that process, but there are a couple of impediments to the development of our current agenda.

One of those is that we foresee in the future some difficulties with the Foreign Investment Review Board in relation to the purchase of land by people of non-Australian nationality. One of the criteria we have placed on the purchase of such land is that it is of sufficient quality to be transferred into the National Reserve System. We have spoken to the National Reserve System Program about facilitating that process. So we see what we're doing as fundamentally different to the acquisition of land in Australia for pure commercial gain. It may surprise you to find that nature reserves have become the ultimate fashion accessory in some circles and that around the world currently there are about 18 million hectares of land held by private individuals as nature conservation reserves. In Australia our clients are interested in purchasing approximately 350,000 hectares of land in northern Australia and in the Northern Territory.

The other significant impediment - which Neil is probably pleased not to be here to hear me talking about again - to the development of that particular process is the structure and nature of the legislation which surrounds leasehold land on the Australian mainland. It's not relevant to Tasmania, but it's a significant impediment to organisations like the Australian Bush Heritage Fund, the Australian Wildlife Conservancy, Birds Australia and the other groups that are participating in the process of securing land without conflict - and also to the clients that I represent. In most jurisdictions leasehold land, although it is sometimes of dubious value in terms of agricultural production, the lease requires that the primary use is maintained as pastoralism. If the landowner makes an economic decision and decides to transfer that land to an organisation or individual who is interested in nature conservation, that requirement is a significant impediment to the achievement of those goals.

The NGO sector - Australian Bush Heritage Fund and the Australian Wildlife Conservancy - asks individuals to provide funds voluntarily to do this form of nature conservation and they've succeeded in securing between them about 30 properties around Australia over the last 10 years. A lot of those properties exist in a tenuous situation and there are some interesting internal ironies in that the National Reserve System Program has provided significant funds towards the purchase of those properties, because it will provide two-thirds of the purchase price, and has done so on leases which have, as their primary use, pastoralism and which have limited terms.

I suppose my point in relation to this particular part of the process that we're engaged in is that we in Australia have failed to recognise the significance of that process in relation to the achievement of nature conservation grounds. Ian spoke previously at length about the cost of things and about how there is an internal

conflict between the person who is required to undertake the activity and the people who wish him to do so - or her to do so. In other places, particularly in the United States and Western Europe, that conflict is partly assuaged by the voluntary commitment of funds by individuals to achieve those goals. There are in the United States something like 280 land trusts and funds that do this work. In Western Europe each of at least the western seaboard countries have an organisation that does this work, and a particularly good example of that is the Nature Monument in the Netherlands, which has a very intricate and well-evolved relationship with government.

My point in this regard is not that there is a need to reduce regulation in terms of nature conservation or increase it; my point here is that we are missing a significant opportunity from this sector and an opportunity which has been realised in other places, which would facilitate those outcomes. My observation of that personally, having spent a significant amount of time talking to people in those organisations and other places, is that the relationships that exist between government and organisations in other places are well polished, well refined and have become very culturally accepted.. For instance, it's almost impossible, when you visit the Nature Monument, to find out where the boundary is between the Nature Monument and the Netherlands government. There are people who sit there and you can't actually work out where they are in the scheme of things.

That's an acceptance of a cultural reality that the problem needs to be solved, and that facilitating that process now - I can give examples of the fact that, despite the fact that the land purchase sector - which was one of the things we do - is stumbling forward currently in Australia and has actually achieved some really significant outcomes - I've been involved in it since its original inception, a short period of a decade ago, and in that time that sector has received little active support from government. It has received funding to purchase property, certainly, and it has received the support of individuals in government organisations that recognise its significance and the process of achieving these goals, but there is a limited amount of coordinated association between government and the sector.

The Productivity Commission has written a report about the role of private land nature conservation which I think is an excellent report, but I feel does not go far enough to address the need to look at the strategic importance of this sector and do things to actively support it. An example of that is that in New South Wales the Australian Bush Heritage Fund purchased a property which was of high conservation significance and, at that time, the New South Wales government was running a covenanting program. It took two and a half years for us, the perfect client, to achieve a nature conservation covenant on the land. It was not the fault of the officers concerned; it was just because there was no recognised process or recognition of the sector in that sphere.

I've spoken enough about this, but I think probably I'm asking something which is extremely difficult, which is a cultural change in the broader population, a recognition of this sector. When you say that to people in government, they will say, "Well, you guys should get out there and push the ball a bit harder." But I think the fact that we've actually created this thing out of nothing and raised its profile across Australia and succeeded in putting some tens of millions of dollars into the sector over the period of time indicates the fact that we're actually doing - or that that sector is doing a very good job in relation to raising its profile.

But the lack of coordination, which I believe underpins a lot of issues related to private land nature conservation, between the state and federal governments and the agencies within those governments and the way they relate to each other causes confusion and a lack of acknowledgment of the role. We're lucky in Tasmania in that we have a small community and we work closely together and we've been successful in creating entities which approach this issue, one of which is the private areas Protected Land Program which is a cooperative venture between the TFGA and the Australian Bush Heritage Fund and the state; a true partnership. That program provides something of a model to achieve those kinds of cooperation across the nation, I believe.

One of the significant impediments to achieving a flow of resources from private individuals or from non-government sources into private land nature conservation is the inability of government to provide a surety that money which is donated or is provided to those activities actually ends up where it's supposed to end up. If you give money to government, then it can end up in a fund and can be disbursed, but there is a perception - real or otherwise - among donors, particularly high-wealth individuals who want to give this money, that they want to be assured that the organisation that they give the money to has one primary purpose.

One of the things we're doing with the Protected Areas on Private Land Program is moving it away from government - in a strategic sense - towards a situation where it's more easily recognised as a single entity. Our model for that is the Trust for Nature in Victoria which I believe has been relatively successful, which hasn't actually made that separation to the point where it's easily identified as being outside of the sphere of government. This all draws attention to the previous groups' points which I'm sure have been raised over and over again during the inquiry, about the perpetuity of - there is a standard bumper sticker amongst conservation organisations that says, "Extinction is forever," but I always say in counterpoint that conservation is forever. You actually have to be able to assure the ongoing commitment of management and process, and the clarity that organisations which have that as their primary objective brings to that - brings assurance to people who wish to disburse funds in that direction.

Now, as I said before, the federal government has been generous in its support of those organisations in terms of finances, in that the National Reserve System Program will provide two-thirds of the purchase price of a block of land, which fits the criteria of the National Reserve System. That I see and we always - the organisations I have worked for and with - saw as being something of great value to us.. But if you count against that the responsibility that those organisations bring upon themselves in terms of their structure and their financial commitment over time, it doesn't take very long for that balance to shift back in favour of the organisation in terms of the resources that are expended. I think that's all I'd like to say about that particular part of the work we've been engaged in and the things that I've been involved in over the last 10 years.

But to summarise it, I would say that I think there is an enormous potential - which has been demonstrated by what is effectively probably 30 or 40 individuals across Australia over a period of the last 10 years - to channel significant resources into this area which could overcome a lot of the concerns that people have in relation to compensation and process.

Basically, there is absolutely no conflict in someone selling you that, your land for nature conservation, and as a conservation manager it's a huge relief to be able to stand on your side of the fence and say to your neighbour that you're doing what you want to do on your land, which is to achieve nature conservation outcomes. In my experience of dealing with the purchase of I think 19 now of those reserves we talk about in Australia, those reserves have been accepted into the local communities in which they're embedded with enormous enthusiasm not only from people who favour nature conservation as communities but also by people who recognise the intrinsic right of people to do what they like on their land.

The second area we have been working in since we started to deal in this sector, in the private sector, is to work with groups and organisations to achieve ways of smoothing all the bumps that happen between the goal of undertaking nature conservation and the achievement of it. We have worked with the King Island Council to produce a vegetation management strategy which was done in consultation with the community. The starting point of that agreement was that we would achieve an outcome which had no net loss to the individuals or the community. The King Island community was very sensitive about its survival as it is a small, isolated community with a distinct culture, and it did not want to risk the loss of productivity or potential from its community, in that it feared that if it did that, then it would disappear altogether.

We've also worked with groups of councils, the Sorell, Tasman and Clarence councils in south-eastern Tasmania, to put forward strategies for achieving nature

conservation goals in their jurisdictions and also now with a group known as the Tamar Natural Resources Management Group, who have a shared agreement between the West Tamar, Launceston and Georgetown councils to achieve natural resource management goals within their region. They are actually now a self-sustaining entity funded by the councils in recognition of the value that their activities bring to the councils in resolving some of the obligations that the councils have.

In all three of those cases, we have undertaken extensive public consultation processes to find out what it was that people could agree on before we looked at things that they would disagree on. One of the main issues we had come across in all of those jurisdictions was that there was a very limited understanding and an enormous amount of confusion in the community about the responsibilities of individuals, the requirements that are placed on organisations by legislation regulation and the opportunities that exist for them to achieve funding.

A classic example of this is that when we first went to King Island, the King Island Council was in the midst of a terrible internal ruction about whether they would impose their own clearance legislation within their planning scheme. People weren't talking to each other or were yelling at each other, and there was a lot of nastiness being exchanged. When we actually pulled the maps out and stretched them on the desk and looked through the strategic process, we discovered that in effect they were arguing about something which had been done for them. The Forest Practices Act and the Environment Protection and Biodiversity Conservations Act already had significant impacts in that regard. When we analysed the vegetation of the island and the nature conservation resource, we discovered that the restrictions that the council was wishing to place on clearance on the land were actually less onerous than those that were already imposed by legislation from above.

The point I make here is that this is a very dangerous situation. For a start, one of the costs that I see in relation to the achievement of these goals is this profound and destructive acrimony that exists within communities about this issue. In the case of King Island, this acrimony was largely fuelled by this discussion about land clearance. In the end, the council imposed its land clearance - it put its regulations in place and no-one blinked an eyelid because they actually realised that the situation hadn't changed. The second point was that no-one on the island knew anything about the EPBC Act or the forest practices legislation which was in place or the recent changes to the forest practices legislation. There were people actively going about doing things on the island which they believed they had every right to do but which were clearly illegal. We facilitated the process of increased understanding of that.

One of the comments I'd like to make about legislation is that while, as I said, I support the need for there to be legislation to protect areas of significance and high

conservation, unless you actually extend the reality of that legislation to people and inform them about what their responsibilities are and support them in achieving their responsibilities, you're causing a situation of extreme cultural tension for no net gain. I would like to add to that that I don't believe that that process is a consequence of the evil intentions or malice of the government agencies that impose them. It's a simple reality that most of the organisations that are vested with the responsibility to enforce these sometimes extremely onerous regulations are intensely underfunded and work in situations where they have very limited support, both in terms of their personal institutional support and simple financial support for their existence.

So we have a situation where the EPBC Act, which can have extremely serious impacts on individuals and communities, is unheard of. The vast majority of the clients we have, we had to run group seminars to bring them up to speed about, and if we hadn't had the intention to do that and they hadn't stumbled on us as people who wanted to participate in this process - I mean, we get paid for this - they would have remained in ignorance of it.

So I think the point I'm trying to make in relation to this area of activity we have is that certainly legislation has a role and the argument about whether we have enough legislation or not enough legislation I neither want to participate in nor buy into; but I think that if we are going to have legislation, it really needs to be effectively extended to the community and it needs to be supported in a way that enables people to make reasonable decisions about their level of compliance. We have a lot of experience in this regard.

I think on our database we have something like 6400 correspondents across Australia who we've corresponded with in terms of public consultation or who are clients or are people we have had relationships with in relation to land we've purchased. I think we have a reasonable understanding of the level of engagement with those processes and I think I would say that it is abysmal. There is very very limited understanding across the broader community about the implications of those legislations, on a state and federal level.

The other processes that are related to the development of these plans and the mitigation of any conflict we can have is the extension of information. Now, once again I'm not criticising state authorities or the federal government in relation to their intention or the intention of individuals, but we have very good mapping of vegetation in Tasmania; compared to the rest of the word, probably one of the best systems in the world. But I understand the difficulty associated with that vegetation mapping and the understanding of the implications of our various acts on people is that that information is difficult to access and is not easily understood by lay people.

Now, Steve, who manages the TASVEG mapping project is working towards a

process to get that to happen. We have worked from the other end and looked at a client base which is basically the planners and people who make land management decisions in councils and as landowners, and asked them what they need to be able to access that information. We've created an interface now which allows you to get to that stuff quickly and effectively. Once you actually look at it and you can look at it on a property scale, on a municipality scale, on a regional basis, discussion inside of council, particularly the West Tamar Council I'm thinking of now, actually has seriously mitigated a lot of the conflict that existed, because opportunities for achieving conservation are clearer across the landscape.

Actually seeing those things on the ground and being able to interpret them removes from people a lot of the concern they have about this. You may have detected by now, I have a real concern about the implications that this process of dealing with nature conservation appropriately has for the community. I live in a rural community. I grew up in a rural community. I lived in a city for 18 months of my life. I really like living in small, rural communities, and I think that this issue has caused more distress and concern amongst the communities that I have lived in and worked in than just about anything else in the last 15 years.

Your terms of reference talk about the impediment of infrastructure, but the intrinsic cost associated with those disputes - and largely as a consequence of misunderstandings and misinformation - has real economic and social impacts in those small communities and I think those are the unmeasured impacts of those processes and the lack of understanding that extends across the community in that regard.

I think that's enough about our planning processes. To summarise it, though, I'd say that what we have identified as being the needs of people in that regard were the provision of information to professional people and landowners in a way that they can easily understand it, interpret it and provide it to other people; the recognition that planning for these things occurs on all different sorts of scales, depending on your level of engagement. You may be a property owner, you may be a municipality planning manager, you may be the manager of a natural resource management group that takes that catchment into consideration, you may be a state planner. Each of those levels of responsibility implies a different set of needs in terms of how you provide information to them. If you can't get that right, then the legislation is pointless. It doesn't actually fulfil its goals. Or if it does fulfil its goals, it does it in an atmosphere of acrimony and contestation which I find distasteful and destructive.

The third thing that we do, we've been doing recently, is working with a number of landowners in Tasmania. These people are some of the largest landowners in Tasmania and they come from the northern and southern midlands.

They have areas of land of significance and we have been commissioned to write whole-of-property plans for properties. The motivation that exists behind this is very complex. We can provide tools to people to do better management on their property. We have high levels of engagement with GIS and other things which just provide useful tools.

The second thing is that Ian said before that engagement with certification and accreditation programs doesn't give you a price margin, but I would say in counterpoint to that that in the near future - well, my understanding is that in the near future, access to markets is going to be if not dependent then at least strongly related to the attainment of those standards and processes. So although you may not get a margin, maintaining your price and place in the market is infinitely better than losing it altogether.

Another dimension to that is that accreditation may not provide you with a margin in the market, but it can actually provide you with new markets. Although it's subject to some very tense negotiations at the present, and I can't go into detail, one of the groups that I am working with has actually struck a deal with an accreditation body to provide preferential access to markets in Europe for their product. That's a much more sophisticated way of dealing with accreditation than it is to sit back, fill in the forms and mail them off somewhere - to actually extend your market through that process and create the access that's required.

Another motivation in relation to the development of these property plans is that there is, as I said before, a need to comply with various legislation and regulation. I know of two cases now in Queensland where financial institutions have looked askance at the development of agricultural enterprises on the basis that the person who was the proponent could not guarantee the continuation of that project in the light of their lack of understanding of available legislation. A proposal that goes to - and, once again, I can provide you with the details of that in private if you want, but I can't really do it publicly. For instance, these properties are in the Brigalow belt, which is high priority within the framework of the EPBC legislation, and one of them was to develop an extensive horticultural enterprise. The financial institution simply said, "Well, how do we know in two years' time someone is not going to come along and take half of your proposed development out of production?"

That reality has filtered down to the people that we're working with here and to landowners we're working with in Queensland in relation to that, to the point where we will identify and warrant the best case scenario, or the worst case scenario, when it comes to nature conservation outcomes and see if we can detail people some responsibilities in that regard. An example here is that one of the properties we're dealing with is particularly related to forest management. There are a set of requirements in relation to that, and we've worked out a way to analyse the nature

conservation requirements and not compromise them at all. In fact, the outcomes we're going to get are going to be much higher than those required by the RFA.

But we've actually located those responsibilities in a way that minimises impact on production. Assessments of the logging process in Tasmania - and correct me if I'm wrong - is on a coupe by coupe basis, which means you identify the area you want to log, you do a forest practices plan and then you work out what your obligations are. If you take snapshots out of the landscape like that, you miss the opportunity to actually rationalise that process into a way that minimises both the impact on production and nature conservation.

The final driving imperative that these landowners feel they have is this processed of integrated property management plans and negotiation in relation to offsetting their conservation risk against the requirements of government and achieving some sort of surety. Now, if I had any strong suggestion or recommendation in relation to how we deal with private land nature conservation in a lot of areas we've been talking about in Tasmania, it's that the state government - and I know that it is currently working on this - and those other people responsible for making these decisions come together and create a process which satisfies their requirements and which is acceptable to landowners in relation to the development of those plans, does it quickly and does it in a framework that assures people on both sides of the argument that they will get the outcomes they want.

Now, that may be living in cloud-cuckoo-land and believing that people will ever be completely happy with it, but we've just heard the virtues of the RFA espoused, but I think my fundamental problem with the RFA was that it dealt with the whole of the state. While it was a good process, the implications for individual forest owners were not well considered in that process; in fact, it was very late in the process that we discovered we had an issue on private land. So I think in relation to our experience with dealing with landowners here in Queensland - and I hesitate to speak for them, because I know there are some in the room - is what they really want is not so much to minimise their social responsibility but to achieve some sort of security and surety about what their responsibility actually is and not get caught out of the blue.

One of the other things we've been doing that relates to this is for the Tamar region. We have been working out a mapping system which works on the interface I discussed before. If you click on a cadastral boundary, it not only gives you the degree to which you are in conflict with your nature conservation values but it gives you a very rough estimate of the lost opportunity costs in relation to that property. I work for the regional forest agreement. I've done policy work for them and I also work for them occasionally as a negotiator to do these deals on land, and I would suggest that one of the major limiting factors on the success of the private forest

reserve program is the fact that there is absolutely no relationship between the resource provided and the economic cost, and that's what Ian was talking about before.

Hidden amongst all that is a lost opportunity, and a lost opportunity is that there are lots and lots of places in Tasmania that have high conservation significance that someone would be happy to give you for $300 a hectare. I think the clear separation of that process, understanding of that and what it actually means has only just started to dawn on people, despite the fact that landowners have been talking about it from one side and people have been trying to implement the stuff they have been talking about from the other. If you can actually see what that means across the landscape, then you can make more rational decisions about you do those processes, and I think that's what we're trying to achieve in the Tamar region.

I think that's all I've got to say really, except to say that we've managed to keep ourselves fed and alive for four years doing this stuff and kept another six, eight or 10 people at times in employment, which suggests to me that, if someone is willing to pay us to service this rather bizarre sector, it is actually something which has reality to it. People are willing to put their money where their mouth is, and recognition of the role of those processes of mitigating conflict is largely overlooked in the adversarial way we approach this issue. It's perfectly understandable that advocates of different groups and different positions maintain their positions and get engaged in conflict over it. That's a process which I'm very comfortable with, and it's been part of our political history.

But the reality of the situation, I believe, is if you actually hard at the problem and do it in a concerted you, you can actually get a lot of gains - maybe not solve the majority of the problem - from that process of agreed outcomes. I don't know whether that's ever going to happen outside the private sector, and I think it's going to happen as a consequence of the fact that pressure is brought to bear on people to actually come to the table and do it. I know that sounds like rose-coloured glasses, but we have witnessed that happen in a number of cases and people are now talking to each other in a way that they have never talked before. So I think that's all I have to say.

PROF MUSGRAVE: Thanks very much, Greg. Are you going to write some or all of that down and give it to us?

MR BLAKE: Yes, I will. I'm sorry, I apologise for not providing it to you in writing.

PROF MUSGRAVE: No, I understand you were in a situation where you realised you could do this rather late in the piece. That's well understood, but what you've

said is valuable and I think that, as well as having the transcript, if some of it was written down. We do have some time to talk to you, Greg, although we might like to reserve some time at the end, in case someone wants to make some further presentations. One of the things that occurred to me was have you talked to Alistair Graham?

MR BLAKE: Alistair is intimately entangled in the process of resolving some of these things actually.

PROF MUSGRAVE: So you would be a living, walking, talking example of some of the needs that he referred to for community education, information about the nature of regulation and so on.

MR BLAKE: Alistair and I have various levels of agreement. I would support what Alistair says in relation to the need for the extension of those ideas. What I would be concerned about is that we avoid that process becoming the advocacy of a particular point of view. The most important thing is that we clearly state and identify the problem, put it up front and then work towards a solution of the problem. We can do that because people don't come to us unless they have a problem, and they don't pay us unless they have a problem. I agree completely that you have to extend that stuff to the community, I think you have got to be very careful about presenting it in a unified manner as a solution to a problem.

PROF MUSGRAVE: In relation to your work with various local municipalities - and I'm thinking of councils - you describe your activity as helping them develop environmental plans and environmental management plans. When you first mentioned that, I thought that this might have been purely an initiative coming from the local body, where they volunteered their own objectives, but then it became apparent that these did relate to the impact of state and federal legislation on the council and its areas.

MR BLAKE: Yes, it's a mixture of both those things. In the case of the Tamar, the three councils clearly recognised that they have an imperative that not only comes from legislation but also from their constituency. In relation to the Tamar, we did a public consultation process and interviewed 3000 people in the Tamar region, which is a significant proportion of the population. It was clear from that interview that 70 per cent of people in the region thought that the maintenance and management of nature conservation issues, values and retention was very important. So that imperative filtered down from the councils, too, in that they were feeling the heat of their constituency.

PROF MUSGRAVE: So we're talking about plans which require significant contributions from the councils' budgets?

MR BLAKE: No. The mechanisms that we proposed were largely related to finding resources from elsewhere. Their commitment was in the form of the employment of people to implement those processes, but they had found a very efficient way of doing that in that they jointly funded this body, and there were implications for their planning schemes in that they had actually placed restrictions or changed process to address those things within their planning schemes.

PROF MUSGRAVE: Having had this experience, do you feel that local government - at least in Tasmania - is an appropriate community group for managing natural resource and environmental issues?

MR BLAKE: Absolutely. The difficulty I have with that is the same difficulty as I would have with the states doing - that currently both the municipalities and the state have chipped at a lot of their responsibility for doing those things in terms of finances into federal funding.. The whole thing seems to jump - and it obviously does - from one funding cycle to the next. So I think if there's some way of committing long-term resources, then they have a really important role in maintaining natural resource management - that is, particularly native vegetation - because they are the people who are signing off on building applications and approvals on a local scale, and they're very close to the community. They have been in uptaking it. We've had a level of success in getting the councils to accept some of these.

PROF MUSGRAVE: That's very interesting to hear, because I think someone today was concerned about conflict of interest, that style of problem, in local government in relation to such planning and management activity.

MR BLAKE: In general, in relation to that in Australia I'd say that in the last 10 years my experience of dealing with local government is that the role of professional officers in councils has increased. About 10 or 15 years ago I would have been reticent to say that because councils generally were smaller. They were generally more directly managed by councillors. Now, I'm not suggesting that councillors are all corrupt or have vested interests, but the role of professional officers who are engaged to undertake particular things has grown, and the understanding of that relationship between appropriate governments has increased and, with that, the way that process works has become a lot more robust I suspect.

PROF MUSGRAVE: I'm looking for phrases here. I was busily trying to take notes as you spoke, but you said many things. The property purchase, acquisition for conservation purposes, I was wondering if you engaged in the rollover-type arrangement, where you acquire property, sell and use the proceeds to go onto another one. I gather not.

MR BLAKE: No, the Tasmanian land conservatives just purchased three properties on King Island. Well, we purchased two of them - the third one is under negotiation - the first of which we intend to "revolve". We have actually created a situation of purchase, placing under a covenant and reselling for clients.

PROF MUSGRAVE: Yes, I see.

MR BLAKE: My reservation in relation to that is that I don't think - at a state, federal or local government level or inside the NGO sector or anywhere - we've actually really addressed the issue of how we manage those processes into the future in terms of the monitoring, in the terms of the maintenance and liability; all those things. If the revolving fund process is going to work on a larger scale than it currently does, then those issues really have to be addressed. It's really important.

PROF MUSGRAVE: Yes.

MR BLAKE: The Trust for Nature in Victoria has gone some way towards addressing those issues, but I think still is now staring down the barrel of a whole lot of inherited liabilities in the process that they are quite concerned about.

PROF MUSGRAVE: Okay. thanks for that. I think I have to draw to a close, because I didn't have enough time to pick up more questions. I guess we can get back to you if we have some more detailed questions, which perhaps we will after the transcript is examined and we've received your written submission. I think that that's not an unusual thing for the commission to do.. Thanks very much, Greg.

MR BLAKE: Thank you for the opportunity to speak to you.

PROF MUSGRAVE: It was extremely interesting.

PROF MUSGRAVE: At this stage, an invitation is extended to anyone who would like to make a further comment or contribution before we close. Is there anyone who wants to do such a thing? Yes? Rob, isn't it?

MR DOWNIE: Yes.

PROF MUSGRAVE: Would you come up, Rob, and identify yourself and speak into the microphone?

MR DOWNIE: Thank you for this opportunity, commissioner. Robert Downie. I just wanted to pick up on one point that was made earlier, which was about the inequity of one property being previously cleared and another property now wanting to do some clearing. I wanted to put it in the context of what happened with the RFA process here in Tassie, where my understanding is - and my facts might not be totally correct - forestry has received a structural adjustment package to proceed posthaste with conversion of native forest to plantation.

Prior to 1988, private landowners had established practically no private plantation - and that is now escalating fairly rapidly - but we're suddenly getting to a point where the goalposts have been moved and big business or forestry and others have gone ahead with what they wanted to do, but small private landowners haven't been able to. Now that small private owners are wanting to be able to do some conversion, they are being stopped in their tracks by legislation, which the big end of town was always able to plan towards. I just wanted to bring that in. I think that's quite inequitable, that some people knew what the game was and small private owners seem to have missed out.

PROF MUSGRAVE: Thank you very much, Rob. If there's no-one else, I think that we can draw things to a close. Thank you very much for your attendance and participation, both you and those who during the day have come and gone. Thanks very much.

AT 4.52 PM THE INQUIRY WAS ADJOURNED ACCORDINGLY

INDEX

	Page
TASMANIAN FARMERS AND GRAZIERS ASSOCIATION: BRENDAN THOMPSON IAN WHYTE ROBERT DOWNIE	724-743
TASMANIAN CONSERVATION TRUST: ALISTAIR GRAHAM	744-766
SOUTHERN MIDLANDS COUNCIL: COLIN HOWLETT DAMIEN MACKEY	767-779
FORESTS AND FOREST INDUSTRY COUNCIL OF TASMANIA: TREVOR BIRD TERRY EDWARDS IAN DICKENSON	780-795
RESERVE DESIGN AND MANAGEMENT: GREG BLAKE	796-809
ROBERT DOWNIE	810