



**TRANSCRIPT
OF PROCEEDINGS**

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PRODUCTIVITY COMMISSION

**INQUIRY INTO IMPACTS OF NATIVE VEGETATION AND
BIODIVERSITY REGULATIONS**

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

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON THURSDAY, 7 AUGUST 2003, AT 8.36 AM
Continued from 4/8/03 in Canberra

DR BYRON: Welcome to the public hearings of the Productivity Commission's national inquiry into the impacts of native vegetation and biodiversity controls. My name is Neil Byron. I'm the presiding commissioner for this inquiry. My fellow commissioners are Brian Fisher and Warren Musgrave. I am sure that most of you are familiar with the background of this inquiry. The commission has been asked to undertake this by the Commonwealth treasurer and the terms of reference were cleared with all the states beforehand.

We've already talked to a range of organisations and individuals with interest in the issues. We've now had over 150 submissions coming into the inquiry following the release of our issues paper in April. The purpose of these hearings is to provide an opportunity for any interested parties to discuss their submissions and put their views on the public record. Following these hearings we'll be holding hearings tomorrow in Adelaide, next week in Melbourne and then in Hobart, Sydney and Moree. We're working towards completing a draft report for public comment by the beginning of December and then we will invite participants who are interested to another round of submissions and hearings after they have had time to read and digest the report.

We always like to conduct these hearings in a reasonably informal manner, but because we're taking a full transcript we can't accept comments or interjections from the floor. Participants to these inquiries are no longer required to take an oath, but under the Productivity Commission Act those giving evidence are required to be "truthful in their remarks" - unquote - and participants are also welcome and encouraged to comment on issues raised in other submissions. The transcript will be available to all participants for checking later. Copies will be available from the web site and by purchase or for perusal in public libraries throughout the country.

At the conclusion of today's hearing I will be asking if there's anybody else present who wants to make a statement. Even those who have given evidence before can come back and make a supplementary statement. I'd now like to welcome the representatives of the WA Farmers Federation. Gentlemen, if you could introduce yourselves first for the transcript - recognise your voices basically - and then maybe summarise in five or 10 minutes the main points in your submission, which we've all read, and then we can have a backwards and forwards discussion about those issues. Thank you very much.

MR McMILLAN: Andy McMillan, director of policy, WA Farmers.

MR NICHOLL: Colin Nicholl, president of WA Farmers.

MR ENGLISH: Garry English, spokesman for land management and conservation.

MR BECKINGHAM: Len Beckingham, north-eastern zone president and farmer

from Waikiki.

MR HARRIS: Ken Harris from north of Geraldton at Binu. I'm also on the advisory committee of the CBH in Granville.

MR NICHOLL: Chairman, if I may, a couple of our members have to go early because they've got other commitments. So we would like to give them the opportunity to have their say first and then we will endeavour to come back. So I'll have Andy go through our submission later on, but first of all I'll go to Garry English who's our land use spokesman and the way we're doing it is, Garry's our spokesman but we have here both Len and Ken who are farmers that are caught up in the problem. But I'd like to start by saying that we welcome this inquiry. We believe it is long overdue and we'd see it as probably the only hope that we, that are caught up in a lot of the environmental legislation, will have the opportunity to be able to fairly and properly explain how that is impacting adversely on our businesses.. With that, I'll hand over to Garry.

MR ENGLISH: Thank you, chairman, and thank you for the opportunity. I mean, this has been a long-running sore for our organisation for probably a decade now and we really do look forward to seeing it resolved. Just the fact that it has taken so long, the distraction of it, is an issue for our organisation and for our industry, the emotional stress for individuals that are caught up in it. It's just one of those things we just want resolved as soon as possible. Chairman, I think our submission, without beaming ourselves up, is a very balanced view. We're not being radical. We are trying to resolve this and we would like to see it progressed. If you've read the report I think that points to exactly the way our approach is.

A couple of points I'd make though: the number of land-holders impacted by legislation is relatively low. However, those that are impacted, the effect on those individuals has been and still is considerable in both economic and emotional terms. It's very serious in fact to those who are caught up in it. The majority of landowners would have sympathy for this cause, mainly on the principle of concern at the loss of value and potential enjoyment of property purchased for the purpose of farming. There is also a serious concern at the insidious incremental shift in legislation and regulations to impose control on landowners for community good, reasons that certainly restrict landowners' business plans without any incentive or compensation.

Had control been brought about by the taking or the resumption of land, it certainly would have involved compensation under just terms and this new shift by regulations and legislation is, I believe, just a shift on behalf of government on the cheap to take over those community good things and control that land without actually paying for it. I think that's the concern of our whole industry really. It's this shift from where there might have been resumption to now control through the back door without any assistance whatsoever. That's virtually just a bit of an opening,

chairman. I think the rest of the detail is in our submission.

DR BYRON: Thank you.

MR McMILLAN: Chairman, if I could just have five minutes to quickly run through the main points in our submission. The whole issue, we see it as an issue regarding property rights and in particular the erosion of the farmer's right to farm his own property. The issue over time has certainly developed into a huge political football, very high in rhetoric and very low on delivery by both federal and state governments, and these issues badly need addressing. The state government over here has developed a sustainability strategy which talks of the three principles of sustainability being economic, environmental and social management processes.

As an organisation WA Farmers supports that principle of equitable measurement of those pillars. However, it's very evident that the government has no commitment whatsoever. We've made it fairly clear in our submission that we believe in the state government it's - the tail is wagging the dog and that there are some bureaucrats well and truly out of control when it comes to environmental issues. Our experience in this regard is well highlighted by the work we have done in relation to property rights, where we've entered into negotiations with the government in good faith. We've developed a set of property rights principles for land clearing, which have been given absolutely no credibility and there has been no finalisation of this debate to date because it's too hard.

We've also been made aware, without pushing the issue, of inequities in the whole land clearing debate, in relation to government agencies and also local governments clearing particularly in areas of road widening. We don't believe there's any permits been issued for the clearing and if the issue was on the other side of the fence there would be prosecutions in place, we'd be very sure of that. We're trying to address these issues but we've hit the usual brick wall and getting no response at all from government.

Commissioners, I think the value in your session with us this morning will be in asking questions and getting statements from the farmers of the group. It has been very difficult for us to get farmers to leave their properties to come to town for these hearings. Western Australia is a very big state and there's a lot of travel involved, and we certainly appreciate Len and Ken and the efforts they've made coming up here. But we have received a commitment from a group of farmers down in Esperance that if the commission was prepared to travel down there in the New Year, when I believe there will be another round of consultations, they would be more than happy to meet with you down there and I would strongly encourage you to take that offer up, so thank you.

MR NICHOLL: It would probably be a good idea now if we went to a couple of

case studies. I think if you could lead off, Ken, because Ken has to go early too.

MR HARRIS: Yes. Thanks very much for giving me the opportunity to put a case to the commission. I've sort of covered a whole area, being a bit older. I started at Badgingarra Pioneer which is area Hill River and in my term up there I was asked to leave the land for six months because I hadn't cleared enough land at the time, eventually got the farm back and developed that, and then I went further up to Binnu which is about 700 K's north of Perth and developed that land, cleared land 40 years ago it has been very productive since, and about 10 or 15 - be 15 years ago, I cleared some more land, filled in a form to say what I was doing, and then I've got twin sons and they're 40 now.

We've been working as a family for a while and three years ago we decided to give them half the farm each, and that including one of the family getting mostly bush. There was 1400 acres on his part of the bush and he wanted to clear that up, so it was left for him when he took over the farm, and he cleared 500 acres after putting a notice in the paper about doing so, and didn't manage to clear it for 12 months because we had the - after I go from the farm I had the worst year we've had in 45 years, so they weren't very pleased about that.

So they left the land there for a while and then he had nothing from the commission over here, so he went ahead and burnt it and promptly got a Soil and Land Conservation notice put on his land, and he wondered what was going on because having just taken over and he hadn't run the farm before, they thought it was just all plain sailing and you went ahead very carefully with your land and did what you thought was right. Ever since then he has had to sell 500 ewes because he wasn't allowed to touch that land with the Soil Conservation notice over it. The neighbours have all been very supportive for him but it hasn't helped of course.

An agronomist gave him some figures the other day. In the last two years he has lost \$80,000 income, potential income from that land that he hasn't been able to use. He has been very careful how he cleared this bit of land, leaving any sandhills, any valleys or any fence lines, and mainly he wanted this cleared. He did what he wanted to do, to eradicate vermin, and as you probably realise from the submission he was paying rates on all this land that he couldn't use anyway, and there was a fire hazard, under the fire control. I was up there for about 35 years and this patch of land has always worried me even when I owned it myself, and it was a relief to see it cleared. So there's three good things came of clearing it, but he wasn't allowed to use it. He's still not allowed to use it.

In fact, Mr Andrew Watson, the Deputy Commissioner of Soil and Land Conservation, was up there yesterday talking to us and he still didn't give us any positive outlook. So we're sort of in limbo as what's going to happen to this bit of land. It's sitting there all cleared and can't touch it, and can't use for running stock on

it. He doesn't know where to put his fences and one thing that came up just a minute ago about stress, well, the daughter-in-law said to Andrew Watson yesterday that it's not just an environmental thing, it's stress. It's a big problem for the young fellows.

Us older chaps, we've sort of led into this stress and we've taken it on our chin as we've gone through farming. There's always something to knock you, and they just jumped into it and all of a sudden they just found it very hard to face up to, and you realise there's a few suicides in our state and this is through stress, through that sort of thing, and I didn't realise it was such a big worry to him until I heard them yesterday. So they're looking forward to some direction, where to go from here, and it has made it pretty difficult for them. But that's from our side of view, but I've been right from the beginning, right through the end, and I'd like to see it sort of resolve somehow.

DR BYRON: Thank you.

MR NICHOLL: We'll go to you, Len.

MR BECKINGHAM: Hello, my name's Len Beckingham and I've got a farm which is in the north-eastern wheat belt. The farm is about 4460 acres and out of that 4460 acres there's about 1300 cleared. This has created a lot of problems for us. First of all, when we bought the farm it was a conditional purchase farm and we started clearing. It was virtually all bush when we bought it. We fully boundary fenced it and then some of the rules changes and that allowed us to be able to get a freehold title on it without having to clear the full amount of bush. Because there was so much bush on it, there was a lot of expense involved in getting it fully productive, so it's a sort of a thing that you've got to do over a period of time. You just can't do it all at once.

As we continued to progress on, you know, with clearing that, rules started to tighten up and it got to a stage when we couldn't do any more clearing, we put an application in to clear some land that had been chained by the previous owner to us, but had regrown, and we were knocked back. I think one of the reasons was the geologist there thought that it might create a salt problem. However, that was quite a few years ago and there have been no salt problems; in fact, not even any of the surrounding farms have any salt, to my knowledge, on them at all, and I know the farmers very well. So I don't believe that was an acceptable answer, and I would have liked the opportunity of getting another geologist's report, because I don't believe the person even went out there; he just looked at a map in Perth and never actually went out there to the farm to check it out.

So what has happened since then? Well, we try and run stock out there. Because there's over 3000 acres of bush still on the farm, there is huge numbers of emus and kangaroos that live there. Last year alone we lost 50 per cent of our crop.

The kangaroos and emus wiped out 50 per cent of our crop, and there wasn't a lot of crop there anyway because of the drought, so that created a huge loss to us financially. Also when we've had sheep out there, and this is an issue that I'm at present talking over with CALM - we lost a significant number of our lambs from our youth, our sheep that were born this year. We've probably lost up to 80 or 90 lambs so far at a present value around about \$80 a head. That's a significant value.

The eagles, they - there's a lot of tall timber in the bush, so there's a problem there. There's no grass that grows in the bush, so the stock can't forage there, so it's of no value to us as far as foraging is concerned. So it has created some costs and other dilemmas with us as far as vermin is concerned. There's some other issues that come up too. Because of the small amount of acreage that's cleared, when we go to a bank to get our overdraft for our running costs, they will only loan us a percentage of the cleared acres because they say that the uncleared land has no value. So we try and get an overdraft and the overdraft is about enough to buy a second-hand car; couldn't even buy a new one on it. So we have a problem there with the value of the land.

The other problem with the value of the land is because there's so many acres of bush on it and so few cleared acres on it, it makes it almost unsaleable. We actually have had it on the market for about three years and we haven't even had a nibble. So nobody is interested in buying it because they just see it as a problem, as we know it is. Also I spoke to our CEO of our local shire yesterday, and he told me to expect a 30 per cent increase in our rates this coming year, because the valuer-general has put the value of the farm up 30 per cent. Now, the valuer-general values the whole farm and at the moment the government is arguing that they don't see there's any value in the uncleared acres, and yet we are actually getting an increase in our rates.

So all in all, we seem to be paying out. We're paying out in rates on the uncleared land, we are being penalised by the banks because they say the land has no value, we are copping a loss with vermin from the kangaroos, emus and with eagles, with stock losses, and with huge crop losses. We really would like to know where the government is going to go on this so that we can try and sort out some way that we can go forward, because this farm has become a liability to us and it's very, very difficult to manage. So really I'll implore you gentlemen to have a serious look at this and see what you can come up with, and we can work out something for everybody's common good, including ourselves. Thank you very much.

MR NICHOLL: If I can just carry on, just dealing with a couple of cases. As Gary said earlier on, the impact on individuals has been extremely high, although in the overall scene, the effect on the state if this clearing was allowed to go ahead, it would not have impacted all that much. I have in front of me here a case of a farmer by the name of Ron Collins, who is now an ex-farmer, but he bought a farm at West River,

and a letter that he sought from the agent - well, going back to the original owner, and I'll just quote it:

Regarding the clearing of land at West River, Mr Bartlett has spoken to the Department of Agriculture at Jerramungup, who said until an official application is put in for the clearing of land, they will not inspect it. They have, however, indicated that only creeks and rocky ridges, if any, have to be left. Please find enclosed a note and the leaflet sent to Mr Bartlett from the Department of Ag -

and that note is the land clearing regulations. Subsequently, Mr Collins sought to clear the rest of that farm. It was a farm that he purchased - I think it was half-cleared, about 4000 acres. There was about 2000 acres of it not cleared. He bought the farm in good faith and when he went to get permission - and that was in - this letter is dated 1989. When he went to get permission to clear the rest of the land, he was denied that. Subsequently, he fell into financial trouble. When I was last talking with him, he had been able to sell the cleared portion of his farm. He was not able to sell the uncleared portion of his farm, and he still had possession of that. He had since been forced off the land and was now living back in Mount Barker. I give that as a good example of a case study of someone who has absolutely been devastated by the changes to the land-clearing rules.

There have been other areas. For instance, in my own - I farm at Hyden, and it is an area where there is increased production in crops. Co-operative Bulk Handling needed to extend their facilities at Hyden, and they were originally denied to be able to do that by native title. They went through the native title process, which took them quite a number of years, at quite considerable cost, and then eventually when they had the native title cleared from that, I believe CALM lodged an objection. These are only small areas of land but high value and very important to the production, and particularly the exports, of this state.

The move to acquire additional land along the railway line and extend their facilities was again delayed. Hyden had been earmarked for one of their Special Receival Points. It has already been - has the overhead or the fast, rapid loading facilities which have been put in there at enormous cost, and the idea of that - it gives us one of the world's best transport systems for grain in the world, because we were able to bulk up cargoes and load them into trains that are on the move, and they can load trains very quickly. But because they're high cost, they need to get a substantial amount of grain put through them, but as the result of that, because we haven't got the storage facilities - Hyden have been denied by that - grain had to be carted to less efficient receiver points further down the line at areas like Karlgarin where they do not have the rapid loading rail facilities.

Even in my own town, and the reason why I raise this - I have first-hand

knowledge there - Hyden is one of the few rural towns that has a growth factor in it not related to agriculture. They more relate it to tourism. Tourism does employ in the order of something like 60 people, either in full-time or part-time jobs, which is tremendous, and it's enabled Hyden to grow where a lot of other towns have had difficulty. But to buy or to get a housing block in Hyden, things like native title have made it extremely difficult because where the town is set to grow is on land that hasn't had the freehold title, and there is a lengthy process to go through to get native title off, and it makes the cost of building blocks in Hyden substantially more expensive than it ought to be in any other town.

Just a couple of other things too. I understand a number of farmers - and I haven't had the time yet to add up all the various acts that impact on our farm, but I understand that in some of the other states, New South Wales for instance, there are up to 17 state and federal acts that impact on landowners and what they can do, and it caught my eye, and article in *The Weekly Times*, 14 May - this is a Victorian farmer who wanted to clear some limbs overhanging his fence, which would be a normal thing. Farmers have to maintain their farms. They do have a responsibility to contain their stock. But in this case, the farmer had been ordered to plant 20 or more eucalypt seedlings for every limb he pruned off the mature trees overhanging his fence. This, sir, shows you just how ridiculous a lot of these laws and the application of these laws are being done and implemented by the bureaucrats. Surely we can get a few systems in this country which will look after both aspects, systems that work, systems that aren't punitive, you know?

Farmers sometimes have been branded as environmental vandals. I can assure you that is wrong, because we lived in that land, we love that land, we are dependent on that land for our income, and we like to live like everyone else does; in a good environment. We do whatever we can to get a good balance between creating a good environment and being able to create a living out of that land. With that, I'll hand over to Andy McMillan, if I may.

MR McMILLAN: Well, I think we've pretty much covered what we wanted to cover at this point in time, commission, so as Colin has alluded to, Gary and Ken have to leave. So if you've got any questions of those gentlemen, perhaps you could start there.

DR BYRON: Thank you, particularly Mr Harris, Mr Beckingham. I'm sure you realise we're not empowered to sort out individual problems like this. I wish we were. It's no consolation to you, I know, if we tell you we've met and talked to, heard from, dozens of other people who are in a very similar situation for very similar reasons, but in different states. That doesn't help you at all, but you're not the only ones. Mr Harris, I mean - I'm just trying to understand why the Western Australian government and the Soil Commissioner's Office still won't allow this land that was cleared to be used. I mean, I understand that they won't approve land where

they're convinced that it's going to cause degradation and erosion, but if it's already been cleared - - -

MR HARRIS: Can I answer that one?

DR BYRON: Yes, please.

MR HARRIS: The word that someone keeps telling them when they come to talk to him is "salinity". He said, "That's the only word you've got in your vocabulary: 'salinity'." As soon as they talk about clearing land, everything is going to go salty, even though there's nothing within the vicinity that's going to go salty. In our case, they put down some test bore holes to try and prove a point. So far it hasn't worked. That's the one reason: they don't want any more salinity in Western Australia. That's their argument.

DR BYRON: The land has already been cleared, but they won't let him use it?

MR HARRIS: That's right.

PROF MUSGRAVE: But you don't understand any mechanism that they - - -

MR HARRIS: Beg your pardon?

PROF MUSGRAVE: There's no mechanism that you can perceive that underlies this. There's no hydrological phenomenon that you can see.

MR HARRIS: It just looks - it's just sitting there cleared, burned, ready to put a crop in. It's been like that for two years.

DR FISHER: So currently it's growing weeds?

MR HARRIS: It's growing nothing at the moment. The good fire that went through it - it's really growing nothing. Actually, it had been cleared 50 years ago by an earlier farmer we had, but he couldn't afford to carry on with that part. He had small equipment in those days. He had a fair bit of other land and it just grew back up again. It was only shrubby stuff. He's cleared that, thinking he was doing the right thing at the time, but certainly with the soil, land conservation, he did no more, and it's just been sitting there for two years and there's practically nothing on it now.

DR FISHER: But it's actually - I mean, this is incomprehensible to me personally in the sense that we have a situation where land is cleared, it's sitting there, presumably it's subject to wind erosion potentially because there's no cover on it, and yet the soil conservation authorities are saying it can't even be - can't be touched to even protect it to that extent. Now, that is to me incomprehensible.

MR HARRIS: The same to us.

MR NICHOLL: I have inspected it and the way it has been cleared though, it has been cleared in a way to reduce - and shelter what's been left - to reduce the effects of any wind erosion. But what Ken has shown there is just a classic example of bureaucracy gone mad, it really is.

MR BECKINGHAM: In our farm all our creek lines are all bushed, bush down to the creek, bush in the creek, so there's no erosion like that. The southern side of the farm is high and it runs downhill to the northern. Now, we're on the perimeter fence so we actually have crown land. I think it's about 20 kilometres, sort of runs into Bimji Station. Now, there's tens of millions of acres of bush there. Every sort of bush that's growing on our property is right there alongside our property. Anyway when they argued the point of salinity, there might be a salinity problem, they worried about salinity getting into the farms alongside.

But salinity starts - I think the idea is that it starts halfway down the hill, often comes out halfway down the hill or goes down the bottom. If that was the case, if it was the case, the only property we'd have if it ever happened would be on my own place because it goes into bush as it goes downhill into crown land. But on the country that we have cleared we've been very careful in how we've done it, because we are very conscious of these problems that people have had in the past. We've made sure that there has always been adequate bush in the right places and that hasn't been happening. So the proof of it in time has shown that what we have done has worked and yet they won't allow us to do any more. So we can't make that farm into really a viable enterprise.

DR FISHER: Mr Beckingham, when did you purchase your property?

MR BECKINGHAM: 1973.

DR FISHER: 1973, and when you purchased your property you had an expectation that you would clear that property to 80 per cent or something like that?

MR BECKINGHAM: We would have only cleared probably to a maximum of 80 per cent, even though the law at the stage allowed you to clear more than that. But because it has creek lines and it has some breakaway and things like that and some rock in it - and like I said, in a way we have cleared it - it would have been at least 20 per cent left over, might even have been closer to 30 per cent, and we're happy to live with that. That's not a problem. Yes, the law at the time state that under conditional purchase farm you had to clear a certain amount of that land. So we were actually obliged through - was it Lands Department, I think they called it at the time, to clear a certain amount.

But with the high cost of clearing and not having sort of any money behind us, it's something that you've - it's taking, like, a little step at a time, something you can just build on a little bit by little bit. You make a little bit of money. You reinvest that into another 100 acres or so and as time went on it got to the 1300 acres and then that's when the law started to change. Yes, that's where everything started to go wrong.

DR FISHER: Now, I'm sure later we'll be told that basically the Western Australian government believes there was a drop-dead date on 17 May 1995.

MR BECKINGHAM: That's right.

DR FISHER: And that everybody in the community would have an expectation that the rules had changed and you couldn't expect to really clear anything post that date. In your case I presume that you've started this process prior to that date. Is that correct?

MR BECKINGHAM: Yes, I was actually away. We probably started clearing in about - we really started clearing in about 75 or 76 and it was just, as I said, a little bit by little bit. So we've got onto that. When they told us that the laws are tightening up we put a notice of intent to clear, I think it was about 400 acres. It had been cleared by the previous owner and had regrown and we were willing to abide by any rules or objections or whatever they might put forward. They say, "Look, we want you to leave this bush here and that bush there," and we were willing to abide by anything that they were willing to put up.

But basically we wanted to be able to get another 400 acres cleared and we were told no, and the interesting thing which upset me a little bit, my brother actually came down and saw the commissioner at that time and it wasn't written down on the paper but he actually said to him, said, "As far as I'm concerned, I'd rather not see another acre of land cleared," and that was what he said verbally. When I heard that I thought, "How on earth are we going to get something through when the person at the top end has made a statement to us that as far as he is concerned he'd be happy not to see another acre cleared?"

DR FISHER: Have you sought compensation? We've read about several potential schemes that were available for compensation. Did you seek compensation under any of these schemes?

MR BECKINGHAM: We haven't sought compensation as yet because we were really wanting to see what was coming up and to see, you know, what does it do to us. Is the compensation going to take away the land completely? Do we end up with a 1300-acre block? What's the value of the compensation? I haven't really been told

a lot. If we can't clear the land, compensation is really the only way we can go. It has got to be one or the other as far as I'm concerned. But really what I'm waiting to see is what's the government going to put forward to us that's going to be acceptable as a fair - because when you look at the 3000 acres - or say two and half thousand acres, right? That will be over 20 per cent that's uncleared, that we probably should have had cleared.

We have a six and a half bag average on our farm. So that works out about \$100 an acre. That's \$250,000 of potential income from wheat that we have lost since then, or it was stock. We haven't been able to run stock in that country because there's a lot of very thick bush in there and the stock don't even go - and a few times the stock do go in there, into some heavy timber, where they shelter. There's actually poison in there and one year alone we lost 70 head of our sheep through poison. I'm not even sure you're even allowed to grab poison out of the bush.

MR NICHOLL: That's box poison, is it?

MR BECKINGHAM: Boxing cluster. So, you know, whichever way we turn we've got problems.

DR FISHER: Now, this question about the rates bill, in the case where the bank is saying that they're effectively valuing the non-cleared land at zero yet the valuer-general is saying that the value is to rise 30 per cent, is that across the property or is that just on the cleared portion?

MR BECKINGHAM: Well, I asked the CEO of the shire and he said he didn't know exactly how the valuer-general valued it, but as far as he knew it was on the property as a whole.

MR ENGLISH: Just to expand on that one, Brian, the valuer-general works on an unimproved capital value, so it's on the unimproved capital value of the land and if land sales around reflect an increase that's how it's arrived at.

DR FISHER: So does this mean therefore that there are land sales in the district for unimproved blocks that are effectively - well, vegetated blocks that are effectively being sold 30 per cent above what was happening last year? Is that what's happening or is there something else going on here that we're not quite understanding?

MR BECKINGHAM: The only farm that I know that has sold in the last 12 months is probably 80 per cent cleared and that probably has accounted for the valuer-general in putting the values up. But the thing is that we're getting hit with that penalty and that's really the issue to me, is that my rates are going up even though the value of my land is still really static, because most of the land is uncleared so there is no value on it, or if it has gone up it has only gone up marginally, certainly

not 30 per cent.

DR FISHER: The reason I ask is there's a bit of an issue here in terms of our terms of reference with respect to the impact of clearing or otherwise on the value of property, and I think there seems to be some inconsistency here in terms of what's happening in your case.

MR BECKINGHAM: I believe so.

DR FISHER: With respect to the bank valuation versus what the official valuation is on your property. So, I mean, we've sort of got inconsistent evidence here about the direction of property values effectively.

MR BECKINGHAM: I would agree with you there and that's what makes it difficult because when it comes to borrowing money the bank only will value the land as to what's cleared. But when we're paying rates, the rates are actually worked out on what the valuer-general values the land at and then he has actually ascertained a value on uncleared land. The bank isn't worried about uncleared land because it's of no income for us, so they can't utilise that then as equity because there's nothing they can do with it, nothing we can do with it, whereas the valuer-general said it differently. There certainly is an anomaly there.

PROF MUSGRAVE: Have you received the valuation?

MR BECKINGHAM: He told me it was - do you want to know the actual amount?

PROF MUSGRAVE: No, I just want to know has the valuation been issued to you?

MR BECKINGHAM: No, not to me but I was advised. When I rang up the CEO yesterday he said, "Be warned, your rates are going up 30 per cent next year because they have just received notification that the value of that particular farm has gone up 30 per cent." It hasn't come to me yet. It hasn't come officially. It was only just the fact that I rang up the CEO on an issue that he said, "Look, I just want you to know about this now."

PROF MUSGRAVE: Are there any other instances of this sort of valuation being made across the state that anyone is aware of?

MR BECKINGHAM: I don't know. Sorry, I couldn't tell you that, couldn't answer that.

PROF MUSGRAVE: No.

MR NICHOLL: Just on the valuation of the land, the valuations go to the shire and then the shires pass them on to us with the rate notices.

MR ENGLISH: I'd like to be excused, if I could, unless there was any specific question. But I think we've covered most of the issues and you can deal with these chaps who are on the ground that are being impacted.

PROF MUSGRAVE: I have a question which may be of interest to you and it relates to the quality of the science that underpins some of the regulation and the implementation of the regulation. As we travel around we've had a number of complaints about the quality of the science, of people asserting that the science is not sufficiently robust that underpins the administrative decisions that are made. Has this happened, to your knowledge?

MR ENGLISH: Yes, I've been involved with soil and land conservation for many years now, certainly since the late 80s, and with the commissioner. I think we've seen a shift and it's an easy option now just to say, "No, it's land degradation, it's salinity, it's whatever." I mean, I don't think the science is as good now as it probably was some years ago, or they're not using the science. It's very easy to rely on just saying, "No, it's going to cause land degradation," whereas probably the main driver or the strong driver is very much about community good and the biodiversity loss. I know the community are fairly upset about seeing clearing going on.

It's very easy to point the finger at someone when it's not your own patch, but I don't believe the science is being used as much. In fact for quite a while the science was actually being used as a way of confounding people for many, many years and they were in the system for anything up to eight, nine years, and that wasn't acceptable either. But they were using the science and making them go and do fauna reports and vegetation reports and get consultants and that sort of thing. So that was a stalling tactic and now that's gone by the way and it's simple to say, "Well, it's going to cause salinity and it's going to cause land degradation," without actually going out and doing the science. As Ken has already pointed out, they're in an area where water tables are that far away that they will probably never see salinity in that patch anyway. But I think the science is lacking nowadays.

PROF MUSGRAVE: Thanks. You seem to be describing a decreasing capacity on the part of the farmers, singly or collectively, to challenge the science.

MR ENGLISH: Yes.

PROF MUSGRAVE: Thank you.

MR ENGLISH: If I could - - -

DR BYRON: Yes, thanks very much for coming.

MR NICHOLL: Thanks, Garry. I just want to make a couple of comments. I have here from the Countryman's - 18 July 2002, where the West Australian Minister for Environment, Judy Edwards, says that compensation should not be part of any deal for farmers prevented from clearing for environmental reasons and I just pick up from what Len was saying. Farmers are really wanting the ability to clear what they need to clear to completely develop their properties, and I'll emphasise that point, that from our perspective we believe most farmers should accept that it would be fair and reasonable to retain 20 per cent of their farm, at least 20 per cent of their farm, under natural vegetation or planted vegetation. So we seek compensation as being a very, very poor second.

The sort of things that the government has raised with us in the discussions that we've had with them, that they've made it quite clear that they would not be prepared to compensate, other than doing what they called equity adjustment. They would be prepared, they initially told us although there has been no action on it as yet, to take uncleared land and exchange that for cleared land in the vicinity, as cleared farmland. What I presume they would do - they haven't put a firm proposal to us, but when a developed property came on the market they would buy that up and then endeavour to split that up amongst the farmers in the area that had been refused to clear and they would take that land, the uncleared land, in place of that.

There are a number of problems that are associated with that and that is that your farm is going to be broken up and any farmer needs to have his land within a reasonable area because you get problems of management of stock, transporting and machinery and all that kind of thing.

DR FISHER: So that's equity adjustment. That's the description of equity adjustment?

MR NICHOLL: That's right, yes. I think also too it would have the effect - if you get another buyer on the land it would push land prices up fairly rapidly too in that area.

DR BYRON: But that seems to me like a complicated and bureaucratic way of achieving the same outcome that could be achieved if the crown simply bought a piece of land that they particularly wanted because it was high conservation value and the seller could then go and buy his own piece of cleared land somewhere else that met his requirements, rather than having to have the government find a piece of land for him to farm.

MR NICHOLL: That would be a better way.

PROF MUSGRAVE: Has the federation, or anyone in any entity it's connected to, investigated or tried to obtain a legal opinion on the scope for compensation in the instance of takings such as these regulations exist under Australian law?

MR NICHOLL: The federation hasn't. I understand a number of individuals have. You must realise here though, because of the threat of prosecution and because of the severity of any fines involved, there are a lot of farmers at this stage that are not prepared to identify themselves as being caught up in this, because they don't want to have the spotlight put on them. There are only a few, and this is why we're very grateful for people like Ken Harris and Leonard that are prepared to come forward and present themselves and present their cases. There are some farmers that have done some clearing that are not sure whether it was legal or not and they're wanting to just stay well and truly out of the spotlight.

In my own case I have a small piece of land that I was wanting to clear, but I've just recently had drawn up a very comprehensive farm plan for our farm which involves tree planting, drainage, surface water control and a whole lot of other things like that, and that's in conjunction with a whole group catchment scheme and it's quite a substantial area. I was seeking to do some offset planting because in this plan the consultant that I'd used had recommended that part of our farm that had been cleared should be put back into trees, and I'd wanted - and it's only a small area too - to offset that by clearing another area of land.

Having spoken with the Waters and Rivers Commission they directed me to the fact - I haven't made official application to clear but they've said before they would even consider it, I would have to have a biodiversity study done of the area and it's in the order of something like five or six hectares that I want to clear and re-establish by the six hectares of plantation timber on another portion of the farm, and I've only had these discussions in the last week or two. But the cost of having to go and have a biodiversity study on a small area of land like that I believe would start to make it unviable to do that, but I need to explore that further.

DR BYRON: I can't help wondering about how strategically significant five or six hectares is in a state the size of WA. I mean, I would have thought that they would have much bigger fish to fry than worrying about relatively small areas like five or six hectares.

MR NICHOLL: I would have thought the same and it is alongside a reserve which is owned by Waters and Rivers and soon to be, I understand, transferred across to CALM.

PROF MUSGRAVE: Now, if we could go back to my earlier question then about questioning the science, do you feel you have a capacity to challenge the argument

for a biodiversity assessment, given the situation you're in? Do you have a capacity to put the question that Neil has just put, in effect, to the people who are making this decision which is going to damage your economic wellbeing?

MR NICHOLL: At the moment we don't have the financial capacity to do that.

PROF MUSGRAVE: I'm sorry?

MR NICHOLL: As an organisation.

PROF MUSGRAVE: Yes. I'm thinking of having a capacity which means hiring professional advice and you're meaning that you don't have the financial capacity to hire that professional advice.

MR NICHOLL: That's right. I mean, the things we would love to be in, the demands on our - but we have a budget of about two and a half million dollars. But the demands on our resources, we would love to be in some of the national bodies like National Farmers Federation but we've had to withdraw just recently because we do not have the financial capacity to be a member of the National Farmers Federation and all the other sectional bodies like the Grains Council, the Cattle Council and Dairy Council that we're still in.

PROF MUSGRAVE: I understand that and sympathise with it. But perhaps I could ask a rather perhaps foolish question: you don't have a capacity to ask the simple questions that commonsense suggests, that a small area neighbouring a large area of similar habitat is sacrificeable, and ask for a reasoned response to that question. It would seem to me that due process, natural justice, would give you the capacity to ask that simple question and be provided with a straightforward answer, and there must be a straightforward answer if an administrator is willing to impose the costs on you that that administrator seems prepared to impose.

MR NICHOLL: Yes, sorry, I misunderstood your question. Yes, I would have the capacity to do that and I probably should do that, but I've only just started down this process and I'll need to take it step by step and go through what needs to be done there.

PROF MUSGRAVE: We would be interested in the answer if you do ask the question.

MR NICHOLL: Yes. The sort of other issues too that I think need to be looked at, admittedly the environmental issues are extremely important and I think largely at the moment, particularly in this state, are electorally driven. One has only got to look at the Environmental Bill 2002 where that went into parliament and there was something like 138 amendments went to it, and I would suggest that you look at that

bill and particularly look at some of the amendments that have gone in that have been raised with that because it just - while we're being given an assurance that the government is opposing a lot of the environmental amendments that have been put forward, a lot of those environmental amendments, if they were adopted, would have catastrophic consequences, certainly on agriculture.

But it just gives you, I guess, the mood and the feeling of some of the more radical elements in the community that are just totally blinkered and tunnel-visioned on the environment and not prepared to look at the triple bottom line. I think that covers most of the issues that I want to raise. So is there any that you believe - - -

MR McMILLAN: I guess just we've been giving the government a bit of a hammering from time to time this morning and perhaps in their defence I'd just like to point out - and I'm sure it will be pointed out to you later on - government agencies are continually being cut back in their budgets year after year. We go in to bat very strongly for the Department of Agriculture in particular to fight these cut-backs. The government a couple of years ago introduced a machinery of government process, which from an agricultural perspective basically shattered a one-stop shop that existed in the Department of Agriculture and split it up all over the place.

So when guys like our farmers apply for land clearing, whereas before you just rang someone in the Ag Department and you could get an answer and pretty well know where you stood, they're being bounced from pillar to post now. We believe that morale in government ranks is absolutely abysmal largely, particularly at the extension level, and I know from my role dealing with people out in the field, they're not particularly happy where they are. In a situation like that where you've got continuing cut-backs those people that can go, will go, and you're left with what we might term the deadwood. You get inexperienced contract staff and this sort of relates to the commissioner's question on the quality of the science being done.

A couple of years ago when I started in this role I went over and spoke to someone in the Ag Department and sort of, you know, explained to me this whole land-clearing process, the regulations, that type of thing. One of the frustrations, and the biggest frustration, was they actually had no science-based people in the field to do this type of work. So from my point of view, looking at the current penalties, this quarter of a million dollars for environmental harm for an individual, is a scare tactic as much as anything else. It's an admission that we don't have the resources to police it and what we're trying to do is to give everyone the power - the truck driver that goes past who has got a grievance with a farmer over a lost contract, "Oh, he has cleared that piece of land. Perhaps we might just dob him in and see if we can get him paying for it as a bit of revenge."

Without endorsing it, I actually came across a submission yesterday put in by

Jim Hoggett from the IPA and I haven't done any research to find out whether these people are terribly credible or not, but he makes some very good points in relation to bureaucracy gone mad and, you know, it's not all their fault. They've got a pretty tough job to do with limited resources and with the splitting of the department, the loss of extension services, the government has lost a very key interface between the agricultural industry and the decision-makers, and without that interface they're making decisions on the run and that's being reflected in what's coming out in the legislation now, I believe.

DR BYRON: That's also consistent with what we've been told in a few other states. But you make the point in your submission about the biodiversity legislation and I think the WA legislation, like many other states, is written in a way that simply says that a rare and endangered or threatened species "must be saved" full stop. It's not about the question of benefits and costs and economic and social consequences of doing that. The law just says, you know, if it's threatened you must do whatever is necessary to protect it. So you've got public servants working in agencies like EPA or Environment Department or National Parks whose job is to follow that law and if the law says, "It doesn't matter about what the economic cost to land-holders are or what the social costs are to country towns, you must protect it," you can't really blame the public servant for the legislation that it's his job to follow. You have to ask why the legislation is written in that way - sorry.

MR McMILLAN: That's all right. No, I take it back to the sustainability strategy then and the equal consideration. The farmers have been belted over the head with this triple bottom line for years and they've got to the point now of saying, "Okay, we accept that. You know, we want rights and we've got responsibilities with regard to what we do with our natural resources, so the triple bottom line is fine." The government has implemented this through this strategy and I know from the last meeting I went to with one of the government agencies they're walking away from it.

They're already looking to do trade-offs to favour the environment over economic and social aspects and Ken Harris outlined some of the social aspects that aren't written in our submission and probably aren't written in too many other places either. But, you know, the emotional impacts of having your hands tied behind your backs in a lot of cases are absolutely huge.

PROF MUSGRAVE: We could perhaps focus a little bit more specifically on the issue of salinisation. In the east this tends to be perceived very much as a catchment problem. I understand that in the west there is evidence emerging that it's perhaps a bit more localised in individual aquifers. I've read some of David Pannell's work.

But even so, when that happens it's a problem involving a group of farmers commonly, as I would understand it, and if it does, it would be best solved on a collective basis - you know, solving a problem across the whole group and with

government perhaps playing a significant role in facilitating this process and one could also argue, making a contribution to solving it because of the public good involved.

Given the severity of the salinisation problem in Western Australia, I wouldn't be surprised if there was some evidence of this sort of approach being adopted. Is it?

MR NICHOLL: Yes, it is in catchment groups. The actual coordination of it is difficult. What has happened there is that previously the salinity and the advice used to come from the Department of Agriculture. We have had some conflicts and I guess there were strong personalities in the Department of Agriculture where they were very rigid in the type of advice that they administered.

In recent times, as Andy alluded to earlier, the government departments have been winding back and that service from the Department of Agriculture which used to be free, is no longer available to farmers and indeed the responsibility of salinity has been transferred from the Department of Agriculture to the Department of Environmental Protection.

What happened though - and I believe that was done as part of smoke and mirrors for a government to be able to go to an electorate and say, "We are putting more money into the environment." But what they haven't told the electorate is that, "We have pulled it out - we were putting that money there anyway but we have just transferred it from the Department of Agriculture to the Department of Environment." What we as farmers now have to do is we have to go to private consultants of which we pay and our case it was something like 40 cents a hectare to have these plans drawn up - and that was done on a group basis incorporating something like 70,000 hectares of which I think 30 or 28 thousand hectares of that is government land in the Dragon Rocks Reserve.

It is very difficult to get - and I think there are about 17 farmers involved in this catchment group - but it is quite often very difficult to get groups of farmers of that number in a catchment - get all of them or a sufficient number of them working together to put forward these plans. There is another cost of the money. That is just the basic plan and your farm plan which is good, but to get the contour lines surveyed in. There is an additional cost and we haven't taken that step further.

There is for government contribution - and it needs to be I believe put aside because we as farmers are only custodians of the land for as long as we are farming it. It is really the nation and the nation's benefit that really own that land. But there is an argument which I believe is being promoted largely by bureaucracy because they want to capture as much of this money that comes out of government as possible. But there is an argument that you cannot use government money for private benefit.

We refute that argument because, you know, at the end of the day it is the community and the nation that for generations - anything that I do on my farm in the way - or any other farmer does - of controlling and improving salinity and improving the land, flows on to the next generation and the generation after that and we must do that. It would certainly help us if we could get more assistance from the government money to, on a dollar for dollar or a 2 for 1 dollar, to help us implement the drainage systems, the tree planting systems or surface water control systems that are needed and we need a whole array and I believe salinity can be turned around if we take a proper planned approach that is coordinated in catchment groups.

There is a group of farmers at the moment - see, at the moment we do drainage. There is nowhere to put our water. That has led a group of farmers in the central wheat belt to start up a channel committee that want to dig a channel through the lake systems to drain the lake systems. I know there has been a lot of controversy over the effectiveness of drainage, but I have seen enough of it in various parts of the wheat belt. I will qualify this: in the right places drainage does work and farmers have been able to turn land that was once saline back into good productive croppable land. But I emphasise, it needs to be the right kind of drainage in the right place.

When farmers drain, we have the problem of where do we drain the water to? The neighbour doesn't want it and I have spoken to people in CALM who have said, "Well, we don't want to become a dumping ground for your water." But what it amounts to is CALM have got to be part of the drainage and the land system - the land conservation system.

When I look around my district and my neighbouring districts, I have seen the farmers have been the ones that have led the front in putting up the money for tree planting and land repair. I see the worst degraded land in our district is on government agency land that haven't been involved in any kind of tree planting, any kind of drainage, any kind of surface water control, and they need to be.

The other fear that I have is particularly with money that has been directed to salinity - is that the community will get tired if we can't prove to them that they are getting an investment on their money. They will get tired and say, "What's the use of throwing money into a bottomless pit?" We as farmers that invest money into land care largely don't get an immediate response from that. This is where I think things like tax incentives have got to be given. It's 100 per cent. Now, I think it needs to go a bit further than that and I think corporations like Elders, Wesfarmers and so on should be encouraged to be given some tax incentive to be able to contribute as well - because they make their living largely - although Wesfarmers have other investments - but they make a lot of their living out of the wellbeing and out of the agriculture industries.

PROF MUSGRAVE: The 40 cents levy per acre or hectare, does that go into a fund that the farmers manage?

MR NICHOLL: No, actually, it wasn't a levy as such. It was a direct cost - account was given to us as individuals from the consultant that we had. We employed a consultant by the name of Noel Dodd who had been through a school - and there was a lag and there is a lag now in the fact that, as I said earlier, the responsibility of agriculture salinity has been transferred from one department to the other. The expertise didn't go with that and there was a void of knowledge and expertise.

I mean, the EPA is just one step further back from interfacing with agriculture than the Department of Ag was. These people like Noel Dodd are going through the schools - and there are a number of them and there are good ones and there are not so good ones. It's a matter of us as farmers being able to identify the good ones. They have a very important part to play in being a catalyst to bring farmers together, but also have us doing the right things or the things that are needed and the things that - the programs that do work to restore our land.

Just one other point on salinity too: if you fly back during the daytime you might observe that there is salinity in the areas of land that haven't been cleared and that is beyond the barrier fence, the rabbit-proof fence that was built 100 years ago. If you look at the Johnson Lakes, that land - well, it's a small area farmed in the 1930s and then the government withdrew the money and it fell over. But you look at the Forrestania Lakes - a massive area of salinity and that land has never, ever been farmed out there and there are quite a lot of other lake systems out there even beyond Esperance where land has never, ever been farmed.

So what I'm saying is salinity was there before agriculture came. I will acknowledge though that agriculture has contributed to salinity but given the right incentives - and it is imperative - the sooner we get the systems in place - I mean, there are those that are tunnel vision, that the whole of agriculture or the most of agriculture areas should go back to trees. That is impractical. The water is there. We have got to drain it out. I understand a lot of the lake systems in the agricultural areas were originally long, slow flowing rivers. When the Darling scarfe rose those rivers were - and we wouldn't have had that salinity if the Darling scarfe hadn't have risen, because they would have flushed the salt back to sea, like they do in other countries like New Zealand and so on where they have the rainfall and the salt is continually being flushed back to sea.

What we have had now is there has been, you know, thousands or hundreds of thousands of years of salinity build-up because of salt falls out there with the rain and that needs to be drained somewhere, whether it's to big inland lakes, or as some people see it, eventually a manmade system, an engineering system to put it back to

the sea and it can continually be self-flushing.

A lot of work has been done on drainage in the Narrambeen area and been done to good effect.

DR BYRON: Could I change the subject to the equity issue, in that it seems to me that some people who cleared all the native vegetation on their property 20, 30, 40, whatever years ago, were probably required to do that under conditions of development property or in some cases, converted from leasehold.

MR NICHOLL: That's correct, yes.

DR BYRON: Others probably received tax concessions for doing so. Up until the 80s I think there were tax concessions for tree clearing.

MR NICHOLL: Yes.

DR BYRON: But we have now got some people who for whatever reasons - either because they chose to retain it or because they haven't got around to removing it - have a significant amount of native vegetation on their property. It could be argued that they are now being asked to shoulder the cost of - whether it's soil conservation, biodiversity, habitat in your case.

MR NICHOLL: Yes.

DR BYRON: Now, that seems to me to be a bit inequitable in that both landowners are trying to produce product from the same market at the same price et cetera. One of them has been paid to treat - to retain vegetation. The other guy is incurring a lot of additional costs because he has retained native vegetation - and if he wants to clear some of these, there are now requirements for offsets and so on.

What we are trying to get a handle on is how much are the additional costs that are imposed on somebody who is told, "You are forbidden from clearing a patch of natural vegetation." You talked about the costs of the - the damage that comes from ferals or weeds or from emus and roos coming out of the bush - that you are providing a feedlot for them.

MR NICHOLL: That's right.

DR BYRON: The fact that you are still paying rates as if this was cleared and highly productive land, when in fact it may be, in the banks' terms, of no commercial value. It seems to me the ones who are unlucky enough to find themselves with a large patch of native vegetation seem to get a lot of additional costs imposed on them. We are trying to figure out how big those costs are and to think creatively

about, you know, who might pay those costs apart from the landowner, who seems to be wearing most of them at the moment, and different mechanisms - if society as a whole decides that the particular piece of natural vegetation is of high conservation value for habitat for biodiversity or whatever, then how does society as a whole pay for that? Sorry, it's a long, convoluted statement rather than a question.

MR NICHOLL: Yes. We concur with pretty well everything you have had to say for that, sir. I think, if you will allow us, we can do some more work on the actual costs. I wonder whether Ken or Len might wish to make comments on it. But there is an inequity about those who did get in and clear the land earlier and those that, for whatever reason, were not able to clear their land as fast. They are the ones that are really paying the price of conservation and biodiversity. We can.

I personally know that the Department of Lands did have inspectors when land was allocated that went round and ensured that you did clear your land at a specific rate and if you didn't meet their requirements, they did in actual fact threaten to take the land off you and I think in some cases they did. Did you want to comment on that?

MR HARRIS: Yes, I would just like to add to that one. You just summed up what could happen with bush and no bush. Well, I've got twin sons so one has it and one hasn't. So in the one family we have got the whole situation and we spent two or three years with a consultant and ourselves and a family adviser, how to develop the two farms, how to split it up correctly. Also the Ag Department - about 10 years ago, we drew up maps nearly as big as this table of what can be done and how we can improve the farm and where to put our banks and where to put our alley farm and how to improve the whole thing. The boys came from ag school and they were keen to go, and when we split it all up we thought that was pretty equitable.

But now one's left with 1400 acres of bush that he can't use, but he only wants to use 500 to bring it up to what we said he could do and the other one is going ahead with all his land cleared. Well, it's not just 500 acres, it really works out to 1000 acres, and there's the difference between his 500 that he can't use and the other chap, 500 he is using and, as I said before, there's about \$80,000 a year he's losing on that bit of land. But we did anything planned towards this so that they would be equal. He wanted that bit of the bush left so he could clear it when he took on that part of the farm and that's why we've left the Huon and now he wasn't able to do it, so he is feeling the stress. You see the whole family feeling the stress now, that he's finding it a bit tougher to develop than the other chap who's going ahead. He even bought another bit of property.

The other chap's battling even to survive on what he's got because he's looking after his children; they're at a high school. He's educating the two girls at high school and we've transferred the farm to them and so naturally they're looking after

us as well. So there's quite a drain on that and he can't sort of get enough income to cover it all and that extra 500 acres that he has cleared would make all the difference to him. But we just didn't go ahead on the spur of the moment. It had been developing over the last 15 years, what we've finally done, only to be stopped dead in our tracks when they said, "You can't go ahead with any more." But it's about \$80,000 he's losing on that particular bit of land at the moment, here.

But I just say that they're so keen, the younger generation, to get on with the farming and we just seem to be knocking them all the time over here and we're losing them. That's why the average farmer's age is about 51. There's no younger ones that keen to come up. They can't see much incentive. We'd certainly like to give them that incentive if we can.

MR BECKINGHAM: The comment I'd like to say is, if by my leaving the land uncleared is of common good to the community and to this nation then if that's what the government argues then they should back that argument up with some sort of financial compensation. Now, there has been a lot of debate going on in the last year or so on carbon sinks and what the government wants people to do is to replant trees on already cleared land and they will - I'm not quite sure if it has got this far or not, but in the end what the intention will be is that people will be paid for putting vegetation back down to take the carbon dioxide out of the air as a long-term thing for, you know, greenhouse effect. So we're looking at a global issue here.

When I found out about this I actually asked the question, "Well, I have 3000 acres or more of property. Can I get paid for this carbon sink because I've got a carbon sink here?" and they said, "No, you can't because it's only vegetation." If the government was going to pursue this and in the end say, "No, you can't clear. We're adamant about that. There's no way in the world we're going to allow you to clear this," then realistically what they have done is that they have then turned most of our farm into reserve for the common good of the community. That's the reality. The common good may be, arguably, to stop salinity but proof up to date has shown that that hasn't been the case.

But the other argument would be that it creates a carbon sink to get rid of the carbon dioxide for the good of the community. Why is it then that the government are willing to pay somebody who already has uncleared land to put bush back on and then pay them a rent for that timber and we, who were supposed to have cleared the land and haven't, we get paid nothing? Mr Commissioner, your comment before about inequity, I see here another inequity.

DR FISHER: Yes. I think just in terms of - it's not for us obviously to comment on greenhouse policy here, but none of this has resolved, with respect, to whether the government will establish a scheme to put in an emissions trading arrangement that would therefore potentially have the people pay or the market basically paying for

the establishment of a carbon sink. So that process has got a long way to go in policy and I guess one of the complications there is that under the rules of the Kyoto protocol - which of course has not yet entered into force nor have we ratified it, so this is very, very hypothetical.

One of the complications there is that if we clear additional land then that actually is accounted for in the process as emissions and the nation would be - should we ratify the protocol and it enter into force, we would then be held to account for those emissions. So obviously in that hypothetical world there would need to be some decisions taken, in addition to biodiversity and all these other issues that we're talking about, whether you want to go ahead and clear land or whether you would want to plant extra forest. So I think all of that is something to be dealt with in another place, at another time.

I think the more important issue here for us today is this question about, as Neil has discussed, if there's a public good associated with native vegetation being retained then what's the best mechanism to ensure that that public good is being paid for equitably? I think Neil has made the point that at the moment it's not clear that there is an equitable solution to that.

MR NICHOLL: With the public good argument it's an argument that is used quite frequently and there has been talk of maybe there needs to be an environmental levy. We as farmers are largely price takers, not price makers, in the nature of the marketing systems. If there was to be an environmental levy then we believe that it should be placed at the retail end where it would be spread right across the community rather than being levied anywhere in between.

DR FISHER: I guess the difficulty though, let's imagine there was an environmental levy and that levy goes into consolidated revenue, which is obviously a dangerous place for this money to go, the question then becomes how do you distribute that, and it's not clear to me at this point that we even have a mechanism that would allow you to distribute that money in a sensible or demonstrably sensible and fair fashion.

MR NICHOLL: There is another point in that any form of compensation I think would have a sobering effect on the restrictions that are being placed, because at the moment the landowner has the total cost, has to bear the total cost of that. It is easy for people, particularly bureaucrats, to apply it knowing there's going to be no cost. But if there is a cost to the community you get the better balanced arguments.

DR BYRON: That brings me to the question I was going to ask you, if you are familiar with the Victorian experiments with bush tender where the government calls on landowners to put forward a bid for how much they would need to be paid each year to either do specified things or to not do particular things, like to stop grazing a

particular patch of land or to stop firewood collecting, or to fence it off and allow a regeneration or something, and that seems to me is one - and it's only an experiment at this stage, but one possible mechanism where landowners can basically work out how much it would cost them to do something that would produce biodiversity conservation, salinity, greenhouse, whatever outcomes, and the government goes out and buys as much of it as they want to buy, depending on how deep their pockets are at the time or how much they value biodiversity.

But to a certain extent it might achieve that point that you were just raising then, that at the moment all these demands for conserving additional areas don't seem to cost the government anything because all the costs are imposed on land-holders. Have you looked at the Bush Tender Scheme at all?

MR McMILLAN: We have had a look. I've spoken to our counterparts in the VFF about it, to get a bit of an idea of how it works, and it's certainly an option that we would like to pursue.. You mentioned earlier on that you've heard that the state government has got various schemes. We've heard that too. But when we asked the question as to, "When are you going to initiate them?" the silence is deafening. Now, to go back to Colin's view with the public good and the environmental levy, I think we've made it reasonably clear the farmers are already paying fairly substantially to manage this environment at the moment through lost productivity and other costs.

As a consumer working for a farmer group, I certainly wouldn't have a problem at all at the end of my trip around the supermarket to find that there was an environmental levy imposed on the farm fresh food component of it. I think it would be great. You're right: it couldn't possibly - - -

MR NICHOLL: Excuse me. Ken would like to be excused, if that's possible.

DR BYRON: Thank you very much for coming.

MR HARRIS: Thanks for listening.

MR McMILLAN: We would be absolutely horrified if it did go into consolidated revenue, for all the reasons that you would be well aware of. It would need to go into some type of environmental trust fund, a board of directors - for lack of better words - put in place to administer the fund, then implementing schemes like the Bush Care or whatever it needs to be called, where farmers identify the native vegetation on their land that they're prepared to manage and apply for - not compensation but a management fee to actually undertake the management for that. All of a sudden it starts looking a lot more attractive to a farmer to commit time to that part of his farm.

DR BYRON: One of the things that frankly worries me a bit about the idea that a government could go out and buy little blocks of land, you know,

10 hectares, 20 hectares, 50 hectares, scattered across an agricultural landscape, is that I think if I was in CALM or National Parks Service or something like that it would be a nightmare to manage all these little blocks scattered around, the fragments. I also wonder about whether lots of little patches like that actually add up to something substantial as opposed to a concentrated area. But the idea of landowners willingly, voluntarily negotiating a satisfactory service fee or a price that they're to be paid for looking after a piece of land of high conservation value might be something that's worth looking into further.

MR McMILLAN: I would certainly consider it would be well worth looking into. You mention the government land-holding. This afternoon I've got to get stuck into a submission on a wild dog report that has been put out and one of the figures that are thrown around in that report is that government controlled land in Western Australia is up to 93 per cent of the state's land mass at the moment. So we're not talking little patches of, you know, 20 hectares here and there. It's an absolute massive tract of land and the agencies just simply don't have the resources to manage it. So it makes perfectly good sense that if you've got native vegetation on farms why not pay the landowner to manage that vegetation for him and it all becomes part of the farm plan?

You know, from where I'm sitting it's a very simple process and we would love to get there. We're trying to get there with negotiating to the state government but we've hit this bureaucratic brick wall that we just can't get through and, you know, simplistically thinking that governments are put in place to lead and we're not getting any leadership at the moment. So if the recommendations that come out of this report are to snap a government into line, whether it's federal or state - because as I said earlier on, it's a football at the moment - start showing some leadership; that's what you're there for.

DR BYRON: Thanks, it's almost time.

PROF MUSGRAVE: Just perhaps for a closing - but in the first page of your submission you refer to the high maintenance costs associated with bush areas. It would be helpful to us if we could get some sort of hold on that, of the magnitude of those costs. I mean, there's two aspects of this. One is the cost on the land-holder who might have to control native bush, but also it gives us some sense of the size of budget that National Park Services need in order to manage the bush under their control. Do you have such cost figures or could you obtain them and provide us with - - -

MR McMILLAN: If we could undertake to have that information for you on the next round. Certainly it's going to vary from farm to farm as we've already explained it.

PROF MUSGRAVE: Of course.

MR McMILLAN: You know, the level of clearing varies across the state. Yes, that's the sort of information I wouldn't think would be terribly hard at all to get out of our members.

PROF MUSGRAVE: Yes, it would be pretty helpful I think.

MR McMILLAN: Yes, as a starting point for the next round, certainly we can look at that for you.

DR BYRON: Again we don't need names and addresses of phone numbers.

MR McMILLAN: No.

DR BYRON: We don't want any of that.

MR McMILLAN: We wouldn't give them to you.

DR FISHER: I just had one point of clarification on page 1 of your submission too. It must be a good page. This story here about the Tetratheca species growing on this iron ore deposit, it wasn't clear to me whether that was an actual cost or whether that was a potential cost, or whether this has been resolved and now this impost on the Esperance port development is solved or not.

MR McMILLAN: I was actually going to ask that you ask that question while Garry was here earlier on. That was his input. But I think the key word there is "potentially". It didn't happen, but, yes, if it had have gone ahead to the nth degree under the environmental assessment, it would have created merry hell down that way.

MR NICHOLL: We had a similar situation to that at Lake Chinacup, which was a gypsum deposit, and we need gypsum on some of the older clay soils to make them more friable to allow them to absorb water and produce better crops, and there was enormous argument over that and it delayed the development of the Lake Chinacup gypsum mine for many, many years. I guess some of the agonies that were involved with that - and it took an enormous push by the local community led by a person by the name of Barbara Morrell to eventually get the government and the EPA to agree to that. The arguments that we found frustrating is that they were saying that there were species there that were endangered, and when we asked them, "Well, can you identify them?" - we were told that, no, they weren't prepared to identify them because there was the risk that we would go and damage them deliberately, which was a stupid argument. I think it led to the fact that it was not a sustainable argument.

That area is now being allowed to be mined and we are extracting gypsum out there, but there is a levy on that gypsum to pay for some of the environmental restoration. But that delayed for quite a number of years the ability of us to be able to start to improve the quality of our land. Bearing in mind products like gypsum and like lime and so on, freight is very high cost because you have to apply something like a tonne to the acre or a tonne to the hectare. So it is important that we are able to find and use these deposits that are virtually on site.

DR BYRON: Thank you very much, gentlemen. I think the time that we've got available at this stage is up. But if there's any more information that you want to provide to us, you don't have to wait to the next round of hearings, you can send in supplementary information at any time and anything you think of arising out of this morning's discussion we'd be very grateful to receive it. Thank you for your input.

MR NICHOLL: Thanks very much, and we are really pleased that this inquiry is being conducted, because we see that this is probably - it needs to be done.

DR BYRON: Thank you very much, ladies and gentlemen.

DR BYRON: The next evidence is from Mr John Dival. If you could just introduce yourself for the transcript and then summarise your submission, which we've all read.

MR DIVAL: Thank you, Mr Commissioner. My name is John Dival. I'm a farmer from Toodyay. Mr Commissioner, my submission really dealt with the broader aspects of the problem that we've got in Western Australia, and I guess I've covered some of the history because I think it was important that the agreements of 92, the national strategy on protection of biodiversity and others, three intergovernmental agreements that set the ball rolling in effect and took us to where we are now. Those agreements of course considered economic considerations and equity issues which I believe have been ignored by those responsible for the implementation of the regulation.

I guess my other serious concern of course was the fact that most if not all of the regulation that is currently being imposed on the clearing of native vegetation in Western Australia springs from a cabinet decision in 95 that asks that systems in place be augmented with other measures to control clearing of native vegetation and taking into consideration conservation issues. The difficulty that those of us that were objecting to some of this, and that includes the Pastoralists and Graziers Association, of which I'm a member of their Property Rights Committee, and Ferguson Kenneison and Associates that are acting for clients - Jim Ferguson in fact was a neighbour of mine and so I got involved. But the problem we had in dealing with this - we were being regulated not by an act of parliament or a statute, a black letter law, but we were being regulated by a cabinet minute that was not available to the public. I thought, in terms of the system of government we had here, that was totally unfair.

We endeavoured to get a copy. We eventually got a copy, and of course when we actually saw what was in it, we found again that only part of the minute was being used and that part was the bit that controlled the clearing. I believe that the minute in fact invited the commissioner for soil conservation to move outside his act in administering the Soil and Land Conservation Act. There were also provisions in there that there needed to be statutory measures taken to support the minute. So I guess in all we felt very frustrated at the fact that we were being penalised in a very real economic sense by things best described as "green letter laws", as outlined in my submission, by Dr Brian O'Brien which I thought was stunning in their accuracy of what they held it.

So we're now in a situation where I believe that considerable economic cost is being incurred by farmers in not being allowed to use the land for the purpose for which it was intended. There's a stark difference between the approach by government in dealing with vegetation conservation in the metropolitan area and that which is outside the metropolitan area. I think that is absolutely inequitable and

unacceptable. If you happen to own land in the metropolitan area that's got conservation value, there is a process that you go through to address the equity issues. Now, I mean, those that are affected of course are far from happy, but, you know, that's human nature I guess. But my answer to them is at least they're arguing about a figure. We don't get the opportunity to argue about a figure. We are just denied the right to use the land and that's the end of it.

In my own situation - I didn't cover this to any extent because I figured what I'd already given you is enough to sort of bore you to tears - but we're in a situation in Toodyay where salinity is not a problem, but landscape is. For that reason, we're controlled to probably a greater degree by statutory planning measures. Again in 97, cabinet asked that natural resources - and this was ironic, that it was really a minute that was to protect farmland - and the term "natural resources" was used rather broadly. But that led to the interpretation of that as meaning, of course, vegetation and actually, as a result of course, the statutory town planning schemes can now include provisions for the protection of vegetation. Our own farm is pretty large in the landscape area, so they can do it anyway as landscape protection.

So we've got the problem where the nature of our vegetation is such that it regrows all the time. We just run cattle, so it doesn't have the same effect as sheep, for instance, grazing regrowth, and we need to knock it over every, you know, six, eight, 10 years, whatever the market is. I mean the market is good now. We would like to knock over because the cattle returns are such that it will handle it. We happen to have our own machinery now so the cost to us is pretty small, but we dare not because not only would we have to deal with the local authority, which really has no expertise in the matter anyway, so we can't argue science, it gets very difficult, and particularly when you're arguing landscape values. I'm not sure that the Soil and Conservation Act can have any application in our case because we're not actually changing the land use, but in the light of a recent court case relating to regrowth and that, well, I'm not sure any more because I guess with any court proceedings, it doesn't matter how right you are, you can never be better than 80 per cent sure of winning.

In addition to that we are now faced with the Environmental Protection Bill 2002 which imposes quite draconian measures, and if we are found to have knocked this stuff over in breach of any existing act, well, we can be hit pretty severely, and because you're a company, that could be \$500,000, up to. So I'm not going to start a machine. We just watch the stuff growing up and if it progresses as it is now - we're only a small operation in total, our own land and other family land, we'd only be running a couple of thousand acres. But 350 breeders, I mean, knock that down by 30 per cent, the cost is significant. I'd conservatively say, you know, 20, 30 thousand.

It matters to us, and so I guess we're just sort of symptomatic of the uncertainty

that pervades right throughout the agricultural regions and particularly areas like the West Midlands where salinity is not such a problem. But there is the total drive to prevent clearing of vegetation. We believe - I certainly believe - that the laws of natural justice in terms of the administration of it are pretty - I mean, they've been cast aside. We have people who are adjudicating who have admitted, you know, said to me that their personal opinion is that no further clearing should take place in Western Australia. I find it hard to come to terms with the fact that that's the opinion of the Commissioner for Soil and Land Conservation, and yet he is, sitting in judgment, on clearing applications. So where do we go? I don't know.

I make the point and I heard the Farmers Federation spokesman make the point that without a cost to government for taking this land, it's unlikely that there will be any real assessment of the economic cost or even the biodiversity value of the particular land. It is just all too easy to say, well, we will have it anyway. Included in the cabinet minutes was the 20-20 rule, which if you're in a shire with less than 20 per cent vegetation and you have less than 20 per cent, you've got to make your case a bit harder. It's a strata system but it's also outside the Soil and Land Conservation Act. That doesn't talk about that sort of thing. We believe that if you are putting forward a case, it should be examined, scientifically examined. It should be examined for its merits and its economic benefit. We argue also that the Commissioner is obliged by the Act to assist in finding management systems that might overcome any potential land degradation. But they don't do that. In fact they actively avoid that, and that's obvious by freedom of information memos and the like that can be had that set out the discussions. To me it is just horrifying that people's livelihood are being dealt with in this way.

So, Commissioner, I'm not sure that I can offer any solutions. It's just that I firmly believe and others believe that at the end of the day it is our land. Things have changed, the values of communities change, we recognise that. But it still remains our land, our income and as long as we don't offend our neighbours, cause pollution for our neighbours, we should be allowed to use it for the purpose which was always intended, and it's rural land, it's farmland. It is not conservation land. If the government want to make it conservation land, then they should have to pay, and then they will start to examine the proposition properly.

DR BYRON: Thank you very much. That was very clear and concise.

PROF MUSGRAVE: I wonder if we can get some clarification which will give us a better framework within which to hold our discussion. First - and I think I understand what you're saying here.. In your opening, you said that salinity is not an issue, in the case of your farm and your area, but landscape is. I took that to mean that the sort of ambient landscape is - - -

MR DIVAL: Yes, that's right. We're in the Abba River Valley, and I totally

support ASA, but I remind people that what they're looking at has been used for agriculture for over 100 years, and no farmer in that area is going to desecrate the area, and frankly, people talk of fragile landscapes - it's not fragile at all. You know, turn your back on it long enough, and it's all grown up again. So if they don't like what they see now, just wait 10 years.

PROF MUSGRAVE: Yes, that goes on to my next question. Anyhow, the point is it's pleasant to look at, and I then draw the conclusion that clearing regulations are calculated to promote that pleasantness.

MR DIVAL: Yes.

PROF MUSGRAVE: Thank you. You just made the point quite graphically about the regrowth - sit back for 10 years and you'll get a wooded countryside. So management of regrowth is an integral part of your property management. I got the impression from what you said, though, that there's no optimal age for clearing regrowth; it depends on the state of the beef market, in effect. You wax and wane.

MR DIVAL: Yes, it's always an economic consideration for whatever you do. You know, there are times when it's not even worth putting superphosphate on, for example, but certainly - you see, one of the problems that we have, mostly when they talk about regrowth, the Department of Agriculture or anybody else, they talk about stuff that's, you know, 15 millimetres around or less than two years old. In the rough country, if you try and deal with regrowth of that size, of course, you're just totally wasting your time, because you get a machine in there, it just bends over and comes up again sort of thing, so you really need it to get to a size where you can get a decent poke at it, you know. That's the way of it. Yes, it does, it depends on the economic circumstances of the time whether or not it's worth dealing with it, but knowing that at some time you're going to have to deal with it.

PROF MUSGRAVE: Yes. And the clearing regulations allow you to clear when it's below a certain height?

MR DIVAL: Well, yes, but regulation 4 has another provision, that you only have to notify if you're changing the land use. The construction of the Soil and Land Conservation Act is interesting because, as I've pointed out, it recognises the rights of the landowners, so it doesn't give approval; it is a lack of disapproval which is a fine but important point.

PROF MUSGRAVE: Yes indeed. Thanks very much for that.

DR BYRON: Just on the definition of regrowth, I think in New South Wales they define regrowth as anything more than 10 years old, so you've got a definite incentive to knock it over when it's 9 and a half. I think in Queensland if it's more

than 75 per cent of its mature height and canopy cover of X per cent or something. Is there a definition in the WA law?

MR DIVAL: Well, no. In terms of town planning schemes, it's whatever grabs them at the time. For example, the Shire of Toodyay, in their latest draft scheme, talks about diameter of the - at so many millimetres above the ground and that sort of thing, so they get down to pretty tight definition. The Soil and Land Conservation Act has changed, so I'm sort of wanting to look at Jim Ferguson for my response to this, but I think it just really refers to regrowth under two years old.

But again, I query the economic wisdom here. It seems like a grab-back for land. So once having spent the money clearing the land, for some reason, if you don't deal with it within two years, say, then it's no longer yours again. That just simply doesn't seem right. I mean, if it was okay to clear it in the first instance, it should be okay to maintain it. It's again driven by the concept that already too much has been cleared and we must grab back whatever we can, and it seems illogical economics to force a person to do something that may not be economic at the time just simply to maintain their right to deal with it. You know, that's just cockeyed to me.

DR BYRON: In the Western Australian government's submission that we'll be looking at in an hour or so's time, it says:

In 1986 the Soil and Land Conservation Act regulations must provide notice of intention to clear in excess of one hectare of land for a change in land use at least 90 days before the commencement of intended clearing.

Now, is that "for a change in land use" an important consideration? I mean, have you argued that your land use is exactly the same as it was?

MR DIVAL: Yes, and for that reason, we really don't - if we want to clear the regrowth at home, we're not chained to the land use, because it's already pastured, supered and grazed. The argument being, of course, that if it's not, then there is a change of land use. If it ever got caught, I would still argue that the land use has never changed; the land use is agriculture, and clearing the vegetation is an integral part of that agricultural operation, whether it's cleared now or later.

The department is aware that there's a problem with them, and at times they put out publications that warn that grazing native vegetation is contrary to the act, and I suppose in the wording of the act, which is "to damage or destroy by any means", they could be right. But it is still argued that the land use is agriculture, which includes, in that definition, of course, grazing. If you want to graze native vegetation, you're perfectly within your right to do so; it's part and parcel. In fact, in

some areas - for instance, in the flats on the Gingin area, where particularly in the winter if they don't turn their cattle into vegetated areas where they can get a bit of a chew at some of the balga trees - blackboys and the like - they have a problem.

So I mean it's part and parcel - or it can be part and parcel of the cattle management. But it is something that the department are pretty anxious to make prohibitive, and there have been instances where they've told people to get them out when they've seen them in native vegetation, because people have then been advised to get them back in straightaway. So it's sort of - a bit argy-bargy goes on with this issue.

DR FISHER: Can you clarify for me this issue about how you define landscape. In the planning laws, are there some sort of descriptors that define an optimal landscape, or is it just in the eye of the beholder on the day?

MR DIVAL: It's pretty much in the eye of the beholder, but in some cases in some shires, there is a prescriptive methodology, and it's a few years since I read it. But no, certainly not in our case. It's just landscape protection - it's in the eye of the beholder.

DR FISHER: So there's some notion in some local government official's mind that there's an optimal amount of grazing land versus vegetation, but nothing is written down?

MR DIVAL: There have been attempts to put methodology in place to assess, but you know, it's always going to be down to the eye of the beholder. I mean, people don't like change, of course, it's what you're used to seeing, and if it changes, you don't like it mostly, it's just the way of it. But if you come back a few years, you get used to it. So it's a difficult one to deal with, very difficult.

DR FISHER: Now, in your case, if I understand it correctly, basically you personally believe that you have the right to clear.

MR DIVAL: Yes.

DR FISHER: But you're concerned that there's draconian legislation in existence or potentially in existence, and that the community view has changed to the extent that if you were to go to court, you would possibly lose and be punished. Is that a fair summary?

MR DIVAL: That's the fact, and the sad case is you could almost be guaranteed to lose if you get one of about three or four judges. But I mean, I guess that's the way of it. But yes, it's a very difficult argument to win at any level now, the clearing of native vegetation. It's extremely hard. The most common response is, "Well, why

do you want to do that? You know you get salinity as soon as you knock a tree down." But I mean, not necessarily so. My answer to that is simply that if you want to go down that track by the department's and the Environmental Protection Agency's own figures, to solve the hydrological problems in the wheat belt of Western Australia, you'll need to replant to a level of 70 or 80 per cent. Now, that means you no longer have a wheat belt.

I asked the EPA at a meeting I was attending with them that if they were sitting in this room now and we'd just got off the ship, and it was suggested we create an agricultural region in Western Australia, what would you do? Well, there was a deathly silence, because I mean, what would you do? Given the arguments that are promoted today, you would not have a wheat belt in Western Australia, because they are saying, "Well, you know, if we knock that over, we'll get salinity." The mistake was made in not replacing the native vegetation with a deep-rooted productive crop - which is happening now, of course. That was the mistake, not the knocking over of the native vegetation. It was just simply that we grew the wrong stuff initially.

DR FISHER: Now, I'm not a lawyer, so you'll have to excuse me, and I guess you're a farmer, so you're probably not a lawyer either. But we continue to hear in a lot of the evidence we've received about the Magna Carta, the Bill of Rights - and I've forgotten the date of that - various laws about tenure dating back to the 1890s and, I think, in Western Australia, some act in 1926 about planning. Some people, I presume, are setting their hopes that these bits of legislation have power that would take you through to a successful outcome in a court. Are you basically saying that this is not correct?

MR DIVAL: No, we would love to see a test case on this. I believe that there could be some fairly successful argument put forward relating to the rights of the property owner. The difficulty is that those of us who are objecting - for a start, there would be a minority of farmers in Western Australia that are affected by this, because most are already cleared, and of course, there's a separate issue that you're already aware of. So we're dealing with a minority of Western Australians in this regard, and a few of us are fighting it, and the cost is enormous. I mean, it is huge in terms of time and commitment.

We've been dealing with this for five, six, seven years now, and we're up against government departments, for one, we're up against the Conservation Council, which is a publicly funded body, and we're also up against the Environmental Defender's Office, which is also a publicly funded body, and we get creamed just about every time we turn around. We've got to work on everything that we can do that doesn't cost us a quid, and that's why we're extremely grateful for this sort of inquiry, which gives us, I guess, another small chance to put our case.

But we believe that there are some residual rights of landowners in this case,

and if it were not so, then the Town Planning Act wouldn't be structured the way it is, which provides for compensation if you're injuriously affected by a zoning decision, the Soil and Land Conservation Act would not be constructed the way it is, which recognises the rights of the landowner in terms of managing his property, and only deals with him if he's going to create a situation that may cause off-site degradation and degrade the land for future use. So those sorts of things give us encouragement to believe that there still exists a case to argue it.

I was interested to read the paper that's been presented by the professor of law at New England University, whose name I forget. But nevertheless it was interesting to me, although his conclusion still said that nothing was certain in this world. I guess it never is. But we certainly would like to see it tested in court because right now we're, I guess, flying by the seat of our pants in many respects because we have the gut feeling that we are right in this and that there should not be the sort of economic burden placed on anybody or economic loss to the state and the nation, I guess, in the broader terms, for something that is not right at law. But to get a test case is difficult and I notice the House of Representatives report actually talked about a test case, but I forgot to say it was for the wrong sort of test case. It was a test case, if my recollection is correct, between whether or not there was adverse effects from clearing to the neighbour.

We're more interested in seeing whether the government has the right to move in on a person's private land and say, "You can no longer use it for the purpose for which it was intended." At the very least we would hope, if we went to court, that the agents would be told they have to use some scientific basis. It's not simply good enough to say that, "You have soil type ABC, therefore you may have" - may have - "vegetation XYZ". That is not a sound examination and it is certainly, in my belief, contrary to the intentions of the three inter-governmental agreements that set this thing in motion in the first place.

I think there is a real obligation for science to enter into it, but I make mention of the fact that more and more of course now the precautionary principle is being used. Now, as a lawyer I'm not sure how you see that standing up in a court of law or what chance that would give an appellant in a court of law, if all the agency has to do is invoke the precautionary principle.

DR FISHER: So is the bottom line that there hasn't been a test case because there's an imbalance of economic power basically?

MR DIVAL: Yes, that's right.

DR FISHER: Or financial resources.

MR DIVAL: There hasn't been a test case, not to my knowledge, and I have

searched high and low and so have others. But there is nothing that gives any indication, other than the odd bit out of other cases that talk about natural justice and the rights to a fair hearing, and all the other things that go along with that sort of thing gives us encouragement and we would certainly like to see a test case.

DR BYRON: Yes. Those issues of natural justice and a right to fair hearing or a right to even have the matter resolved within a reasonable period of time have been raised in many of the submissions and in the other public hearings that we've held.

MR DIVAL: Sorry, I missed your first couple of words.

DR BYRON: No, that wasn't actually a question. It was simply confirming the same issues of whether or not natural justice has been met.

MR DIVAL: Yes. I mean, again there is sufficient information from Freedom of Information material that we have, that shows that there is an active delay tactic is used, you know. I mean, if we - and I'm sort of quoting from memory a bit here, which perhaps I shouldn't do, but I've got a copy of it right here. But it's along the lines of, "Well, there is no" - the proposal incidentally was to clear native vegetation and replace it with pine, which would take 130 per cent of the water of native vegetation. Therefore the salinity issue doesn't exist, although they argue that there is a short-term period until the pine is established, that there may be a problem.

But nevertheless it's recognised in this meeting memo that that is something that could be approved by the commissioner, but then they go on to discuss ways of delaying it until it can get to the EPA and then there are further problems but at least it can be delayed. Now, that's not natural justice. That's definitely unfair but it's not in your bailiwick I guess to go down that track, but nevertheless it has an economic effect and so I'll argue against myself now. It certainly has an economic impact because the person waits. Every year that they lose, the cost can be significant. I mean, if it has got the potential of earning 50 or 100,000 dollars a year it mounts up.

PROF MUSGRAVE: All right. I had a general comment too, which was to the effect that the law in relation to taking in the United States seems to be well discussed, but in Australia anyhow it does not seem to be well discussed and that's a problem for people in your situation in developing an opinion.

MR DIVAL: Yes.

PROF MUSGRAVE: The precautionary principle, it was interesting to reread it fully as you have it on pages 6 and 7 of your submission and it has the attachments to it that if it is to be resorted to, this should be after careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment and an assessment of risk-weighted consequences. Now, one could interpret risk-weighted

consequences as including social and economic considerations and it would be your opinion that this is not the case in Western Australia, as being - - -

MR DIVAL: Well, that extract is from the actual agreements. What happened - and it's only bits of the agreement that are useful to the agencies that are actually included in their material. Now, I couldn't, from memory, tell you how but you may already know how it's used and included in the federal EPBC Act, and I can't remember the exact format that it's used in the proposed Environmental Protection 2002 Bill. But yes, I mean, you could if you wished, I guess, read into it that there needs to be adequate other investigations made. But I mean, the main principle there is the lack of scientific knowledge shouldn't stop you from taking action and that's the good part, as far as the conservation side of it is concerned.

DR BYRON: I fear that we're going to have wind up there, although I imagine we could probably spend a lot more time discussing these very important issues that you have raised in your submission. But I thank you very much for that.

MR DIVAL: Thank you, Mr Commissioner.

DR BYRON: Thank you. Could we now adjourn for about 10 minutes and resume at 10.50 with the WA government, thank you.

DR BYRON: Thank you very much, ladies and gentlemen. We'll resume with the public hearings. The next evidence is from the Western Australian government. Gentlemen, if you could just introduce yourselves, name and affiliation, for the transcript, and then if you care to spend five or 10 minutes summarising the submission which we have, which we've read, and then we can have a question and answer discussion. Thank you.

MR IRELAND: Okay. I'm Ross Ireland, director of environmental policy from the Department of Premier and Cabinet.

MR ATKINS: Dr Ken Atkins, acting manager of the wildlife branch from the Department of Conservation and Land Management.

MR BANYARD: Rod Banyard, manager of strategic development and planning branch in the Department of Environmental Protection.

MR BENNETT: Michael Bennett, principal policy officer, Department of Premier and Cabinet.

MR IRELAND: Since you have the submission, I won't go into a lengthy summary about it at all. I might just make a couple of brief remarks and let you ask any questions or clarification that you're looking for. I think the points that we would want to emphasise are that the controls that relate to protecting native vegetation and biodiversity have been introduced gradually in response to changing values and stakeholders, including government, all learning about the needs, what's required to protect the soil, vegetation and other aspects of biodiversity. So there has been no sudden impact in the way of costs, and as these programs have gradually been introduced, there has been plenty of time for people to adapt and there has been assistance, as these have come in, for people who have been impacted. So they have been introduced gradually. Their efficiency and effectiveness have been improved as the government and other stakeholders have learned how best to do these things, and there has been this progressive introduction, along with some measures to mitigate any impact. I think that's about all I want to say.

DR BYRON: Okay. Well, thank you very much. I found the submission extremely interesting. One of the things that struck me is that it deals very much with the regulation and control aspects of native vegetation. The achievements that have been made in management retention of native vegetation and biodiversity conservation are implicitly attributed very much to the progressive tightening of controls and regulation, and the introduction of stronger enforcement, heavier penalties and so on. This contrast with what we've seen in a number of other states, where there has been perhaps less emphasis on regulation and control and more on voluntary incentives - now, without wanting to get into semantics, the WA Farmers Federation and many other farmers and farmers' groups that we've spoken to around

Australia portray themselves as environmental stewards.

People in environmental NGOs and in some government agencies see land-holders not as environmental stewards but as ecological vandals who will do terrible things unless they are rigorously controlled or regulated. There seems to be a - out of the 160 submissions, they all fall nearly into one of those two categories. Your submission seems to focus on the control element rather than on the collaborate/cooperative partnership sort of arrangements that we've heard about elsewhere. Do you have a reaction to that?

MR IRELAND: Yes, I guess that's not because the government thinks that regulation is the more important part of those factors - I'd say it certainly isn't - but more because we thought that your inquiry was more focused on regulation in discussing the impacts of things arising from the regulation of native vegetation clearance and biodiversity conservation. So for that reason, we focused our submission on the impacts of regulation, not because regulation is the most important element; it isn't.

DR BYRON: Well, would you just like to elaborate on that, because our terms of reference also ask us to look at, you know, possible new measures, both regulatory and non-regulatory, that might achieve the same sort of biodiversity conservation habitat environmental outcomes, but perhaps without some of the alleged cost to land-holders and taxpayers. So you did mention in the submission in a few places about assistance, the adjustment scheme and those sorts of things. Can you elaborate a bit more on the other instruments that are being used here to complement regulation?

MR IRELAND: Okay. Again, the instruments or the mitigation measures that are mentioned in our submission are primarily those where that word "directly used to offset the impacts of regulation" - there are a great number of schemes in various places that are about assisting voluntary efforts and providing incentives. I don't know who would be best to talk about some of those.

MR ATKINS: Perhaps I could run through a few of these sorts of programs, just to give you a bit of a flavour of the range of initiatives that the government has undertaken or that have been undertaken in Western Australia over I guess the last decade or two. Back in 1988, through the Department of Agriculture, the Remnant Vegetation Protection Scheme and also the State Revegetation Strategy were in place, where land-holders were able to receive assistance for fencing for both revegetation or revegetation protection, and in the case of revegetation protection, in exchange for a minimum 30-year covenant over the land. So it was an encouragement using an incentive program to have land set aside for both soil and land conservation, because the measure was undertaken through the Soil and Land Conservation Act, but also for nature conservation through general vegetation

protection mechanisms. That scheme ran until, I think, about 2001, so it was about 13 years, and on average it was about \$500,000 a year. It did vary. It went down at one stage and then went up significantly towards the end.

Following the cessation of the Remnant Vegetation Protection Scheme, the Department of Conservation and Land Management and also through the National Trust of Western Australia, two covenanting programs were established, primarily for nature conservation, and both of these programs provided incentives through assistance with initial management costs, including fencing, but not necessarily restricted to fencing, and as they were done through these covenanting programs, they were in exchange for covenants being placed on those lands, and usually those covenants being in perpetuity. So again, there was an incentive scheme but linked to some protection of the investment that the government and National Trust were putting in to the assistance with managing those lands.

In 1997, I think, from recollection, Western Australia also developed the Land for Wildlife program based on the Victorian Land for Wildlife program, which you may be familiar with, and this was at the same time as the Commonwealth government was developing a national consistency or a national framework for Land for Wildlife programs across Australia. So the Land for Wildlife in Western Australia has been going very strongly for six years, and this provides primarily incentives to land managers through the provision of that management advice, and one of the things that we have found through a lot of these programs, and it's a bit of the evolution that these programs have made over the years, is that one of the major impediments to land managers managing their bushland is the lack of information - they feel that the bushland is something foreign to them, whereas our experience has been that because they are the people working the land and living in that environment that they actually do have much greater sensitivity, if you like, for the management of that bushland and what they may recognise, and it's really just overcoming that mental impediment, if you like, to encourage them to be able to do that.

So the Land for Wildlife program has been extremely successful in encouraging positive management of bushland by land-holders, and this is purely voluntary, there is no covenants involved, but once land-holders are involved in the scheme, they tend to take it on with great relish and do look after their bushland. The government also has a state salinity strategy. It initially started as a state salinity plan in 1996 and evolved into the state salinity strategy, which does have a range of mechanisms in it for encouraging or supporting appropriate land management, including vegetation management, and one to pick out of there would be the natural diversity recovery catchments, which are specific catchments which have been identified as having high nature conservation values, and where management actions would achieve optimal outcome for biodiversity conservation, and in these recovery catchments, there are mechanisms for purchase of land, for assistance in provision of

fencing and revegetation and other appropriate management strategies. So I guess that's just a very quick run-through of a range of the sorts of programs that the government has in place.

DR BYRON: I guess my reason for asking that question is that it seems to me that simply denying permission to clear a piece of native vegetation, or prohibiting it, doesn't guarantee that that piece of native vegetation on freehold land is going to be well looked after, and what really matters is, you know, the ongoing active management and control of ferals, weeds, fires, all those sorts of things. So simply telling somebody you're not allowed to bulldoze it doesn't mean that those ecosystems are going to be well managed and well looked after into the long-term future, and that's why I think that, you know, regulation can achieve some minimal level of compliance, but it doesn't necessarily encourage people to do the extra yards. Is that - - -

MR ATKINS: Yes, that certainly is recognised. It's difficult to force people to do management. It's one thing to encourage and give some assistance, but to actually force people isn't something which governments would be capable of doing, even if it was legislatively possible. The government has always taken the attitude of trying to have some sort of a carrot there at the same time as the stick being brought in. So where various restrictive activities have been proposed, incentive programs have been suggested at the same time.

In the submission, there's reference there to the Environmental Protection Amendment Bill of 2002, which is where the revised clearing control process is going to come through. At the same time as announcing the development of that bill, the government also announced a \$2.35 million vegetation management or vegetation incentive package that would hopefully provide incentives to land-holders to manage their bushland, rather than considering the clearing option. That included \$1 million for land purchase, and there is reference in the paper to the biodiversity adjustment scheme. So that is looking to pick up those ones which have been significantly disadvantaged through the prohibition of clearing, but which do have high nature conservation value. Also \$1 million is allocated to a native vegetation trust fund, which will be providing incentive money for the management of bushland, and there was \$350,000 to provide an enhancement to the Land for Wildlife program, so that there could be more positive management advice being provided.

The fourth part, which didn't actually have a funding component allocated to it, is an investigation of the disincentives which currently impact on land-holders who have bushland to manage, primarily through the taxation and rates-type disincentives, and that is being pursued by the government to look at removing some of those disincentives.

DR BYRON: Thank you very much.

DR FISHER: Did you say - I'm sorry, I might have missed that - did you say 2.3 million?

MR ATKINS: 2.35 million.

DR FISHER: So you're actually not anticipating purchasing many properties?

MR ATKINS: It's a one-off initial allocation, and the presumption is that once we have investigated how that \$2.35 million can be best expended and assessed the positive outcomes, then one would expect that the government would then support that through further allocation. But the number of properties and the amount of property is a little bit contingent on just where those properties are. Obviously an area that's in, say, an outer metropolitan area, you could probably spend all that on one property. But larger, broad-scale agricultural properties in the wheat belt, for example - that could actually go quite some distance in purchasing lands. It is also contingent on the land-holders being willing to sell, and if they feel that they can get a better price than what the government is willing to offer, then they will seek other strategies so it's going to be a little bit of a trial process to just see how effective that million dollars is and what sort of properties can come up.

In West Australia we also have an operating revolving fund which looks to purchase properties of high biodiversity value or parts of properties of high biodiversity value, place a covenant on it and then look to resell it on the market to people who are looking to buy those sorts of properties to manage as lifestyle properties or for whatever reason. So there are other strategies which will complement that straight out purchase by a government. In fact, what we call our "bush bank" which is our revolving fund, has revolved its first property in the last couple of weeks. So that's now an operational thing and has some success and will now start to work on those successes.

DR FISHER: What strategy do you have in place to try and value some of these properties? We've heard some evidence that your valuer-general is valuing properties significantly differently from the banks, where banks say that a property that's vegetated, or parts of properties that are vegetated, basically have no commercial value effectively because of the regulations in place that effectively mean that you can't clear. Therefore, they have no production value, therefore price equals effectively zero for that land in the market. This means of course, if that were to be the case, that your \$2.3 million will in fact go an extremely long way if P equals zero. But of course that leads to the question as to whether that's a fair value, and of course as an economist it's hard for me to deal in fairness, but obviously community stakeholders are concerned about fairness. So do you have sort of a policy in place to deal with how you come to a reasonable value for these properties?

MR ATKINS: Do you have any information on that?

MR BENNETT: If you can't answer that, we'll take it on notice and get advice.

MR BANYARD: No, I can't answer that. I can make some comments on it though. We do, under the country areas water supply legislation, which was introduced in the 70s to prevent clearing in catchments that were going saline for the specific purpose, not of biodiversity, but of protection of the town water supply, security of town water supplies. That legislation I think, because of the time from it was brought in and the novelty of clearing controls in those times, the effects of clearing were fully compensated. So the land was either bought or payments were made for land based on the difference in capital value of cleared and uncleared land. Under that system there's a well-established process for valuing cleared or the effect of the clearing regulation itself on the land. Certainly uncleared land value is not zero. In those areas, there are timber values, there are grazing benefits - there are other benefits and the land has a value. It's not zero.

DR FISHER: So you would see using a process like that. Perhaps that's the precedent that you would - - -

MR BANYARD: That's based on the assumption, if I could perhaps go to a more fundamental issue, as to who should bear the cost of the biodiversity protection itself. You've rightly pointed out the deficiencies of a prohibition or a regulation of clearing in that it doesn't protect the biodiversity values it just prevents land being cleared, which is an essential - I think that we would have the view though that it's much better to preserve existing land than be looking at revegetating cleared land. There's much higher diversity values. I don't think there's any argument about that. But one of the other impacts of prohibition on clearing is the impact is very uneven. Some landowners with fully cleared land bear no burden whereas landowners who may have substantial areas of land bear a burden proportionate, I guess, to the loss in productivity or the disruption of their plans.

So that's a major deficiency and the country areas water supply provisions had a requirement in there that there would be no compensation paid for not being able to clear 10 per cent of the land. So in the mid-70s we had a view that 10 per cent of land should remain uncleared. The national position is that 30 per cent of land should remain uncleared in the national strategies for vegetation management. So it might be reasonable to approach it, if we're looking at who should be bearing the burden, that landowners should expect that they would be bearing the cost of maintaining 30 per cent of their land under vegetation. There's no government position on that, but I'm raising that issue in response to the question of how you might value the cost of the regulation and that would be a factor to take into account there.

DR FISHER: That actually goes to the heart of the problem, doesn't it. I mean, it seems to me that the problem - I mean, all of the angst that at least I've heard, not only in Western Australia but across Australia as a whole, can effectively be encapsulated in the following. There are a bunch of land-holders, some of which are actually cases today, who in the 1970s were required by probably actually a department represented here today to clear pieces of land to maintain their tenure, effectively. That was a requirement for maintaining those blocks. We have a situation where community views have changed such that there have been decisions taken that we should have more concern for biodiversity. There's more issues with respect to public goods.

Effectively though those public goods are now being provided to the community by a group of individuals who just happened, by accident or design, to be the owners of vegetated land. Those people who cleared in the 70s and the rest of us in the community are the recipients of ecological services associated with the land that's not cleared. So we have an intertemporal and interpersonal equity problem. It seems to me that's the key problem and I don't see anything in your submission, unless I've missed it, that goes to the heart of that problem and gives us a solution.

MR BENNETT: You mentioned the intertemporal problem. It's worth noting that schemes like the biodiversity adjustment scheme do try to address that issue. They provide adjustment, and one of the criteria for provision of adjustment is the date on which the land is purchased. I just wanted to draw your attention to that.

DR FISHER: But this problem still exists, that there are ecological services being provided to the community in general by people who own today blocks of property that are either growing back as revegetation, regrowth, or that were never cleared. Yet we don't seem to have a policy solution to ensure that those people who are providing those ecological services to the community are paid for it, and presumably the community is demanding that, because we have this legislation and a whole set of regulations in place. Therefore there appears to be a demand on the part of the community and the voters et cetera to have that, otherwise I guess the government wouldn't have those policies. Yet we have no way of actually - and I don't necessarily want to use the "compensate" word - but there's no mechanism effectively to pay those people who are providing those ecological services. If there wasn't a problem, we wouldn't have received all of this evidence suggesting that there are a bunch of individuals out there in the community who are seriously upset.

MR IRELAND: I guess your point about the problem is well taken. I wouldn't say that there is no attempt to deal with it. There is no single solution. There is a continuing debate and there's constant finetuning of the programs and the legislation and the education and the offsets to try and deal with what is a changing situation and a difficult issue. One view is that there is a set of ecological services which the

recipient of those services should be paying for. But those ecological services are a benefit to everybody in the community and they've been delivered without people having to pay for them - you know, clean air, clean water - in a sense before. It's probably not a good idea to go down the path of saying everybody should have to pay for those ecological services.

The other view is that, as contained in the national strategy for ecologically sustainable development, the intergovernmental agreement on the environment, which is the polluter or impactor pays principle. You say there's a temporal issue and you can't go back and say to people who were being encouraged to clear that actually that was wrong, you were destroying ecological services, you should now make that good. But there certainly is a case to say that now we do understand that, if you now want to impact on ecological services such as biodiversity that are benefiting the whole of the community, and you want to cause that impact for private profit, then there is an argument that those people should bear the cost.

DR FISHER: Actually I don't think that you can sustain that argument in the sense that there's a public good, but there's certainly an equity question that needs to be addressed with respect to those individuals who find themselves in some case, through no fault of their own, and in fact we do have cases here in Western Australia where evidence has come before us that there are people who had property before the drop dead date of 17 May 1995, I think, if my memory serves me correctly as to your drop dead date, that were clearly given a set of incentives and clearly purchased property with another set of rules. It seems to me that there is an equity problem there that seems not to be addressed, and if it had been addressed I guess they wouldn't be coming forward unless they're misleading us.

MR BANYARD: Just on that equity issue, I think there are two equity issues there and I'm not quite sure that I understand your flow of logic there. The people who were required to clear their land and did so, don't bear a burden of not being able to clear their land.

DR FISHER: Okay, correct.

MR BANYARD: So the equity issue for those people is that they're not contributing possible to the protection of biodiversity values that they should be.

DR BYRON: The equity between those two groups.

MR BANYARD: So you're looking at the equity between the people - not the equity of issue of a person who is required to clear and now can't clear. It's the person who has cleared and the person who hasn't cleared.

DR FISHER: Yes, and the rest of the community as well. Those individuals who

sit safely in their houses at Subiaco or wherever and enjoy the notion that there are ecological services delivered to Western Australia and Australians more generally by wheatgrowers who haven't cleared their properties, are effectively receiving a public benefit, and we have no effective mechanism for compensating those who are providing that set of ecological services.

MR BANYARD: It's an issue that does cause, I think, the government - obviously it's a big issue as you raise, and there are significant costs involved in those sorts of schemes where you might look at how people would be paid to deliver ecological services. We have been discussing, I think, with the farming community some ways of addressing the questions that you're raising there, and the issues I think are, as I understand them, that - if you look at the agriculture area as a whole and the level of clearing and the prices paid for produce that the maintenance, if we accept that the 30 per cent was the desired level of vegetation for biodiversity protection, it would make a big difference to the cost of agricultural production. At the current prices those prices are not sustainable.

So it isn't possible, for example, to impose that on the current system without some sort of support. If the support is going to come from the people who have got 100 per cent cleared to the people who haven't cleared their land, that's internal within that system and the whole system is unlikely to be able to bear that burden. So there would need to be some injection of funds from outside. There are ways, I guess, that that could be looked at. But the fundamental question, as I raised before, is who's going to bear this burden? Is it an issue for landowners, the community at large or whatever? The points that Rosh was making about is it really an issue about the position you find yourselves in now, that if you're providing those biodiversity services you shouldn't - now that we know that clearing that vegetation is unwise, that does affect the position you're in now, whereas being able to clear, when we didn't have that knowledge, and I think I'd take a little bit of a different slant to perhaps the way you expressed it in that the community has changed its attitude. Really what we've done is changed our knowledge. We know the value and importance of that vegetation now. It's not really just a value change. It's also a knowledge change that's led to that value change.

PROF MUSGRAVE: You used the phrase "creating havoc". We've had cases described to us and we've visited people - this is not in this state, let me say, in my case - we've visited people who have been materially damaged by the administration of regulation, yet to my perhaps somewhat untutored eye they haven't exactly been creating havoc. Would you persist with the use of that phrase?

MR BANYARD: Did I use that phrase, did I?

PROF MUSGRAVE: You used that in your presentation just now. You talked about farmers creating havoc.

MR BANYARD: Sorry - well, if I did I - I don't recollect using it, but - - -

PROF MUSGRAVE: It seems to be in the line of, you know, that farmers are vandals, environmental vandals, which we've also encountered - - -

MR BANYARD: Well, I certainly didn't use that phrase.

PROF MUSGRAVE: No, no, you certainly did not, which I have encountered.

MR IRELAND: No, I think the point about environmental - about havoc was not about environment, it was about what would happen if you imposed the large costs of internalising all of the costs on the agricultural system. I think, that was the context it was - - -

PROF MUSGRAVE: So it was a generic statement.

MR IRELAND: It was a context about the impact that you would have if you tried to fully internalise all the costs of adequate protection of biodiversity into the agricultural economy, in one go, and that really would not be possible, as we well know, which is one of the reasons why governments have introduced controls on vegetation clearing and biodiversity protection in a very gradual way and with a substantial number of offsetting programs.

DR FISHER: I guess my - just to pick up on that - sorry, Warren, to cut in on you - the point I think I was trying to make was that the - we wouldn't necessarily want to be fully internalising the costs of these environmental services on agriculture, because the environmental services are services being delivered to the community more broadly and to ask the agricultural sector to bear the full burden does not seem to be economically justified.

MR IRELAND: I think that's right, and no government has asked the agricultural sector to bear the full burden, but there is a degree to which those costs should be internalised. Clean air is something that is a benefit to the whole community, but we expect industrial companies to bear the cost of cleaning out their emissions to air or their emissions to water. They are expected to bear the costs of managing their impacts on those services.

PROF MUSGRAVE: Just changing tack slightly but raising a point that relates to this. Has the Western Australian government got a legal opinion on the compensation situation with respect to regulatory takings?

MR IRELAND: Anybody aware - - -

MR HARTLEY: There is no provision for compensation under the Soil and Land Conservation Act of 1945.

PROF MUSGRAVE: That wasn't my question. There's very strong pressure for - arising from the agricultural sector for compensation for the costs that they argue are being imposed on them by these regulations. I think we all agree on that, there is such pressure and as I understand it, the relevant arm of law has to do with the power of the state with respect to the taking of rights and that the agricultural sector is raising the question of compensation for such takings. Now, this is a pretty grey area of law, as this non-lawyer understands it, and as I understand it the farmers have not taken the advice of the law, they haven't got a legal opinion on this, but I think there can be no denying that the state is taking in this situation. There is argument as to whether the state should therefore pay compensation or not and I'm not saying the state should pay compensation for such takings as you so eloquently state, but it would seem to me that it would help everyone concerned if there was a legal opinion on this and it would be fair to say, I think that the state is better placed to provide such advice or obtain such opinion than farmers are.

MR HARTLEY: Thank you for the advice.

MR IRELAND: I don't think - - -

PROF MUSGRAVE: The answer is that you do not have - I'm not saying this in a confrontational way. It seems to me the debate would be so much better served if we could be advised on this. The United States literature is - there's quite good United States literature on this, but the Australian literature seems to be deficient in this respect.

MR IRELAND: I don't think any of us here are able to answer what legal advice is available to the government.

PROF MUSGRAVE: Yes, okay, I think we should pursue the idea of getting it. The new bill, which essentially would represent a very significant development in that it shifts the onus of proof from the state to the farmer, so it's a very significant change and effectively bans clearing, unless you can make a case that satisfies the government with respect to biodiversity environmental considerations. What is the current situation with that bill? I understand that it's some - still in the mills.

MR BANYARD: The bill is in the legislative council at the moment. It's ready to go to consideration in detail in the council. There are a number of amendments proposed to it, both from the government and from other members and it's I think the government's hope that it will be dealt with during this session of parliament.

PROF MUSGRAVE: I see.

MR BANYARD: Or this coming session, by Christmas anyway.

PROF MUSGRAVE: I received your submission rather late last night, so I haven't had a chance to study it closely, but I was struck by the biodiversity adjustment scheme. As I understand it, Western Australia is the only state which has such a program. Is that correct?

MR HARTLEY: I don't - - -

PROF MUSGRAVE: Are you aware of - I'm not aware of any other such scheme. Do you have some information here as to the application of the scheme and number of applications for benefit under it and the number of successful applications?

MR ATKINS: The scheme has only been recently endorsed by our NRM Council and we're just in the stage now of - well, through the WA Farmers Federation and the Commissioner for Soil and Land Conservation putting together a list of properties that are applicable to it and we are now in the process of prioritising those so that we can start to commence negotiations, so it's still - - -

PROF MUSGRAVE: So it's not a question of the land-holder making an application - - -

MR ATKINS: No, because the criteria which are listed in the papers are specific to people who have applied to clear and who have been refused and who meet certain other criteria, such as the date of purchase and things of that nature.

PROF MUSGRAVE: Yes, I see. So someone automatically goes into the - - -

MR ATKINS: We've developed the scheme - or the list from within that process.

PROF MUSGRAVE: Okay, okay. I think it's very interesting to see this scheme and certainly in relation to the claims for compensation I think that the scheme is significant. So it isn't really in place yet, so I guess this means that when it is in place perhaps the angst in the rural community might diminish somewhat. What would be your guess?

MR ATKINS: As has already been pointed out, with only a million dollars it's not going to go that far in the initial spread. I guess what we're hoping for is that it will at least address some of those, shall we say, difficult cases, where people have been historically disadvantaged through clearing restrictions and at the same time achieve some biodiversity benefits for the state through placement of those lands in Crown ownership.

PROF MUSGRAVE: Yes, okay, so it's possible that there might still be some residual angst?

MR ATKINS: I'm sure it won't solve all of the problems.

PROF MUSGRAVE: No. I might say - and I think this has been mentioned by my colleagues already - that in our travels we've encountered considerable angst some of it has been expressed incoherently and some of it has been expressed quite coherently and a significant feature of this is statements that the underlying science of some specific decisions seems poor. That the technical argument in favour of the application of the regulation is not clearly understood and is not well explained, if it does exist and doubt is sometimes expressed, as I've said, as to whether it exists. Now, you refer in your submission to rigorous and public processes associated with assessment of environmental factors and I'm not questioning the fact that such assessment occurs, but there would seem to be a serious breakdown, if what these individuals are saying to us is correct, there would seem to be serious breakdowns at the coalface, wouldn't there, between government and the farmers involved? Are you aware of this sort of problem? Has it been brought to your attention?

MR IRELAND: I wouldn't think that we would want to comment on any specific cases, but I think, you know, it's understood that when you are dealing with cases that are based on, you know, a complex and only partially understood science like ecology, that there will be cases where people have different views and there are undoubtedly going to be problems with new legislation and new regulations based on that kind of thing and it's important that governments and the parties work to solve those in good faith.

PROF MUSGRAVE: Yet even the precautionary principle says it should only be applied after very careful assessment of all factors, and I would include that. I would think that would include social and economic considerations. Yet these farmers that were talking to us - and this is not just in Western Australia - say that they cannot get such an explanation, which must be very unsatisfactory for them, mustn't it, if someone is - I think perhaps even losing just tens of thousands of dollars but still surviving and they're polluted so they have to bear the cost, I think due process and natural justice would require an explanation which they can at least chew on and aspire to understanding, but it doesn't seem to happen - - -

MR HARTLEY: Well, to my knowledge, an explanation is always given as to why an application for clearing is rejected. Now, I think it's quite obvious that if someone makes an application to clear and that clearing application is rejected, that they're going to be upset, so there is certainly going to be conflict between that proponent and the government. But under the Soil and Land Conservation Act, if someone receives a notice of objection, they receive advice as to what the form of land degradation was that was going to be caused. It's usually either a rising water table

leading to salinity or it's erosion and that explanation is given. Now, often they don't accept that explanation. They believe - and we've recently had an incident in the northern part of this wheat belt, where we actually ended up going up there and putting down bores and drilling holes to actually demonstrate where the water table was, because the land-holder wasn't prepared to accept that there was a rising water table problem.

PROF MUSGRAVE: Well, that certainly would be adequate explanation - - -

MR HARTLEY: Well, we don't do that under all circumstances, but on this occasion we considered it justified, but we certainly do give an explanation as to what the problem is and why the application was rejected. But as I said, that isn't always accepted by the proponent.

DR FISHER: Warren, can I just follow up on that. It seems to me that one of the problems we have here is some sort of balance of power problem in terms of the - and again I'm sort of meddling in things that I'm not an expert in, but if I could put myself in - just let me put myself in the role of a departmental administrator for a moment, I can see all - my incentive structure will be to deliver on whatever the - I perceive government policy, so I'll get up to all sorts of tricks, I presume, to ensure that I deliver on - whatever that is.

On the other side, the farmer is making an application and he wants to get his way, therefore, there's this coming together. Now, in some of the evidence we've seen - and it's not necessarily here, but across Australia - there's been instances where you'd have to say that there's been a lot of dirty tricks and this is clearly exposed under the FOI - these things have been FOI'd, you see the processes. The processes are not really what you'd call delivering natural justice, so it does set up a situation where you generally get conflict. Is there thought being given to smoothing out the administration of these things, so that there'd be some sort of more collaborative process so the people on the receiving end of these decisions are actually better able to understand what's happening, because it seems to me that this - and I'm not necessarily directing this at you all, I'm just making this observation more generally because it's - this evidence is coming up everywhere and I think it would be useful to hear some thoughts about how the administration of these arrangements might be smoothed out so they become more transparent.

MR IRELAND: Before we make specific comments I guess I would respond and say that if you've got cases where officers of the West Australian government are accused of undertaking dirty tricks, we'd like to see those and examine them. I don't think that it is general for public servants in this state and unlikely in other states that they engage in dirty tricks to attempt to deliver government policy. These regulations are matters of law. There are all the protections that are normally associated with law such as those you refer to, such as FOI and appeals and

ombudsmen and all those things. Public servants are required to follow the law.

We do not have, as far as I know, a large backlog of cases of dirty tricks or such things being appealed. We do have a significant number of cases of illegal land clearing which the new legislation is attempting to address. Now, in terms of the specifics about smoothing out processes, I don't know if you want to comment on those, David.

MR HARTLEY: Yes. I've got a couple of comments. I certainly take exception to the suggestion that public servants would engage in dirty tricks. I know I go to a great deal of effort to ensure that I administer the Soil and Land Conservation Act in a fair and equitable and consistent manner, and certainly don't engage in dirty tricks any more than I hope you, in your position as a public servant, would engage in dirty tricks. In terms of the balance of power, I mean, I guess I feel that way a little bit every time a policeman pulls me up and books me for speeding when it's his word against mine. I feel a little bit disadvantaged. But if the law is there, as long as it is administered in a fair and an equitable way - we don't make the law, we are there to administer it.

In terms of the imbalance as you see it and smoothing out the process, for quite a few years, well before I came into this position, efforts were made to ensure that there was a booklet produced that provided all the information on clearing applications, on how it worked, what people had to do. So I don't think there is any doubt that people are under any misapprehension about the requirements of the Soil and Land Conservation Act, that if they make application to us they're given a package of material that explains what the act is and what their responsibilities are, and I'm not sure how much more can be done.

DR FISHER: Now, I'd just say again I wasn't accusing you of playing dirty tricks. I'm just saying that there is a perception on the part of some of the applicants that dirty tricks have been played on them. I'm not making a judgment one way or the other of whether that is true or false. I mean, that's not for me to make an observation about and I guess the point I was really making was that certainly we're hearing that sort of response and I was just asking the question about whether you had views about how that might be sorted out.

Now, obviously one of the things you've been trying to do is to publicly provide information about your processes and I guess some of the evidence that we've heard suggests that there are several government departments involved in making these decisions - and I'm not necessarily talking about here in Western Australia but this is a broader problem across Australia - and that there seems to be confusion between the administration of what actually comes under one act and one department, and then how that's passed to another department and whether there are two departments involved or four departments involved, et cetera, so that these

processes seem to us, at least given the evidence that we've so far received, to be quite clumsy and I guess where there's smoke there must be at least a hypothesis that there's a spark or a bit of fire. That's the only point I'm making.

MR HARTLEY: To address that issue, in 1997 this state through a cabinet decision introduced a memorandum of understanding that ensured - that laid down the protocols for communications between agencies and the formal handling of clearing applications, and it was a four-stage process from memory. Under the current government that memorandum has lapsed but there are still clearly established procedures for referring clearing applications on from the commissioner. The Commissioner of Soil and Land Conservation under the current arrangements is where the applications come in the first instance. But for referring those on there are quite clearly established procedures for doing so and I would suggest that there isn't any confusion between agencies administering land clearing in Western Australia.

DR BYRON: We've gone a bit over the time that you had allocated to spend with us and vice-versa. But I mean, this is extraordinarily important and interesting. I think for me the point that comes out of this discussion is that irrespective of the clarity of the process as you see it, there is a perception amongst people on the other side that it's not clear and transparent, and the real point is that ultimately in the long term for the management of those important and endangered ecosystems, fundamentally governments and land-holders have to work together. Now, if the perception of a complicated process is actually inhibiting that sort of partnership it's mutually counterproductive.

MR IRELAND: I agree with that and it is a complicated matter. There are adjustments being made to legislation. The delivery of legislation when it's based on a complex science, as we said before, is difficult. But the government has done a great deal to try to improve communication and to ensure that the policies and administrative procedures and the law are developed in a most consultative way. We had a mention of the Natural Resource Management Council earlier. We have regional natural resource management groups. We have a considerable amount of contact through the Agriculture Department with all those stakeholders. So there is a very thorough process and the government is in the midst of trying to improve its legislation as it affects the land clearance issue. That's in the parliament at the moment.

I think that you're basing a lot of your comments on perceptions and you're talking about the perceptions of one particular group of land-holders who think they've been disadvantaged. As I'm sure you'll hear from other stakeholders, other stakeholders have an entirely contrary perception which is that the government isn't doing nearly enough to control the impacts of agriculture on environmental values. So the perceptions are all around but the government is trying very hard to work for a fair and equitable position to deal with all of those interests.

DR BYRON: I think that's probably a very good point to finish on, unless there's anything that any of you would like to add.

MR BANYARD: Yes. I would just like to add to that last point in that there seemed to be a perception coming from your side of the room that it was government against landowners. In regulation of clearing, for every time there's land cleared we would get a number of inquiries or complaints that there was illegal clearing going on and asking to explain how this is happening and it's not just from the conservation groups. It's from the farmers and the neighbours, and neighbours near and far, and I think this belies a bit your point, sir, about the misunderstanding or the lack of understanding of why clearing isn't acceptable in particular cases.

It's widespread understanding through the community what the disadvantages and the need to preserve biodiversity are, and it might be a bit of selective - obviously the people who are bearing that perhaps unequal burden have got a sharper interest and perhaps a greater sense of injustice, but there isn't in the community, in my view, any misunderstanding of the importance of protecting biodiversity and native vegetation.

DR BYRON: Very good, and thank you very much for coming, gentlemen.

DR BYRON: In the interests of time I think we had better move straight on to our next presentation, which is from Mr Ferguson. Gentlemen, when you get settled if you could just introduce yourselves for the transcript and then if you could briefly - - -

MR FERGUSON: Jim Ferguson on behalf of Ferguson, Kenneison and Associates. We've submitted on behalf of nine land-holders. One of them is here today with me, Mr John O'Day from down in the Albany country. I'll open up on some of the issues that we see. I'll just run through quickly, hopefully in the 10 minutes, of the various issues. But the commission, as I pointed out, would be assuming that the law has been applied in the assessment process of notice of intent in all cases in Western Australia and that has been applied as it should be. We have argued that this is not the case, that both the statutes and administrative law relating to the statutes have been disregarded in quite a few cases.

In our submission we trace the progress from 94-95, the cabinet directive on 10/4/95, the MOU, the advice, the EPA Borton advice 966, advice under 16 section J to the minister for the environment, position statement number 2, environment protection of veg in ag areas and easily understood why the problems have always been there. Just quickly if you go back to - and I've set it out quite clearly, I think if you go back to the cabinet directive, there was always an intention to implement legislation, either in the form of - in the act or in the regulations to make sure that the changes to the assessment process which all hinge on biodiversity conservation, which is what you people are all about, were done according to law. That never happened, I've set it out quite clearly why it hasn't happened but the problems in the industry today are solely as a result of trying to get the Soil and Land Conservation Act which is the EDO's office actually did the \$5000 - opposite the Commission of Soil and Land Conservation, or the Soil and Land Conservation Commission - they paid the 5000 for it.

The EDO's office - and Mr Michael Bennett, who is sitting here was one that made the statement, he did the document and he made the statement in there that the Soil and Land Conservation Act is structured for the productive use of agricultural land - as clear as that - not for the conservation of biodiversity. It's as simple as that. You go back and you get the warning there through the EPA Board in 966 when the chairman of the EPA turned around and made it clear to the minister of the environment that there were problems. On page 5 and page 8 the legislation hasn't been implemented. We're having problems under section 38 of the EPA Act 1986. That's in a nutshell where it all is. To hold that document up here a while ago, the memorandum of understanding, a collusive document - that's all of it is - of how the agencies would get together and do what they were instructed under the cabinet directive, they altered things in there which are set out anyway by the bye, but they altered things to suit themselves.

Even in that document they had the temerity to alter the definition of "clearing". They had to alter that. When you actually examine that - and I'll put in some further material on that, but they've got the hide to give the regulation and then underneath that, out of that box, they put the definition "to clear" and they altered that to suit themselves. Just to run through, an attempt is made to determine whether those with input into the cabinet directive - and they said they had wide input, and that included pasturers and graziers, WAF, another one that's submitting here today, the Conservation Council, I think it was the Liberal Party committee, and that's on the document there, and I think what happened - we haven't gone into this really - the document was taken, presented to the public servants, and they then went and structured the MOU and it's proceeded from there.

I don't think that those who had input probably knew that the legislation was supposed to be amended. But when you've got the chairman of the EPA in 1999 turning around after pressure - and I believe it's after pressure being put on them - he's making sure that he's told the minister that there were problems there, and he states it specifically in page 5 and again in page 8 that they have problems, because it hasn't been - he reminded them that the legislation hadn't been changed.

That Conservation Act - little-known Conservation Act of 45 - cannot deal with conservation issues, and that's why earlier we hear a submission that they've got to get some land degradation issue to stay the process, whether it be salinity, wind erosion or whatever, but salinity is a good one. The use of opinion, even - we'd better just cover that, because one of the commission committee raised that. The use of opinion evidence - they cannot use it the way they've been using it, but I think I've discussed that in there. To have an opinion, you've got to have the technical expertise to put that opinion forward.

Anybody knows that to implement agricultural production, agriculture requires a removal of native veg. I've just stated about the Soil and Land Conservation Act not being structured for what it was to do, and that's what they basically tried to do. There should be more questions asked later on of government on those issues.. It's interesting that the acts for conservation of native vegetation and biodiversity - there's been the efforts of the Commissioner for Soil and Land Conservation to disengage himself from the decisions of 6 and 7/3 of 1997 and 5/3/1999.

The letters are available there to prove that, where they came out and specifically in 1999 - 5 March 1999 - Mr Dival and I went and met with Mr Hartley on 23 or 24 March 1999 and all farmers were going to have to prove that land degradation wasn't going to occur. It's a turnaround, a complete turnaround on the act, and for them to sit here and say that there have been no problems, they've carried it out right to the letter of the law, I will now forward you - well, I've got it in my bag there, but I'll forward it to Canberra - the 10 pages - his response to a question. It will surprise you how that got around that one, but it's good reading.

Also, there's been a failure of the chairman of the EPA and others to demonstrate the value of native veg when requested and prove the added income derived from including 20 to 60 per cent under native veg. They've made no effort to do that at all. They keep going with airy-fairy material and that sort of thing. I don't deny that there's a value in the native vegetation, but there's also a value in tree crops. Again, they've got a policy which I'm trying to get out of the EPA. They've had it for some years. Same with the Ag Department - no clearing of native vegetation to plant tree crops, eucalyptus globulus or the pinus or pinaster. They've got there. They can't give me the policy which they've told me they've got. It's quite interesting.

They've been the signatories to the MRU, they've been reminded of their responsibilities - still they've been reminded of that. I note that they've said that they're not using it any more. Now, there's been a failure - just quickly - of the director general of the Department of Ag to answer questions and comment on the MRU and the CEO of the Department of Environmental Protection, I'll forward their responses in now on the questions of the MRU, seeing as its meritory to bring that document up, a document that I do believe - I can't prove it, but I've been told by two people that when the personnel were being instructed how to use and briefed on it, that it was held up by a person and waved around - and this was in 1997 - this is the end of land clearing. I can't prove it, but I've had that stated to me from two people that were at -

The financial impact of our nine land-holders I will carry through and give that to you at a later date. They're quite great, ranging from 40 hectares up to one for 760 hectares for blue gums. Just on the 760 hectares for blue gums, when you can get government or a senior engineer out of Water and Rivers tell you that by removing the native veg and planting a blue gum plantation for 24 years - that's cop and copus - that that's going to cause salinity, you've got to be joking. In your own document in Farm Tree Notes - I think it's 35, which I haven't enclosed you, but I will - they've got there that they've got problems with their copus regrowth not far from this gentleman's place. It's not going to yield what they thought it did. Why? Because the original crop has taken too much water, so the water table has gone down. That's the sort of stuff that we've had to put up with from these people.

I'd better get on. Farmers - I'll deal with them later in a separate submission. We've got three appeals to the Minister for the Environment, one for 19 months, one for about 16 months, and one for 15 months. Why hasn't she answered them? Dr Gallop's parliamentary secretary, Mr Mark McGowan, he's turned around and written to us and turned around and said, "Well, she's been instructed. She's been instructed from the premier now to answer them." They're just waiting for this bill to come out. That's all it is; it's a game with them, and they couldn't give a stuff.

Level of understanding in regulatory regimes. The poor old farmers, how the

hell can you expect them to understand what's gone on. With the mess that's in here today, what we're seeing, you see what these gentlemen put up, you look at what we've put before you, how can you expect a farmer to know what's being done? You just can't expect it.. They don't know. They think that the act is being implemented as it should be. That's what we argue; that it hasn't been. It's up to the farmers. I'm not a farmer; I've been a farm manager, worked on farms all my life, and got some experience in the environmental field. My partner deals in legal issues and lectures in law at Central Metropolitan TAFE. But it's up to the farmers to pull them on. But like it's been said before, it's an extremely difficult and costly process, and I would say you'd finish up in the High Court. You'd be looking at being prepared to put up 300 to 500 thousand dollars to go through the whole lot with it.

Yes, I've said here, the Soil and Land Conservation Act - again, what I said before about it can't be authored biodiversity issues - it's a document of collusion and probably much worse. What Mr Dival alluded to - the green letter laws - we're certainly seeing the black letter law go from the grey letter law and we're well and truly into the green letter laws now. There's been outright and misleading information given the state of the environment report. I only just alluded to a couple of statements there, but there's the issue of atmosphere as well as the biodiversity issues, and if you go and examine the issue of biodiversity, I didn't even bother to comment on that, but they've got that wrong too. They couldn't help themselves there, and that's not good from the DEP's point of view.

Now, the adequacy of assessments on economic and social impacts, which the committee is to examine. None undertaken, and the native vegetation working group, who were supposed to do something for the farmers, set up by the previous Minister for Ag, they even got a caning from the lower house committee a couple of years ago. I'm told that they were well out of order on the way that they'd - and a bit rough. One of the gentlemen here mentioned the compensation issues - land taken off them and not allowed to clear down here in the catchment areas.

I asked the chairman of the EPA, Mr Barwen, in front of about 15 other people one day, why EPA had passed a clearing south of Manjimup, and put a vegetation corridor in, requiring 35 metres either side of the stream. They wanted 400 metres on one of our clients. "Let's set 400 metres at a starting point." This is because we're getting the vegetation for nothing. That's what it's all about. The chairman of the EPA couldn't answer the question, so I gave him the answer, and he wouldn't comment, and that was the fact that compensation had to be paid above 10 per cent of that owner's land on any land that they took.

It's got that bad that Mr Kenneison and I have started appealing on the no-assessment and no-advice given on the urban material here. That's a joke, and we've had that out with the new chairman of the EPA, or I've had it with him in meeting with several other people. He's got no explanation except to say, "It's zoned

that way." Look, the rural land is zoned for agriculture. If you want to do something with it, generally you've got to clear the native veg. It's as simple as that, but they don't seem to realise that. The adequacy - we go back and we have a look at the adequacy of assessment of economic and social impacts - as far as I'm concerned, there's none been undertaken. It just hasn't been examined in any depth at all, and nobody cares. That's it, basically nobody cares. But the ones out of ours - our ones, and there's a few more besides that - the impacts are that severe it's not funny.

Valuation of land when clearing is refused. We'll make a submission prior to mid-September 2003, and I'll do quite a full one on the valuation of biodiversity, that sort of thing, and have some good material coming out from - the CSIRO are making some statements, and this will come back onto publication by the United Nations organisation on valuation of biodiversity. There's another thing that they all forget. Today, any farmer here can design a system to balance the water. They keep coming up with salinity. It may not make you money, but one day it will, and there are ways and means. They're getting close, and the uptake of water by lucerne, tagasaste and that is pretty good, and with a balance of one we've just got up and have gotten approval for it - 120 hectares of pines, 120 or 130 hectares of tagasaste and Mr Hartley has approved that - we've still got the EPA to fight.

What we have consistently told the EPA and the minister - and she'll be getting a letter by Monday, again - that you're irrelevant to the process here. We've got our own reasons for that. You're irrelevant to the process. We came in under the Commission of Soil and Land Conservation. The EPA can make all the recommendations they like and that's it, and one of them is quite a serious matter. We're disputing where we allege that they have been either - it's an intent to deceive or straight-out negligence, and in one case, they turned around - you heard them use a 30 per cent retention rate of a vegetation system that they want now, it's got to be that. This person - they had a "proposal unlikely to be environmentally acceptable" put on it. They said that he'd have 28 per cent of one vegetation species there as left in the state and there was 24 or something like that on the other, but I'll get that into you as well.

It turned around - when they put the PUEA out - and that's the only thing they got him on - he had 54, there's still 54 per cent of that vegetation type left in the state and 38 or 42 of the other. We won't go back and run that PUEA again because we made a mistake, just carry on and run the proposal before the minister and that's it. I think I can - yes, efficiency and effective regimes in reducing the costs of the soil degradation and distribution of costs - totally ineffective here in Western Australia. I'll leave it at that and perhaps you won't want to ask me many questions. Perhaps Mr O'Dea just might spend a few minutes and just give you his individual one which is one of the numbers in our document.

DR BYRON: Thank you.

MR O'DEA: Can I give you these - this gives you a bit of an indication of what is happening. My name is John O'Dea, I come from Albany. I had a property east of Albany 53 kilometres. The land that I'm referring to is on the semi-coastal plain. The land that I have in the dark area on this first map is land that was cleared in 1974. The Soil and Land Conservation Act told me to put a fence around it, go away and not even allow my animals. I had cattle grazing through this since 1974 and they said, "Put a fence around it, go away, it belongs to the state and not you any more." The lighter coloured land is natural vegetation that had never been cleared. The property had 48 per cent of land not cleared, it was in either natural vegetation or regrowth. The dark area is regrowth.

The cattle that I used to run were put in there in the winter. John Dival mentioned it, in the area north of Perth that they run their stock in the winter. This gives us help rather than having to feed them with pasture hay or other situations to keep them in good condition or top condition. I refer to the next page. I had to appeal against the Commissioner. We had an appeals committee came out and looked at this land and they said they could not work on a lot of this because it was out of their jurisdiction because it should never had this situation put on me. I appealed against it, and on the third page, I don't know whether you can see the outlines. We had a hydrologist in Albany, a very highly-qualified gentleman, didn't bother to even come out and have a look at the situation, and we had to get the minister for agriculture - said, "Could you get a hydrologist to come in and look at the property" and let us know whether we were allowed to clear 150 hectares out of the whole situation. This is what we were given, this map.

I came to Perth, sat down for approximately three days in Perth before they would allocate me this - on the second page - an area that I could more or less try and clear a little bit easier than this jigsaw that I was given in the third page which is very, very disappointing. I had land in the wheat belt in the early 60s. I was allocated this with a CP situation. If I had not have cleared 80 per cent of this land, put a fence around it, my next-door neighbour would have been allowed to take it off me. We were forced into clearing land that has not gone saline but was very, very close to becoming saline because the regulations at that time you had to clear 80 per cent of the land otherwise you were not allowed to keep it. This was the regulation.

Now to go back to this situation where I've got to, I had 48 per cent of my property that was not even - well, it was not really becoming viable. I had a son who went through ag college. He's got a bachelor of business through Muresk and he has had to leave our property - his family and his sons, my grandsons - to go and get another option because the land was not viable for two families. I've been forced off my land. On the second page you can see the black outline, it was taken from me, stolen actually, and been given to the government of Western Australia for

perpetuity. No-one is allowed to go near it. It was cleared in 1974. I had stock running through it and it has been taken off me, stolen off me and given back to the government. You mentioned earlier on about dirty tricks. There was some given to my situation. Thank you.

DR BYRON: Thank you very much, Mr O'Dea. That's very succinct.

MR FERGUSON: Excuse me, Commissioner, can I just make one more quick point.

DR BYRON: Sure.

MR FERGUSON: On number 3, Johnson and our farming - a saga if ever there was one. We put an appeal in which I said is really unnecessary. 44 points we put in his appeal. His has been 18 or 19 months. The minister for environment has determined it. Prior to that appeal going in, under Offer of Sale, 3500, 3700 acres to the government - Mr Ken Atkins was sitting here was sitting here, was one I was dealing with. After two and a half years they decided he had 1500 acres cleared - 1500 out of 1000 acres yielded, around about three tonnes to the hectare would go - 12 hectares, just in the last year when things were pretty difficult in the wheat belt. His property was offered on-off to the government, some of it adjacent Booth and Darra Nature Reserve on offer to the government for \$498,000.

Now they start to talk moneys and compensating funds and they could have picked up that property for him just to get out of it - 498 - added most of the veg to the Booth and Darra Nature Reserve and sold the other to an adjoining farm or something like that. They expect him to do all of that. The interesting one on that is because of all the messing around and the minister not doing anything, on the 27th of the 7th, I think it was, I asked Mr Watson who is acting for Mr Hartley, "Will Mr Johnson have to notify again?" as the two years are up. But seeing he'd been under - the property had been under offer to the government for so long, okay, I reckon there wasn't any need. I sent it out, why there was no need; no response from him.

On 21 or 22 December, I wrote again, same thing, and said, "No response and we'll take it that he doesn't need - to have to renotify." On the 6th of the 2nd, I notified the minister for the environment as a matter of courtesy that he was proceeding to clear. 11 weeks later the minister for the environment came back but I cc'd Mr Watson - Mr Hartley's offsider - and he came back and said - well, he reminded me, "You've got to submit another notice of intention." I turned around and got straight into him and said, "What the hell is going on here?" He came back four weeks later and apologised and said, "Your documentation, your letter of the 27th" - and I always fax to these gentlemen, you can't trust them, always fax them and then send the letter, fax and send the letter.

He came back and he said, "Those letters got put under some finished correspondence." That's what we got. So I'll take any questions. Thanks very much.

DR FISHER: Mr Ferguson, I just had probably one question for you and a couple for Mr O'Dea. It seems to me - and maybe this is the wrong characterisation of the process that you're following - but your process almost sounds like you're fighting a guerilla warfare with the government and it strikes me, to ask you the question, if you believe that the law is on your side, why don't you take one of your cases through the courts to demonstrate once and for all that you are in fact correct. So what's the answer to that?

MR FERGUSON: I've got no land interests. I sit on 800 and some square metres at Yanchep. Mr Kenneison sits on 4000 square metres or a little bit more at York. If the farmers can't do it themselves - I mean - well, I'll go further. I am with about 10 of these going through. I've got them reasonably good. I've written to the honourable member - the Hon Attorney-General Mr Jim McGinty asking him, firstly, whether the Crime and Corruption Commission will be able to deal with things against the minister because previously you haven't been able to have a go at the minister. This is that serious that I believe that the ministers have been foolish enough - and Jim Kenneison agreed - they have been foolish enough to rely on themselves totally with the public servants on these issues.

I've spoken already to the police public sector investigations unit and they are prepared to examine some of them architect. This is the next move that I'll be making, preparing the documentation. I've got other things I've got to do. I do some planning appeals and that sort of thing. This is taking a lot of time but I'm going to prepare documentation to go forward to the - it will either be the Crime and Corruption Commission - we've got time, we'll just keep at it. We keep notifying the Department of Ag that damages will be claimed. We don't talk compensation, but damages can be claimed. So they've been notified that on each of the clients that there will be damages claims eventually; not on all claims but - - -

DR FISHER: I'm still not quite understanding. Are you saying that you still haven't got enough case law - or that's probably the wrong term, but there's not enough material to prove in a test case that you're right, or is it simply because you can't face the potential costs associated with going through the courts?

MR FERGUSON: Certainly. It's cost myself plenty, it's cost Kenneison plenty so far. We've worked on very minimal income for things we've done but what we're doing is getting - there's enough material there. There isn't any doubt about that in our minds now. There's no doubt. What we're waiting for, we submitted comprehensively to the council standing committee which Kenneison and I actually got in motion. We're very interested to see what they come out with. They can only

make recommendations to government, that's all. But in there we actually - I probably shouldn't say this - we don't blame the politicians to any great degree because the public servants are smarter than them. They're there for the long haul. We feel that the ministers and cabinet should see the light but they haven't, but I feel that's the only way - what we're left to do now. The farming community are going to have to take it on. You see, there is an acceptance - when I heard the WA Farmers Federation present there's an acceptance there by them that the law is okay.

When you actually look at ours, examine ours, you'll find out that, I think it's the Wildlife and Conservation Act of 1950 is the only other act that really can deal with biodiversity and animals and it hasn't been used. The EPBC Act hasn't been used to date. So what they have done is they've green-booked it. They had the temerity to offer - is the way we'll get around it. If you go and examine what Mr Watson and Mr Bowen in their evidence in 2000, which I'll enclose, they state it straight out and nothing has changed in the law since that really if the person wants to clear once the Ag Department have given the okay, there's nothing to stop that person clearing here. It's been a fear process. That's on record. The transcripts - we've got the transcripts. We gave evidence as well and our recent evidence that we gave to this committee, it should be able to be released. We put 35 pages of legal argument in on the Soil and Land Conservation Act here.

DR FISHER: So in your view, the problem is simply that farmers are concerned that if they go down the legal route, they will be called in a court of law, it will cost them hundreds of thousands of dollars, and there's no certainty in that process?

MR FERGUSON: No.

DR FISHER: You're saying there is certainty in the process?

MR FERGUSON: I would say they would have to win if the case is structured well. I'd say they would have to win. But by gee, somebody made the comment that some judges - there's about - well, they made the comment of four or five judges, that in the Supreme Court - that you could argue that certainly you may have problems with, and that's well known, I think, in most areas, that sort of thing.

MR O'DEA: We're quite concerned about appeal against the - whenever it happens anyhow, if it's against them. They will appeal against it. It's very hard for a farming community or a person, individual, more or less to come up with this money. We can't afford to do things like this. We know we've been criminally - well, things have been done to us that should not have been done, but as an individual, it's very hard to be able to come up against these people.

MR FERGUSON: Coming back, just to finish on that one, 28/4/95, I wrote to the minister a page and a half in response to some questions I asked. I've asked on 28/5

what the environmental enforcement unit - what will it be able to do? Will it be able to examine those within the DEP, Water and Rivers, that give false information or misleading information? Not a response on that. We had to move on some false information put into the Western Australian newspaper by Mr Alex Martin. He's appointed - looking after the native vegetation for the new Department of Environment. I was pulled in the other day over that particular issue, by the CEO. He's acting CEO. I said to him - we discussed other things for an hour and a half, but I said to him, "That issue is finished. That issue is finished." He couldn't even answer the second or third go, he couldn't even answer the questions properly. But as far as we're concerned, if you want to employ people who we believe or argue demonstrate incompetence, that's your prerogative.

The interesting thing is that the minister came back and defended how her people were operating, and she just implemented an inquiry into the Department of Environment as to the things that needed to be done. Subsequently, two directors were given their marching orders or given an option to leave, but in regard to Johnson, on 28/4, the second-last paragraph, when they said, "Would you please advise Mr Johnson not to proceed with his clearing" - now, this is 11 weeks after we're told that he was going to and after he'd got the letters back from Watson. I said, "Would you please, in regard to that, would you please inform us under what act or acts and what section or sections of those acts are D.S. and W.G. Johnson contravening if they proceed to clear?" They won't give us an answer. That's what's going on in the state.

PROF MUSGRAVE: I just have one question which I've been meaning to ask a couple of people and I haven't got round to it. The Department of Environmental Protection, what is its role?

MR FERGUSON: Well, the Department of Environmental Protection and Water and Rivers Commission are amalgamated now, an amalgam now, and you would have seen two - I think it was two out of them here today. CALM is separate. CALM still comes under the department of the Minister for the Environment. But their role - if you're looking at history, Water and Rivers started off some years ago, might have been 10, 12 years ago, and there was a - somebody, one of the committee, referred to power. There was a power struggle in there, and they had finally got, I believe, probably equal to or the upper hand in it. But their role now under the new - their role prior to this new bill is very, very little, in the scheme of things. They can just be asked for advice. Let's get this straight, that the Commissioner for soil and land conservation can go to the Queen of England, if he so desires, and ask her. He has got to make the final decision. What we're being faced with now is the Minister for the Environment making the decision, and that's why we keep - - -

PROF MUSGRAVE: So that's your point in the case of Sorgiovanni - the EPA has

no standing?

MR FERGUSON: Mm.

MR O'DEA: In my case, the appeals committee that come and look at my land, the person that came down in this situation was looking for quokkas. We've never, ever had quokkas on the south coast, as far as I know, and that was his main concern. They don't seem to be able to picture what's going on out in the agricultural areas. They seem to be able to consider the environment around the metropolitan area and areas that, you know, are in national parks, but in farming areas, you know, if the foxes haven't got the quokkas, if there were ever any there, I don't think they would have ever existed. The dingoes were there as well. You know, these people sort of came into the picture with not much idea of what they were there for, in my situation.

DR BYRON: I don't really have a question but more an observation that in other states, it has been said to us that government officials didn't really have sufficient scientific information to back up their decisions. But you seem to be taking that considerably further, saying that they're deliberately trying to stop all tree clearing, in spite of local scientific evidence, and disregarding - or irrespective of social or economic impacts or irrespective of legislation relating to individual property rights.

MR FERGUSON: That's what it appears to be. That's what we'd argue that they're doing.

MR O'DEA: I think it's only the environmentalists controlling them at present, and they have to do what they're actually told to do. We don't, you know, sort of complain if they come out and give us the facts and whatever we should be doing, but it's very, very airy-fairy at present. They don't really seem to know what they need to be doing. To have farmers coming in and having to, you know, be controlled with these sort of people, it's very hurtful, very, very hurtful. We try to look after our environment. We try to look after our waterways. We try to look after our salinity. We try to look after our soil erosion and everything else. If we didn't, we wouldn't live there. We would be broke. We would have gone. But these people can't seem to see the big picture. It's just not in their situation. They can see the little national parks or they can see the beautiful Kings Park, all these situations, but they can't work out what's going on out in the big, wide, open community that belongs to everyone, not just the farmers - everyone. We all have to eat. We all have to survive. We all have to be clothed. We all have to have drinking water. We don't go along and pollute our rivers or our water situations. We've got to all survive, surely to goodness. They don't seem to be able to consider this away from the metropolitan area.

DR BYRON: Well, thank you very much, gentlemen. Again, I think we could probably go on in much greater length on this, but you have provided us with a lot of

information already, so would either of you like to say anything in closing?

MR FERGUSON: No, what I'd like - yes, I would. I'd really like to thank the commission for this opportunity, because I do believe that it will give government here in Western Australia something to think about. They've had a free run for years and it's come in - that whole thing, as I said, goes back to that Cabinet directive, coming in with no amending legislation. When they examined that legislation, their intention was there to do it. You've only got to look at the briefing note. You've only got to look at the statements. It was going to be in by the end of December. But they had the Ag Amendment Bill. They had the Ag Amendment Bill and also the starting of coming up to, say, this EP Amendment Bill, because the public service are good workers on that sort of thing. They know how to bring everything forward and if they're blocked off one way, they will do something else another way till finally they get there.

Governments may change, and they get what they feel is best. I mean, I've got to give them that. They've got a perception that this is right, the right way to go. Whether Mr O'Dea or any of our other clients get wounded in the process, that's really irrelevant to them. But I think that's the biggest value of this commission. That's why we'll put in further work and come back and address what you're actually looking for, the costs - you're looking for costs, what it costs to the client, and we've got information we're waiting on coming back, waiting - receiving from them, and we'll bring it forward, but it's been a golden opportunity, and I think the commission, with its terms of reference, will do a heck of a lot of good, I honestly believe, and probably - I look at some of the material from Queensland. I think we've got problems, but boy, they've got big ones too, probably been going longer than ours. Thanks very much.

DR BYRON: Okay. Thank you very much, gentlemen.

MR O'DEA: Thank you.

DR BYRON: The next evidence is from Landcare Services and we have Geoff Cockerton.

MR COCKERTON: Good afternoon, gentlemen. My name is Geoff Cockerton, I'm a director of Landcare Services, a business based in York, Western Australia. We're involved in revegetation of agricultural land, supply of native seeds. We also offer environmental consultancy services to the mining industry and other sectors, and we're involved in the establishment of economic plantations in the wheat belt of Western Australia. I've spent most of my working life, bar a couple of years, in the Ag Department, working in this industry, and it's been 24 years now. I appreciate the opportunity to speak with you. I think I will be going over some ground that has been dealt with well so far, and I have certainly picked up a lot in the discussions this morning that have added to my submission, which was really basically two points, which you may have before you - I'm not sure.

The two things which I brought up initially, without giving the whole process a lot of thought, was firstly the right to harvest plantations that were established in agricultural parts of Western Australia. Often these will be in areas which are suffering or potentially could suffer some environmental degradation, and at some stage when they're established and growing, it is perceived that they will have some environmental benefits, whether it be a net production of the water table on a local scale or forming habitat which currently is not present, and there is some concern that once these plantations are established, there may be an impediment to harvesting them. I guess I need some clarification and confidence that at some stage, five, 10 years down the road, there will not be an impediment to harvesting these plantations. That's my first point.

Secondly is, having been involved in the revegetation industry most of my life, the access to remnant vegetation for the purposes of collecting native seeds is becoming increasingly difficult. More areas are getting tied up in national parks, in reserves, regional parks, and the areas which were available to us as an industry 20 years ago are no longer available, and are not being used by anybody. Yet the demand for native seeds is increasing enormously. The vast bulk of the native seed industry supplies the mining industry for their revegetation purposes. A very small proportion services the agricultural revegetation requirement, and that is primarily because of the lack of economic health, you could say, within the agricultural sector and therefore the requirement for a wide range of native trees and shrubs for revegetation purposes.

Should the requirement for funding of revegetation in agricultural Western Australia, and probably in other states too, ever reach the level it ought to, to make a real difference to water tables, lack of habitat, wind erosion et cetera - I mean, there have been some calculations done that we will be needing tonnes of native seed per annum in every local government authority and currently we would be scratching to collect

100 kilos every third year. Part of that can be addressed by taking some seeds and developing seed orchards and making a commercial operation out of the processing seeds, but when you look at biodiversity issues, you must have access to native vegetation because it's almost impossible to propagate and then harvest a source of seeds in a reasonable time frame from plantations. I mean, plantations can easily access acacia seeds, eucalypt seeds and a few others, banksias, et cetera, but when you come to the minutiae you must access native vegetation.

The non-access to regional parks in particular is a serious issue for us. Regional parks are extensive and they are there, they are multi-use parks, but we are being locked out. We cannot get access to them unless it's for revegetation within the regional park. That has a serious implication on the vegetational climates in the metropolitan area and other areas of state. Those are my two points I made initial comment on, but having listened to some submissions this morning, am I able to make comment on some things? It would appear that the new legislation and amendment bill and the federal act are addressing some long-term deficiencies in regulation and are addressing the large amount of clearing that has occurred to date and is attempting to shut the gate long after the horse has bolted.

It is fairly obvious that the clearing that has happened, without any assessment, has been large scale and often has been enforced upon the CP land-holders as Mr O'Dea said earlier, that they had no option but to clear and I guess this is 20, 30 years too late really in many ways. I believe that some of the objections that have been made seem to be based on a lack of understanding of the assessment process that is required by CALM and the DEP and the potential outcomes that are likely should a reasonable assessment occur - I'm involved in assessing vegetation prior to mining, for example. The mining industry has been up to speed as far as the compliance requirements are concerned since about 1990-ish, perhaps a bit further back, and a similar amount of rigour has been placed now on the agriculture industry which has never had to face such regulation and it is not surprising to see that there is a great deal of conflict coming from that.

But I think what is required is an effective communication on the requirements to the agricultural industry when it comes to clear applications and a fixed non-moving target put in place. Now, I have some sympathy for those who have said earlier that the goalposts change when they go through the process and they're told they have to do X, they do X, they come back and the regulators say, "No, we want X plus," and then you apply X plus and then you've got X plus 2. I've experienced that myself and it's eternally frustrating and very costly to the proponent. Now, we're talking about a mining industry on one hand which may spend upwards of a million dollars with their environment or compliance issues and you're dealing with an agriculture situation where \$5000 is a lot of money.

So we need some certainty in what we're aiming for when we're assessing

vegetation and I go back to a comment that was made earlier regarding what is the value of five hectares of bush on someone's land and I do believe it needs to be adequately assessed. I mean, the presence or absence of rare flora is something that is easily grabbed hold of. It's an issue that you can say, "Yes, it's there; no, it's not there." It needs to be assessed properly by properly qualified people. I can't build a house. I'm not a builder. I'm not a lawyer. But people in my industry, botanists and environmental consultants do their job, and we are just a little part of the whole process that needs to be adequately assessed. I think in some cases it is not being adequately assessed and the clients are being misled.

Issues regarding regrowth and, for example, grazing of remnant vegetation, et cetera, need to be carefully considered because the potential impact on the biological quality of the vegetation is not just the gross greenness, it's not just the trees, it includes very small aspects and unless you get down on your hands and knees you won't see them; unless you know what you're looking for you won't see them. It's very rewarding to go out in the field with a land-holder who has had a bit of land for many years and show them what's there and the appreciation for what's in that vegetation is like turning a light on in a lot of cases and it's very rewarding; however, it doesn't help the economic situation. But it does give them an appreciation of the esoteric values of the block of land.

I think the crux of what's happening is that there is not an adequate compensation for people who are directed to leave land uncleared and they perceive they cannot make an economic return and they're being hampered from developing the full potential of their property. Having discussed this very issue with land-holders on the south coast, and elsewhere too mind you, it would appear that the margins for agriculture are relatively small and farms are getting larger and larger all the time, people are buying out the neighbours and buying up land down the road, leasing land elsewhere just so they can make enough margin to support their family or their growing family.

The issues, and I've tried to prioritise them here, we have a requirement for environmental management in the agricultural areas. Now, farmers are very good farmers and I'm not a farmer. I couldn't be one if I tried, I'd go broke. But when it comes to environmental management on land, it takes a lot of skills which are a little different to farming and one way that this has been facilitated in the agricultural areas in Western Australia and probably throughout the country, is through the employment of Landcare coordinators through the National Heritage Trust which I think has been a very good process. Unfortunately, funding for Landcare coordinators has been very limited and it was on a reducing scale. Four years they said, "Okay, we will fund the first year 100 per cent," but the local government authority has to take up the reign.

These have all come to their final year, local governments have looked at

continuing funding of these Landcare coordinators and decided, for their own reasons, "It ain't worth it," and there are a huge number of Landcare coordinators who, in the last three months, have lost their jobs and we've lost all those skills, we have lost the ability to assist environmental management in local government areas on behalf of farmers and very few of them have retained their positions, and that seriously needs some attention. I believe it is being addressed but there is a hiatus in the continuing funding and in the process we've lost people and we've lost skills and we may not get them back and we have to go through another three years of learning and I think that has a serious impact on the productivity of the Landcare movement in this state.

I believe the cost of revegetation should be shared by the community. Land-holders were forced into clearing in a lot of cases in the early years and now they're being forced to conserve and they're being forced to revegetate to keep their farms and there has to be some community sharing of that revegetation cost. I don't have the solution, okay, it's just I see it as a practitioner living in the wheat belt in Western Australia. Maybe in the case of greater than 100 per cent tax deduction, but that only works for those guys paying tax. For the vast majority of people who aren't paying tax there needs to be some direct compensation, even if it comes down to, "Look, yes, we can subsidise the cost of seedlings. But for planting the seedlings we will give the land-holders 20 bucks an hour or whatever to put it back in," therefore the land-holders is being given a direct financial incentive to plant on his land. I really do believe that that needs to be addressed.

Working as the middle man between a proponent and the regulators, I would back up comments made earlier that there are not sufficient people within the DEP, CALM of sufficient experience and seniority to adequately assess projects. There are too many juniors - I mean you can't blame people for being junior. The reason there aren't enough people in there with adequate experience is that the departments are adequately funded. They're not able to pay people a sufficient remuneration to retain them in the departments and consequently, lesser qualified people are being handed jobs for which they will grow into in time, but are beyond their initial abilities and everybody is getting the run around, round and round. That is why you get this bantering between departments and shirking of responsibility. No-one wants to make a decision. I'm not saying it happens in all cases, but it certainly happens in some cases.

People look at remnant vegetations and say, "Go out there and assess the quality of that remnant vegetation." As a botanist I go out there and I take the samples of the flora that's there at that particular time and take them to the Western Australia Herbarium. Each state has a herbarium which is a place where we all go to identify our plants. This state is blessed with a huge array of native species, over 12,000 native plants and it's impossible to know all of them and you have to refer them to voucher specimens. I don't know if you're aware but the Western Australia

Herbarium is grossly underfunded. It was built in the 60s, its funding is barely maintenance, it's lost all its taxonomists bar a couple and the facilities available to us are shocking, absolutely abysmal and it makes our job very difficult and it is not properly funded by the state and that really needs some attention and you need to speak to the director of herbarium to see what they really want, want their wish list is and what they can run with.

I think we have dealt with point 10 which is a comment made by one of yourselves earlier about the ecological services provided to the community by land-holders with remnant and regrowth vegetation on their blocks and there is no way of compensating the land-holders; that needs to be addressed, a formula that is equitable is worked out. I would back up the comments made by Ken Atkins this morning of CALM regarding the activities, the strategies the state has had in place to address voluntary care of remnants. I believe, from what I've observed, that they've been very, very successful but really have only taken on board those land-holders who either have the economic luxury or the deep-seated desire to look after their remnants. It hasn't addressed all the issues, okay.

There is an assumption that clearing of a particular block of land is a significant economic loss to the land-holders and I think that needs to be assessed. In a lot of cases it's not worth clearing the block of land. The costs involved and the returns are minimal and this may come back to my earlier point. Physically it's not worth it and the economics need to be done, I'm not an economist. The dollar value, the actual realisable value of vegetation in remnants is not known generally. I mean, the native seed industry turns over about \$15 million in this state. Where is it got from? Not out of a wheat paddock, it comes out of native vegetation stands and the vegetation primarily has a benefit ecologically, that's fine, we can't put a figure on that. But when seeds are collected for propagation in revegetation programs on farms they've got to come from remnants. They've got to come from remnants on farms, road reserves and other areas available and this ties in with my comment earlier about less and less land being available.

In the majority of cases native seed collection has zero long-term impact if it's done properly and a revegetation industry association has been formed in this state to try and get best practice happening within practitioners. It's been long overdue. I would question how does a loss of use of a given bit of remnant, which is not allowed to be cleared, how does that compare with going down the road and leasing a block of land and running your cattle on there when prices are high? I mean, sheep prices at the moment are sky high. Two, three years ago, five, seven years ago, people were shooting sheep. They were worthless. So the perceived loss can vary depending on market. It needs to be kept in mind, I guess. There's a potential for land-holders to improve their net return from any given block of land by looking at either perennial pastures, alternate crops, tree planting, which is not just trees for windbreak but trees that have some economic return, suited to particular soil types

and landscape in the geographical area in which they are located.

There's a lot of blue gum plantations which will never be harvested in the south-west of Western Australia because the returns are just not there. Either the wood quality is not good enough, there's not enough return from the block to make it worthwhile harvesting and that comes from an over-zealous plantation industry that has just gone silly down there. Ecologist assessment and determination does not include economic or social implications, it just doesn't. CALM is there to administer the CALM Act. The DEP is there to administer the EP Act. Together, those two acts regulate vegetation and clearing. The charters are there to protect the environment, they're not there to protect the environment in cases where significant economic loss is not incurred.

That causes a real problem because we have a case - and it was brought up this morning by the WAF - the farmers federation representatives - about gypsum at Lake Chinacup. Gypsum is a very special case that needs special mention - gypsum calcium sulphate is used to ameliorate clay soils with high sodium content. A lot of our clay soils in this state have high sodium content, sodium soils. They don't allow water penetration, they become greasy. Gypsum is a very good way of addressing that and it's the only way of addressing it where the calcium replaces the sodium. It makes the sodium more friable and you can grow crops in it again. Gypsum occurs on the margins of some salt lakes. Mostly salt lakes - salt lakes are low in the landscape and most of these have not been cleared and so therefore they are in nature reserves and access to the gypsum is denied.

So we have an agricultural industry that may require gypsum application at high rates on a percentage of its land - maybe 20, 30 per cent - but no access to gypsum or very limited access to gypsum. It's a serious issue that this state will need to take into account. It's a productivity issue for farming practices. But they need adequate assessment and all the environmental issues need to be dealt with and if the impact on a particular gypsum source is not significant, I believe it should be allowed, but it's very difficult to get permission. I think actually that now covers all of my points. Thank you very much.

DR BYRON: Thank you very much. It's been particularly interesting to get your insight, as you say, someone who operates in that middle ground between land-holders and the public service. I've got two quick comments and a short question. In commercial plantations and the right to harvest, you're probably aware of legislation in Tasmania. I recall doing an inquiry here in Western Australia for the Industry Commission about 10 years ago, forest industry, where there was serious debate about whether blue gum plantations would be allowed to be harvested by the EPA. We've had a submission from people in Victoria who have been told that the plantation of native species that they put in a former potato paddock is now remnant native vegetation and they can't touch it. So, yes, that point is alive elsewhere.

We also had somebody from New South Wales last week tell us - he's a seed collector like you - and in New South Wales lopping or shooting branchlets off for seed collection is defined as clearing, even on his own freehold land.

MR COCKERTON: It's defined as taking flora in this state as covered under the CALM Act - I'm sorry, the Wildlife Conservation Act.

DR BYRON: Right. My question is - and you gave the hypothetical of a small block of remnant native vegetation - what happens if you or someone like you does find a rare, even previously undescribed plant in a 10-hectare bush block that's located right in the middle of an agricultural landscape? I asked questions earlier about ongoing management - who's going to look after this, how is it going to be looked after and who's going to pay for it to be looked after? I would have thought if I was running a national park service, having a 10-hectare block with a couple of individuals of an extraordinarily rare plant would be an administrative nightmare to look after. Are there precedents about getting one of the adjoining land-holders to do whatever is necessary to make sure that plant is protected under some sort of contractual arrangement? I mean, it's one thing to find the rare plant, and my question is, then what do you do for the long term?

MR COCKERTON: I think the land-holder would take a mattock out there and dig it up.

DR BYRON: That's happened?

MR COCKERTON: In reality I don't know of any case in Western Australia where that's occurred, but maybe I just haven't been around enough. The first thing that happens is the client that we work for has to then advise in their report that a certain species was found. The actual specimens have to be lodged with a herbarium and then the whole process goes through where CALM comes back, sends the land-holder a very aggressive letter saying that a rare flora has been found on their property and they must protect it and there are severe penalties for infringing and damaging not only the plant but its habitat. It's designed to be a very scary letter; sometimes it's used excessively and it's not necessary to do so. I don't know of any mechanism where the land-holder is encouraged to manage that block except that he mustn't damage the flora. The whole issue comes back to what can someone grab hold of and see and use as a tool or a lever.

The protection of a rare flora species is something that people can see. You can grab it, okay. It's there, you can see it and photograph it. The protection of the landscape values of a piece of bush or its other esoteric biological qualities is very hard to put a dollar figure on. So the whole thing comes back to the protection of rare flora and these are the fines for infringing that protection. I am not aware of

anybody being paid to look after the rare flora. I am aware that CALM has a range of flora conservation officers whose job it is to manage all the rare flora in the district or their region. It's like you say, an absolute nightmare. Often these things are on little roadside remnants, often in remnant pieces of land on private land, and I don't believe there is an adequate system of managing these things. It's like a thousand postage stamps all over the countryside.

Quite often, just through no management, these populations are degrading, either because they're on road verges and there's a cutting and it's eroding over time and plants get washed away. There's often no activity taken to take the seeds of these things and propagate them. Having said there, CALM does have its critically endangered list and they are actively trying to translocate these plants but they're not adequately resourced, not by a long way. They just simply need more people with the equipment and support to make it happen - and the political support too.

DR FISHER: Is it the case that the nature of the management often extends to going out, putting up a steel post with - I think it's a yellow-coloured sort of triangular thing.

MR COCKERTON: Yellow hockey sticks in this state on road verges, yes.

DR FISHER: That is dug in the ground next to the piece of flora and that's the - - -

MR COCKERTON: Usually, certainly on the road verges in Western Australia, the main roads, controlled road verges. I'm not sure about the shire land but probably the same on shire controlled roads which are quite extensive in WA. They put up yellow hockey sticks at one end of the population and at the other end. So therefore this area when it comes to weed management, when it comes to grading, et cetera, needs special management. But I've heard of cases where usually these areas are exempt from road grading activities, shoulder grading et cetera. I've heard of cases where the grader operator goes in and only grades between the hockey sticks because he's misinterpreted the directions. There's not adequate management of them.

DR FISHER: Is there actually a scientific reason why you're precluded from collecting seeds in regional parks?

MR COCKERTON: The reason we were given was that seed from the regional park could only be used - firstly, only be used in the regional park; secondly, because we were a commercial organisation we were precluded and only volunteers were allowed in, which is a bit sad, seeing as 98 per cent of revegetation happens in this state is done by the commercial industry. We're not out there to rape and pillage, we're there - I mean, 24 years is not a short time in the industry, and we're not out there to take advantage of what's there. We're there to try and get access on a

sustainable basis to native seeds.

DR FISHER: Let me rephrase that. Do you believe - I mean, there might be all sorts of administrative reasons you were given for not being allowed to do this, but do you as a professional botanist believe that there are scientific reasons why seeds should not be collected in regional parks?

MR COCKERTON: It would only come down to sustainability of the parent population and the parent plants and that would then depend on how the seed is harvested, what proportion is harvested and what frequency it's harvested is a seed bank that is stored in the soil that would be adversely affected. If seed collection is done properly and professionally, no, there is no reason why it should not happen.

DR FISHER: Okay. So a set of guidelines could be established such that those seed populations - - -

MR COCKERTON: We've done that.

DR FISHER: - - - or the plants in the parks themselves could be protected in terms of the seed that would be available for regeneration and other seed could be used for revegetation elsewhere.

MR COCKERTON: That's right. I mean, for example, some plants don't like being pruned; other plants, take to them with some long-handled pruners, come back in three years, you'd never know the difference. The method of harvesting is very important. The frequency of harvesting - mulga trees in the goldfields, for example, seed infrequently based on good seasons. In the season that they do seed, they seed well. We need to be able to go in there and collect a large amount of seed from a given population. You've got about a one-week window in which to do it, but you wouldn't want to do that every year or every time there was a good harvest. You'd want to make sure that there was some return to the environment, either as food for the animals, birds and insects and also as a seed store for when the next fire comes through. We've even got issues of plants having short generational times and long generational times. There's lots of things that need to be taken into account. The seed industry is mature enough in this state to address those and address them well.

DR FISHER: Thank you.

DR BYRON: I'm afraid - this is another conversation that could have gone on a lot longer but in the interests of time we have to keep moving, I'm afraid.

MR COCKERTON: Thank you very much.

DR BYRON: Thank you very much for coming, it's been most informative.

MR COCKERTON: Cheers.

DR BYRON: I propose that we now take a short break until about 1.30 and then we will resume with Mr Underwood and people from the NFF.

(Luncheon adjournment)

DR BYRON: Good afternoon, ladies and gentlemen. If we can all resume our seats we can continue with the hearing, please. Mr Underwood, please. Mr Underwood, if you'd like to just introduce yourself for the transcript and then summarise your evidence for about 10 or 15 minutes, then we can have a discussion about it. Thanks.

MR UNDERWOOD: Okay. Thank you very much. My name is Craig Underwood. I'm a farmer from the Jurien Bay area, Dandaragan Shire Council. I put a submission in to the commission and would like to speak to it. Would you like me to start just on the actual submission itself?

DR BYRON: That's a good place.

MR UNDERWOOD: The submission is a very brief outline of the last nine and a half years of events that my wife, myself and my family have suffered at the hands of the bureaucratic agencies that we've had to deal with in developing our property. There is far more detail that I could provide if it was requested. You can imagine how much material we've got over the last nine and a half years. Originally it started off when we bought a block of farming land on the coast of Jurien Bay, 4200 acres in area. It had a permit to develop some land with the property. The permit is written out to a location number, and I considered it was a reasonable and viable area to develop land in and carry out my farming family's wishes. On going to the AGWEST in Moora to get a digitised farm plan, I was told by one of the agency personnel there that they would not honour the permit and I had to reapply. That was the trap that was snared.

On believing AGWEST personnel, and they know what they're talking about, I complied, submitted a fresh notice of intention to clear some land. They immediately referred it down to the Soil Commission. The Soil Commission decided to refer it onto the EPA and DEP for environmental comment. I believe that was the start of the illegalities, and under the regulations, they had no right to actually revoke that permit. There's nothing in there to say that they can, and I believe that should have firmly gone with the land. Because of the change of ownership, they decided that, you know, it should go with the previous owner. Anyway, that started off a lengthy, expensive, tangled consultative environmental review process, where the goalposts were consistently being changed all the time. Further reports were requested. It became very expensive and very obvious that they had a set agenda that they were not going to allow any further development of farmland in that area, or in the state possibly.

Further to that, after five years, I could not reach agreement with any of them. It was all too impossible. I ended up requesting a meeting with the minister for the environment at the time, and Minister Cheryl Edwards - and an agreement was reached where we could clear a percentage of the property and reserve a percentage.

This agreement, as it turns out, was first mooted in 1994, three months after we initially took over the property by the soil commissioner then, Kevin Goss.. So we went through four years and nine months of unnecessary haggling. In reserving the 748 acres, or 303 hectares, the agreement I had that was to go on its own location - that meant it had to be subdivided from the property. That took two years with WA Planning Commission, two reconsiderations and one appeal. So that was another further lengthy process; went out to seven years.

After we actually got commenced on the further land development and we thought we could get along with it nicely and get the business back into shape after such a heavy loss, and having used most of our development property, we figured we could get bank finance and carry on our original five-year plan for cattle development and further innovative-type ideas from there. May 2001, when we sort of felt we had a bit of confidence about our business, the Water Corporation approached us for access to the property, to put in some test bores for a public water supply for the town of Jurien Bay. I denied them access, requesting that should the area become a public water supply area, we should talk about the equity issues first, sort them out and get all the parties in agreement before anyone does anything. They refused to do that. They drilled all around me. So consequently, again, our business has been put on a freeze, an effective freeze on our development plans, and as director of my company, my family's company, I think under the corporate law it would be irresponsible for me to invest any further moneys in our land, knowing full well that any activities we carry out could be non-compatible with a water source protection zone.

The Water and Rivers Commission informed me that the most likely zoning would be a priority 2 zoning, and I can provide the effects of that as evidence to you when we finish, and I think under those conditions, it would be almost impossible for anybody to effectively be viable on the land. It would become almost too hard to carry out any sort of proper farming activities. So I actually defy anybody to survive five years of environmental review, two years with WA Planning, and now it's a bit over two years of - or nearly two and a half years of Water Corporation's interference. They still haven't decided where they're going to put their bore field, and have not decided what type of priority zoning I may come under. So again, we're freezing. The plan at the moment is to de-stock the property and opportunity to deal in cattle as I find the market suits me, and treat it more like a hobby now, because we'll probably pretty much be shutting the gate.

I do have a small off-farm contracting break-up where I prune Tagasaste, but a bit of off-farm contracting doesn't pay to run a farm. The finances don't add up. So in the meantime, it's cost us a lot of money. We've had to - I mean, we owned the farm outright, owned all the machinery, and I had a substantial house in the town of Jurien Bay. As the farm is only 15 minutes from there, I just thought it wasn't worthwhile investing in a nice house on the farm. So we owned everything outright.

Just last month, our house was sold, and we're moving out this weekend actually, and we're going back into a rental situation. I'm 50 years old. I was 40 years old when I started this, and to reach 50 years old and lose your family home out of it and still have no hope for carrying on the property, I think it's a despicable indictment on the agencies involved.

The points I'd like the Commissioners to probably examine for me is what I see as the systematic persecution of my personal and property rights, and it can only be systematic, from the agencies I've dealt with and the period of time we've been dealing with it. We feel totally discriminated against. I don't know why they've been hell-bent on persecuting us so heavily and putting up a brick wall to everything we've tried to do. You know, we have the old public benefit versus private cost argument coming into this as well. It has cost us very heavily, and I can see it's going to cost us more yet. With the water provision, when Water Corporation get an allocation to provide water for a township, they're the only corporation I know of that can take control of someone's land and not own it, or not even pay for an option on it, and that comes in the form of a water source protection zone, under P2 zoning, most likely.

Now, what that doesn't take into account is the massive transfer of equity that we have in our land and our business to Water Corporation, who pay nothing for water and make a fortune out of it. Water Corporation grossed over a billion dollars last year, had a net profit of \$400 million. They've just been given another \$290 million for ongoing projects, and their CEO earns \$303,000 a year and just got a 6 per cent pay rise, and we're expected to subsidise that by transfer of our equity in our land and business to these guys. Look, you know, those days are gone when those agencies just come along and just take rights out of your property like that. Our land is worth too much to us. You know, 50 years ago there was plenty of land available for everybody, but our land has become far, far too valuable now, and too hard to acquire.

Your property rights, as I see, or our family's property rights is not always about real estate. It's about our ability to earn an income. Our land is our main income-earning ability. Some years we can make a good living; other years we don't make anything at all. That is the risk we take as agriculturalists. We can budget for seasonal variations and market fluctuations, but we cannot budget for bureaucratic interference like we've experienced, because once you're into the system, there's no way of backing out and there's no time frame. There's also our life savings. Our complete life savings are in this land, and I don't think any of the agencies would like me to mess around with their life savings. Most farmers, of which I'm one, our land is our superannuation. We don't have fancy superannuation policies that roll over every second Thursday when the bureaucracies get paid.. Our land is our super. Again, I don't think they'd take too kindly to their superannuation being messed around by that amount. It's also my family legacy, it's an asset base in which I can further educate my children or pass the land over to my children or help them into

another business. So there's a strong family legacy.

What they have effectively done is taken away our economic freedom. Our economic freedom to develop, be innovative and diversity our farmland has been totally taken away from us, and we are still waiting for a decision from Water Corporation in particular at the moment, who have said to me that they would not have a decision until the end of 2004 and possibly longer. If they're successful in their protection zoning and their allocation, I'd ask you to consider the anticompetitiveness of their activities. With these severe restrictions placed on our land, I cannot compete with my peers in agriculture in the same way as anyone else can. I certainly cannot compete for the finance in the same way that any other farmer can, because with this blight on the title, and my discussions with my two finance agencies that I deal with, they say they would certainly require off-farm security, of which I now have none, and they would probably not lend me as much as what I want in the first place and I would be paying a high-risk interest. So I consider it has probably conservatively cost me \$2 million in lost gross earnings, and apart from all the other incidental costs of legal fees and consultancy fees, et cetera, et cetera.

I cannot believe that Water and Rivers Commission, in allocating water licences to people like Water Corporation, could be seen - in developing their own business, could be tearing down our business, or another. So you have them advancing nicely at the expense of us. They're destroying our business in the advancement of theirs, and under corporate law, I don't think any other corporation would be able to get away with it. However, Water Corporation are protected by a very strong act.

I currently see that we have no prospect of improvement, innovation or diversity or advancement in the agricultural systems I'd like to invoke on my property, and I only feel that there's a tactic of attrition to weaken us and destroy us so that we're no longer a threat to their activities. So that's pretty much the history of my property. If there's any questions you'd like to ask me on particular aspects on that - there's a lot of detail, and trying to remember nine and a half years of probably two cubic metres of correspondence would be rather difficult, but I'll do my best.

DR BYRON: Warren, do you want to go first?

PROF MUSGRAVE: Well, I was just thinking that - you've attributed some malice to these bureaucrats and we had some bureaucrats in here before lunch and they strongly denied that they could be possibly guilty of such behaviour.

MR UNDERWOOD: Well, I guess they have a position to defend.

PROF MUSGRAVE: I guess they did.

MR UNDERWOOD: I think perhaps their professional advancement might swing on anything that's detrimental. I cannot see that five years of environmental review on what is a relatively simple matter could possibly take that long when the soil commissioner had made the decision I do have actual other evidence that I could produce that the Department of Environment were playing all sorts of tricks, and one of them was not to inform me of my position at any stage of the way, knowing full well the soil commissioner agreed to what turned out to be the eventual outcome.

They also used the memorandum of understanding against me a certain part of the way. That is still an illegal document. It hasn't been backed up by legislation, and yet they've invoked that in the two bulletins that were released on my property.

PROF MUSGRAVE: Has it been abandoned now?

MR UNDERWOOD: Yes. They've eventually seen that they shouldn't have been using it and I don't think they're any longer using it.

PROF MUSGRAVE: Yes. I guess recourse to law is not an option that you see open to you?

MR UNDERWOOD: It is an option and certainly I've got a barrister and QC giving me advice on that. I think in our weakened economic position, I don't think it would be wise, even if there was a 50 per cent chance of losing. There's still that 50 per cent chance of winning, but really what would we be going for? Compensation or "I told you so" or, you know - I don't think - I mean, I will take that action if I have to. On the advice I've got, we've certainly got a very strong case, but I don't really want to put myself and my family through another five years of litigation. I think almost 10 years is enough for me, certainly. It's certainly enough for my wife and my children.

PROF MUSGRAVE: The watercourse protection zone business doesn't really bear on the topic of our inquiry, or not directly, but this would seem to be fairly close to a resumption of your land. Why is it not?

MR UNDERWOOD: I asked the same question. I have offered - I've had meetings with the minister for environment and the minister for agriculture, fisheries and forestry and, yes, I have put a negotiated resolution to them, and that does require them purchasing the land. My land is all for sale now, including the land that I can't use as a bush block. It's right opposite the Mount Lezure National Park. It could be very attractive for some sort of ecotourism. I've got - part of the land is partially developed, the rest is fully developed. Yes, if I could sell it, I would, and I'd start somewhere else. I've offered it to the government or to Water Corporation in particular, but the message I get back from them is that they don't acquire land.

PROF MUSGRAVE: Getting back to our chase, you referred to the fact you're paying rates on your property.

MR UNDERWOOD: Yes.

PROF MUSGRAVE: What about the valuation of the land for that purpose? Does the value reflect the area of unutilisable land that you have?

MR UNDERWOOD: I'm currently in the process of getting a valuation from an independent valuer, not the Valuer-General's Office. The Valuer-General's Office can only value these lands regardless of the interest, whether it's for biodiversity reasons or any special interest the Water Corporation may have in the land, they can only - they tell me they can only value that land for unimproved purposes, for rateable purposes only. So unimproved value for rateable purposes only to strike rates.

PROF MUSGRAVE: So they would not take notice of these other regulatory threats that exist.

MR UNDERWOOD: That's right. That's the impression I get from them; they would not take any special interest or higher and best use of the land into account.

PROF MUSGRAVE: Thank you.

DR BYRON: Do you have any questions?

MR UNDERWOOD: What can I say? I could add, on the part of the negotiations or part of the offer for them to buy the land, I fully realise that to receive something, you sometimes have to offer something, and I've offered the 748 acres. I've told them that I would donate that land to the national park estate, but they had to buy the rest of the land at the advertised price. At the time I also had an exploration licence for three gigalitres of water because we did have an interest from a potato grower to grow seed potato there. Now because of the time lapse, that licence has actually lapsed and I no longer have that exploration licence. The indications are from Water and Rivers Commission, because of the interest Water Corporation have in it that we're unlikely to achieve a licence anyway.

To add further weight to all the problems here, the town planning scheme at Dandaragan has just been redone, and we now find ourselves in what they call a Bassendean precinct special control area which is - the purposes for that are:

The purpose of the special control area is to preserve the ecological values of the Bassendean precinct and interrelated wetlands, and it's to avoid development and land uses which would negatively impact on the

environment values of the area.

So this actually affects some 100 kilometres of land in that area; takes in 22 properties, bearing in mind there is a lot of national park in that area. That Dandaragan shire has 52 per cent remnant veg in the forms of parks and reserves. So this actually is for the using the environmentalism as the vehicle to protect all that area for public water supplies. So we're having - not only do we have an attack from Water Corporation, Water and Rivers Commission, now the WA Planning are back into it. I cannot see any way out of this where we could develop a viable farm even if we tried now. We're totally at the mercy of all the agencies, the planning, the whole lot.

DR FISHER: So just as a point of clarification, does that mean that this set of planning arrangements will have an impact on your developed property as well as the undeveloped?

MR UNDERWOOD: I think existing land uses would probably get by for a while, but I think when it's being reviewed in five years' time, they would probably make it very hard or put in conditions that would be probably unachievable to meet, and by attrition again we would lose those existing land uses. The recommendations, from the top of my head, are for honey - the preferred uses for that land in this precinct now is honey plants, which means remnant veg. I'm allergic to bees; nut crops, that's either macadamias and pistachio, that type of thing; possibly olives, although they're a fruit I guess; some aquaculture in permitted areas where you have the right soil types I'd imagine, and availability to water; and grazing. So we could run around behind half a dozen Herefords because they will tell us how many livestock to the hectare we can run out of properties, what fertilisers, herbicides, insecticides we can or cannot use, and the DEP would probably put - under the P2 zoning as well they would put a farm management plan on the property and tell us all those things. If we don't comply, well, we could be prosecuted.

What frightens me is the amendments to the Environmental Act, and the definition of "environmental harm" is very, very broad, and I think I'd be really sweating in case my cattle did the wrong thing in the wrong place or whatever other activity we took on.

DR FISHER: So those restrictions are entirely due to the P2 zoning, are they, or is this more broad?

MR UNDERWOOD: No, there's two things in there. I'm sorry, I probably melded the two a bit. P2 zoning, the DEP would put a farm management plan on your property. The recommended uses under the Town Planning Scheme are those ones I've just described, like the honey plants. Even the shortest return on a nut crop that I'm aware of is five or six years. So if you plant it today, it would be five or

six years' time before you got some sort of a harvest off them. This is all going to be severely challenged of course by us because the minister hasn't exactly signed off on it yet, but I think the local government will get rolled on it by planning, because remember it's for the protection of water, and they want the water for the local community and possibly for the northern corridor of Perth. This is just the way they're doing it. Either way, we're finished now. I don't think we'll survive or pull our business back together with all these restrictions.

I can offer the - it's called The Statement of Planning Policy No 11, and the Town Planning Scheme, I can offer parts of that as evidence as well. With the Water Corporation, I've written a letter to Dr Judy Edwards, minister for the environment heritage, and the Hon Nick Griffiths, minister for government enterprises and water et cetera. I'd like to offer that because it does outline my concerns more fully that we have in the operation of our property, if you could accept that. Also another letter I wrote to one of the board members - I wrote to all of the board members of Water Corporation outlining my concerns.

I would also like to give to you as evidence a part of Hansard of the WA state government, and it is a conversation between the Hon Bruce Donaldson and the Hon Kim Chance, the minister. Kim Chance's closing statement was:

The Underwood case is a classic example of why the law had to be clarified. It was a mess.

That's the minister for agriculture saying that in parliament. This is also the land compatibility and public drinking water source areas. There's six pages of that that will give you a very firm idea of how we're expected to operate under there.

We're not the only people of course that are coming under attack from these agencies. As my position in Pastoralists and Graziers Association and the chairman of the property rights committee, we met with a number of farmers in the Binnu region and the director-general of agricultural - that was on 24 April this year - because there was a number of farmers suffering the same problems, but not to the same extent based purely on soil conservation notices and notice of intentions.

I believe you've heard evidence from the soil commissioner in Mr Hartley this morning saying that there was some test bores drilled up in that area. That was an agreement we got with the director-general of agriculture. Part of that same agreement was that we requested that all soil conservation notices be lifted, and that all threats of prosecution be withdrawn. As a compromise they said they would freeze any threats of prosecution and would not act on the soil conservation notices.

We were up again there yesterday and the deputy soil commissioner made it very clear to us one of the options open to him was that they would act on the

complaints and serve these people with a summons for breaches of each of those things, the SCNs or the NOIs. That is contrary to the agreement we had with the director of agriculture, and part of the drilling program that Mr Hartley was commenting on this morning was at our request and the director-general's agreement. We're unsure of the complete results of those holes, but we believe one was fresh - fresh water entirely - and one was dry and one had some level of salinity in it.

I believe Mr Hartley said they did that to prove a point. Well, that's not quite the way we see it and not quite the way we requested it. So we find that openly hostile that these farmers - these good, hard-working, honest farmers up there - are being treated like criminals when we tried to get a bit of a compromise agreement with the director-general of agriculture. So that's just a brief outline of the Binnu farmers situation.

DR FISHER: So let me understand this. You entered into what you believe was a written agreement or a handshake agreement with the DG agriculture?

MR UNDERWOOD: It was a verbal agreement on site and then followed up by a letter to the farmers concerned.

DR FISHER: And that was followed up from the Department of Agriculture?

MR UNDERWOOD: Yes, the soil commissioner.

DR FISHER: And subsequently there is now disagreement with another arm of government?

MR UNDERWOOD: There seems to be not so much a disagreement but a misinterpretation of the original agreement by the deputy soil commissioner and the commissioner for soils.

DR FISHER: Or a reinterpretation.

MR UNDERWOOD: Perhaps, yes. That's probably the nicer way of describing it. We just consider it openly hostile that they're coming out with threats of prosecution all the time. This has been going on six or seven years and they still cannot come to a resolution on it. It's not from the will of the farmers to try and resolve it, and I see no public benefit from prosecuting these people. They're doing what they're supposed to do on their land, and that is develop it, and they can quite safely develop some of that land.

DR FISHER: Maybe this is too hard a question - I asked a question like this to the government officials, and basically it was there are two sides here. In much of the evidence we're receiving, we have almost complete polarisation basically in the

evidence. We've got one group over here and another group over here, and I asked the government officials, "What's the solution to this? Is there a way forward?" - and I actually - perhaps I was misinterpreted but I don't think I quite got a solution. Do you see a way of solving this problem?

MR UNDERWOOD: Yes. There pastoralists and graziers have got a policy, some three years old, that state government move to acquire these areas of special interest and acquire those over a three to five-year period at realistic, over the fence values and what they do not consider as a special interest to allow the rest to be developed. In other words, we can't reserve every known plant and animal for ever because we simply can't afford to, but then on the same hand we probably can't afford to lose it. But those areas of special interest that are on agricultural lands should be acquired by government at realistic values instead of being stolen from them in the way it's going at the moment. So in other words, you sort out the equity issues and these farmers will fall over themselves to help you. If you try and take it from them or deny the use of their land, they will fight to the death.

DR FISHER: This solution the government officials told us this morning that they had actually \$2.3 million to attribute to this sort of process. My perception is that there is probably slightly more than \$2.3 million worth of property to be acquired.

MR UNDERWOOD: You would be correct in that assumption.

DR FISHER: My interpretation this morning was that basically "the government has got a job to do," the bureaucracy is required to ensure that native vegetation is protected, it has a minimum amount of money and therefore it will revert to the use of the regulations to ensure that it does its job. Under those circumstances do you see a way forward?

MR UNDERWOOD: It always get down to money and when I talk of equity, when you transfer that equity from one identity to another there has to be a transaction take place and we deal in money or we could deal in a land swap. They could actually acquire land, buy it on the market and somebody who was disenfranchised of their land there for biodiversity values could be given a portion of that land. But, yes, it will be costly but 2 and a half million dollars would probably - which block are they looking at? Our land has become very valuable, especially in the coastal areas where the climate is very good and the soil types are right and you've got plenty of water. What price are they going to put on that? I don't think they would come at it.

The sad waste of the NHT money, some \$700 million would have gone a long way to sorting out - a fraction of that would have gone a long way to sorting out these equity issues in this state. But unfortunately I see it was wasted on running the agencies that have give us the most drama. A lot of that money was used to run

those agencies, never even hit the ground. It's well documented. So there was an opportunity lost there but it does get down to acquiring those lands of specialist interests. We can't all afford free education, we can't all afford free health and you can't afford to take someone's land off them either, it means too much to us.

DR FISHER: Maybe this is too hard a question, but what do you feel about the argument that has been put to us that you have in your possession - actually in your possession probably should be put in inverted commas from the sound of it - but you at least have the title to agricultural property that provides, if I could put it this way, ecological services to the community.

MR UNDERWOOD: Yes.

DR FISHER: I think I heard the government this morning say that you effectively have a responsibility to deliver that to the community. How do you feel about that?

MR UNDERWOOD: The responsibilities - I mean, each landowner is responsible not to degrade the land that he's on and most of us try and improve it. The definition of agricultural land is domesticated wild land. The way I view it is we have domesticated something that was wild, even the background bacterium is suitable to growing cereals rather than banksia trees. If I am to reserve a large proportion of my land for a public benefit at a private cost, I think the public have to pay. Whether they acquire that land and add it to national park estate or have it on its own little reserve or sanctuary is the finer details. But the basic principle is if I have to again transfer the equity of my land for a public benefit I think the public have to pay.

DR FISHER: So would you be prepared to manage that land with some - not necessarily compensation but with some incentive to do so?

MR UNDERWOOD: I think what you're getting at is stewardship payments, that's been discussed. But at the moment I feel so beaten up by this whole procedure I just want to see the end of it. I wouldn't go near it now - I mean, I wouldn't feel comfortable in managing that land. I mean, somebody else might, people in a different position might. But we're so disgusted with the whole affair we just want to get rid of it.

DR FISHER: So in your personal case you couldn't see your way clear - - -

MR UNDERWOOD: That's right.

DR FISHER: - - - but you don't object philosophically to that approach?

MR UNDERWOOD: Philosophically it would be acceptable to some people that desperately want to stay in that location. But, I mean. I've lost too much time -

10 years almost - and a lot of money and I'm 50 years old. I'm a bit keen to get out of this horrible situation and make a fresh start before I am too old to actually actively farm again. I figure I've got 15 or 20 years left in me. I don't want to waste another five and I'm not going to do it trotting around a piece of rare veg looking after it for the state.

DR FISHER: I understand.

DR BYRON: Thank you very much, Mr Underwood. Unless there's anything else you'd like to say, I think that's probably a pretty strong point to finish on.

MR UNDERWOOD: Thank you.

DR BYRON: Thank you very much for coming.

MR UNDERWOOD: I will provide a contact name I have - I can't read it at the moment - but with the evidence that I said I would provide.

DR BYRON: Thank you very much.

MR UNDERWOOD: Thanks for your time.

DR BYRON: If we could move straight on please to the representatives from the Pastoralists and Graziers Association. I gather there's a few of you coming. Incidentally, there's no need to record any of this because the transcripts will be available on the web site within a day or two. It might be easier if we make a little informal rule that each of you state your name when you pick up the microphone to make an intervention. We don't usually have that many people on the table at once. Thank you very much for coming. We have received your written submission and we have all read it. If you would care to summarise it and then we can go through the material.

MR HYDE: Mr Chairman, thank you very much for the opportunity.

DR BYRON: Sorry, name first please.

MR HYDE: Sorry, John Hyde. The commission said that it was more interested in hearing from case studies. I don't think there is any point in us going through a lot of theory which you already know better than we do and the submission is there. Its basic premise is that the environment is not an end that overrides all other ends, but that the opportunity costs of environmental protection should be taken into account like the opportunity cost of any other action are taken into account; that people should be compensated for the taking of existing rights and the PGA has never argued that they should get windfall gains, we have been very careful not to.

We argue that to do that or if the crown did that it would have the means by which to order its own affairs, that without it there will be no prioritising by the crown, it will make rulings such as it has against Mr Underwood that you just heard without considering the cost to him because they don't have to pay it; that the social environment is as precious as is the natural environment and just as an essential part of that social environment. I think I probably speak for everyone here, but it is my own view that it is not just bad bureaucrats, but bad law that we have to deal with on many occasions. Finally, I have not personally been affected in any way that's quite serious, it's just that the injustice that I thought I perceived offended me and I decided to help the PGA. I'm the acting chairman today because the chairman has just spent some time already speaking to you.

DR BYRON: Thank you very much. I gather that each of you there would like to put something on the record, so it's probably most efficient if we just sort of run through one by one.

MR HYDE: Right, Mr Dave Wren.

MR D. WREN: Okay, I was nominated to talk from submission on the impact of native vegetation and biodiversity regulations on water. I am a farmer and irrigator and I will try to emphasise on the impacts of biodiversity with reference to the

COAG agreement that the state has undertaken to fulfil and then I will end up with how that is actually applying on the ground and the assessment process for water allocation licences. Previously to 1994 in this state the irrigation water was under the Department of Agriculture and they had a whole section and they were encouraging farmers and irrigators to develop their properties to take water to cultivate soil and to increase the productivity of their farms.

With the COAG agreement in 94 the state agencies switched the emphasis and the water authority was formed and COAG was concerned with the water authority so they required that to spit into the Water Corporation which is a water provider and the Water and Rivers Commission which is a regulator. Meanwhile farmers just continue on, they didn't notice anything that would have any impact on them. They were still under the Department of Agriculture for their advice but consequently the COAG agreement changed the process that the states had to do in terms of water allocation and water for the environment was put at the top. In the allocation processes that flowed from that there has been an extreme hardship placed on irrigators and farmers in areas that are highly forested or with some biodiversity in terms of allocations licences.

But concurrently the Water Corporation is also using those areas that are high risk to expand their water allocation process to supply Perth. The area that I'm talking about now they currently have allocations for 45 gigalitres to take from the Yarragadeen near the Scott River to Perth and the next step after that is they'll go north to Gingin where the previous speaker was speaking to take 40 gigalitres. So over a period of time the agencies, even though the Waters and Rivers and Water Corporation split they still have the same people and they still have a relationship that, at the best, is friendly but at the worst it would be anti-competitive, they're competing for the same water that farmers are and many farmers have had that water before they had their applications.

Now, in terms of biodiversity or the assessment process where I'm currently going through on one proposal, where there's been noted as there's a lot native vegetation and biodiversity because it hasn't been cleared, obviously, it's 80 per cent bush, it has a very risky, in terms of their criteria - it's high risk in terms of water location, so it precludes you going for water because it's high risk. If it's cleared area, that's degraded, then it's a low risk, so it's putting - for areas that are just developing, that don't have any - that have quite a bit of environmental biodiversity in its place, like an area I'm talking about quite a lot of national parks, for the irrigators they have been penalised because it's considered high risk for biodiversity, but in the meantime the other arms of the water equation is able to take water and transfer it to Perth.

So that's just basically where I'm coming from and I think that the state, in terms of the COAG requirements for environmental water flows, have not produced

a consistent or produced the mythology that they're using and I think that in many situations the biodiversity angle is being used for other processes in the equation. In other words, they're trying to keep an area for water quality basically, instead of actually biodiversity and where the process has come is that in an area that I'm talking about, when the assessment process is - for a water licence is put forwards, it's a two-year licence, with environment restrictions, and after two years if there was any environment - through monitoring, at your own cost, if there was any impact, well, then basically they're going to - you'd have to do remedial action or close you down. Taking that proposition to the bank, they won't even look at you. It's just - there's no security, so you've got to drill a hole in the ground, with no guarantee or licence first, and then if they do - if they are giving you your licence it's for two years.

In the meantime, like I said earlier, in this particular area the water corporation has got a huge application licence for 45 gigalitres and at one of our growers meetings the water river scientist was there and he was worried about water quality, which we didn't have in any equation. He was worried that cultivation is going to cause acid pyrite soils and that may cause arsenic in the water supply and we were there to talk about water efficiency. So all I could say is that - and we know that the plant has been in the pipeline since 1995, within the internal discussions of the agencies, but nobody told the irrigators in 1995 that in the year 2003 that that water was going to be taken to Perth and there'll be - because of the water quality issues, there'll be restrictions on the activities and nobody told the banks when they lent the money out that - you know, for an irrigation project - that there was going to be restrictions on line activities which will then have an impact on cash flow and productivity.

So the agencies can say what they want because we had several meetings with them, but I think the COAG issue in this state, it's a different template to the Murray-Darling, that hasn't been recognised. There's other issues I can go into, but there are several instances where the environmental water provisions, which include biodiversity concerns and native vegetation, are being used by the agencies in actual to restrict private individuals to access water.

DR BYRON: Thank you very much. Who is next?

MR HYDE: Do you want to question the individual speakers now or to go through them one after another and then - - -

DR BYRON: I think if we go through them all, because there may be some - - -

MR D. WREN: I'm sorry, I'll just have to excuse myself, I've got to head back south, okay.

MR HYDE: Yes. We can't keep - - -

PROF MUSGRAVE: I'm not sure I followed you clearly - - -

MR D. WREN: Yes.

PROF MUSGRAVE: - - - but I understood you to be saying that the water authority is making decisions about irrigators' access to water on biodiversity grounds.

MR D. WREN: In the assessment - the water authority is now split into the Water Corporation and the Waters and Rivers Commission.

PROF MUSGRAVE: Yes.

MR D. WREN: The Water and Rivers Commission is the agency that deals with licence applications. In the licence applications the - and the Waters and Rivers now is an arm of the Department of Environmental Protection - in the application licence the emphasis is on environmental water flows and environmental water concerns and we have to put monitoring devices and have a ground water management plan. That plan itself is - and they issue a licence, they're only proposing a licence for two years, right, which they will review and the - and if the area is in a wetland or an area with high biodiversity in their assessment process it's unlikely you'll get a licence because of the impact on biodiversity. So that's the problem and the problem is that in most of those areas, if you're clearing the land, right, you've obviously got more clearing so you're going to be in a high risk area in their criteria, so they're basically locking up the land.

PROF MUSGRAVE: This is the renewal of an existing licence?

MR D. WREN: No, it's the renewal and - since the water legislation has been changed any licence that expires you're going through a new assessment process and the assessment process is subject to a management plan which water for the environment is the first off the rank.

PROF MUSGRAVE: Yes. In the normal course of events you would have expected the licence to be rolled over.

MR D. WREN: Normal - yeah. The understanding from the commission when the - because most licences have - many licences have expired and they didn't - whereas in the past they would renew them like a driver's licence, it's just a one-page licence. In my situation I had two licences expire. One expired in September, one expired in December, over the past year or two and this is very similar to many other irrigators because we've discussed this. We went back to the commission because there was

concern over a lot of reasons. One was the banks, because they want to know that you have an irrigation licence and their answer was that they have administratively overworked and there is a delay in licences, but when they actually came out and I had - I pushed them a bit more and I actually had an assessment done, I believe, in April this year, they had a - it wasn't a renewal licence, they went through a whole different criteria and that criteria is very intensive and biodiversity and environmental aspects are quite high in the criteria and like I said, in the area I'm talking about, in their management plan, it has a high biodiversity because of the national parks, so it even makes it harder to get a licence, even if you have one.

PROF MUSGRAVE: So where do you stand?

MR D. WREN: The area I'm talking about is the Scott River - Scott Coastal Plains.

PROF MUSGRAVE: No, the licence, has the decision been made?

MR D. WREN: No. It's - we're still negotiating. Meanwhile I'm still irrigating. But what I'm just trying to emphasise is that they've gone overboard. They went from - when it was under the Agriculture Department they went to where there was no licences and encouraging and the requirements have been put into place and the agencies have gone way over to the other side.

PROF MUSGRAVE: Yes. Got that. Thanks.

MR D. WREN: All right. Thank you. I have to go, thank you, excuse me.

MR HYDE: Thanks Dave. Sue Walker.

MS WALKER: Sue Walker. Craig mentioned to you the statement of planning policy 11, which is to do with agricultural and rural land use planning and he was going to provide you with a copy of it. We see that it's a problem because it's integration of land catchment and water resource management and the use on agricultural land. A lot of the work will be done through Department of Agriculture, who produced a manual this size which they continually tell us is not there. Well, we have managed to get a copy of it. What happens now is any time a shire, any local government, changes their town planning scheme, they are required to take into account the statement of planning policy which has led to the proposals that Mr Underwood outlined happening in the Shire of Dandaragan.

In the Shire of Donnybrook-Balingup the same thing has happened and some land that was zoned for intensive farming has now been rezoned to rural residential, with very strict limitations put on to it and the Shire of Donnybrook-Balingup was also altering their town planning policy to include a dams policy which will restrict the use - restrict people from putting dams on their property on environment grounds.

Any dam that holds more than 5000 kilolitres will be required to be licensed by the shire. This causes great concern to us, as do the powers under that planning policy to rezone land so that they may come in and say, "You may only grow a certain crop in that area," because their powers are so wide and planning legislation overrides all other state legislation.

DR BYRON: Is there a process of public exposure of drafts and opportunities for review and appeal and so on in these rezoning decisions, because that seems to be - - -

MS WALKER: Some of the shires are putting out notices, but with some of them you are very lucky to pick up that there is going to be change - in fact, this dams policy was just going to go through council until one particular councillor picked it up and stated that it should go out to public review.

PROF MUSGRAVE: Could I ask a question which relates to a matter which keeps on coming up, and that is the obligation of the state to compensate for a taking of a right and the lack of clarity of law in respect to that and so I ask if - John, I direct this to you, I guess, more than to you - and you may not be able to answer it - whether the association has taken legal advice on this matter?

MR HYDE: No, we have not taken legal advice on the matter in the sense I think you mean it. We've had lawyers sitting on our committee at times; we've had that sort of informal advice that you might get somewhere under common law, that's about as strong as it is. Does anyone have a different view of my interpretation of that?

MR PEACOCK: If I could just - Gary Peacock - the problem I see with that is, as individual farmers and land-holders, it's very difficult to get three farmers in the same room to agree on the colour shirt they're wearing to start with, but the actual - we have no funding, no federal/state funding to defend our actions in these fights. We're relying on volunteer funding from the PGA; the Pastoral Graziers is a volunteer organisation, volunteer funding, volunteer levies. I'd imagine the task of funding and executing these - as Craig has found it out - individually and personally, is probably cost prohibitive and would frighten the average farmer who is from daylight to dark, seven days a week, trying to get on top of things as it is.

MR HYDE: Well, the PGA is not in any financial straits or difficulty, it's only the case because it husbands its money fairly tightly.

PROF MUSGRAVE: It's a very serious consideration, I understand.

MR GARE: I think it would be fair also - Geoff Gare - to say that the PGA did take up the matter of SPP11 politically over a long period of time. We waged quite a

campaign against it. We warned of the consequences of it in that it would permeate all levels of local government, as it is now doing and we did manage to stave it off for some time, but with a change of government it is now law and a lot of our worst fears and predictions are being fulfilled.

PROF MUSGRAVE: Okay. Thanks on that.

MR HYDE: Now move to the next speaker. Mr Gary Peacock.

MR PEACOCK: Yes, thank you, gentlemen, for the time - for allowing me to speak to you. My name is Gary Peacock, I'm a farmer from the mid-west of Western Australia, broad acre farmer. I'd just - I'm a farmer that's affected by this Bassendean Span Special Control Area which has been promised under the Shire of Dandaragan. In answer to your question earlier, the first that we knew that this town planning scheme was going to change and downgrade our title of our land was after it had actually gone to the minister and from discussions we've had since. It's actually - it's been passed without any notification to us.

PROF MUSGRAVE: Been gazetted?

MR PEACOCK: It's in the process of. The Shire of Dandaragan met with the minister's officials last week to ask that some of the issues in there be reviewed or be put to one side, the rest of the policy be adopted, and that these be further negotiated and they were refused and in fact came home with a list of other issues that they felt should be put in. The minister and the state actually wants to change the zoning of all agriculture in the Shire of Dandaragan, which is an agricultural shire, from agriculture as a permitted use to a discretionary use, I mean, and I can't get my mind around what that means.

Just as a bit of historical data; the Shire of Dandaragan is 53 per cent remnant vegetation, that's in national parks, unclaimed crown land and other reserves. In my case I farm 4325 acres and there would probably be a thousand acres of bush on that land. I would imagine historically the reason for that is this is some of the later taken-up land in Western Australia. A lot of the land that was farmed at the turn of the century was a heavier soil type and deemed to be better. This was deemed coastal, to be of a poorer soil type and there probably wasn't a land use for it. A lot of this land was only taken up in the late 60s through the 70s and a lot of the land was still being developed into the 1980s.

In our situation we believe that we were doing the right thing ecologically because there wasn't a land use for a lot of land that we left undeveloped. At that time we could buy land within the shire of Dandaragan for \$80 an acre. It was cheaper to buy the next-door neighbour's farm than it was to develop that land. That land is now worth - you won't buy land in the shire of Dandaragan for \$500 an acre.

It's cost prohibitive to expanding elsewhere. 53 per cent of the shire is remnant vegetation. There is now, with the advent of science and technology, agricultural innovation, there is a land use for a lot of that land. With the advent of no-till farming, of compound fertilisers, improved pasture varieties with the emphasis today on agri-forestry, a lot of the land on my property could be developed and would now be very, very profitable.

I've got friends and associates who 10 years ago grew no wheat on their property whatsoever, not a blade, because it was deemed to be unprofitable, it was deemed to be - you couldn't do it, it was too wet, the soil types were too poor, the Department of Agriculture believed it was unviable. They were a five-year rolling average of over 3.8 tonnes of a hectare which would be twice the state average. Last year they did over four tonnes of a hectare. My own property, through the work of an organisation, the Evergreen Farming Group, we've been exploring the potential uses for perennial pastures, subtropical pastures - again under the Ag Department's early work it was never going to grow here. There would probably be 50,000 hectares - 30 to 50 thousand hectares of these being implemented from one end of Western Australia to the other now. The Ag Department is running trials on the property next door. They are looking at 15 DSE to the hectare stocking rate. The district average would be struggling to be seven DSE to the hectare.

I don't think individuals like myself want compensation. We just want justice. If someone can prove to me that there's a biodiversity issue on my farm, I would be more than happy - I'm not black, white or red, I'm slightly green like everybody else. I rely on my property to be environmentally sustainable. If someone can prove to me that there's a biodiversity issue on my farm then I'd have no worries in reserving that, reforesting it, whatever to do. But there are no signs to back up that most of the country on my farm could not be developed and sustainably and economically and productively as well. I presume a lot of the reason, when you've got the shire of, say, Merredin which might only have an area of 2 per cent remnant vegetation - and I'm presuming that the powers that be would be looking at that and they would be saying to themselves, you know, "There's too much bush been taken off that part of the state. There's a lot there." We're being punished. The blanket application is punishing a few for the - and it is only a few of us. I'd imagine the amount of the land that is wanted to be developed in the shire of Dandaragan would probably be less than the amount that would be revegetated every year in the eastern wheat belt to compensate for over-clearing.

Again this argument of - there is no funding other than the PGA and our two farm organisations in Western Australia, we do not have a voice to tackle these issues and take on the fight that maybe some of the other organisations - the green organisations, environmental organisations, the funding, the time, the resources because we are all involved in our own businesses. We are all, day to day, trying to keep our heads above water and do the day-to-day things. To take a day off and

come here today is alone - you know, it's a big commitment.

DR BYRON: Do you want to ask a question, because I was just going to clarify.

DR FISHER: Well, you clarify and then I'll ask a question.

DR BYRON: I just want to make sure that I've got an understanding of the basic issues. You've been told that you can't clear this remnant native vegetation on your property, it's about a quarter. Is that right?

MR PEACOCK: Yes.

DR BYRON: Presumably the reasons that you were given is that it would cause salinity or land degradation or something like that?

MR PEACOCK: I think - and this is coming back to what Craig is saying - it's been misinformation by a lot of bureaucrats. We bought this property in 88 and did some clearing and then we believe we had to get a permit to clear it. The law clearly stated it. All we had was an obligation to notify that we were going to. But we believed that we needed a permit to clear and we were led to believe we wouldn't get one, so we just never applied. As I say, a lot of that land in that time, because of the commodity prices, ie, wool - we are predominantly woolgrowers - we probably didn't have the money to do it.

DR BYRON: But now that you do want to do it, you can't?

MR PEACOCK: No.

DR BYRON: I guess your argument is that there are new agricultural technologies, new innovations like agri-forestry, new types of plants and crops and pastures that would enable you to manage that land in a way that wouldn't cause degradation, salinity, habitat loss of rare and endangered species or anything else, but you still can't do it.

MR PEACOCK: Yes, I'd actually argue that the technology would mean a much greater water use efficiency and probably greater environmental benefits for the area surrounding these areas from these new things. I mean, the carrot and stick analogy is that we're feeling a lot of stick at the moment, there's not a lot of carrot. We can't do anything with these lands. No-one is going to pay me or help me reserve these areas, so my sheep roam these areas clearing by stealth. Those areas are degrading, there's no doubt about it, which is increasing the amount of water flow that's coming out of these - and in my situation, the sandy hills, the sandy areas, the lower water-holding capacity, that water is running onto my clay flats and actually probably causing degradation.

If I was able to develop those lands I would have then the economic ability to fence the rest of the farm that I don't want to do or is deemed to be unable to be done. Agri-forestry is a larger water use than the remnant vegetation that's there now. Claying and cropping - you know, perennial pastures, the water use of perennial pastures is substantially greater than probably what's going on there now. I mean, we've never applied because of the fear of prosecution. I think you'll find there's a large number of farmers that aren't prepared to put their hand up and actually let people know what's going on in their farms because of the fear of prosecution, the carrot and the stick. They're scared of the stick because they're not being given any carrot.

DR FISHER: I'm sorry, is that "prosecution" or "persecution"?

MR PEACOCK: I think both - prosecution and persecution.

DR FISHER: The question I wanted to ask was, I think you said the value of the property is currently about \$500 an acre.

MR PEACOCK: That depends on the outcome of the Bassendean Sands and the shire of Dandaragan town planning scheme. It's probably in my case the whole shire - you won't buy land in the Dandaragan Shire for under \$400 an acre. Mine would be probably around that or a bit less. Under this new legislation you wouldn't sell it - I can't imagine anyone would be looking at it.

DR FISHER: Okay. So there's the potential for impact on value as a consequence of planning regulations. How much an acre does it cost you to develop this land?

MR PEACOCK: Probably somewhere around \$200.

DR FISHER: \$200?.

MR PEACOCK: To clear pasture and fertilise.

DR FISHER: So for you currently it's actually - if you do the net present value calculation it's a sensible proposition to clear the land rather than go some place else and buy other properties. Is that what you're saying?

MR PEACOCK: Yes. Whereas 10 years ago - as recently as 10 years ago - it was economically more sensible to buy the next-door neighbour's or the bloke up the road than it was to develop a lot of that land because it was poorer land on your property.

DR FISHER: So in this case, as a consequence of technological change in agriculture, you can demonstrate that the clearing restrictions now are having an

economic impact of X dollars a hectare?

MR PEACOCK: Yes, and I'm presuming that they are fuelling some of the increases in land value as well, because you can't clear more land. They're not making new land. You know, I hear the treasurer talking about the housing issue at the moment. I mean, it's not the only reason. This area - because of it only being farmed for the last 20 to 30 years, the productivity of this land, a lot of people in agriculture in Western Australia, they're worried because their productivity is falling. We're fortunate enough to be a new area and with this technology, the productivity in the area is actually increasing which is way - you know, like I say, the value of the land is increasing in response to that as well. We have a lot of rainfall, we've got a good climate. Traditionally, it would have been deemed to be a probably poorer actual soil type but with the advent of technology it's now not that way.

MR UNDERWOOD: Commissioner, if I may comment just on one point there - - -

DR BYRON: If you could introduce yourself.

MR UNDERWOOD: I'm sorry, Craig Underwood. Just on a point that Gary was talking about then on the town planning scheme and the land valuations. I believe there will be a massive write-down in capital value of those lands if this scheme is actually passed. I mean, up to 50 per cent of that land value will be wiped off the books because of the limited land uses that you can actually use that land for. I don't know who's going to pay for that capital write-down - my guess is no-one. We'll have to wear it. There will be up to a 50 per cent write-down on capital value of those lands.

DR FISHER: Is this concern now built into the expectations about land purchases? For example, Gary, can you sell your property for \$400?

MR PEACOCK: I'd imagine at the moment it probably could be and if I had half a brain I would, because it has been so poorly advertised. I'm contacting other affected lenders; they don't know about it.

DR FISHER: So why don't you?

MR PEACOCK: Because where do I go? What do I do?

MR UNDERWOOD: We do hope that this will be removed from the town planning scheme, or the town planning scheme will be amended accordingly to remove this ridiculous re-zoning from the scheme. We've actually requested the shire council do that, and the shire council, by the way, are firmly onside because they believe a snow job has been perpetrated on them by the consultative planner. None of the council are happy about it, they don't want it in there, but I think it will

be put on council by the WA Planning Commission to actually include it as part of that - - -

MR PEACOCK: There's a cost in moving as well for me. For me to sell my farm for \$400 an acre and pay real estate agent fees, relocation fees, transfer my stock, my plant and machinery, pay stamp duty and all those other associated costs, to relocate to another place without these restrictions, I mean, there's probably between 100 and 150 thousand dollar costs there to start with which I'm personally going to have to bear because of the effects. I mean, my bank at the moment - if he gets wind of this is probably again going to reduce my borrowing capacity to start with.

DR FISHER: But you must have actually have done a calculation in your mind that says, you know, taking account of the transaction costs and the expectations about being able to turn the planning arrangements around is actually not worth your moving, otherwise I'd have to say you're probably being irrational.

MR PEACOCK: I'd say the other argument there is we've probably had six weeks to ponder this.

MR UNDERWOOD: It would look awfully suspicious if 20 farms came up for sale in the same region.

MR HYDE: Mr Chairman, it's very hard to say whether it is in fact built in, but for what my judgment is worth, the difference between this highly productive land over near the coast - my son's land at Dalwallinu - is insufficient and therefore I suspect that it has in fact already been partly built in. That's my suspicion. It's a bit weak obviously.

MR PEACOCK: I suppose too there's the pig-headed, stubborn farmer in us. I mean, we shouldn't be running sheep any more. We've been flogged over the head by the wool industry for the last 15 years but we're still there running sheep. Who can understand the psychology of farmers? I'm one and I can't. Mr Underwood, I suppose, is the classic example of that. He should have packed up and gone a long time ago as well, but we have a belief in our area. We bought this land because we believed that there was potential there and, you know, to walk away now would be to not realise that potential. We set goals and objectives. We did a business plan for this property when we bought it in 1988 which we farmed there because that's where we wanted to farm. If we had have wanted to farm in Dalwallinu we would have gone and bought land there.

MR UNDERWOOD: I don't think we can keep on running away from problems. We've got to stand and face them and fight for our rights.

MR PEACOCK: If I can just close. I mean, the issue here is, if you had have told

me 10 years ago I'd be growing green grass on this property all year round, if you had have told my friends the Hayes they'd be growing four-tonne wheat crops, they would have told you that you were crazy. But the other effect of these regulations and that town planning scheme is that they are now limiting - they are putting a cap on what I can do. Agriculture is only capped by your imagination. If you had have told a farmer three years ago that he could go into his John Deere dealership tomorrow and buy a tractor, that he didn't have to put his hands on the steering wheel that would drive itself up and down the paddock, you'd be mad. Today's Countryman, the front-page photo, is of a man with his tractor that he doesn't have to drive.

These biodiversity regulations not based on good science are saying to me that there's not something in 20 or five or 10 or 30 years' time that couldn't add to the value of that property and add to society from its productivity. That's the bit that irks me most. I know I can do with it today but I don't know what I can do with it tomorrow.

PROF MUSGRAVE: The question of the absence of good science, how do you know that?

MR PEACOCK: Because it's been deemed that one of the key sentences in the Bassendean Sands special report, the town planning scheme, is that it's poor agricultural land of low productivity.

PROF MUSGRAVE: You base your observation that there's no science on that statement?

MR PEACOCK: Yes, because it's productive. We're carrying on our perennial pastures three-kilometre district average stocking rate. Now, we're probably doing three times the - I've got trials on my property this year with raised-bed cropping. We've never cropped an acre of my property. I've got 60 hectares under technology known as raised beds. I've got 26 hectares of barley on it that at this stage, it's probably a two and a half to three-tonne crop. I'm sure if you went to Moora, to the Ag Department in Moora and asked them whether you could crop the Bibby Springs area, grow barley on it, the standard answer would be you wouldn't do it, because it gets too wet. It would water-log.

MR HYDE: There's also the issue of misinterpretation of literal truths and sciences. We can leave aside whether they were intended to mislead or not. An example would be salt-affected land, and we get this huge figure and farmers look round and say, "Where is it?" The truth of the matter is that most of the land is very slightly salt-affected, but too little to be visible. The scientist is literally right, but it doesn't fit with our normal use of the word, and you get those sort of misinterpretations I think fairly commonly.

PROF MUSGRAVE: Thank you.

DR BYRON: Thank you, gentlemen.

MR GARE: Mr Chairman, my name is Geoff Gare from the PGA. I'd just like to pick up if possible on the case that the PGA presented to you on Binu, and Eric Simkin next to me would probably like to give some personal observations from his experience there. But in answer to an earlier question of yours, the PGA put up the prospect of a blueprint at Binu for the Department of Agriculture CEO, believing that because it was such a unique catchment, that there was potential for three different types of farming assessment, the first being the existing productive country, where there is probably some emerging salt problem or an existing salt problem; the second is where there are obviously areas that would stand future development along the lines suggested by the previous speaker, and at the admission of the CEO himself, and his senior hydrologist, both agreed on one of those properties that we visited that there was probably virtually no risk whatsoever of any further development taking place - no risk to the environment, I should say, or to the biodiversity or any further development, sensible development, being allowed on that property.

In the third case, we tried to suggest to the department that the opportunity of all of the various groups in Binu working as a community with the PGA and with the department, using the department's extensive sources of information on that area, would create the opportunity to develop a blueprint that would take the thing forward a bit, in that those that had property that could be developed should be allowed to do so; those that had a salt problem could probably collectively look at some way of addressing it in a catchment sense; and thirdly, that the areas where it was too dangerous a salinity risk to take any further development action, that some case be prepared to compensate those people and to either re-orientate them or relocate them or do something to assist them.

You will note that the inference was probably given this morning that there isn't really a land development problem in Western Australia. We would say to you very forcibly that this is simply not the case. Binu was selected by us as one of the test cases we believed would demonstrate that the current laws are quite ridiculous, that if there is a potential to develop with safety, that that should be permitted, and I think the third consideration was that if we could, as department, as organisation and as individual farmers working collectively, demonstrate that this was a workable solution to the problem, that there would probably be a capacity to go to the federal government, to the state government and to properly employ the resources that are available that we've seen wasted through various land care uses, you know, whole campaigns and programs that seem to go nowhere, that we could actually do something constructive for this particular area.

I think what's missing, and the message we would like to deliver to you, if it's possible, is that the Queensland government, as you know, in conjunction with their farmer organisations, is working with the federal government to address the particular - or try and address some of the problems over there. Because we are not in this state responding to federal acts, as they perhaps are in Queensland, we are completely exposed and left out of that loop. If there is any way at all of, through the Productivity Commission, seeing some of the initiatives that may develop for Queensland applied in Western Australia, we would certainly like to see something there followed up. That was the first part of what I was asked to speak to you about today.

The second is an extension of the planning problem that we have in this state, that Sue Walker referred to, and that is - that occurs because of the ability of the states, as you know, to remove their exposure to compensation where there is a biodiversity or a conservation theme involved in the planning process. In this state, we have also recently embarked on a reasonable planning process. The first area which is referred to in our submission is the Peel region, and that has - because a large area of reservation for that Peel region scheme is for conservation purposes - it has enabled the WA Planning Commission to reserve a lot of that area, a lot of it being prime investment and riverfront country, for a variety of conservation reasons, but to have the effect of leaving about 300 landowners in that particular area in suspense because the reservation has no duration to it, it has no requirement to compensate, and it leave the owners in an entirely parlous position.

There have already been instances where some of the owners have been offered a little bit of blackmail in terms of, "You give us your riverfront country for free now and we may allow you to subdivide some of the areas further away that aren't quite as important as the ones we see as being important." This sort of thing has been going on, and it all stems from the fact that conservation and biodiversity are very much part now of the whole planning process in terms of being the excuse to further disadvantage private landowners, and Peter Wren next to me is at the coalface of that, of course, under a different situation further south. But perhaps, Eric, would you like to take on your case?

MR SIMKIN: Yes. Eric Simkin. I'm representing the Binnu people that have done illegal land clearing, we've been told. There's four of us who got conservation notices, which represents roughly two and a half thousand acres, and we've been waiting, waiting, waiting. They threaten that we're going to get fined. I've been one of them who have been doing it since I first applied in 97, August 97, and got a no. That's just what you get from the EPA, whether you like it or not, and then you have to appeal, as you would be aware. After six years, you get a bit sick of not going nowhere, looking at this nice piece of land sitting there, so we bit the bullet and pulled it down, and we got crop growing on it, and it's growing very nicely.

There's two other people in the area. They didn't apply, and they cleared theirs and - probably me to blame - and they pulled theirs down and they've had crop growing on it for two years, and now they've got conservation notices. The short of it is, the deputy soil commissioner - we have a meeting with him Tuesday. He came up there and we come to an agreement with him that he would give us a result by 1 November which way we were going, whether we were going to get fined or what. He said he'd hold everything over till then. I came down to Craig's last night and Craig had the news that the deputy soil commissioner went to a second place yesterday and he told the guy there, "Don't go away for a few weeks, because" - he said - "you'll get a letter in the mail." Now, they tell us something and then he tells someone else, and that's why we have just got sick of it and we've gone ahead and done some planned clearing. Something tells you something, someone tells you something else. The way it's gone, there will probably be a no-confidence motion come from the Binnu branch of the WAF and Northampton branch of the WAF in the EPA. That's all I have to say.

PROF MUSGRAVE: How does this relate to the material on pages 5, 6 and 7 of the association's submission?

MR GARE: It's finished, that.

PROF MUSGRAVE: What you've said so far is depressing and negative. When I read pages 5, 6 and 7, they were less depressing and rather positive. Can we relate the two?

MR GARE: Well, I think it - I'm Geoff Gare, PGA. I think what the PGA was trying to put forward in the blueprint for Binnu was to try and appeal to the department to acknowledge that there had been some instances like Mr Simkin's, and that they should be part of a proper process of just assessing what damage, if any, had occurred, but to look at it in the context of a positive situation. If it was decided after a proper review of the potential in that area that there needed to be further action, okay, but the initiative, if you like, was for a stay of execution and a review of that whole area, not just the individual cases, even those that hadn't applied because they knew that - hadn't applied for a permit to clear - because they knew that they wouldn't get one.

MR HYDE: Mr Chairman, I've not been involved in the Binnu thing, but isn't it the case that at the time that was written, we thought that the powers that be were going to go along with that suggestion?

MR UNDERWOOD: That's right.

PROF MUSGRAVE: And something has happened since then?

MR UNDERWOOD: Yes. Craig Underwood. I was part of the delegation that went up to Binnu this week to meet with the deputy soil commissioner, as some of the PGA members up there had received a letter from the deputy soil commissioner requesting a meeting up there. These events have occurred just in the last few days. The threats of writs being served on these people is only just a recent development from information we got Wednesday.

PROF MUSGRAVE: And that's against the background of the proposals from PGA?

MR UNDERWOOD: That is contrary to the goodwill that we had established with the director-general of agricultural in April.

PROF MUSGRAVE: Extracting from Mr Simkin and his colleagues' problem, which I can - I understand that, but if we can just back off from that a bit and be more general, there seems to me to be a certain logic about the Binnu approach. The association would perhaps like to see this type of approach as more of a partnership approach between community and government.

MR SIMKIN: Mr Simkin - I might just elaborate on it a bit. There seems to be a breakdown in the department. We had a meeting with the CEO, Graeme Robertson. He came and had a look at the issues. He comes back with an opinion. Then the deputy soil commissioner comes to Binnu and he has a different interpretation. So, you know, are they ever going to solve the problem?

MR UNDERWOOD: Craig Underwood. We were very pleased with the initiatives that we were able to make with the director-general of agriculture and the compromise situation that we felt we had. It was disappointing to us this week to find the openly hostile approach that the deputy soil commissioner had taken since that - - -

PROF MUSGRAVE: That's a separate agency, isn't it?

MR UNDERWOOD: The Soil Commission, yes. The director-general of agriculture, Dr Graeme Robertson, is the overall boss, if you like, of the Department of Agriculture in this state. He's the director general of agriculture, of Ag Western Australia; part of Ag Western Australia. Part of Ag Western Australia is the Soil Commission where any notice of intentions to develop are sent to. They are directly sent to the commissioner for soils and the deputy soil commissioner is under the commissioner. The commissioner has already given evidence today and that was disappointing to us, to hear him come up here and say they did the test drilling to prove a point. That of course follows on from the hostile reception we got from the deputy soil commissioner last week, where they are going to go ahead with

prosecutions before anything is actually resolved.

The disappointment is they consider that as a resolution. It's probably a closure or it could start five years of litigation by a whole group of people and I don't think that's the answer. I think we can actually get a compromise to free certain actions and invoke certain actions to get a balanced outcome because the last six years of those people up there dealing with the commission have not even got close to a balanced outcome. It's all been attack, attack, attack. They're getting very resentful about that treatment.

MR HYDE: Chairman, John Hyde. There is another issue and it's one this committee has never been entirely of one mind on. It's how far these cooperative arrangements can be made consistent with rule of law and certainty and the incorruptibility of official processes. Some of us are more worried about that than others and certainly cooperative processes can be fine but if there's too much discretion, particularly those that have access to authority, they can tell other people what to do in the end, yet does have its own dangers for the processes. We've got one more submission to make to you.

MR P. WREN: Yes, Peter Wren. I suppose my talk will be perhaps a bit pedantic because I have a prepared text but because of the subject that I'm attempting to broach before you I needed that for a guideline. It's more to the - what happens next, you know, in terms of say Greg's situation and Gary's and the people wrestling with, "Well, what are we going to do with this land that's rendered say somewhat useless for agricultural purposes and planning?" Notwithstanding we're all left in this zone, for want of a better word, of not being able to plan. I come from the Shire of Margaret River and we have about 70 per cent of our land in that shire still native vegetation. I want to start with some of the issues papers points that you pointed out: inconsistency between Commonwealth and state regimes, impact on property values and cost-effectiveness and perverse environmental outcomes. They were some of the guidelines from your issues paper.

Three of them that I want to tackle a bit and put forward for consideration as far as upcoming concerns, is GST and the sale of uncleared bushland, covenants and rezoning to conservation. All of these are, as Geoff said, at the coal face of impact of this nature conversation and biodiversity or native vegetation. It appears - I have two documents here and there are two rulings from the ATO. One is a private ruling and the other one is to the PGA - that I will table. It appears that in situations where unimproved farm land is sold that is subject to restrictions of a regulatory or statutory nature or as a result of restricted covenanting, that preclude clearing or otherwise developing the land, it becomes a lifestyle lot and is taxable subject to GST. That's contrary to farm land that is cleared which is accepted to be GST free upon sale.

This is a disincentive to prospective purchasers who wish to invest in land

burdened with non-productive native vegetation and biodiversity. It is another impost on farmers who need to sell such lands as it makes it more difficult to find willing buyers. You will see the rulings in the taxation will bear out this. So you have a climate of perhaps a lot of people as testimony here, of wanting to know what to do with their properties that they can no longer use. They will find that the fiscal policies from the taxation determination is not going to be able to help the situation. So on one hand you have the perceived beneficial but non-productive environmental outcomes of retaining native vegetation and biodiversity and yet because the undeveloped farm land is rendered non-productive it no longer can be sold GST free.

Now, there are instances where farmers for development purposes can purchase lots of undeveloped farm land and the sale of undeveloped farm land containing native vegetation and biodiversity is GST free if the land is land on which a farming business has been carried on for at least a period of five years preceding the supply, the recipient of the supply intends that a farming business be carried out on the land. According to the GST Act, "An entity carries on a farming business if it carries on the business of cultivating or propagating plants, fungi or their products or parts including seeds, spores, bulbs and similar things, in any physical environment, maintaining animals for the purpose of selling them or their bodily produce including natural increase or manufacturing dairy produce, farmed from raw material that entity produced or planting or tending trees in a plantation or forest that are intended to be felled.

So you can see as the opportunities diminish to clear and develop unimproved farm land burdened with native vegetation and biodiversity the ability for a farming entity to satisfy the ATO requirements of intentions to carry on a farming business becomes extremely difficult. It also bears in the mind, what becomes the category for GST purposes for those farmers that are left with the land that they cannot develop and use. What is the effect of the GST if a farmer purchases the undeveloped farm land with the intentions to use the farm land for farming activity but is prevented to do so because of government intervention and actions that are beyond his control.

Now, farmers and rural landowners are faced with the prospect of losing their primary producer's state land tax exemptions with statutory rezoning of the land for conservation purposes. Such a case is illustrated by a submission to this inquiry from the Serpentine-Jarrahdale Land Conservation District Committee. Land was rezoned to conservation on a so-called incentive of rate relief. Livestock were removed to meet the conditions of conservation zoning. The property was then reclassified by government authorities as lifestyle for the purpose evaluation and the owners lost the primary production tax exemption. Now they are faced with huge land taxes that far outweigh any rate relief benefit for agreeing to rezone the land for conservation.

They have also lost the ability to raise income or the profit from the land. The

concerned land is classified as a luxury and taxed accordingly. These are the impacts that we are facing. Conversely, or should it be perversely as suggested in the issues paper, the Shire of Augusta-Margaret River has recently rezoned rural land that was subject to a restrictive covenant of non-development in perpetuity with the shire and the Western Australia Planning Commission. The rezoning which overrides the covenant is for special use as an adventure training site. Land use permitted on the site includes a bunk house, accommodation for up to 120 persons, six camping areas, recreational facilities, office/reception, storage facilities, residence, ancillary and incidental uses. The covenant originally was placed on the property as a result of the original landowners taking up the incentive to subdivide, subject to the prevailing conditions of the Leeuwin Naturalist statement of planning policy which clearly states either the subdivision of one additional lot or low impact tourist development, not both.

The statement of planning policy required the landowner, as a condition for the subdivision to agree to "continued management of the land to guarantee the maintenance of conservation and landscape values in perpetuity and an absolute caveat on the title of the lot to secure performance of the agreement in perpetuity." When the Leeuwin Naturalist statement of policy was promulgated in 1997 over 300 local farmers and landowners attended a public meeting organised with the help of the PGA to voice concerns over proscriptive and anti-farm development aspects of the draft policy. An anti-development lobby group called the Cape to Cape Alliance had been driving the planning process and private rural landowners were locked out as land use maps were used by the Ministry for Planning to arbitrarily reclassify rural farming properties in the favour of nature conservation and landscape categories of land use. The Leeuwin Naturalist statement of planning policy is now gazetted and enforced with many rural landowners burdened with what has become de facto national park on which they pay high rates and they cannot use the land.

Local politics will always play an insidious role in decision-making. The Leeuwin Naturalist statement of planning policy clearly required the covenanted land never to be developed. Proponents of the adventure training complex had secured an option to buy the covenanted property subject to having the green light to change the covenant to be able to proceed with their development aspirations. The shire president who had been an active and vocal Cape to Cape Alliance and anti-development advocate was elected to council for his anti-development platform, declared an interest in the item when the shire council dealt with the matter as the proponents of the change in land use employ his son. The meeting that decided in favour of supporting the proposal and rezone the covenanted land was scheduled. In time the proponents had to meet the deadline for their option to purchase. According to the interpretation and resolutions of the Shire of Augusta-Margaret River, the length of time for a restrictive covenant in perpetuity is in effect approximately three years.

The irony of this twist is that it demonstrates the fact that subdivisions to create covenanted lots based on native vegetation and biodiversity and/or landscape values alone are not a sustainable land use. It also exemplifies the shallow substance of the raft of environmental policies, legislation and regulations that are being forced on rural and farming landowners for policy making and populist political point-scoring on the run. Yet development in other forms is occurring to benefit other people with certain connections. It is becoming more and more evident that the imposts of these environmental regimes are not only unsustainable but will also fail the inevitable tests of scrutiny by property law regimes and the forces of changing political favouritism.

In our own shire alone I just learned last night that it has hired a solicitor that was working for the Environment Defenders' Office, based here in Perth, and she is now - was called a bush lawyer - she is now being hired as a town planner, to help implement the district scheme that the shire has in a draft form and it's now at the Ministry for Planning, falling back in with - we are under statement of planning policy number 7 and on top of that we have statement of planning policy number 11. So this is the force of law that the farming community is facing over and beyond say any other implications we have that are precluding our ability to use our land. I just wanted to end that even in these instances, and it was mentioned before, the Environmental Defenders Offices had funding from the federal - I believe - attorney-general. They have an office in every capital and they are well funded and they're well supported.

These farming groups do not have the equity of equal funding to be able to put forward their cases of inequity and that's something I feel this Productivity Commission should at least look into and see where this inequity lies. It would help to answer some of the questions as far as how we can gain resolution. Even in the issues of a covenant the Environmental Defenders' Offices had a solicitor by the name of Michael Bennett who did - one of his papers, he pointed out exactly the results that are happening in the Shire of Augusta-Margaret River. They could even see that these things are useless because at the end of the day the discretionary use that Sue brought out is just exactly what John has his fears and concerns about; the people that are being able to make the decisions at the expense of the people that do not have the abilities to fight back.

DR BYRON: Thank you very much, ladies and gentlemen. You've raised a number of issues which we will of course look into and think about but I guess in the interests of time we're going to have to move on now. Thank you all very much for coming and thank you for your input.

MR HYDE: Can I thank you. It occurs to me after the event that we have tried to cover too much ground. If it's possible within the requirements of your evidence taking for us to provide further information and you want it we will try to cooperate.

DR BYRON: Thank you. If I can now call on the representatives from the Conservation Council of WA. Please come and take a seat. If you can then just introduce yourselves for the purpose of the transcript and if you can sort of summarise the submission which we all have and have read.

MR POUSTIE: Can I check whether you've got the full submission just because when I emailed it through I offered to print some off because it's quite lengthy and detailed.

DR BYRON: I've got quite a lot of attachments but I'm not sure if I've got all of them. I have to open by making an apology because of our extended discussions with the WA government people this morning and the way Qantas' timetables work, my two colleagues have to be out of the building right on the dot of 4.00, but I've been reassured that the public hearing is still legally constituted with me sitting here and the transcript still running so please don't get upset. We've actually got somebody else lined up after you, so please don't take it personally. It's just the timetabling problem, if they're going to get to Adelaide for tomorrow's hearings. Please?

MS SIEWERT: You want us to introduce ourselves?

DR BYRON: Yes.

MS SIEWERT: I'm Rachel Siewert. I'm the coordinator for the Conservation Council of WA.

MR DUGGIE: James Duggie, water policy officer for the Conservation Council of WA.

MR POUSTIE: Cameron Poustie, biodiversity officer for Conservation Council of WA.

MR TALLENTIRE: Chris Tallentire, Conservation Council supporter and facilitator.

MS SIEWERT: Thank you for listening to us this afternoon. We would like to give you a brief overview of the main points of our submission. We know that you would have read our preliminary submission and I didn't want to go into a great deal of detail that you've already received. I would like to context our comments in a framework of the enormous environment debt that Australia is facing at the moment. A conservative estimate we believe put up by the Australian Conservation Foundation is that it's going to take 10 years and an investment of about \$6 billion a year to even start to address some of the significant environmental degradation problems that this country is facing.

The Conservation Council strongly supports effective, strong environmental and biodiversity legislation. We believe that for too long our legislation has not been efficient and effective and has not delivered good environment outcomes. We very strongly support the Environmental Protection Act amendment bill that is currently in parliament but in fact believe that further amendments to that legislation are needed. We are fully aware of some of the problems that inefficient environmental legislation in this state has resulted in and we have been aware and we have been pursuing amendments to the legislative reform for some time.

If you bear in mind that many of these problems, environmental degradation problems, have been known for a number of years, in fact salinity is first reported as a problem in Western Australia at least 100 years ago - so in other words, while we've been aware of the problems we have failed to act. While we strongly support the mechanism - we strongly support a combination of environmental regulation and incentives. We don't believe that the existing approach where we've tended to favour the carrot rather than the stick has resulted in good environmental outcomes. If you look at the problems that WA alone is facing with a third of our agricultural land likely to become saline, with 450 of our endemic plants likely to be lost to salinity, there's most of our wetlands are potentially threatened by salinity and that's salinity alone. Then you've got nutrification, then you've got soil acidity, then you've got acid sulphate soils, wind erosion - the list goes on and on - you can see why we are concerned that we have strong and effective legislation.

We are aware also of the excellent work that is being done by the Landcare community, by the natural resource management regional groups that exist in Western Australia. There is a lot of good work that is being done by the community of Western Australia and we're not taking away from that work at all. We would also like to point out that while much of the submissions that you hear probably concentrate on the south-west agricultural zone, that Western Australia also has a vast rangeland area that also needs to be taken into account and does not get a lot of attention in terms of incentives and investment in dealing with the significant environmental problems that area also has. I think that's enough from me as an overview.

MR TALLENTIRE: I'd like to just add a few points to that. In terms of the estimate made by the Australian Conservation Foundation of \$60 billion required to rehabilitate the landscape it was also a joint study commissioned and endorsed by the National Farmers Federation, so that's certainly a noteworthy point. Other estimates in that \$60 billion price range: Dr Carl Binning formerly of CSIRO and now of Greening Australia, he actually came up with a further study that looked at \$100 billion to rehabilitate the landscape and certainly Ian Cawsley's House of Representatives inquiry looked at a figure somewhere between \$30 billion and \$60 billion so I think that really does clarify the extent of environmental degradation that

the nation faces and in light of that the regulation that we have in force at the moment, it can only be said that needs to be strengthened so that we can avoid having further degradation.

To go to a couple of other points, Rachel has already mentioned about the extent of land degradation in Western Australia; 18 million hectares of agricultural land and 6 million hectares likely to go to salt. There are other ways of looking at that in terms of biodiversity as well. In the south-west region John Beard, a botanist, eminent botanist, determined that there were - the 350-odd vegetation types in the south-west region. Two-thirds of those vegetation types have less than 30 per cent remaining of their original extent and it has since been recognised by the Environmental Protection Authority in Western Australia that when you get below 30 per cent you enter into a phase of exponential species decline. So the gravity of the situation for biodiversity as well as for soil and land health is certainly a dire one.

I might just also add that in a previous role I was employed by the Department of Environmental Protection and was involved in the assessment of some 200 notices of intent to clear and it was certainly noticeable that many of the people who were lodging notices of intent to clear had actually bought properties perhaps not understanding fully the implications of the latest situation regarding the protection of biodiversity and the avoidance of land degradation. So people were perhaps buying land, misunderstanding - possibly misunderstanding real estate announcements, imagining that they would be allowed to clear. That was certainly a substantial category of the people that were buying land wanting to clear it. There were others - there was another category who actually chose to buy land that had native vegetation on it with the expectation that they would be able to somehow force their clearing proposal through the system and were therefore able to argue to buy the property more cheaply.

So we've got this situation where people are actually speculating on biodiversity to buy land more cheaply. Neither of those situations are going to really help us ever achieve the sorts of biodiversity protection that we need and are not going to help us in terms of protecting or avoiding land degradation either. A final sort of smaller category of the 200-odd notices of intent to clear that I was able to examine, there was a category of person who was new to the land-owning area. Perhaps it's a trend in society that people like to own vineyards and things, so those people were also a category of people wanting to pursue notices of intent to clear with the Commissioner of Soil and Land Conservation and they were lodging those unaware that they wouldn't be able to clear the bush land on their property for a vineyard that they had perhaps originally intended.

So that is certainly an insight into the degree of speculation and just again serves to highlight that we really do need the regulation in place to protect against unwarranted speculation.

MR POUSTIE: Cameron Poustie, biodiversity officer. Perhaps if we just move through, having set the context a little bit, move through our submission and pick out some of the key points and certainly I would encourage the Commissioners to jump in and challenge us or ask questions as we go. I appreciate that you are sort of bound by your terms of reference but we just wanted to note on that first page that in some ways we think those terms of reference head you off in a sort of blinkered direction. We note at terms of reference 3B in particular that you asked to look at reducing - asked to look at whether biodiversity and that of regulations actually reduce the costs of resource degradation but of course those regulations, and biodiversity regulations in particular, are designed with other purposes in mind. They're designed to meet our international commitments under the commission on biodiversity. The national targets coming out of the national strategy for conservation and biodiversity and, you know, the numerous other objectives that they have, relate - particularly in relation to ecotourism; people that come to Australia to appreciate the relatively unharmed environment that we have compared to other countries around the planet, and of course there's the argument there that perhaps as conservationists we're the only voice for - that certain species have an inherent right to be here, just as we do, and I appreciate that one's perhaps a relatively controversial point.

I'm sure my colleagues will chip in here as I go. Moving to the second page and the issues paper, section 1.1 notes that concerns have been raised about the effectiveness of new regimes and meeting environmental objectives. Well, perhaps we've already made this point in setting the context. We would certainly agree that some of these regimes in Western Australia, regimes that we have had and regimes that we're actually still in the process of moving into, have been relatively ineffective in meeting some of those environmental objectives but they're not ineffective for - effectively the ineffectiveness comes from the fact that the regulations aren't comprehensive enough, they're not enforced well enough, so in essence we're saying it's not that we've had comprehensive and strong regulations that have been ineffective in meeting environmental objectives. We say that we've had weak regulations in the main that have been inequitably dealt with and inadequately enforced. That's been a significant problem for the last couple of decades in particular.

We acknowledge that a lot of the inequity in the enforcement and the way in which those regulations have been handled has been a genuine problem for particular land-holders and no doubt you've heard today from land-holders who have been justifiably wronged, I guess, by the system. We would say - - -

DR FISHER: They feel justifiably wronged?

MR POUSTIE: Yes, sure. Yes, they are quite - it's quite understandable, the level of distress that the application of those regulations has caused them. We would

certainly seek that there's more clarity in the application of those regulations but we would obviously be urging effectively that those land-holders not be strung on by the system for long periods of time for the - you know, the outside chance that they may be allowed to clear. We would like to see that clarity up-front; that biodiversity targets are set and adhered to and that in certain areas of the state there is so little native vegetation left that we're basically saying there should be a very clear "no" about further clearing of that vegetation on environmental grounds.

MR TALLENTIRE: It's certainly true that administratively a system that made it very clear that there was to be no further land clearing in Western Australia would be a very cheap system to administer whereas at the moment we do spend a lot of money paying bureaucrats and people to undertake environmental assessments and that really is in a way an indirect subsidy to the land-holding lobbyists who insist that they should maintain some right to eventually be able to clear land. We're paying for them, for a system - for them to have a system that they still don't like, but we are paying for them to have a system that sometimes has to tell them no. They don't find that palatable but it's at an extreme cost to the whole of society. All taxpayers are paying for this system that nine times out of 10 should be saying no, just so people can feel that they can have their right to eventually diminish environment values in this state further.

DR BYRON: Sorry, can I just clarify that point? Is the argument that the WA Conservation Council running that there should be no more clearing of native vegetation at all in WA or in areas where there is less than 30 per cent of native vegetation, less than 30 per cent of what was there pre-1890 or - I'm just not clear on - - -

MS SIEWERT: We've got to the point in the south-west agricultural zone that we do believe there should be no further clearing of native vegetation.

DR BYRON: In the south-west?

MS SIEWERT: In the south-west agricultural zone. In the pastoral zones we have concerns about the large-scale clearing that is going on there. Sorry, that there is a potential for; for example there is a proposal for cotton that you will be aware of in the Western Kimberleys and there is a proposal to clear stage 2 of the Ord both of which we think are far too big and do not support. But certainly in the south-west agricultural zone, yes, we don't think there should be further clearing in that region.

DR FISHER: For any purpose?

MR O'DEA: I don't suppose the - - -

DR BYRON: No, sorry, we can't take any interjections from the floor.

MR TALLENTIRE: It's important to note that there's an abundance of already cleared land in this state. If somebody can't design a proposal to meet with the already cleared land, to put it on already cleared land, then really they're not designing their proposal very well.

MS SIEWERT: But why I hesitated was there are some utilities, for example, that may require some clearing of native vegetation. So for me to say absolutely none would be - there is some roadside - we don't like roadside clearing but there may be some issues of safety, et cetera, et cetera. There may be some absolute requirement for a utility and obviously there may need to be clearing for that but broad-scale agriculture, no.

DR BYRON: It's sort of important to clarify that because it sounded, sitting up here, that basically you were saying regardless of the opportunity cost there would - you were advocating no clearing at all. So for example if there would need to be an extension to the international runway of Perth Airport that would not go ahead under your proposal.

MR POUSTIE: No, we are advocating a sustainability approach. It's obviously got three aspects to it: social, environmental and economic. But we're really saying in some agricultural areas in particular - well, we're saying the key concept of sustainability is that you have base lines. It's not the case that you can just throw proposals into the melting pot and on the triple bottom line sort of analysis irrespective of how badly they might impact on one of those bottom lines; that something could be justified because of the upsides on the other bottom lines. So we're saying in areas where clearing has been so extensive as to, you know, question the viability of that area, the extent of native vegetation is so limited the environmental factor becomes primary. In other areas clearing could be a more viable proposition if that particular vegetation complex is more adequately represented.

DR BYRON: That was the reason for my question of clarification. I'm not sure who but somebody today - a few people today have talked about coming from areas where 60, 70, 80 per cent of the shire or the eco region is still native vegetation and my question was that if you were to look at economic, social and environmental criteria and if you concluded that that ecosystem was already very well represented in CAR reserves and that particular area was not, you know, of any particularly high conservation significance, and someone could argue that there were - I don't know what, extremely strong social or economic reasons why it was, you know, I don't know - a vineyard at Margaret River or something - whether you would consider that or whether you said that, you know, that the environmental imperative almost without exception takes precedence over any economic or social consideration. That's all I was trying to clarify.

MR POUSTIE: No, we're not saying without exception. The important qualifier; you mentioned the 30 per cent target and it's worth noting that my understanding is that was considered a minimum target so it's not something to celebrate when an area is achieved.

DR BYRON: Not an ideal, no.

MR POUSTIE: It's also a fairly blunt tool. Depending on the particular vegetation complex, ensuring that it's viable in the long term, the percentage might be different. You know, you really have to do that study on a regional basis. Also some of those vegetation studies that Chris mentioned - the Beard study - we certainly think it's useful in a number of respects, but those types of studies only effectively look at the tree cover essentially. They don't get you a proper focus on biodiversity. People like Steve Hopper, the work he does in the south-west, actually looks below that level to the true sort of level of biodiversity underlying it. So I guess I'm making a number of qualifications, saying that if that science has been done adequately, if people have really been able to look at the biodiversity represented in that area, holding onto it in the long term and they have determined that there is enough there such that for social and economic reasons small amounts of it can be cleared then, you know, we would say yes. I guess in a lot of parts of Australia that science hasn't been done, the work hasn't been done.

DR BYRON: Yes, I would agree with that and I think that most people would agree that the science either to completely prove that something is safe or to completely prove that it's not safe, I don't know of too many places at all in Australia we are at that level of scientific precision on these very complex ecological issues.

MS SIEWERT: You would also have to go back to the context in which I started the conversation and that is we have significantly overcleared most of the landscape in - most of the south-west agricultural landscape in Western Australia. We have significant environment debt and significant environmental problems and I would put that we should start addressing those before we start clearing any further.

DR BYRON: Sorry, I interrupted you before. Have we - - -

MR TALLENTIRE: I would just like to add a slightly different aspect to the issue of future clearing in say the - what we call the northern sand plain country; Shires of Gingin, Dandaragan and further northwards, an area of exceptional biodiversity value. It's interesting to note - and here I'm throwing in some background I have in the climate change area - that we have noticed across the south-west of Western Australia a significant decrease in rainfall and a government CSIRO study, the Indian Ocean Climate Change Initiative, has actually detected that certainly changes in carbon dioxide concentration levels in the atmosphere have contributed to climate

change but they are also considering that there's a second driver, a subsidiary driver, of regional climate change and in the south-west of Western Australia it appears that could well be changes in vegetation cover.

In other words, if you clear out areas you diminish the likelihood of rain falling in an area. I would certainly encourage the panel to have a look at the Indian Ocean Climate Change Initiative document that came out in November and it does document that the 25 per cent rainfall decline that we've seen across the south-west region, it's actually been greater than 25 per cent in areas where we've got larger areas of clearing. Interestingly in areas like Dandaragan or Fitzgerald River National Park the decline in rainfall hasn't occurred. So in fact by keeping native vegetation we're ensuring that we're maintaining consistent rainfall patterns. So it's certainly another aspect. So there's a further reason to maintain native vegetation. It's not just biodiversity, it's not just to counter land degradation but it's also, the emerging science is suggesting, to make sure we don't lose our rainfall. We all know the seriousness in any changes in rainfall patterns to agriculture.

DR BYRON: My recollection of that was it doesn't have to be native vegetation.

MR POUSTIE: That's a possibility but then you would throw in other factors like biodiversity - - -

DR BYRON: It's the El Nino effect.

MR POUSTIE: - - - values to counter the fact that - you might as well just retain the native vegetation.

DR BYRON: That was one of my previous research areas.

MR POUSTIE: Thanks.

DR BYRON: Have you finished your opening introductory comments and have we accidentally moved into the question and answer phase?

MR POUSTIE: We weren't proposing that there was any clear distinction between questions so if you have questions that are - I've got other points to move on to as well.

DR BYRON: Okay, I'll make sure to give you an opportunity, in case they don't come up in the question and answer.

PROF MUSGRAVE: Thanks for coming along and thanks for your submission. We take for granted the existence of the objectives of the legislation and our concern is with impacts on parties and the effectiveness of the measures that are employed.

In that respect across the nation there is a very strong reliance on command and control; on taking of rights with or without compensation. What's the position of the council with respect to alternative procedures such as incentive schemes, stewardship, the bush tender type arrangements?

MS SIEWERT: We very strongly support them as I said, but we believe in the need for strong regulation. But on the other hand we also very strongly support incentives. We've been involved in - we're involved in a number of initiatives to try and promote incentives, rate rebates, we strongly support rate rebates - sorry, my mind has got - stewardship; we strongly support the concept of stewardship payments, looking at the value of ecological services, those sorts of things. So yes, we agree, there is a very strong need for incentive schemes.

PROF MUSGRAVE: Do you see a limit to the extent to which we can indulge in this sort of activity?

MR POUSTIE: Some of the points that came up in the issues paper in relation to that, there's reference made to flexibility at one stage and there's reference obviously to incentives per se. We're happy with a flexible approach to be taken towards incentives. We're not satisfied if there's a flexible approach taken to regulation because that's been the case in the past and it's unsatisfactory both from land-holders' perspectives and from conservation's perspectives. As Rachel said, we're certainly very supportive of incentives. We've attached our - - -

PROF MUSGRAVE: Sorry, could I - this is the second time you've mentioned that regulation must be inflexible. What exactly do you mean? No rights of appeal, no negotiation?

MR POUSTIE: No, we're talking about clear rights. Well, in the submission, page 7, what we're really saying is that sometimes so-called flexibility in regulation manifests itself as government departments selectively not enforcing things. There's a connection there with strong regulations. If the regulations don't result in significant penalties, in appropriate circumstances, then departments won't chase them because it's not worth their time economically. So we do support penalties that are sufficiently deterrent and that departments are encouraged to take a strong line where a strong line is warranted.

PROF MUSGRAVE: Do you have any specific instances of this? At the moment you're just asserting them and so assertion does lack a certain persuasiveness.

MS SIEWERT: The example that you were hearing before in terms of Binu, it seems to me there's a difference within an agency itself in the way it's applying the legislation.

PROF MUSGRAVE: Does indeed, yes, you're quite right. That's a good example, as you say.

MS SIEWERT: We've been, in this state, for the last - you probably heard this morning; confusion has reigned over how the soil regulations have been applied. It's unclear when illegal clearing occurs. Those sorts of - - -

PROF MUSGRAVE: So the lack of clarity arises from the discretionary possibilities open to the agencies.

MS SIEWERT: Yes. We totally agree the legislation to date has been very poor and has been applied - I'm just trying to think of the right word - ad hoc.

MR POUSTIE: Discretionary.

MS SIEWERT: Yes.

MR DUGGIE: I think if I might add - James Duggie - that with respect to implementation of the existing regulations on land clearing that there have been - the government has relied upon the Soil and Land Conservation Act and it has from our perspective a number of flaws in terms of being an effective regulatory tool for controlling - - -

PROF MUSGRAVE: So you would want land clearing - - -

MR DUGGIE: So there are questions about, for example, when - what is the burden of proof that the agency has to provide to be able to successfully prosecute, and there have been various interpretations within the agency about what they need and caution about when they should proceed and whether it's just more effective to engage in discussion with land-holders that aren't complying.

PROF MUSGRAVE: So you think it would be more appropriate to shift the burden of proof onto the land-holder?

MR DUGGIE: Yes. I mean, that's one of the measures that hopefully we'll be taking up in the EP Amendment Act whereby a failure to comply with regulations will be sufficient for prosecution rather than getting into the detailed causation of physical consequences based on, you know, what happens.

PROF MUSGRAVE: If we go back to the Binu case and once again abstracting from the malfeasance of some of the people in Binu, what is your response to proposals such as the PGA put forward, where it is suggested that possibly the parties can get down and negotiate? As I read your submission that would be anathema to you because there's a trade off proposed.

MS SIEWERT: I haven't seen the detail of the PGA's proposal.

PROF MUSGRAVE: Sorry, of course you haven't, yes.

MS SIEWERT: Certainly we would have concerns. What we would like to see is of course vegetation protected. We don't like seeing vegetation being cleared illegally and we have some concerns if in fact appropriate measures aren't taken to ensure the restoration of that vegetation. It sounds like the clearing occurred some time ago but when the government brought in their Environmental Protection Act Amendment Bill, introduced it into parliament last year, they made it very clear that it was retrospective and that any clearing that occurred after that date would have to be rehabilitated.

PROF MUSGRAVE: I'm doing a lot of abstracting but if we abstract from the south-west problem where your argument is that we've overcleared, that is we've crossed some threshold and so any scope for trade off between three elements of the bottom line isn't on and I understand your logic there, in other areas where that threshold hasn't been crossed and so the scope for trade off could be argued to exist, would you entertain a more negotiated proposal - resultant outcome, where the state proposes outcomes that it likes and then negotiates with the community as to ways in which that outcome would be achieved rather than absolute demand and control.

MR POUSTIE: I might just take issue there with whether the regime we're moving into is absolute command and control. We're moving into a more strict set of clearing regulations but there are a whole series of exemptions. There are a whole series of opportunities for governments to do the sorts of things you're doing and to enter into those trade off scenarios. They can for example propose to clear new areas for urban housing and then come out of the clearing proposals, the operation of the clearing regime. So it's not an absolute. Certainly don't want you to go away thinking that the new clearing regulations we're moving into impose some comprehensive clearing ban - - -

PROF MUSGRAVE: Not agricultural.

MR POUSTIE: Yes, they primarily impact on agriculture at the end of the day.

PROF MUSGRAVE: So you're saying that therefore the opportunity cost in agriculture foregone in no way outweighs the benefit of increased conservation activity at the margin. That's not conceivable, outside the south-west?

MR DUGGIE: There is a context for that kind of discussion that might be if we look at a particular region and look at biodiversity values and objectives for that region; having a regional strategy for biodiversity and conservation, being aware of

all the potential threats for land degradation and salinity and what needs to be addressed to ensure that we avoid land degradation. I guess in terms of sustainability we would support the concept of a duty of care for all land-holders to manage their land in perpetuity in a sustainable way and to manage the environmental impacts of their operations in a way that's sustainable and avoids unacceptable environmental impacts. So if all those things, amongst others, have been sorted out that would be a good context for making planning or strategic decisions about what is appropriate land uses and what isn't.

That's the scenario that I'm painting that we're a long way from achieving. Most of the time decisions are being made on an ad hoc basis without any of that comprehensive strategic analysis, decision-making and strategy in place. So whilst it's a nice idea the argument, the cases that we see on a daily or a monthly basis in Western Australia, aren't being played out in that context at the moment.

PROF MUSGRAVE: Thank you, I'd better shut up because we've got to go soon.

DR FISHER: I just had two questions. You made the observation that you thought there was some evidence of inadequacy in the application of the regulations in Western Australia over the last 10 years. Does the council have a view on how individuals should be treated who - where it is demonstrable that they've been denied natural justice? Do you have a view on what should be done with those individuals, or for those individuals?

MS SIEWERT: We were members of the native vegetation working group that - sorry, time flies - in about 1997-98. That group came up with a set of principles by which we thought that native vegetation, protection of native vegetation should be considered in and that was looking at the question of equity. I would suggest that you have a look at that, some of those principles, because I think they're still extremely relevant. Unfortunately a lot of recommendations in that report weren't picked up. It happened at the time of the change of government and it fell between the cracks. But one of those clear principles was the issue of equity and how we dealt with cases that were very hard to deal with because some land owners had been dealt with unfairly - we felt unfairly - and they needed to be dealt with - those issues needed to be addressed and you needed to deal with those cases on a one-by-one basis.

Some of them, there was so much detail in them that you couldn't come out and make a blanket recommendation to deal with all of the cases that needed to be dealt with on a case-by-case basis. But we certainly feel that the issues of equity are very real and that they need to be addressed but that shouldn't then be used to halt - to cover the fact that there are significant issues in native vegetation protection that need to be dealt with and we need to look at how to move forward on those.

DR FISHER: Yes, I was concerned in this question about the individuals who you could demonstrate had been denied natural justice. So you have no problem with respect to fixing those issues?

MS SIEWERT: Yes, but we don't want - we feel that should be in the context of ensuring good environmental outcomes as well so the argument is that if you were saying, well, they should be allowed to go ahead and clear we would argue no, you need to address the issues but that doesn't result in a bad environmental outcome. You could still address any injustice that has been done.

DR FISHER: I wasn't necessarily trying to ask you to give me the solution that they should immediately go out and clear land necessarily, but you're not - you're effectively saying to us that (a) you believe that there's been problems in the way in which the regulations and the legislation has been administered and (b), that you have no issue with respect to dealing with, in a sensible fashion, those people who have been denied natural justice in the process.

MS SIEWERT: Where it's clearly demonstrated.

MR DUGGIE: I think that's - - -

DR FISHER: Right, good. A more difficult question for you, and I've asked this question of several witnesses and I still don't think I've got an adequate answer: it seems to me that the problem that we face here is one where we have the society at large, has decided that it needs a set of ecological services. Now, you and I probably would argue about what they are but let's put that aside. There is a set of ecological services that need to be delivered but we have a rather difficult situation on our hands in the sense that a group of individuals were encouraged by this state actually and in fact if they didn't follow these arrangements their land was taken from them, and if they didn't clear up to the specified amount in the past. So a whole bunch of individuals in the past have been encouraged by the state to clear land and those people who are left, rightly or wrongly, who have uncleared land, are now delivering environmental services for the community generally and for the land-holders who cleared previously. So that's the problem. Now, what - it seems to me what we have here is a situation where we have both inter-temporal and inter-personal equity problems. Do you have a solution for me?

MS SIEWERT: If I had an absolute solution for it I'd probably be - hopefully we would have applied it by now, but we've got some suggestions. For a start I'm putting to one side the argument that it all was driven by state policy and I think there's a whole thesis could be written on how that state policy came to be in place in the first place, in terms of driving the clearing debate. Some of the ecological services provided are obviously of value to the farmers themselves, for a start. So it's not fair to say, I don't think, that anything that we're suggesting in terms of

environment protection and biodiversity protection is purely for society's benefit, it's also for the land-holder's benefit.

DR FISHER: No, no, I didn't say that. I said that there were a bunch of - there's a bunch of individuals, be they farmers or society more generally, who are being delivered ecological services, but there are some suppliers now who for no fault of their own necessarily find themselves supplying a good for which they're not being paid. So how do we solve that problem?

MS SIEWERT: Okay. For a start we think that the produce that we produce should be starting to factor in the environmental cost of production but secondly also we believe that there needs to be further work done on - research into the value of ecological services and then how as a society we pay for those. We would also argue that society is starting to pay for some of those things through NHT1, through NHT2, through some of the rating and tax - conservation tax incentives they're trying to introduce, albeit that some of them are actually having perverse outcomes as we heard. The well-known Serpentine-Jarradale example, which is a perverse example that needs to be fixed, that we start as a community paying for some of those ecological services and the council has been promoting for some time, in fact a long time, an environmental levy. We haven't got the answer to how that should be applied. There's a variety of mechanisms to which that could be applied but we certainly believe there is now a very strong argument for the application of an environmental levy that then is applied to specifically addressing the land degradation issues that this country faces and this state faces.

MR DUGGIE: I think it's important to make a distinction between the timing of when there's conditional release - the conditional purchase releases, is that what they were called? The leases that required clearing; they haven't been in place for at least 15 years, might be longer, and state government made it very clear shortly after that in cabinet decisions that they were very concerned about clearing and stuff like that. So in terms of messages from the state government, certainly been a little while now for land-holders to catch up with a different regime. There is this question of how you deal with the historic - the inequities you might argue have been established because of the historic situation of some being able to clear and others not being able to clear.

If you start trying to right the inequities of the past it gets complicated depending on how far back you go and I guess there comes a point where we have to say, "Well, perhaps the starting point now is to require that all land-holders try and manage their land sustainably." The question of how much - what aspects of sustainable land management can be suggested as for the common good as opposed to what should be just a simple duty of care and managing one's land management operations sustainably, I guess that's the crucial question. We would certainly draw the parallel between requiring any particular industry to manage its emissions in a

sustainable way to avoid unacceptable environmental impact. So if we're talking about a petroleum industry proposal it will go through an EIA assessment process and it will have to ensure that its environmental impacts, if it's to go ahead, need to be acceptable. I think that's the kind of situation we should apply to land-holders.

So land should be managed sustainably and that means off-site impacts should be minimised. That's part of it. If you're talking about re-populating a particular region with mammals that were threatened and had been locally extinct and you're asking land-holders to pay for that maybe that would be unfair but I think a lot more work needs to be done on deciding where that distinction is, between where the community should pay for land management practices and what is appropriate for land managers just to be doing.

MR TALLENTIRE: If I can just add to that - - -

DR FISHER: Thank you, I mean, I'm sure that - - -

DR BYRON: I'll listen, I'll follow it up and you can read the transcript.

DR FISHER: Yes, exactly. Prof Musgrave and I have to go and I'm sure we could have an extremely long and fruitful debate about this and I apologise that we must leave you.

DR BYRON: But carry on.

MR TALLENTIRE: In the first instance the equity issue perhaps should be achieved at a catchment level where we're recognising that the people who benefit most from having ecosystem services provided in a catchment are adjacent land-holders so perhaps at a catchment scale we could make sure that the equity is achieved there so those who are producing agricultural products, they can perhaps be waged a levy and that levy could be paid into a biodiversity conservation fund that could then be directed towards those who own bush land in the catchment.

DR BYRON: I think there's some confusion when we get into these sorts of equity issues because there are actually two: the first one that I think Brian was referring to and we've seen this quite often in our field visits, one property where 20, 30 whatever years ago the landowner decided to get rid of all the damned trees off the property. Now, if he wants to put in centre pivot irrigators or whatever, go for his life. He pays no costs; he's not being asked to do anything at all. The guy next door who, either because financial constraints or even because he happens to love native vegetation, has got 30, 40 per cent of his property still under native vegetation, he's got scattered trees throughout the paddocks, when he now wants to put in his centre pivot irrigator like his next-door neighbour, he has to have biodiversity survey to see whether or not there are rare and endangered birds there. He's been told he has to plant, in one case,

7000 seedlings if he wants permission to remove four paddock trees.

This guy is then told he must set up a permanent conservation area over a third of his property. Now, his argument to us is that because he has been "doing the right thing" he's now getting all these impositions, all these fees that he has to pay for, the consultancy reports to prove that there's no endangered flora or fauna, he's having to pay all these offsets and having to purchase fencing and everything else because he was doing the right thing. Meanwhile his neighbour with whom he's competing to produce the same bags of wheat or cattle or whatever it is, his neighbour is Scot free. That's the sort of one-on-one equity. There's the other question about whether the first farmer should actually pay the one with all the vegetation for ecosystem services directly provided.

MS SIEWERT: That's one of the points I wanted to raise before when we were discussing it before, and that is the emphasis seems to be on the farmers that have got a lot of the vegetation and things like that. What we should also be looking at is the farmers that have cleared in the past and how they, as Chris was saying, are actually receiving the ecological, ecosystem services that the farmer with the vegetation is providing and we need to look at, well, the farmers that have already cleared, they need to get their vegetation cover up. If you look at the catchment problems that we've got in Western Australia, in some catchments the hydrological work has shown that we need to revegetate by perhaps up to 70 per cent. So that means that the farmers that have the native vegetation are actually already ahead because they don't have to revegetate. Certainly the farmers who have already cleared are going to need to revegetate and it's something we haven't bitten the bullet as a community yet is how are we going to do that to the scale that we need.

DR BYRON: And who's going to pay for it.

MS SIEWERT: And who's going to pay for it.

MR POUSTIE: The other equity point that's worth emphasising I guess is that - presumably the commission would be very amenable to this - is that all industries should be treated in the same way. We're not trotting out things that we expect of land-holders that we don't expect of polluting industries and these sorts of things. Those industries are a good example perhaps. They have higher standards now than they used to. They're expected to comply with environment impact assessment requirements, et cetera. That imposes costs but it's deemed to generate benefits in the longer term for the community. So we're expecting analogous requirements across the board, including for land-holders. I guess the other point also in relation to equity is that you wouldn't, if there were two industries and one had got in nice and early with a state agreement act and was able to pollute more readily than a new industry proposed next-door, we would not accept and I don't think the community would accept that that second industry, just because they didn't start earlier and didn't

start polluting earlier should not be allowed to pollute at the same rate.

The community's expectations have changed, the standards have changed. Unfortunately that person who is the second polluter, if you like, has to abide by the modern standards.

DR BYRON: So there is an inherent inequity of treatment based on who was there first or who got in first. When the Western Australia government people this morning were talking about the polluter pays principle, it seemed to me that it was the guy next door to the polluter pays. The polluter himself, the one who might have cleared every piece of native vegetation off the property 30 or 50 years ago isn't actually paying anything at all at the moment.

MR POUSTIE: Well, currently, but I presume what they're actually pushing for is a change in system, moving towards some sort of ecological levy. I guess the state government presumably is acknowledging that the current system does not adequately pick up those externalities and we certainly would support some sort of levy concept that does mean that the person next door to the polluter does not pay.

DR BYRON: One of the questions that I've been asking everybody that comes to the hearings or people that we've met in the visits, it seems to me that just passing a law or regulation that tells somebody that they're not allowed to bulldoze a particular piece of native vegetation doesn't ensure the long-term survival and good quality of that remnant.

MS SIEWERT: Yes, the classic examples in here, in Western Australia, are the water supply catchments where regulations were brought in in the 70s to stop clearing in particular water catchments, those areas were not looked after, they were not fenced and they are slowly degrading and the biodiversity value is being lost despite the fact that there was significant compensation paid that - I use the term compensation there - compensation paid and it has not protected that vegetation. So it's a very good point.

DR BYRON: The Australian Conservation Foundation said to us that they think in certain cases - they were talking about western Queensland I think - overstocking with livestock is just as certain a form of land clearing as using a bulldozer. It just takes 30 or 40 years rather than a few days.

MS SIEWERT: Yes, we've got many examples in Western Australia of that as well.

DR BYRON: But the corollary question there is that if a prohibition, even if fully enforced and rigorously monitored with strict penalties and all the rest of it, prohibition against clearing doesn't necessarily equate with active management and

protection and conservation of those values. I think that's the end point that I believe probably - all or at least most of us want to get to. I don't know anybody who wants their kids to drink dirty water and breathe polluted air and, you know, not see native animals any more. So if there's a certain amount of consensus about the ultimate objectives that we're all trying to get to in terms of sustainable land use are there ways that will get us there much more effectively, perhaps with less cost to the taxpayer, perhaps with greater certainty, perhaps with fewer of these perverse outcomes that we've heard a few examples of.

MR DUGGIE: Can I just - I mean, looking forward is an important part but in terms of the current situation, well, I've had the argument put to me a number of times that passive clearing, all those different types of vegetation destruction that can happen over time - it's not just physical clearing - are happening in Western Australia so why is it important to get strong land clearing controls in place? Well, if we know that we've over cleared and we're not effectively controlling clearing then to actually make it illegal to clear inappropriately is at least a starting point and perhaps if that - it can mark a change in era hopefully so that everyone can understand that it's actually important that we retain our native vegetation.

DR BYRON: I think most people do understand that and the question is the mechanism when we get there.

MR DUGGIE: I appreciate, with respect, in Western Australia there are many people - well, not many people perhaps, not a large number of people but some very vocal land-holders that don't respect or appreciate that fact and don't really appreciate why it's such a problem that they shouldn't be able to clear their piece of land.

DR BYRON: I understand the problem of death by 1000 cuts and all that sort of thing but it's interesting on the semantics and the epistemology and so on, the world views on this, that just about all the farmers and farmers' organisations that we've spoken to in every state and territory are portraying themselves as stewards. Most of the environment NGOs and most of the EPAs and national park services and so on that we've spoken to see landowners as either current or potential ecological vandals who are going to do terrible things unless they are strictly controlled. Now, I suspect that the truth probably lies somewhere between those two polar extremes.

MS SIEWERT: I think that's an unfair - sorry, I think that's probably an accurate portrayal of how we used to be and when we get on the extreme sides of the debate about clearing, yes. However, there's a whole lot of stuff in the middle and you've seen ACF and NFF work together on land degradation and in this state, in Western Australia, we work very closely with a large number of land-holders. I personally represent the conservation movement - person with conservation expertise, you don't represent - on the Natural Resource Management Council where we work very closely with land care groups and with NRM regional groups; a whole range of

production groups, to look at how we can move forward in a positive - how we can move forward with incentives, lobbying jointly with landowners on incentives, trying to write papers on how we can move forward on changes to legislation that actually get rid of any perverse outcomes.

So yes, you're right, where we should be putting more effort - I mean, we come here because there's an inquiry that's been put up because somebody's lobbied to get a Productivity Commission review into the impacts of native vegetation and biodiversity regulation on farmers. What I would - - -

DR BYRON: Not us I should add - not us.

MS SIEWERT: What I would prefer to be here talking to you more directly about is what are some of the positive incentives we can get in place? What are some of the obstacles to actually moving forward, to actually getting more investment on the ground about how we get trees in the ground. That's where we do the vast majority of our work, is actually with the farming community trying to do that.

MR POUSTIE: Yes, we're addressing a commission inquiry that seems to be looking at the prospect of reducing the scope of regulation or reducing the strength of it so we are, in response, I guess focussing our comments on those land-holders who are at the margin who, in the absence of, we say, strong regulation, would be doing the wrong thing. We don't make sweeping generalisations about land-holders in general.

DR BYRON: Well, my previous assignment was looking at land use practices that affect water quality entering the Great Barrier Reef, a report that we finished a few months ago, and if you had a look at that report you would see that we recognise that in all the different industries from mining, beef, cotton, sugar, dairy and tobacco, cane, bananas, horticulture, you could identify some land-holders whose current land management practices were absolutely impeccable, unimpeachable. There is another group who are trying very hard as and when they can to do the right thing. There's another group who probably could be persuaded, perhaps with a little bit of encouragement or financial incentive or a bit more education or whatever, and so on and so on, and down the other end there are some really recalcitrant people who just wouldn't take any notice of this unless you hit them around the head with a great big two by four.

My argument there was that we actually need a variety of different policy mechanisms to work with each of those types of land-holders and the people who are already doing the right thing or trying very hard to do it, it's unhelpful, it's counterproductive to beat them around the head with a two by four. It doesn't help and it actually harms. So where I'm coming from is the suggestion that we actually need a whole suite of different ways of dealing with these very diverse ecosystems

and topography, land uses, land use potentials - very diverse landowners, you know, even adjoining - - -

MS SIEWERT: We would absolutely agree with you and that's why we find that, you know, when people ask us for one simple solution there is no one simple solution to the issues that we're dealing with and you're absolutely right, we need a suite of mechanisms that deal with these issues that go from the incentives, stewardship payments, whatever, through to bottom line regulation. But we would much prefer to work with incentives because regulation, forcing people to do something against their will, is not the way to generate the sort of behavioural change that we need to actually change the way we manage the landscape to get good environmental outcomes.

DR BYRON: Yes, I think the corollary to that is that these things can be mutually reinforcing, that if you've got a good education program it helps with the people - you know, the voluntary land care movements and extension services, and the fact that there is a big stick in the closet downstairs may even focus peoples' minds on it a bit more than they would otherwise, but the question of - I guess what bothered me a bit is relying too heavily on, you know, the big stick. Please don't think I'm saying we shouldn't have any legislation at all. I'm not saying that. I'm saying it's important that we have, as you said, clear and strong legislation; that we're not relying on that as our only way of achieving the sorts of outcomes that I suspect the majority of people are working towards. Now, it may well be, as you've said, that there are some people who feel that they've been denied due process and natural justice and there are ways of dealing with that.

MR POUSTIE: Sorry, just running with that analogy briefly, we absolutely agree, as long as the result of that analysis means you don't throw away the two by four. We're saying certainly look at a package of incentives, be flexible in relation to what works for different types of land-holders but keep the stick. We're saying that in the main, in the last few decades, the stick has been too small or it's been used so rarely and in such an ad hoc manner that it might as well not be there at all. So the people for whom the stick works, the message didn't get through to them. So that's really what we're saying: keep the stick but also there's a whole world of incentives, work that can be done and should be done, some of which the state government is moving in that direction now with the proposed biodiversity act, and in addition to adding those incentive programs, the removal of disincentives or the - getting different regulatory schemes that actually create mixed messages about environmental outcomes, getting those aligned is absolutely critical and we come back to the Serpentine-Jarradale example again.

DR BYRON: That's the point we were talking about before, that there have been mixed messages and the departments are at cross-purposes. Even within departments there are conflicting signals and people just get clagged up in the whole system and

don't know where they're going or whatever.

MS SIEWERT: Yes. There is certainly a lack of integration in this state and probably most other states between natural resource management agencies and lack of integration and coordination, absolutely. But that is not the sole reason, I'm not saying that by any stretch of the imagination, but it has contributed to the problem.

DR BYRON: Yes, it hasn't helped that different departments are each vigorously pursuing the legislation they've been asked to pursue and that legislation is contradictory or incompatible with other pieces of legislation other departments are pursuing.

MS SIEWERT: We suffer in Western Australia from a lack of integrative legislation on natural resource management and we have a position that we need an overarching piece of natural resource management legislation that better coordinates our various pieces of legislation.

DR BYRON: Yes.

MR POUSTIE: And we need a single body providing leadership on biodiversity conservation in particular. The submission we've attached to this in relation to the Biodiversity Act talks about that. Certainly if the message of better integration was coming from a Productivity Commission report early next year when this thing is getting to parliament, that would be very timely.

DR BYRON: We'll see. You've reminded me though of the EPBC. That's another layer of integration that we need to look at between - not only within states, across states and between states and the federal. Some conservation organisations that have said to us that the Commonwealth's EPBC Act is completely useless and it's too small a stick, it's hardly ever wielded and everything else. Others have said it's terrific and it's achieving all that was ever expected of it. I was wondering how - well, first of all whether the EPBC has actually been used in the natural resources area in WA yet and if so whether or not it's been compatible with the state legislation.

MS SIEWERT: It has in terms of - there's currently assessment being undertaken from Ningaloo. Well, there was. I think that may be on hold now that the state has rejected it, so that's not - the Moore's Landing - - -

DR BYRON: Yes, I should have asked first whether the bilaterals have been signed for - - -

MS SIEWERT: Yes, they have.

DR BYRON: - - - both assessment and approvals or just assessment.

MS SIEWERT: For assessment I think.

DR BYRON: Just assessment.

MS SIEWERT: I don't think approval was but I could be wrong on that, sorry.

MR DUGGIE: The EPA Act hasn't yet been amended - it's still in parliament - to actually give effect to the bilateral.

MS SIEWERT: But it was signed, the assessment one was signed in about August last year. So the Commonwealth did commence on the Ningaloo one but it's stopped now that the state has rejected Ningaloo. Various oil and gas proposals have been referred and I don't think there's been many, if any, assessments. I think they've basically relied on what the state has been doing and as far as I'm aware, and again I could be wrong, I don't think there has been any - I don't think it's come up, any agreements. I don't think so anyway.

DR BYRON: No, it's just that in Queensland for example we were told that the Commonwealth definition and the state definitions were quite different and actually incompatible and one piece of legislation sort of required you to do something that was illegal under the other piece of legislation.

MS SIEWERT: We don't have the same issues here.

DR BYRON: Okay, that's good.

MS SIEWERT: The other thing is our act, the Environmental Protection Act in Western Australia, is probably one of the - when it's applied, and stronger Environmental Protection Acts in Australia - it certainly was. Some of the other states are bringing in new legislation. We've always had a very strong involvement in terms of, there's a very clear process, the way issues are referred to the EPA and the way the community can engage in that environmental impact assessment. So I think because we've engaged more with our particular environmental legislation people are engaging less with the EPBC or look to using the EPBC Act in Western Australia because we already have a significant piece of legislation.

DR BYRON: Could we cross back to the range lands and pastoral leases that we mentioned in passing before. We've travelled through some of the pastoral leases in New South Wales and western and northern Queensland where lessees actually showed us the lease that said that they were required to clear X thousand hectares and to ringbark X thousand more hectares actually as part of their lease. My rather flippant comment was they were lucky they haven't lost their lease because they

haven't cleared as much as they were supposed to. But I mean, clearly these things were written, you know, 20, 30 years ago. But now the pastoralists are saying that the absence of fire-stick farming and the change in macropod population is basically leading to what they call timber thickening which I, as a forester, would probably call just regeneration, but what was open savanna woodland is rapidly becoming a fairly impenetrable young forest that you can't ride a horse through any more.

MS SIEWERT: I don't feel qualified to comment on pastoral activity in Queensland because we have a very different system over here so I don't feel qualified to comment.

DR BYRON: Well, I was up in the Fitzroy River - not the Queensland, the WA Fitzroy River - last year and I was wondering about whether that same sort of regeneration increase in tree density, whatever you call it, has become an issue in pastoral leases in WA.

MS SIEWERT: As far as we're aware not really. We have a really significant problem with inappropriate fire management in the northern range lands, where frequent burning is actually taking out significant ecosystems and it's changing the vegetation landscape which is now leading to a loss of species and we are now starting to identify - scientists are now starting to identify a significant species decline in the northern range lands that has not been identified and it's come up fairly suddenly for them and that's as a result of inappropriate - I think one of the issues, sorry, is inappropriate fire management practices. But it's not leading to the same problems as it is in Queensland as far as I'm aware. So I really couldn't comment on the Queensland issue.

DR BYRON: Okay, right. No, sorry, I didn't - I wasn't fishing for a comment on Queensland; just whether that issue of - well, it raises the issue of regrowth more generally. I've seen it in two different contexts: one where land that 40 years ago was sown to wheat for a few years, then it was sown to pasture and it was grazed for four or five years and then destocked and it's now, you know, 10,000 seedlings to the hectare that are 10 centimetre diameter and four or five metres high. Now, the landowners there said - and this is across tens of thousands of hectares, and they're no longer allowed to touch that because it's regrowth that's more than 10 years old in New South Wales. When I see the word "regrowth" in WA context, should I think of that sort of successional regrowth or should I think of the pastoral lease where what used to be, you know, 10 trees to the hectare is now 500 trees to the hectare?

MR POUSTIE: Are you talking about whether or not you're allowed to clear regrowth in WA?

MS SIEWERT: No, it's not - - -

DR BYRON: Well, what do we mean by regrowth in the WA context and the second question is, under what conditions are you allowed to do something about it if in fact the landowner does want to do something about it?

MR TALLENTIRE: I think at the present moment the Commissioner of Soil and Land Conservation has a working definition that regrowth vegetation that shouldn't be allowed to be cleared is vegetation that's two years old. Certainly the ecological values of vegetation that's over two years old could be quite significant in terms of assisting in the control of the hydrological - soil hydrology. In terms of biodiversity it's very much part of the nature of our Western Australian ecosystems that they can regenerate and as you say, we've seen instances where people have even cropped areas, cleared and cropped, and then abandoned and the bush has come back brilliantly.

MS SIEWERT: But in answer to your question, it's not the same - in Queensland I know they use the term "what are your weeds" and things like that. The sort of regrowth - - -

DR BYRON: I don't use that phrase.

MS SIEWERT: No, no, I wouldn't normally but I know that's what they use over there. In WA the regrowth is not the same issue. It comes back, depending on how long ago it was cleared, as more likely vegetation systems, if that's the question that you're asking.

DR BYRON: Yes, and that the - once it's more than two years old the landowner can't touch it without a permit from the Soil Conservation Commissioner?

MR POUSTIE: Needs to lodge a notice of intent to clear.

DR BYRON: Yes, right.

MR POUSTIE: But the new regulations we're moving to, the two year thing won't matter at all. It's just native vegetation more broadly. That's right, yes? So the new system is broader in its impact. You don't have sort of arbitrary definitions like that.

DR BYRON: Just anything?

MS SIEWERT: If it's native vegetation.

MR POUSTIE: Subject, as I say, to a whole suite of exemptions but I think the situation we're talking about there is not exempted.

DR BYRON: Yes, I mean, the problem that arises in New South Wales with - if it's

less than 10 years old you can clear it and if it's more than 10 you can't, which means that everybody rushes out and knocks it down before it's nine and a half, which is frequently perverse and frequently, you know, environmentally and financially a stupid thing to do but people feel they need to do that otherwise they lose the capacity to cultivate that land at some future date. They would argue they're actually on a long-term successional fallow; that it's a 40-year cycle with two or three years of cropping, two or three years of grazing, 30 years of Callitris and then back again. They've been through that cycle five times but now the cycle is broken because if it's more than 10 years old you can't touch it.

MS SIEWERT: It's not the same. We don't do that.

MR POUSTIE: We could find ourselves in a similar problem though because the new clearing regulations say that planting native vegetation is not covered, so you can plant it and then clear it. That's what they say at the moment but the expectation is the regulations will say that replanted vegetation of a certain age would then be protected. We're still waiting on the regulations.

MS SIEWERT: We haven't seen the regs yet.

DR BYRON: Because we've had submissions from a couple of the states where people have planted indigenous species, not necessarily endemic but indigenous to Australia, on what used to be ploughed potato field for example, and when the trees and stuff is 15 years old it's classified as remnant native vegetation and they can't - - -

MS SIEWERT: Okay. We also have legislation over here called - it's not called the right to harvest legislation now, is it? Is it that? The right to harvest legislation. So there's actually a piece of legislation that has either gone through the legislative council or going through the legislative council - yes, gone through - that actually you can register your planted vegetation that you want to be able to harvest. My simple version is that you register it and then you'll be able to harvest it later so hopefully that will deal with that issue.

DR BYRON: We've had land-holders in other states saying, "From now on if I plant a wind break it will be radiata or it will be poplar or willow because if I plant eucalypts, acacias, casuarinas or banksias it will be classified as remnant native veg and - - -"

MS SIEWERT: That's what this legislation seeks to address, the right to harvest legislation seeks to address.

DR BYRON: I've only got one more question but you had a few more things that - - -

MR POUSTIE: I don't think so, no. I think we've - - -

DR BYRON: You've raised the duty of care before and yesterday I was rereading the national framework for the management and monitoring of Australia's native vegetation from the natural resource management ministerial council, so it's the Commonwealth and all the state and territory ministers, and they're talking about the duty of care. If I could just read this paragraph:

A duty of care with regard to native vegetation management could reasonably expect it to include protection of endangered species and/or ecosystems, protection of vegetation on land at risk of land degradation, eg from salinity or erosion, protection of riparian vegetation, protection of vegetation on lands of low agricultural capability and protection of vegetation on acid sulphate soils. Depending on regional circumstances duty of care may invoke other management actions or priorities.

They then go on to say that financial assistance shouldn't generally be paid to land-holders to meet their duty of care for sustainable land management. I think from your submission you would agree with that statement, but I was wondering if there is a flip side to that; is that if someone can demonstrate that they haven't violated their duty of care as defined then they can basically practice whatever form of agriculture on their freehold land they think fit. Is that a necessary converse? I mean, if you establish a duty of care does it remove the need to be highly proscriptive about everything else that you must do? Would it be safe to say that provided you can prove that what you have done has not violated this duty of care, as fully defined, go for your life.

If someone wants to plant a particular configuration or use a particular type of machine that hasn't been used before, we've had evidence earlier today about innovation and new types of cropping systems: types of agro-forestry that weren't even dreamed of 10 years ago when I worked for ICRA, the International Centre for Research and Agro-Forestry. So rather than trying to prescribe what you can and cannot do on every piece of land, to me if there is a case for the duty of care it sets the bar at the required level and it says, "Okay, provided you don't violate that off you go."

MR POUSTIE: I'm not sure I follow the distinction. I would have thought that for a duty of care to be useful and, you know, coming back to the point we were making before about being clear for land-holders, what they can and can't do, I would imagine it would have to be reasonably prescriptive. So you might just be coming at the problem from a different angle but you would effectively be - you would either be teasing out a fairly detailed list of things that you could do, rather than perhaps the pure regulatory approach which teases out a detailed list of things you can't do.

DR BYRON: I think it would be in terms of - I guess I am thinking a bit in terms of outcomes. Provided you don't lead to an increase in salinity or an increase in volume of soil leaving your property, going into the river basin or whatever, provided that you can demonstrate that, you know, no rare and endangered species have been lost as a result of the way you've managed your property and rather than saying, "You have to do it this way," or "You have to use that type of machinery," or "You have to do it in that spatial configuration - - -"

MS SIEWERT: It seems to me that you would need to be able to demonstrate meeting that duty, have a mechanism of meeting that duty of care and a framework within which you are meeting that duty of care and for example I know people are talking about environment management systems, applying those to farms and I know there is work being done all over Australia about how you would develop those systems. They could be mechanisms that help you achieve that duty of care, but I don't think it would work if you just said, "Okay, I'm meeting my duty of care," without a mechanism to actually demonstrate that you are actually meeting that duty of care.

DR BYRON: Or that conversely, the onus of proof the other way around; someone would have to prove that you had not met your duty of care. I mean, we had quite lengthy discussions with Carl Binning last week and Carl's problem as a CEO of Greening Australia is that he meets land-holders whose reaction is, "You want to tell me how I should run my property but when you actually come out here on the ground you can't tell me how to run my property." Now, it seems to me that Australia is extraordinarily heterogenous in terms of topography, lands, vegetation, soils, rainfall, everything and so to try and prescribe from Canberra or Brisbane or Sydney or Perth what every landowner must and must not do or to tell every landowner, "You must be fully cognisant of every piece of legislation and regulation that may have a bearing on what you do on this property when you get out of bed in the morning," may be a bit, you know, a bit onerous.

I'm trying to think of more creative ways that would get us to that sustainable agriculture environment protection outcome without just getting the whole thing clogged up in bureaucracy.

MS SIEWERT: Can I suggest that you have a look at a program that's going on in the Gascoyne-Murchison area called EMU. It's Ecosystem Management Units and it's funded - it's a program that's funded - there's some NHT money in there and some state money in there and it's run essentially by two people, one from CALM and one from Ag, although he's in the centre for arid land management, whatever it's called, in Kalgoorlie at the moment - Hugh Pringle and Ken Tinlay. It's a hugely successful program where they're working with pastoralists and basically go out and spend a couple of days sometimes with the pastoralists and go over with the pastoralists to map the ecosystem units on the property and then they sit down and take that

information and come up with a management plan for that property.

It's one of the best examples that I've seen of agency people and community people working together to come up with a management system that deals with the environment issues as well. We've now got funding to start doing that in other - to extend it into other rangeland areas and we're hoping we can do it in some more intensive farming areas as well. That's a really good example where not being prescriptive, but also working in with accreditation processes in the Gascoyne-Murchison; also had this project of looking at - and there's a document you can get hold of - looking at the - they took ISO14001 or whatever and started looking at how they could apply that for accreditation to the rangelands. So then they would meet this EMS process and EMU process with that and it seems to me that may be some of the mechanisms you're looking for, but it requires a lot of resources and what's plainly obvious is that you need people on the ground to work with the farmer or the pastoralist to make it happen.

DR BYRON: Absolutely.

MR DUGGIE: This question of duty of care rests a great deal on how you define that and as you mentioned, very heterogenous country and various issues, and I guess how you define or interpret what is the appropriate duty of care is a key issue and the situation that we're facing is a very evolving understanding that we have of our landscape and the ecosystems and the ecosystem functions they have and how our human activities are perturbing them and adapting to them or not. The legislative regimes and regulations and other incentives and other measures that we're introducing are evolving in an ad hoc effort to try and come to a more sustainable approach. So there's enormous complexity there and it just seems to me that we need to be very careful if we're going to use a concept like duty of care, not to suggest that just because there's that more simple principle, conceptual idea, that it can actually make it - well, have to be careful that it makes it clearer rather than oversimplifies.

DR BYRON: Yes. I wouldn't suggest for a moment that it's a panacea. As you're probably aware, the Commission has done quite a bit of work on this and we've talked to environmental lawyers and agricultural consultants and all sorts of people so we're not even convinced, you know, whether or not the concept will work, let alone how you would operationalise it in practice. As they usually say, the devil is in the detail. You know, a lot of it depends on where that bar is set but it may be one of the issues that's worth exploring. Please don't think that was a ringing endorsement for the concept. Unless you've got anything else you'd like to say in closing I guess we have one more and I have gone a bit over time, but what you were saying was so interesting so thank you very much for coming.

MS SIEWERT: Thank you.

MR POUSTIE: Thank you.

DR BYRON: And thank you very much for the very detailed submission.

DR BYRON: Thank you very much, ladies and gentlemen. The final on the program, last but not least as they say, is Mr Collins.

MR COLLINS: Yes, it's Ron.

DR BYRON: If you would just like to summarise what you want to say and we can talk about it a bit.

MR COLLINS: Thank you very much on behalf of my wife and my children for the opportunity of speaking before the hearing. I would have really liked the Conservation Council to hear our story, but anyway they are on their way out so we miss out there. I'd just like to commence to say that I, myself, was born and raised on a farm in Nyabing and I spent all my life there being left with my brother to manage our father's farm at the age of 15. As well as farm our father's property I joined a shearing team and spent many years shearing sheep as well as successfully operating the farm. In 1989 I had the opportunity with my wife and two young boys of buying our own farm after many years of leasing farms and successfully grazing sheep and beef cattle in the south-west town of Donnybrook.

We had found a property at Ravensthorpe, at a place called West River. That's in the Ravensthorpe Shire. That would be in the Fitzgerald National Park area, which we could see could be developed into a very good farm and an asset for the future of ourselves and our two young sons. The property consisted of 800 acres of old established farming land and 900 acres of land that needed further development plus another 300 acres of blade power country with some regrowth and approximately 1700 acres of virgin mallee bush. Before buying the property we sought information from the Department of Agriculture at Jerramungup regarding whether we would be able to further develop the 1700 acres of virgin bush in regard to sensible clearing.

We were advised in writing that the approval would be given to clear the 1700 acres of bush provided rocky outcrops and creek lines remained vegetated so we were no more - we were more than prepared to leave more than the minimum amount of vegetation. It was on this proviso and having a written authorisation from the Department of Agriculture that we went ahead and purchased the property. Indeed, if we had not been advised that this was so, in writing at that, we would not have purchased the property with the view to developing it into a viable farm for the growing family. We intended to commence clearing a small portion, say 3 or 4 hundred acres a year but due to the problems of the collapse of the wool industry in the 90s and extremely low grain price at the time we could not commence the clearing as soon as we would have anticipated.

In 95, 96, around that time we again approached the ag department in Jerri and a chap by the name of Fred Armstrong visited the property for inspection. He

advised we could put in an application but suggested it would be highly unlikely we would be given permission to go ahead with any clearing, either on the virgin bush or even the blade clad country. We suggested growing lucerne and we still got a negative response, because lucerne would - we felt the lucerne would use the extra moisture or water - we were actually on a recharge area, so it would help reduce the flow off from the property, of water. That seems to be a problem at the moment. We spent many hours of hard work fencing and developing the 900 acres to the stage where it could be stocked with sheep and poisoned and removed by hand the stumps, and regrowth cleaned up. All the cleared land has large areas of mott and mallee remnant - well, we call it remnant bush, it was just bush - which we have left for shelter belts and wildlife. So on that 900 acres there was huge big amounts of bush that we actually left there and I mean, I could take you to that now and show you that.

In 1998, 99, again we approached the ag department - this time head office in Perth and we were put in contact with a chap by the name of Keith Bradbury, the policy officer, sustainable rural development program, Ag WA, who came to our property to inspect our situation with regard to clearing. We felt that he expressed a very biased opinion, stating that we should not be allowed to clear any of the remaining 2000 acres and expressed the strong viewpoint that we should not get compensated for it in any way, saying - and I can still see these words at the moment - "Don't think the government car will come down the drive with a big bag full of money because it won't happen." Mr Bradbury, in our opinion, had a conflict of interest in these issues. He was one of the decision-makers within the Ag Department and therefore should not have been expressing his own personal viewpoints.

Our suspicions were confirmed when we read an article in our local newspaper saying how Mr Bradbury was at the helm of a group of conservationists who were going around the south-west corner of WA trying to buy up farming land and privately owned bush to create a continuous corridor around the coastline of WA. Early in 2003 Mr Bradbury produced his own telemovie documentary entitled A Million Acres a Year, which screened on SBS, which was extremely derogatory to farmers in the south-eastern agricultural region of Western Australia. Mr Bradbury was also a member of the native vegetation working groups which completed a report for the government in approximately 1999. I am referring to these people in this instance because they were, in my opinion - you know, they weren't really helping us in any way at all. They were just, what do you call it, a brick wall.

I refer to the book Public Good Conservation which - we put in two other submissions to the Federal Government and the State Government. They've had inquiries into this matter, and if you'd like to look on page 154, paragraph 6111, this rather infuriated me when I read this. Mr Hartley testified to a similar vein. He said:

Should these people be compensated for not causing environmental damage? If there is clear evidence that removing trees or any other vegetation is going to cause environmental damage, surely people have a responsibility to do that without compensation -

and this is the bit that really riled me:

No-one compensated me when they brought in laws about pollution on cars and problems that they must have caused a lot of people in the transport industry -

and he's got speed restrictions. Now, this man is right up in there making decisions about our future, and I thought that was quite ridiculous, but anyway:

Tried unsuccessfully over years to push forward with issues of further clearing of bush so as to make our property more viable. We had to work off farm doing contract work to supplement income. We were therefore ineligible for any interest subsidies during the recent drought. Due to that fact, we did this work even though we were qualified in every way. So because we did work off farm, we weren't eligible for that assistance. We were out trying to help ourselves while, you know, the governments and the powers to be were to sort out this problem.

Any clearing applications need to go through several different departments, namely CALM, Waters and Rivers, local LCDC, the shire, EPA and the Ag Department of WA. I've got to say I didn't agree with some comments made just recently. We were talking to those last speakers about quite a lot of these departments - they've got their own viewpoints, and we don't seem to be getting any answers at all. One says yes, one says no, and we just don't get anywhere.

DR BYRON: You just get run around.

MR COLLINS: We just get thrown around, and quite frankly we're just ones that take it. It was impossible to have an application proved, going through all these different agencies. As for assessment for clearing to be looked at, we needed to have a hydrologist assess the situation on our farm at entirely our cost with little or no chance of success anyway, and also I'd like to add to that point, one of the politicians we wrote to was the minister of environment in Western Australia, Judy Edwards, and she wrote back a letter to stipulate to us - she said - I'll read it to you. She said:

Please be advised that there is not a ban in clearing native vegetation in the state of Western Australia.

So I thought that rather interesting because there's not a ban for clearing native

vegetation, but as soon as you put an application in to clear, it just doesn't happen. It doesn't get through all these different departments. It was set up by the previous government in Western Australia, this system, and it was set up in that way that the land-holders would become very frustrated because they knew darn well you couldn't get through all of them. It just wasn't going to work. That's the way we see it, and I'm sure quite a lot of other people see it in the same vein.

Some neighbouring farmers are very unhappy about further development of the 300 acres of blade-ploughed country. That was actually blade-ploughed when we bought it, let alone any native bush. This was expressed to me by an immediate neighbour that we would be reported to the appropriate authorities if we went ahead and further developed this portion which was already half developed. We feel very strongly that the local LCD groups should not be the ones to have any part in decision-making processes. This is a gross conflict of interest. They could be the ones to gain the most from any administrative decisions made.

Most other farmers in the area have all their properties fully cleared, and now very appropriately active in planting back the trees they have cleared. These replantings are being funded through national heritage or government-assisted packages and handed out to the local LCDC groups. We though are expected by all and sundry to halt any further development of our property so as to benefit everybody else's business enterprises. We contacted politicians, both federal and state. We wrote countless letters over the last few years and had varying responses, but to no avail. Federal blamed the state, and the state vice versa over funding issues, who's going to pay? On this question, if the community wants our land, then the community should pay for it. We had to, after all. This could be done by taxpayers' funds or by a levy. After all, we don't expect the public to walk out on their life savings, because that's what we've done.

Finance from banks and financial institutions for operating cash flow was impossible for us. Private finance had to be obtained at very high rates because of equity issues because we had 1700 acres that was not viable, see. So no-one - there was 3800 acres in the entire property, but 2000 acres of it was bush. So any financial institution deemed us unviable, you know, in that area. I mean, if it had been down in the South-West somewhere where, you know, you run quite a considerable amount of sheep or cattle whatever, we would be quite okay, but being out at West River, we ere deemed unviable.

Rates had been paid on full rates for 14 years on the bush, the same rate as the cleared productive land. We were only advised two years ago by the Valuer-General's Department that as from 1999 we could get a rate adjustment, but the shires are reluctant to advise landowners of this option, as the shire is keen to get as much rates as possible. That's the opinion we've taken. I mean, I would have thought that in this instance, the shire should be putting on your rates that, because

you've got so many acres of bush, you should not have to pay the full rates. It shouldn't be on us to have to chase after it. After all, we're keeping this land for public good conservation.

Very regrettably, 12 months ago we had to finally give up our battle against bureaucracy and were forced to sell the property. Although we still retain the 2000-acre bush because the neighbour had purchased the cleared land, but no value in the uncleared portion of the property and expressed that he was not interested at all in purchasing it. We are awaiting some sort of government decision on this matter, as we need to have the bush subdivided off on a separate title. If we were to do this under the present policies, it would mean we would have to place a conservation covenant on the 2000 acres of privately owned freehold land before we could be granted subdivision anyway from the original location. The location is on the cleared land.

Placing it - well, it's on the whole lot actually, but the cleared land - the agreement was that the cleared land was to retain the original location. Placing a covenant on our bush means us handing over all rights to make any decisions about the future of this privately owned freehold land, even though it is privately freehold land, and that takes a bit of understanding. We have lost our superannuation fund. We were forced premature and unplanned sale of the farm inside 15 years, and the government has got a policy going out in regards to capital gains. If any compensation was to be paid from here on now, we would probably have to pay capital gains on it

Lost income on uncleared land plus income that could have been derived from cleared land if farmed to maximum - and by that I mean the finance was not really available due to equity issues with finances. So it couldn't really be farmed to its absolute maximum. Due to there being no value placed on the 2000 acres of bush, no lending institution put any value on that bush whatsoever. The chap that actually bought the property, his bank didn't want to know about the bush. So he said, no, he didn't want the bush. He'd take it, but he wasn't going to give us anything for it.

DR BYRON: That sort of confirms that - - -

MR COLLINS: That confirms - - -

DR BYRON: - - - its market value is approximately nothing.

MR COLLINS: Approximately nothing, yes, and that's the sad bit about it.

DR BYRON: With those controls over it.

MR COLLINS: Sorry?

DR BYRON: With those controls.

MR COLLINS: Yes. We have many years of experience in the farming industry and have had results to show for it in the past, with lambs from our property being some of the best in the district according to our local agent, and we topped the market with our lambs from the property when we sent the Katanning saleyards in 1997. This has had a dramatic effect financially and emotionally on our family now, comprising of two sons and one daughter, as we have all worked extremely hard developing our farm as far as we were allowed to go and take much pride in what we are able to achieve, even though we were so restricted by rules and regulations.

So in conclusion I would like to say that I farmed all my life and I know no other way of life. The opportunity came to us to purchase a property in 1989. Everything my wife and I earned over the years has gone into this property with many years of very hard work on and off the property with the respect of developing the entire property into a viable family farm and having something to look forward to in the future for ourselves and three children. This has been taken from us unjustly as we now are told we no longer have a say in what happens to the land we worked so hard to purchase and develop, and we get the impression the government wants to take this away from us to do with what it likes, even though it belongs to us. This land has a freehold title, and that's the bit that is really frustrating to us.

We've got a freehold title of the land and we've got no say whatsoever. We don't seem to have any say whatsoever as to what happens to it, and we are one of the ones that has lost the battle with the bureaucracy that we're putting up with at the moment, and the previous people I've been listening to - I've been here for an hour and a half, two hours, and I've listened to the ones before, but a lot of them don't seem to me as if they haven't had as big an amount of land not cleared as what we have. I can vouch for many other people that I've worked for in my stone-picking business, the off-farm business that I do, that have got over half the farm that they can't do anything with.

One of them actually had this conservation group come around and offer them a ridiculous price, but he had to fence it, and that's the cost we're going to have. When we make an application to subdivide this bush, I can bet your bottom dollar we'll have to put a new fence up there. As far as I know - I don't know, but I can just about guarantee you that that will be one of the criteria that we'll have to do, and the thing that really upsets us is that we pay all the costs for this, and we've already been penalised. I just think it's grossly unjust. That's all I've got to say, but if you've got any questions you want to ask us. We've actually got an agreement with the purchaser of the land that we retain the right to that bush for five years. We can subdivide that any time in that period, but the thing that worries me is he's got the title to the land.

But on our contract when we sold the land, we had the entire - I've got the copy there if you want to view it. We had the right to that 2000 acres for five years. I don't know how long it's going to take for the governments to make a decision on the inequities of these problems we've got, but I'd suggest that they probably should get their butt into gear and do something about it.

DR BYRON: If there's no decision on that within the next five years, then you basically - - -

MR COLLINS: He's got it.

DR BYRON: - - - lose all - - -

MR COLLINS: We lost it.

DR BYRON: You lose all interest in it.

MR COLLINS: We lose everything.

MS COLLINS: He pays \$5000 for 2000 acres of land if we can't - - -

MR COLLINS: Yes, but we've got to pay the rates on that over five years, see. So in other words he gets it for nothing.

DR BYRON: Okay. Somebody this morning talked about this is expropriation, where the government is basically resuming your land, but not paying for it. They're doing it through the legislation.

MR COLLINS: I haven't seen that as yet, but that's basically what's happening here. What do we do with it? If we put a conservation covenant on it - and that's the only way I believe - unless I've got it wrong, but that's the only way we can get it subdivided from that initial title is to put a conservation covenant on it. I might be wrong there, but that's the impression I got. I mean, we get so many conflicting stories on this, and that's what's got to happen. We've got to get this more cut throat, more straight down the line as to what's going on. These people that were sitting here before us, they want to really stop and think about how would they feel if I had the big stick and I come along to them and said, "Look, you can't have that house but - yes, you can have it. You live in the garage and we'll have the rest." That's what they're doing to us. They're saying, "Well, you can have that patch here but you can't touch that, that's precious."

Now, I could live with the fact that if they feel that this is fairly important, this land, right, we need to be either paid for it or we need to have some royalty paid on

that land so that we get an income. But they never mention anything about the income that farmers could get off uncleared land, did they? Did you hear it? I didn't hear it. What income can you get from that land? It just sits there. You pay the rates on it. You pay high rates on it. You can get lower rates if you put a conservation covenant on it, and then you've lost control of it. You've got no control of it.

DR BYRON: Well, there's talk - and I'm pretty sure it's no more than talk - about one day somewhere there might be what they're calling stewardship payments, where the government or somebody - I don't know who - would actually pay people to actually manage and look after remnant patches of bush.

MR COLLINS: Yes.

DR BYRON: But as far as I know, that doesn't exist today.

MR COLLINS: No. Look, we should have heard of that, Neil. We haven't heard anything. I mean, we've done a lot of homework on this. We have been completely frustrated. I've been to see the Minister of Agriculture here, last year I think it was or the year before, and he said, "Oh, we're working through the issues." Now, he's still working through the issues. I mean, how long do we need to work through the issues?

I've rang John Anderson's office. We've written a letter to Prime Minister Howard. We just got back the answer of "state issue". You know, "State issue, talk to the state." "Haven't got any money. We can't do anything about it. We're working through the issues." We just sit here, and I'm sure we're not the only ones - - -

DR BYRON: No, you're not.

MR COLLINS: There's hundreds out there with the same problem.

DR BYRON: Yes.

MR COLLINS: I mean, if it hadn't have been for the wool collapse it would have been done. There would be no argument. But circumstances happen just - you know, stop further development. That's what has happened to us. But they brought in these rules that you cannot do it now anyway, so we've lost that opportunity and it's very disappointing to us, to say the least.

DR BYRON: To say the least. I think you're being very, very self-controlled there. You could use much stronger words.

MR COLLINS: I could.

DR BYRON: Other people have used much stronger words.

MR COLLINS: I could, but I won't, because I don't think that gets us anywhere. But the point we've got to get across is what effect it's having on individual land-holders, and that has got to be put across pretty strongly and it has got to be fixed yesterday.

DR BYRON: On whole families.

MR COLLINS: Yes, on whole families.

DR BYRON: And it's succession and kids' futures all sorts of things involved.

MR COLLINS: Yes. See, the problem too, Neil, we've got here is that we've struggled with this. I've gone off farm and I've done shearing. My old front-end loader tractor - I bought an old Bourne Stone picker and I went out cleaning up guys' paddocks for off-farm income. I'm away from home for months on end doing that and that's got a tremendous strain on the family. I mean, it has. These bureaucrats that go around saying that, you know, "We've got to have biodiversity," okay, if we've got to have that, let's fix the problem up with individuals. We're thinking of the environment before we think - we're thinking of future generations. What about the generation now, and the ones in future? We're not addressing the whole issue.

DR BYRON: Do you think there's any chance that if you were to sort of formally subdivide that 2000 acres off, and presuming that you did have to put a covenant on it as a condition - - -

MR COLLINS: Well, that's what they've told us, Neil.

DR BYRON: - - - do you think you could sell it to anybody as a bush block, hobby farm?

MR COLLINS: Yes, I don't know whether you would sell it to anyone out there. I mean, there have been these groups going around trying to buy bush land and they give you nothing. See, if I sell that, how much funds have I got to go to buy another property to continue on with what we want to do? We haven't got the funds to do it. That land was bought to develop into a viable farm, and now that has been taken away from us.

DR BYRON: Jennifer, why don't you just introduce yourself.

MR COLLINS: This is Jennifer, my wife.

DR BYRON: Yes, please join in.

MRS COLLINS: Can I just say, in answer to that about being able to sell it to someone else, this is not in an area with beautiful big jarrah trees and karri like we have down Margaret River, Demark et cetera. This is out Ravensthorpe, West River, next door to the Fitzgerald National Park, a farm away from that. It's 2000 acres. It's not pretty bush. The bush isn't higher than those curtains. It's not magnificent trees. But like Ron said, on the cleared land that we had - and we've had since 1989 - we've left massive big thickets of mort and mallee, I mean, huge areas in the middle of the paddocks, not just one clump, and these clumps aren't just the size of this room. They would be bigger than the circumference of four of these hotels.

MR COLLINS: There would be 20 or 30 acres in each one.

MRS COLLINS: In each one, and this is several of these areas within one paddock. But the bush that we have separate to the cleared land, what's left over that the guy didn't want to buy or didn't want to even take it for nothing, it's not the sort of thing - I mean, for a hobby farmer, you can't farm it without clearing it. It's not that sort of land out there.

MR COLLINS: I suppose the conservationists would argue that it had biodiversity aspects for different animals and birds and all that. I suppose I can accept that argument.

DR BYRON: But if it is of high conservation value, why don't they buy it?

MR COLLINS: Well, this is our argument.

DR BYRON: They might say, well, they've already got the national park there.

MR COLLINS: Yes.

MRS COLLINS: It's one farm away from the Fitzgerald National Park. It has gone through our heads sometimes why - you know, maybe CALM would be interested in taking it back. The farms in the area, as we mentioned - as Ron said - all their land is cleared and they are making a living off of it. This guy that bought our cleared land, he owns a lot of farms around our farm. So he's been waiting for this farm to come up. But you know, he doesn't want anyone else to get hold of this bush. He wants it, but he doesn't want to pay.

MR COLLINS: He won't pay for anything.

MRS COLLINS: If we can't subdivide it away from that cleared land within

five years, what's going to happen is he's going to get 2000 for \$5000. That's written into the agreement. We've got five years - we've used up reams and reams of pages. I'll give them credit because they have replied to our letters, all these ministers. Every minister in the cabinet has had a letter written to them. Ron has been speaking to the guy that runs the finance in the state, Eric Ripper, the one that holds the purse strings. He has rung us back but on an answering machine, last week. We've spoken to them all but like, you know, they all say something different. They all say, "Oh, yeah, it's really bad, a really bad thing that's happening," but - - -

MR COLLINS: "We're working through the issues."

MRS COLLINS: But if we've got to get this subdivided, you know, how are we going to do that without them putting a conservation covenant on it and saying, "Well, that's it."

MR COLLINS: They've got control over it, and that's the bit that hurts a lot.

MRS COLLINS: You know, it's 2000 acres of land that we paid for and we purchased it.

DR BYRON: Even if you could subdivide it without the government putting a covenant on it, the new owner would still find that he wouldn't be allowed to do anything with it, for the same reason.

MR COLLINS: They wouldn't be able to do anything with it, but at least we wouldn't have the government or the bureaucrats coming around saying, "Don't do this, don't do that," you know. I would sooner they are not there, Neil, because in this state of Western Australia - this is my opinion - we have got too many people with authority running around, flicking it around in relation to this land clearing and salinity and all this, and we're getting nowhere. We're getting no answers. We get the remark, "We're working through the issues."

That's why I come down here today. I thought, "Well, I'm on my own, my wife and I, and we've got to let you chaps know, let the commissioners know what is actually happening in our case." I'm sure ours is not the only one. There would be farmers out there that haven't come forward that are copping the same stuff. It really made me annoyed to listen to the previous speakers. I mean, I don't really think they get the real message.

DR BYRON: I know it's no consolation at all, but it's not just other farmers in WA but there are people in a very similar situation to you in just about every state. There's something very strange going on.

MR COLLINS: Yes. I did mention that chap Mr Bradbury and I just - you know,

we felt that there was something funny going on, because I rang the Ag Department in Perth and we were put on to him and he come down. Then he didn't really tell us anything, only to say that - I said, "Well, you know, if we can't do anything with this land, surely we should be compensated so we can go and do something else." He come out blatantly to me and said, "No, don't think, Ron, that the car is going to come down the drive and compensate you for this land." I mean, who is he to say that? Now, obviously he had a - we thought at the time he had another ulterior thing that he was thinking about. Sure enough, later on we heard that they were going around the coastline trying to buy up individual farms, to put a corridor around the sou'west of the state.

MRS COLLINS: It was actually written in the newspapers.

MR COLLINS: It was actually written in the newspaper.

DR BYRON: But it may well be that he simply knew from what government had said that even though they don't have an official ban on tree clearing, that in practice that's pretty much what happens, because you just get flicked from department to department to department.

MR COLLINS: That what's happening, Neil. That's what's happening, and that's why we're so frustrated about it. As I say, we lost our opportunity to keep the property last year because - you know, the financial restraints on it - and we had to just sell up. If you can imagine a drowning cat, it goes down squealing slowly, and that's what we were doing. We tried hard to keep it but, you know, until the decision was made - until we thought, "Well, the governments are going to come to their senses eventually and see the inequities in it." But they're still arguing about it, both federal and state. One is blaming the other and the other one is blaming the other, and we're getting absolutely nowhere - absolutely nowhere.

So surely we should have some sort of - inverted commas - when you buy a farm and it's got a freehold title on it, it's a freehold title for you to be able to farm it, without it being taken off you in an unjust way like we've got here. That's all I've got to say.

DR BYRON: I think that sums it up pretty well actually.

MRS COLLINS: I was quite disappointed that the guys from the Conservation Council have all left. Everyone has left. I really like these people, because we look at them on TV every other week and they're commenting on these things from the city, and there are lots of individual people out there in the country who are really emotionally affected by this, and they can't even sit and listen to the real down to earth facts from the people that are suffering.

I noticed also in one of the comments, the trees that are kept in the Fitzgerald National Park, which is out where we are - and we've got 2000 acres of those trees - are keeping the rainfall there. Well, we've just suffered three years of drought at West River, right next door to the Fitzgerald National Park, and I would have liked to have pointed that out to them; that that fact, the fact that there are thousands of acres of trees out there right next door to us and we've got two of those thousands of acres is not preventing a drought. The rainfall hasn't been there for two or three years, although we are quite close to the coast and it's generally a very good area for rainfall. But that didn't prevent a drought affecting - we were actually in a drought-declared area, and we had a drought certificate the last two years we were there, and so I just want to point that bit out, that that is completely wrong, and I'm very disappointed that they can't have just sat here for half an hour and listened to one story from out there from people that are not high up in the official status in the city here, or anywhere else, making these decisions, but the ones that are out there actually suffering from some of these decisions from people - they're not necessarily familiar - I mean, it's fine to read things from books and sit in an office in the city and look at all these things and say that these things are happening, but we're out there experiencing it, and for those people not to listen to a few experiences and to give us a few answers about what we're supposed to do - because we believe in conservation as well.

Farmers are the ones that - I mean, the farm is our livelihood, so we're not going to wreck it, we're not going to rape the land. We look after it, and that's what farmers and trying to do, and that's what we wanted to do, and we wouldn't have cleared the creeks and all that, we would have left half of it there, and the farmers in the past were made to clear all of that, and that made them bad farmers. This TV documentary we watched a couple of months ago, it was infuriating to watch. Took us back in history about - there was a million acres a year had to be cleared. Well, that was the government policy and that's what they had to do, and they were there just absolutely putting down these farms, "Let's get rid of the farmers that are inefficient now and just get them out of the industry, because they're not doing it right." They were sitting there making these judgments and these were these guys within the Ag Department in Perth, and the one that came out and saw our bush, Keith Bradbury - - -

MR COLLINS: He was the one - - -

MRS COLLINS: And it's just very, very - - -

MR COLLINS: I'd like to point out to you, Neil - I don't know how you can be a completely efficient farmer if you've got a noose around your neck, not being able to farm a whole lot of the - can you tell me how you can do that? I mean, I'm pretty fussy about my stock and all that, I try to look after them and, you know, you can only do a certain amount and then if you're strangled by rules and regulations, what

can you do? I mean, you've got to have rules and regulations, but they've got to be fair and equitable, put it that way.

DR BYRON: Yes, but the other thing, as I was trying to say before, you can't run a farm sitting at a desk in Perth or in Canberra.

MR COLLINS: No, you cannot. You cannot. No, dead right.

DR BYRON: And there are people sitting at desks in Perth and Canberra and Sydney and Brisbane who are trying to micro-manage, to tell exactly what you have to do when you get out of bed every morning.

MRS COLLINS: We've all got to fit into a square box and it doesn't work.

MR COLLINS: I mean, most farmers that I know - and, I mean, you illustrate very well, Neil, when you were talking to those guys. You said there's very good farmers, there's another - and then there's ones that don't really know what they're doing. You know, I agree entirely with you. I mean, I've been out mixing with a lot of farmers when I was in the shearing industry and when I do the stone-picking job, I go from West River up to Tarin Rock, 170 Ks away, I drive that old thing, to go and do work, to earn money, and I've gone from farm to farm, and as soon as you go onto a guy's farm, you know whether he's a good farmer or not by whether he's sprayed out the grasses in his paddock the year before he puts his crop in, whether his fences have, you know - he's got this big year, he goes and chops it off and leaves it laying there and whether his - you know, there's umpteen things you can judge whether a farmer is a good farmer or not.

DR BYRON: Yes.

MR COLLINS: I've been to numerous farms and you can tell as soon as you go there. When you're shearing sheep, you go and shear someone's sheep, you know which is a good sheep - the big sort up like this, if you can't see how to get them in the pen.

MRS COLLINS: The 2000 acres of bush that we have had there has never, ever been allowed to have any stock running through it at all. We've always had the stock fenced away from that bush because - they would have died within five seconds anyway, because - - -

MR COLLINS: Four different kinds of poison there.

MRS COLLINS: Yes, full of poison, but, you know, we have made sure that bush is kept in its original state. It hasn't been touched, we haven't driven machines through it, there is fences along it, we don't own a gun so we don't shoot the

kangaroos and emus that are out there, you know, we haven't driven a vehicle through it or any of that. We haven't done anything to damage that 2000 acres. It's as it was when we took it over, which was its original condition. So we're not one of these people that may have let their stock run in the bush. We've kept them separate from that because we've had to keep them, and, you know, we have been looking after that, and we would have, if we'd been allowed to still clear it, we would have only done it in a particular way. But we were told by all the neighbours, their water runs off into our property - - -

MR COLLINS: I was going to say that.

MRS COLLINS: - - - and from the over the road property, which has now been bought and owned by the chap that bought our place, the water one year ran across the highway - we're on a major highway - through our property into our creek line, broke the dam that was there on our property, and we're getting all his run-off, and nobody wants us to touch our bush because they've got all their cleared paddocks and ours is to advantage, with 2000 acres.

MR COLLINS: That particular property wouldn't have 2 per cent vegetation left on it, and that's the annoying - I mean, it's too late for us now because we've lost the property, but when we first went down to West River, we leased another property at Cascade. There was 3000 acres there, and there was a shed and one tree on it. That's probably a bit exaggerated, but there wasn't any timber on it. In 92, I think it was, we had a very heavy rainfall in that Esperance/Cascade area there, and we couldn't get anywhere near that property, and we had ewes and lambs up against the fence and the lambs are dying against the fence, trying to get to the shelter in the other side of the fence, and that goes to show how much short - so what the conservationists have got to realise is that there's one set of rules for clearing one lot, and then they go to the other extreme. They go to the other extreme - "None at all, none at all."

DR BYRON: Yes.

MR COLLINS: So, you know, in this situation, this is what they call and ELD block, Esperance Land Development - that was a big American company that came in there, and that was the criteria. They had to put a shed on it. This particular block had 3000 acres. They knocked it flat and put a shed on it, and there was four paddocks on it, 3000 acres. Now, there's an extreme, from over-clearing to our situation. But we can't seem to get across to these conservations and people to be that there's a gross injustice there. They're going from one extreme to the other entirely, you know, so I don't know how you convince them. I really don't. But, I mean, in our case we've lost that. It's gone. We can't do anything about it.

MRS COLLINS: In the paper, like, we got it from the Internet, we printed it off, all the - about the inquiry here - it's saying about the effects that any of this

legislation or the clearing issues that are about to come in or that are sort of in, whether that's having an effect, a detrimental effect. We've noticed, because we travel around the country a lot, we live in Mount Barker but our farm was two hours from there, and Ron does contract work all over the country, and we've noticed in the last three or four months, there's an area I was driving out with some friends last weekend, and this is out from Mount Barker, where there are big karri and jarrah trees, huge big trees as thick as that column there, paddocks and paddocks have just been knocked over of trees - - -

MR COLLINS: Single trees.

MRS COLLINS: - - - single trees in these paddocks, not large patches of them, but all these single trees, you know, about 20 or 30 in a small area, from paddock to paddock to paddock, and they have, just in the last three months, they have only all just been pushed down.

MR COLLINS: And that's because the state government here in Western Australia is about to bring in a complete clearing ban on all vegetation on rural land. That's what we're led to believe, and I've been talking to the local Liberal member in Albany and they're fighting it at the moment. Apparently it's coming before parliament on the 12th of this month. It's the very first issue that's going to be discussed, they tell me. So, I mean, we can get ready for the state government to put complete clearing bans on - and that's what the farmers do. You go out to Ongerup, you go wherever you like, and you'll see individual trees being flattened, because farmers don't want to get tied up in this issue.. They just flatten them. See, that's - I mean, can you blame them? You can't blame them, because bureaucracy is - you've got two sets of rules. It's a mess. I can tell you now, it is a mess.

MRS COLLINS: Almost like they've been put into a panic situation. If we don't - - -

MR COLLINS: And I don't blame them, in a sense.

MRS COLLINS: And these trees are trees that have been there for years and years, and all of a sudden they're all flattened, these huge big gum trees, just the last two months.

DR BYRON: They might have heard about the problems that people in New South Wales, Victoria and South Australia are having about, you know, the odd single - - -

MRS COLLINS: These aren't odd single trees. There's 20 or 30 in a paddock or, you know, in a single paddock - - -

MR COLLINS: They'd be all - - -

MRS COLLINS: Yes, they are.

MR COLLINS: They'd be scattered all over the paddocks.

MRS COLLINS: But there's a lot of them, because I've been born in the area where they are being pushed down and you know when trees have only just been pushed down, and coming up the Albany Highway here today from Mount Barker, all the trees in the paddocks along the highway have all been pushed down.

MR COLLINS: Down - called Tunney, there's an area there with - - -

MRS COLLINS: And how can that be when it's illegal to push those trees down?

MR COLLINS: I mean, I don't blame the ones that are doing it because, I mean, the bureaucracy is going to come slamming down. I mean, they won't have any say at all. I just honestly - I mean, it's the wrong thing to say because I'm not against looking after our environment, but, I mean, can you blame the farmers, if they've got all this bureaucracy coming in there, treating them with a big stick, you know, and saying, "You've got to do this or we've got to do that," you know, so - anyway, Neil, I think we've got our - - -

DR BYRON: Yes, you've got your message across very loud and clear, Ron and Jen.

MR COLLINS: Yes. I just wish a few of the others - I mean, the PGA, we were a member of the PGA, but they obviously had to get going, but I wish the conservation people would have stopped and listened to our plea, and they might have been able to see a few home truths. I'd be quite happy to put them in the car and take them down there and show them the property.

DR BYRON: In the meantime, we can send them the transcript from this discussion.

MR COLLINS: Yes, do that. Do that, yes, and you probably might like to put on the bottom that if they want to discuss it, I'd be glad to.

DR BYRON: Thank you very much. I think with that we can finish the hearing.

MR COLLINS: Yes. Thanks for hearing us, anyway.

AT 5.33 PM THE INQUIRY WAS ADJOURNED UNTIL
FRIDAY, 8 AUGUST 2003

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