



COMMONWEALTH OF AUSTRALIA

SENATE

Official Committee Hansard

**ENVIRONMENT, RECREATION, COMMUNICATIONS AND THE ARTS
REFERENCES COMMITTEE**

Reference: Commonwealth environment powers

MONDAY, 27 APRIL 1998

MELBOURNE

BY AUTHORITY OF THE SENATE
CANBERRA 1997

INTERNET

The Proof and Official Hansard transcripts of Senate committee hearings, some House of Representatives committee hearings and some joint committee hearings are available on the Internet. Some House of Representatives committees and some joint committees make available only Official Hansard transcripts.

The Internet address is: **<http://www.aph.gov.au/hansard>**

SENATE
ENVIRONMENT, RECREATION, COMMUNICATIONS AND THE ARTS
REFERENCES COMMITTEE

Monday, 27 April 1998

Members: Senator Allison (*Chair*), Senator Tierney (*Deputy Chair*), Senators Hogg, Lundy, O'Chee, Payne, Reynolds and Schacht

Participating members: Senators Abetz, Bartlett, Bolkus, Boswell, Brown, Calvert, George Campbell, Chapman, Colston, Coonan, Cooney, Eggleston, Evans, Faulkner, Ferguson, Margetts, McKiernan, Neal and Patterson

Senators in attendance: Senators Allison, Carr, Hogg and Tierney

Terms of reference for the inquiry:

- (a) the powers of the Commonwealth in environmental protection and ecologically-sustainable development in Australia, including an examination of case studies;
- (b) the practicality, adequacy and application of existing Commonwealth mechanisms, including legislation, to promote the national interest in the protection of natural and cultural heritage and to achieve compliance with the principles of ecologically-sustainable development, with particular reference to:
 - (i) implementing Australia's obligations under international treaties and conventions, in particular, the Ramsar Convention and the World Heritage Convention,
 - (ii) the National Reserve System and the consistency of management regimes for reserves created under the National Reserve System program,
 - (iii) environmental impact assessment in or near areas of high conservation value in which the Commonwealth has an interest, and the consistency of guidelines for assessment processes between all levels of government,
 - (iv) export controls,
 - (v) the use of the corporations power,
 - (vi) the Endangered Species Protection Act,
 - (vii) the Inter-Governmental Agreement on the Environment, and
 - (viii) the National Strategy for Ecologically Sustainable Development; and
- (c) the most appropriate balance of powers and responsibilities between Commonwealth, State and local levels of government and mechanisms for implementation of treaties, conventions and national strategies to ensure consistency between all levels of government in environmental protection.

WITNESSES

AMBROSE, Dr Stephen John, Research Manager, Birds Australia, 415 Riversdale

| | |
|---|-----|
| Road, Hawthorn East, Victoria 3123 | 304 |
| AMOS, Mr Derek Godfrey Ian, Public Officer, National Association of Forest Products Industry Communities, 29 Cornelius Crescent, Healesville, Victoria 3777 | 345 |
| BARNETT, Ms Jenny, Research Officer, Victorian National Parks Association, 10 Parliament Place, East Melbourne, Victoria 3002 | 304 |
| BURGAN, Mr Graeme, Committee Member, Phillip Island Conservation Society Inc., PO Box 548, Cowes, Victoria 3922 | 318 |
| CHRISTOFF, Mr Peter Alex, Spokesperson, Environment Victoria, 19 O'Connell Street, North Melbourne, Victoria | 288 |
| COVENTRY, Mr Donald Hugh, Chief Executive Officer, Birds Australia, 415 Riversdale Road, Hawthorn East, Victoria 3123 | 304 |
| CUMING, Dr Brian David, Research Coordinator, Westernport and Peninsula Protection Council Inc., PO Box 9, Hastings, Victoria 3915 | 318 |
| FORSYTH, Ms Juliet, Research Officer, Friends of the Earth—Australia, Box 222, Fitzroy, Victoria | 288 |
| JOHNSON, Ms Margaret, Secretary, Phillip Island Conservation Society Inc., PO Box 548, Cowes, Victoria 3922 | 318 |
| LINDROS, Ms Joan, President, Geelong Environment Council, PO Box 4044, Geelong, Victoria | 334 |
| MARTIN, Mrs Leanne Deborah, Member, Maryvale "A" Team Association Inc., PO Box 37, Morwell, Victoria 3840 | 345 |
| MOODY, Mr Christopher John, Secretary, Maryvale "A" Team Association Inc., PO Box 37, Morwell, Victoria 3840 | 345 |
| MOSLEY, Dr John Geoffrey, Peak Environmental Enterprises and Conservation Centre of Australia, 90/113 Boyds Road, Hurstbridge, Victoria | 277 |
| PARKER, Mr Alan Arthur, Secretary, People for Ecologically Sustainable Trans- port, 50 Stirling Street, Footscray, Victoria | 352 |
| WALKER, Mr Campbell John, National Liaison Officer, Friends of the Earth—Australia, Box 222, Fitzroy, Victoria | 288 |

**ENVIRONMENT, RECREATION, COMMUNICATIONS AND THE ARTS REFER-
ENCES COMMITTEE**

Commonwealth environment powers

MELBOURNE

Committee met at 9.25 a.m.

MOSLEY, Dr John Geoffrey, Peak Environmental Enterprises and Conservation Centre of Australia, 90/113 Boyds Road, Hurstbridge, Victoria

CHAIR—I declare open this public hearing of the Senate Environment, Recreation, Communications and the Arts References Committee. Today's hearing is the sixth of the Commonwealth environment powers inquiry and our second hearing here in Melbourne.

Welcome, Dr Mosley. The committee prefers that evidence be given in public, but should you at any stage wish to give your evidence, part of your evidence or answers to specific questions in camera, you may ask to do so and the committee will consider your request. I point out, however, that the evidence taken in camera may subsequently be made public by order of the Senate.

The committee has before it submission No. 88. Are there any additions or alterations to the document that you would like to make at this stage?

Dr Mosley—No.

CHAIR—Would you like to make a brief opening statement?

Dr Mosley—Since I made my submission last June, there have been some developments that affect the subject of your inquiry. Notably, the review of the intergovernmental agreement on the environment has reached a further stage with the heads of agreement on Commonwealth roles and responsibilities for the environment. There has also been a consultation paper on the reform of Commonwealth environment legislation, and the government has called for submissions on that. I was one of the people making a submission and, if you consider it pertinent, I could make available a copy of my submission on that consultation paper.

CHAIR—I think that would be of benefit to the committee. You say in your submission, 'Many of the present failures can be attributed to the failure to agree on roles between levels of government and that is the crux of the problem.' What in your view can be done to better see that agreement is reached between those levels, and can you include local government?

Dr Mosley—Yes. In my submission, I have stressed the significance of the role of local government and believe it is the sort of Cinderella aspect of environmental control. What I have suggested most strongly is that the best way of clarifying and codifying roles is to have an explicit reference in the constitution, rather than leaving the situation as it is where the roles are not entirely clear. We have the courts often having to arbitrate or define the roles in regard to the constitution.

By the way, the position I support is the same position that the Australian Conservation Foundation has. But, unfortunately, I see no movement towards that being the subject of constitutional review. I simply see the republic agenda as completely wiping out any other consideration, and I would have thought this was a more fundamental matter for constitution-

al change than the question of the republic.

As to how that explicit reference would be made, it is not just a matter of defining more exactly the role of the Commonwealth, it is really a question of defining in one go, if you like, the roles of each of the three or four tiers of government. I certainly would include local government in that, because at the moment it has no reference in the constitution either explicit or implied.

I started with what seems to be the optimum approach to this. I support the efforts that have been made through the intergovernmental agreement on the environment. That is certainly going down the track that I would support of getting an understanding between the parties and, as I mentioned, the latest heads of agreement is a review of that agreement. But I do not think that is sufficient.

If there was explicit reference in the constitution to the roles of each of the three or four tiers of government, then everyone would be on firmer ground when it came to acting to protect the environment on a day-to-day basis, and when it came to sorting out who was responsible in cases such as the Hinchinbrook Channel controversy where there has been dispute over the roles of the Commonwealth and the state of Queensland and where the local government seems to have had no role whatsoever—in formal terms anyway. That perhaps outlines the approach that I would recommend.

CHAIR—Dr Mosley, with there being a Commonwealth head of power for the environment, do you see a problem in defining what ‘the environment’ actually means? Have you done any work to discover how that might be framed in the constitution?

Dr Mosley—I think the definition of the environment that appears in the Environment Protection (Impact of Proposals) Act is an adequate definition of the environment; that is, it includes the social environment. I believe that is an essential aspect of environmental planning and management.

Senator HOGG—Just following up on the first issue raised by Senator Allison on the three tiers of government: what role do you believe the Commonwealth should have? Should it be the tier of government responsible for legislation with the others being responsible for the implementation of the legislation; and should there be any legislative role for state and local government in this whole process?

Dr Mosley—I addressed that in my written submission. The start of the matter is that the Commonwealth should be responsible for all international environmental matters and then it should be responsible for matters of national significance and that, I believe, includes playing a leadership role with regard to conservation or environmental protection matters which involve more than one state or all states and territories.

I feel very strongly that the Commonwealth should work cooperatively but often in a leadership role by creating a systematic approach to environmental planning such as in the establishment of a national system of conservation reserves. Clearly, it does that already through its obligations with regard to the World Heritage Convention, although I believe it could go much further in that leadership role, as I have explained in my submission.

Certainly, the states need to play a major role through legislation. I would strongly support the states having a similar responsibility for conservation as they already have under the constitution, even though it is a kind of a residual list, if you like.

With regard to local government, I believe that their role reflected in the constitution or spelt out in the constitution should be, as I put it in my submission, the fundamental building block and the means of implementing environmental policy and planning. I strongly support the idea that the entire approach in every tier should be strategic. I think it is terribly unfortunate that the strategic approach that was obvious in the national conservation strategy, for instance, of the early 1980s and later the approach of the ecologically sustainable dialogue which resulted in a kind of a strategy has disappeared. It was a means of coordinating all the different elements. Although it may have had some flaws and it may not have been as comprehensive as it might have been, it certainly provided a definite means for cooperation between the three tiers.

I would certainly see the local government acting in a similar way. I have recently prepared a conservation strategy on a regional basis for the Great Ocean Road region, an area which is something like 150 kilometres from east to west and about 40 to 50 kilometres deep, taking in several shires. You have, if you like, a bioregional approach or at least you have an approach which is based on common interests by the character of the land and the main thrust of land use, which, in that case, happens to be tourism along the Great Ocean Road.

You do need a comprehensive set of tools as well as these explicit references in the constitution, in legislation and in agreements between the three or four tiers. I keep mentioning four because I think there must be in some instances scope for a regional approach on a formal basis. The regional approach seems to have dropped off the agenda which was once quite important in this state where we have a number of regional authorities which are very good and effective. But they seem to be out of favour, probably because they are seen as rivals to both the local government and the states. Also, while local government is a plaything of state governments or at the whim and mercy of state governments, their role will never have much integrity.

There needs to be some trust in local government. I know it is very hard and, as a conservationist, I have found it really hard to have trust in local government because of the prevailing development ethos which has affected local government to a very large extent. I am prepared to put that trust in local government in the belief that they are the tier of government, with people serving on the councils, who have the most knowledge of the local environment, the best understanding of it and the greatest incentive to protect it.

Senator HOGG—That raises the issue I was really interested in. Should those levels of government—the local government and state government—have an implementation role, rather than a legislative role in terms of the legislation that is brought down? Should it be the federal government's responsibility to put the appropriate legislation in place and, having got that in place, to see it implemented by state government, local government or the fourth tier, as you said, regional government? That is what I am heading towards.

Dr Mosley—My own view is that there should only be intervention by national or state

government in local affairs to the extent that the values that are being protected or the programs that are being implemented are those which relate to the function of the state or national government. The rest of it would, I believe, be the responsibility of local government, which I would expect to be innovatory in regard to their greater knowledge of the needs of their local area, which I have just referred to. So I would not just see their role as being implementary or through implementation. I would see them as having a far more creative role than just doing what some other 'higher' level of government says should be done. In other words, it is a bottom up as well as a top down relationship.

Senator TIERNEY—You emphasise that perhaps we need to change the constitution in terms of defining Commonwealth powers. The history of this sort of thing shows that it is fraught with great difficulty. It is only when both parties agree that you might—and I emphasise 'might'—get a change to the constitution. In this area of environmental powers, the government believes the locus should be more towards the state and, if I can sum up the opposition's position, they probably think it should be more towards the Commonwealth. If you cannot get that sort of agreement between parties, how realistic do you think it is to try to change the constitution on this matter?

Dr Mosley—It is not realistic if you have a fairly low view of what is possible, but that is the crux of the matter, isn't it? It is about being more optimistic. It is not as big a job to change the references to the environment in the constitution as it was to federate and set up a constitution. Why are we put off by these seemingly negative, pessimistic views that we will never be able to agree? I could not possibly accept that as the basis for working in the future. I would have to begin with an optimistic view that, if this is desirable—and I believe the environment is a fundamental matter and should not be the subject of a political football match—

Senator TIERNEY—Of course, our history is littered with failed attempts to change the constitution. I suppose that is why I am a bit more pessimistic. I suppose the only way it might happen is if there is an enormous ground swell of support for such a change by the public. Do you see any evidence of that?

Dr Mosley—I understand the problem. The problem is that it is perceived that the states would be giving up something. I do not think that is the right approach to it. It is not so much a matter of the Commonwealth gaining more power; it is a matter of sorting out what are the appropriate powers for the Commonwealth and for the state without starting from the outset with the view that somebody is going to lose. All are going to gain, as I would put it more positively, from a sorting out of powers.

A state could be boycotting, if you like, through the lack of clarification of powers something that is in the national interest. That has certainly happened in the world heritage field, for instance. An example is the third stage of the western Tasmania world heritage area. In 1988 the Commonwealth, through former Senator Richardson, entered into an agreement with the state of Tasmania saying it would not act unilaterally thereafter with regard to world heritage. It was in no position to give away that power, of course, but it did as a policy matter give it away. One could go into the reasons for that, but the fact is that it was an undesirable move, just as it is an undesirable move of the present day, I believe, for the present Commonwealth government to be entering into regional forest agreements with

the states which have stymied the world heritage assessment process.

I would argue that those kinds of moves are really in nobody's interest. I come back to the point that we should be positive about this and look at the benefits, not simply have in the top of our minds that there is some sort of political agenda that is going to result in somebody losing powers that are relevant to them. Through the process, each tier, including the local government, would have powers that are relevant to them confirmed. I am not having my head in the clouds on this. I realise that the constitutional references would be fairly basic, as it were, but it would provide the framework for the mode of operation to be worked out more effectively.

Senator TIERNEY—I understand that you want the powers defined more clearly between the different levels, but in terms of the balance of powers you said you are reasonably happy with the states powers at this stage and you indicated that you thought that local and even regional levels should have a stronger position. Doing the sums, does that mean you think the Commonwealth in this defined power should have a diminished role? If the states stay the same and local and regional increase, then is that correct on balance?

Dr Mosley—I just said that I do not believe it is a matter of one tier giving up something to the other.

Senator TIERNEY—I was trying to reconcile that with what you were saying earlier.

Dr Mosley—Yes, I know, but I have not seen it as a win-lose approach. If you should not have had a power or a role and then you lose it, you have not actually lost anything—that is what I am trying to say. I will give you this as an example. Say the state has effectively had a veto power over world heritage nominations, there are world heritage values in an area and the state should not have had a power of veto. If in fact that is preventing world heritage values from receiving the protection they deserve, then there is no loss there, in my opinion.

The only way you could conceive that as a loss would be if there were some economic or social effects that were not considered in the making of the nomination—protection of world heritage values versus some economic loss type consideration. But my view is that those matters must be considered by the Commonwealth adequately before it acts. I give you that as an example. I imagine that you are seeing this as a loss of something to the state. Perhaps it is not the best of examples. I am saying it is not a loss if it is a power inappropriately practised, as it were.

Senator TIERNEY—You mentioned four levels of government and you talked about regions. Of course, a regional sense of government in this country is very poorly developed. Perhaps using your Ocean Road example, could you explain how regional cooperation, particularly between councils with the backing of the state government, perhaps might work better than it is currently working?

Dr Mosley—I must say first of all that regional government gained a bad name through association with the Whitlam government, the Department of Urban and Regional Development and those programs. But, regardless of what you think about it or whether or not it is a

fair criticism, I think it is wrong just to regard regional government or regional approaches to government as being solely related to some initiatives of the Whitlam government of the mid-seventies.

The approaches to regional planning were developed long before the Whitlam government embarked on its particular programs, and they have been promoted and then pulled back by the states. For instance, in Victoria a number of regional authorities were operating in the Latrobe Valley, in Geelong, in the Dandenongs and Upper Yarra area and in the Mornington Peninsula-Westernport area, and they were able to take a region wide view of things. I believe they are often too urban oriented. For instance, Geelong planning—the strategic plan, and so on—was very much oriented to the city of Geelong and to some extent encroached on other surrounding regions that could have been run on a more rural basis.

You asked me about the Great Ocean Road. The approach there was initially regional in that a regional plan for the Ocean Road was developed in 1955 through the Town and Country Planning Board which went to the local councils of that area and suggested that there was need for a regional approach. The councils gave up their power—willingly, I understand—to the Town and Country Planning Board which then drew up a planning scheme for the Ocean Road. It protected that area against ribbon development between existing settlements such as Anglesea, Lorne, Apollo Bay, and so on. Effectively it has successfully contained ribbon development and we now have separate towns.

At the moment in Victoria the regional approach to planning has been wound back. Special authorities such as the Dandenong Ranges Authority no longer exist. The Geelong regional authority is gone. There is no provision whatsoever in, for instance, the Victorian planning provisions—the present state government's approach to planning—for regional planning. So we have gone from a situation where regional planning was quite a major part of the planning picture in several parts of Victoria to a situation where, if there is to be any regional approach, it is up to the councils, without any encouragement from government, to enter into arrangements with adjoining councils.

So with regard to regional planning, I believe it needs a framework. I can see that it is a rival in the long term to state government, and that is probably why state government will always keep a wary eye on it and will perhaps make sure it never becomes a competitor, which is an unfortunate thing. As I say, it goes right against the grain of what I am suggesting is the way we should be approaching these matters, not in the spirit of competition and 'you are going to get my job' and so on. I do not know whether I have really answered your question.

Senator CARR—Dr Mosley, I noticed in your final paragraph of your submission you say:

Finally there is the decline in the quality of environmental impact assessment since the 1970s. The arrangements whereby the Commonwealth today often relies on state/territory level assessments can result in inadequate assessment of the impact on national aspects of the environment.

The key component of Senator Hill's proposals in terms of the review of the EPIP Act has been, of course, the accreditation of other governments' procedures. In your experience in

regard to Victoria, has that provision which has been used in the past by governments in terms of reliance upon local authorities—that is, state government authorities' planning assessments or environmental assessment procedures—been adequate?

Dr Mosley—I do not really feel very well equipped to answer that question in that I have not got a very deep knowledge, as it were, of the quality of the state—

Senator CARR—City Link might be an example. How adequate were the EPA arrangements in regard to the City Link in terms of the environmental assessments undertaken for that project?

Dr Mosley—That last sentence in my submission was partly related to the fact that the Commonwealth is not doing its own assessments adequately. That is what I meant when I said that it 'relies on'. I know you have focused on the inadequate assessment part of that sentence, but there is the other component of that—that is, that the Commonwealth is not making a nationally oriented assessment of something because the state is making an assessment.

I am aware of some of the flaws in the City Link proposal, but I do not know if they are ones that the Commonwealth has interested itself in. For instance, I am aware of the clash of the City Link project with the ring park project. If anybody looks down Moonee Ponds Creek today from Footscray road, they will see exactly what a terrible mess has been made of that section of the ring park. The Commonwealth approach to that could have been through better cities or some concept of that notion.

I am familiar with the national gas pipeline project in East Gippsland, and my comments were partly based on my involvement in representing national environment groups on the consultative body that was involved with the national gas pipeline. That is another instance where the Commonwealth purely went through the motions as far as its assessment of the issues which were raised by that particular project and left it almost entirely to New South Wales and Victoria. I am critical of the quality of the work done by the state on the national gas pipeline.

The alternatives were not adequately addressed. Basically, the alternatives were to go through East Gippsland, through the Monaro and up the Illawarra escarpment to Sydney, or to use the Hume Highway route, but because, for commercial reasons, the proponent wanted to go through East Gippsland, the Hume Highway route was never adequately addressed. I would have thought that it was absolutely essential for the Commonwealth, through its responsibilities with regard to national energy planning, to have looked at that alternative, but it was not properly looked at in my view.

CHAIR—Do you think the Commonwealth ought to get involved in developing the terms of reference for such environmental impact studies?

Dr Mosley—Yes, but that would not be enough. If it is a national matter, the Commonwealth has to use its own procedures fully. It has to have a draft environmental impact statement under the present procedures and make that available to the public for comment, and have a final environmental impact assessment, and not just be going through the motions

of doing those things, as it is now, and simply rubber-stamping the state approach.

Senator CARR—The broader question here is about the effectiveness of local environmental authorities and the extent to which their integrity is being compromised by their close associations with economic interests in any particular state. In the case of the City Link, I think there was substantial public criticism after the event at the way in which that environmental panel was put together, the terms of reference and the extent to which it adequately assessed data that was presented to it.

There were fundamental questions as to the impact of that project on residents throughout Melbourne's north and central suburbs and how they were going to be adversely affected, and the extent to which the Commonwealth then relied upon advice tendered by a bodgie process organised by the state government. Is there a concern in your organisation that these arrangements concerning the review of the EP act will legitimise those processes to the extent that the Commonwealth does not have the capacity to effectively challenge bodgie arrangements?

Dr Mosley—Yes, I believe that is so. You have said that if the policy of the state government is to give high priority to some particular economic development then it is not going to be objective in its assessments of the environmental impacts. I believe that is a very real risk. I would not see the Commonwealth as just being the umpire. I would see the Commonwealth as doing its job with regard to things of national interest.

Certainly, I can see how it would be attractive to many people to see the Commonwealth coming in and saying, 'This is a bodgie approach', and using its involvement to stop a bodgie approach. But I go back to the point that it is up to the Commonwealth to not surrender and to not give up doing what it should be doing with regard to its particular interests. For instance, I believe that the amenity, if you like to use that word, of the people of the city of Melbourne—that is good, healthy living conditions in Australia's second city—is a matter of national interest.

If you do not mind my mentioning the ring park proposal very briefly, it originated in the late 1980s and was taken up by the Liberal Party as part of its political platform but, unfortunately, as difficulties were met with—such as the City Link and perhaps, to some extent, the casino—it changed from a ring park to a circle of parks to a capital city trail.

My role is to try to get the park through the Docklands project, down the Moonee Ponds Creek and all of these other sensitive areas, such as the old inner city railway, where unfortunately the Labor government of the time was interested in using parkland for housing. I deal with all these problems. The Liberals came in with a platform of making it happen but in fact they ran up against major problems such as City Link. What is going to happen in the Docklands? I do not know. But the Docklands—I believe certainly there is a national interest in the Docklands—assessments are another example of what you would describe as a bodgie approach. It has been an approach of assessment and consultation going on through two governments and constantly changing, so that people who try to look after a particular aspect of the environment, such as open space, do not know where they stand.

Senator CARR—Dr Mosley, it is just not practical for the Commonwealth to take an

interest in every economic activity that is undertaken in the country at any particular time and as a consequence it has to have some sense of priority. My concern, though, is: in terms of your organisation, is there a greater chance for smaller levels of government to be captives of economic interests which may not have the broader social or societal interests at stake?

Dr Mosley—Absolutely.

Senator CARR—To that extent may the reliance upon the accreditation of other government procedures, which in fact seems to allow for the decentralisation of environmental assessments of these major projects, compromise the capacity to ensure that there is a broad collective or a public interest provision provided?

Dr Mosley—With the predominant political philosophies which are summed up in the term ‘economic rationalism’, that is indeed an enormous risk: that local government might be co-opted, as it were, by economic forces with far more power than they have. Certainly, that applies to the state government and obviously to the Commonwealth government.

But if things are that bad, and I believe they are extremely bad, I cannot see the point of taking a negative view of it and making minor adjustments at the edges. You have to try to argue for and promote a more positive approach to government that is based on the possibilities of not being subject to these economic forces and to globalism and so on. If you are not prepared to tackle that major issue and accept that we can do a lot better, you might as well give up. Whilst I understand exactly what you and Senator Tierney are saying about the difficulties, I do not think it is an adequate response to be able to say, ‘Let’s use the Commonwealth as an umpire’, which is roughly what you are saying.

Senator CARR—I am putting a slightly different view from that—certainly a very different view from Senator Tierney. But, in terms of the extent to which economic interests or public interests can be balanced against the more narrow concerns of any particular enterprise, the proposition I am putting to you is: isn’t it the case that the larger the government that is dealing with those forces, the more capacity there is for a more balanced relationship in any environmental assessment?

Dr Mosley—Yes, that is probably so because it is probably more powerful and could stand up to business interests or whatever you like to call them, but I do not believe that is the best approach. That is an ‘Oh well, we can’t do any better’ approach. It is accepting the inevitability of these problems.

I think it is a matter of redefining the economic interests of the community and not accepting current views about the inter-relatedness of the world and so on as inevitable. I think this is the fundamental problem, but there is virtually no discussion of it. It is not recognised as a fundamental problem. The media, in effect, take the same view of inevitability of globalisation. I am arguing for a more optimistic approach altogether.

Going back to your point about the Commonwealth, I think the Commonwealth has to continue to do the job it did extremely well in the mid-1970s when the Environment Protection (Impact of Proposals) Act was first developed and when major inquiries were run

under that act. We have had no such inquiries of late, or very few. I believe that the scope for these inquiries to open up the issue and to explore the different dimensions—the national, local and regional—and how they interrelate is great.

Senator CARR—That is my point, Dr Mosley.

CHAIR—I am sorry, but we are running out of time. There is just one other question. I think you have pursued that line of questioning a fair bit. Dr Mosley, can you comment a bit more on your statement in the submission about world heritage areas and the apparent reluctance of the Commonwealth government to pursue nominations. Can you expand on your reasons why you think this has happened and why we are in the situation where the Commonwealth often pays for extensive submissions to be put together which then go nowhere? I am thinking of the Blue Mountains and, of course, the Sydney Opera House. Can you quickly give us your views on that.

Dr Mosley—The Blue Mountains nomination is most likely going to be made by 30 June this year with an area that is yet to be resolved. The alps and adjoining south-east forest is probably a better example, as is the eastern arid lands or the Lake Eyre proposal. They are instances where I believe the reason for the Commonwealth's reluctance is those economic interests that Senator Carr was talking about—and this applies to governments of both complexions—particularly in the woodchip industry. The regional forest agreement has been used as the method of dealing with that. The regional forest agreement for East Gippsland has simply put off the assessment. I would have to say that the reason for that reluctance to proceed is not any lack of information about values. There have been more studies that have confirmed the world heritage values of that region—including by the Australian Academy of Science—than for any other part of Australia.

CHAIR—If we cannot rely on the Commonwealth to do it, given all those studies that have been put forward—

Dr Mosley—I am blaming the Commonwealth, yes, absolutely. The Commonwealth has devolved its responsibility through the regional forest agreements—in the case of East Gippsland, with the state of Victoria. Shortly, of course, there will be a regional forest agreement with the state of New South Wales, although I do not think the state of New South Wales is going to be quite as complicit a partner as it was with regard to the economic interests of the woodchip industry.

With regard to the central eastern arid lands, or the Lake Eyre Basin, the ludicrous thing is that the assessment has been limited to South Australia, yet the proposal affects Queensland and the Northern Territory. There is one simple reason why it has been limited to South Australia and that is because of the policy of not proceeding, even to assessments, without the support of the state government. At the time, only South Australia would agree. Queensland definitely would not have any part of it. So the CSIRO assessment has been affected by state boundaries, straight lines on the map, when the valleys of course are biological and geophysical.

I suppose the point I was making in my submission is that it is common to blame the states for lack of progress with things like world heritage, but the Commonwealth must take

its share of the blame. It really comes back to one of the main points that I have been stressing: that one of the chief functions of the Commonwealth is to provide leadership. It is not just a matter of having powers but of being persuasive in encouraging the community to believe that what it is doing is right.

I think also that the case of the Blue Mountains shows that, given the right approach, there can be very strong local community support for world heritage. There is a great residue of pride in the environment at the local level. It is that sort of community interest that should be harnessed, as it were, throughout the nation with regard to environmental programs.

CHAIR—We have run out of time. Dr Mosley, thank you for appearing before us today.

[10.17 a.m.]

FORSYTH, Ms Juliet, Research Officer, Friends of the Earth—Australia, Box 222, Fitzroy, Victoria

WALKER, Mr Campbell John, National Liaison Officer, Friends of the Earth—Australia, Box 222, Fitzroy, Victoria

CHRISTOFF, Mr Peter Alex, Spokesperson, Environment Victoria, 19 O’Connell Street, North Melbourne, Victoria

CHAIR—Welcome. The committee has before it two submissions numbered 160 and 263. Are there any alterations or additions that you would like to make to those documents at this stage?

Mr Walker—No.

Mr Christoff—No.

CHAIR—I invite you to make an opening statement.

Mr Walker—We have a very brief opening statement. Our written submission obviously has our main concerns and also the issues that we endorse. Juliette will give a very brief introduction and also bring it down to the Victorian level, because we are very clear that there are impacts at the state level.

Ms Forsythe—First of all, we acknowledge the need for reform of Commonwealth legislation. Obviously, a lot of the legislation was first generation. With the changing political and social climate, there is a need for reform and we strongly encourage that. However, the reforms as proposed in the consultation paper seem to deliver worse environmental outcomes than is the case with the present system. We take that view for a number of reasons, but mostly because of the past record of the government. We have seen bilateral agreements recently in Victoria with the regional forest agreement. It is those types of agreements that make us really worried about what other bilateral agreements will produce for the environment. That is an issue that I would like to come back to.

We are also concerned about the lack of transparency with the process and the lack of public consultative measures incorporated into the processes that have been proposed. Although there is talk of public consultation, how it is actually going to be incorporated is neglected.

I wanted to come back to the precedent that has been set with the regional forest agreement and, to us, that is an instance of how the states and Commonwealth seem to be going with this legislation. The states and Commonwealth, by excluding the RFA from this discussion and from the reforms, are indicating that they are quite happy with that outcome; whereas we are not happy with the outcome at all. We have had industry embrace the decision and conservation groups not embrace the decision, which to me indicates its one-sidedness. The main problem with handing back powers to the states is that the state

government has proven time and again not to be interested in environmental outcomes but to be driven by industry, and the East Gippsland RFAs prove that to us. I will hand it over to Campbell to talk about transparency.

Mr Walker—The committee will be aware of the concerns that have been voiced by the environment movement in terms of the consultation process to date. Looking at the committee's agenda for today, it is very extensive and we would congratulate you on the fact that you are talking to the smaller regional groups as well as the national and the state groups. But you will be aware that there have been concerns about the short time frames for comment.

I think the environment movement is giving a very clear message: we feel that we do need to see the draft exposure of the legislation before it goes anywhere and that the minister should meet with the full National Environment Consultative Forum before it goes any further. The idea behind that would be that we have had legislation sitting in some instances for more than 20 years. If the time frame is drawn out longer than what is currently being proposed, that is fine, because we have lived with legislation for a couple of decades. So a few more months will not make any difference.

I would like to make a couple of specific points. Obviously, our submission goes into the details and at the back we have listed the areas which we fully support, the areas where we have serious concerns and then the areas where we feel there needs to be more clarification. Overall, as we have said, the negative aspects of what is being proposed outweigh the positive.

However, there are two particular points that we have been asked to make. One is from our representatives in the Northern Territory, the north of Queensland and South Australia, and that relates to joint management. A lot of Aboriginal people, particularly with the reviews that are occurring of legislation such as the Aboriginal Land Rights (Northern Territory) Act and the Aboriginal and Torres Strait Island Heritage Protection Act, are very concerned about loss of their rights. We feel it is very important that joint management be enshrined in any rewriting of the legislation and that the Commonwealth maintain primary responsibility for joint management arrangements.

Given the heads of agreement and the Commonwealth-state responsibilities under COAG, which in many ways are the linchpins of the reform, and given that there are Commonwealth interests and Commonwealth responsibilities, while we take note that the current heads of agreement cannot be rewritten without at least the consultation with the states, it is imperative to us that those issues which are currently listed as being interests have to be included as responsibilities. Without being able to deal with international level issues, such as greenhouse gas emissions and ozone depleting substances, the reform will not work because it will not be able to have a national or a global perspective. If it does not have that, then there is no point having the reform process.

To finish, we would refer to page 5 of the consultation paper which talks about the criteria by which the reform process and the new regime will be judged—things such as clarity, simplicity, transparency and certainty. We would agree with all those criteria very strongly. However, we would also say that, at that point, that is where those issues of

environmentally sustainable development have to be enshrined. There is no point judging them only against economic or process criteria. The criteria also have to enshrine those issues of ESD, particularly intergenerational equity and the precautionary principle. They are our introductory comments.

Mr Christoff—Environment Victoria welcomes the opportunity to present its submission and thinks that this inquiry is a very important contribution to what is currently a very difficult process of at least proposed reform of the national environmental legislation. Environment Victoria agrees in principle with regular reviews of environmental legislation at the Commonwealth level. It finds that that is an obvious and necessary way of bringing legislation up to date.

However, Environment Victoria opposes the present process of reform which fails to meet even the requirements of the latest heads of agreement on environmental matters agreed to last year in relation to the principles of cooperation and transparency—cooperation between government and all stakeholders and transparency of decision making processes. It finds that the current process, particularly in relation to consultation around nominated legislation, is extremely deficient in terms of consultation. Consultation has been negligible.

We see the current process of reform in a longer historical frame, a context which has included about 20 years of attempts to try to reform and, I think in some cases, try to diminish Commonwealth involvement in environmental matters. There were reviews of the EIA process in the 1970s. I believe that the 1992 intergovernmental agreement on the environment actually does diminish Commonwealth involvement and at least responsibility for environmental matters. And this current process threatens to do the same.

In relation to some of the points in the heads of agreement signed late last year and also in the consultation paper on environmental legislation relating to the streamlining of processes as a preferred means of assessing proposals and the development of Commonwealth-state bilateral agreements for accreditation of state processes, there are a number of points I would like to make very quickly. The first is the notion of eliminating duplication—the notion that efficiencies actually derive by eliminating duplication—seems to be driven by a very limited concept of economic efficiency.

Senators would be aware of the findings of the 1978 House of Representatives Standing Committee on Environment and Conservation which found that, should the states adopt legislation similar to the Commonwealth, the Commonwealth believes that there will still be instances where issues of national importance arise which warrant Commonwealth involvement. It is clear that the Commonwealth will always be brought into environmental issues, often in ways which surprise all of the players involved.

The idea that somehow efficiency can be achieved by simply removing duplication actually runs in the face of what is often a well-accepted principle in organisational theory—that of necessary redundancy and the need to have duplication between different levels or different parts of organisations. That is especially in relation to dealing with new issues but also in relation to checking compliance—and I would suggest that the issue of compliance by the states with any bilateral agreement is a major problem—and also the capacity to engage in review and deal with appeals against, for example, state processes.

There is the related issue of state or territory capacity to deliver on those bilateral agreements as well as their intention. This is a point that relates to a comment that I think Senator Carr was making earlier this morning. The IGAE says that the Commonwealth should give full faith and credit to the results of state practices, procedures and processes and the consultation paper says that the Commonwealth should maximise reliance on state processes—as is suggested for the new biodiversity legislation or the environmental protection acts. I would suggest that that is quite inappropriate for at least two reasons.

Firstly, there is a structural difference between what the Commonwealth and the states or territories would seek to do, what they are economically and politically geared up to do in relation to resource management. I would suggest that the Commonwealth is much more likely to take on board broader issues of community concern at the level of national interest than the states and territories which do have a much more focused and domestic desire to exploit resources, get employment up and so on, and meet the interests of selected interest groups.

Secondly, in relation to state capacity, I would refer you to an article that I have had published in the recent *Journal of Planning and Environmental Law*, issue 15, No. 1. If you look at the example of what has happened in Victoria, since June 1990, the capacity of the Department of Conservation and Environment—many times renamed—in terms of employment has fallen from 4,966 to 2,699 in 1995, a cut of 46 per cent in staff. There are further cuts coming through with the current state budget which will probably reduce staffing just in that department alone to about 2,000—a loss of 60 per cent of its staff.

The capacity to actually deliver in terms of research, investigation and even strategic planning on many of the things that the Commonwealth would like to see the states do I would say is sorely hampered by what has happened in Victoria, and that is probably mirrored in other states. In addition, there is a tendency for states to minimise Commonwealth involvement, as well as not to deliver effectively on that.

On a more general point about the use of bilateral agreements: when the Commonwealth and states are developing legislation, they should clearly encourage and engage in a process of producing products of public process. Legislation is very much the outcome of public negotiation, lobbying and detailed inquiry. The bilateral agreements which are likely to be produced—and I think the RFAs are a good example of this—are usually the products of agreements behind closed doors between senior politicians and bureaucrats, and they really reflect the antithesis of some of the key principles which the Commonwealth and state governments have agreed to in the latest heads of agreement, for example, and certainly the antithesis of parliamentary democracy in general. Transparency is really not part of that game.

The last point I want to make very quickly is that Environment Victoria believes that whatever the current government may wish to do in terms of shedding national responsibilities and achieving some sort of fiscal leanness in the environmental area, it cannot achieve that very effectively. Many of the issues that the Commonwealth deals with in particular are internationally defined. They are internationally constituted: biodiversity and greenhouse are two very good examples. The national government alone will be held accountable for outcomes in that area.

Both from above, in terms of international requirements, and from below, in terms of pressure from interest groups at the domestic level, I think issues will constantly be forced up to the national level. To believe that the Commonwealth government can somehow divest itself of its practical capabilities as well as its responsibilities for dealing with environmental matters I would suggest is a little unrealistic and dangerous as well.

CHAIR—When is the next meeting of the NECF?

Mr Walker—In the third week of June—the week of the 22nd.

CHAIR—Is there any indication that the matters in the discussion paper will be addressed at that meeting?

Mr Walker—I have not seen an agenda as yet. The last indication I had was that there may be a partial briefing but not a full briefing, and certainly not a proper consultation. I also have not heard any indication about discussion of the exposure draft.

CHAIR—In your view, what should be the role for non-government organisations and conservation groups in the development of such a review?

Mr Walker—At the very least, as has already been mentioned, there should be full involvement in the actual legislation. Given that the legislation will define and have an impact on the day-to-day work of our organisations in a very real sense, the environment movement is the constituency of the federal environment department. If these are the tools with which the federal environment department will manage their responsibilities, it is imperative that the constituency be involved in creating the framework.

Ms Forsyth—To add to that, we have outlined our objections to the reforms as proposed, but we also have objections to not being asked to submit our ideas on what we would like to see in fundamental reviews of legislation in terms of the environmental impact assessment process itself, endangered species and greenhouse and what measures we would like to see the Commonwealth implement. That has been a problem with the process. We have been asked to review this paper rather than put in our submissions on what should be in the fundamental reforms.

CHAIR—Could you make available to the committee your submission to that discussion paper?

Mr Walker—The earlier one from last year?

CHAIR—No, your response to this discussion paper. You made one, presumably.

Mr Christoff—Yes, we could supply that.

CHAIR—Is it possible that this review and what is put forward in the discussion paper might provide us with a better and clearer trigger for Commonwealth action? Does your submission go to this question? What is your view about that?

Mr Walker—It does. Our concern is, as is stated in here, that we feel the information provided is too vague, particularly about how the agreements—the MOUs—would work, the triggering process, who would have rights and standing in that process, a number of fundamental issues such as who has final say over issues such as endangered species and listing and things like that. We feel that the information is too vague and that where it is not too vague it would not provide better environmental outcomes. To take one step back, while we are endorsing the concept of reform, and we do have support for some of the suggestions, overall there is just a massive outweighing of negative and positive outcomes.

CHAIR—How have triggers operated in Victoria in the past, say, perhaps in the Point Lillias chemical storage depot? What is the history in Victoria of triggers for Commonwealth involvement?

Mr Walker—My experience is that the current situation is certainly not perfect. With regard to Point Lillias, in many ways, in terms of triggering things, the Commonwealth had to be dragged in kicking and screaming anyway. We are certainly not saying that the current process is ideal. There is a clear process now, but the outcomes in many ways were not satisfactory, to take the instance of Point Lillias. It was often difficult to ascertain what was going on as an NGO involved in that campaign. It was often difficult to understand the background on decisions that were being made, and how and at what level the Commonwealth would be involved. There was also a feeling that the triggering process can be very politicised. We would want to see a removal from the political process. As proposed, one of the problems appears to be that the triggering of legislation still remains a politicised issue. It needs in some way to be removed from that process.

Mr Christoff—One of the biggest problems has been the discretionary element in the use of triggers. Another good example is that of the City Link process developing the ring road scheme in Melbourne, where the acceptance by the federal government of a number of incomplete EESs by the state government really depended on a range of political discussions between the two levels of government, rather than any complex or effective review of the quality of those EESs. The issue of discretion, we feel, has to be addressed. It needs to be a much more transparent process.

The second thing is that I believe there is a tendency in all the material currently before us, in terms of both the heads of agreement and the consultation papers, to believe that triggering can be set to one side through the use of bilateral agreements which set up a regulated and lubricated process of simply investigating and accrediting certain investigations. There is a feeling, certainly within Environment Victoria, that there need to be many more checks and balances set in place, which would not disable the use of bilateral agreements as such but would enable there to be much greater scrutiny and appeal against what might occur within those sorts of processes.

Ms Forsyth—We do support the fact that the environment minister is now responsible for triggering the legislation. That is something that in our submission we have agreed with. However, in the consultation paper it says that proponents can propose to the environment minister a triggering of the act. We would also like to see NGOs and any member of the public able to put to the environment minister that a certain proposal should trigger the act. It is unfortunately up to a lot of community members to say, ‘This proposal is going to have

environmental impacts.’ If their voice cannot be heard there are a lot of proposals that simply are not going to be recognised, because a proponent is not likely to put up their hands and say, ‘We want an environmental assessment undertaken’, especially as they are often financing environmental impact assessments.

Senator HOGG—How does one achieve transparency in this whole process? That is of grave concern.

Ms Forsyth—One thing that is necessary is access to documents for community groups. As we have seen with the Victorian department, they are charging \$20 for freedom of information requests. You are not even guaranteed to get the documents, but they still keep the money.

Senator HOGG—Freedom of information in itself is not the answer?

Ms Forsyth—No, not the answer at all. In a lot of cases they are not giving us documents, even though they are required to under freedom of information, and there is very little process for the ordinary citizen to object to being refused documents. That is my personal experience, but people might have something more to say.

Mr Walker—In this specific instance, the main place we have had to look for information with regard to this review has been the consultation paper, and there are many omissions there. There is also discussion of acts that have not been created and very little detail on very key issues—for instance, what public involvement would there be in the creation of bilateral agreements? It is very hard to have an opinion on something when all the details are not there.

Then, to take a step back from that and look at the context, you have to look at what is happening with the federal environment department at the moment. The environment movement has a very low level of trust in the intentions of the current government in regard to environmental protection so that with any changes that are not exactly spelled out people have to be suspicious or at least cynical of the intent behind that. That is part of the problem. Unless it is spelled out exactly clearly—and there appears to be no other information than this—then it is very hard to make a judgment.

Mr Christoff—I would suggest there are three components. The first is access to information. That has been stressed.

Senator HOGG—When you say ‘access to information’, what type of information, and how would people access it, if FOI is not the way to go?

Mr Christoff—For example, if there are inquiry processes under way, clearly much of the information that will be provided to inquiries will become available. There may be a range of other processes apart from formal inquiries which call for information from proponents from interested organisations and so on. That information is not always available to the public; not merely for reasons of commercial-in-confidence, I would suggest.

There should be ways of defining and making physically accessible the information that

is used in any sort of inquiry. That is simply one part of the process. I would suggest the second part is agreement as to what the process is. There is a degree of confusion as to how certain decisions are made, the responsibilities of levels of government, which players are involved in which decisions at which times. That confusion certainly runs through to the interest groups involved. The third thing that I would suggest is that for transparency—

Senator HOGG—Who has the defining role as to who has the interests? It is an issue that we run up against.

Mr Christoff—Which interests are given predominance obviously will change from inquiry to inquiry, and from issue to issue, but there are ways certainly of formally defining who is to be involved in the process and how they can be involved. The third thing I want to stress though is the issue of timing. Transparency and acceptance of the outcomes of a particular process obviously involve sufficient time being allowed for all parties to work through the issues and work through the information material put before them. That is one of the problems we are having with the current process of reform.

Senator TIERNEY—Mr Christoff, the previous witness led us in a very detailed discussion of the various powers between the different levels of government, including the regional level, and how these different levels of government should interact. In your submission you are very critical of compromised outcomes. Given the complex federal structure that we have in this country, isn't it inevitable that you have compromised outcomes?

Mr Christoff—I think the question is: what level of compromise is likely to be acceptable? The quick answer is, yes, it probably is inevitable. The longer answer is that there are many aspects of compromise which perhaps could be avoided or could be limited by opening up processes and enabling greater degrees of scientific information and input to actually clarify and publicly expose points of debate. For example, in relation to the regional forests agreement or a number of other EESs, points of dispute about what the environmental outcomes of particular agreements might be could be confined had there been greater public discussion as to what those outcomes might be.

The example I would like to point to is the use of the Land Conservation Council in Victoria to give the greatest possible clarity to the areas of dispute and the areas of agreement; the use of scientific fact-finding consultancies and other processes involving government departments to actually create an agreed body of evidence so that different parties which would like to dispute the impacts of different types of resources simply are not led down and do not lead each other down false trails. They simply agree to a base of information and therefore the conflicts, the arguments and the compromises that emerge are confined and moved away from areas of environmental sensitivity or unnecessary and misleading economic issues and problems.

Senator TIERNEY—If a better scientific base is the answer, how do we resolve conflicting interests like those we have found with national forest agreements? I refer particularly to the Hunter Valley where such a situation in a geographic area around Dungog is leading to the massive downscaling of the timber industry and loss of employment in those areas. How does a scientific knowledge base actually fix the point of what is, in

essence, conflicting values between conservation and development?

Mr Christoff—I do not think you can fix them. I think ultimately the desirable outcome is one which minimises the pain in so far as that is possible. We went through a very similar set of conflicts and problems in East Gippsland in Victoria.

One of the issues at stake there was exactly how much harvesting the forests of East Gippsland could sustain. I do not suggest for a minute that scientific information is going to be the panacea for all of our problems but, for example, knowing there exactly what a sustainable harvest would be and getting agreement across the parties—the unions, government agencies, the environmental movement and so on—as to what was in fact a sustainable harvest enabled a higher degree of agreement that certain adjustments needed to be made and that, if those adjustments were not made, the economic and social consequences of not going down the path of reducing the cut to sustainable levels would be far greater than a compromise, a painful compromise though it was in that case.

I am not suggesting that fundamental value conflicts can be set to one side and simply resolved but I think there are ways of minimising the degree of aggression and conflict around those value differences by clarifying a range of issues which contribute to those conflicts.

Senator TIERNEY—I think in the case of the Hunter Valley example that it fell down on perhaps the actual scientific base rather than the values base of the agreement in the sense of what was a sustainable harvest. It ended up with an agreement on the low side which has been leading to the downsizing of the industry, whereas there was a feeling that perhaps it could have sustained more. It was actually the scientific evidence on just pinning down what was a sustainable harvest in that particular region which was the problem. So I would perhaps go back to challenge your basic premise that scientific evidence is the thing that ought to solve the problem.

Mr Christoff—I certainly was not suggesting that it would solve the problem.

Senator TIERNEY—Isn't there a danger in what you are suggesting in your submission that perhaps all potential development and economic activity would end up being challenged in court? If so, who should pay?

Mr Christoff—I doubt that I would suggest that all economic activity would be challenged. I think it is fair to say that there are a number of mechanisms that could be used to weed out and eliminate vexatious litigations, claims and processes—a similar debate to one occurring on another issue and a very difficult one, native title, and I am not diminishing the difficulty but I think there are many ways in which unnecessary challenges can be limited at the same time as recognising and encouraging valid interventions by third parties.

Of course, the issue of third party standing by generalised representative interest groups like environment groups on environmental issues is one that is fundamental to the discussion that we are having in the sense, I would suggest, that there is a need to ensure that third parties do have access to and can challenge various development projects—resource projects and whatever—but at the same time there need to be safeguards set in place so that those

challenges are simply not vexatious. Where those challenges are valid and go ahead, clearly it is in the public interest—broadly defined—and therefore I think it is appropriate for those challenges to be properly resourced and funded from the public purse.

Senator TIERNEY—We often get the impression that there are a fair degree of vexatious claims and challenges made. What do you think should change in the process to weed those out and to get it back to legitimate challenges?

Mr Christoff—I am not sure that I can answer that clearly, though my own feeling is that there have been very few challenges made. If one looks at the history of the use of the courts, particularly for example the environmental matters, the number of instances that you can point to where challenges have been made on the one hand and successfully pursued on the other are very slight indeed.

I would suggest that the history of the Land and Environment Court in New South Wales is a very successful history indeed. It probably provides a good example of how some of those processes and those issues could be dealt with effectively if similar courts were established in other states. I think that would be a great step forward.

Senator TIERNEY—I have a question for Friends of the Earth. With regard to conflicting interests between developers and environmentalists, are there any models in other countries that you think Australia could follow for resolving those sorts of conflicts?

Ms Forsyth—I was actually at a National Environmental Law Association conference last month and somebody from Canada was giving a paper on the implementation of an environmental ombudsman. That seemed to be quite a successful step forward—to have someone overseeing the state and Commonwealth processes. That was one way forward that the NELA conference, as a whole, accepted would be a step forward.

Senator TIERNEY—Do you know how many countries have an environmental ombudsman?

Ms Forsyth—I could not answer that.

Senator TIERNEY—Is there any chance of finding that out? Perhaps through the coming out of the conference papers?

Ms Forsyth—I could probably do that.

Senator TIERNEY—And which countries, of course. Thank you.

Mr Walker—At the state level we would also refer to the New South Wales Land and Environment Court. It seems to be the most effective model that Australia has at the present time.

Senator CARR—The Friends of the Earth submission indicates that your concern is that the Minister for the Environment be the minister, rather than the minister for resources, responsible for enacting environmental impact assessments and public involvement. Why do

you believe that to be the case? Can you explain to the committee why that is your view?

Mr Walker—I am not clear; could you reframe the question?

Senator CARR—Page 2 of your submission relates to powers and triggers for Commonwealth involvement. Do you see that reference?

Mr Walker—Yes.

Senator CARR—You say there that it should be the Minister for the Environment, rather than the minister for resources, responsible for enacting environmental impact assessments. Can you explain to the committee why that is your view?

Mr Walker—I think that, particularly in the instance of export quotas for woodchipping, it has been a longstanding issue that the environment movement has been running on; that is, in many ways the environment minister is meant to be a proponent for the environment and therefore you would hope that decisions would be made on a scientific basis rather than on an economic basis. Clearly, a minister who has responsibility for primary industries and energy has different priorities, so it makes sense that the minister most responsible for ensuring environmental outcomes and protection be the one who triggers the legislation.

Senator CARR—The present EP Act requires that any minister responsible for any Commonwealth action be obliged to seek designation for any particular project where it is believed that the Commonwealth's action will have a significant environmental impact. Under this proposal it seems that there is a movement away from that to some sort of a codification, vague as it might be, of only nationally important projects or matters of national importance. Is it your view that that is, in fact, a downgrading of the EP Act?

Ms Forsyth—In our submissions we have been quite strongly of the opinion that there has obviously been a downgrading. When we said we encouraged the Minister for the Environment being able to trigger the act, that is, we encouraged them being the main person to trigger the act. But, in terms of referring proposals to them, we would encourage a much broader base. We would encourage people from the community to be able to put a proposal to the minister.

Senator CARR—Mr Christoff, would you like to comment on those propositions I have put in regard to, firstly, environment minister versus resources minister and, secondly, in terms of the direction that this proposal seems to be heading in in terms of downgrading the responsibilities of ministers to ensure that their own actions are not having an adverse environmental impact?

Mr Christoff—I would like to start with the second first and agree very strongly that it is a downgrading that is being proposed. In fact, there have been similar attempts over the last 20 years to change the EPIP Act to this effect. I think it is actually very important that at minimum the act rely upon all responsible ministers notifying the environment minister of any environmental impact of their actions and in fact it reflects the Commonwealth's capacity to get involved in a range of areas and its de facto involvement in a range of areas at different levels of government through funding a number of other powers.

In terms of the environment minister and resource minister issue, I think that it is appropriate that the environment minister's powers be enhanced. I have not seen the Friends of the Earth's submission so I am not exactly sure what they are proposing. I do not know that I can comment more than that.

Senator CARR—Right. However, the current EP act was always subject to the criticism that the environment minister required an action to be taken by the designating minister, that is, the minister responsible for any Commonwealth action in his or her portfolio. Are these proposals able to actually overcome some of those weaknesses?

Mr Walker—Not from my reading of it, but again part of the problem is that it is too vague. It does need to be restated that under the old model often outcomes would not occur, and the classic one is that of export woodchip licence renewal. The existing model often did not work even where there was reporting back. However, the new one, from my reading, is still too vague for me to be able to answer that.

Senator CARR—It is not adequate to make that criticism.

Mr Walker—Yes.

Mr Christoff—Can I suggest that the problem is one of discretion. I think it is clearly unrealistic to expect the Department of the Environment or the environment minister to have a comprehensive grasp of everything that is happening across all aspects of government at the Commonwealth level. So I think it is appropriate to have other ministers providing that sort of information to the environment minister. The issue is one of discretion. If there is clarity as to what triggers those ministers' responsibilities to report to the environment minister then I think that particular problem of the discretionary failures we have seen in implementation of the act so far would to some extent be resolved.

Senator CARR—A problem arises if we rely on the environment minister per se. That person does not necessarily have the resources to appreciate the full range of Commonwealth activities at any particular time. That is on the present model. How do you respond to that proposition? Has the Commonwealth got the resources to be able to appreciate what it is doing across the full range of government activity? Does one minister have the resources to be able to understand what every other minister is actually doing in terms of environmental impact?

Ms Forsyth—I think that is definitely a matter for concern but, if there were a good process of judicial review of decisions by the minister to trigger the act and if there were very wide standing so that members who felt aggrieved by those decisions could get review, I think that would be a process whereby it would work a lot better.

Mr Walker—Clearly a minister would rely on departmental advice, whether from that minister's department or other departments as appropriate. But I think what is currently being proposed is in many ways greater power to the specific minister that would be discretionary powers, and one is the listing of endangered species and threatening processes. Rather than that final decision resting with the appropriate committee, it rests with the minister. So, in a situation that relies very strongly on scientific evidence, any minister

cannot be expected to entirely understand, given the breadth of the issues they deal with. Extra power is actually given to that minister in quite an inappropriate way. That is one particular critique of the current model.

CHAIR—Is there an argument therefore for every piece of significant legislation coming forward to have some sort of statement attached to it with regard to whether or not this warrants a further impact study or is some attention drawn to whichever minister it is in relation to that legislation? Is that what you are suggesting?

Mr Walker—I had not thought of that but that seems like quite a logical step to take.

Senator CARR—The present EPIP Act requires every Commonwealth minister to be responsive to an environmental impact of his or her decision. What is wrong with that proposal?

Mr Christoff—Nothing per se. For example, in Norway there is a requirement now with every budget that there be an assessment—the rigour of that assessment is open to question, but that is another issue—of the environmental implications of every budget bid coming out of every department, produced by the relevant ministers, handed over to the environment minister and then that particular report on the environmental impacts of the budget being tabled by the environment minister. That is a similar sort of process, I would suggest, to the one that you are concerned about.

Senator CARR—The existing act requires not a budget measure but action—‘every action’. There are exemptions for taxation purposes and various other national security questions, which you might or might not regard as legitimate. My question goes to the issue of how adequate that current process is. I am not getting a clear sense from you as to how you regard that.

Mr Christoff—My answer would be that I do not believe the current process is adequate. I do not think it is adequate for a couple of reasons. One is that I do not think ministers take it seriously and regard their responsibilities with the sort of onerous responsibility they perhaps ought. The other is that there is a real lack of clarity as to how one goes about assessing the implications of what any departmental action or proposed action might be. That is where I think there is clearly a need to develop a much more rigorous process for assessing what are threatening processes and to also then create an additional process, I suppose, external to departments whereby if there has been a mistake made in the normal process of assessment, the third parties can appeal or draw attention to the inadequacies of whatever response has been made.

Senator CARR—Which is what happened with regard to woodchip licensing. The action of the minister was reviewed by a court. You are saying that that is a process that you would welcome in these proposals as well?

Mr Christoff—I think so. I think we would also want to say that we would not want to see the nightmarish bureaucratisation of that process or a sort of flamboyant politicisation of it as well. I think that the very few examples we have seen so far have been incredibly politicised. In fact, if the process was normalised, it would not be the sort of bureaucratic

nightmare, the impediment to good government and so on which many who would be concerned about would actually suggest.

Senator CARR—The fact is that public servants will not be advising their ministers with a high level of seriousness unless they believe there is some external sanction. Is that also what you are saying?

Mr Christoff—Yes, definitely.

Senator CARR—I finally put to you this question about the use of state authorities for environmental assessments. You heard the range of questions I put to the previous witness with regard to the Victorian circumstances. With regard to the City Link project, for instance, is it your view that there was an adequate environmental assessment procedure carried out by the state authority?

Mr Christoff—It is my view very strongly that there was not an adequate process. Such a review occurred in different parts of the project. There was no attempt to look at the implications of City Link as a whole. There was certainly no intention or desire to refer it to the Commonwealth in terms of the Commonwealth's involvement.

Senator CARR—In fact, the project was substantially changed after those initial environmental assessments were undertaken with regard to the tunnel and various other projects as they were initially proposed. However, the Commonwealth relied heavily upon the state authority in that regard. What is different about this proposal? Isn't this what is being expected now to occur as a matter of course under this proposal?

Mr Walker—Except there is not even a watchdog factor coming in in terms of the Commonwealth overseeing that process. It seems to be based on accreditation. Once you are accredited, you follow the process. If you tick all the right boxes, the outcome is approved at the end.

Particularly under the RFA in East Gippsland, there were many concerns about the quality of the information being provided by the state department: about what was available, about the validity of some of it and about the methodology. So there are precedents for concerns but, at least in theory, there was still the Commonwealth, which had a say in that. So there is the very real fear that—

Senator CARR—So you see this as a further deterioration of what was already a bodgie process?

Mr Walker—Yes.

Mr Christoff—We certainly do and I would also suggest that the phrasing that is being used, such as putting full faith and credit in state processes, does suggest in the current political and economic climate that the Commonwealth government is also seeking to downsize the Department of the Environment's capacities to deal with certain issues and problems. In other words, there will be no capacity to review effective compliance or the effectiveness of the agreements that are set in place. I do think it is a movement towards

downgrading outcomes.

Senator CARR—That finally leads me to this point. Without an adequate monitoring role by the Commonwealth in terms of an effective public service structure, isn't it the case that the states will always have the upper hand in regard to these relationships? Isn't it equally the case that, in terms of the control that economic interests seem to hold over state governments, ultimately a flawed process will emerge from these discussions?

Mr Christoff—I would strongly agree with that. I think that is very much the current tenor of what is being put forward.

Senator CARR—Is that the view of Friends of the Earth as well?

Mr Walker—Yes.

Ms Forsyth—That is right. If I could just go back to the City Link example, where we have the Commonwealth funding state projects there is an incentive for the states, when they carry out an environmental impact assessment, not to find bad environmental outcomes from a project. That is something that is of obvious concern: the disincentives for states to carry out a proper environmental impact assessment because it has become political. So the Commonwealth funding of projects is an added dimension to the City Link process.

Mr Christoff—There might be a misinterpretation of earlier remarks in that what we are all proposing is a completely duplicated system of monitoring and so on. That is not necessarily the way in which things would have to work.

The Commonwealth can and does provide funding to assist the states to do certain things for its benefit. For example, it would be ludicrous to have two comprehensive monitoring networks: one for the Commonwealth and one for the states. The Commonwealth can take much greater care in regard to the ways in which its funds are expended. Indeed, it can additionally fund states to achieve certain outcomes which the Commonwealth wants. But it can use its funding very carefully to target the funding in ways which, I think, are completely unfashionable at the moment to achieve outcomes that the Commonwealth can be certain about.

Senator CARR—So you say it is a question of having confidence in the processes, rather than duplicating them?

Mr Christoff—There is a need for a degree of duplication. You would certainly need to be able to have the capacity outside the state systems to review the data coming in, for example, but that does not mean having a completely duplicated network. Some parts of the system would be done in close cooperation, but there needs to be a very careful process of monitoring and review of that process by the Commonwealth.

CHAIR—Thank you for appearing before the committee today. If after today you wish to draw further material to our attention, please feel free to do that.

Proceedings suspended from 11.09 a.m. to 11.23 a.m.

BARNETT, Ms Jenny, Research Officer, Victorian National Parks Association, 10 Parliament Place, East Melbourne, Victoria 3002

AMBROSE, Dr Stephen John, Research Manager, Birds Australia, 415 Riversdale Road, Hawthorn East, Victoria 3123

COVENTRY, Mr Donald Hugh, Chief Executive Officer, Birds Australia, 415 Riversdale Road, Hawthorn East, Victoria 3123

CHAIR—Welcome. The committee has before it two submissions numbered 303 and 265. Are there any alterations or additions you wish to make at this stage? As you have indicated there are not, I invite you to make a brief opening statement and then we will move to questions.

Dr Ambrose—We welcome this review of 25 years of Commonwealth environmental legislation. Protection of the environment is a global responsibility. In reviewing and subsequently improving this legislation, the government has an opportunity to set appropriately high standards for the protection of the natural environment for the rest of the world to aspire to reach. We also welcome the opportunity to take part in the initial stages of this review, and encourage the government to consult with all key stakeholders such as the general and business communities, conservation NGOs and scientists throughout the whole review process.

Birds Australia is the leading organisation involved in the promotion of the conservation of birds and their habitats and overall biodiversity in the Australian region. It is this area of expertise that we draw upon in today's Senate inquiry.

These are our main points. The Commonwealth has the legal right to be involved in the following seven matters of national environmental significance: world heritage areas, places of natural heritage significance, Ramsar wetlands, nationally threatened species and ecological communities, species that migrate beyond Australia, marine and coastal environments and nuclear activities.

We believe that, in addition, two other areas should be added to the Commonwealth's legislative area of responsibility rather than remaining within the states. The first one is vegetation clearance controls. Over 10 million hectares of native vegetation has been cleared nationally in the last 10 years. The rate at which vegetation is cleared varies considerably in each state or territory, with the highest being in the Northern Territory, Queensland and New South Wales.

Two of the most threatened ecosystems are the woodland areas of southern Australia and the grassy woodlands of northern Australia. About one-quarter or 25 species of Australia's threatened birds are found in these woodlands, and many other species' populations are declining. Many of these species, such as swift parrots, superb parrots and Regent honeyeaters, are highly mobile and do not recognise state or territory boundaries. Revegetation programs are welcome but they are a longer-term solution. Eucalypts, for example, take between 150 and 200 years to develop hollows large enough for birds and mammals to use for nesting, roosting and shelter. Therefore, effective Commonwealth legislation needs to be

in place to minimise vegetation clearance nationally, including restrictions on the removal of timber for firewood, which is a significant threatening process.

The second major area that needs Commonwealth legislation is the allocation of water rights. There needs to be a Commonwealth rather than a state legislative framework in place for controlling water flow in major irrigation areas of Australia, for instance, in the Murray-Darling Basin. Having different water flow policies in each state adversely affects the quality of the natural environment in other parts of the Murray-Darling Basin. A good example of that is the flooding of areas for rice paddies in New South Wales, where you might have regional increases in biodiversity as a result of increasing wetlands but by flooding these areas you actually reduce native biodiversity nationally by destroying the habitats of native animals that are reliant upon the native grassland areas.

Much of the Murray-Darling Basin is in the arid or semi-arid regions of Australia. Wetlands in these regions have at least 10- to 20-year cycles due to the unpredictability of the climate. Therefore, there are wetlands of national or international importance yet to be discovered. Sensible Commonwealth legislation governing water use instead of state legislation of variable quality will minimise the risk of such areas being permanently harmed.

Another area that needs to be improved in Commonwealth legislation is the protection of biodiversity. We would like to see revised legislation which reflects more precisely the national strategy for the conservation of Australia's biological diversity agreed to by all Australian governments. This new legislation should include, firstly, key processes that have a major impact on biodiversity, such as vegetation clearance, land degradation, salinity, climate change, exotic wildlife diseases and native forest protection. Secondly, it should include funding of monitoring programs to detect biodiversity that is not yet threatened but is in decline. This will enable threatening processes to be identified early and appropriate recovery plans to be implemented before species become threatened. This will also assist with the state of environment reporting. Thirdly, there should be a process for identifying and listing habitat that is critical for maintaining national biodiversity.

Fourthly, the legislation should include granting of authority for the Endangered Species Scientific Subcommittee and/or the National Biodiversity Advisory Committee to officially list threatened species, populations, ecosystems and threatening processes. This authority currently lies with the Minister for the Environment. Listing by informed committees such as these will minimise the risk of this process being politicised, irrespective of what political party is in government. Fifthly, there should be involvement of the general and scientific communities in the development and enforcement of conservation agreements at all levels of government discussions.

Finally, we would like to see the development of industry or individual tax concessions to fund, firstly, the monitoring and evaluation of the effectiveness of environmental legislation in protecting biodiversity and, secondly, community acquisition and management of land of conservation value.

Ms Barnett—First, I would like to explain that our submission was put together by three people, two of whom have now left the organisation, so there are perhaps certain aspects that

I might not be able to handle when you ask questions later.

The main parts I was involved in and wish to emphasise today are problems with the EES process and also our experience with the RFA process, which is becoming highly relevant if this is an example of accreditation in the Commonwealth/state agreement. I will highlight our main problems with the EES process to date. There have been a number of inquiries, some as recent as 1994, into the environment effects process, with nothing ever being put into place. There has been, to date, an emphasis on not duplicating processes. As we discussed earlier, maybe there are some problems in that.

What has concerned us is that there is no mechanism to ensure that everything is covered. They are anxious that they both do not do the same thing but there is no mechanism to make sure that somebody does it. There are a number of examples of things that should have had assessment which have simply slipped through the net. There is no mechanism, no public input, in which the public can say that this should have had assessment to challenge it and perhaps get assessment where it is required.

Allied with that are problems in triggering the process. What is significant, as was pointed out earlier, is that this process has become very politicised. Certainly in Victoria, where the state act has now been changed so it is purely at the discretion of the minister, it is extremely political as to what gets an EES and what does not. For instance, the Albert Park development was very controversial. It had no EES.

We believe there is a need for a range of levels of assessment. One of the problems is if you have an all or nothing, which tends to be the case with EESs, there is resistance to triggering an EES if it is seen to delay the process. Perhaps it is not quite significant enough to require it, whereas if you had a series of levels of assessment and you had clear guidelines which indicated what level that assessment would be at, proposals would get the level of assessment required and would not be unnecessarily delayed if they were of a much lesser impact.

The jurisdiction of the Commonwealth should be such that it has power to be involved in all proposals of international significance. For instance, at the moment there is a problem with the Endangered Species Act. There are species listed under the Commonwealth act. It has to take care that it actually stands within Commonwealth land or that part of it is actually exported. Otherwise, if the state does not take action, the Commonwealth cannot take action either. We had a classic example of that with a proposal to mine a site at Marble Gully, Victoria. A species was found there which was listed in the national as well as the state act. The state government decided that it would not do an EES, but because the product was not being exported and it was state forest, the Commonwealth had no power to take action even if it wanted to. The situation is that that simply must be fixed up.

You dealt earlier with the issue of the final assessment. As I understand it, the decision process rests with the action minister rather than with the environment minister. We believe that that situation should be reversed because the action minister can have a vested interest in the proposal and it is better that the final decision be taken by a department that seems to be impartial on the issue.

In Victoria, for instance, if an EES is undertaken, then at least the final decision is done by the planning minister and not the ministers responsible for mining or for the forests. We think that sort of situation should occur at the Commonwealth level. It is important to have as a mandatory part of every EES—be it done by the Commonwealth, state or whatever—post assessment monitoring, because a lot of things go through where they say, ‘It will be all right provided such and such is put into place.’ But unless you actually go and look at whether ‘such and such’ works in practice, then the next time a proposal comes up you cannot say whether or not that is going to be successful. We want to have an ameliorated practice based on experience and monitor the experience, rather than on good wishes that we hope this will work.

We think that there is a need for cumulative impact assessment—this has been dealt with by a number of different reviews but nothing ever happens. At the moment, the process tends to look at the effect of one proposal at a time. It does not look at the cumulative effect of that proposal when it is added to similar proposals in the region. We have had examples where the state government would declare an EES on a particular mine for a proposal on a river when there are about 12 other proposals all on the same river. They should be looking at the effect of all 12 of them and deciding what the river can take, not just looking at one of them.

An important issue that has been raised earlier is that of third-party standing. You can have excellent laws that give good objectives and policies, but if there is no action anybody can take it is very hard to make sure that the government keeps its own law, particularly when there is economic and political pressure upon them. The Flora and Fauna Guarantee Act in Victoria contains fine words but, in practice when it comes down to it, what action can the general public take if the government does not follow it? The answer is: I really do not know that we can take any action.

So you need a mechanism where there is third-party standing and some sort of court similar to the New South Wales Land and Environment Court, as mentioned earlier, with mechanisms to remove vexatious claims. I would challenge that there is an excessive number of those because, in Victoria for instance, somebody did an analysis of all the planning appeals that went before the AAT and came to the conclusion that vexatious applications simply were not a problem. It tends to be put up by businesses and sometimes by governments that they are a problem and a reason why they cannot widen standing powers. But I do not believe there is much evidence to show that, once you improve standing powers, you get a flood of vexatious applications as is claimed, providing you have the normal mechanisms for removing vexatious applications.

We spoke earlier of the need for transparency in process. That is something that needs to be addressed. I move to the regional forest agreement or RFA process which was a classic example of a process that lacked transparency. As I said earlier, if this is an example of what accreditation will mean in a Commonwealth-state agreement, I have grave concerns. For instance, that process relied on state government data. There was no ability for the public to say whether or not it thought the data was faulty at any stage. The Commonwealth merely accredited it.

A good example of what they did in the reports is that they lumped together some of the

mammal results under medium to large mammals and plotted a so-called distribution. But they lumped together things like wombats and quolls, which are extremely hard to detect. The distribution of wombats tells you absolutely nothing about the distribution of quolls in East Gippsland or the Central Highlands. Then they concluded that there is enough data so they do not have to worry about it. If that is an accredited process, it is just a glossing over of the fact that they do not have the information for quolls.

When they did identify gaps—for instance, in the East Gippsland process they omitted some areas towards the west of the East Gippsland region which are low in data for quite a range of species—what happened? Nothing. The RFA was still put in place. There were no proposals to do more surveys for that area. They did not say, ‘We will hold woodchipping over there whilst we fill in the gaps’—nothing like that. The woodchipping export controls were lifted for the whole area. The pre-logging surveys that used to happen in the past do not seem to happen any more. So they identify a gap and do absolutely nothing about it.

In the case of East Gippsland, no options were given as part of the range of forest management. It was only considered that the current logging practices continue. They did not look at the options of less intensive logging, examine what that would mean for the environment and what that would mean for economics, and then make a decision based on the range of options. In the case of the Central Highlands, they did not even have any options in terms of reserves. They just said, ‘This is our preferred option,’ and no alternatives were given for anything. If that is meant to mimic the environment assessment process, which they claimed it did, then they are simply not putting out prudent, feasible alternatives as required; yet the process is rubber-stamped.

There was also very poor public consultation. It was done through having a few meetings which were often set at very short notice. There was a total of three that you could attend for East Gippsland and the same three for Central Highlands. In the case of the Central Highlands, they were set on dates on which we just simply could not attend. We put in written submissions, so we did attempt to still have input. But it would be truthful to say that nothing we wrote ever appeared in the final outcome. All the final bargaining between the states and the Commonwealth happened behind closed doors.

In the case of East Gippsland where we did manage to get to some of the meetings, we could see some apparent sympathy towards some of the things that we were putting, particularly from the federal bureaucrats. But, when the crunch came with the final RFA, that just did not appear. My reading of it is that the state bureaucrats held the ultimate power. All the sort of whispers we got from the bureaucracy seemed to indicate that the state bureaucrats held sway totally over the Commonwealth bureaucrats. We are very concerned about a process that comes out with a final agreement in secret. There is no sort of final public input on the final agreement. It is just put out at the end, signed by the Prime Minister, and that is it. They are the main things I wanted to say.

One thing which the RFA purports to do is to satisfy a range of acts—the environment protection act, the world heritage act and the national estate act—and, as I point out in my submission, it appears to be in breach, at least of the spirit if not the law, of some of those acts. For instance, with respect to the national estate act, the RFA says, ‘Although we have identified these values, we are only going to list on the register those that are inside reserves

or which are immune to logging, otherwise we are just not going to list them.' By simply saying in the agreement that the Commonwealth and state agree that this process has satisfied these acts, that does not prove to the public that it does so. I doubt that legally it holds up to have a process which just says, 'It is all right.' But, given that it is extremely difficult for anyone to legally challenge, we just do not think that is satisfactory.

CHAIR—Mr Coventry, do you wish to make any remarks?

Mr Coventry—No.

CHAIR—Ms Barnett, you identified a problem in Victoria of there being a lack of data on which decisions are made, especially to go to an EES or not, and Environment Victoria pointed out the reduction in staff in state environment departments. Is there a role for the Commonwealth in making sure that that data is in place and in seeing that those resources in the state departments are not diminished to a point where they are ineffective? Do you see the Commonwealth having a position there?

Ms Barnett—There could be if they set up good standards that must be followed. Then there is going to be argument about funding—whether funding comes from the Commonwealth or the state. Without getting into that argument, there must be adequate resources from somewhere. The problem is at the moment they have let the woodchipping go ahead and they are talking about monitoring the forests. However, they are not required to do it until 2002 and they are arguing about who is going to resource it. So you can have good standards in place, but you must also have the resources available for it.

CHAIR—So does this suggest a carrot and stick approach to the states?

Ms Barnett—Yes, I think you need both.

Senator HOGG—An issue I have followed throughout this inquiry is where the absolute authority with all of this should lie. Should it lie with the Commonwealth? Should it lie with a mixture of Commonwealth, state and local government? Where should the absolute authority lie, if it should lie anywhere at all?

Ms Barnett—To me, logically it should lie at the top, but I think the roles and responsibilities of each of the three levels need to be clearly defined, and one does not interfere with the other unless they are not carrying out that role. Perhaps there is room for there to be a public mechanism to be able to—

Senator HOGG—I will come to the public mechanism in a moment because I am interested, firstly, in where the authority should lie. It seems to me that there are divergent opinions as to where that authority should be. We have heard evidence that the authority should be vested in some instances at the local government level and, in other instances, we have heard it should be at the state government level. We have heard criticism of it being at levels lower than the federal government. We have heard that the federal government is the government with the capacity and the ability to look after the environment far better in the longer term than either of those other levels of government. Of course we have had argument about the bureaucratic duplication and the legislative duplication that can take place, in spite

of agreements existing already to ensure that that does not take place. So where the actual legislative power lies seems to be terribly important and germane to this whole issue.

Dr Ambrose—I think it is the responsibility of the Commonwealth government to actually set the lines or the boundaries between the various legislation. In the various workshops I have attended over the last few years, there seems to have been a lot of confusion and bad feeling between Commonwealth, state and local governments and the general community because there is a misunderstanding of who is responsible for what. I guess the general feeling is that, of all of those groups, the bad boys are the state governments because the state governments are collecting environmental information and not making it available to the other interested parties.

The Commonwealth government is getting a bit upset because it is not having access to that information. The local governments are getting upset because the state governments are setting legislation that is imposed on the local governments and which they have to follow through. The constituents who are served by the local governments are getting upset because the local governments cannot tell them why they have to set that legislation into practice. So I think all the interested parties need to get together to devise a mechanism to actually say who is responsible for what because at the moment it seems to be a hotchpotch of confusion.

Senator HOGG—There is no doubt about that and that leads to the frustration that is felt out there in the community where they feel dispossessed from the process. I would say that they are as equally uncertain as to where their role is in this as a result of the diversity of law making bodies.

Dr Ambrose—We certainly found in Birds Australia that the general community allowed us to monitor the environment and, in particular, birds and their habitats on their properties because they trusted us as a community organisation. Whereas if a state or Commonwealth government wanted access to those properties to do the same monitoring work, by and large, they were not allowed access to the property because there is that distrust from the community.

Senator HOGG—This raises the issue of how the community is to be involved. In your view, who does the accreditation of the community organisations to be involved?

Dr Ambrose—I think committees such as these and other similar committees that involve discussions between the various levels of government should also involve community representatives. How that takes place, I do not know. To have community involvement in this review process is a good first step, and I would encourage the governments to continue involving the community and stakeholders from every other interested group in review and legislature processes.

Senator HOGG—The argument has been put to us that one can achieve the involvement of the community through the local government area, but we have also had criticism of local government because of the fact that it generally represents fairly sectional interests, particularly developmental interests, and thereby one might not necessarily achieve the representation that one could see happening. What mechanism can we use, therefore, as a means of having community voice heard and thereby allowing more open and transparent processing?

Dr Ambrose—I guess there are several levels of involvement. At the Commonwealth level, there already is a community group of representatives called the NECF. They meet with the minister and his staff at least twice a year. So I think that is a good start for that consultative involvement of the community at the Commonwealth level. If there is broad spanning environmental issues that involve Commonwealth legislation or Commonwealth involvement, I think that is a good starting point. Then there are obviously other issues that might be environmentally important at the state level and at the local government level, and I think you have got to have committee processes in place that involve the necessary community representation. So if there is an environmental issue that only involves a local community or local area, then just involve the local community by all means. I think there needs to be a process in place to actually establish whether or not environmental issues are of local, state or Commonwealth importance.

Ms Barnett—I would just like to add that, as well as defining what their roles are and having them do their duties under those roles, there seem to be some mechanisms about what you do if they do not fulfil their roles, be they at the local, state or federal level.

Senator HOGG—What would you suggest, because this is the other problem that has been raised with us?

Ms Barnett—There needs to be a power for the government above to take over or direct in the event of them not fulfilling their role, and that would be used sparingly. There could also be a mechanism whereby a third party could take the local government or whatever to task. For instance, as happens with planning legislation in Victoria. A local member of the public can take out an enforcement order for breach of the planning legislation. Just the fact that it is there serves as a bit of a break on that particular government. It is a check and balance—because it knows it can be challenged, it is more likely to make sure it does what its duties are in the first place.

Senator HOGG—But you would need some external mechanism to the federal minister, surely?

Ms Barnett—Yes, you would need some sort of Commonwealth land and environment court with appropriate standing and with sufficiently clearly defined legislation saying under what circumstance you can take that action so that, in most serious cases, it can be taken.

Mr Coventry—Birds Australia has a situation at the moment where, through public appeal, it raised funds to buy a property for the preservation of a number of endangered species, including the black-eared mynah. At the moment, it is subject to an application through the state government for sandmining on old-growth mallee. Because we are not covered by federal lease, our property at the moment cannot be protected through the Endangered Species Act and we would have to look at that. So there is a definite need to have an overarching protection for such processes when community organisations acquire land, and I believe that strongly has to be at the federal level. Unless it is a federal property, there is not that protection at the state level.

Senator HOGG—It has been raised with us that there is a need for a ‘fourth level of government’, being regional authorities based on a number of councils or a number of shires.

How do you think that would function and operate, given the difficulties that we have with three tiers of government now? Is that really an effective management tool?

Mr Coventry—It is and it isn't.

Dr Ambrose—From an environmental point of view, it has its advantages. If those regions were based on ecosystems rather than political boundaries, that might work. One environmental disadvantage of that is, using the rice paddy example I used in my opening speech, farmers in the rural community of western and central New South Wales are flooding their paddocks to make rice paddy environments. They argue that by doing so they are increasing biodiversity in their region because they are creating wetland habitat for waterbird species that would never have been found in their region.

However, on a national level, it is a disadvantage because the areas that have been flooded were native grasslands and those grassland areas have a unique wildlife. By flooding those grasslands you are destroying that wildlife. Regionally, you are increasing the biodiversity, but nationally you are actually decreasing it. If you are going to have a regional form of government, you have to be very careful about how you structure it.

Ms Barnett—In the past, the Upper Yarra and Dandenong Ranges Authority did function like that. It had, effectively, a policing role and it helped keep the shires in order. Complicating that now is the fact that the shires have been amalgamated. Some of the shires are now almost as big as the regional authorities were. Interestingly, the government has got rid of those authorities, but it has set up another set of authorities, which are what are now called catchment and land management authorities. There are nine of those in Victoria, I think. They are regional authorities, but we have concern about how they will work out in practice because, by law, they have to have a majority of farmers on them. That means that the majority of people on them have a vested interest in how the land is run. When you are dealing with issues such as land clearance, which we believe is going to be passed over to them, to our concern, then we feel that they may not handle that in an entirely unbiased way. Certainly, regional authorities have had some benefit in the past. Victoria still has them, but we are not sure how these ones are going to operate.

CHAIR—Dr Ambrose, you suggested that the Commonwealth needs to have powers over vegetation clearance and water rights. What practical difficulties can you see in such legislation? How would that work, given the involvement of even local government in both those areas in perhaps a more obscure way? Is it realistic? Are the practical problems so great as to make that unworkable?

Dr Ambrose—Certainly, there are lots of practical problems—I freely admit that. But I am also of the view that one should not go down that pathway based on that point of view. I consider the clearance of vegetation as being the major threatening process in Australia as far as birds are concerned. I think we really need to look at that more closely in terms of Commonwealth control. We have in excess of 100 bird species in Australia that are on the decline or on the verge of extinction, which is about 12 per cent of the total number of bird species found in Australia. One quarter of those species that are at risk are found in woodlands in southern and northern Australia. To all intents and purposes, it is a state of emergency.

When you look at the differential rate of clearance between the various states, some states are very good. One may argue that the reason they have reduced rates of clearance is that they have cleared most of the valuable native vegetation for agriculture anyway. But there are other states such as the Northern Territory, Queensland and New South Wales which certainly need to be kept in check. They are the three states now that really have the greatest numbers of bird species that are at risk.

CHAIR—In relation to migratory birds and the international treaties that the government has signed, in your view, what is the problem with the Commonwealth's apparent reluctance to intervene, particularly in Victoria—and I point to the Point Lillias example—when there are threats to Ramsar sites. What should be the trigger? What is a better process for seeing that they are protected?

Dr Ambrose—The problem I perceive is that it is a question of them against us when it comes to Commonwealth-state relations. With respect to Point Lillias, we had a situation where we had a Victorian government which really was not particularly interested in the natural environment, and it was quite clear from the decision making with respect to Point Lillias that that was the case.

We were all rather surprised when the federal minister did allow the go-ahead for Point Lillias, provided there were some slight changes in the boundaries of the Ramsar site. But we were very amused afterwards when the Kennett government reversed its decision about it, based on environmental grounds. One cannot help feeling cynical about that. Perhaps the federal government may be able to encourage state governments to follow a good environmental line by providing some economic measures to make it worth their while to do so.

CHAIR—What sort of economic measures?

Dr Ambrose—I guess it could be further assistance to the states for putting back into the environment, for their own environmental work, as a reward for being good environmental citizens.

Senator CARR—The Victorian National Parks Association submission suggests that the Commonwealth environment minister should have effective power to designate matters under the EPIP Act rather than the action minister. Have I understood you correctly in that regard?

Ms Barnett—I took that from this document which was put out by the Environment Protection Agency which was entitled 'A public review of the Commonwealth environment impact assessment process'. They suggested that that change be made, and I agreed with it. As I understood it, the final decision rested with the action minister who, as I said, would tend to have a vested interest in what happened whereas the environment minister—who I assume would be somewhat like our planning minister—would have a more neutral role.

The action minister should still be in a position where he can suggest that he thinks an EES should be done, but it is the final decision. So that even if the action minister does not think one should be done, the environment minister should be able to say, 'I think one should be done', therefore one will happen.

Senator CARR—You are in fact arguing that the environment minister should be able to initiate, not necessarily be the final arbiter?

Ms Barnett—Yes. Initiate and be the final arbiter as well.

Senator CARR—The question arises as to what extent should every minister be mindful of his or her actions in regard to the possible environmental impacts. The problem occurs that if it is up to the environment minister, doesn't that allow individual ministers to wash their hands of any responsibility?

Ms Barnett—They should have their duties defined under the act, but it is a bit like when we were discussing before the roles of different levels of government. At the end of the day, the environment minister should have the power to say, 'This should be done,' and there should be set up strong guidelines triggering the EES and also strong guidelines as to how and when it should happen so that it is transparent. At the moment, theoretically, under the Victorian act the minister for forests—they are all in one department now—could say, 'I think an EES could be done on this,' and the planning minister could say, 'Yes, okay, we'll do it.'

On the other hand, if the suggestion does not come from the minister for planning, either from his own volition or more likely from the public writing to him, he will say, 'We think an EES needs to be done.' The fact that EESs do not happen as much as they should is another story, but this is the theory at least. They still have a responsibility to manage things according to certain principles and guidelines, but there is still that oversight, if you like, from the environment minister.

Senator CARR—Yes, however, if there is a specific requirement at law for a minister to be responsible for their actions in regard to environmental impacts, does that not put a greater onus on the departments to actually be monitoring environmental impacts?

Ms Barnett—Possibly. It depends whether anybody can take any action on that point of law. It is all very well having nice words, but if the public cannot do it—

Senator CARR—Do you think the policing question is the critical one in that regard?

Ms Barnett—Quite often. It either comes from the minister above or from the public who are going to take some sort of action if that thing does not happen. At the moment you can have very nice sounding acts, but governments do not always seem to follow them.

Senator CARR—Do you see a role for an environmental defender—such as we see with the Competition and Consumer Commission, which is an independent body—whose role it would be to be an advocate for the environment?

Ms Barnett—Very definitely, and they must be resourced. That resourcing must not be tied, as it is at the moment, to them not taking 'any litigation'. In Victoria, that means I cannot even make a planning appeal, which is just ridiculous. You have to have adequately sourced and independent bodies, and you need an appropriate court to which you can take things. Maybe with some of these acts theoretically one could take them to the Supreme

Court, but environment groups and individuals do not have tens of thousands of dollars. If you have an action which can only be taken to court if you have a colossal amount of money, effectively it is big business that can take that action, but the public cannot take that action. That is a real problem with environmental law at the moment in general in Australia.

Mr Coventry—There will be a problem with the government encouraging community groups to purchase land for conservation value and then not providing adequate protection for those groups. I think that will create intense dissatisfaction and distrust with the government if those protections are not there for them, given that the community will invest considerable amounts in properties that they see, through that process, should be protected.

Senator CARR—The present act requires ministers to be mindful of the impacts in terms of the possibility of significant environmental impact—the word ‘significant’ is used. National parks is saying in their submission that they believe that this creates ambiguity. Does Birds Australia share that view?

Dr Ambrose—Yes. I very much support what Jenny is saying in the sense that there is no avenue for a member of the public or the general community to stand up and challenge various environmental activities—

Ms Barnett—Or non-activities.

Dr Ambrose—Yes, like mining activities—and be confident of a win.

Senator CARR—Equally, if there is no discretion, what is to stop actions being taken to prevent any economic development?

Ms Barnett—I do not see that happening. What we are talking about here is the right to have things assessed in the first place and assessed in a proper manner according to certain standards. It does not dictate what the outcome of that assessment will be.

Senator CARR—For instance, if the Commonwealth minister for schools wants to ensure that there are decent TAFE colleges built, what is to stop action being taken to prevent the construction of TAFE colleges?

Dr Ambrose—I think the key word that you used earlier is ‘significant’ impact. That has to be defined legally within environmental law.

Senator CARR—So you do see a need for a clearer definition of the word ‘significant’? That to you is the important question here?

Ms Barnett—Yes.

Senator CARR—The issue of discretion arises, but perhaps it should be more clearly put in terms of the legal definition of the word ‘significant’. I just wanted to clarify that point in your submission.

Ms Barnett—There is also the question of a level of assessment because the building of

a number of schools, depending on where they are built, may not have much of an impact. It would be keyed against these guidelines that it only needs very minor assessment. All the public can challenge is that the assessment has happened at the appropriate level.

CHAIR—On a point of clarification, the Trust for Nature has a covenant system over its properties. Do you know whether that protects them against mining operations?

Ms Barnett—No.

Mr Coventry—It does not. Likewise with us, we thought we were protected. Unless we are under federal title, we have no protection under the Endangered Species Protection Act. We would possibly look at that as an option.

CHAIR—The legislation covering those covenants is the strongest in the country, is it not?

Mr Coventry—I cannot comment on the extent of that.

Ms Barnett—It might have been, but at the end of last year, without even telling the Trust for Nature (Victoria), the state government apparently brought in legislation saying that, if anything is in the state interest, the covenant is automatically void, or words to that effect. That is a new thing and that just goes across all existing covenants so it is currently being watered down somewhat.

Mr Coventry—The situation we also face in South Australia is that the environment minister is not keen to have environmental concerns overriding mining issues. So it gets down to a conflict between the state and federal government. At the moment we are just not covered there.

CHAIR—We have again run out of time. I thank you for your presentation today. I invite you, if there is something further which you would like to put to the committee, perhaps in writing, to do so after today. Thank you very much.

Dr Ambrose—I have for the committee a conservation statement on woodlands.

CHAIR—We would be glad to have it, thank you.

[12.13 p.m.]

CUMING, Dr Brian David, Research Coordinator, Westernport and Peninsula Protection Council Inc., PO Box 9, Hastings, Victoria 3915

BURGAN, Mr Graeme, Committee Member, Phillip Island Conservation Society Inc., PO Box 548, Cowes, Victoria 3922

JOHNSON, Ms Margaret, Secretary, Phillip Island Conservation Society Inc., PO Box 548, Cowes, Victoria 3922

CHAIR—I welcome representatives from the Westernport and Peninsula Protection Council and from the Phillip Island Conservation Society. The committee has before it two submissions numbered 44 and 242. Are there any additions or alterations to those documents that you would like to make at this stage?

Dr Cuming—Could we perhaps make an introductory statement, which might incorporate some of those issues?

CHAIR—Certainly. I will invite you to do that. I thought there may have been some more material you wanted to submit to expand on those submissions.

Dr Cuming—I do not have any further written material.

Mr Burgan—I do have some additional written material that I will refer to in my presentation. I do not have four copies; I have got only one copy.

CHAIR—I now invite you to make an opening statement or, if you wish, we can go straight to questions.

Ms Johnson—The Phillip Island Conservation Society was the first group of its type formed in Victoria 30 years ago. We have just celebrated our 30th birthday. Apart from practical projects et cetera, we have served on many committees. Currently, these committees include the proposed car ferry environmental effects statement committee; the EES stage 2 of the Seal Rocks project, which followed the stage 1 consultative committee; the Crib Point Terminal Consultative Committee; Environment Victoria; the Phillip Island Nature Park Management Committee; and the Bass Coast Shire Council Advisory Committee on the Environment.

We have been a staunch watchdog for conservation for the ecology of not only Phillip Island but the broader area of Westernport and its catchment. We have contributed to hundreds of planning appeals, during which time we have learnt quite a lot about planning law. We have contributed and written many survey reports, environment research papers, management plans and regularly submitted papers to inquiries—local, state and federal, including many Senate inquiries. We have encouraged many visits of state and federal environment ministers to the island to show them what we are talking about.

Our current membership is just on 200, of whom half are local and half are very committed holiday home owners. The following short submission will be presented by Graeme Burgan and Brian Cuming about matters that concern us.

Mr Burgan—We will be focusing on only two specific areas, which might be different from the last submitters you have had who have talked in a broader sense about Commonwealth powers. The first one regards oil in Westernport. I have personally made two representations to Canberra to talk to environment ministers over the last eight years about this particular issue. I would also like to talk about another issue—the development of a particular area on Phillip Island.

With regard to the oil issue, both Brian's group and my group have been working very closely together on that since 1992, when the issue first came into being. It is over that issue that we have become involved with the Commonwealth's powers over protection of the environment. Both of us would like to make a presentation about how we dealt with those issues. Brian was going to give a brief introduction about what the issue was and then I was going to talk a little bit about the processes.

Dr Cuming—We have a similar history to the Phillip Island Conservation Society. It is only 28 years rather than 30 years, but in all of that time we have had a close liaison. There is a very effective network of groups around the bay, of which we perhaps are the oldest and take the lead. We have also been involved in the matter of oil in Westernport for all of that time. We made a substantial submission to the 1978 House of Representatives inquiry on oil spills and more recently we have made a submission to the oil spills inquiry run by the standing committee of the House of Representatives two or three years ago. We have also been part of the deputations to ministers in Canberra and have in recent times hosted two ministers, including the current minister, to see Westernport Bay and its problems.

I would like to start by highlighting in my submission the quote from the former chair of this committee, Senator Meg Lees. She said, 'If we can't protect a Ramsar site, what can we protect?' We believe that the case history that we have been through in recent times is a perfect illustration of the need for Commonwealth powers. As it is, the Commonwealth powers have turned out to be ineffective. Graeme Burgan will expand on that in some detail. The fact that we at least had the chance to refer the matter and keep the matter alive with the Commonwealth has been a very important part of our campaign.

In summary, the oil came to Westernport in the mid-1960s when BP set up a refinery. At that stage, there was no legislation—there was not even an environment movement in the world, virtually—so there were no real permissions sought or given in relation to the environment, and there never has been. Oil has been transported and handled in Westernport all that time. Then oil was discovered in Bass Strait, so a second installation of Esso's came. Twenty years later, BP closed the refinery for their own commercial reasons, leaving only the export of Bass Strait oil by Esso. This was a declining market and it was something that we were happy to live through.

However, a proposal by Shell-Mobil then came along to use the old BP facility to bring imports into Westernport because they could bring bigger tankers there than into Port Phillip. This would have the effect of bringing the levels of oil transport, which had reached a height

of about 15 million tonnes a year, back up again from what has now become quite a low figure. At that time, we asked the minister in Victoria for an EES and it was refused summarily.

However, the minister for planning demanded that an oil spill plan be prepared. There were certain reference points, one of which was the Shire of Hastings which was to comment. Some 90 submissions were made to that, including some very technical ones. Also, Commonwealth authorities were to be consulted, and this was of particular importance to us—and I will refer to the importance of this in a moment. This gave us the occasion to carry out technical investigations—and there is not time, but the documents are here if you would like to discuss any of them, Madam Chair.

Calculations were carried out by technical people on our committees, but we also commissioned the Victorian Institute of Marine Science, which is now part of the Marine and Freshwater Institute in Victoria, for work which we paid for ourselves using the Commonwealth's oil spill computer modelling program. That showed conclusively, we believe, that it is impossible to deal with an oil spill of any dimension in Westernport.

In referring it to the Commonwealth EPA at the time, they in turn employed a respected independent consultant, Oversea-Undersea Environmental Consultants from Brisbane. Their conclusion said:

The contingency plan cannot guarantee protection of the Ramsar values of the Westernport Bay wetlands nor of the environment in general should a worst case or even moderate oil spill occur in the bay. Despite the existence of the plan, the risk of major oil spills from the Crib Point operation remains and it is likely that significant environmental damage and economic loss will occur in the event of such spills. This does not reflect any particular deficiency with the plan, but is an inescapable reality within the constraints of the nature of oil and current available technology.

Those sentiments are expanded in detail in that report. The Shire of Hastings commissioned other consultants—WBM Oceanics. All these documents, incidentally, were tabled at the House of Representatives inquiry. The general conclusions drawn by these consultants confirmed those of the CEPA consultants. Both of them recommended there should be an environmental impact assessment carried out. The story from that moment on is that we have never achieved an inquiry of any sort, but the important thing to us is that we have been able to refer the matter to the Commonwealth as well as to the state.

The mood of the state government at the time when we had our EES refused was such that the door would have been closed to any further discussion. We never managed to meet Mr Birrell, for example, in the whole three years of his ministership. We had one dismissive letter from him. But what has happened is that, because it was possible for us to take this to first of all Senator Faulkner, later to Senator Hill, it has remained alive and these technical facts have slowly been able come out onto the table. They have been tried in various forums including, as I said, the House of Representatives inquiry, where the industry presented evidence alongside me, but there was no effective criticism of any of this work. Likewise, the EPA in Victoria. So to us it is a very important matter that there remains a strong Commonwealth presence in environmental law.

It is only very recently that we have become aware of the consultation paper. We are pleased with many of the positive aspects of this—the fact that the triggers are no longer

artificial triggers, but that it is proposed that they be environmental triggers for the act, for the EPA—but we are very concerned about the matter of bilateral agreements with the states. If a management plan were made for Westernport which closed off the avenue to go to a higher level, we believe it could be disastrous because we believe there are philosophies and agendas that apply at different levels. A matter like Ramsar, a matter like greenhouse, a matter like ozone—all these things are things that can only be looked from an Australian point of view. They will go in the wrong direction if they are closed off into state points of view.

I think that probably is enough introduction. I will hand over to Graeme to talk a little bit more about the detail.

CHAIR—Dr Cuming, you suggested there is some value for your organisation in being able to go to the minister, but doesn't the letter from the EPA suggest that there is no trigger and therefore no role? Is it doubt about whether or not the Commonwealth can get involved in this instance that has allowed you to put forward this material or do you agree that there is no role for the federal government?

Dr Cuming—In our particular case, do you mean?

CHAIR—Yes.

Dr Cuming—We have believed all along that the act should have been triggered when it went to the Foreign Investment Review Board, when they referred it to the EPA. In fact—I have referred briefly to this and Graeme will talk more about it—from freedom of information research we have discovered that Bill Phillips from the national parks, as it was called then, wrote to EPA and said, 'We would like further information because this is a Ramsar site.' In other words, 'Please do not do anything,' is implied in that letter, and yet CEPA went ahead and told the Treasurer to go ahead with FIRB (Foreign Investment Review Board) approval. We in fact were advised that we had a very strong case against the government for that, which we did not implement finally, and we still believe that there were triggers which could have been operating through all that time.

The government has in fact given permission. It is only Shell back in Holland, as far as we can interpret the correspondence, who have said, 'This looks a bit dangerous. We will not go ahead with it.' But, as far as the Australian and Victorian governments are concerned, permission has been given for something which we believe is inimical to the environment of Westernport.

CHAIR—So you would not suggest that, with all its shortcomings, this discussion paper about the Commonwealth review might in fact open up the possibility of those triggers being better defined.

Dr Cuming—I do acknowledge that, yes, they become genuine environmental triggers rather than artificial triggers. We applaud.

CHAIR—You have not seen them yet, of course.

Dr Cuming—Well, as it is written here. But what we are concerned about is the possibility of bilateral agreements being made which close off something as massive as the whole future of Westernport.

Mr Burgan—Perhaps I could elaborate on why we feel that way in regard to, I guess, delegating your responsibilities for things like Ramsar to the state government. I will just quickly backtrack a moment to highlight why we feel that way. I will read a couple of paragraphs from some documents that I will hand over to you. This is from our submission:

At significant cost to our members, deputations were made to the federal ministers and local members in Canberra—

I was the person who made that deputation—

on two occasions and to state ministers and members on numerous occasions. The upshot of our inquiries and concerns over the approvals process was a real lesson on the limitations in the environmental protection legislation at both levels of government. Both chose to pass the buck and hide behind bureaucratic bungling, each claiming that it was the other's responsibility for ensuring the appropriate environmental impact assessment and consequent approval of the project.

At the time I was a councillor for the shire of Phillip Island and our council, together with all the other shire councils that border Westernport, felt the issue was of such significance that they actually paid for me to go to Canberra to represent our feeling on the matter to our local members and to the Minister for the Environment at the time. I made a report back to our shire council which I will table for your records. I will just read to you part of my summary of that:

All government approvals can be traced back to that original application which made a number of claims relating to the risk of using Westernport for the transport and storage of oil. These claims were never tested or questioned.

Brian has already elaborated on that. My summary continued:

The assumption was that oil had already been in Westernport for 25 years with no spills or problems and that because the new operation would not be in excess of what had been occurring then it would be unlikely that risk would change or that a spill would occur.

I will table that. The reason I made that statement was in response to the advice that was given to the state's planning minister at the time from his regional manager. This actually advised the minister that an EES would not be required. He based that assumption that an EES would not be required on the fact that the oil company was in a rush and it was imperative that they get ahead with the project very quickly because they had just recently spent \$500 million on upgrading a processing plant over at Geelong. His argument was that there was an overriding interest of Victoria, and that enables the minister to actually call it in and make a decision without referring it through the normal planning processes.

That concerned us greatly. We did not find out about this until later when it was acquired under the FOI Act. What it meant was that we believe the project had not been investigated adequately by the department of planning and the appropriate referrals had not been made to the environment department at the time. Consequently, we believe that the minister was given poor advice at that initial stage.

Senator CARR—Can you table those?

Mr Burgan—Yes, I will table all those documents and I have highlighted the sections that I have been speaking to. That has been reflected in the minister's letters back to us through our local members about the project. I will quote our planning minister:

. . . the use was appropriate for the site and that the significant environmental issues associated with the proposals, and which fall within the responsibility of the Victorian Government, can be adequately addressed by various approvals which are required.

However, he then states that he will not require an EES. I table that letter.

In subsequent correspondence with the state government, because we were concerned about the fact that it would not go through the EES process, we kept getting letters back saying that not only would an EES not be required but those issues in regard to Ramsar were a matter not for the Victorian government but for the federal government. We were a bit concerned that we were getting this passing from one level of government to another all the time. I will read one letter from Mark Birrell, who was the then Minister for Conservation and Environment:

. . . the Federal Government determined not to invoke its own environment impact assessment legislation. It did so in full awareness of Australia's Ramsar treaty obligations. If it wishes to intervene, or to effectively stop the terminal proposal it could.

That was one letter from our state minister that I will table. As a result of these letters, we thought that we would go to the federal minister, which we did. We started getting letters back from firstly CEPA—the Commonwealth Environment Protection Agency at the time—making similar sorts of statements:

In regard to the application of environmental assessment legislation to the proposal, this is a matter for the Victorian government . . .

That was followed up with a letter from the then minister for the environment, Ros Kelly, who said:

. . . it would appear that the application of environmental assessment to the proposal is a Victorian Government responsibility.

She also wrote to the shadow minister for planning at the time with exactly the same sentence. We had this situation where we were getting this toing and froing between the state and federal governments, with both of them not wanting to accept responsibility for environmental assessment of what we thought was a very significant issue. It all stemmed back to that original documentation which said that because Westernport had been used for oil for so many years and there had not been a major spill then it was not going to be a problem in the future. We felt it needed to be more thoroughly assessed. We went through the processes of getting a legal opinion to work out whether we should actually—

CHAIR—Mr Burgan, is there any reference in those letters to Ramsar, is there any discussion about it?

Mr Burgan—Yes. I have not read all the letters out because it would take time to do that—

CHAIR—No, that is fine.

Mr Burgan—But in the CEPA and federal letters and in the state letters they do refer to Ramsar, because that was the issue that we were wanting to explore.

Senator HOGG—In any of those letters, was there any reference to legal opinion supplied to either the state government or the federal government to say that their position was the correct position—that they did not have the responsibility?

Mr Burgan—There is some mention of it in one of the CEPA letters of advice to the minister obtained under FOI, but in any of the other letters there is no mention about the legalities of advice.

Senator CARR—Are you saying that the Commonwealth had legal advice that it was not appropriate for them to act?

Mr Burgan—Yes, Ros Kelly was given that advice. When I went up and met with her, she advised me of that advice that the Commonwealth believed it did not have a responsibility, because the advice was sought from CEPA for a FIRB proposal, it was not actually going through the environment minister. So she was not the action minister. The Treasurer was the action minister in that particular instance.

Senator CARR—So it was a technicality, you are saying?

Mr Burgan—So that was a technicality. But, after two years of toing and froing, we went and got some legal advice. I am not prepared to table that legal advice. However, I would point out that in this document entitled *Review of Commonwealth environment assessment decisions: a discussion paper*, which was an Administrative Review Council report of October 1993, it vindicates the legal opinion. I have photocopied the relevant pages and underlined what we believe are the relevant sections. This review stated:

The environment department is of the view that further investigation of the environmental impacts of the proposal is warranted. It must refer to the environment minister the question which, if either an environment impact statement or a public environment report, is necessary to prepare in relation to the proposed action. Also, the Minister might at any stage order that a public inquiry be held.

In the end, we were asking the minister to hold a public inquiry, because she had stated to us that as she was not the action minister she could not actually require that any EIS be done. Our legal advice had also told us that we could require the minister, through the ADJR act, to order a public inquiry. But we did not go through with that because we did not want to end up in court. We are such a small environment organisation and we do not have the money to be able to do that sort of thing. So to this day, we are still sitting here. I guess we are lucky in that, because of the situation with oil imports in Australia at the moment, the project has not gone ahead. However, that also indicates to us that these companies can convince governments of the urgency of the projects so that they can fast-track them. The original approvals by this state government were given because of the urgency and the need

for the project, but that just has not come about because of changes in the oil market. So we have been lucky. What we are worried about is the Commonwealth delegating its responsibilities through agreements to the state to uphold environmental protection legislation. The issue here is that the whole of Westernport is a Ramsar designated area.

Senator CARR—So is it your submission that the current arrangements under the environment protection acts require clarification? That is, you are saying that the relationship between the environment minister and the designating minister or the action minister needs to be clarified?

Mr Burgan—I think so. Quite often in some of these large projects, if there is already a pre-existing use and there is a move to either upgrade or change the use, it usually comes through under Foreign Investment Review Board procedures. It just would not appear on the environment minister's desk. So really the FIRB approval process is the only opportunity for another bite at the apple, so to speak, in order to ensure that the project's environmental impacts are addressed properly.

Senator CARR—But you have no doubt that action by the requirement to take matters before the Foreign Investment Review Board is legally a Commonwealth action and therefore subject to the EP act?

Mr Burgan—Yes, we are aware of that, and that is the advice we were given. We actually asked the minister why she had not made—

Senator CARR—What was her explanation?

Mr Burgan—Again, the explanation was that she was not the action minister and that there was not another decision to be made because FIRB had been given the approval. We did not find out about all this stuff until after FIRB had given approval. We came along afterwards and started to find out this trail of how the decision was made and how the approvals were given. The minister was not prepared to take a step backwards. There was no new decisions to be made by her or by any of the following ministers for the environment on that matter, so they felt that they could not enact the act.

Senator CARR—That seems all very logical to me. Therefore, under your submission, the failure is not with the environment minister on that occasion, that would be a question for the Treasurer at the time; is that right?

Mr Burgan—If we had known about it before the decision was made, but our problem was that we did not know that this decision was being made. We only found out after the fact. So the decision had already been made by the Treasurer to allow the FIRB approval.

Dr Cuming—If I could interpolate an explanation there: all of this happened lightning fast between September and December 1992. It was not until about November that we started thinking of going to the Commonwealth but, by then, the companies had already got this through very quickly. What we discovered under freedom of information—and I just realised that I had these documents here which I will table—was that CEPA had referred it to national parks, and Bill Phillips of national parks wrote back on 2 November saying—

Senator HOGG—National parks wrote back to whom?

Dr Cuming—To CEPA who were handling it—the reference from FIRB had gone to them—and pointed out that this was a Ramsar territory. The letter stated:

Although the BP refinery was in existence at the time Western Port Bay was listed as a Wetland of International Importance, the current proposal would appear to have the potential to impact on the ecological character of these wetlands, and therefore, may have implications for the implementation of the Ramsar Convention in Australia. This service would appreciate the opportunity to consider the proposal in greater detail if more precise information can be made available.

Mr Burgan—I will table that because I have a copy.

Dr Cuming—On the same date, 2 November, CEPA wrote back to Treasury and said that comments were sought from the Australian Heritage Commission and Australian national parks. I am skipping:

ANPWS note that coastal margins of Westernport Bay, including Crib Point are listed as a Wetland of International Importance . . .

under Ramsar—

A copy of ANPWS's comments is attached.

We take that to mean that national parks were really saying, 'Please don't do anything until we hear more,' and this was completely ignored by CEPA.

Mr Burgan—I table that one, too.

Senator CARR—This points to the question about the relationship between various agencies of governments and the role of those agencies in terms of the actions of the Commonwealth in regard to environmental impacts. You are effectively saying that the Foreign Investment Review Board chose to ignore the environmental impact. Is that the case you are putting?

Dr Cuming—No, we are not really saying that, we are saying that—

Mr Burgan—Poor advice was given.

Dr Cuming—Poor advice was given by CEPA. CEPA made a decision to ignore the advice of national parks, which was part of the same ministerial—

Senator CARR—We have had a minute in regard to the City Link project. A similar pattern emerged with the Foreign Investment Review Board proceeding very quickly to assess an application with little regard apparently being paid to the environmental impacts, which suggests to me there is a problem with the existing legislative framework, if that is occurring on a couple of occasions. Is that your experience? Is there a problem with the current act?

Mr Burgan—The problem is that when the ministers go to their departments for advice, quite often it is on localised issues, such as what is happening here in Melbourne or what is happening down in Westernport. Quite often these departments, such as CEPA or ANCA, really need to go and talk to local officers who have local knowledge about these issues.

Senator CARR—The Commonwealth officers need to be able to speak to?

Mr Burgan—The state officers who have similar responsibilities in the same areas and talk about the issues before they get back to their seniors. There is no requirement in the act for them to do that.

Senator CARR—So you are saying there needs to be a clearer monitoring role by Commonwealth officers independent—

Mr Burgan—Exactly. Independently, yes.

Senator CARR—Because when ministers speak to ministers, often they will hear precisely what the government of Victoria wants to tell the Commonwealth government, not necessarily what is actually happening.

Mr Burgan—That is why the officers need to be given the power to have the same level of discussion because there is a problem that the EPA here in Victoria do not talk the same language as the Environment Protection Authority in Canberra. I do not know how you make that link, but if you do decide to go into agreements with the states on these issues, then you need to spell it out very clearly. If there is an approvals process there needs to be a specific referral process in there, otherwise you are not going to pick up the information and it is going to be people like us, who are the custodians of the area in a way, who pick up the mistakes and then try and chase them around again. If you cut that opportunity of being able to go to the Commonwealth off from us, and it is a state problem, then we will have our hands tied and we will not be able to intervene in the process if we see that it is wrong in a major way.

Dr Cuming—A theme through the whole business is that this technical information was put together in 1993 basically, perhaps finalised in 1994, and has been sitting around there all that time. We have never had an open forum in that five or six years in which it can be properly appraised. I am not sure how many windows of opportunity the community should have, but we have had none.

I think the important thing in looking at new legislation is that the community has proven in this case that it knows more about the whole situation than anybody in government at either level. We both have files literally six feet long on this and many other people, including government departments, do too. An enormous amount of money and effort have gone into this. We have seen Shell and Mobil spend half a million dollars just in a couple of years on the public relations campaign in newspaper advertisements and attendance at meetings and so on. A tremendous amount could have been resolved in the early days if there had been an opportunity somewhere at this stage for us to put our views at an open forum.

Senator CARR—Can I ask perhaps a difficult or maybe even an unfair question? Do you see circumstances anywhere on the coastline of Victoria where we could have an oil refinery that would meet environmental standards?

Mr Burgan—You need to have an understanding of where the oil market is going. If you had read the *Age* this weekend, you would understand in Australia that our production capacity now is at a problem stage where we are having to compete with the Asian markets. The Asian markets are adding the equivalent of Australia's oil production capacity every year. It is to the point now where Australia can purchase refined product cheaper from Asia than it can produce it itself. In other words, the reason why we have cheap petrol is that Asia is producing it cheaper. What that means for our local companies is that they cannot compete.

In New Zealand what has happened is that all the oil companies have got together and formed one company to compete. Here we still have four different players in the market and there will be some rationalisation going on over the next couple of years whereby they will go down New Zealand's pathway. What has already been happening in Westernport in the last two years is that there has been a company come in to Westernport which is importing refined product from Asia. In other words, they are bringing in unleaded petrol in tankers, putting it into holding tanks and it is going straight to the petrol tanks. That is a new way of producing energy. Oil refineries in Australia essentially produce petroleum, whereas in Asia they are producing distillate and sell unleaded petrol as a by-product. That is why they can produce it cheaply.

The methods of supplying the market with oil products is changing. So your question in a way is a little irrelevant at this point in time. What we have been arguing is that because of this change in the market situation and the need for the refineries perhaps not to have as much product coming through them in the near future is to keep supplying the refineries in the way they have in the past. That is to use smaller tankers so that they can access Port Phillip straight to the refineries instead of having to come into Westernport with very large tankers and off-load half their cargo and then take the other half around to Port Phillip and double handle it and put both bays at risk. Our argument all along has been: why put both bays at risk when the oil can just be taken straight to the refineries in Melbourne?

Dr Cuming—We had evidence that the economics of that was a saving of 0.2c a litre. It was quite trivial.

CHAIR—Even if there is not a refinery on Westernport, you still face a risk, don't you, of oil spill through the transmission, through that operating as a port?

Dr Cuming—Yes.

Mr Burgan—As soon as the tanker comes in and hooks up. There are risks in bringing tankers into the bay.

Dr Cuming—Indeed there is a risk now from the petrol imports. We are finding it very unsatisfactory to get an oil spill plan out of the new company, for example.

Senator HOGG—I just want to pursue the issue you raised when you made representations to the federal minister I think it was at the time. I believed you said that you were also representing the local councils.

Mr Burgan—Yes. When you live in a small community quite often you wear a number of hats. I have been a member of the society for 15 years. At the time I had been a councillor for four or five years until the government amalgamated and sacked us all. At the time I was a councillor. So when I went to Canberra I was representing my shire council as well as our local conservationist society.

Senator HOGG—Were you representing more than one shire council which may now well be a larger amalgamated shire council?

Mr Burgan—Yes. We actually wrote to all the other shire councils around Westernport and asked for their support and I had written support from each council.

Dr Cuming—I had a letter from the shire of Hastings that had carried out this investigation. In fact the commissioners endorsed the findings of the original unanimous decision of Hastings council to adopt that report of the Mornington Peninsula Shire Council.

Mr Burgan—And to not allow the planning permit to go through either.

Senator HOGG—So it would be fair to say that at the time that all of this was happening there was a fair degree of unanimity between the council and groups such as your groups?

Mr Burgan—Yes.

Senator HOGG—Would part of the problem have not existed had there been a role for local government in the whole process whilst there are some cowboy local governments out there where they favour the developers, the industrialists or whatever else because of the perceived interests of the local community?

Mr Burgan—There was a role there for local government because it was the responsible authority under the Victorian planning act in this project. They had to make a planning scheme amendment and the Hastings Shire Council at the time went through the normal planning processes. It actually determined not to give approval to the planning amendment. Then the minister has the powers to call these projects in if they are of state significance. I read out earlier the reasons why it was called in. He was advised it was of significant state importance. So he called it in and overrode the council's decision in that matter.

Senator HOGG—What I am leading to is: is there a justification for there to be greater authority vested in local government than currently exists? Under the current circumstances the only tiers of government recognised are federal and state. There is no recognition given to the power or the authority of local governments at all.

Mr Burgan—That is true. We think local government needs to be one of the tiers of government involved in any due process. If there are any agreements between the federal and

state governments to delegate, then local government should be a partner in that because of our closeness to the issues.

Senator HOGG—This raises the other issue of whether the federal government should not only be the legislative arm but also the policing authority in effect or whether the federal government should be the legislator but leave policing to the subsidiary levels of government be it state government level or the local government level.

Mr Burgan—I think someone has to oversee the whole process. If we have commitments at an international level for upholding agreements and you delegate authority to someone, someone needs to check and balance to ensure that it is being carried out. That has been our whole problem with this Ramsar issue. We believe that if the Commonwealth have entered into the international agreements then ultimately they are responsible to ensure that this nation carries out its responsibilities, which means that it has to give itself the power to step in if the states are not fulfilling their obligations, and the same with local government. If local government are in partnership with the state government over these responsibilities, then the Commonwealth should be able to step in and say, ‘We have an agreement and we do not believe you are fulfilling your obligations. We need to do something about it.’ It is no good to legislate and then do nothing about it.

Senator HOGG—What should set that intervention off? What should trigger it? Should it be through a court system?

Mr Burgan—As soon as you start getting into legal areas groups like us end up having to fork out money to get representation because we have to ultimately provide standing. That is part of the problem with why we did not go ahead with our challenge to the minister on this particular issue. We just do not have that standing. We do not have the financial capacity. However, we do not need to have a process by which if we see there are problems then we can have input at some point in time—whether it is an annual review, I do not know. We really have not explored those areas. There is so much change going on with state legislation and now with federal legislation it is difficult for us to work out what to suggest other than to say that we do want to have a say in these matters and want the opportunity. If we see something going astray or something that has been overlooked, we want to be able to put our hands up and say, ‘You really need to look at these things.’

CHAIR—Mr Burgan, it was suggested earlier today that an environment ombudsman would be appropriate.

Mr Burgan—An independent umpire would be a great idea as long as they were given sufficient powers to be able to intervene in either state or federal processes and have equal access to the protection acts. I do not know how you do that.

CHAIR—And to be able to call for an EIS, for instance.

Mr Burgan—That is a difficult one, having read through all the literature about the problems that EISs create. I am not totally against development, industry or anything but, quite often, I think it can threaten the growth of the nation if EIS processes are handed out at the drop of a hat. You really need to understand that the EIS should only be invoked if it

is an issue of high significance environmentally or ecologically, and it is a problem to try to determine that sometimes.

Dr Cuming—Perhaps the whole EIS thing should be rethought and it should not be made a matter for the proponent but raised to the level of something that is independent of the proponent.

CHAIR—So with terms of reference which were developed by a third party perhaps?

Mr Burgan—Yes, absolutely. We have problems with the terms of reference now because there is a requirement in the Victorian act that the proponent prepare the EIS. Quite often, the government here requires a scoping document to be done now, and we have just been through a couple of these examples in recent times. One example was the Nobbies project. I do not know if you are aware of that or not, but that was about the privatisation of part of our nature park and the process the government went through in allowing that development to occur. They require a scoping document and there is public input into the scoping document to allow all the issues to come out that need to be investigated by the proponent in order to do the EIS. We have not been fully through one of those yet, but that process appears to be actually solving these issues, flushing out what the issues are and then requiring the proponent to address all those issues. We still need that third umpire to ensure that the decisions are made on an equitable basis because, quite often, government has a different agenda in environmental protection to what the community does.

CHAIR—The inquiry in Sydney gave the suggestion that there be a more public and open tendering process for preparing EIS studies. There was some suggestion that developers very often used a hired gun to prepare an EIS and they were not only in charge of the terms of reference but very often the outcome as well. Have either of your groups thought about this issue?

Mr Burgan—As I said, we have just been through one and we have just gone into another one now. The problem with the first one was that we got down to the stage of going through the EIS process and there were some concessions made by the minister halfway through the process which basically meant that the brief needed to be redone because the changes he decided to make compromised the site, so the brief needed to be rewritten in order to address the issues again. That is the problem. If the minister can intervene halfway through the process, quite often the outcome is going to be wrong. It is automatically going to be wrong because the brief has now changed and it is wrong because it is not addressing the issues that need to be addressed. If you start the EIS process, it should not be open to any intervention halfway through, unless an independent authority can determine there is another issue that has arisen that needs to be addressed.

CHAIR—Time is running out and we have not heard about the Seal Rocks proposal. Is it your intention to talk about that as a case study today?

Mr Burgan—I wanted to briefly say that these are the two examples we have just been through. I have been a member on, firstly, the consultative process for stage 1 of that project. That project has just been completed. I am also on the EIS committee for stage 2 of that project. What I have just been talking about is the process that those two projects have

been through. In the first instance, the minister decided there was not to be an EES required for that site and we made representations—

CHAIR—For the benefit of Hansard and perhaps Senator Hogg, who is not a Victorian, could you describe stage 2 of the Seal Rocks proposal?

Mr Burgan—I had a video but you have not got time to see it. That is more promotional. Phillip Island is an island down the southern end of Westernport and it is of high environmental significance. We have the highest level of visitation to a wildlife nature park anywhere in the state. The penguin parade, which you may have heard about, contributes over \$50 million a year to the nation's economy.

There has just been a new project that has been developed within our nature park. The government decided to excise some land from the nature park and lease it to a private developer. I will not go into the process of that now—it was a longwinded process—but we were not happy with the way in which it was done.

We do have problems with the way in which the project was approved. That whole coastline is on the Register of the National Estate because of its landscape values. Because of the size and scale of that building, we believed and we still believe now that the thing is finished that it is a blight on the landscape and it is actually out of scale with that landscape. That building has had a major impact. A lot of people who used to go out and enjoy that site no longer go there because they feel it has been desecrated. We do not believe the federal government, under its national estate and heritage obligations, really assessed that project adequately from the start.

I have since written to the minister and asked him to have representation on the stage 2 committee, which he has done. We have got a meeting this Friday and I am dying to meet the minister's representative to see what sort of contribution she can make to that committee in terms of trying to address some of those landscape impacts. We are talking about areas that are internationally recognised because of their natural beauty, and we do not want those sites to be spoilt.

In that situation we almost need an independent umpire to come along and assess the subjective judgments that are being made. It is very difficult with something like landscape to say that one person is right in his assessment and another person is wrong, but I think most of the community where I come from agree that the impact that development has had on the landscape out there has been very intrusive. I have got a couple of documents that I will table in regard to that project as well.

CHAIR—As there are no further questions, I thank you for appearing before us today. If there is something further you have forgotten to mention or that you want to draw to our attention, please feel free to do so. Thank you for coming.

Mr Burgan—Thank you.

Ms Johnson—I have a copy of our introduction that I only briefly summarised, so I will table that as well.

Proceedings suspended from 1.06 p.m. to 1.55 p.m.

LINDROS, Ms Joan, President, Geelong Environment Council, PO Box 4044, Geelong, Victoria

CHAIR—Welcome. We have before us submission No. 362. Are there any additions or alterations to the document that you would like to make at this stage?

Ms Lindros—I do not wish to alter that document; I am happy with the contents of it. I do wish to verbally add some other aspects.

CHAIR—I invite you to make a brief opening statement, after which we will go to questions.

Ms Lindros—As stated in the submission, the Geelong Environment Council was very involved in the Point Lillias issue right from the start, together with Point Wilson and other issues on the western shores of Port Phillip Bay. We were in fact appalled at the manner in which the acts, treaties and agreements were not able to protect Point Lillias.

I believe that it was possible for the state government and the federal government to have cancelled this whole proposal right at the very beginning because of the way that the acts, treaties and agreements applied to this area. However, both governments saw fit not to do that, and we saw the unfortunate situation where officers from government departments had to change their views through the process. Officers who had certain skills were opposing the proposal but, by the time it got to the panel appeal, they were making excuses and not clearly opposing it.

So there is a great concern that even though the legislation was there—and in the submission I think I have given a list of the various acts and treaties which I believe should have protected the area from development, and there is a big range of them—I think it was a mixture of political, environmental and economic issues which in the end stopped the project from proceeding.

Another great concern with this project was that, had the Victorian government not cancelled the project when it did and it had proceeded, there was no affordable means of appeal for the conservation groups. We were aware, and did say, that we would go to the High Court if necessary; however, in reality, I believe the high costs of doing that would have made it impossible. I think direct action was probably the only other means we would have had of expressing the community's concern and opposition.

I think that what was really missing from this whole process was a clear opportunity for environment groups to go to a court or an ombudsman or some independent body which would be able to look at the issues in a detached way, detached from the political desires and whims of the people who were pushing it. That missing opportunity for the community to proceed one step further after a panel hearing needs to be remedied. I say that with particular reference to the new legislation which looks like it is being proposed, and I must say that the Environment Council has great concerns about that.

We support the submissions from the ACF and others on this issue. We did make just a brief page, and we are particularly concerned that it appears that the new Commonwealth

legislation will not cover really important issues like land clearing, land degradation and forestry issues, which are going to be contentious until there is some slightly better way of dealing with them.

Other issues which perhaps will arise in the future are the lack of communication between organisations and the lack of knowledge which is often found within the departments and the officers of the departments. I do not think they know all the guidelines and all the requirements for recommending that issues go to a panel, an appeal or an EES; not so much a panel or an appeal, but certainly an EES. There are a number of gaps. However, I am very concerned that it looks like the existing legislation may be weakened. I do not think that we can look at why the legislation was not adequate to protect issues in the past—as listed in the material that we received earlier in the piece—without also looking at the future legislation and which direction it may go.

We made a submission to an Industry Commission report on a full repairing lease. I wonder if the recommendations in that report, which was fairly extensive, will be taken into account in the formulation of the new legislation. I would be happy to leave with you our comments on that report.

CHAIR—The Geelong Environment Council's comments on that report?

Ms Lindros—Yes. I will leave those with you. I think that that report brings up a number of very concerning issues, such as writing 'duty of care' into the legislation, which has to be supported in itself. Using 'duty of care' rather than just 'voluntary control' without mandating these cares through legislation is, I think, of great concern. There are other issues in that report if it is to apply and be used in the formulation of the new legislation. Would you like to ask some questions?

CHAIR—For the benefit of the non-Victorian government senators and for the purposes of writing the report, perhaps, firstly, you could expand on the Point Lillias case study and talk about the definition of 'urgent national interest' and whether or not aid was adequately filled in this case. Secondly, could you tell us whether there is a better way of defining 'urgent national interest' for the purposes of the Ramsar convention?

Ms Lindros—The brief history of the Point Lillias issue is that the Victorian government was looking for a new site for chemical storage—a hazardous material and chemical storage facility—and a port. It was necessary to have the port facility, so the site had to be on Port Phillip Bay. The first choice of the Victorian government was Point Wilson and then that was defined further as West Point Wilson. An EIS was started and there was a lot of community consultation. There was a community advisory committee.

That proceeded for a year or so and then there was discussion with the federal government about an east coast armaments facility which was required due to the Sydney Olympics. The federal government chose Point Wilson as their preferred site for the armaments complex, which meant that chemical storage would not be appropriate so close to an armaments storage facility. The Victorian government, without any proper community consultation, then decided that Point Lillias would be the appropriate place. In the early stages of it after the fire at Coode Island—I left this bit out—there was a Coode Island

review panel which looked at a number of sites where chemical storage might occur.

There were some ridiculous ones. Point Lillias was one of the ones examined by the Coode Island review panel, and John Landy headed that. Point Lillias was considered to be totally unsuitable because of safety issues, because Avalon airport adjoined it, environmental issues, because the area was part of the Ramsar listed areas around Port Phillip Bay, and because the orange-bellied parrot was known to use Point Lillias. The Victorian government then took no notice of those issues. They were very keen on Point Lillias because it was considerably less costly than Point Wilson and it was a real bonus to be able to move to Point Lillias in what they considered to be a legitimate manner.

The EES studies were just transferred down the bay a bit, and extended a little no doubt, because there was a significant amount of dredging to be done into Point Lillias. At that time we were looking at three large dredging proposals: the Geelong channel, Point Wilson and Point Lillias. So that was one of the major issues.

The EES was completed, with masses of paper—19 volumes of background papers and two large reports. There was a three-member panel hearing which recommended that the proposal should not go ahead until there were further studies which would have included the effect of spills from unloading the ships and the dredging—I am trying to think of the other environmental studies—and also the safety issues had to be further examined. The panel virtually said it should not proceed.

The minister, Mr McLellan, in his wisdom, then decided that it should go ahead and that, after that decision was made, the studies would proceed. Because of the Ramsar area, the Victorian government had to have permission from Senator Hill to excise that area from the Ramsar listed area. Senator Hill came and looked and talked with people. We understood that Senator Hill did not want it to go ahead and believed it should not, but that the Prime Minister did, and that the Prime Minister won in discussions. I understand Senator Hill's department believed it should not go ahead. There are also Aboriginal middens and so many reasons that it should never have been considered in the first instance.

There was a certain amount of lobbying and we were officially unable to receive—although we did—copies of the Victorian government case on urgent national interest. They took months to prepare it, so it was not prepared when the decision was actually made. They made the decision and then had to justify it. The urgent national interest case was very slender and really just said that the chemical industry needs a port and storage facility and that this is the only spot. I believe that the urgent national interest, if it was really national, should have encompassed values to the whole of Australia rather than merely to a particular industry in Victoria.

Interestingly, the chemical industry did not want to go to Point Lillias because of the rising costs. Another issue that the panel was very concerned about was transport and that it should not proceed until there were extra lanes on the Geelong-Melbourne freeway because that road is very busy and the large number of extra trucks would have been particularly hazardous. So the case for the urgent national interest was very flimsy—I trust you have a copy of that—but it was not national and did not present an urgent case.

That raises another issue: that these documents should be available for the public to see so that the governments and departments can be accountable and can be seen to be doing something that really fills the guidelines, whereas this did not.

CHAIR—What was your experience in asking for a copy of that document?

Ms Lindros—It was just refused and the copy that we did get was a leaked copy. At no stage did we receive an official copy.

Senator HOGG—That raises the issue of freedom of information, which I have pursued with a couple of witnesses this morning. Is that an inhibitor to groups such as yours being able to prosecute your case in a reasonable way?

Ms Lindros—It can be very costly and, in fact, this paper on the urgent national interest was not actually available through freedom of information. I do think it is inhibiting because there is quite a time lag from when you are asked for something to when you get it—and I understand that it does take time to produce documents. It can be costly for a group that has no funding. Our group certainly does not have any funding although, fortunately, we were able to receive sitting fees through the EES process which did pay for some of the expert advice that we had. Freedom of information and the ability to have somewhere to appeal are important.

Senator HOGG—The next issue I was going to raise with you was the issue of appeal. Your words were that there was no affordable means of appeal.

Ms Lindros—Yes, I believe that there should be some.

Senator HOGG—What would you see as being an affordable way for ordinary citizenry—if we can put it in those broad terms—to appeal these matters?

Ms Lindros—I think the only affordable way is to have some court facility or appeal facility—I do not know how it should be set up—that does not cost a huge amount of money to actually go to. We understood that there it would have cost about \$40,000 for the first day of the High Court hearing had we gone that far. That sort of money is absolutely unobtainable by conservation groups—you just do not get that kind of donation. It is difficult enough to get any funds for legal advice.

At this time, the Environment Defenders Office funds had been cut and any funds that they received from government were not allowed to be used for any court appearances. They could be used for advice to groups, but not to actually assist in any court work. Even if groups have to prepare their own cases, which is very difficult in itself, there should not be an up-front cost in my view.

Senator HOGG—It may well be that you are talking about an environment where lawyers and non-lawyers could mix.

Ms Lindros—Yes. I think that is essential because otherwise it inhibits all but the wealthy groups—and I really do not know of any wealthy groups now at all. It is very

inhibiting to any appeal. If further legislation comes in, according to what it appears to be, it is going to be absolutely essential that there be some method of appeal by the community.

Senator HOGG—Should this be in the federal or the state jurisdiction?

Ms Lindros—I think there actually needs to be both. There have been other issues in Victoria that perhaps have not been national issues—for example, the clearing of some fairly threatened yellow gum woodland at Bannockburn near Geelong—where there should have been access to some sort of appeal process. There was a panel, but there was a lack of information being put out to the people who would have been interested. I think there perhaps needs to be a state facility. I do not know how the New South Wales Land Court works.

Senator HOGG—That has been mentioned a number of times today.

Ms Lindros—I wonder if there should be something of that nature. I have mentioned that court at odd times in discussion with New South Wales environment people. We have absolutely nothing here which relates to that.

Senator HOGG—Would it be fair to characterise the view of organisations such as yours as being that there is a lack of transparency in all of these processes and that you are seeking to improve that to your own personal satisfaction?

Ms Lindros—I think the lack of transparency is very obvious in this issue and in other issues too. I think that there is a reason for that. The reason is that transparency cannot be afforded by governments which are not sticking with the guidelines—not applying them—and are putting aside the various acts which should protect areas. I think if there is transparency it can be highlighted to a much greater extent.

Senator HOGG—In your submission you refer to dredging of the Geelong channel, and you say:

The Geelong channel is now partly completed, with disastrous consequences of the dredge spoil being of a different specific gravity to what was expected and a vastly larger area of Corio Bay floor now being covered with a fluid and reasonably uncontrollable dredge spoil. (400 ha to date rather than the 150 ha allowed in the EES and Panel process and 600,000 cu metres still to be dredged.)

Where is your redress there?

Ms Lindros—There is no redress in this instance.

Senator HOGG—This is an ‘after the fact’ situation, is it?

Ms Lindros—Yes. In this case the monitoring of the dredging is only taking place afterwards. There was no real look at the effects of earlier dredging in Corio Bay 1 through the EES process. In fact, there is no redress in this issue for anyone, because I believe—

Senator HOGG—At either the state or the federal level?

Ms Lindros—I believe not. The problem is due, I think, to consultants not carrying out their work adequately and not knowing that the dredge spoil was going to be fluid and run over a much greater area of the bottom of the bay than it actually did, in spite of the environment groups having brought up these issues through the process and after the panel hearing.

Senator HOGG—So really you are looking at a broader process than just participating in the EES process or the EIS process?

Ms Lindros—Yes.

Senator HOGG—You are looking at a process that goes beyond that and also looks at any ramifications that may well come out of that process?

Ms Lindros—Yes. To go to the Point Lillias issue, we had the EIS process and then the panel hearing. But the community was very aware that the reasons that it was going ahead were political rather as a result of the proper investigations. With those kinds of issues I believe there needs to be some other place where those issues can be put.

Senator HOGG—Let us say there is a proper appeals process, input process, in place. You go through that input process and whoever is responsible brings down a decision. Should there be an appeal against that decision if you do not agree with that decision? Are we then looking at going to a formal court process or do we need to have an appeal process overlaying the appeal process?

Ms Lindros—It is like this case of urgent national interest. It was secret, but it is also exceedingly flimsy. There is another issue too: the replacement habitat which had to be supplied for the lost Ramsar land. When those issues are clearly lacking or unsatisfactory I think there has to be some process, but I am not exactly clear on what that process should be. Perhaps there should be a land court in Victoria. In that case, we could have said, 'Right, we'll go there with these issues.'

Senator HOGG—My point is: what happens if this court hands down a decision that is unfavourable? Do you think there should be an appeal process through the likes of the High Court?

Ms Lindros—I suppose that is there.

Senator HOGG—That is right. If the developers or whoever are unhappy with the decision they will still take it to—

Ms Lindros—They will keep on going.

Senator HOGG—Yes.

Ms Lindros—At some point, surely government has to make a decision.

Senator HOGG—How does one then get both sides to accept the decision that govern-

ment makes? I see the process in this as being so important.

Ms Lindros—Yes. At some stage, a decision will be made and somebody will not like it. You go through a process of an EES or whatever and then a panel hearing, and the panel can say that there are still these problems and there is this legislation which virtually says that this should not proceed because it is listed under the Ramsar convention or the threatened species legislation should protect it because of the threatened species there. I believe that, if it goes to an area which is not political and the decision is made then at that stage, you probably have to accept it, but it is the political problems. Everything has got its political problems, I know.

Senator HOGG—You mean politicians.

Ms Lindros—I do not mean political as in politicians; I mean political as in somebody particularly wanting reasons which do not really relate. I do not know what Howard's reasons were for pursuing this, but the reasons did not relate to good management of Ramsar areas. It did not relate to safety on the road or to aeroplanes landing at Avalon. It related to something else that I do not know about.

Senator HOGG—My concern is that, at the end of the day, you could end up with a system that may well disadvantage organisations such as yourself more so than advantage them.

Ms Lindros—I am certainly not looking for that.

Senator HOGG—I know you are not and that is why I am asking these questions.

Ms Lindros—We did feel at the end of this issue that, before the government decided against it, we had nowhere to go. We had unsatisfactory reasons. We had legislation which was ignored, and what was the redress? There has to be some means of pursuing it, I believe.

Senator TIERNEY—You mentioned that you believe the federal government should have some overriding compulsion or power to protect areas listed under international treaties or agreements which it does not have in the constitution. We did raise earlier—and perhaps you were not here—some of the difficulties in changing the Australian constitution.

Ms Lindros—Yes. I believe the constitution should involve protection of the environment somehow, because we have a very valuable environment in Australia and we are one of the major biodiversity regions.

Senator TIERNEY—Given that you would not get political agreement across the board, it is unlikely such a change would go through to the constitution. That is one obvious problem. I am just wondering how widely you thought this power under the constitution should be. Are you saying all treaties, or are you just saying environmental treaties?

Ms Lindros—Can you just go back a sentence. I did not catch what you said. You said 'how widely'.

Senator TIERNEY—How widely would you apply this under the constitution? We have a number of treaties obviously that have nothing to do with the environment. I was just wondering how widely you thought this power should apply.

Ms Lindros—I think it should apply to all international treaties, whether they be environment or human rights.

Senator TIERNEY—So you think we should give up sovereign power on all treaties?

Ms Lindros—I think the federal government has to take responsibility for the treaties that it signs. Because if it passes it down to the states and allows it to be either watered-down or changed, I believe government is really abrogating its responsibility. If it signs a treaty, the state should be required to uphold that.

Senator TIERNEY—So you are suggesting that governments have no discretion on a case by case basis. If it is an international treaty—let us come back to the environmental area—we should automatically follow that and not have any discretion as a national government case by case.

Ms Lindros—I do not think I am totally suggesting that. If we have signed a treaty with, say, Japan about the protection of a particular migratory bird which moves between Japan and Australia, I think there should not be any discretion to destroy the wetlands that bird requires when it gets to Australia.

Senator TIERNEY—But you did say all treaties. Most of these are multilateral covering dozens of countries usually on a range of issues.

Ms Lindros—I suppose I am going to say that it has to be looked at, but anything that is looked at has to be done so openly and transparently. It has to be appealable if there is to be some change. I am not saying there are not times when something could happen, but something better could happen as a result of it.

Senator TIERNEY—Don't you think it is more likely that we would be more reluctant to sign some of these treaties if they did take away sovereign power?

Ms Lindros—I did not see too much reluctance to sign the Multilateral Agreement on Investment, and I would hope there is a reluctance there. My understanding is that that will take away certain of our powers. I think governments, whichever ones they be, have got to get some responsibility for protecting the things that the country and the people hold dear, and its responsibility should not only be on an Australian scale but an international scale.

Senator TIERNEY—It is interesting that you bring up the MAI because I do not think any country—and certainly Australia will not be one—would sign a blanket MAI. There would be caveats and all sorts of things in all sorts of areas. Fairly obviously, because of the concerns we were raising earlier about giving up sovereign power, there will be caveats on a whole range of areas, and we have not really got into that debate yet in terms of the parliament. I am sure we will very soon, but I think it does raise the point that we would be putting caveats on for that exact reason that I mentioned earlier, with not wanting to totally

surrender sovereign power in some of these areas and wanting the discretion to make decisions case by case.

Ms Lindros—As I understand it, if the MAI is signed, the actual signing of it does not allow discretion. You talk about the debate going to parliament. I would like to see the debate going to the community at a greater level. There are people in the community who have made large efforts to publicise and get the debate going, but I do not believe it has come from the decision makers, where I believe it should have.

Senator TIERNEY—You say on page 2 that the Commonwealth should retain responsibility for the upkeep of major treaties and acts and not delegate them to the state. I just wonder how we would handle that, given that the responsibility for land use, under the constitution and under the way the courts and bureaucracies are set up, is under state control. How would we handle that? Can you comment on the proposition that handing it over to the Commonwealth means that we might have to set up a whole range of new bureaucracies because we just do not control land use at a national level?

Ms Lindros—I think some of the land use in some of the states has been very appalling. There have to be basic principles that the federal government sets out and then abides by and requires the states to abide by. Land clearing is one clear issue where the federal government should take leadership, because that has implications on biodiversity and on greenhouse. There are issues now that the federal government can have responsibility and leadership for and I do not think that should be lost. Any new legislation must not allow these responsibilities to necessarily go to the states. The states might be really stunning in their protection, but they may not be and then you do not have national standards anymore. You have standards depending on the virtual whims of the particular state government and I think that is fairly dangerous.

Senator TIERNEY—But you are not suggesting that land-use power totally be moved from the state to the Commonwealth, are you?

Ms Lindros—I am not talking about moving powers back to the Commonwealth; I am talking about the Commonwealth using the powers that it has, such as triggering EISs. There were issues that should have allowed the Commonwealth to call for an EIS for Point Lillias but that was delegated to the state. Because it was delegated to Victoria, it went through the process and the panel but the minister then made another decision. So I understand what you are saying, but I believe that any powers that the Commonwealth has now should not be reduced or watered down or passed over because it is in the national interest to maintain our biodiversity; it is not just in the interest of Victoria or Queensland or Western Australia.

Senator TIERNEY—But, given that most of the power does reside at the state level on land-use, and you seem happy to keep it that way, particularly if you got a state hostile to what the Commonwealth government is doing—I am not talking about the current context—

Ms Lindros—Yes, hypothetical.

Senator TIERNEY—Surely a cooperative approach between the states and the Commonwealth is imperative for resolving these sorts of situations.

Ms Lindros—It is. I think a cooperative approach is absolutely necessary, and earlier in the piece I talked about agencies and organisations communicating so that there is an awareness of what each party requires.

CHAIR—You are saying in your submission that you think that funding to the states ought to be conditional on sound environmental management. Have you thought about how that process might work?

Ms Lindros—Not in total, but we do see landcare funding in quite large amounts. It may be improving but I believe it has not always been used to the very best value, and I think there should be incentives built into the landcare funding too so that there would be incentives, say, in the farming community for landowners who maintain native vegetation on their properties. They should get an incentive which is perhaps similar, and should be worked out as tax relief or rate relief. I know one shire in Victoria which is giving rate relief for this, which is Melton Shire. However, perhaps in the federal sphere it should be tax relief for maintaining of native vegetation, because for the land owners who may be clearing then at some later time when erosion has set in they then get some landcare funding for revegetating. So I would like to see it start before destruction happens.

CHAIR—I suppose the Natural Heritage Trust fund is one such opportunity that the Commonwealth might take. Do you care to comment on how that has worked so far? I think we are now into the second round. Do you see any evidence of the Commonwealth wanting to put in place those sorts of conditions?

Ms Lindros—No, I have not seen any evidence. What I do think I have seen is that there has been a bias away from conservation groups, which in fact can do really excellent work, towards the landowning part of the community. While I would not oppose that at all, I believe that the conservation groups can be the bodies which will monitor and recognise where some of the problems are and can do a mass of voluntary work. They are working with no vested interest; there is no gain in being out every weekend revegetating something for the common good. My understanding of the Natural Heritage Trust funding is that it has been very much oriented towards trees in the ground, which is a very important part of it but is not all of it.

For example—and I do not say this in a personal way—the Geelong Environment Council had applied for funding for nomination of the western shores of Port Phillip Bay for a biosphere reserve which, I think, would have had national value and also some international value because it would have highlighted how a biosphere reserve can be in a reasonably small area and that conservation, protection, industry and other land uses can proceed together because it is a populated area. That was not considered to be of practical value, as some of the other applications were.

At some time we will redo the application and will perhaps have done slightly more homework, but we presented two quite extensive documents on this issue. It was not practical enough, I believe, and did not come within the criteria that the state government was after.

CHAIR—At these hearings a lot has been said about duplication of bureaucratic

agencies. If we were to ask the Commonwealth to take a much more powerful role, then that means they would need to do much more monitoring and that would lead to duplication. Is that a danger that you see as well, or is that just something we have to be prepared to face up to and fund?

Ms Lindros—I think it is something we have to face up to and fund because I do not think there will be too much duplication. The state government in Victoria—I do not know about the others—has been downsizing the EPA and the Department of Natural Resources and Environment, the very bodies which have been monitoring what is happening and should be working to protect it. I am not saying that they are not working to protect it, but as their staffing levels and funding get reduced and reduced, I do not believe there will be a lot of duplication.

CHAIR—Should the Commonwealth insist that the states keep up a certain number of people in those agencies? We heard this morning the actual figures year by year of departmental officers in environment in the state government department. Is that something the Commonwealth should concern itself with and actively mediate?

Ms Lindros—If there was evidence that, say, the pollution monitoring was not adequate because of the reduction in staff numbers, I believe that is something that the federal government should be concerned by. I am not too sure how the federal government would be able to say, ‘You have to have certain levels,’ but I believe the federal government should not remove its responsibilities for an overriding responsibility for EPA, pollution and land and water protection.

CHAIR—Thank you very much. If there are any other matters which you would like to draw to our attention, please feel free to do so after today. I thank you for appearing before us.

[2.41 p.m.]

AMOS, Mr Derek Godfrey Ian, Public Officer, National Association of Forest Products Industry Communities, 29 Cornelius Crescent, Healesville, Victoria 3777

MARTIN, Mrs Leanne Deborah, Member, Maryvale "A" Team Association Inc., PO Box 37, Morwell, Victoria 3840

MOODY, Mr Christopher John, Secretary, Maryvale "A" Team Association Inc., PO Box 37, Morwell, Victoria 3840

CHAIR—Welcome. The committee has before it a document which is numbered 310. Are there any additions or alterations you wish to make to this document?

Mr Moody—No.

CHAIR—I now invite you to make a brief opening statement or, if you wish, we could go straight to questions.

Mr Moody—The organisation I represent is a group known as the Maryvale "A" Team. It is a group of employees from the forest and forest products industries in Gippsland in the Latrobe Valley. It is important to note that we are not an employer group as such or a trade union. Our membership comes from concerned employees, staff and spouses in the industry. We believe that we have a point of view to put across on different topics—and this is one of them. That is why we are here today.

Leanne Martin is also an "A" Team member, and she was given the responsibility of writing our submission for this particular inquiry. Derek Amos is representing our national organisation, NAFFPIC. That is made up of groups from Burnie in Tasmania and from the Shoalhaven in New South Wales where we have similar groups. Those groups nominate representatives to our national body.

Our organisation believes, as far as environmental powers go, that the bulk of these powers should belong to the states. My colleagues will expand on the reasons why shortly. We also believe that, for issues of national importance such as treaties, some sort of ministerial task force could be set up to deal with those, comprising the federal and state ministers as relevant to the topic. I will ask Derek Amos to now say a few words.

Mr Amos—The three groups that Mr Moody mentioned—the employees, staff and their families—are all incorporated organisations in three states, representing some five pulp and paper mills, softwood sawmills and plantation organisations, so we virtually cover the bulk of Australian forest activities in terms of both native forests and plantations and the way in which the resources from those forests are processed.

The organisations have had some experience in the area of your terms of reference in the past in representations that they have made to various state and Commonwealth ministers, in relation to both international treaties and particular powers that currently exist—for instance, those under the heritage act and also those relating to the regional forest agreement process.

It is the view of the groups who have met on this topic that there ought to be more cooperation between the Commonwealth and the states than they believe has been the case in the past, particularly in respect of the Commonwealth entering into international treaties on the environment where the recognition is that the states, because of their power over land use and planning, need to implement the environmental changes or environmental laws associated with those treaties. It would be far better for them for the states to be involved in more detail and in a more transparent way than has been the case in the past and that the ongoing administration of the implementation of those treaties ought to be again subject to a great deal more consultation than has been the case in the past as well. Perhaps Leanne might want to make some general comments or leave it to question time.

Mrs Martin—I would only make the comment that, as you can see from the submission, we have based it on a lot of agreements that have already been established. Most of those lean toward the fact that the states should have responsibility for land use decisions and that they should be involved in all areas of the environment within their state. Most of the quotes we have used in our submission confirm that the states have a big role to play, a bigger role than the Commonwealth does.

CHAIR—Why did you reach that conclusion? What is your perspective? What is it that you bring to this committee in terms of the Commonwealth powers? Why do you wish to see a greater role for the states?

Mr Moody—We believe that some groups have used environmental powers for their own purposes over the years, probably because of a lack of consultation between federal and state governments over certain issues. People's jobs have been used as political footballs. The forest debate has been a classic example. Before the national forest policy statement was introduced, which is now a good example of agreements between state and Commonwealth, we had a situation with log trucks around Canberra and a huge conflict over forest use. We believe that, in the interests of protecting both the environment, protecting jobs and communities, a good working relationship between the Commonwealth and the states can avoid this sort of conflict. I do not know whether Derek or Leanne would like to expand on that.

CHAIR—I presume we are talking about the forestry industry here; is it your view that jobs have been protected through the RFA process?

Mr Moody—We believe so, particularly because a lot of big industries have been too nervous to invest large amounts of money because of the uncertainty of the availability of resource. Now that we have an RFA process in place which looks at what needs protecting, protects it and says to industry, 'You've got some surety here of resource over the next 20 years,' industry has been prepared to invest money, particularly where we come from. For instance, Amcor have invested \$330 million in a new paper machine in Gippsland, creating some 200 jobs.

Mr Amos—I would like to add to that. We are aware that, prior to the decision of the Amcor board to make that \$330 million investment in the new paper machine at Maryvale, they sought from the Prime Minister an assurance that the RFA process for the Central Highlands forests, upon which that Maryvale mill depends for some 70 per cent of its ash

resource, would be expedited so that there was a more speedy resolution to an RFA than had hitherto been the case. The company had refused to make its decision to invest in that new paper machine until that assurance was received. That is how important that was in terms of creating new jobs and opportunities for the Gippsland region.

CHAIR—You say that the Commonwealth should not sign any international treaties affecting the environment without fuller consultation and more transparency with the states. Does that mean that before embarking on such a treaty, the Commonwealth would need to reach agreement with every state before it could sign? What sort of process do you see involved in that suggestion?

Mr Amos—Not necessarily. When we were talking about this prior to putting our submission to your committee, it was the view that there should not be a great deal of difficulty in the organisation of a ministerial council of environment ministers—whether it be the one that is in existence or whether there be a new task force or a new ministerial council set up, or even a set-up of environment and resources ministers or their equivalents on an ad hoc basis; they may well be primary industry ministers, depending on the way each state government dictates its ministerial responsibilities—to have regular meetings to discuss any proposed new environmental treaty that Australia might be asked to sign.

It is not as if Australian representatives at the United Nations or at any other world forums are suddenly given 24 hours to produce a signature for Australia to join in with other nations. There is ample time given for the Commonwealth minister responsible to translate that request for our joint support to the state counterparts.

CHAIR—Do you see a role for community groups and individuals in this process?

Mr Amos—We do indeed, yes.

CHAIR—How would that work?

Mr Amos—In much the same way as consultative processes now take place. For instance, we are here today as a result of the Senate looking at the Commonwealth powers. We have also been given an opportunity to respond to the consultation process of the proposals of the Minister for the Environment. So they are there. I guess there are a number of ways that it could be done, but they are just two.

Senator HOGG—I want to pursue the issue of the Commonwealth powers because it seems that in some instances the state does not want to claim that it has got the power and there are some instances where the federal government does not have the powers, which leaves a lot of people out there in the wilderness, because they do not know who has the power. Yet there are other times when one or either of the legislative groups will claim the power because it is very good to claim it. How do we overcome that problem? Is that fixed? I understand your argument is to see the power reside solely in the state arena. But surely the arguments that have been put to us are that if there is an overarching legislative role for the federal arena then that will pick up any areas of inconsistency and doubt and give the ultimate responsibility for the issue of the environment to the federal government. That is not saying that there is not a role for state governments or other forms of government to play.

Mr Amos—It is difficult to see how that would work anyway because there is no doubt the states, under the constitution, do have the power over land use.

Senator HOGG—Yes. We would have to talk in these circumstances of change to the constitution.

Mr Amos—I think that is most unlikely. Another matter that was discussed, for instance, around our table when we were developing the submission to go before your committee was a perfect Australia—the Australia we would like to see. Certainly, from the three sitting around this table, if we had our way there would be no states anyway, there would be one national government. I think we are all of the view that it is an absurdity that a country of this small size in terms of population has so many houses of parliament, so many politicians and so many governments. Is it any wonder that we have got conflict? But that is the way our constitution is. Until some such time as our constitution is changed, we are going to be stuck with the fact that the Commonwealth does not have power over land use planning; the states do.

Senator HOGG—Yes, but that is what this inquiry in part is about: looking at ways in which we can make things work all that much more easily. If one way is to see the major environmental powers rest with the Commonwealth, then that is something that this committee has within its province to recommend; not that that means it will be taken up. Our environmental problems do not know any boundaries. You do not come to the Queensland border and say, ‘Aha, this problem stops at the Queensland border, it does not go across into New South Wales, South Australia or the Northern Territory.’ It is for that reason that it is being put to us that, quite contrary to a lot of other issues, the environment issues transcend state boundaries. It makes the best sense to manage them through the federal arena. Given that there are difficulties there now, it seems that could be the best way to manage problems.

Mr Amos—On balance, notwithstanding the view that I expressed and that the three of us at this side of the table hold about the role of the Commonwealth and the states, we also recognise that your committee, whilst it can make a recommendation to give the Commonwealth the power over these environmental issues, does not really address the broader issue of whether or not that recommendation is realistic or can be implemented or would be implemented, or whether you would get the support of the states and/or the people of Australia in some sort of referendum to change the constitution.

There are probably other issues that a lot of our members would regard as even more important than the environment, like health and education, where the same rules or bar exists, where the Commonwealth does not have the power to be the one body which dictates the way in which the health budget is administered in this country. If just reading the newspapers gives you a clue, there is one hell of a mess with the health system at the moment. It cannot be addressed by the Commonwealth because they do not have sufficient power to do so. Whilst it has some superficial attractiveness to have a proposal to influence the committee to recommend that the Commonwealth take over those powers from the states on environmental issues, we do not see it as being practical.

CHAIR—You do accept that there are matters of national significance and importance

that the Commonwealth ought to—

Mr Amos—Yes, we do.

Senator TIERNEY—I was intrigued by your latter statements on federation because you seemed to start off saying that things should be moved back to the states, particularly in the environmental areas, and then a bit later you were saying that the federal government should run everything. We are a bit flattered that you think Canberra is the fount of all wisdom on these things. I think we would have great difficulty conceiving a system where we could run from Canberra all the schools, hospitals, police forces and everything else in the nation.

Mr Amos—We were saying under a different system, but we do not have that system.

Senator TIERNEY—But the different system you seem to be proposing is to abolish states and have everything running out of Canberra. That is an interesting proposition. But under the current system you feel the locus of power should be more back with the states in relation to the environment. Given that we had a lot of witnesses putting the opposite point of view through this hearing, could you sum up the reasons why you think it is better to run most of the environmental powers and processes out of the states?

Mr Amos—The first and most important reason is that the constitution does not allow the Commonwealth to have that power to dictate the way in which environmental law is administered, because that power resides with the states. That is the most fundamental of the reasons. The second reason is the history of the Commonwealth's attempts in the past to dictate from Canberra when they do not have the power has proved somewhat disastrous for the forest products industry—and we have got a number of examples we could give you about that.

The third reason is we still believe that there is sufficient goodwill, irrespective of party politics in this country, to reach understandings about either bilateral agreements or arrangements on consultation on the way in which environmental law is administered. You are not going to get everyone's agreement. That is clear. We were fortunate enough to hear the previous witnesses before this committee hearing talk about some of the difficulties associated with reaching agreements.

No matter how transparent you make these decisions on the environment, you are not going to have everyone agreeing. There are going to be winners and losers depending upon a particular person's or group's objectives. But if it is transparent and if there is a great deal more cooperation than has hitherto been the case, I think you will have a more workable situation.

Senator TIERNEY—I am not sure if you heard the previous witness, but that witness was making the point that international treaties should be mandatory in this environmental area. If there is an international treaty, there should be no discretion for governments at all. It should be implemented at a national level was the point that was being made by the previous witness. Would you like to comment on that proposition and what might be some of the outcomes if we did adopt such an operation?

Mr Amos—My colleagues speak for themselves, but from my point of view I do not believe it would be in Australia's best interest to agree to the mandatory dictates of international councils. We ought to remain independent and we ought to be mature enough to be able to negotiate agreements with international bodies, international treaties, that do provide for a degree of flexibility so that we can implement those agreements in the best interest of all Australians.

Mrs Martin—If it was done that way, I do not see the possibility of taking everything into consideration. I am sure a lot would be missed in relation to regional communities in particular. I guess every state is different. The implementation has to fit with each state, and I do not think it would be workable from that level that you are discussing.

Mr Moody—I will comment on that too, just quickly. I think, for it to be mandatory, it poses some great dangers. For example, if we look at the recent one on greenhouse, a lot of those countries which are able to meet those greenhouse targets or which are proposing those greenhouse targets have their power source by nuclear means. Here in Australia, we have decided to source our power from coal. I certainly do not believe that most Australians would want to see vast amounts of nuclear power stations in this country. I think each agreement has specifics that each country has to look at and base their decisions upon.

Senator TIERNEY—You mentioned that jobs were protected through the regional forest agreement process—that in your area it meant \$300-odd million in investment and 200 jobs. Could you give the committee a more Australia-wide perspective on that? Our experience in the Hunter Valley was quite the opposite; the RFAs actually shut down timber industries and shut down whole towns—that process is going through at the moment. Is yours an isolated example of success of the RFAs?

Mr Amos—No, I think everyone is the same. In your case—forgive me if I am wrong—if there has been any jobs lost, it is as a result of the process of the RFA leading to its final agreement, not the agreement itself. The process leading to the agreement, as we all know, involves meeting the criteria of reserve forests and of ensuring the adequate protection of flora and fauna. There are going to be some forest regions in Australia that will be struggling to meet those criteria. Others will meet those criteria quite easily.

The Central Highlands RFA was a little unique in that it is the most inquired into area of forest in Australia, given the great number of inquiries by various authorities—government and Commonwealth agencies—over the years, including the Heritage Commission, land conservation councils, et cetera. But it is also fortunate in that its forests are mostly 1939 regrowth ash forests. It was able to meet the reserve forest criteria a lot easier with lots to spare than, say, East Gippsland or other states in Australia would have been able to meet those criteria.

Senator TIERNEY—But that is my point in the case of the Hunter Valley. You could not meet those; therefore, a whole industry shut down. You seem to be leaving the impression that the RFAs were working out.

Mr Moody—The difference with Victoria was that Victoria had already done a lot of the hard work over the years with a timber industry strategy in place. A lot of jobs have been

lost since the early 1980s in our industry, in an effort to have an ecologically sustainable industry. So a lot of that pain has been taken. We are now starting to see some investment and some growth from taking that pain.

Senator TIERNEY—Thank you for that historical perspective. You are saying that your area did go through the same process but just at an earlier time.

Mr Amos—It is not the end of it either. Obviously an RFA cannot guarantee investment, cannot guarantee jobs. It can only lay down an arrangement that investors can look at and say, ‘Well, there’s a resource here and, for what it’s worth, there’s a resource guarantee that is available.’

There are vagrancies of the investment community and the markets go up or down. Most of our members are in the pulp and paper industry and, as most senators would know, that is subject to world cyclic conditions in the marketplace. The international price of pulp can vary and swing wildly, and that will also influence companies such as Amcor about whether or not they invest in new pulp and/or paper machines in this country. Not only that, you have a range of other conditions which influence whether environmental considerations, such as regional forest agreements, are going to be the panacea that a lot of people think they are going to be.

Mrs Martin—I would like to say on that point that it is a good example of the states having responsibility for the environment. Victoria has gone through the pain. We have gone through all the processes. We have had a land conservation council. We have had state legislation, such as the flora and fauna guarantee. All of that has worked to produce the RFA outcomes that Victoria has got. They have had the Commonwealth draw up the scoping criteria for the RFAs and, because Victoria managed the environment so well previous to the RFA, they have worked.

Senator TIERNEY—Thank you.

CHAIR—Thank you for appearing before us this afternoon. If there is anything further you would like to add for our consideration, please feel free to do that.

Mrs Martin—I would just like to say that, with regard to the new proposal for environmental law reform, we do support the industry’s submission that has been submitted.

[3.12 p.m.]

PARKER, Mr Alan Arthur, Secretary, People for Ecologically Sustainable Transport, 50 Stirling Street, Footscray, Victoria

CHAIR—I welcome Mr Parker. The committee has before it a document which is document No. 5. Are there any additions or alterations that you want to make to the document at this stage?

Mr Parker—No, there are no additions.

CHAIR—I invite you to make a brief opening statement or, if you would prefer, we will go straight to questions.

Mr Parker—I had a great deal of difficulty writing this submission because it was transparent to me that the Australian government nationally was different to other governments that take greenhouse, ozone depletion and things like this really seriously. It appears to me, having written numerous submissions to the Industry Commission and other inquiries, that what we got was systematic duplicity at the top level. Quite frankly, the more documents I read, the more this comes across.

I do find at the middle level in some of the inquiries some of the technical people are very, very good and they do genuinely take ecologically sustainable development seriously. They seem to have a real technical understanding of it in the same way that professional planners do in the Netherlands, Norway, Denmark, Sweden and places like that. What struck me about the whole process as I went through it and put together this whole thing was that there is an economic rationalist game being played in Canberra in which economic priority is right at the top of the pile. I do not really think the big environmental issues are taken seriously whatsoever.

So basically, when I put this together, there was that underlying perspective that there were a few absurdities which stuck out like a sore thumb with regard to the current situation. How many years is it that the Australian government has been involved in discussing ecologically sustainable development? Yet we have no rational government policy on population and no understanding of what the ecological limits are.

The specifics that I have been engaged in are on the transportation side. Basically, the unsustainable trends in transport are pretty well documented. If you look at the ABS census data for the trips to work, which is your indicative measure for congestion in Australian cities, which is costing us about \$5 billion a year, you find that all of the more sustainable forms of transport are in decline and you have a massive increase in single occupant motoring.

When you start to look at the car industry, you will find that the Industry Commission totally ignores the economic brief given to it by the minister. What does it do? It ignores the environmental factors. This is all fully referenced in this document. I was quite amazed when the Chairman of the Industry Commission turned to me and said, 'Well, we really don't have time to look at the environmental factors'—things like pedestrian friendly cars, designing

cars in such a way that you minimise the human impact in collision, or an energy efficient national car or the overall trend in terms of fuel consumption.

What I have put together here is basically a statement about the unsustainable trends that actually exist, which are actually taking place and which are actually measurable, but which the PR wing of government is playing games with.

CHAIR—I will start with the United States Intermodal Surface Transportation Efficiency Act which you refer to. It would be useful if you could describe that in a bit more detail for the committee.

Mr Parker—That is a very interesting piece of legislation which originated at the time of the Bush administration. It came in after they had observed the way in which several billion dollars were spent every year on highways in the US. They just had the progressive building of freeways and more freeways, and they were not really getting anywhere. What they did was to say, ‘From now on, all highway funds and, largely, transport funds will have to go through a process which takes into account American environmental law.’ What I have written in my submission in the case study section at the back is an introduction to the intermodal surface transportation act. It has been highly successful. There was a conference last year in the USA reviewing that act and its impact.

It has been very successful in implementing the American clear air program. No longer do you get the car and the roads lobby in the dominant position of being able to dictate to a state, ‘If you don’t spend that money you don’t get it. The only thing that we can build quickly is freeways.’ In California in one year alone \$10 billion went into public transportation projects. The provision for pedestrians and cyclists in America has been appalling for something like 20 years. During the course of this program they gradually developed bicycling and pedestrian programs up to the point at which this year \$450 million is being spent in the USA on bicycle and pedestrian projects. There is a national bicycle and pedestrian plan. The American federal government has taken over a very constructive role in setting up bicycle and pedestrian committees in each state, and a whole swag of programs are there.

If you look at the case study on page 1 of appendix A, at the back, you will find a little box there which outlines the various aspects of that legislation. I know quite a lot of people professionally in the transportation planning area. What they tell me about the ISTEA legislation is that it is very sound. From a professional point of view, if you want to implement greenhouse friendly transport projects this would be the way to go. The reason the Bill Clinton and Al Gore administration has continued with this is that they know it to be a sound piece of implementation which will in fact deliver the goods on air quality improvement and all the other things that one is concerned about in transport.

The ISTEA legislation has been reviewed during the last year. The old ISTEA legislation that ran from, I think, 1991 has been continued for another seven or eight months. Hopefully there will be a second lot of ISTEA legislation that will guarantee about \$180 billion worth of transport funding for the next five or six years after that. Of that, one would expect a significant proportion—probably \$30 billion—to go into public transportation projects. They set guidelines for public participation and things like that. Bicycle and pedestrian organisa-

tions expect to pick up over \$1½ billion a year every year for the next five or six years if the legislation goes through. Currently, the American right wing is trying to bury it and go back to the times when transportation was just a matter of building more and more freeways.

CHAIR—Mr Parker, you say in your submission that, even though 35 per cent of all local governments have a local area bike plan, the Commonwealth still refuses to provide the funding for implementation and coordination of a cycling system. Why do you think this is? Is it that there is no political will? Is it that the Commonwealth perhaps does not have the legislative powers to direct funding through to local government in this way? What is your view of the problem?

Mr Parker—We have got one example where the Commonwealth did do something and did provide bicycle facilities, that is, with the development corporation in Canberra from approximately 1948 to about four years ago. There was a proper development corporation like an English new town and there was provision of bicycle and pedestrian facilities. You will find in both English new towns and in Canberra the death rate per 100,000 population is approximately one-third of what it is in the rest of Australia. However, if we are talking about the Commonwealth's role in relationship to any other city, if you come into the category of being a pedestrian or a cyclist the Commonwealth's role is one of abdication of responsibility.

If you look at all the most important transportation plans that have been prepared in this country from 1948, you will find that they are petrol headed. They are laughable in so far as their analysis and their technical content concerning the needs of pedestrians and cyclists are concerned. In the Melbourne transportation plan in 1951 they did a very detailed study for Melbourne which, in the town planning schools, they reckon is the best planning study that was ever done. At that time there were as many cycling trips in Melbourne as there were car trips. Yet you will find no statistical data of any significant nature in that report because the assumption was then that cycling will fade away and die and that is the way it will be.

In countries where they never made that assumption, there are now really significant levels of bicycle usage, like the Netherlands where 28 per cent of all trips are by bicycle; we only have two per cent of trips by bicycle. Imagine what Dutch cities would be like, in a compact European situation with pollutants coming in from different countries, if those 28 per cent of trips were made by car. You can start to see the benefits that spin off when you are talking about numbers of that order. We are talking about 13 billion kilometres of travel per year for a country with the same population as Australia.

CHAIR—What is the problem here? Is it a budgetary issue? Is it that the Commonwealth does not have the legislative powers to implement this or is it just that there is a head in the sand approach to this whole question?

Mr Parker—The Commonwealth has the power to do what it wants to do. There is no question about that. It is just that the bureaucracy has chosen to remove itself from that particular scene. They yap on about world best practice. Listen to the economic rationalists. It is absolutely unbelievable what goes on. Yet when you go down to Canberra and go into the bureaucracy, into the federal office of road safety of the Department of Transport and Regional Development and start talking about world best practice and the places where they

have practised it for 15 or 20 years in regard to pedestrians and cyclists, they do not want to know about world best practice.

So what you have is an institutionalised system. I will give you one concrete example of this with regard to implementation of our 120-odd bike plans which are all completely inadequately funded. The first example is the Netherlands which has almost the identical permanent population that we have. They have been spending \$250 million a year at 1990 prices, since 1976—after the first oil crisis—on bicycle facilities in their urban areas, and it is done nationally. Their national environment plan is a real national environment plan. It is properly stratified in a hierarchical way from the broad overall environment plan to a transport and traffic plan and then in other areas a plan for waterworks, et cetera. Then under the transport plan it goes right the way down to the needs of bicycles and pedestrians. There is no inconsistency.

They have a federal system—they have 14 provinces—but the policy, because of the professionalism, travels right the way through the system. It works really well and the money gets to where it is needed. Here, in contrast, you have different state governments pursuing contradictory objectives. When most European professional planners travel around Australia, it becomes a bit of a joke because you suddenly realise that here you have a place called Australia, yet one state government can be pursuing policies that are utterly contradictory to another one and for totally irrational and disparate reasons.

Senator TIERNEY—In your submission, you recommend that target levels of greenhouse gas emissions be dropped by 60 per cent over 10 years. Given that the economy will probably continue to expand over that time, that car usage and power usage will probably go up, how realistically could we drop it by 60 per cent over 10 years?

Mr Parker—I did not actually say that. What I actually said was that in 10 years time the scientific community will have firmed up its data so well that we will know that we need to get a reduction of 60 per cent. All the scientific literature on the greenhouse now says that the real need is for a 60 per cent reduction. I take your point that it would be very difficult indeed. Even the Dutch have only managed to kind of hold the growth in pollution from transportation at the level that they had about seven or eight years ago—they have not really managed to reduce it. Some of the problems are quite intangible—they are very difficult.

I have a copy of this, which has only been off the printing press for two months in English. It was printed through the EU—the Dutch national environment plan. The beautiful thing about the Dutch is that when they have a problem they recognise it and say, ‘We’re not getting anywhere, but we are going to get somewhere. In future, we are going to make the necessary changes.’ You then see a process of revision. What I see taking place here is that there is no acknowledgment of where we ought to be and what the impact is going to be in the sense of the political game plan between the economic rationalists who control most of the financial elements of the bureaucracy and the others.

Senator TIERNEY—To get it down by that much, in terms of the country’s current reliance on coal-fired power stations, you would be in a position, surely, where you would be shutting down a lot of economic development and shutting down a lot of jobs? Would that be an outcome of trying to reach such a target within 10 years?

Mr Parker—Trying to reach such a target in 10 years is well nigh impossible. You have to start by saying that that may be necessary—even though you cannot achieve it, you have to try to achieve something. Let's face it, there is one thing about Australia that most Australians take for granted: no other country in the world is as rich or as lucky as this, especially if you look at the per capita sustainable energy that we have at Australia's disposable in terms of proven wind power, wave power and solar power. Various agencies of government have actually researched some of this. There is no other country in the world that has this wealth, yet we have no priority program whereby we seek to exploit the sustainable energy sources that we have got.

I know of no Commonwealth document that does that. You can find the data—it is there—but there is no vision whatsoever. It is really quite disastrous when you look at it. I think that in 10 years time the scientific data will be harder and firmer and we will know that we have a catastrophe on our hands. People will look back at the last 10 years and say, 'What a disastrous government we had.' That is what is going to happen. I cannot suggest to you what you could do to reduce it by 60 per cent. I do not know, but I certainly know that the starting point is not to pretend that that kind of target might be necessary to achieve it.

Senator TIERNEY—Possibly one of the reasons why all those alternate sources that you say are available are not widely exploited is that they do not in sum, given current technology, generate enough power to do the job that you are suggesting. They will work to some extent. Even in Newcastle we have a wind farm. We have just set one up in the last year, but a minuscule amount of energy is coming off it.

Mr Parker—I realise a lot of the costs that you have got with cheap coal and cheap oil, et cetera, but have a read of the current issue of *Scientific American*. The big feature article, which they have spent a year building up, is called 'The end of the age of cheap oil'. That sets out some of the long-term intangibles. What is really disappointing is that these problems are not being realistically looked at.

Senator TIERNEY—You mentioned that there should be Commonwealth government action to increase the availability of Australian made ecological cars. Could you explain that concept a bit further?

Mr Parker—Easily. It originates from a little technical team that Al Gore put together in the USA. They went to 'the big three' and they talked about a car that would do 100 kilometres on three litres of petrol as a mass-produced available car for the American public by the year 2003. The Industry Commission people just ruled out a discussion of that as a rational objective as if the possible president of the US, Al Gore, is some kind of blithering idiot. I could never quite work my brain around that one. I cannot see why people cannot look at the idea of a 'green' national car as a concept. Certainly the Japanese are actually doing this at the moment. I have got some statements on file at home by the leaders of the Japanese car industry who attended the Kyoto conference. They have got those cars well under way.

But now we have got an industry car plan in place that makes no reference to it whatsoever. If you read this report you will read what the chairman told me, 'Our brief is too big; the government has not given us enough money to look at it even. We have decided

we will concentrate on what we are good at, which is all the economic blah, blah, blah stuff. Difficult stuff? Forget about it.'

Senator TIERNEY—Surely if the Japanese are starting to make it that is the start of the solution, isn't it?

Mr Parker—Yes.

Senator TIERNEY—These cars are not going to suddenly be created in Australia. If the big car makers centred in Detroit or in Tokyo decide to make these cars that will then spread to Australia, surely?

Mr Parker—Having served an apprenticeship and a managerial training program with the British Motor Corporation many, many moons ago, the one thing I know about the car industry is there is 10-year lead time on it. If you want to introduce that kind of change you have to start saying it now if it is not in this Industry Commission. What will really happen to the Australian car industry is that it will just get wiped out if the crunch ever comes.

CHAIR—You refer in your submission to problems you see the Commonwealth having in achieving its agenda 21 commitment to sustainable transport. Can you elaborate on your concerns there and give us some indication of where you think the problems lie, whether it is political will or whether it is a legislative or administrative problem? What sorts of actions do you think the Commonwealth should be taking to discourage car use?

Mr Parker—I would suggest that one follows world best practice in this regard and uses the Dutch ideas—they have had three transportation plans that are focused on this and they are still focused on it—as some kind of a guide. The Dutch, first of all, have got a series of objectives in the transport sector. By their demand management programs they are trying to get no increase in per capita passenger car kilometres travelled.

In a European context—not an Australian context where every idiot is buying four-wheel drives with bull bars on the front—where the trend is to better smaller cars, that objective of no increase in per capita passenger car kilometres will achieve a very considerable reduction in greenhouse gas emissions because of the improvements in engine efficiency and car design that will come about. That is what they are managing to achieve. While there has actually been a small increase in per capita car kilometres travelled since 1989, it is quite tiny compared with what we have got here in Australia.

The other objective that one needs to set—and here the Commonwealth would have an absolutely dynamic role; it could not have a role with regard to individual cars becoming more efficient because it has abdicated its responsibility with the Industry Commission with the car inquiry—is to increase the seat occupancy of commuter cars from 1.11 to 1.26; in other words, what Australia had in terms of seat occupancy for the trip to work in 1976, and there was a hell of a lot of driving in those days. What that would effectively do is pull about 15 per cent of all cars off the roads by just getting more people in cars for the trip to work.

There are numerous schemes for this. The ones that are old hat and everybody knows

about are car pooling and van pooling in America. On top of that you have Swiss schemes of multiple or group car ownership. These schemes are even more successful and could bring another five or 10 per cent of the commuting people on side because what they do is actually reduce car usage. The Dutch have a very successful scheme. The Swiss have it. The Germans are already into it. People have an opportunity to own part shares of a car. They have a contract and get to use a car when they really need it.

Surveys of these schemes that have now been running for seven or eight years show massive consumer satisfaction because they either have a car or if they had not got a car they could get a car when they really needed it and because the cost is so low to them they are very happy with the arrangement. What makes it work rather well in Germany, the Netherlands and Switzerland, I suggest, is that a lot of the middle distance trips, two to five kilometres, are done by bicycle. You do not need a car. Under these schemes they are really only using a car for trips of longer than five kilometres.

CHAIR—What was the government's role in encouraging that car sharing arrangement? What did the government actually do?

Mr Parker—It has an agency of government that deals with that and then relates to the states and fosters experimental programs.

CHAIR—So it was advertising and that kind of thing. No other incentives?

Mr Parker—You would hire extra staff and put them in the federal department of transport and they would relate with the various state governments. That can work quite well today. It was not like it was 15 years ago. Brian Howe, when he was minister, was getting extraordinary cooperation with state departments towards the end of the Labor administration. So it shows that you can build up good working relationships and foster schemes. He did that with the better cities program—not that particular project but he did some very interesting transportation projects in that area.

The other objective that I have here is decrease in the average fuel consumption of the car fleet by eight per cent per year. That is a figure that you would actually need to achieve if you were to bring down the petrol consumption of the average Australian car by the year 2006 to about four litres per 100 kilometres. At the moment it is up near the 8½ litres per 100 kilometres level.

We have a very old car fleet and in 2006 half the cars that are running around now will still be running around then. You can imagine the difficulty of reducing the average fuel consumption. However, there is a role for the Commonwealth in this. It is a twofold role: one is you put a tax on the gas guzzlers; and the other is you provide a financial incentive for the very small energy efficient cars that satisfy certain air pollution requirements. The Australian Conservation Foundation has had specific recommendations for this for five years to my knowledge.

CHAIR—In terms of building infrastructure and looking at alternative forms of transport, do you see it as problematic that the Commonwealth funds roads from fuel excise and that there is that link between the two? No doubt, the Commonwealth gets a lot of

pressure from local government and states to fund more roads through that fuel excise, but how do you see getting the balance right in terms of the infrastructure and what is the political reality of those pressures?

Mr Parker—I think the inquiry into urban air pollution said it very nicely: there is no connection between the two; it is a mythical connection that exists in the minds of the media—that is, between the fuel excise and what you actually spent. There is no connection and there is no need to be. It is like saying there is a connection between subsidising people dying and the tax that you get off cigarettes. It is ludicrous; it just does not add up. So first of all let us get that out of the way. Basically, any government can spend what it wants on what it wants if it wants it badly enough.

CHAIR—So you are saying it is just a matter of political will?

Mr Parker—Yes, that is right. I make a lot of play here on the national security implications of greenhouse. You have no problem in the Netherlands talking about the national security implications of greenhouse. Why? Because you are living in a nation that for 1,000 years has been keeping off the North Sea and about a million of its people drowned to death in the worst storms, which again are climate related.

Because of the dykes they have built, about 60 per cent of their population lives on either former swampland or land that would be under the level of the North Sea at this moment. You do not have any great difficulty taking greenhouse seriously when your major airport is, say, three metres under the level of the North Sea and you are in that kind of situation, because you know what a metre level sea rise will do to your historic cities and there is a sense of pride. So I think the problem that we have got is entirely political.

CHAIR—We need to feel the pressure from greenhouse more before we will take it seriously; is that what you are saying?

Mr Parker—Yes, basically.

CHAIR—Is there anything else you particularly wanted to say?

Mr Parker—I would like to see the Commonwealth pick up its responsibilities in the transport area. I would like to see us have something like the Dutch master bicycle plan if something like ISTEAM American-style funding does not come on line—because that is another way of doing it. The Dutch master bicycle plan's equivalent here could be administered through the federal department of transport. The bureaucrats would not be involved in the detail, of course; the state governments and local governments would be responsible for that. The allocation of funding and the general guidelines are dealt with by the Dutch national bicycle planning unit located in their ministry of water, land use, planning, et cetera.

I believe a budget of about \$100 million a year would be a very good starting point for the thing. We could start to catch up on those 120 bike plans that we have got lying around. I will give you a concrete example here in Melbourne of how bad it is. We are getting at the most optimistic about \$5 million a year going into on-road and off-road bicycle facilities. The real need is something in the order of \$35 million a year. What is happening is that the

facilities are not keeping up with the population increase. In fact, one is getting somewhere not very fast at all.

The other interesting thing with the Netherlands is that more women cycle than men—four times as many. I am serious. Dutch women have a realistic choice. When my wife got on a bike in the Netherlands she was wrapped. There are totally separate bike paths on either side of the main road. You have got your own traffic lights. It is great. Let me put it this way: when you see women in their eighties riding a bike, you know you have got a safe road system. It is as simple as that.

It would be nice to get some sort of commitment to clean up the mess of our central cities and get some realistic funding towards bicycle planning because, quite frankly, the only people who are going to cop bike lanes on 100 kilometres an hour roads are young aggressive males with an overdose of testosterone. It is as simple as that.

CHAIR—We might finish on the point of this inquiry, which is about the Commonwealth powers and how effective they are, particularly in relation to the other two levels of government. You say that an ecologically sustainable transport system has to be achieved through national legislation and not through state government agreement. Are you aware of the Commonwealth discussion paper about the review of Commonwealth legislation? Are you aware that in that discussion paper is the suggestion that in future, rather than relying on Commonwealth powers, there will be bilateral agreements with the states? That is contrary to what you say is required here. Have you looked at that paper and can you comment on that? Using your preferred model, what mechanism can be used with the states in order to get compliance with each of them?

Mr Parker—I have not read that particular document. I know about it and I have read summaries of what is in it from the ACF and other groups like that. The states have to be online with a lot of the policies, I recognise that. The real initiatives that need to come from the Commonwealth government are not there and nobody is even talking about them. You also have a game played in this country with bureaucracy that you do not get in the Netherlands and that game is second-guessing the politicians on the assumption that they are a bunch of idiots. That is what our bureaucrats do. They produce these reports, front them all up and say, 'Yes, it is on side.'

The first national environment plan that was put up by the Dutch contained the equivalent of completely wiping out the subsidy to company cars. That was put forward by the Dutch bureaucracy, knowing that it had to be done and it was necessary. It brought the government down. The real problem that we have got here is very serious. You have got a bureaucracy that does not work on serious matters like this because they are second-guessing the politicians and the politicians are not really looking at the broader long-term issues. That is the way I see it, basically.

Quite frankly, I was really impressed with the way we are doing it the Netherlands. By the way, the Netherlands still have not managed to get rid of the equivalent of company cars, but believe me the ministry of transport over there is still trying very hard to do it. But the nice thing about it is that they take something like that, which is politically unacceptable, and try to run with it and try to make it work. They have succeeded in a lot of areas, but in

that particular case they failed. I use that as an example. I cannot really say any more.

CHAIR—Thank you, Mr Parker, for appearing before us today. If there is something further that you think of that you would like to draw to our attention, please feel free to do that.

Committee adjourned at 3.54 p.m.