



COMMONWEALTH OF AUSTRALIA

# SENATE

## Official Committee Hansard

ENVIRONMENT, RECREATION, COMMUNICATIONS AND THE  
ARTS REFERENCES COMMITTEE

**Reference: Commonwealth environment powers**

WEDNESDAY, 15 JULY 1998

**ADELAIDE**

BY AUTHORITY OF THE SENATE  
CANBERRA 1997

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**SENATE**

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

**Wednesday, 15 July 1998**

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

**Substitute members:** Senators Carr and Evans

**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, Hogg, Payne 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**

**CLOSE, Dr David Henry, Vice-President, Conservation Council of South Australia,**

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**Committee met at 9.10 a.m.**

**DOWNTON, Mr Paul Francis, Founding Convener and Public Officer, Urban Ecology Australia, 84 Halifax Street, Adelaide, South Australia 5000**

**EDE, Ms Sharon Anita, Secretary, Urban Ecology Australia, 84 Halifax Street, Adelaide, South Australia 5000**

**ACTING CHAIR (Senator Tierney)**—I declare open and welcome you to the public hearing of the Senate Environment, Recreation, Communications and the Arts References Committee, the Commonwealth environment powers inquiry. The committee prefers evidence to be given in public, but should you wish at any stage to give any part of your evidence or answers to specific questions in camera, you may make a request and the committee will consider the request. However, such evidence may subsequently be made public by order of the Senate.

I welcome Ms Ede and Mr Downton from Urban Ecology Australia to the table. The committee has before it submission No. 181 which it has authorised to be published. Are there any alterations or additions that you wish to make at this stage?

**Ms Ede**—Not at this stage.

**ACTING CHAIR**—Do you wish to make a brief opening statement?

**Ms Ede**—I do. I had no idea what to expect today. I thought I would be speaking in a court like environment, so I have just actually done up a few pages which I will read to you, because it is easier. Environmental issues begin in the city. Development and the making of cities is the single most powerful source of impacts on the global environment. The United Nations estimates that shortly after the year 2000, over 50 per cent of humanity worldwide will be living in urban areas. We will become a predominantly urban species for the first time in history. By the turn of the millennium, for the first time in the 10,000 years since human beings began to make settlements, the majority of people will be living in cities.

Humanity is at a watershed moment in history, but neither our physical environments nor our societies have a precedent for dealing with the effects of rapid urbanisation as we have come to know it. This has enormous implications for the way we build and live in cities, given that our late 20th century urban creations generate massive impacts on ecosystems and societies at all levels in terms of resource requirements and production of waste.

Cities are the planet's primary resource manipulators. Choices such as building materials, energy sourcing and demands on agricultural land are made in the city. Political and economic decisions which affect 'out there' are made in the city, yet few urban dwellers are ever faced with the impacts cities make on areas beyond the city limits.

We need to view the city as the solution for global ecological crises, turning the city into a positive force and making it life sustaining instead of destructive. We can do this by addressing ecological and social impacts of the built form at the planning, design and

specification stage rather than attempting to ameliorate the outcomes of environmental degradation.

How can the Commonwealth facilitate ecologically sustainable development? To quote my colleague, Paul Downton, government portfolios slice up the political landscape in the same way that political boundaries slice up the living landscape, with similar results of alienation, disconnectedness and disintegration where integration is the key.

Complementarity in governance: complementarity means adopting a whole of government approach to facilitate ESD, with consistent objectives so that different levels and sectors of government are not working at cross-purposes. State and local governments must comply with the requirements of all treaties and conventions to which Australia is a signatory, such as Agenda 21, or else the purpose of such documents is defeated. ESD should be coordinated and funded under the environment portfolio but should be a common theme in each portfolio across the spectrum of government.

Constitutional change: the Australian constitution contains no reference to environmental issues as these were not identified as concerns for the Commonwealth when the constitution was being developed. As a consequence, constitutional responsibility for environmental issues, excepting judgments made by the High Court, has been left with the states. This is a far from ideal situation because environmental issues by their very nature require a broader approach, often extending beyond national boundaries. The Commonwealth should have external powers over all levels of government concerning implementation of all international treaties and conventions.

Developing partnerships: during the 1990s there has been a recognition that governance in contemporary, particularly urban, societies cannot and should not be carried out by government alone. Partnerships between various levels of government, the private sector, NGOs and other entities, are now seen as the way to develop a collective and responsive process of governance. Establishing and developing partnerships at the local level between organisations, sectors and individuals is becoming a key concern for the governance of cities worldwide. The Commonwealth can provide support as a partner in conjunction with local government, state government, the nonprofit sector and the private sector, in joint ventures to research, develop and implement case studies such as the Halifax eco-city project in order to benchmark ecological development.

Redefining ESD: in Australia we use the term 'ecologically sustainable development', but this does not fully or accurately express what is required to move towards a culture of sustainability. The co-initiators of Adelaide's Halifax eco-city project use and promote the term 'ecologically sustaining development', that is, where development sustains the ecology. It is entirely feasible that the processes of urban development can be rethought and reoriented so that city making, far from continuing in its current parasitical form, not only maintains ecosystems but also drives ecological restoration of the damage done to ecosystems by urban development. Humanity needs not only to avoid further damaging nature's life support systems but to actively set about repairing deforested areas, salinated land, contaminated soil and polluted waterways.

Economic incentives and legislation: ecological development initiatives need to be supported by economic incentives, either through the taxation system or via other financial mechanisms. Ecological development initiatives also need support by legislative means, as they are often met with bureaucratic responses, with reasons being found not to do something innovative simply because it has never been done before, or by a rote response to systems which can be changed and may be mitigating against ecologically sustaining futures, simply because it is easier to deal with business as usual.

So, in conclusion, in order to address environmental issues, we need to address them where they are being generated: in our cities. Australia, as one of the most urbanised nations on earth, can set the standard, and the Commonwealth can play a significant role in this undertaking via legislation, financial mechanisms and supporting best practice case studies in ecological development.

**ACTING CHAIR**—Thank you. Mr Downton, do you have something to add?

**Mr Downton**—Yes. In order to give a specific example of how those ideas would apply to the current situation, Australia has recently adopted a national building code and it has recently been upgraded, but the Australian Building Code, which affects all built environment outcomes across the country, has no reference whatever to energy conservation and it has no reference to environmental impacts. At the same time, the tax system provides no incentives for developers to put up energy efficient buildings, but it does provide incentives to tenants to consume energy because there is a tax break on money you spend running a building and paying out energy costs, but there is no tax break whatever for putting in conservation measures.

So we have got a tax system which is actually working against energy conservation and we have got a building code which has no requirement for energy conservation. I think, in 1998, that is a seriously embarrassing situation. It needs to be addressed, but it clearly is an issue which cuts across portfolios and there is no central point in government which coordinates all of that. I know that the current Minister for the Environment, Senator Robert Hill, is aware of the issue and it is being addressed, but at the moment, regarding addressing the building code issue, for instance, it seems to be the preferred option for the industry to look to voluntarily doing something about it. I think our position is that there need to be clear codes, clear legislation, definite goals, so that you are not having to constantly negotiate, renegotiate and so forth to achieve outcomes which are very easily achieved by simple legislation like having minimum energy performance standards in buildings.

That is an example and, as I say, the relationship to the tax system is, I think, a good instance of where we have got the potential for legislation to do the right thing on the one hand, but even if that were changed right now, the tax system is working directly contrary to it. That is why we need a whole of government approach. That is why there needs to be a point in government which takes responsibility for ESD and recognises that it reaches out into all these other areas, and we focus on the urban environment, on buildings. Most environmental issues are thought of as being, as Sharon indicated, out there somewhere. We are saying the problem starts at home, in our backyard, in our cities, and that, with the right approach by government, with a clear understanding of ESD as a whole of government issue, a lot can be done very quickly and actually at very small cost.

**Senator HOGG**—Just before you proceed with your submission, is the model that you refer to in place anywhere in the world, where there are tax incentives for energy conservation and for the proper design of buildings as opposed to the road we seem to be on?

**Mr Downton**—I think there are many instances internationally of incentives for energy savings: subsidies on energy performance measures for buildings, and I think, to the best of my knowledge, all the other OECD countries have got very strong building code requirements on energy performance, and many of them are starting to move towards environmental building code requirements to do with things like internal health quality and so forth. But we have not even got to the energy issues yet.

**ACTING CHAIR**—Have you finished, Mr Downton?

**Mr Downton**—Yes. That was an example to substantiate the general—

**Senator HOGG**—I am just interested in what form the incentives take to encourage the makers of buildings to make them conserve energy within those properties and meet reasonable standards. Is it a form of taxation relief, or how does it operate?

**Mr Downton**—I cannot give them to you now, but we can forward to you examples of how it works overseas. The current situation, for instance, on energy consumption is that a tenant gets a tax break on what they consume. The building owner does not get any benefit at all. We are not talking about additional taxes therefore in that situation. I think it is a question of relocating where the tax break goes, to encourage the construction of energy efficient buildings in the first place. It is that going through the whole tax regime, looking at how it can facilitate outcomes which relate to ESD, that we are talking about. So that is an instance that we are very aware of because of our focus on the built environment, but I think as a general approach, if we are going to be looking at tax reform of some kind—and I think everybody accepts some kind of tax reform is in the offing one way or the other—

**Senator PAYNE**—So they tell me!

**Mr Downton**—then let us not lose that opportunity to address ESD issues as part of tax reform. It does mean somebody is going to have to work through the whole regime, but as I say, tax reform is on the agenda anyway. Let us make sure ESD is a goal within it.

**Senator HOGG**—It is one thing to have a tax incentive, but are the operation and the continued running of these buildings a disincentive to make them energy conservation proof, if I can use those words?

**Mr Downton**—Current buildings?

**Senator HOGG**—Future buildings. Do they become more expensive than the traditional buildings and therefore there is a disincentive in making them energy wise?

**Senator PAYNE**—Do you mean is construction more expensive?

**Senator HOGG**—Construction-wise and operation-wise.

**Mr Downton**—Operation-wise the costs would reduce, and that is the beauty of most positive environmental measures in regard to the built environment. The actual running costs go down because you are not wasting energy, and energy costs money. So the running of buildings would reduce in cost. The building cost itself would go up and that is why there needs to be a building code which says, 'You must build energy efficient buildings,' because otherwise only those who choose to do so will do so. So, in effect, a building code which required everybody to perform well with their construction would provide that level playing field so that you could not have cheapskate developers leave out the insulation and all the rest of it, which they can legally do. Developers build to the legal minimum, and what we are talking about is a legal minimum which properly addresses, for instance, energy issues, but in the bigger picture we are talking about ESD and, as I say, relating that to a whole of government approach and seeing that the tax regime corresponds and does not go against it.

**Senator HOGG**—Just one broad question on the issue, Ms Ede, of who should have the responsibility. We have had evidence that if you leave it to state governments, you get tied up in state government bureaucracy; you really need to leave it to local government because they are right at the source of the problem, whether it be the development, whether it be the pollution problem that might be there—it does not matter what it is—or it may well be an amalgam of a number of local councils to address a problem. What is your response to that?

**Ms Ede**—I entirely agree that it should be local government that is playing the major role in these issues, particularly when you get to the nitty-gritty of what developments get approved and which ones do not, but as Paul said, what we need to do is ensure a level playing field, like a base minimum which is above that which we have got at the moment, which is way behind what is going on in other parts of the world. In order to do that, we need to have some sort of standard nationally, and I think that is where the Commonwealth role comes in, otherwise you would be getting what we have got now, which is different standards in different parts of Australia, and it is not requiring people to meet what we consider to be an ecologically responsible minimum.

**Senator HOGG**—So you see the federal government, in effect, determining the broad standards to be applied?

**Ms Ede**—For sure.

**Senator HOGG**—And then—

**Ms Ede**—Local government.

**Senator HOGG**—lower levels of government, whether they be state or local government, being the implementers.

**Ms Ede**—I think so.

**Senator HOGG**—Who therefore should police what happens?

**Ms Ede**—I think that any development applications that are received at a local government level need to comply with whatever standards are set, and it should not be just the

Commonwealth that sets those standards; that needs to be a process where all parties get to have an input into it. Paul, do you wish to comment on that?

**Mr Downton**—The policing is already in place. We are talking about working with existing legislation and existing mechanisms like the building code, like the tax system, and making it integrated. The integration is the key and that is where the department of environment and perhaps a department of ESD is needed to ensure that the whole of government approach has got an integrated approach. The mechanisms for policing the individual aspects are already there, and at the moment, again taking the building code as an example, local government has a responsibility to see that people are complying with the code. If the code across Australia were a good one environmentally, then local government would continue to do what it does. It does not require a massive change at all in the way government operates at any level. It really is to do with ensuring that there is an integrated whole of government approach at the top end, so that all the other players are working within that framework, whereas at the moment there is no coherent framework whatsoever.

**Senator HOGG**—Are there any statistics to show what would happen if we did not have a whole of government totally integrated approach to our longer term economy?

**Mr Downton**—We have not got that. I would like to get those statistics. I think it would be a worthwhile research effort but I do not know if anybody has done it. I think it would require a fair bit of research. It may be an appropriate thing to do.

**Senator HOGG**—So it is just a hypothetical thing at this stage, that there is a real long-term impact.

**Mr Downton**—It is not hypothetical because you can measure the impact of the outcomes as they are. It is already an issue that is being addressed as best as possible through things such as the greenhouse challenge program, and there are some good initiatives being put in place in that respect. They are addressing what is clearly understood, that we burn way too much energy if nothing else, quite apart from other environmental impacts, through the way we operate our built environment. So the impacts are already understood and are quantified. What we are talking about is using existing government mechanisms, integrating them, so that the outcomes can be better coordinated. I do not think there is any doubt whatever that the negative impacts on the environment from a poor built environment stock are huge.

**Senator PAYNE**—I would not mind a little bit of information on what Urban Ecology Australia actually does which puts you in a position to give this evidence today. How long have you been in existence, for example?

**Mr Downton**—We are a community nonprofit organisation founded in 1991, incorporated as an educational association here in South Australia. We are the only urban environmental community group that is recognised as a national group for the National Environmental Consultative Forum, and a couple of weeks ago we were in Canberra as a part of that process. So we are recognised formally by the present federal government at the national level as the peak urban environmental organisation, but we are entirely community based and an entirely volunteer organisation. Our goal is to promote, advocate and educate and do

whatever in respect of creating ecologically responsible and balanced cities, and that engages the social agenda as well as the environmental; looking for a balance so that we can sustain long-term futures.

**Senator PAYNE**—You fund yourselves by memberships?

**Mr Downton**—Memberships, sponsorship, and we have had some grants in the past from the state government—from the department of the environment—and we are currently in receipt of our second annual grant from the federal department of the environment.

**Ms Ede**—It was the GVCO, grants to voluntary conservation organisations.

**Senator PAYNE**—I just want to take up a point that Senator Hogg was making in relation to who polices this entire process. In terms of the Commonwealth environment powers, which is where this inquiry is based, do you think there is a role for the Commonwealth to use its financial strength, if you like—because other witnesses we have heard have suggested this might be the case—to impose certain requirements on states at least, and if they do not comply then they suffer a financial penalty as a result? So if you do not adhere to or comply with the Commonwealth requirements at a state government level, then you do not receive the grant or the funds that you might have been expecting. Similarly, in the cascading effect that you have discussed with the levels of regulation, that would flow from state to local government and so on.

**Mr Downton**—I know that is fashionable.

**Senator PAYNE**—It has been fashionable in evidence we have received.

**Mr Downton**—Take the building code as a very good example. It has got so many implications that spin out from it. A simple change in the code as part of the national legislation would achieve enormous amounts at virtually no cost to government. So I think engaging in complex financial incentive deals between levels of government is unnecessary in many instances.

**Senator PAYNE**—If you can use existing structures.

**Mr Downton**—Really I would suggest a lot of the things that we are talking about can be dealt with in that way. In the event that they cannot, then perhaps the Commonwealth powers can be enforced in that way.

**Senator PAYNE**—Mr Downton, I suspect you know a great deal more about the national building code than I do. Could you perhaps give me some idea of how difficult those sorts of changes would be to implement in the national building code in terms of all of the parties, the process that it took to get to a national building code and how we might go about amending it, if that were your suggestion?

**Mr Downton**—There have been a number of ongoing working committees to do with the code. I sat on a committee looking at putting energy issues into the code back in 1988, I think it was.

**Senator PAYNE**—I thought it might have been a long time in gestation.

**Mr Downton**—Yes, and it still did not come through. I remember the discussion being very much about whether to educate, to provide incentives or to delegislate. There is a lot of building industry representation which does not want any more legislation and there is this constant thing—the private sector prefers not to have to do anything, which is bizarre in a country with probably the highest amount of legislation per head of population on the planet. The industry is also starting to respond. In Howard's greenhouse statement he actually picked up, we believe, on something that we were pushing with regard to the code in particular, and basically said that if industry did not respond and start doing something about energy efficiency, then they would have to look at changing the code.

One of the outcomes from that is that the Housing Industry Association and Master Builders Association are now coming through working with the department of the environment in Canberra to upgrade their act. We are more of the view that if industry voluntarily comes to something, yes, it is fine, but most likely that voluntary goal will be way below what you could achieve otherwise. Because it is voluntary and because if you were to take the Commonwealth powers' approach, you would have different states with different capacities to respond, different regions of Australia with different capacities to respond and in a sense the poor would get poorer and the rich would get richer, because those who were better able to kick in and put the right things in effect would move on and do it.

They would end up, for instance, with built environment stock which was superior to other states, and that would be where the smart people wanted to go—to sort of cartoon the situation—whereas I think a simple change in legislation with all the mechanisms already in place means that everybody is definitely working at that level. Then you can work on more subtle and complex issues such as the total environmental impact of building, which we have got a long way to go towards. One of the things we are keen to see is environmental restoration as part of the future of ESD, not just in stopping the damage but reinstating damaged ecosystems and so forth. I think that Waitakere in New Zealand, as part of their development push, are asking developers to assist in revegetating the landscape outside of the cities, something that we have been promoting for some years. That sort of thing takes things even further down the track towards ESD in a substantial way, but at the moment we are not even off first base, and it makes the more ambitious goals much harder to get to. We are here and trying to get here; we need to be here trying to get here. That would be a lot easier for everybody, including the industry.

The other thing is, education is terrific—I teach architecture as well as practise it—but there is nothing like, 'You've got to do it.' The building industry is probably one of the most inefficient in the country in terms of just overall performance; it works to a very slim margin. In construction their profit margins are very small so there is not a lot of room to experiment and do anything very different, and the industry is very conservative. So any sort of incentive kind of approaches have to be massive, and I do not think governments should be having to put up money for that. That is the beauty of legislation; you just say, 'Well, all your buildings are going to have to have certain insulation, and that's that.'

**Senator PAYNE**—Mr Downton, you said to Senator Hogg that you would perhaps try and find us some more information or international examples of the sorts of things that you were talking about.

**Mr Downton**—Yes.

**Senator PAYNE**—In terms of the best practice in Australia—and I note a reference to the Halifax ecosystem city project in your submission—would you be able to provide the committee with some more information of local examples of the sorts of things you are seeking and you believe ought to be implemented?

**Mr Downton**—Yes, we can.

**Senator PAYNE**—That would be very helpful.

**Mr Downton**—We are currently engaged by the Built Environment Research Unit in Queensland and are addressing precisely those issues. So we are in the process of putting that material together and I think there may be a version of that available.

**Senator PAYNE**—Thank you. That would be very helpful.

**ACTING CHAIR**—Mr Downton, the whole thrust of what you are saying is that there are ways to legislate and this will not be very costly. If I can just ask a few questions on that. You seem to be focusing more on that from now on, if we set those things in place, we will get a better outcome in terms of the environment, but what are your views on buildings that are already established? Take airconditioning systems for example, making those more efficient; I assume this would be costly and who would bear the cost of those sorts of upgrades for the urban environment?

**Mr Downton**—You cannot do things in one fell swoop. A building code applies to any new construction and a new construction includes a retrofit change in existing buildings. All existing buildings require upgrading and changing; very few buildings go much longer than five to 10 years without having something done to them. A building code approach would mean that every time something was done to a building, it would have to come up to the current code, so you would actually quite quickly address even existing building stock. With the whole approach, if the tax regime also favours energy efficient buildings—in other words, if you are better off as a tenant, for instance, in an energy efficient building because you are not getting paid government money to consume energy, which is the current situation—then I think the market will actually take care of some of those issues and start to provide buildings where the dollars do not leak out of the cracks, the walls, doors and windows.

So by having a code which will ensure that any new construction, any retrofit, any changes to existing stuff come up to speed, you will be starting to shift the expectations of what buildings do, shift the expectations of the tenants and building users and so forth, and then the market can take care of the other differences. That is how it has always happened when the building codes change. For instance, with wheelchair access, it was the same sort of issue. All the existing old buildings did not suddenly spring wheelchair ramps, it

happened over a period of time as it was possible and as it was needed. It did not take very long for most buildings to start to be accessible for wheelchairs and it is an understood dynamic.

**ACTING CHAIR**—So, take a city like Adelaide where you have a whole lot of high rise buildings that were probably built in the last 15 to 25 years. What is the life cycle on these sorts of buildings in terms of retrofits? When might they come up for—

**Mr Downton**—It is an enormously complex problem with high rise because the requirements for residential and commercial are different. There was overinvestment in commercial buildings in the 1980s and there is now a lot of interest in retrofitting those buildings for residential purposes and things like ceiling heights and different things like that make it complex. So there is no very simple answer to that.

The investment horizon for your average building is about 25 years. In other words, they are expected to pay for themselves and be done with, written off, within that period, so after 25 years a building is either going to be knocked down or is going to be so useful that you will keep retrofitting and redoing it. The reality is that even short-life buildings last much longer than ever they are expected to, and people tend to keep them going. They want to keep them on. I think you can safely say that virtually all the existing building stock will still be with us in 20 years time, and it is all going to have to perform better, with or without legislation and government response, because we are going to be facing an increasing energy cost. But that will be a messy, difficult change, and not done efficiently unless there is, I think, a whole of government approach to coordinate all the different aspects of what people are doing, and that is what it keeps coming back to.

There are lots of bits and pieces to the picture all of the time, and none of them is consciously and properly related to any another, the way things are done currently. They are just happenstances that meet all the issues. What we are talking about is the Commonwealth's taking responsibility for seeing that at the top end of things there is an understanding of the need to integrate all of the issues, and that is what it keeps coming back to. On the ground, the situation is so complex that if you try and do it at that level without an overriding sense of how the bits go together, I think it becomes unworkable and certainly not efficient.

**ACTING CHAIR**—It is interesting what you are saying in relation to the buildings and the fact that the building cycles probably indicate: 'We'll do this from new buildings and retrofits.' Of course there probably will not be too many new buildings in Adelaide for the reasons you have given. I think I noticed one crane on the horizon, and that was about it.

**Mr Downton**—Yes.

**ACTING CHAIR**—But Adelaide is also made up of a lot of very old, very nice, very inefficient buildings, I suppose, in terms of things like energy use and other conservation measures you are suggesting, so what do you do with that sort of building stock?

**Mr Downton**—I think building stock is constantly being worked over, and in fact people are more and more staying in their houses rather than moving. They are upgrading, typically

putting on building extensions, and if the code had an energy performance requirement as a bare minimum, then those building extensions would immediately have to comply, and then the house owner is going to notice the difference. I mean, if we come down to that very domestic, immediate level, I think they would quickly recognise that their extension was outperforming the rest of the house, and they would then understand that if they put a bit of insulation in the loft, it would make the whole building work better and that their overall running costs would come down.

But at the moment there is absolutely no incentive, no requirement, for their new extension to do anything halfway sensible in terms of environmental performance. So without that trigger for greater realisation and education, I think it just stalls and we do not get the changes as quickly as we might otherwise. Existing buildings can be retrofitted very successfully, and improved in terms of their energy performance, and it is not a massive cost, but when you have no requirement to achieve energy performance, then every cost looks big, if you see what I mean.

**ACTING CHAIR**—You have moved to talking about housing in terms of older buildings, but what about older buildings that are used for business?

**Mr Downton**—The same applies, really, and that again takes me back to the tax system encouraging energy consumption. If the tax system did not encourage energy consumption then tenants, for instance in commercial premises—and they are usually tenants—would be less likely to tenant a building which was going to cost them more to run. So I think you would get a very quick shift in the market there, and demand coming from the building occupiers for buildings to perform up to speed. I think then in the commercial sector the market could take care of a lot of that, because again what would be quickly understood then—but is not understood now because it is simply not an issue—is that the building owner could easily upgrade in many cases just by putting in insulation to their buildings, if they are smaller ones.

With the bigger ones it is a bit more of an issue, but there is again a bit more of an understanding of the total energy management in the larger structures anyway, but the small-scale stuff, where a lot of energy gets consumed, and the small businesses are active, it would not cost very much for the building owner to upgrade the building and please the tenants. So I think with the expectations in place, with the right kind of tax incentives there, a lot of the stuff would work through the marketplace very quickly, and without that much pain.

**ACTING CHAIR**—You have indicated that the tax system encourages consumption rather than conservation of energy, so how would you change the tax system to move it the other way in terms of conservation?

**Mr Downton**—You drop out the incentives to consume and drop down over, I don't know, maybe a couple of years, the tax breaks on energy consumption. In other words, when you consume energy in your office, you write off some of that against tax. If that starts to disappear over a couple of years, that tenant will be saying, 'Well, I want this building performing so that we don't have to throw this energy away,' and instead of the tax—public money—making up the difference, you simply stop losing the heat or the coolth, as it were,

through the building fabric if the building does the job it should do, and the building owner takes care of that and has got those two years of change in the tax regime to get that in place. So I think you would see a very quick and effective change in that area.

Probably the preferred approach by government would be just to cut out tax incentive altogether, because that would save money. It would actually save money at government level. The other approach would be to shift it over and actually provide incentives to building owners to put things in. For instance, if you insulate and upgrade the performance of your offices, then you get a certain sort of tax kickback on it, so that it would take it from one area and put it into the other.

**ACTING CHAIR**—You are calling it an incentive, but aren't you just talking about a normal business cost write-off?

**Mr Downton**—Well, it is effectively an incentive.

**ACTING CHAIR**—You are suggesting that we do not allow them to write off that cost to their business as a tax deduction?

**Mr Downton**—Yes, because it is inappropriate. It actually encourages consumption.

**Senator HOGG**—Does this apply to residential dwellings as well, because you seem to be focused on the business community, and I can understand that that is a fairly significant sector, but what about the ordinary residential buildings?

**Mr Downton**—The ordinary residential person cannot write off their energy consumption.

**Senator HOGG**—But are you going to offer them some incentive as well to become more energy efficient?

**Mr Downton**—It would be nice to, but I am not sure how you would do that. That would need a little more thinking about. In places with very cold climates, like England, there have been targeted incentives for householders or occupiers, such as providing free or very low cost insulation to old people, because they have problems with hypothermia. So those are examples overseas of where a situation related directly to building performance was addressed at government level, to provide the right incentives to fix it. In Australia we have different conditions, so you would have to work that through. But yes, the models exist one way or the other.

**ACTING CHAIR**—Ms Ede, perhaps you would explain to us a little further the concept of ecologically sustaining development. You seem to be saying that rather than taking away from the environment, it could add to it. In your comments perhaps you might explain to us how the funding for that would work. Who pays for it?

**Ms Ede**—Ecologically sustaining development is the term we use instead of ecologically sustainable development. There are several reasons for that, one of which is that the meaning of the words has been misrepresented in quite a number of ways. We had the head of a

mining company referring to ecologically sustainable uranium mining at one stage, which is just ridiculous, and everybody in the environment movement will probably argue that. What we are referring to is using or creating cities that work like environmental repair kits, so instead of cities being parasites, as I refer to them in my statement, in other words drawing in resources, drawing in energy from the surrounding hinterland or areas far removed from the city, they actually drive the restoration of those areas. So instead of taking from them, in the process of developing them they actually heal landscapes.

**ACTING CHAIR**—Could you give us a concrete example?

**Ms Ede**—For example, what we have proposed with the Halifax eco-city project is that with the stabilised earth walls that would be used in construction, the earth for that would be sourced from remodelling erosion gullies in rural South Australia. Erosion is a big problem. We are losing soil through erosion because of the degraded landscape there, so what you do is actually regrade the sides of these erosion gullies back to a gentler gradient, remove the nutrient deficient earth from that site, replace the topsoil and stabilise it with vegetation and the soil that is removed from that site then comes into the cities to make the walls. So there you have got an example of the city. In a conventional development you might do something like use rainforest timber in construction, which sends signals that we want to chop down rainforests elsewhere, but with this type of development you can actually send signals that we want to use the city to heal landscapes. As for funding—I do not know.

**Mr Downton**—Picking up on the timber aspect of that, a requirement that you only use timber from sustainably managed sources would be a major contribution to that. At the moment you can use an awful lot of timber in buildings, and have no guarantee whatever about the environmental impact. It can come from logging old growth forests, it can come from destroying rainforest, and the industry is not really up to speed with it. If there were a focus on the overall impact of building, which is what we do in making cities, you start to address that, so it would simply become a requirement that only timber from sustainable sources gets used. I think the market would respond very quickly.

Because we do the specification and consumption of the resource primarily in the city, the consequences are actually way outside the city where the forests are, and it is understanding those linkages and making sure that we are not sort of pulling the wrong lever. So I think that, as Sharon says, it is a repair kit. When you use timber, you know that you are using timber which is part of a sustainably managed resource which is going to maintain and ideally even expand our forest resources, rather than one which is depleting them.

**ACTING CHAIR**—This concept you have provided would require quite imaginative approaches, but Mr Downton has told us that the industry is inefficient, unimaginative and works on very fine margins with not much room for error, so, to either of you, how do you reconcile those two things?

**Ms Ede**—I think you work to create examples and create a change of culture by holding up examples, which is what we have attempted to do with the Halifax eco-city project: get people talking about the issues, get people understanding them and effectively sell them the benefits of ecological development, coupled with perhaps some changes in legislation. You know more about the building industry itself than I do.

**Mr Downton**—As I said before, all developers build to the legal minimum, and that is the point. If you change the legal minimum so that what has to be built at the very least is at least halfway reasonable, that in itself would be a major change and once the industry had to do that, we would start to get a lot more understanding. The Sydney Olympics have done a little bit of that. With the Sydney Olympics there has been a requirement for them to be green, and one could be extremely cynical and critical about how far they have gone, but there has been that requirement, and over the last two years the building industry has learned to understand that the green word is actually something that you can build in, that it is okay and is not just about your greenies stopping development. It is something you can do in construction, and do well and successfully.

So the Olympics—where there was a requirement at a fairly high level on a massive project for a certain performance—has generated a whole stack on ongoing education and, I think, increased understanding. If you had changes in things like the building code, like the tax system, which would again change those expectations across the board, I think you would get that same flow-on and understanding and education spin-out. It would be even more effective than the Olympics, and probably cheaper.

**ACTING CHAIR**—Any further questions? Thank you very much for appearing today.

**Mr Downton**—Thank you.

**Ms Ede**—Thank you.

**ACTING CHAIR**—I will hand the meeting back to you, Madam Chair.

**CHAIR**—Thank you, Senator Tierney. I apologise for being late.

[9.55 a.m.]

**SON, Dr Christina Luba, Scientific Officer, Nature Conservation Society of South Australia, 120 Wakefield Street, Adelaide, South Australia 5000**

**CHAIR**—The committee has before it submission No.167 which it has authorised to be published. Are there any alterations or additions that you would like to make at this stage before we perhaps invite you to make an opening statement?

**Dr Son**—No.

**CHAIR**—Do you wish to make an opening statement?

**Dr Son**—Yes, I do. I would like to start off with a quote from the ECD environmental review for 1998:

The extent and intensity of pressures leading to habitat loss and modification for both terrestrial and aquatic ecosystems continue to present an extremely serious threat to Australian biodiversity with a very high number of threatened and endangered species. It is unclear whether the progress currently being made is of sufficient strength, scope and speed to relieve pressures and redress their impact on biodiversity and ecosystems.

It is unclear at the moment to the NCSA what the federal government's current position and commitment is on the issue of safeguarding what little remains of our biodiversity. Conservation appears to be at a crossroads.

There is more information available now, the public is much more aware, even the government at times appears to be onside, but we have this example of a process of inquiry into Commonwealth powers relating to environment which is continuing at a slow rate. The original submission made by my predecessor, Dr Stokes, was in June last year. This is in contrast to a strong push without due consultation by the federal government to legislate the changes via its draft of the new environmental laws.

It is this uncertainty which makes us wonder whether we are really progressing. It almost appears that while the federal government was starting to progress at one point with the draft legislation, they appear to be instead gradually retreating from their national role of responsibilities for environmental matters by transferring these to the states wherever possible. It was acknowledged back in 1990 by the then Premier of New South Wales, Nick Greiner, that in many areas the states must defer to the federal government on strategies which contribute to the minimisation of global and national environmental problems. He was quoted as saying:

I firmly believe that we must reconsider our narrow obsession with state rights on many of the issues which face us on the environment. Such an approach is both inappropriate and out of step with the nature of the task.

Really we cannot afford this two steps forward one step backwards approach to critical issues on the environment. At the current rate the conservation of Australian species and communities threatened with extinction will not be fully implemented by the year 2000. The major constraint appears to be the provision of adequate funds to develop and implement recovery plans and threat abatement plans. This lack of financial support by the federal government can be seen in other issues pertaining to the environment. The interim biogeographic regionalisation of Australia—whereby a comprehensive, adequate and representative system, the CAR system of protected areas—should be developed and implemented in the context of national strategy for conservation of biological diversity.

Although a nationally protected area system and strategy should be mutually agreed on by federal, state and territory governments, it is the federal government which must ultimately ensure that the strategy is produced and implemented. The federal government must take a leadership role in ensuring adequate funding again for land acquisition plus management funding. Management funding is certainly the area that we have found in South Australia that the states have great difficulty with. The recent example probably is the oceans policy paper.

So far we are using arbitrary boundaries to define areas of biodiversity importance. Really this is useless in terms of biodiversity significance because biodiversity traverses state borders. Another recent example of this is the irrigation proposal that was put forward by the Queensland government to irrigate the Cooper Creek, which would have had terrible consequences for the Coongie Lakes in South Australia.

This brings me to the next point. There are many issues where one state has a different environmental standard from another state and this can occasionally contravene international requirements. The federal government therefore needs to act to protect heritage areas such as areas of Ramsar management and World Heritage areas. The problem really is that the priorities set by the federal government are often not clearly stated. The federal government often seems to relinquish responsibility on scientifically upholding no-take zones in reserve systems, but on occasion it can act and it can act correctly, as with the Franklin Dam. This was certainly moving and progressing in the right direction.

Representing a conservation group, we feel very strongly that we would like the federal government to act more in a transparent way because we have got an immense task and, if we are going to work together to progress in a steady and strong way, we need to be able to trust each other and work together. Thank you.

**CHAIR**—Thank you. Dr Son, I recognise that you did not write this original submission.

**Dr Son**—No.

**CHAIR**—You are obviously familiar with it. I wonder if you could give us some details and perhaps an update on the two Ramsar wetlands that were cited. It is 12 months ago, as you point out. Perhaps you can give the committee the latest information on those two issues.

**Dr Son**—I am really sorry, I cannot give much information about the Coorong and Lakes Alexandrina and Albert, because I have not really been working on that. I have only been working with the Nature Conservation Society for five months. A lot of that time has been taken up, though, with the issue of Coongie Lakes, so I can discuss that with some knowledge.

This is a heritage area in the north-east of the state. It has particular significance, both on national and international levels. It has been listed on the National Estate, the Ramsar listing and the World Heritage listing. It is a particularly beautiful area and it is traversed by the Cooper Creek system. Our main concern here is that it has been recognised as an area of high biodiversity value and particularly the Coongie Lakes control zone has been noted as an important area.

Unfortunately the Coongie Lakes control zone falls into the one per cent petroleum mining lease currently held by Santos. Santos has already done some preliminary exploratory work on this and we are very concerned that they will start drilling very soon. I often feel very worried at this point that I am actually looking like I am anti-development or I am anti-Santos, so I would like to just say very clearly that I do not have any concerns about mining or development. I think that development can go hand in hand with conservation, but in this particular case it is only one per cent of the mining lease held by Santos and it is a significant area in terms of the plant species, the bird species and the reptile species there.

We certainly do not have all the information but we have enough information to dictate to us that this is not an area that we can move into and move out of without any consequences. The main reason for that is because of the hydrological fluctuations in the area in the sense that when the Cooper Creek floods, the whole ecology of the area changes from flood lands and, when there are dry spells, it goes back to being saltpans. That variability in the environment has created quite an unusual range of both fauna and flora. Certainly it is unique and it has been called a transient desert wetlands. I do not think there is a comparable ecological system in the world. So we are a bit concerned as to why Santos is continuing to exert pressure to mine in this area.

Up to the latest report, Santos have agreed that they may do an EIS, though I have not had any written verification of that. We would ask, as a minimum, for an environmental impact statement. The problem again is for that to be effective there has to be a proper public consultation process. Unfortunately I do not believe that the public are very well aware or educated about the issues and that makes the environmental process a little bit dubious. The other problem with the environment impact process is that we do not have enough scientific information; we have some but not enough. That again is due to lack of funding by the states to fund biological surveys in this state. They have done a comprehensive mineral survey but they have not finished doing the biological survey or even near finished. Without that information we cannot properly assess the area, but we do have enough from certain ecologists, such as Jim Puckeridge, that the area is very important in terms of biodiversity. Would you like to ask some more questions?

**CHAIR**—Your society suggests in the submission that there is a need for federal intervention. What are the processes and triggers that the federal government can use to

intervene in this case? What approaches have you made to them and what has been the dialogue thus far?

**Dr Son**—We have had several discussions with the Labor caucus members, in particular John Hill, talking about this issue of what we would like to be done. Really we would like the area to be declared a proper reserve—a no-take zone at all. This is very difficult because the Innamincka Reserve, which the Coongie Lake is within, is actually a multiple use reserve. The problem with multiple use reserves is that often the uses within the reserves are incompatible and, in addition, you have the problem where there is no take, as such. You have multiple use actually within and around the supposedly no-take zone. We would like to actually ensure that a no-take zone is a no-take zone and if any multiple use is to occur, it is to occur around the no-take zone to safeguard that area. Ideally we would like it to be a reserve.

**CHAIR**—This is not something the federal government can do. Is that right?

**Dr Son**—I am not really sure. When we asked John Hill, he was not very sure either about the process of this. I cannot really answer the question of what powers the federal government has. I thought they actually did have powers, if they saw an area of international recognition, to declare that area to be a particular reserve. I am not sure, so I cannot answer that.

**CHAIR**—The submission also talks about the relative impartiality of the federal government. Can you explain why you think it is that the federal government is relatively impartial—compared, presumably, with state and local government?

**Dr Son**—Compared with?

**CHAIR**—I presume that is what you compare it with.

**Dr Son**—I do not think it was actually. We are more concerned with what the state government does, because we are not convinced that the state government can act in the best interests of the environment from their current record. I think the classic example of that would be the attempt to change the regulations in the Native Vegetation Act. We are very concerned by both the state and federal levels of impartiality. I do not think there was a comparison in that sense meant, although it is very difficult for me because I am speaking on behalf of Adrian here.

What concerns us, and it brings me back to the opening comment, is that the federal government is currently trying to push this new draft for environmental changes, and at the same time it has this inquiry in process. These sorts of situations make us wonder what the federal government's real commitment is, because these two things are occurring simultaneously. Perhaps you could answer that question for me.

**CHAIR**—As you would be aware, this inquiry was set up some 18 months ago.

**Dr Son**—Yes, that is correct.

**CHAIR**—It is reaching finality now. We admit to it being fairly slow in terms of its progress, but there are a number of reasons for that. The government's legislation has, as you know, been tabled now and referred to the legislation committee which will, we hope, pick up on the work that has been done by this committee. There will be some sort of relativity for both inquiries.

**Dr Son**—I think this is the confusion that arises, and for conservation groups it is difficult to determine what is happening. I have actually worked with conservation overseas for many years and I have only just come back to work in Australia. I think one of the principal bases of any progress in this area is really the basis of trust. I am afraid that my first impressions were that there was very little of that between departments and conservation groups and other stakeholders. So there is a bit of cynicism as to why these two are in the process of—

**CHAIR**—If I can have another go at explaining that: this is seen to be preliminary to identifying the problems with the Commonwealth powers, and the next inquiry will look at the government's legislation, which is ostensibly to address some of those problems as they were brought forward at the COAG meetings, as I understand it.

**Dr Son**—Good.

**CHAIR**—The next time around the inquiry will look at the actual bill, the parts of the bill and not so much the area that we have looked at thus far.

**Dr Son**—Okay.

**Senator HOGG**—I note in your comments you said you are not anti-Santos.

**Dr Son**—No.

**Senator HOGG**—I think that is interesting, because the thing I want to raise with you arising out of the submission is the fact that it seems to me there are competing interests. How does one reconcile the competing interests and who reconciles the competing interests?

**Dr Son**—That is really important.

**Senator HOGG**—Because there are a number of groups.

**Dr Son**—Sure.

**Senator HOGG**—There are the conservation groups, there is the government and there are other people who, as you said in your presentation, might not have the education to understand what is going on out there, but nonetheless they have a view, whether it is by your perspective or my perspective, an ill-informed view or a poor view, whatever it might be. That broader community at large might say, 'Well, look, we really need whatever is under the ground there.'

**Dr Son**—Sure.

**Senator HOGG**—How does the government address those competing interests? In the submission your organisation talks about the lowest common denominator and the highest common denominator, and I will come to that in a moment. How does one try to satisfy and reconcile the competing interests?

**Dr Son**—I think we have to go back to basics. I believe one of the things we lack is a national strategy for biodiversity, I really believe this. We need to assess areas on a scientific basis, not on an ad hoc, arbitrary basis for their biodiversity value. Once we identify areas, and we are looking at the land base criteria which the OECN recommended of 15 per cent for an area of significance, we should set aside those areas as no-take zones really quite seriously, and then multiple use can occur around those zones.

Currently what we are faced with is a situation where reserves as such—I really do not like to use that word because reserves can mean multi use reserves and that has a different connotation—were determined many years ago. In fact, at one stage reserves were basically determined on the basis of whether they were any good for development. If they were not good for development they were made into a reserve. That is a very poor basis on which to formulate a reserve.

What has happened, of course, is what happened with Yumbarra in this state, where a mining company may come along and say, ‘Look, we have identified something very important under the ground. We don’t know what it is, but we would like to do further exploration.’ That is meant to be a no-take zone reserve, and currently there is this tug of war between conservationists and the mining companies who want to go into that area.

There is not really a problem. It may not even be a very important area in terms of biodiversity, but we have not assessed areas really properly. We are just using arbitrary distinctions, and that is basically the problem. If we can identify areas of importance and say, ‘This is a no-take zone,’ then use around that area can occur. I do not see that as a problem, but we have to identify areas of no-take zone.

**Senator HOGG**—Who should do that? Who should do the identification? One will say that there are different standards being applied by different groups.

**Dr Son**—Yes.

**Senator HOGG**—The government will apply one standard which does not satisfy the conservationists.

**Dr Son**—Sure.

**Senator HOGG**—The conservationists will apply a standard that does not satisfy the government.

**Dr Son**—What I feel is the new trend at the moment is for people to actually work together, so stakeholders come together and form a working committee and you will have experts from all the different stakeholder groups working together. I have actually been on a couple of committees as a sitting member and it has worked quite well. You have got Santos

there, you have got PIRSA, you have got your conservationists there, and we are learning from each other and making our contributions. I see that is really the way to do it, through negotiation. I actually have not seen a problem. They will decide they will need a particular expert, they will recognise they do not have the expertise and they need to get it from elsewhere and that is done. As long as that basic negotiation and communication is open, it is not a problem.

**Senator HOGG**—But where that communication does not lead to the desired result by one or either of the parties, where is the resolution of that to be, in your view? This gets down to the heart of what needs to be in legislation.

**Dr Son**—That is correct. Really, in my view, we need to work very carefully on this CAR system, this comprehensive, adequate and representative system of protected areas. That is where the federal government really needs to step in and take a leading role. I believe this is the only way to resolve these issues. With the recent ocean policy where we are dealing with oceans—there is no defined boundary with an ocean and so you are having to transverse areas—you do not have a choice in that. That is where I see it is very important.

That reserve system was, I think, initiated five or six years ago and has not gone any further. That is a pity, because it is a fantastic approach, I believe, to preserving our biodiversity. It is the only way to do it.

**Senator HOGG**—The issue in the submission of the lowest common denominator and highest common denominator—this goes back to the issue that I raised earlier and that I have tried to raise throughout these questions with you—who actually determines these things?

**Dr Son**—Again we would like to see the federal government take the initiative.

**Senator HOGG**—How does one legislate for it?

**Senator PAYNE**—Good question.

**Senator HOGG**—That is the thing that interests me. I am not against the federal government having the power to legislate. How does one determine the lowest common denominator? How does one determine what is the highest common denominator? How does one then determine how to deal with the conflicting and competing interests?

**Dr Son**—Again, it is a question of setting your priorities, and I believe that the Commonwealth government has not set its priorities in accordance with its legislation. Biodiversity is not given a high priority. With the recent oceans policy—I actually had to review that—what I found was often the priorities were confused. Biodiversity was confused with ecologically sustainable development. When your priorities are confused, your legislation will be confused. The federal government needs to set its priorities clearly and it needs to recognise that biodiversity should be a high priority. I think this is where the legislation falls more to the lower denominator. Also there is not much encouragement, from the states’

view of the federal government, to act in a proper way regarding environmental issues, and so you are getting this mishmash of action by states on environmental matters.

**Senator PAYNE**—That, in fact, leads directly into the question I wanted to ask, which is that in your submission you noted a number of points—the Commonwealth should do X, the Commonwealth should do Y. But let me take up under item C, ‘Federal funding is an ideal opportunity to enforce standards across the states.’ Do you advocate what I would describe as use of the big stick, as opposed to the carrot, and that is the Commonwealth reprimanding, if you like, states through funding denial for not doing the right thing, as opposed to the Commonwealth using a carrot to encourage states to do the right thing?

**Dr Son**—I notice that Adrian did use the example—

**Senator PAYNE**—Of the vegetation question in Queensland.

**Dr Son**—Yes. I was not really sure. I do not have enough knowledge on that. What I feel about the carrot or this big stick, is that if we can encourage the states in positive ways, fine, that is good. I would prefer that. I think positive is probably the way to go. Unfortunately, there does tend to be within the states this push to development. They are almost blind to anything else. That is brought about by pressures with unemployment—particularly unemployment I would think. In South Australia we have a terrible unemployment problem, and I am sympathetic to that. I think NCS is sympathetic to that as well. It is a difficult issue to know what to do.

I do not think we should take out our big stick if people are sincere about trying to resolve the issue, but where states are being very stubborn and are not trying to resolve issues by proper consultation with stakeholders—and I mean with equal footing, I do not mean just with hearsay—I believe then that stronger action needs to be taken, yes.

**CHAIR**—You say, Dr Son, that you have had a chance to look at the new legislation.

**Dr Son**—Very briefly, yes. Several months ago when it first came, yes. I had just started my position in March, so it was the first thing that was put on my desk.

**CHAIR**—Much of the thrust of the legislation is about bilateral agreements with the states. What sort of confidence do you hold for those bilateral agreements being able to create, for instance, uniformity across the country, or do you think the opposite is the case?

**Dr Son**—I believe the opposite will be the case. Particularly the state of South Australia has not shown that it is really capable of putting biodiversity as its main objective. I will just again reiterate the attempt to change the regulations of the Native Vegetation Act which would have, in fact, if they had been regazetted, watered down the act. We cannot afford any weakening of the act. We can review the act and I think that is important. That act initially came into effect five years ago, but we need to review things in a sensible way with all stakeholders present and with proper consultation. You just cannot go and gazette changes, and this is what the state here seems to be doing. It does not seem to be entering into proper negotiation processes. I think this is where the NCS’s main fears are.

**CHAIR**—You will have an opportunity for a much fuller submission, obviously, but I wonder whether your organisation has any concerns about the fact that the bill does not go into greenhouse or land clearing. Is that of concern to you?

**Dr Son**—The greenhouse effect is, from my point of view, a very dicey area. Often the problem with these types of reports is the scientific basis on which they have been formed. I believe that, regarding the information source and the background material, there is probably not enough there to formulate much, and we need to really work on our information sources. We tend to be making all this legislation, making all these statements, without much of a scientific basis to it, and that is probably the principal concern for the NCS.

**CHAIR**—Thank you very much for appearing here today. If there is anything further you think of that you would like to present to the committee—

**Dr Son**—Yes, it was a bit difficult because I actually had to step in on behalf of Dr Stokes.

**CHAIR**—Please feel free to do that if it occurs to you, and thank you for coming.

**Dr Son**—Thank you very much.

[10.26 a.m.]

**CLOSE, Dr David Henry, Vice-President, Conservation Council of South Australia,  
120 Wakefield Street, Adelaide, South Australia 5000**

**DENT, Mr Anthony, Chairman, Fleurieu Regional Development Alliance Action Group,  
Box 251, Port Elliot, South Australia 5212**

**CHAIR**—I welcome to the table the Conservation Council of South Australia and the Fleurieu Regional Environment Alliance. The committee has before it submissions 207 and 243, which it has authorised to be published. Given that it is probably more than 12 months since you made those submissions, are there any alterations or additions that you would like to make at this stage, before we go into an opening statement?

**Mr Dent**—No. I will just make an opening statement at this stage.

**CHAIR**—I invite you to do that and then we will proceed straight to questions.  
Mr Dent?

**Mr Dent**—I guess some things that have probably changed recently are that our local council has taken up LA 21, Local Agenda 21, and is proceeding to work with that system. What I have found so far is that it has tended to bring in a lot of people from outside of the normal environmental groups. What has tended to happen is that you go along to environmental things and it is always the same people in the groups, whereas LA 21 seems to have brought out a lot of extra people, which is good. It is also running very much on a shoestring. The funding for it has basically been dug up, I suppose, by the local council. They have managed to get little bits of money from here and there. I think this is one issue that is very important and can have long-lasting effects on the environment and it should be helped out by the Commonwealth in some way. It should very much be highlighted as the way to go.

**CHAIR**—Can I ask, Mr Dent, is this a local government initiative and specific to that local government, or is it a state government or—

**Mr Dent**—It actually came out of the Earth Summit in Rio, Local Agenda 21, and it has been taken up by some councils. The Marion Council took it up initially. Whyalla has, Happy Valley and now the Alexandrina Council. Basically it is looking at local action planning, so it is very much what can be done on the ground and in terms of things that affect the environment at a local level. That goes right from how the council operations affect the environment right through to how the community can be involved and also how business affects the environment, and looking at basically better ways of doing things where the environment is factored in there.

I have been involved in the LA 21 working group and, as I said, it is very dynamic and a lot of useful information is coming out of it, but it really needs some sort of input of funding, because at the moment they have got one natural resource officer who basically has

got no long-term position. He is just being funded for the next six months, or the next three months, or whatever, and I think it is one area where the Commonwealth could really help out.

Moving on to states, I think the problem with states and the environment is really that they tend to get caught up in a lot of competitive tendering and that sort of thing. They are actually competing with other states and quite often it seems that the things that are traded off are the environmental aspects. I am a bit concerned that there should be more regulation by the Commonwealth to get a more Australia-wide focus, I guess, rather than get caught up in the local state issues.

The state government does have an important role in terms of the Environment Protection Agency. I think that is important, to make sure that the guidelines are clear throughout the state, and that there is some sort of big stick available for people who blatantly disregard the environment. Another major function of state government is things like national parks. At the moment in South Australia, and I know it is partly as a result of the economic situation, national parks are also running on a shoestring and basically tend to be putting up permapine barriers to keep people out of places and collecting the rubbish, and very little else is really achieved.

People like John Wamsley have pointed out—I do not know if you are familiar with him—some of the failures of the national parks. I think he has been a little bit too harsh in some ways, but it does show that it may need to be people like John who show the initiative in terms of what can happen.

**CHAIR**—Mr Dent, I nodded on behalf of the rest of the committee without asking if they were familiar with John Wamsley.

**Senator PAYNE**—Yes.

**Senator HOGG**—Yes.

**CHAIR**—Okay, carry on.

**Mr Dent**—Everyone has seen his cat skin hat. That is probably all I would like to say at this stage.

**Dr Close**—There is nothing in our submission that I would like to change. It does seem like ancient history now because so much has changed in the whole debate since then, but there are some general points I would like to make, especially with reference to major conservation issues which would actually have been helped by the existence of the powers that are proposed in the government's revision of Commonwealth environmental powers. To that extent the Conservation Council welcomes them.

There is the issue of the degazettal of Yumbarra Conservation Park, or part of it, for the purpose of mining exploration. That is on the register of the National Estate, so that would have triggered Commonwealth intervention under the proposed reforms, which would have been a welcome move.

There is the issue of Hindmarsh Island which is in the middle of a Ramsar wetland, and the only grounds for Commonwealth intervention are ones you are well familiar with, and I think it is fair to say those proved to be disastrous politically, because they resulted in the obliteration of what the Conservation Council viewed as the most important aspects of the whole issue, which was that it was a poor environmental and planning decision. This was completely lost to view as a result of the fact that the only trigger for Commonwealth intervention was Aboriginal heritage, even though I agreed with the grounds for Commonwealth intervention. So the grounds for intervention to protect Ramsar wetlands would have been welcome.

Another major issue which is still simmering is that of the protection of Coongie Lakes in the north-east of South Australia. This once again is a Ramsar wetland, and at present it is very much in need of protection, both from overgrazing and from mining activities. Once again, Commonwealth intervention would have been a welcome measure of protection. This leads me on to the more general point that the Conservation Council would like to make, which is that the powers that are proposed in the government's revisions in the Environment Protection Bill, the Biodiversity Conservation Bill and the proposed legislation on national heritage would lead to a severe and quite arbitrary restriction of Commonwealth powers, which the Conservation Council would view as completely indefensible.

In the case of Coongie Lakes, for example, by far the greatest threat to Coongie Lakes actually comes from outside South Australia, and that is from proposed diversions of the Cooper River in Queensland. As proposed quite seriously in the recent past, these would have had the effect of Queensland depriving South Australia of a major river, just one state taking a whole river from another state. This, in itself, would not have been a trigger for Commonwealth intervention under the proposed reforms. The trigger for intervention lies in the fact that there happens to be a Ramsar wetland on the lower reaches of the Cooper.

There is another major river running from Queensland to South Australia, the Diamantina, which also has a wetland of extraordinary biological importance on its lower reaches. That is Goyder's Lagoon. This does not happen to be a Ramsar wetland, mainly because the South Australian department of the environment is too underresourced to undertake the necessary work to list it as such. So any diversion from the Diamantina in Queensland—and diversions are proposed—would not trigger Commonwealth intervention. So the omission of any mention of rivers crossing state boundaries from the proposed revisions of Commonwealth powers is very serious.

This leads on to a more general point, which is that the Commonwealth powers need to relate to broad policy areas. They should not be confined to specific issues, or specific items of legislation like national heritage, Ramsar or World Heritage, or the protection of whales or the trade in protected species. One such broad policy area is the protection of biodiversity. There is reference in the proposed reforms to the national strategy on the conservation of Australia's biological diversity, but there is very little detail on the Commonwealth's role in the fulfilment implementation of this strategy.

There is also reference to bioregional planning and a Commonwealth role in that but, once again, there is a distressing absence of detail on how the Commonwealth would be involved. In the case of references to identification and monitoring of Australia's

biodiversity, the references are largely negative. They seem to consist largely of reassurances to the states or to private land-holders that the Commonwealth will not intervene. There are very few references to positive interventions that are planned by the Commonwealth.

On page 30 of the discussion paper, the consultation paper, the Commonwealth role is arbitrarily limited by the exclusion of vulnerable ecological communities. Now, seeing that the classification of ecological communities and species into vulnerable, endangered and so on is inevitably pretty arbitrary, such an exclusion is completely indefensible. So what the Conservation Council has in mind is the role that the Commonwealth took, and is still taking, in the formulation of regional forest agreements. Here the Commonwealth is taking a role in the formulation of a comprehensive, adequate and representative reserve system with regard to forests.

Of course, forests are not the only endangered ecosystem in Australia, far from it. Woodlands in southern Australia, different types of woodland, are arguably much more endangered, so are native grasslands. So it is indefensible to confine the Commonwealth's role with regard to the construction of a reserve system to forests. There needs to be a role in the construction of a comprehensive, adequate and representative—a CAR—reserve system for other ecological communities as well, similar to the role that the Commonwealth took with regard to forests.

The Conservation Council also notes with some concern that there is almost no reference to climate change in the Commonwealth's proposals. There is a single reference to the Ozone Protection Act, yet it makes no sense to protect the ozone layer yet not to do anything to protect the troposphere beneath it. If one is a Commonwealth responsibility, so should the other be. So in general we welcome the move towards a rationalisation of Commonwealth powers, or a move from the present situation, where the Commonwealth's powers of intervention are largely determined by those weapons in its constitutional armory which just happen to be there, towards a definition of the Commonwealth powers in terms of policy areas.

I think that is a move in the right direction, but it is an extremely limited move, and in its present form it is indefensible, and so we stand by our original submission of a year ago which argued for a leading role for the Commonwealth in broad policy areas; a role which would include the carrot and the stick, as well as a constructive participation in the formulation of strategy.

We should conclude by referring to the absence of any reference to clearance of native vegetation. Comprehensive controls on the clearance of native vegetation are vital, not only for the conservation of biodiversity but also in order to ensure that Australia fulfils its obligation under the Convention on Climate Change, which has not been referred to by the Commonwealth. So it is essential that the Commonwealth be prepared to intervene to ensure that every state has a comprehensive and working system of controls on the clearance of native vegetation, and among the ways in which it should intervene is a readiness to use its grants power to ensure that the states do carry out their obligations.

It is nonsense to hand out money for revegetation proposals while at the same time doing nothing to prevent clearance of native vegetation which is still going on, even in the

southern settled areas of South Australia which are widely thought to have solved their problems of native vegetation conservation. There is still a constant battle being fought by conservation groups to prevent illegal and legal clearance of native vegetation in the southern settled areas, and almost nothing has been done to conserve intact native vegetation communities in the northern pastoral regions. So preservation of native vegetation is still a major problem in South Australia, and once more there is a Commonwealth role here. I think that pretty well sums up what I need to say.

**CHAIR**—Thank you, Dr Close. Could you go back to Hindmarsh Island, and tell the committee what you think would have been the outcome had this legislation been in place 12 months ago prior to the issue coming up. Presumably you think there would be a different outcome?

**Dr Close**—Yes, I am sure there would. There was an inquiry by the Environment Resources and Development Committee, the standing committee of both houses of the state legislature, in I think July 1993, which concluded that it was a poor planning decision to approve the Hindmarsh Island bridge and also open to severe objection on environmental grounds. I am sure a Commonwealth investigation would have resulted in the conclusion that a proper mechanism for community consultation and planning should have been a necessary prerequisite to any decision like this, and I just cannot imagine that a decision like the bridge would have been approved if the community consultation and planning had been carried out in this way.

**CHAIR**—You have spoken favourably about the regional forest agreements as well, and of course that is cited as an example of a bilateral agreement which will be produced by this bill in other areas.

**Dr Close**—I am not happy with the details of implementation in all cases. There are serious concerns in the case of some states, but at least I thought it was the right sort of process.

**CHAIR**—That was the question I was going to put to you. The committee has heard a lot of evidence to suggest that the RFA process has not been adequate in protecting forests, but you do not have so many forests in South Australia. I guess this has not been such an issue.

**Dr Close**—No, it is the land of the stobie poles.

**Senator TIERNEY**—Mr Dent, you refer to Local Agenda 21, which of course came out of the Rio conference in 1992, and a frustration of lack of movement on a national level. The hope was, of course, that there would be a lot more movement at the local level. In my own city of Newcastle we hosted the Asian Pacific regional conference following Rio, and there has been a lot of activity in my own area, so my perceptions of Agenda 21 come from that. You seem to be indicating, though, a lack of funding for officers who were charged with implementing Agenda 21, and I do not know whether you were talking about just one council area or whether it is a pattern in South Australia. Could you perhaps give us a state-wide view on how that has proceeded?

**Mr Dent**—State-wide? I think in other council areas there is more funding. Because we are a regional environment group I can really only speak widely about the Alexandrina Council, and I know that a lot of work has been done in the Happy Valley Council. They have got a lot further down the track, and they have several natural resource officers working on the issue. The way LA 21 started in the Alexandrina Council was basically out of the Mount Lofty Ranges catchment program grant of \$10,000 to the council. That got the ball rolling, and since then the council has got funding from other areas to keep it rolling, but there does not seem to be any impetus from anywhere else, apart from the odd grant money that can be grabbed from here and there. There is a certain amount of backup in terms of information, but it is my concern that something so important is not being more widely pushed.

**Senator TIERNEY**—Dr Close, you seem to want a stronger role for the Commonwealth, and one of the purposes of this inquiry is to try and sort out what is appropriate for local, state and national levels. You mentioned that you wanted environmental problems of national significance defined in the constitution. Could you clarify what you mean by that, and perhaps give some examples of those nationally significant areas.

**Dr Close**—Yes. Rivers crossing state boundaries is one. Biodiversity is another, because that can only be considered at a national or international level. A species which may be a pest species at a local level may in fact be endangered at a national level, and that is why it is necessary to take a national view of biodiversity. The fulfilment of obligations under international conventions with regard to the protection of the atmosphere is another example. We cannot have seven different state and territory policies on climate change, for example. There has to be a coordinating role for the Commonwealth there.

There is the setting of national pollution standards: we had a state government here which declared a pollution holiday soon after it was elected in 1993 as a way of attracting industry to South Australia. We cannot have states waging dirty wars with each other in regard to pollution standards. That is another area in which there is an obvious need for a Commonwealth role.

**Senator TIERNEY**—You also suggest that the tax system be used—I assume a carrot and stick approach with the tax system—in terms of improving environmental outcomes. Could you explain a little more how you propose the tax system be used in that way.

**Dr Close**—I can only remember referring to income tax incentives to clear native vegetation. Apparently it still is possible to deduct the costs of clearing native vegetation in some cases for income tax, in which case that is obviously indefensible.

**Senator TIERNEY**—Is that something separate from what would be a normal business cost? All businesses have costs. The costs are tax deductible. Are you saying that is something separate from that, or is it just the normal business process?

**Dr Close**—No. I see what you are getting at, but I would have thought that there should be very little clearance of native vegetation from now on in the pursuit of one's business. Certainly that is not the case in South Australia. I think it is arguable that it should not be deductible because of the obvious scope for abuse here.

**Senator TIERNEY**—On the area of heritage protection, you have some concerns about the role of the Heritage Commission. Would you like to see that role changed in some way?

**Dr Close**—It is just that in the past it has not moved fast enough in describing heritage listed areas, which has made it easier to damage or destroy those areas. If a heritage listed area does have its environmental qualities fully described and listed, then there is that much more information available to justify its conservation. I think that was my only criticism.

**Senator HOGG**—In the submission you say:

Community organisations must be resourced to comment on EIS's for major projects.

**Dr Close**—Yes.

**Senator HOGG**—Who determines what community organisations? Are you looking for some form of legislation to set the framework, and if so at what level, state or federal?

**Dr Close**—I was not proposing any new mechanism to discriminate between community organisations that should receive grants. This is a problem that has presumably been tackled for a long time now by state and Commonwealth governments, and as far as I can see they can only be selected on their performance, on their track record in providing informed comments on matters of public concern. Is that the sort of thing you were getting at?

**Senator HOGG**—I am just trying to work out what community organisations would be resourced and how they would be resourced.

**Dr Close**—It is being done at present of course on a large scale; numerous community organisations are being resourced. There was a lot of controversy when some had their grants cut.

**Senator HOGG**—That is right, and then you end up with the controversy as to whether the right group has been left in the playing field.

**Dr Close**—That is right, and as far as I can see that is unavoidable. We live in an imperfect world and the line has to be drawn somewhere. To some extent these are matters of judgment. I cannot see that there is any objective measure by which one can assess the performance of one community organisation against another.

**CHAIR**—Mr Close, it has been said by a number of people, so far, to the committee that the Commonwealth has many powers but lacks the political will to act on them. Is that your view as well?

**Dr Close**—Yes.

**CHAIR**—Apart from those example you have given us already, are there any others that you can think of in this state?

**Dr Close**—Where the Commonwealth might have acted but has not, you mean?

**CHAIR**—Yes.

**Dr Close**—Let me think—or where Commonwealth intervention might have been welcome—yes. I suppose the whole question of native vegetation protection, especially in arid lands, would have welcomed a greater Commonwealth role, both in participation and in funding. This has been seriously underresourced, so that is one example that comes to mind. As I said, very little off reserve protection has been undertaken so far in the pastoral lands of South Australia, and this can be attributed largely to a desperate lack of resourcing for the pastoral management branch, as it was until recently.

**CHAIR**—Lack of political will and proper funding.

**Dr Close**—Yes. Of course the national strategy for rangeland management has been a dead letter from the start. It took years to come out and it has not resulted in anything.

**Senator PAYNE**—If I could just start with a question, Mr Dent, in relation to your comments on Agenda 21. Coming from your local experience—which I think would be very useful for us—you say we should be aware of the cost advantages of dealing with projects at a local level with community input and local knowledge. Do you have some examples of the work that you have been doing where you have been able to find significant cost advantages in working on that basis that you could give us?

**Mr Dent**—I have been involved in a number of community groups over a period of time; Coastcare would be one example. In terms of Local Agenda 21, really that is only just finding its feet, so it is a bit hard to give examples they have come up with at this stage. In terms of resourcing people in the community, it seems that the Commonwealth is looking to not just engender interest but also get people out there and actually doing things for the environment. I think that is very good but I would like to back up what David said about the problems of people out there planting trees while at the same time there is not enough restriction—

**Senator PAYNE**—Clearing somewhere else.

**Mr Dent**—Yes, there is clearing everywhere else. There is a rapidly growing feeling amongst a lot of people that the Commonwealth is not dinkum about what they are doing. If they were they would be stopping some of the abuses of the environment and not just giving things to community groups to do. People are becoming a bit jaded when they can see it is kind of business as usual, yet at the same time they are expected to get out there, give their own time. Quite often it is not just your time, but you are putting other things on the backburner so that you can address issues or problems that have come up in the environment that are not of your making but you are expected to fix them up. We would like to see other things happening so that we could feel we are part of something, rather than we are a sort of bandaid solution or we are being taken advantage of.

**Senator PAYNE**—But that is still part of the community ownership concept—partnerships—and you have referred to Coastcare which is very much about partnerships and working together.

**Mr Dent**—Yes.

**Senator PAYNE**—Even though you are not responsible for X, you may be responsible for Y and someone else will be expected to look after Y and you are asked to help with X. That is the sort of partnership within a community involvement situation which I thought, from your previous comments, you were supportive of.

**Mr Dent**—Yes, I am very supportive of that. It is just that I can see it tends to be the same people out at working bees all the time, which is one reason why I was saying Local Agenda 21 was good, because it tended to get a lot of new faces in, from retired academics to local farmers, so there was a good cross-section of the community. Local Agenda 21 has really shown in our area that it has got a lot of potential, whereas possibly a little bit further down the track it will go a little bit the same way as Coastcare, where people are getting tired of spending their weekends working on community projects when there do not seem to be the initiatives coming from the government to back up people's enthusiasm.

**Senator PAYNE**—What sorts of initiatives would you be looking for?

**Mr Dent**—I think in terms of backing of alternative projects. There does not seem to be a lot of wanting to change. It seems to be plugging up the way the economy is working at this stage, but there does not seem to be a lot of thought for the future and how things could be different.

**Senator PAYNE**—Could you be a little bit more specific, Mr Dent?

**Mr Dent**—Things like putting the train through to Darwin: perhaps that could be powered by solar energy or alternative energy; looking at housing in terms of low impact on the environment in terms of the materials used—how they are heated, how they are situated on the block to use passive solar, et cetera. The Commonwealth could give a lot more of a lead in getting those ideas off the ground.

To give an example, the Commonwealth had a scheme going where if you put insulation in your house, basically you did not have to pay the interest on the money for some time and the Commonwealth picked up the tab there—but it did not seem to be widely advertised. The only reason I found out about it was because I happened to show some interest in a display at a supermarket and a salesman from the company came around and explained it all to me. That was the first I had heard of it.

**Senator PAYNE**—So there is an avenue for promoting those sorts of initiatives that you think is not being taken.

**Mr Dent**—Yes.

**Senator PAYNE**—I appreciate that. Dr Close, if I could just ask you a question in relation to your emphasis on the role of the Commonwealth, and you referred to carrot or stick before I had the opportunity to ask you the question about carrot and stick in regard to the states. How do you see the interaction with local government and the role of local

government playing out when you put more emphasis on the operation of the Commonwealth in terms of zoning, in terms of approvals and things like that?

**Dr Close**—I am afraid I have not thought much about that one. I suppose there could be grants available for local governments to apply for. That is the only interaction that I can foresee immediately.

**Senator PAYNE**—Perhaps I should clarify my question, I'm sorry. In terms of the regulatory environment as it currently exists, local government has a significant responsibility at the ground community level for what happens to the environment. If you want to place more emphasis on the role of the Commonwealth and the Commonwealth having a far more significant capacity than has previously been the case, how do you see local government fitting into that structure?

**Dr Close**—I certainly do not think they exclude each other and I would have thought the Commonwealth's role should be to try to see that the lower levels of government perform their responsibilities and then leave it to them as far as possible. That is the carrot and stick approach.

**Senator PAYNE**—Isn't that the problem we have now though?

**Dr Close**—The problem that we have?

**Senator PAYNE**—In terms of governments at other levels saying, 'Here's a framework. You go off and implement your responsibilities.' Your complaint, I assume, would be that they are not properly implemented and that is where problems arise; that people are allowed to clear vegetation when they should not be allowed to clear vegetation and so on.

**Dr Close**—Yes, that is right. So if the lower levels of government are not fulfilling their responsibilities then obviously there is a greater role for the Commonwealth. I think we are moving in that direction where the lower levels of government are fulfilling their responsibilities increasingly. To that extent I agree with the recent Commonwealth government's proposals that things are moving in that direction, but they have not moved nearly so far in that direction as the Commonwealth government obviously assumes. There is obviously still a much greater role for the Commonwealth than the government assumes. As for regulatory powers, I am afraid I really have not given any thought to that one, so I could not help you there.

**Senator PAYNE**—That is fine. Thank you.

**CHAIR**—Dr Close, you are an advocate of definition in the constitution of the Commonwealth powers, and you have outlined some five points on which you think the constitution should reflect those powers. Which powers should the federal government not have? Have you had a chance to think of those? Which should be vested in the states and local government?

**Dr Close**—It is very difficult to say, isn't it, except there obviously are very extensive powers which cannot appropriately be dealt with at national level. For example, the whole

business of waste management and recycling can only be dealt with at the local level and I cannot see any role for the Commonwealth there. Otherwise they are matters of administrative detail, I suppose, that can only be dealt with at the state level—just exactly how national parks should be administered, for example. I cannot see that it is any matter of Commonwealth concern how a state manages a river or a waterway that is completely within its own boundaries, except insofar as there is a question of biodiversity involved.

**CHAIR**—You raised the matter of funding and inadequate funding in a number of places. I wonder whether, in the 12 months since this submission was written, you have had a chance to look at the Natural Heritage Trust fund and whether that has served this purpose to any degree or whether, as some witnesses have suggested, that has been responsible for a good deal of cost shifting with various levels of government. Do you have a view on the Natural Heritage Trust fund in terms of being able to satisfy some of the problems you identify?

**Dr Close**—No, because I have not been involved in the administration of that. The Conservation Council's executive officer Michelle Grady has, and she would be quite happy to comment on that if you are interested in her experiences. She has been heavily involved in it. I am afraid I cannot really form an opinion on its effectiveness.

**CHAIR**—You might raise that with her.

**Dr Close**—Yes.

**CHAIR**—It is not a question that we will put formally but if there is something that either your council or she would like to add to the submission, that would be useful.

**Dr Close**—Yes. I notice that we have been invited to comment on the Commonwealth's proposals which is a separate inquiry.

**CHAIR**—Yes. We would be willing to take on board the sending of that bill if your council would be interested in receiving it.

**Dr Close**—Yes, we certainly would be.

**CHAIR**—The advertisements were in today's *Australian* for the next inquiry.

**Dr Close**—Yes.

**CHAIR**—Is there anything further that either of you wanted to add here today?

**Mr Dent**—Yes. I would just like to say that in regard to the federal government and local government, it seems that increasingly local government is being asked to take over a lot of the tasks that would have originally been state government tasks in terms of environmental protection. I think there is a role there for federal government to help local government out in terms of funding. I have already pointed to the LA 21 aspect. It seems to be an increasing role. It was something that was not really dealt with in the past and it is something new almost that local government is expected to deal with but they have not got any

extra funding from anywhere else. Either it comes from increased rates, which is unlikely in the present climate, or I think NHT or the Commonwealth, through some other means, could be very useful in helping local government achieve a lot of the goals in terms of environmental protection.

**CHAIR**—Has your organisation made application for NHT funding?

**Mr Dent**—Not the Fleurieu Regional Environment Alliance, but I am also a member of the local Coastcare group and we have been accessing Coastcare grants for the past three years now. I guess we are more of a political lobby group rather than a hands-on group, so there is that sort of distinction too between community groups in terms of what they are trying to achieve.

One other thing I would like to say is that a lot of projects, like the Mount Lofty Ranges catchment program, tend to come out and they get up all this steam and everything starts happening and then the money seems to just run out, the people that were employed go somewhere else and then there is a big lull before the next lot of funding comes through. So I think it is important to try and keep some momentum going. It seems that a lot of things that happen in the environment tend to be very stop-start. I do not know quite how you would do it, because the political system is a bit like that, but we should try to get some more long-term planning. It might be more effective to use a certain amount of money over a longer period of time than to—

**CHAIR**—Stop-start.

**Mr Dent**—Yes, sort of go, ‘Here it is,’ and then cut it, pull the rug out from under people.

**CHAIR**—In my home state of Victoria the state government has reduced funding to its environment department. Is that the experience in South Australia as well?

**Dr Close**—Yes.

**Mr Dent**—Yes.

**CHAIR**—Can you quantify that and tell us over what period of time there has been a reduction?

**Dr Close**—I am afraid not, no.

**Mr Dent**—No, but there has been a drop in funding for all areas of state government. Personnel have been cut constantly since Bannon’s time. The public service is only a shadow of what it used to be, and I know if you try and get any information from the state public service, it takes a very long time basically, and when you do contact people, it tends to be that there are different people. They are being moved around all the time, so it is very much in a state of flux.

**CHAIR**—So would you argue that Commonwealth funding should be conditional on the maintenance of a certain level of expenditure on the environment? Is that a carrot or a stick?

**Dr Close**—It is a difficult one. It could easily lead to a vicious vortex, couldn't it, of reduced funding all-round.

**Mr Dent**—Yes, but I would give a provisional yes, I suppose, to that one. I think that it would be good that the Commonwealth emphasised to state government that they should be doing their bit, but largely I think Commonwealth's main function would be to deal straight with local government. I think that is probably the most cost-effective result. But there needs to be some sort of long-term vision happening, yes.

**CHAIR**—Does that suggest that the constitution needs to recognise local government as well as environment powers?

**Mr Dent**—Yes. I am a little bit out of my depth on these areas.

**Dr Close**—We have tried that road before. It would help. I could try to get these figures on reduced state expenditure on the department of environment, if it would help your inquiry.

**CHAIR**—The committee can probably find that information out as well.

**Dr Close**—Yes, more easily than we can.

**CHAIR**—Thank you for your attendance today.

**Proceedings suspended from 11.15 a.m. to 12.44 a.m.**

**McKENZIE, Mr Peter Francis, Manager of Health Services, Town of Kwinana, Council Chambers, Gilmore Avenue, Kwinana, Western Australia 6167**

**CHAIR**—Good morning, Mr McKenzie. It is Senator Lyn Allison here. We are connecting with you for the inquiry into the Commonwealth powers.

**Mr McKenzie**—Yes.

**CHAIR**—We are here in Adelaide at present. With me is Senator John Tierney, a New South Wales senator; Senator Marise Payne, also from New South Wales, and Senator John Hogg, who is from Queensland.

**Mr McKenzie**—Good morning to you all.

**CHAIR**—I welcome you to our teleconference from Perth. The committee has before it submission No. 336, which it has authorised to be published. Are there any alterations or additions that you would like to make at this stage?

**Mr McKenzie**—Not to that submission, no. I must state that it is not my submission. The officer concerned, Mr Paul Rokich, has left the employ of council.

**CHAIR**—This is a problem the committee has struck in a number of places, and it is due to the fact that most of these submissions are more than 12 months old, so we do understand. Can I invite you to make a brief opening statement. If you would prefer not to, we can go straight into questions.

**Mr McKenzie**—No, I have no opening statement that I would like to make because there has been no further consideration of that matter, and I do not wish to make a further statement.

**CHAIR**—We will go straight into questions then, thank you. You suggest that there need to be clear criteria for decision-making for each level of government, and I wonder if you could perhaps expand on that and tell us whether you think that ought to be achieved through legislative or through perhaps administrative measures.

**Mr McKenzie**—I believe that the clear criteria for decision-makers at all levels of government need to be legislative, because the administrative criteria that are in place do not appear to be working. It is clear that certain officers in local government in particular tend to ignore the fact that administrative measures are not law, and therefore do not see the need, when it suits them, to actually apply administrative measures. They seem to think that legislative measures are the only thing they need to apply.

**CHAIR**—You mention too that there should be a process for identifying the status of priority land use. Once again, what sort of process do you envisage there being necessary? Where there are conflicting land uses, how would you propose that that be dealt with?

**Mr McKenzie**—In conflicting land uses, there needs to be some authority as to who has the higher level of authority to decide whether the priority given is the appropriate priority. I do not believe at this particular time that there is clear direction to the levels of government in that regard, and we believe that that would be the case; that if there were some way of defining who has the authority, then you would go to the organisation with that authority for a determination.

**CHAIR**—It has been said by a number of people who have made submissions to the committee so far that there needs to be a far greater role for local government and that perhaps there should be a direct involvement of local government with the Commonwealth. What is your view about the way in which local government is involved in Commonwealth related environment issues?

**Mr McKenzie**—I believe there is an inadequate relationship between local government and Commonwealth. In the first instance, I believe that it needs to be strengthened and needs to have clear criteria laid down in law as to how local government would interact with the Commonwealth, and certainly at the local level, with clear guidelines in place, then local council would have some clear direction from the Commonwealth and involvement in making decisions where they have the authority to make those decisions, but the decision-making power needs to be there to give that clear guidance, and I do not believe that is there at this particular time.

**CHAIR**—Your council mentioned in its submission the Cockburn Sound Garden Island naval base, which is owned by the Commonwealth.

**Mr McKenzie**—Yes.

**CHAIR**—Is it possible to bring the committee up to date with that issue and to just expand a bit on what the environmental issues are relating to that?

**Mr McKenzie**—If you are going back in time, one of the clear concerns at the time that the naval base was being constructed was the impact of the causeway from the mainland to the island, as to what impact that would have on the water quality in the area. I certainly believe that in relation to the impact of slowing down the water and the water flow through Cockburn Sound, the concerns that were expressed at that time have now been justified. The water quality in Cockburn Sound is controlled by the water flow from the south to the north, and the causeway has had an impact on that.

The other issues of tributyltin at Garden Island, at the naval base, have become an issue certainly, but they are out of the jurisdiction of this local authority. Obviously, it is on the opposite side of the sound, but council does have a concern and the community has a concern as to any impact on Cockburn Sound because of the heavy industrial area there. But the Commonwealth impact really relates to the opposite side of the sound, the outer boundary of the sound, which is the Garden Island naval base.

**Senator HOGG**—What sorts of monitoring processes have you had in place to show that the adverse effects that you claim are there have come about?

**Mr McKenzie**—The monitoring processes have been done through the state government. Council does not have the resources to monitor Cockburn Sound completely, but they have done recently the southern metropolitan coastal waters study through the Department of Environmental Protection in Western Australia. Those documents have only recently been published, and I believe they would be a suitable reference for your committee.

**Senator HOGG**—What difficulty is posed by the fact that it is a state government monitoring process, when it seems to be at a local government level? Is this something that needs to be resolved?

**Mr McKenzie**—Obviously the community may wish to monitor more frequently. The manner of resourcing the environmental monitoring is an issue. It is a matter of getting funding, because the cost of doing such large-scale studies is a considerable cost, and therefore the local community just does not have the resources to undertake that type of monitoring.

**CHAIR**—Mr McKenzie, has the Commonwealth government shared in any of the cost of this monitoring?

**Mr McKenzie**—That I am not aware of, that they have actually contributed, but I do not believe, in the discussion that I have had with other people, that they actually did. They do have involvement through what is known as the Cockburn Sound Conservation Committee. The Australian Navy is represented on that committee, but I do not know about actual funding in that regard.

**Senator TIERNEY**—Mr McKenzie, some witnesses earlier on were discussing Local Agenda 21, which came out of the Rio Environmental Conference in 1992. I was just wondering, in Western Australia and specifically in your council area, do you have any Local Agenda 21 programs operating for the environment?

**Mr McKenzie**—At this particular time, no. Council has allocated funds in the budget—and it was only adopted last week—to get the Agenda 21 issues up on the plate, but doing that work in that particular area certainly is one thing that council has recognised needs to be done.

**Senator TIERNEY**—So what sort of budget did you allocate?

**Mr McKenzie**—In the environmental area I believe about \$45,000 for environmental programs has been allocated in this current year's budget.

**Senator TIERNEY**—And what sort of things will you be doing with that budget?

**Mr McKenzie**—The first stage is to do a complete environmental study and management plan for the municipality, and that will be put out to contract to get that done as soon as we can.

**Senator TIERNEY**—I take it this is the first time you have done that, is it, in this budget?

**Mr McKenzie**—It is the first time that we have done the complete municipality. There have been many environmental studies done in conjunction with industry and the state government in the heavy industrial area, but not as a total municipality issue.

**Senator TIERNEY**—The Rio conference was in 1992. We are now six years down the track. I am just curious as to what sparked the movement that way at this point in time.

**Mr McKenzie**—It has been an issue for several years, trying to get funding out of council for this particular area. There is a lack of resources.

**Senator TIERNEY**—Do you know the position across Western Australia? Is there a widespread movement towards doing Local Agenda 21 programs or only local interest, or what is occurring?

**Mr McKenzie**—I know in other municipalities adjoining the Kwinana area, the Mandurah, Cockburn and other councils are certainly getting their management plans done and are looking at that area. I live in the north of the city in what is now the city of Joondalup or the former city of Wanneroo. They are also working on Agenda 21. But I think generally across Western Australia, from my knowledge with other colleagues through conferences and different things, it is something that is not being done right across Western Australia.

**Senator TIERNEY**—Regarding developing clearer criteria for what local, state and federal governments do in the area of the environment: do you think that should be done through legislation, or should it be done through administrative procedures?

**Mr McKenzie**—As I said earlier, I believe that legislation is the way to go, because councils tend to take more recognition of legislation than they do of administrative procedures.

**Senator PAYNE**—Mr McKenzie, just in relation to the reference in your submission to wetlands, you obviously make references as part of your role in local government. You refer to the state, and the Commonwealth also has a role there. Could you just tell me what requirements you have on the interaction of the various levels of government with specific reference to wetlands.

**Mr McKenzie**—You are asking the interaction between local government and state government?

**Senator PAYNE**—Yes, how you think the system works, local, state and Commonwealth, and then how you think it could be changed to work more effectively.

**Mr McKenzie**—Well, certainly at the state level they have identified wetland areas in the Swan coastal plain. They have chosen a date; I think it was 1 December. Wetland areas which have got water in them were listed on that report. Not all damplands and wetlands are listed on there. They are those with water on 1 December of the particular year they did it. That has impacts on other areas of development, because obviously when the ground water rises above the surface of the land after the wintertime, and then recedes just below, it is still

a dampland, but in terms of classifying it as a wetland and the questions that are asked in terms of what constitutes a wetland, we believe there are differing agendas at different levels of government, and local government tends to look at it from the point of view that they will follow the state government's lead, so we really want some clear guidelines.

Are the international treaties and what the state says and what local government says all meaning the same thing when they are talking about wetlands? Certainly council does interact with the state government departments in terms of regional parks and wetlands that are listed in those regional park areas within the municipality.

**CHAIR**—Mr McKenzie, you give the committee three examples of local areas—I think each of them wetland areas—where in one case I think there is a road going through a reserved wetland area—Spectacles wetland?

**Mr McKenzie**—Yes.

**CHAIR**—Part of Beeliar, is it?

**Mr McKenzie**—Beeliar, yes.

**CHAIR**—Beeliar Regional Park. What is the status of those now, 12 months down the track? Have those roads and rail reserves gone through?

**Mr McKenzie**—The roads have not actually been built, nor have the railways been built, but at this particular stage they are moving ahead with the planning aspects for those transport corridors to be implemented.

**CHAIR**—You say that these cases demonstrate that the Commonwealth and state environmental protection mechanisms do not seem to be taken into account. Why in this instance were they not taken into account, in your view?

**Mr McKenzie**—I really do not know why they were not taken into account, because I believe and I think others believe that there are alternative routes that could have been used without cutting through those particular areas.

**CHAIR**—Did your council have a role in the processes?

**Mr McKenzie**—Council has had input into the transport studies and the location of the railway, but it is the state government that actually makes the final decision.

**CHAIR**—And in your view were the alternatives to slicing through a bit of the corner—which is what this sounds like—available?

**Mr McKenzie**—I think there are alternatives. They may have been more costly alternatives because of the road networks that were existing, but I believe there are certainly alternatives there.

**CHAIR**—This afternoon the committee will hear from the Aboriginal Legal Service, and in their submission they go to some lengths to point out the fact that they have rarely been consulted over environment actions. I presume you have an Aboriginal community?

**Mr McKenzie**—Yes, we do have an Aboriginal community.

**CHAIR**—What processes do you go through in terms of consultation with that community?

**Mr McKenzie**—If it was an issue that was clearly identified as an Aboriginal issue in terms of Aboriginal sites, to do with development, at the initial planning stages for development they are taken into consideration, but in terms of direct consultation with the Aboriginal community, I am not aware that there is a direct consultation process in place.

**CHAIR**—Does your council have any local area agreements signed by indigenous people in the community?

**Mr McKenzie**—I am not aware of a formal agreement being signed, though they do have a relationship with the local Medina Aboriginal Cultural Group.

**Senator HOGG**—I have a question on the relationship of your council with other councils on environmental issues. You mentioned Mandurah and Cockburn. Is there a relationship, and if so, what is the umbrella under which that relationship operates?

**Mr McKenzie**—The council established quite some years ago, I think back in probably about 1969, the Cockburn Sound Conservation Committee. That takes in the area from Fremantle Harbour, so we had the city of Fremantle, the city of Cockburn, the town of Kwinana and the city of Rockingham. It also has government departments involved in that as well, and the Australian Navy. It is basically a loose arrangement in terms of cooperating to try and improve the quality of Cockburn Sound. There is also a further environmental committee known as the Cockburn Kwinana Rockingham Local Authorities Environmental Committee. That was established to look at major industrial developments where they would cooperate and, if necessary, employ professional consultants to review management plans and industrial proposals to try and have an environmental focus.

Certainly the city of Mandurah is further out of our region to the south. That is not participating in any areas. There is also the South-West Metropolitan Council. It is a voluntary regional council, made up of Fremantle, Melville, Cockburn, Rockingham, Kwinana, and they do also have some environmental focus, particularly in the coastal management area and the waste management area, and are cooperating for the benefit of the region.

**Senator HOGG**—But these organisations would rely on cooperation rather than any legislative framework within which to operate?

**Mr McKenzie**—That is correct, and occasionally—

**Senator HOGG**—And is that a weakness therefore?

**Mr McKenzie**—I think in some ways it is a weakness, because if a particular council chooses not to contribute or not to participate, then that is their choice. There is no compulsion to participate.

**Senator HOGG**—So if that is a weakness, how can the weakness be overcome, in your view? Is it a matter of state legislation or a matter of federal legislation?

**Mr McKenzie**—I think in this particular case, at the regional level, it was a Commonwealth issue. That obviously would need some Commonwealth powers to require it. If it were a state issue, then I think we would need some state powers. So what I would be suggesting is that if there were a head of power from the Commonwealth which flowed down through the states to local government, then I think it would make a difference.

**Senator HOGG**—It would lead to better environmental planning, in your view?

**Mr McKenzie**—Yes, I believe it certainly would, because I think a lot of the issues are not necessarily local issues, but are more regional and state issues as distinct from local issues, because the lakelands and the wetlands do not stop at the boundaries of local government.

**Senator HOGG**—One of the things that we have heard, of course, is that this area can become bound in bureaucracy, that state bureaucracies can tie up local government, and local government needs to have a reasonably sound environmental approach to their development and management. Do you have a view on that at all?

**Mr McKenzie**—Certainly I believe that bureaucracies can tie up one another in the administrative arrangements, and I certainly believe that local government needs to be freed up, but in freeing up local government I think there needs to be very much a clarity of the legislative responsibilities with the criteria that they are to operate under, and that the environment must have a place in development. So I think it must be very clear, and certainly I would not like to see that the system becomes purely bureaucratic to tie up development proposals and improvement and protection and conservation of the environmental matters.

**Senator HOGG**—We were told about the competing forces. Local government, the local council area, are fairly gung-ho about getting local development to go in to boost their council and their region, and that can also be a problem for state government as well, being fairly gung-ho, whereas in the federal arena it is seen that they are not so driven by the need for development as such, and therefore may well take a more objective view as to any development process. Do you think that is the case?

**Mr McKenzie**—Yes, I do believe it is the case. I think the objective view should come from the top down to the bottom, being local government, and I think it certainly is the case when a development wishes to at times ignore their environmental responsibilities.

**CHAIR**—Mr McKenzie, you say it would be desirable for the Commonwealth to have a head of power in the constitution. Given that the Constitutional Convention did not address this question, what likelihood do you see there being in the near future of our reaching

agreement on this point, and where will the political initiative come from, or rather how do you see this getting up on to the agenda publicly and at the federal level?

**Mr McKenzie**—A very difficult question. I believe that it has really got to come from both spectrums of the communities throughout Australia, but also it has to be politically driven as well if Australia is going to maintain its environmental integrity in the long term.

**CHAIR**—I wonder if you have had a chance to look at the new federal legislation, the Environment Protection and Biodiversity Conservation Bill, and whether you think that the definition of national environmental significance in that will improve the situation?

**Mr McKenzie**—No. Unfortunately I have not had the opportunity to have a look at that bill at this time.

**CHAIR**—Would you be interested in receiving a copy of the bill? Can we send that through to you?

**Mr McKenzie**—Yes, I would be more than happy to receive a copy and pass comment on it.

**CHAIR**—It was today advertised in the *Australian* as well, but the committee will send you one direct.

**Mr McKenzie**—Okay. Thank you very much.

**Senator PAYNE**—Mr McKenzie, you were talking about your preference for a legislative approach to dealing with various tiers of government and controlling involvement in the environmental area. What sort of penalties do you think should be put in place which would act as a sufficient incentive or deterrent, depending on your perspective, for local and state governments in particular to comply with effective environmental protections?

**Mr McKenzie**—I think it is always an interesting issue as to how you apply penalties, but I believe that the penalties have to be substantial, and they have to apply to the council. In terms of local government you are looking at the chief executive and the managers responsible for those particular programs. I do not believe that it is just one responsibility. I think all the different levels of responsibility in local government, state government and Commonwealth have to be responsible, otherwise it is very easy for people to sit back and say, 'Well, it's not my responsibility. I didn't do it,' and the organisation accepts the responsibility, when quite often it is the directors or executive managers, CEOs and departmental managers that are basically implementing those particular requirements.

**Senator PAYNE**—So you would suggest significant financial penalties as a deterrent?

**Mr McKenzie**—I believe so, yes.

**CHAIR**—We have heard, Mr McKenzie, in a number of places now that state governments have withdrawn funding from the environment area and that to some degree the burden has come back on local government to provide those services. Is this your experience

in Western Australia? Do you have any data on the amount of spending on environment programs by the state government there?

**Mr McKenzie**—I do not have any data that I could quote you at this time, but I do believe there is a reduction in funding. Certainly in terms of saying it has come back to local government, I believe, as I was saying earlier, a lot of the local governments probably have not put funding into environment areas because of lack of resources. It is a matter of the cake not getting bigger, therefore the environment issues are one of the things that are really not being funded to the fullest extent.

**CHAIR**—Can you give some examples of how the environment misses out by that lack of funding?

**Mr McKenzie**—Certainly in terms of the very issue we have spoken about earlier today, the money that is allocated to the environmental programs here, it has taken several years to get the funding to do the environmental management plans for the local authorities because of the competing resources.

**CHAIR**—That funding was state government funding or Commonwealth?

**Mr McKenzie**—No, this funding really is coming out of councils' municipal budgets.

**CHAIR**—Is the Natural Heritage Trust fund an opportunity for you to—

**Mr McKenzie**—Yes, it is an opportunity for council. We are just waiting on the appointment of the replacement environmental officer to look at ways we can access some of that funding.

**CHAIR**—So you have not yet put an application in?

**Mr McKenzie**—No, not directly. We have participated in other areas in terms of the coastal management, and I think the city climate protection program is another area we are looking at as well.

**CHAIR**—We do not appear to have any further questions for you, Mr McKenzie. Is there anything else you would like to add?

**Mr McKenzie**—No, I have no further comments I would like to add, thank you.

**CHAIR**—Thank you very much for being part of our teleconference.

**Mr McKenzie**—Thank you very much for the opportunity.

**CHAIR**—We will break for lunch now.

**Proceedings suspended from 12.16 p.m. to 1.31 p.m.**

**CHAIR**—The committee notes that Mr Glenn Shaw has not been able to be contacted. We attempted at 20 past one as arranged and then again more recently. The committee will now adjourn.

**Committee adjourned at 1.32 p.m.**