



COMMONWEALTH OF AUSTRALIA

SENATE

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

Reference: Commonwealth environment powers

SYDNEY

Thursday, 18 December 1997

OFFICIAL HANSARD REPORT

CANBERRA

SENATE
ENVIRONMENT, RECREATION, COMMUNICATIONS AND THE ARTS
REFERENCES COMMITTEE

Members:

Senator Lees (Chair)

Senator Tierney (Deputy Chair)

Senator Carr	Senator O'Chee
Senator Hogg	Senator Payne
Senator Lundy	Senator Schacht

Participating Members

Senator Abetz	Senator Cooney
Senator Bolkus	Senator Eggleston
Senator Boswell	Senator Evans
Senator Brown	Senator Faulkner
Senator Calvert	Senator Ferguson
Senator George Campbell	Senator Margetts
Senator Chapman	Senator McKiernan
Senator Bob Collins	Senator Neal
Senator Colston	Senator Patterson
Senator Coonan	

Matter referred for inquiry into and report on:

- (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

ADAM, Associate Professor Paul, President, Coast and Wetlands Society Inc., PO Box A225, Sydney, New South Wales	90
ANTON, Mr Donald Kris, Policy Officer, Environmental Defender's Office Ltd, Level 9, 89 York Street, Sydney, New South Wales	42
BRAZIL, Ms Sarah Jane, National Conservation Manager, Australian Council of National Trusts, PO Box 1002, Civic Square, Australian Capital Territory	116
DEVINE, Mr Matthew Terence, Conservation Officer (Architect), National Trust of Australia (NSW), GPO Box 518, Sydney, New South Wales ...	116
DONALD, Mr Bruce, Legal Practitioner, 82 Elizabeth Street, Sydney, New South Wales	42
JOHNSON, Mr James, Director, Environmental Defender's Office Ltd, Level 9, 89 York Street, Sydney, New South Wales	42
KENNEDY, Mr Michael Geoffrey, Director, Humane Society International Inc, PO Box 439, Avalon, New South Wales	42
MUIR, Mr Keith William, Director, The Colong Foundation for Wilderness Ltd, 88 Cumberland Street, Sydney, New South Wales	71
OASTLER, Mr Peter, 3 Wilson Lane, Darlington, New South Wales	90
REEVES, Ms Anne Elizabeth, Executive Member, National Parks Association of New South Wales Inc., and President, Australian National Parks Council Inc., PO Box A96, Sydney South, New South Wales	116
ROBINSON, Dr Brian John, PO Box 256, Milsons Point, New South Wales	107
TUCKER, Ms Linda Louise, Research Fellow, Centre for Natural Resources Law and Policy, University of Wollongong, Wollongong, New South Wales	42

SENATE
ENVIRONMENT, RECREATION, COMMUNICATIONS AND THE ARTS
REFERENCES COMMITTEE

Commonwealth environment powers

SYDNEY

Thursday, 18 December 1997

Present

Committee members

Senator Lees (Chair)

Senator Hogg

Senator Tierney

Senator Payne

Participating member

Senator Allison

The committee met at 9.01 a.m.

Senator Lees took the chair.

ANTON, Mr Donald Kris, Policy Officer, Environmental Defender's Office Ltd, Level 9, 89 York Street, Sydney, New South Wales

DONALD, Mr Bruce, Legal Practitioner, 82 Elizabeth Street, Sydney, New South Wales

JOHNSON, Mr James, Director, Environmental Defender's Office Ltd, Level 9, 89 York Street, Sydney, New South Wales

KENNEDY, Mr Michael Geoffrey, Director, Humane Society International Inc, PO Box 439, Avalon, New South Wales

TUCKER, Ms Linda Louise, Research Fellow, Centre for Natural Resources Law and Policy, University of Wollongong, Wollongong, New South Wales

CHAIR—I call the committee to order and declare open this public hearing of the Senate Environment, Recreation, Communications and the Arts References Committee inquiring into Commonwealth environment powers. I welcome Mr Donald Anton and Mr James Johnson. We have before us submission No. 257 dated 26 June 1997. Are there any alterations or additions that you would like to make to that submission at this stage?

Mr Johnson—No.

CHAIR—The committee has authorised its publication in a separate volume. I welcome Mr Bruce Donald. We have before us submission No. 116 dated 19 June 1997. Are there any alterations or additions that you would like to make to your submission at this time?

Mr Donald—No.

CHAIR—We have authorised the publication of that submission in a separate volume. I welcome Mr Michael Kennedy. We have before us submission No. 262 dated 26 June 1997. Are there any alterations or additions that you would like to make to your submission at this time?

Mr Kennedy—No.

CHAIR—That also has been authorised for publication. I welcome Ms Linda Tucker. We have before us submission No. 234 of 26 June 1997. Are there any alterations or additions that you would like to make to your submission?

Ms Tucker—No.

CHAIR—That has also been authorised to be published. The first session that we have today is a panel session which goes through until 11. It will take the form of a panel

discussion. There are some questions that the various senators may wish to ask you individually and others may be general questions. Please feel free to be involved as a panel discussion. I would now invite each of you to make an opening statement and after that we will put questions to you either individually or as a whole. If someone else has answered a question, please feel free to add something to that. Ms Tucker, would you like to make an opening statement?

Ms Tucker—I would like to draw the committee's attention to three points that we would like to make. The first is that we feel we are wasting the potential of the international nature conservation law that Australia is a party to by a minimalist interpretation of the obligations of the conventions and that Australia is failing to respond to the evolution of the world heritage and Ramsar conventions, as well as their ongoing process of alignment with the Convention on Biological Diversity. We need to be moving away from an icon approach to implementing those conventions and towards a broader catchment perspective. That has been reflected in the development of operational guidelines under the World Heritage Convention and the development of the wise-use concept under Ramsar.

Secondly, the Commonwealth should be exercising a greater role in implementing greater uniformity across jurisdictions. Although we did not refer to the access to bio-resources report by the Commonwealth/state working group in our submission because it came out afterwards, we feel this exemplifies the downfall of jurisdictions not aligning themselves. The approach has been to take a nationally consistent approach, rather than an uniform approach and this could undermine a very important developing area in biological resource use and conservation.

The third one which we did refer to in our submission was the need for the Commonwealth to enhance its role in developing strategic planning. It need not necessarily use its powers for legislation nor rely on loose non-binding agreements, but that it needs to develop a greater role in strategy and perhaps step back from ad hoc planning project control and instead coming in at a much earlier stage.

Mr Donald—I begin by saying that, even though I appear in my private capacity as a practising lawyer, I do hold a commission on the Australian Heritage Commission as a seconded commissioner. I am serving a second year in that capacity. That is pursuant to the powers of the commission itself to coopt, and I was coopted for purposes which had a lot to do with the legal issues confronting the commission and the national inquiries at the moment. I also have the honour of chairing the Environmental Defender's Office in a voluntary capacity. My colleagues here today represent that office; I do not represent it but I come with that capacity as well.

My practice as a lawyer includes a range of environmental matters and also a long background in public interest law in this country, including having served on the board of the Public Interest Advocacy Centre and having served for seven years as the chief lawyer

of the Australian Broadcasting Corporation. So I hope I bring to the inquiry today a perspective that brings together straight black-letter law legal experience, a commitment to public interest law and a level of experience with the operation of government and the environmental laws.

There are three things that I think are the key to the developing future of environmental laws in Australia. The first is that we must somehow move quickly to a unified federal legal system. I note with particular interest that in its report, the Industry Commission, a body perhaps noted for its radicalism in other directions, has proposed the radical proposal for a general duty of care to the environment to be enacted through what it calls a 'unifying statute'.

This is a welcome and progressive suggestion from an informed and intelligent organisation. It is consistent with the need for national leadership. It is also acknowledging that in a federal system we need to be more creative in reducing the duplication of legal systems, acknowledging the three tiers of government but with the federal government playing a very important unifying and leadership role in that process.

The second crucial ingredient to proper environmental law management is the enhancement and sustenance of independent statutory authorities. I submit that one of the great successes in Australian government at all levels has been the creation and the sustenance of independent statutory authorities. We see it in the broadcasting field through the regulator, the Australian Broadcasting Authority, not to mention, of course, in our own public broadcaster itself, which is a key cornerstone of our communications independence. We see it also in the corporate area through the Australian Securities Commission, and we certainly see it in the competition and utility regulation field in the ACCC, an independent statutory authority.

The Australian Heritage Commission, on which I serve, stands again as a tribute to independent statutory authorities. It is perhaps in a less powerful position in that role because, in a sense, its staff are also the staff of the department. During the course of today's debate, maybe I can address some difficulties in that. But in so far as the present government has certainly evidenced a degree of antipathy towards independent statutory authorities—I think we saw that with the suggestion that the Administrative Appeals Tribunal become a department of government—I wish to emphasise to this committee the crucial role in Australian governance of independent statutory authorities.

The third key issue is the public interest sphere. That is a phrase of the noted German philosopher Habermas, who sees that as the sphere that sits between government and the private sector. In Australia it has been a crucial sphere for the development and maintenance of law. So many times we see that, where public authorities become very close to government and when governments become very close to the private sector, particularly in relation to developments, it is only the public interest sector that provides the circuit-breaker—and, in many cases, through the courts. Hopefully, we can spend some time today giving a couple of examples of how crucial that has been in Australia.

In my letter, I also point out the need for innovative development of the use of the federal legal constitutional powers. I think it is particularly significant that this committee sits just one week after the federal Minister for the Environment has informed the Kyoto conference that the Australian position on land clearing should be taken into account as a national factor in determining our position under the greenhouse strategy.

We have heard for a long time in this country that land management is a state and local issue; it clearly is not. Government has now internationally acknowledged the significance of land management as part of the obligations of Australia as a nation state. I welcome the minister having acknowledged this. We now look to see that flowing back into policy implementation and the legal structures within Australia. Today, we will no doubt range fairly extensively over constitutional powers, but I think we are seeing a classic example of intelligent use of our external affairs powers as the basis for properly implementing considered law.

Mr Anton—Thank you for the opportunity to address this committee in what I feel is a very important inquiry. As our submission explains, the parallel COAG review currently under way has been hampered by its narrow terms of reference and the failure to involve the public sufficiently in its review process. Accordingly, its final result is likely to be unsatisfactory. One reason why this inquiry is so important is because it gives the wider Australian community the ability to have a say and to provide valuable input about the operation of Commonwealth environmental law.

It also allows the Senate to track what COAG is doing and to report back to the public at the same time that COAG does. It is important not to end the inquiry too early in order to highlight deficiencies. This inquiry also allows us to focus on the unduly restrictive agenda of the upcoming Constitutional Convention. In my view, the matter of whether to say yes to a republic or no to a republic is one of the least important and uninteresting issues that could be debated. Instead, we should be looking at the whole range of our existing constitutional arrangements in light of the needs of contemporary Australia, including the desirability of a need for an expressed Commonwealth environment power.

We should remember what Henry Parkes said in the 1890 debates of the Australasian Federation Conference. He emphasised that we ought not lightly disregard all the powers which the imagination can call forth in picturing the future of these great colonies. The powers of imagination at the first constitutional convention did not picture a future Commonwealth government with a need for an expressed power to legislate on environmental matters.

Presumably, the enlightenment faith in the inexhaustibility of nature meant that the need for Commonwealth environment powers simply did not cross the minds of those delegates. This view of nature turned out to be wrong, but even with our better knowledge it appears that the delegates to the upcoming Constitutional Convention will still not be

permitted to imagine a Commonwealth government with an expressed power over environmental law.

When environmental consciousness began to emerge in Australia in the early 1970s, the Commonwealth government was forced to explore other ways and invoke other powers in order to exercise regulatory authority over environmental problems and land use generally. Since that time, it has become abundantly clear that the Commonwealth government has expansive power to enact environmental laws. Yet, without an expressed power, uncertainty still surrounds the variegated authority on which the Commonwealth relies to pass environmental law.

We hear a lot these days about how bad uncertainty is, especially from the business community. Isn't it curious, then, that the business community is silent about uncertainty associated with Commonwealth environmental laws passed on what may be debatable authority? Perhaps it is not surprising; perhaps it is more telling. When the law permits developers a second bite at the cherry in a constitutional challenge to the law under which they believe they have been slighted, then maybe uncertainty is not such a bad thing.

In any event, since I first arrived in Australia in 1991, I have been advocating for a stronger, more unified role for the Commonwealth in the protection of the environment. Indeed, even before I swore allegiance to Australia and her people earlier this year and thereby acquired a true vested interest in the Australian environment, I co-authored a *Law Review* article entitled 'Nationalising environmental protection in Australia', which argued for extensive coverage of the field of environmental regulation by the Commonwealth. I have brought copies here to distribute to committee members.

Unfortunately, strong leadership by the Commonwealth in environmental matters remains lacking. Rather than considering an amendment to the constitution to clarify its role and powers in relation to environmental powers, the Commonwealth has sought to develop a more consultative process with the states, thereby avoiding the need to enact legislation that blocks development plans of the states or to make other politically controversial—but equally necessary—interventions. This preference for political consensus was indicative of the Commonwealth government's decision to embrace cooperative federalism across all policy fronts, a decision, which in the sphere of environmental policy, gave rise in the inter-governmental agreement on the environment in 1992.

However, rather than enhancing the Commonwealth's environmental powers, the IGAE represents a retreat by the Commonwealth from its responsibilities in this area. The agreement is a manifestation of the inherent weakness of the Commonwealth's negotiating powers with the states on environmental issues, because it squarely places responsibility for 'the policy, legislative and administrative framework within which living and non-living resources are managed within the state'. In contrast, the pre-eminence of the Commonwealth in relation to environmental law in policy is limited to foreign policy; and

notably, as we have heard, the ratification of international environmental treaties and the fulfilment of the obligations they impose, as well as the prevention of a situation where policies and practices of one state have significant adverse effects in another jurisdiction.

The agreement effectively limits Commonwealth action making it conditional upon the consent of states and, where appropriate, allows the Commonwealth to accredit state practices, procedures and processes to override the Commonwealth equivalents. Yet the appropriateness of accreditation does not depend upon state practices, procedures and processes being just as protective of the environment as the equivalent Commonwealth arrangements. The agreement fails to outline a procedure for resolving disagreements between the parties in the event that existing practices are unsatisfactory, other than to assert that the Commonwealth and the states will endeavour to agree. When an agreement cannot be reached, the decision making power is ultimately left in the hand of individual states and, clearly, inappropriate outcomes may result in many circumstances.

A continuation of the current states rights approach, as embodied in the COAG review to environmental protection and management, will inevitably, in my view, fail to meet the challenge of ecological sustainability as any agreement will invariably be the result of political compromise and ultimately will be unenforceable. Failure to grasp the opportunity to amend the constitution so that it expressly provides for environmental responsibilities and powers of the Commonwealth will perpetuate the current ineffective approach. What is needed, in my view, is leadership, vision and decisive action on the part of the Commonwealth government. Thank you.

Mr Johnson—I too would like to thank you for the opportunity to make submissions to this inquiry. This inquiry is vitally important, because there are major problems with Commonwealth environmental management. The current approach is fragmented. In our submission, we give an example of the conflicting actions that can take place because of that fragmentation—not just between levels of government but within government. The example I am thinking of is the sugar industry infrastructure program where, on the one hand, money was given for infrastructure to enable the growth of the sugar industry and, on the other hand, money was made available—again by the Commonwealth—for the purchase of the very land which was being cleared and which was the habitat of the mahogany glider.

The current approach is uncertain. The community and industry do not know whether a particular development will trigger assessment. It is not clear who will be involved in the management of a proposal. It is not even clear what level of assessment will be conducted, if there is a trigger. The current processes certainly are not transparent or accountable. I think it is fair to say that both industry and the conservation movement are concerned by that. The current process generates conflict partly because it excludes the public, partly because it occurs far too late in the development process and partly because of fundamental flaws with the preparation of the EIS document.

As we all know, the environmental impact statement is prepared by the proponent in an assessment. We heard the announcement this morning that ANSTO will prepare the documents for the nuclear reactor at Lucas Heights. That leads to cynicism within the community. The Environmental Defender's Office gets a good feel for that level of cynicism and that level of despair, because one of the things that we do is provide free advice to people over the telephone. We now deal with about 2,000 inquiries a year from members of the public who want assistance, who are concerned to know what their rights and why things are happening as they do.

Having acknowledged that there are major problems and that change is needed, we would urge that any change must be part of a structured process. There must be adequate time for any review, and it must involve the public. I would echo the words of Don Anton that we do have a real concern. The initial discussion paper does not bode well for the way the process is to be conducted. The initial discussion paper was released to a very select audience that did not include, for example, the Environmental Defender's Office. A very short length of time was given for comment on that paper.

We basically agree with many of the criteria in the industry's submission. Another way of putting that is that industry agrees with the criteria that we have put in our submissions. I would urge provision of that time and that process to enable us to build on that common core. EDO has conducted a huge amount of work in the Commonwealth environmental impact assessment area. In 1994, we acted for the Tasmanian Conservation Trust in what has become known as the Gunns case involving a woodchip licence in Tasmania. That case first raised and highlighted the deficiencies in the Commonwealth environmental impact assessment process.

During 1995, we prepared a submission on behalf of the peak conservation groups in the country for the Commonwealth EPA which was conducting a review of environmental impact assessment. In October 1995 we also conducted a two-day conference on Commonwealth environmental impact assessment. I am sure that proceedings would be available in the Parliamentary Library. If you have difficulty having access, we would be only too pleased to make copies available.

As a member of the EPA advisory board, I spent a long time negotiating with industry and with government in trying to arrive at a common core of amendments to the way environmental impact assessment in particular is conducted at the Commonwealth level. I am afraid I only have one copy of this but I seek leave to tender a document prepared following that consultation which highlights the common areas at least. I think it is important those common areas be borne in mind when any review is being undertaken.

There have been developments since the terms of reference for this inquiry were formulated. Don Anton mentioned the COAG heads of agreement and the discussion paper which is soon to be released. I too would urge this Senate inquiry to await those documents, which I understand will be in the public domain early January, and to include

those in its deliberations. I also echo Don's sentiments that this inquiry is important because the public needs to be involved in these far-reaching changes. The process to date has mirrored the deficiencies involved in the Commonwealth environmental impact assessment process.

I would like to speak later about in particular Commonwealth environmental impact assessment. In relation to the other specific terms of reference, I would say this: the Commonwealth powers are comprehensive and I do not know that the inquiry needs to dwell on that at all. The powers are not limited simply to the implementation of treaties. They include a range of other factors. Don mentioned the constitutional dimension and the need to include a constitutional head of power. I would urge this inquiry to revisit the final report of the Constitutional Commission released in 1988, which came to the contrary conclusion. Thank you very much.

Mr Kennedy—Thank you for the chance to talk to you this morning about Commonwealth powers in relation to the environment. I am currently a member of the federal government's Biological Diversity Advisory Council, and the Endangered Species Advisory Committee. Until lately, I was a member of the federal government's State of the Environment Reporting Council which produced the first report on the environment last year—1996.

Our views on the need for the Commonwealth to act in terms of conservation of the environment generally are quite strong. Our obligations have yet to be met under the existing treaties that we are a party to—of which there are many. Given the wide responsibility that these treaties confer upon Australia, we are very keen to urge the federal government to take action in the current review of environment laws to ensure that we preserve the environment nationally in the near future.

There is a concern that the review now going on has not been able to present its draft paper to date. It was meant to produce, by late this week, a 100-page document which spells out the intent of the government in terms of the three new laws on biodiversity, impact assessment and heritage. We have some clues as to where they are going generally, but as yet we have not seen the paper. It would have been nice to have had it here today for debate in this inquiry. We believe the COAG paper still has not been signed off by the states, which in turn has delayed the Commonwealth's paper on the laws. Again, that is a matter of regret. The paper will come out in early January for a very brief public comment period, with intent to pass the new laws by April 1998.

In the last two months we have been putting a lot of effort into the review process before the paper emerges in trying to ensure that the split in responsibilities that has been negotiated so far is in fact of the ilk it ought to be. We have had some promising discussions; others have not been so promising. Two issues have been mentioned so far this morning. It is, I believe, quite important for this committee to debate these issues in general. The first issue is access to bio resources under the biodiversity convention.

ANZECC agreed new laws are needed to deal with this issue. So far there has been no national action or agreement about how to handle access to bio resources. It is one major outstanding point that must be dealt with this year or next year.

The Industry Commission report was just mentioned. They have, indeed, put some regressive ideas in terms of conservation in this country. One chapter which talked about utilisation of wildlife trade was, in our view, particularly badly researched. They came up with a resolution that this nation ought to lift its long-term ban on the export of live wildlife. We find that a startling recommendation in light of historical information about trade and the problem it causes to wildlife. In your review, we urge you to keep an eye on the need for the federal government to have strong control of the wildlife trade. There is some hint that in this review some responsibility for trade in wildlife may be given back to the states. That would be a disaster, in our view. The federal government must maintain control of all exports of wildlife where they occur.

CHAIR—Thank you for your opening remarks. Mr Johnson, you mentioned that we may not need to look at the Commonwealth having any additional powers by way of changing the constitution. You also said that we are not making maximum use of the powers that the Commonwealth has at the moment. Could we all develop that a little bit further? Could you give the committee some examples of where the Commonwealth is not making maximum use of the powers that it has?

Mr Johnson—Can I clarify something? I was not meaning to say that there was no need for constitutional change. I was saying that there was no need to examine whether the Commonwealth has powers in the environmental area. That is clear. I think that the constitutional change is important to reflect that and to make it clear and remove it from doubt.

CHAIR—Yes, but you were saying that it may not be as necessary. You referred to the earlier 1988 report that said, as I understand it, that it was not essential and that the Commonwealth could go ahead without a specific change to the constitution and do a lot more than it is doing now by way of national leadership.

Mr Johnson—That is possible. My mention of the final report of the Constitutional Commission was to alert the inquiry to the fact that these things have been looked at before and that a conclusion has been arrived at. I urge the inquiry to revisit that because I think it is important.

CHAIR—We will open up the discussion generally on what else the Commonwealth can use and how else the Commonwealth can take a national leadership position on the environment.

Mr Donald—I would like to contribute to that. Having laboured for many years over the Trade Practices Act, my starting point often becomes the Trade Practices Act. It

is a classic case. There is no federal power over trade practices and commercial law. That was always thought not to be within federal power. But, of course, as Garfield Barwick showed us in the developments during the 1960s with some real leadership, you can very quickly put together a combination of powers and produce a single statute governing that field that uses the distributive mechanism of drawing upon trade and commerce power, the overseas trade power, the post and telegraph power and, of course, the corporations power, which the famous Rocla Concrete Pipes case opened up. The external affairs power speaks for itself.

My proposition has always been that there is nothing stopping the Commonwealth now drafting a law, expressed generally, and having application determined in the same manner. For example, you see it in the Atomic Energy Act. That is an act which applies absolutely in the territories, for example—the territories power is another head of power—and it applies to the extent of constitutional authority in the states. So it applies sometimes in an uneven way, but it states the structures nationally and in terms of the needs of the environment, drawing upon the various heads of power.

There is the vegetation example. This country, notwithstanding what has perhaps been put in Kyoto, is in dire need of unifying laws on vegetation control. We are in a very serious position. Less than one per cent of the native grasses of Victoria still exist, and let us not forget that native vegetation on most of the wheat belt of Western Australia has gone. We need to draw upon a range of powers. There is nothing stopping a law that will affect the agricultural activities of trading corporations. Many agricultural businesses are carried on naturally and properly through trading corporations and would be susceptible to corporations power regulation.

In the case of land clearing, for example, if what comes out of Kyoto is a sensible part of the treaty, that Australia, to be permitted to increase its emissions, has to undertake a proper implementation of land clearing laws, then you have an immediate scope for a national law. So we should start now.

To finish this point, in addition, what should be done is what was done in the very first Trade Practices Act. Some 20 years later we finally got through to the point where the states enacted cooperative laws and adopted that pattern of law. That was envisaged way back in 1975. It took us a long time to get there but, because the Commonwealth took the leadership and set that law down, we were able to get there over time.

CHAIR—Going back to land clearing and what was mentioned about Kyoto, when the Natural Heritage Trust Bill was before parliament, there was an attempt to have a clause inserted in it that said that the states could not do anything that was contrary to what the Commonwealth was trying to do by way of revegetation or whatever. The minister was not prepared to accept that. It was specifically targeted at states that were still undertaking wholesale land clearing but were putting out their hands for money for

revegetation. How do we get round some of these problems? Eventually do we have to take on some of the recalcitrant states on a variety of issues? How does the Commonwealth actually get there?

Mr Kennedy—As an example, under the biological convention, the obligations and powers are clear—and there are many. It is the convention that confers upon the federal government the ability to do what it wants for conservation in this country—and that is undoubted, in my view. Talking about vegetation clearance, it is an issue which is perhaps most important to most of us. Under the Endangered Species Protection Act 1992, you can nominate a key threatening process which threatens four or more species with extinction. There was a nomination for vegetation clearance under the legislation about two years ago which the federal government rejected. It agreed that it was indeed a threatening process. It was unquestioned that it was the major threat to biodiversity in this country today, and that is a known fact. But even before it got to the politicians, the scientists decided that the issue was too hard to be dealt with nationally; that while it was an agreed threat—no sign of a dispute whatsoever—the scientists thought, ‘This really is a very hard one. It’s politically too difficult, the means of combining a national plan would seem insurmountable,’ and then rejected it on that basis.

I think the perception amongst bureaucrats and scientists is half the problem. Where they know the issue is of immense importance nationally, they are not prepared to recommend to government or to the minister that this can be tackled on a national basis, despite the fact that it is a known threat; the powers are there; and the law makes provision for the development of a national plan to abate clearing.

It is the taking of that one step forward which appears to be the hard thing to achieve. The laws are there; the powers are there; the means are there, through the Threatened Species Review Act, but we cannot get that last step moved forward. In EDO’s and HSI’s submission to the government this year on the review of the Endangered Species Protection Act, we made it quite clear that the BD act, the biodiversity treaty, does provide them with a power to move that one step further—and the means are available.

Mr Anton—In my opening statement, I did not mean to give the impression that I do not think the Commonwealth has virtually plenary power under the heads of section 51 of the constitution to enact environmental legislation—any environmental legislation that it wants. I think, along with Michael Kennedy, that the biodiversity convention itself—and there has been talk recently by Minister Hill about a biodiversity conservation act—could provide a unified framework similar to the Trade Practices Act to regulate the field of environmental law.

What I was trying to emphasise in my submission was that the lack of that express power, the failure to include an express environmental power, gives the government a politically expedient way to excuse itself, if you will, from entering necessary fields of

environmental legislation. By putting that into the constitution expressly, it does away with an excuse. That is what I was driving at. I realise that the constitutional commission reached a different conclusion, and that is reflected in the article that you have in front of you. However, that was a select commission. It was not a people's convention. The people themselves did not get to decide whether or not our constitution should have an express environmental power. I do believe, with James, that that should be put to the people more widely.

Ms Tucker—When we are talking about our obligations under conventions, the biodiversity convention, the CBD, has now given us that approach. The CBD has also made it explicit that when we are talking about protecting areas, no matter whether they are set aside or protected in the way they are managed, it is not necessarily setting aside public land. We have to get away from that dominant conservation paradigm in Australia where we rely on crown land to fulfil our conservation needs.

The Ramsar and world heritage conventions make no mention of a need for public land; it is just the way it has been interpreted—it is the most expedient way of doing it. But the biodiversity convention makes it quite clear that protected areas will range across tenure. This is a huge issue in implementing landscape management—that the Commonwealth can draw on those powers and has the obligations. I do not think it has an excuse now. It has been argued that the Commonwealth should be stepping in. Even without an express environmental power, there are enough powers there to oblige the Commonwealth to step in.

Mr Johnson—In the case of vegetation clearance, people are basically trying to make a buck within an economic framework that they have been presented with. Those people range from small farmers doing it very tough to large agri-businesses. I think, rather than looking at it as taking on the states—because the states are vigorously representing the interests of their constituents—I see it more as changing that economic framework so that we do not have the encouragement to clear.

Senator Lees mentioned the grants subject to conditions. That is one of the ways that the Commonwealth can take a role, apart from passing legislation, which is very important. It is disappointing that, particularly with the Natural Heritage Trust, there could not be some rational link between making grants for revegetation and a guarantee of change for land clearance, because it is contradictory, it is inefficient. It seems to me to be wasting money.

The other main way that the Commonwealth could take a role is, of course, through taxation. Changing the taxation laws could well shake that economic framework that provides that incentive to clear at the moment.

Ms Tucker—Just going back to the access to the bio-resources issue, of course that is a major imperative. Again, going back to the commitment of biodiversity where it

is now seen that you can translate future socioeconomic benefits into current conservation bargaining chips, you can say, 'Yes, there are resources there,' and this is where a great advantage is seen around the world with the biodiversity convention, that—in making explicit our sovereignty over our biological resources and in providing a framework for access and use of those resources—we can do what James was talking about there. That is, we can change the economic framework of how we view our habitat and how it can be used to provide alternatives to land clearing and current land uses.

CHAIR—Thank you. Any questions?

Senator TIERNEY—If we go back to your point, Mr Johnson, about the Commonwealth powers being very comprehensive, and then the arguments that have been put up about perhaps using things like the biodiversity convention as a vehicle for widening Commonwealth powers to make decisions in areas of the environment, in that sort of scenario, where do you see the role of the states in these decisions? Do you see this as being, in your best possible world, totally a Commonwealth matter, or do you see a role for the states?

Mr Johnson—It would be pretty hypocritical for our office to advocate the exclusion of the states in these sorts of decisions because most of what we advocate is a participatory framework for making decisions, involving the public in decisions and involving the states in decisions. So certainly there ought to be close consultation with the states, I believe, in the making of those decisions, but matters of national importance are matters ultimately for the Commonwealth to decide.

Senator TIERNEY—Are you saying that in the sense of the environment being a matter of national importance? Is that what you meant by that statement?

Mr Johnson—Yes.

Senator TIERNEY—I just wonder where we stop with this process. You could say that education is a matter of national importance and that health is a matter of national importance, but I can see this nightmare scenario of the Commonwealth government ending up trying to run everything. I think it is a bit of a worry.

Mr Anton—In the European Union there is a concept known as 'subsidiary', which dictates that laws be enacted at the most appropriate level, whether it be local, state, national. I think a similar concept is useful in environmental law within Australia, and I certainly think states should not be excluded from entering the field. I do believe, however, that states should be required to have as good as, if not better than, environmental laws that the Commonwealth passes. I think it is perfectly acceptable for states to enter the field if they are willing to provide laws that provide equal or better protection for environmental values, and I think the principle of subsidiary goes some way into helping us achieve that sort of compromise result in not having the federal parliament

totally responsible for environmental laws.

CHAIR—Mr Anton, how does the EDO go about persuading the states that they should take that approach, that is, persuading them that their rules are inadequate and that they should change them? What role in a participatory framework, which is I think what Mr Johnson referred to it as, do you play with the states in advocating that approach?

Mr Anton—We play a very active role in trying to influence environmental legal and policy decisions taken at state levels. We consult widely with the public. We also consult with peak environmental groups in the state through an entity known as the Environmental Liaison Office. We regularly meet with parliamentarians, trying to persuade them to do better, if you will. It is one of the major functions of the EDO. James may like to expand on that.

Mr Johnson—The last session in New South Wales parliament was a good example. A raft of environmental legislation was before the parliament and a large proportion of our time was spent producing analyses of draft bills and suggesting amendments. Of course, we always have one eye on developments at the Commonwealth level while doing this.

Senator PAYNE—How successful do you rate yourselves at doing that?

Mr Johnson—Do you mean the EDO?

Senator PAYNE—Yes.

Mr Johnson—We rate ourselves as reasonably successful in putting the arguments.

Senator PAYNE—What about the outcomes?

Mr Johnson—You cannot always carry the day. If you thought you were going to win every one you would go home tomorrow.

Senator PAYNE—It seems to me that your concept of a participatory framework for decision making is laudable and, in an ideal world, would be the way things played out. But in a federation with the history Australia has, we do not live in an ideal world one way or another.

Mr Johnson—I would second that.

Senator PAYNE—I have a view on the constitutional convention that I would be happy to share with Mr Anton later. The difficulty we face in achieving an ideal world is persuading the public—and I understand that you work very hard at that—and then the states and then bringing the Commonwealth on board in a dual participatory framework. It

seems to me that the major stumbling block is there—people never cede ground.

Mr Donald—I will put my Heritage Commission hat on and contribute to that. At a meeting last week the Heritage Commission signed off on accreditation of both the ACT and the Victorian processes for heritage listing and assessment. So we have achieved the first step in the future directions of the Australian Heritage Commission, which is based on a cooperative model acknowledging the inevitability and continuing federal structure within Australia. Frankly, I do not think that we will ever get a constitutional amendment on the environment. I do not think it will happen, which is why I say we should go down the positive path we are already on—we should acknowledge the three levels of government and bring them all along.

The Commonwealth and, I believe, the Australian Heritage Commission have been very successful in this particular field in bringing those accreditation standards and involving the agreement by the state agencies to the AHC Act criteria for assessment for heritage values, including natural heritage values. As you are aware, we do not just look after buildings; we have the indigenous, the built environment, the historic environment and the natural environment. This has been a long process but it can be done.

To respond to Senator Tierney: it is not a matter of the Commonwealth taking over; it is a matter of the Commonwealth showing leadership and using unifying laws to wipe out the duplication—the absurdity of having nine legal systems for a population the size of the city of Tokyo. We will always have those things but we can, within that structure, make dramatic advances in reducing duplication by cooperative federalism. I will cite an excellent paper given by one of the most respected environmental lawyers in this country, John Taberner, a partner in Freehill Hollingdale and Page, at the last Environmental Outlook Conference. He proposed precisely these sorts of approaches within the continuing federal structure—acknowledging the role of the three tiers of government.

Mr Kennedy—Coming back to the issue of state or federal: it is not for us a matter of state or federal; it is a matter of each jurisdiction having strong environmental laws. In reference to the COAG review and negotiations with the states, we were recently asked, as NGOs: which state has the best threatened species laws; what is the model to hold up for negotiation; and what are the standards to be achieved by all states and territories. In our view this state had the best threatened species laws. Combined with the Commonwealth law they could provide the model and the standards that should be set for national conservation of threatened species. So we do not seek to have the federal government rule the land in the sense of taking charge of everything environmental but that it has strong laws that can be used when states do not themselves come up to par with, say, threatened species issues.

Senator TIERNEY—I have a bit of a problem with this. We are talking about cooperative federalism and I thought that really meant—and I have seen some good

examples of it actually happening in different jurisdictions—state and federal ministers sitting down and working out a way on a particular issue. You seem to be indicating in your last statement that, yes, you want that approach but you want to make sure that the Commonwealth has the whip hand, making sure it all goes the way the Commonwealth wants to.

Mr Kennedy—Cooperation threatens species—let us take this statement and the Commonwealth's role. The Commonwealth and the state both have good laws on conserving threatened species. They are both very progressive—in fact, the best in the world probably. The state government and the federal government work well on this issue, in part because the federal government provides the funds for this state to provide recovery planning for threatened species. The money provided by the federal government comes with strings attached which are quite efficient and they have been working well for five years.

It is a process that can and does show how you can work together on a particular issue. We are simply saying that some states have no threatened species laws; in fact, they have regressive laws. When those states fail to protect what we perceive to be nationally important places or species, we would expect the Commonwealth in that instance to have a view on the future of those places or species.

Senator TIERNEY—So, in the case of those states that have not done that, you want the Commonwealth to step in?

Mr Kennedy—We expect the Commonwealth to ask the particular state to come up to standard. We assume the COAG process is now looking at that very issue: are your standards sufficient or not?

Senator PAYNE—You can extrapolate, for example, the methods used in some aspects of health funding so that, if states are not spending their money correctly, funds can be held back until they start to do the right thing.

CHAIR—In the immediate case, I think the minister has offered quite a few hundreds of millions of dollars over the next four years if states upgrade their hospitals. Do you see that as a legitimate means of getting results on the environment as well?

Mr Kennedy—Compulsory standards?

CHAIR—Carrots and sticks.

Ms Tucker—I think there is recognition that we have national interests, and that is assumed in various areas. We are saying now that this is in the area of the environment, and it has been widely recognised. We have the Australian nation principle which talked about social and economic interests and that now we need to add to that environmental

interests. I think we can assume that nationally we can come to some agreement as to where those standards lie and that we work from there.

CHAIR—So we are generally looking at a framework—I will just interject for a moment—of where the Commonwealth sets the national standards, measures what states are doing against them and perhaps encourages states with money and incentives to meet those standards. You mentioned before where the Commonwealth should really have the front running on matters of national importance. Do you see some issues overriding the process altogether on where the Commonwealth steps in? If so, how do we decide what issues are of such national importance?

Mr Johnson—That threshold test is, of course, where the real debate is going to take place about how you determine what is of national importance. Can I say that it is a matter of equity and justice as well—that people ought to have the right to an adequate environment around Australia—and so there should be clean air and clean water available to certain minimum standards whether I live in Sydney, Perth, Brisbane or anywhere else. Matters like that are clearly matters which ought to be determined at a national level. It is unfair for me not to be able to have access to as clean an environment as other people's in Australia.

It is not just environmental. When we are talking about the Commonwealth adopting a national minimum standard, it is not just environmental standards; it is also participatory democracy standards. I should not be disenfranchised because I live in the Northern Territory and there is no freedom of information legislation. So I would urge the inquiry to look more broadly than simply at environmental laws—it has to do with access to information and it has to do with judicial review. Don mentioned a process where, if a state or territory came up to a certain standard, its environmental laws would be accredited and the Commonwealth would step back and there would be a full faith accreditation between the Commonwealth and the state or territory. It is no use simply looking at the environmental laws and doing that; you also need to look at the broader framework within which people operate.

Senator HOGG—I have been listening with interest. You have mentioned a list of things that need to be determined at the national level, and I am just wondering whether there is a specific list as such. The one level of government that has not been mentioned today is local government. I am just wondering how local government fits into the whole scheme of things under what you are advocating. If we are going to have an all-powerful federal arena, what is the role of local government? It is at the local government level that many of the problems are occurring and are to be controlled.

Mr Johnson—It certainly is. Perhaps the greatest example of that is greenhouse, where the federal government has set all sorts of policies yet it is not influencing decisions on the ground. We acted for Greenpeace in a case challenging on the merits a power

station in the Hunter Valley—a coal fired power station that is going to be less efficient than existing technology, but the raw material was going to be cheaper for the proponent. At the local government level the decision was made for the power station to go ahead. The court, on review, said, ‘The Commonwealth government may make these policies, but we are not bound by them.’ The point I am making is that you are absolutely right. The local government level is really where the coalface decisions are made.

Senator HOGG—The point I am getting to is how do you have a list of things that the federal government may well be responsible for without being too intrusive into the local government area.

Mr Johnson—I think Don mentioned this subsidiary principle, where legislation is made at the most appropriate level and environmental management takes place at the most appropriate level. That will be a matter for discussion. There needs to be an establishment of broad principles about the types of matters that the Commonwealth manages, the types of matters that the state manages and the types of matters that local government manages. On occasion, matters will pass a threshold and they will cease to be at a local government level. That happens at the moment within New South Wales. Once a development exceeds a certain threshold it ceases to be a local government matter and becomes a state decision. The same could be extrapolated to enable that sort of seamless passage of responsibility to take place between state and Commonwealth as well.

Senator ALLISON—I would like to follow up on that and ask you to talk about a case in point of, say, recycling, which is very much a decision at the local government level. But if there are no markets for the recycled material, and it seems to me to affect three levels, how do we overcome that kind of involvement at each level?

Mr Johnson—We have not talked yet about the role of policies and programs developed by the Commonwealth and the assessment of those policies and programs. One of the deficiencies of environmental impact assessment at the moment is that we have assessment of specific decisions on specific developments; we do not have assessment of policies and programs. I think it is important that that extension take place. Often with those policies and programs a number of decision makers are making fundamental decisions about how a course of conduct is to take place over a number of years. It is all very well for the state government to set a policy about waste reduction but unless the economic framework is there, for example with recycling, it is not going to happen. I know that local government is basically being shafted, because they have committed to various contracts to provide materials and the bottom has fallen out of the market, and that is through considerations that are beyond local government control. We are talking about international factors influencing the market there.

CHAIR—But the Commonwealth, for example, through the taxation system, could influence the use of recycled material.

Mr Johnson—Yes, they could.

CHAIR—So that would be a mechanism, if particular benchmarks and goals were set, that the Commonwealth could use to influence what is a local government activity in that case.

Mr Johnson—Certainly.

Senator ALLISON—I come back to a point that you made, Mr Donald, about the need for, I think you said, enhancing and sustaining independent statutory authorities. Then you, Mr Johnson, talked about the EIS process and the problem of the proponent who puts it forward. Can we assume that what you would like to see is a statutory body which actually prepares environment assessment statements? How would that work?

Mr Johnson—I do not think it necessarily has to be a statutory body that prepares it. I am reluctant to advocate anything like that. An alternative would be for government to engage a consultant, using the money currently used by the proponent to engage a consultant. So I am not talking about expanding government and creating a whole new bureaucracy. I am talking about using the money to administer the assessment in an independent way. Government itself would engage the consultant, who would work closely with industry, with the proponent, in developing the EIS. Because they would not be paying directly, that arm's length approach would be maintained. You would have accountability to a different person.

CHAIR—Where does the community fit into an EIS process? Do you see a greater role for local community groups, or maybe national environment groups could have some involvement in the EIS process?

Mr Johnson—I see great involvement. There should be much earlier involvement at the scoping stage so that you are not carrying out environmental assessments of things that are not of concern to people and you are dealing with matters which are of concern. So at that very initial stage there needs to be involvement of the community so that you are efficiently using your resources. That participation needs to be ongoing. At the moment, participation comes far too late in the process. It comes after an environmental impact assessment document has been prepared.

CHAIR—Looking at the EIS process still, I would like to go back to the independent statutory authorities. Could we look at various ways they could be used in the process? In other words, very early in the piece there is the triggering of a range of different possibilities as to what the project might affect—maybe biodiversity. Could we look at other ways to make some initial decisions before getting right down to the ground where the company is all ready to go ahead and just has the environment statement to give it the rubber stamp?

Mr Donald—My mentioning of the need to enhance independent statutory authorities reflects a concern I have that so much of the environmental decision making is open to political influence when there ought to be standards against which it can be separately judged.

The classic case is the Hinchinbrook development. There was always going to be a development on that site but it was a ministerial decision that said that there was no feasible and prudent alternative to the biggest development on the entire east coast of Australia on that site. That became an unreviewable straight political decision by a minister. It would seem to me that in these areas the role of the independent authority is something we ought to look at, within standards that are established and provide some basis for review.

These things are not simple. There will always be an interplay between the political role in dealing with these issues and the public's desire for independently verified standards to be met. But success, I believe, depends on the inclusion of independent statutory authorities, together with the overlay of strong public interest groups and public involvement.

I will make one small aside. The Iron Gates case in northern New South Wales this year was a classic case of the public authorities simply failing to uphold the standards. The failure of the public agencies was only brought to book by a public interest action which ended in the court ordering massive rehabilitation—ripping up of roads and gutters and everything—because of the public agencies' complete failure to meet the standards.

We need more independence in the statutory authorities. In New South Wales even our own EPA is not a truly independent statutory authority. The director of its board reports directly to the minister and is appointed by the government. The board is effectively an advisory board and does not operate as a truly independent authority. So it seems to me there is great scope—I do not put this forward simplistically—in using the notion of independent authorities at the three levels of government, including acknowledging the role of local government, but operating within standards which are established and applied at the appropriate levels where decision making is determined.

Mr Kennedy—I would like to comment on the issue of authorities. We support, particularly at the federal level, stand-alone authorities that have their own powers that can be used directly and quickly. Under the current process that is going on with the review of laws, our most famous statutory body, the parks service, will cease to exist after 25 years or so. It will be removed. There is an uncertain future for the Great Barrier Reef Marine Park Authority. It may, too, be reduced substantially. So I think the problem we have is that the current government does not like such authorities. We have been well served by them in the past, but they are on their way out, if we believe the discussions going on currently.

I have a quick comment on EISs, and James can pick up on this if I am wrong. The problem for us as a lobby group is simply getting things triggered, having designations occur for important projects. They hardly ever are. In the five years we have had the federal Endangered Species Protection Act, there has not been one designation for a listed species, as far as I can recall. Is that right, James?

Mr Johnson—Not that I know of.

Mr Kennedy—I do not think there has been one. It is finding a means of having a trigger set off. I think EDO at one point had a recommendation for having the public or even NGOs in some way trigger an assessment, at least, by a government authority. It is how you get the top end before you have gone too far down the line. For us, that is the major problem. How do you kick off that EIS process? Not one fishery, not one trade program, not one threatened species has ever had an EIS done. For us it is a major problem.

Senator PAYNE—I would like to take up that point that Mr Kennedy just made in reference to the EDO's point in their summary on the trigger question:

Broadening the triggers for Commonwealth involvement in environmental decisions to:

- a enable any person to refer a proposal for determination;
- b cover all proposals that may have significant environmental effects; and
- c require assessment of all such proposals.

In reference to point a, 'enable any person to refer a proposal for determination', do you have a degree of proximity in mind for any person? Is it as simple as 'any person' or do you have another view about that? When you refer to point b, 'cover all proposals that may have significant environmental effects', who determines and what are 'significant environmental effects'?

Mr Johnson—As to your first question, I do mean any person. That is in the context of a nomination needing to be made against certain guidelines. That operates quite successfully, for example, in the threatened species area, where any person can nominate a species. There is a huge amount of work in getting that nomination together. I sense that you are afraid of abuse of that process and that there will be floods of nominations and things like that.

If there are strong guidelines as to how to decide whether the matter is of significance, then assessing a nomination will be a relatively straightforward matter. Our concern at the moment is that the only information that is provided in the assessment process comes from the proponent. That is not a good way of deciding environmental significance. It is not in the proponent's interests to highlight the areas which are of significance. Those areas are not highlighted. By enabling any person to bring a matter to the attention of the Commonwealth, it is a sensible way. You are essentially privatising the gathering of that information. It will be self-selecting. I am sorry, your second point

was—

Senator PAYNE—My second point was in relation to point b, ‘cover all proposals that may have significant environmental effects’. I assume from your response that the question of significance is covered in the guidelines as you have referred to them for the making of that trigger.

Mr Johnson—Yes, that is true. At the moment there is great uncertainty for the public and for industry. Simply because you cross that threshold of significance, there is a second exercise of discretion in the process as it currently stands where, having decided there is significance, it is then up to the minister to decide both whether there should be assessment or not and the level of assessment. You have an uneven playing field.

Although they will not express it publicly, I know sections of industry have in the past been upset or disconcerted, however you want to put it, that they have had to go through an assessment process, yet their commercial competitors may not have had to go through that process. In terms of achieving certainty, if you cross that threshold, that should mean environmental assessment. That is what happens at the New South Wales level, for example. There is no room for argy-bargy between commercial competitors. If you are on the list of designated development, if you cross that threshold, it means an environmental impact assessment and an environmental impact statement.

Senator ALLISON—I would like to come back to Mr Donald and your remarks about administrative duplication. Can you give the committee some examples of that and how they might be eliminated?

Mr Donald—It seems to me that in almost every area we have talked about today the fact that we are dealing with separate pieces of legislation at state and federal level creates a double layer of work every time a developer is involved in a project. That is what this whole process is about; working out how we are going to rationalise federal and state responsibilities. But the one thing we should be working towards is single statutes which the Commonwealth and the states sign off on and then implement at the appropriate levels; the Commonwealth perhaps having the carriage of scrutiny for matters of national significance and the states having the scrutiny under the same tests in regional matters.

The fact that we have two separate sets of statutes creates legal duplication. It creates lots of work for lawyers, but that is not a very sensible thing to do in a very small country. It is very inefficient. My personal view is that to repeat our planning laws around Australia is a very expensive way to go. It means that a building company operating across state borders is operating with different legal constraints in various places. It is bad for planning and it is bad for management.

In heritage management, too—and that is why the accreditation process is going to be so important—it means that you are working on common ground as you approach the

listing of places for their heritage values. It has worked well in these other areas and I do not see why it cannot work well in the field of environment.

Can I take up one other point made by Senator Payne before I forget it? That is the question of any person being entitled to trigger and who determines significant environment effect. Without sounding like a cracked record again, in the trade practices concepts introduced 20 years ago we gave standing to any person without limitation to take action to enforce the provisions of those laws. We left it as an open legal question; what was a 'substantial lessening of competition'? That was the trigger for the application of the legal test in that act.

In those cases there was open standing for anybody to take action and with the law to develop through the court's determination of how that phrase would be interpreted. There has been no floodgates problem under that law. I must say that it took a bit of time for the courts to get up speed on what was a 'substantial lessening of competition', but we now have a coherent body of law. These things can work sensibly with open access as the trigger and with general phrases that are interpreted by the common law.

Senator PAYNE—Do not misunderstand me, I do not disagree with the proposition in and of itself. My view in relation to the TPA would be that the public and political climate has changed profoundly over that period of time. The level of the debate at the moment would suggest to me that taking this step in an environmental area would open up to a significant number of commentators more fronts on which to attack supporters of protection of the environment as wanting to hand Australia over to someone else, if you know what I mean.

The idea of me being able to refer a proposal for determination in relation to a matter in Western Australia would, amongst certain commentators and certain parts of the community and the media, cause significant concern. I am concerned about management of these issues as well as everything else.

Mr Donald—I must say that I have never subscribed to the floodgates theory after 30 years in the practice of law.

Senator PAYNE—I agree with you on trade practices, absolutely.

Mr Donald—Not just on trade practices; in no area. When the High Court was approaching the issue of whether they would allow damages for nervous shock, everyone said there would be floodgates opened to actions. It is entirely manageable as the system develops. There is an inertia in the legal system. There is a cost in taking legal action, even with the existence of public interest law operations like the EDO.

Senator PAYNE—Perhaps I had the misfortune to listen to a particular commentator on the question of a native title matter this morning and it has coloured my

day.

Senator ALLISON—Does anyone on the panel have some information about international models that we might look at? I am thinking in particular of New Zealand, which has a level of government, their regional councils, which regulates and takes care of environment measures and standards. Has anyone got any critical remarks to make about that system or others?

Ms Tucker—I do not know about other countries but I know that is happening in Australia anyway with development of regional organisations of councils. This goes back to the original questions about the role of local government, and that is something that is developing as well where, while local government is not currently drawn necessarily along catchment lines, they are going beyond that into a regional approach.

Senator ALLISON—I mean something a bit different. The example in New Zealand, as I understand it, is that there is a level of government which delivers no services and is not a peak body for local government; it does not act that way. It is a regulatory level and so it sets those standards and it regulates everything from pollution levels to uses of resources. It is very important environmental body.

Mr Johnson—Could we take that on notice? If I can again refer back to the conference proceedings from our 1995 conference, Dr Tom Fookes gave a New Zealand perspective on environmental impact assessment at that conference and I have not had the opportunity to refresh my memory about that. Another jurisdiction which is also discussed in those conference proceedings is Barry Saddler's Canadian experience. If we could take that on notice, we could prepare a short submission for the inquiry.

Senator ALLISON—That would be very useful.

Mr Kennedy—There is an example too which I do not have here of the EU having just passed some environmental laws looking particularly at biodiversity and wildlife trade which are very strong. I will endeavour to send a copy to the inquiry.

CHAIR—I want to go on to something different in a moment, but first I want to finish off looking at the environmental assessment process and what triggers all of that. Can we have some examples of things that have worked, where there has been an effective trigger and we have actually seen some results, and areas where it really has not worked? Looking through the submissions and looking at the new nuclear reactor, it seems again that, with the company getting ready to do its own assessment, public confidence in the system is getting badly shaken. But do we have some positive examples of where it has worked well?

Mr Donald—Do you mean establishing a trigger as a generalised test and allowing any person—

CHAIR—Where we actually seem to have had the proponents doing the assessment and it has generally been accepted as a well done assessment that took on board all the concerns, particularly community concerns. I am looking back through some of those that have happened recently where there has been severe criticism, for example, looking at Kakadu and the new uranium mine there.

Mr Donald—I am sure ERA would say it has worked brilliantly in that case and they have come up with all the answers, but—

CHAIR—Again, public comment has not borne that out.

Mr Kennedy—Going back to James's point about having your list of what is significant as part of the trigger test, that actually occurs in part of the Commonwealth. Every listed threatened species is seen to be significant under the terms of the impact act, but as yet it has not been triggered. A problem is that the minister himself, Senator Hill, is not the actual minister. Until you have in most jurisdictions the environment minister being the action minister, we are still not going to see the triggers and the designations occur in any event.

CHAIR—So you are basically saying that we have situations around the country where threatened species are under significant pressure and we cannot trigger a full assessment.

Mr Kennedy—The only person that can in most cases is the responsible minister—say, Senator Parer for fisheries in Canberra, for southern bluefin tuna and gemfish. Only he can trigger an impact assessment.

Mr Johnson—In fairness, there are some areas where negotiation and discussions have gone on and it has worked very well but, generally, they have not been at the first stage. They have often been as a result of, for example, actual court proceedings. What you have is a more equalising of the bargaining position between the community and the proponent. Where there may be, for example, delays or expense, that does sharpen the mind, and I have seen quite good consultation and negotiation go on after that.

As part of the process that I have seen—for example, particularly with mining and large infrastructure developments—the people who carry out the assessment in the beginning come from an engineering background. They have been engineers at university. They have moved through the company or the department and they are now in charge of the project. They do not necessarily have the skills or appreciate what is involved in proper consultation and public participation. They are brought up short when something like a court challenge does happen. It is a learning process.

CHAIR—Perhaps we need an independent Commonwealth statutory authority, where an issue is of national significance, that moves in and does the assessment and

draws on a mixture of community input as well as expertise from a range of other areas—whether it is the Heritage Commission, people on biodiversity or whatever. Is that the sort of model that—

Mr Johnson—I suggest that the authority does not do the assessment but perhaps manages the assessment—I mentioned the model before—rather than setting up a whole new bureaucracy, because whenever you are assessing a development you need to call on a range of expertise and I do not believe that a government agency could command that range of expertise.

CHAIR—If it involved a wetland, you would need experts in that particular area.

Mr Johnson—Yes.

CHAIR—If it involved forests, you would need a different range of—

Mr Johnson—And it is even more obscure, if I can call it that. It is not just a wetland expert. It might well be the giant stuttering frog expert that you need to examine a particular area.

Ms Tucker—We had that example with the Shell Cove Marina at Shellharbour on the south coast, where there was an EIS. The University of Wollongong has marine biologists who work in that area. When they saw the EIS, they were shocked. They said, ‘We did not know the EISs were this bad.’ It is not a scientific document. It has ignored species that exist there. It said that there is no significant species or no significant numbers in that wetland, in that catchment. It ignored so many points. I am now working with a biologist in that area and going through it. She could not believe that such a document could get through and the inadequacies that it had. She said, ‘No scientist would surely put their name to this. Why is there no referencing? Why has there been no significant research done?’ You had a body of experts right there, who work in that area. If the assessment were to be managed independently, presumably they could manage it in that way, and call on the people who are there.

Mr Johnson—Particularly with threatened species, you are absolutely right. There is no single person or body that is a repository of knowledge. Often with threatened species, in order to find out what is there, what is their habitat and what their habits are, you might be calling on a local resident who could be the amateur birdwatcher, who has been there for 20 years, or whatever—and they are ‘the expert’. But you will not find them on any register of experts. That is the value of public participation, and that is why you need them and you need them early.

Mr Donald—Can I give you another excellent case. There is Lake Wollumboola, north of Jervis Bay. It is one of the last of the barrier lakes where there is a sand bar that protects the lake water from the sea. It is a very important part of the aquatic biology of

that part of the world. That matter was only ever really opened to proper public scrutiny, to the EIS process, after the minister withdrew it from the local council—because there was a concern that the developer and the council had not dealt with matters properly—and called a commission of inquiry. A public interest group succeeded in getting some legal aid money and, from that very small amount, they retained just the right experts to look at the fauna impact issues and the water issues.

As a result of that, the whole process ceased. The National Parks and Wildlife Service realised that, long before, it should have called for a fauna impact study. It did so only after public input. The developer also realised that it had to redraw its entire water plan. If that had all happened sooner with proper availability of access and funding of access for public input, the savings just in the process would have been enormous. We still have not come up with one case that answers your question; one which really works right from the beginning.

CHAIR—As we write our report, it would be nice to have some positives in there.

Mr Kennedy—I have some positives, but they are of a general nature rather than a specific. Under the federal Endangered Species Protection Act, in the last five years that it has been going, what has been happening is that proponents of different proposals have learnt that this beast exists. Developers, state governments and federal departments have called the parks service which runs the act and said, ‘Listen, we are about to do this. Does it affect the species under your act?’ There have been hundreds of informal referrals to the government asking whether they need to do anything. That is positive. It is not public in terms of an assessment going on, but it at least shows that people are aware they ought to make the call and ask the question. In a sense that has been a very good positive. It is the unheard of part of how the act works. That is quite positive.

Secondly, the feds have just issued an advert in the press this week to do with the nomination process. You can, as a public person, make a nomination for a species, or a community can nominate a threatening process under the federal act. They have just asked for a register of people who have expertise in birds or mammals or fish or threatening processes. It would pick up your local birdwatcher. There is no requirement to do that. They have done it as a program proposal. It is not a legal requirement. That could be done just the same for impact assessment, in terms of individual people who know about the species and places to be called upon should a proposal come up that would affect or link in with their knowledge.

Mr Johnson—I do not think we can come up with a major public example. The difficulty is that often they are anecdotal, often they behind the scenes, just requests and subtle consultations that take place. Perhaps it is a symptom that they are the ones that slide through much more easily—they are not public, they have been successful, and they have not been elevated to a major dispute.

CHAIR—I want to switch to something that we have not talked about a lot this morning, and that is intergovernmental agreement on the environment. If we look through your submissions as well as other submissions we find that many of them are critical of 91 that. Some suggest that it has not been effective; other say that it is taking us backwards. Would anyone like to comment on their view of that agreement?

Mr Kennedy—Generally, we did criticise the IGAE in our submission to the government last year in terms of the need to have the coalition government take leadership in the area of the environment. Our view was that the history of the IGAE was not one to inspire confidence in environmental management. We thought the process ought to be reviewed in terms of the split between responsibilities, with larger weight being given to the Commonwealth's role in management. The current review is, in effect, what is occurring. We simply hope that the outcome of this review with COAG will be a vast improvement upon the IGAE, which I assume will be subsumed by this new agreement.

CHAIR—Would anyone else like to comment on where the agreement is at the moment?

Mr Anton—As I said in my opening statement, rather than enhancing the Commonwealth's environment powers, I think the IGAE detracts from those powers. I think it effectively limits Commonwealth action on making it conditional on the consent of states. I do not see it as a very environmentally friendly agreement. I think it is a politically expedient agreement, but as the discussion was heading earlier in the morning, I think a better approach is for the Commonwealth to cover the field with appropriate subsidiary principles and state local involvement where appropriate.

Ms Tucker—It is interesting that a process was set up with the now National Environment Protection Council that we seem more willing to go into that area of agreement with regard to pollution or ambient air, water and soil quality, but there was nothing there for nature conservation. We still seem to back away from that approach. So a council has been set up and you have the two-thirds binding majority, a process is under way there, so why can we not take that approach with regard to conservation, especially with regard to habitat maintenance?

It is interesting that it seems to parallel our general approach in conservation land management in that we are much more willing to take the effort with regard to pollution where you have that sort of transboundary imperative that you have to deal with it, while the more amorphous or harder to pinpoint issues of conservation, biodiversity maintenance, habitat maintenance are not dealt with.

Mr Anton—Even with NEPC and the national pollutant inventory the ultimate agreement has been weakened by the elimination of the transfer of pollution from that particular inventory. As I understand it, the reporting requirement for pollution transfer has

fallen out of the inventory because of state pressure. I just think it is another instance where, if the Commonwealth were going it alone, we would probably understand pollution being transferred from, say, air to acid rain deposition. As it is, we have no idea what is going on.

Ms Tucker—It also depends on how you read it, yet we do not want to restrict it to international obligations. The Commonwealth responsibilities with regard to the implementation of international law are recognised under the IGAE. If you read what that means, could you then use it to override the land management aspects of the IGAE which are enshrined as state powers? So it would depend upon your interpretation of Commonwealth powers under the agreement.

Mr Johnson—At the beginning of our evidence we talked about the muddying of the legal and the policy approach. Legally, the Commonwealth has the power; as a matter of policy, the Commonwealth has chosen to step back. Clause 2 of schedule 7 includes that in the IGAE where it states:

Primary responsibility for land use and resource planning decisions rests with the states.

In so far as that is a statement of law, it is plainly wrong. What it does is to reflect policy at the time that agreement was made. That is not clear from the agreement.

CHAIR—Your contribution has been most helpful. As the committee hears from additional witnesses today and in future hearings, we may need to get back to you for further clarification. If you would like to add anything to your submissions at a later date, you may do so. I take the point that the committee should wait—it will be waiting; this inquiry is going through until June—so that it will have time to look at the COAG document when it appears. Perhaps that is something on which we will need to seek further input from you, so you will probably be hearing from us again.

Mr Donald—It would be a matter of great regret if the papers that we are expecting came out when we were all on holidays and with a deadline that would not enable proper public input. It is my great fear that what is going to come out of the current process will not be delayed so that this committee can take proper account of it. It is my great fear that in the summer we will see a proposal from this government for the end of the Australian Heritage Commission and the Register of the National Estate. For these sorts of things to be coming out over a summer period is a matter which we should all be deeply concerned about.

CHAIR—This committee will certainly have time to deal with the issue, and we hope that the government will allow time for it to be dealt with, too. I thank you all for your time today.

MUIR, Mr Keith William, Director, The Colong Foundation for Wilderness Ltd, 88 Cumberland Street, Sydney, New South Wales

CHAIR—Welcome. The committee prefers all evidence to be given in public but you may at any time request that your evidence, part of your evidence or perhaps an answer to a question be given in camera and the committee will consider such a request.

We have before us submission 14A, dated 2 December 1997. Are there any alterations or additions you would like to make to that submission?

Mr Muir—Yes; I have provided the amended submission to the secretary.

CHAIR—Thank you. I now invite you to speak to the committee. I understand you will be showing us some slides as well. We will then put questions to you.

Mr Muir—I am quite happy to answer questions as we go along as well. The Colong Foundation was established in 1968 to protect the southern Blue Mountains from a very large limestone mine at the Colong Caves. It owes its origins to the National Parks and Primitive Areas Council, whose secretary is Myles Dunphy. He became the first patron of the Colong Foundation.

Myles Dunphy prepared a proposal called ‘The Greater Blue Mountains National Park proposal’, which essentially covered, in 1934, the parks which are now the Blue Mountains National Park system. I have a copy of a biography of Myles Dunphy here, which I would like to lend to the committee. I have marked the map of the Greater Blue Mountains National Park proposal as it was put forward in the Blue Mountains *Gazette*—it was published in the local newspaper—in 1934. In those days, conservation was a very new concept and the idea of wilderness was completely novel.

In 1934, it was the Great Depression; austerity which is not known by this society was dictating political thinking. Myles Dunphy put forward, in that environment, the concept of wilderness preservation for these remote and wild lands. I might add that the concept was well received. In fact, while the Greater Blue Mountains National Park system does not exist in name, the actual national parks that were proposed in those days are now all declared.

The recommendation which I have put forward, for the Colong Foundation, to this hearing and the inquiry is that there needs to be, essentially, a performance criteria and time lines. The intergovernmental agreement between the state and federal governments on the environment covers World Heritage in schedule 8. Whilst it has very broad comment, it does not have the essential detail to progress conservation proposals even when there is bipartisan support for it. The Blue Mountains world heritage proposal illustrates the failure of the intergovernmental agreement to progress a proposal which has broad community support and, indeed, illustrates the failure of the current arrangements for consideration of

World Heritage proposals between the state and federal governments.

The situation with regard to the Blue Mountains is one where the community has fallen into a state of cynicism after numerous announcements of the intended listing. There have been three deadlines set for the preparation of the nomination. There have been three sets of time lines, but these have never been seriously considered. There have not been the administrative mechanisms to put those time lines into effect. They were just proposals or concepts. They were not effected. So there seems to be lacking a framework where political decisions can be made and put into effect.

The current deadline for the nomination is 1 July 1998. This is the last day for the nomination to be considered and be accepted by the World Heritage Committee and meet an Olympic deadline. Back in 1989 when the Colong Foundation first advanced the proposal, the hoped-for outcome was that the area would be listed by that date.

We are now in a situation where the consultant tender has been prepared in draft and is being reviewed. The consultant has two months—two months only—to prepare the nomination report. So the nomination report is to be finished by March and then three months of review to be completed by the 1 July deadline. There is \$80,000—\$40,000 by the New South Wales government and \$40,000 by the Commonwealth government—has been provided to undertake this assessment. This is about half of what you would expect for a feasibility study, let alone a nomination report being put to an international forum by the Commonwealth government to signify its belief that a property has world heritage values and should be incorporated on the world heritage list of properties.

That then leads us to the questions of: what is being proposed; and why are we doing it? What is being proposed is still unclear. There is no boundary for a world heritage property. The National Parks and Wildlife Service has a position which favours a smaller area than the Royal Botanic Gardens proposal. This is quite disturbing to the Colong Foundation.

In my view, the proposal should proceed as follows: the world heritage values should be identified; following that there should be a consideration of management and integrity questions. This may then influence the boundaries so that areas which are not managed as we would expect a world heritage area to be managed or are not intended in the future to be managed as world heritage—even if they had those values—it would not be appropriate to put them up. You will note that point five in schedule 8 of the intergovernmental agreement suggests:

Arrangements for the management of a property will be determined as far as practicable prior to the nomination.

CHAIR—Can I just ask a question there. You are saying we are within six months of the deadline as far as getting it done by the Olympics, which was one of the aims if we

are going to maximise tourist potential at the time of the Olympics, but we have no definite map of which area we are talking about; is that right?

Mr Muir—That is correct.

CHAIR—The state and federal governments have not agreed on what exactly is the area we are talking about.

Mr Muir—It has been 10 years and in that 10 years there has been bipartisan support announced at regular intervals, and the exhibits which I have provided to this inquiry demonstrate that. Now we have two months. We do not have a boundary. I will get to the issues of eucalypt themes, et cetera, which are other confounding elements, if you like. It is a very difficult circumstance for the executive to deal with. The executive has to resolve this problem in two months—probably in the first two weeks of the two months—or hopefully between now and the time the consultant produces his report.

CHAIR—Looking at the terms of the inquiry as far as Commonwealth environment powers are concerned, who has the authority to eventually make the decision: ‘Okay, these are the boundaries’?

Mr Muir—Because the matter has been to some extent delegated to the state through the intergovernmental agreement, it is the state. But what happens if the state under a Carr government comes up with a proposal which is unacceptable to the federal government? It is usually the other way around but, under this circumstance, it could be quite possible that the Carr government may envisage a bigger proposal which the federal government may not find satisfactory. This is a difficult problem.

There is a solution. The solution is that you identify the values and you then see what can be managed as world heritage. We can expedite that. I have made some suggestions on this to the National Parks and Wildlife Service in New South Wales. I have basically said that, given the shortness of time, we map and identify the world heritage values based on the Royal Botanic Gardens report of 1994. That is a whopping great big volume of 350 pages.

The second step would be to examine the existing national parks and see where those world heritage values fall within those parks. Thirdly, world heritage values in other areas could then be examined by the reference committee—a community based committee which has people like Matthew Hingerty from the Minerals Council on it—and agree upon any additional areas. So that could work. That is probably the only possibility of it working, by basing it all on existing information. The \$80,000 nomination report would be simply a writing exercise based on existing identified values and existing management in existing parks.

We are still going to have difficulty convincing the World Heritage Committee in

regard to integrity because not all parks are subject to plans of management. Believe it or not, Blue Mountains and Kanangra-Boyd national parks do not have plans of management. The Wollemi National Park, the second biggest park in New South Wales, still does not have a plan of management. Nattai National Park, which is a more recent park created under the Greiner government in 1991, also does not have a plan of management. The only area that I know that has a plan of management of the world heritage property—first put forward by the Colong Foundation in 1989—is Thirlmere Lake, a small national park, which has had a plan of management since the early 1970s. I think the World Heritage Committee will probably raise some questions about that—fairly pointed ones—and say to the state government of the day, whoever that will be: why is this so; why haven't these longstanding parks got plans of management?

I have touched on the issue of management and integrity, and world heritage is all about management: it is all about managing those areas that are the best of the best: the cherished, most special areas in Australia that we want to hand on to future generations and that we want to maintain for the sake of biodiversity for ever, in the best possible state and with the best possible management. That is what world heritage should be about, and that is what its management should be. Yet we still do not have plans of management for these parks.

We now come to the concept of the eucalypt theme. The thematic approach to world heritage actually comes from cultural areas, cultural values, cultural world heritage properties. It is now being applied to natural properties—or it is attempting to be applied. It is experimental. By that I mean that the World Heritage Committee has not agreed to a thematic approach for natural areas yet. But what are we doing with the Blue Mountains? We are putting forward a thematic proposal, an experimental suggestion, for acceptance.

Given what I have already said about the management of the area, this then creates another difficulty for the World Heritage Committee to deal with. It has to assess the merit of the thematic approach, and not just the merit of the world heritage proposal. It might not like the thematic approach; it might like the world heritage property: what does it do then? It is a difficulty we could do without.

CHAIR—If we are not looking at a thematic approach, what should we be applying under? What particular characteristics do you think we should be putting forward?

Mr Muir—The World Heritage Committee has operational guidelines which outline the criteria for a proposal. The operational guidelines are in four main categories for natural areas. You need only meet one of these four criteria. The guidelines state that world heritage properties must be:

1. Representing major stages of the earth's history, significant on-going geological processes in the development of landforms, or significant geomorphic or physiographic features. All of

the key interrelated elements must be present. This category mainly relates to geology and landform;

CHAIR—Which is what Macquarie Island has just got its nomination under.

Mr Muir—Right. I will get to the point about what the eucalypt theme does to that first consideration or category. The guidelines continue:

2. Representing significant on-going ecological and biological processes in the evolution and development of terrestrial, freshwater, coastal, marine ecosystems and communities of plants and animals. Again all the elements must be present. This mainly relates to the biota and biological processes.
3. Contains superlative natural phenomena or areas of exceptional natural beauty and aesthetic importance. This mainly relates to the natural scenery, including wilderness.—

And I will be showing some slides in relation to that category.

I would also like to now hand up to you a copy of *Wild places*, which the Colong foundation published last week. It lists six wilderness areas which are within the Royal Botanic Gardens proposed world heritage area. I have marked those sections in the book.

There is a fourth category that may be satisfied in a world heritage proposal. You need meet only one of the four categories. The fourth category is:

4. Containing the most important natural habitats for conservation of biological diversity, including those containing threatened species of outstanding universal value for science or conservation. All of the elements of flora and fauna should be present and the habitats must be large enough to ensure their survival.

In addition to those four categories, some of those categories should also consider conditions of integrity. The integrity criterion is important for biota and for habitat of species. Only those sites which are most biologically diverse are likely to be accepted. The eucalypts in the Blue Mountains are probably the most diverse in the world; in other words, there are more eucalypt forest types in the Blue Mountains and surrounding plateaus than anywhere else in the world. That is the criterion which we are running on.

The reason we are running mainly on that one is that the expert panel was very dismissive of the geomorphological values of the proposed area. This was based on advice from Professor Ollier, who considered that the Blue Mountains were fairly commonplace geomorphologically. However, we sought a second opinion from Professor Brian Marshall. I have provided his evidence to this inquiry, and you will find his evidence in exhibit D11. In part, this is what he says in relation to Professor Ollier's advice:

Professor Ollier is perfectly correct in stating that this type of tectonic boundary—

that is, the boundary of the continent that the sandstone plateaus are found on—

is common at a global scale. However, the statement has negligible significance since, as indicated above, the pre-existing rock types and structure and the local climatic effects can induce different geological and geomorphological expressions. It is fatuous to believe that passive continental margins on continents in Arctic, tropical and Equatorial climates will have the same geomorphological expression. It is equally fatuous to believe that the geomorphological expression of a passive plate margin will be the same in Queensland, Western Australia and New South Wales. Any implication that the Blue Mountains will have strict geomorphological parallels in other continents or in Australia is poorly founded.

He goes on to say that it is because the Blue Mountains have such wonderful yellow sandstone that we have the wonderful Sydney beaches. We forget that the geomorphological Sydney basin produces the golden yellow sand. Even the heritage buildings around Sydney are made out of it. It is so universal to our life that we tend to take it for granted, but those clean sandstones are quite rare. Those magnificent cliffs of the Blue Mountains are quite significant. So I hope that I have at least established there is a difference of opinion as to whether there is geomorphological significance in the Blue Mountains.

CHAIR—What happens if we run on more than one criteria?

Mr Muir—The question should be: why are we focused upon the eucalypt theme when geomorphology is an important and integral part of the world heritage proposal, as identified by Geoff Mosley and by the Royal Botanic Gardens Report? I think it was very dismissive of Professor Ollier to reject geomorphological values in three pages. I think more work can and should be done.

CHAIR—Perhaps I could ask why he is being given that status? Where in governmental processes, either at Commonwealth or state government level, has somebody given him the power to be the ultimate authority in terms of who is listened to?

Mr Muir—It is quite reasonable that there be a peer review of the Royal Botanic Gardens consultant report that recommended that the area proceed to a nomination. Professor Ollier's comments were part of the peer review process. I am sorry, I do not have the details in front of me, but the principal CSIRO research scientist also reviewed the Royal Botanic Garden report and found it a worthy document and made some very detailed—mainly editorial—suggestions as to how to proceed from that point with that document.

CHAIR—Okay, but where, at either a bureaucratic or government level, was it decided that we should not worry about the CSIRO or about the Botanic Gardens report or anything else and that we should just concentrate on that one three-page review that was critical, refocusing our efforts to get world heritage listing on those three pages?

Mr Muir—He is part of the expert panel. In my submission I have been very critical of the role the expert panel has played in influencing decision making in regard to

this very matter. I do not think I can take it much further. If you wish to ask your question of Dr Geoff Mosley when your hearings are in Melbourne, you might have a more thorough answer from him on that point.

Senator ALLISON—I am not altogether clear what is behind the differences. Would narrowing this down to a theme of eucalypts give you a smaller park than one based on geomorphological considerations? Is the issue that we have competing interests here—some who want the park to be smaller and others who want it larger?

Mr Muir—Thank you for that, Senator Allison. You have hit the nail on the head, so to speak. The World Heritage proposal and its assessment is not about land grabs for conservationists. It is not about making parks bigger or anything. It is about identifying world heritage values. If governments then choose to protect those values, that is another issue. If you are going to do anything—build a dam or make a park or whatever—you have to assess what is there. You work out what the values are and then you decide what to do with them. I think it is a ludicrous proposition to try to mix those two considerations together and not be clear about what you are trying to do.

The forest policy requires that world heritage values be assessed. Under the forest policy, eucalypts are obviously the key thing that needs to be assessed. It is of great interest for eucalypts to be assessed in the Blue Mountains proposal, particularly because of the assessment by the Royal Botanic Gardens which predated the forest policy that said that the Blue Mountains was the most diverse area for eucalypt species types. Here we have an area which is already in a park, it has already got the most diverse area of eucalyptus, and I suspect that that is what is driving it. But that is not what the world heritage criteria say you should do.

The forest policy is placing too much emphasis, or has led to too much emphasis, being placed on the eucalyptus values of a particular world heritage value. I think it is good and proper, if you are looking at the forests of the whole of the continent and Tasmania, to say, 'Where are the eucalyptus values all over the continent and Tasmania?' and say, 'Yes, we've assessed all of the eucalyptus values.' That does not mean that there might not be other values. Sure, that is a proper thing for the forest policy to do, but it is almost inverted policy making to then say, 'The Blue Mountains must be a eucalypt thematically based thing. Forget about the Royal Botanic Gardens report. Forget about the fact that it's got other values, because now we've got the forest policy and that is what everybody is focused on at the moment.' That seems to be what it is about.

The reason why the Blue Mountains is the principle focus, I would suggest, is simply a historical one. It is the birthplace of conservation. It is the area which was first reserved as a national park and it has, therefore, to be the area that the world heritage proposal has to be in. That is true, but there might be other values beyond the actual Blue Mountains National Park, and they should be assessed.

If governments then decide that, yes, they are peripheral to a core world heritage proposal based on the Blue Mountains, then fine. But firstly we have to know where all the world heritage values are—I thought that was what the Royal Botanic Gardens report in 1994 did—and then governments decide what actual areas of that are to be protected. It seems quite logical, but we seem to be doing it backwards.

This then comes down to the question of what does world heritage mean? Is it tourism and dollars, and that is why perhaps the local council wants the world heritage proposal to be centred on Katoomba, or is it a sense of national achievement that we get out of it, like the Olympics—‘Hey, we’ve got the Blue Mountains for world heritage listing’—or is it about caring for our country? It is probably all those things, but what is most important, I believe, is the exercise in rediscovering the value and worth of our natural landscapes and preserving and managing those through the world heritage listing process so that those very best areas are preserved for all time.

The Colong Foundation has a particular view as to how areas should be managed—to deal with such places as a major world heritage area next to the largest city in Australia—so that they are not being loved to death. That is through wilderness reservation, and it was through the vision of Myles Dunphy that these parks were created and are now largely managed as wilderness parks. Now I would like to show you some slides—unless you have any further questions.

CHAIR—I do not have any questions right now. Has anyone else got questions immediately?

Senator TIERNEY—Yes. I am sorry for missing the start of your presentation. We had the Colong Foundation present to us about three months ago. It is fairly unusual in Senate procedures to have a group come back three months later.

CHAIR—Perhaps I can answer that.

Senator TIERNEY—I am just asking the witness.

CHAIR—We actually asked the witness to come back because we want to focus on the Blue Mountains as one of our case studies in looking at the workings of the various levels of government in a practical situation. It was one of five issues chosen by the committee as where there does seem to be considerable delay in making decisions among the various levels of government, and that includes local government. We have discovered, unfortunately, that of a couple of local governments that we felt could add a lot to this, one in particular was not prepared to actually come before the committee and discuss its objections to world heritage listing. So this is just one example which we felt would help us to clarify the roles of the various levels of government. We are looking at a particular example where it is not working very well.

Senator TIERNEY—But we heard from the group three months ago.

CHAIR—That was a more general discussion particularly looking at some of the overall issues of Commonwealth environmental powers and general environmental protection.

Senator TIERNEY—But at that time we did not know that we were going to be doing that.

CHAIR—No, we had not made the decision. I think we have got five specific case studies that we are looking at and this is the one in New South Wales.

Mr Muir—Senator Tierney, in my submission dated 1 December you will note that I make reference to a letter that was received from the chair by the Blue Mountains World Heritage Reference Committee, of which I am a member, and the chair asked the Premier of New South Wales whether the Blue Mountains would be a possible and suitable case study for examining the Commonwealth's environmental powers at this inquiry. As a result, I took it upon myself to make a further submission to the reference committee, given that time was extremely short.

The committee said, 'We don't want to involve the National Parks and Wildlife Service. We don't want to have a huge exercise through the reference committee of making submissions together in a collective way to this inquiry because that would take up the effort and energies of the reference committee which should solely be focused upon the critical task of somehow getting the nomination approved through two governments—in the challenging times that we face—by 1 July.' That is why I am here. I am here to try and address some of the concerns and also raise some concerns because, whilst I accept the view of the community-based reference committee, I think that it is essential that the story be gotten out.

Senator, you may not accept some of the views that I have put forward and all I can suggest to you is that you look at the evidence that I have provided to the inquiry and make up your own mind. I have provided quite an extensive list of correspondence and reports as a set of exhibits to the inquiry.

Senator TIERNEY—I have not made any comment on your proposals. Would you tell me a little about the Colong Foundation: how many people are members of the Colong Foundation?

Mr Muir—We have about 200 members.

Senator TIERNEY—How long has the foundation been in existence?

Mr Muir—Since 1968. We are the sibling, if you like, of the National Parks and

Primitive Areas Council, which was established in 1934.

Senator TIERNEY—What sort of a role do your 200 members have in your making submissions to bodies like this? Do you do this on behalf of the group? Does it have any role in assessing what you will present?

Mr Muir—I am their executive director.

Senator TIERNEY—As executive director, you totally prepare it for putting in. Does it run past the group at all in any way? Do they have any chance to comment on it?

Mr Muir—Everything I do gets tabled and published. You will eventually read about it in the *Colong Bulletin*, if you are a member. I will say that the Blue Mountains world heritage proposal is supported by six local governments. It has bipartisan support, both state and federally. It has the unanimous support of the New South Wales Nature Conservation Council annual conferences. It has been ratified several times. We have 200 members. It has been the corporate objective of the Blue Mountains City Council at certain stages. I can only say that, whilst we are a small organisation, I do not think that we are a minority on this issue.

Senator TIERNEY—I was not asking that. I was asking more about the internal processes of the organisation—whether it was a collaborative effort or you just do it on behalf of the foundation. That was the essence of the question.

Mr Muir—Senator, you have raised an interesting point on the question of whether I have taken this report and tabled it. All I can say is that the honorary secretary Alex Colley, who made submission No. 14 to this inquiry, has read it. I have discussed it at a meeting of directors, but I have not as yet written an article for the *Colong Bulletin*, which would enable every member to inform themselves of the program that we are undertaking in that submission and its detail.

Senator TIERNEY—You hope to get this in place by 1 July next year to make the Olympic deadline. Given the 10-year history of this and the difficulties that have been outlined to date, what sort of hope do you see of that occurring? What processes are in place to provide some hope that that might happen?

Mr Muir—Thank you for that excellent question. We have funding of \$80,000, state and federal. We have a draft consultant brief for the preparation of the world heritage nomination for the Blue Mountains. The members of the community based reference committee have had an opportunity to comment on this brief. I have made a submission to the National Parks and Wildlife Service in regard to this brief. It has been along the lines of some of the points I have mentioned in my submission here today.

Some of the older members of the Colong Foundation think we should just go with

the original 1989 proposal. I can fully understand they suggest that because it is the original concept that was developed in 1934. The issue, in my view, has moved on. The issue is that world heritage values exist. Where they exist, they should be identified. Where they are identified, there should be decisions made by governments as to whether they should be protected or not. It is the obligation of the Commonwealth government to make sure that that happens.

Senator TIERNEY—In terms of processes, which I assume involve all levels of government, what sort of movements are occurring towards this objective at this stage?

Mr Muir—There will be a nomination report prepared. It may or may not be available at the end of March as intended by the program. There is a time line. As I have mentioned in my submission to this hearing today, there have been three time lines for the nomination. Hopefully, Senator, you will help by making relevant questions to Senator Hill in relation to that time line and ensuring that the nomination does not fall behind. They may run out of money. More money may be required at short notice.

It may be that it will require the Howard government and the Carr government to get together at a backbench level or a cabinet level—and I do not know the details—or to direct your executive to get together and sort it out and put time aside to ensure that that happens on a very tight time frame. That is the sort of thing that is needed. What is needed is actual political decision making and following up your executive to ensure that it actually happens in the tight time frame that we now find ourselves in.

Senator TIERNEY—I am just trying to grapple with what different groups are doing. At the state government level, what sort of push is on for this at the moment?

Mr Muir—The local community group, the Blue Mountains Conservation Society, is pushing very hard for it at the grassroots level. That means that the local council and the community are being sensitised to the issue yet again. As I mentioned in this submission, there is now a reaction of cynicism, because this is the third time that we have been through, ‘Yes, we are going to do it now. Now it is going to be done.’ It just so happens that this time a nomination will be prepared.

The carriage of the world heritage proposal is with the National Parks and Wildlife Service in New South Wales. The executive officer is Russell Couch. He is the manager of the Sydney zone team, which is a structure within the National Parks and Wildlife Service which deals with these sorts of matters.

Senator TIERNEY—In terms of their processes, have they got sufficient things in place for this to proceed at this point, or has the National Parks and Wildlife Service got extra work to do?

Mr Muir—The National Parks and Wildlife Service is struggling to keep up with

the Carr government's conservation initiatives, of which this is one, and I would hope it is an initiative of the Howard government as well. It would be useful if questions were asked of the New South Wales Minister for the Environment, Pam Allan, as to what is being progressed and in what form, and whether sufficiently senior people who have adequate problem solving skills and can deal with short time frames are addressing this job. Maybe that would enable the Minister for the Environment to ask that of her executive and so on, so that we actually get some priority. You could perhaps pursue that, if you wished to carry the argument forward in that direction.

Senator TIERNEY—I am interested in how you are pursuing that. What sort of interaction have you had with the minister, Pam Allan, on moving your proposal forward and up the priority list?

Mr Muir—That is a good question. Believe it or not, the environment movement of New South Wales has had very few meetings with Pam Allan. It is very difficult to meet her. That is a fact. The chief environmental groups have not met with Pam Allan at all for over a year.

Senator TIERNEY—You have tried to, though, in the last year?

Mr Muir—Yes.

Senator HOGG—Do you meet with her advisers?

Mr Muir—I attempt to. It is not easy to get to her advisers.

Senator PAYNE—Do you mean neither the Colong Foundation nor the corporate entity of the peak environment groups in New South Wales?

Mr Muir—That is correct. It is very difficult. They are too busy.

Senator HOGG—Why is it difficult? What is the problem?

Mr Muir—They do not seem to be able to schedule meetings, Senator.

Senator PAYNE—It cannot be because of sitting commitments.

Senator TIERNEY—It cannot be sitting commitments, given that they only meet 40 days in a year.

CHAIR—Can we get on with the slides?

Senator TIERNEY—I want to follow this up, because I am rather curious about it. You have a premier in this state who used to be a minister for the environment. If you

cannot get any satisfaction out of the state environment minister, have you tried the Premier?

Mr Muir—The Premier launched a photographic exhibition by the Colong Foundation, and I had about 10 seconds with him. Senator, he is too busy; he is the Premier of New South Wales. This is the problem. Everybody is all for it, but no-one has sat down and worked out how to put it into effect. The intergovernmental agreement does not help.

Senator TIERNEY—From what you are saying, nothing is moving on the state scene actually to bring this about by 1 July next.

Mr Muir—And nothing is moving on the federal scene, either. Well, it is moving: your line of questioning is trying to establish the hunt for the guilty, but there is no guilty party; it is just not being given appropriate priority in amongst all the other priorities of government. Everybody supports it, but it is just not being effected. If you ask a minister, ‘Can we . . . ?’ they will say, ‘What are you talking about, Muir? You know that we have a consultant brief for the world heritage consultant to be employed. We have allocated \$40,000 to it, and the federal government has allocated \$40,000 to it; it will happen. What’s your problem?’ The level of detail which you are asking for really has to be referred to the state minister. I cannot go to the depth that you wish to.

Senator TIERNEY—Just broadly, has the state minister indicated a priority for this particular proposal as opposed to other New South Wales proposals? Is this top of the heap, or is it third, or fifth? Do you have any indication of that?

Mr Muir—I do not wish to speak for the minister; how can I do that?

Senator TIERNEY—I just thought they might have indicated that to you.

Mr Muir—I know that if I asked them, they would say, ‘Yes, it’s going to happen; it will be a priority.’ But that does not mean anything. Schedule 8 of the intergovernmental agreement between the state and federal governments does not ensure anything. When you have problems that require political decisions between governments, there is no circuit-breaker here to solve problems. They just roll on, back and forth through changes of government. Decisions get made and then are not acted upon.

Senator HOGG—Is it your frustration that, whether it be the state or the federal government, neither of them accords the priority to this that you and your organisation accord it? Is that the nub of the problem?

Mr Muir—It is not just my organisation; as I have explained, Senator Hogg, there is broad community support for world heritage listing.

Senator HOGG—I accept that, but neither the state nor the federal government accords it the same priority that the community or your organisation, whichever you wish to use, accords it.

Mr Muir—That is correct.

Senator HOGG—So why do they not accord it the same priority? This is part of the frustration of life; we all have our priorities.

Mr Muir—That is right.

Senator HOGG—Unfortunately, my priorities are not everyone else's priorities, otherwise the world would be wonderful.

CHAIR—On top of that, is it not true that the state or the federal government—I understood it was both—have said they were hoping that this would be done by the time of the Olympics? If we move back from the Olympic time line, that leaves July next year as the last possible time line.

Senator HOGG—I accept that, but the problem seems to be that government does not give—and I am not picking on either state or federal here—the same priority to this as seems to be coming from the Colong Foundation and the community.

Senator PAYNE—It is entirely logical.

Senator HOGG—I want to know why.

Mr Muir—There are a number of issues. The National Party does not like world heritage. There are divergent views as to what world heritage means. Some believe world heritage is an international conspiracy to take over the powers of the state. These are things that come up all the time, and they are all nonsense. I think government these days has a problem: when things get difficult, they do not make strong decisions and they do not expedite decision making. They tend to put it to one side, unless it is absolutely critical to the health of the state.

The issue is that the parks are already there. It is non-controversial. It does not get the conservation campaign priority, because the areas are reserved. As a result, the conservation movement does not push it. Governments think it is a good idea, but it is not getting any pressure. If it gets discussed in the party room, I would imagine that there are divergent views and things slow down. There is no political pressure on it. That is all. All the hard problems have been solved, and that is why there is no forcing political pressure for the listing to proceed. Because it is not the Daintree being threatened by logging or the north-east rainforests being put in a similar situation or uranium mining being proposed in Kakadu, it does not get the priority, which is probably a reasonable thing, but now it

should. Now is the time, and it is the responsibility of senators and backbenchers to push it along.

Senator HOGG—I am not doubting that, but I think you summed it up very nicely yourself when you said the response you get is, ‘It is going to happen anyway.’ That seems to me to be the obstacle you are running into, that people are saying to you, ‘We don’t really know what you’re kicking up such a fuss about. Whether we miss 2000 by a month or two, at the end of the day we are not going to lose any sleep over it.’ To me that seems to be the impasse you are running into.

CHAIR—But then what happened with Macquarie Island was that they said no, because the application was not right. The risk we are running here is that, if we do not get it right in the first place, it could be not just 2002 or 2004 but 2010 or 2020.

Mr Muir—And internationally it is an embarrassment that is likely to happen and does not need to happen. It needs some clear thinking. As I have suggested, you have to work out the values first and identify those. And that has already been done in the Royal Botanic Gardens report. Then you look at the management and you look at what is achievable and put that forward.

The thing that is happening now is we are leaving out the geomorphological values, so those are half the values that are being identified. That appears to be not getting the emphasis. Then we are running on an experimental theme—the eucalypt theme—which is another handicap. Thirdly, we have a very tight time frame. It is almost as if we have set it up so that it is almost impossible to succeed, and it will only succeed if some clear thinking is done so that, when the World Heritage Committee gets its report, it does not wade through a massive document that tries to fudge it. It needs to have before it a document which explains what the world heritage values are, where they are, how they will be managed, where there are gaps and how they will be fixed.

There are some good stories to tell, such as that of the Sydney waters waste transfer scheme, which is taking the sewage out of the Blue Mountains and removing pollution from the headwater creeks and rivers in the Blue Mountains. That is a good news story and not many nation states can say they have done it. That is a major advance in integrity. We can say, ‘We’ve done that. We’re moving towards managing our parks.’

We could perhaps make commitments to have the plans of management completed by the year 2000. We could make commitments to have the wilderness areas reserved by the year 2000. That is what we could do. That would reassure the World Heritage Committee that the management will be up to world heritage standard, that the area will be managed as a world heritage area should. We might say that those areas over there which had world heritage values have also got coalmines on them, so we are not going to deal with those. Fair enough. But you have got to say where the values are and then you have got to decide what you are going to do with them. You do not try to sweep the

values under the carpet.

Senator ALLISON—I would like to ask a hypothetical question—you do not need to answer if you do not want to. If the nomination fails, are we going to see yet another buck-passing exercise, ‘It wasn’t my fault they didn’t get their act together’? What is going to happen in terms of who takes responsibility for not having got it right?

Mr Muir—The answer to that question is that usually, unless it is abysmal, you get a sort of conditional failure and you get to do it again. That is what happened with Macquarie Island. They said, ‘Well, if you’d put it up this way it would have been all right.’ That is exactly what we are looking at with the Blue Mountains. We do not have to embarrass ourselves by putting forward a poorly constructed proposal; we can do it right. With the information we have got, I can see how it can be done. I do not think that we need to embarrass ourselves again internationally by putting forward a poorly constructed proposal.

Senator ALLISON—How much money is required for a decent proposal to be put together? If \$80,000 is not enough, what is the appropriate sum?

Mr Muir—It depends on the consultant. The Royal Botanic Gardens probably did a couple of million dollars worth of work for peanuts. The Colong Foundation has spent at least \$100,000. The government does not pay the Colong anything to support it. Our applications for national estate grants for the world heritage project which Geoff Mosley put together—I believe I have provided it to you—were unfunded. Twice we requested national estate grant funding; twice we were refused. We were encouraged to make those applications: we were encouraged to provide a proposal for a world heritage nomination and put it forward as a national estate grant proposal and it was refused.

Here we are. How much money? If you want to pay top dollar and get a top consultant you could probably spend a million dollars on it or you can choose the right consultants who will do it for love. They might do it for \$80,000. But you have to be aware that when you do that those consultants will probably be working out of love for the country and of our commitment because it cannot be done properly for \$80,000.

CHAIR—I am afraid we have to get on to the slides now because we are trying to finish at 12.30. Thank you very much. We will probably ask you some more questions during the slides or perhaps after.

Overhead slides were then shown—

Mr Muir—I have decided to present a slide show which is more to do with scenery which is world heritage criterion number three rather than talk about all the world heritage values, because I believe that Dr Geoff Mosley will be making a presentation. This is the Budawang. The Budawangs are in the southern part of the Royal Botanic

Gardens proposal. They contain important basalt flows which enable the landscape to be dated.

The reason it is important to date the landscape is that the landforming processes of the Blue Mountains occurred at a rate that was for some reason 10 times slower than that of those that have made the Grand Canyon. No-one knows why that is so; they just know that if the same processes that were happening in America were happening here it would all be a peneplain, there would be no sandstone uplands—they would have been washed away by now. So there is something different happening in the Blue Mountains that no-one really understands.

This is the Kanangra-Boyd, which is the second largest wilderness and probably most scenic area of New South Wales. This slide shows us some of the sandstone formations. This is Mount Cloudmaker, which is the centre of the Kanangra-Boyd wilderness. From there you can see the city, you can see the Blue Mountains townships. Some would argue that because you can see development it should not be a wilderness. This is the second largest one in the state. It is declared. It is 111,000 hectares inside but you can see development around it from that mountain top. So it raises questions.

This is Yerranderie Peak, which happens to be a volcano. Incidentally, the fires are burning there at the moment. This is looking down from Splendour Rock into the Cox. This is a view of the upper Kowmung. I think that is another view from Splendour Rock. That is Mount Gouagang in the centre of the image, and spurs running down from the mountain, which is the highest mountain in the Blue Mountains.

This is another view of the Kowmung. This is just a presentation of scenery shots more than anything else. That is a view from Mount Solitary, still in Kanangra. That is another view from Splendour Rock, I believe. That is Axehead Mountain in the Blue Breaks, showing the cliff lines to dramatic effect. Here we are in the Grose Valley. I believe we are looking up at Mount Hay there. I may be wrong. This is a sunset shot of the Grose. That is definitely Mount Hay.

This is a pink flannel flower, one of the rare plants in the upper Blue Mountains. This is boronia, of course. This is the dwarf pine *microstrobos*. It is located on a few waterfalls around the upper Blue Mountains townships and is threatened by urban development and run-off. The local emergency services have attempted to remove the weeds from the sites where this dwarf pine is situated. It is one of the very unusual plants in the Blue Mountains. There it is in close-up.

That of course is the Wollemi pine. The Wollemi pine is proof of the value of wilderness reservation or wilderness management, because only in such a large area as Wollemi would the environmental processes be sufficiently protected and nurtured to enable this pine to survive from the Jurassic to the present. It is found in something like this. This is a slot canyon—looking down. You will notice that the vegetation at the base

of the canyon is rainforest. It is the geology, geomorphology and vegetation that combine to make the landscape.

The next slide is taken at Bent Hook Swamp, which is one of the swamps towards an area known as Putty. It is situated on an extension of a thing called the Lapstone monocline, which has prevented the continuation of erosion processes. What has happened is that the soils are very deep in this area and the drainage is impeded. Swampy, sandy soils have been created. It is a unique feature of the mountains. This is another one, called Gooche's Crater, which is located on the western side of the Blue Mountains near Newnes Plateau. Gooche's Crater cradles a sphagnum swamp in which there are lots of amphibians.

This slide shows a slot canyon in the north-west of the Wollemi National Park at a place called Dunbono Creek. These formations are called pagodas and are somewhat akin to the Bungle Bungles in nature. These are the beehive type. There is another type called the platey pagoda. This is an image of Mount Dawson. The small trees in the foreground and running up the formation give an impression of the scale of the sandstone formation. They are quite like castles in size. So it is all on a fairly human scale with very dramatic landscapes.

This is the icon of the Wollemi National Park—the Colo River. The Colo River feeds, and is essential to, the salinity balance of the Hawkesbury-Nepean River and is the main undammed tributary of it. This is a shot of the Capertee River, which gives you an impression of the expanse of Wollemi. Wollemi is the largest eucalypt forest wilderness in the world. I think that simple statement should get across to the World Heritage Committee just how significant this area is. The wilderness is about 402,000 hectares in extent, and the park is about 490,000 hectares.

This shot is taken at the northern end of Wollemi, heading down, and that drains into the Hunter. This nice formation is called Wedding Cake Mountain, which is situated in the Widden Valley. The Widden Valley is a very historic place in the upper Hunter Valley, I suppose you could call it. That is the end of the slide presentation.

CHAIR—Does anybody have any further questions?

Senator HOGG—This is still worrying me. Is an integral part of your problem the bureaucracy of the government, let alone whatever the complexion of government might be? Have we become so bureaucratic in our processes that that is the cause of your frustration?

Mr Muir—I think it may be, in this case, the fact that, firstly, it is difficult to get quality time with decision makers; secondly, even if you tell them what to do they can't do it because there is no piece of legislation which sets an administrative process in order. And that is part of my submission, Senator Hogg, that there needs to be some sort of

program, that sets performance criteria and time lines, that sees a proposal that the community wants expedited.

Here we have an area which—although some may say there are major problems with it, there aren't—is largely or almost entirely national park, areas covered by world heritage values. You can put it forward without running into the major conflicts that inevitably plagued world heritage proposals in the past, but yet it has not proceeded, and the reason it has not proceeded is that there are no administrative arrangements, even when you have a dream run. With a dream proposal with no major problems you still cannot get it through because there is no program. You actually need the heat of conflict to progress an issue. In an area where there is conflict or that is absolutely the opposite of that—say, Macquarie Island—there are virtually no issues except fishing, and I am not sure how that impacted on the world heritage property.

Senator HOGG—I have one last question. Would it be possible to progress the thing in a couple of stages if that were to expedite it, if there are areas of contention?

Mr Muir—Yes, it has been attempted in the past. I do not think the World Heritage Committee likes it because, from its point of view—put yourself in the international decision making body's position with lots of signatory nations clamouring at your door with proposals—they do not wish to revisit things or to go over and re-examine areas; they would like to have a properly considered, completely well formed proposal put to them, and to be able to say, 'Right, there it is.' You can do it that way, but the risk that you run is that you will get knocked back.

Senator TIERNEY—Finally, can I suggest that you might like to go and see the new outstanding Australian movie *Oscar and Lucinda*. During the movie they are supposed to be going from Sydney to the Bellingen Valley in the last century, but somehow they managed to go via the Blue Mountains, which I thought was a little strange. There are some absolutely spectacular shots of Blue Mountains scenery.

CHAIR—Some of us will see that tomorrow, I understand, on our site inspection.

Mr Muir—Senator, can I suggest that you go and see Michael Weiley's film *The Edge* at Katoomba when you have a chance. You will see some excellent 70-millimetre footage of the Blue Mountains in a destination movie which, incidentally, the Commonwealth government could probably borrow from the sponsor for the purpose of the nomination, take it over to Geneva—and this is serious; it has been proposed to us—and sell world heritage with that movie. That is one of the purposes of that movie, and the sponsor—who, incidentally, built the Fairmont resort—will be very happy for that to be done.

CHAIR—Thank you for your time today. Will we be seeing you tomorrow?

Mr Muir—Yes.

CHAIR—Thank you.

Luncheon adjournment

[1.06 p.m.]

ADAM, Associate Professor Paul, President, Coast and Wetlands Society Inc., PO Box A225, Sydney South, New South Wales

OASTLER, Mr Peter, 3 Wilson Lane, Darlington, New South Wales

CHAIR—Welcome. Mr Oastler, in what capacity are you appearing before the committee?

Mr Oastler—As a private citizen with some degree of expertise in environmental impact assessment. I do not represent any organisation.

CHAIR—The committee prefers all evidence to be given in public, but you may at any time request that your evidence, part of your evidence or an answer to a question be given in private and the committee will consider that request. The committee has before it submission No. 339, dated 6 August 1997, and submission No. 228, dated 23 June 1997. Are there any alterations or additions that either of you want to make to your submissions?

Prof. Adam—On the second page of our submission we made some comments about the role of the defence forces in relation to the Southern Ocean. We acknowledge that since we made those remarks the navy has made a very important contribution with recent arrests for illegal fishing in that area. We understand there is not an ability to maintain sustained patrols in that area, and indeed the recent documents on the defence strategy for the country have a very northern focus and do not really provide an indication of any long-term commitment to patrolling the Southern Ocean.

CHAIR—The committee has authorised the publication of your submissions in a separate volume. I now invite you to make an opening statement to the committee, and after that we will ask you some questions.

Mr Oastler—My submission has some general directions. I suppose their relevance to the references committee is more in its role of checking what the government does, as opposed to what is happening in parliament itself. The other part of my submission is about some specific reforms to the IGAE, the inter-governmental agreement on the environment, the National Heritage Commission Act and the Environmental Protection (Impact of Proposals) Act.

The general directions are to do with the integration of economics and ecology which, despite being well developed in the 1990s—basically, we have had 25 years to develop ecologically sustainable development principles and ideas—is still not being talked about. I get so disappointed that representatives of government, in particular, rarely ever refer to ecologically sustainable development.

With the specific reforms, there is nothing to expand on in the recommendations I have made in my submission. In particular, one of my disappointments that encouraged me to make a submission was that recommendations that have been made in the past, and inquiries that have occurred in the past, still do not get implemented. For example, the Commonwealth Environmental Protection Agency received 100 submissions and did a comprehensive review of the Environment Protection (Impact of Proposals) Act in 1994. Here we are in 1997 and it is still just sitting there. Having read through that document, the proposals make sense. They would improve the act vastly in terms of environmental protection.

Prof. Adam—I think we have covered in our submission the majority of matters that the society would wish to raise. We would stress that we believe the environment is not a single issue and that matters environmental impinge on every aspect of government. This needs to be more broadly recognised and every attempt made to reduce the turf wars which seem to occur between different levels of government, and even more strongly between different arms of the same level of government. We see those as a major impediment to any satisfactory progress in this area.

We believe that the absence in the constitution of reference to the environment is really like a historic accident and reflects the sentiments of the time. If the constitution were being written now, we think it would be automatic that environmental matters would be extremely high on the agenda. We would see it as appropriate that the Commonwealth use what powers it has, even if that sometimes involves a degree of imagination, at every opportunity rather than try to step back from its commitment.

The environment cannot be conveniently chopped up into little bits. It requires a holistic approach. Even where the Commonwealth is not the operating agency, we see that the Commonwealth could take a much stronger role in trying to ensure agreement between states and also in supporting the activities of both state and local government.

CHAIR—Looking at, for example, Ramsar and the issues related to the protection of wetlands, how do you think the regime can be improved? Do we have problems at an international level with the general agreement? Do we have problems at the federal level or the state level?

Prof. Adam—I think we have problems with people understanding what the Ramsar Convention is about because the Ramsar Convention has evolved over the 25 years since it first came into being. Stressing the importance of birds is now a lesser feature of the convention than it used to be. So it is now much more a general wetlands convention. It is still perceived, though, as being a convention that is related to specific sites which are identified as being of international importance. That is only one aspect of the convention. In our view, the most important aspect is its stress on wise use of all wetlands resources. That side of the convention, in our view, needs to be pushed more—the fact that we need to look at all wetlands. To that end, we commend the

Commonwealth for its introduction of a national wetlands policy, and we look forward to seeing that being implemented.

CHAIR—Do you think that wetlands policy has sufficient enforcement provisions within it to actually get some results?

Prof. Adam—Yes and no. Clearly, as a policy it can only directly influence the Commonwealth in its role as a land-holder or in the exercise of its provisions under legislation. It cannot affect the management of wetlands in the states, except in so far as it might be linked to funding programs. The Commonwealth is an important land-holder and, apart from areas like Kakadu, there are numerous wetlands of extreme importance on Department of Defence lands and also on FAC lands. So it is important in that respect.

There was one particular aspect of the policy which we, as a society, would wish to see pushed, and it is one which has not yet received a great deal of publicity. There is a commitment in the policy to investigate alternatives to peat. The issue of peat mining in the Northern Hemisphere has been a very controversial one. The issue has not really arisen much in the Southern Hemisphere, but Australia is a major importer of peat, which means that we are party to the destruction of wetlands overseas, and there is also a significant peat mining operation in Australia at Wingecarribee. I would like to place on record our thanks to both the department and the minister for their representations at the recent mining wardens inquiry.

In the past couple of weeks the peat issue has possibly become more important because of whatever commitments—I have not seen the details—we agreed to at Kyoto because any peat that is mined will, in what it is subsequently used for, eventually oxidise and become carbon dioxide. So, although there is debate as to the exact role in greenhouse gas cycles of peat wetlands when they are in situ, there is no doubt at all that, once they are mined, mined peat is a direct contribution to carbon dioxide. Therefore there is the possibility of the Commonwealth linking its obligations under Ramsar—which at its last meeting recognised peatlands as being one of the neglected aspects of wetlands around the world—and also under the greenhouse convention and actually achieving something.

SOCOG for the Olympics have declared themselves peat free—no peat can be used in horticultural or landscaping projects at the Olympics. The Commonwealth, through its various agencies, is a major user of landscaping—whenever you build new buildings, you stick palm trees or whatever in a pot outside. In the production of those materials and in their maintenance a lot of peat and other products are used. In that respect the Commonwealth could take a major lead by also having a requirement in its contracts with horticulturalists that peat not be used.

Senator HOGG—I did not know we were major importers of peat.

Prof. Adam—Yes, we are—substantial amounts from Germany and Russia in

particular.

Senator HOGG—Where is it used? Primarily in gardening and horticulture?

Prof. Adam—Yes, in gardening and in the horticultural trade in potting compost. A very major use is the mushroom industry because the casing that goes over the top of the containers in which mushrooms are growing is a layer of peat in most cases. A wide variety of substitutes is available. The Botanic Gardens here in Sydney has done extensive trials and is quite convinced that the substitutes are every bit as acceptable as peat itself. The substitutes have the advantage that they value add to what would otherwise be wasted. The major substitutes come from copra from coconuts, and there is also from the Riverina a product that is made from rice hulls, which is very satisfactory. So there are perfectly adequate alternatives and we have the opportunity of developing industries based on them rather than importing the stuff from overseas.

Senator HOGG—Where are the major peat reserves in Australia? Are they major?

Prof. Adam—They are not major on a world scale. There are peat areas in Tasmania, in the south-west of Western Australia and at various high altitude sites up the east coast and in some coastal dune systems. The largest operating mine, which certainly accounts for more than 90 per cent of the output from Australia at the moment, is at Wingecarribee near Moss Vale to the south of here. During the course of this year there has been a mining wardens inquiry into the renewal of its leases. We have not yet seen what the mining warden has recommended, but there was very substantial opposition and, as I say, the Commonwealth department put in a submission to that inquiry opposing the continuation of the mining.

CHAIR—Does the Commonwealth have any remedial powers?

Prof. Adam—Not directly. Potentially it could because one of the interesting features of that particular mine is that, even though Australia is a major importer of peat, it also exports peat. It has exported substantial quantities of peat to China, of all places, in recent years for use in golf courses. As I understand it, peat has not been recognised as one of those substances whose import or export triggers any consideration by the Commonwealth.

Mr Oastler—There is no reason why that would not trigger the Environmental Protection (Impact of Proposals) Act if there is an export involved in it, as far as my understanding goes. One of the things I have said in my submission is that translating international agreements such as Ramsar into effect in the nation state of Australia requires substantive laws.

When the environmental laws that Australia has were passed in the 1970s, which is when most of them came about, suddenly, for the first time, environmental considerations

had to be taken into account in development decisions. Now that we are in the 1990s, we are in a very different situation. The laws of the time were very much procedural. We have reached a point where things are getting much more urgent and the laws need to become more substantive. So rather than simply a procedure being gone through and then the decision being at the discretion of an action minister at the end of the process, there have to be some clauses in the acts that say that if there are going to be adverse impacts on the environment, then the decision has to be 'no'. This is where the reform needs to occur, now that we have reached a new point in our history as we go into the 21st century.

CHAIR—You mentioned environmental impact statements. Do you see a problem with the triggering of those or the way in which they are conducted?

Mr Oastler—Yes, I see a problem with the way they are conducted in particular, but most of that is detailed in the submission. I have gone through the triggering, the actual objective of environmental impact assessment and the preparation of assessment documents. One of the key areas that is worth emphasising in this hearing is in the final decision. Where a mission-orientated department or bureaucracy, such as the department of resources, which is more concerned about the products of mining than about the impacts on the environment, is left with that decision, then the decision is almost always going to be 'yes'. If the decision is to go ahead with the development, it may be with some kind of minimum changes that make it more environmentally sound. But if the decision were put in the hands of a department that is institutionally committed to the protection of the environment, better decisions are going to be made.

CHAIR—Do you have anything to add?

Prof. Adam—Yes, I would support what has just been said. We as a society have a history of long involvement with Botany Bay. Indeed, the society's formation really goes back to studies that were conducted in Botany Bay in the 1970s. Here, in a sense, we see currently the failures at least of the Commonwealth EIS system in relation to the third runway. The third runway EIS has done a great deal of damage to the credibility of EISs in general. Most attention has been placed on the flight paths aspect of that, but there are also impacts within Botany Bay itself which we were assured were not going to happen and which have, particularly in relation to Towra Point.

Towra Point is a Ramsar site on the southern side of Botany Bay which is suffering substantial erosion and, indeed, may not exist for very much longer unless something can be done about it. The exact causes of that erosion are still debated but at least in part it was related to changes in wave energy following the construction of Port Botany in the 1970s. But that has recently been added to by changes to the wave patterns as a result of the third runway.

One of the strange results of the whole process was that the Federal Airports

Corporation has ended up with the carriage of the environmental management plan for Botany Bay. Although we see an environmental management plan for Botany Bay as being a very desirable and, indeed, necessary thing, we have some difficulty with seeing that that is a role of the Federal Airports Corporation. Nevertheless, as it stands at the moment, it is responsible. In one respect this has led to complete non-action for several years.

One of the impacts that was predicted about the construction of the third runway was the loss of wading bird habitat—for birds covered under the JAMBA and CAMBA conventions as well as under Ramsar—with the loss of habitat on the north side of Botany Bay. In the consent that was given to the third runway, it was suggested that the FAC investigate and carry out habitat mitigation. Even if it were possible, the problem with that as a proposal is: where are you going to mitigate and create new habitat where there is not already something of value?

What eventually came out of that system was a proposal, which was subsequently subject to an EIS, for construction of habitat within the aquatic reserve off Towra Point. Scarcely surprisingly, New South Wales fisheries, who are responsible for the aquatic reserve said, ‘You can’t create new habitat for waders, even if that is important, by destroying our aquatic reserve and destroying the habitat of sea grasses.’ In fact, nothing has happened now for several years because there has been this stand-off. If the proposal ever had any value—and we could debate that—then four or five years after the event any birds which were displaced from the north side of Botany Bay with nowhere to go to would not have been hanging around for the past four or five years while it was argued what to do about it.

CHAIR—While they sorted it out.

Prof. Adam—This strikes us as one of the most farcical exercises that one could imagine and one on which a great deal of money has been spent. The whole process was deeply flawed because of a failure of the Commonwealth government of the day to be honest. It could have said, ‘We are going to build this airport because we see enormous benefits—economic, social and whatever—and, unfortunately, it is going to involve loss of habitat and loss of birds which are otherwise important.’

What it tried to do was have it both ways and say, ‘We are going to have the airport because we need it; we have this problem with the birds, but don’t you worry about that because we can create some new habitat somewhere else,’ without ever apparently going through the full details of what that implied before it happened. As a result, we have subsequently spent even more money on an EIS for a proposal which, for a variety of reasons, is not acceptable to those agencies which have to give approval. So nothing happens.

Senator HOGG—Where have the birds gone?

Prof. Adam—Who knows?

Senator HOGG—That is an important consideration.

Prof. Adam—Yes, it is an important consideration. What appears to happen is that the larger species of birds like curlews and bartailed godwits have moved across. The smaller species of wader, such as sharp-tailed sandpipers and curlew sandpipers, have not found a suitable habitat. One does not really exist. A number of small wetlands on the north side of Botany Bay have been used by some of those birds. Indeed, at the weekend the New South Wales Minister for Urban Affairs and Planning announced the approval for the M5 which destroys a wetlands recognised by the Commonwealth on the Inventory of Important Wetlands in Australia and which has been used by about 200 sharp-tailed sandpipers since the runway was built. Presumably the majority of the birds are dispersed somewhere else up and down the east coast or have simply not found any habitat. We do not really know.

Mr Oastler—This is how we get to the point where we have endangered species.

Senator HOGG—This also gets to one of my hobby horses that came up at another inquiry. I think it is raised in one of your recommendations. We do not really have a very good database on what is where and how things change over time. What do we need to do about that?

Mr Oastler—We have started doing it with state of the environment reporting and that is something which obviously needs to continue. There could also be a specific allocation of funding to establish a central environmental information centre at the Commonwealth level. These things have to be done at the Commonwealth level because ecology does not recognise state boundaries. Birds migrate from Tasmania to Victoria and to Siberia. As well, there are the many other trans-boundary issues, whether of atmospheric pollution or of what travels down rivers from Queensland to northern New South Wales. It has to be under Commonwealth level. A central database is obviously going to be something that will create one of those words we like to use at the moment—that is, ‘certainty’ for everybody.

Prof. Adam—I would doubt that it would create certainty. The state of the environment reporting unit within Environment Australia has a consultancy looking at assembling data on coastal habitats in Australia. I had a meeting with the consultants yesterday. There are a number of problems. Existing huge databases or huge amounts of information in many agencies will require a huge investment if they are ever to be converted to an electronic form.

There are hundreds of thousands of specimens in museums and herbaria, for example, around the country. Most organisations now can electronically database new accessions, but they do not have the resources to go back to the past, and yet that

information that relates to those specimens is still extremely important. Simply collecting data and adding to it is going to be a very expensive task. Whether it is done by the states collaboratively or the Commonwealth government, it is going to be an exercise way and above what is currently funded. In my professional capacity at a university, bodies like the ARC do not look kindly, for obvious reasons related to their own charters, at exercises of simply data collection. Yet that is what we need in these areas. Bodies like ABRIS, although that has had a recent return to some sort of funding, have for 20-odd years been substantially under-funded in relation to the task at hand. We do have a real problem.

Problems of access to data are important considerations. If these databases are assembled, who has access to the data and at what cost? I know that in New South Wales, because of the development of threatened species legislation, people need to know where records for particular rare and endangered species might have been made from. There is an issue that, if people go along to the agencies who they think might have this data, in this current age they are required to spend considerable sums to find out this information. That can be considerably galling if you are one of the people who originally provided much of the information and you cannot get it back. That is a very real problem. Regardless of who assembles these databases, the issue of access is one that will have to be addressed. There will clearly be conflict between the public right to know and economic rationalism.

Senator HOGG—What about the issue of the sort of model that needs to be put in place? One could imagine the federal government having the overarching responsibility. How does one determine who will have the lower levels of responsibility and what they will be if one is to have a system that works in this nation? It seems to me that everything is so disparate, whether it be the source of the information, government or whatever.

Prof. Adam—I understand the state of environment reporting unit is trying to assemble essentially what is called a meta database, which does not contain the data but tells people who access it where the data might be. It will be a database of databases rather than the database itself. That will require collaboration across a whole range of agencies to tell the Commonwealth what data they have and to make sure that it is in some sort of comparable form.

Of course, it is not just states. In New South Wales, since the Local Government Act was amended we have had a requirement that local councils prepare state of the environment reports. Some state of the environment reports produced by councils in New South Wales are very useful documents. Councils are beginning to assemble their own databases to do this. But, again, unless there is some attempt at linking those, the problem you allude to is going to get worse.

Senator HOGG—Yes. What sort of model do we need? Is it one where the federal government is all powerful on these issues and takes over the role from local and state government or is there still a role for local and state governments there?

Prof. Adam—Most of the information that goes into those databases, particularly at the local level, is provided by local residents. They are more likely to cooperate if they feel they have some ownership of the end product. I see the Commonwealth's role more in providing protocols and standards to make sure that things can be interchanged, and in providing this meta database that provides the links rather than actually maintaining the databases themselves. There will be some areas where, because of direct Commonwealth funding or research involvement, the Commonwealth will have the primary databases. It would be both impractical and probably not desirable to have one mega database of actual original data.

CHAIR—When you talk about links, are you looking at someone who has to do an environmental impact statement on a particular project or development having to refer back to base data on the species that are there and the particular habitat? Is that what you are referring to?

Prof. Adam—Yes. They could, if it was a coastal matter, go to this coastal database that Environment Australia is assembling and say, 'Yes, for that site we can see that there are data in the Australian Museum' or 'the National Herbarium' or 'the EPA' or that 'somebody at the university of New England has got some data,' and then contact them. That would also have the advantage that they would be then going directly to the people who could value-add to it because they would actually know something more about it. If it was all on a central database all you are likely to get is the data whereas, in fact, you could possibly find more information when you go to the original source. You can also get some assessment of quality control. A real problem with huge databases is garbage in, garbage out. Unless you actually have some handle on how it was collected, who it was collected by and whatever then you are not sure you believe it.

Senator ALLISON—That leads to the question which was raised this morning about the EIS process and whether or not it should be much more independent than it currently is and whether there ought to be a statutory body which sees to that independence, that is, a proponent funds the study but the choice of who does it is up to another organisation such as a statutory body. Is there an argument for such a statutory body to maintain a database, as you are suggesting, and to do that other part of the equation?

Prof. Adam—The databases would have a great deal of use other than just for EISs so I do not see that there is a need for that. The question about whether there should be is one that has been debated for a long time and it is certainly a view that I would support, even more so when you have a situation that the people who prepare the EIS, if they are a government department, end up making the decision as to whether or not to accept it. The process is not one, at the moment, which is conducive to public credibility. The decisions may be perfectly correct in terms of the data and the information available but you would have a hard job in many cases selling that to the public who really see it as an expensive rubber stamping operation to give a degree of environmental respectability to

something which is not at heart environmental.

Senator ALLISON—What is a more appropriate model?

Prof. Adam—In my view a more appropriate model would be one where the proponent provides money to some independent body which allocates that money to the person who carries out the EIS to make sure there was a more than arms length division between those carrying out the EIS and the actual proponent of the operation.

Senator ALLISON—Should that body also set benchmarks, if you like, for approval or otherwise? Should there be a point at which a proposal is unacceptable, based on data that is already set by—

Prof. Adam—No. It seems to me that that is very much part of the political process. What we need is transparency, so that, when the decision is made, we know what the consequences of that decision are. It seems to me that in a political context there may be occasions when the value judgment that is made is that there is a greater public good to be served by this. There will be this environmental consequence, but that is a price that we are prepared to pay. What happens at the moment is that, miraculously, nearly every EIS concludes that there is not going to be any significant environmental impact. So everybody can be happy. They can make their decisions, because it is not going to have any effect.

To take an extreme example, it would seem to me that, in a political system, if a government felt that destroying the Great Barrier Reef were to the greater good, it should not be prevented from making a decision to do so. It would have to wear all the consequences that would follow, but I do not think you can set arbitrary limits to get out of the decision making process. One of the problems with the whole EIS system at the moment is that it almost seems to have been designed to prevent the proper exercise of political judgment. The documents carefully tell you that there is no problem, so you do not have to think about the implications of what you are doing. It becomes a whole rubber stamping process.

And I think it would aid all of us if environmental impact statements produced reports which said, ‘This is what is at risk. These are the advantages. You, as a decision maker—be it within a department or at a high level of government—have got to weigh those up and justify your decision,’ rather than everything seemingly happening inevitably and automatically.

Mr Oastler—I would like to present another argument about that. Generally it has been my understanding that the environmental movement would prefer that the consultant carrying out the EIS not be hired by the proponent of the development, and so I know that what I am about to say is very controversial. Nevertheless, an element of the EIS process that perhaps has been successful to some degree is the fact that consideration of

environmental impacts is integrated into the process of development. That means that the proponent is actually thinking about what sorts of impacts their proposal is likely to have. It might be argued that in some cases proposals never get off the drawing board because the impacts are going to be too great.

Senator ALLISON—Do you have any evidence of that?

Mr Oastler—Not really. No, I cannot say that I can think of any particular case studies.

Prof. Adam—There are certainly cases now coming up in New South Wales where developers discover that there are threatened species on the land concerned and they, at least for the moment, decide not to go ahead with putting forward proposals because they reckon they will not get them through.

Senator ALLISON—So you are saying that some sorting goes on even before the proposal gets off the ground?

Mr Oastler—One of the things that needs to be added there is that the process also needs to be open, so that the public can have an input and can monitor what should be included in an EIS. One of the problems that I have is that the EIS is seen as the end result. The environmental impact statement either recommends the proposal goes ahead or that it does not go ahead. I think that is not where the decision should ever be made. The EIS is simply part of the process. Other people should be allowed to input into that as well, if you hear what I am saying. So it should not be just the EIS that the decision is made on; it should be the EIS plus the public submissions, and then the decision should still be made by the government authority.

CHAIR—I am just looking at where you see the community fitting in to the issues generally. I do not mind what level of government we are looking at. How can the community have a greater say in the decision making processes?

Prof. Adam—At the moment the community does have a greater say under the Commonwealth legislation than it does under the state legislation for example. Under the Commonwealth's Environment Protection (Impact of Proposals) Act there is the opportunity for public submissions as to the scope of an EIS. In New South Wales there is not. The scope of the EIS is determined by correspondence between the proponent and the Director of Urban Affairs and Planning, and there is no public input in that state. In the Commonwealth system, the public does have the opportunity to flag issues which it thinks are important, which might not have otherwise been thought about until much later. The disadvantage under the Commonwealth legislation is that the opportunity to have an EIS is much more discretionary than it is under New South Wales legislation.

CHAIR—Should the community be able to initiate an EIS?

Prof. Adam—I think they should be able to propose one and actually have some reasonable certainty that if they have a strong case it would be granted. Again, in a sense, in New South Wales, the public has the opportunity, at least for certain classes of development, to demand a public inquiry. For matters that have been called in by the government in New South Wales, if a member of the public asks for a public inquiry, it is almost inevitable that that will be granted. That does not happen under the Commonwealth system.

But the biggest failing of both systems is their failure to properly address cumulative impacts and the interactions between developments. In many cases that is going to be very difficult because you do not know what is going to happen. One of the worrying things is that, even when you know that other developments are in train, there is very little attempt to link them. Botany Bay is an example of everything going wrong, but the third runway EIS considered the impacts of the third runway. We would argue that it did not consider them very well, but that was all it was addressing. But we know, because it has been government policy for many years, that there will be in the near future—some time early next century—considerable expansion of Port Botany. At least conceptually, that has been on the drawing board. The EIS for the third runway did not consider what the interaction is going to be if we build this runway with the dredging patterns that are necessary for the extension of the port because it was in the EIS for the third runway.

At the present time there is an inquiry into a co-generation plant on the south side of Botany Bay. Again, when the port is built, there is the potential for changes to the bathymetry of Botany Bay which could affect how the heating field from this power development will go there. But the inquiry into that is just considering the power development and not these other things. So I think there is a strong case for saying that EISs have to be considered within a planning framework rather than as they are at the moment—basically, just independent pieces of a jigsaw, and nobody ever gets to put the jigsaw together.

CHAIR—Has there been a full biological survey of Botany Bay to look at what we are talking about, from what is on the bottom to what is in the water to what is on the shore?

Prof. Adam—There was a very detailed study by the New South Wales government in the late 1970s and early 1980s carried out by the then State Pollution Control Commission, and that produced a management plan for Botany Bay. The few easy bits which did not actually involve any problems have been carried out; all the difficult bits have been quietly forgotten about.

CHAIR—And that is really at state government level?

Prof. Adam—That was at state government level.

CHAIR—How involved are the various local councils around Botany Bay in working towards that, or using it, or have they largely ignored it?

Prof. Adam—As I understand it, the councils around Botany Bay are constantly agitating for some proper coherent approach, but one gets the impression that it is not convenient to listen to them. There is a group of councils around Botany Bay who do present a common front, but it does not appear to have much influence.

Senator ALLISON—Your submission suggests that the EIA regime should apply to all developments; is that correct?

Prof. Adam—Yes.

Senator ALLISON—Is that state or Commonwealth?

Prof. Adam—This is one area where I think there needs to be considerable discussion between the states and the Commonwealth to make sure that things do not slip through the gaps. The procedures in New South Wales apply to all developments to which they can apply. Whether or not they result in an environmental impact statement depends upon whether it is a designated development, where it is occurring and whatever, but there is a regime, and aspects of that regime we would consider desirable for all EIA processes, regardless of whether they were Commonwealth or not.

So the transparency, the rights of appeal and so on in our view should apply to developers whether they are operating under the Commonwealth legislation or the state legislation. They should be much more similar than they are at the moment. They are very different regimes at present. Although the public has this one, plus the Commonwealth system of being able to influence what is considered in the EIS, the ability subsequently of the public to influence things under the Commonwealth process are much less than they are under the state system.

As for the ability to take things to court, they frequently say, ‘This would be terrible. We would never get anything done.’ If one looks at what happens in New South Wales, the number of things that go to court are really very small compared to the total number of developments. Most of the stuff in the Land and Environment Court is really neighbourhood disputes more than big issues. But of those issues which do go to court, quite a large proportion of environmental groups taking those actions are successful, which suggests that they do have a case in these big issues. There is no way that anybody could mount a third party challenge to matters under the Commonwealth legislation at the moment.

Senator ALLISON—You say there is a big difference between Commonwealth and the state. What about state by state? Would you advocate uniform legislation statewide and how different are they at present?

Prof. Adam—They are very different. Uniform legislation would have advantages for developers. They would not have to keep working out what the laws were in any particular case and they would know that they had standard rules. And there would be advantages for the public if they had the same rights in every state, which at the moment they would not have.

Senator ALLISON—Can I go back to world heritage? You suggest that there are advantages in Commonwealth/state cooperation—and everybody would agree with that I am sure—but that as a last resort the Commonwealth ought to be prepared to step in and act. Can you discuss what the implications of a more confrontational approach might be both for the longer term interests of the environment and the more political question of Commonwealth/state relations?

Prof. Adam—I can see that at least in the short term this might have difficulties for Commonwealth/state relations, as of course happened in the past in relation to North Queensland. But in the longer term—even if not yet openly—there would be general recognition that the world heritage listing in North Queensland was justifiable and correct and that there are positive advantages that flow from it.

But, for example, we suggest in our submission that we think there is a case for the Lake Eyre Basin being listed. Now, if one had a situation where one state supported it and the other major state in the basin did not, if the Commonwealth were convinced by the totality of the argument, then we would suggest that the Commonwealth should go ahead with the nomination. Again, we could suspect that in the long term that would be seen to be a correct decision.

Equally, of course, we would recognise that in Australia, because of the particular role of the Commonwealth in relation to world heritage listing, there is the potential for calls for world heritage listing to be used as a political weapon. Certainly on a world scale some of the things that go on in Australia cause people overseas to raise eyebrows in that regard. Certainly not every claim that something ought to be listed under the World Heritage List really would meet the criteria. But, where they do and the process of assessment that is carried out is fairly rigorous, then we would see that the Commonwealth should perhaps go ahead.

Senator ALLISON—I suppose the political aspect of this is whether or not we would see a further polarisation. A lot of people are looking for leadership and, when you get into a dog fight, you are likely to get that divisiveness and not a cooperative environment.

Prof. Adam—On the other hand, one could say that where there has been cooperation for many years it did not greatly benefit those who were cooperative. From a New South Wales perspective, New South Wales was a state which under both political parties actively supported world heritage listing and prepared listings which went to the

Commonwealth and, of course, the money from the Commonwealth went to the recalcitrant states to keep them on side and New South Wales ended up carrying its own burden. So that is being cooperative; there may be advantages in objecting. Although it is not related to the society's role in this, I was very heavily involved in the world heritage listing of the New South Wales rainforest. I actually wrote the submission. I wrote the nomination documents so I have been a very active player in that process and I have been able to see that side of it.

Senator ALLISON—You also talk about the advantage of a diversity of management regimes for protected areas of world heritage. Can you explain the reason for that?

Prof. Adam—That is reserve areas in general. What I am really arguing is that there is probably no one correct approach for managing every natural area. Even if there were, we certainly do not know what it is. So, rather than saying we might propose some universal objectives for how protected areas should be managed, I think it would be wrong to be prescriptive as to actually how we should reach those goals.

We have an opportunity in that the state agencies responsible carry out experiments, if you like, of nine different experimental approaches and, provided there is proper feedback and provided that when we realise something has gone wrong we address it, I think there are advantages. If we had one unified system and ended up with one unified approach, that might be fine if it worked but, when we started making mistakes or if things started to go wrong, we would not have our other examples to look at to realise what we might have to do next.

So in general terms we have to regard land management in our present state of knowledge as an experiment. That means all our management regimes have to have feedback and mechanisms to correct mistakes when we know they have gone wrong, but there are also advantages in having several different examples to look at in this process. Although there are occasional calls that we really ought to have, say, a national parks service in Australia based on the United States or Canadian models so that we have national uniformity, provided we have national uniformity in terms of objectives and standards I and at least those members who helped to write this do not actually see it as necessary that everything be done the same everywhere.

Senator ALLISON—Defining the national interest is fairly central to this committee's work on these terms of reference. You give an example of the Murray-Darling Basin and the Border Rivers commissions as one where the national interest might be supported by the Commonwealth but not by the states. Can you assist the committee to define what is in the national interest and what is not?

Prof. Adam—With those parts of the environment that are indivisible, there is a national interest in things like water quality, air quality and species which move between

boundaries. But I think there is also an interest which can be at least addressed at the national level in cases like the Murray-Darling Basin where there are several states involved, where there are clearly advantages both to the environment and the populations of most of those states in there being some commonality of approach. Yet you have got, as in this case, Queensland still proposing to regulate rivers which are the head waters of rivers which otherwise are important in New South Wales and South Australia. So in a sense there are two sorts of national interest: one is the national interest because these things are genuinely national and the other is the sort of national interest of the federal government being a coordinator, an umpire or whatever for the benefit of different states as against competing interests.

CHAIR—In your submission you talk about national significance as well and you suggest that there should be some community involvement in deciding what is of national significance. How do you see that working?

Mr Oastler—Community involvement in determining the national interest is not a very easy one really. Are you referring to a specific—

CHAIR—In your submission, I think on page 6, you look at nationally significant conservation values and you say there should be a process for public nomination or public involvement. I was wondering if you could expand a little on that in terms of how you saw the community being able to perhaps nominate or in some way get involved in that process?

Mr Oastler—I think the capabilities are there in the community, because there is a lot of expertise tied up in non-government organisations, such as the Wetlands Society. The initiative is usually taken by these organisations anyway. As long as the processes are open to that—that is my main concern. It comes down again to law and to openness for the public to challenge decisions in the courts. It is the same thing again: instead of it resulting in a floodgate, it will actually result in better decisions being made in the first place, because of the threat, if the decisions are wrong, that they can be challenged by somebody. I just think anywhere where you can open the processes up to the community you can get better outcomes, because you can have more input.

Senator ALLISON—I have a question about your submission, Professor Adam, relating to local government's role. Could you expand on the idea of the Commonwealth perhaps tying grants through the states to local government and how you see local government's role being improved in relation to environment objectives?

Prof. Adam—A lot of extra burdens have been placed on local government, certainly in New South Wales in recent years, without any extra resources. The main things are access to information and access to expertise. Local government in New South Wales is required to report on a whole range of matters in its state of environment reports, and most councils do not have the expertise in all of those areas. The extra resourcing that

is required is certainly to provide greater access to information. With the development of databases, provided the standards and comparability can be maintained, that possibly can be addressed.

In terms of expertise, perhaps what is wanted are at least some regional centres of expertise upon which councils can call. I think it would be unnecessary and uneconomic for every council to have an expert in every field just to meet those requirements, whereas on a regional basis they perhaps need centres which they can call upon. In some cases, rather than being a permanent centre, it may be that councils need to call upon the expertise of some particular division of CSIRO, say, at the Commonwealth level. CSIRO has a long history of involvement with land management and environmental issues, and very considerable expertise.

One thing the Commonwealth perhaps could do would be to institute a regime of access; that, rather than councils having to employ CSIRO as a consultant, funding be set aside, say, within CSIRO's budget to provide this sort of information for local councils. If this were done, and if councils were linked together, one of the great advantages would be that not only would we find out what we do know, we could probably identify some critical general absences of information and then direct funding to fill those particular information gaps, of which I am sure there are many. Everybody thinks everybody else is doing something and until you actually bring everything together, you do not realise where the gaps are.

Senator ALLISON—In New Zealand there is a system of government called the regional councils at which the resource management act is implemented, as I understand it. That is a level which does not deliver services but it does regulate and it does determine infrastructure planning and resource management. Are you familiar with those councils? Perhaps you could tell the committee what you think of that system?

Prof. Adam—One of the clear features of Australia is that, although it is relatively recent history, our local government and our state boundaries are for the most part biologically arbitrary. There is a lot of merit in environmental terms in thinking in different sorts of units that make more sense. To some extent, we are moving toward that with total catchment management and so on. I would strongly agree that there perhaps ought to be much greater consideration for thinking up appropriate administrative units that make biological or biophysical sense and seeking to promote regional councils that could be within existing states or, where appropriate, across state boundaries. It does not make much sense if you suddenly chop off a river halfway down. That model has a lot to commend it.

The Commonwealth government is developing regionalisation of Australia. The Commonwealth has something called IBRA—the interim biological regionalisation of Australia—which at least for certain planning purposes, but not for all, has been adopted officially in New South Wales. That is a model which the Commonwealth, states and local government perhaps could give much greater consideration to.

Senator ALLISON—Thank you.

CHAIR—I thank both of you for your time.

[2.08 p.m.]

ROBINSON, Dr Brian John, PO Box 256, Milsons Point, New South Wales

CHAIR—I welcome Dr Brian Robinson. Do you have any comments to make on the capacity in which you appear?

Dr Robinson—I am one of many billion owners of the world's heritage.

CHAIR—The committee prefers all evidence to be given in public, but you may at any time ask that your evidence, part of it or an answer to a question be given in camera or in private, and the committee will consider that request. We have before us submission No. 26 dated 12 June 1997. Are there any alterations or additions that you would like to make to that submission at this time?

Dr Robinson—I have made a number of addenda to the submission and the last of these was faxed to the Senate office yesterday and I believe was faxed on here this morning.

CHAIR—Thank you. We have authorised the publication of your submission in a separate volume. I now invite you to speak to the committee and, after your opening remarks, we will be asking you some questions.

Dr Robinson—I believe you have a copy of my opening remarks. The submissions were based on information collected for the National Committee for the Environment at the request of the President of the Australian Academy of Science, Sir Gustav Nossal. The fellows of the Academy of Science monitor standards of scientific evidence, particularly the reproducibility of results and proper peer review. We were appalled by the secrecy and suppression of information such as those detailed in the submissions.

I was asked to investigate two developments in North Queensland: the first at Port Hinchinbrook in the Hinchinbrook Channel and the second at Nelly Bay on Magnetic Island. Both submissions highlight the need for much greater environmental safeguards in or adjacent to world heritage areas. Existing environmental standards have demonstrably failed.

I have tried to reduce my remarks to cite three concerns. The first is the avoidance or the blatant abuse of the process of environmental impact assessment. I would make a few points about that: those preparing environmental impact statements lack accreditation and, most notably, independence—a point made in the previous session here. These reports were ignored or suppressed when they were contrary to the wishes of the developer. Proper monitoring of environmental impacts continues to be absent. I regard that the independent monitoring of impacts is essential. Also I suggest that the Commonwealth government must be involved earlier in determining the terms of reference for an EIS and

during the EIS process—not belatedly picking up unsatisfactory EISs generated by councils, state governments and consultants on behalf of developers.

A second concern is the failure to address world heritage obligations. Commonwealth guidelines are sorely needed for development to take place in world heritage regions. It has been pointed out to me that the obligations on government were confirmed by the High Court in the Franklin Dam case. The High Court cited four obligations which were protection, conservation, presentation and transmittal to future generations.

A third point is the lack of adequate guarantees or insurance where developments collapse, developers go bankrupt and leave devastation on public land or water. For example, what guarantees were there to deal with the devastation left by Tekin Pty Ltd at Oyster Point or by Magnetic Keys Pty Ltd at Nelly Bay? They left a bank guarantee for a paltry \$100,000. At Oyster Point in the Hinchinbrook Channel, Cardwell Properties Pty Ltd have a bond of only \$200,000 for its obligations on foreshore management. At Nelly Bay, we wonder what guarantees are now required for the new proposal by Nelly Bay Harbour Pty Ltd. A final remark is that abandoned and degraded sites, where developments have failed and developers have gone bankrupt, invite excessive development in the future. That is the end of my introductory remarks.

Senator ALLISON—Dr Robinson, what would you see as being appropriate guarantees or bonds? Is it just the amount of money or is that not a sensible system? What would you like to see in its place?

Dr Robinson—I think both aspects are important. For example, in the case of Magnetic Keys Pty Ltd, the original requirement—and I think this started from the Queensland government and it certainly was a requirement in the issue of a permit by GBRMPA—was that the company have an insurance policy for \$20 million. The company later came back to GBRMPA and said, ‘There’s no-one prepared to provide insurance of \$20 million against our not being able to complete the project.’ GBRMPA—and this is a very serious point—waived the requirement for the \$20 million insurance and instead substituted a bond of \$100,000. When the project fell flat on its face a year later, \$80,000 of that was used to build a culvert to drain the area so that the water did not go stagnant; and another \$20,000 was used to build a drain so that rainwater in the wet season would not run directly from a quarry on the edge of the Great Barrier Reef Marine Park. But these were very minor civil engineering works—\$100,000 covers nothing. After the work done by Cardwell Properties Pty Ltd in just the last few weeks, the amount of \$200,000 required in the Commonwealth approval of the development is an absolutely paltry sum to restore the foreshore of the Hinchinbrook Channel.

Senator ALLISON—But the \$2 million for insurance—

Dr Robinson—\$20 million.

Senator ALLISON—\$20 million for insurance was on the success of the project rather than on any environmental damage that it would do; is that correct?

Dr Robinson—I think it was to restore the site if the project failed.

Senator ALLISON—I see. No doubt you would argue that if nobody were prepared to give that insurance, then the project should not be permitted to go ahead?

Dr Robinson—I certainly would argue that. But there are broader questions here; money itself is only part of it. I have mounted some photographs of the Nelly Bay area.

Photographs were then shown—

Dr Robinson—These are before and after photographs of a world heritage area. The question is: once that quarrying of a headland in the world heritage area has occurred, what is required to clean it up? As I see it, the assessment and approval process does not go far enough to prevent this sort of devastation—what I have called environmental vandalism—occurring.

Senator HOGG—Where is the actual fault? Is it at the local government level, the state government level or the federal government level—or all three?

Dr Robinson—I would say all three.

Senator HOGG—How does one then seek to stop that sort of exercise happening again? Is it done through federal legislation, which is binding on the state and the local government authority, or does one approach it through state government legislation?

Dr Robinson—I believe the federal government need to give the final approval. They need to be the final umpire. They are more at arms length from some of these developments than the state governments or the local councils.

Senator HOGG—So there is a degree of self-interest in terms of the business that the state government have attracted to their state or that the local authority have attracted to their region. But that would see a major surrender of autonomy by some of the local and state authorities, and there would be a great reluctance on their part to do so; would that not be the case?

Dr Robinson—In the particular case of Nelly Bay, which was in the Great Barrier Reef Marine Park Area, the GBRMPA, through their act, do have the final say in the issuing of the permit, so that is not even the federal government. A federal independent agency have the final say. In this case the fault lies with them.

CHAIR—So where did things start going wrong in the processes for the go-ahead

of Hinchinbrook? Was it right back at the beginning where decisions were made or did things progress along the way until it was almost impossible to turn them around again?

Dr Robinson—I have provided a concise history of the Hinchinbrook case.

CHAIR—I have seen the history.

Dr Robinson—I apologise that that is still seven pages. I think a creeping development goes on. I am not an expert on what the original company proposed, but it was something on a much smaller scale. That was approved. I think the impact of that on the Hinchinbrook Channel and the world heritage area was much less than the impact we currently see.

When that company went bankrupt after only a short time, leaving a devastated moonscape, it was possible for another developer to come in and say, 'I'll clean up this mess for you. Just give me the go-ahead.' He then had much more grandiose plans which did impact on the world heritage values of the area. So there was this stepwise process which I was concerned about.

But when he was proposing something bigger, he asked that the EIS process be waived, and that request was granted. There has been no EIS. In fact, as I pointed out in several places in my submissions, there has been no report recommending that that development proceed—absolutely none. The only report is on the impact of the dredging, but that was only part of the impact of the whole proposal.

CHAIR—In terms of world heritage, should that be laid back at the door of the Commonwealth government?

Dr Robinson—Yes.

Senator ALLISON—I have a question about monitoring. What sort of agency do you see doing that monitoring? Is there a role for local government in that or should there be a federal agency which does it? How would that work?

Dr Robinson—The monitoring usually requires a degree of expertise, therefore state or federal government bodies could do it or independent agencies like GBRMPA or AIMS or CSIRO. Also there is a lot of expertise in the educational system. Many university and TAFE people have expertise and would willingly undertake some of this monitoring work.

CHAIR—In your submission you referred to the threat to the mahogany glider habitat. Again, where do you see the role of the states versus that of the Commonwealth versus that of local government? The reference I have is 21 October. What is the current situation with this? Where are we at now, as far as habitat protection is concerned and as

far as state versus Commonwealth responsibilities for that are concerned? Could you comment on that for us?

Dr Robinson—When Senator Faulkner declared the areas for the threatened mahogany glider habitat—‘threatened’ is not the technical word, but there is a technical word there—it was clearly a joint Commonwealth-state decision to declare these areas. What happened this year was that the state of Queensland decided unilaterally to change these without reference to the Commonwealth. As far as I can see, the Commonwealth stood back and did nothing. The Commonwealth is essentially a signatory to an agreement, yet it did not step in and say to the government of Queensland, ‘Just a moment. We need to discuss this matter further. We have a joint responsibility in this.’ So there is an abrogation of responsibility on the Commonwealth’s part that I see in that case.

CHAIR—I remember going through your statement looking at, stage by stage, the creeping development, if you might call it that, on Hinchinbrook. Have either the state government or the local authorities looked at the impact of the number of people more broadly in the area in terms of, if the development is finished, putting thousands of people into an area that is quite sensitive? Has there been any environmental assessment of where those people are likely to go and what they are likely to be doing in the broader environment away from the resort itself?

Dr Robinson—To my knowledge, there has been no assessment but, for example, independent bodies have pointed out that Cardwell, with its current population, has a considerable problem with water supply. If you are going to add a resort of 1,500 or 2,000 people, plus the staff, it is going to more than double the water requirement for the region. There has been absolutely no discussion of where that water would come from or who would pay to provide that water. You would get involved in people then wanting to dam the Tully Millstream that has been a popular thing in the past. They say, ‘Well, because we have this resort and Cardwell is short of water, we will have to dam the Tully Millstream.’ That is another environmental impact. That is another creeping effect of such a development.

Senator HOGG—Could I just look at the local impact because I think you have touched on an important issue. As I understand it, there seems to be quite strong local support for the development on Hinchinbrook, and I am talking about the residents of Cardwell. Whether their decision has been made based on fact or fiction, I do not really know, but what processes would have been gone through for them to have arrived at their decision? Do you know? Is there a responsibility for some organisation, removed from them but maybe attached to the government, to look at the overall impact on, say, things like the water supply and so on? Otherwise, it becomes a very emotional argument. It becomes an argument about they see that there are 50, 60, 100 or 200 jobs that they are aware of—

Dr Robinson—They were promised 35 jobs.

Senator HOGG—Whatever. That is right. So how does one take the emotion out of this and look in a cold-hearted sense at it? The EIS might not necessarily do that.

Dr Robinson—I think that is an excellent question, Senator Hogg. One of the anti-development people stood in the recent council election, and he got 20 per cent of the vote. So clearly there is a minority who supported him. I think two of the factors that affected this were this promise of jobs, and the number 35 was mentioned. In a small town, with high youth unemployment, this was attractive. When we are talking about world heritage values in the area, that very local focus seems to need to be counteracted by some body that takes a broader view.

The second part of this is that the project is basically a major real estate development. The resort is only the focus for the surrounding real estate that they want to sell. Some of the local people were involved in this real estate speculation, they were involved in advancing the project and were very keen on it. The greed motive was very high.

CHAIR—The people of Cardwell are expecting that visitors to the resort will spend time in the town, perhaps at local businesses, getting photos developed and all of those types of things. Is that part of the expectation?

Dr Robinson—That, unfortunately, is part of their expectation and yet the resort is designed to be totally self-contained. People will travel to the resort and may never stop even to buy a newspaper or a toothbrush in Cardwell.

CHAIR—Looking at local operators, will the resort be encouraging other tourist operators to, for example, take people out to Hinchinbrook Island or to take them fishing—or is it going to be all resort centred?

Dr Robinson—The amount of information available is extremely limited so I cannot be definitive about this, but my understanding from what I hear is that fishing charter expeditions will start from within the resort and the existing operator in Cardwell might get that job in the resort or he might be bowled over by a bigger company. If I were in Cardwell I would not expect to see the town benefit much at all from this development. Related to having this resort of about 2,000 people with charter operators in the resort is the impact on Hinchinbrook Island—a world heritage area. That is a serious question. Currently, there are limits on the number of visitors per day to Hinchinbrook Island but once a resort is there there will be this pressure to increase the number of visitors. You have got all these people here who want to visit Hinchinbrook Island and if we can only have 40 a day how does that work with our 2,000 guests?

CHAIR—Is that being tackled now or are GBRMPA and local authorities waiting until the resort is finished before they start dealing with access to Hinchinbrook Island?

Dr Robinson—I have not heard that anything is being done about that problem but I do know that the ranger on Hinchinbrook Island is concerned that there will be pressure to increase numbers.

CHAIR—That would be a Commonwealth responsibility in terms of deciding the management plan for the world heritage area?

Dr Robinson—Yes.

CHAIR—So it is the Commonwealth that would be perhaps making a very unpopular decision if they said, ‘We are definitely not going over 50 a day.’

Dr Robinson—They will get a lot of flak from whoever owns the resort at that stage. It will not be the developer; the developer will have sold on to somebody else or have gone bankrupt. Whatever happens he will be away from it. Whoever is trying to manage the resort will throw a lot of flak at the government and the Queensland government will throw flak at the federal government. The question is: how do they hold that line of saying, ‘We have this limit on numbers of visits to the island and we do not want to see that increased’?

CHAIR—Looking back through your submission and the history of bankruptcies, not just with this development but, as you have said, with others—do not answer this question if you are not comfortable—can I ask: do you think it is a possibility that this resort may, in fact, never be finished, that we may end up with what is a large landfill site?

Dr Robinson—The collapse of the Asian economy in the last six months and the effect, as discussed in this week’s newspapers, of a 20 per cent drop in the number of Asian tourists coming to the region could mean that this project may never be profitable. In fact, how many of these projects are profitable at least to the initial developer or owner? The profitability is not assured and the developer there may see that he may not get a buyer for the real estate he is trying to sell. He had a big real estate sale last Sunday and, if the buyers do not come forward, we know he is strapped for cash.

CHAIR—That sale was on the adjacent land or is that more in Cardwell itself in terms of additional property?

Dr Robinson—That is on the adjacent land, yes.

CHAIR—Was that a successful sale?

Dr Robinson—I do not know. I was en route between Queensland and Sydney at that stage and I have not had any local feedback.

CHAIR—Looking at what is actually on site at the moment, what type of actual construction of accommodation has happened as yet? Or is that still to come and are we really still looking at site works?

Dr Robinson—Yes. I sent you a month or so back a recent aerial photograph of the whole site and clearly there were only site works going on. There were no buildings at all.

CHAIR—But the Premier was there last weekend opening something.

Dr Robinson—That is essentially the real estate development. Premier Borbidge was opening it.

CHAIR—I misunderstood. I thought we were actually up to the construction stage.

Dr Robinson—No. Nowhere near it, no. It is quite likely that it may never happen and that we will be left with this great pile of acid sulfate soils, a large area of mangroves removed and beach sand dumped there. Ten years from now we will still be looking at it and thinking, ‘How did we let that happen?’

CHAIR—Any further questions? We thank you for your evidence.

Dr Robinson—Could I make one final comment? A question that continually came up was: why did the state and federal government give in so easily when they could have insisted on higher standards for this development? Why did they just meekly back off, agree and not stand up? The developer is very much one for threatening to sue people. Anyone who gets in his way gets sued. I would not be talking here today unless I understood that what I was saying was subject to parliamentary privilege, otherwise I would be in court tomorrow.

CHAIR—We have a similar experience with a developer in South Australia at the moment, too.

Dr Robinson—However, I do have a letter here, and I am afraid I only have part of it. I would like to table it. It is a letter to the Queensland government from Keith Williams and this is a copy. I would like to put it on the record. I apologise for the scrappy nature of it. The letter was obtained by FOI. I will get the complete letter to you in due course, but it is in Townsville. I did not bring the complete letter with me.

The level of threat there to sue for loss of profits from the state or federal governments I think has scared the relevant ministers at state and federal level from being seen to do anything that stops him, because immediately they would be sued. That is my personal belief. But that letter to the Queensland government provides some substance to that, I believe.

CHAIR—Thank you very much.

[2.57 p.m.]

BRAZIL, Ms Sarah Jane, National Conservation Manager, Australian Council of National Trusts, PO Box 1002, Civic Square, Australian Capital Territory

DEVINE, Mr Matthew Terence, Conservation Officer (Architect), National Trust of Australia (NSW), GPO Box 518, Sydney, New South Wales

REEVES, Ms Anne Elizabeth, Executive Member, National Parks Association of New South Wales Inc., and President, Australian National Parks Council Inc., PO Box A96, Sydney South, New South Wales

CHAIR—Welcome. We have before us submissions Nos 328 and 267 of July and June this year. Are there any alterations or additions that you would like to make to those at this point in time?

Ms Brazil—I am not quite sure if it is relevant, but some of the statements we made about greenhouse gases and things like that could be changed because of government actions. Do we change that sort of thing?

CHAIR—No, I am sure we will all mesh together with circumstances that have overtaken us. Would each of you like to make an opening statement. You may like to cover some of that then, if you wish. After that, the committee will put some questions to you.

Ms Brazil—I would like to thank you for the opportunity to do this presentation. The ACNT, the Australian Council of National Trusts, believes that a clearer delineation of how the three levels of government discharge their collective responsibility towards the protection of the environment is required. But in supporting this view we feel that it must be stressed that any reforms in environment powers must result in a more efficient system for the protection, conservation and management of our environment and also have more demonstrable benefits to the Australian community.

Another concern of the Australian Council of National Trusts is that past Commonwealth involvement in the environment has focused on natural environmental issues as opposed to the cultural heritage environment. We feel that any redefinition of the balance of powers and responsibilities between the governments should apply to all aspects of our environment, both natural and cultural.

I would like to touch briefly on a few of the issues we raised in our paper. Firstly, the ACNT believes that the Commonwealth should fulfil its national and international obligations towards the environment. Nationally it should provide leadership in best practice environment processes. For example, the government has spent money on the committee of review of Commonwealth owned territories and properties, also known as

the Schofield report, which does address many of the issues that we are looking at even though it is specifically for the built environment. It addresses legislative requirements for protection, identification, conservation practices and procedures and also procedures for the disposal of property. The National Trust is suggesting that this document be supported and implemented by the government but to date nothing has happened, and it is 12 months since the fact.

Another thing we believe the government should be doing nationally is to commit itself to the open processes of community consultation and a greater use of community grants which achieve cost-efficient and effective conservation and also to recognise and balance the right of both the individual and the community in the environment.

We also think the government should be responsible for developing an administrative structure which is administratively as simple as possible, efficient, effective, consistent, compatible and transparent with minimal duplication and adequately funded. Whilst we are saying that the three levels of government must work cooperatively to achieve an effective environment protection regime, it is still important that the Commonwealth continues to retain a key role through the auspices of a strong agency which provides leadership and sets best practice standards and processes such as the Heritage Commission and the Department of the Environment.

Internationally, we feel that the government has a key role in promoting, maintaining and protecting places subject to international environmental treaties and conventions. Recent Commonwealth actions on world heritage issues indicate that the Commonwealth is not sufficiently implementing or fulfilling its obligation under these treaties—for example, the Great Barrier Reef and tourism development, and Shark Bay and gas and oil exploration permits. Again, another initiative of the government is *Managing Australia's world heritage*. The recommendations in that appear to be quite sound. A lot of these problems would be overcome if this report were to be implemented.

We also believe in the current process of the administrative decisions bill—that the ratification of an international convention is a positive statement by the Commonwealth that it will act in accordance with the convention. So we are again saying that the Commonwealth really is responsible for the world heritage places.

As far as achieving better responsibilities and a balance between environmental powers, we feel that, as for the Commonwealth and the mechanisms for conservation and the management of our environment, we support the development and implementation of national standards. Therefore we believe that the Commonwealth has a responsibility to initiate and coordinate a national policy and strategy for environmental protection and management and also to place the national interest ahead of state and territory rights when developing environmental policy and legislation.

We would also require a commitment by the Commonwealth to establish best practice strategies for environmental conservation and management to ensure cooperation and consistency between all levels of government environmental protection. This would ensure that environmental considerations will be integrated into all government decision making processes. In turn, all Commonwealth agencies must be subject to state and territory and local government environmental planning laws and regulations. For example, the recent and ongoing widespread public outcry in relation to the issues of overhead cabling and the location of mobile telephone towers is partly because of the Commonwealth's lack of compliance with local and state planning laws.

Therefore, we support the development of national standards that are designed to maximise and have demonstrable net benefit for the identification and protection of all places of environmental significance, both cultural and natural, and designed to maximise cooperation between all levels of government. We need to be efficient with resources, through the lack of duplication and things like that, to reflect Australia's environmental diversity and to promote transparency in the processes. But, of course, all these things need resources.

We feel that Commonwealth funding for environmental management and conservation should not be seen by the states and territories as a means of avoiding their own funding responsibilities and that the Commonwealth should make funding of the environment programs contingent on good performances; that is, the recipients of any environmental funding should have to reach agreed performance levels for the conservation and management of our environment. We feel the Commonwealth should also be pursuing a commitment to placing an emphasis on positive provisions like tax incentives and the provision of deterrents to ensure environmental protection.

Finally, the ACNT believes there is currently a good opportunity to improve environmental performances of all governments. This opportunity provides the Commonwealth with an ideal vehicle to demonstrate strong leadership in developing and implementing consistently high standards and processes for the responsible conservation and management of our environment.

Mr Devine—As I represent the National Trust of Australia (NSW), which is directly linked to the Australian Council of National Trusts, we support their position. At the moment, I have nothing further to add to what Sarah Jane said.

Ms Reeves—I suppose I am doing in one person to some extent what the two people on my right are doing in so far as I am here representing the National Parks Council Australia wide, as president, and also representing the National Parks Association of New South Wales, which was a major mover in establishing the Australia wide council. In addition to the submission which was drawn to your attention as numbered, the Australian National Parks Council also made a submission. I do not think that will be before you, but I am sure it will be on your record.

I listened to my colleagues on my right and feel that, in fact, we would want to give support to many of the points they made while recognising that our charter, as national park organisations, is primarily with the natural environment and with nature conservation and protection of our natural world—our biodiversity. We do not believe that any additions in terms of cultural heritage support should be at the expense of protection of the natural world. In fact, we think that over the last few decades it is very apparent that we have not been going uphill but rather downhill in terms of many of our environmental indicators. This is no more apparent than in the issues of climate change and in the increased pressures on water resources, which are having repercussions in the viability of our river systems.

In specific points and noting the terms of reference of your committee, I thought perhaps I would like to focus a little on world heritage for starters, but I recognise that all the comments I make are reinforcing the concerns that the Commonwealth government has a really important lead role to take in environmental protection. It is not one that it should try to duck by passing the buck to states and territories, to local government or even to community groups. Thus, the comment would be that resourcing community groups to take action is a useful and valuable role of the Commonwealth, but it should not be done in such a way that is an evasion of Commonwealth responsibility and leadership. It is effective like a series of onion skins, and the overlying and broad policies should be such that the other elements fit within it.

We feel that there have been some elements, unfortunately, in passing the buck, and this includes in the world heritage area. The Commonwealth government left a very difficult legacy over Willandra Lakes—one of the early cabs off the rank as a world heritage property—by dragging its feet for many years, which led to a legacy of some confusion and hostility among local landowners, and only very recently has this been addressed. We think it is highly welcome that the issue is now being sorted out, although we are not quite sure that the plan of management is as desirable as we would like. We believe that, in Willandra for example, the Commonwealth government has a role in a whole basket of issues, including, given the proposals for sandmining in that region, what the implications would be at Commonwealth level should that—and it is sand for glass—be translated ultimately into export commodities. There are links, and there are also links with management of water resources.

Over the alps of Australia—which is, undoubtedly, a jewel in the crown and very eligible for world heritage listing to the extent that states and territories and the Commonwealth have a memorandum of understanding on it and have been giving support to the alps liaison committee—there has, nevertheless, been failure to grasp the nettle by the Commonwealth in terms of Victoria's intransigence with regard to grazing in high alpine country, which contributes to the deterioration of the natural environmental qualities up there, and, we believe, is most deplorable.

We think that there are opportunities for the government at Commonwealth level to

take a slightly bolder approach here and exercise its very real muscle in terms of providing clear leadership. There have been in fact reports that even suggest there could be an extension of that world heritage alps area by including the forests of the south-east of Australia as a cradle of eucalypt evolution. This was very well documented in a report in 1992 by Mosley and Costin which seems to have sunk almost without a trace of response at government level, which is really most unfortunate.

Senator ALLISON—Would you mind giving us the title of that report?

Ms Reeves—It is *World heritage values and their protection in the far south of New South Wales*. The authors were Geoff Mosley and Alec Costin. It was a report to the Earth Foundation of Australia in July 1992. Copies were lodged with the various relevant ministerial authorities at the time as well as with the Parliamentary Library and so forth, so it should be accessible.

I am sure you will have heard from others who are much closer to it about the concerns on the world heritage values of Hinchinbrook, so I will not dwell on that. But it is another element of concern where we believe that the Commonwealth government could have taken a much bolder approach because it is very widespread concern about the destruction that impinges on maintenance of world heritage values there.

Again, the Commonwealth has opportunities in the Lake Eyre Basin. That is another example where, unfortunately, it seems that the state governments have been reluctant to come to the party, particularly South Australia. Senator Lees, you are probably well aware of that situation. We do think that the evaluation has made it clear that Lake Eyre Basin is a very important area, that it is worthy of world heritage listing, but that, if states will not come to the party, there is a real problem in terms of the Commonwealth exercising its due responsibility to protect the environment on behalf of not only all Australians but the world. We think that it is possible that some of the objections to world heritage listing in the Lake Eyre Basin may well have actually been a legacy of earlier slowness to do the right thing in terms of Willandra Lakes, which has left an opportunity for those who wish to beat up hostility to provide some ammunition for that.

Another of the international treaties and conventions which Australia is party to and which was referred to in your inquiry's terms of reference is the Ramsar Convention. Our organisation was represented at the last meeting in Brisbane and we were very encouraged by the support given by the Commonwealth government to participation by the non-government sector in the convention. It was seen by all those familiar with these international meetings as providing some really up-front leadership. It was, in fact, I believe Senator Hill's very first responsibility as Minister for the Environment, or his first major one.

However, what we are hearing is that, after that frenetic activity in the lead-up to the Brisbane conference in 1996, there seems to have been a falling away of resource

support and commitment in terms of pursuing the convention. We believe that this needs gingering up because it is a significant area for Australia. We all know that wetlands are tending to deteriorate rather than improve, with individual exceptions where there has been special action. Of course, that is to be commended and some of that has been with the support of Commonwealth funding.

But we understand that the wetlands unit at the Commonwealth level has virtually folded and we believe there are opportunities for the Commonwealth to continue to take the lead role that it began to in terms of the Brisbane meeting. We recognise very much that there are huge pressures on wetlands, not only in the face of people pressure but also in terms of development for irrigation. Later, I would like to touch on the water issue.

Another issue where the Commonwealth government has taken and should continue to take significant responsibility is as a lead role in the national reserve system. There were commitments under the national forest policy aiming for 15 per cent of the 1770s ecosystem representation in a secure and adequately representative reserve system. However, we have been very disappointed as the so-called CRA process unfolds to witness what we believe is delivery of less than the optimum that was possible and the continued pressure, and folding to that continued pressure, of unsustainable exploitation of native forest resources for woodchips and other reasons, but primarily for woodchips.

In New South Wales the key flashpoint issue is still there, and that is the south-east forests where there is a major woodchip mill that exports. While we think that our own government of New South Wales has been fairly up-front in trying to drive the process compared to some of the states—and I understand in the negotiations some of the Commonwealth officers have been very proactively in defence of the previously agreed policy situation—it is one where the federal government cannot afford to loosen its grasp if we are going to be able to pass on a rich inheritance of native forest to our grandchildren.

The Environment Australia—as it is now called—commitment to the national reserve system has been a bright spot and our Australian National Parks Council that we refer to in our submission has been able to contribute in terms of liaison with the non-government movement in progressing the concepts. But again, if there is any falling away of political and resource commitment, we fear this may be like high-sounding rhetoric that ends up in a pigeonhole.

We believe that time is running out and urgent action is needed for these protective measures. The protective measures are opportunities both in the public reserve system and in various initiatives with the private sector. In this state our National Parks Association has been working closely with WWF and with the Nature Conservation Council in progressing opportunities for various private sector initiatives.

In terms of vegetation management, a vegetation conservation bill recently went

through parliament. We think that the Commonwealth government is going to have to take a very strong lead in this area, however, given the widespread discussion of this issue at Kyoto and what some of us see as the excuses that the federal government gave in terms of its opportunities to offset greenhouse gas emissions by managing clearing. As you will all know, unless this is supported in a very proactive way, it is a matter that is normally devolved to the states. We are not really clear how the states are going to be brought into line if they do not wish to in terms of managing and controlling continuing loss of native vegetation, particularly in the fragile and more arid systems.

Another aspect of the reserve system is the need to be proactive and supportive of the states which are keen on taking good initiatives in terms of acquiring and managing land.

The IUCN—the International Union for the Conservation of Nature—has a number of world commissions. The World Commission on Protected Areas has just concluded a mid-term workshop in Albany in Western Australia. Two non-government Australians participated in that, and also representatives of the Commonwealth government, including Peter Bridgewater. I am not sure of the list of attendees.

What emerged from that was the dilemma being faced by conservation agencies around the world in terms of the pressure of increasing population and demands for natural resource exploitation, which are tending to push, with a multiple use thrust, into the protected areas we have which are not yet by any means meeting the criteria of 15 per cent of the natural forest policy. We believe it is going to take a strong and firm lead from the federal government to adhere to those commitments and to ensure that the conservation spreads outwards rather than the multiple use spreading inwards.

We have been party, as a national park association in New South Wales, to several submissions in the past two or three years that impinge on Commonwealth environment powers. One was the inquiry into the Environment Protection (Impact of Proposals) Act and the Commonwealth Environment Protection Agency. The Environmental Defender's Office in this state prepared a very comprehensive submission to which we were contributors in developing part of the dialogue, and I imagine that your committee will be looking at the import of that.

We are most concerned at any degrading of the Commonwealth leadership in protection. It is an interesting cycle because not so many years ago the minister for the environment in the Greiner government was very active about the importance of consistency across the board in terms of pollution controls so that you do not get a kind of auction of lowest common denominator pressing in on development. I think that this applies in many ways. Therefore, our approach is that it is very appropriate to review the implementation of environmental impact systems but not to disband them. The preliminary scoping procedures are a very desirable component. Peer evaluation is a very desirable component as a concept but is only effective when it is carried out by genuine peers.

I am afraid I cannot quote to you today but I have had reported to me by a very authoritative person in the consultancy world one case where the evaluation was carried out by a body that sounds very authoritative but in fact knew nothing about the issue and therefore was not well placed to judge whether or not the matter had been adequately studied and addressed.

Another great concern under these impact proposal assessments is that the Commonwealth government could take a very valuable lead in looking to accountability for the work that is done. At the moment, we find that you have consultants who submit reports, often on commission, to the overarching consultancy agency. Their names are omitted down the course of the line and ultimately a report comes out where nobody really claims full accountability. That is a big situation.

CHAIR—I want to ask you a question on the way in which those impact statements are done in the whole environmental assessment process. We have had other witnesses suggest to us that the process is wrong, that it should not be the proponent—the developer—who initiates and decides who is doing the assessment, but rather the developer puts the money into the pool and then perhaps a government authority or a statutory authority says, ‘Okay, here’s a range of consultants. We will appoint these to go off and do the study.’ That is just one suggestion. Do you have any other suggestions as to how we could possibly make the process more independent?

Ms Reeves—There is the peer evaluation which needs to be a very up-front and open process, but also there should be a measure of accountability such that people who contribute work to these studies actually have their names held against what was stated. I am sure you have heard about the third runway in Sydney. That is an outstanding example of where there were comments that the noise problem would not be all that unacceptable, but experience has shown that clearly a lot of the evidence was fudged. If you have a requirement for people to sign off and effectively be suable if they can be shown to have deliberately fudged accuracy of reporting, it would be one additional lever. I think there is probably more than one way to bell the cat. This is certainly one which I was discussing recently with a person in the judiciary who has some experience in these matters. I just offer you that as one of the ideas to contemplate. What is the time frame?

CHAIR—We are very keen to ask some questions.

Ms Reeves—Can I make a few quick comments, then, before I sign off?

CHAIR—Yes, very brief.

Ms Reeves—I would like to draw your attention to the Threatened Species Review Act. Again, the Environmental Defender’s Office made a very valuable contribution to that on behalf of many of the non-government organisations. I would like to highlight the issues where the Commonwealth clearly has a role in water—that flows from the COAG

obligations—and, as you are probably aware, there is great concern in New South Wales about the attitude of the Queensland government, in some quarters at least, towards development of water resources that are impinging very adversely. This ties in with something the National Trust said about looking at not giving financial support to state governments that do not toe the line.

In terms of appropriate balance, we believe the Commonwealth government would be cheating the Australian people if it walked away from taking a lead role—financially, in policy development and in keeping with its obligations in terms of foreign relationships, treaties and adequate surveillance of exports tracked back to where the exports come from. This will be increasingly important against the attitude in some quarters that is pushing for maximum sustainable yield rather than ecologically sustainable development principles over natural resource development. I am aware of the audit that is going on over four years at \$30 million to look at natural resource management and its potential for development. Having had one meeting with these people, I would be seriously concerned to ensure that the Commonwealth government does not weaken in the face of development pressure and fail its obligations in environmental protection.

Senator TIERNEY—Ms Reeves, earlier you made a statement about budgets—the environment budget and the cultural heritage budget. You seemed to be indicating that there was some possible trade-off in funding there. Would you explain that a little further?

Ms Reeves—It was a pick-up on the comments from the National Trust, who were highlighting the fact that, from their perspective, they consider some of the cultural aspects of heritage to have been neglected at the expense of natural heritage protection. Our view is that natural heritage protection in itself falls short of what is desirable and so, while not in any way wanting to negate what the National Trust is concerned about, we would not want it to be a trade-off.

Senator TIERNEY—I do not think it really works that way.

Ms Reeves—Good.

Senator TIERNEY—In relation to all budgets, all groups can see very valuable ways in which governments can spend money. There is not enough to go around. We do not really have a trade-off between the two areas that you are referring to.

Ms Reeves—We would certainly hope not because, after all, the natural environment is the life support system for us all.

Senator TIERNEY—They are in different departments, and they work under different processes. My next question relates to what you were saying about the high alpine country. If there is damage being done in these areas, I was wondering why it would not be a state responsibility, given that they have responsibility for land

management, broadly. I assume you are talking about the Kosciuszko system.

Ms Reeves—I am talking about Kosciuszko, but the alps actually extend into Victoria and north to the ACT. Victoria is the only state that still allows grazing in the high country. Grazing in the New South Wales high country was actually phased out totally in the 1940s and 1950s because of the damage it was doing. It was primarily driven as a water catchment issue, but it was clearly recognised that there was change to the ecosystem occurring as a result of grazing.

Senator TIERNEY—If the current problem is isolated to one state, and states have control of land management, why wouldn't it be a matter of putting pressure on that state government to change these practices? I was wondering why it should be a national issue when, clearly, it could be a state issue?

Ms Reeves—I was saying that the Commonwealth had a role in putting some pressure on Victoria, and it can do it financially and in lots of other ways if it wishes. I realise that the current Premier is a world unto his own, but there are always opportunities.

Senator TIERNEY—You are blessed with Liberal governments at both levels, actually.

Senator HOGG—It needs a nice letter from you.

Senator TIERNEY—You did mention the south-east forests and what you thought should happen there. I would like your comments on forests in the Hunter Valley, particularly relating to the Barrington Tops systems and forests that flow out from that, and what has happened with resource agreements there. With the position we are in at the moment, whole towns are likely to be shutting down because there is a feeling in the Hunter Valley that such agreements have gone too far.

Ms Reeves—I am well aware that there is hostility—some is genuine and some is not, and some is a legacy of, I have to say, less than perfect state government management of forestry resources. It is very clear, and it is emerging very much under the state RACAC process, that forest resources have not been well accounted for and, sadly, but not surprisingly, the agency is not always comfortable about acknowledging that openly and up-front.

I think there are problems when the opportunities for development of natural resources come to an end. I will give you a parallel example: there was more and more pressure to develop the south-west of Western Australia, to clear it for wheat farming. Many people warned that that was not a good thing because of the potential for salinity, et cetera. The clearing persisted until we are now faced with very expensive damage to extensive areas of country. The ESD process is all about trying to invoke the precautionary principle and recognise that you should not be leaping in with further

development if it is going to cream the resource unacceptably.

I am not personally very up to speed on the details of the Barrington issue, so I cannot give you full information of every fine point. My understanding, from participation in general meetings, is that there is very good logic for the pressure for protecting the forest areas, both as potential for magnificent reserve protection for water catchment purposes and that taking the areas out for woodchip export is not going to benefit the country in the long term to the same extent. Our state government has looked at restructure packages with the Commonwealth in order to address some of the problems socially.

Senator TIERNEY—It does not really address the problem if you are shutting towns down. You can restructure all you like and provide people with moneys to go off and do something else but it just leads to the collapse of the local economies. You have acknowledged that perhaps the process has gone too far, which is something we certainly support. Wouldn't you see that to be a case to perhaps slow these processes down a bit—

Ms Reeves—Slow which processes down?

Senator TIERNEY—The RACAC processes—until you get a more accurate picture of what your reserves are and what the social effects are going to be? This one all happened very quickly.

Ms Reeves—It happened relatively quickly. The only reasonable position, if you are going to slow down the process, is to ensure that you are not creaming the resource in the process.

Senator TIERNEY—We never thought there was a danger of that. I was just interested in your comments on that.

CHAIR—I realise we are looking at built heritage and natural heritage, but if there are issues that cross over, please do not hesitate to say you would like to have a say. Before passing on to my colleagues, could I just ask Ms Reeves—just going back to world heritage and some of the difficulties—specifically about the Blue Mountains and the process now of 10 years that it has been in the process of developing towards the listing. I understand that we really only have a few months, if we are going to get the nomination through by the year 2000. What do you see as some of the problems with actually progressing the nomination of the Blue Mountains world heritage area for listing?

Ms Reeves—There has been some reluctance because of resistance in some quarters to the concept of world heritage, which is not something we could feel comfortable with. There have possibly been in the past some games played about whether evaluation was done at the right levels and whether all the things that are potential criteria for world heritage listing have actually been evaluated. It is my understanding that that is

a bit of a furphy, that it is the convenient excuse for not progressing things.

My understanding, from most recent conversations with people very directly involved, is that things are moving along not too badly right now. There have been two evaluations. My understanding was that this state government actually had some commitment in that area and was interested in pursuing it. That is as much as I can tell you. If you would like me to try to obtain further information I am happy to.

CHAIR—No, that is fine. I was just looking at a broad understanding of where we were at. The New South Wales National Parks Association's involvement is looking at a number of national parks that are going to be brought under the one umbrella. I will just go back the National Trust's submission. On page 4 you make mention the Commonwealth not acting sufficiently as far as its international obligations are concerned. Could you just enlarge on that for me and perhaps give some examples?

Ms Brazil—My understanding of our obligation under world heritage—and I am not all that au fait with the nuts and bolts of it—is that they do have an obligation to actually nominate places as well. That is one thing that is becoming more apparent with the current government, that they are pulling back on—this is on the Blue Mountains thing. The Sydney Opera House is yet another example that is being pulled back.

CHAIR—Where is that bogged down?

Ms Brazil—The last time I spoke to the relevant department, which was probably three months ago at the most, there were extremely difficult urban policy problems.

CHAIR—So that is at state government level.

Ms Brazil—That is at federal government level. Our belief is that there is just no cooperation.

CHAIR—Between the state government and the federal government?

Ms Brazil—Yes.

CHAIR—And the Sydney City Council?

Ms Brazil—Yes, at all levels. Minister Hill has said that anything to do with world heritage is to be done in agreement with the states and territories.

CHAIR—Who is meant to take the lead in getting that agreement? Has that been specified?

Ms Brazil—No. My understanding is that it can come from anyone. Why do I say

that? I do not think the process of listing a place would be any different from listing something with the National Trust, with National Parks and Wildlife or whatever.

CHAIR—If everybody sits back and waits for somebody else to take the lead, to do the legwork and to get things organised, we could be waiting for a while.

Senator ALLISON—As I understand it, it is organised. The application has been completed and it is ready to go; it is ready to be put in the post.

Ms Brazil—It is a beautiful document on the Sydney Opera House; it is beautiful.

Mr Devine—It has been completed for quite a while, too.

CHAIR—So it is just sitting there?

Ms Brazil—It is literally sitting there.

Senator ALLISON—There is a reluctance on the basis of the new development that has gone ahead on Circular Quay or nearby and the implications that might have, but my understanding is that the document makes it quite clear that it is only the water-based surrounding area and it has nothing to do with that other dimension.

Ms Brazil—It is the opera house and its setting. That is actually what has been proposed for listing. The document was finished in October last year and they were hoping to get verification by both governments to take it to Paris at the last meeting at the end of last year. If they did not do it by then, the process would have been changed as would also, I think, some of the criteria for world heritage listing. In some sense, that application can be seen as void, so the process will have to start over again. The money that is spent on doing these sorts of things is just phenomenal. Other concerns included: who is going to pay for this? So it is the same problem coming up at many different levels.

Ms Reeves—Can I make a comment, because I think this is parallel with some of our concerns. Effectively, as I see it, the Commonwealth government has the responsibility for discharging its responsibilities under the World Heritage Convention. Therefore, it has some responsibilities in grasping the nettle and carrying them forward.

Senator ALLISON—I have a question for you, Ms Reeves, about national parks. In Victoria the state government is planning to excise one of our alpine national parks. Should the Commonwealth government have the power to intervene in that sort of action? I understand that this is the first time in Australia that such an action has taken place. Should the Commonwealth have more responsibilities over national parks?

Ms Reeves—It should have a moral philosophy type of lead. As with water resource development, vis-a-vis Queensland and New South Wales, I have not canvassed

this in those terms with my membership but I suspect there would be a wide sympathy for the Commonwealth government effectively exercising a bit of muscle and saying, 'If you are going to play silly games with, effectively, Australia's heritage, we are not sure that it is appropriate for the Commonwealth government to keep funding you under the COAG agreement.' It is virtually undercutting the IGAE.

Ms Brazil—Also, in relation to what Anne has just said, sometimes the NGOs in particular get the impression that the governments have forgotten who actually owns these properties. They are like the caretakers for the rest of the Australian community. In relation to going in to protect a park or something, I think they do have a moral obligation in some respect, but to the Australian community.

Ms Reeves—It is obviously a very delicate one. With the celebration of Federation coming up, there are a whole raft of opportunities here to review some of the things that were very difficult to negotiate in order to get federation. As to whether or not states' rights should prevail effectively to the detriment of the long-term future of Australia, and as we are all becoming more mobile and our communications are getting much better, it seems that there are some underpinning, broad, outer shell of the onion issues where the Commonwealth government should pick things up and the others fit in.

CHAIR—Just looking back to the management of national parks, I understand there are still some in New South Wales—and I know there are in other states—where there is no management plan.

Ms Reeves—That is right.

CHAIR—We do not have an overview in some cases of what we are trying to manage in terms of significant features within the parks. Ultimately, if the state is not going to do that, are you suggesting that the Commonwealth steps in and says, 'There this grant money and that grant money for national parks. We expect a management plan'?

Ms Reeves—I think that that is not unreasonable, providing it is done in a constructive way, as opposed to a destructive way. Clearly, there are always opportunities to play off at a political level which can often use the environment as a pawn, which is very unfortunate. I think that, because of the financial responsibilities of the government in terms of collecting revenue, it does also have a responsibility to provide some guidance. It has provided some really important leadership in some of the parks, like Uluru and Kakadu. It is also had some rather poor decisions made from time to time. I do not want go into the uranium mining one, having been back in the old original Ranger inquiry.

Senator ALLISON—In terms of the responsibilities of the three levels of government, you say in your submission that those levels of responsibility should be more clearly defined. What we are hearing from almost everybody is that we would like to see a greater role for the federal government in all of this. How would that work? Having

defined what the responsibilities are, is it not then contradictory to say that the Commonwealth should have some overriding powers to coerce or ensure that the responsibilities of the other levels are in fact taken up?

Ms Brazil—That leads us into talking about something else that the federal government has been pursuing through the Australian Heritage Commission. You may not be aware it has been putting out a series of discussion papers on the environment. In one of these papers they are talking about national heritage standards. What we see is that the Commonwealth will play the key role in establishing standards for the conservation and management of our environment. These submissions were certainly towards the cultural environment and, through that, by having uniform standards across the board. Therefore, one would assume that something that was significant at a local level would still have as much protection as something at a national level. Is that making it clear?

Senator ALLISON—Are you suggesting the Commonwealth has the responsibility to set the standards by agreement presumably with the states?

Ms Brazil—The states and territories, so that everyone is in agreement with the same sort of the standards. But it still would be the federal government playing that key leadership role.

Senator HOGG—That is one of the difficulties within Australia where you have a diversity of governments and a diversity of interests. The interests in Queensland are different from Victoria, Western Australia and the Northern Territory, for example. Where do you resolve those individual state differences? One could even take it further down to the local government level.

Ms Brazil—Exactly.

Senator HOGG—Herein seems to lie to real dilemma that we have. There are local government interests, state government interests and then federal government interests. There seems to be a reluctance on the part of the federal government to become overly involved, regardless of the fact that the power exists for them to do so. How do we resolve this dilemma?

Ms Brazil—I know exactly how you feel because my role at the Australian Council of National Trusts is exactly doing that, trying to get agreement out of eight offices, et cetera.

Senator HOGG—It sounds like a Mogadon is the answer.

Ms Reeves—To some extent, but perhaps I can make a comment here.

Ms Brazil—Yes.

Ms Reeves—I have been an elected member of local government and I have been an active environmental person in both South Australia and New South Wales, and now a bit in the national. I think there are parallels in other areas. For example, I sat on the National Health and Medical Research Council for a while. There is not much disagreement that certain basic parameters at the medical level should be universal across Australia.

Similarly, in terms of road safety, people are really interested in having safety across the board. It is partly a question of, as I see it, the Commonwealth government being brave enough to take a bit of leadership with a little bit of stick and some carrot. I do not believe at the same time that the federal government should have to get down into every last little stream to decide whether or not it is being properly managed. It obviously has devolutions, but it needs to have checks and balances.

Senator HOGG—Yes. So really what we are looking at, and I believe it is emerging now in this inquiry, is some sort of model. To date no-one has provided us with a successful picture of what would be reasonably necessary to achieve that result. Just where does the involvement of the federal government say, ‘Now we will step out and we will leave it to the relevant state government,’ and where do they step out and go down to the relevant local authority, for example? It would be nice to have a model, but of course no-one at this stage has provided us with one.

Ms Reeves—I suspect that the Commonwealth government could quite usefully, rather than spending lots of money on a fancy convention on the constitution and the republic, probably do just as well to have a really good, high level workshop on that sort of issue. Obviously your inquiry is providing some groundwork for further discussion. I think it is a very timely period in Australia’s life to look at it.

CHAIR—Any further questions?

Senator HOGG—No.

CHAIR—Thank you very much for your time. There is a plan by the government to put out a document fairly soon looking at roles and responsibilities, so we may need to seek your advice, or comment at least, on that document over the next couple of months. It is due, I understand, some time in January.

Ms Brazil—Is the government looking at all of these inquiries and reports and things that have been put out in the big picture?

CHAIR—We would hope so.

Ms Brazil—Because this is just one of eight or something that in one part are looking specifically at roles and responsibilities. The Heritage Commission put out three

papers, all to do with it, at the beginning of the year. There is this one, the House of Representatives—

CHAIR—I guess once we see what they have talked to the states about, and how close they are to some sort of agreement with the states, we will know how much has been taken on board of all that has been done over about the last five years in this area.

Ms Brazil—Yes.

Ms Reeves—Might I suggest that you look very carefully at this \$30 million audit that is being carried on, I understand, primarily out of Anderson's portfolio. Although he and Hill are co-ministers under the National Heritage Trust, I gather that effectively Hill has delegated it to Anderson who has just been kept informed. I am most concerned that an overenthusiastic push towards natural resource utilisation may be very detrimental to the environment. It is a very important issue for the Commonwealth government to come to terms with as regards consistency.

CHAIR—Thank you. I thank you for your time today.

Ms Reeves—I brought some copies of our magazine with pretty pictures.

CHAIR—Thank you.

Resolved (on motion by Senator Hogg):

That this committee authorises publication, including publication on the parliamentary database, of the proof transcript of the evidence given before it at public hearing this day.

Committee adjourned at 3.55 p.m.