



COMMONWEALTH OF AUSTRALIA

# SENATE

## Official Committee Hansard

### ENVIRONMENT, RECREATION, COMMUNICATIONS AND THE ARTS LEGISLATION COMMITTEE

**Reference: Environment Protection and Biodiversity Conservation  
Bill 1998**

**FRIDAY, 28 AUGUST 1998**

**BRISBANE**

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CANBERRA 1997

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**SENATE**

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

**FRIDAY, 28 AUGUST 1998**

**Members:** Senator Patterson (*Chair*), Senator Schacht (*Deputy Chair*), Senators Allison, Eggleston, Lightfoot and Lundy

**Participating members:** Senators Abetz, Bartlett, Bolkus, Boswell, Bourne, Brown, Calvert, George Campbell, Carr, Colston, Coonan, Cooney, Crane, Harradine, Hogg, Faulkner, Ferguson, Mackay, Margetts, Murphy, Neal, O'Chee, Payne and Tierney

**Senators in attendance:** Senators Allison, Lundy, Margetts, Patterson and Tierney

**Terms of reference for the inquiry:**

Environment Protection and Biodiversity Conservation Bill 1998

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**Committee met at 9.00 a.m.**

**HOLT, Mr Lindsay Phillip, Project Officer, Queensland Conservation Council, PO Box 12046, Brisbane, Queensland 4002**

**CHAIR**—I declare open this hearing of the Senate Environment, Recreation, Communication and the Arts Legislation Committee inquiry into the Environment Protection and Biodiversity Conservation Bill 1998. The committee prefers that evidence be given in public, but should you at any stage wish to give your evidence, part of your evidence or answers to specific questions in camera, you may ask to do so and the committee will consider your request. I point out, however, that evidence taken in camera may subsequently be made public by order of the Senate.

I welcome the representative of the Queensland Conservation Council. In what capacity do you appear before the committee today?

**Mr Holt**—I am representing the QCC and the North Queensland Conservation Council in the absence of the NQCC coordinator, Imogen Zethoven, who could not attend today.

**CHAIR**—The committee has before it submissions Nos 14 and 93, which have been authorised to be published. Are there any alterations or additions that you would care to make at this stage?

**Mr Holt**—No. I wish to confirm the QCC submission, but I want to add further comments to it later on, if that is okay.

**CHAIR**—Yes. We will just get Senator Margetts on line. Mr Holt, you said you wish to make a short statement?

**Mr Holt**—It could take about 10 minutes, if that is okay?

**CHAIR**—That is actually too long. Could you try to precis it? You can take it as read that the committee has read your submission, so you can comment if you have something extra to add. If you read for 10 minutes you will find that people gaze at the view. What you could do is precis it and table it for us, and we will take the document.

**Mr Holt**—Okay. I wish to advise, on behalf of the environment movement in Queensland, that the Queensland Conservation Council has become party to this national submission from the national environment movement. All of the major Australian environment groups have now signed on to the document that was prepared by the Environment Defender's Office of New South Wales. It is a very comprehensive document, a comprehensive critique of the bill as it presently stands. The fact that the submission makes 115 recommendations about necessary amendments to the bill is an indication of how ill-conceived and badly flawed the bill is considered to be by the environment movement.

Those 115 recommendations are directed at converting the bill into comprehensive environmental best practice legislation that is capable of addressing the critical environmental issues facing this nation as we enter the new millennium—issues like greenhouse and climate change, vegetation clearing, biodiversity loss, and land and water degradation. The prevailing view in the environment movement, particularly in this state, is that we would prefer to retain the existing inadequate Commonwealth environment legislation than have the bill proceed in its present form. We believe that it requires major redrafting to reflect the recommendations made in the national submission before it would be acceptable to the environment movement.

The positive aspects of the bill are far outweighed by the negatives, and it is extremely disappointing that years of negotiation through COAG, and now this bill, have failed to deliver

the kind of visionary reform of the roles and responsibilities of the Commonwealth and the states and environmental protection and sustainable resources management.

Before discussing the QCC submission, I want to comment on two matters which could very well become a supplement to the environment movement's national submission. The first issue relates to how well the national strategy on ESD is reflected in the object of the bill, clause 3, and in clause 136, which deals with factors to be taken into account by the minister in deciding proposals. This bill represents an ideal opportunity to give effect to the national ESD strategy as development proposals of national environmental significance are decided.

All levels of government are party to this national strategy on ESD, yet nowhere does this bill fully express or commit to the goal or objectives and guiding principles of ESD, let alone translate these into provisions that logically and fully give effect to that ESD strategy. Indeed, the bill's object only refers to promoting ESD rather than ensuring or achieving ESD, and clause 136 requires ESD principles be taken into account, but not the goal of ESD.

The bill mistakenly describes the three core objectives of ESD as ESD principles when they are not; they are core objectives. This in itself indicates how poorly the incorporation of the ESD strategy has been thought through.

I would like to hand out to members of the committee an extract from the national strategy on ESD. That sets out the goal, the core objectives and the guiding principles of the national ESD strategy. I would like you to focus on the goal, if you would not mind.

There is an environmental bottom line in this goal. Quite clearly, development is required to improve quality of life for those in this and later generations, but with the very important rider that development must occur in a way that maintains the ecological processes on which life depends. The goal, therefore, should condition our thinking about what forms of development need to be dealt with within the bill and what provision should apply to the management of development and its impacts.

QCC therefore recommends that clause 3 of the bill be amended so that the principal object of the bill becomes 'ensuring the goal, core objectives and guiding principles of the national strategy on ESD are achieved'. We also recommend that clause 136 be amended so that the goal, objectives and principles of ESD are factors to be taken into account in decision making on policies, plans and proposals.

Incorporation of the standard definition of the goal, objectives and principles of ESD in this way helps the Commonwealth meet its responsibilities under the national ESD strategy and the intergovernmental agreement on the environment. It sets the benchmark for other jurisdictions.

This approach to ESD is most important given that the previous Queensland coalition government introduced new planning and development assessment legislation in 1997 called the Integrated Planning Act, IPA. IPA has sought to achieve ecological sustainability as its object, not ESD. This is a new and untested version of ESD. IPA also has a weak, non-standard precautionary principle, and there is no intragenerational equity principle in IPA.

Through the bill, we believe that the Commonwealth must attempt to discourage this kind of selective interpretation and reinterpretation of the agreed national philosophy on ESD in a different context and in different jurisdictions. For example, in negotiating bilateral agreements, the Commonwealth should require other jurisdictions to adopt and give effect to the standard definition of ESD in their environment protection, biodiversity, EIA, resources

management and planning and development assessment legislation. There should be a prerequisite to Commonwealth accreditation of any state process or law.

The second matter relates to clause 146 which deals with strategic assessments. The environment movement's national submission—the submission I referred to previously—recommends replacement of that clause with one providing for strategic EIA of each Commonwealth policy, program or legislative proposal likely to have a significant effect on the environment. Please see paragraph 27 of that national submission.

QCC recommends that this committee consider extending the requirement for strategic EIA in two ways—firstly, to semi-government and private sector policy, programs and development proposals likely to affect matters of national environmental significance or which significantly affect Commonwealth land and waters; and, secondly, by incorporating in the bill a requirement for the Commonwealth to use its 'best endeavours'—it is not necessarily going to be possible to negotiate this outcome—to enter into a bilateral agreement with each of the states that states adopt strategic EIA in relation to their policies, programs and proposed laws, as well as semi-government and private sector proposals affecting matters of state and regional level environmental significance. These recommendations create an approach to strategic EIA that reflects our federal structure.

The Commonwealth exercises EIA responsibility for its own affairs, for matters of environmental significance within its land and waters and for matters of national environmental significance in other jurisdictions. The states do the same for their activities and their land and waters where matters of state and regional level environmental significance arise. Logically, there could also be circumstances where strategic EIA could usefully be undertaken by local government, and this could also be addressed in the bilateral agreement with the states.

An excellent example of the need for strategic EIA at Commonwealth, state and regional level is the \$3 billion-plus complex of interdependent coal, power station, rail, port, dam and irrigated agriculture developments planned by Sudaw Developments and others in the Surat Basin in Central Queensland. I would welcome questions about the flaws in the EIA process that relate to that whole region development package, and how strategic EIA could be a preferable process to the compartmentalised, fragmented assessment which is occurring at present.

**Senator LUNDY**—Can we perhaps proceed on that point? Can you extrapolate on—certainly for my benefit—an outline as to the current processes, and then an explanation of the critical points where that process needs to be rectified?

**Mr Holt**—The previous coalition government entered into a kind of in-principle agreement with Sudaw Developments to proceed to prove up the feasibility of a dam on the Dawson and a dam on the Comet River. There would be of the order of 20,000 hectares of irrigated agriculture that would be dependent upon that. The dams in turn would provide part of the water supply which would be required for some of the power stations which were going to be built, which in turn were going to use the massive coal resources in the Surat Basin, part of which would be going to export, part of which would be going to the coal fired power stations.

There were a series of transport proposals associated with this complex as well, including a minimum of two, possibly more, new rail lines to link existing systems, but possibly a completely new line as well down to a coal port which could either be an expansion of the existing coal ports at Gladstone or a new coal port near Bundaberg at an area called Coona,

which has, in fact, got a marine reserve offshore. It is of great environmental significance and has national parks adjoining it, et cetera.

The process that has been gone through so far with the Sudaw Developments proposal has been basically to give the private sector its head—to allow it to go out and prove up these sorts of things. The state stands back, basically. Even the water in the dams would not remain in the possession of the state. Sudaw Developments would have the entitlement to sell the water to the irrigators.

What has happened with the environmental impact assessment process is that each aspect of this overall complex of interdependent proposals is being considered in isolation. So you look at a coal power station; you look at a coalmine; you look at a railway; you look at the port—all in isolation. But we are effectively looking at the transformation of an entire part of Queensland, an entire region of Queensland, and no comprehensive environmental assessment is possible in these circumstances where everything is dealt with in a compartmentalised sort of way.

The other major problem we have is that the site specific impacts are being looked at, the regional level impacts are not being looked at, and the impacts beyond the region, including impacts on the Great Barrier Reef, are not being looked at. Another failing of the present system is that the greenhouse gas emission consequences of coalmining, which is going to unleash things like methane, potentially—which is also going to trigger the coal fired power station proposals—are not being addressed by the Queensland government.

It is relevant, in fact, I think, for the committee to consider that, towards the end of the last government, of the order of 3½ thousand megawatts of additional power generating capacity was announced in Queensland. That could account for—according to some expert calculations we have had made for us—an increase in Australia's national greenhouse emissions of between 3.8 and 5.1 per cent. This is by 2005. We have a national greenhouse emission target of eight per cent by about 2010 or 2011.

Queensland's unilateral decisions to proceed with the kinds of regional development proposals of the magnitude we are talking about are going to completely make it impossible for our national greenhouse commitments to be met. They are just going to be blown out of the water. What I am suggesting to you is that a strategic EIA potentially can be very valuable in terms of looking at the national environmental consequences, which probably in the context of this particular development could include things like the Great Barrier Reef world heritage values and greenhouse emissions and there will probably be land clearing and threatened communities involved as the coalmining occurs. There could be a number of triggers to look at the national interest areas. But we also believe that, in a trickle down logical sort of system reflecting our federal structure, maybe the states need to be obliged through the bilateral agreements to actually look at defining what is of state and regional significance and then, because they control local government, local government should be asked to do the same thing within its jurisdiction.

**Senator LUNDY**—I need to clarify a couple of points. In terms of what you are proposing with respect to a strategic EIA—and I will get you to extrapolate on that shortly—are you articulating in your submission that the strategic EIA process be established under this Commonwealth legislation and that the relationship subsequently with the state be managed through a bilateral agreement and hopefully in similarly reflective legislation in the states?

**Mr Holt**—Yes. Obviously, there will need to be bilateral agreements between the Commonwealth government and the individual states and territories covering how EIA

processes and EIA laws are going to operate and how the linkages are going to operate between the federal jurisdiction and the state jurisdiction. Logically, the strategic EIA process that we are talking about should be established in each of the jurisdictions and that also should be covered within the bilateral agreement.

**Senator LUNDY**—In terms of this bilateral agreement, to what degree do the current Commonwealth-state consultative mechanisms and processes and, I suppose, bilateral committees in that regard actually serve as models or frameworks for what you are proposing? What is your assessment of their adequacy?

**Mr Holt**—As we have indicated in our submission, we are quite critical of the fact that the COAG agreement dealt with about 30 matters in which the Commonwealth had either primary responsibility or an interest, but only six of those 30 matters actually end up being reflected in the bill as being of national environmental significance. Big picture stuff like greenhouse, land clearing, land degradation and water allocation issues in Australia—which are emerging as major problems—were not dealt with by the legislation, which is just an absurdity when you think about it.

**Senator LUNDY**—Is it an issue, though, of the forum and the structure of that forum being inadequate or the actual substance of the outcomes being inadequate?

**Mr Holt**—I suppose it is extraordinary that you can have negotiations going on for years under COAG that generate an intergovernmental agreement that, in itself, has major problems; that, when you actually look at the agreement, it has major difficulties. But when it comes to actually trying to give legislative effect to that agreement, there are even more problems in the sense that there has been a selective exercise going on within the Commonwealth jurisdiction as to which things it is going to deal with. We do not know what the status is for 24 items out of that 30, and I think it is reasonable for this committee to challenge the federal government to demonstrate how those remaining 24 items are going to be dealt with either inside or outside this bill.

**CHAIR**—What heads of power would the Commonwealth rely on to add other items to the list, as you suggest?

**Mr Holt**—I think the COAG agreement already reflects the generally understood arrangements in terms of Commonwealth jurisdictional powers. They are quite clear, and these are identified as being a matter of responsibility in some instances; and, in other instances, it has an interest along with other jurisdictions in management.

**CHAIR**—Would you add the whole 24? If so, where do you draw the line? For example, if it is about greenhouse gas emissions, would a road project or an urban subdivision be a trigger?

**Mr Holt**—No. As we have said in the QCC submission, we believe that these should be pitched at the high end of the spectrum. We do not really want to attach figures to the number of megawatts a power station might have or the characteristics of the emissions from a major energy consuming project like an alumina plant or a magnesite plant. We believe that it is probably appropriate to give the Commonwealth reasonable discretion in these matters by using words like ‘major’ or ‘significant’, or whatever.

**CHAIR**—They are going to have problems then. The problem is, then, that you have either a duplication where the state and the Commonwealth are involved—we are trying to reduce that sort of duplication of process—or an argy-bargy over what is major. One of the problems is definition.

**Mr Holt**—Absolutely. These things obviously need to be addressed, either through the bilateral agreements or—quite frankly, they probably should have been dealt with through this—COAG. We have had officials working on these things for years. Why has it not been possible for them to actually pin down these issues properly? I am concerned that there are going to be major discrepancies from one jurisdiction to another as well with these kinds of bilateral agreements.

Picking up your point again, in relation to, say, greenhouse, the Borbidge government announced within a matter of weeks something in the order of 3½ thousand megawatts of additional power generating capacity in Queensland. That was a program of public and private sector works. They were going to virtually double the power generating capacity in this state within a six- or seven-year period. Surely that is a matter that the federal government should have taken an interest in and should have regarded as a matter of national significance. You do not even have to consider whether you have definitional problems about ‘major’ and ‘significant’. It clearly is. There is just no avoiding the issue.

**CHAIR**—But you have to have some rule. You cannot just say, ‘It clearly is.’ There has to be some defining point where something becomes major. That is why I do not think you have quite convinced me yet that you can define. You can say, ‘Yes, it does.’ But how do you get around the edges? What do you do when it is in that middle part where it could be major and it could be minor? How do you deal with that? That is the problem.

**Mr Holt**—It is difficult. The reason we have shied away from actually suggesting that you try to put numbers on these things to try to make the decisions about definitions and whatnot is that we have had experience in Queensland in the past where, under the former planning legislation, we had EIA being triggered by development of a designated type or in a prescribed area. The designated type ones quite often had figures attached to them. It could be that you have to do an environmental impact assessment if the size of the excavation you are making is more than two hectares on the flood plain. The number of 1.9-hectare excavations on the flood plain that get through without any kind of rigorous environmental assessment is remarkable. These things obviously have flaws if you try to add numbers to them, which is why I am saying to you that I do not believe you can pin these things down absolutely; you need to have some discretion. Apart from having the ability to exercise discretion, I think it is also worth while considering that the bilateral agreements that are going to be negotiated between the Commonwealth government and the states allow for these kinds of issues to be worked through. Probably on a case by case basis many of these things will need to be done.

**CHAIR**—You just said that if you make it a two-hectare hole, they will do 1.99 hectares—

**Mr Holt**—Yes. There are countless examples of it.

**CHAIR**—If you get a concept of what is major and what is minor, it is not beyond the wit of humankind to generate two projects that come in under the minor that together make up a major. You are going to find that people will still use whatever tactics there are to increase their certainty and to reduce the number of processes they have to go through.

**Mr Holt**—I appreciate that. That is another flaw in the system. You can stage the development; you can break it down into smaller component parts so that you do not actually attract the triggering of the EIA.

**Senator LUNDY**—Isn’t the scenario that you have just described with respect to the power generation model? That in fact is precisely what is happening. We have a series of projects that have all been assessed in isolation so, in effect, we are seeing a very tangible example

of that dividing up of elements of an overall strategy in such a way that actually precludes it from being considered in a broader context?

**Mr Holt**—To follow through with that example about power generating capacity and greenhouse implications, perhaps the way to deal with it is that the bilateral agreement between the Commonwealth and the states has to say that the states need to put forward their proposals for power generation and that they need to be jointly assessed by the Commonwealth and the states because they both have significant jurisdictional interests and responsibilities in these matters. So it would have to be a joint exercise. Maybe you do not deal with it on a project specific basis but deal with it on a program or a policy basis, which supports the proposition I put to you before about the use of strategic EIA, because lots of things can impact. Rather than being dealt with in a compartmentalised individual one-off way, they can be bundled together so you can get an overview of what the long run cumulative consequences are going to be.

**Senator MARGETTS**—We have seen over time that the Commonwealth can use things like export powers, treaty powers and corporate powers on environmental issues, because the High Court has told us so in things like the Fraser Island and Franklin Dam cases and so on. Quite clearly, when the founding fathers of Australia put the constitution together, they did not even consider that things like environmental standards were constitutional issues—they basically did not consider them at that particular time. We are seeing—and I think you have pointed out—quite considerable duckshoving here in relation to responsibilities. So it is not a matter of powers; it is more a matter of political will. In terms of constitutional change, what do you think might be necessary in the medium to longer term so that ecological sustainability will be seen as a responsibility of all levels of government rather than being shoved from one level to another?

**Mr Holt**—The QCC submission actually deals with the big picture issue, I suppose, and we talk about the establishment of a bill of rights under the constitution.

**Senator MARGETTS**—So you suggest that ecological sustainability can be a right of citizenship?

**Mr Holt**—Yes, as can the protection of environmental values. But possibly we could build into this bill of rights certain guaranteed requirements in relation to public participation, open, transparent and accountable government, et cetera, which will address many of the structural and institutional problems that we suffer under at the moment. It is one thing to have environmental laws; it is another matter altogether to have the capacity to implement them. For example, if you do not have legal standing to go to court, then you actually do not have any real ability to rectify flaws in the enforcement of legislation. The bill, as it is presently structured, does not provide open standing; it provides limited standing for members of the general public to seek enforcement action through the courts.

The other issue I think is about ecologically sustainable development. In my opening statement I referred to the fact that we are seeing a fairly selective interpretation of the national ESD strategy in the legislation and policies that are being adopted in the state jurisdictions, and I do not believe that that is a reasonable proposition. If we have gone through literally a decade of negotiation to reach a point at which we end up with intergovernmental agreements on the environment and a national strategy on the environment to which all of the states and the Commonwealth have become party, why does that then not become the fundamental basis of all legislation in this Commonwealth of ours? Surely ESD has to be inscribed in legislation. Our proposal is that ESD needs to be more strongly expressed as an object and as a

considering factor in the bill, but it also should follow that each of the jurisdictions should have to apply ESD in accordance with the national strategy on ESD as they develop their policies, their programs, their laws, et cetera, and the bilateral agreement should operate on that basis.

**Senator MARGETTS**—It has been argued that, because land management is under the conditions for a state's rights, somehow or other all environmental issues therefore fall under that bailiwick. Is the environment a matter of only land management in your opinion, and where does that put things like greenhouse management? How do the states end up being, if you like, the sole responsible bodies for what they do with greenhouse gas emissions?

**Mr Holt**—Traditionally, it has been taken that land and water management is a state jurisdictional responsibility rather than a national one. I suggest to you that the circumstances in Australia at the moment are such that we are seeing dramatic cross-boundary impacts of what is going on in one jurisdiction impacting on another jurisdiction. The Murray-Darling Basin is a classic example of that.

Queensland, at the moment, accounts for approximately half of the national land clearing that is occurring and Queensland accounts for half of the national biodiversity of the country. It follows logically that our nation's biodiversity, which must be regarded as a matter of national environmental significance and interest, is being put in jeopardy by the land clearing programs in Queensland. Logically, Queensland has to rein in its land clearing arrangements if national biodiversity is going to be protected adequately.

**Senator MARGETTS**—How long would it take? We have been told that we will be very quickly able to put a question to the Australian public at the time of the election in relation to the Northern Territory and statehood. How long do you think it would take to put a proposal to the Australian public about ecological sustainable development in terms of constitutional change so we can look at this legislation in the future with a bit more commonsense?

**Mr Holt**—I do not know if I have anything to offer on that except to say, as I was indicating previously, we do think that a bill of rights is perhaps one useful mechanism to be looked at to deliver ESD across the country. But we also believe there are other aspects like civil liberties, open and accountable government, rights to public participation, et cetera, that need to be embodied in such a bill of rights so that you end up with a package of things that allow communities to take control of what is going on in terms of environment and development and sustainability generally.

In fact, that is an element of the national strategy on ESD. The expectation is that communities will have an involvement and some degree of control over what is going on around them. That is simply not possible at the moment under the scheme of things. In fact, the federal structure quite often militates against that because of the compartmentalisation of perceived responsibilities and duties.

**CHAIR**—Senator Margetts, Senator Tierney and Senator Allison have some questions as well.

**Senator TIERNEY**—Just following on from some comments from Senator Margetts and the chair and what you said to us earlier about land use and water allocation not being in the bill, if we come back to basic principles, surely they are fundamentally state responsibilities. You would not be really proposing that Canberra undertake comprehensive land and water management right across the whole country region by region, river by river, valley by valley, would you? Surely it is more a state responsibility.

**Mr Holt**—The adoption of the Natural Heritage Trust is a reflection of the fact that the Commonwealth is now seen to have responsibility for trying to manage land and water and biodiversity across the country, but, unlike previous impressions where this was seen to be a matter for the states to deal with exclusively, it has obviously been recognised that collectively the Commonwealth government has a responsibility for the way the environment is managed and whether or not the development that is occurring in this country is going to be sustainable or unsustainable.

Let us go back to land and water. I guess the examples in Queensland would be that we have major water systems operating in Queensland that feed into the water systems of other states, so it is quite clear that what happens in this particular jurisdiction is going to have an effect on New South Wales and on South Australia. Therefore, because it is a matter of cross-boundary impact the Commonwealth government has got a responsibility and a duty to consider what is going on in terms of managing land and managing water in Queensland. It has a responsibility to look at those matters and have some involvement in it.

**Senator TIERNEY**—You have raised a number of issues. I would just ask you to keep your answers fairly brief because you raise about three issues each time you give an answer.

**Mr Holt**—Sorry, but these matters are complex.

**Senator TIERNEY**—I realise they are complex, and I appreciate, through the Natural Heritage Trust, that the federal government does assist in certain areas, but it does not take over comprehensive control of the whole area.

With the cross-border issues, these have obviously been issues for a very long period of time. We have set up mechanisms like the Murray-Darling Commission, an intergovernmental group. States are a part of it and the Commonwealth is a part of it. It was set up to handle that particular aspect. You seem to be arguing that the only way to do this is for the Commonwealth to take control. Surely those intergovernmental commissions are suitable mechanisms for handling cross-border issues.

**Mr Holt**—They can be, but they do not necessarily need to be. For example, consider the proposal to establish a major irrigated cotton development in the Cooper Basin. As far as I am aware, that matter was decided exclusively by the state. In this particular instance the state government decided that those irrigated cotton projects should not proceed. But it could have been the other way around, in which case we would inevitably have had reduced water and lower quality water flowing across our state boundary into other jurisdictions.

When we are talking about massive changes in land use or the intensity of land use that have got implications for other jurisdictions, surely they are matters that the federal government should have some involvement in. Those changes could possibly trigger environmental impact assessments at the federal level.

**Senator TIERNEY**—Certainly involvement, but surely an intergovernmental commission like the Murray-Darling Commission is an excellent model of what could happen.

You did indicate also that you thought communities should get more involved in the processes, which I would certainly applaud. You are wanting to increase local involvement. That is fine. You are wanting also to increase federal involvement, but we are talking about land and water management issues that are basically state issues. What do you see as the role of the states in land and water management? If you are increasing the role of all these other groups then you are decreasing relatively the role of the state that has the major responsibility in these areas.

**Mr Holt**—Without wishing to unduly complicate it any further, the situation in Queensland over recent years has been that there has been an increased tendency to devolve to local government lots of environmental management responsibilities. This has been done without due thought to the capacity of local government, or the interest of local government, to take on these matters, let alone provide the resources to local government to take on these matters.

The Integrated Planning Act and the Environment Protection Act are classic examples in Queensland of where we have effectively bundled up lots of functions and given them to local government. That enables communities to have a say in those things.

But, at a state government level, I would have to say that the environment movement is not terribly impressed with the performance of state governments of all political persuasions in terms of the way that they approach environment protection and sustainability of development. Although the federal jurisdiction does not have a particularly pure track record in that respect either, I guess we have got greater confidence in the federal jurisdiction on the basis of past performance. The Commonwealth government will stand up for the environment, and stand up for local communities if needs be as well, and probably it does do a better job than the state jurisdictions.

**Senator TIERNEY**—We are impressed that you think Canberra is the font of all wisdom, but after looking from the inside of government for the last several years, I must say that, given the responsibilities we have got in areas like trade, defence, immigration, social security and things that are obviously the proper responsibilities of the federal government, federal governments find it incredibly difficult to handle the complexities in all of these areas.

What you seem to be suggesting—and you are not the only group that suggests this—is that the federal government take on an even a wider range of powers. The education people think the federal government should run the whole school system. That has been put to us. Health people tell us we should be running all the hospital systems. The point is that, from remote Canberra, things that are specific problems on the ground right around Australia we just cannot control.

You indicate that Queensland has gone back to the local level. Would it not be a better model to have local control and local decision making, providing it was properly resourced? That is probably the problem, I would assume, in Queensland—that these responsibilities have been handed over but there has not been proper resourcing for and proper structures. Surely, that would be a better way to go than try to have Canberra control things in remote north-west Australia. Do you agree?

**Mr Holt**—I would go back to what I said before relating to the COAG process and to the bilateral agreements. If the COAG process of this bill has got any significant problem attached to it, it is the fact that we have not dealt with those kinds of issues; we have a federation, but we have not apportioned out the responsibilities and the roles appropriately. The federal government has selectively chosen a few areas in which it is prepared to accept responsibility and has not said how the balance of those responsibilities are going to be dealt with; nor has it, through this legislation, set in place any kind of process to require the states and the territories to do a similar kind of exercise within their jurisdictions to work out what their responsibilities and their roles will be.

Also, if I can repeat what I said earlier, the bill should set the principles and the processes, set the benchmarks, the standards, for how environment protection, biodiversity conservation, et cetera, should operate within the state jurisdictions. We are a federation. Surely we are capable of apportioning those roles and responsibilities in a reasonable fashion. It could be,

at the end of the day, that the federal government will be able to say, 'Okay, we've got these agreements in place with the states; we can effectively assume that the environment is going to be managed reasonably within those jurisdictions.' There is just no guarantee though, with the system we have in place for a COAG and this bill, that this is going to happen now.

**Senator TIERNEY**—Earlier, in response to questions—

**CHAIR**—Senator Tierney, Senator Allison has some questions—

**Senator TIERNEY**—Could I just have one last question?

**CHAIR**—Just one more, because we are beginning to run behind time.

**Senator TIERNEY**—Thank you. In response to Senator Lundy earlier, I think you were giving an example from around the Gladstone area of developments being site specific approvals, and you wanted, basically, a comprehensive plan initially. But given the dynamic nature of the economy, that projects just keep coming up in response to certain situations, do you think that is realistic? Wouldn't the effect of that, as we have found in places like Hinchinbrook, just freeze everything and drive away development?

**Mr Holt**—No, I do not think so. When I was talking about Gladstone I was in fact talking about the whole complex bag of interdependent proposals in the Surat Basin. What I was saying was that some kind of strategic, regional level environmental impact assessment would have been an appropriate way to deal with those kinds of issues, rather than looking at the rail separate from the port, separate from the coalmine, separate from the power station, et cetera, or a dam or the irrigated agriculture—because the things all intermeshed; they did relate. In fact, it is a bit like a pack of cards: if you take one or two of those elements away, the whole thing just crumbles. There has never been a regional level environmental impact assessment process undertaken in Queensland. And I am not aware of it ever happening in any other jurisdiction.

**Senator TIERNEY**—Can you see any way of fast-tracking such a complex, interrelated set of projects in terms of developing regional growth?

**Mr Holt**—With respect, Senator, the agreement between Sudaw Developments and the previous government was a fast-tracking package. It—

**CHAIR**—Can we just hold it there and let Senator Allison ask a question, because we must finish on time today. Thank you.

**Senator ALLISON**—I am interested in your suggestions about the criteria for accreditation. I wonder if you could relate those criteria to land clearing in Queensland, for example—how, if they were adopted, we would deal with this question of land clearing and the implications for greenhouse, which is a national concern?

**Mr Holt**—There would be two avenues available. What happens in Queensland at the moment is that we have land clearing guidelines that apply to leasehold properties in the state—and leasehold represents roughly three-quarters of the surface area of Queensland, so those leaseholds guidelines obviously are very important in terms of consequences for land clearing, for biodiversity maintenance, et cetera. It would be possible, I suggest, for the program of land clearing which was to be approved under the state Land Act to be referred to the Commonwealth government to see whether or not the Commonwealth government had any concerns from either a greenhouse emission point of view or a biodiversity maintenance point of view.

The other aspect of biodiversity maintenance would be in relation to threatened species and nationally endangered communities. In our submission we suggest that the nationally

endangered ecological communities need to be extended to those communities which are vulnerable. Queensland has a very large number of vulnerable communities, and by vulnerable we mean a community where only between 10 and 30 per cent of the original extent of that vegetation community is still in place. If you take a precautionary approach to biodiversity, you would look at protecting a vulnerable ecological community, so that might trigger a Commonwealth environmental impact assessment if one of those communities was to be affected, but also an endangered community or a threatened species.

**CHAIR**—Mr Holt, could you make your answers as succinct as possible because we are now running five minutes behind time?

**Mr Holt**—Okay. I am trying to introduce other ideas—

**CHAIR**—I know.

**Senator ALLISON**—I want to quickly ask you about consultation—you refer to it in your submission—and the involvement of the public in the processes that have been laid down by the bill. It would be fair to say, I think, that there has not been a conservation group that has supported the bill—certainly not in its entirety if in some aspects of it.

**Mr Holt**—We are opposed to it in its present form.

**Senator ALLISON**—Yes. Regarding the discussion paper, you also criticised the fact that comments appear not to have been taken up by the Commonwealth. What submission did you make at the point of the discussion paper and were any of the suggestions you made—if you made them; I presume you did—taken up in the bill?

**Mr Holt**—Again, it was a national approach on the part of the environment movement. There were individual groups who did put in some submissions. I am not entirely sure whether we put in a separate submission, but we certainly became party to the national submission that was put in on the discussion paper. As we have indicated in our submission to you, those comments do not appear to have been taken up.

**Senator ALLISON**—Not at all?

**Mr Holt**—That is right. So we have now gone through a number of processes and nobody seems to be listening.

**Senator ALLISON**—The COAG agreement is, of course, between two levels of government; it is not an open process and it does not involve—

**Mr Holt**—That is a flaw in the system.

**Senator ALLISON**—How can we correct this bill to make sure that there is an avenue for public participation?

**Mr Holt**—You do not mean in relation to COAG; you mean in relation to the processes of the bill?

**Senator ALLISON**—Yes—of the bill we are talking about.

**Mr Holt**—We believe that the bilateral agreements, the accreditation processes, et cetera, should all be subject to an open and accountable process. We believe that the initial proposals should be freely available to the community. There should be opportunities—

**CHAIR**—You have outlined that in your submission?

**Mr Holt**—Yes, we have.

**CHAIR**—Therefore, that question has been answered in the submission, Senator Allison.

**Mr Holt**—There should be opportunities for submissions, et cetera, and for these things to be taken into account before they go to a finalisation stage.

**CHAIR**—I am sorry, at this stage I am going to have to close this hearing. We could go on all day, Mr Holt, but there are some other people who have points of view to put, and a lot of our questions will be answered in the submission. Thank you very much for your attendance, for your submission and for your time this morning.

**Mr Holt**—Thank you.

[9.48 a.m.]

**BURTON, Mr Mark Peter, Committee Member, Property Council of Australia, GPO Box 113, Brisbane, Queensland 4001**

**DENNY, Mr Warren Grant, Committee Member, Property Council of Australia, GPO Box 113, Brisbane, Queensland 4001**

**ELLIOTT, Mr Ross, Executive Director, Property Council of Australia, GPO Box 113, Brisbane, Queensland 4001**

**GIBSON, Mr Guy Stuart, Deputy Chair, Planning Committee, Property Council of Australia, GPO Box 113, Brisbane, Queensland 4001**

**COXON, Mr Simon Warner, Chairman, Planning and Development, Urban Development Institute of Australia (Queensland), GPO Box 2279, Brisbane, Queensland 4001**

**MARSHALL, Mr Peter David, President, Urban Development Institute of Australia (Queensland), Level 17, T&G Building, Queen Street, Brisbane, Queensland 4000**

**CHAIR**—Welcome. The committee has before it submissions Nos 157 and 82, which it has authorised to be published. Are there any alterations or additions you wish to make to your submissions at this stage?

**Mr Elliott**—I believe that there are, Senator. We have with us our final submission, if I can table that now.

**CHAIR**—Yes.

**Mr Elliott**—Thank you. We also have a joint industry letter that was finalised only late yesterday afternoon, which we will also table. That has been sent by post to Minister Hill and to you.

**CHAIR**—Thank you very much. That will be circulated to the committee when it is photocopied.

**Mr Coxon**—We have one correction to make to our submission—I think it is No. 82, dated 20 August 1998. It is a factual error, just for the record. On page 3 reference is made to the Commonwealth Environment Protection Agency, CEPA. That should obviously now read Environment Protection Group to accord with current administrative arrangements.

**CHAIR**—Thank you. Does either group wish to make a brief opening statement? Let me just say that submissions have been read and, unless you have got something additional to add to them, it is better that we just ask questions. Has anyone got any additional comments to make?

**Mr Elliott**—Perhaps we could make a very brief opening statement, given that time is short. There are a couple of property groups represented here today that are frequently seen to be anti-environment. From the Property Council's point of view that is not why we are here. In fact, in Queensland, the Integrated Planning Act, which has our full support and which we

were intimately involved in creating, states as its objective 'ecological sustainability'. A view on the bill, which we are here to discuss today, is that it is not so much a piece of environmental legislation, but is, in fact, a piece of planning and development control, and that is where our concerns come from. We have a history of involvement in planning legislation nationally and we will leave this with you for your reference.

**CHAIR**—What are you leaving with us for our reference? It does not read very well in the *Hansard* if we do not know what it is.

**Mr Elliott**—We will leave three documents with you: *States of progress*, *Planning for change*, and *Unfinished business*. Those documents are identified in the submission.

Our concern, in brief bullet form fashion, is that the current bill, as a piece of planning and development control, basically says to the community that the Commonwealth does not trust the state agencies to do the job which they have been charged to do. The state development instruments have given the industry and the environmental movement certainty. This bill, in our view at least, will create uncertainty. The reasons are all detailed in our submission.

**CHAIR**—Mr Elliott, I am a bit confused. I thought that the previous witness told us that the states had too much control, and now you are telling us that the Commonwealth is not trusting the states.

**Mr Elliott**—Who was the previous witness?

**CHAIR**—Were you here?

**Mr Elliott**—No.

**CHAIR**—Sorry, I thought you were here. The previous witness was from the Queensland Conservation Council, Mr Lindsay Holt. He was saying that there are only six triggers for the Commonwealth, and 24 items were listed, and that maybe more of those should be included—such as the regulation of water, and that greenhouse gas emissions ought to be controlled. You are saying otherwise: that the bill does not give the states enough authority or responsibility. Why?

**Mr Elliott**—It does not, in a sense, change the authority of the states, but it adds another layer of approval processes to those which are already created under the state legislation.

**CHAIR**—How does it do that?

**Mr Coxon**—Excuse me, Chair, are we moving into the question side? We would like to make a very brief statement also along with the Property Council.

**CHAIR**—All right. You make a brief statement and I will come back to asking those questions.

**Mr Coxon**—Firstly, thank you very much for the opportunity to attend today. The committee may be aware that at the moment, as I understand, it is their first state hearing. At the moment the bill, as it stands, is out of print and there is not one copy available from any government bookshop in Australia.

**CHAIR**—Let me just tell you that I have sought advice and I have been told that the AGPS are printing more. Environment Australia have had a new consignment last week and copies are also on the Internet.

**Mr Coxon**—Good to hear. We would like to stress for the public record that the UDIA fully supports the government initiative to make sure that this is perfectly clear in terms of this reform of Commonwealth environmental legislation. The UDIA also fully supports the background substance to various things that have preceded the bill, namely, the

intergovernmental agreement on the environment of 1992, in particular, and the COAG heads of agreement of November last year. We can now move straight to questions, if you like.

**CHAIR**—The essence of this was to try and increase certainty but reduce the bureaucratic process and overlap, and you are saying that it does not do that?

**Mr Gibson**—That is correct.

**CHAIR**—Why not?

**Mr Gibson**—We support the notion of actually taking a whole series of ad hoc triggers for Commonwealth involvement in environmental decision making and trying to rationalise those. We appreciate that the attempt that has been made in this bill is actually aimed at that specific outcome, but we believe that there is a better alternative.

Queensland, in particular, along with the other states, has gone through processes of reforming environmental planning and development control legislation. In Queensland we now have the Integrated Planning Act which actually takes all environmental, town planning and development control processes, and procedures and approval processes, and actually collapses them into one, single, integrated development approval system which is recognised nationally by planning ministers, local governments and industry associations, such as ourselves, as best practice.

We have the position where all of that significant micro-economic reform has been undertaken and achieved with that piece of legislation. But we are still faced with a situation where, through the call-in powers that exist under this legislation, we could have a whole different set of environmental decision-making procedures that would apply to development proposals. This is our particular concern, but we understand other industry bodies and other parties have concerns about this applying to things other than simply development proposals. That is our significant concern. You have a whole series of new call-in powers, procedures and development approval systems that would be put in place at a Commonwealth level that effectively duplicate and overlap the state-based systems.

We believe the preferable alternative would be for the Commonwealth to maintain its interest in relation to national policy formulation concerning environmental matters, and leave day-to-day decision making concerning development proposals to the states, particularly states such as Queensland, where we have achieved this enormous reform in integrating all of those processes anyway.

**Senator LUNDY**—When you began your statement, you said you supported the concept, or the principle, of the Commonwealth taking up the role of identifying specific areas that enabled them to become involved in that decision making. But your subsequent explanation indicated that if in any way those matters touched upon issues that were under consideration by state legislation and under a state jurisdiction, in fact you would perceive that as a conflict and an additional layer. How do you resolve what I see as a contradiction in your evidence in that, for the stated aims of the Commonwealth to be achieved, there needs to be some degree of specificity as those actual issues?

**Mr Gibson**—I do not think that there is a conflict at all, with respect, Senator, because what we see as important is the clarification of the respective roles and responsibilities of the Commonwealth and the states. We support the Commonwealth's role in national policy formulation but feel that it should be in relation to setting outcomes.

**Senator LUNDY**—Can you, in terms of roles and responsibilities, sharpen your definition of that and say whether it actually embraces an issue based analysis of the environment in

defining those roles and responsibilities, or whether it is just a question of demarcation between state and federal jurisdictions?

**Mr Gibson**—I think the clearest separation would be in relation to setting the outcomes that the Commonwealth was seeking from a national environmental policy perspective.

**Senator LUNDY**—How would you define those outcomes? What is an outcome?

**Mr Gibson**—An outcome can be defined in relation to a particular geographic area in terms of quite objective performance criteria. If you are looking at a Ramsar wetland, for instance, you might be specifying certain water quality characteristics on an objective scientific basis at a Commonwealth stated sought outcome for—

**Senator LUNDY**—What about something like greenhouse under that model?

**Mr Gibson**—I think greenhouse is a good example of where the current drafting of the bill, because of its vagueness and lack of specificity about what the Commonwealth government is seeking in relation to that particular issue—

**CHAIR**—Senator Lundy, let him answer the question.

**Senator LUNDY**—He is not answering my question.

**Mr Gibson**—creates the potential for confusion and uncertainty about what is going to be an activity, or a proposal, that is called in by the Commonwealth as an issue that is considered to have national environmental significance.

**Senator LUNDY**—My point is that, if the Commonwealth's role is to define outcomes, as you have described, you have answered my question in that there has to be a fine degree of specificity in defining an outcome, and you used water quality as an example. But if you applied the same model of outcomes—degree of specificity—to an issue that is not currently included in that group of issues that the Commonwealth has jurisdiction over or involvement in, then that ambiguity remains, unless at some point that specificity of outcome is enacted across each state, again so that you have commonality between the states regardless of the Commonwealth's input. I am trying to come at a sharper definition of outcomes and how that relates back to your general position in the Commonwealth's role.

**Mr Gibson**—What the Commonwealth seems to want to do is to allow itself the opportunity to intervene in a whole series of currently undefined and vague areas. The very lack of specificity that you are talking about, in our view, reflects a lack of discipline on the part of the Commonwealth in identifying what are those matters that it seeks to have an involvement in and how it seeks to have that involvement. As I said, in Queensland we have now gone through a very disciplined process of integrating all of the environmental and planning and development approval procedures into one single system so that all of those matters can be considered at a single point in time and resolved with the objective of ecological sustainability.

**CHAIR**—Have you read the Commonwealth heads of agreement on this issue?

**Mr Gibson**—I am not sure whether I have.

**CHAIR**—Reading that might help because it does clarify some of the things you are now referring to and some of the concerns I think you have. One of the things it is trying to do is overcome the duplication you are talking about. If you read that, you will see where the Commonwealth and the states have come to an agreement about what happens and, if it is a Commonwealth responsibility, that may actually delegate it to the states, but with the oversight of the Commonwealth—I think that is right.

**Mr Gibson**—We strongly support that approach.

**CHAIR**—I think your concerns about the duplication are a little overstated. If you read the heads of agreement, that might assist you.

**Mr Gibson**—The bill provides for that as a possibility but, in our view, given that IDAS is already up and running with the Integrated Planning Act in Queensland, there is an ideal opportunity for the Commonwealth to be up front in the process, rather than undertaking to look at it down the track, to actually enmesh its own approval systems into the state approval system by the Commonwealth acting as a referral agency under state based legislation. We believe that would provide all of the necessary opportunities for the Commonwealth to have Commonwealth interests protected in relation to the environment, but it would also protect the system that we now have in Queensland which is a single integrated development approval system.

**CHAIR**—Senator Lundy has another question.

**Senator LUNDY**—Yes, I do, with respect to your comments on the IPA. We heard examples this morning from a previous witness—and I pursued it in questions with him—about the consideration of various proposals which, under the IPA, do not actually occur in an integrated way; rather, each development gets considered in virtual isolation. So the broad regional impact of, for example, a power strategy for a certain part of Queensland or for Queensland is not considered holistically under that act.

**Mr Gibson**—With respect, that is simply an incorrect view because the Integrated Planning Act delivers integration on two fronts: one is the integrated development approval system, which relates to development applications, but the other thing it delivers integration on is the plan making process. So for the first time in Queensland we have a system whereby all state agencies are required to identify what their interests are in relation to planning development and environmental outcomes and they are actually built into local authority planning schemes. So those planning schemes are now whole of government or whole of public sector ideally.

**Senator LUNDY**—Under the IPA, is there an opportunity for all of those elements to be considered holistically in a strategy?

**Mr Coxon**—I was here this morning when the witness gave that evidence. What was put to you is wrong. The committee would have a clear misunderstanding of how the state system works.

**Senator LUNDY**—That is why I am asking these questions, Mr Coxon. If you will let me proceed, I am trying to get your view of this matter. I think it is important that the committee has the opportunity to hear all views. There is no doubt that there will be some non-agreement between witnesses.

**Mr Coxon**—There was a statement, for instance, that local authorities—

**Senator LUNDY**—It is not really your role to refute a previous witness. If you will let me ask my questions, the committee will establish the different views.

**CHAIR**—Senator Lundy, a witness can indicate where they think that they have heard something. I asked a question about what the previous witness said.

**Senator LUNDY**—That is the purpose of my questions.

**CHAIR**—Let Mr Coxon answer what he thinks were your questions.

**Mr Coxon**—Thank you, Madam Chair. There was one point made this morning that the devolution of powers had actually increased for local authorities. That is patently not true. Under IPA for the first time, compared, for instance, to the previous planning and development

legislation, all state government departments on varying levels now have referral powers to all planning and development decision making within Queensland, to the extent that some of those departments actually have refusal powers in relation to those applications.

There was some mention this morning of digging a two-hectare hole and applications being made for 1.99 hectares. That is only one small aspect of an application being environmental licence. Impact assessment of whether that hole is two metres, two hectares or 2,000 hectares would still occur under Queensland's Integrated Planning Act.

**Senator LUNDY**—The point that I was trying to get to with respect to the IPA is that the Commonwealth has identified six areas of their responsibility. If a process engaged under the IPA did come under one of those aspects of the Commonwealth legislation, is it your understanding that that process would then instigate a holistic assessment of that given project? Is that how you see it working.

**Mr Gibson**—If the Commonwealth were to fall in under the IPA, do you mean?

**Senator LUNDY**—No. They would utilise their powers as provided for in the six elements that provide them for jurisdiction. How do you see that?

**Mr Gibson**—I am trying to understand how you see the intersection between the IPA and the Commonwealth's powers.

**Senator LUNDY**—It becomes what the trigger is for Commonwealth involvement post IPA consideration of a given proposal.

**Mr Gibson**—The difficulty is that the current system provides for a completely separate system of Commonwealth review, which is the very point we are making about overlap and duplication. You could even take it to the extent whereby a proposal had all of the necessary authority approvals under the IPA in terms of planning, development and environmental licensing and was under way and, because of the then perceived effect on a matter of national environmental significance, that proposal which was under way was called in. So there would be no confidence about whether or not somebody actually had authority to proceed. That is one of the areas of concern about the vagueness of what an effect on an area of national environmental significance relates to. Potentially areas quite remote from an area of national environmental significance could be perceived by the Commonwealth to be having an effect that justifies Commonwealth call-in, and that could apply even before the commencement of the proposal; it might occur during delivery of a project.

**Senator LUNDY**—So you do not agree with the statement made by Mr Coxon about supporting the presence of the Commonwealth in those areas. You place your confidence within the IPA and the IPA processes.

**Mr Gibson**—Our suggestion is that the theoretical process that is alluded to about accreditation of state processes be carried one step further and the Commonwealth become formally involved in the plan making process under IPA, so that Commonwealth interests in particular areas are actually included in the plans which then become whole of public interest plans instead of just whole of state government and whole of local authority public interest plans, as they are in Queensland at the moment, and the Commonwealth actually sees its interests included in the plans that are produced and then administered. Then, through the integrated development approval system, the Commonwealth would be formally involved in the process of considering applications that meet certain triggers, but again as part of a single integrated system, so that there cannot be confusion or uncertainty, once an authority is

obtained, and that authority cannot be realised or might be struck down because of some later Commonwealth process.

**CHAIR**—We are all coming to grips with this ourselves, but I thought that the environmental impact triggers—there were six major Commonwealth triggers—would be taking place at the same time. It is not some sort of two-stage process; it is done in conjunction with the state, sometimes with cooperation of the state. In fact, the agreement talks about that.

**Mr Gibson**—It may, but it may occur later. It may occur during project delivery.

**CHAIR**—The whole essence of this was to try to get some sort of certainty into it on both sides. Maybe you need to go back and read the COAG agreement and I need to have a look at the bill, but my view is that it is not as bad as you seem to think it is.

**Mr Gibson**—It may not always be as bad, but there is the potential for it sometimes to be as bad as that because the processes might not operate in parallel because the Commonwealth process might occur later than the state process.

**CHAIR**—You have raised that issue. We will go back and have a look at it. We will talk to the people about that when we get some more advice from the department.

**Senator ALLISON**—Mr Coxon, could I just clarify your position on this bill. I thought you said earlier that you supported the bill in its present form.

**Mr Coxon**—No, I thought I made it quite clear that we supported the background agreements to the bill, but unfortunately everything went off the rails with the production of this document.

**Senator ALLISON**—What do you mean by background agreements?

**Mr Coxon**—I do not think any major groups have a major problem with the concepts, agreements and principles embodied in the intergovernmental agreement on the environment of 1992 and the COAG agreement of 1997, but unfortunately those principles have not translated into the bill in any shape or form.

**Senator ALLISON**—There seems to be some agreement between you and the previous witness in relation to the need for state legislation to be in line with Commonwealth legislation. Can you expand on that?

**Mr Coxon**—I would go the other way and say that maybe the Commonwealth legislation should be in line with the state legislation because it is so far advanced that it is in a different hemisphere.

**Senator ALLISON**—Would you accept that states have different forms of legislation?

**Mr Coxon**—I would, yes.

**Senator ALLISON**—How would you suggest that they be brought to some sort of national consensus, or is this not important in your view?

**Mr Coxon**—I think that what is referred to in the bill in terms of bilateral agreements and accreditation is admirable, but that must occur at the front end and not, as is currently articulated in the bill, happen in the passage of time when, once this becomes law, there is really no encouragement on behalf of the Commonwealth to do anything.

**Senator ALLISON**—In your submission you say that you think there is a problem with the constitutional validity of the bill. Can you expand on that? I think the Property Council's submission said that.

**Mr Gibson**—I think there is a potential question mark over the constitutional validity which could again lead to challenges and uncertainty.

**Senator ALLISON**—Why do you think there is a question mark?

**Mr Gibson**—Because the Commonwealth powers in relation to the environment are circumscribed. This has the appearance of potentially extending the Commonwealth's role into areas that it does not have specific constitutional powers to do.

**Senator ALLISON**—On page 2 of the document that you tabled this morning, you talk about the late 1980s and the early 1990s seeing an explosion of government planning controls in the property industry. You refer to environment, heritage, coastal development, fauna conservation, contaminated land and so on as being a problem which the Property Council of Australia has arrested. You refer to those measures—presumably—as a cancer. Is that not overstating the position somewhat? Do you not regard environment, heritage, coastal development, fauna conservation and the like as being important?

**Mr Gibson**—I think we regard all of those as being important. The issue during the 1980s was that separate pieces of legislation dealing with each of those aspects were promulgated, leading to lack of clarity about approval systems and so forth. The benefit of the integrated development assessment system we now have in Queensland is that it has actually collapsed those different approval processes into a single system whereby, with a one-stop shop, an applicant can achieve all of the necessary permitting and licences authority approvals that are required to undertake a development.

It is more the fragmentation of the control system that we believe is undesirable rather than the fact that there are controls over each of these aspects. Each of those different pieces of legislation again led to duplication and potential overlap and multiple permitting of the same activity by different agencies. What this is talking about is the work of the Property Council in recommending, through the planning ministers forums and so forth, measures to achieve greater uniformity of planning control mechanisms. To come back to the question you put to Mr Coxon, what we would recommend is greater uniformity across all the states, and, as an association, we have been actively involved in attempting to achieve that for a period of 10 years.

**Mr Elliott**—This unfinished business which we will table is to try to deliver a harmonised system, which I think is what we are really driving at. We do not object to legislation to control contaminated sites or environmental run-off, but we would like to see the legislation consistent throughout the country and internally consistent within the states. A one-stop shop approach—so that you know up front what the requirements are for industry—is preferable to finding out part way through a project that there is a series of open doors and no end in site.

This was prepared for the Australian Council of Building Design Professions, the Building Designers Association of Australia, the Housing Industry Association, the Institution of Engineers Australia, the Master Builders of Australia, the Property Council of Australia, the Real Estate Institute of Australia, the Royal Australian Institute of Architects and the Urban Development Institute of Australia. So there is some momentum to achieve a harmonised system around the state, and state planning ministers—at least in our understanding—are very supportive of that.

Senator Patterson, I have one further comment in response to something you said earlier about the Commonwealth heads of agreement. It is our understanding that a number of the state agencies are particularly concerned that this bill in its draft form will create difficulties

for the state agencies because of the uncertainty, from their point of view, in administering their own state based legislation because of the identical issues which industry groups like the UDIA and the Property Council have raised. In Queensland, I understand there is a cabinet submission being prepared on this and that there will be a formal view put down the track. All we can really allude to at the moment is our understanding that there is a depth of concern, not only within Queensland but elsewhere.

**Senator MARGETTS**—It was hard for me to pick up who made the statement about performance criteria in relation to Ramsar. If I ask the question, perhaps the relevant person might like to jump in.

**CHAIR**—Mr Gibson.

**Senator MARGETTS**—Australia signs international agreements in relation to things like protection of migratory whales and so on. Obviously it is very difficult for one state to act differently from the others because the whales do not know to act differently in different states. In relation to Ramsar wetlands—that is, in relation to Australia's commitments in protecting migratory bird species—how could a set of quality criteria protect migratory birds if a large part of the problem seems to be the amount of clearance and development around Ramsar wetlands? If it is a matter of clearance, you might end up with a high quality puddle left, but the actual amount of wetlands left may be in breach of Australia's international commitments. Could I have a comment on that?

**Mr Gibson**—In the initial instance, I think the best way for the Commonwealth to address that is through the state-based plan-making process so that Commonwealth interests in protecting particular geographic areas are actually implemented through the planning schemes that are prepared with the contribution of all the relevant state agencies and local governments now. In the future, if it could also include the Commonwealth agencies' interest and they are protected in the planning schemes that are created, then the process of implementation of those planning schemes will naturally pick up the concerns that the Commonwealth has in relation to particular geographic areas. If it is an issue of the clearing of a particular geographic area, that control can be built into the planning scheme that is produced as a collaborative effort by the state agencies, local government and the Commonwealth.

**Senator MARGETTS**—You say it can be, but does anyone know of a planning scheme that says, 'No Ramsar wetlands will be allowed to be cleared?'

**Mr Gibson**—As it happens, that is now effectively undertaken in an ad hoc way because particular Ramsar wetlands—a good example would be the Tinchy Tamba wetlands in the Pine River north of Brisbane—are already included by Brisbane City Council in a conservation zone which does not permit any development.

**Senator MARGETTS**—They have chosen to do that.

**Mr Gibson**—They have chosen to do that in support of their own strong environmental objectives, which are consistent with the Commonwealth's in this particular instance. The point we would make is that the Commonwealth should formally participate in those processes of plan making and ensure that Commonwealth interests, objectives and preferred environmental outcomes are actually built into those plans in the same way that state agencies now do. Then, through the process of assessing applications that relate to those particular places, the Commonwealth would actually be formally involved as a referral agency to ensure that its interests are protected. So there are two opportunities for the Commonwealth to ensure that Commonwealth environmental concerns are addressed.

**Senator MARGETTS**—With all due respect, I know of a number of examples of where states were quite prepared to clear Ramsar wetlands, so we cannot necessarily assume that the states will automatically put those restrictions on themselves. That leads me to this question: in corporate law, tax law or just about any other form of law in Australia, if there is an agreement between the states and the Commonwealth and one or both of those parties breaks that agreement, we will see it in the courts and it will be sorted out that that agreement cannot be broken. In the case of environmental agreements, what should happen if one or both of the parties breaks that agreement? What action can actually be seen to be protecting the environment if the Commonwealth signs off to an agreement with the states on certain promises and those promises simply are not kept?

**Mr Elliott**—It is really a jurisdiction issue, isn't it?

**Mr Coxon**—I would have thought that the ultimate reliance is on the legislation of that particular state. Agreements between states and the Commonwealth on matters like this are really at the end of the day nothing but political comforts, as you have probably identified.

**Senator MARGETTS**—They are not worth the paper they are written on.

**Mr Gibson**—But planning schemes have the force of law.

**Senator MARGETTS**—For protecting the environment?

**Mr Gibson**—That is right. Planning schemes have the force of law.

**Senator MARGETTS**—I could give you many examples where they do not.

**Mr Gibson**—Planning schemes in Queensland have always, as a matter of historical legislation, carried the force of law.

**Senator MARGETTS**—Sure, they might carry the force of law for what is in the planning scheme, but that does not mean that they actually protect the environment.

**Mr Gibson**—That is an issue about whether or not the planning scheme is constructed in such a way as to protect the environment, which is why we believe the Commonwealth should formally become involved in that process of plan making in Queensland and have its interests protected in those plans, in the same way that state agencies now have their interests protected in those plans.

**Senator MARGETTS**—I would like to point out that I do not know of any environmental standard in Australia that can actually be enforced, so the certainty you were talking about actually seems to be one-way certainty. There is certainty for industry to get approval but not necessarily any certainty in what you have suggested, that we are actually going to have environmental standards that can be maintained.

**CHAIR**—That is a statement, Senator Margetts, and I do not think it requires an answer. We are running out of time because we are due for the next witnesses. I think we have all had a reasonable chance. We have got a lot of people to get through and a lot of places to go. I would like to thank you all for your presence. If there is anything that strikes you afterwards that you would care to put on paper, we would accommodate that, though we have got a lot of submissions and a lot of material to go through. I thank you for the time you have spent in preparing the submissions and the time today. Thank you very much.

[10.25 a.m.]

**DALTON, Mr Graham Laurence, Executive Director, Queensland Farmers Federation, 27 Peel Street, South Brisbane, Queensland 4101**

**ROSS, Mr Richard, Research Officer, Queensland Farmers Federation, PO Box 3128, South Brisbane, Queensland 4101**

**BREEN, Mr Martin Gerard, Operations Manager, Queensland Commercial Fishermen's Organisation, PO Box 392, Clayfield, Queensland 4011**

**CHAIR**—The committee has before it submission No. 154 from the Australian Seafood Industry Council, which is authorised to be published, and the Queensland Farmers Federation submission, which has just been tabled. Is there anything additional you would like to add to either of your submissions?

**Mr Breen**—Yes, Senator, I have some additional information, which is the submission from the Queensland Commercial Fishermen's Organisation, and copies there for members.

**CHAIR**—Do you have any additions to make to yours, Mr Dalton?

**Mr Dalton**—Only that we support the National Farmers Federation submission and this provides more detail on some concerns we have.

**CHAIR**—Senator Margetts, you can go first this time. Do you have any questions?

**Senator MARGETTS**—Yes, I have. For fishermen, obviously seagrass has great importance in relation to nursery areas and mangroves. Does Mr Breen feel that the state, perhaps Queensland in particular, is able, under its current planning procedures, to adequately protect the nursery areas for the fishing industry, including crayfishing, prawns and so on?

**Mr Breen**—To answer your question, Senator, in some ways yes, in some ways no. I was hoping to give a brief introduction to our submission, but I will continue, if you like, to answer the question. The state has a range of legislation in place to deal with nature conservation and it also has particular legislation in place to deal with fisheries. Experience has shown that in Queensland seagrass beds are perhaps not as well protected as they could be under an ideal regime. We have found that the fisheries laws have been particularly effective in maintaining the long-term prosperity of the Queensland commercial fishing industry. The different agencies responsible for the different pieces of legislation take different approaches to these issues.

I guess it is worth noting that results from the effects of the trawled fishing experiment which have recently become available suggest that trawling is in fact nowhere near as harmful to the substrate as a lot of people in the community believe. Also, there are some preliminary results coming back from the effects of the line fishing experiment which might suggest that commercial line fishing on the Great Barrier Reef is operating currently at sustainable levels. In this regard it is notable that the conservation strategies of the Great Barrier Reef Marine Park Authority might not actually be achieving all they could. So it is a very complex answer to the question you have asked me. It is a very complex question.

**Senator MARGETTS**—Perhaps in particular with mangroves, what kind of legislation is necessary to protect the important areas of mangroves as natural areas for the fishing industry?

**Mr Breen**—Currently we have in place the Fisheries Act and the fisheries regulations which protect all marine plants in Queensland. We feel that it is quite adequate. If any person wishes to remove or damage in any way a marine plant, they would need approval from the state agency, the Queensland Department of Primary Industries, and we are always consulted during that process. Currently we feel that is quite adequate.

**Senator MARGETTS**—Right, so there have been no problems with reduction of nursery areas for your fishing under these acts?

**Mr Breen**—There have been local issues up and down the coast over the years. Recently we have implemented—actually in 1995—the Coastal Protection and Management Act. That was a result of a significant campaign by the Queensland Commercial Fishermen's Organisation and conservation agencies over a long period of time. Focusing on this question of coastal development, it goes right back to the early 1980s. That legislation has been in place only for the last couple of years and it is beginning to produce statutory management plans. We are hoping that that will deliver even a higher level of protection than we already have.

**Senator MARGETTS**—You are hoping?

**Mr Breen**—Yes, we are hoping. We are involved; the legislation is there. It does provide powers to protect our interests and we are involved in the discussions. I am not sure that there is anything more that we could possibly do at this stage than to let that process unfold.

**Senator MARGETTS**—But mangroves are still being cleared and seagrasses are still being cleared in parts of Queensland or impacted by other farming methods?

**Mr Breen**—I am not sure, Senator. I do not have any evidence about that.

**Senator MARGETTS**—Right, thank you.

**Mr Breen**—Could I perhaps just give a very brief overview of the paper that I have just submitted?

**CHAIR**—I would prefer not, Mr Breen. We will read that. We are running behind time and it is better for the senators to ask questions and then go back and read it. I am sorry about that.

**Mr Breen**—I feel there is one quick thing I need to say and that is that, if you had to liken this debate to the tax debate, there are some similarities in that everybody in the community believes that we need to reform the tax base.

**CHAIR**—I do not think you could say that, Mr Breen. I would like everyone to think that.

**Mr Breen**—The model is debatable, but I think people generally believe that there is a need for reform. Certainly in terms of Commonwealth environmental laws, interested parties believe there is a need for reform. It is interesting to observe the comments this morning, including the comments from the conservation organisations, and I have not heard anyone support this bill at this stage. I think that is a very important issue.

**CHAIR**—Thank you.

**Senator ALLISON**—Can you expand on your remarks about the national environmental significance? This word 'significance' is always kind of contentious. Have you had any thoughts about how that might be defined? Do you have any suggestions to make?

**Mr Breen**—We have in our national submission. The ASIC submission has gone into some detail, I believe. I think our concern with the definition of NES is that it extends the power of the Commonwealth into state affairs to a level which at the moment we do not feel all that certain about.

**CHAIR**—You do not think it should happen or you think it is too much?

**Mr Breen**—We do not think it should happen.

**CHAIR**—I am just laughing because it is the exact opposite of what we just heard from the previous witness.

**Mr Breen**—If you have a close look at what people are saying, some people believe there will be more power in the Commonwealth and some people believe there will be more power in the states. The primary reason for setting up this legislation was to bring in ESD and create certainty. The only thing it has done is create more uncertainty, and that is a critical point which this legislation has not resolved. There is a lot of feeling amongst our industry that, despite years of campaigning for more strategic and more coordinated approaches from the state and the Commonwealth, unfortunately this does not deliver it.

**CHAIR**—Is it amendable, or do you think it should be—

**Mr Breen**—It is amendable.

**CHAIR**—In your opinion?

**Mr Breen**—Yes, it is. All we were seeing to date were our submissions falling on deaf ears. I really appreciate the fact that the Senate inquiry has come to Brisbane to give us an opportunity to have a say.

**Senator ALLISON**—Did your organisation make a submission at the point of discussion paper?

**Mr Breen**—Yes.

**Senator ALLISON**—And again your suggestions were not taken up?

**Mr Breen**—No.

**Senator ALLISON**—You say in your submission that in your view there is a problem with ministerial intervention. Again, have you had a chance to suggest where that intervention is appropriate and where it is not?

**Mr Breen**—I think we are confident in the negotiations between the state and the Commonwealth in terms of the bilateral agreements. We are hoping that that process will produce results favourable to our industry. Because it is behind closed doors, we are really not sure how it will turn out. If we were more closely involved in that process, then we might be in a better position to be confident that the outcome would be suitable.

**Senator ALLISON**—Would you presumably like to see some of those bilateral agreements available before we proceed with the legislation?

**Mr Breen**—Yes, and that is detailed in our submission.

**CHAIR**—Senator Lundy, do you have any questions?

**Senator LUNDY**—No.

**CHAIR**—Senator Tierney?

**Senator TIERNEY**—No, but I would like to hear from Mr Breen if we could. We usually allow our witnesses to give a brief statement and he seemed very keen to do it. I will give up my time to allow him to do that.

**CHAIR**—Okay. We have asked our questions, so you have got time. We needed to give QFF time too. Now we have got a bit of time, you can give us a quick run-down. Do not read it out; could you precis it?

**Mr Breen**—I think I have covered all I wanted to say. Thank you.

**CHAIR**—I have been overruled and now I have won in the long run. Has anybody else got any other questions? Have you got anything else you would like to—

**Senator MARGETTS**—I do, if possible.

**CHAIR**—Yes, Senator Margetts.

**Senator MARGETTS**—What does either body—perhaps the Australian seafood industry—believe should be happening to GBRMPA? Should GBRMPA be state responsibility or is there recognition that the Commonwealth should still maintain an oversight of GBRMPA?

**Mr Breen**—I am glad you asked that question, Senator. I know in the discussion paper which was released several months ago that the intention was to make minor amendments to the Great Barrier Reef Marine Park Act. Our submission at that time—and it still stands—is that the Great Barrier Reef Marine Park Act does need to be amended.

The issues we would like to be considered are these. Firstly, the objectives of the act. There are five objectives of it at present. The lead objective is conservation. The act was written in 1975. Since that time there has been substantial evolution of our understanding of environmental issues and considerable debate. Queensland has introduced a range of resource legislation which provides for ESD but the Great Barrier Reef Marine Park Act does not have ESD in its objectives and we would like to see that happen.

Secondly, there is an issue regarding governance. We feel that it would be beneficial to everybody involved if the Great Barrier Reef Marine Park Authority were governed by an expertise based board, if the Great Barrier Reef Consultative Committee stayed in place and if the new act was objectively governed and remained free from political interference.

We are not advocating removing the Great Barrier Reef Marine Park Authority or handing the powers over to the state, but we are advocating just updating the act to bring it in line with the current state processes.

**Senator MARGETTS**—Currently the federal government is undertaking an experiment to see what happens when you fish otherwise unfished reefs. Is that political interference or is that just the Great Barrier Reef Marine Park Authority trying things out?

**Mr Breen**—Not at all. That is a most important experiment and it was designed by leading world fishery scientists in consultation with the authority, as you would be aware, Senator. It will provide us with a better understanding of what it means to catch fish on the reef, to what level you can catch them, and how sustainable our industry currently is. We would urge the government and the Senate to ensure that the project is seen through to its fruition. I note that it is coming up for a second round and there will be a vigorous debate in the Senate. We will be urging all senators to support that project continuing until it is finished so that we can all have a better understanding of the role of fishing on the Great Barrier Reef.

**Senator MARGETTS**—And so there can be more live fish for the market in South-East Asia?

**Mr Breen**—If that is the case, there would be less dead fish because, at the moment, you get \$52 a kilogram maximum for a live fish. For a dead fish, you get around about \$12 or \$15. Live fish boats carry far fewer fish than dead fish boats. It could be argued that the live fishing industry offers a much more sustainable and much better value-added product than dead fish.

**Senator MARGETTS**—So it is really a commercial production decision. It is not really about conservation.

**Mr Breen**—The issue of live fish export has nothing to do with the experiment. The experiment is all about trying to find out what happens when you fish the reefs at certain levels. It will produce results which will be very meaningful for management, but it is important not to confuse the two issues. They are both quite separate and the experiment is very important.

**Senator MARGETTS**—I think we might have to agree to differ on that one.

**Mr Breen**—I would appreciate talking to you in more detail about it somewhere else, if circumstances permit, Senator.

**Senator MARGETTS**—Thank you.

**Senator ALLISON**—Mr Dalton, I just had a look at what you tabled this morning. You say that you are concerned about the fact that there is no appeals provision and that, in the absence of bilateral agreements, the decision rests solely with the minister. What sort of provision should there be there? The argument we have from the government and others like the Property Council of Australia is that appeal provisions simply result in delays. Why is this your view?

**CHAIR**—Is there an appeals process currently available?

**Mr Dalton**—Under our state law, there are a range of appeal processes and due process.

**CHAIR**—I am talking about what triggers issues for the Commonwealth.

**Mr Dalton**—Our concern is that this will represent a significant expansion of the powers of the Commonwealth into land management issues in Queensland. I would point out that about 87 per cent of the land area in Queensland is managed by our members. Almost every bit of water that lands on a farm ends up either in the Great Barrier Reef or in the Murray-Darling system or flows down into Lake Eyre. Every piece of vegetation has an impact on the balance of greenhouse gases. All our coastal rivers flow into the waters of the Great Barrier Reef. The potential exists here for a major intrusion of the Commonwealth into land management issues. That is the nub of what we are saying.

**CHAIR**—How would they intrude?

**Mr Dalton**—I can give you some examples of what we have been hearing in recent times. The Queensland Conservation Council said, for instance, that dugongs are being killed by dioxin and the dioxin is coming off cane farms. We have put an exhaustive effort into testing the science of that and we cannot see it. But if that became the general wisdom then maybe there would be pressure on cane farming.

**CHAIR**—Where will the trigger come from?

**Mr Dalton**—The trigger will be that cane or trash burning is affecting the waters of the Great Barrier Reef. That could well have a significant impact on an area of national environmental significance. We do not know what a significant impact is. Certainly a significant part of the conservation movement would be arguing that it is a significant impact.

The Great Barrier Reef Marine Park Authority suggested in recent discussions with our environment management group that perhaps consideration should be given to fencing water courses on rangelands because of the impact on the water quality. That is an extraordinary expectation of industry, as just the level of steel alone involved in trying to provide the fencing is extraordinary, yet that is on the table for discussion. If that became deemed to be a significant impact, then the powers would exist for the Commonwealth to start intervening in land management issues.

You might say that I am drawing a long bow but, with all due respect, the bill does have that long bow provision. It does obviously intend to have bilateral agreements with the states that will provide for sensible management, but we do not know what those bilateral agreements might be. We do not know what a significant impact is. At the moment, in the absence of those, an enormous amount of power will exist with the Commonwealth minister, and that

power will be to intervene in what have been routine and existing land management decisions should they be deemed to be a significant impact. I have other lists. The damming of the Dawson that would damage the Great Barrier Reef was another good example. Does ploughing of rangelands for water detention have a significant impact on the Great Barrier Reef? They are some of the examples I am flagging.

**CHAIR**—I do not know the answers.

**Mr Dalton**—No, I do not know the answers either.

**CHAIR**—I will seek some answers. We will respond in the report.

**Mr Dalton**—I add that the Industry Commission recently reviewed Commonwealth environment legislation and made a major report. It basically recognised that industry such as ours does have a major role in land management. It strongly urged a very cooperative approach, codes of conduct and so on. I do not think I see the recommendations of the Productivity Commission embodied in this legislation.

**CHAIR**—I would like to thank you all for coming today and for your submissions, Mr Dalton and Mr Breen.

**Mr Dalton**—Thank you. I apologise for the lateness of the submission, but it is such a big issue.

**CHAIR**—It does help us to have it in beforehand for all sorts of reasons.

**Mr Dalton**—I think you will see, from our concern about the consultation time, that it would need a fair bit of discussion.

**CHAIR**—Thank you. You have to start working when the bill is in the House of Representatives.

**Mr Dalton**—We started working well before the bill was in the House of Representatives. We asked for a draft copy and were refused it.

**CHAIR**—Thank you.

[10.51 a.m.]

**COFFEY, Dr Felicity, Queensland**

**UDY, Dr James, Ransome, Queensland**

**UDY, Mrs Nicola, Ransome, Queensland**

**CHAIR**—Welcome. Do any of you have anything to say about the capacity in which you appear today?

**Mrs Udy**—I am here in a private capacity, representing myself and my own views.

**Dr Udy**—I am also presenting my own personal views and not those of organisations I am affiliated with or employed by.

**Dr Coffey**—I am representing myself.

**CHAIR**—We have before us submissions Nos 56 and 94, which the committee has authorised to be published. Are there any alterations or additions that you would like to make to those submissions?

**Dr Udy**—I was going to make a brief statement. How are you going for time?

**CHAIR**—If you read it out people will fade off and not listen. People concentrate better if you can speak to it. So raise the points you want to raise.

**Dr Udy**—I know that in recent times the QCFO and scientific management of marine things have come closer together, but I was pleased to discover that I am in quite close agreement with some of their points. The bill has some positive aspects. It gives, for the first time, statutory powers relating to Ramsar sites and migratory species. It improves management of endangered species. It has the potential to improve the management of world heritage areas and to provide a coordinated approach to the Commonwealth administration of environmental issues that are of national significance.

However, the danger in the bill is in its ambiguities. As it is currently proposed the minister has large discretionary powers and, as has been pointed out by the industry representative who spoke before us, that is a double disadvantage. The minister will constantly be under pressure from vested interest groups to use his discretionary powers to help either of them—in some cases to approve environmentally damaging things and in others to stop environmentally damaging things—and it provides no clear ground rules for either industry or conservation groups to work on to provide stability for developers and conservation groups. That factor of the bill needs to be addressed before any positive steps can be made. Obviously there has to be give and take in all environmental issues. Most people in science understand that there are certain important conservation values that should not be negotiated and that there is also a large area where negotiation has to be allowed because conservation is not the only thing—there is conservation and there is also the fact that people expect to make money from the environment. Those two cases have to be looked at and balanced and this bill needs to clarify how those things are going to be balanced, rather than leaving it up to ministerial discretion.

The bilateral agreements have a potentially positive aspect but once again the lack of any public or, as we heard this morning, industry involvement gets everybody concerned that agreements are going to be signed and sealed behind closed doors and the first thing we are going to hear is that they are already signed, sealed and delivered. That aspect of the bilateral agreements has to be looked at.

My overall opinion of the bill is that, as far as I have been able to ascertain at this point, it has a lot of positives in being able to look after the environment and give the Commonwealth power, but the way some of these bilateral agreements could occur is analogous to the Senate relinquishing their ability to approve House of Representatives bills. You could make these agreements with the states and find that you are giving up your right to then say, ‘That is not the way that should be happening.’

Obviously, I would imagine most of you would agree that it would not be good for the Senate to say, ‘We trust the House of Representatives enough to let them pass bills and anything they pass will be fine.’ You want to keep your right of approval. Giving the states the day-to-day management of the environment is good, but it is important that the Commonwealth provide the ultimate safety net for protecting the environment when either the states or local governments do not step in and protect the national interest.

**CHAIR**—Dr Coffey, do you wish to make a brief statement to add to your submission?

**Dr Coffey**—I have tabled a written submission to go with my address. I will run through it and make points as I go. I will not read it, but I will highlight the issues.

The first one concerns the bilateral agreements. I am not happy with the bilateral agreements. I would prefer national policies and regulations. It does remind me of when we had different railway gauges for different states. The Property Council said they would be happy if all Australians had the one regulation. I am sure businesses would be pleased to have one

regulation and not change between states when it comes to transport or whatever and petroleum companies. I do not like the bilateral agreements.

We should have national strategies, and of course the states can implement them and so forth, but there needs to be one set of policies and regulations with the same penalties throughout Australia. I have highlighted some examples from the Rio declaration, Agenda 21, to highlight that I emphasise national strategies. That is page 2. I have mentioned the parts in the bill that I would like changed.

Notwithstanding my disappointment at the proposed fragmented approach to environmental management and conservation, I will now move on to the bill. One issue is the objects of the act. In the Rio Declaration on Environment and Development they mentioned that we should conserve, protect and restore the environment. I would like the word 'restore' to be included in the objects of the act. That is very important.

Principle 15 of the Rio declaration talks about the precautionary principle. I know that is mentioned in the act for the minister, but I think it should be part of the objects. I know it is part of ESD, but it should be stated because we have so many problems in Australia. It is really important that that is up front. That is the recommendation on my part.

On page 4 I have mentioned three new objects I that would like to see in the act. Part C is to restore and rehabilitate degraded environments and that is a very important part of a bill on the environment. I would like to have that precautionary principle put up front in part E. In part F, I would like to take the statement out of the national state of the environment report which said that we need to embrace a systems approach to environmental protection and conservation of biodiversity, and that would include national legislated policy. There should really be a systems approach and we should not let each state have different policies, values and regulations. That is the objects of the act.

For issue 3, matters of national environmental significance, I highlighted in my submission that nature does not stay within state boundaries and ecological processes. You are talking about the air moving and we mentioned water earlier today. The Murray-Darling is a great example of what happens if Queensland does something with the waters up in Queensland—and what is left for poor South Australia?

I really do not think we can have state boundaries for the environment. We have ecological processes. The Commonwealth has acknowledged this with a national weed strategy, because weeds and pests do not stay within state boundaries. It is really important that the environment is looked at differently because it is so mobile.

I suggest on page 5 that there are a lot of issues that the Commonwealth needs to deal with, including environmental research and teaching, because that is part of matters that I think the Commonwealth should be involved with. I have listed what I think and they are quite extensive.

**CHAIR**—I would like to ask you a question to start off with. How long do you think it would take to get all the states to have uniform legislation?

**Dr Coffey**—That would be a problem.

**CHAIR**—If we tried to think about it, it would be almost impossible to guesstimate how long that process would take. Can the environment wait that long? Do you do one thing and try and look at the other afterwards? Do you try to do it in the way you are suggesting to get all the states to agree? You have just heard the Queensland people talking about the integrated assessment process. Victoria, Tasmania and Western Australia all have different processes.

To get them all to come to some agreement that would fit within this bill, it seems to me that the environment would suffer in the interim.

**Dr Coffey**—We have the national strategy for ecological sustainable development already in place. We have the national strategy for conservation of biological diversity. Those two major strategies are already there. We just need to follow that.

**CHAIR**—But do you have to change all the legislative processes in every state?

**Dr Coffey**—I am talking about policy, penalties and regulation. For example, contaminated land should be the same between the states. We should have the same regulations between the states.

**CHAIR**—What head of power would the Commonwealth use to do that, other than a cooperative relationship with the states agreeing to have uniform regulations about contaminated land?

**Dr Coffey**—I am not sure specifically for contaminated land, but that would be generally for pollution and we have external affairs power that makes it imperative. We have external affairs power and signed agreements that make it imperative for us to look after the environment. The powers are not limited; the Commonwealth has the powers there.

**CHAIR**—Some people might disagree with you on that. I am concerned that the time frame is so long if you tried to go down your path. Maybe it happens in the ideal world and maybe it is something you should work towards, but if we try to achieve that in this process, there may be environmental degradation because of the delay.

**Dr Coffey**—I would not stop what is there at the moment. There is not going to be a gap. I actually think we are going backwards from the opinions in the High Court at the moment. We would go backwards by leaving it to the states. I heard that people liked the Integrated Planning Act of Queensland, but they are reducing the fact that you need environmental impact assessment. They are decreasing the need for the assessments and that is a backwards step in my opinion.

Senator Hill mentioned that this was a major reform in the environment. I am quite prepared to have a major reform, but because it is major I think we should go in the right direction, rather than go back and fragment our environmental management and protection.

**Senator LUNDY**—I would like to take up your point about this national approach. In much of the evidence we have heard this morning, we have heard both sides of the story, and people who believe that a state framework offers the most certainty. In terms of a national environment approach, do you believe the best mechanism is to try and beef up the Commonwealth's clout in establishing state-based regimes, or do you believe the Commonwealth should legislate quite specifically in a way that overrides the states and provides uniformity in that way?

**Dr Coffey**—I think they should lead in national policy and legislate that this is the way to go. Of course, how they are put in place could be left to the states, at least if the states are working towards the aims and goals of the Commonwealth and Australia as a whole. It is the national policy that we are really aiming for and for the regulations to be the same—and perhaps how it is actually implemented and who is in control.

**Senator LUNDY**—That is what you mean when you talk about a systems approach in putting a structure in place?

**Dr Coffey**—Yes. You may have the EPAs in each state actually doing the work of checking on industries, developers and polluters and how they go about it, but the actual penalties would

be the same, and the types of developments that would need to have licences would all be the same.

**Senator LUNDY**—You have made the point about restoration and rehabilitation. I am interested in that in terms of the other point you have made, which is to put it into the objects. That certainly makes a lot of sense in the context in which you have put it. I am interested in asking you a very practical question about other aspects of the bill that actually address that. Is there any other reference to restoration and rehabilitation in the context of the bill that would go some way to serve that purpose?

**Dr Coffey**—I do not know because, as I pointed out in my first submission, I only started on this last Thursday afternoon because of the problems with being a public member. I do not know if it is addressed elsewhere. I really feel that we have so many problems with land degradation and salinity throughout Australia that it has to be one of our big objectives to have a bill that is called what it is.

**Senator LUNDY**—I suppose that raises the question of restoration and rehabilitation and whose responsibility that is. My limited experience in this area indicates to me that a lot of the current restorative programs are federal programs.

**Dr Coffey**—That is right.

**Senator LUNDY**—In the context of this current debate, if the current restorative programs are under federal jurisdictions, that provides a very good example of the states' legislative framework failing to establish those priorities and to actually invest in rehabilitation and restorative work. I am interested in your comments on this.

**Dr Coffey**—At present it is right that the Commonwealth is providing funds for the Natural Heritage Trust. It is deciding which way the money will be spent. It is giving guidelines. It is giving a lot of directions at the moment on how we should restore the environment.

**Senator LUNDY**—That is an interesting point. Where expenditure is required, the states seem to be perfectly comfortable with the Commonwealth having jurisdiction but, where planning and decision making is required, it is, of course, the other way around.

**CHAIR**—Senator Margetts, do you have any questions?

**Senator MARGETTS**—Yes. Dr Udy and Mrs Udy have indicated the potential problems with the Ramsar requirements of protection. It has been put to us today that such things as water quality criteria could be sufficient for the states to use as a planning mechanism and that you do not need the Commonwealth to oversee the protection of Ramsar. I would like a comment on that.

If this legislation were to go through, considering that consistent polling shows that the vast majority of Australians are concerned about the protection of the environment, do either of you believe that it would create extra community pressure for changes to the constitution to put ecological sustainability as a right of citizenship?

**Dr Udy**—Firstly, on the Ramsar sites, I do not believe that you would want to leave that matter to the states, because it is the nation of Australia that signed the agreement. I know personally that, if I signed a legally binding contract with a builder, I would not leave my son or daughter responsible for carrying that out properly. I would want to stay in control because I was the one who was legally bound by the contract. I think whoever is legally bound by the contract—and in this case it is the nation of Australia—should have final say on whether those sites are being appropriately managed or not.

**CHAIR**—In this bill, do they or don't they?

**Dr Udy**—My reading of it is that they could be given up through bilateral agreement stuff, but I must admit that I do not fully understand how this bill is going to act in that case.

**CHAIR**—If they did not, if the Commonwealth still retained its power, would that allay your concerns?

**Dr Udy**—To some extent. The other thing is—

**CHAIR**—Why would it not allay your concerns?

**Dr Udy**—It would not allay my concerns because it is then the wording of what is protected: is it just the Ramsar site that is protected, or is it the processes that actually maintain that Ramsar site as having good biodiversity and good productivity? In that case, it has to include all the things happening in the catchment, which was actually pointed out by the farmers federation who were here before.

**CHAIR**—I will stand to be corrected, but when I was being briefed on it I think I asked that same question. I asked: the Ramsar site does not end at the fence, so what happens on the edge of it?

**Mrs Udy**—It is the whole catchment—

**CHAIR**—That is what I said—that the Ramsar site does not start at the edge. I was advised that it did include the areas that impacted on the Ramsar site. I am not sure that that is right, but I think I am right. If that is the case and the Commonwealth does not give up all its power, then your concern would be allayed. So I want to make sure that you are not saying that the bill is not right because of a lack of full understanding. We are all coming to grips with that too. Last week we had to be experts on retransmission of broadcasting and, two weeks before that, on digital TV, so we just move from being experts on one thing to being experts on another, and you know more about some of it than we do. But if those concerns can be allayed and they are covered—

**Dr Udy**—Then I would see the bill as being a positive step.

**Mrs Udy**—There are issues that Dr Coffey was talking about, such as environmental flows for rivers. A lot of national rivers end in a Ramsar site, so if actions that one state takes have an influence right downstream and affect a Ramsar site 2,000 kilometres away, then the Commonwealth needs to be able to say, 'Hey, you guys, you are not toeing the line properly upstream.'

**CHAIR**—I do not know how far that boundary goes outside the Ramsar site. I would need to be advised on that.

**Senator LUNDY**—There is a classic example of that of course with the environmental flows proposed for the Snowy, given that it is the states of New South Wales and Victoria that have determined the water resources issues around the Snowy corporation. So that fits the example that you are describing, because the federal government have grappled with their jurisdiction over that very issue in this context. Your description of what the application of this bill could potentially be has a manifestation in a number of current issues.

**CHAIR**—As a committee we will seek advice about whether the bill does deal with your concern, and we will respond to that in the report. As I said, we are not all experts on it.

**Senator TIERNEY**—In the example you have given and in what Senator Lundy has commented on we have had a mechanism for many decades in the Murray-Darling Basin Commission—

**Senator MARGETTS**—Can I have my second question answered?

**Senator TIERNEY**—I am just asking a follow-on question. We have Victoria, New South Wales and the Commonwealth governments involved in that commission—and in view of an earlier issue that Dr Coffey raised we should perhaps have Queensland in it as well, it being at the head waters. Surely that is an intergovernmental mechanism, which is the way to resolving issues relating to water flows that involve a number of states, even if the mechanism needs adjusting. Surely we should just enhance the mechanism we have?

**Mrs Udy**—I think you are right, and I think the objectives stated in those agreements were probably written quite a few years ago—

**Senator TIERNEY**—They might need updating.

**Mrs Udy**—They might need amending to reflect the current state of mind on Ramsar treaties, and all the other international agreements and treaties we have that are designed to protect certain environmental issues may need to be incorporated into those.

**Senator MARGETTS**—My question was in relation to the fact that quite clearly neither the Commonwealth nor the states have environmental protection per se in their bailiwicks. The argument has been about land management and international obligations, and corporate and export powers. What do any of the speakers believe with regard to constitutional change to clarify that and perhaps make ecological sustainability a right of citizenship?

**Dr Udy**—I would personally support that: the problem at the moment is that the Commonwealth has its hands tied on any environmental issue unless it goes contrary to one of the Commonwealth's treaties, thereby giving it the right to step in. The question often comes up: does the Commonwealth have the right to step in and stop the states from doing something it feels is inappropriate, or not? You then have High Court challenges, and lots of money gets spent on lawyers, but very little gets spent on the environment. In the end, sometimes the conservation groups win and sometimes they do not. Either way, I do not think it leads to positive outcomes, because there are always people who are quite disappointed with the outcomes.

An overriding and very clear definition of sustainable development and what the Commonwealth sees that as being—and whether it can be a right of a citizen to complain if they see that sustainable development is not occurring in their area—would be of benefit. But I take Senator Patterson's view expressed before: that may be a long-term goal that we have to aim for, and maybe there is a shorter-term bill that should be passed at the moment. I do not support this bill in its current state as a short-term solution, but I know from experience that governments move very slowly when it comes to legislation.

**CHAIR**—When it comes to the constitution, Australia moves even slower.

**Dr Udy**—One example locally is a Moreton Bay marine park that was gazetted at the beginning of 1993. It took five years before a zoning plan was enacted that actually allowed management to do much and, even still, it could be improved, I suppose. You win and lose bids and you have to come to a good compromise. The point is that, if we can improve on the existing legislation, we should do that; but we should make sure that any moves we make are improving on that legislation and we should possibly be looking for a better long-term solution.

**Senator MARGETTS**—Yes; but I put it to you that we are having a constitutional change referendum being put to us at the Commonwealth election, and so it depends: when governments want constitutional change, the measures can be done quite quickly.

**CHAIR**—It does not always mean to say, though, Senator Margetts, that the Australian people will respond in the same way—as you know from the history of referendums. Dr Udy is saying that that could be a long process and that maybe you should amend the bill—if that is necessary.

**Senator MARGETTS**—Yes. If it is a matter of fighting the vast interests of the community and the government, then it could be a long process.

**CHAIR**—That is your point of view. If you were closer, I would be frowning at you; but you are not here, and so you cannot see me.

**Dr Coffey**—I would like to simply support that ecological sustainable development was included in our constitution.

**CHAIR**—Thank you. Senator Lundy, do you have any other questions? Senator Allison has not had a go yet.

**Senator ALLISON**—Dr Coffey, I congratulate you, first of all, on your submission. It seems to be a very thorough document, and you have obviously taken a great deal of time over it, even though you have only done it since last Thursday. Can I ask you the broadest question first? If the suggestions that you make in this document were to be incorporated in the bill, would you be satisfied with it?

**Dr Coffey**—Actually, because of the bilateral agreements, I think that the basic philosophy is not quite right—because of separating it out to the states. It is the fundamental philosophy that needs to be sorted out first. I really do think it would be highly changed. If it stayed the same bill, it would have to be highly modified to take up some of my ideas.

**Senator ALLISON**—Does that mean there are further suggestions you would like to make?

**Dr Coffey**—No; that is basically it.

**CHAIR**—You say here that you did not think that private citizens and small community groups knew about the bill and that you did not think you had time to do it. What sort of mechanism would you use? I have a view, and maybe I should say publicly what it is. I have had a feeling since I have been in the Senate that one useful thing would be—and I might get hit on the head for saying this—that, in the national newspaper, at the beginning of every parliamentary sitting week, every bill that is before the parliament should be listed with a short summary—or some other process for people to be made aware of bills.

I have felt the same as you, that people do not know about it unless they are very involved in the issue and unless they have got contact with the Internet—and, 10 years ago, they were even less likely to know. In what ways do you think small community groups could know? Given the fact that the bill goes to the House of Representatives, then comes to the Senate, then goes to the committee stage and then we have a reporting date, it can sometimes take a year or a year and a half for a bill to get through. You have to understand that the committees have got many other bills they are dealing with, as well.

You want more time from the time the committee sits and hears it—where you have enough community consultation on the bill but you actually do not have it for so long that events have passed you by, or else, as in this case, the environment suffers; or another issue such as digital television is upon us while we are still debating it—but one of the problems is that the world changes and we have to do it in a timely way. Have you got any suggestions?

**Dr Coffey**—With the newspaper idea, it would be good if it were in just one national newspaper once a month, so that you only had to buy one newspaper per month, if you were interested. The problem is, with something like the notice for this being open to the public

for submissions, that it is put in a newspaper but you do not know when it is going to be put in a newspaper.

**CHAIR**—I am wondering if they could always appear in the national newspaper in the same place, so that all committee inquiries are all on page 5 or in some little section, because otherwise you miss them. And the same goes for nominations and hearings that are going on for other than bills. There are inquiries into this or that matter. It seems to me that it is higgledy-piggledy. You have put that in your submission, and I think that is a reasonable thing to say. You can also see it from our point of view: doing it for a Senate inquiry is very difficult, in terms of the timing to let people know and for us to respond. The process has to go on, and we do not sit every day of the year and so we miss a couple of weeks and then it goes into the next session, because the bill has not gone in. There are all sorts of restrictions on bills, as well. It is a bit of a problem.

**Dr Coffey**—The page idea would be good, as long as you knew exactly when it was coming out—once a month, or once every two weeks.

**Mrs Udy**—Or even in every Saturday paper the Commonwealth could have a section and, if there was nothing to put in for that weekend you can say, ‘Sorry, nothing here today.’ Most people will buy a Saturday paper. We do not buy the daily paper, because we do not have time to read it. On a Saturday, people are more relaxed and have time to go through the paper.

**CHAIR**—The public notices are always in the same place every time, aren’t they?

**Mrs Udy**—Yes. If there is nothing there that week, then you know nothing is happening.

**CHAIR**—We will take on board the point about the submissions, but I do not think you are going to solve that one, because we have time lines we have to meet. But, if you knew as soon as we were doing the inquiry, that would be of assistance, wouldn’t it?

**Senator ALLISON**—Can I come to the comments that you made about the bilateral agreements? I think you are suggesting that, if there is no industry or conservation group or general public involvement in those, they are going to be ongoing problems in terms of acceptability.

**Dr Udy**—Yes. The public, industry and everyone else are not necessarily going to trust the two political groups to come up with a positive outcome for anyone. From my point of view, I felt they were not good and so I obviously was interested to hear quite clearly from industry that they are not very pleased with them, either.

**Senator ALLISON**—What would be a good process to have in this bill for those agreements?

**Dr Udy**—You obviously have to include some form of public and industry consultation, with interested parties. At some stage, you have to allow the public to have a say, and that automatically allows all the vested interest groups to have a process. How that would happen, whether through submissions or hearings, I do not really know.

**Mrs Udy**—In the same way that we were talking about having bills and various other forms of legislation being proposed to be written up in the newspaper, any agreements that are being signed or being negotiated should be advertised as well.

**Senator ALLISON**—Exposure drafts and agreements, with some sort of public process where people can make submissions.

**Mrs Udy**—I think people are very sceptical of all forms of government. I know in our little community that, as soon as the council puts something in the letterboxes, they say, ‘Oh, they’re

doing something we don't know about.' I think people are very suspicious of what all levels of government do. If the process is opened up, then they have nothing to complain about and they feel like they are fully involved in the whole planning process.

**Senator ALLISON**—Dr Coffey, I think you said that anyone should be able to trigger an environment impact assessment study of some sort. How would you decide at what level that assessment should be made, and how could that be described in the bill?

**Dr Coffey**—I think every development should have an assessment. I know it was covered a bit this morning. I can mention a local development that we have in our area. It is simply an aquatic nursery and it wants to bring water in from the local creek—recycle the water. It says it does not discharge the water, but it does. No plan went to council to say that it was a closed system. It has non-native species which could get into the creek. It may sound minor, but it can become a big problem. No matter what the size, you can have an environmental impact statement.

I do not expect that developer—it is just a family business, and I congratulate him on creating his own business—to pay an engineering consultant \$60,000 to do the study. I do not expect that, but I do expect that, when they put in an application to the council, they have the plans of their piping and that they give information so that the council can make an informed decision. I would say that every development needs some sort of environmental statement—and then you would not have your minor or major—but you would not expect them to hire consultants, that is for sure.

**CHAIR**—You are talking about commercial development, but what if I want to do some hobby in my home that involves aquatic animals or whatever? Where do you draw the line at what is a development? Does it have to be commercial? What would be the trigger for the council to say, 'You must present us with all this information'?

**Dr Coffey**—There is someone in our area who is certainly not a commercial operation but she has some alpacas—a non-native species which is hard-hoofed—and a dog that stays there. I feel that the council should have some information so they can make a decision. Rather than an application saying 'I want to redesign my property for this,' I feel there should be some information provided so they can make a decision that relates to the possible environmental impacts.

**CHAIR**—Does that become a Commonwealth issue or a state issue? Is the Commonwealth going to be worried about whether Mrs Smith has alpacas in her back garden?

**Dr Coffey**—No, but the policy would be there to say that that person needed to provide environmental information.

**CHAIR**—Are you saying that you would leave it to the council to make that decision?

**Dr Coffey**—Following the national policy that every development provide environmental information.

**CHAIR**—And then at the next level up you would let the state make a decision, and then at the next level up the Commonwealth makes a decision.

**Dr Coffey**—On what should be allowed?

**CHAIR**—That is the logical progression of what you are saying, which is what the bill is trying to do on the issues that the Commonwealth thinks that it has the powers and the responsibilities for.

**Dr Coffey**—I can see what you are—

**CHAIR**—The problem we have is: whose responsibility is it? Is it the council's responsibility that Mrs Smith has alpacas in the back garden or Mr Jones is running his small business in rare aquatic fish? You are saying that we let the council have that responsibility—that we let them make an informed decision. Similarly, at the next level up, we are saying a state can make decisions on issues such as water allocation and greenhouse gas emissions and that, where the Commonwealth has the heads of powers to deal with things like Ramsar and wetlands, the Commonwealth makes those decisions. But you were saying earlier that the Commonwealth ought to be involved. The problem is: how involved does the Commonwealth get?

**Dr Coffey**—That is right. It needs to be sorted out. It does not take away that national policies that everyone follows need to be there, that you provide environmental information and that you need to take the environmental issues into account when you apply for a development.

**CHAIR**—But isn't that what this bill is doing?

**Dr Coffey**—No.

**CHAIR**—Why not?

**Dr Coffey**—It has bilateral agreements between states, so there are going to be different values and different penalties. I am asking: why have different agreements between the states? Why not have one simple agreement that the Commonwealth holds and everyone agrees with it?

**CHAIR**—Mr Hallahan was just saying that when the CLERP bill went through, it took 10 years for the states to come to some agreement. That is the sort of time frame you are looking at. With the environment, I would say that it would probably take longer than 10 years to get the sort of ideal world you want where the states all agree. I can see your point, and I think the Property Council was saying the same thing. If you are a property developer in Melbourne, it would be very useful to know what rules apply in Queensland. You would be more likely to conform with them if there was uniformity because you do not have the excuse of saying, 'I didn't know.' But, in the interim, before we get to that ideal world, we have to live with the need for development and the need to consider the environment as well.

**Senator MARGETTS**—Is that a statement or a question?

**CHAIR**—It is both. It is me trying to come to terms with Dr Coffey about the fact that her suggestion is going to take a long time and whether she wants us to go down that route.

**Senator MARGETTS**—Madam Chair, I am just clarifying this because you do have a go at other people if they editorialise, and you are doing quite a lot of that yourself.

**CHAIR**—Thank you for your help, Senator Margetts. Maybe you should come over and you could do it directly.

**Senator MARGETTS**—I have the right to do this by phone, and I do not think we need to abuse people for being—

**CHAIR**—I am not abusing you.

**Senator TIERNEY**—We never see you here at any of these hearings, and you are a member of the Greens party. It would be nice if you would turn up occasionally. Can I ask questions now?

**CHAIR**—Dr Coffey, if it is going to take a while, do you think this bill could be amended in a way that would address those issues if you look at what you are saying is a long-term goal?

**Dr Coffey**—I would worry about making bilateral agreements because you are going backwards. I think it is harder to amend—

**CHAIR**—So you would leave what is in place now and try the other process; is that what you are saying?

**Dr Coffey**—I think there is a way. I cannot say right here and now, but there would be ways where the states could agree. We had an intergovernmental agreement on certain issues, and it had a lot more significant issues for the Commonwealth. I think there is a lot more agreement than you may be suggesting. I feel there is a way.

**CHAIR**—Senator Lundy, did you have a question?

**Senator LUNDY**—No. I was going to make a point about the discussion that occurred earlier, but I will restrain myself and submit it to you formally.

**Senator TIERNEY**—Dr Coffey, would you comment on the discussion we had with Mrs Udy earlier relating to mechanisms that already exist to handle interstate matters such as the Murray-Darling? I would like your views on whether some sort of variation or enhancement of that mechanism, which has existed for decades, could solve problems, even where it involves Ramsar sites such as Lake Eyre. That commission covers New South Wales, South Australia and Victoria, and we could add Queensland if we needed to. Wouldn't that be a better approach? You did not comment when the issue was raised earlier.

**Dr Coffey**—I am quite happy with mechanisms that can help a national policy. I am not against intergovernmental committees, agreements and things like that. But I am worried that they may lag some of the issues. We have issues like native pollination and ecological processes that are not under any agreement at the moment. Sure, there is a commission for the Murray-Darling now, and it is being looked after, but the problem has happened and it is extreme. Yes, if we have national policies and national regulations with their penalties, there are mechanisms to enforce them and to manage them between the states, that is fine.

**Senator TIERNEY**—Earlier on you gave an example of an issue like contaminated land that the federal government should get involved with. I would have thought that contaminated land is a very much localised matter, unless you can think of any examples where it crosses state borders. I would have thought it would be something that would be at the local government level particularly, maybe under guidelines. Surely, given that land management is a state issue, and local government has some role as well, wouldn't it be better to leave issues such as those contaminated sites, which are very much localised, to those levels of government?

**Dr Coffey**—They may be localised, but I think the different states have different registers of the contaminated sites, what has to go onto which site and different ways of dealing with it. I think, to make it more coherent, that one national approach to dealing with contaminated sites would be the way to go.

**Senator TIERNEY**—But surely that could be done through ministerial council agreements, couldn't it?

**Dr Coffey**—If it is a national policy, but not for each state to have their different rules.

**Senator TIERNEY**—Dr Udy, I would like your views on the proposal to use bilateral agreements between the Commonwealth and the states to accredit state assessment processes. What is your view on that?

**Dr Udy**—Using bilateral agreements or the accredited—

**Senator TIERNEY**—To accredit state assessment processes.

**Dr Udy**—My main problem with that, as I read it, is that basically, once they have signed that agreement or they have accredited the state body with the right for approval, it then takes away the Commonwealth's overseeing and protective role. I think it is far more logical for the day-to-day management to be based in the states, but I do think it is important for the Commonwealth to maintain that overseeing role and making sure that things are being done appropriately.

**Senator TIERNEY**—But, surely, at the point of agreement that would happen. The Commonwealth would not sign off unless it was. A bilateral agreement is an agreement that they reach, where they then say, 'Well, we're happy with that process.'

**Mrs Udy**—Take Ramsar, for example. If, say, the Commonwealth signs off with the Queensland government—I think Queensland has four or five Ramsar sites; I am not sure—by the year 2000 you are going to have a management plan to look after each of those Ramsar sites. The Queensland government agrees, 'Yes, yes, yes, we'll do that. We'll behave ourselves,' but come the year 2000 and there is no management plan, what happens?

**Senator TIERNEY**—They have broken the agreement.

**Mrs Udy**—So the Commonwealth then steps in?

**Senator TIERNEY**—It is the way you set up the agreement in the first place. If you set up deadlines for things, you would have procedures in place presumably that will handle not meeting those deadlines. You would do that in the initial agreement, I would have thought.

**Dr Udy**—I think my main concern with this bill is that it leaves too much to be decided in the future as opposed to outlining some of the guidelines and processes that should be followed during the bill. I think that the passing of the bill now with all these things left for these agreements that are going to be devised in the future is—

**Mrs Udy**—Really an open book.

**Dr Udy**—It is making people think that you are passing a bill that has something to it, whereas actually it has very little in its body; it is all reliant on these future things being passed, and, as Senator Patterson pointed out, we do not know how long some of these other agreements are going to take.

**CHAIR**—No, no, no, you are putting words in my mouth. I did not say that. I was saying for all states to agree to get the sort of thing that Dr Coffey said—not the agreements. Don't misrepresent what I was saying.

**Dr Udy**—Okay. In this case, in agreement with Dr Coffey, I think the important thing is that the bill should be more specific about what it sees as the environmental values that have to come out of some of these bilateral agreements rather than just saying, 'Yes, in due course we will sign bilateral agreements behind closed doors that nobody will participate in, but don't worry, trust us, we'll look after you.'

**Senator TIERNEY**—The thrust of what all of you have been saying is towards greater Commonwealth involvement. What is your view on the local and regional involvement in issues that specifically affect their areas? How should they be involved in the process?

**Dr Udy**—Do you mean local and state governments?

**Senator TIERNEY**—Let us stay away from state governments at the moment. How do you see the role of local and regional organisations that might exist in that particular area in the management of the environment on significant issues?

**Dr Udy**—At the moment their role is very central. Local governments actually say yes or no to the majority of environmental decisions that take place every day. I think that local governments could do with some larger more broad scale guidance on that. Obviously, it is the tyranny of small mistakes that make for a very big mistake. I have actually read consultants' reports that say things such as, 'This development is going to have no significant impact on seagrasses at Moreton Bay because it is only going to affect'—for argument's sake—'one hectare and Moreton Bay has so many thousand hectares.' The trouble is that there are thousands of people out there that probably want to do something that is going to impact on their one hectare of seagrass in their specific region. If you allow all those one hectares to be developed, then you are going to have a significant impact.

That gets back to the bill, which is very vague. It says 'a significant impact', but scientists cannot even agree on what a significant impact is. To be using that terminology in legislation, it seems to me, is like asking for millions of dollars to be spent in the High Court and other courts of the land on arguing about what a significant impact is. You are putting in a terminology that you cannot get scientists, let alone all the other members of the community, to agree on.

**Senator TIERNEY**—Going back to my original point, if we manage in some way to beef up local involvement in the management of these issues, and if you see also a need to beef up Commonwealth powers, where does that actually leave the states which, under the constitution, have power over land and water management? How do they fit into that sort of analysis?

**Dr Udy**—I think the states, with some direction from a national policy, would provide the policy and the direction that the local governments would actually give the approvals on. At the moment the local governments give the approvals for day-to-day developments that are happening in each local government area, but the state can provide the overall guidelines for those approvals and for what is appropriate and what is not appropriate. At the moment, I think there is a management plan being done by the Queensland state government for the coastline, but when that is going to come out, I am still not sure.

**Dr Coffey**—At the moment a lot of local people are being involved in their region. We have the integrated catchment management groups, and that is a regional approach. I think that is really good. It has worried me that a lot of the local community are developing strategies for their region, which can be quite large—the Fitzroy catchment is huge. I would like them to relate some of the Commonwealth and state policies to their strategies. I feel that there is a problem with the community knowing what the policies are at the state and Commonwealth levels. I wholeheartedly agree with the local people developing their strategies, but they really should keep in mind the higher policies.

I am also concerned that we have value setting at the moment where the community can actually say they are happy with the water in the creek to be suitable just for swimming. That does not follow ecologically sustainable development and caring for your future generations if you are going to allow so much pollution to go in there and ruin it. I really feel that community participation is important, maybe for implementing how to correct the problems

and how to prevent the problems. People also need to be aware of what Australia has agreed to as a country.

**CHAIR**—Thank you very much. We need to stop for a short break. Thank you for your submission and, as individuals, thank you for making submissions. We appreciate the time you have given today to come before the committee.

**Proceedings suspended from 11.45 a.m. to 11.57 a.m.**

**OLIVER, Ms Janet Stuart, Director, Wildlife Preservation Society of Queensland, 95 William Street, Brisbane, Queensland 4000**

**CHAIR**—Welcome, Ms Oliver. The committee has before it submission No. 155 which it has authorised to be published. Are there any alterations or additions you wish to make?

**Ms Oliver**—Yes, please. There are a few typos. I am not sure which copy you are using, whether it was the faxed copy or—

**CHAIR**—It looks like the faxed copy.

**Ms Oliver**—Then there are probably a couple of errors in it. The title had ‘ft’ in front of ‘Conservation Bill’ for some extraordinary reason. Could we delete that?

On page 2, under 3.4, the word ‘listing’ should be there and not ‘lilsting’. Also, in 3.4 there should be a parenthesis after the phrase ‘key threatening process’. Close the parenthesis there.

In section 4.2, on page 3, in the middle of the paragraph the words ‘JAMBA’ and ‘CAMBA’ stand out. The word ‘and’ should be inserted after ‘JAMBA and CAMBA conventions’ so that it reads ‘conventions and in addition’.

On page 4, section 5.6, the word ‘exists’ has been omitted. After the words ‘Where a state managed fisheries’, please insert the word ‘exists’.

Then on page 6, under section 8.3, there is another spelling error. The word should be ‘the’ rather than ‘rthe’. Sorry, we were still typing this at midnight.

**CHAIR**—You can take it that the committee has read the document. Do you wish to make any additional comment?

**Ms Oliver**—I would like to emphasise that I am representing 24 branches and nearly 1,200 members of the conservation movement in Queensland. I have had a number of submissions from our branches and a number of individual submissions, all of which are before the Senate committee. Those people have not been called, so I am incorporating in some of my comments today what they have said.

Several of us were very pleased to see that there are now increased statutory controls over special sites, such as the Ramsar sites, and over endangered species in migratory birds. But we are also concerned that we now need to see joint management plans to protect specific species there. Wildlife does not recognise state boundaries—it goes backwards and forwards—so we really want to see joint management plans between the Commonwealth and the states if this act proceeds.

When we say ‘if this act proceeds’, I realise that you have probably received a lot of submissions from conservation groups where there is really genuine concern about the fact that there is a feeling the Commonwealth is abrogating its responsibilities over the environment, that the acts that are being replaced, including the national biodiversity strategy and so on, are not being implemented in this new act. There is a definite feeling of concern about the Commonwealth moving away from controlling what is happening in the environment.

We do not trust the states, and we do not trust the Commonwealth either in some cases.

Of course, being conservation groups, many of us do not trust local governments either. It puts us all in a bind because we have to have some trust somewhere. We are really concerned that in some cases state governments are much more prone to pressure from individual companies, foreign interests, and so on, than perhaps the Commonwealth would be, and we would really wish to see the Commonwealth holding on to its Commonwealth powers.

I appeared before Senator Allison in the investigation by the Senate into the Commonwealth powers before, as did a number of conservation groups. Again, we said—as I have said in my submission—that we are really concerned about the Commonwealth getting out of Commonwealth powers to control the environment.

We are particularly concerned in Queensland, of course, because of the Great Barrier Reef which has a number of proposals affecting it at the moment. If there were no triggers for environmental impact statements for those, for instance, we would be really concerned because of current events in the last week with oil spills. There have been three on the reef this week alone. If Commonwealth powers were removed from even those sorts of activities, the environment would be in great danger.

We are also particularly concerned that there are no guaranteed environmental standards on the regulatory processes that have now been put into the statutory controls over some of these special areas. We are especially concerned about the reserve categories which the minister has control over because we feel that, probably, a scientific committee is needed to advise him on that. I am just going through some of my key points, by the way.

We wish to emphasise that the society is absolutely against mining and mining infrastructure in national parks or marine parks, or the excision of parts of those parks for the inclusion of mining processes. We are most concerned in the bill that there are no public consultation processes for a number of items. These include determining activities that have a significant effect, which is in my paragraph 3.6, and the nomination of threatened species as listed species, which is in my section 6. Under the bilateral agreements, there is no public consultation between the state and the Commonwealth.

There is another problem with the bilateral agreements in that they do not have the objectives or the details laid out in the bill. We are also concerned that there is no public consultation for the triggering effect of an environmental impact statement on endangered species.

Because our society is particularly concerned with wildlife, the sections on wildlife trade are particularly important to us. We reiterate that we wish to see no live listed species traded, and that those lists must include the state lists for endangered and threatened and 'possibly threatened in the future' species. We would like to see an ethics committee set up for research. That has been the subject of long-term investigation and submissions by various organisations to the Commonwealth, particularly because there has been some very poor research done in Queensland and along the reef which did not come under any environmental impact statement or an ethics committee, and there was major damage caused to parts of the reef because of the research. We wish to see no changes to environmental impact statement requirements for the export of such wildlife as macropods—kangaroos, wallabies, et cetera.

I was assuming that the submission from the Australian Seafood Industry Council and the QFO, with Mr Ted Loveday, would have submitted some comments about the fisheries. Apparently they have not, so I will make this point again. We are most concerned that, under 'trading wildlife', freshwater species of fish that are not farmed are allowed to be traded at the moment. This could completely deplete certain valuable species of fish. Some of them are

very small—they are used for aquarium trades overseas—and they are not covered under the act at all. We need to close that loophole.

We are also particularly concerned, of course, that the matters of national environmental importance, et cetera, are very limited. They are restricted to about six categories. I am sure you have had presentations from other groups saying that we all wish to see vegetation clearing, land degradation, the control of downstream water and water allocation, climate change and greenhouse included as matters of national environmental significance.

We are particularly concerned in Queensland about the fact that exemption from coming under the act can be gained by individuals and authorities. This means that individuals would not have any environmental control over what they were allowed to do. We are also very concerned that the triggers for an environmental impact statement by the Commonwealth are narrow. We particularly wish to see them still precipitating an environmental impact statement when there is foreign investment or export controls or wildlife trade involved.

We wish to see the areas under regional forestry agreements—and, of course, it is only a small percentage in Queensland, but there are major percentages in some of the other states—to be covered so that environmental laws cover our forests and retain our forest biodiversity. There are a number of listed endangered species in some of our forests which will then not come under any environmental control at all. We feel, as I said before, that the environmental sustainability of the whole act needs to be greatly strengthened. There is a lack of clarity and specification regarding ESD. There is a feeling that we are just allowing everything to go on, that sustainability will virtually take care of itself, and that is not good enough from the point of view of the Commonwealth environmental act.

**CHAIR**—Thank you.

**Senator LUNDY**—I have some questions with respect to your point about the regional forest agreements and the current way in which they are isolated, or excluded, from coverage under this bill. The way that they are constructed under state legislation seems to have provided the Commonwealth with an excuse to construct the bill in this way. Under the way the bill currently stands, can you see that there will be other opportunities for states to construct initiatives, or management proposals, for areas—even under those six—to find areas under the federal act that would then subsequently exclude them from jurisdiction, based on the structure and the way it sits in the relationship with the RFAs at the moment?

**Ms Oliver**—One would hope that the states would do that. What we do not see is the states reacting in that sort of way. Most of our states, including Queensland, are still intent on rape and pillage of old-growth forests. They are not protecting them. They are facing the inevitable fact that the use of old-growth forest, for instance, is declining from the point of view of production of wood. If you look at the figures, you will see that the production of wood is just going downhill completely. So we are being forced to use plantations, and that is fine because it does mean you have got a managed, controlled industry. But they do not always come under the regional forest agreements, and the states seem very averse to doing anything that is going to affect the timber industry.

Recently I was shocked to hear that we thought we were protecting thousands of jobs in the timber industry in Queensland. There are 200 jobs that we are protecting, and yet we are allowing all the forests to be logged, either selectively, or even clear felled in some cases. That is the old-growth forest that many of our endangered and threatened species—and ordinary species as well—are dependent on for nesting sites and shelter and so on. We do not think

the states will take on that responsibility. The regional forest agreements are not totally accepted by the conservation movement either.

**Senator LUNDY**—We actually had a conversation with some witnesses across the table about the Commonwealth's role in restoration and rehabilitation work. Are you aware of any examples where state governments have actively embarked on a restorative or rehabilitation program?

**Ms Oliver**—Only through other agencies, such as Greening Australia, or state governments providing grants to local government in some cases, or to specific organisations, including us, for local revegetation projects. We have a number of projects going on in the Whitsundays, for instance, which have been implemented by our branch in the Whitsundays. It is using Greening Australia trees with a grant to revegetate the sides of the road and the areas on either side of a major bridge on a state highway. They are revegetating the whole of the areas there. They have got the local council's agreement that there will be no further bulldozing and that no supporting vegetation on either side will be removed either. That is one example, but it is a very small area, about twice the size of this room.

**Senator LUNDY**—I am interested in pursuing it because it put this whole issue of the Commonwealth role in protection and, indeed, in restoration and rehabilitation of the environment into an important context. Just let me explore the background to that project. What were the factors that led to it, such as the political motivations that led to the state government providing resources in the way that they have with that project?

**Ms Oliver**—The area was looking dreadful. There was a lot of erosion, and the erosion was getting so bad that, apart from the aesthetics of this bare area approaching the bridge, the bridge foundations were being threatened by run-off. So the state government had to act. The group came along and then they were partly funded to do it. Of course, their labour is never funded. It is always hard work. You try planting trees in the middle of a Queensland summer, which is the ideal time to plant them because of the rain.

There are a number of other coastal plantings and revegetation examples which are being funded under Coastcare. They are going on all up and down the Queensland coast.

**Senator LUNDY**—Is Coastcare state or federal?

**Ms Oliver**—It is a joint federal-state initiative coming under natural heritage funding. The submissions are made to each state region; the short list is sent down to the Commonwealth and the Commonwealth makes the final decisions. It does have quite an influence on those final decisions; it will accept or reject. Even when a state coordinator, for instance, of a Coastcare project says, 'This is my priority list, 1, 2, 3, 4, 5,' the federal government may actually say, 'No, we want 5 emphasised; it fits better into our guidelines.'

**Senator LUNDY**—What is the proportionality of contributions between the state and Commonwealth governments?

**Ms Oliver**—It is 50:50, supposedly. In fact, a lot of government support—that is, state and local government support—is actually coming from local government, and some of that is in kind. In other words, it is the provision of trucks, or tools or implements. It may be using trees raised by council nurseries, or vegetation plants, that are used on dune revegetation.

**Senator LUNDY**—Given the obvious need, would that initiative have emerged within the auspices of state and state based funding only, or did it require the federal initiative to really get something moving? I know it is a highly subjective question, but I am very interested in your opinion.

**Ms Oliver**—It is an interesting question. There were local and state funded projects going on in a small-scale way before Coastcare started. Some shires had to do something because their dunes were all being washed away, for instance. But the Commonwealth initiative really pushed the whole agenda along, and I would say that it probably never would have got going without the Commonwealth initiative and funding and the feeling that the Commonwealth provided the overall supervision of the whole process.

**Senator LUNDY**—It was an administrative resource type of approach?

**Ms Oliver**—Yes. And there was the feeling that there was now a network of ideas and suggestions coming through from the Commonwealth.

**Senator LUNDY**—In the context of the consideration of this current bill, there are some of the same parallels in that the Commonwealth's management of that restorative and rehabilitation work bears very strongly on the issues of preventive measures for environmental degradation and the planning and land management issues that come under the auspices of this bill. Thank you.

**Senator TIERNEY**—You made a number of imprecise statements. Can I refer you to your comments on 'rape and pillage' of old-growth forests? You referred to the fact that 200 people's jobs were being protected in the forest industry. I find it difficult, in a state the size of Queensland, to reconcile those two statements.

**Ms Oliver**—The 200 people are in the south-east region of the RFA, which is undergoing work at the moment.

**Senator TIERNEY**—Just one part?

**Ms Oliver**—It is from Bundaberg, to Maryborough, south to the border ranges.

**Senator TIERNEY**—The RFAs in New South Wales have led to the wholesale closing down of towns, particularly in the Hunter Valley region, where I live. Could I have your comments on the effects of such agreements on human populations, and on the economies of areas such as the one I mentioned?

**Ms Oliver**—One of the things this bill does not address is the social impact of some of the implications of environmental laws. It is probably beyond my brief to comment on New South Wales—

**Senator TIERNEY**—Let us cover Queensland.

**Ms Oliver**—In Queensland we have had several towns—Ravensbourne is a good example—where the town was virtually closed down. Maryborough has lost a lot of its work as well, and forestry industries were cut back. However, the work that has been done by Dr Aila Keto of the Australian Rainforest Conservation Society indicates that jobs could be compensated for in two ways: they could be diverted into softwood production, and into the production of wood products from those softwood plantations. That means that the social impact in some of the towns would not be as great as it has been.

I appreciate that there is a loss of social amenities and jobs in towns where forestry has been a major industry. But it is like all these extractive industries. Once the resource is exhausted, the town has to find alternative works. We have had numerous examples in Australia and in Queensland where mining towns have had to close or cut down because there are no resources left. We have had examples—and we have still got them all through Australia—of Australian farming towns cutting down as well, and losing all the social infrastructure there because of changes in the farming practices.

Timber is another example. It is a resource that is supposedly renewable. But it is not when many of our forests are 200 years old, and we cannot wait for 200 years to keep logging them. When I use the words 'rape and pillage', it is the traditional response of the conservationists, I agree. But we have got material now to back us up—in Queensland, anyway.

**Senator TIERNEY**—There are a number of things I want to challenge in that.

**CHAIR**—Just a second. I refer you, Ms Oliver, to the bill—page 128, under subdivision B, 'consideration for approvals and conditions'. You may not have picked this up because not all of us have read all 400 pages. Under 136, 'General Considerations', it says:

(1) in deciding whether or not to approve the taking of an action, and what conditions to attach to an approval, the Minister must consider the following so far as they are not inconsistent with any other requirements of this Subdivision:

(a) matters relevant to any matter protected by provision of Part 3 that the Minister has decided is a controlling provision of the action;

(b) economic and social matters.

So it is a mandatory requirement. I think you said that there was not any requirement.

**Ms Oliver**—There is insufficient, I consider, in some cases. There is some.

**CHAIR**—That is not what was said. So I just wanted to clarify that.

**Senator TIERNEY**—I would like to challenge some of the things you have just said in terms of actual practice, as opposed to theory. In the Hunter Valley, you were referring to finite resources, and you gave the example of mining. I am not just talking about old-growth forests; I am talking about forests. The RFAs in that area were so tough that investors did not really see a future for continuing to mill. The reality was, and is, that these mills have shut down.

You say that they can convert to softwood industries and processing, as if that can all happen by magic. The harsh reality is that that is not what is happening. What is happening is that people are joining very long dole queues, or are leaving the region. That is the outcome. So I wonder where in the balance between environment and human concerns you place concerns about people losing jobs and their entire lifestyles because of unreasonable restrictions.

**Ms Oliver**—If it is relevant to the inquiry, I consider that that is very important. I happen to be a trained social scientist. I have a master's degree in social science, and that means that inevitably I am looking at the human side of it even more than the scientific side of it—that is my whole training, my background. It causes some problems in the conservation movement when they expect everybody who is directing a society such as ours to be a scientist. But it means that I look at the human effects of things with far more care, and I am well aware of the care we need to take in dealing with any environmental matter to do with the social impact.

The same thing happens with any development. If you put a development out because of environmental concerns, people inevitably are going to have their jobs and social life interrupted. The same happens with forestry. I am not aware or cognisant of all the details in the Hunter, and I do not like to appear before a Senate committee and pretend I am an expert when I am not, but I still say that we have to consider the restructuring of some of these industries to allow for changes in environmental circumstances, including forests, including mines and, it may be, including fisheries.

**Senator TIERNEY**—Dr Patterson and I have PhDs in the same sort of area. We have concerns about it as well, but we also see the practical reality. We turn up in those

communities; we talk to people in those communities, and realise that it is not, as you have stated, an interruption to their lives: it is a devastation of their lives—

**Ms Oliver**—Excuse me, but I also talk to people in local areas of Queensland—

**Senator TIERNEY**—Could I just finish my comments first and then you can comment, because I let you go on for some time on a number of areas. Don't you really feel that before an RFA—or any measure that affects the economic outcomes in a particular area—is put in place measures should be put in place to deal with the social and economic outcomes before a change is made in RFAs if it is protecting the environment? We should protect the human species as well.

**Ms Oliver**—That would be fine in practice. Put the suggestion up, see that the RFAs do it—and that is where we need the Commonwealth input.

**Senator TIERNEY**—Unfortunately, the RFAs came in under the last Labor government. We had no control over it. In my state it was implemented by a state Labor government and that is where we have the problem. I have no further questions.

**Senator ALLISON**—You suggest that there should be an ethics committee for research. Yours is not the first submission this morning that has suggested that the government should take the advice of other scientific communities in reaching everything from agreements on bilateral agreements to other matters. Are scientific bodies currently in place that would do this job? To your knowledge, has advice been sought from those bodies and used in the process of developing the bill?

**Ms Oliver**—There are some committees in each of the states and at the Commonwealth level, and many of those are associated with universities of natural science and ecology and so on, that have made recommendations on some ethical considerations. To the best of my knowledge, there is actually no committee calling itself an ethics committee or a research committee into ethics. I think perhaps the Commonwealth could look at that as part of this act because it would also cover cruelty and misuse of animals. We are not a humane society. We do not deal with that sort of thing in detail, but it certainly concerns us that with export trade, for instance, or investigations, ethics are not being considered.

**Senator ALLISON**—You said in your submission that there needed to be a new category of a near threatened species. Could you just expand on that? Is this your idea or from IUCN?

**Ms Oliver**—It has come in from IUCN, the Australian Conservation Foundation, and a number of other conservation groups. In Queensland, we have species that are not really quite threatened. In some areas they are in quite good numbers but they are getting to the stage where, if circumstances in the environment change or they are put under extra stress, any abatement scheme would not be sufficient to stop them going into the threatened category.

This relates to certain birds as well as migratory species that are coming from overseas. It also relates to certain of our marine mammals. We are very concerned, for instance, about some of the dolphins in central coastal Queensland. We also have concerns about other species in the western forest—for instance, quolls, corellas and certain species of frogs. They may be plentiful in some small area but, if that area is threatened, those species then become threatened.

We have lists of species that are just not on the threatened list. They are certainly not on the CITES appendix list either. We should be aware of those and allow that to be inserted into the act if necessary. One of the problems is that there are not very many review provisions

in the act that we have picked up so far so, if species do become 'threatened', there is not much provision for then including them under Commonwealth triggering legislation.

**Senator ALLISON**—I think you called for joint management plans to be developed too, especially in the migratory and marine species. Have you had a chance to look at the wildlife conservation plans aspect of the bill? In what case does it not—

**Ms Oliver**—No, I have not had the time to go into all of these. I know there are some already and there are certain species that are jointly managed—whales are a good example—but there are others that need more care and more joint provisions.

**Senator ALLISON**—It is an age-old question about what happens if management plans are ignored or are not put into effect, and what the Commonwealth's role might be in making sure that they are. Do you have a view as to the Commonwealth's current and past willingness to insist on those kinds of provisions?

**Ms Oliver**—The Commonwealth has had provisions in the past which have not always been used. In this stage we are concerned that, if the Commonwealth removes its controls and abrogates some of its powers, the state will not pick up those controls. In particular, the act has increased penalties and so on which are really good against infringements, for instance, but we need to be assured that they are going to be used.

**CHAIR**—Just to go back, you said that the minister should keep up to date.

**Ms Oliver**—Which section are you referring to?

**CHAIR**—You were talking about migratory marine species, particularly migratory birds, and the minister keeping up to date. I suppose you would argue that the ecological immunities ought to be kept up to date as well. Section 181 of the bill requires the minister to establish, and keep up to date, a list of threatened ecological communities. Section 182(3) defines vulnerable ecological immunity and provides for additional criteria to be prescribed in regulations. With regard to the birds, the bill provides for development of wildlife conservation plans for listed species, marine species, et cetera, in cooperation with states and self-governing territories. There are mechanisms in place in the bill to keep those lists up to date. So I am not quite sure whether what you just said then was as accurate as it might have been, given what is in the bill.

**Ms Oliver**—I was referring there to species that are near threatened.

**CHAIR**—Okay. But then you say that, when they become threatened, you need to keep it up to date.

**Ms Oliver**—Yes. We did not think that was strict enough in the provision.

**CHAIR**—We have a problem though, just as we had earlier today. You are going to have three categories: non-threatened, nearly threatened and threatened. You have to draw the line somewhere.

**Ms Oliver**—Yes, you do. We had a good instance recently, where the Commonwealth was setting up dugong protected areas in Queensland. They are not listed as a threatened species in Australia because of the very fact that there are good populations in the Northern Territory and into north-western Australia. That is an area where 'threatened' in Queensland does not apply in the rest of Australia. That is why we are saying that, if things move in and out of those categories, we need to be assured that they are going to be listed and come under Commonwealth legislation.

**CHAIR**—I think the committee should seek advice from the department as to whether they believe that not only the ones that are going to be threatened are included, but also species that are not threatened in one area but threatened in another area are included.

**Senator ALLISON**—Your submission suggests that there should be an avenue for public involvement in triggering of environmental assessments. Yours is not the first submission to suggest that. How do you see that working? What sort of contribution would you say those groups can make to the process? Could you respond to the suggestions earlier this morning that it would unnecessarily tie down development and bring about unnecessary delays?

**Ms Oliver**—The triggering has already been done, in some cases by community groups who are, as I said in my submission, funded by the Commonwealth at the moment to do such observation, objections and submissions on various impact statements. That is one of the reasons, for instance, that this society receives Commonwealth funding. It is to do exactly that. If that provision is not needed in the proposed bill, it does mean that a different viewpoint is not always taken into account.

A conservation group may be the representative community group, in many cases, that could trigger an EIS. A progress association may be very environmentally friendly but, on the other hand, it may not be. Sometimes the community groups and conservation groups need to have that avenue so that they can turn around and say, 'This is a really nasty development that looks as though it is going to impact on the environment and on various species. We really do need to have a Commonwealth EIS on it.'

I think this gets back to the section that, if there is only a limited list of matters of national significance, it means that, again, the Commonwealth is getting away from controlling the major environment of Australia. I agree that it can hold up proposals because, for instance, community groups and environmental groups take time to do these things. Most of us do not have any employed people.

For instance, in our society we have 23 branches. In the head office in Brisbane there is an office manager and me. We are part-time and we are the only paid officers in the whole of our movement. That means that, if you have to prepare detailed submissions, you are using people who have to find their time to do it. It can slow things down. We often need more time. Trying to make comment on 480 pages of a new biodiversity act in less than four weeks is a real trial for most groups and virtually impossible to do thoroughly. It does slow things down, but I still think groups and individuals ought to be able to trigger an EIS.

**Senator MARGETTS**—Ms Oliver, mention has been made on a number of occasions today about Queensland's Integrated Planning Act. How long has that been in force?

**Ms Oliver**—The changes to the Integrated Planning Act came in at the beginning of this year. There is a two-year changeover time, according to my information.

**Senator MARGETTS**—Okay. We were speaking a little while ago to representatives of the Australian seafood industry, and I guess that is probably why they said they thought that seagrass and mangrove habitats would be protected under both the fisheries and the planning acts, that so far this act has not necessarily been enforced. Are you confident that that will be the case?

**Ms Oliver**—All mangroves and seagrass communities in Queensland are already protected under existing state legislation. We have very heavy fines for removal of mangroves and wetlands vegetation—even picking a leaf can lead to a large fine for the person who is caught. Mind you, it does not stop people clearing mangroves to get a better view from their seaside

houses sometimes. So they are protected here already. I am not sure of the impact of your question.

**Senator MARGETTS**—I guess we have heard a few stories about various development proposals where there have been clearances of mangroves or seagrass meadows and governments seem to have allowed that to happen. I just wonder how effective the existing legislation is. If it is not too difficult, is it possible to provide the committee with some of those examples of clearances of seagrass meadows or mangroves in the last few years that have not been in line with the existing legislation?

**Ms Oliver**—The key example, which I am sure you must be aware of, is the Port Hinchinbrook development at Hinchinbrook, where mangroves were illegally cleared by the proponent, Cardwell Properties Pty Ltd. Those mangroves were cleared without a permit and the old permit had expired at the time. Fisheries in Queensland did nothing about it. The proponent was allowed to proceed and has been quoted—and I have a document showing this—saying, ‘All mangroves in my whole area would be much better cleared and we would have a better view.’

**Senator MARGETTS**—Is that an indication that the fisheries legislation is not necessarily effective in relation to stopping mangrove or seagrass meadow clearance?

**Ms Oliver**—That is correct.

**Senator MARGETTS**—With your 24 groups and the various contacts that you have on a regular basis, is there a discussion, or is there beginning to be a discussion, about the need for constitutional change? Somebody suggested today that in a bill of rights, for instance, ecological sustainability should be a right of citizenship in the Australian constitution. Is that a discussion, or is that discussion beginning, amongst your representative groups?

**Ms Oliver**—That discussion has been going on in our representative groups for some time. We had all our northern groups together in a conference and capacity building workshop situation in June and these circumstances came up straight away, including the lack of protection of mangroves and wetlands being implemented in Queensland, particularly with the Port Hinchinbrook development.

Also, Point Halloran, which is south of Brisbane, had mangroves cleared that were the key habitat of the Illedge’s Ant Blue butterfly. This was against a proponent who wanted to put in a marina. The case was won by the conservation society, one of the branches of the Wildlife Preservation Society, and then lost on appeal. That development went ahead in a modified way, but the butterflies disappeared.

We have other examples where mangroves are being sprayed in central Queensland, again threatening endangered species of butterflies. Our groups are discussing it virtually non-stop, and they cover areas from Cairns right down to the border and west to Dalby and Taroom, the upper Dawson and so on. Clearance of vegetation of all kinds, including wetlands, is a major concern of our groups.

**Senator MARGETTS**—Are you saying that clearance of wetlands is not adequately policed in your state legislation?

**Ms Oliver**—It is policed in the state legislation, but fines that are possible under state legislation are not always imposed.

**Senator MARGETTS**—So for wetlands—Ramsar and others—you are not necessarily getting effective protection of Ramsar habitats. Is that right?

**Ms Oliver**—I would say not. Our Bayside group, which covers a lot of the Moreton Bay Ramsar area, reports regular clearing of mangroves on some of the southern bay islands as individual households expand their gardens or want a better view—as I said before—or access to a jetty. Local governments are also known for mangroves disappearing overnight and mangrove trees being knocked down fairly discreetly, and it is very rare that the person is either caught or prosecuted.

**Senator MARGETTS**—Thank you very much.

**CHAIR**—Thank you for your attendance and your submission, Ms Oliver. We appreciate the time you have given to come today.

**Proceedings suspended from 12.43 p.m. to 1.58 p.m.**

**BRAGG, Ms Jo-Anne, Solicitor and Coordinator, Environmental Defenders Office (Qld) Inc., 243 Edward Street, Brisbane, Queensland 4000**

**SILVA, Mr Rowan David, Solicitor and Coordinator, Environmental Defender's Office of Northern Queensland Inc., 451 Draper Street, Cairns, Queensland 4870**

**CHAIR**—Welcome. The committee has before it submission No. 99, which it has authorised to be published. Are there any alterations or additions you would care to make at this stage?

**Ms Bragg**—We have prepared some additional material that focuses on Queensland examples of the points made in our submission and also made in the major submission by the Environmental Defender's Office of New South Wales, which we endorsed.

**CHAIR**—Do you wish to table that?

**Ms Bragg**—Yes, I table that document.

**CHAIR**—Thank you. We will have copies circulated to all members of the committee. Are there any other alterations you wish to make to the statement?

**Ms Bragg**—No, no further alterations.

**CHAIR**—Do you have a brief statement to make?

**Ms Bragg**—We have prepared these Queensland examples. If you would like, we could present those in a very abbreviated form.

**CHAIR**—That would help us, because the longer you take on that, the less time we have for questions.

**Ms Bragg**—In that case, because we have jointly prepared this submission, we will share the presentation.

**CHAIR**—Okay.

**Mr Silva**—I will begin by briefly summarising the contents of this further written submission. We make the opening comment that we believe that the bill reflects an unduly restricted view of the Commonwealth's role in environmental protection. We support that by reference to subsequent examples relating to matters of national environmental significance. We focus on two examples of matters of national environmental significance which we consider have been omitted from the list included in the bill. The first of those is vegetation clearance.

After a brief opening about vegetation clearance we give an example which looks at a very recent activity which has been occurring on a timber reserve in the Mount Amos area, just south of Cooktown, which is part of the national estate and which has been logged pursuant to an agreement by the former government. The new state government intervened and stopped

logging there. We give that as an example of an area with recognised national environmental values which has been subjected to harm as a result of logging activities. The next example is water for the environment.

**Ms Bragg**—With respect to water for the environment, we also think this is a matter of national environmental significance and should be added to the list.

**CHAIR**—What heads of power would the Commonwealth use for that?

**Ms Bragg**—Because the Commonwealth has extensive power with respect to the environment due to the various treaties that it has ratified and signed, that is the basis of our proposal.

**CHAIR**—Do you know if any of those cover this issue?

**Ms Bragg**—There are impacts on biodiversity and so forth of water for the environment, so I think there would be quite a range of treaties which could be used to justify that power.

**CHAIR**—I do not know the answer to that and I will seek some advice from people who are more experienced than I am, but I think there is some question over that. Please go on.

**Ms Bragg**—The two examples that are included in the written materials are the Cooper Creek proposal, which is a proposal for a major cotton development in the Cooper Creek area in Queensland, and the proposed Dawson Dam in Central Queensland, and the implications of these two examples for environmental flows.

**Mr Silva**—We look at the legislation which applies in Queensland. We make the comment that as the bill exempts these particular matters from the category of matters of national environmental significance and as it sets up the device of bilateral agreements, it is then important to assess whether there is sufficient statutory protection in relation to those matters existing in Queensland. We provide an account in relation to vegetation clearing which we believe indicates that there are not sufficient state controls covering vegetation clearance. We also then examine the Water Resources Act, which is the chief legislative instrument which is intended to control and protect environmental flows of water and water distribution in Queensland.

We go on to make a particular point in relation to the exemptions which are provided under the act. There is a special section, section 43, relating to the Great Barrier Reef Marine Park. We believe that that provision is particularly flawed because it seeks to exempt from the whole process that is created under the act of defining matters of national environmental significance actions which should be controlled and subjecting those controlled actions to an assessment and an approval process. Section 43 exempts anything which is done pursuant to a management plan or a permit or other authority issued by GBRMPA. The flaw that we say exists in relation to that is that the bill proposes to create a situation where GBRMPA will no longer have the power to trigger a full EIS or public environment report or the other types of assessment available under the bill.

**CHAIR**—On what do you base that?

**Mr Silva**—On section 43 which says, essentially, that it is an exemption. It is the same as regional forestry agreements. It says that, if an action would otherwise be covered by part 3 of the bill but you have an approval from the marine park authority, then the bill does not apply and you do not require an approval under part 9 of the bill. It seems implicit that the bill is saying that it is satisfied with GBRMPA's own processes for assessing actions impacting on the Barrier Reef marine park.

What we say is that the powers that GBRMPA has under its own legislation do not actually allow it to trigger a public environment report or an environmental impact statement of the same scope and magnitude as exists under the bill. We point out that GBRMPA has in the past exercised the equivalent power under the Environment Protection (Impact of Proposals) Act which this bill seeks to replace in relation to environmental impact assessment.

We move on to talk about other legislation in connection with the bilateral agreements mechanism. The thrust of that is to show that the Queensland legislative framework is not in a sufficiently good condition to allow the Commonwealth at this stage to enter into bilateral agreements approving state processes because of the inadequacies of state environmental impact assessment. We express concern that the bill has not actually set forth criteria for accreditation under that bilateral agreements process. It is contemplated but there are no actual criteria listed or guaranteed at this stage.

In terms of the EIA processes under Queensland law, we deal with and discuss the inadequacies of the State Development and Public Works Organization Act 1971, the Mineral Resources Act and the Integrated Planning Act. We then move on to give some case examples which indicate the flaws in those processes.

**CHAIR**—If I could just go back to the actions in the Great Barrier Reef Marine Park, I have been advised that the EIA does apply, but the approval would be given under the Great Barrier Reef Marine Park. If that were the case, and we demonstrated that to be the case, would that alleviate your concern?

**Mr Silva**—It would. We have concerns about the EIA process that the act itself creates because we do not believe that it is a good EIA process and we do not believe that it has the same scope as the currently existing EIA process, but it would certainly go a long way to addressing that concern if there were a mechanism under this bill for a proposal to be subject to that process.

**CHAIR**—The committee will look at that and respond formally to what you have said so that you can see whether there is an alternative argument to that point of view that the EIA process can be initiated under this bill but the approval comes from the park authority. That is leaving aside whether the process is adequate or not. We will respond to that.

**Mr Silva**—All right.

**CHAIR**—I am sorry to interrupt you there, but I needed to correct something as we were going along.

**Mr Silva**—I could perhaps add briefly that I can see how that could occur under section 43 by the marine park authority simply withholding its approval or permission and triggering the process before a permission is provided so that that precondition under section 43 does not actually apply. But the way that bill is worded seems to be an artificial way of triggering the process, and in the way the bill is structured it seems to be intended that GBRMPA approvals be exempted from the processes of the bill.

We give some case examples of flaws in the environmental impact assessment process under Queensland legislation: the Dawson Dam proposal, the Brisbane city valley bypass and a proposed marina accommodation complex at Dungeness. We then make some other short points about the bilateral process. We point out that in Queensland there has been a situation in the past where ordinary environmental impact processes under Queensland law have been avoided by special acts of parliament. There should be a safeguard in the bill which ensures that a bilateral agreement would not permit such a form of approval to be acceptable under

the bill or the bilateral agreement. We give the example of the Mount Isa Mines Limited Agreement Act, which allows MIM to not comply with the environment protection policy on air emission.

**Ms Bragg**—That broadly summarises the additional material we hoped to put to you. I emphasise that we are concerned about the bilateral agreements and the possibility of the accreditation of the Queensland environmental impact assessment process, because of its many flaws. I will mention two. The first is that the State Development and Public Works Organization Act is for the big state level projects. It does not require, even for projects with major environmental effects, an environmental impact statement to be carried out. There are mere administrative procedures pertaining to that. The Dawson Dam is an example of the faults in that system. A decision was made by the previous state government to proceed with the dam when the impact assessment statement had not addressed downstream impacts and a water allocation management plan, which was to include those impacts, had not been completed. So there are flaws in the processes.

The other piece of legislation we have dealt with in our written material is the Integrated Planning Act, a new piece of legislation pertaining to town planning and development assessment. It covers matters of local and regional significance but would still touch on matters of interest to the federal government. Under the Integrated Planning Act developers have the right to refuse to supply information requested by state agencies, including the environment departments, without giving a reason.

**Senator MARGETTS**—In relation to heads of power, you mentioned treaties involved with water, vegetation clearance and endangered species. We know that the corporations power can be used to control the behaviour of corporations and that the Commonwealth can use export powers to require licences and so on. A lot of the time they choose not to do that. What kinds of constitutional changes might be necessary to ensure that we do not have this constant argy-bargy and shoving of environmental responsibility from one level of government to another?

**Mr Silva**—As Jo indicated, we believe that the Commonwealth has certain constitutional heads of power which are appropriate and which legitimately authorise the Commonwealth to pass environmental laws. In terms of international treaties, we have mentioned the conservation of biodiversity. There is threatened species. There are also greenhouse agreements which have a direct correlation with vegetation clearance. If it is felt that the existing heads of power under the constitution are insufficient, then the only real alternative is a referendum.

**Senator MARGETTS**—One of the things I am referring to is that even the states do not have environmental responsibility built into their constitutions. They are drawing a long bow, if you like, to suggest that they have a monopoly on the environment. Land management is not necessarily environmental protection. What is your opinion about having ecological sustainability in the constitution so that all levels of government have to include ecological sustainability in their method of operation? Do you think that would be workable?

**Mr Silva**—What we would say—and I think most environmentally focused organisations would agree with this—is that there needs to be a single national uniform approach to the protection of the environment. That can only occur with national leadership through the national government. The problem that we currently face is that there is an incredible disparity in the measures of environmental protection which are afforded by the different state jurisdictions. If it were possible to achieve a bill of rights which entrenched the objective of ecologically sustainable development within the federal constitution and allowed the Commonwealth to freely legislate in whatever respects were necessary to secure that objective,

then that would clearly be highly beneficial for the environment and we would definitely support that. There clearly is a consensus through the national strategy on ecologically sustainable development and the intergovernmental agreement on the environment that ESD is the way forward for every jurisdiction.

**Senator MARGETTS**—If it were the right of citizenship in the constitution, it would be a requirement for all levels of government to integrate it into their operations, I guess.

**Mr Silva**—Yes, if it could be truly integrated into the operation of government at all levels, that would be a very important and significant move.

**Senator MARGETTS**—You have made comments in relation to the inability—or your opinion that there is inability—for the environment to be protected in Queensland simply using the current state legislation. In regard to the IPA in Queensland and the Fisheries Act, can I get your comment as well in relation to their ability to protect things such as seagrass meadow clearance or mangroves? The fisheries people from Queensland Seafood basically seemed to think those bills will be able to protect the seagrass meadows and mangroves because they state that those things should not be cleared and that is sufficient protection. Would you like to venture an opinion on that?

**Ms Bragg**—I can comment a little on that, Senator. The Integrated Planning Act is mainly to cover local government areas, but it can cover areas in the water. Under the Integrated Planning Act, clearing of vegetation is not able to be regulated by a planning scheme. As to seagrass, I guess that could be regarded as vegetation, so there may be some difficulty in protecting seagrass under the Integrated Planning Act. I had not actually thought of seagrass in that context. But, certainly, using planning schemes, the Integrated Planning Act currently makes it impossible to directly regulate vegetation clearing.

With respect to the Fisheries Act, that act is to be amended consequential upon the Integrated Planning Act which is a 1997 act. The Fisheries Act already offers some protection to mangroves, requiring permits, and so forth, for their clearing. As someone who has spent several years trying to improve the proposed Integrated Planning Act, and as developers do have rights to refuse to supply information requested to assess the proposals under the Integrated Planning Act, I would not be confident that there would be protection of seagrass or other tidal vegetation.

**Senator MARGETTS**—Do you know of any prosecutions that have occurred using the Fisheries Act in relation to either mangroves or seagrass clearance?

**Ms Bragg**—I do not know of any prosecutions. I do know of cases of clearing.

**Senator MARGETTS**—Right. Would it be true to say that you are worried that the Fisheries Act is not necessarily enforceable on those issues?

**Ms Bragg**—I would not go so far as to say that the Fisheries Act is not enforceable with respect to mangroves. In Queensland we have had a general problem of having environmental laws and town planning laws which are not adequately enforced. It is often an issue of the culture.

**Senator MARGETTS**—It is not a matter of enforceability; it is a matter of ministerial will or something of that nature.

**Ms Bragg**—Ministerial will and the culture within the relevant Public Service, and also the resources available for that task.

**Senator ALLISON**—In your submission, you say that the accreditation process should require the state environment minister to be responsible for triggering an EIS and making sure

there is sufficient information provided. Could you expand on that? I think it is the second submission we have had this morning that has made a suggestion along those lines. How would this work and how would it provide better protection?

**Ms Bragg**—I guess we have had an ongoing problem in Queensland where particular departments are both promoters of an industry and also responsible for the assessment of proposals. For example, the Department of Mines and Energy was criticised in a Criminal Justice Commission report because it was both promoting the mining industry and in charge of assessing the environmental impacts. It was perceived as a conflict of interest within the department. If we had the environment minister responsible for considering development proposals or state works and forming an opinion as to what type of environmental assessment was required and whether any environmental assessment done was adequate, we would see that as a vast improvement which would help to overcome the existing problems of conflict of interest. Also, we do need a more unified, integrated system of environmental impact assessment in Queensland. Rather than having part of the responsibility with Mines and Energy under the Mineral Resources Act and part of the responsibility with the diverse state departments, with the ongoing problems of conflict of interest, it would be much more sensible if the decision as to whether environmental impact statements were required, and monitoring of the quality of those statements, were to go to the environment minister.

**Senator ALLISON**—A number of submissions have also talked about the lack of public involvement in the bilateral agreements, for instance, that there was a problem that they would be agreed between the Commonwealth and state governments without involvement of anybody else. Have you thought about that? Do you have a process in mind which might overcome that problem and satisfy all of the stakeholders—to use that terrible word—that their views had been taken into account and were part of it?

**Ms Bragg**—We would be very interested to see a public draft of any bilateral agreement, particularly because groups like the Environmental Defender's Office who have day-to-day experience in relation to development applications are aware of the sorts of issues that should be looked out for in relation to any accreditation of the Queensland process. So I think public availability of a draft is very important. Also, there should be some ongoing monitoring and review of how Queensland is going, if any accreditation does occur, and that information should be also be public. Those who have experience in relation to individual development proposals that might come up might have very useful feedback on how they believe the system could be improved and is, or is not, working. I think that sort of monitoring and review of the bilateral agreements is very important because, if that is not built into the system, then, where there is unsatisfactory performance by Queensland, it would be a highly contentious political issue to try and withdraw the accreditation.

**Mr Silva**—That process could be formalised with time lines. Preferably, there would be a positive obligation upon the Commonwealth to actually respond to submissions which are made by the public, which is a common feature of other public consultation processes, particularly in the development of planning schemes and instruments of that type.

**Senator ALLISON**—Would you agree, too, that perhaps these bilateral agreements ought to go to some scientific advisory body? That is another suggestion that was made.

**Mr Silva**—Depending on the nature of the bilateral agreements and the issues that they are proposing to cover, I would think that it would be important to obtain as much expert input as possible. If it is intended to conserve biodiversity and avoid the degradation of the environment generally, clearly there is a need for some expert input into the process.

**Senator ALLISON**—You talk about the need for minimal environmental standards to be part of those bilateral agreements. Have you had a chance to think about what they might be? Who do you suggest ought to develop those?

**Mr Silva**—The national submission addresses that in more detail. The main criterion that we would like to see is that best environmental practice be reflected in all criteria under the bilateral agreement so that, if the bilateral agreements, for example, are accrediting a state environmental impact assessment process, that impact assessment process should reflect best practice. The Commonwealth has conducted reviews in the past which have come up with some recommendations about what best practice should be in relation to impact assessment.

**Senator ALLISON**—In your view, should this be in the legislation?

**Mr Silva**—Yes. If it is not in the legislation, it is at the whim of government whether it is included in subsequent regulations. The public is entitled to certainty in advance about what the bill promises the environment, especially in relation to the bilateral agreements because they are potentially so significant.

**Senator ALLISON**—We talked about a review earlier. Do you have a feel for the period after which there ought to be a review? Would it be five years?

**Ms Bragg**—I believe the major submission might be talking about three years. It needs to be a length of time that is sufficient to see some development proposals go through from beginning to end, but not such a long time that major problems in the system might be allowed to wreak damage. I would refer you to the major submission of the Environmental Defender's Office of New South Wales on that point.

**Senator ALLISON**—You also say that you think there is a need for a single, integrated law that governs environmental impact assessments. Does that suggest that there needs to be a parallel raft of legislation in each of the states along with this bill? Is that something that ought to have been negotiated in the intergovernmental agreement?

**Mr Silva**—We are saying that there does need to be integration of environmental assessment procedures in Queensland and we do believe that accreditation of state processes before that happens would be defective, deficient and unlikely to produce good environmental outcomes. Essentially, we are agreeing that there should be, as a precondition to accreditation of state EIA processes, a proper consolidation of those processes in Queensland and in each other state where a bilateral agreement is proposed to be entered into.

**Senator ALLISON**—Based on your knowledge of the states—and perhaps starting with Queensland—how likely do you think that would be able to be done?

**Ms Bragg**—Do you mean in legal or political terms?

**Senator ALLISON**—Both.

**Ms Bragg**—There is certainly no legal problem with an act which deals with environmental impact at all levels of government within the states' powers. I believe that this proposed Commonwealth reform in fact provides a good opportunity to prompt Queensland to get its act together with respect to environmental impact assessment. There is a new, incoming state government in Queensland. They are well aware of the problems with the Queensland environmental impact system. In fact, when they were last in government at the end of 1994-95 they were proposing to reform the State Development and Public Works Organization Act. Those proposals reached an advanced stage. Then there was a change of government, and that reform proposal was lost.

We now have an Integrated Planning Act which has a number of deficiencies, some of which we have mentioned, which have created a level of barrier to reform. Various state government departments are now tuning their administrative structures and processes towards that new piece of legislation. I imagine it would require a little bit of extra energy and pressure at a political level to prompt a major reform at this stage, but we certainly feel that we have examples which demonstrate that the environmental impact assessment process in Queensland is not working. We think that those examples really do speak for themselves. The fact that developers now have the right to refuse to supply information requested by a state agency under the Integrated Planning Act is surely the most blatant example of poor practice. That provision is included as an attachment to our written submission.

The Dawson Dam is a proposal which you might be aware of. It is a proposal for a major dam in the Central Queensland area. The impact assessment statement was completed under the State Development and Public Works Organization Act, which has no definition of an environmental impact statement—in fact, no mention of it. It merely includes the administrative procedures which are used. The then Minister for Natural Resources under the previous coalition government made a decision to proceed with that major dam when the impact assessment statement did not fully address downstream impacts on the estuarine areas of Central Queensland and when a water allocation management plan which was to have addressed downstream impacts was not yet complete.

We believe that examples like the fragmented and unsatisfactory process in relation to the Dawson Dam should be enough to fuel a reform of impact assessment laws in Queensland, but we really need a bit of a push from the Commonwealth through this process and through getting minimum standards as a requirement of bilateral agreements for that to occur. Surely we want some sort of consistency in the process in different states so there can be certainty for the public, the development industry and the different levels of government that have to deal with these proposals.

**Senator ALLISON**—Just on that matter, I am told that bureaucrats make judgments about legislation on the basis of the number of times the minister is mentioned, and this bill is full of ‘the minister may’ and ‘the minister must’. Is that your view too? Is there too much discretionary power given to the minister in this legislation?

**Mr Silva**—We made a comment that we do not think that those sections of the act that relate to the bilateral agreements are sufficient. Those sections consistently, one after the other, say, ‘the bilateral agreements may be entered in relation to this matter’—whether it be protection of world heritage or Ramsar wetlands, et cetera—‘only if the minister is satisfied.’ The problem is that the mechanism for reviewing the minister’s satisfaction is judicial review; it is not going to allow merits review of that decision. We all know of the failings of judicial review as a mechanism for determining whether it is the right decision or the wrong decision. It does not do that. It just determines whether the decision is legally correct.

So, if the bill relies on those ministerial discretions and the only way to check whether they have been exercised rightly or wrongly is through judicial review, it is certainly imperfect and it does not offer sufficient protection. We would rather see substantive concrete provisions in the bill which set standards rather than relying on ministerial satisfaction.

**CHAIR**—Can we just go over the review part again? You mentioned before you had a concern about the review process for the bilateral agreements. Can you reiterate that concern?

**Mr Silva**—I think Jo made the comment about that.

**Ms Bragg**—The comment was that we thought there should be a specific period after which bilateral agreements are reviewed—possibly three years. I referred to the major submission from the Environmental Defenders Limited of New South Wales on that point. I believe they suggested that three years was the appropriate period.

**CHAIR**—Section 65 of the bill on page 65 says:

65 Expiry and review of bilateral agreements

(1) A bilateral agreement ceases to have effect for the purposes of this Act:

- (a) 5 years after it is entered into; or
- (b) at an earlier time when the agreement provides for it to cease to have an effect for the purposes of this Act.

(2) The Minister must:

- (a) cause a review of the operation of a bilateral agreement to be carried out; and
- (b) give a report of the review to the appropriate Minister of the State or Territory that is party to the agreement;

before the agreement ceases to have effect as a result of this section.

It would seem to me that it has to be done within that five years, or earlier if the bilateral agreement ceases before then or is revoked by either of the parties.

**Ms Bragg**—We suggest that five years is too long a period—

**CHAIR**—But I thought you indicated earlier that there was no review process. I will not put words in your mouth because it is not hygienic—I have said that before in another hearing—but I thought that you said that there was not a review process. It does not matter, but there is a review process.

**Ms Bragg**—We are proposing three years.

**CHAIR**—You did mention five years—it is there. Because we are not experts on the bill either, we will need to go back and get advice on the things you have said. If you raise something that we feel has been covered in the bill, we will respond to that in the report because somebody could take it as gospel that it is not there. I have not pulled it up because I am not familiar with the whole bill. That is an example where there is a clause. You are saying three years. We can debate whether it should be three years or not, but there is a review process.

**Ms Bragg**—We refer you to the submission of the Environmental Defender's Office of New South Wales on that point.

**Senator ALLISON**—To follow up on that question, I noticed in the bill that the bilateral agreement ceases to be after a five-year period. What do you think of that? Is that a problem? Why do you think it is in the legislation? It seems to me to be fairly arbitrary, given that some of these bilateral agreements will be for wide ranging purposes. Why five years? Would you recommend, for instance, that that period of time after which they disappear should vary according to the kind of agreement they are? Is the review that you talk about necessarily related to the completion of the agreement period? I would have thought that a review should take place to determine how effective the agreement was and so on. I think you are saying that it does not simply relate to a review at the end of a period of time.

**Ms Bragg**—If there was public availability of the draft bilateral agreement and we were able to see the scope of the agreement—what sorts of matters were covered, what requirements

might be placed on the Queensland government—we would then be able to form an opinion as to exactly what might be an appropriate period and be able to give a better informed answer. But, certainly, I think the purpose of the review would be to really look at the quality of decision making and so forth that was occurring under the state processes which have been accredited through the bilateral agreement.

**CHAIR**—You expressed concern, and a lot of people today have expressed concern, about transparency or public knowledge of the bilateral agreement or involvement in that process. If you are going to involve somebody else in the process, the public or whatever—and who the public is, I do not know, when it comes to that—with the number of agreements that have to be done, how would you have a process that was workable, that gave some sort of certainty to the people involved so that it did not end up with the people or processes being bogged down because you had open slather on bilateral agreements? Have you got any suggestions as to a workable mechanism for scrutiny of bilateral agreements? I am not saying that I necessarily agree with you, but you cannot just say, ‘Let’s have a public hearing’ when, with every bilateral agreement, we have 300 or 5,000 submissions. How would you have a workable scrutiny of bilateral agreements?

**Ms Bragg**—To start with, if there were some sort of minimum standards or criteria within the proposed new Commonwealth legislation, that would then better delineate the scope of what would be in the bilateral agreements.

**CHAIR**—Could that get out of hand?

**Ms Bragg**—It probably would improve the process because—

**CHAIR**—No. I mean could delineating the things get out of hand? I do not know; I am asking you because you have got a lot of background in this area. How broad has that got to be to satisfy your concerns—the delineating, the base things, the bilateral agreement? Is it a long list, a short list, a doable list? How do you perceive the list? What is it going to look like?

**Ms Bragg**—I am just speculating here; it is not something I have given a great deal of thought to.

**CHAIR**—You make a statement and, if we were to say, as a committee, ‘Yes, great idea; how does it work in legislation?’, you might suddenly find that you have got a list as long as your arm or it might be so short that it does not do what you want.

**Ms Bragg**—Yes, I do understand what you mean.

**CHAIR**—Do you see the problem that I have got? You make a suggestion; I want to know what you think it looks like.

**Ms Bragg**—I could give you a few examples of the sorts of matters I thought could be there and it probably will not be comprehensive. For example, for major projects, one requirement could be that the state system had mandatory public consultation on terms of reference and on draft impact statements and similar requirements as to the public availability of the various documents including supporting materials. I think it would need to—

**CHAIR**—Has the Commonwealth got the power to require the state to do that?

**Ms Bragg**—The Commonwealth could, through the bilateral agreements, because it would be accrediting the state to deal with matters of national environmental significance. I guess that I would also expect to see the principles of ecologically sustainable development appropriately reflected in the state legislation. I would expect to see common definitions of things like the precautionary principle and so forth. I will not go into it now, but in Queensland

we have definitions of the precautionary principle in the Integrated Planning Act that are inconsistent with the national strategy in the intergovernment agreement. So I would expect to see consistent definitions. I guess it is a precautionary approach, but I would expect to see some of these principles reflected.

**CHAIR**—Are you talking about general principles rather than nitty-gritty lists?

**Ms Bragg**—It is a nitty-gritty list in that it would refer to the need to incorporate those principles in the state legislation. I would expect there should be a definition of what an environmental impact statement is. In Queensland legislation, the repealed Local Government Planning and Environment Act had one and that proved useful when you had poor quality statements. The Integrated Planning Act does not make any reference to impact statements; that presents practical problems. That is another requirement to have impact statements defined as to what they are. That is probably all I would feel comfortable in saying, but I think they are practical matters which would go some way towards ensuring a better quality impact assessment system.

**CHAIR**—That is the first thing. The second one is about the scrutiny of it. Do you have any ideas about scrutiny of the bilateral agreements? People have mentioned that today over and over. How do you get it workable so that you do not have an indeterminate process that goes on, with no certainty about how long a process would take?

**Mr Silva**—I think I said before that I do not see any problem with having time lines governing the public participation process in the development of bilateral agreements. That happens with all sorts of public instruments at the present time. I used the example of planning schemes before. That is a good example because throughout Australia local authorities regularly create new planning schemes which cover all their activities in their jurisdictional area and they all provide for public input into the development of those planning schemes. There are strict time lines requiring the advertisement of the planning scheme, the release of the draft planning scheme, the time within which public submissions can be made and the obligation on the local authority to consider the submissions and respond to them, and then they come up with a document.

**CHAIR**—Then there is a bilateral agreement that does not meet the majority of the public's concerns. Do they go ahead or do they have another process?

**Mr Silva**—No. If you use the planning scheme example, they go ahead because ultimately it is a political process and the government of the day decides whether or not to go ahead. The public submission process does not prevent that, but what it does do is inform the government what the public views are. I guess, if they are sufficiently persuasive, the government would take notice. It does still rest with the government. The level of procedure can be different. Using that planning scheme example, under the IPA planning scheme it is now a two-tiered public consultation process; it used to be a one-tiered public consultation process. So a decision could be made about how much public consultation process was appropriate, but clearly there should be a mechanism for it.

**CHAIR**—My nodding does not necessarily mean I agree. It is interesting to hear your views. Senator Margetts, do you have any more questions?

**Senator MARGETTS**—You mentioned the concerns about exempting—or was that the previous group—the Great Barrier Reef Marine Park from federal environmental scrutiny. I asked questions previously of the Australian seafood industry about whether or not the pressure for carrying out experiments on the Great Barrier Reef Marine Park is in the fisheries interest or in the environmental interest. Do you have an opinion about who is the appropriate body

to manage the Great Barrier Reef Marine Park and whether or not the balance occurring at the moment is appropriate?

**Mr Silva**—My view is that the marine park authority is the appropriate agency. I think a resource such as the marine park should be managed by a specialist agency such as GBRMPA. I think that applies also in the case of the other world heritage area—the Wet Tropics Management Authority—in northern Queensland. In both cases, a specialist agency delivers better outcomes and makes better decisions where there are jurisdictional problems between different Commonwealth agencies and a political decision does need to be made to resolve those jurisdictional conflicts. I am not particularly familiar with the nature of the conflict between the fish management authority and the marine park authority in relation to fishing, but there should be a mechanism for resolving that, rather than allowing the conflict to continue.

**Senator MARGETTS**—I will just fill you in a little bit. That is in relation to the experiments on some reefs that have not been fished before, which are also connected with the live fish trade. Are you aware of those? What role do you think the federal minister or federal environmental laws should play?

**Mr Silva**—My opinion about that would be that the marine park authority should be the body which determines—

**Senator MARGETTS**—Who are the ones suggesting it. It has been suggested that it was the fisheries that were pushing it, rather than a conservation ethic pushing it.

**Mr Silva**—I think the marine park authority is forced to engage in a juggling act between the different sectors, but its primary duty is to preserve the world heritage area known as the marine park, which includes the marine park, so I would be critical of pressure being applied to the marine park authority which compromised that primary conservation objective.

**CHAIR**—Senator Margetts, we have run over time, Professor McDonald is waiting and we are due to finish at 3.15 p.m.

**Senator MARGETTS**—Okay. Thank you.

**CHAIR**—I thank you very much for the time you have taken with your submission and for the additional information you have given today. I thank you for your attendance. We have a long way to go as this is only the first hearing. Thank you.

**Mr Silva**—Could I just note that we did intend to say at the outset that we wanted to recognise the Commonwealth support for both our offices. That has assisted us to prepare the submissions and attend today.

[2.51 pm.]

**McDONALD, Associate Professor Janet, c/o School of Law, Bond University, Queensland**

**CHAIR**—Welcome. In what capacity are you appearing today?

**Prof. McDonald**—I appear in a personal capacity.

**CHAIR**—The committee has before it submission No. 152 which it has authorised for publication. Are there any alterations or additions you care to make at this stage?

**Prof. McDonald**—I have a slightly altered version of that submission. It amends some minor typographical errors in that submission.

**CHAIR**—If you table that, the secretariat can circulate the corrected form. Do you wish to make a brief statement?

**Prof. McDonald**—I have had the benefit of having heard the submissions of both Ms Bragg and Mr Silva and I have also read the submission of the New South Wales Environmental Defender's Office. I agree with the vast majority of the points that have been raised in that submission and in the conversation that has been had here this afternoon.

I hold grave concerns about what this bill signifies for the future of environmental law in Australia, not only at a national level but also for its implications for state laws because the message that it sends is that the federal government is happy to move towards a lowest common denominator approach to environmental regulation rather than what was contemplated at the beginning of this reform process, which was to make sure that the Commonwealth government set a minimum upper level of good environmental practice that the states would be required to follow.

**CHAIR**—Was that the view you had from the original statement or discussion?

**Prof. McDonald**—Not from the original consultation paper. This reform process has been discussed and talked about at the academic level and among professional environmental lawyers for the whole of the 1990s. Certainly, colleagues of mine who had involvement in the previous federal government's moves towards reforming environmental impact assessment legislation in particular were giving advice on the basis that the federal government was going to assume the role of minimum watchdog for state activities to make sure that environmental compliance, and in particular environmental impact assessment, did not fall below a minimum acceptable level of process.

That does not seem to be what has come through in this bill. That is not to say that this legislation or any environmental legislation will change people's attitudes towards the environment. I think it was Martin Luther King who said that legislation cannot change the heart, but it may protect the weak from the heartless—and it seems to me that that should be the appropriate role of the Commonwealth government. The federal legislation should be there as the benchmark below which no state and no local authority can fall, but above which everyone is welcome to rise. That is my starting point.

I note with interest that the bill includes reference to the precautionary principle. It states in its objectives that it hopes to promote ecologically sustainable development. I think it is unfortunate that it does not actually say that the object of the legislation is actually to achieve ESD. To merely say that you are hoping to promote it is a watering down of what is already a hortatory objects clause anyway.

The application of the precautionary principle to ministerial decisions should be extended to all ministerial decisions, not only to the ones that are specified in the legislation. Apart from that, the precautionary principle should not be the only relevant principle. The principles of ecologically sustainable development cover the precautionary principle, the polluter pays principle and, very importantly, the principle of intergenerational equity. One of my chief concerns is that the devolution of responsibility that this legislation evidences will completely undermine that key principle of intergenerational equity. I will spend most of my time talking about EIA—

**CHAIR**—Could I just say that, if you spend too much time, we will not have time to ask questions.

**Prof. McDonald**—That is fine. I am going to assume that most people have already raised the concerns about the limited list of matters of national significance. To me, that list—six matters and six matters alone—is far too limited. It needs to be broader, and there needs to be a mechanism to make it even broader when there seems to be wide consensus that a matter

should be dealt with at a national level. I think it is absolutely preposterous that climate change and vegetation clearance are not there. I agree that water allocation should also be a matter of national significance.

In my view, there are no realistic constitutional limitations on the federal government's power. When you look at the amalgam of powers that they have under the corporations power, the trade and commerce power and the external affairs power—not to mention fisheries and so on—there is really no question that the federal government has the power to do basically anything it likes in respect of environmental management. What we are really dealing with here is a question of the appropriate state-federal mix that is brought out in this legislation.

**CHAIR**—So you would have the Commonwealth involved in everything. Where do you draw the line?

**Prof. McDonald**—I think that there are many things other than Ramsar wetlands, matters of world heritage, listed Commonwealth endangered species in communities, nuclear activities, Commonwealth marine areas and migratory species that are matters of national significance. I think there are a great number of issues that are truly matters of national significance. I have given you examples of three, and I could think of more. I am not suggesting that the Commonwealth take a role in every single decision that is made around the country. I am saying that a list of six matters, with a very convoluted system for adding to that list by regulation with the approval of all states, is an unnecessary and inappropriate fetter on the federal government's watchdog role on environmental matters. Does that answer your question?

**CHAIR**—Sort of, but not entirely because I do not know whether land contamination—

**Prof. McDonald**—I said land clearance.

**CHAIR**—Would land contamination—which was raised today—fit in there?

**Prof. McDonald**—My view is that land contamination could, although in most circumstances it would not be a matter of national environmental significance. Where the contamination is of a kind and location that it could have cross-border implications or impacts on an area or a region that is of particular environmental significance, I would suggest that the Commonwealth has an appropriate role to play in respect of management of that contaminated site. Having said that, when you are talking about cattle tick dip sites or contaminated industrial areas in an urban or industrial region, I do not consider that to be an appropriate role for federal intervention. However—and this is not the subject matter of this legislation—there is certainly nothing to say that it would not be appropriate for the National Environmental Protection Council, for example, to develop guidelines and substantive criteria for what is an appropriate level of cleanup and appropriate environmental management standards for contaminated land. That is not the subject of the environment protection and biodiversity conservation legislation.

**CHAIR**—But what about greenhouse gas emissions?

**Prof. McDonald**—My view is that climate change needs to be coordinated at a federal level. Greenhouse gas emission is only one part of the climate change equation. Climate change must be dealt with at a federal level. Its omission from this legislation is one of the greatest weaknesses of the legislation. That does not make it a simple task for the Commonwealth, but I do not think that the Commonwealth should use its difficulty to shirk that obligation.

One of my major concerns about the way in which the legislation is drafted at the moment is that, although it is pleasing to see that the federal environment minister has been given approval power over matters that are subject to Commonwealth environmental impact

assessment, the criteria by which the federal environment minister must consider the project are skewed against environmental factors even though it is part of an environmental impact process. The environment minister must consider all relevant social and economic factors, but is only permitted to consider the environmental impacts that pertain to the matter of national environmental significance.

It makes a fiction of an approval process. It says, 'We're going to look at all the economic benefits or all the purported social benefits and, in giving our approval to this particular project, we are only going to look at the environmental disbenefits to the extent that they affect this federal value that we've looked at. We're going to ignore pollution and for the time being we're going to ignore land clearance issues and salination issues,' or whatever issues they may be, 'because they are matters for the state.' That represents a skewing of the relevant matters and an inappropriate focus on non-environmental matters in a piece of legislation that is supposed to safeguard and embody the role of environmental considerations in an approval process.

The provisions for strategic environmental impact assessment are contrary to what most professionals understand by strategic environmental impact assessment. The procedures contemplate that, if you do a strategic EIA, you do not actually have to do a procedural environmental assessment for projects that are undertaken under the rubric of that strategy. Generally speaking, it is understood that strategic EIA does not eliminate the need for small-scale EIA.

My concern is that this bill does not make any provision for the Commonwealth government to consider the environmental effects of all its activities, at least in some sort of less formal process; for example, the environmental impacts of tax reform, the environmental impacts or otherwise of welfare reform or the environmental impacts of acceding to an international economic agreement—for example, the WTO or the Multilateral Agreement on Investment. There are a whole range of flow-on effects to the environment that come from the whole range of government policies. There is no mechanism by which the government is required to at least consider environmental impacts. That worries me greatly about this legislation. It is disappointing that there is not some requirement there that all government policies should be subjected to some sort of environmental impact assessment process, even if it is at a policy level. It is required under the North American legislation and has not been adopted here.

**CHAIR**—I am sorry to interrupt, but I am conscious of the time. Senator Margetts may want to ask some questions. I am sure Senator Allison will want to.

**Prof. McDonald**—Yes, I will make three more points.

**Senator ALLISON**—I would prefer to listen to what you say and ask you questions later.

**CHAIR**—Senator Allison, please stop Professor McDonald if there is some point you want clarified. Senator Margetts, we will let Professor McDonald speak. If you want to interrupt Professor McDonald and ask a question about anything, do that, because we have got a problem with time.

**Senator MARGETTS**—Yes. A major issue is coming out in the themes that Professor McDonald is talking about. A statement that has been made by the minister on several occasions is that areas or elements of national significance will be better protected under this legislation than they were before. The example I will throw in is Shark Bay in Western Australia. It is a world heritage area and they are already having to rescue dolphins and turtles because of a recent activity. I need to know your opinion as to whether areas of national

significance will be better protected or whether the protection will be worse as a result of this legislation going through.

**Prof. McDonald**—The way that the legislation is currently drafted, it is actually impossible to give you a straight answer to that question. The provision for bilateral agreements is so vague in its current form that one can have no guarantee at all that matters of national significance will be adequately protected under the legislation.

Not only has this bill greatly reduced the matters that one could rightly consider matters of national significance, it allows even those matters to be dealt with under the state process. I agree entirely with the views of the Queensland Environmental Defender's Office that, for example, in Queensland, the environmental impact assessment processes are so inadequate that there is no way that there would be suitable protection for matters of national interest if it were dealt with under the Queensland process.

The answer to that question depends somewhat. If you are in New South Wales I would feel a little bit more assured about it. Very few states have the same level of environmental impact assessment process and substantive requirements as New South Wales has, and Queensland certainly falls into the poor performer category there.

It is possible that some matters of national significance will be dealt with better, but that also assumes an acceptance of the bill's definition of what is a matter of national significance. One of my principal concerns is that that list is drawn far, far too narrowly and there is very little mechanism in the legislation to broaden that list once the legislation has been passed.

I am also very concerned about the vast range of exemptions that are available under the legislation in relation to matters under regional forestry agreements for matters that are in the national interest, without further explanation of what could be in the national interest. If you have a look at the 1997 Department of Foreign Affairs and Trade white paper on the national interest, it specifically says that we must not allow environmental matters to interfere with the pursuit of the national interest.

So there is a real concern there that the Minister for the Environment is going to be able to make declarations exempting from environmental impact assessment matters that might be necessary in the national interest. I can understand a decision to go to war, but short of that I think that is a very dangerous clause to have in there.

**Senator MARGETTS**—Suppose the states and the federal government sign bilateral agreements which give more power to the states, or more responsibilities for the states. If the conditions of the agreements are broken, what should happen? Should the Commonwealth act if the agreements are broken?

**Prof. McDonald**—I certainly take the view that if the agreement is broken then the Commonwealth should step in and take control of the impact assessment process at that point. The problem is that if the Commonwealth has already given approval to the state process it is unlikely that the Commonwealth is going to maintain a supervisory role over the administration of the process, or it will not be able to succeed in avoiding the duplication that is one of the objects of the legislation because it will have to watch the state administrators.

The legislation makes provision for suspension or cancellation of one of the bilateral agreements for breach of the terms of the agreement. What it does not make provision for is suspension or cancellation of the agreement where it proves to be inadequate. The only arrangement that is made there is the expiry of the agreement and the review of the agreement at the end of five years, which the chair referred to in the earlier submissions.

My reading of that provision is that it deals with a review, an evaluation of the agreement, as between the state and the Commonwealth at the end of that five-year period. It does not involve a review of it involving the wider public to make a decision about whether or not, in the view of the wider public, that agreement has adequately safeguarded matters of national interest.

The bilateral agreements, as they are currently contemplated, will not necessarily guarantee that Commonwealth matters will be adequately dealt with. I am concerned that there will be an abrogation of administrative capacity by the Commonwealth government so that the Commonwealth is then incapable, in resource terms, to actually assume that role where the state processes are shown to be inadequate.

**Senator MARGETTS**—Does that leave them open to any writs of mandamus for not abiding by their own legal responsibility as a Commonwealth government?

**Prof. McDonald**—I would have to take that question on notice. I could not give you a straight answer to that one.

**CHAIR**—Are you saying your concern is about the Commonwealth's ability to monitor the bilateral agreements to a sufficient level to step in if it is not proceeding, because you have a number of agreements going on?

**Prof. McDonald**—Yes, absolutely.

**CHAIR**—Do you think this should be a monitoring process?

**Prof. McDonald**—I certainly think that there should be a monitoring process. I was very interested in the questions that you were putting to Mr Silva and Ms Bragg earlier. My view is that it is very rarely a problem that you involve the public in the process for negotiating the bilateral agreements, or review and monitoring of agreements. When you do have, as Mr Silva suggested, those time lines built into that process, there are not that many people out there who have the time and the dedication to be bothered putting in written submissions.

**CHAIR**—It does not feel like that from this side of the table.

**Prof. McDonald**—On the matter of this legislation, could I say that this is one of the most significant pieces of environmental reform—

**CHAIR**—Of any legislation. For most legislation we get lots of submissions. For some we do not; last week we only had six on something.

**Prof. McDonald**—Bilateral agreements may only be in respect of a certain type of project or a certain region. It is not necessarily saying that we are going to accredit all of Queensland's environmental impact assessment processes for all projects that are ever going to happen in Queensland or impact Queensland. That is not my understanding of how the bilateral agreement process will work. It will be more specific than that.

It may be that there is an agreement to accredit the process—for example, the nature link cable car project that is dear to my heart at this point. It is a proposal to build a new cable car up to Springbrook, a world heritage listed area. There you may well see the Commonwealth approval, in respect of world heritage values, transferred to the state government. In my view, that is an inadequate process because there are some matters that, by definition, need to be dealt with at a national level, taking into account the wider national interest.

**CHAIR**—When you say that they transfer, do they really actually transfer? That is a very strong word to use. Does legislation transfer them?

**Prof. McDonald**—It is actually very difficult to work that out at this stage because of the way in which the legislation has been drafted. My reading of it is that the accreditation process can operate in two ways. One is that it can accredit the state process for impact assessment. The second is that it can accredit the state approval for the project itself. In that case, there is a transfer of the Commonwealth's approval process to the state government. Would you like me to continue?

**CHAIR**—No, I am thinking. Yesterday it got down to alpacas in somebody's back garden. There has to be a point where you actually transfer responsibility. Dr Coffey talked about somebody having a small business with aquariums and selling exotic fish, and how the outflow from that could get into the creeks and you might get exotic fish in the creeks, et cetera. I think what she was saying was that she was happy for the council to have the responsibility for doing that. We might have councils around the states that we do not feel comfortable about leaving with that responsibility. Where does the buck stop? You have to give some responsibility and ask if they can do that. It could have national implications if an exotic fish gets out into the waterways. That is at council level.

**Prof. McDonald**—Indeed.

**CHAIR**—At some point you have to say that somebody has to take the responsibility. At that level, there was an agreement that it was the local council. One of the problems is as you go up further. You are saying that the states are not responsible so you do not want to pass that on to them, even though there are powers to step in.

**Prof. McDonald**—I agree with you. I would make two points. Firstly, the point that you raise about councils is actually a very pertinent one because, in Queensland, the move is to devolve more and more power to the local authority level.

I am based on the Gold Coast. The Gold Coast has such a dismal history of approving disastrous environmental projects that it is very difficult to have faith in their consideration of something as important as world heritage values, for example, or even trans-boundary environmental effects. Where you are accrediting a state process and that state process then devolves half of its process to a local authority, it does not give one an awful lot of faith in that devolution process.

Having said that, though, I am not opposed to some process of bilateral agreements and accreditation. I am opposed to a process that is incorporated in legislation without any guidelines on what minimum standards have to be met. I agree entirely with Ms Bragg about the minima that need to be contained in those bilateral agreements, and I think it is unacceptable that this legislation does not contain some minimum guidelines on what bilateral agreements must at the very least contain in relation to public exposure; public involvement in terms of reference; public access to drafts; access to relevant information from the developer; minimum environmental criteria that are considered; review of the document by relevant bodies; and acknowledgment in the final environmental impact assessment of the concerns that have been raised during the consultation process about the draft environmental impact assessment. There are all sorts of safeguards that this legislation could contain that would give one an awful lot more confidence in this use of bilateral agreements. Without them, one can only think the worst.

**CHAIR**—If the state does not comply with the bilateral agreement, you are saying that you have transferred the power, but can't the Commonwealth step in under the act if the state does not conform with the bilateral agreement? And, if so, how do you justify your comment that it was a transfer of power? They have transferred the power to supervise but, if they do not

honour that, then the Commonwealth can step in. If they do not honour the bilateral agreement, the Commonwealth can step in and say—

**Prof. McDonald**—First of all, the fact that the state honours the bilateral agreement does not mean to say that the Commonwealth has not transferred its power. That is my first point.

**CHAIR**—But the job has been done. If, in the bilateral agreement, they have done what is in the bilateral agreement—

**Prof. McDonald**—The Commonwealth has still transferred its approval process in that situation. It may have appropriately transferred it but it has still transferred it.

**CHAIR**—How does it transfer its approval process when it can actually withdraw it at any time if it thinks that the state has not complied?

**Prof. McDonald**—Your first scenario was if the—

**CHAIR**—The concept to me of transferring is you transfer it and then it is within the state's hand. If they comply or do not comply, it is up to the state, and then it becomes a political issue if they do not comply.

**Prof. McDonald**—If they transfer—

**Senator MARGETTS**—Keep that in mind when we talk about the RFA process next time.

**CHAIR**—I thought you would do that, Senator Margetts.

**Prof. McDonald**—If the Commonwealth transfers its approval power under the bilateral agreement, and the terms of the bilateral agreement are complied with, the Commonwealth has transferred its approval power. It is as simple as that. It cannot revoke it if it is still within the terms of the bilateral agreement. If it has a process in place and the terms of the bilateral agreement are breached by the state government, certainly the legislation provides for a suspension or cancellation of the bilateral agreement. That does, however, presuppose that the Commonwealth government is keeping an eye on compliance with the bilateral agreement. What I think that this legislation foreshadows is a massive reduction in the administrative capacity of the federal government. It will say, 'Once we have devolved all of this power, we do not need a massive environment department at the federal level.' What will then happen is, with this greatly reduced human resource at the federal level, the cry will then be raised, 'We can't possibly keep an eye on the enforcement of all of these bilateral agreements because that is why we had them—so that we did not have to keep that oversight.'

**CHAIR**—At the end of the review, the minister has to publish the report in accordance with the regulations. If they have not complied, and the department has not kept a watching brief on the bilateral agreement, that will be demonstrated in the review.

**Prof. McDonald**—Indeed, and in the meantime Fraser Island may have been sandmined and Lake Pedder may have been dammed. The fact that there is a five-yearly review that is made by the federal minister to the state minister does not necessarily indicate that the bilateral agreement has been successful in environmental terms. It may just mean that it has been a fantastic way to expedite an environmental impact assessment process that is slow for a reason.

**CHAIR**—You are saying to me, then, that you do not review it; you wait until the end of the five years, things happen, the horse bolts and you try to close the door after the horse has bolted. But, at any point, if the Commonwealth does not agree that the bilateral agreement has been adhered to, it can revoke it.

**Prof. McDonald**—I think that you are actually completely misunderstanding what I have just said.

**CHAIR**—No, I do not think I have completely misunderstood, with all due respect. What you are saying to me is that, even though there is a review process at the end, bad luck, Fraser Island has been mined, or whatever else has happened, and you have this review process at the end.

**Prof. McDonald**—I am concerned that that review process is of itself inadequate because merely allowing for a review at the end of five years does not mean that things will go well in that five-year period.

**CHAIR**—So what you are saying to me is that you maybe should have stages of review within that?

**Prof. McDonald**—I am certainly saying that the Commonwealth needs to maintain some ability to oversee the administration of that bilateral agreement. But, more importantly, the point that I am trying to make is that we need to make sure that the bilateral agreement is a good one in the first place.

**CHAIR**—There are two different things here. One is about the agreement itself and the other is about the monitoring of the agreement.

**Prof. McDonald**—Indeed. But, if we get the first one right, the second one will not be nearly so important.

**CHAIR**—Okay.

**Prof. McDonald**—If we make sure that the agreement has appropriate procedural and substantive environmental safeguards in it, there will not be as great a need or as great a concern about the federal government passing over that approval process to the states.

**CHAIR**—I was concerned that, if you do have some sort of guidelines for the agreements, you end up with them being almost ridiculous because you have to include everything. Do you think it is possible to write statements that are sensible, that are achievable, that are doable, that are reasonable from both sides?

**Prof. McDonald**—I think that you could include on a page the key requirements that any environmental impact assessment process must contain.

**CHAIR**—Are there any other questions you want to ask?

**Senator ALLISON**—Have you finished?

**Prof. McDonald**—I have concerns about the level of exemptions under the RFAs, matters in the national interest and also matters under conservation agreements. It seems to me that you can opt out of compliance with environmental laws as long as you enter into a conservation agreement. I think that those conservation agreements suffer from the same lack of specificity under the legislation as the drafting of the bilateral agreements suffers from.

In relation to the conservation agreements, it is interesting to note that they are only enforceable by parties to the conservation agreement. That is a bizarre situation because, if the agreement is between, say, a private landowner, the federal government and the state government, if there is non-compliance by the private landowner, it may well be that that is with the tacit approval of the state and federal governments. There are third party rights to enforce other aspects of the legislation but, specifically, that is excluded in relation to enforcement of the obligations under the conservation agreement. I have finished, thank you.

**CHAIR**—We have a time constraint. I could actually enjoy having this sort of discussion for another two hours, but we cannot go on for two hours.

**Prof. McDonald**—I have no other commitments. I am happy to discuss the bill with you for as long as you like.

**CHAIR**—We actually have to go to our homes. Senator Margetts, do you have any questions to ask?

**Senator MARGETTS**—Probably lots.

**CHAIR**—You are home. We have to get there.

**Senator MARGETTS**—No, that is all right. I am happy if Professor McDonald comes and sees me some time; we could talk to the issues as well. But thank you very much.

**CHAIR**—Thank you. I am sorry to cut you off like this.

**Prof. McDonald**—No, that is quite all right.

**CHAIR**—We appreciate the submission, and we appreciate the effort and time you have put into it. I have enjoyed the discussion across the table; it has been interesting. If we have any other questions, the committee will, if you do not mind, put them to you on notice. We will have a look at what you have said and we might come back to you when we are more familiar with the bill as well. I would like to thank you for your submission and for the time you have taken to come to speak to us. Thank you very much.

**Prof. McDonald**—Thank you for giving me the opportunity.

**CHAIR**—I would like to thank Hansard for getting up very early this morning to leave Canberra to be with us. Thank you very much to the staff. Thank you to my colleagues and thank you, Senator Margetts.

**Committee adjourned at 3.25 p.m.**