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HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON ENVIRONMENT AND HERITAGE

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HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON ENVIRONMENT AND HERITAGE

Monday, 11 September 2000

Members: Mr Causley *(Chair)*, Mr Barresi, Mr Bartlett, Mr Billson, Mr Byrne, Mrs Gallus, Ms Gerick, Mr Jenkins, Dr Lawrence and Mrs Vale

Members in attendance: Mr Billson, Mr Causley, Mrs Gallus and Mr Jenkins

Terms of reference for the inquiry:

For inquiry into and report on:

- the impact on landholders and farmers in Australia of public-good conservation measures imposed by either State or Commonwealth Governments;
- policy measures adopted internationally to ensure the cost of public good conservation measures are ameliorated for private landholders;
- appropriate mechanisms to establish private and public-good components of Government environment conservation measures; and
- recommendations, including potential legislative and constitutional means to ensure that costs associated with public-good conservation measures are shared equitably by all members of the community.

WITNESSES

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Committee met at 9.34 a.m.

LOGAN, Mr William Richard, Senior Project Officer, Biodiversity, Environment Planning and Legislation, Environment ACT

CHAIR—This hearing is part of the committee's program of hearings and visits in different parts of Australia. The hearings and visits allow us to pursue some of the issues raised in the 248 written submissions to the inquiry with the authors of some of these submissions. In today's hearing you will hear evidence from the ACT government and the ACT Sustainable Rural Lands Group. I welcome the representative of the Australian Capital Territory government, Mr Logan. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as the proceedings of the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. We do have a submission, but would you like to make a brief opening comment to elaborate on that at all?

Mr Logan—Thank you. I will not necessarily elaborate but point to some of the main features. Environment ACT, at the request of the committee, and on behalf of the ACT government, made a submission to this inquiry outlining the measures it has undertaken to secure the conservation of environmental values on occupied land in the ACT, primarily rural land. We have made quite a considerable effort in recent years to address these issues for two main reasons. The nature conservation estate in the ACT is extensive, to the extent that it occupies about 53 per cent of the territory. That is land reserved as a national park or nature reserve for environmental conservation purposes. That does not guarantee that all the nature conservation values in the ACT are included in that reserve system. Other important values occur on rural land and there is a point of diminishing returns where nature conservation values are automatically reserved to provide for their conservation. It is an ongoing development throughout the country, and including the ACT, that off-reserve conservation measures are a practical and preferred mechanism for securing nature conservation values and assets that are not in the nature reserve estate, and the cost of including them and the practicality of doing so is not always apparent. We prefer to pursue off-reserve conservation measures by encouraging land-holders to identify and protect the nature conservation values on their land. That is the thrust of it.

Combined with that is a historical development in the ACT, where land has primarily been seen as serving the purposes of the national capital and the interests of the occupants of the land have not always been paramount. That has led, in the agricultural sector, in many cases to insecurity of tenure and a lack of incentive to invest in sustainable land management practices, to the extent that some of the known nature conservation values are declining and agricultural practices have not been as they could be. In 1996 the government, recognising these issues, instituted an independent inquiry and the recommendations that came out of that inquiry were, in large, adopted by the government as a new rural policy package. The features of that package are what the submission is about.

I will refer to the submission to get them in the right order. Firstly, they addressed the issue of short-term rural lessees lacking the incentive to farm in a sustainable and long-term manner. Where land was identified as not having any need for development in the foreseeable future, long-term leases of up to 99 years have been offered over the short-term leases which are held

currently. That provides security of tenure, which is an important aspect of sustainable farming. To encourage the rural lessees to participate in this new scheme a number of incentives were developed. One was for farmers moving to 99-year leases to buy out any government improvements that were on the land and also to buy out the rental component of the lease in its entirety so that they, in fact, owned the lease for the term of the lease. Special financial measures were developed to allow them to do that. For existing lessees this applies, and it is a window of opportunity for only 18 months where these special financial arrangements can be taken advantage of.

Also, recognising that rural lands in the ACT contain important community nature conservation values and assets and that the land-holder would be the primary agent of caring for those assets, there were incentives provided in the way the land was valued for the rental buy-out purposes. With the objective of developing a continuing and sustainable agricultural sector, the land was valued in terms of its productive capacity rather than its market value, which, in land close to a large urban area, can be considerably more than the value of land for production purposes. So the land was valued for rental purposes and for the subsequent rental buy-out provisions at its productive capacity. Also, a 15 per cent discount was applied to that productive capacity valuation of land as an incentive that, when combined with the special financial arrangements, would allow a land-holder to buy out the rental component of his lease for the term of the lease if it was going to be a long-term lease. That discount also recognised that a corresponding responsibility of the lessee would be to recognise the nature conservation values that were present and to provide them as part of a duty of care, and as a public contribution in recognition of the fact that they were community assets.

To try and get all this into a framework which both parties could work to, a system called a land management agreement was developed whereby new leases require the development of a land management agreement where production issues and, in particular, nature conservation issues were identified up front, long-term management outcomes were agreed and the land-holder in the land management agreement would then advise how he was going to manage the land to achieve those agreed outcomes, whether it be for sustainable production or conservation of natural assets. That is the land management agreement process which is provided for in legislation.

In addition, the government also developed a financial assistance scheme called the Rural Conservation Fund in recognition that, for some of the work required to secure the conservation of assets on the land, the responsibility was broader than the land-holder and that, in some cases, the direct costs involved were unreasonable to impose on the land-holder. So there is a system in place where the land-holder can apply for financial assistance for specified conservation works. They can develop a program of, typically, fencing out some important vegetation or putting in some infrastructure to allow a piece of land with nature conservation values to be managed differently from, say, the rest of a large paddock, which would include fencing out and perhaps revegetation, alternative water supplies and things like that. That funding scheme is now in place where the government makes a financial contribution to conservation works on the land. Part of that agreement is that it would be considered a long-term project and the outcome might be 50 years from now but action to secure that outcome is required now.

There are also other environment grants programs for community groups which address nature conservation issues which a land-holder is able to take advantage of in a community sense. If they are part of a Landcare group and the project has community benefits, there is an ACT environment grants program which can also help with financial assistance for conservation works. That is a summary of our submission.

CHAIR—Thank you. Just to get it into perspective, there is no freehold land in the ACT, it is all long-term lease. Is that correct?

Mr Logan—That is quite right. All occupied land is held under lease, although not necessarily long term.

CHAIR—Does the ACT government, in its conservation measures, rely on the planning act to put in place controls that property owners have to comply with?

Mr Logan—Yes. It is primarily the Land Planning and Environment Act of the ACT. There are two provisions. First of all, it says that new rural leases must have a land management agreement and, as I mentioned, that agreement is the identification of management issues and an agreed approach to their sustainable resolution. The Land Planning and Environment Act, together with the Territory Plan, which is the overarching planning document for the ACT, also identifies land use constraints, so areas may be zoned for rural use and that will place a limit on the range of activities which can be undertaken on that land.

CHAIR—How do you come to an agreement with the land-holder on the management plan?

Mr Logan—There are two components to the land management agreement. There is a property survey which is primarily the responsibility of the land-holder, but at policy level it is agreed that the government will supply information it holds which would be of use for that purpose. The land-holder will prepare a survey of the management assets, the natural assets and the issues surrounding them. For example, he needs to identify erosion areas, areas of nature conservation value and things like that. We have quite a comprehensive database of nature conservation assets on rural land, including where the vegetation occurs, what its condition is, how valuable it is in terms of the biodiversity of the ACT, if there are endangered species involved and if it is a good example of a piece of vegetation. We will advise the land-holder of that.

Once he has all this information he then has to prepare the property management agreement which has to acknowledge the presence of these issues that he may have identified or we may have advised him of. The land management agreement will set out how he is going to manage them in a sustainable way.

CHAIR—On the biodiversity and the endangered species—I can understand erosion; it is fairly obvious—but in the other areas what science do you base your assessments on or is it just something that maybe the majority of the electors feel warm and fuzzy about?

Mr Logan—No. I think we are fortunate in the ACT on matters of scale, but we have done quite extensive surveys, particularly of the natural vegetation of the ACT and the values that they contain. We are able to tell a land-holder that there is a certain sort of woodland on his

property, that parts of this woodland are in good condition and that parts of that woodland are in fact the habitat of threatened species. This is based on our survey work.

CHAIR—Are you then saying that if in fact the land-holder has to put in place these conservation measures and it detracts from their economic viability, then you are prepared to reduce the rental on that lease to take into account the loss?

Mr Logan—Yes. I am not involved in the legal side of this but certainly the valuation of the land for determining the rent then determines how much you need to pay to buy out the rent, based on the carrying capacity and any land use constraints that apply at the time. The valuation will take into account, for example, a piece of high quality native vegetation which has been identified as such and its future management has to have a priority for protection of that value. The valuation of the land for production purposes will take that into account.

CHAIR—I understand that it is one of the quirks of the ACT that the Commonwealth government still retains the Crown title to the land. Is that correct?

Mr Logan—I believe so. The Commonwealth government is the land-holder. The ACT government administers the land on behalf of the Commonwealth through its legislation under the Land Planning and Environment Act primarily.

CHAIR—Most other states tell us that they are not bound by the Constitution, but how would you see this under the Constitution? If there was any devaluation or any need to resume then would there be fair compensation involved?

Mr Logan—It is a bit out of my expertise but, in general terms, the current situation is that all leases have a three months notice provision in them where the Commonwealth, or the ACT on behalf of the Commonwealth in that context, can say, 'We need to resume this land for development of the national capital,' and there is compensation available for assets which the owner owns or for approved capital assets which he has provided. The development of the land is an approval process, and if it is an approved process he is entitled to compensation. But not for anything more—he is not entitled to compensation for lost productivity, for the fact that his family assets are now gone. That was decided many years ago in most cases, when the land was resumed from freehold and became leasehold.

The new scheme changes that. Lessees that move to a long-term lease under this new policy arrangement purchase any government owned improvements and then are subject to new legislation, the Land Acquisitions Act. That gives full compensation as people recognise it, which I believe includes loss of future earnings and productivity if the land is resumed.

CHAIR—In developing this, you say that it is a new process that you are going through at the present time. Did you have consultations with the land-holders as to whether they were in fact happy with this particular process?

Mr Logan—Yes, that is fair to say. In 1996, I think it was, the government set up a rural policy task force, which is an independent body to investigate rural issues and recommend to the government matters for resolving them. That task force included two rural lessees, plus business managers, financial managers and land valuers—a range of people who had relevant

expertise. The recommendations to the government were adopted in the majority, which included the land management agreement process, the discount on the valuation on production capacity rather than market value and a discount on that valuation for this transitional phase. It is my understanding that the Rural Lessees Association of the ACT, which was the representative body, endorsed that wholeheartedly.

Mr BYRNE—How many properties in total would you anticipate would be affected?

Mr Logan—I am sorry, I cannot give you a specific number. I would have to take that on notice.

Mr BYRNE—Having undertaken the consultation process, do you have a rough figure of the expected uptake of these particular new leases?

Mr Logan—We think it is a favourable deal and we expect maximum uptake, particularly for existing lessees. They have an opportunity over 18 months to take advantage of the special arrangements for financial assistance, so we expect a maximum uptake on it.

Mr BYRNE—Is that the feedback that you have been receiving from relevant stakeholders?

Mr Logan—I do not deal directly with the rural community on lease matters. I have spoken with the chair of the Rural Lessees Association and several of their members on related matters to do with financial assistance for conservation works, which is the area where I work, and I believe they are very interested in it. In particular, as part of the development of the land management agreement recognising conservation assets that need to be protected, they are aware of the financial assistance that is available to do that and are quite keen to have the two come together, so that when they say, 'I will protect this piece of vegetation,' they will also say that they can look at what the government can provide to assist them.

Mr BYRNE—So you are saying that your general understanding is that most of the stakeholders are happy to pursue this particular option?

Mr Logan—Yes, that is right. I am also aware that there are some who are not, but it is my clear understanding that a majority of people favour it.

Mr BYRNE—This is categorised as a trial program at this time?

Mr Logan—No. We had a couple of pilot studies early in the piece, but now the legislation is in place, the policy has been released by the government and it is a firm direction.

Mr BYRNE—Would you characterise the intention of the government to be trying, by incentives or otherwise, to encourage the stakeholders to pursue this? The annex to my question is: if you have a reasonable group of people that pursue this, what happens to the group on the 20-year leases when they expire? If there is a reasonable uptake with the 99-year leases, what will happen with those that are left when their leases expire?

Mr Logan—I am not quite sure; I am not in the lease administration area, but I think they can apply for a renewal of the lease, or they can say that they do not wish to continue the lease. If they do not take advantage of the new scheme to move towards a 99-year lease, I think they will still be required to prepare a land management agreement once the other lease reaches its termination date. But they would remain there on a rental basis as is the case at the moment.

Mr BYRNE—If they do not actually uptake it, they will have to sign a land management agreement. There will not be any compensation to do that; that will just be an expectation for those who renew those leases.

Mr Logan—Yes that is right. It is a condition of any new leases that a land management agreement be prepared.

Mr BYRNE—That is from now—is that correct?

Mr Logan—That is right.

Mr BYRNE—With respect to the compensation component—we were talking about financial assistance for conservation works on leased rural land—this particular fund:

... is designed to fund projects for leased rural land that are important to conservation of the biodiversity of the ACT and that involve a direct financial cost that would be an unreasonable burden for the landholder to meet in its entirety.

Does that mean that most of the work that would have to be done as part of that land management agreement would have to be borne by the land-holder?

Mr Logan—Yes. A land management agreement addresses the whole gamut of sustainable land management. There are two components. There is the land care component, which I think a responsible land-holder could reasonably be expected to undertake, to control weeds and erosion, and prepare for drought and fire as part of responsible land management. When you move out of that into nature conservation per se, that is when you get a broader community benefit arising from those works. There is a split between land-holder benefit and community benefit, and the purpose of the rural conservation fund is to recognise that broader community benefit which would accrue towards it and help.

Mr BYRNE—I will just ask one final question at this point.

CHAIR—I think Mr Billson would ask: where do you cut off? How do you define the responsibility of a land-holder and what you would see as being required by the community?

Mr Logan—There are no hard and fast rules. We do have an advisory committee which administers the rural conservation fund, which is a body of independent experts in rural, economic and nature conservation matters. They advise the government when a project is generated to what degree there is a land-holder benefit and a community benefit. That points to the degree to which the government should fund that particular project. They are keen that the land-holder retain ownership of it in terms of initiating the project, having responsibility for doing the project and maintaining it over time. But they also see that there is an up-front cost, in particular where the community contribution is relevant. As a rough rule they say that 50-50 is

pretty reasonable where the land-holder might undertake the work, but there would be assistance towards any financial outlay.

Mr BYRNE—What about a disputation mechanism? I do not know who the monitoring body is, but if they say, ‘You haven’t fulfilled your land management obligations,’ and the farmer says, ‘That’s not right,’ where is the disputation mechanism?

Mr Logan—The Land Management Agreement provides for a dispute settlement procedure. So the land management agreement does have penalty provisions against it if the land-holder does not comply with it, but there is also a dispute resolution where the land-holder can appeal a decision on that matter.

Mr BYRNE—And is that within the planning department of the ACT?

Mr Logan—That is right.

CHAIR—Before I ask further questions, I would like to welcome a delegation from Zimbabwe. Welcome to our hearings. This is the House of Representatives Standing Committee on Environment and Heritage. At the present time, we are doing an inquiry into what is called ‘public good conservation’—in other words, where governments make laws, whether they be state, federal or local governments, that affect the rights of individuals on their properties. We are investigating what those laws might do—in fact, whether it is fair and whether there should be some compensation.

Mrs VALE—Mr Logan, I was interested when you said initially that the land-holders would actually provide the survey of the assets with the support from your department. Would the land-holder have to get an expert to actually formulate that survey himself? To what cost is the land-holder put just to provide the survey, even given your support?

Mr Logan—Yes, it could be the case, particularly in those cases—which are becoming more common—where the land-holder might be a lifestyle farmer, not an experienced farmer.

Mrs VALE—I am sorry, did you say ‘lifestyle’ farmer? I have never heard that term, but I think I understand exactly what you mean.

Mr Logan—Yes, lifestyle farmer. They would like to live in a rural residential situation—and it might be substantial—but they may not have their own expertise. They might employ a manager or, in cases such as these, they could employ an expert to help them prepare a land management agreement, and some of them do. Where it is a normal land production issue—like drought, fire, erosion and weed control—many farmers would be able to do it themselves, but some may not. Where we are talking about nature conservation values, we recognise that it is not something we would expect a farmer to be an expert in, and we have undertaken to provide that information: what is on the land and what the management implications are to help them with that side of it. It falls into the agreement side of it.

Mrs VALE—If a farmer does decide to hire a professional to do that survey, have you any idea of the ballpark figure for the cost of the survey?

Mr Logan—No, I am afraid I do not. This is a relatively new process. We have about 10 land management agreements under development and four or five that have been developed, and those that have been signed off on that I am aware of are relatively simple ones. But we have yet to see one reach completion for the large rural blocks. We are keen that that be done properly, because that means that everyone has a common base upon which to look at the management of the land; but I have no idea of the cost involved.

Mrs VALE—So would the expertise required to do that mean that those people would probably be planners or environmentalists?

Mr Logan—No, I would reckon that they would be rural experts: rural production people and land managers or people with expertise in land management. Environmentalists have a role, certainly. We try to provide that information, but the main expertise provided would be sustainable land management expertise.

Mrs VALE—So there already is a professional body out there that would be able to service the farmers if they needed that sort of information—at a cost?

Mr Logan—Rural consultants, yes—there are quite a few around. I am not familiar with the rural production industry personally, but it is my understanding that the expertise is available.

Mrs VALE—It is very much like an environmental assessment statement, isn't it? When you look at the planning laws in New South Wales, which I am familiar with, you could well imagine that anything that actually takes that sort of assessment could be very costly.

Mr Logan—Yes, I agree that that could be the case, but it is also the basis for sound property management: a modern farmer will have a property management plan of what he is going to do with the land, how he is going to do it and when he is going to do it. This is the basis not only for our land management agreement, which is required for lease purposes, but also for sustainable land management. A sound and professional property management plan is the basis of long-term sustainable farming. So, you are right, there is no doubt that there is a cost involved in that, but I think it is a cost which any land-holder would need to incur, irrespective of whether or not there is a land management agreement required.

Mrs VALE—Mr Logan, could you also tell me the range of prices, because I do not come from the ACT or from a rural background. When you look at the price of 99-year leases, what kind of monetary value are we looking at? Then, perhaps, what is the range of reduction on those leases that the environment department is prepared to negotiate?

Mr Logan—I am afraid I cannot give you any figures; I would have to take that on notice. Market values vary considerably from year to year even, let alone—

Mrs VALE—That is true.

Mr Logan—But on a property of reasonable size—if we are talking about 1,000 hectares—we are talking millions of dollars. The figures would be available, but I do not have them.

Mrs VALE—I just wanted a ballpark figure. Does your department have a budget for the amount of compensation that you are prepared to pay to farmers for this kind of work? I know that you have said that you have actually had some pilots, but I was just wondering—

Mr Logan—The pilot stage that I referred to was establishing the land management agreement in a form which the farmer would understand and be able to use properly and which would service the government's requirements as well. So we ran through a couple of dry runs with land management agreements. I am not sure what the compensation involved here is. We have a financial system in place to give 30-year loans at eight per cent fixed for land-holders who want to buy out their lease. That is a special financial arrangement. The valuation of the land is at carrying capacity rather than market value, and there is a 15 per cent discount put on that once that is determined. So it is not a financial outlay; it is a loss of potential income to the government.

Mrs VALE—You just said 'for land-holders who want to buy out their lease'. Does that mean then that they would own the property freehold if they bought out the lease?

Mr Logan—No, they would own the lease for the term of the lease.

Mr BARRESI—I have just a brief question, and I hope that it has not already been asked of Mr Logan. I apologise for coming in late. On the issue of market value, I have read that the land's stock-carrying capacity is used as a costing of the leasing of the land rather than the land's market value. How does that take into consideration the potential value of threatened species or rare species of flora and grasslands on that land?

Mr Logan—The valuer is given the information on the conservation assets on the land and the management implications of that. He takes that into account in valuing the carrying capacity of the land. He will know that a certain piece of vegetation cannot be cleared for pasture.

Mr BARRESI—So that portion which has the threatened species is removed from the parcel of land which will be assessed for carrying capacity?

Mr Logan—No, it will be assessed at a minimal carrying capacity or at a carrying capacity appropriate to that piece of vegetation.

Mr BARRESI—So is there a formula—some sort of sliding scale—that is used?

Mr Logan—A valuer would have one; I am not aware of it, though. The valuer is an expert in valuing rural land for production purposes.

Mr BARRESI—I am still not sure how you would take into consideration the value to the broader community of having indigenous species or threatened species of grasslands and flora protected on private land through this valuation method.

Mr Logan—The valuation process does not take that into account. It takes into account the productive capacity of the land in the form examined by the valuer. If there is standing timber on the land and that timber is identified as a conservation asset—and as grazing capacity of a

patch of standing timber is less than a patch of open grassland—the valuer would apply a valuation to recognise that reduced carrying capacity for timbered land.

Mr BARTLETT—You indicated earlier that most lessees seem to be happy with the conservation action plan. How then do you respond to concerns expressed by the ACT Sustainable Rural Lands Group that the economic impact on their activities has not been adequately addressed?

Mr Logan—I am familiar with their concerns but I am not familiar with their arguments, because there are legal and constitutional matters which they put forward to support their arguments and I am really not able to comment on those. I can only fall back on my earlier comment that the rural land policy was developed independently of the government in consultation with the rural lessees over a couple of years. The bulk of the recommendations—the vast majority of them—were adopted by the government. It is my understanding that the Rural Lessees Association, which was the peak body at the time, participated in the review and was happy with the outcome. There were a number of hearings held during the period at which all lessees with concerns could air their concerns. I am only able to say that the outcome we have seems to be to the satisfaction of most of the rural lessees.

Mr BARTLETT—How representative was the peak body of rural lessees generally? Have you got any figure of the percentage membership?

Mr Logan—Yes, I think it is something like 90 per cent of rural lessees belong to the Rural Lessees Association. It might even be higher.

Mr BILLSON—I have two themes, but my first question is: have you graduated the incentives that you speak of to a point where there is minimum expectation on landholders to manage their land in a way so that it does not adversely affect other interests and then have incentives on top of that, or are some of the incentives that you talk about going to fairly rudimentary land management practices?

Mr Logan—Let's see if we have the question right. The primary objective is to promote sustainable agriculture and secure the nature conservation requirements on rural land. There are a number of incentives in place to promote that. Landholders get the valuation of the land, a discount on that valuation and special financial arrangements to allow and encourage them to take out their long-term lease, purchase government improvements and develop a land management agreement. Those discounts were specifically built into the system on the recommendation of the task force to recognise the special factors that apply to the ACT, in that it is only leasehold, and that nature conservation requirements were to be accommodated.

Mr BILLSON—Let me put it another way: if you have a landholder doing more than their fair share—and we are having a long debate about what is a fair share—are there added incentives for those people or do the incentives go to the fair share effort?

Mr Logan—I see. No, in general, the incentives go across the board. There is a discount on the valuation and there are special financial arrangements irrespective of whether the land is 40 hectares of cabbages or 3,000 hectares of rural grazing country with lots of native vegetation remnants of very important native conservation values. So there is no distinction there. The only

distinction is where we provide financial assistance for conservation works on the land. So first of all, it has to be a conservation work, and the degree of public benefit from that would influence the degree to which the project was funded.

Mr BILLSON—So it would be difficult at this stage to move to more market based mechanisms of trading conservation effort and outcomes between landholders, because we do not have a market determined in terms of ‘This is what everyone must do; here is what you can do,’ which may then be put on the market to assist somebody not in a position to maybe pull their weight?

Mr Logan—I think you are right when you say that.

Mr BILLSON—Is that a direction you are looking to move to over time?

Mr Logan—Yes. I cannot say that it is government policy. It is certainly embedded in the thinking behind it, and I know there is a national thrust towards recognising the role that farmers have in conserving natural values which are of community benefit and to recognise the cost to the farmer in dollar terms and lost production and all the other things that go with that. But other than what I have spoken about today, we do not have any specifics to try to recognise, first of all, the landholder who has lots of good stuff and the landholder who is doing lots of good things about that good stuff. We do not have a way of recognising that.

Mr BILLSON—There is a bit of a view around that landholders in the ACT have greater expectations on them than landholders in other jurisdictions. Is that your sense of it?

Mr Logan—I am aware that that view is there. I am not sure that it is correct. I am familiar with some of the things that the other states are doing about protection of vegetation, which is quite dramatic in some cases, and I do not think the ACT is particularly different from some of the leaders in that area. South Australia has very strong vegetation protection legislation, Victoria has lots of examples of different ways of approaching this and I think the intent is there nationally. The mechanisms are different, but I do not think the ACT is any different.

Mr BILLSON—Do the broadacre land-holders carry a disproportionate burden for land management than the more urban land-holders?

Mr Logan—That would be correct, although a small block could contain an important piece of vegetation or a stream line, and there is always a priority put on protecting stream lines. A large block could have more of it. I do not think that it automatically flows, in the relativity of it all, that he is up for greater expense, in terms of scale.

Mr BILLSON—The issue floating around in my mind is that it is often said that rural land-holders have these impositions placed on them, yet most urban land-holders find not being able to use their incinerator a terrible imposition as well. If we were to move nationally to a policy of financially rewarding or recognising those land-holders that are doing more than their fair share, you would need some general agreement on what is a reasonable cop for any land-holder. You need to agree on what is an accepted duty of care regardless of where or what your holding is, so that those extra benefits are made available in a defensible way. Are we in a position to do

that? Is the ACT sufficiently advanced whereby you could be the incubators for such a bold measure?

Mr Logan—You are trying to apply the same rules to urban dwellers; is that what you are thinking about?

Mr BILLSON—No, I am not. I am just trying to draw the argument out of people that, if you want someone else to pay for it, those people paying need to be satisfied that you are not having a free ride before you start getting money for what some might think is a reasonable expectation without incentives.

Mr Logan—It is not in place at the moment but there is certainly scope for it to be in place, and I am thinking of the land management agreement. That could certainly be developed and refined to be a much more formal mechanism for identifying important nature conservation values and costing the management of them in some way.

Mr BILLSON—Are the management plans and catchment strategies—the reporting and monitoring systems—in place in the catchments in the ACT so that, if there was $12 million sitting on the table, we are in a position to properly evaluate bids? If we go out to the marketplace—to the land-holders—and say, ‘We have $12 million to buy conservation outcomes,’ bearing in mind that some land-holders are more disposed to it than others and you would arguably get more bang for your buck by going about it that way, are we in a position to properly evaluate bids and to know what is most important, what is nice if we could do it and what is not worth the money?

Mr Logan—Yes, I think we are. In terms of existing nature conservation assets on the ground, we have got a pretty good handle on where it is, what are the best bits and which are the most important. We can address that pretty thoroughly and we do that when we are developing land management agreements or funding assistance in terms of the significance of the job to this bigger picture which we hold.

Mr BILLSON—So, you could evaluate various bids for nature conservation outcomes.

Mr Logan—Certainly. We do that now with the rural conservation fund. We evaluate them against the bigger picture, which is where the bottom line is in getting value for your money. We are also in a situation where we want to target land-holders—we have not done it yet. We would like to approach land-holders and say, ‘Look at the stuff here that we know about. Are you interested in receiving financial assistance to develop a project to protect it?’

CHAIR—We have had evidence that, in some areas, people have done the right thing and some people have got vegetation that has been maintained over the years. Yet, on the other hand, we are saying to other people who had their properties pretty well cleared that we are looking to try to give them some encouragement or payment to try to bring back some of the vegetation. In some instances, we have even talked about people who replant getting some benefits from the carbon scheme, getting some credits—if it ever comes to fruition.

I do not know whether you have addressed the question I am posing or whether you have any ideas on it: what do you do for those people who are seen to have done the right thing? They

seem to be standing out there saying, 'You've done the right thing, but you're not going to get anything?'

Mr Logan—It is a difficult question and I appreciate the concern. Where people have done the right thing, there is not a problem. We direct the money to the problem areas. Doing the right thing might have been at a cost to the land-holder. I am not sure what the answer is there, other than we recognise that value and we are keen for it to be retained. We do not have strong provisions to recognise that in any financial way. We can assist financially to fence out that good piece of timber that has always stayed there, so it can be managed differently from the rest of the farm. But we do not have any mechanism in place that I am aware of to recognise it in a formal way, although we are keen for that to be retained. Certainly, in the land management agreement, we would address that high quality piece of vegetation: it is there; it has to stay there. That would be a condition of the lease. The legislative provisions at the moment would prevent such a good patch of vegetation being cleared anyway, but we would certainly like that situation to continue under any future arrangements.

CHAIR—The other question that popped up in my mind was that you keep on talking about the long-term lease agreements that you are putting in place so that you can buy out the crown asset. That puzzles me. What is the crown asset on the lease?

Mr Logan—It will vary with the lease. When the ACT was being established, freehold land was resumed by the Commonwealth. Where there was not an immediate development requirement, the freehold land-holder at that time had the option of staying on the land as a tenant under lease. In some cases, he was given the option of purchasing back the improvements on the land, and that led to a lower rental, or just remaining as a tenant with everything being owned by the Commonwealth, and that attracted a higher rental.

CHAIR—So you are saying that the Commonwealth bought the assets and that is how they became owners of it?

Mr Logan—That is right. Whether the lessee then repurchased them varied. The situation on some land is that some improvements will be owned by the lessee and on another piece of land the improvements will still be owned by the Crown. That would determine his entitlements if there are any compensation arrangements, if the land is withdrawn under the current arrangements. Under the new arrangements, the lessee will own it lock, stock and barrel and be entitled to full compensation should the land be resumed.

CHAIR—We change our minds every decade or so about whether we are right or whether we are wrong in some of these areas and we will probably continue to do that. With this plan that you have put in place, is there any assessment of it as it progresses to see whether in fact it is achieving or overachieving?

Mr Logan—There is provision for a review of a land management agreement and I think it is every six years. It is routinely brought up for re-examination. There is also provision for the land management agreement to be reviewed at the initiative of either party at any time. If something changes or new knowledge comes to light that the land management agreement that is in place may be inappropriate in some way, there is scope for that to change.

CHAIR—Are there any other questions?

Mr BYRNE—What happens to a farmer who enters into a land management agreement? As I understand it, that agreement can be altered by the ACT government. Is that correct?

Mr Logan—That is right, although as an agreement, both parties need to sign off on a new agreement.

Mr BYRNE—What level of compensation is provided to the farmer after that agreement if it is altered to that farmer's detriment?

Mr Logan—I am not aware of any compensation provision because it remains an agreement. It is reopened for negotiation—that might be initiated by the government or by the land-holder—and has to be re-signed by both parties. If one party does not agree, there are appeal provisions to contest the agreement. I am not aware of any compensation arrangements.

Mr BYRNE—To whom do they appeal?

Mr Logan—The Land Planning and Environment Act contains appeal provisions for the land management agreement.

Mr BILLSON—It is like a shopping centre lease: you agree because if you do not they will kick you out onto the street.

Mr Logan—I am unable to comment.

Mr BYRNE—I read an example in another submission of a land-holder who independently improved the farm land environmentally and then saw that work incorporated in the land management plan without any level of compensation. Given that that landowner was then going to utilise it in a certain way—I have probably answered the question—is there no level of compensation or recognition in the lease for the work that has been undertaken by the land-holder?

Mr Logan—No, not in the land management agreement. It would be reflected in the valuation of the land for rental buy-out purposes, but not otherwise.

Mr BYRNE—What is your experience of people selling land? What happens if a land-holder wants to sell up? What is the process?

Mr Logan—It is normally an open market. There are several processes: he puts the land up for sale and prospective buyers are then required to prepare a land management agreement.

Mr BYRNE—So they prepare a separate one; they do not just buy into the existing land management agreement.

Mr Logan—No.

Mr BYRNE—Why? Notwithstanding the change in names, why would there need to be a separate agreement?

Mr Logan—I accept your point: the lease and the land management agreement are in place and the name changes. If a new person takes over the lease, a new land management agreement is required. Although it may be essentially the same, there is a new party to the agreement.

Mr BYRNE—Do you have any perception of uncertainty given that, as the chair has said, general practices and government perceptions change every decade or so? Is there not some level of variability that would be a huge disincentive to land-holders? As I interpret it, government can vary some conditions without consultation and say, 'This is what we expect you to do now'. Do you acknowledge that there could be a potential difficulty for land-holders? It is like running a business: you do not know when the next regulation might deleteriously affect the business. I asked initially whether there was some sort of feedback with respect to that and whether the people who understood the ramifications were very concerned.

Mr Logan—Yes. In a hypothetical situation, one can imagine that the lease is in place, the land management is in place and everyone is happy. Then some new knowledge comes to light—for example, a bit of a wheat paddock harbours a rare insect and it is the responsibility of the government to protect it. That is a valid reason for renegotiating a land management agreement.

Mr BYRNE—What happens then? In that case where is the compensation mechanism built in?

Mr Logan—I do not think there is one built in.

Mr BYRNE—Consequently, if you were a land-holder—I am trying to put myself in that situation—would you acknowledge that there would be some difficulties for or uncertainty among land-holders, given the fact that they may have something imposed on them with no compensation?

Mr Logan—Yes. I come back to the intent of the land management agreement. It is an agreement. It is meant to be a partnership in which both parties sign off on an agreed outcome.

Mr BYRNE—If you have had a farm for X number of years, it seems to me that the balance would be slightly one sided. If you want to continue your business, you have no alternative but to sign that land management agreement—even if you have some difficulties. Is that not so?

Mr Logan—At the end of the day, it has to be signed by both parties.

Mr BYRNE—But what happens if the farmer does not sign the lease? He will effectively be off the farm.

Mr Logan—The lease does not come into force—that is what it amounts to.

CHAIR—I would like to clarify a point I might have got wrong. When Tony was talking about the sale of a lease and you were saying that there may be three or four bidders at auction, does the management plan continue or do they all have to come up with a new management plan?

Mr Logan—I got myself into a bit of deep water there because I am really not sure of the situation.

Mrs VALE—Often those kinds of agreements on land, in real property law in New South Wales, actually run with the land. They are not a personal agreement between the parties. It is sort of like a law—

Mr Logan—I think it is a bit different here. The land management agreement is not attached to the title of the land; it is attached to the lease for the land and the lessee for the land. I would have to say that I do not know the details, when the lessee changes, of how the property management agreement changes. It is my understanding though that a new property management agreement would be required with a new lessee.

Mrs VALE—It just seems very expensive.

CHAIR—It seems to me that the government could dictate who could buy the lease depending on the agreement that was reached.

Mr Logan—Yes, I can see your point there. I would have to take it on notice, I am afraid.

CHAIR—Thank you very much. We did not interrogate you as long as we needed to.

[10.31 a.m.]

COONAN, Mr David John, Vice-President, Australian Capital Territory Sustainable Rural Lands Group Inc.

LOWE, Mr John William, President, Australian Capital Territory Sustainable Rural Lands Group Inc.

TULLY, Mr Evan Donald, Treasurer, Australian Capital Territory Sustainable Rural Lands Group Inc.

CHAIR—Welcome. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of the parliament. We do have a submission from you but maybe you would like to make some opening remarks.

Mr Lowe—Thank you very much, Chairman. To members of the committee, we appreciate your hearing us and we very much appreciate the time that you have put into this matter. We have got a copy of the statement which we will hand over to you so you do not need to worry too much about the details, but you have our submission as well.

Just before I get into that though, we have heard the statements to you by the ACT government representative. It is one of the reasons our folders are out. We are greatly concerned about what has been said to you. There are material areas of fact put before the committee in relation to the status of the leases in the ACT and the history of leaseholding in the ACT which are just totally wrong.

We are seriously concerned with the actions taken by the ACT government in relation to long-term leases. The majority of our members are full-time farmers and we actually earn our living from the land. We have taken action to retain Australia’s most senior Queen’s Counsel in this matter and he has advised us, and we have advised the ACT government, that their actions in respect of the legislation introduced in the past by the House of Assembly on 25 November exceed the authority of the Self Government Act and therefore the act is invalid. We have raised the question of whether, in fact, the Territory plan, and the Planning and Land Management Act under which it operates, is invalid also because of the same problem.

This is a serious problem of lease administration in the ACT which runs counter to the outcomes which the community seeks in relation to good management of leases and land. It is across a lot of areas of the ACT. Only last week in the ACT Supreme Court another leaseholder in another area had his complaint upheld against the ACT government that his lease should be treated in just terms under the Constitution in terms of compensation. In order for him to get to that point, he had to take it to the ACT Supreme Court.

In 1976, rural lessees in the ACT had to take a series of actions against the ACT government to enforce their lease conditions right through to the High Court. We are also very concerned because we have been trying to understand where we stand in our leases and where this fits with the community’s environmental concerns. We have entered into lengthy discussions with the

conservation groups in the ACT, and we find that the conservation groups and our group are in agreement, and we find ourselves jointly at loggerheads with the ACT government in terms of the approach to management of the environment on rural lands. We are also concerned that those farmers who have done the right thing in the ACT have been treated with a great deal of disrespect in relation to how they are managing the land. Sorry, we needed to say that.

We will welcome and be very happy to answer your questions—the same questions you asked the ACT government—and then we will give you the facts and inform you of the other side of the story. As environmentally aware and informed land-holders, we experience the challenges, frustrations and impositions which were referred to in the other submissions to the committee. We are quite happy to respond to your questions later in relation to the very real problems we are experiencing in the ACT. As a community, we need to search for better ways forward. In our initial comments, we would like to put some constructive suggestions to the committee. I am very interested in what Mr Billson has said.

We are landowners and managers—we deal in physical things; we deal in tangibles. But the environment, which is our biggest challenge, remains an intangible. We see it, we work in it—indeed we earn our living from it. But we are unable to measure it; we cannot trade in it, sell it, spend it or bank it. We know it is important and we understand how complex it is. The community asks that land managers be proactive in undertaking environmentally sustainable production programs. We do just that, and have received national awards for these endeavours. It is expected by the community that this will be done in the interests of the community, but without consideration of the costs, who will meet these and how these will be met.

We believe that it is time to stand back and search for a new strategy for managing Australia's ecosystem. Current environmental management is based on a carrot and stick approach: a little bit of encouragement or informal compensation to keep people heading in the right direction, together with regulations aimed at defining in some way standards of good housekeeping. These are redistribution measures: they do not create anything and they are mostly negative. But the land managers looking at the whole picture—and we have seen lots of examples of how much it will take to fix up environmental degradation—cannot afford very much, and the community's resources are already stretched in redistribution.

The net operating surplus of farms over all of Australia, which is about $6 billion, is about the same as the profits being earned annually by Telstra. There simply is not enough money in the bush. Neither do we need another form of social security aimed at the environment. So if we continue only with redistribution techniques, we define the environment as a cost forever. The cost of techniques will impoverish Australia. Techniques to recreate the environment are very expensive. It will create pointless social division and will generate inadequate resources for the task. We see a fundamental imbalance in our capital markets and the economy.

How strong the environment is, how resilient it is, how complex it is and how beautiful—no wonder there is a big demand for it; no wonder Australians are willing suppliers. So we have a willing buyer and a willing seller—but where is the market for such a good? We look at the world around us and we see markets for sheep, cattle and grains; we see markets for urban gardening supplies; we see markets for computers, for software; we see markets for labour and labour services; we see markets for technologies, both knowledge and incorporated in machinery; we see markets for shares, futures and options; we see markets for opinions—TABs,

betting markets for all manners of sports and things, including the gender of possible future kings and queens. But we do not see a market for the environment. There is a market for ourselves—the human capital market. There is a market for the machinery and trappings that make us comfortable—the commodities and manufactured capital market. And there is a market for our money—the financial capital market. But there is no market for the environment—natural capital. Our economy in its structure ignores the source of its being.

The basic building blocks for a market in the environment and natural capital are there. There is good long-term demand; there is an apparent good long-term reward. There is a willing supplier and active government and community support. Australia is a mixed market economy, and our other markets have a blend of government, community and open market operation. What is missing in the environmental area is the open market operation. Can you imagine what might have been the size of the sheep industry, the software industry or the Internet if governments had decided to develop these goods themselves and not foster an open market? Yet government played a major role in all of these through research, encouragement and support.

Without diminishing the current incentives, we propose that the community's efforts be directed towards creating an open market and a capital base in the private sector for the environment. Rather than the environment being a cost in the future, we wish to see the environmental value able to be reflected in balance sheets so that there is a built-in positive incentive with returns equivalent to that in other markets in the environment's favour. Until it is reflected in that way and can be part of the creation of the community's private capital, environmental management will be an uphill battle and will not move beyond the carrot and stick stage.

Australia has unique challenges but also a unique situation and a unique opportunity to lead the way. Our land mass is great and our population small. Compared to North America and Europe, our rural sector and our urban economies are unable to transfer the substantial resources being called for. This may be more affordable in Europe and North America but it certainly cannot be afforded here. If you want to see an example of that, just read one of the latest *National Geographic* magazines and see the extent to which the world is now closer to Australia.

We need to create the resources and expand our economy to cater for the environment, not to impoverish it. After all, that is what markets do: they expand things, and that is why we have chosen as an Australian community to be a mixed market economy. We do not expect the market to work on its own; we regulate and we assist it in all areas. Markets trade goods and through that trading create capital; that is how our living standards improve. It is time now to bring the environment into that market.

Governments in Australia are large landlords and appropriators of land. Governments in Australia are also interested in the future wellbeing of Australians. Our constitution enshrines the requirement that in appropriating the land, particularly federal and territory, that governments pay just terms. Through long-term planning Australians are putting some $25 billion away each year, but the main effect of this so-called long-term investment is in short-term, high money velocity investments. The market failure in respect of natural capital is ensuring that the community investments are not taking care of the most important factor on

which the future depends, which is the environment. You were talking about carbon trading and all this other stuff—that is all part of it.

New markets—that is what we are talking about—always have problems. They are uncertain and erratic. There are products that are developed that do not work. There are groups that are put forward that go broke. But as they develop and mature, markets expand and produce greater resources and wealth. The communications industry shakeout and the insurance industry shakeout are all examples of markets expanding and creating wealth and readjusting. A new market like this will do exactly the same thing.

We believe that the government can lead the way in this through two simple steps. Firstly, as landlords and acquirers of land, it should include an environmental value as a tangible, not as an intangible, in the definition of 'just terms' in all government land valuations and settlements. That would be a simple instruction to a valuer. Secondly, it should ensure that a proportion of Australia's long-term savings are directed to the long term in the natural market. By way of comparison, the total capital base of farms in Australia is only some $150 billion to $200 billion, but the superannuation annual savings are $25 billion. So without suggesting there should be any subsidy in any way but rather support, then we see that the market can be created in this whole area, which is not being done yet.

CHAIR—Just leaving the market for a while—although we are very interested in that—and going back to the leases themselves, I want some clarification. It was my understanding that, when the ACT was created, there were 99-year leases given to all lessees. Is that correct?

Mr Lowe—No.

Mr Coonan—The situation in the ACT was that, when the Federal Capital Territory was created by Commonwealth legislation, part of the ACT was resumed in the initial land resumptions in 1908 through to 1915-16. Some of that land was used straightaway by the Commonwealth for its purposes, and some of it was then leased back, and some land in the ACT remained freehold through until 1976 or thereabouts.

The land that was leased back in the early times was leased back in a variety of arrangements. Some of them were simply tenancies because they needed it in a year or two, and some were longer term. There was a large soldier settlement scheme in the 1920s. Every single leaseholder that is in this group's lease originates from a soldier settlement block or prior seettlement occupation in the 1920s that was issued with land tenure varying from 10 years through to 25 years—and there was an upper limit on the 25 years in the federal territory law at the time. Our leases have been rolled over and renewed from that time through until now, and it was only last year that our right to renew was removed.

However, each time the leases have been renewed, the lessee and the government have negotiated or come to arrangements. Every time, the government has divested itself of interests and put responsibility back on the lessee—after many years of a command and control land management process where the leases were inspected by inspectors, and if you had a briar and you did not cut it within a specified time they would send somebody out to cut it. We can show you a document from Evan's family history where he was required to do inappropriate land management things at the wrong time of the year that resulted in him having to put two of his

full-time staff off to be able to pay the government people that were taking on the task—and they were not doing the most effective thing.

After many years of that and the degradation that that caused, and the quite explicit instructions on how fences should be built and that sort of thing, in 1955—in the lease offer on our current leases—the government walked away from trying to give direction and said that the way forward was to give security of tenure and let the lessee manage in a sustainable way. The controls were removed and normal duties of care under legislation was the way forward. The lessee was required to purchase all of the assets held by the Commonwealth government and was required to pay land rent on the residual land component.

The extent of the purchase and the ownership was eventually tested in the High Court in 1976 in the Oldfield case. I can give the exact reference, but the effect of the High Court enunciation of the rights is that any action of a human that inured to the land from the time the land was first discovered by the white people belongs to the lessee—so that means the clearing of the land, planting of trees, fencing, pasture improvement, shelter timber and structures belong to the lessee. So the only component we were paying rent on should have been the residual land component. That is one stream of leasing. These leases were 50-year leases, with the expectation and a legal right that they would be renewed for another 50 years.

The other types of leases that are common in this current time are leases that derive from the 1976 resumption of freehold title, at which time the government chose not to give the opportunity back to the lessee to purchase all of the entitlements as we had.

CHAIR—That would have been through the Department of Territories at the time, wouldn't it?

Mr Coonan—Yes. And there was a variety of original resumptions from freehold. Some people simply moved back in and paid rent for everything. Some people took their money and left, and then the lease was put back into a market situation for a new tenant. Over the years—after much pleading—some of those people had the opportunity to buy a degree of their tenant rights back at market value. That has led to a situation where about 25 per cent of leases are the old type lease that we have, and about 75 per cent are a variety of leases, from no tenant rights whatsoever—they are simply paying rent like in a housing commission house, if you like—through to people who have purchased what they could back from the government and they may have an equity approaching the sort of equity that our membership holds.

From that base, in simple numbers, only about 25 per cent of people have our type of lease. If you look at land area, these are fairly large leases. Of the area of land being granted 99-year leases, as distinct from short-term leases, our membership holds a substantial coverage of that 99-year area. As John pointed out before, the majority of our membership are primarily deriving their income from the land.

CHAIR—So the 99-year lease being offered by the government is really good news?

Mr Coonan—No, it is bad news.

Mr Lowe—It is absolutely bad news, to the point that I doubt whether I can operate under my lease.

CHAIR—Because of the conditions?

Mr Lowe—Because of the conditions in the lease. There was some misinformation given to the committee on that this morning.

CHAIR—Could you please explain to us where you see that what we were told this morning is misleading?

Mr Lowe—The land management agreement requires us to put forward a production proposal as well, and to show the financials. It means that every five years in that review the government can vary the provisions of the lease. If you want to put any new agricultural activity on it which is not already there or not recognised as traditional agriculture, there is a clear policy statement that there will possibly be a user charge levied on that. I run an equestrian facility, and if the fashion is against horses then it is very likely I would have the numbers reduced.

We have a very lovely area of bushland which we have protected, and we have received national awards for our standard of farming. It comprises about 20 per cent of our lease, right in the middle of the lease. We are told that we cannot use it in the way we have been using it before. Talking to the people in the ACT Wildlife and Monitoring Section, we have four different opinions about how we should use it, including one from one person in the same area of the department who says it is not of high value at all, and that with what we will be offered under our new lease that whole area will be subject to a withdrawal clause without compensation.

It is impossible to plan in agriculture for horizons of five years—you cannot do it. If we find that we cannot agree under the land management agreement with what the government proposes, then we have no right of appeal. The only right of appeal exists in relation to an initiative by the minister to vary the land management agreement through one of those five years. So these are really not 99-year leases at all, they are five-year leases.

Mr Coonan—There is a fundamental difference in the lease being offered in regard to the allowable land use. Our current leases allow us to use the land for grazing and agriculture, and for other purposes as the minister may approve. If we set aside the other purposes for the time being and say ‘grazing and agriculture’, that is a very broad legal definition. The lease being offered is for rural purposes. We have advice from Mr Rose QC that would show that the new purpose is of less value than the old purpose.

CHAIR—In the five-year review, if the government decided to vary the lease, for instance, what criteria do they use to vary? Is there any substantial scientific evidence required to say, ‘We think you now should have a different area of vegetation cover, et cetera’ or is it just their opinion?

Mr Lowe—We can show you the land management agreement, and you can speculate as much as we can about what that will be—all sorts of rumours are going on. You mentioned

yourself, in your opening remarks and in the discussion, that fashions change. This is the problem now of this new lease. I have a letter from the government from a few years ago offering me a rollover of my existing lease. We have been told that, as a result of the legislation last November, we cannot have our current leases beyond 2005. So in effect our leases have been determined. We have been told, 'You cannot have this after 2005.' It does not seem to be registering with the department and the minister that this is a substantial problem for us.

More than that, it is a substantial legal problem for the ACT government. It could amount to a very large compensation problem for the ACT government. In our view, the federal government has an interest in that, and that is why we are here: because you are the landlords and these people are your agents. What your agents are doing ought not be done. It is contrary to what you stand for, which is the Australian Constitution, and contrary to the agreement you had with the local community, which is the Self Government Act, to implement and run these lands. So they are breaking the agreements that you have bound them by.

Mr BYRNE—It has been covered fairly comprehensively by your submission, but I asked Mr Logan how many people had articulated a concern about these proposed changes. What is your awareness of the number of relevant stakeholders? You were saying it was somewhere around 200?

Mr Lowe—There are about 200 leases in the ACT: about 160 lease holders and about 40 leases of our particular type.

Mr BYRNE—Obviously, you have articulated your concerns, but have there been collectives of leaseholders that have articulated their concerns to the government with respect to this?

Mr Lowe—As far as we understand, we are the only group outside the Rural Lessees Association, from which we have moved away because we could not get them to understand the problems that were coming forward. Our view is that the consultation on this process has been quite inadequate and that issues that were put before the rural policy task force, which is the independent review, were really so little understood that one of the chief advisers to that group had to go upstairs to get a lease to read about a timber treatment issue. The main adviser to that group really did not understand his brief or did not understand the base on which they were going. What we have heard from Mr Logan here is the perpetuation of this myth: that the government own everything. They do not in 40 leases.

There are groups of people who want us to represent them with the government but we have not taken on any new members because it would put us into another area. But some of these 40 leases have had their leases totally withdrawn and they will be offered only 20-year leases, at the end of which time the specifics of the legislation provide that the improvements will be worth zero. So there is no provision in the legislation for compensation. Under the legislation, the ACT government—even if it were of a will—could not compensate them.

Mr Coonan—They have changed the Lands Acquisition Act such that in the case of a short-term lease, instead of valuing the lease as if it had an ongoing interest, which is normally considered just terms, they have changed it to valuing it as if the lease ends at the end of the lease. So in year 19 you have got one year left; in the first year you have got 20 years.

Mr BYRNE—If you were doing a rough estimate and were wanting to sell out of that particular operation, how much of a diminution of the value of your property or lease would you estimate these particular changes have made?

Mr Lowe—We had a look at that.

Mr Coonan—We have engaged a valuer that was associated with a firm in the 1976 High Court case, and he has commenced detailed valuations for us. Basically, we know it is less; how much the gap is we are still working on. The other point is that the market has become very distorted and the actual market for these leases is quite perverse at times. There have been very large amounts of money paid for nothing but basically the opportunity to hold a lease. There have been other leases, which are of the same nature as ours, which have changed hands for relatively modest sums—when you speak to experienced valuers. Our valuer is suggesting that one of the challenges for modern valuation is to actually get around the traditional thinking and to start to include some of these components—for example, the woodland on John's property or a pine regrowth on another member's property— which have come up for some discussions with the government about what they are worth for environmental purposes and what they are worth for the lessee. The lessee may have established these for good farming practices but by the same token he has established an environmental asset for the community. Surely, in building any asset, there is a degree of private and public good, and the valuation principles applied by a land acquirer should account for the overall net worth of that property in a proper market, not a distorted market.

A few years back—my parents have been on the lease for some 40 years—there was a large withdrawal of land from that lease. Dad was the manager and he took the property over. At the time he took it over it was possible to go to the bank and get finance against these leases. Indeed, the lease was held in the bank for many years and we were able to borrow against it. We are now advised by the financial institutions—because one of our members went through a difficult marriage separation—that they will not lend against these leases. So, in a way, that is a demonstration that there has been a diminution of the value of the lease, because you could borrow against it and it was held as sound equity by the bank because they understood the High Court case outcome. Under current terms, financial institutions are saying, 'There is too much uncertainty here. We will not lend.'

Mrs VALE—Does that mean that the financial institutions also see these leases now as really five-year leases?

Mr Lowe—I think there is total uncertainty about what they mean. The ACT government undertook to approach the Commonwealth Bank to try and assure rural lessees of the value of the new 99-year lease. The answer to that has been total silence.

Mrs VALE—They are not wearing it.

Mr Lowe—There is no way. I should not mention this, but the other banks have said that until these leases are sorted out and there is clear unencumbered tenure possibility of long term, they will not even talk about it. Great, but get your tenure right. What is happening, and it has happened now, is that in the ACT, in our view, the bureaucracy has not done its job in understanding what these leases are, and it has not done its job in understanding what the rights

of a landlord and lessee are. It has just made a big mess of trying to put in place something which we have been seeking for a long time and, in doing so, has totally screwed up our ability to manage in an environmentally positive way.

Mr BYRNE—Has the ACT government or its agents articulated a framework where they might use those position points as foundation points to change the land management agreements, or is it just an arbitrary thing where the government has the power legally to say, ‘We have a problem with this particular agreement’? Do they have to do a broad range of agreement or can they just come in on any land management agreement and say, ‘We have a problem with this particular thing’?

Mr Lowe—No. In the way the land management agreement is worded, it is a disallowable instrument but presumably it has something like a lease status. The government can come in on anything that is of new information—I think that is the phrase.

Mr Coonan—Yes, that is right. The land management grant form—and we provided a copy with the original submission—is a rather thick document so you obviously do not have it there. It is a formal disallowable instrument and it sets up a range of actions required by the lessee and a number of criteria. There are a couple of clauses in it that provide the opportunity upon new information of any sort for them to come back and renegotiate, and it does not have to be at five years. It can be any time.

Mr BYRNE—Yes, any time, as I understand. Can I confirm that what Mr Logan said previously was that, given that there would be no form of compensation entered into, it is not ethically built into the land management agreement if that then disadvantages the farmer or land-holder?

Mr Lowe—Our experience, unfortunately, in the ACT is that the ACT government is not interested in discussing anything other than a reduction in rent, which is a very small part of our total cost, given that we own everything on the land except what ministers have agreed with us in discussion is the undeveloped virgin state of the land; that is what the community owns. Our valuer has indicated that is negative.

Mr BYRNE—Thank you.

Mrs VALE—I was wanting to know how many land-holders in the ACT, and I know you represent lots—

Mr Lowe—About 200. We think there are about 160 lessees.

Mrs VALE—And they will all be affected by this?

Mr Lowe—Everybody. Some people make substantial gains and those that have been equivalent to a housing commission type tenant are being offered an opportunity to purchase their land and to go on to a 99-year lease funded by the community over 30 years at eight per cent. That is a pretty good deal and we do not want to stop that happening. Our problem is that it is not going to be necessarily a good thing and the land management agreement being proposed is not that agreed by the conservation council. The land management agreement

proposed by the conservation groups was a proper agreement which was negotiated in hearings of the ACT Urban Services Committee. Those groups have reiterated their total support that if their community wants something on the land which is going to cost the lessee then the community should take the responsibility of negotiating an agreed arrangement. That is not what the ACT government is seeking in this legislation.

Mrs VALE—Mr Lowe, I understand that this legislation will probably affect the landowners to a greater or lesser degree, and it depends on their particular situation, their particular land holdings and the environmental assets they have. How many do you think will be in a position where their farming will be no longer viable because of this?

Mr Lowe—It is hard to know.

Mrs VALE—Are there many that are in the position where it is that serious?

Mr Lowe—I do not know—

Mr Coonan—Can I just give you an example and say that there are potentially 40 that have the same type of lease?

Mrs VALE—Yes.

Mr Coonan—They are potentials. Of the other 160 there will be some who have to make some decisions as to whether it is viable to go down this new path or what they had was a better deal because of the graduation of the lessee's rights that occurs from nil tenant rights to full tenant rights. In a number of situations like my family's—and we have been there close on 40 years now—it is a viable agricultural activity. It provides export dollars because basically we provide cattle to the export feedlot industry.

The other activity on the property that my Dad has taken on is breeding Australian stockhorses. As you are aware, camp drafting is about to become the next national sport. His horses have competed at royal shows and things like that. The valuer's advice to him, around the kitchen table the other day, was, 'You cannot sign this new option over what you have got.' And unless we are successful in either changing the government's mind or taking on a very expensive legal challenge, which really should not be necessary for small groups in the community, our only option is to walk away from the lease. That is disrupting a family. I live on the lease as well, so it is two families which have done nothing wrong. You go and talk to the rangers—it may not be a Rolls Royce property, but it is certainly not a problem property. It certainly has a good relationship with its neighbouring area—we primarily adjoin government land. I am quite happy to take anyone of you out there and show you the government land that adjoins us, versus our property and versus other properties, and you will find that the worst-managed land in the ACT is held by the ACT government.

Mrs VALE—That is the next question I want to ask you. If you did walk off your land, and I am assuming that you would not even be thinking of selling it—you would just be thinking of walking away—

Mr Coonan—I am afraid it is just not marketable. Our best option is to approach the government on the basis of 'you have refused to renew the lease', because they took away our legal right to renew the lease. Since 1997, in some precedent cases in the Northern Territory, the right to renew is clearly property and part of the just terms and so on. So, yes, we would have to leave.

Mrs VALE—That would mean that there would be nobody looking after that land?

Mr Coonan—Unless they can re-tenant.

Mrs VALE—I am just trying to think of the ultimate outcome of that position.

Mr Coonan—Unless they can re-tenant.

Mrs VALE—And nobody would under the circumstances—for your particular use?

Mr Coonan—They would not enjoy the same lease that we have got. In relation to the type of industry that might be viable there, I suspect that if it were re-tenanted it would be in smaller lots to lifestyle farmers.

Mrs VALE—That would not be very productive.

Mr Coonan—It is not productive from an agricultural productivity point of view, but it might be productive from some people's view of what makes for good environmental practice. Basically—and John can probably articulate it better than me—some of the studies show that you can get really good environmental outcomes because you are viable, or because you do not need to be viable.

Mrs VALE—I understand.

CHAIR—Regarding those cases on the right to renew, you mentioned the Northern Territory. Could you give us some detail on that because I think the committee would probably be interested in any precedents.

Mr Coonan—I think we are prepared to provide in camera Mr Rose's advice for you which contains the reference.

CHAIR—I would be interested in that.

Mr BILLSON—The market based ideas are very attractive to me and others on the committee. There are a range of examples from water, salt trading, emissions trading, sulfur dioxide and so on. There is nothing unusual about those ideas. The CSIRO is doing a lot of work on ecosystem services and the like. But I am curious about something. To achieve that sort of position, you actually need to create a degree of scarcity, which of its very nature imposes some restrictions on landholders. I just wonder how you would see the market being created—and I agree with your thesis on how helpful that would be—when one of the tenets of it is something that gets up the craw of most landholders. Do you see a way forward in that?

Mr Lowe—Obviously, we have had to exercise a lot of energy in trying to deal with our problem and in coming to terms with some of these bigger issues, and seeing some way in which it could go forward. If you had said 20 years ago, 'You will be able to carry something around in your pocket which will be off the satellite and go somewhere,' you would have thought that it was some sort of thing out of Jules Verne.

Mr BILLSON—You were not doing that at the time?

Mr Lowe—In terms of thinking where this might be in the future, the other side of scarcity is greater demand, because the scarcity is a relative thing. So if you increase your demand and you have a fixed supply, then your supplies become scarce.

Mr BILLSON—I am familiar with the concepts, and I think there is wide agreement on that—it is their translation into a bankable set of arrangements.

Mr Lowe—That is right.

CHAIR—Couldn't it be government intervention as well—saying that we want a certain area or we want so many of such and such a species and tender out for someone to—

Mr Lowe—I think there are a range of things that you could do here. What tends to happen from an economics point of view is that people start talking about products, rather than the market. What you are talking about is products. The market consists of a range of diffuse products which give you the competitive market activity and all that sort of stuff. What we are talking about here is the way in which that creates the capital base. The capital base will come from the capitalisation of those products into whatever it is. What we are suggesting is that, for the Northern Territory, ACT and federally owned lands—probably through agreements with the states—you can actually include directly an environmental value in a farmer's balance sheet. You can do that because every year there are thousands of hectares being taken up for roads.

Mr BILLSON—You can do that now. There is an Australian accounting standard that allows you to do that now.

Mr Lowe—What you would need to do is simply have an agreement amongst the governments to say that there will be some funds put in to underwrite an environmental value in the balance sheet of every piece of land that is acquired from now on. Once it is written into one balance sheet, the market will put it in all other balance sheets, particularly for the same time. I know people say, 'If everybody sees a big teat around, they are going to try and suck it.' The superannuation is there and I do not want to get caught up in that sort of trap. The superannuation funds at the moment are money managers and the highest returns on money are in the high velocity areas. So, you try and turn money around in money. You do not try and turn it around in long-term assets with uncertain outcomes taking eight, 15 or 25 years to generate a good sized tree. But unless we do it, we are bankrupting ourselves, because we are putting all our money into the money.

Mr BILLSON—The concept you present has its flaws in exactly the experience you are speaking of: with trying to get finance on your lease. Just because you state you have something

of value does not mean it is necessarily fundable and therefore does not necessarily mean you will get—

Mr Lowe—But you cannot say what the product is going to be.

Mr BILLSON—I agree, but you cannot get to that point until there is some agreement on what you value.

Mr Lowe—Yes, that is a point.

Mr BILLSON—I would submit to you, and I would be interested in your point, that until such time as you guys and other land-holders sit down with the ACT government and other stakeholders and have a love-in on what is valued in the environment and what natural system elements are important, you will not be able to move forward. You need an agreed outcome. A lot of these mechanisms do not function because you do not have agreement on what the point of it is.

Mr Lowe—We would be delighted to do that. It is like the widget argument—you cannot sell something if people do not want it. What we have said to you in this submission is that it is obviously a framework; you have to step outside product type thinking at the moment. Otherwise, you are not going to get there. We have got a demand and people are saying they want it. With respect to the international conferences on greenhouse gas emissions, you only have to look at how you calculate your base years for GGE to see the complexities and difficulties at the international level. But unless you push people into that area and unless you encourage people to do it, it will not happen. Lots of the Internet companies and communication companies are going broke. I am not suggesting we put money into something that goes broke but the analogy is that the thing will stumble because you will get the definitions wrong, in the same way we are getting the environmental definitions wrong now. But at least we will be doing it in a way in which an individual's interest will be served by looking after the environment. Unless you do that, you are going to be stuck within the limits of the budget. Anyone can do it. Just get it out of the budget and have an expanding resource that allows you to fund it.

Mr BILLSON—With the catchment plan approach where you had some agreed set of outcomes across the catchment: that would go some way towards giving you a chance to trade, because you might say, 'We want 40 per cent of vegetation type X throughout the catchment.' With respect to the example you are talking about, you have a chunk of it. So you are saying, 'I'm carrying more than my fair share. Harry down the road has nothing. Harry, mate, it's a bit like this.' Then you can start getting a bit of an exchange going in a way that enables the outcome to be secured with minimum pain, rather than trying to impose—

Mr Lowe—That is limiting in the sense that you are trading within the square.

Mr BILLSON—But you are trading within the ecosystem.

Mr Lowe—That is what we are trying to do. I would see what you are talking about as being a product within the type of market—

Mr BILLSON—I understand that, but you still need that starting point.

Mr Lowe—Absolutely.

Mr BILLSON—Is it fair to say that is a sensible place for more government investment now, trying to get to an agreed starting point and an agreed description of what is important?

Mr Lowe—But you cannot just rely on the government. There are people throughout Australia who are very good at facilitating—

Mr BILLSON—With respect, you keep only hearing part of what I am asking you. I said the government funded. We talked about the stakeholders being involved before. That might be part of why we do not get some things solved in the ACT. I mean the government financing that as part of its role and it has to involve the stakeholders, as we discussed a few moments ago—not doing it in isolation from you.

Mr Coonan—There is another issue, though. Before you can go down that path, you have to try to do some mitigation of the perverse signals that are in the market. For example, there is a leaseholder I know who had some woodland which the community valued and wanted to include in expanded areas of the community's management. They valued the woodland at zero dollars.

Mr BILLSON—How did they rate it though? In other states where you have got non-productive rural land it is actually penalised with the tax system.

Mr Coonan—The trouble is that until they resumed it they were quite happy to charge him rent for it on a productive basis. When they resumed it, they gave him zero dollars. That is a perverse market signal. That says, 'If you let woodland grow on your lease and the government takes it from you, they will not pay you.' If he had cleared that land, which they would not then want, he would have been paid the cost of clearing the land—the value enhancement—

Mr BILLSON—The state land tax system.

Mr BYRNE—I am conscious of time. The end point though with respect to the market is that if you do not undertake these measures then that will result in your industries being threatened anyway. So one of the market determinants that the member for Dunkley may not have touched on—I am sure it is at the back of his mind—is that if you go down the path with water salinity we have to take these preventative measures. That is the market. The market is that if we do not do this we will not have that. Part of the sort of thing that generates the market is that if we do not do this then we are not going to have farms in a certain region and stuff like that. That is the sort of thing that should act as a stimulus point for the actual market itself.

Mr Lowe—I think more knowledge will lead to more opportunities.

CHAIR—Governments set standards in that case. We are pretty much out of time. Are there any other questions? Is there anything that is really nagging in your—

Mr BILLSON—Nothing we cannot nag further.

CHAIR—Thank you very much for your evidence. It is very interesting to have a discussion with you.

Mr Lowe—We will leave a copy of those comments.

CHAIR—Certainly.

Mr Coonan—We will forward a copy of the Rose advice to you but not for publication.

CHAIR—Yes, just out of interest because I was interested in the legal precedents on leases being renewed.

Mr BILLSON—This is his constitution advice, not his variation of lease—

Mr Coonan—It is all rolled into the same thing.

Mr BILLSON—I was just trying to see how you briefed him, whether he went the whole hog or just bits.

Mr Coonan—We asked him two very simple questions. The first question was, 'Are we losing something?' and the second question was, 'Does that give rise to compensation or what happens?' The answer was yes, we are losing something and it gives rise to the act being invalid.

Mr BILLSON—The just terms provisions.

Mr Coonan—Yes.

CHAIR—Thank you.

Resolved (on motion by **Mrs Vale**):

That, pursuant to the power conferred by section (a) of standing order 346, this committee authorises the publication of evidence given before it at public hearing this day.

Committee adjourned at 11.19 a.m.