
COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

# HOUSE OF REPRESENTATIVES

## STANDING COMMITTEE ON ENVIRONMENT AND HERITAGE

**Reference: Public good conservation**

TUESDAY, 20 FEBRUARY 2001

PERTH

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**HOUSE OF REPRESENTATIVES**

**STANDING COMMITTEE ON ENVIRONMENT AND HERITAGE**

**Tuesday, 20 February 2001**

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

**Members in attendance:** Mr Byrne, Ms Corcoran, Ms Gerick and Mrs Vale

## 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 9.04 a.m.**

**HARTLEY, Mr David, Executive Director, Sustainable Rural Development, Agriculture Western Australia**

**McNAMARA, Mr Keiran James, Director of Nature Conservation, Western Australian Department of Conservation and Land Management**

**PEN, Dr Luke Jerome, Program Manager, Restoration and Management, Water and Rivers Commission**

**CHAIR**—I declare open this public hearing by the House of Representatives Standing Committee on Environment and Heritage for its inquiry into public good conservation. Today's 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 256 written submissions to the inquiry with the authors of some of these submissions. The committee visited Narrogin yesterday to see first-hand and hear about some of the problems and solutions associated with environmental measures imposed on land-holders.

At today's public hearing we will hear evidence in relation to submissions from groups involved with farming, land management, resource conservation and the Western Australian government. 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. Do you have any comments to make on the capacity in which you appear?

**Mr Hartley**—I am also the Commissioner for Soil and Land Conservation with Agriculture Western Australia.

**CHAIR**—Thank you. As I said, we do have submissions from you, but would any of you like to make an opening statement?

**Mr McNamara**—Chairman, I have a very brief opening statement. Firstly, thank you for the opportunity to appear before the committee. The WA government submission that you have before you consists of inputs from the three agencies represented here today—the Department of Conservation and Land Management, Agriculture Western Australia, and the Water and Rivers Commission—together with a covering letter from the Ministry of Premier and Cabinet. I am sure that you will appreciate that with the recent change of government there has not yet been any opportunity to discuss with our ministers any of the matters that are covered in that submission. I do not have any further opening remarks to make but I am more than pleased to answer your questions.

**CHAIR**—Thank you. We have had similar statements from property owners across Australia, and if the statute law is different in Western Australia, then maybe you can enlighten us. If you were making an application to, say, clear land in Western Australia, is there a one-stop shop or do you have to wade through a series of departments to get an application through?

**Mr Hartley**—I can comment on that. About three years ago, there was a memorandum of understanding developed here in Western Australia between the four agencies involved in environmental matters, and that memorandum of understanding does lay down the procedures. It is a four-stage process that people go through. It is a one-stop shop in that under our legislation, if people wish to clear in excess of one hectare of land, they need to put in a notification of intent to the Commissioner for Soil and Land Conservation. That then triggers the procedures under the memorandum of understanding. It goes through an initial assessment. Then there is a second stage of assessment, and a third, and the first three of those are controlled by the Commissioner for Soil and Land Conservation. The final stage, if necessary, is through to an environmental impact assessment.

**Ms CORCORAN**—On average, how long does that process take?

**Mr Hartley**—The commissioner is required to respond within 90 days to the initial notification of intent but, should it go through the long process, it could take any amount of time. But usually it is wrapped up in a matter of a few months, within the 90 days on most occasions.

**CHAIR**—Statutory legislation is often vague. Do you apply the precautionary principle, that if you do not know, you say no?

**Mr Hartley**—Effectively we do. Our minister, the Minister for Primary Industry, made a decision on 5 March 1999 which effectively invoked the precautionary principle in which he required, as part of the notification of intent to clear, that the proponents produce evidence that environmental degradation, particularly soil degradation, would not occur.

**CHAIR**—That is a fairly onerous provision on a land-holder, isn't it?

**Mr Hartley**—Yes.

**CHAIR**—How would they comply with that?

**Mr Hartley**—It is fairly difficult because land clearing does cause degradation and it is very hard to find evidence that it will not cause land degradation. But, if they believe they have a case, there is a lot of expertise in the private sector out there and, in fact, they do use consultants to provide evidence to support their case.

**CHAIR**—If they have the money?

**Mr Hartley**—Yes.

**CHAIR**—Does the legislation or the department, or the government for that matter, take into consideration the economic effects on a property owner of denying such an application?

**Mr Hartley**—The government is certainly aware of it. The Minister for Primary Industry established a Native Vegetation Working Group approximately 18 months ago to deal with this specific issue. He was very conscious of the fact that some people were denied the ability to

clear their land and that it was causing economic hardship in some cases and he did look at ways in which incentives could be provided to try and alleviate some of that hardship. Yes, the government is certainly conscious of that. I have a feeling that the working group's recommendations may have been attached to the submission.

**CHAIR**—Yes.

**Mr Hartley**—There are 15 recommendations in that that tend to be aimed at things such as a revolving fund, where the government is proposing, with assistance from the Commonwealth, to purchase land and then resell it. There are arrangements there about subdivision of land that has native vegetation on it, to give them some value. There are proposals in there for rate relief, land tax relief, to try and overcome some of the burdens associated with people being unable to clear their land.

**Mr McNamara**—I might also add that one of our department's roles is to manage the state's conservation reserve system and that reserve system is not complete in terms of meeting the criteria of comprehensiveness and so on. We do purchase lands from time to time to add to the reserve system, and certainly some of our land purchases have been of areas where people have been seeking permission to clear and have either been denied permission or are perhaps likely to be denied permission, and that has been a form of assistance in some cases.

**CHAIR**—The rules have changed midstream, haven't they? In the past, people honestly believed that they had this right, and all of a sudden we now say, 'No, you can't.'

**Mr Hartley**—Yes, that is correct. Even as early as the 1980s it was part of conditional purchase in this state that, given a block of land, they were required to clear certain amounts within a certain time frame to keep that conditional purchase. But it has been our knowledge and understanding of salinity, in particular, and the impact that clearing has on rising watertables that has caused us to progressively, since 1986, tighten the rules on land clearing to the point that we reached in March 1999 where the precautionary principle was invoked, and legal land clearing has slowed down to just a couple of hundred hectares of agricultural land a year and a couple of thousand hectares for infrastructure purposes.

**CHAIR**—An old farmer once told me he would not get up in the morning if he applied the precautionary principle; he might be run over by the tractor. But it is one of those things: it is very vague and obscure and people find it difficult to understand. You would have seen the terms of reference that we have, as to what is the duty of care and what is the public good conservation.

**Mr Hartley**—Yes.

**CHAIR**—Have you ever considered what you see as being the duty of care of a property owner to maintain and look after the general environment of a property and how much is the responsibility of the general community?

**Mr Hartley**—Yes. This is something that we have thought about a lot. I believe that all farmers do have a duty of care to ensure that there are not any off-site impacts resulting from their farming operations, such as erosion running off into streams, causing siltation and

eutrophication, and that it is not going to cause rising watertables on adjoining property. That is why, in the public interest, we do take such a tough stance on clearing.

There is an intergenerational equity issue here, in that it is unfair to expect future generations to carry the burden of mistakes that we are making now. Similarly, it is wrong to expect the current generation of farmers to carry the burden of decisions that were made by previous generations of farmers, in many cases on the advice of governments. That is an issue that we do have to come to grips with: how the current generation have to make decisions to protect the future generation but also need to be assisted with the mistakes of previous generations. That is a very difficult thing.

We are going part way towards achieving that at the moment through Commonwealth and state government contributions to land care and salinity programs. There is a substantial contribution there, coming from the Commonwealth, of the order of about $30 million a year, and NHT, for example, comes into this state, and something of the order of $40 million a year is spent by government agencies on this problem, so there is $70 million there in public funds that are providing assistance to land-holders with this intergenerational equity issue.

**CHAIR**—Do you have any idea of the extent of this? We have had submissions, of course, from people about their inability to clear after they thought that they had the right to clear, and they claim that there is very little compensation, even though they have freehold title. Do you have any idea of the extent of this, what area would be involved, where people would genuinely argue that they should get compensation at real property value?

**Mr Hartley**—Those figures have been worked out by my office but, unfortunately, I just do not have them in my head.

**CHAIR**—Could you get them for us?

**Mr Hartley**—Yes, I could.

**CHAIR**—Thank you.

**Mr Hartley**—The deputy commissioner had certainly looked at that because we have looked at what our potential liability may be if compensation became an issue and, as you would know, it has been on the political agenda, particularly with Queensland, and that has resulted in similar calls coming from this state.

**CHAIR**—The Murray-Darling is very much to the fore, too, at the present time.

**Mr McNamara**—I might just add, in a contextual sense, that there are certainly a couple of areas north of Perth, in the Midlands area and perhaps the Northampton area, and there have been some examples down in the south-eastern area of, say, Esperance, where some of the problems or issues that you refer to have been more evident in recent years. But, by and large, through the bulk of the wheat belt the level of past clearing is very high and, on a shire basis and, in most cases, on an individual property basis, the amount of remnant vegetation is quite small, often only numbering one to several per cent, with most less than five to 10 per cent through the bulk of the wheat belt, and only remnant vegetation of more than 20 per cent on

private lands in a relatively small number of areas throughout the south-west agricultural zone. Therefore, in that broad contextual sense the issue is not a very sharp one, except in a small number of areas.

**Ms CORCORAN**—I am interested in your view of how soil protection and land protection are accepted by the farming community, by landowners. Do they regard the process as a real pain or is it something that they embrace willingly because they can see the benefits of it? Is there a level of acceptance? Do most people apply to have their land cleared or do you find over and over again that people have cleared their land without bothering to go through the system? What is the feel for it?

**Mr Hartley**—My intuition there is that about 70 per cent of people fundamentally support no further clearing of agricultural land.

**Ms CORCORAN**—Sorry, 70 per cent of people on the land?

**Mr Hartley**—Yes, 70 per cent of people on the land. I would say the view in the general community is overwhelmingly that they believe we should not be either logging old-growth forests or clearing remnant vegetation on farms. I think that on a community basis that is an overwhelming view. Amongst farmers I think about 70 per cent would support the stance that we have taken on no clearing. Of the remaining 30 per cent, probably 10 per cent have very strong views and have been quite vocal, and the remaining 20 per cent would be relatively indifferent. We feel as though we have, overall, quite strong support for the position we have taken on clearing.

**Mrs VALE**—How much consultation do you do with the farming community yourselves? Obviously, there is an awareness now about land clearing and the impact it can have, but exactly how much personal consultation do the departments have with the farming community itself?

**Mr Hartley**—Extensive. Since the first serious restrictions came in on land clearing in about 1986, there has been a series of key strategies taken, such as the memorandum of understanding, and there has always been a degree of consultation, particularly with the peak industry bodies. I would confess, though, that on 5 March 1999, when we introduced effectively the precautionary principle or onus of proof back onto land-holders, there was not any consultation on that process.

Generally, on environmental issues with agriculture we use our Soil and Land Conservation Council, which comprises representatives of the four government agencies involved, and farming and community representatives. They, provide us with a good sounding-board on environmental issues, and the five regional natural resource management organisations that we have established in this state.

**Mrs VALE**—When it comes to remedial work, for instance with salinity—and draining does appear to be an issue in the area we visited yesterday—

**Mr Hartley**—Yes.

**Mrs VALE**—do your departments go out and, on a case management basis, consult with the individual farmer and give advice?

**Mr Hartley**—Yes, particularly on something like drainage. We have a philosophy of engagement. Within the commissioner's office that I look after, even though we have a very strong regulatory background we are reluctant to use that. If someone wants to drain, we have a full-time drainage manager who goes out on a case management basis, sits down with those farmers and says, 'Okay, if you want to drain, here's how you have to do it to be environmentally sound and for it to be efficient.' And, yes, we are putting a lot of effort into that side of our work, where I guess all that is really required is for them to put in a notification and then we rule on it. But we have chosen a philosophy of engagement.

**CHAIR**—They believe that your answer is automatically no.

**Mr Hartley**—Not on drainage. I cannot think, out of the last 16 or 17 drainage notifications, where we have rejected one, in the last 12 months or so.

**CHAIR**—I am sorry I am interrupting—

**Mrs VALE**—That is okay; it is important.

**CHAIR**—but is it based on salinity? What is the basis of you saying no to drainage?

**Mr Hartley**—Yes, it is based on salinity and whether it is going to cause soil erosion.

**CHAIR**—Do you have evidence to back that up, or is it just your gut feeling?

**Mr Hartley**—No, we have good evidence. We have some excellent scientists. I think I have two of the best hydrologists and scientists on salinity in Australia here, because we have been working on it for so long, and we have good evidence of the impact that it can have. Most of the impacts resulting from drainage are not actually soil degradation, erosion or salinisation, it is the off-site impacts of disposing of that saline water into some other environment. You are transferring saline water, effectively, and that often will have an impact on biodiversity or water quality issues.

**CHAIR**—In the Murray-Darling Basin, for instance, there are no options: you have to dispose of salt somehow, therefore you have to plan it and manage it.

**Mr Hartley**—Yes.

**CHAIR**—Are you trying to do that, or are you just saying no?

**Mr Hartley**—No, that is the approach we are taking. We are trying to take a catchment approach to water management, acknowledging that surface water and ground water are inextricably linked, and if we are going to do some drainage we need a catchment-scale plan on where we can drain, and where that water can go. That sort of approach is in its early days, but that is the direction we are moving in.

**CHAIR**—To natural evaporation or something like that?

**Mr Hartley**—We are in some cases. The township of Merredin, for example, has a very serious rising watertable problem and huge infrastructure damage is starting to occur there. We have reached the conclusion that the only way we can treat that problem is by underground pumping, which is an engineering option similar to drainage, where we intercept the ground water and pump it up. A lot of that is going into evaporation basins. Some of it is going to be desalinated and recycled and used. We are looking at both evaporation and reuse of some of this saline water.

**CHAIR**—Finally on the drainage applications, do you have figures on how many applications you have and how many have been approved?

**Mr Hartley**—I could get those for you. I just do not have them in my head at the moment.

**CHAIR**—Yes, please.

**Mr BYRNE**—I want to follow up on what the chair was saying. With respect to Narrogin, for example, where they have quite correctly identified that the area of drainage would seem to be a key issue, where are you with respect to some sort of catchment management plan?

**Mr Hartley**—Not very far progressed because it is an extremely difficult issue in that area. We do not have all the answers. We have people who are hurting very badly because of rising watertables. We do not have an immediate solution on where we can dispose of that water. That is our biggest problem: finding a site. There are a lot of conservation reserves there that we can be tempted to put water into, but then there is a loss in terms of biodiversity, and then there is another major issue to be resolved there. At this stage we do not have an immediate answer for the problems there.

**Mr BYRNE**—The farmers have basically identified that as the key issue for them. The position they put to a number of committee members was that unless this issue is addressed comparatively soon then the other conservation measures will become ineffective over time. Is that a correct statement?

**Mr Hartley**—I will let Keiran comment on that in a moment but, yes, that could be the case. There are some conservation assets, biodiversity assets, that could also be at risk in time to come unless we treat the fundamental cause of the problem. That is our preferred approach. Drainage is treating the symptom of the problem rather than the fundamental cause, which is the imbalance in the water equation, more water running in than is being taken out.

**Mrs VALE**—Yes, but you need a time lapse.

**Mr Hartley**—Yes.

**Mrs VALE**—You need to buy time somehow.

**Mr Hartley**—Yes, we do, and that is why we have to treat the symptom in the short term, to try and get the long-term changes to land use systems.

**Mr BYRNE**—If it got to a scenario where something had to be done, where would this water be discharged? If it comes to a point where it has to be discharged, to where would it naturally flow? To the ocean? Is that what would generally happen?

**Mr Hartley**—No, there is inland drainage there. We do not have drainage to the ocean from there, so that is a problem.

**Mr BYRNE**—If it was allowed to, in the natural course of events, discharge or flow through, where is its end point? Where does it flow through to?

**Mr Hartley**—It would be out into the natural drainage systems. Maybe Luke has an answer.

**Dr Pen**—I could probably answer that. It is a very flat landscape out there and most of the discharge would be to a receiving wetland somewhere.

**CHAIR**—Not mentioning the Blackwood River. Where is that?

**Dr Pen**—Blackwood River or one of the lake systems is a very broad river system in the wheat belt, mostly—very flat with very little slope. The main problem is actually getting water to move very far. It would be wonderful to be able to get it out to the ocean, but the problem we have there with respect to drainage is that because it is a catchment approach all the landowners along that conduit for water have to be in agreement, and there is a great deal of fear of having excess water and wanting to get rid of it, and there is an equal amount of fear among those landowners who fear they are going to receive it because they are in the lower part of the landscape. Very often drainage applications are hung up on one or two landowners who are very afraid of having to manage that water, especially the landowners who have properties close to receiving water bodies, very broad lake systems.

**CHAIR**—Do you have legislation that allows you to have county councils? You wouldn't know what country councils are about in New South Wales?

**Mr Hartley**—Yes.

**CHAIR**—They were the authorities who did the drainage over there.

**Mr Hartley**—It is interesting that you should ask that question. It was only yesterday that I asked the same question myself and asked for our legal people to check up to see whether our local government does have the capacity to do that, because I see it as an answer to some of these natural resource management issues to try and involve local government a lot more than they have been in the past, on a large, regional scale.

**Mrs VALE**—Yes, because it seems to be an impossible task for an individual landowner, or even a couple of individual landowners together; it is really too big for them.

**Mr BYRNE**—An example we saw was one farmer who had been very proactive in the sense of some slight drainage works and some pre-emptive plantings of trees and native vegetation going back 15 years, but the consensus was that this was just a bandaid measure until the more serious issue of appropriate discharge, where it can be put, was resolved. Again, there was a strong consensus across the board with respect to that.

**Dr Pen**—I do not think we can underestimate the degree of desperation there is out there to cope with the salinity problem, and some of the 'solutions' that are out there are looked upon a bit more positively than they should be. The reality is that in a clay landscape water moves very slowly. It will move slowly towards a tree and it will move slowly towards a pump and it will move slowly towards a drain. We are very concerned, if drainage systems are put in place, that they be effective and that the landowners can afford to maintain them.

**Mr BYRNE**—The landowners can afford to maintain them?

**Dr Pen**—Yes.

**Mr BYRNE**—So the onus would then be on the landowners?

**Dr Pen**—Working with government and local government.

**Mr BYRNE**—Yes.

**Dr Pen**—But one of the other problems is that the productivity of the land is probably not in proportion to the maintenance and capital costs of the drainage systems that they would seek to put in place.

**Mr BYRNE**—Do we have a rough costing, a rough approximation, of what would categorise effective drainage works in that region?

**Dr Pen**—I do not think so, no.

**Mr BYRNE**—Are we doing work-ups on that? If it is something that seems to be a major issue and we are spending lots of money on other measures that may not be quite as effective, or it is a combination of a basket, I am just interested to hear that there has not been any sort of costing conducted, or some rough approximation.

**Dr Pen**—On the coastal plains, which are very sandy and drain very well, we have in the order of 2,000 kilometres of drains that are managed by the Water Corporation, and you can speak more to them. The yearly maintenance costs on those, where salinity is not a problem, where drainage is particularly good, but it is still a flatland, are in the order of $6 million in 1994 dollars. That was the last figure I saw.

**Mr BYRNE**—Is that around Esperance? I know that has some fairly sandy soil.

**Dr Pen**—No, it is in the Swan coastal plain between Perth and Bunbury; there is more between Bunbury and Busselton; there is some ad hoc drainage which is farmer-managed only

on the Scott coastal plain, and then there are some more gazetted drainage districts over towards Albany and Denmark.

**Mr BYRNE**—Before the land clearing and farming, how did water drainage occur? How did it find its way naturally through the landscape? What was the so-called pristine environment?

**Dr Pen**—The irony is that that land out there was never meant to drain and the fact that it did not drain meant that the water was soaked up by the deep soil profiles and was available for the vegetation to use over the long, hot summer. Essentially, if you put a tree there, it will drain that area of land, if there is a tree next to it, it will drain that area of land, each tree and shrub receiving the water it requires over the long, hot summer. That is how the wheat belt region essentially drained itself. It did not drain by flowing through the landscape rapidly to windows, to wetland systems, where it would evaporate. We can achieve that through-flow on coastal plains where it is sandy; it is very difficult to achieve that through clay.

**Mr BYRNE**—In a sense it has just deposited itself there, and there was obviously very extensive vegetation, and that drained the water?

**Dr Pen**—Yes. Ninety-nine per cent of the water was put back in the atmosphere either through direct evaporation or the transpiration of the trees.

**Mrs VALE**—Was that very high salt content water?

**Dr Pen**—Over a period of thousands of years the salt accumulated by virtue of being deposited but not flowing off the land with the water, so it has accumulated. I think the estimates are that the salt content of the soil can be explained by about 3,000 to 4,000 years worth of rainfall. There have been periods in which it was more saline, hence we have a very salt-tolerant vegetation out there, and periods when it was fresher. That tends to cycle with climatic changes.

**CHAIR**—Can I take you to a much harder area. We had better get into some of the real issues. Again, coming back to people's property rights, which we are looking at, do you have planning laws over here that override private property rights?

**Mr Hartley**—I am not an authority on planning laws but, yes, I understand that we do.

**CHAIR**—The same as in the east, yes.

**Mr Hartley**—Yes.

**CHAIR**—Therefore, government can just put a planning law over a private piece of land which affects the ability of people to manage and make a living off that land.

**Mr Hartley**—Yes.

**CHAIR**—Without compensation?

**Mr Hartley**—As I understand it, that is correct, yes.

**Mr McNamara**—I am not an expert in our planning law, either—we would need someone from the Ministry for Planning to answer your question—but there are certainly rights of landowners, certainly in the Perth metropolitan area where planning controls are put over areas, and I do not think it is as simple as saying that there are no rights of compensation or the like.

**CHAIR**—What sort of compensation is available?

**Mr McNamara**—I do not know. That is a specific question that the Ministry for Planning would need to answer, but I do not think it lends itself to a simple yes or no answer. It would need to be explained by someone who is expert in planning law.

**Mrs VALE**—Could I ask through you, Mr Chair: is it a consideration, when you get a notice of intent to clear, as to the viability of that particular property for the farmer if he is refused? Is that taken into account in addition to the environmental considerations that you look at—the land degradation, et cetera? Is the economic loss to that particular farmer a consideration that is part of your decision-making process?

**Mr Hartley**—No, it is not. Under our legislation, we are required to make a decision on the basis of land degradation, and the social or economic implications of that are not considered.

**Mrs VALE**—I see.

**CHAIR**—You said earlier that you believed that 10 per cent of property owners were affected by not being allowed to clear without compensation, et cetera. Can we take you to a higher plane, because the CSIRO are saying to us that in some instances, and in salinity areas in particular, there will have to be greater areas of revegetation. Now, if you take huge areas—and there will be huge swathes of land that might have to be revegetated—how do you compensate property owners that are going to be affected in the public good?

**Mr Hartley**—It is very difficult to answer that. It may not necessarily be revegetation that is the answer, but we know that we will have to change our land use systems.

**CHAIR**—Can we stop the world until we find out?

**Mr Hartley**—No, we cannot stop the world. Obviously, a lot of people out there have to continue to make a living. We have to give them the best advice we have available at the moment. We have some good systems that do allow us to use things like alley farming, a combination of trees with crop production, and the use of deep-rooted perennials like lucerne. But even with the best farming options we have available, it is only slowing down the rate of recharge of water to the ground water table, rather than stabilising it or reversing it. The projections that our scientists have done show that, even by implementing the best management practices that are available, we will still end up with in the order of four million hectares of salt-affected land in WA.

If we do nothing, the do nothing option, it will reach equilibrium at around about six million hectares. Currently it is two million. Equilibrium in, say, 100 years time is going to be at

six million. The best possible scenario is that we can only slow it down to four million hectares. There are going to be another two million hectares of agricultural land lost, no matter what we do. We are really talking about saving that remaining two million hectares. Yes, it is going to take us time to develop some solutions for that. We have had a CRC announced into plant based management of salinity. The primary focus of the CRC will be to try and look at plant based solutions to managing salinity; some alternative farming systems to what we have at the moment, other than revegetating with 80 per cent trees. Clearly, if you have your farm down to 80 per cent trees, it is pretty hard to grow a wheat crop. That is the dilemma.

**Mr McNamara**—Can I add to that quickly. Your question was in terms of compensation for revegetation. I do not think we have looked at it in that way. We have looked at some support and investment in research and development, as David has alluded to in the case of the new CRC, to seek to find plant based options or perennial options that will be taken up broadly because they return money to the landowner. That is why the maritime pine program in Western Australia receives some incentive payments to landowners. That is why there has been a 10-year history, or more, of research and development into oil mallees as an option for farmers in the drier parts of the landscape. Rather than looking at compensation, we have been trying to look at developing options that put money back in people's pockets so that the take-up follows readily.

**CHAIR**—On that angle, and taking it up from where you were, if we cannot somehow encourage and help the property owners that are there at the present time to manage their properties economically in a way that is going to help the environment, then who is going to pick up the bill? Does the Western Australian government have enough money?

**Mr Hartley**—I do not think governments anywhere have enough dollars to solve all of the environmental problems on their own. It really does have to be a partnership of government, community and industry. I think everyone has a responsibility for it. The Commonwealth government, for example, has recognised this problem and has developed a national action plan for salinity and water quality. As you would know, they are injecting $700 million into that program.

**CHAIR**—That is really a drop in the ocean, isn't it?

**Mr Hartley**—Yes, it is. Clearly, the WA government has less money than the Commonwealth.

**CHAIR**—You get all the GST now. What are you complaining about?

**Mrs VALE**—That money, though, is not going directly to farmers as compensation, is it?

**Mr Hartley**—Not in the form of compensation, but a lot of it is going to works on ground. It is there to try and be catalytic and to try and provide an incentive and to lead the way to get people to help themselves in managing salinity. A couple of million dollars a year already goes out in incentives for people to revegetate—and that is in our submission. We have our revegetation schemes, where we subsidise fencing and seedlings and seeds, to get people to plant trees. We have a remnant vegetation scheme where we subsidise fencing to protect existing remnant things. We certainly have some schemes in place to provide an incentive for people to do things,

but we do not have anything in place that you could really interpret as being compensation in the sense that you are referring to.

**Mrs VALE**—We had expressed to us yesterday, 'Don't you want farmers on the land any more?' They felt they were being driven off the land. That is a real concern. This is a real problem when you are speaking about the increase in salinity that we can expect, even if we try. You said four million hectares. Obviously, the only chance we have to keep farmers on the land is to come up with the viable options that you have suggested. We were also told yesterday that there is some sort of a cap on the amount of oil mallee that can be planted.

**CHAIR**—Through the NHT. Do you know anything about the NHT guidelines that are restricting the amount of oil mallee that can be planted?

**Mr McNamara**—I am not sure if there is a restriction on the amount or the extent of planting as such. There is a limit to the amount of money available to provide some of the incentive per seedling.

**CHAIR**—Because it is seen to be a commercial crop? Is that a reason?

**Mr Hartley**—I can comment on this, because I was part of the SAP process and I can recall speaking about that. I personally, with my economics hat on, felt that the NHT subsidy that we were giving on a per tree basis was simply jacking up the price of the tree. If we were adding another 50c subsidy on the price of a tree, that was ultimately finding its way into the tree supplier's pocket rather than the land-holder's pocket. I saw it, as an economic instrument, not being particularly effective.

**CHAIR**—You are one of those economic dries, are you?

**Mr Hartley**—That may well be what you picked up.

**CHAIR**—Yes. That was a very strong comment, actually.

**Mr Hartley**—That was a restriction placed by the salinity council.

**Mrs VALE**—That seemed to be incredibly counterproductive and sending out very bad messages. We want farmers to be able to make a profit on their land. If they can make a profit and, at the same time, help the environment, that has to be a win-win for everybody.

**Mr McNamara**—There was some strong debate early in the NHT about whether programs other than the Farm Forestry Program should invest in projects like the oil mallee project. I deal primarily with Bushcare and Environment Australia and the minister responsible for that. We certainly put the view strongly through that portfolio that Bushcare should be prepared to invest in that type of work. Dr Sharman Stone visited for the precise purpose of inspecting those types of projects, and Bushcare funding did flow into that line of work, which we were very pleased about. Leaving aside the subsidy issue that David referred to, we thought it was quite valid and, indeed, quite important for Bushcare to be investing in seeking those options that might give us scale in revegetation.

**Mr Hartley**—I would like to clarify the intent of the State Assessment Panel in taking that policy. They believed that, by reducing the subsidy per tree, the limited amount of money was going to be spread over a larger number of trees. That was the logic. It was not to restrict oil mallees. It was, in fact, a policy to try and get more oil mallees to go in. I have forgotten the figures, but if the subsidy was 50c per tree or if it was 25c per tree instead of 50c, logic suggests that you are going to get more trees in the ground with that fixed amount of money. We were not in any way trying to restrict oil mallee production.

**Mrs VALE**—Then the wires are crossed, and there are fewer oil mallees going in because of the cost, because of the cap.

**CHAIR**—There seemed to be some theory in this that said there had to be a special species mix, it had to be native vegetation, which seemed extremely theoretical to me, whereas we are looking at practical ideas of how you overcome these issues.

**Mr Hartley**—That is a separate issue. The State Assessment Panel was insisting that there be some environmental planting of other species associated with oil mallees. Instead of getting a mono-culture, and wall-to-wall oil mallees planted, the State Assessment Panel—who approve the NHT funding—were insisting that there be environmental plantings. Keiran may have a better understanding of that than I have.

**Mr McNamara**—I did not sit on the State Assessment Panel last year, but certainly there has been advocacy—including from the Oil Mallee Co. and the Oil Mallee Association—for associated biodiversity orientated plantings. I am not familiar with the precise rules in the way that is delivered to an individual farmer—whether the individual farmer must take on board the other elements of the package. I would have to look into that.

**CHAIR**—I want to take you back to the property rights, because I see this as being absolutely critical in all of this. In Australia we have always been very proud of the title that we have to property—whether it is your house or your farm—and we have declared and, in fact, I have been told around the world, that we probably have the best property rights in the world. People are seeing an attack on property here. They are seeing an attack on property rights. In the corridors of power where you move—not just within the state government; you obviously mix with the federal bureaucrats as well—have there ever been any discussions about the fact that this is a very critical thing, that under the federal constitution people are supposed to be compensated for property rights? States tend to duck out from under that and say, 'No, we're not bound by that.' If a community elects a government, we are elected by the community to make decisions for the community, and if the community makes decisions that affect an individual within that community, surely they are entitled to compensation.

**Mr Hartley**—It comes down to a question of ideology. Yes, the question has been debated many times, and long and hard. Even within political parties there are quite divergent views, with some people saying there should be compensation, there should be a property right, and others believing there should not be. The legal situation under our legislation is that there is no property right and there is no legal requirement to pay compensation under the Soil and Land Conservation Act for restricting—

**CHAIR**—That is the advice from the crown law office, is it?

**Mr Hartley**—Yes.

**CHAIR**—Has it ever been tested?

**Mr Hartley**—No, it has not. It has not been tested in court, but that is the advice from our crown law legal advisers.

**CHAIR**—Lawyers will tell you what you pay them to tell you.

**Mr McNamara**—You will find in the government submission that you have before you that there is some variety in different statutes from different vintages. On behalf of my minister, I administer the Wildlife Conservation Act, and there are declared rare flora provisions in that act which do trigger compensation to a landowner when that landowner loses the use of the land because permission is denied to take the declared rare flora.

**CHAIR**—What sort of compensation?

**Mr McNamara**—Monetary compensation.

**CHAIR**—At valuation?

**Mr McNamara**—It has never had to be used. The legislative provision is there. It has never been exercised because we have always negotiated our way through the issue to what I hope has been a satisfactory outcome. We have never actually triggered the payment pursuant to that section of the act. But, just reflecting that at different times the parliament enacts different things, that provision was put in there when the rare flora provisions were first put into the Wildlife Conservation Act.

**Ms CORCORAN**—To help me understand that, could you give me an example of a negotiated solution? Here I am with something I want to pull out; you want me to keep it in.

**Mr McNamara**—We weigh up whether that is the only population of the rare plant or whether there are other populations, what the numbers involved are and whether a clearing or a partial clearing of that population would not be detrimental to the overall status of the species. Permission to take the plant may be given, and often is. That permission might be given for a lesser area than the landowner originally requested, and there might be other forms of assistance entered into. The Remnant Vegetation Protection Scheme or fencing assistance have been provided in some instances. Most landowners want to try and do something, if it is not too onerous, so you can often find your way around those sorts of things.

**Mr Hartley**—There is another point of view to that. The other side of the coin is: should people be compensated for not causing environmental damage? If there is clear evidence that removing trees or any other native vegetation is going to cause environmental damage, surely people have a responsibility to do that without compensation. No-one compensated me when they brought in laws about pollution on cars and the problems that that must have caused a lot of people in the transport industry—speed restrictions.

**Mrs VALE**—Being made to comply with pollution on cars was not going to impact on your livelihood. People inherit farms or buy farms, and that is a business. It is not a lifestyle; it is a business. These people work every minute of daylight. There is a very real difference. I would like to ask a question, Mr Chair. When you do make a decision, Keiran, about the protection of fauna and flora, do you inform the land-holder of his or her options at law or under the legislation, if the decisions that are made by the departments will have a negative impact on their ability to receive an income from the farm?

**Mr McNamara**—We have a standard notification that we give to a land-holder when we become aware of a rare flora population. That includes their legal rights. Should they then apply to take that rare flora—that is the term in our legislation—then we work through the issue in the ways that I have outlined.

**Mrs VALE**—Thank you.

**Mr BYRNE**—The Productivity Commission issued a report in 1999 entitled *A full repairing lease: an inquiry into ecologically sustainable land management*, which advocated a reform which included a legislated requirement for a minimum duty of care to be applied to private land-holders and pastoral leaseholders. Has your department undertaken any investigation with respect to that?

**Mr Hartley**—No, we have not.

**Mr BYRNE**—Have you actively considered anything like this? It is something to consider if you are looking at the carrot and stick approach? Has there been an examination of this?

**Mr McNamara**—We would probably have to speak from our respective statute areas, but I am certainly conscious of that issue in the context of the proposal, which is a commitment of the current government, to introduce new biodiversity legislation in Western Australia to replace the 1950 Wildlife Conservation Act. I am certainly conscious of that report and other writings and thinking about that issue, and I know that will be a matter of public discussion and, I expect, parliamentary discussion, in the development of that legislation, so we will have to address it in that context.

**CHAIR**—I suppose we could carry on for quite some time, but thank you very much for your evidence. It is a very vexed question and I think we are all well aware of it. We may get back to you. Would you make yourself available to Hansard; if there are any terms used that they did not quite understand, they might want to ask you some questions.

[9.52 a.m.]

**OMA, Ms Veronica Patricia Mary, Principal Environmental Officer, Water Corporation of Western Australia**

**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 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 have received your submission, but would you like to make some opening remarks?

**Ms Oma**—Just that the submission is within the scope of our powers and functions. We certainly support strongly the work of the committee. We have a couple of programs in place which partly, at least, go towards the outcomes that you are seeking to achieve. Since we have been corporatised, our role is somewhat more limited than previously, when we were the Water Authority of Western Australia. A lot of the powers in terms of management of water resources, and therefore looking at associated land uses, are now with the Water and Rivers Commission rather than the Water Corporation.

Our role is much more about being the state's water utility in terms of providing water and waste water services, but in that context, particularly in terms of the clear link between what happens in catchments and the quality of the water downstream, and whether we may or may not have the opportunity to use that as potable water supplies, obviously we are very keen to ensure that there is good land management in those catchments.

**CHAIR**—Do you manage the water supply just for Perth or for other areas?

**Ms Oma**—Our mandate is across the state. In terms of our operating licence we have designated areas which essentially cover most of the state.

**CHAIR**—What legislation do you have in place to back up the management of the catchments of those water areas? Is there state legislation to back that up?

**Ms Oma**—Yes, there are several bits of legislation. There is the Country Areas Water Supply Act 1947 which is essentially administered by the Water and Rivers Commission, there is the Rights in Water and Irrigation Act recently amended, and also the role of the Water and Rivers Commission, but there are some delegated powers between the two of us. If you want to know more about that, I am really not the person to talk to about the nitty-gritty of that. The Water Corporation Act 1995 gives us the powers in terms of taking water and providing water for public benefit.

**CHAIR**—In your experience, what impact is there on property owners, and what are the problems? Do you have any conflicts with property owners over the management of the quality of the water in those catchments?

**Ms Oma**—Yes, absolutely.

**CHAIR**—Could you just go through some of the problems.

**Ms Oma**—Certainly around the hills areas there are problems. You may have visited the hills catchments.

**CHAIR**—Not yet.

**Ms Oma**—They are, essentially, fully forested and they are held as crown land, mostly as state forests. The newer-in-size valleys in those ancient land systems tend to have better soils, and quite a number were preferentially alienated and developed as horticultural properties, around Piesse Brook and Karragullen and other areas like that. They are, in fact, pretty vital resources for the horticultural industry, particularly for stone fruit; they serve a large part of Perth's domestic need for stone fruit. Because of the soil capabilities, the availability of water, closer domestic markets and the chill factor, being up in the hills, they are a valuable resource for horticulture.

On the other hand, there are problems with the use of fertilisers, perhaps pesticides, and the private abstraction of water in surface dams. In a lot of instances we see dams being placed over waterways. For instance, I visited a catchment a few months ago where there is only a trickle coming out of the base now. We have the legal means to take water from the catchment, it is just that decisions have been made in the meantime to enable private landowners to take most of the resource, so there are issues about availability and quantity of water, as well as increasing risks of poor water quality because of the associated uses of the soils in the catchments, particularly nutrients.

**CHAIR**—Therefore, you have a potentially huge conflict there between your needs for water and the property owner's need for water.

**Ms Oma**—Yes.

**CHAIR**—Is the government contemplating legislation similar to that in the east where property owners can only keep 20 per cent of the water on their land?

**Ms Oma**—I certainly have not heard of that. I am not aware of any such moves. The surface water resources were those that were developed early in the state, and we have a number of dams—Mundaring Weir, for instance—that go back to the turn of the century. They were recognised as very valuable resources early on, for the goldfields and to help develop and expand Perth. We are fortunate in more recently having discovered the huge underground water resources under the Gnangara Mound and the Jandakot Mound, and since then we have found further resources, albeit deeper, but they are still huge, untapped resources. Although the surface water resources have been extremely valuable to Perth, and currently supply something like about 40 per cent of Perth's metro needs, when the availability is not there or it is difficult to try and claw back the resource, it is almost easier to turn on the ground water tap, rather than trying to do something about surface water supply which is probably a very difficult situation to turn around.

As well as that, you have, of course, what is a high risk for the Water Corporation to manage, and that is to ensure that we supply consistently high-quality water that meets public health

standards, which we are legally required to do. It is almost easier to manage the ground water resources because of the much higher purity and the much lesser risk, recognising that the ground water resources, particularly the Gnangara resource, is pretty effectively alienated—it is crown land—and so is protected in that regard.

**CHAIR**—You mentioned fertilisers and chemicals, which are the usual ones that are mentioned. You monitor the quality of the water. If, in fact, there was some incidence of fertiliser run-off or a chemical in the water, what types of sticks are there available to control the horticulturalists and the quality of run-off?

**Ms Oma**—From my understanding—and, again, perhaps I am not the right person to talk to—I do not believe there are any really effective measures.

**CHAIR**—But you do monitor the quality of the water?

**Ms Oma**—Yes, we do monitor the quality of the water.

**CHAIR**—What is it like?

**Ms Oma**—It can be variable. Sometimes we have to just close resources, like the Bickley Dam, that has now had chronic toxic blue-green algae blooms over the last couple of summers. We envisage that that might be a pretty regular event in summer. Yes, we monitor the quality. It is variable, particularly in summer. We have the ability to close and not take water from some suppliers. Again, we have developed almost a risk management approach to the whole situation because of the ground water resources. We have something like 32 schemes that we can use and juggle at any one time.

Last summer, and the summer before, we actually had to close the Serpentine Dam down because of a water quality problem. That was not to do with horticulturalists, because that is a fully forested catchment, but we had a particular problem of high aluminium content in the water because of the natural erosion of the banks along the dam. We had to close that for two months, so we just turned on the ground water tap a bit more. But, as I said, we have 32 schemes, so at any time we can 'shandy' the quality of the water to make sure that wherever we provide it, it is always of a consistently high quality.

**CHAIR**—How many horticulturalists are unhappy with you in the conflict between you?

**Ms Oma**—I am not sure that there are too many that are unhappy with us, because the situation tends to be avoided rather than confronted. In a sense, there needs to be a whole of government approach to that. It is no good just the Water Corporation raising its hand and saying, 'We need to address this problem.' There are a number of players and I think we need a whole of government approach to deal with it. On the other hand, it seems to be almost easier just to manage it as we have been doing.

**Mrs VALE**—Regarding water quality, do you have the power to investigate causes for the aluminium content or the blue-green algae blooms that you have in certain water sources, and to take steps to prohibit the activity that is causing that? Does the Water Corporation's brief go that far, or are you more concerned about, as you say, making sure the water quality is constant?

**Ms Oma**—I must say that with water quality we have other problems, particularly in the Mundaring catchment, which is close to Perth. It is used for a range of recreational activities, including four-wheel driving—Rally Australia—and is a great resource for people to go camping and marining in, which are all, under the regulations, illegal activities, but it is close to Perth and it is hard for us to patrol. My understanding is that we have very limited powers to manage those things, other than we have rangers who patrol and who do great work out there under, I would suggest, at times a high level of personal risk, intervening with people camping, with pig-shooting, and all sorts of things.

**Mrs VALE**—Your actual powers as a corporation are quite limited at law as to what you can actually do?

**Ms Oma**—Yes. The powers are much more with the Water and Rivers Commission. There is an MOU between us that looks at delegating or sharing some of those responsibilities, but I would suggest it is probably not adequate. Recently, the CALM amendment bill went through. We argued strenuously and got some specific amendments in there that were real concessions, recognising that the land in state forests should be managed not only for the timber resource and the natural ecological values but also to recognise their value for public water supply. We put those amendments in and also wrote in our responsibility to be part of developing management plans for those forest catchments; there was nothing in place previously. We have started to try and put forward the need to represent the community in terms of being able to safely provide good quality water.

**Mrs VALE**—And the powers that, hopefully, go with it.

**Ms Oma**—Yes, at least in terms of the management plans, which can then start to look at activities that happen in the forest which require us to also be involved in decisions in terms of other land uses in those forest catchments. We have not had the powers previously.

**Ms GERICK**—I know that a number of the small orchards out Karragullen way are electing to close because of the costs that are involved and are electing to subdivide their properties. Is that going to create more pressure as more people move into those areas or will it improve the water situation?

**Ms Oma**—It depends what sorts of activities and what town planning measures are put in place by the local governments. I was involved in the mid-eighties, working with the Shire of Kalamunda, developing what was called the Hills Orchard Study, which was a particular town planning scheme to look at trying to play God to manage existing land use conflicts and prevent further ones. I was on it as a representative of the Department of Agriculture at the time, wanting to promote horticulture. The Shire of Kalamunda obviously were there trying to meet their community's aspirations but also to manage conflicts. The other representative on the working group was from the Water Authority.

We were trying to look at what was reasonable in terms of meeting horticulturalists' expectations about horticulture, subdivision issues, and what was reasonable in terms of allowing other rural residential type uses. We came up with quite a creative approach to horses, which we called 'large-hooved pets'. We put in place in a couple of the rural residential zones the ability for people to keep up to two large-hooved pets on the basis that they were properly

stabled and the manure was collected and taken off site. You can manage those situations. It depends what you write into your legal instruments. Fundamentally, it comes down to management; management on behalf of the landowner, and then management and monitoring powers and commitment of the decision-makers, the local government.

**Mrs VALE**—I think you said in your submission that it would require a necessary attitudinal change here.

**Ms Oma**—Yes.

**Mrs VALE**—Are the steps you have taken to try and help an attitudinal change part of the management plan that you were speaking about earlier?

**Ms Oma**—For the hills management plan?

**Mrs VALE**—Yes. You said that you considered that behavioural change will not occur on a large enough scale without fundamental changes. You discuss the behavioural change or the attitudinal change to start with. Have you put any plans or protocols in place that would encourage those attitudinal changes on behalf of landowners?

**Ms Oma**—No, I cannot say we have to date. As you said, our powers are pretty restricted. The issue is not just one of attitudinal change. That, as we know through the land care movement, has been pretty effective. It has taken a lot of state and federal resources, and people's support as well. The attitudinal change, or at least awareness, is probably there. What has not followed through is the behavioural change. They are two separate things. Most people are aware that land clearing perhaps is bad but, when it comes to their bit of land that they want to clear; they can always rationalise it. The behavioural change I do not think is sufficiently there yet to make a difference to managing the state's most intractable land degradation problems of salinity, eutrophication and the rangeland deterioration.

**Ms CORCORAN**—My questions are associated with what you have just been saying. I am interested in asking two things. Firstly, I am not too sure what your role is with the small communities or, indeed, individual farmers. Does the Water Corporation have a direct association with these people or not? You also talk about imposing sanctions on people if they do not meet minimum acceptable standards. What sorts of sanctions and what are these standards? We think we understand what they are but are they laid out somewhere?

**Ms Oma**—No. That is probably a limitation of the catchment planning activities that have taken place to date. In terms of sanctions, in my understanding, early on in the decade of land clearance there was a clear expectation on the part of the federal government that if you had a funding and resourcing commitment to help people to understand the problems, they would then be able to make the changes. I do not think that is happening, so we need to follow that up through sanctions. Those sanctions can be further restrictions on land clearing, application of fertilisers, irrigation type regimes, then down to land uses as well.

**CHAIR**—If that affects the individual, what compensation will there be?

**Ms Oma**—Government will have to come to grips with that. On equity grounds you would have to provide some sort of compensation, either because of less or lost production or constraints to their ability to use the land.

**CHAIR**—As Perth grows—and it will—we will need more water. We were talking about dams on properties, et cetera. Has the corporation ever considered the fact that they might set a levy on the supply of water to buy out those people?

**Ms Oma**—No, but what we have previously done as part of the Water Authority—and I think it is part of the submission—is that we were looking at trying to manage the salinity problems in some of the south coast catchments such as the Hay, Denmark and Kent. There were four or five designated catchments. We provided compensation, therefore reduced ability of land-holders to clear land. Some $20 million has been spent that way. I assume that we found those resources from within our means, recognising that we rate properties anyway in terms of providing water, wastewater and drainage services. We saw that as a more cost effective way of trying to hold the salinity problems in those area.

That was providing the compensation and the sweetener to make that behavioural change but it was not followed up there with sanctions. The sanctions that should have been applied at the time were that the money provided to those landowners should have been spent on fencing the remaining vegetation, which we said we provided them the compensation for. We should have made sure that money was spent on fencing; we should have made sure the money was spent in either enabling the landowners to sell out and to buy into something else that was viable, or else to buy additional already cleared, developed land for them to continue on in a more viable capacity. We did not; we just handed the money over.

What you are facing now is a situation on the south coast where there has been a lot of clearing of the vegetation by stealth by just allowing stock to go through. The ecological values have deteriorated markedly and the salinity problem has not been controlled in any way. I do not think the landowners are any better off in terms of the resource that they have left to farm with. I do not think it has helped that structural adjustment.

**CHAIR**—I dare say the principle I am getting to is what our terms of reference are talking about, where the majority believe that they should impose conditions on the minority. What I am saying is that if the majority say, 'We want that because we want it in our interests,' why should they steal it from someone else without compensation?

**Ms Oma**—That is fair enough. Our experience has been, through providing the compensation in the south coast catchments, that essentially it has been the whole community's resources that have been targeted to a few private landowners to try and achieve that very thing. We did not underpin it legally by ensuring that the measures that were necessary to protect the vegetation, and therefore to prevent run-off and water salinisation, were put in place. I think you need to do that.

**Ms CORCORAN**—In your submission here you talk about sanctions needing to be applied if certain minimum standard practices are not adhered to. My understanding of a sanction is that it is a punishment type thing. Is that what you are getting at?

**Ms Oma**—It is legal underpinning to support the appropriate behaviour. If you want to keep vegetation, you have to fence it. You have to make sure that stock do not go into it.

**Ms CORCORAN**—What are your links with communities or with individual farmers? How do you promote your policies and philosophies?

**Ms Oma**—I do not think we have many links at all with individual farmers. We provide water mainly through the grid system. We are increasingly looking at our responsibilities as a good corporate citizen and we are developing programs to more effectively work with rural communities. Obviously, we have a long way to go.

I am aware that we own a large number of small bits of bush out in rural areas. We would be keen to develop, with local land care groups, joint management responsibilities for those bits of bush. They are probably no longer needed in terms of public water supply, because the water in them is probably salinised, but they are still good catchment areas. We would be keen to look at creative ways to work with communities and local government to ensure appropriate management of those bits of bush; if not for the water, at least for the animals and the plants that are in them.

**CHAIR**—But that is not your principal income.

**Ms Oma**—No, that is not our real core business but we are seeing that, essentially, that is the way business is going. It is looking at its corporate responsibilities to work with communities that it provides services to.

**CHAIR**—Who do you see has the responsibility to, for instance, get a code of practice with the property owners in your water catchment? Is it your responsibility or the Department of Agriculture's responsibility to talk to the horticulturalists and explain the situation with water quality and get a code of practice?

**Ms Oma**—That is a good one. I cannot say I know. With the changes to the Rights in Water and Irrigation Act, it now provides Water and Rivers the ability to convene local management committees, and it depends how you define that; whether a local catchment is all the hills catchments together or separately as the watershed. It provides those committees with the ability to look at issues of water allocation. I would assume, through that, that we could also start to look at issues of private versus public use of water, threats to the water resource and how best to manage those. That is a very new amendment that has only just been put in the Rights in Water and Irrigation Act, so none of these committees has been established to do that specific function.

We would want to be a player in that, particularly having put those amendments in place in the CALM Act, in terms of recognising the qualities or requirements for managing the hills catchments for water supply, as well as all those other uses. We would certainly want to be a player in looking at any management plans for allocating water between public and private uses and appropriate land management and appropriate land use to support all our multiple objectives for the water.

**CHAIR**—In these areas of conflict, not just in your area but across the whole continent, we are very big on environmental impact statements. We now start to talk about social impact statements. What about economic impact statements? Should government give consideration to those in these decisions?

**Ms Oma**—Yes, we are working very much now towards a sustainable development approach to water use and water management. Clearly, the economics of who uses it, how it is used and how effectively it is used are major considerations.

**CHAIR**—You are a corporation but it is very easy for government to make these statutory decisions. Small people do not seem to have the right to say anything, except every three years they can put the boot in. But that does not really resolve a heck of a lot either. I am looking at the decision-making process as to what we should take into consideration. Thank you. We are going to break for a cup of coffee.

**Proceedings suspended from 10.21 a.m. to 10.55 a.m.**

**GARE, Mr Geoffrey Marshall, Communications Director, Pastoralists and Graziers Association of WA (Inc.)**

**HYDE, Mr John Martin, Chairman, Property Rights Committee, Pastoralists and Graziers Association of WA (Inc.)**

**CHAIR**—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 just give us a brief statement?

**Mr Hyde**—Yes. Mr Chairman, first of all, may I apologise for running late. It was entirely our fault; we went to the wrong place. Can I take it that the submission has been read?

**CHAIR**—Take it as being read.

**Mr Hyde**—The first point I make, Mr Chairman, is that the principle that we are defending is not confined to environmental policy but is one that we feel is offended very often in dealing with environmental policy: land use planning/native title. There are other things that run against it quite often. We do not want to be interpreted as being against the sorts of reforms that sometimes lead governments into running against this principle. For instance, we applaud the COAG agreement, the efforts on competition policy and so on, though we will argue with odd little bits on the margin. The general aim, we feel, is essential and we would like to state that at the beginning because we would not like anyone to misinterpret us. We are not against getting the economy more efficient and we realise that there are going to be some difficulties in doing so.

I will speak to some principles and Geoff will deal with the examples that have come PGA's way. He is much more familiar with them than I am. First of all, the nature of property: whether your property is in cash, shares, a superannuation policy or you have put your savings into land, it is in fact, in the end, a bundle of rights. My background is agriculture, so I will take an agricultural example. I am said to own a farm, but if I am not allowed to grow sheep on it or crop it, its value falls away to almost nothing. Some property rights have a lot of value attached to them, some only modest rights attached to them.

The Crown normally does not take the whole bundle; it recognises that it should not. But the practice has developed of stripping off the individual rights. It has not happened to me but it has happened to many people I know. Taking the right to say, 'Clear the land and crop it,' has reduced his bundle of rights to very little value, but he is still the nominal owner of the land. That is every bit as egregious as taking, in a case that we are familiar with, six or seven out of his 10 paddocks. It is the same loss, and that is his savings. That is what his family has been putting away. Instead of putting it into a super policy or something like that, he has put it into land. It is not fair. The government, of course, has responsibility to take property in some circumstances, and I use the word 'take' as it is used particularly in America.

**CHAIR**—'Resume', I think it is called.

**Mr Hyde**—Yes, I know. I have chosen 'take' because that is what has got into the American literature but, if you prefer, 'resume'. They have sometimes made the distinction that resumption is where compensation is paid. Taking includes both compensation and non-compensated takings—but 'resumption' if you prefer. 'Taking' is borrowed from American readings. The government must resume land for various purposes, normally to preserve or to create some public good, roads, environmental amenities, all sorts of things, and clearly the Crown must have the authority to do that. We have no quarrel with that.

Our argument, though, is that if it is taken for a public benefit it should be at public cost, not the cost of some poor, unlucky individual who happens to have put his savings in the wrong place, and that, Mr Chairman, is the central point in our argument. It is an issue of justice. Society will not function if people feel that they are badly treated, even if you have no respect for the principle itself, and I am not suggesting this committee has not.

An extreme example that I have used sometimes—and it has sometimes irritated people, I will admit—is, for instance, a superannuation policy that you had put your savings into, where the rules were suddenly changed and you could only collect it at age 70 instead of 65, or something like that. It is the normal practice of the government, when it has had to make these sorts of changes, not to make them retrospective. The savings have already been made under one set of rules and they stay. We are only asking that the same principle be applied to people who have put their savings into physical assets, and the one that worries us most is land, although the principle is not confined to land. Because of environmental and land use planning reasons, this is where most of the problems seem to us to have arisen.

For the sake of the record—and I know you are aware of it because you mentioned it yourself yesterday—the Commonwealth is constrained in what it can do here by 51(xxxi) of the constitution. The states are not so constrained.

**CHAIR**—They say they are not, anyway.

**Mr Hyde**—We have had no luck suggesting that they might be, put it that way. If you know what a High Court judge is going to think next, you are a better man than I am. At the moment, anyway, we have had no success in arguing that they are so constrained, and the PGA has argued the case for a couple of years now that they ought to so constrain themselves. I am not sure of the position in other states but this state can do so by an absolute majority of the parliament in both houses. It does not need a referendum to do it. We have had no success whatsoever.

I will just say a word about obligations because everyone keeps throwing it at us. Of course an owner has obligations. This is a red herring in the argument. We have never argued that owners do not have obligations. Basically, those obligations restrict him in what he may do to other people's rights, including the rights of the yet unborn. We quarrel with the environmentalists and the green movement on all sorts of specific issues, but there is no disagreement at that fundamental level. I do not think we need say any more about that bit.

Poor justice I have covered. It is poor economics not to have clear property rights. The moment a property right is unclear, people apply higher discount rates. You have to get a higher rate of return before you will make your investment, for the obvious reason, but think about the sorts of rates of return that an Australian company needs to invest in, say, black Africa. It will take much lower rates of return in a country like this because it believes that that so-called sovereign risk is relatively low, and it is relatively low, Coronation Hill and one or two aberrations aside. It is bad economics.

It is poor environmental management. I am a farmer, and what do I do if I discover a funny furry thing while I am having a smoko in the middle of the night off my tractor? I say nothing about it.

**CHAIR**—You have been warned about self-incrimination?

**Mr Hyde**—Yes. You will some trouble pinning me! I keep ploughing. Of course you do. You are not going to tell anyone that you might have something strange on your property, because you might lose the property and, from an environmentalist's point of view, this is plain crazy. This is not an exceptional attitude. If you have something unusual, and mostly you just suspect it is unusual—you do not know—you keep ploughing, mate. And that is very widespread, I assure you, Mr Chairman. With your background you are probably also familiar with it. It is also poor administration because it is building up a sense of injustice out there in voter land.

I will add one more point. It has become evident in recent time that it is also poor politics. People are resentful and coalition parties, particularly, have felt that in recent elections. They are resentful about a lot of things. An administration that does not have the backing of the people, whatever the law says, has little chance. People tend to disobey laws that they do not respect. The courts and the parliaments and so on can do what they like; if the public will not wear it, it will not work. You have to bring people along, and that goes back to my issue of justice.

The specific question is: what is public good conservation? Public goods are defined in all the economic textbooks. It is where other interests are not excludable. You cannot tax people for walking under a streetlight. The transaction costs kill that proposition, therefore it becomes a public good. You cannot exclude anybody, therefore you cannot charge. That is where you get the public good.

I think you ought to also be looking at the spillover. Where someone is providing an amenity that is of benefit to other people and cannot get all the rewards for himself, some sort of government subsidy is economically appropriate. It may not be administratively appropriate. You still have to load in the costs of administering this subsidy and the common citizen's originality and persistence in ripping the public sector off. Because a thing will line up economically does not mean you should necessarily do it. You may not be able to administer it, and certainly with minor things it is not worth doing—only the major ones.

Vice versa, if someone is creating a nuisance and goes beyond his property right to do so, again a tax that prevents that is the most sensible way of going about it. It is not worth chasing every rabbit down every burrow. Because of the administration costs and the capacity of the individual to take advantage of the law, you cannot write law to deal with everything, but at

least you should be looking at it in those circumstances, so where you mention public good there, I would have also looked at externalities.

Impacts of conservation and measures of their costs: I think the government will never measure them well. These things are very hard to measure. Shadow pricing has a poor record. Looked at empirically, with hindsight and so on, it does not work very well. If you have nothing else, you have a shadow price, but it is not good. The Crown should first look at internalising the externalities or privatising the public good. I appreciate that you cannot always do that.

Crayfish stock off the coast: we do not have a way of establishing property rights in the fish in the water, but we can establish property rights in the fish if they are out of the water, and that is immensely better than trying to limit the overtaking of crayfish by boat size and horsepower and the other silly things that have been done in the past. There are better and worse ways of doing it.

Financial assistance for conservation by land-holders: yes, it goes back to what I have already said, but please do not underestimate the capacity of the land-holder to rip off the Crown. I know myself. You are sitting on a tractor all night, with nothing else to do. What do you do? You spend your time thinking about how you can get a bob out of the government,

**CHAIR**—How to get rid of the government.

**Mr Hyde**—You do that too. That is how you and I got into politics. One of the mistakes the Crown makes is to believe that they can administer what is beyond their capacity. Yesterday you heard quite a lot of evidence from various people and, if you added it all up, I submit to you that the answer was that a lot of what they were asking for and what has been tried cannot be done. It is beyond the Crown's capacity to deal with that sort of detail, although you will have an imperfect result if you do not. I suggest you have an even more imperfect one by meddling with detail that is beyond your administrative capacity.

As to sharing costs, basically, if it is a public good, the public should pay for it. The PGA is not asking you to follow that line with every triviality, it is not worth it, but certainly that should be the case where a major cost, or benefit for that matter, is created or born. The final point I would make is that these principles are, in fact, recognised in quite a lot of law—namely, that what we are advancing is not exceptional—although we have a considerable quarrel with the town planning authorities on, particularly, how they value, but that is not for this committee today. It does recognise the principle. If they changed the rules by which a metropolitan block was purchased, then they have to compensate, and our quarrel is getting down to valuation then. We are not putting a radical proposal to you. I will leave it at that and let Geoff tell you about some of our awful cases.

**CHAIR**—Thanks, Mr Hyde. Mr Gare.

**Mr Gare**—Thank you, Chairman. To follow on from what John was saying, most of the problems that are experienced in Western Australia on these sorts of issues follow on from federal directives to the states in terms of requirements that are seen to be in the national or community interest. It is the interpretation of those rules by the state that is causing most of our problems here. I think that is linked, in turn, to the absence of any constitutional provision in

Western Australia for compensation, particularly where land that is involved in conservation measures is tied up.

I think you heard yesterday from Mr O'Dea about some of the first-hand problems that occur with clearing bans in this state. That is the tip of the iceberg. We believe that the problem in Western Australia, despite denials by the state government, is just as big as it is in Queensland. It is probably more intense in that it involves very small areas in some cases but areas that are parts of smaller holdings that are critical to the people that own them. They purchase them, in many cases, with permits to clear. They probably accept that it is no longer tenable in the community interest to clear them but they are left holding it. They are left to pay the rates, the taxes, the encumbrances, the fire breaks, the whole works, with little or no consideration, and in many cases that has involved hardship to the degree that a lot of families have disintegrated, marriages have disintegrated, bankruptcies have occurred, and the problem is far more widespread than you will ever read in the Western Australia media. What Mr O'Dea said probably sounded light to you, but I can assure you that it is a massive problem in this state.

I would like to read to you from a press release that we issued last year when Queensland's Premier Beattie was going to the feds for money. The comment we made was:

If you break the law of the land in this country as an illegal immigrant, you can expect more consideration from the federal and state governments at the moment than you get if you have invested in rural land and are subsequently denied the right to develop it.

**CHAIR**—You need a United Nations convention then, don't you?

**Mr Gare**—Well, it is an interpretation. I do not know that it is worth going to any more individual cases, because you will be aware of them, but I think it is necessary for us to say that as an organisation we did not sign off on the previous government's remnant vegetation policy because it contained, in our view, absolutely no provision for adequate compensation for the people that we represent. We will continue to argue the principle that if their land is required or they are required to accept a loss in the interest of the national community, then somebody has to look after them more than is happening at the moment.

The other interpretation by this state of conservation requirements, in our view, relates to the planning arrangements we have here. I think Jane Gerick has in her area a group along the Murray River near Mandurah that comes under the Peel Region Plan. There are something like 300-odd private landowners that have had land in that area gazetted either for recreation, which is a reasonable future requirement, or for future conservation. Due to the enormous uproar that those 300 were able to generate, the matter was reconsidered by the state Planning Commission, and some of those private areas were diminished in size. They remained in the plan but, instead of being referred for future conservation, they are now gazetted as floodway protection and silly things like that. They are all on prime riverfront country, purchased by people, as John suggested, for superannuation, for obviously an idyllic situation.

**CHAIR**—Was it freehold title?

**Mr Gare**—Yes, and it is pretty much all riverfront country. The way this state works is to say, 'Right, for our planning processes in the future, this will be for conservation. It might take

us 20 to 30 years to get to you. You can do what you like with it as long as you do not change the current usage. You will not be allowed to subdivide it and we will eventually be the only buyer but we will nominate the time and the place.' This plan has yet to be ratified by parliament and we are now told it probably will not be because it does not need to be. They have actually changed the rules so that they can put it through.

The immediate effect, of course, was that those people that needed to sell or were in the process of selling lost sales. Some were so desperate that they actually did sell at the government's price, which was roughly half the market value, and that then became the norm for all these other properties. You can see that it has caused much disruption to these people's assets and their whole way of living; it is quite an undemocratic situation. That has flowed on, as I said before, by virtue of agreements and things to create conservation areas, which no-one denies, but we do maintain that if that land is required, it should be taken by the government or resumed by the government at a reasonable price so that the people involved can go somewhere else and get on with their lives. Those people, as Jane knows, will be sitting there probably for 20 to 30 years before anything happens.

To add to the scandal of this, the state Planning Commission recently has been going along to these owners, particularly the ones they know may be a little more pliable, and are saying, 'You sign over your riverfront to us now and we might give you permission to subdivide further back.' These sorts of pressures are being applied and it is something that we regard as abhorrent. It simply supports what we say: that a fair thing is a fair thing and, if land is required, it should be paid for.

One other example on the land issue, and how we are very suspicious of a lot of government action, is the requirement for buffer zones. One of the classic examples is down at Kemmerton, which is an industrial area actually proclaimed by the Carmen Lawrence government, just north of Bunbury. The industrial area never got going—in fact, it is still lumbering along with very little investment involved—but it did get to the point where a considerable buffer zone was gazetted and CALM was the agency appointed to acquire the dairy farming properties that were going to constitute this buffer zone.

Amongst them was a privately owned nature park which was run by somebody quite successfully. The demise of that park came partly because of the fact that CALM set up a park right across the road and then refused that private owner permission to expand; the upshot of that, of course, being that he was sold up by the bank. The buyer of that property was a friend of the minister at that time. The property was consequently on-sold 12 months later for double the price to CALM who subsequently sold that area.

**CHAIR**—Haven't you got an ICAC over here?

**Mr Hyde**—Sort of.

**Mr Gare**—It was sold on to Landcorp at a price that I would not care to mention, but it is in the millions, and you are talking about hundreds of thousands to start with. This is the sort of activity that we have watched and we have had people come to us saying, 'What can you do about it?' We can do very little about it at the moment because there is no provision there for

any recourse. It is a frightening situation that has developed by virtue of the fact that these agencies have been able to interpret the requirements to meet conservation requirements.

The final point I would like to make is on the issue of water which, as you know, is a COAG requirement on this state which it signed off on. The PGA has supported in principle the need for tradable water rights, licensing and those sorts of things. The problem now, of course, is that we have reached the stage where we get to the real cause of the water reform arrangements which is, of course, to provide water for the environment. That has yet to be determined in this state, although we believe it has been advanced to a point where it is probably going to come up for public discussion in the near future. But, again, it was not until late in the administration of the last government that there was any recognition that people who had existing infrastructures and things like that were entitled to some due consideration.

It has not gone as far as compensation but there was some acknowledgment that there was a problem, because equity arrangements are going to be severely diminished, particularly in some of these licensed areas, if some of the foreshadowed environmental allocations occur. Again, we have many people very concerned that these things are rolling on and they are not being consulted. In fact, very few, if any, of these people that I have referred to in any of those categories have ever been properly consulted.

Meetings are advertised in the back pages in local papers a day or two before the event. Everyone else seems to know about it except the land-holder or the water user, and there have been deliberate tactics employed by agencies in this state to try and exempt landowners from actually getting involved. Thank goodness we now have faxes and the like so that people can communicate. They can be made aware of some these things and, as a result, actions such as the one in Peel, where at least 300 people got together and said, 'Hey, fair go!' and had some of their areas removed from the gazetted plan, are making some difference.

But it is worth stressing that we are now suffering as a result of, probably, the good intent of federal agencies, the good intent of states, and probably of landowners, but a lot of that is being frustrated and unnecessary hostility has already been created, and if it keeps rolling, we will destroy the land care movement and a lot of things that have been regarded as very good initiatives in the rural sector in Western Australia.

**CHAIR**—Can I go back to a core issue. Do you have just terms legislation in this state?

**Mr Hyde**—In some of the acts. If land were resumed under what used to be the land acquisition act—by description, without capitals—most of the time we would not have a problem. I think that only two pieces of legislation since then have changed the rules. These more recent rules, one dealing with environment and the other with land use planning, have made it much easier for the Crown to acquire land with what the PGA considers is inadequate or no compensation.

**CHAIR**—Isn't it a fact that bureaucrats can make these arbitrary decisions because they know full well that the individual property owner does not have the ability to take them on at law?

**Mr Hyde**—That is undoubtedly the case. Unlike some of your people yesterday, I am not inclined to say that your bureaucrats are necessarily malign. They are in a difficult position. They do not understand the underlying principles—incidentally, neither do most politicians—so they do not have those guiding them. Their act specifies a narrow range of things, which they are naturally bound by. They protect the Treasury. You are not going to quarrel with civil servants trying to protect the taxpayer's dollar. They protect the environment which is, again, appropriate action. But their focus and understanding are too narrow.

The principles are not widely understood. At the risk of sounding frightfully gratuitous, I put it to you that this committee might do something useful if it can spell out the principles. There will be a lot of hard cases which you may wish to discuss, but at least if the principles are spelt out, future legislators and to some lesser extent bureaucrats interpreting the current law—and ministers, I might add, because some of the more dreadful things that we know have happened have actually happened in the cabinet room—will have a background against which to assess their own actions. I suspect there is nothing that you might do that is more useful than if you can get a reasonably succinct expression of the principles that are involved.

**CHAIR**—You would understand that, with statute law, the courts are there to interpret and enforce.

**Mr Hyde**—Yes.

**CHAIR**—Sometimes the judges think it is a little bit more than that. Unless it has been interpreted, parliament cannot really assess whether in fact a law is—

**Mr Hyde**—The federal and state parliaments have often, in my opinion, left far too much discretion with ministers, and I think I speak for the PGA on this.

**CHAIR**—The law is written by lawyers for lawyers, though, isn't it?

**Mr Hyde**—Your drafting lawyer, who is not quite your practising lawyer—the parliamentary draftsman—comes in with something that suits the department. Private MPs cannot handle the complexities or the volume of it. Unless you people are smarter than I was, you just do not get across a tenth of the law that comes through that place.

**CHAIR**—That is true. What I am getting to is the fact that you do need some assessment or interpretation by the courts as to what our rights really are. I will put all of us in the same basket, because we all have property. The problem you have here is that the states keep on saying, 'Well, we don't have to compensate.' A lawyer will tell you that. The crown law office told me that when I was a minister in New South Wales. I do not believe it in my heart of hearts. The only way that you will get to the bottom of that is if you challenge it in court. Now, you are part of the NFF. Why aren't the NFF taking some of these cases on and clearly identifying through the court what the court sees as being the rights of individuals?

**Mr Hyde**—I am not certain that I am entitled to do this but, providing I am, I could give you a look at the NFF budget and you would see why they cannot. We just cannot afford it.

**CHAIR**—That is why farmers, for instance, paid into that fund. It grew out of Mudginberri which we all know about.

**Mr Hyde**—The fighting fund?

**CHAIR**—Yes.

**Mr Hyde**—I do not know how big the fighting fund still is. You probably do; I do not.

**CHAIR**—I do not, no.

**Mr Hyde**—In my view, it would be a thoroughly appropriate use for the fighting fund. Careful, Hydie! Some of the fire has gone out of the NFF belly, shall I say?

**Mr Gare**—I think it is fair to say also that issues like the clearing ban problem in Queensland and Western Australia were regarded as totally insignificant by NFF until such time as Beattie made it an issue. We could not get through from this state an adequate case to even interest them.

**Mr Hyde**—We have been much better heard over here since the Queensland ruckus.

**CHAIR**—Even your water rights go down to property rights. If, in fact, we are going to have a tradeable rights system in water, which we are all going towards in every state, then why isn't it that the government, the Treasury, on behalf of the people buy their rights to put the water into the river?

**Mr Hyde**—Hear, hear! You have been reading the PGA submissions.

**CHAIR**—I thought we did it New South Wales long before you.

**Mr Hyde**—I know. You are so far ahead of us.

**CHAIR**—Of course, then there is some discipline on Treasury.

**Mr Hyde**—Exactly—our words again. That is right. In the water one, particularly, there are some hard cases. It would be silly to conduct this argument without admitting that there are some genuinely hard cases. If a family has been taking water for three generations, but on paper has no title, what property right has been established?

**CHAIR**—Common law right?

**Mr Hyde**—I think I used the words 'reasonable expectations'. At that level it has to be interpreted, if not by the minister, who has enormous discretion—too much in my view—then by a court, to decide what it is. In any laying down of the principle, 'reasonable expectation' has to be discussed. There are other hard cases. The Aboriginal land rights raise some really hard cases. Where it was thought the property right resided, it did not when it suddenly resided somewhere else. That is leaving aside the issue that it was never defined, which means it was of

use neither to Aborigines nor miners nor anybody else, but that is because High Court judges never know anything about economics. Leaving aside what I believe was the stupidity of the court in that case, they came up with something that changed it and presented a lot of anomalies. I would not quarrel with their decision as it related to Eddie Mabo. It seemed sensible to me, but not as it was extended. A lot of people would be in that boat. The only point I am really making is that there is no hard line. A line has to be drawn.

**Mr BYRNE**—There needs to be some level of definition in the matters that you have raised there, because they are looking at issues like legislated duty of care. I asked a previous witness, a government agency, whether or not it was contemplating this and there was a very vague response. But certainly my understanding is that governments are actively considering that.

**Mr Hyde**—Yes.

**Mr BYRNE**—If they are, then surely, as Ian has been pointing out quite rightly, they have to look at clearly defined rights. Everyone that we have spoken to, including the key stakeholders like the NFF, say that there is no clearly defined right and that is creating, as you have said in your submission, a great level of ambiguity that is being exploited by government agencies and is generally, from what I can find, to the detriment of the farming community.

**Mr Hyde**—The best thinking that I know of in this—and I am not sufficiently well read to know it all—comes out of the United States. I cannot recall the name of the author at the moment.

**CHAIR**—It is not Professor Anderson from Montana University, is it?

**Mr Hyde**—Anderson is very good. I know Anderson personally. No, this guy is more relevant to the question here in that he is a lawyer. Anderson is essentially an environmental economist. Getting world expert opinion on it would cost nothing compared to what is at stake. The principles do need to be spelt out, and people who draft the law need to make the distinction between a difference of principle and a difference of fact. 'Where is the existing property right at the moment?' is a question of fact.

**CHAIR**—That is what I was getting to the definition of. If you could get that defined, then you start to understand some of the rest of it.

**Mr Hyde**—Yes. You will not in statute define the fact ones completely. I am not saying that you should not make some attempt at it, but be cautious. There will need to be a lot of interpretation. But I think you can do better with the principle. Section 51(xxxi), as interpreted by the High Court, is pretty vague, but the High Court has given some substance to 51(xxxi). It is very useful. We have tried to get these blighters down here to put a similar constraint on themselves.

**Mr BYRNE**—Has the Western Australian government or its agencies ever come down and given you what its interpretations are of property rights and farmers' rights, et cetera, in a document?

**Mr Hyde**—Verbally they have quite often.

**Mr Gare**—It has been couched in a lot of discussion papers in terms of public interest.

**Mr BYRNE**—But nothing like a layperson's guide.

**Mr Gare**—No, nothing like that.

**Mr Hyde**—Correspondence with Holthouse. That is about the best. He is the town planning—

**Mr Gare**—State Planning Commission.

**Mr Hyde**—Land use planning.

**Mr Gare**—Some of the South-West delegates that you may be hearing from can probably give you more on that.

**Mr Hyde**—There is correspondence, but I think that is probably all. I am probably being a bit unfair in citing that one, in that he takes a more extreme view. He has enormous belief in the capacity of wise men, sitting over other people, to regulate society that we do not, by and large, share.

**Mr Gare**—The situation, too, in terms of land clearing in particular, may be clarified by some of the people that have suffered the most. There are initiatives afoot to go for damages claims. They have moved past compensation to the point where the advice is that they should be seeking damages because of the deliberate delays and the methods and costs to which they were subjected.

**CHAIR**—A class action.

**Mr Gare**—Not a class action, probably individual initially, but as a precedent situation. That is developing. It is so serious that it has reached that stage.

**CHAIR**—One of the things this committee is wrestling with—because we have had other evidence about duty of care and where a duty of care ends—is where the public expectation begins. I dare say that is all things to all people, but that is the thing we are wrestling with: what we see as being duty of care.

**Mr Hyde**—Let us kick it around, and bear in mind that Geoff and I will be talking off the top of our heads a bit, so we might not think in your terms. The expression 'stakeholders' is used quite a bit, and very loosely and, in my view, foolishly at times. There are two types of stakeholder. One has a right against you. My creditors are stakeholders. They have a right against me. My employees are stakeholders. They have a different set of rights against me. I am a stakeholder with my employees. That does not extend to a right to keep them in the job if they want to move on to a better one; no right at all.

The distinction I am trying to make is between those stakes to which rights attach and those stakes to which no rights attach. The distinction has to be drawn. Common law does pretty well,

I think, although I am no lawyer. If any of you people are lawyers, you can put your own judgment on that, but I am given to understand that it does. The rights extant ought to be the starting point. The duty of care goes beyond rights extant. There is such a thing as a duty of care but it can be grossly overused. The United States circumstances are an example of that. I am not entitled to go into Hay Street and fire a gun; I might hit somebody. The duty of care is quite clear in the matter, even if there was not a statute stopping me doing that.

On the other hand, I am entitled to walk into this room with influenza and you people will wear it. I am likely to do you more damage in the latter case. Precedent has something to do with it. The extent of the damage in the extreme seems to have something to do with it. What else?

**Mrs VALE**—Immediate impact.

**Mr Hyde**—Yes, the immediate impact—visible impact in part, yes. Often you do not know you have flu until a couple of days later.

**Mrs VALE**—We may not be sure we got it from you, either.

**Mr Hyde**—No. You would have trouble suing.

**Mr BYRNE**—Just to cut across you briefly, could you make a comment on governments employing the precautionary principles?

**Mr Hyde**—There are lots of precautionary principles around. As originally defined by Bruntland, I think it makes a bit of sense. Most of the formulations since that date, including those adopted in most places in Australia, we would not agree with. We do not think they, in the end, are understandable even.

**Mr Gare**—We have seen evidence of the use of it in Western Australia, probably to the satisfaction of some and dissatisfaction of others, but certainly the delegation from Augusta-Margaret River may discuss Scott River, which is a classic example of a need and a potential to develop quite a substantial broadacre farming situation where the precautionary principle applied basically on water and clearing use, and the potato processing opportunity disappeared. It suited some and it did not suit others. It was based largely on precautionary principles through the documents.

**Mr Hyde**—In the end you have to apply discount rates, and if you do not, it is nonsensical.

**Mrs VALE**—When you talk about duty of care, there are also reciprocal responsibilities, or the rights of the landowner. I did ask the members who were representing the West Australian government agencies earlier this morning if, when they do make an adverse decision against the landowner about the viable use of his property, the government agencies actually advise the landowner of his rights or the options that are available to him at law. We were told here that, yes, they do, that they are actually given a list. I think we would have to read the transcript, but my understanding was that they were given a sheet of paper with a list of their options on it. Is that your experience, Geoff, with your members?

**Mr Gare**—It depends on the agency and on the situation. We have situations that range from, currently, one in Pinjarra where there are water pipelines being trenched through farming property, where the agencies have not notified the individuals. Particularly where changes are involved, there is no discussion of compensation. In fact, there is a denial of it, or, 'It will be sorted afterwards. If we come on first, we will use all the powers we need to get on your property and then we will sort it out later.'

There are instances where they have obviously declared the advantage of going onto private property rather than to go through crown land because they face less of a prospect of opposition from the green movement if they go through a farmer's place than if they go through crown land.

**Mrs VALE**—Would you say that perhaps in some circumstances, when it comes to a government instrumentality making adverse decisions against a landowner, there could be an element of bureaucratic bullying? I do not want to put words in your mouth, of course. I just want to try and get the picture for the record.

**Mr Gare**—It is quite obvious that in some instances it is almost as if they decide they need to acquire land, so the decision is made as to which is the most appropriate agency to get it. They are sent in and, as John would tell you, once you remove one right from the bundle, the rest become diminished. You can look at cases, particularly where farmland is required for urban and state development—and Pinjarra again is another classic—where people's farms have just become thoroughfares for pipelines and powerlines and things like that, virtually with no compensation, and with, in many cases, contempt once they express concern or try to suggest an alternate route or suggest that, instead of taking a one-acre belt for five different agencies, they all got together and maybe took three or four hundred metres. They then become identified as troublemakers and the full force of the law is applied.

**Mr Hyde**—They took a whole strip off my property to plant trees on for the passages of birds and so on. I was adequately compensated and have no complaints there, but there was a thumping great railway reserve not used next to it. They found the railways department too difficult to deal with, so they came and took land from the private land-holders, paid us adequately for the land—no quarrels—but it cost the taxpayer an unnecessary fortune because one department could not deal with another.

**CHAIR**—I want to deal with one point that you raised. We talked about compensation for people acting in the public interest and managing land for an environmental result, and you said, and I agree with you, that if you just do that, then people will find all sorts of ideas of how they can get the money. Not just farmers, of course: you put out a pot of honey and the ants crawl all over it.

**Mr Hyde**—Of course.

**CHAIR**—Why couldn't we use the usual business principles, so that if the government says, 'We want a certain area of land that is to be managed in a certain way,' they call tenders?

**Mr Hyde**—Exactly. It is not done that way, I suspect, because people want to impose their own views on how it is done, but I would not hesitate to agree with you that that is the way to

do it. It is the only thing that stops corruptibility in the public sector, apart from anything else. Give yourself, as politicians or bureaucrats, too much discretion and you will be corrupted. We are all human; this happens to us. You should call tenders.

**Mr BYRNE**—Is there some merit in creating an independent agency that then conducts its own assessment? There was some evidence we received today, where if a farmer disagrees with a government's assessment about that sort of use of land or its potential usage, et cetera, that farmer then has to furnish out of his or her own pocket a counterbalance, but then the government makes the decision. Shouldn't there be some independent body that then makes a decision?

**Mr Hyde**—The rules for the agency have to be laid down by statute, and they have to be quite constraining because it will get a life of its own, and one of those rules must be that all evidence is taken in public—all. No commercial-in-confidence, ever.

**Mrs VALE**—John, following on from Anthony's suggestion, do you have an ombudsman here in West Australia in the state government?

**Mr Hyde**—Yes.

**Mrs VALE**—Is there any recourse for some of these decisions to be referred to an ombudsman?

**Mr Hyde**—The difficulty is that the law is drafted to give these people enormous discretion. We are not complaining about illegal action. Action that we believe is improper in spite of the law is what we are talking about.

**Mrs VALE**—There is almost an air of immorality about it.

**Mr Hyde**—Mostly not. I do not know whether hubris is a moral issue or not, and there is plenty of hubris around. But mostly not. My tendency, in fighting bureaucrats and so on, is actually to get to like the people. I do. But they come at it from a different angle and it is the fundamental understanding that is not there.

**Mrs VALE**—But, John, surely if you are going to alienate someone's land you are, therefore, going to impact on the amount of living they can derive from that land. It does get down to a question of a kind of human morality. You are really depriving that person of not just lifestyle; you are depriving them of an income, which is a livelihood.

**Mr Gare**—It is accountability of process. That is what is lacking.

**Mr Hyde**—It is accountability. The laws that apply to private property and theft in the private sector ought to apply to the public sector, hot war aside.

**CHAIR**—Thank you.

**Mr Hyde**—We had a conference that we ran ourselves in which some people spelled out things fairly well—others did not. Do you want those proceedings dropped in?

**CHAIR**—Yes, we would like to see them.

**Mr Hyde**—Okay. Thanks for your time.

**CHAIR**—Thank you.

[11.51 a.m.]

**ENGLISH, Mr Garry Hilton, Spokesman, Land Use and Conservation, WA Farmers Federation (Inc.)**

**PARKER, Mr Douglas George, Acting Executive Director, WA Farmers Federation (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 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 have your submission, but would you like to make an opening statement?

**Mr English**—Yes. Our opening just builds on the way farmers treat the environment in this state. Point No. 1 points out and acknowledges that there is an enormous amount of work being done on a voluntary basis. Most farmers, particularly our members, are very supportive of looking after the environment. It is their livelihood and their future, and that of their children as well, so they are putting a lot into it, and that should be acknowledged. When you go beyond that, where the capacity of landowners to take on board some of the impositions that are placed upon them, that needs to be recognised. If it starts impacting on their operations, their lifestyle and their capacity to earn a living—and it might even be outside of their field of interest, for instance—there needs to be some support measure.

I am not necessarily going down the line of pushing for compensation. That is one measure, but there are a lot of other things that could be included which assist landowners to look after the conservation for the public good. It is a balancing act, really. That is the thrust of our paper. We are not anticonservation. In fact, we are very supportive of conservation, which I think goes somewhat against many other agripolitical organisations in Australia, seeing some of their releases. In fact, it makes me embarrassed to put my hand up as a landowner.

**CHAIR**—Mr Parker, do you wish to make any statement?

**Mr Parker**—No, thank you. Mr English has been the architect of the submission.

**CHAIR**—All right. One of the questions that we have been asking is: how far does this duty of care extend? You have said that you respect the fact that there are environmental issues involved and farmers are involved in that, but how far does that go? If, for instance, you had a property in the upper reaches of a salinity basin and all of a sudden the government—or the people, I suppose—decided that your property needed to be reafforested, how would you react to that?

**Mr English**—That is something which we are debating at the moment, certainly at a regional level. It does need to be debated. It is quite an issue as to whether the person at the top is contributing to the problems of the person at the bottom, and how we find a balance. I do not have the answers at this stage It is very contentious. It is the same as the person who is causing water quality problems, particularly in basins like the Murray-Darling, which supplies water for

Adelaide, and how we find this balance. It is going to be very difficult and that is what governments and community and everyone in between is grappling with at the moment. I cannot really say how we could handle regulating the person at the top of the catchment to protect the fellow at the bottom. I do not think we have an answer at this stage.

**CHAIR**—Do you think there are adequate discussions or adequate availability of input with government to try and assess some of these things, or do you think government is just imposing laws over the top?

**Mr English**—There tends to be a top-down approach, certainly not with support from the people at the bottom—the land-holders and stakeholders or whatever you might like to call them. That happens, but equally government is driven by community, and it could be driven by other lobby groups who have a different perspective. They may be very supportive of doing that. I do not think governments necessarily impose upon land-holders without having some sort of support; otherwise, you might see the debacle that has happened in the last couple of weeks.

**CHAIR**—Do you think the lobby groups would have a more moderate view if they had to pay some of the costs?

**Mr English**—I surely do think so. Some of our suggestions are that we should have some sort of assistance and that that should be spread across the community, and, yes, they may think differently about it then.

**Mr BYRNE**—Does that mean some sort of environmental levy that could be incorporated? Is that something that you are suggesting, or not?

**Mr English**—The environmental levy has been floated, certainly in WA, as recently as last week during the elections. One party suggested a salt levy on every loaf of bread that was sold. I am not supportive, and our organisation is not supportive, of that, unless you can show that it is going to be very transparent and the collection is going to be very efficient. There are a lot of problems with these levies, but it is a way of doing it. WA actually has almost had a trial run of this. Three million dollars came from the Water Corporation and went via the state salinity council for projects on the ground. That was money which came out of Water Corporation's profits. It could be seen as a water levy to support managing water resources, so there is already a trial run of almost what could be called a levy. It needs to be very broad-based so that everyone is contributing, though, because we all benefit. I have some sympathy with an environmental levy, but I am very cautious about supporting it much more than just initially saying, 'Yes, it's worth looking at.'

**Mr BYRNE**—People from the cities have been saying that the farming communities should be adopting certain practices. If you are implementing a levy, doesn't that say, 'There's a cost to this,' which then increases the awareness of the scope and the amount of work that has to be done and the burden that is being borne disproportionately by the community implementing these sorts of measures?

**Mr English**—I sympathise with what you are saying, yes, and it brings it home to everyone. In fact, when you are looking environmental good or public good, really everyone is involved. Unfortunately, some see it as not their patch, and not impacting on them.

**Mr BYRNE**—Would you agree that really what is happening with respect to the conservation measures that are being urged on governments is that the farming community and farmers are the ones that are bearing the disproportionate costs, both in personal and financial terms, and that, in comparative terms, the people in the cities are not necessarily making the equivalent contribution?

**Mr English**—I think there is quite an imbalance there at the moment and, if we really want to progress, we do need more support out there. We see a small amount of support from the Natural Heritage Trust, for instance. That assists landowners to implement measures, but I do not believe it goes anywhere near far enough. In this state just recently we have had an environmental protection policy for the wetlands of the Swan coastal plain which caused an enormous amount of heat. I am very sympathetic to looking after wetlands, but our members in that area that had wetlands were very concerned that they were going to be imposed on and impacted on by this policy, which was pretty draconian. Frankly, I would rather see a cooperative approach than a heavy-handed government approach which says, 'This is going to be registered and you will do this. If it impacts on your business, there's no compensation, there's no recognition of the impacts.'

**CHAIR**—Negotiate some management agreement instead?

**Mr English**—It would be a far better way to go, using a cooperative approach, and it applies not only to wetlands, it applies to the whole range of issues. If there is a better understanding of the value of the environmental issue that you are looking at, if there is an education process, if there is a little bit of support, it would be a far better way to go than the heavy-handed approach of government saying, 'You will do this.'

**Mr BYRNE**—What level of consultation occurs? Can you describe an instance where someone might front up and say they want a piece of land, and it might be that they have identified some flora or fauna or some other sort of usage? How are farmers notified? What generally happens? How much negotiation is there, and how much information is exchanged?

**Mr English**—I am not aware of the exact process, particularly with rare and endangered, other than that once you have it, it is protected and you will protect it, and there is no easy out.

**Mr BYRNE**—But if you have a disagreement, what is your mechanism then for appeal?

**Mr English**—I am sorry, I do not know. It is a major concern, and I have seen a release from another state organisation which says, 'You shut up about it. In fact, you get rid of it.' That is irresponsible and immoral, frankly, and a negotiated approach would have been a far better way to go.

**Mr BYRNE**—Yes. If farmers go through this negotiation, do they invariably wind up losing, or is there some sort of equilibrium there?

**Mr English**—In many cases they would lose by trying to go through the processes, which are dragged out. I think the previous speakers were going through a little bit of this, too. At times you can be drawn away from your business of making an income, so that is a problem.

**CHAIR**—You heard what I had to say with the previous witnesses on the issue of property rights. What would be your opinion on whether we do need a resolution as to what people's property rights are by getting them defined in a test case?

**Mr English**—I am not quite so antagonistic towards testing our rights. I believe you have a right, when you purchase freehold property, to earn a living, but I think you also have an obligation which goes with that right to manage that land and the environmental aspects of that, whether it involves native vegetation or wetlands or waterways—things which are more a public good—and you have an obligation to manage that whole piece of land for the future, not just for your own individual gain.

**CHAIR**—Given the scenario I gave you earlier where, by statute, a parliament can say to you, 'We are going to revegetate your property,' wouldn't you want to know about a property right then?

**Mr English**—That would be a problem, if you were being imposed on by governments, yes. You just cannot lose your bread ticket, frankly.

**CHAIR**—But at the present time governments can do that. I do not know what the law is in Western Australia but I certainly know in New South Wales a planning law can be put over your property which says you cannot use it any more for what you were using it for.

**Mr Parker**—That is the same here.

**CHAIR**—It is the same here, is it?

**Mr Parker**—It can be done that way, yes.

**CHAIR**—Effectively, your right has been alienated.

**Mr Parker**—That is right, and certainly a lot of our members do have that concern, whether it is through water legislation or planning legislation. That can interfere with their future livelihood.

**CHAIR**—Yes.

**Mr Parker**—Can I just go back on a couple of points which were raised. I believe there is a far greater awareness now of the problems that are being faced in the farming community through great focus by the media in the last 18 months, particularly on salinity. Whereas they might have driven through the country before and said, 'That country looks pretty poor,' now they say, 'That's salinity.' That awareness is there now. When the salinity levy was first raised 18 months ago there were a lot of letters to the editor saying, 'That's not fair,' but I would

suggest that perhaps, now that people have had a lot more chance to focus on it, they might be thinking a little bit differently.

The other issue is that we certainly have some support through our organisation for the conservation movement and we are looking to work a lot more closely with them than perhaps we have in the past. That is something we are actively looking at doing. Obviously, there is great support for the green movement in Western Australia, and the recent election evidenced that. I think if you link that through with the public awareness that is coming through, they dovetail into each other.

**CHAIR**—Are you satisfied that the government decisions on these environmental issues are being taken on good scientific evidence, or do you think they are reactions to public opinion?

**Mr English**—Some would be and some wouldn't. As an example, I use the clearing issue, which has been fairly debated in WA for quite some time. Initially there was a 20 per cent rule which said, 'Twenty per cent of your property, 20 per cent of your catchment, 20 per cent of your shire should be left under vegetation,' and, if you did not match that, you could not get approval for clearing. I do not believe that the 20 per cent rule was scientific; it was a figure that was pulled out of the air.

**CHAIR**—Arbitrary.

**Mr English**—It was very arbitrary.

**CHAIR**—And it is being implemented arbitrarily, too, isn't it?

**Mr English**—Yes.

**CHAIR**—We have had evidence that people who have nowhere near 20 per cent left cannot clear.

**Mr English**—That is because they are in catchments which have been well and truly overcleared.

**CHAIR**—They have to bear the burden for someone else?

**Mr English**—That is right. And then there are the inequities that come in, and there is no room for compensation. In fact, very few acts and the regulations that go with them allow for compensation.

**CHAIR**—Are you happy with that?

**Mr English**—I am certainly not if it goes beyond the scientific basis. I do not think people should be compensated for causing land degradation. If you know what the magic number is for remnant vegetation, for instance, being left in a catchment which will solve your water balance, then anything over and above that I think people should be compensated for. If you are clearing

and you are under that magic number, it is that balancing game, but I do not think we have the scientific—

**CHAIR**—That is almost an impossible position, though, isn't it?

**Mr English**—Exactly.

**CHAIR**—Our forebears did not know that by clearing land they were going to cause a salinity problem.

**Mr English**—That is right.

**CHAIR**—We do not know if we are doing things now that are going to cause something 50 years down the track. It is one of those situations where I dare say we do need a lot more scientific evidence.

**Mr English**—Yes. It is strange that WA has gone through this overclearing—

**CHAIR**—Not just WA.

**Mr English**—I know, but we are suffering now as a result, and yet we have states which are still wanting to go ahead and wanting compensation. The evidence is there now and I believe that we as land-holders have a responsibility, as much as the community outside of agriculture, as well as governments. We all have the responsibility. I do not want to point the blame at anyone. There is a problem, but we are still not recognising it in some areas, where we say, 'Hey, we still want it cleared.'

**CHAIR**—Many states had leases, a condition of which was, 'You must clear the land, otherwise you haven't got the lease.'

**Mr English**—That was the same here.

**CHAIR**—Until the last 10 years.

**Mr English**—We had conditional purchase and, frankly, my first block had to be cleared at 20 per cent a year for five years.

**Ms CORCORAN**—I am interested in the practical side of compensation. If we accept that some compensation is reasonable, do you have a view of how that should be managed?

**Mr English**—In WA I thought we were managing it very well until this recent election. Since Queensland also got into the debate, compensation for clearing has undone what I believe has been instigated in WA very well over the last, probably, 15 years, where clearing has been tightened so that the only clearing which is allowed is where it is reasonably safe. I do not know that compensation was really an issue here. We were probably looking at 10 people that should be compensated because they are really imposed upon and the rest I really believe are outside of that imposition.

**Ms CORCORAN**—I was picking up on a point you make in your submission where you said that compensation needed to be considered.

**Mr English**—Yes.

**Ms CORCORAN**—In those cases, I am looking for a practical way. Maybe you have not had a chance to, but have you thought through yet as to where compensation is regarded as necessary or desirable and what is the process?

**Mr English**—There is certainly room for trade-offs. It does not necessarily have to be dollars in the hand. If you have a property with a very large amount of remnant native vegetation on it and it is seen as worth saving for the broader public good, there should be room for that land to be purchased and put with the estate, and then adjoining or nearby cleared land could well be purchased. There is plenty of cleared land on the market at the moment which could be purchased. That is a trade-off. That is probably a better way for people who want to stay and manage land and farms. That would be a better way than being lumped with a block of bush on the property, making them unviable.

**Ms CORCORAN**—Yes. Thank you.

**Mrs VALE**—Mr English, that point you raise is exactly one of the points that has been put to us, especially the fact that, even though government agencies may provide fencing and the farmer has to put the fencing in to fence off certain land that has been assessed as being essential to maintain or to retain, that land, once it is fenced, then becomes for all intents and purposes exorcised from the property of the landowner; not only that, but he also has to pay rates on that land even though he cannot use it any more. It has been put to us that that is a very valid case for compensation for the farmer.

**Mr English**—Yes, very much. That is why I have mentioned in our submission the Native Vegetation Working Group report which was done for the state. That tries to pick up on all the impediments to retaining native vegetation on a property. Rates is an issue. Maintenance of the vegetation is an issue. You have to keep ferals and weeds and all those sorts of things out of it. Managing native vegetation does not earn the landowner anything. In fact, it is quite a problem and a cost.

Sure, we have had a state support scheme where you got $1,200 to put up a fence, but you still had to erect it yourself, and that was a cost. But the Native Vegetation Working Group report goes beyond that and is trying to get these blocks of land, where possible, exorcised out of the property and sold as a bush block. There are a lot of people who would like to own just a bush block, and there could be a parcel of cleared land which goes with it, adjoining, so that they could live there and enjoy their lifestyle block, for that matter.

**Mrs VALE**—Yes, it is not without a market.

**CHAIR**—Can I take that one step further. How many people who live in the city do you believe would be prepared to take over some of these environmental blocks, maintain them and pay the costs?

**Mr English**—I am surprised at the interest that there is. You do not need a lot. There are not a lot of farms in Western Australia and it does not take too many, but if anything is near major population centres, there are quite a few people who have a very keen interest, and I know of some who have actually done this. If you tapped into Perth, there are probably any number of people who would take up land within reasonable proximity. I do not know how you would get on if you were out the back of Southern Cross or right out on the outskirts, but certainly within reasonable distance—

**Mrs VALE**—Within driving distance.

**Mr English**—there is an opportunity for people to enjoy their lifestyle blocks.

**Mr Parker**—There is a Bush Brokers scheme that has been established, but I do not have details with me and I could not really elaborate too much further on it. That certainly was included within that Native Vegetation Working Group report, and there are details of that, if you have a copy of that report.

**CHAIR**—The Bush Brokers scheme?

**Mr Parker**—Yes, which does capture what you are talking about.

**Mr English**—It is organised between the Real Estate Institute plus landowners plus other interested people to try and set up this Bush Brokers scheme. It needs support from the Minister for Planning, for instance, because normally they are very reluctant to carve up rural properties and produce more and more of them. But it is worth pursuing.

**Mrs VALE**—Yes.

**Mr Parker**—I read yesterday a Ministry of Planning newsletter which said that they are now looking at the subdivision of bush blocks as well, they are prepared to approve them, so perhaps I could forward some details on to the committee on that.

**CHAIR**—Yes.

**Mrs VALE**—Mr English, were you happy with the recommendations made by the Native Vegetative Working Group? Is there anything else you would like to have seen recommended?

**Mr English**—No. They were very extensive. It is getting funding from state resources, obviously, and I think they were also hoping for Commonwealth assistance, which is part of the Prime Minister's $700 million plan. There is a small allowance there for this sort of thing as well. Yes, I was very happy with that. The federation was very involved with supporting that work.

**Mrs VALE**—Thank you.

**CHAIR**—Thank you very much for your evidence, it was quite interesting, and we will follow up on a couple of those reports. We have a copy of one, anyway, so we can chase that up.

**Mr English**—Thank you.

**Proceedings suspended from 12.17 p.m. to 1.41 p.m.**

**LOGAN, Mr Philip John, Senior Valuer, Egan National Valuers (WA)**

**CHAIR**—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 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 from you, Mr Logan, but would you like to make some opening comments before we ask some questions.

**Mr Logan**—Yes. Thank you. My submission made to the inquiry in June 2000 was from a valuer's perspective, from my observations and experience in valuing development land and, in particular, reference to and knowledge of some cases where land has been affected in value by environmental restrictions. My personal background is that I have been a full-time real estate valuer since 1973, when I commenced my valuation experience with a New South Wales practice. Over the past 25 years one of the areas I have continued to specialise in has been the valuation of compensation related property matters.

My submission to the inquiry focused on the Western Australian government's Bushplan and wetland conservation proposals. Bushplan is now endorsed by state cabinet as Bush Forever. There has been a considerable extent of newspaper articles written over the past two years which has highlighted environmental issues, mostly from a position of Save Our Environment. Occasionally one comes from the affected landowner and a position of 'This is my castle.' I have observed, sadly and quite often, that if a compromise is reached on a sensitive environmental property matter, both parties still feel aggrieved. The environment cause feels cheated and the property owner feels robbed. This friction is carried forward and ultimately what manifests is a lack of trust.

As a valuer I have frequently found that there is landowner animosity and distrust of government when it comes to property required to be valued for a public purpose. It is therefore from this position that land declared conservation often results in government and landowner conflict. I ask: should this be the case? After all, land is a real asset. If the asset value is fully recognised and guarantees are quickly put in place to protect the environment and each party's interest, then surely all parties would be more acceptable to the conservation goal. This would require that the landowner be promised a fair and just basis for establishing value in return for the land being immediately covenanted for protection.

There are many examples of land-holders acting in panic over the threat of an environmental restriction and proceeding to clear land with significant vegetation. Sometimes what is finally protected is second best in terms of quality. It appears to me that the conservation impact would be considerably reduced on land-holders if, through forward planning, the government publicly promoted the vision, established and declared fair principles for acquisition and protection, gave clear understandings and based good conservation on recommendations of an independent technical body after scrutiny of all relevant issues.

Furthermore, the statues should clearly enunciate the land value principles for land affected by conservation and a culture should be established so that the conservation is recognised as a

significant asset, one to be appreciated and treated as part of Australia that has been nurtured, protected and acquired as a public treasure and one that in general all Australians have contributed towards.

In order to bring about a change in attitude that considers conservation to be a significant public asset, the public at large have to be prepared to share the cost of conservation. There needs to be a change from the current circumstances and predicament of individual landowners suffering the penalty of denied opportunities and insufficient compensation. The Urban Development Institute of Australia, WA chapter, is on record for stating that the $100 million that the Western Australian government has reportedly set aside for Perth's Bushplan over the next 10 years is grossly undervalued.

It is obvious that the state government is underresourced in this area or, alternatively, the conservation will be achieved by other means likely to affect landowners significantly. The initiatives now announced in Bush Forever documents do appear to go some way towards trying to balance preservation of bushland and maintaining and managing some form of development. The iniquity, however, continues to be the constraint on potential urban development land without sufficient provision for adequate compensation.

Negotiated planning solutions for these landowners will result in a compromised outcome on development. There will be no fair test of value and no market for these landowners until an agreement is reached with the government through negotiations. The outcome is uncertain simply by the very nature of negotiations and it appears highly likely that the landowner will lose financially compared to the neighbour outside the Bushplan boundaries unless there is a compensation mechanism which recognises the constraint. It is not apparent in Bush Forever.

It is noted that some negotiated planning solutions in urban areas propose a cost-sharing arrangement relating to some acquisition of conservation areas. To some extent this appears fair on a neighbourhood benefit basis. However, in many cases, there is likely to be too much constrained land in the form of bushland and wetlands and thus a significant financial burden on landowners could occur if the cost of bush protection is to be shared by only a few landowners in a neighbourhood.

In fairness, surely the public in general should contribute to the bush retention where there is a benefit to a much wider community than an immediate neighbourhood. Again, this requires the test of fair, unaffected value to the landowner with a difference in affected market value representing the regional value that a government should be prepared to pay as compensation. If a collective means of contributing towards the environment is not found, then land-holders are going to continue to suffer the consequences of environmental restrictions, perhaps to a greater extent in the future.

**CHAIR**—Thank you, Mr Logan. Bushplan, I assume, was an act of parliament that identified certain areas to be preserved for urban bush, within the city, was it?

**Mr Logan**—I am not aware of it as an act of parliament that started it.

**CHAIR**—Started through the planning act?

**Mr Logan**—It generally started, from my understanding, from the green lobby movement and the general community wanting more conservation. I guess government then decided to take initiative and study which areas of remnant bushland were in the metropolitan area.

**CHAIR**—So they put out a map which identified area.

**Mr Logan**—They put out various maps and they studied things. It took from about 1997 through till the end of 2000, to become a document that eventually was endorsed.

**CHAIR**—Yes, so it is public now?

**Mr Logan**—It is public.

**CHAIR**—And is a proportion of that freehold property?

**Mr Logan**—Yes. There are publications that indicate to what extent. A substantial portion is in government ownership and obviously they are then saying, 'We have that protection,' but there is a significant area in private ownership.

**CHAIR**—In your experience what sort of devaluation occurs with that?

**Mr Logan**—It is hard to generalise because it really depends on the location. If the location is really at the front of urban development, then it can significantly affect it. What it does is take away the market to start with. I know in the area where I live in Southern River, 20 kilometres south of Perth, it is right at the front of urban development and for the last three years anybody in a site that was initially identified as Bushplan would not have a developer knocking on the door. That continues to be the case, and no-one would be interested in buying the land at fair unaffected value.

**CHAIR**—So the only buyer is the government?

**Mr Logan**—The government is not intending to buy it either. They are not promising to buy it.

**CHAIR**—They do not want to buy it.

**Mr Logan**—They are looking at different mechanisms in which they may protect it. In some cases they will reserve land under the Metropolitan Regional Planning Scheme. That reservation puts a responsibility on their shoulders to acquire it and they have acknowledged they will acquire it. I think that is mostly what the $100 million is for.

**CHAIR**—At what value?

**Mr Logan**—It will get to a grey area as to what the unaffected value is. It will depend on the land planning that has gone around that neighbourhood as to what alternate land use you could declare that land would have had. In some cases that is quite grey and that is why there are a lot of court cases.

**CHAIR**—Do you value land across the state?

**Mr Logan**—Yes, I do, mostly in the metropolitan area. I go down to Mandurah. I have some special projects that go further afield, such as Geraldton.

**CHAIR**—Have you seen government legislation across the state that affects what you see as the valuation of property?

**Mr Logan**—The legislation for public purposes remains the same legislation across the state. The Land Administration Act would deal with that, but my paper was basically addressing the fact that the government, I believe, with their insufficient funds are looking at means of protecting the environment virtually from Perth and beyond in the future by other means of protection rather than compensation.

**CHAIR**—By using government statutes to steal people's property?

**Mr Logan**—It seems that way, binding land use and environmental restrictions. Some of the court cases I have been involved in have been along those lines, where the government's argument is that it has no potential because it has an environmental restriction. We have always known, particularly based in New South Wales, when I first learnt valuation, that you look at it unaffected, you take away the public reservation and the public effect and say, 'What would have been the land use otherwise if it hadn't been a requirements for public purposes?' That is what we used to call the unaffected value. You looked at the neighbourhood and if the neighbourhood was residential or urban, the valuation was on that basis. Government are trying, it would appear, to say if it has bush on it, or if it has wetland on it, or it has other sort of environmental restrictions, it never had potential to go to urban or residential uses. That seems an anomaly. That seems to be an unfair position, because a lot of the time good planning is based on location and an urban growth that naturally occurs.

**CHAIR**—Have you been successful in those court cases?

**Mr Logan**—We are still waiting for the decision.

**CHAIR**—How long ago was that?

**Mr Logan**—It was suggested it would be March, although there was some indication that the judge would—

**CHAIR**—No, since you started the cases, how long did it take?

**Mr Logan**—The court case?

**CHAIR**—Yes.

**Mr Logan**—I first looked at the valuation I think around about 1995. It went to court in the beginning of 2000 and we are waiting for the decision in the next few months.

**Ms CORCORAN**—Your paper raises the problem of how you value land that has this imprint on it.

**Mr Logan**—Yes.

**Ms CORCORAN**—Do you have any solutions to offer?

**Mr Logan**—More as really a case-by-case basis. I could take my local area and say, 'Well, there's Southern River.' The portion where my land is actually is part of a Bushplan site of about 80 to 100 hectares. A significant portion of that was zoned urban under the State Planning Scheme in 1994. Then in 1995 they brought out a planning legislation bill that required local authority to bring their local schemes into compliance with the state scheme. It had a certain time limit, but that seemed to be ignored. Here we are again, seven years later, with no amended local authority scheme because of the Bushplan issues that have ground the whole thing to a halt and changed the ball game really.

To answer to your question, I remember some land near my property that was valued back in 1994 at $1.4 million. The developer got caught up with the whole Bushplan issue. In the end he had to negotiate an outcome well before these documents had been finalised. He gave up 30 per cent of the land for nothing. That land then sold for $900,000, about six years later.

**Ms CORCORAN**—The remaining two-thirds or—

**Mr Logan**—No, the whole property. The $1.4 million six years later sold for $900,000 as a result of the consequences of the 30 per cent reservation or 30 per cent giving up for nothing.

**CHAIR**—So he did a deal, with whom, the planning department?

**Mr Logan**—The government did not buy it. He did a deal to get approval. The approval restricted it to 70 per cent. He then sold it on the open market and cut his losses and quit.

**CHAIR**—Is there any evidence that you would have that shows the valuation of, say, a neighbouring property before and after these restrictions were put on?

**Mr Logan**—I think that is a good example, Yes. I would have to give it some thought.

**CHAIR**—If he was able to develop that property, what was the potential?

**Mr Logan**—It was residential. It would have been alternative residential land. What he has land use over—70 per cent is now residential. Nearby, probably a matter of 300 or 500 metres north, in a different suburb, Canning Vale, the values paid there are between $250,000 and $300,000 a hectare.

All of a sudden his land is only worth $150,000 a hectare because everybody is shying away from it. It already has been restricted, and the question is how much more restriction will there be on subdivision approval through the difficulties associated with having to maintain that 30 per cent that is left.

**CHAIR**—And it was zoned residential?

**Mr Logan**—Yes.

**Mrs VALE**—Why did he have to reserve 30 per cent of it? It was conservation land.

**Mr Logan**—It was land under the Bushplan.

**Mrs VALE**—That was worthy of conservation.

**Mr Logan**—That is right.

**Mrs VALE**—When he did his development he only developed 70 per cent of the total area.

**Mr Logan**—He has not developed it yet?

**Mrs VALE**—No.

**Mr Logan**—But he applied to get a subdivision approval and that process was held up with various protests.

**Mrs VALE**—Until he surrendered.

**Mr Logan**—He could not get any environmental approval on what he wanted. Certainly the legislation has changed a little bit, whereby zonings go through the process of environmental approval, but before 1994-95 that was not the case. There was always a little bit of a grey area there. It is just that changing circumstances of environmental requirements caught him in a situation where the Minister for the Environment said no.

**Mrs VALE**—I understand. When he surrendered 30 per cent of his land, I assume this was on his rezoning application.

**Mr Logan**—No, it was not a rezoning. It was already rezoned. It was all zoned residential.

**Mrs VALE**—But it was deigned to be worthy of conservation.

**Mr Logan**—He just could not get the subdivision approval through with the Minister for the Environment.

**Mrs VALE**—Did you say that 30 per cent was actually then on-sold?

**Mr Logan**—No, the 70 per cent was on-sold.

**Mrs VALE**—The 70 per cent was, so that 30 per cent is still intact.

**Mr Logan**—In technical terms the whole property was on-sold but, from a developer's point of view, he knew he could only develop 70 per cent.

**Mrs VALE**—I see. That 30 per cent is still left intact and natural.

**Mr Logan**—Still left. That is right, yes, it is. It has not been acquired; it is just left as a no-go zone.

**Mrs VALE**—That is part of the residential development curve.

**Mr Logan**—Yes, it is a swale running through the middle of the land, so it severs the land, and there will be issues to do with how you create subdivision on the balance of the land and have adequate drainage without that drainage affecting the environmental value. It goes to more than just losing 30 per cent of your land for development purposes; it goes to some penalty costs associated with looking after the conservation that is required.

This conservation in most people's eyes—and I know this is all very subjective—is that this is land that has been bulldozed for years on the Swan coastal plain because it does not seem to have aesthetics to it; it is quite scrubby sort of country. But the principle from the environmental view is that there needs to be a 10 per cent retention of vegetation types, and it is called the Southern River vegetation type that was bordering on only 10 per cent left in remnant state. That was one of the reasons why they said, 'We want to keep it.'

**Mrs VALE**—It is probably like a kind of heathland, is it, Mr Logan, that also has a lot of birdlife and smaller animals?

**Mr Logan**—It does have birdlife. That is right, yes.

**Mrs VALE**—It offers a habitat.

**Mr Logan**—That is right, yes.

**Mrs VALE**—But if land does have a certain conservation value, surely it is worth while protecting it.

**Mr Logan**—I agree with that, yes. But it is very confusing when you walk the land with a botanist, sent out by the government, who says, 'This won't be managed in the longer term. These environmental values will subside and go away and it will be in too much conflict with urban development around it.'

**Mrs VALE**—And there was no compensation for this developer at all?

**Mr Logan**—He was virtually the frontrunner of Bushplan before Bushplan became endorsed.

**CHAIR**—If, in fact, that constraint was put over the land at that particular time, what do you see as fair compensation?

**Mr Logan**—I can see that there are benefits in being able to retain some bush in an urban environment that gives the balance of the land, when it is developed, some higher value. There is evidence that demonstrates that where you are overlooking reserves, if they are passive

reserves, the lot values can be higher. You have to almost look at it on a case-by-case basis and, if you were to give any up, our normal requirement would be to give up 10 per cent in a subdivision.

If you give up 20 per cent in some areas, you might get some extra benefits and therefore the value of the land may not be significantly diminished. It may depend on marketing or the design, or those sorts of attributes, so long as that 20 per cent of bushland can be maintained. For example, in the Southern River area again it is banksia woodland and, once you start to play around with banksia woodland, it all starts to die on you and you cannot keep those environmental values running very well. But in the case where you may have some big tuarts and all sorts of very attractive vegetation, and you keep the 20 per cent, that landowner may not suffer a great deal. But there must be a cut-off point, depending on the location and the circumstances of the area, whereby they do lose financially.

That is where I say there is a regional test. It is a test where the Australian public, or the state public or a wider community, should make contributions if they want to preserve that quality of environment. I am challenging the principle of establishing a rule and then changing the rules, establishing a zoning, some zonings being in place for six years. There is a very high and reasonable expectation of these landowners that they have money in the bank; that they have a superannuation policy; that they have a real asset. How can you go along and change the rules and say, 'Hang on, we want to keep that bush and we're not going to pay you anything for it'?

It is more than just keeping the bush. You may have some very expensive development costs incurred by the developer to maintain that bush. Like any other investment, it has to have a return. If it does not get a fair return, it loses value.

**Mrs VALE**—You would have a lot of costs to develop it, too, even before you get to the stage of putting in an application for either rezoning or for rebuilding, in just preparing everything.

**Mr Logan**—Waiting six years for an outcome is costly to the landowner. His superannuation suddenly has not grown. He has been sitting there marking time.

**CHAIR**—You said there were protests about the development that triggered this. Was it that development or was it just a protest around the place for more urban bushland? I thought I heard you say there were protests about the development. I was wrong, was I?

**Mr Logan**—There have been numbers of protests about Bushplan.

**CHAIR**—Against Bushplan?

**Mr Logan**—Against Bushplan's principles.

**CHAIR**—I thought you meant there were protests against the development that triggered it.

**Mr Logan**—No. There were protests to EPA by not giving approval; that sort of thing.

**CHAIR**—Yes.

**Mr Logan**—When approval eventually came through there were even further protests by The Wilderness Society in terms of approval that had been given. It really was muddying the waters of where the land security was whilst you marked time waiting for the green light of government to go ahead. In the end, on that particular example in Southern River, the developer believed he had his rights and moved in and demolished very quickly, and just left the 30 per cent that he was required to leave before there was anybody else on the sidelines protesting that the government should not have given that approval.

**CHAIR**—There have media reports of some of that, where people have moved in and just cleared. Is there any penalty for that?

**Mr Logan**—It is a grey area under the act. Under the soil conservation act there is a requirement where you can only clear a hectare at a time—it does not really say how often—otherwise you have to apply for clearings rights, et cetera. There was one case in Canning Vale just recently where quite attractive wetland vegetation was demolished by, obviously, people associated with the land ownership, and the community is up in arms about it. The local authority is trying to raise funds to fight it in court, et cetera. I do not know what the outcome would be, but I have some knowledge about the developer's position and point of view, and he believes he has managed to legally do what he has done.

Again, that is an example where, if government had clearly established the rules that said, 'You will not be penalised. This is a treasure; we will buy it. Developer contributions will pay for that. Don't be fearful,' then there would have been the best conservation left, rather than having to turn around and do a secondary rehabilitation of that land.

**Mrs VALE**—Could I ask a question to clarify. Under the native flora legislation you can clear an acre of land at a time or, if you want to clear more than acre, you have to get permission.

**Mr Logan**—It is a hectare of land.

**Mrs VALE**—It is a hectare. You said there was no time frame on that.

**Mr Logan**—There does not appear to be. I had to look at that issue and, without seeking professional legal advice, from what I have read there is no definite time about it. What you can do in terms of that clearing is a grey area. Obviously, if you moved in and cleared your whole property straightaway, then they would be applying the penalties under that particular act.

**Mrs VALE**—Yes.

**Mr Logan**—But if you were to take away a hectare every year, I think they would see that as the natural improvement of your land, a certain land right that they would perhaps have a hard time fighting in court against you.

**Mrs VALE**—I understand. It could take a farmer a long time if they have 250 acres and they wanted to clear that.

**Mr Logan**—That is right.

**Mrs VALE**—They would not live that long.

**Mr Logan**—I have been in Southern River for nine years. I have nine hectares and I could have cleared it all by now, but you take a responsible attitude and you do not want to desecrate the environment.

**Mrs VALE**—The farmers that we have spoken to, particularly, are very conscious about preserving the land as best they can and they are, at their cost, putting in measures to make sure that they preserve the land as they have.

**Mr Logan**—Yes. I have spoken to rural valuers and they say, 'Look, the farmer has a vested interest. He wants to manage his environment in the appropriate manner. He won't clear all his land if he is a good manager.'

**Mrs VALE**—Yes, and also he wants to leave something to his children. That seems to be a very relative consideration for farmers. Thank you.

**CHAIR**—Thank you, Mr Logan, that is very interesting.

[2.07 p.m.]

**CHALLIS, Mr James, Vice-Chairman, South West Private Property Action Group**

**COULTER, Mr Ted, Secretary/Treasurer, South West Private Property Action Group**

**WREN, Mr Peter Alex, Chairman, South West Private Property Action Group**

**CHAIR**—I welcome the South West Private Property Action Group. 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. Giving false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. We have submissions, but would you like to make an introductory address or remarks?

**Mr Wren**—If we may. We have prepared a little bit of a comment. Each of us would like to handle certain areas and, hopefully, it ties in with the submission we had, and some resolutions to some of these matters can be highlighted, or the possibilities of proceeding. First of all, we appreciate that we have been able to come forward to a group such as this. It would have been helpful if, during the time that some of us have been in various farming groups and organisations, we had been able to come forward to legislate at a state government level here. As yet we have not.

On this issue of property, you can see by our name, the South West Private Property Action Group, forthwith we were not able to claim that we were a rights group because, in one of our early endeavours with the planning process here in this state, we had a meeting with the Minister for Planning and he was quite clear and unequivocally stated to us that, as property owners, under the Town Planning and Development Act 1928 we had no rights. That was part of the impetus for us to get together and say, 'Well, what is happening here?' At least I can state we have a limited ability to speak. That is one of the few freedoms we still have, and we are able to come before you then with these concerns. That is where we stand. We do not have to look too far to see other parts of the world where people are not even able to address these concerns, so we appreciate that.

I would like to make a statement about where this comes from in Western Australia. Approximately 7½ per cent of the land here is freehold. It is a big country. We have about 92½ per cent that is crown land, pastoral leasehold, but really you are talking about only 7½ per cent of the land being private property. Yet because of where the population lives, which is where the pressures are, because of the media and the community-minded members and the things have gone on with the environmental agenda, we find ourselves heavily impacted.

To give a brief background of our group, as you have seen in the submission, we have three main concerns. One is the protection of existing property rights—that is, rights and entitlements of land use that the landowner currently holds under zoning and common law. We recognise that, even though the planning minister has told us that we have no rights, other advice has stated, 'Well, you do have something. Don't give up.' We also are concerned that there would be

some right to compensation where those rights are eroded or diminished, or restricted by policy or regulation to local, state or federal government mechanisms, and that there is some establishment of an independent low-cost system of appeal, but of course those things are yet to come. This problem of uncompensated regulatory acquisitions, if you want to say, through policy or through legislation or discretionary interpretation by ministers or government agencies or their servants, is nothing new and it is happening worldwide. It is happening in the United States, it is happening in Europe, and we have seen it now here in Australia.

In the Court of Justice in Luxembourg in 1979 there was a case brought forward where there was a restriction of a woman who wanted to increase her vineyard plantings. Essentially, the court at that time stated:

Restrictions based on the general interest should not go further than needed and should not touch the substance of property rights.

That was in 1979 and it was before the global type of attitude had started to prevail in terms of what people could or could not do. The common theme that is experienced is the growth of government regulation that denies owners the legitimate use of their property for economic purposes. I think it is fairly fundamental that we realise that. Whether it is through land use or for amenity purposes, it is the denial of economic purposes, and that is the problem.

In our specific case, when we met with the minister it had to do with the promulgation of the Leeuwin-Naturaliste Ridge Statement of Planning Policy and I want to read on here because I clarify it. That represented for us an imposition on land use categories. An example is, they categorically brought out a principle of ridge protection and a ridge landscape amenity which literally took away our rural zoning on our rural land use. They just said, 'Your land has changed now. Your land is landscape and nature conservation.' We have come to feel that that is partial acquisition.

Earlier speakers talked about how it works; not just total resumption, but partial resumption of values and interests that are rightfully the land-holders. In more explicit terms, it is acquisition by stealth. That is the process. I do have a copy of this with me, but appendix 2 of the mechanisms for protection or conservation of landscape values to Leeuwin-Naturaliste Ridge Statement of Planning Policy reads:

It has developed a statement of planning policy that provides roles for both public and private property and protecting lands with high conservation and landscape values. In particular, the LNRSPP provides for negotiation with landowners to determine the most appropriate means to secure those high conservation and landscape values. It must be pointed out that the statement of planning policy is limited by section 5AA of the Town Planning and Development Act 1928 as amended. Whilst being the highest order of policy available to the Western Australian Planning Commission, it is not a planning scheme. It does not in itself provide for compensation. Implementation of the LNRSPP relies in part upon instruments under other statutes such as the Land Administration Act, Conservation and Land Management Act, the Environment Protection Act and the Soil Land Conservation Act.

So it is done with a lot of thought, a lot of purpose, from the standpoint of the gentlemen who would have been here this morning—the three would have been involved in this from CALM

and from the EPA and from the Water and Rivers and the other agencies. Basically speaking, from what we can understand, the policy is to be implemented through acts that already exist, that virtually restrict your land use now and forever. That is finished now, as far as the LNRSPP quoting is concerned.

One has to ask the question, 'Why is it necessary for landowners to negotiate upon instruments under the above statutes to secure that which they already hold?' In the case of private land, a land-holder already has 100 per cent property in these values, securing the entitlement. We already own those values. If they are landscape and nature conservation values in the view of the community or West Australian Planning Commission, why are they telling us that we need to go and negotiate with government agencies to secure those values, if we own them? That is something that seems to be part of the picture that they do not understand; people do not understand.

When governments act not to secure rights and property, which we feel is the case—they are not acting to secure rights; they are acting to muddle it—but to provide the public with some good, in this case nature conservation or landscape values, it is in effect denying the use of that property. Its effect is imposing a de facto restrictive covenant which prevents the owner exercising his right of legitimate use of the land for economic purposes. A restrictive covenant is utilised in the development industry and it has started to be implemented through some of our government agencies. If you have a developer who wants to be able to have a certain outcome, restrictions are done in a negative sense that are binding on all the parties. That is what is happening. They are putting a restrictive covenant. But in a restrictive covenant there is always a beneficiary, and in this case it is the public and there is no compensation.

The government is acting under an interpretation of common law, and the SPP is clear on that. They choose to interpret it that way. They are saying, 'You do not have the ability to use that land any more.' The principle, we feel, is quite simple. If there is a clearly identifiable beneficiary to these restrictions that are imposed on private land, the public has to pay for it. It has to pay for the goods and values it wants, just like any private person would have to. It is absurd for the owner to be expected to negotiate to bear the full costs of the public's insatiable appetite. There is nothing stopping it from happening.

Acquisition of private property by regulation and policy is the most common form of abuse that governments at all levels use to provide the public with all manner of amenities, especially now and today with environmental amenities. There is an old-fashioned word for that practice and it is theft. That is what it is. No amount of rationalisation about 'for the common good' or other good reasons will change that. Even thieves, after all, have good reasons for what they do. I will turn over to Mr Challis and see if he has anything further to say.

**Mr Challis**—I would like to continue that same line of argument. It is open to the government to create a genuine political alliance between environmental forces and agricultural interests by accepting the principle that public good should be funded at public cost. I know that is where our chairman has been coming from and that is a very strong feeling amongst the members of our group—in other words, private property owners should not bear the cost of creating reserves and de facto national parks.

In our submission we made reference to a full repairing lease, an inquiry into ecologically sustainable land management, what is known as the ESLM, produced by the Industry Commission and published in January 1998. This report, we believe, sets out an attitude and an approach which would achieve the aims of conservation for public good without the costs being borne by the individual landowner. The emphasis in the report is that whatever measures are taken for the management and conservation of biodiversity on private land-holdings it should be voluntary and with the full cooperation of the land-holder. This means consultation. This means consultation and recognition of the landowner's value within the process which, regrettably, has been lacking in the past.

We feel strongly about that, too. I know when the Leeuwin-Naturaliste SPP came on board I, as a private property owner, and a number of farmers in our area—a number of landowners, not just farmers—were unaware that the process had already begun. It has been a lengthy and well-prepared document. The concept is excellent. The concept of the document we can agree with. The only thing that we say is, from the beginning the most important stakeholder—that is, the landowner—was left out of the process. We are not saying that was deliberate, but the way the invitation to attend the first seminar and workshop was worded, it would not have given a genuine farmer, landowner, a second thought about attendance—in other words, it was framed along the lines that those who were interested in attending a workshop seminar for the protection of land for environmental purposes need attend on such and such a day. That is not the sort of statement that hits a farmer or land producer between the eyes.

What we would want to hear is, 'Please attend a workshop or seminar that's going to tell you what's going to happen to your land between Cape Leeuwin and Cape Naturaliste'—in other words, that long strip of very attractive, very appealing farmland and ridge land that runs throughout the South-West of our state. That is the sort of comment that should be coming out by way of advertising to our landowners and our people who are vitally concerned with the land. Consequently we were about six months behind in the process. So much planning had already taken place, and we really fought to get our way onto committees and to be heard. Fortunately, we made ground, and I think we helped determine some of the outcomes.

With reference to the policy measures and the appropriate mechanisms as stated in the Leeuwin-Naturaliste Statement of Planning Policy, the solutions provided to those who have been really affected by planning legislation have proved to be largely ineffectual to date—in other words, there were some good suggestions put forward but little action. In my own instance I can speak with pleasure, I suppose, about a favourable outcome, and I am pleased to be able to do that. But let me say it took nearly 12 years of negotiation. The property involved was a large property. It was uncleared. It was purchased, however, as a rural property and at the time it was expected you could clear up to 80 per cent of the land. We went through a number of applications for development—firstly, to clear, and then when it was realised that that was not going to be readily taken on board by the agencies, we tried lifestyle blocks, we tried part clearing for viticulture. We looked at numerous options and it was really quite frustrating, decidedly frustrating, how we were handballed from department to department.

It would have cost us $250,000 to $300,000 during that time. We spent a lot of time, a lot of negotiation, throughout the process. As I said earlier, I am pleased to say it was a favourable outcome. However, what I am sad about reporting is that it was not through any outcome of the planning process. I believe the same problems are out there. Our good fortune in making sale to

government was brought about through a rare and endangered species being on the property and the political climate being right, so that funds could be made available from the Natural Heritage Trust Fund for the purchase of the property.

As I said, it was a favourable outcome, but a lot of work and a lot of commitment, and a lot of finance went in to get us to where we were.

**CHAIR**—The NHT gave money to a state department, did they?

**Mr Challis**—Correct. Yes, through the state agencies we were really struggling, and it appeared we were never going to make it. They wanted it, they made it quite clear through this document that they wanted it, but they were not in a position—so they told us—to be able to fund it or do anything about it. That is where the injustice in our planning legislation is occurring, and I still believe it needs to be addressed. We will hear speakers tell us that there are good schemes in place, and I am not doubting for one minute that the thrust of those schemes is good. However, it is action that is needed, and it is action that is needed fairly urgently for a great number of landowners.

CALM and also the agriculture department, through the numerous seminars we have attended, have put in place compensatory mechanisms. They have indicated things like rate relief, fencing, government grants for protection of certain areas, all subject of course to memorials on the title and covenants. They have spoken about tradable development rights, land swaps, revolving land trusts, and recently the Bush Brokers scheme, and of course outright purchase. If I can quote from this booklet here, they are saying:

Under the Conservation and Land Management Act of 1984 the Executive Director of the Department of Conservation and Land Management can enter into agreements with land-holders and pastoral lessees to manage private or leasehold land as a nature reserve/conservation reserve. To date no agreements have been entered into.

This was in 1997. Admittedly, it is three years ago, but from 1984 to 1997 they report, 'No agreements have been entered into.'

We are certainly seeing a greater awareness, which is a good thing. We are certainly hearing a lot more being spoken about that topic, and it is certainly very pleasing to come before a standing committee such as yourselves, because probably during the time you have been together as a committee you would have heard numerous examples of land-holders and property owners being disadvantaged by creeping and increasing legislation and erosion of private property rights. It is something that I would certainly like to highlight to this committee.

I would perhaps just finish by emphasising a couple of the points that I see as being most necessary. There is the need to put a time restraint on restrictive planning legislation. What happened in my instance—and I have heard of worse—is that there was planning in place to do something within a 10- to 20-year time frame, and the moment that plan goes over the property then its value and its ability to earn income is blighted. As any developer applies for a development permit, he has to go through a process where he submits a plan and discusses it with the community and the respective authorities. Then, if he is granted a development permit, it is granted with conditions and a time frame.

If we reverse that situation and if government or government agencies wish to put a plan over land that contains private property, why then shouldn't the first thing be consultation—real consultation—with the principal stakeholder, being the landowner, and consultation with the community to justify that plan, and then a time put in place whereby, if the plan is enacted, compensation is paid to those land-holders who are injuriously affected?

Compensation seems to be the real problem that governments and government authorities have, and I guess we can all understand why. Money is generally the issue behind them all. If there were unlimited money, there would not be a problem, because any land that was perceived to be for common good could be purchased. However, there are a great number of other compensatory mechanisms available and, unfortunately, I believe to date there has only been lip service paid to them. I believe now that governments and government agencies have to become very serious: if they are going to enact planning legislation they need to provide compensatory mechanisms as part of that legislation. I will now pass over to Ted Coulter to pick up on anything that I might not have covered.

**Mr Coulter**—Thanks, Jim. I will pick up from where Jim left off and, hopefully, come up with some positive recommendations. I initially prepared what I was going to say by saying that I was going to put before you not so much specific recommendations but more an environmental attitude. But, having listened to some of the speakers this morning and some of your questions, I believe we have some really positive solutions, so your job is going to be made easier.

It is apparent that within the growth of the environment industry and the plethora of organisations, groups, committees, et cetera, that are out there, there is an overwhelming awareness within the community that we must adopt a responsible attitude to our land and the use to which it is put. It is important that we say that we wholly agree and endorse this approach. The thing that is disturbing, however, when you read some of the written submissions, is that there seems to be a common theme within that that the clearing of land is an act of vandalism and environmental degradation. Surely in some areas it might be, but not in all areas. Some of the submissions go further and seem to imply that a lot of farmers out there are actually endeavouring to destroy the land.

One of the previous speakers alluded to a fact that we would like to reinforce: that that sort of a view is absolute rubbish. It is our view you only have to drive down around the south-west of this state to see how landowners, in the main, have been excellent custodians of the land for many generations, and it is not at all true to say that there are landowners out there who are not valuing their land. It is their income; it is their livelihood. Generally, farmers and rural landowners are in there for the long haul, from a generational point of view, not just from a career point of view, so they have a feel for and an empathy with the land, and they want to look after it and protect it

Within that view, and following on from that, what is also concerning is that, as far as a lot of the groups that are around are concerned, there seems to be a mammoth amount of assistance available to them, both financial and bureaucratic, and their status within the general consultation process in this state is far overrated. That is balanced by the lack of consideration that is given to who is generally the key stakeholder within that process, and that is the landowner.

Jim alluded to the consultation process that took place for the production of the Leeuwin-Naturaliste Ridge Statement of Planning Policy. That process was galvanised by a couple of small green groups getting on to ministry officials, and they actually got to the stage of holding workshops. Jim, again, has alluded to the ads that were placed. I would not say that it is deliberate—perhaps by absence of thought—but these ads promoting the discussion process made no mention that, first of all, the activities that were being contemplated affected private land. They talked about what is mainly national parkland, which is what is called the Leeuwin-Naturaliste Ridge area of the state, between Cape Naturaliste and Cape Leeuwin. They talked about the biological diversity and the protection of the biological diversity of the land, and environmental considerations and terminology like that.

Those are the sorts of terms that landowners would have a view on, but they would certainly not take the time out from a fairly busy schedule to go and attend workshops that run all day on them. It attracts a particular type of person. That is the way this whole process that resulted in that document commenced and became galvanised. It was well under way before, suddenly, some of the landowners became aware of the process and realised what it was about, and that is really what spawned our group. As a further example of the assistance that is made available—Peter has a copy of this brochure—they proudly boast on the back of their brochure that, 'The EDO is funded by the Commonwealth Attorney-General's Department.' Gee, wouldn't we property rights people love a funded Property Rights Defenders Office! We could utilise that and keep them very busy.

**CHAIR**—The states usually have one as well.

**Mr Coulter**—Yes, exactly. We believe it is a crucial responsibility of government to ensure that all of its citizens have an equal opportunity within the consultation process but, more importantly, it must be recognised that the rural land-holder is a stakeholder in the process. John Hyde touched on the definition of a stakeholder. Our definition would be fairly simplistic: the person who owns the land over which the debate is about is the key stakeholder in the process. We all agree that there are other people who may well have some form of interest in what happens to that land, and that would be acknowledged, but the land-holder is the stakeholder in the process and he must be consulted, and must be consulted initially in the process, not after all the decisions have been made and the process is almost complete. He must be brought into the discussions initially, right at the commencement of the process.

The continued failure of governments to recognise the value of the landowner within the process will continue to lead to the erosion of the ability of our land to be economically sustainable, and will subsequently contribute to the destruction of the richness and diversity that exists in the country. It is also becoming apparent that this failure to deal with these issues that are rurally based in a manner that is rurally acceptable is driving the rural citizens away from the traditional parties within our electoral system, and it is hard to contemplate what the future for this state—and, indeed, the country—is going to be if that trend continues.

There has been some reference to the remnant vegetation scheme which was tabled earlier and discussed. I can report on that, being involved as a member of a steering committee—as was Peter—on a locally funded or a locally put-together remnant vegetation strategy that took place in the cape-to-cape region within the Augusta-Margaret River Shire. Funding was applied for by an organisation called the Cape to Cape Alliance in our area, and it was funded by NHT

funds. Money was put into it also by the Busselton Shire and the Augusta-Margaret River Shire. I am an ex-councillor of the Augusta-Margaret River Shire. I was recently 'dissolved' by our local minister for local issues, but I will not go into that.

The sad thing about this remnant vegetation study is—and it also touches on a question that came up earlier about scientific study—the thrust behind the proposal was that it was really a mapping project to identify what was believed to be remnant vegetation areas within the cape-to-cape region, and we had considerable discussion with experts over the definition of what remnant vegetation actually is. But, that aside, consultants were sought and employed from Edith Cowan University, well-qualified people, and the total funding for the project in actual dollars was in excess of $50,000, and you would have to add into that the costs of the shire staff, et cetera, in backing up the project. It was an expensive project. It lasted for two years.

They carried out their study and quotes, and two documents were tabled in front of us, as the steering committee. One was a handbook which was to be made available to private land-holders and which really gave recommended management strategies for any remnant vegetation they might have on their property. It was a voluntary, participatory document which we adopted and supported. The other document was the document that purported to identify the areas and make some loose recommendations as to what should happen.

But when we got behind that report, we found that some of the scientific data was gathered by these scientists driving along the road and getting out of their vehicles and looking over fences and saying, 'Well, yes, that looks like this,' so they would make notes and jump in their car and drive on again, because there was an issue that arose as far as access to land was concerned. We are unaware of any land-holders that were approached by them, seeking permission to get on the land, but it appeared that they anticipated that it might be too difficult, so the whole thing was just done by looking at existing CALM maps that were already there, previous mapping data that had been done and, as I say, driving along the road and looking over the fence. Then they just collated all that information together, made a nice computer presentation, produced computerised mapping information and presented the report.

As a result, the steering committee rejected the formal report and said that we could not accept it because of the lack of scientific data that was behind it. The whole process lasted for two years, cost over $50,000, and finished up on one little leaflet that could have been produced by a committee of two, probably for about $20, management guidelines for private landowners.

These are the sorts of things that I think are causing considerable frustration among landowners because they are compelled to participate in these processes, which are driven by bureaucrats or other groups, and they are forced to devote energy and resources to participate in the process, just in an endeavour to protect the value of their properties.

I would like to touch on a couple of things that came up earlier. One is the advice to landowners by bureaucrats when making policy that affects the land. You asked a question about a circumstance where an agency produces a document or a policy that is going to affect a landowner and whether that landowner is, in fact, advised of his rights. The landowner will be advised of his options but not his rights. He will be told, 'Here's the process. Here are your options,' but it is up to him to again find out what his rights are. I totally support the rationale be-

hind your question that obviously he should be being advised of his rights but, as has been previously said, we have a state minister here who says there are no rights. It seems to be a very difficult issue to come to grips with.

**Mrs VALE**—That is interesting, Mr Coulter, because that is not exactly the answer we got from the person whom I questioned, if you recall.

**Mr Coulter**—No. That person was a bureaucrat. I am not surprised. I would also like to touch on the gentleman that I heard from WAFF. I have to say that I quite strongly disagree with some of the views that he put forward, specifically with the remnant vegetation scheme. It has probably enlightened me somewhat to see some of those farmer representative bodies, who sometimes act like government agencies: whenever they participate in a process and purport to represent landowners, the outcome you see when eventually you get the document bears no resemblance at all to what you believe you would have been putting forward as your part of the consultative process were you asked. But, unfortunately, when people involve these state organisations that purport to represent some of the individuals, there is a gap in the communication and a lot is lost in what is presented. I would finish there, and I am happy to answer any questions.

**CHAIR**—Thank you. Maybe we will start where you finished then. Are you saying to the committee that these organisations that represent farmers do not often speak on behalf of the grassroots?

**Mr Coulter**—WAFF is a state based agency and obviously they have state based problems, but a lot of the difficulties from our perspective—and we are just a south-west group—are that, generally, what are perceived to be state-wide problems are not; there are very few state-wide problems. Most of them are localised in different areas. Salinity is not an issue down in the Scott River or our area down in the far south-west, for instance, but a lot of decisions are made based on salinity problems. The gentleman from WAFF expressed a view on clearing. He felt that the clearing ban was a positive step.

We believe that a state-wide clearing ban is obviously naïve, not a positive or well economically thought out strategy. There are local areas where clearing could be done of not at all pristine bush, nothing native or old-growth about it, to turn land into economically sustainable, producing land. But, because we have a state-wide clearing ban, that cannot happen. I would not want to blame necessarily the individuals involved in those state organisations but they tend to perhaps look too globally at the problem, and they have their own political affiliations within the process that probably tend to affect their input.

**CHAIR**—They are actually democratically elected, though, by the farmers, aren't they?

**Mr Coulter**—I am not sure about WAFF. I would have said they are.

**CHAIR**—In the same context, then, does your group in your smaller area represent the majority or are there people who have a different view to you in that area?

**Mr Coulter**—We have a very diverse community down in our area.

**CHAIR**—I am talking about the farming. I know others may not agree with you, but what about the farming groups?

**Mr Coulter**—Yes. I would say amongst the farming group people we speak to we would have over 90 per cent support down in our area.

**Mr Wren**—My experience is that WAFF tends to represent the developed side of agriculture, and I am not saying that is right or wrong, it is traditional, whereas I do know from input into, say, the PGA and our own group and what have you, that we represent that side of agriculture that is probably undeveloped and feel the full brunt of this issue, and especially issues of biodiversity. The salinity issue, as Ted pointed out, is a different can of worms. I do not think anybody from any government or farmer organisation really has a handle on that one.

**CHAIR**—We have canvassed a few of the issues, and you have sat in today so you have probably heard some of them. I did put, I think to the graziers, that in a utopia, if there was a fund out there that was going to compensate people for loss of rights, in some instances you might call tenders, but that would not work in all instances in a smaller situation where a particular block on a particular property was identified as being of conservation value. I do not think a tender system would work in that instance because the individual property owner probably would not like to see someone else coming on there to manage that particular piece of land.

I do not know whether you have it in Western Australia, but in New South Wales we have what is called a Land Board which is basically there for a cheap disputes resolution process in land issues. Tony raised earlier on that it may be an environmental levy or whatever. If you had a retired magistrate, if you had a valuer and you had, say, three property owners that could make some assessment of what the value of managing that particular section of your property is worth—these are people who are practical people and no-one is going to fool them—do you think that type of situation would be an option, that a committee such as that could come to some reasonable terms as to what it is worth to manage that particular section of the property?

**Mr Challis**—I would agree that they could, yes. I would say that that particular body you have just named could do that. It is an interesting concept, and that is something I would like to explore further. It is difficult to be specific right here and now, but if I go back to the mechanisms that have been spoken about in the Leeuwin SPP and some I have heard through the various committees that I have attended, agricultural board people and the like, if we look at, say, tradable development rights, the concept is great. Where has it happened? We look at land swaps. Great! Good idea. It was mentioned earlier today. If you have a parcel of bush there and they do not want you to clear it and the public good says it should not be cleared, I accept that. If I were a farmer I could get an equivalent parcel, a production unit, somewhere nearby; I could look seriously at that. But we have not seen a land swap.

Revolving land trusts: hopefully, we are going to hear a little more about this today because I have spoken to our next speakers and they have put these concepts forward—Bush Brokers. But it is all about something happening for the landowner out there now, not 10 years hence, not 20 years hence, because the planning schemes come in and they come in well ahead, and that is what creates all the problems. I believe that as part of the planning scheme comes the compensatory mechanism and if it cannot be cash it has to be kind, it has to be something to maintain

equity and fairness. The simple answer to why it cannot happen is: money. That is always the answer. But then why should the private property owner be the one who is penalised?

**Mr Coulter**—We can give you an example of a document affecting negatively the price on a property next to the Augusta golf course. It was a fairly large property that was owned by a whole lot of different people and it went through quite a series of events before they could get permission from the court to sell it, and it was sold by tender. The property was valued at $965,000. It is right on the coast. It was sold by tender for $702,000, I think, and that was purely because of that statement of planning policy which had most of the property in what was called the Principal Ridge Protection Area land use category, which Peter has previously mentioned. Despite the Valuer-General's valuation, that property changed hands for $702,000.

It was also a property that should have been bought by government. There are both bureaucrats and politicians that indicated that it should have. Indeed, a large body of environmentalists within the area were strongly lobbying to have the property purchased by the government.

**CHAIR**—You can get us that evidence, can you?

**Mr Coulter**—Yes, we can provide you with that.

**CHAIR**—Yes, we would like to have that.

**Mr Wren**—I would like to address that again, if I could. There are a lot of the examples that are put forward of what should happen to bring these things to resolution. We have had mentioned the Bush Brokers. Where is it at? I have a bush block that should be promoted right now by Bush Brokers. I have been aware of Bush Brokers for about three years; we have been hearing of it happening. With this particular property, we tried to utilise some of the incentives to this document. We spent a considerable amount of money on consultants' fees to try to come to some negotiated arrangement with government. It never happened. It took us two years. That property is still there; it is sitting next to a nature reserve. It could be valuable but where are the Bush Brokers? That is my question. Why isn't it happening?

In our local shire, our shire director of development services got hold of, I believe, NHT money again. He put together a working party to try and look at something which we are talking about: incentives for landowners with native vegetation. He invited our group to be a part of the process; he invited some community groups to be a part of it; Keith Bradby will be a speaker; and Rod Sastrom from Conservation and Land Management, who develops our covenants. We thought we came to a standpoint where we were going to actually come out to: 'Well, let's start putting it on the table and seeing it happen.' It did not.

We have been waiting for that meeting to happen to try and get resolutions and it is not happening. Words are spoken. You have the native vegetation working group document. Much time and effort has gone into this and there are many recommendations in there, but you get down to the end when it talks again about mechanisms for that money to follow through, and it is not happening. You continue to have industries of consultants that are virtually making a livelihood out of this problem, and enjoying it, but it is not being addressed.

**CHAIR**—There is one other question, which I think you might have raised, Mr Coulter, and it goes to our knowledge base in some of these areas, and the inventories we have. Government departments have a lot of information, but when you want to have some knowledge on flora, fauna, salinity, water or whatever, is it available? Does the state have an information bank that you can go to to get this information? I know that it will be dynamic and that it is continually being added to, but is it there?

**Mr Coulter**—There are a plethora of documents, leaflets, brochures, et cetera, available on what is in your local area. Some of them are state-produced by state agencies, CALM—the Department of Conservation and Land Management—is very active in producing that sort of data, and also most local governments are producing, within their local area, brochures.

**CHAIR**—They often cling onto it. Is it available?

**Mr Coulter**—It is available if you look for it, but the fact that it is available is probably not widely promoted, purely because, once they produce it, then they do not allocate the extra funding to actually promote the fact that they have it.

**CHAIR**—It is actually an asset you can sell.

**Mr Coulter**—It should be. Yes, I agree.

**CHAIR**—Thank you very much. We are always very pleased to get those views.

[3.00 p.m.]

**BRADBY, Mr Keith, Policy Officer, Soil and Land Conservation Council**

**McFARLANE, Mr Michael, Community Member, Soil and Land Conservation Council**

**WARDELL-JOHNSON, Ms Christine, Executive Officer, Soil and Land Conservation Council**

**CHAIR**—I welcome representatives of the Western Australian Soil and Land Conservation Council. 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 the parliament. We do have your submission, thank you, but would you like to make an opening statement?

**Mr McFarlane**—Yes, we would, first of all to clarify who we are and what we are.

**CHAIR**—Yes.

**Mr McFarlane**—The Soil and Land Conservation Council is the peak land care body for Western Australia. It is a statutory authority that reports to the Minister for Agriculture now. It used to be Primary Industries; things change. It also advises the soil commissioner. There are two land users on the Soil and Land Conservation Council, there are representatives from two of the industry groups, and also from one or two other government agencies, so there is a little bit of integration there.

**CHAIR**—Are you appointed by the minister of the day?

**Mr McFarlane**—Yes. The Soil and Land Conservation Council has also been administering some incentive schemes for Western Australia, one being the Remnant Vegetation Protection Scheme that has been fairly successful in protecting 66,000 hectares of remnant vegetation throughout the state, and also until recently the revegetation scheme which has been quite effective; so they are two effective incentives within the state. The minister's initiative was the SLCC's role to develop the Native Vegetation Working Group, to be overseen by SLCC. You have heard references to that, obviously, from other submissions.

Out of that particular group came 15 recommendations and they were accepted by the state government of the day in October last year. It is only in recent time that those recommendations have been signed off. They are being progressed along and it all depends on the amount of state funding available as to how far some of those particular recommendations go but, in time, we would like to see a really strong partnership with the Commonwealth in developing some of those recommendations. The recommendations cover quite a wide range of incentives and that is fairly important for land managers. If you have a very narrow scheme, there seem to be only a few that will undertake it, but if you broaden the incentive schemes there seems to be a better take-up across the board.

The SLCC's role has been strong in supporting the development of an NRM framework for Western Australia. I think a lot of people out there on the ground see different groups representing land care—

**CHAIR**—When we talk about some of these, could you first of all say what they are, because *Hansard* probably does not know what NRM is.

**Mr McFarlane**—Natural Resource Management.

**CHAIR**—Thank you.

**Mr McFarlane**—Yes—develop a true natural resource management framework for Western Australia, with a fair bit of devolution of authority to the regions. We have developed some fairly strong regions within WA, and there seems to be a lot more local ownership if there is a regional group to work with, rather than a state or national group. That is one of the supports that the group is heading towards. Certainly, with the regional approach, we are finding with the Remnant Vegetation Protection Scheme that the funds are more strategic and the schemes are a lot more readily sought after.

Two of the items that we put in our submission referred to clearing and draining of saline waters. Certainly, in Western Australia, 1986 to 1999 has progressively seen restricted controls on clearing, and this has given landowners quite a wide opportunity to seek recourse for those restrictions. We have seen over that time quite a number dealt with but, at this particular point of time, there would only be a few landowners that would have any moral legal right for compensation claims when it comes to preventing them from clearing, especially in the agricultural areas. I do not know if you have seen a photo of the agricultural region but it is extensively cleared and that has led to other problems too. The biodiversity of that particular area is very rich and I think there is a sleeping tiger there.

Certainly the Western Australian landscape, the agricultural area in particular, is in crisis from salinity. There are many groups moving towards trying to come up with answers and there is certainly some fault within government in not giving the right information, and there is certainly some bad leadership out in the landscape, trying to push single recipes to overcome that particular problem in the drainage issue of saline waters.

In completing this opening message, the SLCC believes that compensation sends the wrong signals. We really need to send the right signals to the land managers out there, and that must be done more by the incentives and by removing imposts. When the word 'compensation' comes up, we find the interpretation by land managers out there can send some very bad signals, so we are opposed to that. We are open for all questions from your group. Keith, do you want to say anything?

**Mr Bradby**—I am happier to take questions.

**CHAIR**—You raise a fairly radical question straightaway. We have heard quite a lot of evidence across Australia, particularly from the CSIRO, whose eminent scientists say that some of these issues, particularly salinity, will demand huge changes in land management. But you say you should not have any compensation, so what will you do with the property owners who,

if they are alienated and they have no rights to manage their properties, cannot have an economic return?

**Mr McFarlane**—Certainly there is, particularly in my area, a real screaming need for new industries that would help fight salinity.

**CHAIR**—That is an easy statement, but such as?

**Mr McFarlane**—It is. A lot of those industries are not known at this point of time; they take time. But the oil mallee industry is one point out in our particular area, a low rainfall area, that has potential. Once again, that will only take up three to four per cent of the landscape in any given area, but it has some real potential to return dollars. There are other land management options out there, especially growing perennial pastures, such as tagasasti, for cattle production on areas that at the present time are being used for annual cropping and leading to major recharge.

**CHAIR**—What are the economic returns from grazing as compared to cropping?

**Mr McFarlane**—They are better. If done properly they are better.

**Mr Bradby**—Could I respond to your point. It is quite an important one, and it is probably a clarification, I would like to add. Across government in Western Australia we strongly support the sentiments you put in your question. What we are urgently trying to develop in Western Australia are adjustment programs to assist land-holders in the massive transition we have to make between the current practices, which are putting a lot of farmers out of business already, particularly salinity, and the new practices that will mean we can retain our rural industries.

In the area of vegetation protection, when you talk compensation you are giving an inference, that people pick up, that land-holders have some right to clear vegetation and cause downstream harm.

We are very cautious about giving that impression. We are saying that we all have to pull our weight, we all have to accept change. Where that change hurts we do need to swing in government programs to assist the adjustment or transition process. I strongly support the sentiment, but we have learnt to be quite cautious on the wording and the inferences there.

**CHAIR**—You have good reason to be. There is no doubt about it, there are no guarantees of that. But as a committee we are looking at the effects—the evidence coming before us and listening to people who are already being affected by government decisions—and we have to try and make some recommendations. The recommendations may not be listened to, but we have to make those recommendations. We are genuinely trying to come to some practical recommendations. You are contrary to a lot of evidence that we have received right across Australia.

**Mr Bradby**—Because of the recent agricultural development in Western Australia we do have a number of land-holders with large areas of their property under bush and they did have a 20- or 30-year clearing plan, but we also have a number of land-holders who have been severely damaged from the impact of the clearing that did occur and we somehow need to assist those

parties. I am quite concerned that those who want to clear should not be in a position where they are jumping the queue for assistance.

**CHAIR**—I can see the argument, yes. Then, again, those who have cleared reaped the benefits in the past.

**Mr Bradby**—Yes, absolutely. Industry contribution to the adjustment process, as we have seen with fishing, would also be a very important element to bring in.

**Mr McFarlane**—There has been an adjustment period of over 14 years in Western Australia as the controls have become harder and harder.

**CHAIR**—Yes, I noted that. That is contrary to evidence we have, too. Why should people come before us and say, 'We had a clearing right and overnight there was an imposition put on us that we couldn't clear that land.' Your evidence is contrary to that.

**Mr McFarlane**—Controls were gradually imposed over that long period of time.

**CHAIR**—Why didn't people know?

**Mr McFarlane**—They should have known.

**CHAIR**—If these controls were being gradually phased in, why wasn't there a notice given to people on the sale of land or whatever to explain, 'There is a caveat on the property'?

**Mr McFarlane**—It is a bit simplistic to put it that way, because I know a lot of the landscape where I am has only about three or four per cent of landscape native vegetation in some areas. People should be aware that when the controls were coming on we were talking about going through a series of steps which they would need to go through, whether they had 20 per cent of vegetation still on the land, whether there was 20 per cent still in the catchment. I think that was fairly reasonable. People were made aware of that at the particular time.

**CHAIR**—Was that 20 per cent in the catchment or 20 per cent on the property?

**Mr McFarlane**—Both—20-20

**CHAIR**—Where you had people who had 80 per cent of their land uncleared and they applied for a clearing licence and were knocked back, what was the reason for that?

**Mr McFarlane**—There could have been a number of reasons: the clearing could have done damage to other farmlands or there were special plants on that particular land.

**CHAIR**—On what scientific evidence was that based?

**Mr Bradby**—I can clarify that. That caused some confusion when it was introduced. The 20-20 rule was used by the Commissioner for Soil and Land Conservation as an indication that he would be likely to find that land degradation would result from clearing. It is a rule of thumb

which has proved pretty accurate in some areas and probably an underestimate in others, as we get a greater understanding of the processes. The commissioner's powers relate to land degradation, not biodiversity. Certainly for the larger wheat belt areas of the state, we are certainly aiming to have at least 20 per cent of vegetation in those catchments to prevent downstream damage through salinity primarily.

**CHAIR**—How many times did you disagree with the commissioner and how many times did he listen?

**Mr Bradby**—Me personally?

**CHAIR**—The committee.

**Mr Bradby**—The committee has had a long process of negotiation with the commissioner on all of these things. I know there have been some rows and I know there have been some agreements. I do not think anyone has kept a tally. I will add that, particularly in the 1991-92 round of tightening the clearing controls, all of our land conservation district committees were involved and they all had an opportunity to comment on the guidelines that the commissioner worked to. It is a good question: 'How come some land-holders pop up and say, "I didn't know"?' With any change in society there are some people who do not catch up with it, but my feeling is it has been relatively common knowledge that clearing controls are in place, certainly since they were brought in in 1986, definitely since they were tightened somewhat in 1991-92. In the two recent tightenings in early 1997 and early 1999 it has been in the papers, and we have had shire councils pass motions on it.

**CHAIR**—Was it advertised?

**Mr Bradby**—There was certainly advertising of the 1995 round, in my understanding. In 1992 I was not working in this area, but I have seen promotional brochures and there was extensive media release with our rural press. They tend to run everything—

**CHAIR**—Were they made available to the farming organisations to get to their members?

**Mr Bradby**—The material?

**CHAIR**—Yes.

**Mr Bradby**—I cannot answer that question.

**Mr McFarlane**—I would be very surprised if it was not given out to them, because each local government area had an LCDC that was well aware. In some areas it was quite an issue.

**Mr Bradby**—It certainly went to all the land conservation district committees. Under the act they have a representative from the Farmers Federation and from the pastoralists and graziers.

**Mr McFarlane**—And a representative from the soil commissioner.

**Mrs VALE**—Were any of the farmers written to personally and told this would happen?

**Mr Bradby**—No, they were not.

**Mrs VALE**—So that I can understand the framework of your council, Mr Bradby and Mr McFarlane, are you both farmers?

**Mr McFarlane**—No. I am a farmer.

**Mr Bradby**—He makes an honest living. I am a policy officer.

**Mrs VALE**—And Christine?

**Ms Wardell-Johnson**—I am executive officer with the council.

**Mrs VALE**—You work for the council as a conservation body. Are you a government instrumentality?

**Mr Bradby**—Statutory authority.

**Mrs VALE**—Are you all employed by the statutory authority?

**Ms Wardell-Johnson**—I am employed by Agriculture Western Australia.

**Mr Bradby**—As I am. Part of our job brief is to service the Soil and Land Conservation Council. Michael is a farmer member who gets a sitting fee but not a salary.

**Mrs VALE**—Michael, you said that compensation would send the wrong signals to farmers. Would you like to articulate for a city girl exactly what those wrong signals would be.

**Mr McFarlane**—Too often politicians when pushing things can send the wrong signals because expectations in the rural areas can rise very high. When those expectations are not met, then there is a really bad feeling towards those who announce them. With compensation, if the word 'compensation' came up, there would be a very general expectation that the remaining bush on particular farms could then be put up for clearing and they would be compensated when they had been told no.

I have heard of examples of two farmers alongside one another; one wants to clear the remaining bush on his farm and will seek compensation, if it is made available. The one alongside has a great feeling for that remaining bush and believes it should be protected forever. That person would not be compensated—in fact, would be penalised—for doing what I would say would be the right thing.

**Mrs VALE**—I suggest the compensation idea is not coming from politicians. It is something that is being put to us in our inquiry and for some very real reasons. Mr Bradby, you feel that people should not be compensated for denigrating the land. What if those people buy the land in the first place with the expectation that they have a right to develop it and, therefore, feel they

have not only the right to develop it but that is their livelihood? I am not talking about lifestyle; I am talking about livelihood and they virtually buy the land almost on a promise that they can use the land for the intent and purpose that it has always been used—a pre-existing use right, if you like.

**Mr Bradby**—Yes.

**Mrs VALE**—As you know, initially when this land was given or granted or leased or sold it was government policy in the early days that if you leased land you had to develop it—so many hectares per year or a percentage of the property. That has always been the understanding. In the situation where people for a long time have felt they have a traditional right to farm the land and that right is taken away from them—and this is connected to their income and to their livelihood—why should those people not legitimately expect that, if some of their land is sterilised for any use, they therefore should not in some way, in some measure, be given some form of recognition?

**Mr Bradby**—I will clarify that point. I agree totally. As I said, particularly in Western Australia where government was actively promoting and alienating public land for agriculture as recently as the early eighties—

**Mrs VALE**—It was all over Australia. It was not just Western Australia.

**Mr Bradby**—Absolutely. There is a need for assistance to help people make that adjustment. I have difficulty—and the policy stance that the government has adopted is that it has difficulty—seeing some sort of intrinsic right.

**Mrs VALE**—Incidentally, in a lot of cases that property was initially bought with the understanding that there was an intrinsic right.

**Mr Bradby**—I would like to see agriculture operate on the same basis as other industries, where your ability to do certain things does change over time and you have to keep up with it. Part of my background has been working with the mining sector and elsewhere where they do keep up with these changes and there is not this sort of argument.

**Mrs VALE**—Maybe the mining sector is more of a confined and defined industry.

**Mr Bradby**—It is also a more affluent one where it can weather these changes. That gets to the point where we do need to institute much larger and much more effective assistance programs. What we have adopted as our strategic approach in Western Australia is really a scale, where we remove the disincentives and add incentives. You may well be aware of the work that Carl Binning from CSIRO and others have done which has helped to define conservation of land as one of the most heavily taxed land uses in Australia. Governments, both state and federal—because we have our land tax—have to remove the disincentives to vegetation being kept on properties.

As a next step we have said we really need to work with land-holders closely to help them develop marketplace solutions. The Bush Brokers arrangement to train real estate agents in selling bush is helping in some cases. Like our colleagues, I would like to see it move a lot

faster and more furiously. The pot of money you referred to earlier on, I can deploy. The third element in that is a safety net. We do need to have a safety net for the very people you refer to. I am hoping I am not sounding pedantic, but we do find that when the word 'compensation' is used people assume a totally unchangeable right to do things is being taken away, whereas in fact the circumstances in Western Australia—a landscape in crisis, downstream land-holders suffering severely, downstream towns; I doubt if we have a dry cellar in a wheat belt pub—in those situations I do not think those rights exist. My advice is they do not exist under law.

If I can revert to Mike's example of two guys and one is looking after a big hunk of bush because he knows it is a good thing for the wider benefit and for his own property and the other one wants to clear—I think we should be able to treat them equally and compensation tends to give the person who wants to clear a jump in the queue; adjustment and assistance treats them equally. I consider it fundamentally important.

**Mrs VALE**—Does the council see itself as having an educative role, then, with this particular conundrum?

**Mr Bradby**—Absolutely. In fact, we have a four-step approach, which I jumped in aid of brevity, which is to significantly increase the communication on the options available for land-holders, on the various schemes around, what is happening in the market, how to get out of rates, how to move on land tax, and the values of bush on the property. I would be the first person to concede that government communication on these issues has been quite poor in the past and has led to some of the submissions you are getting in the hearings.

**Mrs VALE**—Certainly we have heard of some very severe social dislocation and economic hardship of the worst kind.

**Mr Bradby**—Absolutely.

**CHAIR**—Do you adjudicate on land clearing?

**Mr McFarlane**—Personally, no.

**CHAIR**—The committee?

**Mr Bradby**—The commissioner does.

**CHAIR**—The commissioner alone? You do not give any advice?

**Mr McFarlane**—No, not on that particular issue.

**Mr Bradby**—It is a policy overview role. We have an act which rests heavily with the commissioner, but then there is an appeal process if a land-holder is aggrieved.

**CHAIR**—Where does that go to?

**Mr McFarlane**—An appeals committee is set up which comprises two government officers who have not been connected with the case, one from the environmental sector and one from Agriculture, and a land-holder, and they provide advice to the minister. He is now the Minister for Agriculture.

**CHAIR**—Could I take you to this point that we seem to be disagreeing over, or the evidence is disagreeing over, on so-called compensation. Could I put it to you that if you were living in a town and that town had some beautiful parks that were being run by the local council, then everyone in the town is contributing to the management of those parks.

**Mr Bradby**—Yes.

**CHAIR**—Where a certain area of land—it might be a large area or it might be a small area or whatever—has conservation value and needs to be managed, what is happening is that the community as such is paying someone to manage that; not compensation—management.

**Mr McFarlane**—No, that is different from what I call compensation. The south-west corner of Western Australia is a very rich botanical region to start with, so it is really important to have it managed. The landscape has been so cleared that it does need active management, and certainly the remaining bush there does, so it is just like your example with the park. That particular land could be privately owned or it could be public if different government agencies like CALM buy patches of these valuable areas back. It all needs to be actively managed, and this is where farmers need to receive some incentives.

**CHAIR**—Through the tax system, do you mean, or how?

**Mr McFarlane**—Well, the tax system as far as rates. There should be the removal of rates. That could put real pressure on local government to fund activities if they lost that rate base. There is an opportunity there for state or federal governments, through the grants system, to maybe put dollars into that local community. There also needs to be money made available for managing those remnant and bush areas and improving them. They need to be enhanced in many cases. Pest control is an ongoing cost to individual farmers, whether they be weed or animal pests.

I know in my own particular subcatchment we are very mindful of the cost of the remaining bush in that particular area, and yet it is one of our best assets. We want to work towards reducing those imposts and costs and build up incentives, because in the long term these bush areas are actually going to be far more valuable than many areas of cleared land because of their richness and biodiversity.

**CHAIR**—I do not argue with you, but some people would say, 'You can't eat gum leaves.'

**Mr Bradby**—The terms of trade for genetic richness are pretty damn good, and Western Australia is the most genetically rich part of Australia.

**CHAIR**—Terms of trade?

**Mr Bradby**—Bioengineering and the various uses of genetic riches—gene splicing and so on—in my view is a rapidly increasing industry around the world, and we are the mega-diverse part of Australia and there is potential for a number of those industries. In the region I come from on the south coast, over a quarter of our plants already are used horticulturally. What we are not good at is actually tapping that sort of richness for the local area.

**CHAIR**—I do not argue with that, but who is being paid for that? Is anyone being paid for that at the present time, or not—governments, Australia or anyone else?

**Mr Bradby**—I think we are in the same position as a number of Third World countries where we are being bioprospected, and I think there is great potential for change there that would help some of the biodiversity wealth of those areas remain in those regions, remain with the land-holders and remain with the communities.

**CHAIR**—I have heard these arguments in the past and I am just pushing my way through them. I have heard the argument, for instance, that if we are seen environmentally to be a clean green country then that gives us advantages in the marketplace.

**Mr Bradby**—Yes.

**CHAIR**—Do you think America or Europe are going to worry about that?

**Mr McFarlane**—They are going to worry if they can use something against us in the marketplace.

**CHAIR**—They will anyway.

**Mr McFarlane**—They will, but at the moment we have quite a lot of plants and animals ready to become extinct here in Western Australia. They could use that tool to cut us out of the top end of our agricultural markets, and they will in the future.

**CHAIR**—They have cut us out of most of the agricultural markets already.

**Mr McFarlane**—This is going to make it easier for them.

**CHAIR**—Let us get to Bush Brokers. How many blocks have been sold?

**Mr McFarlane**—That was only signed by government in October, wasn't it?

**Mr Bradby**—It is not something we are keeping tabs on. I need to explain that scheme a little bit, if I can. Bush Brokers is an arrangement with the industry. It is between the Soil and Land Conservation Council, the real estate industry and the World Wide Fund for Nature. Its basic premise is that there is an increasing conservation market for bush, and this is based on both the feelings of those of us who have been involved in the buying of bush for some years, some of the agents and the Valuer-General's Office.

We are saying that we can assist with some of the farmers, some of the land-holders, who have difficulties, by increasing the training of real estate agents in marketing conservation values—and some of them have been very good at it for a number of years now—and also in putting out publications that stimulate the market for buying bushland, particularly the urban market. There has been a small and steady market in that area for some years. We have had a formal agreement with the Real Estate Institute for a bit over 12 months now on this program. We have run some information days, we have some leaflets, we have a case studies booklet of 15 or 16 land-holders who have bought bush for conservation reasons coming out shortly, a web site to link the buyers and sellers is probably three or four weeks away, and we are doing some market analysis to try and target the market.

I know of blocks that have sold in that period. I have helped do some trading on a small scale. I know of some agents who have been sitting listening for 12 months and they are saying, 'Yes, okay,' and are going off now and are targeting those sorts of markets. I cannot say that there have been 68 blocks sold because of it, but what we are trying to do is to build a groundswell which will bring in extra investment to that area, and will ease some of these problems.

As an example, I met two weeks ago with a wealthy individual who, in the last six years, has bought either six or seven major properties, including two pastoral properties, in Western Australia, and is managing them purely for conservation purposes. There are discussions with the industry and the valuers, and from reading the back pages of the *Countryman* some of the ads are starting to change. Bush Brokers has adopted the red-tailed wambenger, a little marsupial, as its emblem, because one agent in the south-west advertised a block one weekend as good Phascogale country, and he sold it.

We think there is a groundswell there, but I agree with the comments Jim made and I would dearly like to see more government funds put into building these programs, as long as the dead hand of government does not hurt industry vitality. It would have been good to see these sorts of programs started 10 years ago, because they are slow groundswell programs, but it is happening.

**CHAIR**—Why would a government need to have any involvement in that? You are only selling property.

**Mr Bradby**—I have needed to have significant involvement in the last 12 months, more than I had budgeted in my work schedule, to just keep talking it through within industry. For a number of players it was a new concept.

**CHAIR**—They get a commission, though, don't they?

**Mr Bradby**—Sure they do, but over a number of years there has been no shortage of agents who have been advising land-holders, 'Get a clearing approval and try and knock the country flat before you sell it.' We are saying, 'It could be that you can sell it better if you leave the bush there.' There has been significant thinking through and discussion happening with the industry, for them to say, 'Okay, yes, it is changing,' and to go on from there. I should stress that the strategy I am working on is a year or two of intensive involvement in this discussion, building rapport with the industry, helping with an understanding of the issues and so on, and then I think the quicker I get out of there and government gets out of there, the better. This is primarily,

I would hope, an industry based program where they start driving it because there are extra sales in it for them, with an independent organisation such as the World Wide Fund for Nature there to give it a bit of an environment quality assurance process.

**CHAIR**—I assume, then, that these policies that you are talking about and the positions that you are stating are Western Australian government policy?

**Mr Bradby**—I would think most of what we have been talking about, and certainly programs like Bush Brokers and the revolving fund.

**CHAIR**—So no compensation?

**Mr Bradby**—I will refer you to the report I work to, which is the final report of the Native Vegetation Working Group, released with the state salinity strategy in April last year, and endorsed by my then minister after discussion through cabinet in October. I am working to implement the 15 recommendations in there and that has been the basis upon which I have been having this dialogue.

**Mr BYRNE**—Touching on a couple of points in your submission, you have on one of the pages:

It can be argued that increased saline flow is, in effect, an effluent created by the agricultural industry. If this argument is accepted, then it follows that the agricultural industry should have the legal responsibility of reducing the damage its economic activities have caused.

**Mr Bradby**—Yes.

**Mr BYRNE**—What would your position be if there is no diminution in the salinity problem and there are difficulties with respect to limiting the increased salinity flow? Are you potentially proposing some sort of legislative amendment to ensure that you address the problem, given what you have just stipulated here?

**Mr Bradby**—No, but to use a phrase which I hope is appropriate here, the level playing field, the environmental controls that SLCC has been party to, particularly on the issue of land clearing and the issue of draining of saline water, are controls that other agencies also have an oar into. When you work closely with agencies such as the Environmental Protection Authority on these matters, one day they are dealing with an industry which has a pipeline and a permit system and it is quite rigorous, and they measure it, and the next day they have an industry where it has been built on a cooperative basis through the land care movement, which I hope we maintain. But that argument, which is not put as a case but is put as a view that is often heard, is for a bit of a bottom line.

**Mr BYRNE**—What would the position of the Conservation Council be if these ongoing programs that you were proposing were not taken up, if there were groups of people that were not very happy with adhering to what you had proposed? You have talked about incentives in this. What happens if incentives that you have proposed do not work?

**Mr McFarlane**—I guess we come back to the framework for natural resource management. When you have a regional body that is well recognised by the community, then some of these schemes need to be finetuned to meet the needs of those particular subregions, and in doing so you can find out what is going to work in that particular region and what is not. Out in my area it could work quite differently from, say, the south coast or the sou'west.

**Mr BYRNE**—Would your position be at this point in time that you would not propose any legislation to ensure duty of care for farmers? Is that the position of the council? There are a couple of reports that have recommended that. Perhaps I will rephrase my question. What is your response to that recommendation?

**Mr McFarlane**—Certainly there needs to be a pretty solid bottom line when it comes to environmental issues, and I think the bottom line has been breached so often in recent times, and certainly when it comes to saline water, that it will depend on what damage is being done as to how much regulation needs to be introduced, but I am hoping the minimal amount would be required to have the maximum effect.

**Mr BYRNE**—So that is something that your organisation is examining in the present period of time?

**Mr Bradby**—It is. We had a discussion or SLCC had a discussion that I was party to at its meeting last week and, I should add, partly prompted by today. The discussion was basically, 'Yes, we've been putting a lot of effort in the last year or two into the incentive stuff, the assistance stuff, working with the salinity strategy. We do need to go back and renew a bit of discussion on those bottom line principles of policy.' But the overall approach has been, and I hope will continue to be, that we are evolving. Land care has moved enormously in the last 10 to 15 years. We are in a very different place to where we thought we would be. We have been far more successful but the problem is also far larger. We now know that. I guess no-one is looking at what the bottom line is in 20 years time. We are probably concerned to put as much effort and assistance out there in the most effective manner in the next four to five years.

Your question was a very good one. I should add, what happens if all the incentives do not work? The state salinity strategy is making is quite clear that if all we know about at the moment does work, instead of losing 6½ million hectares of land—which is two or three thousand farmers, or more, certainly a lot of farmers—a third of the wheat belt, we might lose 4½ million hectares. At this point, it looks as if what we have got will not work and the outcome will be a need for massive structural adjustment to ease the pain of salinity.

**Mr McFarlane**—I would just like to cut in there. The large area is actually bandied around, but it is going to be affected to different degrees and there is going to be quite good money earned by farmers from this change to land with changed management and changed industry, new industries, that could be very profitable.

**Mr BYRNE**—Why then, if you are saying that, do you have a collective of farmers who feel very apprehensive about the existing arrangements and potential future arrangements? I do not know how many farmers we met from various farms. If in fact we have undertaken this consultation, if people clearly understand what the guidelines are, if they understand the challenges before them, why this collective apprehension about what is happening?

**Mr McFarlane**—I think the expectation out there is there going to be a quick fix to this major problem of salinity, and there is just no quick fix. It is going to need a real integrated approach, so both public and private are going to have to be a lot more strategic with their funding.

**Mr BYRNE**—Have you conducted any sort of estimates as to how many farmers might lose their properties as a consequence of this adjustment?

**Mr McFarlane**—No-one can tell, I would say.

**Mr BYRNE**—But you would have to have a rough estimate, surely?

**Mr Bradby**—What we have done in the last three years is institute a very massive program called Land Monitor to virtually provide salinity prediction mapping and show what will it mean on the ground. That is winding up in the next month, two months, and we will then be able to go out bit by bit and do that sort of thing. I should also add that some groups who have seen that material are not happy with it being public material because there are properties already that are unsaleable or close to unsaleable because of this issue and that could worsen.

**Mr BYRNE**—I think you were talking about the extension of the vegetation scheme. You are preparing a draft report, draft guidelines of the subgroup. Who has that subgroup been consulting with in the lead-up to drawing the draft guidelines?

**Mr Bradby**—Is this for the implementation—

**Mr BYRNE**—The remnant vegetation protection scheme.

**Mr McFarlane**—The expansion of that program.

**Mr Bradby**—In the Native Vegetation Working Group document it was mooted that the scheme needed to be broadened to pick up a number of issues. At the same time that that document was put together, what we also did with the last year's funding for that scheme was devolve it to the four main regional groups in the southern agricultural area and said to them, 'Would you like to manage this scheme?' and they have done an excellent job. I am personally finishing off those guidelines over the next couple of weeks and the first port of call will be those regional groups, each of them being an umbrella organisation now for the amazing network of land care groups we have, and I expect them to carry the debate through that network.

**Mr BYRNE**—What will they do then? Will they say, for example, 'We've been to Narrogin'? How will the farmers in Narrogin be aware? What sort of process of consultation will occur? You are talking about a regional group, but what do they do to meet with farmers, individually consult with farmers? What is the process?

**Mr Bradby**—It varies region by region. Resources make it very difficult to do it through any solid process such as we would all like. The south coast is the region I am working in most, and that regional group meets every six weeks. Members of a large number of their land care groups get to each meeting and issues like this are thrashed through at each meeting. They have a

specialist native vegetation group that will then meet, and they will come up with a position which will be included in their regional strategy and in a native vegetation strategy that they are putting together, based on the Commonwealth's and the state's native vegetation framework. That is a public document that will go to every council, all the major groups and what have you across the region. We are trying to build pretty open and transparent processes here. We do get a lot of criticism for too many workshops, too much discussion, too much paper. There is a bit of a balancing act needed.

**Mr BYRNE**—Do people individually go and consult with farmers in the sense that you have people who will meet with farmers individually? Is there some sort of process?

**Mr McFarlane**—I am from the Avon River Basin area and I am a member of the regional body there, and to be on that body you have to be elected by the community through the LCDCs. It is a fairly democratic process in that area. We try to get out to whatever field days are on or seminars and try and get a spot with the industry group meetings, just to bring issues to the fore.

**Mr BYRNE**—Just one final point. This is in your overall conclusion:

An approach is needed which recognises the fundamental obligation of landowners to behave with environmental responsibility, while at the same time seeking the most effective mechanisms to produce the changes in landscape management that benefit all.

The following point:

Where these mechanisms involve payments to land-holders, then they should be subject to the fundamental common law test of reasonableness, given the physical circumstances, the historical background and the relative abilities of the parties to undertake certain actions.

Would you argue that there should be some sort of reciprocal reasonableness with respect to the farmers? Given that if this is what has been proposed, do they not have a right to subject the authority to that same test?

**Mr Bradby**—Absolutely, and I think WA, perhaps more than the other states, is fortunate in that we are not a large population and people do have pretty good access to the political process and to the government process. Certainly through the development of these sorts of reports, the minister of the day goes to lots of country shows and so on and there is all sorts of feedback. The Chairs of the regional groups at the moment meet together and often were meeting with the deputy premier and others. It was a backwards and forwards process. It was not one way.

**Mr BYRNE**—We have taken some testimony from various people who have been affected by this legislation who would contest that they have been subjected to that sort of standard, and when they sought recourse they had to fund it themselves. Do you think if farmers wish to contest an encumbrance that is put on their property they should have an avenue rather than themselves funding that where they can subject a proposition that has been put forward by the agency to that test?

**Mr McFarlane**—There was the Agricultural Disputes Board but it was never used by farmers.

**Mr Bradby**—I guess we would all like this type of legislation in Western Australia to be a bit clearer, and there has not been much revamp of natural resource legislation for many years, and in fact we have to operate a little bit by overlapping some of the old laws and that has certainly been the case with the clearing controls and that has certainly led to some of the communication problem and the concerns, because it is difficult to understand. I think that would go a long way to resolving some of these issues, but I guess I would have to ask what is the standard for any industry. What does happen for any industry that is affected by a change of planning decisions or by greenhouse targets being introduced on their smokestack and so on?

**Mr BYRNE**—It is still fairly contentious.

**Mr Bradby**—It is fairly contentious.

**Mr BYRNE**—When you are using that example you have major industries saying that if we utilise those standards they are going to have to close down and move offshore, so that is perhaps not the best analogy you could use with respect to farmers.

**Mr Bradby**—I think part of what we have been saying is in Western Australia in particular there are some hard bullets to bite, and we are not really biting them yet. Maybe it is the same with global warming, I am not sure.

**Mr BYRNE**—But in a sense, then, if you are arguing that, are you arguing that the people who are on the front line who are going to be affected by these changes, where you are going to in a sense change their lifestyle, should be afforded compensation? You are talking about adjustment, but what sort of adjustment? We are going through this adjustment process now. We are saying there are going to be bodies and casualties as a consequence of this. We are observing that destruction of lifestyles, et cetera. Who has the ultimate responsibility to assist these people? We are implementing these changes but we are also seeing the effects of the implementation of these changes and people's lifestyles completely changing. I think we all know that if we implement some of the stuff you have touched on here, it is not just a minor adjustment, it is a substantial adjustment. Just reading this entire submission, the reality, from what you are arguing, is that there needs to be more significant structural adjustment, and you have said that yourself. Who then carries the responsibility of assisting farmers through that adjustment, or are you saying they have got to absorb that themselves?

**Mr McFarlane**—To some degree we will have to, because farmers are managing land out there and carrying out industries that are not suited for that particular land. I know on my own property I am really targeting where I am going to grow the best crops and make money, but too often we see just crop from fence to fence and then the profit is drawn from an average. We cannot do that any more. We have really got to target what industries are put on what land, and we need new industries out there, especially when it comes to combating salinity to deal with it.

**CHAIR**—If you were the minister, would you have the courage to implement the changes?

**Mr McFarlane**—If I was not prepared to go beyond the next term, I would be prepared to have a go.

**CHAIR**—Yes, that is the reality of life, isn't it?

**Mr McFarlane**—Yes, I realise that. There are some real limitations there but it is only when there is a real crisis, and I believe there is a real crisis in the WA agricultural area now, not only from commodity prices but also from the seasons. Also the crops are not being yielded off the particular land now, and so we need to be far more targeted as to what industries we have on what land.

**Mr Bradby**—Can I respond to your point a little bit too. One of the measures we put in the safety net was actually case management of farmers one by one, because I think each individual farmer's circumstances vary so much, and they probably vary so much that it is hard to have a silver bullet. You have really got to sit down and work it through over a few months. It is a new form of adjustment. We have done this for other reasons in the past. I guess I am happy to go on the record agreeing with some comments that were made by the previous group, that the government is in danger of doing too little, too late.

I think the stuff in here, as we get wheels under it, if we get significant funds into it, if we do link in with the Prime Minister's action plan that was released the same week as this one, and if that does deliver and we can come to the intergovernmental agreement that they are wrestling with at the moment, then we will start delivering at the scale and at the level which will resolve most land-holders' concerns, but at the moment we have carried out the actions seen as necessary to protect the landscape and we are bringing this stuff in afterwards, and it would be nice to be a bit quicker and a bit bigger.

**CHAIR**—Could I ask Mrs Corcoran to move that the evidence be published.

**Mr McFarlane**—We would like to present some supplementary notes.

**CHAIR**—We need a motion on that as well.

Resolved (on motion by **Ms Corcoran**):

That, pursuant to the power conferred by section (o) of standing order 28B, this committee authorises publication of the evidence given before it at public hearing this day.

**Committee adjourned at 3.56 p.m.**