# Land Tenure Policy

## Implementation Strategy Report

Prepared for Kimberley Regional Group
by NAJA Business Consulting Services & CreativeIQ

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## BACKGROUND

In January 2017, NAJA Business Consulting Services (NAJA) presented the Kimberley Regional Group (KRG) with a Land Tenure Framework Policy Position Statement which they had commissioned. On April 28, 2017, the KRG formally adopted this as their policy position on land tenure.

This paper was produced in response to KRG's understanding of frustrations experienced by pastoralists seeking to diversify their operations along with the challenges faced by the Shires themselves and experienced by developers and Aboriginal groups seeking to engage in other developments and infrastructure works. Land tenure changes required for normal local government operations, such as roads, housing, land development and the provision of infrastructure and services are often thwarted due, in part, to the complexities of the current land tenure framework and in particular, native title processes.

It was important for the KRG that in the development of this policy position that opportunities for economic development and diversification are supported in the region through effective policy that is sustainable, workable and takes consideration of the needs and priorities of all key stakeholders.

The Policy Position Statement was developed in partnership between Paul Rosair from NAJA and Anna Dixon from CreativeIQ and represented significant stakeholder consultation and research. This engagement and exploration involved:

- Stakeholder Interviews
    - National Native Title Tribunal
    - Department of Aboriginal Affairs
    - Department of Lands
    - Kimberley Land Council
    - Kimberley Pilbara Cattleman's Association
    - Pastoralists and Graziers Association of Western Australia
    - Ben Wyatt (ALP)
    - Peter Tinley (ALP)
    - Josephine Farrer (ALP)
    - Stephen Dawson (ALP)
    - Michael Murray (ALP)
    - Mark Lewis (Liberal)
    - Brendon Grylls (The Nationals)
    - Terry Redman (The Nationals)
    - Dave Grills (The Nationals)
    - Robin Chapple (Greens)
- Case Studies
    - Nita Downs Station
    - Country Downs Station
    - Ord East Kimberley Expansion Project
    - West Arnhem Land Fire Abatement Project
- Analysis of Media Coverage – Seizing the Opportunity Agriculture
    - Ceres Farm

- Mowanjum Station

As a result of this work, along with the analysis of the current policies and processes associated with land tenure matters in the Kimberley (and beyond), a range of observations were made in relation to this area. It was suggested that it is important to consider whether it is reasonable that:

- The primary agricultural activity on pastoral leases in Western Australia is effectively the same as it was when leases were first granted in the 1850s – grazing stock on native vegetation;
- The State leases 34% of Crown land (87 million hectares) for a total value of production of only around $300-million per annum – constituting only three percent of the State's $10-billion of agricultural production each year;
- It costs more to administer pastoral leases than the State receives in rent for those leases; and
- Investors and lessees trying to expand and develop relatively small areas (500 to 15,000 hectares) of pastoral leases for high-value horticulture and irrigated fodder production are tied up in red tape and complex negotiations for years.

The situation as it stands means that if a project proponent wishes to diversify a pastoral lease, their options are:

- Diversification Permit:
  - may offer a solution for many projects on Pastoral leases;
  - have limited applications – can only be used for small-scale activities to support pastoral operations and for activities related to pastoral use;
  - held by lessee so not transferable or registerable (impacts on potential to secure funding via loans or third party partnerships).
- Negotiation of long term leasehold changes or freehold title:
  - complex process (as per LTPIA flow chart);
  - case studies in the report have taken over ten years' work without resolution.

The LTPIA flow chart (fold out chart in LTPIA Handbook) articulates these stages and timeframes (although, based on the case studies and media coverage it seems that it is not uncommon for timeframes to far exceed even those listed below and still not result in resolution):

| Stage | Description | Estimated Timeline |
|---|---|---|
| **Application Stage 1:** | Proponent develops idea, submission of Crown Land Enquiry Form to Department of Lands for initial land tenure investigation and assessment. | Applicant completion of Crown Land Enquiry form + 2 months |
| **Application Stage 2:** | Proponent seeks preliminary advice and in-principle support, develops Project Proposal. Project Proposal is | 7 months + unspecified timelines |

| Stage | Description | Estimated Timeline |
|---|---|---|
| | submitted to Department of Lands for assessment and to undertake statutory referrals. Department of Lands then refers the application to the Minister for Lands and Cabinet for approval. | for Ministerial and Cabinet consideration |
| **Option Agreement Stage** | If Project Proposal is approved, proponent is offered a three-year Option, providing the opportunity to determine project feasibility. There are a range of conditions that must be met during this Stage. | 3 years |
| **Tenure Stage** | If all conditions of the Option are met, a four-year lease is issued. The land must then be developed in this final stage. Once all the conditions of the development lease are met, a long-term lease or freehold, as approved, will be granted. | 4 years |

The Land Tenure Policy Statement recommended a range of legislative, policy and administrative changes as a result of these findings. The KRG adopted all the recommendations as their official position in relation to Land Tenure Policy at their regional meeting on 28 April 2017 and put forward that government give consideration to:

- adoption of the new land tenure framework;
- overarching changes to government policy;
- subsequent legislative changes to LAA; and
- subsequent adoption of new land tenure administrative processes and procedures across government.

## PROPOSED LAND TENURE FRAMEWORK

Proposed land tenure framework seeks to achieve the following objectives:

- **Navigability** – that the process is able to be navigated by small-scale project proponents who lack specialist knowledge.
- **Preservation of rights** – supporting the retention of the rights of Traditional Owners and improved process for the negotiation of benefits from land use.
- **Improved certainty** – that the process provides industry and investors with improved certainty about their rights and obligations to allow them to strategically manage their investment decisions.
- **Acceleration** – that the process be responsive and flexible enough for time-sensitive projects to achieve certainty regarding tenure to secure investment commitments at the time when they are considered most lucrative.
- **Industry development** – facilitate appropriate industry development and diversification in the Kimberley, particularly in the agricultural and tourism industries.
- **Outcomes focus** – supporting the development of projects that have beneficial outcomes for all parties (State, traditional owners, industry, environment and community).
- **Structured negotiation** – support all parties in effective negotiation through the provision of a structured process and provision of tools and templates.

- **Procedural remedy** – that stalled negotiations can be adjudicated by an independent body to allow for resolution.
- **Procedural fairness** – that the process gives all parties involved access to a fair and proper process when having their position considered.

## LEGISLATIVE AND ADMINISTRATIVE CHANGES

Consideration of amendments to the *Land Administration Act 1997* including:

- Modernising the definition of pastoral purposes to better reflect current practice - unchanged in the Act since the commencement of pastoral activities in the north of Western Australia in the 1850s.
- Aligning the definition of pastoral purposes with the 'primary production' definition in the Commonwealth *Native Title Amendment Act 1998* – given s24GA and s24GB of that Act allows a broad range of primary production activities.
- Clarifying whether on Division 5 of the *Land Administration Act 1997* diversification permits are necessary for 'agricultural, horticultural or other supplementary uses of land inseparable from, essential to, or normally carried out in conjunction with the grazing of authorised stock, including the production of stock feed; and activities ancillary' – particularly given that the need for permits for activities that form part of accepted pastoral practices which would seem to align with the intent of the lease agreement.
- Clarifying terminology such as 'enclosed and improved', and 'unenclosed and unimproved' within the *Land Administration Act 1997* in particular in relation to native title;
- Addressing the inconsistencies between definition of pastoral purposes in S93 and s51(c) of the *Environmental Protection Act 1986* (which requires authorisation for the clearing of native vegetation) and the current approach of requiring diversification permits for agricultural uses of pastoral land (such as S120 of the *Land Administration Act 1997*);
- Clarifying access to carbon rights – for example, that the Minister or the Pastoral Lands Board can provide the statutory mechanism to transfer carbon rights on a pastoral lease on to the lessee. Further amendment to the *Carbon Rights Act 2003* may be required.

Consideration of administrative changes should include:

- Adopting a more facilitative approach.
- Referral timeframes be considerably reduced, with consideration that 14 days is sufficient time for referral agencies to provide comment on any proposals (currently around 45 days, considering that the referral agencies are generally not the decision makers, rather only required to provide comment on proposals).
- A change of approach to responding to referrals is also proposed, with referral agencies' commentary being consistently considered as advice as opposed to decisions/directions.

- Delegation to local governments to deal with straightforward land tenure matters using a set of standard conditions developed by the Department and reviewed by legal officers.
- Wind back of government decision-making around viability of projects with a transition to a 'first in, first served' type approach.

### NATIVE TITLE CHANGES

Native title changes should be considered, including:

- Innovative native title compensation models developed to allow proponents to negotiate a compensation, with the government to fund up-front and the proponent to repay through staged payments linked to approvals timeframes and milestones and/or lease instalments;
- The reinstatement of the Native Title Office;
- Templates and tools for proponents to support ILUA negotiation and formation of agreements; and
- Establishment of a procedural remedy for unresolved native title disputes or failures to establish agreements.

## CURRENT CONTEXT

NAJA, in collaboration with CreativeIQ, were engaged to work with KRG and stakeholders to raise awareness of the content of the Policy Position Paper and its potential benefits, as well as seeking to understand how stakeholders can contribute to moving the Policy Position Statement from concept to action.

In the time period since the development of the Policy Position Statement, there has been a change of government at state level. It should be noted that as part of the consultation process in developing the Policy Position Statement, representatives from all sides of politics were engaged with and there was broad support across the political spectrum for change.

As detailed in Section 4: Stakeholder Engagement, a wide spectrum of stakeholders was briefed on the KRG's position and the Policy Position Paper. The level of engagement with this consultative process has been very positive and reflects the current appetite for change in this area.

## AWARENESS RAISING

In addition to the stakeholder engagement that NAJA was formally engaged to undertake, there have been a number of other opportunities to raise awareness of the position of the KRG and these have been undertaken on a pro bono basis on KRG's behalf.

In June, NAJA took advantage of the opportunity to meet with the federal Productivity Commissioner, Paul Lindwall, who is leading an inquiry into Transitioning Regional Enquiries. During this meeting, a high-level overview was provided of the KRG's position as part of a range of issues discussed. Following the meeting, we made a formal submission to the Inquiry, including a full copy of the Policy Position Statement.

In recent months, there has been renewed media interest in the issues around land tenure issues related to pastoral leases and more broadly matters related to the sustainability of pastoral stations, for example with the discussion of opportunities in terms of carbon sequestration. Noting this, NAJA took the opportunity to flag the Policy Position Statement to The West Australian. As a result, Business Reporter, Jenne Brammer, interviewed Paul Rosair and was referred to KRG directly in the development of an article which explores the issues and potential solutions in this space. An article regarding this appeared in The West Australian on 28 July 2017. See Appendix A for a copy of this report.

The State Government is currently undertaking a Service Delivery Review, looking at how government services can be better provided including improvements to government processes and procedures. NAJA have taken the opportunity to advise the panel guiding this review of the KRG's perspectives and have provided them with a copy of the Policy Position Paper. During this engagement, opportunities explored in particular were the delegation of land administration responsibilities to local government, along with collocation of DoL staff to local government areas to improve synergies and timelines.

NAJA also made a submission to the Senate Select Committee on Red Tape, providing with the Policy Position Paper and, in addition to this submission, Paul Rosair appeared before them via teleconference at their public hearing on 22 August 2017. See Attachment 1 for a copy of the Hansard Record.

In October, Paul and Anna will co-present at a panel discussion focusing on 'Politics in the Regions' at Sustainable Economic Regional Growth Australia (SEGRA) conference and will incorporate the ideas presented in the Policy Position Paper as an example of how regional leadership groups such as the KRG can constructively lead and influence strategic economic change.

# STAKEHOLDER CONSULTATION

## 1.1 Members of Parliament

As part of the engagement process, the following members of parliament have been provided with a brief overview of the context and content of the KRG's Land Tenure Policy Position Paper, along with a copy of the document:

- Hon. Alannah MacTiernan MLC, Minister for Regional Development, Agriculture and Food
- Hon. Darren West, MLC, Parliamentary Secretary to the Minister for Regional Development; Agriculture and Food; Minister Assisting the Minister for State Development, Jobs and Trade
- Hon. Stephen Dawson MLC, Minister for Environment; Disability Services
- Mr Reece Whitby MLA, Parliamentary Secretary to the Treasurer; Minister for Finance; Energy; Aboriginal Affairs, Parliamentary Secretary to the Minister for Environment

## 1.2 Office of Minister for Local Government; Heritage; Culture and the Arts

Senior Policy Officer of the Office of the Minister for Local Government and Communities, Garry Hamley, previous Executive Director at Native Title Office (WA), discussed the issues and opportunities presented in the Land Tenure Policy Position Paper.

Mr Hamley was very interested in the concepts presented in the paper and saw that was real opportunity to move forward with the framework and associated recommendations. He considered that forming a group of people in government, along with key stakeholders to drive it forward. Mr Hamley was keen to see the development of a cross-agency unit to take action on the recommendations.

In further discussion, Mr Hamley agreed that a compensation model needed to be determined with input from representative bodies. He also was of the view that native title and heritage matters could be better handled in relation to public works, particularly where works are being carried out for the benefit of the native title group. Mr Hamley supported the establishment of a specialist unit to deal with approvals.

In a further meeting with the Hon. David Templeman MLA's staff, Kelly McManus (Policy Officer) was briefed about the content and benefits of the Policy Position Paper and she was highly engaged and interested in the concepts presented.

## 1.3 Office of Minister for Regional Development; Agriculture and Food

Principal Policy Officer of the Office of the Minister for Regional Development; Agriculture and Food, Craig Huxtable was provided with an overview of the KRG's Land Tenure Policy Position Paper and opportunities to move the recommendations forward. Mr Huxtable was positive about the recommendations and was interested in how these ideas could be actioned.

## 1.4 Office of the Treasurer, Minister for Finance; Energy; Aboriginal Affairs

Principal Policy Advisor (Aboriginal Affairs), Rowan Worsdell, and Adelaide Kidson, Policy Advisor of the Office of the Treasurer; Minister for Finance; Energy; Aboriginal Affairs, were provided an overview of the initial engagement undertaken with stakeholders during the development phase of the KRG's Land Tenure Policy Position Paper including Mr Wyatt's indication of a willingness to be significantly involved where there was sector wide by into any proposed changes to assist navigating the changes. Mr Worsdell and Ms Kidson were then briefed as to the content and potential of the KRG's Land Tenure Policy Position Paper and the wide-ranging support for the proposals during this phase of engagement.

## 1.5 Mark Lewis – immediate past MLC and Member for Mining and Pastoral Region; and Minister for Agriculture and Food; current consultant in the field

Mr Lewis was consulted as part of the development of the KRG's Land Tenure Policy Position Paper and was highly engaged with the process. Mr Lewis is no longer in government, however, is engaged as a consultant working on a range of projects in the minerals and energy sector, as well as pastoral projects. The opportunity arose to brief Mr Lewis in relation to the KRG's Land Tenure Policy Position Paper and he continued to be highly supportive of change in this space. He considered that the recommendations were workable and would be welcomed across stakeholder groups.

## 1.6 Department of Premier and Cabinet

Deputy Director General of Department of Premier and Cabinet, Michelle Andrews (also Chairperson – Regional Service Delivery Review) was provided with a high-level overview of the KRG's Land Tenure Policy Position Paper and invited NAJA to make a submission was made to the Regional Service Delivery Review which included a copy of the paper.

## 1.7 Department of Planning, Lands and Heritage

Director General of the Department of Planning, Lands and Heritage, Gail McGowan was briefed on the background and content of the KRG's Land Tenure Policy Position Paper. Ms McGowan was already familiar with much of the content of the document and her staff had briefed her regarding the overall intent of the document. She noted the complexities of the current processes but also highlighted the significant legislative and policy changes which would be required to achieve the objectives of the proposed new approach.

## 1.8 Department of Lands

Colin Slattery was consulted as Director General of the Department of Lands, shortly before the Machinery of Government changes saw the amalgamation of this department with Planning and Heritage. Mr Slattery considered that the Regional Framework was useful, although needed to provide greater clarity of the involvement of government. He emphasised the importance of partnerships being agreed with aboriginal people.

Mr Slattery noted that there was significant opportunity, as mooted by industry bodies such as the Kimberley Pilbara Cattlemen's Association, for hundreds of millions of dollars' worth of projects to go ahead. He considered these would represent not only benefit to project proponents but also disadvantaged people across the region, regardless of whether they were traditional owners or not. He suggested there was real opportunity to provide employment for regional people, including aboriginal people, on many of these projects.

## 1.9 Department of Local Government, Sport and Cultural Industries

The Director General of the Department of Local Government, Sport and Cultural Industries, Duncan Ord, was provided with an overview of the background and content of the KRG's Land Tenure Policy Position Paper. Mr Ord concurred that there were many challenges in the space for all stakeholders and was supportive of improvements to process being made in this area.

## 1.10 Department of Water and Environment

Director General of the Department of Water and Environment, Mike Rowe, was briefed as to the background and content of the KRG's Land Tenure Policy Position Paper. Mr Rowe agreed that the current processes in this area are not effective and that change was desirable, with the model provided by KRG sounding very positive. He emphasised the importance of cultural change within government to a less risk-averse and more enabling approach would be critical if real change was to occur. He felt that there was an opportunity to establish one Department as the 'one-stop-shop' for development projects to further streamline the process.

## 1.11 Western Australian Planning Commission

Eric Lumsden, Chairperson of the Western Australian Planning Commission, was briefed on the content and recommendations of the KRG's Land Tenure Policy Position Paper. Mr Lumsden reflected on the challenges presented to those wishing to diversify in the Kimberley and that the recommendations in the paper presented a comprehensive strategy to respond to these challenges.

## 1.12 National Native Title Tribunal

Deputy Registrar of the National Native Title Tribunal, Dr Debbie Fletcher explored the findings of the Land Tenure Policy Position Paper and opportunities move forward on the strategies it puts forward.

Dr Fletcher shared her understandings of the current situation at Department of Premier and Cabinet, with it being her observation that a continuation of a legislative approach is still being taken in relation to resolution of native title matters and that briefings to incoming members from long-standing staff have mooted a 'business as usual' approach.

She commented that it seemed like momentum was gathering at a Commonwealth level to address native title issues and potentially make changes to this space. Debbie provided a contact in the area and with their assistance we have been directed, Nadine Williams, First Assistant Secretary in the Community and Economic Development Division of the

Department of Prime Minister and Cabinet, who we have since engaged with to provide a copy of the Policy Position Paper.

Dr Fletcher discussed the 24 August 2016 Federal Court of Australia judicial assessment of native title compensation for the extinguishment or impairment of native title rights and interests in *Griffiths v Northern Territory (No 3)* [2016] FCA 900 (**Timber Creek**). This was a landmark decision whereby the Court ordered the Northern Territory to pay over $3.3m to the Ngaliwurru and Nungali Peoples as compensation for economic ($512,000) and solatium, or non-economic loss, ($1.3m), along with interest ($512,000).

This case provided an initial methodology for native title compensation liability calculation. However, it was acknowledged at the time of the assessment that this may well be challenged.

This has since proven to be the case, with the Northern Territory government lodging an appeal in February 2017, making a case that the method used to determine the costs was incorrect. An appeal from the native title holders have also filed notices of appeal and cross appeal, seeking greater compensation.

This is still before the Court but proponents need to be aware of the potential impacts of the initial decision with this providing a guide to the quantum of native title compensation liability (particularly noting the decision to compensate both economic and non-economic losses).

Dr Fletcher was of a view that existing compensation policies needed to be reviewed and to have more substance to them. She pointed to the South Australian government's policy providing some potential guidance. Dr Fletcher suggested the formation of a steering committee of stakeholders to review native title and coordinate the development of native title policy as there are currently no written policies, other than a Cabinet In Confidence Compensation Policy.

When reflecting on the current changes to the machinery of government, Dr Fletcher commented that it was one thing to reorganise departments but it was another thing to achieve change through the development of policy and process. She also considered that the right to negotiate and exercise an expedited procedure was underutilised.

Her perspective on compensation was that the creation of jobs and economic opportunities was key.

Dr Fletcher agreed that changes proposed in the Position Statement to the *Land Administration Act 1997*, particularly in relation to alignment with the *Native Title Act 1998*, were important.

## 1.13 Kimberley Land Council

The Chief Executive Officer of the Kimberley Land Council (KLC), Nolan Hunter, was updated as to the development of the KRG's Land Tenure Policy Position Paper which he was consulted regarding during the stakeholder engagement phase. Mr Hunter was very supportive of the practical and outcomes focused approach of the paper.

Mr Hunter considered that all parties were keen to move to a model that provided more certainty and better outcomes, and that the model proposed by KRG could deliver on that. He felt that all parties were highly motivated to see change occur and this represented a positive opportunity to move forward in a cohesive manner.

Mr Hunter indicated that the KLC would be willing to provide a letter of support to the KRG and a model letter has been provided to him for consideration and adaptation (see Appendix B for a copy of the letter).

## 1.14 Pastoralists and Graziers Association of WA

The Pastoralists and Graziers Association of Western Australia (PGA) met to discuss the KRG's Land Tenure Policy Position Paper, with representation by Tony Seabrook – Chairperson; Doug Hall – Policy Officer; Tom Lamond – Policy Officer. They were in strong agreement with the ideas put forward in the paper and indicated that their formal position on these matters was very closely aligned.

The PGA believed changes to policy, administration and intent were more likely to yield significant results than changes to legislation – that much of what needs to be achieved is related to government processes and practices, rather than legislation.

Also highlighted during the meeting was the opportunity for traditional owners to be engaged in ranger type roles, managing boundaries along with fire and weed management.

The PGA is keen to see changes of the nature explored in the KRG's paper progressed and they indicated that they were able to provide a letter of support to that effect. A model letter has been provided to them for their consideration and adaption (see Appendix B for a copy of the letter).

## 1.15 Kimberley Pilbara Cattlemen's Association

The Kimberley Pilbara Cattlemen's Association (KPCA) was represented by David Stoate – Chairperson, and Emma Salerno – Treasurer (also Principal at Salerno Law). They were provided with a brief as to the KRG's Land Tenure Policy Position Paper and the opportunities it presented. They were very supportive of the strategies laid out in the paper and the KPCA felt strongly that change in this area was vital.

The KPCA is keen to see sustainable growth and development in the region and considers that changes such as those proposed in the KRG's paper would make a real difference. They indicated a willingness to provide a letter of support to the KRG in relation to this and they have been provided with a model letter for consideration and adaptation (see Appendix B for a copy of the letter). The KPCA has since provided a letter using this model to the KRG.

## 1.16 Aboriginal Affairs Advisory Committee

The Chairperson of the Aboriginal Affairs Advisory Committee, Ian Trust, was provided with an overview of KRG's Land Tenure Policy Position Paper and was in agreement that the current system is not working to effectively. Mr Trust considered there was a system failure

and that change was required, with the KRG's proposal providing a potential model. He identified that the regional agreement model could see aboriginal people undertaking work such as monitoring rangeland conditions to avoid overgrazing and similar environmental issues.

Mr Trust indicated a willingness to provide a letter of support to the KRG and a model letter has been provided to him for consideration and adaptation (see Appendix B for a copy of the letter).

## 1.17 Yawuru

We had the opportunity to meet with Peter Yu, the CEO of Broome-based Yawuru (representing the traditional owners of the area) and provided him with a briefing regarding the background and content of the KRG's Land Tenure Policy Position Paper. Mr Yu was in agreement that there needed to improvements to the current system for achieving land tenure and navigating native title. He felt this represented a leaner and more streamlined approach that had the potential to yield positive outcomes for all parties.

## 1.18 Western Australian Local Government Association

The Executive Manager Governance and Strategy with WALGA, Tony Brown, was presented with the background and content of the KRG's Land Tenure Policy Position Paper. Mr Brown concurred that the current land tenure framework does not work effectively and was a barrier to development and growth in the region. During the meeting, discussion regarding the LAA legislative delegation to local government occurred and the benefits of such a model explored, looking at the benefits of streamlining the process and reducing the costs of land administration for both local and state government. He considered that the approach outlined in the Policy Position Paper offered a workable solution for all parties and would be welcomed by local government.

## RECOMMENDED ACTIONS

The overwhelming outcome of the consultation was that across all sectors there was strong agreement that the current processes related to land tenure and native title are not working, particularly in the Kimberley, and that the proposed changes laid out in the KRG's Land Tenure Policy Position Paper offer a workable solution.

The level of interest in engaging with us during this process has been extremely high and there is clearly an appetite to consider significant changes to both legislation and policy. The likelihood of this occurring is enhanced by cross-sector agreement by stakeholders of the value these changes offer to all parties.

It is recommended that the KRG now write to Hon. Ben Wyatt and Hon. Rita Saffioti and request the opportunity to work with them to support the implement the changes proposed in the Land Tenure Policy Position Paper. A model letter has been included in Appendix C which the KRG may choose to use as the basis for this approach.

It is noted that there is the option for the KRG to independently commence work to facilitate some of the proposed changes (for example, scoping the potential delegations to local government and drafting this work, developing templates for negotiations), however we recommend at this stage the focus be in secure a formal commitment from the State Government to move forward. The KRG can then take an active role in inputting into the proposed changes.

# Report backs Native Title Office

The West Australian 29 Jul 2017 Jenne Brammer

The Office of Native Title could be reinstated and an independent group formed to mediate over Indigenous Land Use Agreements if recommendations in a blueprint for developing the North West are adopted by the State Government.

Commissioned by the Kimberley Regional Group, the Land Tenure Framework Policy Position Framework aims to unlock the economic potential in the WA's north by addressing issues associated with native title and slashing crippling red tape.

Author Paul Rosair, of NAJA Business Consulting Services, said the document outlined a range of recommendations for legislative and administrative changes which could streamline procedures currently impeding development.

Mr Rosair has a 40-year career in State government, including the role of director-general of the department of regional development and lands, along with other senior roles within the water and environmental regulation departments.

"Recommendations in the report centre on providing a contemporary approach to land tenure, particularly for pastoral leases and the conversion of unallocated crown land," he said.

He said the recommendation for a new native title ministerial body or State Appeals Tribunal subcommittee would provide a procedural remedy for all parties and break the current gridlock which exists when an ILUA cannot be successfully negotiated.

Mr Rosair said re-establishing the Office of Native Title, abolished in 1994, could provide a one-stop shop to help parties through the land approvals process and bring efficiency.

But it would require specific instructions from Government and appropriate power to engage with other departments.

The Land Tenure Framework Policy Position Framework has now moved into a consultation phase, and Mr Rosair is working with all relevant Government departments and ministers, including Aboriginal affairs, regional development, lands and environment and water, to outline the policy position.

That consultation phase would run until late August.

Kimberley Zone chairman Elsia Archer said the Kimberley Council, comprising the Shires of Broome, Derby/West Kimberley, Halls Creek and Wyndham/ East Kimberley, had for a long time been trying to find a solution to the crippling red tape and other issues which were holding back development in the State's north.

However, commissioning a formal report, with clear recommendations, was the first formal attempt.

After Mr Rosair's final consultation period with State Government authorities, the Kimberley Council would start lobbying the various departments later this year.

Mr Rosair said the current State Government seemed committed to reducing red tape and all parties were hopeful of a positive outcome.

"The work we have done is manna from heaven, as it gives

Amend the Land Administration Act 1997 to modernise the definition of pastoral purposes and align it with the Native Title Amendment Act 1998.

The Minister or the Pastoral Lands Board to be able to transfer carbon rights on a pastoral lease on to the lessee.

Land tenure administration delegated from the Department of Lands to local governments using standard conditions.

Referral time frames (where agencies provide comment on proposals) reduced from 45 to 12.

Onus on the proponent, not the Government, project viability. Conditions throughout developments to include key milestones.

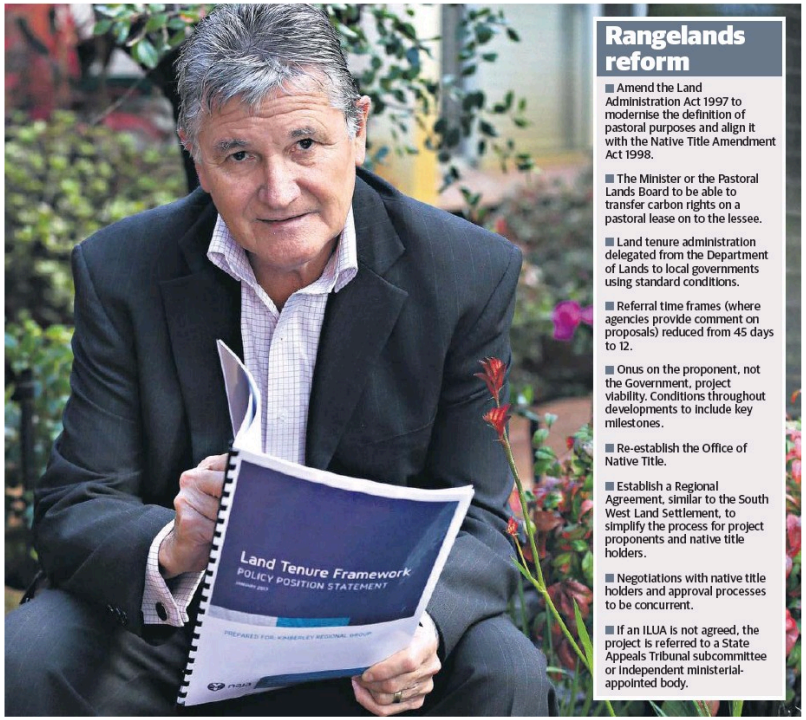
Re-establish the Office of Native Title.

Establish a Regional Agreement, similar to the South West Land Settlement, to simplify the process for project proponents and native title holders.

Negotiations with native title holders and approval processes to be concurrent.

If an ILUA is not agreed, the project is referred to a State Appeals Tribunal subcommittee or independent ministerialappointed body. the new State Government a clear pathway to resolve some of these issues," he said.

He said while many of the recommendations would represent a new risk profile to Government, the alternative of taking a highly risk-averse approach would be at the cost of progress and economic growth.




**Rangelands reform**

- Amend the Land Administration Act 1997 to modernise the definition of pastoral purposes and align it with the Native Title Amendment Act 1998.
- The Minister or the Pastoral Lands Board to be able to transfer carbon rights on a pastoral lease on to the lessee.
- Land tenure administration delegated from the Department of Lands to local governments using standard conditions.
- Referral time frames (where agencies provide comment on proposals) reduced from 45 days to 12.
- Onus on the proponent, not the Government, project viability. Conditions throughout developments to include key milestones.
- Re-establish the Office of Native Title.
- Establish a Regional Agreement, similar to the South West Land Settlement, to simplify the process for project proponents and native title holders.
- Negotiations with native title holders and approval processes to be concurrent.
- If an ILUA is not agreed, the project is referred to a State Appeals Tribunal subcommittee or independent ministerial-appointed body.

Paul Rosair, principal of NAJA, says the State Government seems to want to reduce red tape.

# APPENDIX B – Model letters provided to stakeholders

Elsia Archer – Chairperson
Kimberley Regional Group
PO Box 653
BROOME, 6725

<<DATE>>

RE: Kimberley Regional Group – Land Tenure Policy Position Paper

Dear Ms Archer

Recently Emma Salerno (Treasurer) and myself had the opportunity to be briefed by Paul Rosair regarding the Land Tenure Policy Position Paper as commissioned and recently adopted by the Kimberley Regional Group (KRG). I'd like to thank the KRG for providing the Kimberley Pilbara Cattlemen's Association (KPCA) with the opportunity to contribute in the development of this paper, along with now updating us as to the recommendations of this piece of work.

The KPCA agrees with the KRG that the current policies and processes around land tenure and native title in the Kimberley are not effective and are impacting on our region's ability to develop. Some of our members have experienced significant challenges resulting from the current policies and processes related to these areas, with negative impacts felt by our industry. There is considerable opportunity in the north, if government and industry can work together to facilitate development. We consider that the proposals for change laid out in the KRG's Policy Position Paper represent a considered and practical way forward to address these issues. We are very supportive of the recommended approach being adopted to improve outcomes for all sectors.

We are committed to supporting our members to grow and develop in sustainable ways and consider change in this space imperative if we are to unlock the potential of the region. We lend our support to the proposals made in your paper and if we can be of any assistance in gaining traction with government, we would be very happy to discuss how we could partner with you to action change.

On behalf of the KPCA, I would like to commend your organisation on taking this practical step to address a significant issue for our region.

Kind Regards

David Stoate
Chairperson
Kimberley Pilbara Cattlemen's Association

Elsia Archer – Chairperson
Kimberley Regional Group
PO Box 653
BROOME, 6725

<<DATE>>

RE: Kimberley Regional Group – Land Tenure Policy Position Paper

Dear Ms Archer

I recently had the opportunity to be briefed by Paul Rosair regarding the Land Tenure Policy Position Paper as commissioned and recently adopted by the Kimberley Regional Group (KRG). I'd like to thank the KRG for providing the Western Australian Aboriginal Advisory Council (WAAAC) with a briefing regarding the context and recommendations of this piece of work.

The WAAAC agrees with the KRG that the current policies and processes around land tenure and native title in the Kimberley are not effective and are impacting on our region's ability to develop. We consider that the proposals for change laid out in the KRG's Policy Position Paper represent a considered and practical way forward to address these issues. We are very supportive of the recommended approach being adopted to improve outcomes for all sectors.

We are committed to supporting our communities to grow and develop in sustainable ways and consider change in this space imperative if we are to reach our potential. We lend our support to the proposals made in your paper and if we can be of any assistance in gaining traction with government, we would be very happy to discuss how we could partner with you to action change.

On behalf of the WAAAC, I would like to commend your organisation on taking this practical step to address a significant issue for our region.

Kind Regards

Ian Trust
Chairperson
Western Australian Aboriginal Advisory Council

Elsia Archer – Chairperson
Kimberley Regional Group
PO Box 653
BROOME, 6725

<<DATE>>

RE: Kimberley Regional Group – Land Tenure Policy Position Paper

Dear Ms Archer

Recently my colleage Tom Lamond and I the opportunity to be briefed by Paul Rosair regarding the Land Tenure Policy Position Paper as commissioned and recently adopted by the Kimberley Regional Group (KRG). I'd like to thank the KRG for providing the Pastoralists and Graziers Association of Western Australia (PGA) with the opportunity to contribute in the development of this paper, along with now updating us as to the recommendations of this piece of work.

The PGA agrees with the KRG that the current policies and processes around land tenure and native title in the Kimberley are not effective and are impacting on our region's ability to develop. Some of our members have experienced significant challenges resulting from the current policies and processes related to these areas, with negative impacts felt by our industry. There is considerable opportunity in the north, if government and industry can work together to facilitate development. We consider that the proposals for change laid out in the KRG's Policy Position Paper represent a considered and practical way forward to address these issues. We are very supportive of the recommended approach being adopted to improve outcomes for all sectors.

We are committed to supporting our members to grow and develop in sustainable ways and consider change in this space imperative if we are to unlock the potential of the region. We lend our support to the proposals made in your paper and if we can be of any assistance in gaining traction with government, we would be very happy to discuss how we could partner with you to action change.

On behalf of the PGA, I would like to commend your organisation on taking this practical step to address a significant issue for our region.

Kind Regards

Doug Hall
Policy Officer
Pastoralists and Graziers Association of Western Australia

Elsia Archer – Chairperson
Kimberley Regional Group
PO Box 653
BROOME, 6725

<<DATE>>

RE: Kimberley Regional Group – Land Tenure Policy Position Paper

Dear Ms Archer

I recently had the opportunity to be briefed by Paul Rosair regarding the Land Tenure Policy Position Paper as commissioned and recently adopted by the Kimberley Regional Group (KRG). I'd like to thank the KRG for providing the Kimberley Land Council (KLC) with the opportunity to contribute in the development of this paper, along with now updating us as to the recommendations of this piece of work.

The KLC agrees with the KRG that the current policies and processes around land tenure and native title in the Kimberley are not effective and are impacting on our region's ability to develop. We consider that the proposals for change laid out in the KRG's Policy Position Paper represent a considered and practical way forward to address these issues. We are very supportive of the recommended approach being adopted to improve outcomes for all sectors.

We are committed to supporting our communities to grow and develop in sustainable ways and consider change in this space imperative if we are to reach our potential. We lend our support to the proposals made in your paper and if we can be of any assistance in gaining traction with government, we would be very happy to discuss how we could partner with you to action change.

On behalf of the KLC, I would like to commend your organisation on taking this practical step to address a significant issue for our region.

Kind Regards

Nolan Hunter
Chief Executive Officer
Kimberley Land Council

# APPENDIX C – Model letters – political engagement

Hon. Ben Wyatt MLA
PO Box 4373
Victoria Park 6979

<<Date>>

Dear Mr Wyatt,

I am writing to you on behalf of the Kimberley Regional Group of Councils (KRG) to formally request your support for the recommendations of the Land Tenure Policy Position Paper as commissioned by our organisation and adopted as our position on 28 April 2018. Attached with this letter is a copy of this paper.

During the engagement process in the lead up to the development of this paper, a wide range of stakeholders, including yourself, were consulted with. I note your indication of a willingness to support this work to move forward where there was wide ranging sector support for the proposals.

We have since commissioned further engagement with key stakeholders, representing political, government, industry and traditional owners. A summary of this engagement is attached and indicates a high level of interest in, and support for, this proposed new framework. Also attached are letters of support from a number of key industry and community organisations <<attach letters of support as received by KRG>>.

The KRG is keen to see real change occur as laid out in the Land Tenure Policy Position Paper and is very willing to work with the State Government and key stakeholders to achieve this.

We would welcome the formal support of yourself, and the State Government, along with the opportunity to further engage with you to discuss how we can move forward.

Kind Regards

Elsia Archer
Chairperson
Kimberly Regional Group

Hon. Rita Saffioti MLA
PO Box 2656
Malaga WA 6944

<<Date>>

Dear Ms Saffioti,

I am writing to you on behalf of the Kimberley Regional Group of Councils (KRG) to formally request your support for the recommendations of the Land Tenure Policy Position Paper as commissioned by our organisation and adopted as our position on 28 April 2018. Attached with this letter is a copy of this paper.

During the engagement process in the lead up to the development of this paper, a wide range of stakeholders were consulted with. This consultation informed the development of the approach laid out in the Policy Position Paper.

We have since commissioned further engagement with key stakeholders, representing political, government, industry and traditional owners. A summary of this engagement is attached and indicates a high level of interest in, and support for, this proposed new framework. Also attached are letters of support from a number of key industry and community organisations <<attach letters of support as received by KRG>>.

The KRG is keen to see real change occur as laid out in the Land Tenure Policy Position Paper and is very willing to work with the State Government and key stakeholders to achieve this.

We would welcome the formal support of yourself, and the State Government, along with the opportunity to further engage with you to discuss how we can move forward.

Kind Regards

Elsia Archer
Chairperson
Kimberly Regional Group

COMMONWEALTH OF AUSTRALIA

# Proof Committee Hansard

# SENATE

## SELECT COMMITTEE ON RED TAPE

**Effect of red tape on environmental assessment and approvals**

(Public)

TUESDAY, 22 AUGUST 2017

PERTH



BY AUTHORITY OF THE SENATE

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**SENATE**

**SELECT COMMITTEE ON RED TAPE**

**Tuesday, 22 August 2017**

**Members in attendance:** Senators Burston, Leyonhjelm, Paterson, Smith.

**Terms of Reference for the Inquiry:**

To inquire into and report on:

The effect of red tape on environmental assessment and approvals, in particular:

a. the effects on compliance costs (in hours and money), economic output, employment and government revenue;

b. any specific areas of red tape that are particularly burdensome, complex, redundant or duplicated across jurisdictions;

c. the impact on health, safety and economic opportunity, particularly for the low-skilled and disadvantaged;

d. the effectiveness of the Abbott, Turnbull and previous governments' efforts to reduce red tape;

e. alternative institutional arrangements to reduce red tape, including providing subsidies or tax concessions to businesses to achieve outcomes currently achieved through regulation;

f. how different jurisdictions in Australia and internationally have attempted to reduce red tape; and

g. any related matters.

**WITNESSES**

**ANSTEY, Mr Michael, General Manager, People and Health, Safety and Environment, Roy Hill Holdings Pty Ltd**

**HILL, Mr Julian, Senior Legal Counsel and Head of External Affairs, Roy Hill Holdings Pty Ltd**

**WYNNE, Mr John, Manager, Environment and Approvals, Roy Hill Holdings Pty Ltd**

**Committee met at 8:33**

**CHAIR (Senator Leyonhjelm):** I declare open this hearing of the Senate Select Committee on Red Tape for its inquiry into the effect of red tape on environmental assessments and approvals. These are public proceedings although the committee may determine or agree to a request to have evidence heard in camera.

I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee. If a witness objects to answering a question the witness should state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer having regard to the ground which is claimed. If the committee determines to insist on an answer a witness may request that the answer be given in camera. Such a request may also be made at any other time.

A witness called to answer a question for the first time should state their full name and the capacity in which they appear and witnesses should speak clearly into the microphone to assist Hansard to record proceedings. For those witnesses appearing by teleconference please identify yourself each time that you answer a question.

I remind those contributing that you cannot divulge confidential, personal or identifying information when you speak. If you wish to supplement your evidence with written information please forward it to the secretariat after this hearing. I ask everyone to ensure they have switched off or turned to silent their mobile phones.

I now welcome representatives from Roy Hill Holdings Pty Ltd. Thank you for appearing before the committee today. I invite you to make a brief opening statement should you wish to do so.

**Mr Hill:** I am the head of external affairs at Roy Hill and I am also the senior legal counsel. I have only recently taken over the role of the external affairs portfolio and, as Senator Leyonhjelm was mentioning just before we officially started, my predecessor, Bill Hart, was in this position and helped put this submission and some of the submissions together in the past, which I acknowledge.

This morning I am joined by my colleague, Mr Michael Anstey. Mr Anstey is the general manager for People and Health, Safety and Environment and Human Resources and has been with Roy Hill through the construction of the project and through a lot of the approvals that were needed to be obtained in relation to our construction phase.

I am also joined by Mr John Wynne. Mr Wynne is our manager of Environment and Approvals, so he is probably the real expert here this morning out of the three of us in terms of having to go through and comply with the various obligations that we have of a regulatory nature, especially, obviously now that we are into operations phase.

Before I mention the operations phase it would remiss of me to move to that stage without talking just a little bit in terms of looking backwards. I do not intend to spend a lot of time looking backwards, so to speak, but just for the record it is a well-known fact from various submissions that we have made both to this committee and to other government departments in the past, including the WA government, and put out in press releases as well that the Roy Hill project is the newest and the single largest iron ore mine in the country located in the Pilbara and represents the single largest project finance mine development in the world with a total capital cost of greater than A$10 billion. We are on the way to producing a capacity of 55 million tonnes per annum and we have a mine process plant and a 340-kilometre heavy haul rail and port facility at Port Hedland. We started exporting in December 2015. As I mentioned, at full capacity we will generate approximately 55 million tonnes a year, which should generate about $3 billion per annum in terms of revenue.

Over 50,000 workers were employed during the construction phase and around 2,000 staff will be permanently employed at peak operations, which we are nearing towards. That 2,000 is without the various services and organisations that we engage for ongoing maintenance and operations through the project as well, where there is a substantial number.

In relation to the approvals phase, it is a well-known fact, for the record, that it took us from when we first started in earnest with a team of people well before my time to when we got stuck into the construction phase proper, about 10 years in terms of getting various approvals along the way, which is a very long time indeed. Obviously we had the preconstruction phase and then we had the construction phase as well. Those 4,000 approvals are not all in connection with the environment, which is obviously the focus of the committee today, but nevertheless a very

significant undertaking in terms of the amount of work that needed to be waded through to achieve and obtain all of those approvals.

In terms of where we stand today in moving forward and looking at the landscape, there have been a number of improvements since we got those construction approvals, which now go back five or six years, and the preconstruction approvals before that. Obviously we acknowledge that under the Commonwealth act there is now a bilateral agreement with the state so that in relation to the EPBC Act process there has been assessment delegated, effectively, to the WA state government, which we think is a good thing and certainly helps towards a one-stop shop. In relation to the way things are moving within WA itself, we think that the recent formation of the new department, which is called DWER, in the state and has got the amalgamation of three agencies from an environmental perspective is obviously going to be a good thing as well, although it is early days in that respect.

The final thing that I would like to say, by way of general comment, is that we acknowledge that some of the comments that we make here today are intended to talk to systems and to processes. It is not intended that we are criticising the people concerned in the various departments who might actually, if you like, roll out and implement those systems and services. We deal with them on a day-in, day-out basis and I think that we generally have a good working relationship with them. This is not intended to spoil that working relationship.

Having said all of that, there is still a fair amount of room for improvement. In relation to the operational phase which we are now in, there were three or four issues which I was going to mention briefly. I will run through those quite quickly at a headline level and then I am happy to be quiet and either take questions or we can take you through a few examples which we are happy to talk to if you so wish.

In terms of the operational matters from our perspective, firstly, the level of compliance and assurance reporting which we have to undertake in the operational phase is heavy. Some of it is duplicative and probably a fair amount of it, in our view, arguably, is unnecessary. We would recommend that the nature of that reporting is changed to be much more of a risk based reporting system. My colleagues here can talk to that in a bit more detail if you wish. With that risk based reporting would also come an auditing function which would be undertaken by the relevant department by way of visits to our site and to our office, rather than check in 150-page documents which are quite often more in the nature of tick-in-the-box exercises. There are good precedents for this this within government—and Mr Anstey, who is involved on the safety side, can talk to this as well if you would like—where the Department of Mines and Petroleum here in WA operates much more along a risk based reporting requirement system in relation to safety matters. We say that works to good effect and we would like to see it rolled out more on the environmental side as well.

Secondly, the scope for government departments to review any variations which we may seek to our operating permits or approvals is, we think with due respect, too broad and, again, we would say unnecessary. It is unnecessary in the sense that we can talk to an example or two where we think that if you have some broader confines, so if you have some wider, probably more general controls in place in the first instance, then matters of low impact we should be able to move on with without seeking new proposals. We can talk to that as well and explain a bit more about what we mean.

Thirdly, we think the time taken by government departments to review any proposal for a significant variation to our approvals is too lengthy and in one specific case, for example section 46 of the act, there are no time limits on the relevant government department in terms of coming up with an answer.

Fourthly, we would like to see a one-stop intergovernmental reporting system where there is a department within government that is charged with looking at that issue, chasing up other departments, coming back with, if you like, a single point decision, whereas at the moment it is still moved around different departments for their views. That, in turn, would ideally lead we would say to a single point of data collection and management from within the government for the various approvals processes. The context for these changes is around the fact that as an operating business we are working to proposals and approvals which we put in five or six years ago before we started construction.

Obviously we are a dynamic business. When you are digging iron ore out of the ground you never quite foresee, with the best planning in the world, what might actually be there when you get in to digging it out of the ground. There are changes that need to be made when you are starting or getting into your operations phase and we think that at the moment in some respects the time taken and the process taken to get approvals to change course slightly along the way is essentially a bit too complicated and a bit too time-consuming.

I have probably spoken for more than five minutes, for which I apologise.

**CHAIR:** That is useful. Thank you very much. Senator Burston, would you like to start?

**Senator BURSTON:** I am right at this point in time. I have had some experience in designing process plants and so on in the Pilbara so I understand the difficulties that you face. I will reserve some questions for a little later.

**CHAIR:** I would like you to discuss, in some detail, this concept of risk based assessment. How would you identify the risks? Who would identify the risks? Who would agree on the risks? How much agreement would there be on what the risks were or is it pretty much settled knowledge? A number of submissions have referred to risk based assessment as a preferable approach so I am interested to know what your thoughts are on it and what that would actually look like in reality.

**Mr Hill:** I will ask my colleague, Mr Wynne, to answer your question.

**Mr Wynne:** A risk based approach would help us to mitigate low and high risks, so rather than have a generalised standard condition or many conditions over a project we would be able to assess the risk using a standardised risk matrix of low, medium or high risks. High risks, obviously, would account for your larger management or tighter management measures, whereas low risk issues can be dealt with as just day-to-day issues rather than being put down as a condition. The assessment of that would be through a government and, ideally, a single source of a government department, someone that you would send it through and then through negotiation and through their approval you would agree on a risk matrix and an agreed risk outcome.

**CHAIR:** Is there an agreed risk matrix for other mining developments that you could take off the shelf or would it have to be developed?

**Mr Wynne:** DMP, with the 2016 guidelines.

**CHAIR:** GMP?

**Mr Wynne:** DMP's 2016 guidelines are not standardised but are a risk matrix that you could look at and use.

**CHAIR:** That is the state department?

**Mr Wynne:** That is correct. We have our own risk matrix and if each company had a similar risk matrix then if the government department looking at it and assessing it felt comfortable with that risk matrix through that negotiation, then I think that would assist.

**CHAIR:** Is there an international agreement on what a risk matrix would look like?

**Mr Wynne:** There would be an international standard, yes, in risk matrix.

**CHAIR:** Would that be useful in Australia's case?

**Mr Wynne:** I think so.

**Mr Anstey:** There is an Australian standard for risk management and that could be quite easily transferred into a jurisdictional risk process that could be applied in this example. Further to your original question, it is certainly incumbent upon the proponent or the operator to facilitate the baseline surveys and other environmental work to understand what the risk to the environment might be as a consequence of the proposed or actual work and then that, as my colleague Mr Wynne has said, would then be taken to a government department for further discussion, consultation and collaboration to ensure that those risks are being adequately understood and, therefore ultimately transferred into an operating licence.

**CHAIR:** I am familiar with risk based assessments in agricultural chemicals; that is the approach that is taken. The risks are, essentially, internationally recognised and agreed but they are tailored at the margins for local circumstances. So, for example, Europe does not worry too much about blowflies, whereas we do. Am I right in assuming that you are suggesting something similar, that the core of a risk based assessment process would be an international standard and that there would be some tailoring at the margins based on local circumstances, or do I have that wrong?

**Mr Wynne:** That would be correct. Each site has its own idiosyncrasies in terms of the environment, so we would expect that there would be a localised input. Some mines, for instance, are closer to sensitive receptors than others so a risk based approach in that respect would be beneficial.

**CHAIR:** So the risks would be something like potential to contaminate a watercourse or groundwater, or where they need to clear a large number of trees or something like that? Some mining proposals would have very few trees and no watercourses to worry about and others would have both to worry about. Is that the sort of thing that you were talking about?

**Mr Wynne:** Yes. Essentially, in terms of a sensitive receptor—and when I talk about sensitive receptors I talk about groundwater, surface water, lakes and rivers—you are right. In some areas the environmental value is less. I refer to the Pilbara, close to where we are, the Fortescue Marsh. It is seen as a significant environmental receptor and a significant wetland so mines that are operating in close proximity to that would have a higher risk in relation

to surface water and groundwater affecting the Fortescue Marsh as it stands as an ecosystem, whereas mines that are further away from that Fortescue Marsh would not factor that into their risk matrix.

**CHAIR:** In your submission you refer to the one-stop shop option. If there was a risk based approach would you expect that one-stop shop to apply that agreed risk based matrix across all of the agencies that have an interest in a development, or is that too much of a pipedream?

**Mr Wynne:** I would see that as being the way forward. I would see that we would go through a single agency who would then have a look at our application, send that out to the wider group, to the other departments involved, and get feedback from them, and then that single agency would come back through to the proponent with conditions or recommendations based on the reviews of the other departments.

**CHAIR:** If the other agencies did not cooperate or did not agree, or the state and federal governments did not work together as well as we might like or something like that, if nonetheless there was a standardised risk matrix, an agreed risk matrix that they were all signed up to one way or another, legislatively or by an agreement, would that be an improvement?

**Mr Wynne:** I would suggest it would. Everyone would be working from the same page. I would also suggest that the single agency would also have the lead in terms of making the decision so if there was not collaboration or there was not effective collaboration or there was some sort of discourse amongst the groups then that single agency could make the decision based on the risk approach, in negotiation with the proponent.

**CHAIR:** I will think about my next series of questions.

**Senator SMITH:** I have always been interested in the idea of deemed approvals; that is, that the state is required to operate within a set time frame and if advice is not provided back to a proponent within that time frame then the approval is deemed to have been granted as a way of putting some pressure back on state agencies to make sure that their internal processes are as efficient as possible. I am wondering whether or not you have thought about that as a potential mechanism in the environmental approval process area.

**Mr Wynne:** No. To be perfectly honest I have not thought about it in this instance, but certainly at this point in time it would suit us in lieu of any other comment because essentially at the moment we are finding that the review and the approval process is too long, so a deemed approval at this point would work. We would prefer that timelines are reduced significantly from what they are now.

**Mr Anstey:** I can make a further comment. For a number of the approval processes that we are required to work through with government there are prescribed time frames for that government to respond but not in all instances, and certainly in some cases that apply specifically to Roy Hill they are open-ended. As my colleague, Mr Wynne, has just stated the time frames for some of those approvals, even though they are prescribed, are out of sync with the requirements that we have as a business to try and change our mining methods or open up different developments, so that lag creates some impost for us as a business.

**Senator SMITH:** The previous Western Australian state government had the major projects or special projects approval process in the Department of State Development. Roy Hill would have been part of that mechanism.

**Mr Hill:** That is correct.

**Senator SMITH:** Did that work efficiently or effectively for you?

**Mr Hill:** We are still in dialogue with them today because they are the coordinating department, so when we have matters holistically to talk about and/or if we are wanting something in terms of further approvals or further involvement with government they are there to call on. I would say that, historically, they have generally been relatively helpful but we would describe it as not the sort of genuine one-stop shop in the sense that they are a coordinating department, if you like. We would go to them and we would say, 'We've got this kind of issue', and they would come back and they would say, 'You need to deal with DMP', or, 'You need to go and deal with DER', or, 'You need to go and get the Environmental Protection Authority's approval or have an assessment before you can do whatever it is that we're talking about doing', and so we then generally had to go off and have separate dialogues, conversations, discussions and approval processes with each of those other departments.

**Senator SMITH:** That is revealing because I think that most people, when they hear about the major projects or special projects mechanism, would think the Department of State Development was driving agencies across government to a particular outcome, but what I have heard from you is that you would call on them and then they would help you work through the process, which is quite different from them actually driving the approvals process to support the development of, in this case, the Roy Hill mine.

**Mr Hill:** Perhaps I have slightly understated the role that they play, and I do not want to do that. When I use the terminology that you used, at the moment that is probably more of my personal and recent experience since I have

come into this role. It is true to say that if there are, shall we say, challenges with different departments that the DSD, as the coordinating department, will follow up with the departments concerned to try to see that we get the right answer.

**Senator SMITH:** I have two other questions. The first one goes to—

**Mr Anstey:** Excuse me. Can I just take you back to your first question in relation to the deemed time frames?

**Senator SMITH:** Yes.

**Mr Anstey:** We are now preparing version 4 of our original mining proposal in just three years of mining. A mining proposal is required. It is a statutory approval process that Roy Hill requires under the Mining Act and so these variations to the original mining proposal reflect the changing nature of our business and, therefore, the significant burden and impost that this creates due to the way that the current regulatory regime is structured. The maximum prescribed time frame for that approval of a mining proposal is six months, so you can probably piece together four mining proposals in three years, and a six-month approval time frame creates quite a bit of work, not just for us as a company but also, I am sure, for the agency that needs to approve that document.

**Senator SMITH:** Are the other requirements around that mining approval process too onerous? Are you having to update every element of that particular approval?

**Mr Wynne:** For this version, yes. We have switched over from the 2006 guidelines to 2016, which means that all of our previous mining proposals have to come into one, so it is quite a large body of work. In future we see that as being less onerous. Bringing in from the 2006 guidelines to the 2016 guidelines is quite onerous and it will be more so for companies that have legacy mines. Mines in the goldfields, for instance, have several years of mining proposals. That will be a very large body of work.

**Mr Anstey:** We would argue that with a risk based approach we would not have had to submit four variations to that original mining proposal.

**Senator SMITH:** Let us say the state did not have any reporting obligations. Let us imagine that for a moment. What reporting obligations would you still have to insurers and to other financiers in the project? I am just wondering how much of the red tape that you need to do is also used because of the reporting and assurance obligations that you might have as a result of your private contracts?

**Mr Hill:** I am probably best able to talk to that in relation to the finance side; probably not so much personal experience in relation to the insurance side. In relation to the financial side, we have regular reporting. There is a monthly report that we have to compile. In relation to that I suppose I am thinking that it is a chicken-and-egg situation in the sense that what we report is the level of compliance and/or any issues that have arisen under our various regulatory obligations.

**Senator SMITH:** I am wondering about the scrutiny from a private financier who has contributed part of the $10 billion. I am thinking that if I had contributed part of the $10 billion I would be paying very close attention to the detail of the project and I am just wondering whether or not that sort of information might be more valuable to the state rather than the state having its own reporting requirements and obligations. Do you see what I am saying?

**Mr Hill:** Yes, I do. I would not describe the level and the type of reporting that we do in relation to the financiers as out-and-out risk based reporting, but it is probably more in the nature of risk based reporting and recording, if you like, progress in relation to how we are developing as against our business plan. So, in that respect, we would not necessarily have to report a huge amount on environmental issues unless we already had obligations which existed under the regulatory regime. Then it would almost be by exception that we would report back to lenders and say that there were things which needed reporting on.

**Senator SMITH:** Finally, a more thematic issue, the level of red tape, black tape, green tape or whatever it is really is a statement about the community's appetite for certain variations in risk profile. Do you think that a state like Western Australia has become much more adverse to any risk? Could that risk profile or that risk appetite be adjusted downwards as a way of releasing some of the reporting obligations?

**Mr Anstey:** Most projects have myriad stakeholders and different stakeholder groups have different perspectives of risks. That is the way I would answer that superficially. For some stakeholder groups their drivers as to what the inherent risk of a project might be are many and varied. In the case of Roy Hill, we operate a mine and port in the Pilbara area of Western Australia. There are some sensitive environmental areas in near proximity to where we operate which means that that would attract, in a risk based system, a certain level of risk. How the government manages those myriad stakeholders to apply a different calibration to the risk of a project and how the proponent can mitigate that risk, more importantly, is a challenge.

**Senator SMITH:** What you are saying is that under the risk based approach that you are advocating it provides a much better way to calibrate certain risk profiles to certain projects in certain geographic areas?

**Mr Anstey:** Correct.

**Senator SMITH:** So, the risk profile of a project in the Pilbara might be substantially different to a risk profile in the Kimberleys, for example, where environmental considerations might be more pronounced.

**Mr Hill:** Correct. To take the analogy further, it might be a different risk profile from having a project on the fringes of Perth, for example.

**Senator SMITH:** Yes. Thank you.

**Senator PATERSON:** Earlier you were talking about a particular project being located near something of high environmental value. I am interested in whether or not you think there is an objective or at least a reasonable standard of what constitutes high or low environmental value. How do we agree that something is more worthy of protection than something else?

**Mr Wynne:** We have a series of guidance documents, matters of national significance for instance, through the EPBC. That would guide, firstly, our understanding of what was deemed significant or of less environmental value. We would look at the ecosystem as a whole so when we undertook reviews and initially when we did monitoring of the area for fauna and flora, we would refer back to DPaW priority listed fauna and flora and so on. That would allow us to make a reasonable assumption as to whether we were going to have a low or a high impact on an environmentally sensitive receptor. That is how we would initially do it. Part of that monitoring is the likelihood of environmentally sensitive, for instance where the Northern Quoll would occur in our mine. If there are rocky hills and outcrops then the likelihood of Northern Quoll occurring would be high, for instance. We would ascertain all of that as part of our initial reviews of the project. That is how we would come to an assumption.

**Senator PATERSON:** I think it is obviously a fairly straightforward exercise if, for example, there is an endangered species in the area, but presuming that there is not, how do we assess the environmental value of a waterway versus another worthy environmental area that should be protected?

**Mr Wynne:** Again, it is around the localisation of the area. All of our waterways, essentially through our project, are ephemeral; they will obviously only run after large rainfall events. You could classify them as being significant to the environment because we have fringing mulga communities on the western side of our project. Mulga communities, as it is scientifically known, are reliant on surface water flows so although from face value we would say that the mulga, because it occurs broadly across the Pilbara, is not a sensitive receptor, our project could have impact on that receptor, so we would build in mitigation around that. That would be a risk based approach, understanding our project and understanding the impacts on the surrounding environment and then base our environmental management and mitigation around that from a localised understanding of the ecosystems involved.

**Senator PATERSON:** Mr Anstey, you were referring to the fact that different stakeholder groups had different views of the level of risk that is tolerable with a project, so I assume an environmental group would be much less willing to take risks than a traditional owner group that is going to benefit from mining. How do you think we should weigh up those competing and different values about the willingness to take risks?

**Mr Anstey:** That is a challenge. There is no disputing that the myriad stakeholders that have an interest in any development, in any project, will have different views. As I said before, some of that is driven by ideology and some by science. It depends. I think with sufficient thinking it could be managed through a risk process. I honestly believe that to be the case provided the proponent has done sufficient work, as best they can, to quantify what the risks and impacts associated with the development might be. That requires more work in order to ensure that all stakeholders have a say in the risk process, but I think it is possible. I honestly believe that. We do it on a regular basis in health and safety, for example, and health and hygiene where there is a multitude of different stakeholders, nominally our employees. We sit down with them and we work with them to understand what their risk profile is as a homogenous workgroup, or similar exposure groups. We put together management strategies around the risk exposures to those groups, so it is possible.

**Senator PATERSON:** Though in that system, effectively the burden of proof falls on those who are proposing development and for, let us say a hypothetical environmental group which has no direct connection to the region except that they are interested in it, they can simply raise objections and say, 'This project shouldn't proceed because it's going to damage the environment.' Is that a fair situation where a group not connected to the area can place an objection and then the proposer has to go to quite some length, some effort and some expense in justifying it?

**Mr Anstey:** Very much so. That is the way some of the approvals are established, to allow stakeholder groups to have a say. They might not have much in the way of an association, for example, with the area. Certainly the traditional owners do, but not some other stakeholder groups. That consultation process is designed to draw out the

concerns that different stakeholder groups have. Proponents of projects like Roy Hill in some cases have to go to extraordinary measures to demonstrate that they can adequately manage aspects of the business that relate to the concerns sometimes of the minority. That can be time-consuming; we know that for a fact. It can also be very costly.

**Senator PATERSON:** Just on that cost, has Roy Hill made any attempt to quantify the cost of the compliance that you have had to undertake, either in dollar terms or in time, in staff time, or the delay in establishing the project?

**Mr Hill:** As part of our submission there is a figure there that in relation to compliance costs up to the point when we went into operations, I think it was estimated at approximately $75 million.

**Senator PATERSON:** How do you assess that as a relative expense that you face? How does that impact on your decision-making about proceeding with a project or about the next project that might start or not start?

**Mr Hill:** That is an interesting question because my time with the company has been for the past five years and we were just entering into the construction phase then, so quite a lot of these approvals were actually in place or in the course of being obtained when I joined. It is probably fair to say that due to the ownership that we had with Mrs Rinehart at the time wanting to drive the project through into operations, then that very much informed the way in which Hancock, as 70 per cent owner but which was 100 per cent owner at the time going back 10 years, and then Roy Hill itself, has sort of driven the project so in terms of whether it has stopped us or have we stopped to think, 'Is this too much for us?', the answer and history has shown it is no. We have ploughed on.

**Senator PATERSON:** Perhaps if you had a less determined owner it might have.

**Mr Hill:** Quite possibly. There is an interesting anecdote which I heard from someone else the other day in sort of looking forward which was that in terms of a potential new project that someone mentioned to me confidentially, which is probably some way off, they are already thinking about an approvals process of four years.

**Senator PATERSON:** That is extraordinary.

**Mr Hill:** That is a long period of time in terms of an owner or developer or operator needing to plough through that time period but also when you are looking at it, from a state or a whole-of-government perspective the revenues through royalties that come back to the government through that process are effectively going to be delayed.

**Mr Anstey:** Can I just add to that comment?

**Senator PATERSON:** Yes.

**Mr Anstey:** There is also an ongoing cost. As I am sure other companies do, so I am not saying we are any different, but we have so many obligations that we need to conform with that we carry a software product that enables us to track the quite literally thousands of obligations that we have. Now, not all of those obligations require a lot of effort but some do. Our reporting requirements, under the various approvals that we have, are quite onerous so we carry a substantial number of people in our business whose role almost exclusively is to do compliance type work and write reports. We have provided here today a list of those if it is of any interest to you.

**Mr Hill:** I have a document which I wanted to hand to you which is an A3 sheet.

**CHAIR:** You want to table it?

**Mr Anstey:** Thank you.

**Senator PATERSON:** Continue.

**Mr Anstey:** We find that there is a lot of duplication in the content and obviously the preparation of those reports for the different government departments.

**Senator PATERSON:** Finally, you mentioned a potential four-year timeline to receive approval for a project?

**Mr Hill:** Yes. Obviously that is anecdotal but that is what someone has in their head as to the timetable.

**Senator PATERSON:** But we only have to look at say the Adani project to know that that is not an unreasonable assumption. That obviously means that you have to have quite a high degree of confidence, for example, about where the price of your commodity is going to be in the future. If your project is iron ore you would have to have a pretty high degree of confidence that you are going to be able to get a return on investment after waiting for four years just for the approval plus then the construction phase.

**Mr Hill:** Yes, although, unfortunately, the iron ore price is not something that we can control. We are generally price takers, not price makers, unfortunately, but in that respect obviously there needs to be a good degree of confidence built up over time more about being able to control the cost of the development and the cost of the operations of the project because, unless it is one where you are in the lowest quartile in terms of those costs, then you are going to run the risk with it. The annual price will go up and down and when it is down then there will be pressure on the project.

**Senator PATERSON:** Thank you.

**CHAIR:** I have a quick question before I hand over to Senator Burston, because I am going to ask the same question of each of our witnesses today. It relates to the timeliness or responsiveness of how long it takes to get approvals back again.

You mentioned there are some time limits written in legislation and others that were open-ended. Is there any merit in considering incentives or disincentives for the decision-makers, the public servants involved in making these decisions, to be added, for example an incentive for approvals within time or a disincentive for not approval within time? I think you operate in some areas on a cost recovery basis so if you did not get your approvals in time could you get your fees refunded, for example? Is there scope for that sort of thing in project approval?

**Mr Wynne:** You would have to look at it from the point of view of how much the delay was actually going to cost against what fees you were paying, for instance. I will draw an example. For us to have a licence amendment reviewed and approved could cost in the vicinity of say, off the top of my head, around $1,900 or $2,000, whereas if that delay was incrementally months for the project we could be talking hundreds of thousands of dollars for the proponents.

**CHAIR:** I might have given you the wrong impression. I am thinking about the effect on the public servants, the bureaucrats, who are making the decision. If they know that their department is going to lose some revenue in the form of fees do you think that would change their approach to their responsiveness?

**Mr Wynne:** One would hope.

**CHAIR:** You are not prepared to speculate?

**Mr Wynne:** For us we look at it from an industry point of view where we would like to think that government departments, or the reviewing departments, could work within a similar timeline and fashion as the industry so the industry is able to have confidence that when they put an approval through or an amendment to an approval that there is not going to be a large amount of delays and that government departments can work in response to their timelines.

**Mr Hill:** I would like to add just one comment perhaps by way of clarification. My colleague, Mr Wynne, was just talking about delays. It is probably not delays beyond the time period which the government departments have at the moment and which you can see on their websites, generally, in terms of, if you like, their service standard. It is more in terms of the fact that that length of time itself, we would say, is too long. We have examples that we can give where effectively you are talking about nine months. You will go to one department and they say on their website that it is probably going to take six months. It then is not looked at by another department until after the first department has looked at it, so there is a sequential timeline. It is another three months for the second department, so you are talking about nine months. If it is a substantial amendment to an approval it may be government departments need that length of time. I know that Mr Wynne would probably think that they do not need that length of time even for something very substantial.

That then comes back to the conversation or discussion that we were having with Senator Smith which was around the fact that if you have more of a risk based reporting system and risk based approval system in certain circumstances there are going to be matters for approval that we would put in which we would think of as probably being low impact and, therefore, not needing to go through that lengthy process.

**Senator BURSTON:** I think some of these government departments are very clever at the length of time they take to approve various developments and they sometimes use the stop the clock. If they are waiting on extra information they stop the clock and say, 'Until we get that we won't start the clock again', so it covers their backside in terms of their commitment to approving developments within a specified time. Have you found that as a delaying tactic? I am being quite frank with my question.

**Mr Anstey:** Yes, we have. I would say in some cases that the stop the clock has been warranted, but certainly not in all cases. I think it is incumbent, as I said before, on the proponent or the operator to have done the preparatory work upfront to make sure that the requirements of the approval are full and thorough so there is not a stop the clock invoked by the department. I think our experience has been that on the odd occasion where that has been applied we have had to go back and do a bit more work. In other cases it has been completely unwarranted and in one particular case, because the government department concerned could not advise us as to which particular model they would prefer us to use and therefore approve as part of the approval process, to ensure that we did not have a stop the clock we ran two models, which, by the way, virtually gave the same output. That was just to avoid a stop to clock because that was a critical path approval.

**Senator BURSTON:** Thank you.

**CHAIR:** I have one small question before we go to your key recommendations and we finish. We are due to finish in about five or 10 minutes. You talked about onsite auditing. Again, I am referring to my agricultural and chemicals experience. The regulators are periodically taken out and shown what a farm looks like, how chemicals are used, at what stages of the crop they are applied and all of that sort of stuff. They end up being better informed and able to make better quality decisions. Do you have any experience to suggest a similar sort of thing would work in the kind of project approvals that you are talking about or even with the ongoing compliance of your projects?

**Mr Anstey:** I might respond from an ongoing compliance perspective. If I can draw your attention to the Mine Safety Inspection and Act and Regulations, which clearly is not environmental; it is health and safety. Under the Mine Safety and Inspection Act and Regulations there are prescribed incidents that require statutory reporting by the company and recently that government department has seen fit to use those incidents to form a risk profile for our company and other companies. They use that risk profile to form a view on the number and types of visits that are undertaken, whether they be an inspection or an audit of a particular hazard. That enables them to come out to our business and have a look at what we are doing because sometimes the incidents that we need to report, from time to time, can create a level of concern that really is unwarranted considering all of the things that we are doing to prevent those incidents from occurring in the first instance. That model, itself, which is risk based now, has taken that particular government department a while to come around to using the reporting as a mechanism of understanding how often they should be on site. I think that is a useful model for environment.

**CHAIR:** If we were to look at the gold standard, how much regulation should there be? How many laws should there be that you have to comply with? Should there be a deemed approval, or an assumption of approval, written into the law and then the onus is then on the regulators or the people involved in it to find reasons why that should not be allowed to stand? Have you any thoughts on that?

**Mr Wynne:** The deemed approval, on the face of it, has merit, and from a risk based approach that we have undertaken, to the best of our abilities, a risk matrix that helps us mitigate all risks and that if we then put in an approval based on that and understand all of our obligations, I think the deemed approval process could work. It would have some merit on the face of it.

**CHAIR:** There would be concerns that there were some companies that were not as responsible as Roy Hill that would be somewhat cavalier about things that they should not be cavalier about. Do you think that is a legitimate concern?

**Mr Wynne:** I would think so. I would hope that most companies—

**CHAIR:** The issue is that companies like yours get regulated to the standard of the cowboys. Is there any way of avoiding that?

**Mr Anstey:** There are certain governance principles I would say should apply to all publicly listed companies, and certainly protection of the environment is one of those governance principles. We are not publicly listed, but we set very high standards for ourselves. If we are, as you say, being managed to the lowest common denominator, which is the poor performers, with the size of our operation that is unfair and we would say it is unwarranted as well. I know we keep harking back to this, but I think there is still merit in the application of a risk based approach through the regulatory regime to get the right outcomes for all the stakeholders.

**CHAIR:** I will use a couple of minutes now, before we finish, on the key recommendations from page 3 of your submission. Can you explain in a little more detail what your intention is in some of these statements. 'Immigration programs are more effectively geared to ensure adequate supply of appropriate skills.' Do you find you are unable to recruit skilled people locally and that you need the immigration program to ensure they are available?

**Mr Hill:** I think you might be referring to one of the papers which was attached to our submission. It's a letter which runs to five pages.

**CHAIR:** It's a submission to the federal government, Resource Statement, 8 March 2016. It is 18 months old.

**Mr Hill:** From personal experience over the last 18 months, that is an issue which is of less importance for us generally.

**CHAIR:** We will not talk about it in that case, if it is less important. There is a comment in relation to the industrial relations environment that wages and salaries need to be globally competitive. How does Australia and its industrial relations sector compare in your experience, and Roy Hill's experience, on a global basis?

**Mr Hill:** Can I take that on notice and we can explain it?

**CHAIR:** Yes, with great pleasure. That will save time. You also made a comment about a taxation system 'that facilitates incremental research and development and productive investment'. I am not entirely sure whether I understand what your intention is there. Are you arguing for greater tax deductibility of R&D?

**Mr Hill:** The answer to that is, yes, but again I will take it on notice and confirm that.

**CHAIR:** Senator Burston, do you have any more questions?

**Senator BURSTON:** You also recommend the reduction in the local content requirements to a level that recognises the assessable need for globally competitive inputs. What is the exact meaning of that?

**Mr Hill:** The comment or the background to that submission is that—and we live in a global world where there are competitors and manufacturers elsewhere around the world that are coming up with good solutions, products and equipment—we just need to be careful. We think that if you drive a focus too much on local content, we run the risk that literally the world might pass us by and we might miss out on those innovations, which will come in and will be used elsewhere.

**Senator BURSTON:** Thank you. That is all.

**CHAIR:** Mrs Gina Rinehart has written a number of articles along the lines of international competitiveness. What I would like is if you could also take on notice some specifics in relation to Australia's competitiveness in the mining sector, the sector in which you operate, which would suggest we are facing a globally competitive world and that we need to be mindful of our costs and regulatory structure if we are to attract international investment. That was the point she was making, but I do not recall the details and, in particular, I do not recall the countries with which she was comparing us. If you are able to flesh that out on notice that would be handy.

**Senator SMITH:** What was the date the final investment decision was taken to proceed with the project?

**Mr Hill:** In terms of lenders or in terms of our owners?

**Senator SMITH:** Both. You could take that on notice.

**Mr Hill:** Yes, I will take it on notice.

**Senator SMITH:** What I am curious to understand is from that particular period until now how many legislative or regulatory changes there have been and how much new regulation or new legislation. I am keen to understand this. So, if the board makes a decision to proceed, it knows the world to be this, and then it starts to finance and prepare and, of course, the world starts to change.

**Mr Hill:** Change.

**Senator SMITH:** Change, yes. I am keen to understand the magnitude of that regulatory and legislative change. I am assuming, of course, that there is more regulation and more legislation, not less.

**Mr Hill:** I understand.

**Mr Anstey:** That is a safe assumption.

**Mr Wynne:** We would not be here otherwise.

**CHAIR:** We had probably better wrap it up at that point. Thank you very much. Thank you for appearing today. It is very much appreciated. If I can ask you to have your responses to questions on notice in two weeks? Is that sufficient time for you?

**Mr Hill:** Yes.

**CHAIR:** The secretariat will be in touch with you regarding that. Thank you very much.

**BENNISON, Mr Simon, Chief Executive Officer, Association of Mining and Exploration Companies**

**SHORT, Mr Graham, National Policy Manager, Association of Mining and Exploration Companies**

[9:37]

**CHAIR:** I now welcome representatives from the Association of Mining and Exploration Companies. Thank you for appearing before the committee today. I invite you to make a brief opening statement, should you wish to do so.

**Mr Bennison:** I would like to take the opportunity to make a brief opening statement. The Association of Mining and Exploration Companies is the peak national industry body representing hundreds of mining and mineral exploration companies throughout Australia. It is critically important that barriers which cause excessive regulation, duplication and red tape are removed. A more streamlined and cost-efficient regulatory framework is a cornerstone to achieving those outcomes.

The backdrop to the AMEC submission is that the mining industry is currently faced with significant lower discovery rates, extremely volatile commodity prices, increasing production and operating costs, lower grades and higher strip ratios amongst many others that create an impost upon the industry. The burden of unnecessary red tape is unsustainable and acts as a major disincentive for critical investment and business decisions. Mid-tier emerging miners are faced with shorter mine lives and increased unit costs as they do not have access to the same economies of scale available to large mature miners.

There has been lower greenfield mineral exploration activity, with fewer mines being discovered and developed to replace those coming to an end. The result is a reduction in government revenue streams and serious risk to future growth employment. All of these trends are of extreme concern and require attention at all levels of government.

AMEC is working closely with the various state and territory governments in order to address identified red tape approvals and regulatory reforms. Some slow progress is being made. The focus of the AMEC submission to the Senate inquiry is therefore in relation to red tape and regulation surrounding Commonwealth government issues, but AMEC has extensive experience of all matters in all jurisdictions and we more than welcome questions to those relevant jurisdictions. Thank you. We would be pleased to answer any questions that you might have.

**CHAIR:** Thank you. Senator Paterson or Senator Smith, would you like to kick off?

**Senator SMITH:** No. Come back to me, please.

**CHAIR:** Senator Burston?

**Senator BURSTON:** No, not at this stage.

**CHAIR:** I will exercise the Chair's prerogative. Once you get me started it is hard to stop me, so you will regret that. I would like you to flesh out recommendation on page 5 of your submission and this idea that 'bilateral agreements with accredited state and territory governments should be resolved and implemented'. I am not entirely sure I understand what your model is. I perfectly understand that the states, territories and the federal government should not duplicate each other and be working towards the same outcome, but I am not entirely sure, beyond that nice warm feeling, what you are hoping would be the practical realisation of that.

**Mr Bennison:** In the initial stages of the one-stop shop process and the development of the bilaterals there was a process of accreditation incorporated into getting the approvals and assessment over the line. We were developing those processes up with the federal government and the various state and territory jurisdictions, basically to lay the groundwork as to how the state agencies would effectively tick off on the requirements of the EPBC Act. It has been our intent to obviously see those right through the process and, unfortunately, we are only halfway there at the moment. In essence, what we are trying to do is get a devolution of the legislative responsibilities under the EPBC Act back to every state and territory jurisdiction. The detail in which that may happen is one that we have had up for discussion for some time. The accreditation process that was being developed under the assessment and approvals arrangements went through some modification. We work closely with the various government groups, as I mentioned, on making sure that they are workable for industry. Unfortunately, at the moment without the full devolution of responsibilities back to those various state jurisdictions we are going to struggle to avoid the duplication that we now endure at the federal and state levels.

**Mr Short:** I make it clear that is in respect of the approval process. There are two components, obviously. There is the assessment process, where there is a bilateral agreement between the Commonwealth government and the various state and territory governments, but it is this approval process. I think it would be fair to say going back three to four years ago we were progressing towards that. In fact, I recall it ended up in the Senate. There was legislation before the Senate, but there was a hostile Senate. There were some crossbench senators that did not agree

with the approval concept being passed back to the state and territory governments and those governments being accredited to approve.

**CHAIR:** This one-stop shop concept involves the federal government essentially accrediting state agencies with the right to tick off on development projects, as I understand it, and then not questioning them, and only doing it itself by exception rather than the rule. Am I right on that?

**Mr Bennison:** That is my understanding.

**CHAIR:** We are just mere senators, and I was there when the one-stop shop bill went down, although I was voting yes, but I have to say I was not 100 per cent across what it was aiming to achieve. If it was brought back again, would it solve many problems or was it imperfect right from the start and it could be improved before being brought back?

**Mr Bennison:** There is no question it can be improved. I think there is enormous value in bringing it back and getting the approvals component of the bilaterals through the Senate. I think the whole concept of the one-stop shop approach, which this entails, has very strong merit, but it has to happen in practice. At the moment, under the EPBC Act there are a number of legislative changes that we see as the industry that need to be made beyond the bilaterals that are required to make sure that devolution of responsibilities and assessment at a local level, at a state or territory jurisdictional level, are effective and cut out the duplication that we are enduring at the moment.

**CHAIR:** In your submission, you refer to the duplicative water trigger requirements from the EPBC Act. Can you explain that? A couple of other submissions have referred to it as well and I do not pretend to understand it entirely.

**Mr Bennison:** Essentially this was brought in for a number of the coalmines on the eastern seaboard and, my understanding was, to a certain degree with coal seam gas. But the issue for us is that we now have a duplication where such projects can be assessed at the state or territory level, with all recognition to any interference with water tables or any hydrology that is related to that particular development. At the moment, with the legislation incorporated into the EPBC Act, with its own legislation such as the water trigger and reference to a scientific committee, we just see this as a complete duplication of what could be properly assessed at the local level rather than having to refer through to the federal level.

**CHAIR:** Perhaps I am being fanciful for a moment, but would that not apply to pretty much all mining projects, anyway? What is the role of the Commonwealth in any event?

**Mr Bennison:** I agree with you. I totally believe that there is the possibility for all matters of national environmental significance back to a local level, and that that should be done under the bilateral arrangements and that should be the chief objective of the bilaterals.

**CHAIR:** An issue that I perhaps am not quite so ignorant about is this vexatious appeals by third parties seeking to delay and block mining development. Could you discuss that a little more?

**Mr Bennison:** As you would be aware, there is the provision for third parties under the legislation to make an appeal. This happens at a regional level. We have also seen it happen at the national federal level. Our concern is that a lot of these third parties are not impacted by a lot of the developments and, unfortunately, use the opportunity to stall and in some cases prevent certain developments from going ahead.

**Mr Short:** If I can just add to that.

**CHAIR:** Yes. Go ahead.

**Mr Short:** If I can use the Western Australian example. We have a warden's court and in some states and territories we obviously have an environment court and a land court. But in WA we have a warden's court. There is a capacity within that particular process for anybody at any time to object about anything to do with mining tenements. There is an opportunity through that particular process and there have been some examples where environmental issues have been brought up. Again, it leads to a delay. There are opportunities through the lodgement of mining proposals—again, using the Western Australian example through the Department of Mines and Petroleum as it was known. There are objection processes that can be pursued through there. Then, of course, we lead into the EPA, the Environmental Protection Authority. Again, there are opportunities for appeals through that process and a public environmental review. Then we lead into the Commonwealth legislation where, again, there are opportunities. There are plenty of opportunities for appeals by third parties who do not necessarily have a direct interest in the project but just want to delay. Obviously, there are other examples. In Queensland, for example, there is a company that was mentioned before.

**CHAIR:** I was under the impression the EPBC Act was the only one in which the legislation allowed standing to someone who did not have a particular interest in a matter. You are saying there are plenty of opportunities for people who do not have a stake in an issue—

**Mr Short:** That is what we understand.

**CHAIR:** —to intervene in state legislation as well as the EPBC Act?

**Mr Short:** Correct. In fact, we are actively pursuing this issue. As Mr Bennison indicated before, we are a national body. We are dealing with various state and territory governments. You will see in our documents, which are reform strategies, that each and every one of them relates to restricting third-party appeals to those with a direct interest in a project, for the reasons that I have indicated.

**CHAIR:** I have heard many people argue that the EPBC Act should be amended to remove that potential for third parties to intervene. The Adani situation in Queensland has been mentioned many times as an example of the adverse effect or the adverse consequences that that has allowed. But what you are suggesting is that even if that was achieved there really would still be plenty of opportunity for people who do not have direct interest to get standing?

**Mr Short:** Correct.

**CHAIR:** What would be the net benefit of amending the EPBC Act that way, if those state laws remained?

**Mr Bennison:** You have got duplication. You have got the ability to make a vexatious claim both at a federal and a local level.

**CHAIR:** So, all you would remove is one avenue for them to be a pest, but they could still be a pest in the other avenue?

**Mr Bennison:** The other avenue is subject to change. We have seen that recently in Queensland. Under the previous government usually any party that was directly affected by that particular proposal had a right to object. That has now opened up under new legislation. So, it is a moving feast, if you like. It is not set in every jurisdiction as to a template on how third parties can make objections to particular proposals. It can change with a change of government and we have seen that. It unfortunately is creating a lot of uncertainty. It would be ideal to have a templated process where we limited the capacity of third-party claims unless they were directly related to the proposal itself.

**CHAIR:** Is there any other area of the law where you can intervene in a matter in which you do not have a stake? I cannot think of one.

**Mr Bennison:** I think there is. I think other parties in different sorts of proposals can also register an interest. That is part of the public consultation processes. Certain projects obviously get particular NGOs engaged in that consultation process that may lead to appeals against their particular objection to a proposal. We are seeing several of those at the moment across the country.

**CHAIR:** You made note of the special status of mining or milling of uranium ore in the EPBC Act. If that was removed what would change? Would there be anything or are the barriers to uranium mining still monumental?

**Mr Bennison:** They are. When you look at the approvals process at a local level, the period of time which particularly uranium projects take to get up and running are far in excess of those of a base metalline or coal-type assessment. That is one of our concerns. At the moment, the mining and milling component within the legislation we think is duplicated in the sense that it could obviously be devolved back to the local jurisdiction, which can take on board all of those issues in relation to mining and milling. We do not think there is any scientific rationale to have that federal legislation as it stands at the moment.

**Mr Short:** As I understand it—and, again, using the Western Australian model—there are projects that are going through the EPA in Western Australia that take a period of time, which could be hundreds of days in terms of getting to a process where the EPA signs off. But in the process the nuclear action provisions of the EPBC trigger the involvement of the Commonwealth. Therefore, the Commonwealth duplicate what the states are already doing. It then adds on a further period of time in terms of the approval. Again, my understanding with a couple of the companies that have gone through this process is that it potentially can add one year or two years on to the approval. It gets back to this uncertainty issue. Even though they receive approval and they are limited in terms of taking the next step at the moment, because there are other factors that come into play, including obviously the price of uranium, at the moment it adds on that extra period of time.

The same applies going back to the bilateral agreement process that we were discussing earlier. The duplication of the Commonwealth adds on that extra period of time and of course delays the project. Maybe a question could have been asked of the Roy Hill representatives in terms of the importance of timeframes as it relates to shipping

dates. So, there are agreed shipping dates. There are contracts that are signed. They try, as I understand it, to work back on their Gantt chart and understand exactly where they are at. Any delays have consequential impacts on the construction process, getting in contractors and those contractors being available. Any delays in the process just add to further complications at the end and potentially to liquidated damages and things like that.

**CHAIR:** The final area that I will focus on before I give my colleagues a go again is this question of native title and the Aboriginal Land Rights (Northern Territory) Act, which you have gathered up in three recommendations—5, 6 and 7—in your submission. I am not sure where my colleagues are up to, but I have a very poor understanding of the implications of the Native Title Act as it affects mining developments and environmental development, in particular, this question about what section 31 refers to, and the rights of veto that exist. Perhaps just for educational purposes if nothing else you might take us through that.

**Mr Bennison:** I will start on powers of veto and then defer to my colleague on section 31. We are working very closely with the Northern Territory government in particular as well as at the federal level to pick up on a report that was done some years ago on the Aboriginal Land Rights Act in the Northern Territory. One of the key issues and recommendations to come out was around the power of veto. At the moment, it is a serious concern for the development of projects particularly in our industry within the region, because those land councils have the capability to restrict access to those lands that come under their jurisdiction, in the context of land rights. Companies can spend an inordinate amount of money trying to get access to those lands for exploration purposes, let alone any further development. At this stage there may not even be any discovery, but there can be extraordinary costs incurred in just getting to first base. And that is an opening discussion, meeting with the rightful owners and trying to organise access to those grounds.

**CHAIR:** So, they cannot arrange meetings?

**Mr Bennison:** They can arrange the meetings, which come at extreme cost, but they also run the risk that the outcome of that meeting will be, 'We're just invoking the power of veto so come back in five years time and we'll continue the discussion.' So, the opportunity for exploration and development of those lands, which is quite considerable, as you can appreciate, in the Northern Territory, is lost. We are just trying to make sure that a more reasonable period of veto is provided for in the legislation. We just find that five years is rather excessive.

**CHAIR:** I would like to understand this. If it is freehold land owned on anything other than an Aboriginal or traditional owner basis, the Crown has ultimate authority over any minerals on it.

**Mr Bennison:** Correct.

**CHAIR:** And the owner cannot ultimately veto access to it. Is this only when it is traditional ownership that the veto power applies?

**Mr Bennison:** Correct.

**Mr Short:** Which is covering about 50 per cent of the Northern Territory.

**CHAIR:** Yes, indeed. They have absolute veto? There are no negotiations or anything?

**Mr Bennison:** No.

**Mr Short:** If I can just add to what Mr Bennison mentioned in terms of some of the cost. One of our members recently advised us that they were exposed to this piece of legislation. They went through the negotiation process. They organised a meeting. The meeting cost them $85,000. It lasted three minutes—

**CHAIR:** Why did the meeting cost $85,000?

**Mr Short:** to be told, 'We're exercising the power of veto.' That is just one example where there is a problem. I might just also add for the record that the interesting thing is there are land councils directly involved in this particular process. In the Northern Territory we are talking about the Central Land Council and the Northern Land Council. The day before the Northern Territory election, on 24 August 2016, a joint media release was issued titled, 'NT land council calls for Indigenous led northern development'. The interesting point is a motion was passed that in part read:

> We call on the States, Territory and Commonwealth Governments to work with Indigenous peak organisations to establish a comprehensive planning and implementation strategy focused on delivering economic, ecological and social/cultural benefits to Indigenous people in northern Australia.

That particular motion is contradictory to some of the actions they are actually taking.

**CHAIR:** This is territory legislation, not Commonwealth?

**Mr Short:** It is Commonwealth legislation, but it is administered by the Northern Territory. It is quite an unusual piece of legislation, as I understand it.

**CHAIR:** One of the issues with coal seam gas or even just coal on freehold land is that there is a perception, 'There's nothing in it for me,' on the part of the landowner. That is not true, but that perception does exist. Do you think that is an issue in the case of Aboriginal groups exercising this veto? What motivates them to be uncooperative in that fashion?

**Mr Bennison:** I would not like to speak on behalf of those traditional owners, and it is very difficult to apply a broad brush to this. There are some groups that are very keen to engage with companies and look at the opportunities for their communities participating in those projects, both employment opportunities and also, in many cases, a royalty offtake arrangement. There are financial arrangements that come into play under the Indigenous land use agreements in most normal terms. The companies are more than willing to sit down and negotiate terms and conditions of access and development that are workable for all parties. That has never been denied by the companies trying to gain access.

Exploration is a little bit more problematic in the sense that we do not have a clue whether there is anything there. All the indications from precompetitive geoscientific data says it is prospective. We think there is an opportunity. Most companies endorse the aspect that they will provide about 10 per cent employment if the project can go ahead. Again, that is subject to negotiation with that native title group. I think in fairness most of those groups are quite capable of negotiating some sort of arrangement with the company that is fair and equitable to all. Why some land councils in particular just put up a complete 'No Entry' sign I honestly do not know. It is frustrating. We think it is a lost opportunity for them, but everyone has to respect their privacy and their connection to the land, which they are trying to preserve. Perhaps they just see exploration or future development as an intrusion on that. I am not sure.

**CHAIR:** I am not sure either.

**Senator SMITH:** Just on a similar theme, and I know it is not strictly in keeping with the purpose of our inquiry. Talk to us briefly about Indigenous heritage and how that is being used to delay exploration and mine development.

**Mr Short:** Can I jump in on that one?

**Senator SMITH:** Yes.

**Mr Short:** Just by way of example, 12 to 18 months ago the Director-General of the Department of Mines and Petroleum in Western Australia issued a media release that indicated that it takes on average 364 days for an exploration licence to be granted. You put your application in and 364 days, nearly one year, later you will get your exploration licence so you can then go out and start negotiating, hopefully find a drill rig and start exploring. This is after you also go through the environmental approval processes at the state level.

They have indicated to us that the timeframe to go through the native title process, which also includes the cultural heritage clearance process, takes about nine months. So, nine months of the 12-month period is taken up through this cultural heritage process, which is also used as a leverage process to extract further funding for the costs to do the surveys, meeting expenses, the add-on expenses for experts to come on, whether they be anthropologists and so on, and the legal people involved with the process. There are significant sums of money going back into the native title representative bodies or otherwise prescribed body corporates under the Native Title Act, which are invariably land councils. The funds go in there and they are cross-subsidising other operations, which also includes processing native title claims.

**Senator SMITH:** That is not to say that there are not legitimate Indigenous cultural and heritage issues, but the propensity is for some Indigenous land councils or corporate bodies to use this mechanism/process to delay or extract a higher price or premium from potential exploration and development.

**Mr Short:** We talk to our members regularly and on a face-to-face basis. A lot of these negotiations are confidential. When it comes to signing off on an agreement, there is a confidentiality clause at the end where they cannot share that information. We wanted to try and put together a comprehensive database across Australia, but they are restricted in terms of what information they can make available other than on a face-to-face unattributed basis of, 'Here. Have a look.'

With some of the information that we have seen in there you can see where there has certainly been leverage applied and clear indications of, 'We'll give you the approval if you make these payments.' As a consequence of all of that, one of the other initiatives that we have been pursuing, again through the reform documents that I have referred to in the various state and territory jurisdictions, is the whole principle of mandatory disclosure. Mandatory disclosure of a site, an object or a place should become the norm in state and territory based legislation. You obviously have a regulatory authority at a state and territory level that holds that data. We do not need to know the specifics of what it is or exactly where it is. You can have a buffer zone around it, but disclose it so that at least you know in a particular region it is in the top right-hand corner of the tenement and you can work the rest of the tenement. So, work on the principle of mandatory disclosure so that the state and territory governments can also

fulfil their requirements under their respective heritage legislation, which is also state and territory based, and not only that, developers—and we are not just talking about the mining industry but any other development—so that they have access.

**Senator SMITH:** This is a poorly-understood point. The register of cultural and heritage sites is actually not publicly accessible on the basis that it has cultural significance, Therefore, the information is held or, as you say, is not disclosed. I am familiar with the Mindax example out in the Yilgarn, where Indigenous heritage issues slowed down that project considerably.

**CHAIR:** So, are you talking about mandatory disclosure of cultural sites or access agreements?

**Mr Bennison:** You are right. There are two issues. What we are looking for is disclosure of heritage reports and making them also transferable. At the moment, if you want to go back over that same ground, you then have to negotiate exactly the same heritage survey that the previous company and the previous company before that did. What we are trying to do is make sure all the heritage reports are transferrable. If there are sensitive issues in those reports, redact them. But most of these reports are pretty much duplicated from company to company. It is only sensitive sites. Those sites, in most jurisdictions, go up on a public sites register, to my knowledge.

The key sites and their buffer zones can often be identified in many aspects. You have just got to go in there and do the research to try and find them. That is what most anthropologists do when they are doing a heritage survey for the company and that particular Indigenous group, but not all of that information is up there. There is certain information that is, if you like, redacted, because of its sensitivity. That is another issue. You are right that there are two particular aspects to this.

**Mr Short:** And they are accessible by registered users. You simply apply and you get restricted access.

**Senator SMITH:** Thank you.

**Senator PATERSON:** Would it be fair to characterise mining exploration as a high-risk business in the sense that if you do not find anything you do not get paid, and it is not a straightforward process to find things?

**Mr Bennison:** Absolutely. That is one of the reasons it is extraordinarily difficult to attract capital into the exploration sector. It is very high risk. The hit rate is probably one in a thousand.

**Senator PATERSON:** And you hear lots of stories, certainly anecdotally, of people who for years and years and years toil in relative poverty. If they are lucky, they will have one great find of their life and that sets them up, but if they are not lucky they may never have a great find and they might retire in not exactly the kind of prosperity they imagined for themselves.

**Mr Bennison:** That is right. You would be surprised at the number of significant discoveries that have happened in this country on just about the last drill hole.

**Senator PATERSON:** Given it is already such a risky activity, how much more difficult does the regulatory burden make it for explorers? I can imagine if I was faced with a decision of contemplating an exploration activity and knowing that it would take me a year to get approval and I would have to sustain myself in the meantime without—

**Mr Short:** Before you start.

**Senator PATERSON:** Yes. What kind of impact does that have on the amount of exploration that we do in this country?

**Mr Bennison:** It has a huge impact. In terms of putting forward the problems facing the exploration sector, we have done this before with the Productivity Commission when we had the inquiry on non-financial barriers. It is a serious problem and it is hurting this country enormously. The long-term projections that are about to be published, and that we are using ourselves in a lot of submissions, clearly indicate a massive drop-off over the next 15 to 20 years in discovery. As we mentioned in our submission, there are consequential loss in revenues to everyone and also employment opportunities. It is a high-risk game. We have to make sure that we encourage exploration and discovery. We have a huge investment in precompetitive scientific data. That is good, but the real test for all of this is making sure that we get capital into the exploration sector and encourage as much exploration, particularly in the basin, precious metals and rare metals. They are very strategic in some cases. We need a future supply of them and at the moment the rate of discovery is the worst on record.

**Mr Short:** To go through the process, obviously from go to whoa, in terms of the exploration, starting with the exploration, getting the initial grant of the exploration licence to go out there, to drill holes to hopefully find something, and then to go through the construction process and the financing process, it is years. I think we have indicated in our submission that it could take anything from 10 to 15 years.

**Senator PATERSON:** That is extraordinary. This is probably a difficult question to answer, but are you aware of anyone who has tried to quantify the cost of this, how much exploration is not taking place, because of these barriers and what the cost is that we are all bearing as a result?

**Mr Bennison:** I do not know of any documentation that clearly identifies that. There is a lot of aggregated data that includes a development proposal that came through the EPBC one-stop-shop process when it was being mooted at the time, which ran into the hundreds of millions if not even more. I cannot remember the exact figure. It is very difficult, as you can appreciate, to model this and actually estimate. We can get numbers. Reports have been done on the multipliers of discovery and the investment for every dollar you put into exploration of what the return should be. You can take that side of the equation, but trying to put a dollar cost to some of the red tape and duplication is a real challenge.

**Senator PATERSON:** I appreciate your point about rare metals, because it is not just an economic cost but a strategic cost.

**Mr Bennison:** Absolutely.

**Senator PATERSON:** People are very concerned about how important these are to modern production, how scarce they are and how few countries there are and which countries control the supply of them. That is a very important additional point.

**Mr Bennison:** I think it is a very serious strategic issue that this country has not really taken a hold of yet. It is a concern to us. We have tried to raise it at a political level and an agency level in the federal sphere. I think it is something that the government should be far more cognisant of and be facilitating in a more constructive way than what is happening at the moment.

**Senator PATERSON:** Just finally, what do you see as the main obstacles to government addressing this? What is stopping it being dealt with?

**Mr Bennison:** I think the opportunity to get land access is probably one of the key issues that we are facing. Anything the government can do at a federal or regional level to facilitate that process and shorten it to meet the requirements of both the landholder—and it could be private or it could be under native title—has to be fast tracked as best we can. That is just from a discovery point of view. We are happy to provide some of that discovery data for you when it becomes published in the near future.

**Senator PATERSON:** Thank you.

**Mr Short:** What I was going to say was just to carry on from an exploration perspective. Mr Bennison referred to the Productivity Commission review, which was called the Mineral and Energy Resource Exploration, otherwise known as a non-financial barriers to exploration, going back to 2013. There were 20 or 30 recommendations that potentially were all state and territory government related, but unfortunately those recommendations I believe are still a work in progress. Maybe that needs to be picked up, dusted off, pursued and implemented. Some of them cut across the issues that we have raised today.

**Senator PATERSON:** Thank you.

**CHAIR:** Just to pursue that last point in terms of what is holding back exploration, obviously you cannot exploit resources if you do not even know they are there. I asked this question of Roy Hill. Do you have a feeling for where Australia sits in global competitive terms, taking into account access issues and all of the other factors that would influence a decision as to whether or not to explore in Australia or to explore somewhere else?

**Mr Bennison:** Yes. There is some published data that provides all of this, which we are happy to provide to you. There are two groups, in particular, that do publish the information, particularly on where the various countries sit in a competitive sense on exploration spend and discovery. We use the Fraser Institute report as one component of that.

**CHAIR:** That is the Canadian think-tank?

**Mr Bennison:** Yes, that comes through the Canadian group. There is another Canadian group that also publishes international exploration spend not only in dollar terms but also in metres drilled. Australia, for example, in the early 2000s had about a 23 per cent share of the international greenfields exploration spend. We are now down to 12 per cent of that international spend. That is an indication of other countries becoming more attractive from the point of view of regulation and access. A lot of capital—in fact, we were just doing a presentation recently—out of the initial public offerings that have been raised this year, of which there have been about sixteen, 62 per cent of that capital raised is going offshore. That is a problem that we faced about two or three years ago, when 67 per cent of it went offshore. There is a growing trend. We use this as a barometer. If you have a trend line at the moment of the amount of capital that is raised in IPOs going offshore it is quite disturbing. If that is not an indication of some

of the problems that we have in this country about regulation and red tape I would be staggered. It is something that has to be addressed.

Elaborating on that a bit further, when you look at the exploration context, the cost of the average exploration company has just gone through the roof. Part of the blame has been the shift culturally in government to go on cost recovery. The cost to the average explorer has increased dramatically. The risks have stayed the same, in the sense that this is a very high risk. The attractiveness of exploration to a lot of the investors has waned, and that is something we have to try to reverse. We have to somehow make investment in greenfields exploration far more attractive than what we have got, and it is one of the reasons why AMEC has been driving the exploration development incentive that was put through in 2013 at the federal level and why we are now trying to get through what we have termed the mineral exploration investment credit that we want the federal government to adopt and put in play to attract investment into the exploration sector in this country, to get it back to where it was internationally in a competitive sense. Our downward trend in this space is huge.

**CHAIR:** We are out of time, but there were a couple of points in your submission that I wanted to get you to talk about briefly, and if you have more information on it perhaps you can get back to us on notice. This issue about sharing infrastructure, port and rail, as you know, is complex. This has come up in the context of privately constructed railways not being accessible to other users, and it is being talked about now in the context of the Adani coal mine and its railway line. I talked to the minister about that and he assures me that that would be available for other users. What is your organisation's view on that? How do you view the role of the government in reconciling capacity to use infrastructure with ownership of that infrastructure and who built it?

**Mr Bennison:** In general terms, we have always supported third-party access to infrastructure in some shape or form.

**CHAIR:** Irrespective of who built it?

**Mr Bennison:** Correct. Provided that can be provided without interference to the operations of the owner of that infrastructure. It might be rail. It might be energy. It might be done on a cost basis. We have seen that go through the courts in the context of how this could be done and what is a fair and reasonable cost sharing arrangement on some of this infrastructure.

**Mr Short:** And to also maximise the economic potential of that infrastructure as well as maximise the economic potential of a smaller mining operation that cannot afford to build their own infrastructure or whatever it might be.

**Mr Bennison:** You just have to ask the question, if you have 10 mines sitting in the Pilbara do we have 10 railways, 10 corridors and a massive duplication of all of that infrastructure? Does that make sense?

**CHAIR:** Do you have views on how the government could facilitate that?

**Mr Short:** You are getting into property rights here, and obviously that is a bit of a touchy area.

**Mr Bennison:** The regulatory authorities have taken jurisdiction in this space, whether it has been through the ACCC or the various state and territory regulatory authorities. They have provided legislation that sits around the opportunities for sharing of infrastructure to a degree or at least adjudicating on how that infrastructure could be shared and how the costing arrangements surrounding that could be settled between the interested parties.

**Mr Short:** From my recollection there was an issue that raised its head some years ago in terms of the Pilbara rail network, which had been built by two of the larger mature miners, and an emerging miner wanted to get access to that. They went through the regulatory process. It ended up with the Treasurer, who then signed it off in terms of giving access to that emerging miner, but then they had to commence negotiations with the owner of that infrastructure in terms of use of rolling stock. So, in terms of the rail they have access to the rail but then they need to negotiate in terms of the rolling stock that is used on that. So, do they use their own rolling stock? Then what are the timeframes? When is the railway not being used again? At the end of the day it has never happened. The result is the emerging miner ended up having to build their own rail network.

**CHAIR:** Yes, I agree. I know who you are talking about. The question then is: does the government have a role in making that less of a concern? I am very reluctant for the government to vacate this space and leave it to a regulator such as Mr Sims at the ACCC, who has never been shy about deciding what policy ought to be. So, if the government were to say to anybody, 'If you build infrastructure you should take into account the fact that we will require you to make that accessible to others', would that be preferable to the situation where they build it and then they say, 'The government might do that, but the regulatory environment is uncertain'?

**Mr Bennison:** The government could say that, but the owner of that infrastructure could say, 'There is no capacity on this infrastructure.' That might not just be a rail line. It could be a port facility as well. That can only be

tested one way, which would be back through either the legal system or through the regulator in some shape or form. It is just what we are faced with.

**CHAIR:** This committee's mission is red tape, but uncertainty in a regulatory environment can be just as bad. If you are a builder of infrastructure and you do not know whether your infrastructure is likely to be used for somebody else by dint of the government saying, 'You must do it', or a law saying it or, on the other hand, you know it will be used by somebody else but because of the law a bit of certainly would not hurt, I would have thought?

**Mr Bennison:** I agree. It is how that law is going to read to provide that certainty.

**CHAIR:** Do you have any views on how to provide any certainty?

**Mr Bennison:** I would have to take that one on notice.

**CHAIR:** You are welcome to. We are out of time.

**Mr Short:** When we looked at this a couple of years ago I know we tried to follow a flowchart to try to get an understanding of how many regulatory agencies were involved in this process, starting at the state and territory level. By the time you end up with the Treasurer, and not only with the Treasurer, signing off on access, then it comes back to an economic regulatory authority that sets the floor and ceiling prices—excuse the pun—it is an absolute minefield.

**CHAIR:** It is indeed.

**Senator SMITH:** We have had third-party access arrangements in telecommunications for a long time.

**Mr Bennison:** It is not new. It is just a case of making it work.

**CHAIR:** Yes, indeed. Frankly, I think that if the government can help to make it clearer and more certain then it ought to. That is why I am looking for guidance. If you have any thoughts on that you can take them on notice. If you get back to your office and have a mental blank on it, then sobeit. We will leave it there. Thank you very much, gentlemen, for your evidence today.

**ROSAIR, Mr Paul, Principal, NAJA Business Consulting Services and Consultant, Kimberley Regional Group**

**WILLIAMS, Ms Jill, President, East Kimberley Chamber of Commerce and Industry**

*Evidence was taken via teleconference—*

[10:35]

**CHAIR:** I now welcome representatives from the East Kimberley Chamber of Commerce and Industry, NAJA ~~Building~~ Business Consulting Services and Kimberley Regional Group. Thank you for appearing before the committee today. I invite each of you to make a brief opening statement, should you wish to do so.

**Mr Rosair:** I have been consulting for three years after 40 years in state government in roles in the Water Authority of Western Australia, water and rivers commissions, departments of environment, water, local government, land and regional development, the last 20 years being in a senior capacity and the last five years as Director-General involved in the Regional Development and Lands Department. Previous to that, short stints as Director-General in Environment and Water. I have been involved with environmental approvals processes and I have regulated state industrial environmental approvals, water licensing and land tenure administration over that 40 years, and now work in the private sector assisting proponents and local governments alike to navigate the approval processes to achieve their projects.

I was engaged by the Kimberley Regional Council in my private capacity some time back to develop a land tenure framework for the Kimberley region, which I have now completed and I think were submitters to the inquiry. That framework has a number of solutions to streamline land tenure and also to streamline government administration and reduce red tape. That report has now been adopted by the Kimberley Regional Group as their formal policy, and I am in the throes of consulting once again with key stakeholders.

That process had 15 levels of key stakeholders, including the current Treasurer and Aboriginal Affairs Minister, Ben Wyatt; the Kimberley Land Council, Nolan Hunter; the Cattlemen's Association; PGA; local state member Josie Farrer; the local Minister for Environment, Stephen Dawson; and the Native Title Tribunal. It was widely consulted. We have a clear framework and position to streamline red tape and government approvals.

The other area of interest is that I was involved in the Ord irrigation expansion, the last regional partnership between the federal and state government, with a $330 million contribution from the state and $190 million contribution from the federal government under social outcomes. That project had a myriad of environmental approvals, which I can go into under questioning, but potentially it was an inefficient process that was a duplication between the Commonwealth and state agencies. Timeframes were extraordinarily long, and it continues today, even with the expansion continuing and the expansion trying to get some additional land.

As a director-general and as a deputy director, I administered planning control legislation, the Environmental Protection Act, the Water Licensing Act, the Land Administration Act and parts of the Local Government Act, which I am quite familiar with if you have any questions around that.

With my 40 years in government, I have some insight and intelligence for the committee, and now in my three years as a consultant applying that insight and intelligence and having a look at how proponents navigate from an external point of view. I think that can be quite invaluable to the committee.

**CHAIR:** Thank you. Ms Williams, do you have an opening statement?

**Ms Williams:** Yes. As president of the chamber for the last two and half years, I represent approximately 130 members across range of industries—tourism, mining, pastoral and agricultural. The feedback and the sentiments from our members during that time are that they experience great frustration as far as approvals and assessments go, that those are not timely and are very costly, certainly an impediment to doing business in the Kimberleys, and a barrier for future investment if the federal government really is dedicated to opening up the north.

**CHAIR:** Thank you. Mr Rosair, I think you are responsible for the East Kimberly Chamber of Commerce and Industry submission; is that right?

**Mr Rosair:** No, I was not. I think that has been an oversight.

**CHAIR:** I am sorry, it is Ms Williams.

**Ms Williams:** Yes.

**CHAIR:** I would like to take you to a couple of aspects in that submission and ask you if you could talk about them a bit more. You have talked about the difficulties in relation to land clearing for irrigation and things like that, and we have some other witnesses coming in who want to talk about similar sorts of things to expand the area of irrigated agriculture. You refer to the large number of approvals or the difficulty of getting approvals that are

required to do that. Do you think that it would be any different if the land was freehold instead of leasehold? Is it a question of who owns it that leads to these constraints or would they be there anyway?

**Ms Williams:** I think there are two answers to that. Yes, definitely it would be a much easier pathway if it was freehold and, therefore, the proponents would have tenure. A lot of the issues relate to tenure. You cannot have tenure unless you have licenses and you cannot have licenses unless you have tenure. Also, it is very difficult to raise finance and investment if you do not have tenure. Banks and investors require some security for them to invest. I do not know that the approval process would be ultimately resolved through tenure.

**CHAIR:** There has been a process in New South Wales where leasehold property in the western part of the state has been progressively converted into freehold. I am just wondering whether you think that process would be of some assistance in overcoming some of your objections?

**Ms Williams:** Yes, I think that would resolve some of the issues. Currently our state government is looking at signing a model similar to that in the Fitzroy Valley here with private enterprise, with some parameters around it. If they are willing to invest a significant amount of money then, over a period of time, they would gain freehold. They are looking at that option.

**CHAIR:** A number of points you make relate to the perception that the Kimberley is one big national park and that some people who are in decision-making roles seem to think that any development there should be discouraged. Do you have any thoughts as to what solutions there might be to that sort of issue? Do you think that it can be fixed in any way that you have worked out as a result of your experience?

**Ms Williams:** I think we allude to some solutions in the back of this submission. Perhaps if it was not perceived as a conflict of interest or lack of probity for some of those decision makers to be able to actually come and visit the sites that are going to be developed and cleared they would have a greater understanding of the context and the scale here in the Kimberley. Yes, you are right; there is a perception that the Kimberley should be locked up as a national park, I think even in Perth, because a lot of people have not come up here and experienced it. If they understood the scale that we have here and that with the 50,000 hectares of potential that will still only be 0.5 per cent of the land in the East Kimberley. It is not a very big footprint. They need to understand that we have already got over 40 per cent of the Kimberley as conservation assets. What we are asking for to clear, to assist in developing the north and to have investment here is not a very big footprint at all.

**CHAIR:** I agree. I think there is nothing like seeing it with your own eyes to help you realise what is being talked about. Have you raised that idea at all with any of the authorities you or any of your members have had to deal with in your area?

**Ms Williams:** Yes, and I know that some of our businesses and proponents have requested that they can have those decision makers come, but due to probity and what they feel are conflicts of interest they do not feel they can.

**CHAIR:** What would be the conflict?

**Ms Williams:** That is difficult.

**CHAIR:** What would be the conflict?

**Ms Williams:** The government does not pay for that. That is not in the budget. Therefore, the travel and accommodation to get here. The proponents would need to pay that. Therefore, the conflict of interest.

**CHAIR:** In your submission, you have comments about research institutions that, in your view, have conflicts of interest; they are more worried about their research institutions than they are about promoting development and perhaps even serving their clients. Would you like to talk about that a little bit more? Do you have any specific examples that would help the committee understand what you are referring to?

**Ms Williams:** There were a couple of examples in the submissions with regard to some health issues. The example that we put in there was with regard to doing some research on mosquitos and health-borne diseases. I would not have thought that was an environmental parameter. That is purely health. I think that was really only made part of that environmental management plan on request from another department that wanted some research done. I do not see why proponents should fund research for the health department.

**CHAIR:** I have a number of other questions that I would like to come back to you on. Senator Burston.

**Senator BURSTON:** I have one question on the timeframe and other delays in the assessment process. Do you have any applications that have fallen over because of lengthy delays?

**Ms Williams:** No, I do not. That does not mean there are not, just because I am not aware of them. But I do know that it is a severe impediment to business, particularly small business. When I say I am not aware of one, we do have an example in our submission of Sawyers farm, where they were the preferred proponents for a parcel of land in 2015. I followed up with them yesterday to see if there was anything further since we had written this

submission and, yes, there is. Even though they were the preferred proponents of that parcel of land and have put in clearing permits which are conditional on a lease, and a lease which is conditional on a permit, they are still without those at this stage. Then only within the last two months the Department of Lands has contacted them and said, 'We've just realised that there's actually a road easement through that parcel of land.' I was speaking to Mel yesterday. They have spent between $50,000 and $100,000 so far just on trying to progress clearing and water licenses, and they are now at the stage where she said to me yesterday, 'I would prefer that the state government gave whatever we have spent, between $50 and $100,000 back', and they can have their parcel of land back, because there was no disclosure of that road easement at the time that they were the preferred proponents of that parcel of land.

**Senator BURSTON:** That makes it difficult, $100,000. I don't like their chances, but thank you for that answer.

**CHAIR:** I am looking at your submission and your specific recommendations. One of them, which I am not entirely sure I understand is, where you say on page 13:

> Specific areas for potential red tape reduction include where local government or other third parties are mentioned in environmental conditions or management actions and thus become a party to those conditions or actions. Third parties often do not have the resources and/or inclination to participate.

What are you referring to there?

**Ms Williams:** Sometimes the environmental management plan will mention or put conditions in for third parties. That might be local government or it might be TO organisations. Quite often those third parties do not have the resources or inclination to participate in that, which makes it extremely difficult for the proponents in that they then cannot meet the conditions or the audit requirements.

**CHAIR:** So, this is a state government organisation or state government bureaucracy basically requiring a proponent to go to the local government or some other group, such as a TO group, to seek their agreement on something and they are not keen to do it? Do I have that right?

**Ms Williams:** No, not quite seek agreement. It is more quite often the environmental management plan might ask for the third party to have input into some of the outcomes of the management plan.

**CHAIR:** What I am looking for is what your ideas are for improvement, bearing in mind that most of Australia does not live anywhere near the Kimberley and most of Australia has never been near it. This idea that it is one giant national park is not exclusive to public servants. Clearly, there is going to be a level of reassurance needed in a regulatory system. Given that, do you have any specific recommendations, Mr Rosair or Ms Williams, as to how you would like development in the Kimberley to proceed? There are lots of options. You have talked about a couple in terms of this bilateral agreement and so on. But suppose you were starting from a blank sheet of paper, how would you go about it?

pastoral purposes

primary

**Mr Rosair:** I am happy to just summarise the land tenure framework mission paper, which endeavours to reduce the timeframe, which can currently be beyond eight years, to secure freehold titles by introducing a number of recommendations that now have got a lot of traction. I was with the Kimberley Land Council CEO, Nolan Hunter, this morning, who reaffirmed his support for some of these initiatives. We have had support from the Cattlemen's Association and also from the PGA in principle. The minister, Ben Wyatt, in consulting him leading up to the development of this policy, is also quite supportive. The recommendations are outlined in the report, but in summary there is a bit of legislative change to the Land Administration Act that aligns ~~parcel purchases~~ with the Native Title Amendment Act in 1988. That would mean the need for diversification permits would probably not be necessary, because the ~~timely~~ production purposes in the Native Title Act allow for that activity whereas the Land Administration Act only allows for it in association with pastoral purposes. There is a clear and distinct difference in definition and a simple change in the Land Administration Act. The minister for the pastoral lands board to be able to transfer carbon rights to pastoral lessees. Land tenure administration delegation from the Department of Lands to local government, as I mentioned earlier, which is a really complicated and legalistic process. That could be delegated down to local government level to get local decisions with standard conditions. Referral timeframes for agencies should be reduced from the current 45 days down to 12, and that is consistent with the Justice Martin's Roe 8 appeals decision, where he suggested those referral times in the ~~submission~~ decision.

against

The other thing that the government gets involved with is the viability of projects. It is not their bailiwick and they certainly do not have the expertise to determine project viability. That comes from the marketplace and the private sector. What the government should do is apply conditions to developments. The risk is with the proponent about the viability of the project and that development and approval can only occur ~~with~~ key milestones. That is the sort of approach that was taken in the Ord with the Kimberley agricultural investors, where they would

only get 50-year leases once they had done the investment, the clearing and they had invested some money into some of the infrastructure developments.

We also think that establishment of a region-wide agreement not dissimilar to the southwest land settlement in the southwest of Western Australia would simplify the process of clear approval. We also believe that negotiation with native titleholders and approval processes should be concurrent.

Finally, there is no procedural remedy in place. Some of these developers have been endeavouring to get land titles for up to 16 years, where there is no procedural remedy if an ILUA cannot be established. It just basically goes on forever. We have in our reports what we believe potentially to be a procedural remedy with a subcommittee, a ministerially appointed one or one under the state administrative tribunal, which would have an independent view of the negotiations to determine and apply a number of requirements to the negotiation. Is it in the interests of the state? Is the project viable? Is there sufficient compensation? Are the best endeavours being applied by parties? There is a legal instrument in a case which is sometimes used in the states under the Land Administration Act, which is the taking of land by notice of intent to take, which was used on the ~~ground~~ and then both parties came to an agreement. So, the fall-back position where you have a situation where you cannot achieve agreements. We believe that a procedural remedy needs to be put in place otherwise the smaller based developments, which rely on the capacity of the developer and, as was mentioned earlier, which is lacking often, have a procedural remedy to move forward.

Browse project

There are also in the Ord case study duplications between state and federal environmental approvals that are astonishingly bad. When I oversaw the Ord expansion we were required to submit a Gouldian finch management plan and a quoll management plan to the state EPA. We went through a process that was very costly and we produced a management plan that was accepted by the state EPA. It was then referred to the biodiversity commission under the federal government rules, and they asked me for a similar Gouldian finch plan and a similar quoll plan. I dusted it off and said, 'I prepared one earlier.' They said, 'That's old now. That's two years.' Now, in two years Gouldian finch and quolls do not change their habitat behaviours, but we had to go back and update it with additional research at another expensive cost. Then when they assessed those plans they did not even assess it at the Commonwealth level. They sent it back to the state to assess it.

As a result of that, we now have a condition on the Ord which is $100,000 per year over seven years, and the surveys are showing the finches have been exactly the same levels they have prior to clearing. As mentioned earlier, environmental offsets are ludicrous in many cases where research agencies see the opportunities for funding of research activities as part of the development. The Ord development, for instance, was required to pay $1.5 million over 10 years to CSIRO to study sawfish and river sharks in Northern Australia – money which would have been far better spent on addressing social outcomes in proximity to the development.

**CHAIR:** Are you there, Mr Rosair? Are you there, Ms Williams? We have lost them. We will now break for morning tea for 15 to 20 minutes.

**Proceedings suspended from 11:09 to 11:30**

**GREBE, Mr Cameron, Head of Division, Environment, National Offshore Petroleum Safety and Environmental Management Authority**

**HEIDEN, Mr Karl, Head of Division, Regulatory Support, National Offshore Petroleum Safety and Environmental Management Authority**

**SMITH, Mr Stuart, Chief Executive Officer, National Offshore Petroleum Safety and Environmental Management Authority**

[11:30]

**CHAIR:** I now welcome representatives from the National Offshore Petroleum Safety and Environmental Management Authority. Thank you for appearing before the committee today. I invite you to make a brief opening statement should you wish to do so.

**Mr Smith:** I thought I would make a statement. I do not assume that you are that familiar with National Offshore Petroleum Safety and Environmental Management Authority so I thought it might be of some value. Firstly, thank you for the opportunity to appear today. We think there is significant scope for regulatory burden to be reduced and removed and we think that can be done while also improving regulatory outcomes.

In terms of NOPSEMA, we are the national regulator for safety, well integrity and environmental management for offshore petroleum activities in both Commonwealth waters and in state waters where they have conferred their powers on us. Victoria has done so in regard to both safety and structural integrity.

NOPSEMA was originally established as an offshore petroleum safety regulator back in 2005. Our responsibilities have been expanded over subsequent years, particularly with well integrity and environmental management. Those responsibilities followed the Montara Commission of Inquiry. That inquiry took the view that a single independent body should be responsible for regulating health and safety, well integrity and environmental management for offshore petroleum operations.

By establishing NOPSEMA, a standardised approach was able to be adopted in Commonwealth waters. Also, we were subsequently endorsed for our environmental management processes under the EPBC Act. That means that if we grant approval for offshore petroleum activities in Commonwealth waters, or in state waters for that matter, that activity also automatically has approval under the EPBC Act. That endorsement, since it was granted in 2013-14, has meant that 134 environment plans for offshore activities have been accepted by us that would have otherwise had to have also gone through the EPBC Act approvals process, and the estimated savings to industry are in the order of $120 million a year from that streamlining alone.

Our responsibilities at the moment, except where conferral occurs, is Commonwealth waters, so from three nautical miles out to 200 nautical miles. As I say, we think there is scope for the states and the Northern Territory to confer their powers on us as well like Victoria has for safety. They currently look after the coastal waters typically from the shoreline out to three nautical miles.

By conferring the powers to us it means we will regulate on behalf of the state and the Northern Territory, reporting to the state minister. At the moment, NOPSEMA reports to the federal Minister for Resources as the responsible Commonwealth minister. We also report to the federal Minister for Energy and Environment for the EPBC Act responsibilities, and we report to the Victorian minister, Wade Noonan.

In terms of a single national framework for regulation of offshore oil and gas, we think if all of the states and the Northern Territory were to do so the benefits would be eliminating discrepancies across boundaries that currently exist and reducing the volume of required permission documents that currently industry has to complete. It would improve consistency. It would ensure the maintenance of robust environmental outcomes and it would also expand access to world leading practices and critical mass of regulatory experts, which we have.

Just to finish off the opening statement, I think it is probably worth giving you a quick example. If you have an offshore oil and gas facility that might have wells in both Commonwealth and state waters that are producing and they then have a pipeline running to onshore, whether it be in the Northern Territory or on state waters, for a situation like that you currently have four regulators that would be responsible for offshore oil and gas approvals, for environmental approvals alone. That would be the relevant state Department of Mines or Primary Industries, the state EPA. They would also need Commonwealth Department of Environment and Energy approval under the EPBC Act for those activities in state waters, and we would grant approval as well. If they were to streamline the process by conferring their environmental powers on us, industry would just need one approval from us as the regulator for the same activity, irrespective of whether they confer.

Just to finish off, I would point to various reviews and inquiries that have been conducted into this issue which have come to the view that there should be a one-stop shop and it should be achieved through streamlining of regulation and to the conferral of powers, such as the Productivity Commission has completed their inquiry. The WA government did its own inquiry into the Varanus Island report, which also recommended that they confer powers. And the Hawke review of the EPBC Act, as well as various inquiries and reviews of how we operate and how we are performing which have endorsed the approach that we apply. We are ready for conferral from the states and the Northern Territory and we look forward to it happening.

**CHAIR:** Thank you. Not that I suppose it matters that much, but have you discussed this at all with the states and territories? Do they have a different view from you?

**Mr Smith:** Yes. We certainly discuss it with them regularly. The issue is discussed through the COAG process. I also go to the states and the Northern Territory and meet with the ministers, the shadow ministers and the relevant government officials to discuss conferral.

**CHAIR:** What sort of response do you get?

**Mr Smith:** Some of the states are interested in conferral. There are discussions going on with those about the possibility, and likewise with the Northern Territory. In the case of New South Wales and Queensland, the response has been that they see merit in conferral and they are happy to do so when other states have done so. They do not have much in the way of offshore oil and gas in their jurisdiction so it is not a high priority for them. Other states are at different stages of going down this path. Officials have various views. In some states, they are supportive. In other states, some of the officials are concerned about what it might mean if the functions are conferred on NOPSEMA; that is, in terms of their employment, not in terms of environmental or safety outcomes.

**CHAIR:** Of the offshore oil and gas operations that are around Australia's coastline, what percentage or proportion of them come within your responsibility?

**Mr Grebe:** I do not have the numbers to hand. We can provide them. Excluding pipelines probably about 85 to 90 per cent of the facility count would be in Commonwealth waters. A large proportion of the remainder in state waters would be in Western Australia, because the three nautical mile coastal limit extends quite a long way offshore due to islands—Barrow Island, Varanus Island and so on. Inland waters are quite large in Western Australia.

**CHAIR:** Not that I am disagreeing with you, but if Western Australia referred its authority for these things to NOPSEMA in the scheme of things how much of a difference would it make to the industry?

**Mr Smith:** I would think it would make a substantial difference to industry if Western Australia did. The example I have already given in terms of since the powers were conferred on us under the EPBC Act, or since we were endorsed for approval for the EPBC Act in 2013-14—we have accepted 134 environment plans for offshore activities just in that time. The streamlining benefit is in the order of $120 million per year.

It is not hard to see, in moving to that arrangement where there is just the one regulator, substantial savings just in Commonwealth waters alone. If you were to include state waters, instead of having four regulators you would just require one. Typically, if you have an offshore activity occurring, a production well for instance, you are going to need to have it connected to onshore unless you are using floating LNG. The industry is going to be requiring approvals not only from the federal government but also from the state and territory government. So, you would remove the duplication that currently applies. That is not for every project, because of floating LNG, but for the vast majority there would be a saving in terms of their regulatory burden, financially, and in terms of preparing documents. But it is not just about making savings. I would say it is also about environmental outcomes. If you have duplicate systems operating under different legislations and statutes, that imposes a cost. It also creates a potential risk and that might lead to adverse environmental outcomes.

**CHAIR:** So, the vast majority of the 85 to 90 per cent that you referred to as coming under your authority also have some reporting and oversight obligations from state authorities because of the pipeline. Is that what you are referring to?

**Mr Smith:** That is right, as well as inspections.

**CHAIR:** And inspections. So, what you are suggesting is that if NOPSEMA had all of it that would be one authority that these companies would deal with and so you would have the same rules nationally?

**Mr Smith:** Correct.

**CHAIR:** And they would be dealing with the same individuals?

**Mr Smith:** Yes. They would put in one application for approval and they would receive that, assuming they meet the requirements. They would be the subject of one set of inspections and so on instead of three or four regulators for the offshore areas.

**CHAIR:** Do you appear at estimates at all?

**Mr Smith:** Yes, we do.

**CHAIR:** Has this question ever been raised previously?

**Mr Smith:** I have raised the issue of conferral at estimates. I do not typically receive questions about it. But, yes, I tend to raise the issue in any public forum that I think is relevant.

**CHAIR:** I suppose there would be a degree of suspicion that it was departmental empire building. What do you think of that?

**Mr Smith:** In reality, it would not build our empire. We would need very few additional staff. It is actually the savings that come from it. We already have the expertise in the critical mass. It is not about building our staffing or anything like that. In terms of funds, it is not going to increase our revenue stream to any great degree. The industry is already paying a levy for us to regulate things like pipelines. They also have to pay the state jurisdiction a levy to regulate the pipeline in the three nautical miles from shore. It is not about building an empire, it is about the savings that would come from it. Also, in terms of that question about building an empire, the concept of NOPSA and then NOPSEMA is a creation coming out of COAG with the endorsement of all of the states. They recognised the benefit of having a single one-stop shop regulator for offshore oil and gas before we even existed. We are just looking to have the COAG governments implement what they have already supported.

**CHAIR:** Are there any other Commonwealth authorities like yours? You are a COAG creation, in a sense, so you have a degree of independence from both the Commonwealth and the state departments, if I am correct.

**Mr Smith:** Yes, we do.

**CHAIR:** Is there anything like that?

**Mr Smith:** Mr Grebe can mention the AMSA example.

**Mr Grebe:** The closest example, which is not identical, is the Australian Maritime Safety Authority, which has in recent years been in the process to regulate coastal shipping on behalf of states. I do not have details on that process, but that is probably the closest example that I can think of.

**CHAIR:** I have experience with another one, which is less reputable. To change its remit, it is a COAG process and it requires every one of the states and territories to agree. Would that be the case, if your proposal for taking over state responsibilities was to occur? If that was ever changed, would it then require all states and territories to agree again?

**Mr Smith:** If a state wanted to confer its powers on us it can do so. The state needs to decide to do so. All of the states—

**Senator PATERSON:** If you say unilaterally it does not need to go through COAG?

**Mr Smith:** Correct.

**Senator PATERSON:** It can just refer to you directly?

**Mr Smith:** Yes, because when NOPSA and then NOPSEMA were established it was with the support of all of the states and territories as well. The agreement was that when a state is ready to confer its powers on NOPSEMA it can proceed to do so. At that point, we then report to the relevant state minister as well as the existing ministers.

**Mr Grebe:** Our legislation is already amended to make provision for us to have powers conferred on us and all it takes is individual states to pass legislation to cause that conferral to occur, which has happened, as Mr Smith mentioned, in Victoria on the functions for safety and structural integrity.

**CHAIR:** Can they retrieve those powers?

**Mr Grebe:** Yes, of course.

**Mr Smith:** Yes, they can. If they are unhappy with our performance they can take those responsibilities back and give them to another agency.

**CHAIR:** Let us suppose also NOPSEMA had some strange recruiting policies and ended up recruiting people who thought that saving the pink-eared flying fish was its mission in life, and so nothing was approved because the pink-eared flying fish was endangered. What could be done about that? The issue with other COAG creations that I am familiar with is that it is very difficult for anybody to do anything about it, because it requires all of the states and territories to agree. Is that your situation or not?

**Mr Smith:** No, it is not. If a state minister was unhappy with our performance and felt that one of the existing state agencies or a new creation could do a better job than us they could just decide to do that. They could advise the Commonwealth minister, pass the legislation at a state level, and away they go. They do not need the support

of the other states and territories to withdraw from conferral. Effectively, when conferral occurs we become another agency of the state. So, in the case of safety, a state will have alternatives like the Department of Mines, WorkSafe and potentially other organisations as well or NOPSEMA. It can allocate that responsibility for regulating to any of those agencies and it can move it from those agencies to another one at any time. That is the case with conferral as well.

**CHAIR:** My question was really aimed at the policies that NOPSEMA adopts and implements and what guides your approach to applicants for approval. To what extent are you guided or directed by the states and the Commonwealth?

**Mr Smith:** We are an independent statutory authority so they cannot direct us on what decision we should make. They set the legislation and the regulations that we operate under.

**CHAIR:** The Commonwealth legislation?

**Mr Smith:** The Commonwealth, but if a state confers its powers we can operate under the state or territory legislation.

**CHAIR:** Suppose you took a very hard line. Environmental assessments are always a balance between economic development and environmental protection. Suppose you took a very hard line one way or the other. Just for the sake of the discussion, as I said, the pink-earned flying fish was regarded as sacred and almost no offshore developments were consistent with its survival. Beyond withdrawing from the referral of powers, which you referred to, by a state, what could be done about saying to you and your people, 'You've got this wrong'?

**Mr Smith:** If they disagreed with an individual assessment?

**CHAIR:** More at a policy level. If you set the bar up here and there was a feeling that the bar should be lower?

**Mr Grebe:** There are two aspects in answering that question, and it is one that the industry asks about as well. The first part is around our decision making and how the authority makes decisions, which is clearly set out, for example, in environment decision making that you are referring to under our environment regulations. Those criteria are roughly similar in all the state equivalent legislation through past legislative change to harmonise legislation across boundaries. The legislation very clearly sets out what is approvable and what is not approvable, if you like, and as an independent authority we are of course bound to make decisions in accordance with the Administrative Decision (Judicial Review) Act, and so we are making them in accordance with the law. The factors around environmental acceptability are fairly clear and we are not making random decisions and letting individual preferences for one species that staff may have, for example, overpower decision making in accordance with the law. It is NOPSEMA that makes the decision. As Mr Smith mentioned, we are an independent statutory authority. The power to make decisions rests with the authority, which is delegated to the CEO in the legislation and not the minister.

There are two elements to cover on policy matters. One is the act provides the ability for minister or ministers to set a statement of expectations on the chief executive, which is in place and is on our website. That sets out policy expectations around how the authority conducts its regulation. In there, hypothetically, for example, if there was a policy directive around how consideration could be given to particular environmental issues, that is a place where there is still the ability to guide NOPSEMA in a policy sense, but the act prohibits the minister from giving direction on individual operations the act calls up.

**Mr Smith:** There is one other point that I might make. Occasionally we will be talking to a community group and they will say, 'What about if we think you're far too liberal in your approval? What if we think certain environmental factors are such that there should never be activity in these waters, but we think you might allow those activities to occur under the legislation? Don't you think there should be a role for an elected official or government minister to make the decision whether activity proceeds or not'? I think that is a perfectly reasonable position to put. What we would say in regard to that is that we do not make the decision in terms of issuing titles. We have no role on the economic side. It is the elected officials that make the decision to release titles for the companies to operate in a particular area. It is only after the title is issued that we will consider whether environmentally, and from a safety perspective, the way in which they intend developing the resource is in keeping with the legislation. There is a role for elected officials to decide whether activity should proceed.

**Senator PATERSON:** I have a quick clarification question. Are your decisions on those matters reviewable by the courts if someone is unhappy with your decision?

**Mr Smith:** In terms of environmental decisions?

**Senator PATERSON:** Yes.

**Mr Smith:** In terms of the process, not the decision itself.

**Senator PATERSON:** They would have to demonstrate that you failed to take into account what you were required by law to take into account in order to successfully overturn a decision?

**Mr Smith:** Correct, yes.

**Senator PATERSON:** Has that happened in recent times? Has it ever been challenged, let alone successfully?

**Mr Grebe:** No. Our decisions under Commonwealth law are reviewable by the Federal Court, of course, under the ADJR. We have not had any cases taken against us in the Federal Court. We have had complaints taken to the Commonwealth Ombudsman, which is normal, after we have reviewed a complaint. That has happened once, and we were found to have made the correct decision in accordance with the law in that instance.

**Senator BURSTON:** Are you responsible for ongoing safety audits of rigs and the like?

**Mr Smith:** Yes. Safety inspections, yes, and the environmental inspections.

**Senator BURSTON:** And relocation of oil rigs? Do they need additional approval?

**Mr Smith:** Do you mean decommissioning?

**Senator BURSTON:** Yes, decommissioning or relocation. Do they ever relocate oil rigs after they have exhausted an oil field?

**Mr Smith:** Not so much production rigs, but there will be things like drilling rigs that will move from one site to another, yes.

**Senator BURSTON:** Do they need additional approval to relocate?

**Mr Smith:** For an environmental approval, they will need a separate approval if it is a different environment in which they are operating, but their safety approval will stand provided they are operating within our jurisdiction.

**Senator BURSTON:** Thank you.

**Senator PATERSON:** I have a final question following on from Senator Leyonhjelm's questioning. Mr Smith, it is a compelling way that you have presented your evidence, but it seems like a logical path to me. What are the objections that people raise with you when you raise it or do they raise any objections?

**Mr Smith:** I have not had any objections raised by anybody to it. The issue that seems to come into play is a concern by state officials, and sometimes by ministers, until we brief them on how it would happen. There can be a concern that conferral means the handing over of powers from a state or a territory to the Commonwealth government. They are averse to that. Having been a state government official for over a decade I understand where they are coming from. In the past, that is how conferral has occurred in some other jurisdictions, other industries and so on. The conferral that we are talking about, the way it happens for us, is not the handing over of powers to the Commonwealth; rather, we become an agent of the relevant state or territory and, therefore, the power remains with the state or territory.

For the officials, as I mentioned, sometimes there are some concerns that if the powers are handed over there are going to be savings. We already have a critical mass of expertise. We need to be able to have enough staff to do our job. But if it is in some of these smaller states it may be the case that we do not need to take on any additional staff or a very small number.

**Senator PATERSON:** Wouldn't that be a terrible thing?

**Mr Smith:** I will leave that for others to judge. You can understand where there might be some concerns from officials, but for elected officials it is typically that issue of not wanting to hand powers to the Commonwealth until we explain how conferral would work.

**Senator PATERSON:** And to your knowledge the Victorian government is largely happy with the narrow set of powers that it has referred to you?

**Mr Smith:** More than happy. It has been in place for over a decade now. It continues to be in place through Liberal and Labor governments. We enjoy bipartisan support federally and at a state level, and reports and reviews continue to endorse the approach of conferral and streamlining. There has not been a question about them withdrawing their conferral. It is just a matter of expanding it.

**Senator PATERSON:** It might have been before your time, but do you know why at the time that the powers were referred they decided to refer them only in that narrow way and not all of the potential responsibilities were taken?

**Mr Smith:** Yes. That was all we were responsible for when they conferred their powers.

**Senator PATERSON:** That makes sense.

**CHAIR:** I realise where some objections might originate. Suppose there was an application to look for oil on the Great Barrier Reef or Ningaloo Reef or something like that, would it be a political decision whether to allow exploration in the first place?

**Mr Smith:** Yes.

**CHAIR:** If the powers were referred to you, you would then be responsible for the environmental and safety conduct of the subsequent exploration; would that be right?

**Mr Smith:** Correct, yes. We do not have a role unless the government has already decided that they are happy for that company to have acreage in their waters.

**CHAIR:** Yes. How would you assess whatever risks you thought there might be, particularly environmental risks, in the context of Bass Strait being a different marine environment to the Great Barrier Reef or the Ningaloo Reef? How would you go about that?

**Mr Grebe:** That is a good question. I think it is a benefit of having the legislation we have, which is built off a principle of objective based regulation, which has essentially arisen out of, unfortunately, significant safety incidents in the UK and in Piper Alpha, which strengthened the safety case approach. The way regulations work require certain environmental outcomes to be demonstrated to be met. They are not prescriptive in terms of a Bass Strait environment, a Great Australian Bite or the Great Barrier Reef. They are evergreen for whatever location. It is a set of objective based criteria that the proponent has to demonstrate through a reason supported set of arguments in an environment plan. It is not just management arrangements, with actions they will take. It is the justification as to why those management controls to reduce environmental impact and protect the environment will be to acceptable levels, but reduced even further to as low as reasonably practicable. That applies to both impacts. So, certain things that are going to happen—seabed footprint and so on—but also to unlikely but high consequence events such as oil spills. It will not matter whether it is in Bass Strait or the North West Shelf or—and I do not think that it will happen—off the Great Barrier Reef, but it is hypothetically possible that our regulations could apply there and the same high environmental standards would apply to an activity there.

**CHAIR:** An applicant for exploring or extracting gas or oil 20 miles off the coast would need your approval to explore and to extract? If the referral of powers that you are talking about had occurred, they would only need your approval to get it onto shore?

**Mr Grebe:** Correct.

**Mr Smith:** Correct, for environment, safety and well integrity.

**CHAIR:** All the way through?

**Mr Grebe:** If they conferred the powers.

**Mr Smith:** Correct, yes.

**CHAIR:** It sounds like a one-stop shop.

**Mr Smith:** Yes. In fact, that is the term that has been used for NOPSEMA and its creation.

**CHAIR:** We might just mention that in our report. I think we have probably heard sufficient on this one. Thank you very much for coming along.

**Mr Smith:** It is a pleasure.

**CHAIR:** I am sorry you never got to talk to us, Mr Heiden. You will have to speak up.

**BELL, Mr Robert Alex, Policy Director, Health, Safety and Environment, Australian Petroleum Production and Exploration Association**

**ELLIS, Mr Stedman, Chief Operating Officer, Western Australia, Australian Petroleum Production and Exploration Association**

**GIBBONS, Mr Patrick, Director, Climate Change, Environment and Energy, Minerals Council of Australia**

**PEARSON, Mr Brendan, Chief Executive, Minerals Council of Australia**

[12:03]

*Evidence from Mr Gibbons and Mr Pearson was taken via teleconference—*

**CHAIR:** I now welcome representatives from the Minerals Council of Australia, via teleconference, and Australian Petroleum Production and Exploration Association. Thank you for appearing before the committee today. I invite each of you to make a brief opening statement should you wish to do so.

**Mr Ellis:** For the record, Australian Petroleum Production and Exploration Association is the peak national body representing the upstream petroleum exploration and production industry in Australia. We represent member companies who produce approximately 98 per cent of Australia's oil and gas, who conduct the majority of exploration in Australia and represent many of the service companies that support the industry.

We welcome this opportunity to appear before the committee. I would like to make just a couple of points in this opening statement. Firstly, I would make the point that I think the committee would be aware that oil and gas projects bring substantial economic benefits to Australia—Western Australia and other states—and that their regulation should promote community wellbeing without imposing unnecessary regulatory burden.

Secondly, in what is a challenging business environment for the oil and gas industry, regulatory certainty and regulatory burden have a profound effect on Australia's competitiveness in attracting investment. Finally, in the offshore regulatory environment, as you have just heard from the chief executive of NOPSEMA, there have been significant improvements in the regulatory arrangements surrounding our industry in recent years, and this needs to be maintained.

If I could just go on to make a few points to support that—as the committee is meeting in Perth, I thought I would just illustrate the economic importance of oil and gas projects with some reference to WA. Natural gas is of fundamental importance to Western Australia, both in terms of energy security and economic activity in the state. Some 43 per cent of the electricity in the southwest of the state is generated from gas. Something like 737,000 homes and small businesses rely on gas. At the same time as gas plays that role, we have had the emergence of projects like Gorgon, Wheatstone, Ichthys and Prelude, which is supplying gas to the growing demand in our region. In doing so they have created an export industry in Western Australia which is second only to iron ore in its importance to the state. In 2014-15 it generated $900 million of royalties and taxes for the WA government and in the same period paid the Commonwealth $1.5 billion in revenue. It employs approximately 20,000 people in Western Australia. This is a significant economic outcome being delivered for the state.

In terms of regulatory burden, perhaps I will briefly spell out our views and they probably sit neatly with the evidence that you have heard from NOPSEMA. APPEA strongly supports the leadership that the Commonwealth and COAG have taken in establishing NOPSEMA as a single agency for offshore health, safety and environmental approvals including under the EPBC Act. The objective based regulation within which NOPSEMA operates is internationally recognised as the most appropriate regulatory regime for dealing with potentially high hazard industries like oil and gas activities.

Again, as you have heard, the adoption of a one-stop shop in Commonwealth waters has removed duplication in approvals processes. We would strongly support the point made by the chief executive of NOPSEMA that the prospect of conferral by states and territories would build on what is a very successful model and further reduce duplication and regulation of the industry.

NOPSEMA's performance, from the point of view of our members, has been generally regarded as good. There were some early uncertainties in the application of the safety case methodology to environmental approvals when NOPSEMA assumed that responsibility, but that has been progressively addressed and looking at both NOPSEMA's indicators, published indicators of performance and the anecdotes we hear from our members, it is performing in a positive way.

It perhaps is also reflected in the Fraser Institute's global survey of petroleum jurisdictions and their investment attractiveness. Australia ranks second to the United States, and the most attractive regime for investment is the offshore environment for petroleum activities. But there remain significant challenges to reduce regulatory burden

in our industry. Some of our members report that the preparation of environmental plans to gain approval has doubled in size to nearly 1,000 pages for an individual environmental plan approval for operational activities over the past four years. The time and effort to produce these complex documents needs to be reduced alongside efforts to improve stakeholder engagement and transparency.

APPEA and our members are strongly committed to working with the regulator to address this challenge and to continue to improve the regulatory environment for the industry. With those few remarks, I have now completed our opening statement.

**CHAIR:** Thank you. Mr Pearson or Mr Gibbons, do you have an opening statement?

**Mr Pearson:** We also welcome the opportunity to participate today. The key point that we would stress at the outset is that we are not seeking to remove or diminish any environmental safeguards. Our interest is in environmental regulation that is both efficient in operation and effective in achieving its desired outcomes. Why does this matter to everyone else? The $200 billion in exports income from the resources sector is making a big contribution to better living standards of all Australians, but we are at risk of blowing our competitive advantage in this area. Over the last decade or so the scale and scope of environmental regulation in the minerals sector has multiplied. Two years ago, we asked Australia's premiere productivity experts to survey our member companies to identify the key blockages to productivity gains. Delays in project approvals were cited by 90 per cent of respondents as the most important cause. A large environmental impact assessment now costs several million dollars and can take several years to complete. A recent draft environmental impact statement in the Northern Territory involved the production of over eight and a half thousand pages of documentation, together weighing 43 kilograms.

Federal environmental law continues to grow. As I believe you might hear later this afternoon, the Institute of Public Affairs recently reported that the overall stock of legislation managed by the Department of Environment increased by 240 per cent between 2001 and 2014. Separately, the Productivity Commission has estimated that a one-year delay to a large greenfields project can reduce the nett present value of a mining project by between 10 and 13 per cent. For a large project, this could mean an NPV loss of at least $30 million per month.

Moreover, our approvals processes are increasingly being gamed by groups opposed to minerals and energy production of any kind anywhere. As Mr Ellis also noted, our reputation as a place to invest is coming into greater question. Canada's Fraser Institute also does a review of provincial mining jurisdictions around the world. In the mining area, only WA ranks now in the top 10. New South Wales has slid from a ranking of 27 to 66 over the last four years, while Victoria has dropped to 42 from 31 in the last four years. We can do better.

The federal Department of Environment has concluded that streamlining federal and state environmental process could save Australian businesses $426 million annually. If you think about this from a macroeconomic perspective, the benefits are formidable. We asked BAEconomics in 2014 to assess those gains from reducing project delays by a year, and the result was it would add $160 billion to national output by 2025, creating an extra 69,000 jobs.

In our view, the solution is relatively straightforward. In 2013 the Productivity Commission benchmarked Australian processes against international and domestic best practice. It concluded that, 'Overlap and duplication of similar regulatory processes is one obvious source of unnecessary burden for proponents.' The PC recommended a 'one project, one assessment, one decision framework for environmental matters'. We are disappointed that the following proposal for a one-stop shop approach to federal and state environmental approvals has not passed the Senate, and we hope that that can be done soon.

I will close with one quick quote. What we want to work towards here is a streamlined system so that projects do not go through two layers of assessment for no real gain. It is double the time. That clearly is an inefficient system. We fully agree with the words of the former Prime Minister Julia Gillard back in 2012 and we hope that we can, at some point soon, reach a bipartisan agreement on a one-stop shop approach to environmental approvals. I will stop there.

**CHAIR:** Thank you. Senator Paterson, would you like to start?

**Senator PATERSON:** Yes. Mr Ellis, I realise you are from WA. I am from the great state of Victoria, and at the forefront of my mind in your space is one particular regulatory burden for mining, and that is obviously the moratorium on onshore exploration and development, both for conventional methods for a few more years and in perpetuity for unconventional methods such as coal seam gas. Do you have any comment on that?

**Mr Ellis:** We would echo the views of Australia's Chief Scientist, Dr Alan Finkel, who is on the public record as saying there is no evidence that fracking is unsafe; in fact, all the evidence is that with proper regulation the industry can be safely managed. We have a strong history of regulation and operation of the oil and gas industry in Australia onshore and offshore. As Dr Finkel reported in his most recent report to COAG on the electricity market, we should be assessing oil and gas projects on a case-by-case assessment using our regulatory system. There are no

particular risks there that evidence has demonstrated that would warrant bans or moratoriums. When we impose those, we impose not just immediate economic costs on a state, in terms of the energy security they might have or the economic activity in regional areas, but we damage Australia's reputation as a destination for foreign investments. Perhaps I will stop there.

**Senator PATERSON:** Yes. You have my agreement there. It was always an illogical policy, but it is becoming particularly exposed for just how illogical it is given the shortages of gas and the record prices for gas at the moment. One possible solution has been put forward to break some of the resistance in regional communities to CSG, which is to quarantine some kind of share of royalties to landowners. Does APPEA have a view on proposals like that?

**Mr Ellis:** At an in-principle level I think we are all looking for a regulatory framework that ensures the environment is protected, that landholder's rights are protected, that safety is ensured, and that is done in a way that provides some certainty of process, both for stakeholders and investors in the industry. In terms of how that might work best, in our view a good starting point is to look in Queensland, where over the last five years you have had the emergency of a very large onshore gas industry supporting three LNG projects at Gladstone island. You have more than 5,000 individual land access agreements with different farmers. According to the most recent report of the independent body established by the Queensland government, GasFields Commission Queensland, up to 2016 $238 million has been paid to farmers in Queensland under those land access agreements.

There is certainly a model there which would demonstrate that coexistence is being achieved and economic benefits are being shared. Now, whether individual jurisdictions want to look to royalties and things like that, I think the practical record of the industry is that it has been able to develop. Where it is able to get past the campaigns of misinformation which are trying to stifle exploration, it has been able to demonstrate to farmers that it can deliver real tangible benefits through its presence.

**Senator PATERSON:** I think your last point is the key one, because Queensland's relative success and satisfaction with CSG exploration is not new. It has been successful for some time, and yet that successful example has not been sufficient to overcome objections in most of New South Wales, all of Victoria and to some extent in South Australia and that is why people are now looking at other models. Obviously, the South Australian government has started to go down that path and others have advocated that Victoria should. Just on perhaps that legislative revenue sharing arrangement, does APPEA have a position on that?

**Mr Ellis:** We would support individual jurisdictions looking at mechanisms that both protect the right of farmers and ensure they are beneficiaries from development. It needs to be recognised that perhaps a one size fits all approach will not work, and imposing a new model, for example, on Queensland, on top of how it already works would perhaps be inappropriate.

**Senator PATERSON:** I agree.

**Mr Ellis:** Hence, our concern around just the jurisdiction. Certainly, the underlying principle is one that we would support, because we think the industry can demonstrate that. Again, the Queensland example is a powerful one in terms of reversing the economic fortunes of some of the inland Queensland towns. There are benefits to be delivered, and if those incentives need to be made more real and tangible to overcome some of the misinformation then we would be supportive of that.

**Senator PATERSON:** Thank you.

**CHAIR:** Mr Pearson and Mr Gibbons, I am looking at your submission. I am wondering if you could expand on a couple of points. You comment on the increasingly complex regulation of mining developments. I cannot point you to a page under your executive summary. You refer to the continual expansion in regulation as being compounded by the development of additional independent advisory panels at both the Commonwealth and state levels. Can you talk about that for a moment so the committee understands what you are referring to there?

**Mr Pearson:** That refers to the creation of the independent scientific committee on the water trigger. This is a new process that was applied back at the end of 2012 and it completely duplicates most of the processes or all of the processes that we undertake at a state level in any case. When we are doing a state level approval, impacts on water are fully assessed and we have found in practice, since the operation of that extra top-up regulatory hurdle, we are not identifying any new shortcomings in state approvals processes with that extra layer. In other words, we have completely introduced a duplicate level, which in many cases delays processes.

In a former life, I worked for a company which was just waiting for its final tick from state and federal governments and it was around about that time that this regulator was introduced. It meant an extra delay of several months. At the end of that process, no change was made to the conditions that applied to that project. The water trigger process, in our view, is unnecessary. It has proven to be unnecessary in the experience that we have had since its introduction.

The second layer refers to the special process that applies, and this is more longstanding than the water trigger, to uranium development. Uranium is regarded as a trigger under the EPBC for federal intervention for so-called nuclear matters. Now, uranium mines are in most cases no different to any other mine, but it has to go through a special number of hoops which, in our view, are unnecessary and have proven to be unnecessary. I think even the recent South Australian royal commission into nuclear matters opined on this and also concluded that it was unnecessary. They are the two extra layers that we think are superfluous and could be done away with. Of course, in both cases efforts to streamline both of those processes have failed in recent times.

**CHAIR:** Can you comment on this notion of a risk based assessment? We had a discussion with the Roy Hill folks earlier this morning about that. They thought it had merit; that a risk matrix could be developed that would be agreed, in the absence of a one-stop shop, by whatever authorities thought they ought to be involved and that subsequent approval could be based on that risk matrix. Do you have a view on that idea?

**Mr Pearson:** I did not hear the evidence this morning, but I have spoken to our people in the past about this. I think where they are coming from—and correct me if I am wrong—is that we have had a tendency in recent times to lean towards much more prescription in the environmental impact assessments that we are required to undertake. That is borne out by the scale of some of our EIS documents and how rapidly the size of those EIAs have increased and, as I said, a very recent case involved 8,500 pages. This is clearly ridiculous and it is almost impossible for regulators to effectively administer. If the Roy Hill example is focused on, 'Let's identify what the primary risks are in various assessments and approvals and focus on those, and focus on a less prescriptive approach,' then we would certainly support such an approach.

**CHAIR:** This also applies to the APPEA people. I am interested in your thoughts on this. We are hearing consistently from evidence today, and also in the submissions that have come into this inquiry, about delay and the cost of delay, about the amount of data that has to be provided and we have talked about that just now, that the bar is being raised. All that has to be reviewed. The data has to be reviewed. And then you have compliance monitoring afterwards. If you look at it from the perspective of the bureaucrats administering the law, their only incentive is not to make a mistake. If they make a mistake they are in trouble. If they delay, ask for more data, refer it to somebody else, they suffer no penalties. This is a common issue in public administration. I am interested in what could be done about it.

Just to get your thoughts going, in the APVMA, which does agricultural chemicals, they have statutory time limits and there are some statutory time limits in some of the legislation applicable to minerals development. If they do not make those time limits there does not seem to me to be much downside. If you were designing the system yourself how would you go about it? What would you do to ensure that these complaints were at least less of a problem? Mr Ellis, you can go first, or Mr Pearson.

**Mr Ellis:** Perhaps I will start. I might ask Mr Bell, our HSC policy director, to expand. In our experience what is critical is there are clear decision-making processes, transparent decision-making processes, for the regulator and there is accountability by publication of their performance. Those are characteristics we see in the NOPSEMA regime but perhaps I might pass to Mr Bell to talk about how that works in that regime.

**Mr Bell:** As Mr Ellis has indicated, and I think the NOPSEMA people prior, NOPSEMA produces an annual report of its performance matrix and the industry's performance matrix, which includes indications of timelines around their approvals for environmental plans, safety cases and other instruments. It also produces volumes of how many approvals are given. What it does not produce is indications of the size of some of the documents. That has been probably the overall complaint from industry, that our EPs and approvals documents are getting larger. So, to that end, NOPSEMA has produced decision-making guidelines to help people understand the process and supporting advice around that.

As you would be aware, there are also moves at foot within NOPSEMA to look at making the decision-making process more open to consultation, at the moment, which may initially require a little bit more work, the idea around it being that the overall approvals process will be less burdensome for the applicants but also the people that are reviewing it, both within NOPSEMA's authority, but also for external stakeholders who are complaining about the burden of having to review documents and increasingly larger environmental approvals and safety approval documents.

**CHAIR:** Mr Pearson or Mr Gibbons, would you like to comment on that?

**Mr Pearson:** I can use one example to illustrate this point. I take your point about an incentive built into those who are regulators not to make errors. I think where this has gone awry is we have overlooked what the Europeans call the stereo subsidiarity where in this case I think state environmental regulators are much better equipped to have a sense of the circumstances in which a project is going forward.

The example I will give is where a project was being assessed in a semi-arid region of Western Australia. It had gone through the state process and then hit a hiccup at the federal level where an obviously well-meaning environmental officer said, 'Yes, but you haven't accounted for the platypus.' Now, there have not been platypi in that area for several millennia and it was not appreciated at the federal level, when you are in a nice looking office overlooking the lake, that familiarity with local circumstances is less obvious. So, I think that is where there was a breakdown of trust somewhere along the line between the federal regulators and state and/or the development of parallel processes.

Now, we need to overcome that and get back to trusting state bodies, through accreditation, through appraisal auditing of the state regulators, and all of that is covered in the one-stop shop legislation. Some of the problems that we are encountering are too many parallel processes, processes that are being overseen by, to be honest, people who are far distant from the circumstances in which many of these projects are being assessed and evaluated.

**Senator BURSTON:** Mr Pearson, if we move back to the EIS, the 8,500-page 43-kilo EIS statement, it is obviously based on the level of risk in many, many areas. Could you see that being split into high, medium and low risk categories and having separate EISs for each of those and if the high risk EIS is satisfied then perhaps the authority can give some sort of deferred commencement subject to the others being satisfied to save time and give surety for investors?

**Mr Pearson:** There are two points here. I think in the first instance I am not sure that an EIS, even with those breakdowns, that totals 8,500 pages is really all that effective in the end. I think that something has gone wrong in the systems over time where we are over engineering these things and over complicating them. Now, perhaps as you suggest, there is something to a better grading of risk and, therefore, more information and more testing obviously required at the upper level, at those areas which are of most importance. There has been one-way traffic on this in the last 10 years.

I can recall speaking to former treasurer Keith De Lacy in Queensland. He had a project in Queensland with Macarthur Coal that went from exploration, from when they found the coal to first production, in 18 months. That was in 1998. Now, I think we are still probably several months away from the Adani project which is in its seventh or eighth year, in an area which from most environmental assessments is relatively straightforward. I take the point that there are some peculiarities with the Adani case report, but I am not convinced that some of those approvals that were completed in the early part of the 2000s were deficient in quality. We have somehow overloaded the complexity of them to a level beyond my understanding, so I think we need to have a look at that risk based approach. We have to look at strategic regional assessments where we do not have individual projects coming back with the same material on the same issues time after time, where a regional assessment can be done and we work out how to deal with problem A, B and C and that becomes an easier or a template approach for following projects to address. I do not know if Mr Gibbons has anything to add to that. Mr Gibbons has got us on mute.

**CHAIR:** He has us on hold.

**Mr Pearson:** I think I have covered it.

**Senator PATERSON:** I have a question for Mr Pearson, that we have not really discussed yet, which is the question of standing in court action over project approvals. I am broadly familiar with the MCA's view but could you outline what you would propose the government should do to address this issue.

**Mr Pearson:** Does this relate back to the recent McGlade decision?

**Senator PATERSON:** Yes.

**Mr Pearson:** Are you still hearing that feedback on your line?

**Senator PATERSON:** No, it does not sound like it.

**Mr Pearson:** It might have been only on my line. This is a problem. This is a problem that we have today. We have heard today there was a conclusion to a court case in Brisbane launched by a very small number of Indigenous people who are trying to block the Adani mine. Now, the consequence of having one or a very small number of Indigenous members of a community being able to block a project that will benefit a vast majority of Indigenous people and communities in a particular area was really under threat following the McGlade decision. We are very pleased that there was a bipartisan agreement to pass legislation to fix that problem. There are further issues to be dealt with over coming months, including on the right to negotiate and probably even after that more reforms that will be dealt with, and I think following a recent Law Reform Commission proposal, but the bottom line is that our rules must allow, given the rich tapestry of humanity, that we are not always going to get a 100 per cent agreement in any community, in some cases in Indigenous communities, so it is really important to have that uncertainty removed which would have stopped both future agreements being negotiated by Indigenous communities to the

benefit of a vast majority of those communities and not to have them stopped by very small numbers of Indigenous groups, often having been incited by activist green groups.

**Senator PATERSON:** Just to come to that point, because obviously in the past it has not just been a small proportion of an Indigenous community that has taken legal action but also some environmental groups who, people might observe, would have a tangential connection to the region where the development is taking place that have taken action. Do you have a view on whether they should be eligible to have standing?

**Mr Pearson:** We supported the amendments that were put forward a year or two ago on section 487 which would confine standing, in certain cases, to groups who were directly affected or communities, landholders, who were directly affected by a particular project. That did not succeed. We are always looking for other ways to address that issue. I would note, for example, that South Australia has legislation concerning wind farms. The South Australian government has indicated that only people within two or three kilometres of a proposed wind farm project are allowed to be objectors to that proposal. Now, clearly that is one solution that the South Australian Labor government has tried, particularly on wind farms, so if you are not directly within that certain distance of a wind farm you do not get a say.

We are open to ideas on how to stop the gaming of mining projects by green groups because we have seen it clearly in the Adani case; they are explicit. They say, 'Our first priority is to get in front of the critical projects to slow them down in the approvals process', and then they add—and this is in a document 'Stopping the Coal Export Boom—'By disrupting and delaying key projects we are likely to make at least some of them unviable.' The evidence is plain to see that there are people gaming these processes and we need to continue to look at ways to stop that from happening.

**CHAIR:** We are almost out of time but I have one more question for both organisations. In the EPBC Act there is a requirement for the government to review it. Are you familiar with that and do you have any thoughts on whether that might be a useful exercise?

**Mr Ellis:** As indicated in terms of the steps that have been made of regulation of the offshore petroleum industry, we would be very keen to see the model of accreditation of NOPSEMA extended further and if a review looked at that—as I think the chief executive of NOPSEMA indicated earlier—the pathway to get where we have got to in regulation of the offshore industry began, to some extent, in 2009 with the Productivity Commission report which found that Australia was potentially losing billions of dollars a year from its potential value of its oil and gas resources through duplication inefficiency, ultimately leading to the Commonwealth, in 2004, deciding to agreeing to accredit NOPSEMA and remove the Department of Environment under the EPBC Act. A review needs to look at what is working well; we would say NOPSEMA is a good example of something that is working well and could be built on. I think there remain, as Mr Pearson indicated, areas such as the water trigger that have been inserted for political reasons not based on any evidence and they certainly warrant a review and removal.

**CHAIR:** Mr Pearson?

**Mr Pearson:** I would say a couple of things. One is that this is an area that has been reviewed relatively frequently. There was the PC report back in 2013. There was the Hawke review of the EPBC Act just before or just after that. There has been a separate review done by a parliamentary committee in 2014 or 2015. To be honest, most of those reviews came to the same conclusion on the streamlining of the act and the operation between the federal and the state governments. We have no objections to further review, but the message from the past reviews has been relatively clear and, unfortunately, it has gone unheeded in subsequent parliamentary votes, particularly in the Senate, when the one-stop shop legislation and other changes have been advanced.

**CHAIR:** Yes, the Senate is an issue, although the government's approach to the Senate perhaps bears some responsibility for that. I do not make any apologies for some of my crossbench colleagues, either. We are just a little bit over time so I think we might leave it there. Thank you very much for your evidence today, gentlemen.

**HALL, Mr Doug, Policy Officer, Pastoralists and Graziers Association of WA (Inc.)**

**SALERNO, Ms Emma, Treasurer, Kimberley Pilbara Cattlemen's Association**

**SEABROOK, Mr Tony, President, Pastoralists and Graziers Association of WA Inc.**

**STOATE, Mr David, Chairman, Kimberley Pilbara Cattlemen's Association**

[12:50]

**CHAIR:** I now welcome representatives from the Pastoralists and Graziers Association of WA and the Kimberley Pilbara Cattlemen's Association. Thank you for appearing before the committee today. I invite each of you to make a brief opening statement should you wish to do so.

**Mr Stoate:** I will make a very brief opening statement. Thank you for the opportunity. Kimberley Pilbara Cattlemen's Association represents primary producers and related businesses across the Kimberley, Pilbara and Gascoyne regions of WA. Our organisation is committed to developing agricultural industries in the north of Western Australia. We represent the full range of business types, including Indigenous owned businesses, large corporate organisations and family businesses.

The north of Western Australia remains a region of enormous opportunity with abundant land and water resources all in close proximity to growing markets in Asia; however, the region is an expensive place to do business and the regulatory burden from all three levels of government compounds these problems. The current situation is one where different arms of government encourage development in northern Australia and other parts obstruct development. Despite these difficulties a number of landholders, including myself, are investing in agricultural projects such as irrigated agriculture. This investment is less than it would be in a more favourable investment climate and it is also a lot slower to proceed. What we need to do to fix these problems has been well documented in a number of government reports, including the developing northern Australia white paper as well as all of the private submissions to these inquiries, so what we need now is some action. Thank you.

**Mr Seabrook:** Thank you for the opportunity. The Pastoralists and Graziers Association has an overlap with the Kimberley and Pilbara Cattlemen's Association. We share members. Our association also represents the entire state. Half of our membership is pastoral and the other half is agricultural. We are constrained by a lot of the same issues that Mr Stoate just brought up and it was with a small degree of disappointment that I just realised how confined we are with the terms of reference for today's inquiry.

**Senator PATERSON:** Do not feel too confined!

**Mr Seabrook:** Thank you very much. We very much welcome the opportunity to be here and hope that we can put forward the views of our members in such a way that you can help us advance the cause of our industry. Thank you.

**CHAIR:** We do not have a submission from the PGA but I am assuming that you would not say much different from the cattlemen's group anyway, so if I sort of focus in on that I am assuming you will add to that discussion.

I found your submission interesting. Thank you very much for submitting it. The obvious absurdity that you want to put in some irrigation, grow some pasture, run some more cattle, turn them off sooner, general stuff that anywhere else but in your part of the world would be a no-brainer for any farmer, but then you need to go through this remarkable level of approvals in order to do that. It is just mind-boggling. I acknowledge that you have made a number of comments in relation to improving the process and all of that sort of thing, but I am just wondering if you had to start from a blank sheet of paper and design the system all over again would you have leasehold or freehold? What approvals would you require for doing what you would like to do?

**Mr Stoate:** No-one would have leasehold if they could choose, that is for sure. Certainly the issue of land tenure holds back the development of the north. A key reason why the Kimberley is not very well developed is that there is not much freehold land; it is mostly leasehold. If you are starting again you would address the issues of land tenure at the top of the list. We would still need environmental regulations; we just need them to reflect the risk of what we are trying to do. I am trying to clear 100 hectares out of a property size of 300,000, so if you are putting in a risk based approach you would say that the environmental risk from that activity is almost negligible. There is no risk base to the environmental approvals as they stand.

**Mr Seabrook:** I can add to that. There is an attitude within the Department of Lands that it is their land and that they are there to control and govern the entire industry. Some legislation was put forward by Terry Redman, as the Minister for Lands, that we violently opposed. We opposed it because this aggregated the power and control over the industry within the department and we felt this would be very detrimental.

There are two things. I farm freehold in the Wheatbelt of Western Australia and I believe that under current legislation and the attitude of the community we would not have been allowed to clear the farm that I currently farm. We have been there ever since the beginning. I believe that it probably supported a population of maybe a dozen Aborigines at the time. We can feed and clothe 10,000 people off that piece of land today. This is the potential that Mr Stoate is talking about. We are losing so much that could be of so much benefit to our country because of the way we regulate and control.

The second thing that I was going to allude to is there is an abattoir that has just been built about an hour's drive east of Broome. Jack Burton has constructed it and it has cost well over $20 million to put it there. He was fortunate enough, on one of his properties, to have a small 50-acre block of freehold and because it was freehold he has built the abattoir. In a conversation I had with Mr Burton a few months ago he said to me that this abattoir that is up and running, state-of-the-art, that would benefit everybody up there, would never have happened if he had not had that piece of freehold land to build it, so the loss of opportunity here is just absolutely staggering.

**Mr Hall:** If I could add to that, without question greater property rights would be addressed if we had a blank state, but above and beyond that the whole approach to the regulatory framework should be very different because we have a framework at the moment which is just exploding exponentially. IPA has got papers on that. We need a lean law approach. So, what are the pillars or the major outcomes you want out of the legal framework? What is the minimum amount of law that we need in order to achieve that and the minimum amount of regulations? We also need a framework which facilitates non-regulatory solutions, these sort of cohesive solutions where you allow neighbours to work together to come to a solution with low transaction costs, that would have an optimum increased benefit to both. Where those transaction costs are due to government intervention they should be identified and minimised so that you enhance the likelihood of those non-regulatory cooperative arrangements to come about.

**Ms Salerno:** I can add to that. I agree with all of the comments of my colleagues but on your question of blank slate, and if it was starting from scratch, land tenure is obviously a key to that. I agree with everything that has been said: we will only encourage expenditure from landowners into infrastructure and things that we desperately need to develop the North by giving more security of tenure. That is definitely a big factor but, outside of all of that, the systems and the processes of any form of development—getting any development done—need an overhaul. Some key things that I think in addition to security of tenure that need to be looked at are departments changing their risk profile in terms of development. We have a really key, and I think, a fairly clear, direct mandate from government that we want to develop the north but, as Mr Stoate said in our opening remarks, you have also got the bureaucracy obstructing and working against any form of development at every step of the way, so we need to change the risk profile. That is absolutely key. Then, on top of that we need to change the efficiencies of government and the way it works. I think that the only way that we can change the efficiencies is to implement fairly stringent deadlines, response times, and have them either incentivised in some way. We can suggest a few.

**CHAIR:** Suggest, please.

**Ms Salerno:** Firstly, this is just a comparison from a different government. You have an office like the Australian Taxation Office. It is not one that anyone likes all that much, but one of the good things about the way that that agency works—and it is probably geared towards the outcomes for government being revenue raising or revenue collection—is that at every step of the way they have very clear deadlines that they have to comply with, and they do, and if they are not going to they have to work it out with the proponents, with their users, with taxpayers, and give them the reasons why and step them through. If you make a call or a complaint or something like that they have to respond and get back to you within two or three days. If you lodge a review of a decision they have set time frames—14 days, 21 days, 28 days—for different decisions and they comply with them. There is no reason why our state departments, for the approval processes, should be any different. They should have very clear guidelines and there should be a mandate. That is probably something that needs a policy change at the upper end, a policy change rather than the departments being managers of the land—I think that is the comment that I would agree that the departments are dealing with a policy that views themselves as having a role in sustainably managing land, so changing that policy to effectively economically developing land, and sustainably.

We need to change it at that level and then implement underneath that practices and processes that ensure that they have actual deadlines and that those deadlines are incentivised. There have been suggestions made for rebates of application fees if deadlines are not met. That is one way. There need to be accountability and transparency where they have to report. There should be reports done on whether they are meeting their application deadlines; I think bureaucrats and departments respond fairly well to be named and shamed. I think there should be that kind of process put in place.

**Senator PATERSON:** I note for the record we are very pleased to welcome an alumni of yours to the Senate recently in Mr Slade Brockman who used to work with the PGA many years ago. There are two comments that I

would like to pick up on and explore further. Mr Seabrook and Ms Salerno, you both mentioned the attitudes within the bureaucracy. I think you are referring to the Department of Lands thinking that it is their own land. Ms Salerno, you agreed with that. Where do you think that attitude comes from? How does that become pervasive within the bureaucracy?

**Mr Seabrook:** It is ingrained there. There is no shadow of a doubt. I have no idea of where it came from. You are dealing with people who have this sense that they are responsible for this land and on so many occasions they do not recognise the fact that this land has actually been leased. There is a commercial arrangement there. They have leased this land to this person. As Ms Salerno said a little while ago, when someone proposes to clear and use 100 hectares for other purposes, the size and scale of what they are doing is minute in relation to the actual lease and yet it becomes the greatest roadblock.

We had one of our members in the office the other day. He wants to spend a massive amount of money. It is to do with water. He has irrigation equipment on the ground that he wants to install and yet they are blocking him because they feel it is their land and they have control over it. If he is allowed to progress with this he needs to be prepared to acknowledge that he cannot perform economic damage but he should be at least allowed to get on and do it, not take that money out of the country, which is quite possible.

**Ms Salerno:** Also to answer that question—and I agree with Mr Seabrook's comments—I have some experience of this because in my civilian life I am a lawyer and I act for a lot of pastoralists and people in the agricultural industry more broadly in the agribusiness sector. Often what is being repeated to me is the policy that lands and other departments are being governed by. I am aware that there is a managing the rangelands government policy on the Western Australian rangelands which is dated March 1999 and that lays out their policy. There are four key points that they come from but their overriding policy is about sustainable management of the rangelands. That is what they say they are there to do. That could be tweaked very easily just to ensure that there are some economic drivers there. We still maintain the sustainability but there needs to be some economic development driving that policy.

**Senator PATERSON:** That seems very reasonable. Mr Stoate, you were mentioning an example of someone who wants to develop 100 hectares out of 300,000 and when you have to receive environmental approval to do that. Am I right in assuming that the level of time and effort in order to receive that approval is not proportionate to how much it has affected, so, if you proposed developing 100,000 rather than 100 that would have a similar level of scrutiny? Is that what you were saying?

**Mr Stoate:** I have not tried to develop 100,000 but it seems that way. I have had to engage consultants to do flora and fauna surveys as well as geological assessments.

**Ms Salerno:** At considerable expense.

**Mr Stoate:** Yes, large expense. As I said, it is way out of proportion to the potential environmental impact. The land system and so on is not just the 300,000 hectares on my property but it is millions of hectares throughout the Kimberley.

**Mr Seabrook:** Have you read the Gogo proposal?

**Senator PATERSON:** No.

**Mr Seabrook:** Phillip Hams has been the main proponent there, but the Harris family own Gogo Station. They have identified some very good soil types and water there for centre-pivot irrigation and there is a large tract of country there that could be almost dry land farmed on the basis that if it gets wet enough it will produce a crop. This has gone through the state parliament where the minister got to his feet about six or seven months ago and said, 'Every obstacle that the government has in place now has been covered. It's now yours to go ahead. There's only thing you need to do, to negotiate an Indigenous land use agreement with the local communities.' Now, I understand there were three communities on the property. They do not like one another very much and this is a hurdle of such monumental proportions. The proposal, as I understand it, was that they were asking for the freeholding of, I believe, 10,000 hectares. One-quarter of it was to be owned by the local communities, leased back by the consortium that was going to do the irrigation work there and then employing local people in that process so it gave a continuous stream of income, both from the lease and the ongoing proposal.

All of the testing work has been done. They have tested the crops out. They know what will grow there. They have the whole thing ticked away and they still cannot go ahead because they cannot get this approval in place. Now, it is not to say that they do not have to have an agreement with these people, but it is not time framed. There is no time frame there at all.

Now, these people own the property. They want to do this and they are running cattle there, but if you had a big consortium from overseas that wanted to make a major investment you cannot say that it is going to take six years

to go through the process of getting it through government and then never-ending negotiations with lawyers who have a vested interest in making certain that these things are not concluded at any time soon. There is your problem.

**Mr Hall:** If I could just answer maybe a little bit more philosophically to your question, it is rooted in sovereignty in the first instance and how we have devolved our land. There are a lot of similarities in WA that I see with the western part of the US. Vast percentages of the western states are owned either by the state or by the federal government, and so I believe we see very similar challenges. There is definitely a public choice economic underpinning there. These are well-meaning people, but they have responsibility for this land, so they deliver on it. Going back to one of the first questions about clean slate and freehold versus leasehold, clearly devolving this land into freehold would separate the role of land management very clearly from the role of government. It is this conflict of interest which is inherent in government when they have regulatory legislative oversight but also are operationally still involved, so clearly to do something about that would be a huge step in the right direction.

**Senator PATERSON:** Yes. Similar to how there is a conflict of interest when the government owns an asset and regulates an asset in a privatisation sense.

**Mr Hall:** Yes. That is right.

**Ms Salerno:** That is right.

**Senator PATERSON:** That is a good point.

**Ms Salerno:** I absolutely agree with that and I see that factors into a lot of the problems that flow from there.

**Mr Hall:** To me it is much broader. I would class it under the tragedy of the commons problem. The tragedy of the commons, as I see it, is the view that many people have that the best way to protect the commons is getting it over to government. There is clear evidence now all around the world that if you want property rights better delivered, including environmental outcomes, you are far more likely to get it in the short, medium and long term if it is actually in non-government hands. You still need a regulatory oversight framework and, of course, in my previous comments, it needs to be lean.

**CHAIR:** You will not get an argument on that.

**Ms Salerno:** Can I pick up on the point that Mr Hall was making? I see this in a lot of the applications for development of my clients that one of the first things that the Department of Lands has to tick off—and they have to tick off a few things before it can get over first base—is that they make an assessment about the viability of the project which I see as being amazingly problematic, that you have a government department who are not skilled in any way in being able to tell the viability, and yet you have the private sector who are the punters who have to put their own money in and decide whether they are going to go through this process, having already made the decision of, 'I've assessed this as being viable. What else does the government have to say about that?' That should not be—

**Senator PATERSON:** Yes. It is not their money.

**Ms Salerno:** It is not their money.

**Senator PATERSON:** They should not be worried if someone is going to lose their money on a bad investment.

**Ms Salerno:** That is right.

**Senator PATERSON:** That is a good point.

**Senator BURSTON:** Just further on that, I was a councillor on a council for five years in New South Wales. That was not a reason for knocking back a development of any kind. I am surprised you have said that. Whether a project is viable or otherwise has got nothing to do with any approval authority. It is just not a planning reason to knock back or approve; end of story.

**CHAIR:** Their logic, as I understand it, is if it fails then the government, which still owns the land, will be left the consequences of the failure. That is the logic behind it, which is a flawed argument.

**Ms Salerno:** Yes. I have been told that.

**Senator BURSTON:** Similarly, they cannot approve or knock back an application based on the impact that it might have on another enterprise.

**CHAIR:** Yes. This question of tenure is obviously important. We have heard other people talking about regulatory processes, where they are there and so on, so we have probably heard enough on that, but what I would like to talk about for a minute or two is what it would take to improve tenure. In western New South Wales we have had a process of the government selling off leasehold land to the lessees and converting it to freehold. It has been difficult. Some of the lessees say, 'Why should I buy it? I already have a long lease on it', which perhaps might not apply in your case. Obviously there are costs factors, so some people or potential purchasers have reacted negatively because they could not see how they could afford to buy it and, of course, there is no shortage of people who have

not got skin in the game saying, 'This is a bad idea anyway because I didn't think of it', or, 'The environment will die', or whatever. I am just wondering what would be the barriers to converting a good part of the leasehold land in northern Western Australia into freehold.

**Mr Seabrook:** We have an Indigenous land use agreement in place over most of the properties that we represent and any change like that would mean having to renegotiate that land use agreement, which is not time framed. Part of the legislation that the Redman government was trying to put forward involved the thing called the rangelands lease, which gave the pastoralists other options than just running a pastoral operation, but it threw you into that no-man's-land of having to renegotiate your land use agreement and it could become a blackmail situation when trying to get that arrangement in place in determining what you wanted to do.

**CHAIR:** Yes, but you assume that the prospect of acquiring freehold title, in other words private property, would also attract the Indigenous people as well as everybody else. The scenario that you had of converting land to freehold and some of it being retained by traditional owners, which would then be leased back for commercial purposes, makes amazing sense to me.

**Mr Seabrook:** If there is no opposition advanced we would love to see that.

**CHAIR:** So, what are the regulatory barriers? What could this committee recommend occur to accelerate that process? It is a state government thing, purely, but federal government has got considerable leverage. What if they said to them, 'We'll give you more of your GST if you do this'? That is getting a little bit fanciful. What would be the regulatory barriers, from a state government point of view, to converting a lot of leasehold land to freehold?

**Mr Stoate:** The biggest barrier would be native title.

**Ms Salerno:** Future act.

**Mr Stoate:** Freeholding extinguishes native title. I know that in dealing with the state government bureaucracy with native title scare, they just will not do anything when it comes to native title. That would not be impossible to overcome but it would certainly be a big barrier. The whole freeholding would be welcomed by most landholders in Western Australia. That opens up the possibility of growing a different range of crop types. In the existing arrangements there is a very narrow range of pastures and crops that you can grow on a pastoral lease, which does not apply to freehold.

**CHAIR:** The same thing applied in western New South Wales.

**Mr Seabrook:** We have already met with the Minister for Lands here and the question I would say is: dare we ask? This is a place that we would like to go but dare we ask for this and what might be the outcomes? There is no doubt that if someone wants to borrow money and they need to put up an asset as security against that borrowed money they actually need to have a good grip on that asset and under the current lease agreement it is not that strong.

**Mr Hall:** It is fair to say that with the new government there seems to be some interest, some appetite, for addressing a situation which is not delivering to Indigenous people and not delivering to other interested parties either. It might be a very good time, an opportune time, to apply some encouragement and support from the federal sphere into the state government because, even if there is a will here to address this vexed question, it is still going to be a very challenging and a hard road to go down, so whatever support and encouragement can be given from the federal sphere would be very positive.

**Ms Salerno:** In just adding to that, there is already a pathway to turn leasehold into freehold, as we know. There are only three current people in the industry who have an application on foot. If you look at the people who have that application on foot they are only people who are heavily resourced, because the process takes a minimum of eight years. The department will tell you a minimum of eight years and the amount of resources you have to have in order to track that process through and comply with everything that it requires, requires you to be very heavily resourced and you have to also have the size of the project that makes it viable to do that.

There is a pathway for that. You have asked about what regulatory changes could be made and you probably see that everyone sitting at this table has hit up against the primary one that government will always raise that they are incredibly fearful of anything becoming a future act triggering native title. That is the key barrier to any of these processes.

**CHAIR:** Short of freehold, long-term leasehold with the conditions of the lease being equivalent or virtually equivalent to freehold would seem to me to be a halfway house. What are your thoughts on that?

**Mr Seabrook:** We would be pressing for the irrevocable right of lease renewal subject to being compliant. That is all we have ever asked for and it certainly was not part of the legislation that the previous government was putting forward. That is almost bankable, as long as you are compliant with the terms and the conditions of the lease. The

first leases in Western Australia expire in 17 years time and the last of them are 49 years out, so there is a broad range of leases over time frames, but the longest lease was a 50-year lease and we are now one year into that. If we, as an association, could achieve that automatic right of renewal, subject to being compliant with terms and conditions, that would be a significant move forward and that does not necessarily trigger a future act.

**CHAIR:** So the two conditions, as I see it, would be long-term lease and the conditions of a lease being basically they leave you alone as if you were the owner of the property, so, if you like, did not maintain any particular responsibility for it other than as is applied statewide. The entire ACT is leasehold. Senator Paterson and I both own property in the ACT. It is on a lease and yet it is bankable. You can borrow against it and all the normal things with property.

**Ms Salerno:** Yes. In addition to those issues that Mr Seabrook has raised, there was the concept that Terry Redman's reforms intended to bring in with the rangeland leases with the advantage of having permit approvals transferable.

**CHAIR:** Having what?

**Ms Salerno:** Permit approvals transferable, because right now when you obtain a clearing permit or any form of diversification permit it extinguishes upon the sale or transfer to another landholder.

**CHAIR:** I do not quite get that. So if Mr Stoate got his irrigation approvals for 100 hectares on his farm, could he transfer that to his neighbouring farm?

**Mr Seabrook:** No. It means that if he sells the property to another owner, another lessee, they do not carry the permit.

**Senator PATERSON:** In a property development if I have a planning permit for an apartment building it would remain.

**Mr Seabrook:** It is lost on the sale of the property.

**Ms Salerno:** Correct.

**Mr Seabrook:** This is stupidity. The permit should travel with the property.

**Senator PATERSON:** Yes, as it does elsewhere.

**Ms Salerno:** You have added value to the property. You cannot bank on that value then when you transfer it.

**CHAIR:** With freehold, if you get a development approval, it stays with the property.

**Mr Stoate:** The reality is that most of those permits are transferred on sale.

**Mr Seabrook:** It is not automatic.

**Mr Stoate:** You cannot unclear the land once it is there.

**CHAIR:** We have solved all the problems of the world! All we have to do is convince the government to do it. Is there anything that we have left out, because we still have five minutes?

**Mr Seabrook:** Most of the issues that we have are state based so we have virtually had to hold back a fair bit, but we were also outside a little while ago and discussed the fact that you, as the federal government, have an enormous amount of power and control over state governments because you have the purse strings in your hand. Within our region we are still confronted with a massive array of red tape. I need to be compliant in my transport industry. I cart a bit of wheat to the bin every year but I am treated in exactly the same way as someone running an east-west fleet of trucks. It adds a cost to my industry having to do that. We have a staggering situation here today where if a farmer was to take his air seeder out on the road to move from one farm to the other there is no permit system available anywhere in the country to make this legal, so we are moving air seeders around on main roads and shire roads that is absolutely against the law. You cannot get a permit. There is no permit system in place to move a tractor because these things have been on the road for 30 years but no-one in Main Roads has actually been out and had a look to see that these things are actually on the road.

The last one that is of great importance to us was the backpack attacks and the lack of any recognition of what we are going to call prior learning or skills. If someone comes into the country with a piece of paper saying they are an accountant or whatever that is recognised as a skill, but if I try to get someone to come onto my property as a highly skilled plant operator without a piece of paper we have a problem, so access to good labour throughout the pastoral area and in the agricultural areas is really a number one priority.

**Ms Salerno:** On a final note, in relation to the question you put about anything else, we have talked about some of the recommendations that we would make that would go to fixing some of the issues that are there with red tape, but often one of the things is that a lot can be done from the policy level down to very quickly make the departments

more efficient and functional. So, potentially if we pitch our recommendations too high in terms of legislative change it could fall into a bundle and might be put into the too-hard basket.

I think that certainly there is a lot that can be done to address the policy. We have talked about it from an overriding policy intent but then below that one of the very difficult, problematic issues that my clients face in Western Australia that I see that they do not face when they cross the border and do business in the Northern Territory is that there is no coordination between the departments for approval processes—it is very much a proponent-led process for development—whereas in the Northern Territory the model there works much more efficiently and in more of a coordinated process between departments. I see that one of the ways that that could be addressed is having a lead agency take the role and drive the application process to some extent.

**CHAIR:** Yes. That is not a new idea. That has been around a while.

**Ms Salerno:** That is right.

**CHAIR:** That has been done before.

**Ms Salerno:** And it is not a difficult thing to implement.

**Mr Hall:** If I could just make a comment on the EPBC Act, recently there was a designation of banksia woodlands listing in WA and for many organisations, including ours, it really came out of left field. I was involved in a meeting with some federal people and they declared that they had undertaken a consultation period but we are not quite sure who it was with, and we have had dialogue with other industry associations that had the same experience. They were about to do the same thing with tuart forests and they have promised that they will undertake a better process, but what this highlights is a lack of a clear framework for high quality consultation with stakeholders that have a real interest in land. They are not necessarily against environmental outcomes but they want a framework which allows a proper dialogue about development sustainably.

The other thing that those dialogues have highlighted—and this may be just a state based thing—is the whole lack of transparency in the offset process, so if people are paying for land to be purchased somewhere it should be clearly documented where it has been bought. Everything should be completely transparent and from the discussion that we have had our understanding is that that is not really the case.

**CHAIR:** I hear a lot of complaints about that offset exercise.

**Mr Hall:** It undermines the confidence that the people have that it is a fair, equitable and real process.

**CHAIR:** Although I am glad that it exists, because if it was not for that then there would be a lot more refusals, but, yes, you are right. I think we might leave it there. Thank you very much. That will get us back on time again. We appreciate your evidence.

**ALLEN, Mr Darcy, Research Fellow, Institute of Public Affairs**

**BREHENY, Mr Simon, Director of Policy, Institute of Public Affairs**

[13:30]

**CHAIR:** I welcome representatives from the Institute of Public Affairs. Thank you for appearing before the committee today. I invite you to make a brief opening statement should you wish to do so.

**Mr Allen:** Red tape costs Australians $176 billion each year in foregone economic output. That is the equivalent of 11 per cent of GDP. This burden is not just the paper or direct costs of red tape; it also includes those businesses that were never started, those jobs that were never created and the lost time adhering to unnecessary regulation.

Environmental assessments and approvals are one of the key aspects of Australia's red tape crisis. This is because Australian environmental law has not only been expanding but it has been becoming more centralised. As our research reveals, the number of federal pages of environmental law has increased 80-fold since the first federal environment department was introduced. In 1971 there were 57 pages of federal environmental law. In 2016 there were 4,669.

Cutting red tape is critical because we are reliant on business investment and we operate in an internationally competitive marketplace of mobile capital. The current level of Australian business investment, however, is only 12.2 per cent of GDP. That is lower than the Whitlam era average of 13.7 per cent. Furthermore, whilst since 2004 Australia's population over the age of 15 has grown by 22 per cent, the number of new businesses opening has dropped by five per cent. This means Australia has both declining investment and entrepreneurial activity. Environmental red tape discourages starting new projects and expanding existing ones. For example, the Adani coal mine has spent seven years in the approvals process and prepared a 22,000-page environmental impact assessment. The Roy Hill iron ore mine required more than 4,000 separate licences, approvals and permits in the preconstruction phase alone. While the optimum level of regulation to achieve a given environmental objective may not be zero, requiring thousands of licences for a project is far above what can be considered minimum best practice regulation.

Our submission has emphasised a number of key aspects of red tape in Australia's environmental law, including green lawfare through section 487 of the EPBC Act, the water trigger in that same act, as well as native vegetation clearing laws at the state level. Given the federal emphasis of this inquiry, however, we will focus on the former two. Section 487 of the EPBC Act should be repealed. Section 487 extends legal standings specifically to green groups to challenge federal environmental approvals, even when the private rights of the challengers are not affected by a proposal. This section is being used to gain legal standing for anti-development activism through the legal system. Indeed, green groups do not need to win a case in court for their activism to be successful; disrupting and delaying projects through lengthy court appearances often makes projects commercially unviable.

IPA research has shown that 87 per cent of challenges under section 487 that have proceeded to judgment have been rejected in court. That is 87 per cent. Since 2000, major projects in Australia have spent approximately 7,500 cumulative days, that is 20 years, in court due to legal standing gained under section 487. The IPA estimates that these delays have cost the economy as much as $1.2 billion.

The water trigger within the EPBC Act should also be repealed. Introduced in 2013, the water trigger requires all large coal and coal seam gas projects which may affect the water resource to receive approval from the federal environment minister. The water trigger is not intended to protect water resources but rather aims to slow the development of coal seam gas and large coal mines. Why else would the water trigger not apply to other activities? The regulation of water activities should be returned solely to the power of the states.

These two examples of environmental red tape speak to some of the core problems of over regulation and red tape within the environmental law more broadly. Any agreed-upon environmental objectives are not necessarily most effectively achieved through the use of complex and costly government approvals processes. We encourage the development of alternatives to this heavy handed regulatory approach. This could include, for instance, the development of market based mechanisms where those who value environmental amenity pay to achieve that objective.

Policy makers should also focus on removing unnecessary duplication and overlap with regulatory responsibilities between different levels of government. This process should include the principle of devolving regulatory powers and responsibility downwards to the state level; that is, to embrace environmental federalism. Thank you very much. We welcome any questions that you may have.

**CHAIR:** Thank you. I do not know if you have ever met these IPA folks, Senator Paterson. Do you have any questions for them?

**Senator PATERSON:** Thank you. That is an appropriate segue for me to declare, just in case anyone is unaware, that I was previously employed at the IPA prior to becoming a senator. Yes, I do have some questions. I am particularly interested in section 487. Obviously it is something that the government has sought to address and has not yet been successful in doing so. Just to play devil's advocate, there are some environmental activists who say that section 487 is a rule of law measure. It allows anyone in the community who wants to make sure that environmental law is being complied with to have standing to take a case. As advocates of the rule of law should that not be possible?

**Mr Breheny:** Frankly, I think it is a nonsense argument. The reason that it is a nonsense argument is because it is a special legal privilege that would never exist were it not for the existence of that provision. In the common law there would be no standing for people who did not have a direct interest, whether that is a proprietary interest or a special interest in the development that is being considered at the time, so I think, frankly, that it is a nonsense. I think one of the problems is this idea that the fact that when you look at practically what has happened with the provision there have now been 28 cases of the 32 that have been thrown out. You would have thought that if this was a provision that was being used properly by people who, in fact, did think that something had gone wrong during the approval's process and that there were legitimate concerns to be raised through legal means, you would see a slightly higher rate of success than that. I think the fact that we have seen only four of those cases, and really only one of those four where a significant change was made to the original decisions, shows that section 487 is not being used by people who have an intention other than to stop projects going ahead.

**Senator PATERSON:** Is there a good point of comparison with another area of law and a relative success rate that we could benchmark it against?

**Mr Breheny:** That is a good question. We can take that on notice. There are other provisions in very different areas. We can take on notice whether there are provisions which have a similar lack of success in environmental law.

**CHAIR:** If I can just add to that question, we heard from an earlier witness today, AMEC, that there is quite a number of state laws in which parties without a specific stake in an issue can have standing similar to the 487 in the EPBC Act, so the question then would be: if section 487 did not exist would those state based provisions be used more by those who want to engage in green lawfare? Are you able to have a look at that and perhaps get back to us on notice if you are agreeable?

**Mr Breheny:** Yes, we can. Just as a side note to that, the argument is often put by those who want to retain section 487 that if the provision was repealed there would be no way for decisions to be reviewed. That is simply not true. The threshold would just be increased to the same level that applies right across our legal system, which is that there would need to be some direct impact; you would need to have an interest yourself rather than just generally being interested in the issue of environmental conservation.

**CHAIR:** They may be referring to federal jurisdiction rather than state jurisdiction.

**Mr Breheny:** Yes.

**Senator PATERSON:** I think the witness was referring to at least if the federal law was not there, there at least would not be jurisdiction shopping where activists try to use every possible avenue to challenge an approval.

Just a further question on that, how narrowly or widely should that direct impact or direct effect be defined? If you think that 487 is too wide and inappropriate, what is an appropriate level of interest or effect for a party to have standing?

**Mr Breheny:** I think we should go back to the common law test of standing. I think the principle that should apply in the context of judicial review in this case should be the same as in every other case which is determined under section 5 of the Administrative Decisions (Judicial Review) Act.

**Senator PATERSON:** So there should not be any special standard for environmental organisations or people with environmental concerns that is different from a legal standard elsewhere in the system?

**Mr Breheny:** Absolutely not.

**Senator PATERSON:** Thank you. I will come back later on.

**CHAIR:** In your opening statement you mentioned the possibility that those with a particular interest in environmental goods could pay for protecting them. I think that is a summary of what you said.

**Mr Allen:** Yes.

**CHAIR:** How would that work in practice?

**Mr Allen:** There is a number of ways. The underlying principle of that is we have to understand and we have to recognise that not everyone values environmental amenity equally, and we think the principle should hold that those who value it more should pay for that process. One of the examples would be native vegetation. It is state based laws across the country. In that circumstance we could have private individuals come along and buy areas of land, for instance, to protect that native vegetation or to protect a species within that area, so it could be the purchasing of land or, alternatively, you could have government based compensation for the erosion of property rights through native vegetation.

**CHAIR:** The assumption behind the Native Vegetation Act is that your property rights stop when the government decides otherwise, so the native vegetation on your land is a matter of public interest. Now, is there any way in which you can do other than to decide, yes, it is or no, it is not; in other words, it is the property owner's business, that native vegetation, or the government does have a superior right and, therefore, can tell the property owner what to do with it? Is there anything other than those two options?

**Mr Allen:** I think we should begin with the presumption that the rights exist with the individual of that land.

**CHAIR:** So do I. What we are saying is that people with an interest in environmental goods should put their money up. How does that relate to a private property owner on which others regard environmental goods as more important than the property owner does?

**Mr Breheny:** To some extent we are talking about native vegetation. A lot of people who want to retain native vegetation talk about it being a public good; protection of the environment and environmental conservation is a public good. The problem with the current regime is that, although there might be some public interest in retaining native vegetation across the country, all of the costs are borne by private landholders. Essentially what we are advocating is for you to either admit there is a public good, in which case we all benefit and we all should pay for it, or to change the regime. We are in favour of repealing native vegetation laws because we think that it is an unfair burden on landholders, particularly in regional and rural parts of Australia where you are much more likely to be living on a piece of land that still has native vegetation. A long time ago in suburban areas and in cities that vegetation was cleared. Just because we happen to be buying and selling land in 2017 and you live in the country we do not think that that cost should be on the private landholder.

**Mr Allen:** Even, for example, in Queensland, native vegetation debates have been happening in Queensland recently. One of the attachments in our submission focuses on that. There was a push to reverse an exception which allowed for high value agriculture land so that you could clear on an area where you proposed there was high value agriculture. There was a push last year, I think it was, to reverse that but this just speaks to the point that when the property owners have to pay for it—and it can be forced upon them through regulation—there is no understanding of what the trade-offs of that are and that it could be used for high value agricultural use or irrigation. In the current circumstance it works the other way.

**Mr Breheny:** If I can just add to that, there appears to be no cost benefit analysis when it comes to native vegetation clearing. It is black and white in the sense that you have either cleared and you have done the wrong thing or you have not. There is really no mechanism, at least directly under native vegetation law, for you to take into account the productive benefit of clearing the land, for instance. There are penalties. You can pay exorbitant sums after having cleared it, but there is no connection between that and whatever economic benefit might be taken from clearing and then developing land.

**CHAIR:** On page 7 of your submission you have your alternative system.

**Mr Allen:** Page 7 of our submission is just one example of an alternative system. What we are really trying to get across here are some of the underlying principles that we think should be in the forefront of our minds when we are doing reforms to environmental law and that includes the idea, as we have talked about now, that we should have market based solutions which should shift the cost to those who wish to pay those costs. We have to understand that people do not value environmental amenity in the same way, and those two things come together.

**CHAIR:** I have some sympathy for that but I am thinking in terms of where there are incentives. Are we talking here about sole priority of a property owner? What you have said here is the government would announce details of a project, of a proposed mine. The public has eight weeks to respond. That is made publicly available. An eight-week period would follow where government and other community groups negotiate. Who has the incentives to settle here? How would that work in reality? Would the mine proponent say, 'Thank you very much. I've heard your statements and your concerns but I do not think they are valid; therefore, I'm going to proceed', or would the government say, 'I've heard both sides and they're going to arbitrate'? How would that work? At the moment, of course, the government says, 'Yes, it's our decision and not yours and we'll make that.' Beyond the shortening of

the consultation process, which would be a good thing in itself, how would that change if the government retained that ultimate decision?

**Mr Breheny:** I do not think there is any way of getting around it. The government has to make the ultimate decision if we are talking about a regulatory regime. Yes, they are the ultimate arbiter but the reason that this changes things is that there are particular stakeholders who will come forward and make submissions rather than having the current onerous process where you do not take submissions from environmental groups that might like to stump up their own cash.

**CHAIR:** We have heard from witnesses today who have complained about the time delays involved in getting approvals for various projects and, although there are some time limits for responding written into some state legislation, it would seem that they are not achieving a great deal. If you have a bureaucrat who has been asked to make a decision to approve a proposal, from the bureaucrat's perspective the incentive is not to get it wrong. If they get it wrong then they are in trouble. If they merely approve the application there is no great reward for having done that. That is all negative. The only thing really that varies that is if there is a time limit by which they have to make the decision then they have to make it within that time limit, but still the safe decision is to say no. I am wrestling with this idea of how we give them an incentive to say yes without it being corrupt. Have you got any thoughts on that?

**Mr Allen:** Yes. There are a few ways. A few broader things would help with this. Embracing the idea of environmental federalism would help with this because presumably the state governments would have a greater incentive. You would have jurisdictional competition between the rules rather than having it just at the federal level.

**CHAIR:** So, environmental federalism means that the federal government withdraws from environmental management?

**Mr Allen:** Yes. We think that primarily the role of environmental law should sit with the state governments. It is only relatively recently that this has become a federal issue and it continues to expand, so we support devolving powers to the states. We think that would help. There are a few other principles. At the moment much of our environmental approvals system is based on the idea that you should approve a project before it happens with a number of conditions based on future potential harms that might happen. That is only one way to achieve an environmental objective. If we agree on an environmental objective, for instance, instead of doing this process, which is an ex ante process that you do before approval, we would prefer to move towards having clearly stated laws where you have the positive obligation to report the breaches of those laws, so instead of doing these massive approvals beforehand we would rather pursue these objectives in a different way which helps that incentive problem.

**Mr Breheny:** That would mean that the environmental outcomes would still be the same. The objectives would still be the same under the regulatory regime. The difference is that you do not have a positive obligation before the fact; you have got one whenever a breach has occurred. This is a way that really most other areas of law operate outside of the environment and some other areas in corporate and financial regulation. To us it seems pretty obvious that you can achieve the same sort of outcomes. You can determine what you think the penalties should be. In the case of a breach, for instance, if you think that lower penalties are not going to yield the right sort of outcomes, are not going to incentivise strongly enough for landholders to make those reports when they need to be made. We think that this is a very good way of solving the massive time and cost implications of the current regime.

**CHAIR:** We have a reasonable amount of that; for instance, it is against the law to go and dump your rubbish anywhere other than in an approved location and if you breach the law then you are likely to get yourself in a lot of trouble.

**Mr Breheny:** Exactly.

**CHAIR:** Discharges of chemicals and other pollutants are also, per se, offences in most cases. So, we do have a level of that. The issue, of course, is whether that can be applied to new projects. I think there is scope for it.

**Mr Breheny:** A new project is a series of those sorts of decisions. I think that we could convert the whole environmental assessment and approval regime to that after-the-fact regime.

**CHAIR:** So you would convert the entire thing to that and that is as much regulation as you need? So, it is after the fact?

**Mr Breheny:** We think that is a principle that should apply across the board when parliaments are considering laws of this kind.

**Mr Allen:** Generally we think it would be better to shift the resources. If we are going to have a given set of resources to achieve an objective we think it would be better served by doing it after the fact, which is something that came up in the previous red tape inquiry about liquor licensing as well.

**Senator PATERSON:** Just to break down this $176 billion figure of the red tape cost, is that a combination of federal and state red tape?

**Mr Allen:** To explain the measure a little more deeply, part of the measure is based on an international survey of what business leaders think is minimum best practice regulation based on a different measure of how that will also impact our GDP. There are two broad ways to measure red tape. We can either measure it from the bottom up by going to, for instance, individual departments and asking them how much red tape costs they think they impose. There are problems with that, of course. There are incentive problems with what answers they will give. It also does not take into account all of the follow-on costs from that of what activity would have occurred if people were not doing that particular paperwork, for instance.

The other way to measure red tape, which is something that we have developed here, is to measure it from the top down. That is our best guess estimate of the extra economic output that Australia would have.

**Senator PATERSON:** So, it would not be possible to break that down by type of regulation? You could not say, for example, what the component of environmental regulation makes up of that figure?

**Mr Allen:** No, not at this stage.

**CHAIR:** Finally, if you had to start from scratch on environmental law what would you end up with from the Commonwealth's perspective?

**Mr Breheny:** From the Commonwealth's perspective it would be a lot less than we have.

**Mr Allen:** Yes, not very much at all. We have done a lot of research. Much of this inquiry has focused on the EPBC Act, which is the main federal environmental act. In going through a lot of the different matters of national environmental significance we see very big problems with many of those. There was a question previously today that you asked of what should be in the review of the EPBC Act? We think that review should seriously take into account whether there should be an EPBC Act at all. We are going through these matters of national environmental significance and, in our opinion, a lot of it does not stack up from a cost-benefit perspective.

**Mr Breheny:** I am being slightly churlish when I say a lot less than what there is now, but there is a serious side to it which is the number of cases that you have seen today of companies that have found it very difficult to get projects up and running? In many cases there would be companies around Australia that have decided not to go ahead with projects because those burdens are too high. One really significant example from another company that was appearing before you this morning was Roy Hill, which has been a famously publicised case where there were 4,000 permits, licences and applications that they had to go through. We think that it is absurd that you need to have different pieces of licences for separate pieces of machinery, for instance. There is real duplication there that you can cut out of the system by massively simplifying the current regulatory regime. We think that there is a lot of work to be done in reducing that number for projects that want to get off the ground in Australia down to a much, much lower number, even if that number is not zero.

**CHAIR:** Thank you very much, gentlemen. We appreciate your coming all of this way to talk to us today. The hearing is now adjourned.

**Committee adjourned at 13:58**