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PRODUCTIVITY COMMISSION

DRAFT REPORT ON THE NON-FINANCIAL BARRIERS TO MINERAL AND ENERGY RESOURCE EXPLORATION

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MR J. COPPEL, Commissioner

TRANSCRIPT OF PROCEEDINGS

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INDEX

	Page
CONSERVATION COUNCIL OF WESTERN AUSTRALIA: PIERS VERSTEGEN CAMERON POUSTIE	3-22
KRED ENTERPRISES: WAYNE BERGMANN CLAIRE COMRIE	23-40
ASSOCIATION OF MINING AND EXPLORATION COMPANIES INC: SIMON BENNISON GRAHAM SHORT	41-59
YAMATJI MARLPA ABORIGINAL CORPORATION: CHRISTINA COLEGATE MICHAEL MEEGAN FRIDA BLOM	60-69

MR WOODS: Welcome to the Perth public hearings for the Productivity Commission inquiry into non-financial barriers to mineral and energy resource exploration. I'm Mike Woods and I'm the presiding commissioner for this inquiry. I'm assisted by my colleague Commissioner Jonathan Coppel.

The Commission has been requested to examine exploration approval systems and processes within and across jurisdictions. We have produced a draft report and, in developing that, the Commission conducted a number of industry visits and has received 34 submissions in the lead-up to that draft. I'd like to express thanks from Jonathan and myself and from our staff for the courtesy extended to us in our visits and deliberations so far, including of course our previous visits to Perth, and for the thoughtful contributions that so many have already made in the course of this inquiry.

These hearings represent the next stage of the inquiry and the final report will be presented to the government in September this year. I would like these hearings to be conducted in a reasonably informal manner but remind participants that a full transcript will be taken and will be made available to all interested parties and will become a public document. At the end of the scheduled hearings for the day, I will provide an opportunity for any other persons present to make an unscheduled presentation should they wish to do so.

I have some housekeeping matters. In the case of an emergency, please view your nearest emergency exit which, given the green light and the running person there, suggests that it's in that back corner. If a fire is detected and cannot be contained, please advise the front office and call the fire brigade on triple zero. Do not use lifts. Take the nearest emergency exit. Make your way out of the hotel via the front entrance to the fountain area which you may have noticed as you came in.

I'd like to welcome to the hearings our first participants, Piers Verstegen and Cameron Poustie from the Conservation Council of WA. Could you please for the record state your name and the title and organisation you are representing.

MR VERSTEGEN (CCWA): Thank you, commissioners. Piers Verstegen, Conservation Council of Western Australia. I'm the director with that organisation.

MR POUSTIE (CCWA): Cameron Poustie, and I'm the energy transition officer at the Conservation Council of WA.

MR WOODS: Thank you very much, and thank you for your contributions so far to the inquiry. They have been greatly appreciated, including some very practical suggestions and contributions. Have you got an opening statement you wish to make?

MR VERSTEGEN (CCWA): We do, and thanks again for the opportunity to provide comment in relation to this report. Certainly from a state in which the minerals industry is such a prominent part of our economy and a state where we have such high environmental and cultural values, which many of us like to protect, some of the issues that you've touched upon in the report are very important to us and we'd like to make some further contributions to those that we've already made.

If I can just make a brief opening statement and perhaps we can have discussion about that before I hand over to my colleague, who would like to address a few points in more detail. If I can just start with our comments right at the very beginning. One of the statements that's made in the report, or in fact the premise that the report is based on, we'd like to have some discussion around, and that is the analysis of the rationale for intervention, the rationale for government regulation of mineral exploration activity.

Certainly we agree that there is a strong rationale for government intervention but we'd like to suggest that the rationale that's been suggested here, and indeed then provides a framework for the way that you've analysed the issues throughout the rest of the report, is probably significantly too narrow. We would suggest that there are a range of additional rationales for intervention in this space by government and, indeed, regulation that aren't defined in that definition.

One of the points that we discussed the last time we met is that from the perspective of the environment and, indeed, the community and the need to uphold environmental values, the process of exploration itself cannot be separated from the downstream impacts that would result from minerals development activities, and so to the extent that exploration in many cases leads directly to, or there's an expectation by industry, and indeed government, that exploration leads to development of viable resources, certainly that implies that there's a broadened rationale in terms of regulating the environmental impacts of exploration because, indeed, the environmental impacts are not just related to the exploration activities themselves but they give rise to further and much more significant environmental impacts downstream.

Also we wanted to raise an issue with the fact that the rationale for government intervention, to the extent that it does mention protection of the environment, specifically relates that to damage to sites of environmental and heritage significance. Certainly under the federal legislation, as you would know, the powers relating to the ability for government to intervene are not constrained to sites themselves but are also related to species, and when you've got impacts such as seismic testing offshore on marine environments and whales and migratory species, certainly there's a strong rationale there which is embedded in Australian law which

requires the protection of those species and is separate from the actual site considerations itself.

Certainly we've seen, in relation to that example, the development of new regulations just recently in the US, resulting from court cases which have shown quite clearly that seismic activity does have a significant impact on marine environments beyond the site-specific impacts.

Then more broadly, I think, in relation to this question of rationale for government intervention, we do need to look at various other market failures that arise as a result of a lack of government intervention or, in particular, a lack of strategic planning approaches to the development of Australia's resources, and when we have a lack of strategic planning approaches, we end up with a rather chaotic situation which is essentially driven by the market, which ends up resulting in development activities which are not well strategically organised and certainly do not minimise the impact on the environment and, in many cases, actually significantly increase costs to industry.

The example that we discussed last time was the Gorgon Gas Project and the lack of a broad strategic approach by government at the time of that development, now resulting in an extreme impact on a very fragile and high-value environment, which has now come at a very high cost to industry, at a cost which is much larger than that which was originally anticipated, and indeed now, with the hindsight of knowledge that other gas fields have actually now been proven up and are now in development with onshore processing facilities, I think anyone would look back at that scenario and say an additional level of government intervention in relation to strategic planning in that area would have resulted in a much better outcome, both in terms of a reduced environmental footprint of those processing activities but also in relation to significantly reduced costs.

So that's an example that's at hand here in Western Australia where we believe that there's a significant rationale for government intervention early on. Certainly part of that relates to the exploration phase for these types of resources and, indeed, the way that in that particular example exploration leases are actually released, and so we would just like to make the point that there's a range of other additional rationales for government intervention that address various market failures that are very important to take into consideration here.

We also see this with the market failures that result in a lack of ability to develop common shared-use infrastructure in the Pilbara. This relates in particular to mining activities where there's an inability by industry to actually develop shared-use infrastructure like railways lines and power transmission lines. Again we've got duplication of infrastructure in many cases, which increases environmental impact -

not specifically related to the exploration phase for these resources but certainly there's an argument to be made there that these downstream impacts are part of the rationale for government intervention right back at the exploration stage. I don't know if you wanted to have any further discussion of that.

MR WOODS: That's probably a good starting point and we can then go through - I know that you have some comments on some of our specific recommendations, but perhaps if we can start at the rationale.

MR VERSTEGEN (CCWA): There's a couple of other general points that I'd like to make, but I'm happy to have further discussion about that rationale question because I think it is important as a basis for the whole way that the report is conceptualised.

MR WOODS: All right. Let's start with the rationale, and if I can start and then Jonathan can pick up from there. I'd like to get back to the fundamental question of exploration versus mining and the regulation you wrap around the two. If I can tackle a couple of the, hopefully, more constrained issues first.

I was surprised to hear you say that we had limited our perspective on environmental issues to sites, when hopefully a reading of our third rationale might put you more at ease, where we said that "Exploration may have effects beyond the tenement, for example on the surrounding region's environment," which picks up your sonar issue, that it's not just on the site itself but that there are externalities that extend beyond the site, so whether it's air or water pollution, so soil disturbance on site might lead to downstream water pollution or threatening of freshwater species or whatever; whether it's air pollution with airborne particulates; or whether it's sonar in a broader area than the site in question.

So we were trying to encapsulate the sorts of issues that you were referring to in that third one. Whether we've articulated it sufficiently is a separate question and we're happy to go back and examine the words we use, but I think we should have a common view that that's what we're trying to achieve.

MR VERSTEGEN (CCWA): Sure, and certainly that clarification is appreciated, but I think, if I may, in this respect it really comes down to the interpretation of those words and I think what we wouldn't like to see is anything which undermines the legitimacy, if you like, of the need as prescribed under the EPBC Act for government intervention in relation to impact on species. Impact on species may or may not be related to impact on sites and so when you're talking about the surrounding region's environment or damage to sites of heritage significance - - -

MR WOODS: By "environment" we included whether it's the flora, the fauna or

whatever. If you are able to elaborate on that in your follow-up submission, that would be useful, but certainly there's no disagreement in intention on that particular one.

MR VERSTEGEN (CCWA): Sure.

MR WOODS: The strategic planning issue might take a little while, so perhaps if we go back to the "leads to". So do we regulate exploration in its own right or do we regulate exploration as if there will be some significant disturbance through a mine or a wellhead or whatever it might prove to be? I think we're going to probably disagree on that. Certainly from our point of view - and it's consistent throughout the report - the regulation in relation to exploration should very specifically target any disturbances or other impacts, whether it's on environment, heritage, species, whatever, that is generated directly by the exploration activity.

There is certainly no sense amongst explorers that every exploration activity will lead to a mine - and "If only it would," they wish, I suspect - but it certainly is not the case and we have got various statistics in there that demonstrate the quantum of exploration, and also we were very clear that exploration in itself is a broad term that encompasses anything from a fly-by aerial survey looking at magnetic resonance imaging or whatever, through to actual digging of trenches or taking soil samples or whatever it might be and clearing tracks for access and the like.

So exploration is a very broad range of activities and each one of those should be carefully regulated according to the actual impact it has, and our view is that any consequent activity that may arise from exploration that may in itself cause impact that needs to be regulated should be done at that latter stage, not as if exploration will lead to mining or drilling or petroleum extraction or whatever. Jonathan, do you want to comment on that?

MR COPPEL: I agree with that view, and I wanted to ask you how would your idea actually be able to be put into use in practice? When you explore, the numbers are about a one in a thousand chance of actually finding something which is economically viable, and then the regulation that relates to a mining approval will be specific to the actual type of project that is being proposed. If you take that back to the level of exploration, you will have no idea what exactly is being proposed, and the impacts that follow from that will obviously also be unknown. I'm just putting a practical question: how feasible would that be?

MR VERSTEGEN (CCWA): I think there's a number of ways that principle can and, to some extent, is put into practice, but if I can just address the key premise there. Certainly in the views of the Western Australian community, there's an expectation - and certainly I think with industry as well - that if money is spent on

exploration activity and if government allows exploration activity, then there's some sort of inherent assumption there that there will at least be an allowance for proposals to be made for development, and so I think this is what gives rise to a whole range of market failures that result not just in unacceptable and higher than otherwise necessary levels of environmental impact but much higher costs to industry that are otherwise potentially achievable.

I think in practice some of the examples of the way that this can be put into practice are, for example, where we have protected areas which for all intents and purposes are supposed to exclude damaging impacts like mining, we don't allow minerals exploration on those, and there's a number of different examples in Western Australia where exploration has been undertaken or allowed to be undertaken in areas where the EPA, the state's environmental watchdog and policy-maker, has said that development would be unacceptable on that site. I can give you several examples of this, where exploration has been allowed to be undertaken and the EPA has said, "We don't have the power to stop the exploration itself."

MR WOODS: Because the damage was not of such significance that it warranted a stop?

MR VERSTEGEN (CCWA): Because the damage is not of such significance, but then you give rise to a scenario where exploration has occurred, which gives rise then to development applications, which then result in mining or unacceptable impacts on sites which have previously been considered by the EPA and other government agencies, and certainly by the community, to be inappropriate locations for that development.

MR WOODS: Is that a failure of the regulatory intervention at the point of the mining application as distinct from at the exploration stage?

MR VERSTEGEN (CCWA): Possibly. So it's a failure of a range of different things, but one of them is a failure of having a cohesive framework to understanding, "Okay, well, we do put aside certain parts of the environment which we agree and parliament agrees shouldn't be subject to the types of impacts that minerals development implies," and yet we allow minerals exploration and the spending of, in some cases, very significant sums of money to explore minerals in those places. I think that that's just a disconnect which you might be able to reconcile in your mind in some way, but certainly in the minds of the Western Australian community it's not something that can be reconciled.

If you allow exploration then there's some precedent that's been set there that you're going to at least have an open mind to development, and that's something that certainly runs against the grain. So I think that's one practical way that it can be

applied and in some cases is applied through protected areas, so pre-emptive measures that would say, "Okay, these areas are not the areas where we want to see those types of impacts."

There are other ways that it can be applied as well, though, and I think what we're really getting to is the need for a strategic policy approach which straddles all of those stages of resource development and has the necessary data behind it at a strategic level to inform, "Okay, where are the areas within the state in which we think minerals development could be appropriate, where are the areas within the state which are more constrained due to social or environmental or other factors, and therefore where are we going to focus minerals exploration activity?"

In the lack of that kind of approach, we end up with these market failures that get driven by all the types of examples that I've given. So I suppose what we're calling for is a much more sophisticated strategic planning framework to underpin policy decisions about whether to allow exploration or not in particular areas.

MR WOODS: I'm happy to explore the strategic planning issue, but I just want to pursue the first premise a little further. Jonathan made the point, "Now, what's the practical application of such an approach?" Do you regulate every exploration proposal as if it was going to lead to significant disturbance through a mine and the mine site and the transport corridors and all the rest of it, which would tie up exploration very significantly? So that's one consequence.

The other is to say, "Well, is there a failure at the respective points of proposed activity that may have different levels of impact, some of which can be acceptable because they are minor disturbances that don't threaten the environmental or heritage or social values, but then if there is a greater level of disturbance proposed, that can be through a mining application?" and then you regulate at that point.

So it would target the regulation to the potential impact rather than just blanket cover all potential impacts in case some later, more significant impact might or might not occur. So it's a matter of both the likelihood and the degree of impact that you need to have a bit of a metric on, and I'm not sure that your proposal does that. It just stops everything at the front end.

MR POUSTIE (CCWA): If I may, commissioner.

MR WOODS: Yes, please.

MR POUSTIE (CCWA): His intention is not really to say that we were proposing that you would regulate every core-sample-taking as if it might be an open-cut mine, but the emphasis of his comment and what I wanted to underline here was that it's

really - when there are parts of the conservation estate that are identified as no-go, then they should be identified throughout the regulatory process consistently as no-go areas.

If you weren't going to allow an open-cut mine in a national park, then you shouldn't really allow core sampling for what might result in an open-cut mine. That would be our position. That's not just an environmental view, but we would suggest that, looking exclusively through economic glasses, that should be the position as well, that Australia should resist a regulatory system that allows for wasteful expenditure by explorers that's not ultimately going to result in productive mine sites.

So that's the key emphasis of our focus: not just the national parks but perhaps any other areas that are of significant environmental value. There should be the capacity for the community to identify those early in the process to signal to industry, an industry that's constantly calling for certainty, which are the go areas and the no-go areas. We would agree that we seek that certainty as well, that areas that have substantial environmental value are identified as no-go areas as early in the process as possible.

MR WOODS: That probably brings us directly to recommendation 4.1, and I don't know if you want to deal with that now in this discussion or whether you want to come back to that.

MR POUSTIE (CCWA): Well, that's right. That recommendation, as I understand it, is addressing the fact that across the jurisdictions you've got some areas in some states and territories where exploration in a national park is possible and some where it's not.

MR WOODS: Yes.

MR POUSTIE (CCWA): So, yes, our position is that you should be advocating for a consistent approach to national parks in particular that flags that in national parks, where the full-scale development of a mine would not be appropriate, you really stop wasteful expenditure on it at the early stages of the process.

MR WOODS: So does that really target the second paragraph of that recommendation where we say governments should, where they allow for consideration of exploration activity, assess applications by explorers to access parks and reserves according to the risk and potential impact? Is your view that governments should tighten up their regulation of what they do and don't allow, as distinct from what we're saying, which is that where they do allow exploration activity, then the regulation should be targeted to the nature of the impact that may result, whether it's an aerial survey or soil sampling or a core sample?

MR VERSTEGEN (CCWA): I think our point is not so much that the regulation of the impacts or the activity should change, although we do have some views about that which we'd be quite happy to discuss, but it's that there should be a framework whereby government indicates a predisposition towards particular types of development activities in particular locations, and then that predisposition then focuses exploration activity on those areas which are likely to be less constrained and so we don't arrive at the scenario where - I mean, we've talked about national parks, which is a pretty clear-cut example, but there's a whole range of examples now that are coming about where it's not so much that there's a national park that's being gazetted there but you've got a community with a particular interest in maintaining a set of cultural and environmental values.

This was the case in Margaret River recently, for example. The government had indicated a predisposition against mining in that location but, because of the way that the regulatory system was set up, the premier himself indicated that the proponent has a right to go through this process. That resulted in a huge expenditure of resources by that proponent in not just exploration but in developing a development proposal which, it was pretty obvious at the beginning, was not going to be acceptable to the local community, it was not going to be acceptable in terms of its environmental impacts and, at the end of the day, it wasn't allowed to proceed.

MR WOODS: If that's private capital at risk, why is that a concern?

MR VERSTEGEN (CCWA): Well, it's not a very productive way to spend private capital.

MR WOODS: We don't want to start dictating how people spend their own money, presumably. If they are aware of the risks and they accept those risks and invest their personal funds, hopefully the state won't start telling them where they can and can't apply those funds.

MR VERSTEGEN (CCWA): But this is the point that I'm making: that the regulatory system is not well calibrated to reflect those risks.

MR WOODS: A separate question then: if the risks were not sufficiently clear that the person knowingly entered into them, then clarification of the risks through government statements and regulations would help. I understand that point.

MR POUSTIE (CCWA): A key theme in your draft report is proportionality and we may talk about that more at some stage, and the view has obviously been taken that in some respects there's been a disproportionate regulatory response, presumably often in the context of CSG in the eastern states, and we don't have a view on that

here. We may talk about shale fracking later on; we probably should.

But if that's the view, that there's been a disproportionate regulatory response and that it needs to be adjusted, we would say the corollary of that is that if currently the regulatory response in Western Australia or elsewhere is disproportionate, is actually under-protecting the environmental values, then you are setting up a situation where companies can come in with an expectation of doing something that they actually ultimately won't be able to do, so that is also disproportionate. So if you were to extend your purview across all of that, the notion of disproportionality, you would want to consider areas that should be identified up-front as no-go and consistently treated throughout.

MR VERSTEGEN (CCWA): I think that the fact of the matter is that in all regulatory situations there's going to be a lag or a gap between the effect of the impact of regulation and community expectation. That gap is what results in a failure of industry, in many cases, to achieve a social licence to operate. They might achieve a regulatory licence to operate but they don't achieve a social licence to operate.

That is a risk situation for industry and I think our view is that the regulatory system needs to be better calibrated towards community expectation, which might mean regulating different types of impacts, it might mean regulating in different ways. It doesn't necessarily mean more regulation, but it means regulation that's more attuned to the interests and expectations of the broader community so that you don't have these risk scenarios created which is not productive use of capital in the economy and certainly is just not a very good way to govern the exploitation of resources.

MR WOODS: Jonathan, did you want to comment?

MR COPPEL: I was going to make the link between exploration in areas of national parks and strategic assessments, because one of the values of exploration is that you build up a knowledge. I'm talking about the knowledge of environmental values. We build up a knowledge of also resource values, and for a strategic assessment you need to have some sort of baseline information, so I would have thought that having that knowledge would be a first step towards moving in the direction of strategic planning and assessment, and there are other complications with strategic assessments, in particular in areas that are unknown.

It's the same sort of thing; you're trying to think about what may be in 20, 30 years from now, and the knowledge base when making decisions about how strategic planning should apply to particular regulations with that limited knowledge base is again another sort of practical disability, but we do see value in the tool to

address issues of cumulative impacts and we also note that, at least at the mining stage, in the Pilbara there are a number of examples of strategic assessment, use of the strategic planning and assessment, being built.

But how do you see those functioning in the context of regulation for exploration, regulation for mining? Would they be something that would then be considered an area for exploration and then at the time that exploration takes place there wouldn't be a process for the granting of approvals for exploration; you would have that sort of level of regulation removed because you have the strategic planning and assessment tool that overlay the area? I'm just trying to get a sense of whether you see this as in addition to a project-by-project form of regulation or something that sits on top of that.

MR VERSTEGEN (CCWA): Let's go back to the issue that you raised, which is an absolutely critical one, which is the issue of knowledge. Our observation is that there's an extreme knowledge deficit about the qualities of Western Australia's environment. We've got an amount of knowledge relating to the geology and mineralogy. I think a public interest test needs to be applied to this in relation to the cost of acquiring that knowledge and government will make a decision, depending on their persuasion, how much government resources should go into acquiring that knowledge. We might have a different view, but the fact of the matter is that that knowledge does get acquired and that there should be a public interest test there, but there's an extreme deficit in terms of other types of knowledge in relation to the impact of these types of activities on the environment in particular, but even more broadly than that, just data in relation to what you might call in a broad sense the performance of the industry.

I note that there's a number of graphs that you've provided in the introduction to your report, talking about performance of the industry, but the data is provided through purely an economic lens and what we lack of an overview of that that shows, "Okay, well, this is the contribution to gross domestic product," or, "This is the amount of capital investment that's gone into that industry," but what is the actual net economic and environmental impact of that? That's the kind of thing that will allow the broader community and the government to make truly strategic decisions, not the types of tactical decisions that I think you're potentially talking about.

I think what we're talking about is getting away from a decision-making framework that just relates to knowledge of mineral development opportunities but actually looks at a whole broad sweep of different datasets that the community expects and government needs to be able to make informed strategic decisions about minerals development.

It appears from the types of data that have been presented here that there's an

underlying presumption that minerals development in all cases is necessarily a good thing - a good thing for the economy and a good thing for community, and a good thing.

MR WOODS: In the absence of any significant impact that may cause some - - -

MR VERSTEGEN (CCWA): But also in the absence of any significant data to actually analyse that and test that presumption. That's what I'm suggesting: that there's certainly a knowledge deficit. To some extent that knowledge deficit applies to environmental knowledge, or to a large extent, but there are other areas which there's even less knowledge about, and so how can we overcome those sorts of things?

Well, there's actually a proposal in Western Australia that's shared by environmental organisations and industry to address one part of that question, which is to develop a biodiversity research institute which would then develop a dataset characterising Western Australia's biodiversity values and then providing the equivalent dataset that we have to the geotechnical information that we can then use as an overlay for strategic decision-making.

So I'd just like to pull you away from that conception that we need to look at knowledge in this very narrow way, because what we're saying is we need an overlying policy framework that takes into account a whole lot of different issues and a whole lot of different types of knowledge.

I'm not sure how we're going for time, but there is one particular issue that I wanted to raise which is a recurring theme through this report which we'd like to make some comment in relation to, and that is the claim or perhaps the assertion which often comes from industry about this issue of regulatory duplication. We think that that requires some testing as to whether there is actually duplication occurring.

Our observation is that in most cases where claims of duplication are occurring, it's not actually duplication. It's different roles that different government agencies legitimately have, and so where you've got an example where the EPBC Act is the mechanism whereby the Commonwealth government gives effect to its international treaty obligations, it's slightly different to the state government's role, which has a different set of responsibilities and issues that it has to take into account. State governments have rights to the economic resource but they don't, and no-one would expect that they would, have to give effect to international treaty obligations and a whole range of other issues which are of value not just to the state but to the broader Australian community, matters of truly national significance.

Our observation is that there isn't actually duplication, that in the cases where this is raised, environmental impact assessment processes take place at a state level, the Commonwealth then has a look over them and says, "To what extent has that state assessment dealt with our federal issues which are properly in our jurisdiction?" and to the extent that they haven't dealt with them, there might be an additional assessment and, indeed, a compliance or regulatory regime applied. That is not duplication; that's dealing with separate issues in separate ways.

I think that that really needs to be interrogated, that claim that, just because there are two different levels of government looking broadly speaking at environmental issues, they're duplicative. I think that really is an assumption that's been take up in this report that really hasn't been tested.

MR WOODS: In the interests of time, can I just make a comment at that point. I don't think we're actually that far apart. There's no sense from our drafting of the report that adherence to international treaties and the like should in any way be downgraded or not pursued, therefore. What we're looking for is administrative efficiency so that one set of processes and one set of time lines can span all of the required assessments, whether they be of a state or federal nature, and it's also interesting that I think the figure is about 1 per cent of exploration proposals actually have an EPBC requirement applied to them, if my memory serves me correct; it's of that order. So we're looking for the administrative efficiency, not wishing to in any way reduce the adherence to the obligations at whichever level of government they be, so I don't think there's a significant issue.

MR POUSTIE (CCWA): I guess it's just how some of these processes are conceptualised. For example, if a particular decision was open to administrative review or judicial review, that wouldn't be perceived by most people as duplication even though it might be a review on the merits. It might actually be a decision made afresh on the same evidence; it's just seen as good governance.

Similarly, we would tend to see - and I can't readily think of any Western Australian examples where it's not been the case. We would tend to see the role of the Commonwealth in relation to federally listed threatened species as an oversight role in the context of what the Western Australian assessment process has generated, so if a Western Australian assessment results in a federal decision, that, we would respectfully suggest, is portrayed by this document as a duplication, whereas we'd see that as an oversight role.

You extract from the submission of the Australian Network of Environmental Defender's Offices to that effect. They talk in terms of shared responsibility and oversight, so that's appropriate.

MR WOODS: We quote lots of people's views. I suspect even your own good selves appear in various ways. That doesn't mean we necessarily endorse them.

MR POUSTIE (CCWA): Sure.

MR WOODS: We do allow full play of all views in our report, so the fact that we quote it doesn't imply - - -

MR POUSTIE (CCWA): No, indeed. In fact, the way it's quoted - we endorse their terminology "shared responsibility and oversight", but the way it's quoted by the report is that the introductory paragraph refers to that as groups who support duplication, so - - -

MR WOODS: We'll look at the draft.

MR POUSTIE (CCWA): Not characterised in that way. But, yes, I appreciate you're quoting multiple views before coming to your own opinion.

MR WOODS: Can I just very briefly ask one question about West Kimberley. What is your view of such a broad-based declaration process? Do you see that as helpful? Do you see that as needing then another layer of interpretation so that within the broad boundaries there needs to be another layer of guidance? You were talking earlier about clarification of risk to actually make it implementable or operable.

MR VERSTEGEN (CCWA): I think that that's a really good question and I think that assessment that's been undertaken in the Kimberley is a step forward to addressing the knowledge and information gaps that we've been talking about in relation to providing an ability to do and have a strategic planning approach. So now that we've got some characterisation of the cultural and environmental values in this area, there is a knowledge base that can then be applied by government in relation to decision-making around exploration and minerals development.

What is lacking though - and there's a potential for incoherence - is if the decision-making framework around what sort of exploration is allowed and therefore what sort of development would be considered doesn't in any way reflect that value proposition that's been identified in that information. So I think there probably does need to be some interpretation given, and what we would like to see is that decision-making around exploration actually gives effect to that knowledge system rather than just allowing any exploration anywhere and then coming up against a situation where later on down the track, where a lot of money has been potentially spent and a lot of aggrieved members of local community have gone to a lot of effort to raise issues and have a lot of uncertainty to deal with, then it's found to be

inconsistent with the value proposition that's been laid out by that information framework.

That exactly is one way to address that concern that we have, but yes, I do believe that there is at this present time a disconnect between those kind of information systems, whether it's that kind of assessment that's done, whether it's setting aside a national park, whether it's setting aside an area for cultural values, and then that filtering down into the decisions in relation to where exploration is or isn't allowed and how that exploration might be constrained.

MR WOODS: And arguably the Commonwealth green area concept is - - -

MR VERSTEGEN (CCWA): Precisely.

MR WOODS: - - - of the nature, that you need to develop that into a more strategic and better analysis.

MR VERSTEGEN (CCWA): Yes, but I think the issue in part of the Kimberley is interesting, because it gives rise to this question about a relatively new type of industry, which is gas fracking, and what we're seeing in that, just in relation to the exploration aspects of that industry, is exploration being defined in a way that's probably unlike exploration is defined in other industries, and that is because the exploration phase for gas fracking actually requires those wells to be hydraulically stimulated or fracked, so it's not the case where you can do a low-impact type of exploration activity.

MR WOODS: A greater disturbance.

MR VERSTEGEN (CCWA): You're having a much, much greater disturbance, but without the regulatory oversight that comes from licences, et cetera, that would be granted for actual production licences. So you've got exploration activity causing a very significant potential environmental disturbance, without that regulatory oversight, and indeed arguably if you do have this type of exploration, fracking of these gas wells that don't then go into production, you potentially have an even greater environmental risk because you've got very high-pressure wells that then are capped and abandoned and no-one is undertaking any ongoing monitoring of that, which then can fail and lead to contamination of groundwater aquifers. You don't have the regulatory oversight or, indeed, the monitoring of that activity. So we would say that just regulating that under an exploration kind of framework is totally inadequate and totally not calibrated to the environmental risk of that activity.

MR WOODS: But consistent with what we're proposing in this report, in fact, we're saying that you should regulate according to the impact of the particular

exploration activity, so our view would be that if it has greater impact then you apply the appropriate proportion of regulatory framework to it. I don't think we're that far apart.

But in that context, just finishing that one off - and I am conscious of the time - I would like to get your views on this. The Standing Council on Energy and Resources have put up this multi land use framework. Is that something that you're particularly familiar with and have a view on? If not, we're happy to have you reflect on it and come back to us.

MR POUSTIE (CCWA): This is more about the creation of new national parks?

MR WOODS: In part. That's one consequence of it, but there are a range of potential consequences. But whether you want to discuss it this morning or come back to us - - -

MR POUSTIE (CCWA): I'm just trying to find the page. As a basic response to that concept of creating new national parks, we're going to provide some more information later on, but it's out understanding that that would be inconsistent with national and international obligations in relation to biodiversity conservation to bring social and economic consequences, if you like, into whether or not a park gets created.

In terms of the meeting of national reserve targets and actually conserving particular landscape types and creating long-lasting habitat for certain threatened species, if you need to achieve those goals in part by protecting an area that has mineral potential, that's what must be done.

MR WOODS: Or tourism potential or anything else.

MR POUSTIE (CCWA): Sure.

MR WOODS: Let's look at the impact of the activity and not whether it happens to be mineralogy versus tourism.

MR POUSTIE (CCWA): Sure.

MR WOODS: We would argue if the activity's impact threatens the inherent values, then it needs to be regulated and in many cases excluded, but we shouldn't differentiate just according to which part of the economy that impact derives from, and hopefully you would have a similar view.

MR VERSTEGEN (CCWA): I think that's broadly consistent with our view, but I

make the point that this goes back to the fundamental premise and reason for national parks, and that is that we allow other types of activities outside of national parks which have quite a degrading impact on the environment and an impact on the environment which would potentially lead to catastrophic loss of ecosystem function without those national parks, so it's a little bit disingenuous to look at just the national park itself or the process to create a national park in absence of looking at the broader perspective and how we're actually managing land uses outside of national parks.

Arguably what really needs to occur is, if there's a concern that national parks are constraining minerals development unnecessarily or constraining economic activity unnecessarily, then we've got to take a broader view of the surrounding land uses and say, "Well, okay, how can we adjust the surrounding land uses to make sure that we don't have catastrophic ecosystem loss by reducing pressure through other means?" but that's not really on the table as a systematic approach or a policy tool.

What is on the table as a policy tool is reservation, which does play a role, and so there's been an approach that's looking particularly at that issue of reservation, and I guess the point I'm making is that that needs to be looked at within a broader policy context and what is the management regime for areas outside of national parks, because what we're trying to do is protect ecosystem function and ecosystem integrity across a landscape scale and in some cases national parks are not necessarily the best instrument to do that.

MR WOODS: With the indulgence of the next participants, KRED, who have turned up, if we could have just 10 minutes to finish off. Thank you very much.

Can you focus - and I take the blame for the wandering conversation, but are there particular other ones that you want to draw our attention to this morning and then any others you can sort of wrap up in a follow-up submission?

MR POUSTIE (CCWA): I've been going through and I think there's only really one that is worth underlining. You make comments at page 95, for example, but I think there are other places in the document, that:

> Adequate, skilled staffing is something governments must address so that exploration proponents, communities and other stakeholders can be confident that the regulations in place are being properly administered.

I don't know whether it's considered to be beyond the scope of the commission to make a recommendation along the lines of "Get more staff in these roles."

MR WOODS: No.

MR POUSTIE (CCWA): We'd really encourage you to go as close to that as you possibly could.

MR WOODS: We have an Act that says we get a term of reference and we can consider all other matters that are relevant to that issue, so our Act can take us wherever we wish.

MR POUSTIE (CCWA): The draft report makes this point, but it doesn't then go on to make a recommendation, so I would really encourage you to look at that if there is a way to make a recommendation, because it's a classic sort of win-win. The industry will have faster assessment processes if there are more adequately trained staff in the regulator, and the community will be much more confident with the regulatory process if they see it actually being implemented properly.

Western Australia is, I think, a pretty classic case in point where we see so much pressure on relatively small numbers of regulators to try to actually make these regulations work, and when that happens, it doesn't even matter in some respects what the text of the regulation says; the community is losing faith over time in the process because it's seen as being inadequately administered. So it would be an important signal, I think, for the Productivity Commission to indicate that it's worthy governmental expenditure to increase staffing in that regard.

MR WOODS: We don't as a natural matter of course propose that the taxpayers in the western suburbs keep funding more and more money for other activities, but nonetheless if they are of high value, we are prepared to lend our support to such proposals.

MR VERSTEGEN (CCWA): And if I can make a comment on this, certainly there is a public interest component to the resourcing of these regulatory activities, but there is also the potential to look at and examine cost recovery, and I think Western Australian regulators have to some extent gone down that pathway, with some resistance from industry.

I think that is something that can and should be looked at, but that needs to be done carefully because there needs to be an absolute transparent framework for enabling cost recovery that doesn't lead to buying approvals, effectively, and so that needs to be very carefully thought through, which is a related issue to the issue of offsets and the management of offsets, which has some similar concerns.

MR WOODS: Jonathan, are there other ones that you particularly want to pick up?

MR COPPEL: You just mentioned the final one, the application of offsets. Can

you elaborate a little bit about your concerns with the offset policies?

MR VERSTEGEN (CCWA): We have a fundamental concern that in ecological terms you cannot regenerate an ecosystem. I mean, it's never been done anywhere before successfully. That's a fundamental issue that we have with the application of offsets.

To the extent that we are going to have offsets, though - it's an inevitable outcome of our contemporary regulatory systems - we need to make sure that some principles are applied to those offsets in a very careful way and one of them is to ensure that offsets are not used as a way to in effect buy approvals or to pay for otherwise important government activities that should be done as a consequence of normal government business, and industry and the conservation sector certainly share the concern that that kind of thing has occurred in the past here in Western Australia. There have been some steps taken to have a much more transparent approach to offsets, but it seems to be pretty slow in development and it's hard to see when that's actually going to take effect and whether it's going to address those kinds of issues.

MR COPPEL: My understanding is that offsets haven't been used in the context of exploration approvals.

MR VERSTEGEN (CCWA): I can't think of an example off the top of my head where they have been used, although certainly there are various parts of the exploration approval system, as you know, and one of them for example is the native vegetation clearing permits that are required. Often there are offset arrangements associated with them that might not be specific offsets for a particular site but an offset in relation to a broader level of impact.

It does though, as you say, apply much more significantly to the actual development phase, but this is one of the things that need to be looked at. As well, as I said before, we need to look at the cumulative impact of these exploration activities and certainly in terms of native vegetation clearing, that cumulative impact is very, very significant.

MR POUSTIE (CCWA): I'd be surprised if we didn't see offsets on the table in the context of fracking in the Kimberley, for example, because it's a relatively high-impact proposition.

MR WOODS: I'm not quite sure what you're offsetting there, but we'll watch that with interest.

MR POUSTIE (CCWA): You need to do essentially the same amount of clearing for frack wells as you do for production fracking, so it will be interesting to see what

happens.

MR WOODS: I notice in earlier correspondence that there were actually a couple of points that you were supportive of, so we thank you for that. I think this discussion has also shown that, apart from the fundamental issue of whether you regulate exploration as if it would lead to mining, and even there we have managed to narrow the gap a little, there is a degree of common intent.

MR POUSTIE (CCWA): I don't think we're suggesting that we should regulate all exploration activity as if it leads to mining. I don't think that was ever our suggestion.

MR WOODS: I did wrongly portray your view. I withdraw it. But I've found today's discussion very helpful, as have been your previous contributions to this inquiry. We would encourage you to write up some of this material and other material, and if our officers find that we want some clarification, if you'd be happy to have that dialogue and, if necessary, put anything else on the public record that may warrant that level, that would be helpful to us.

Can I just ask one final question. We have urged in the report for greater clarity and transparency on a range of things, and some of those we have discussed today, but we haven't directly raised the issue of ministerial transparency. We have a recommendation in there dealing with "Ministers should give reasons for their decisions." Where would you sit on that? Would that be useful to you and do you have any case studies that we might want to draw on in any follow-up material?

MR VERSTEGEN (CCWA): We are very strongly in support of that general principle. Certainly that's the kind of thing that would facilitate much better decision-making, I think, and just actually providing reasons and documenting reasons in itself in many respects would provide much better decision-making.

There's a range of different examples that I can cite, perhaps best done in follow-up information, about how decisions have been made at a ministerial level which in some cases have not accorded with departmental advice, with no reasons or information given in relation to why those decisions were made, which then just adds to the uncertainty in relation to future decision-making. I think that that's an important recommendation.

MR WOODS: Excellent. Any final comments from yourselves?

MR VERSTEGEN (CCWA): No. Thank you for the opportunity.

MR WOODS: And thank you for coming.

MR WOODS: If I can call up our next participants, from KRED Enterprises. Thank you very much for attending. Could you please for the record, each of you separately, state your name, the position you hold and the organisation you're representing.

MR BERGMANN (KE): I'm Wayne Bergmann. I'm the CEO of KRED Enterprises.

MS COMRIE (KE): My name is Claire Comrie. I'm a senior project officer with KRED Enterprises.

MR WOODS: Thank you, and thank you very much for providing some notes for the hearing. You have signalled that you wish to raise a number of issues and also to make some reference to the Western Australian government submission, but do you have an opening statement you wish to make?

MR BERGMANN (KE): Yes, and it's probably best that we frame what I'm about to talk about in the context of my background and what we're trying to do.

MR WOODS: Sure.

MR BERGMANN (KE): Previously I was the CEO of the Kimberley Land Council for 10 years. I worked and lived in Fitzroy Crossing in the Kimberley for about seven years with the Kimberley Aboriginal Law and Culture Centre. Prior to that I was a boilermaker and, in between that time and then, became a lawyer.

The context in which we are talking about Aboriginal heritage and engagement with this sector: if you look at the context of what position Aboriginal people are in to be part of this market, because we've generalised by calling it "the economy" but we're talking about a market in economic terms - the resources sector - Aboriginal people are not in a position to participate fully in the economy, and in particular in the Kimberleys we conducted a desktop review - and I'll provide this to the commission with our written submissions - with the help of Melbourne, the ANU, where they looked at - - -

MR WOODS: Was this KAPA or - - -

MR BERGMANN (KE): Yes.

MR WOODS: Okay.

MR BERGMANN (KE): They looked at 29 communities, from memory, to determine on different indicators where were they placed to be able to participate in any kind of regional development activity, and basically all the communities were

either in the third or fourth quarter, or however you say that, which meant that there had to be more investment for Aboriginal people to be part of any meaningful participation in health, employment, housing, training, et cetera.

MR WOODS: Did they do the Pilbara at the same time and was there a difference?

MR BERGMANN (KE): No. It was a small desktop study that the Kimberley Land Council had commissioned.

MR WOODS: Okay.

MR BERGMANN (KE): Then the broader social indicators of Aboriginal people - suicide rates, generally two every month in a population of, I think, seven to eight thousand people - is devastating. We think those figures are actually a lot higher because a number of the deaths that happen, the police don't follow through with further investigation to determine whether it was death by misadventure or were they in a good state. So the communities in the regional areas, and in particular the Kimberley, are in a difficult position, so I'd like to thank the Commission for the opportunity to make these presentations today, and any reforms to the mineral exploration industry would have an enormous impact on our members.

KRED has eight members in the Kimberley, where we're a social and economic structure. We're owned by a social foundation and KRED is the economic arm of that. Both entities are public benevolent institutions and we have partnerships in the Pilbara, alliances with other Aboriginal groups based on our cultural blocs, and KRED is also working with some other Pilbara groups as far down as Onslow.

MR WOODS: Do you work with national groups such as IBA in that as well?

MR BERGMANN (KE): Yes. IBA is a bit of a supporter to try and provide assistance wherever possible. So I've been the CEO of KRED for the past two years, just over two years. It was part of a role - to the point, I think, of what this inquiry is about - to try and place Aboriginal people in a better position to benefit from the regional economies.

I play an interesting role because I have independent directors on KRED to assist in the good governance, but there's a consistent tension between, in a corporate sense - what's in the best interests of the company KRED and its members is often a cause for tension, because sometimes our members take a position on things, that they do not want a certain economic activity in a certain area, and so in a corporate governance sense the survival of the company, generating revenue for the company; so there's this healthy tension between finding that balance.

MR WOODS: But that's presumably also partly why you've also got your social or

charitable organisation sitting there, so that its primary focus can be on that versus - - -

MR BERGMANN (KE): It's to focus on some of our priorities, so any profits that KRED makes go back into its social arm. Both entities do social kind of projects but the predominant purpose of the social foundation is to target cultural training, health, land management.

The members we represent are Mayala, north of Derby; Bardi Jawi, north of Broome; Karrajarri, south of Broome; Nyikina Mangala, which is my mob, formed along the Fitzroy River and going to the desert.

MR WOODS: Out as far as Balgo and things or - - -

MR BERGMANN (KE): Ngurrara, which goes up to Balgo; Tjurabalan, covering Balgo; Jaru, going all the way to the border. So it's basically a cultural bloc from the Northern Territory border all the way across to Bidyadanga, south of Broome and coming up to the Fitzroy River or Fitzroy Crossing.

MR WOODS: You don't go further north up to Wyndham and that area?

MR BERGMANN (KE): Not at this stage. So the membership is open for any native title group who wants to appoint KRED.

MR WOODS: And you pick up the top end of the Canning Stock Route? Well, if you think the Tanami - is that a natural - - -

MR BERGMANN (KE): No, we pick up probably half the Canning Stock Route. Our members probably cover about 80 to 90, maybe 90 per cent, of the Canning Basin.

MR WOODS: Okay. Thank you, that's helpful. I've travelled a lot of that country many times personally. It's fabulous country.

MR BERGMANN (KE): Yes. And we have then part of our cultural bloc our partnerships with Martu. Their PBC is WDLAC, and then working with Thalanyji in Onslow, on some of the major future or compulsory acquisition notices happening there.

So we're a hundred per cent driven by our members and accountable to our members and we make no apologies for pushing industry to make their standards better. This also can go against environmental groups, because we're driven by our members deciding on what our balance is.

There are a number of issues raised by the Explorer Association and the WA government in their submissions that directly relate to operations in the Kimberley, although they don't necessarily mention our name, and I will touch on some of them and I'll address them directly, but I believe, following the release of the commission's draft recommendations, that you have seen through most of the, I think, shakier claims by industry that lack any empirical data to back up what they're saying. So I'll go on and address a number of these issues.

One of the first points: I must admit that I'm a little shocked to read the whole-of-government submission that fails to acknowledge the interests of Aboriginal people in this state when it comes to exploration activity.

MS COMRIE (KE): That's referring to the Western Australian government.

MR WOODS: Yes.

MR BERGMANN (KE): And I make the point that there was an apology in the WA parliament yesterday. Josie Farrer, the member for the Kimberleys, raised that the Minister for Multicultural Interests had done a multicultural report for the whole state that failed to even mention Aboriginal people in this state. That might give some context to the colouring of the submissions that have been made. I would also generally like to make the point that the WA submission substantially lacks empirical data or verifiable evidence, and I believe that their submission should largely be ignored.

At a personal level, when I first started in KLC I dealt with numerous inquiries and participated in numerous forums about the improvement of heritage processes to streamline future act notices of exploration activity. The end result of all that stuff has always been industry or the WA government trying to cut corners.

Firstly, there's no monopoly by native title representative bodies, and the WA submission fails to support the claim that there's an anticompetitive bargaining environment, and I say this because KRED is an example. Our members cover about 90,000 square kilometres in the Kimberley. It's almost half the Kimberley. Of the native title determinations in the Kimberley, which is covering about 80 per cent now of the Kimberley, there are at least five native title PBC who are not represented by the Kimberley Land Council. Groups have decided on their own representation. So people are moving on, and you can see examples throughout the Pilbara where that's happening and groups are appointing their own advisers based on their own reasons as to what they want.

I would also like to challenge the claim that an unacceptable economic barrier is being created through the reasonable desires of Aboriginal people to have expert advice in dealing with commercial and cultural issues. Acceptance of the

government's position would lead to damage to cultural heritage and poor agreements, which in turn could lead to project delays and possibly project closures if heritage is not significantly protected. In other words, it would be highly damaging to industry.

This reality is widely accepted by mining companies, which is why industry fund these costs, and some of the bigger companies get this and realise that they have to provide the investment they need, when engaging with Aboriginal people, to get the decision accepted by the group as a collective.

Earlier examples include Argyle Diamonds. After 20 years of having a dodgy agreement, they renegotiated over I think a four-year period, where they renegotiated a new impacts and benefits agreement. The original agreement was signed by four elders who got paid four Toyotas, 20 kilometres of fencing, a welder, an ablution block and, I think, $20,000 each, and that's the context of one end of the scale and that is an example of where an Aboriginal site was destroyed as part of that mine. That community never healed.

When I came on board in the Land Council, the way that was struck had split the groups who had customary ownership and there was new leadership in Argyle Diamonds to fix that, and the Miriwung, Gidja and Wularr people came together and, through the help of the Kimberley Land Council, renegotiated a comprehensive agreement.

MR WOODS: And that's working sufficiently if not perfectly?

MR BERGMANN (KE): Yes. It's significantly changed our people's attitude and engagement. I think, as most companies make judgments - I think Rio has put it on the market as not having return on asset - or what do they call it? - internal rate of returns to keep it. I think back in 2006 is when that was re-signed and the relationship with the traditional owners has grown from strength to strength.

MR WOODS: Can I just interrupt briefly there, if you'd pardon me doing so. Did the renegotiated agreement also come with, or at the same time was there, greater effort to provide training and employment and other engagement with the mine? The agreement is one thing in itself, but was there a package of related things and has that been helpful?

MR BERGMANN (KE): Yes. The agreement in broad general terms - the process that traditional owners came back with together was to ask themselves what was important to them, and when they asked them that, they said they wanted jobs and training opportunities, they wanted greater respect and acknowledgment. It resulted in Argyle Diamonds giving an apology for their past behaviours and paying a lump of funds which were what they called, like, sorry money for past behaviours and not

having a good record previously.

Their employment in the early days ranged between 1 and 4 per cent and then within two years of signing the agreement it went up to about 25 - it fluctuated between 20 to maybe 28 per cent; a workforce of between four to six hundred people; and stronger recognition and acknowledgment of Aboriginal cultural values. So the agreement created long-term funds in terms of their compensation money for what you might say is their legacy, and money for now to deal with some of their immediate needs, and a trust structure set up to deal with that.

MR WOODS: And the money is useful? It provides long-term capacity, but it's the daily jobs and the training and the building up of human capital and engagement that presumably also has very significant - - -

MR BERGMANN (KE): A lot of things came out of the Argyle agreement that created precedents throughout the Kimberley, where they had "No means no", where Rio Tinto or Argyle signed off, and it's been put in all forms of agreement throughout the Kimberley and is catching on in the Pilbara, where "You will not destroy an Aboriginal site unless you have consent of the traditional owners." A number of public companies have signed those principles in the Kimberley, so that when Aboriginal people identify areas of significance, the companies don't mine there unless the TOs say that activity is allowed.

There's a lot of controversy about it because they thought we were using it as a bargaining chip to gouge them for dollars, but in my experience it hasn't ever happened, and in fact acknowledging that up-front had increased Aboriginal people's trust to participate with those projects.

MR WOODS: Although you do pick up the Canning Basin, and I understand other organisations trying to do exploration surveys have had long and protracted negotiations that have ultimately not proved successful. Is that because of issues of respect or of quantum of money or of potential impact on heritage or - - -

MR BERGMANN (KE): Really I think that goes to the point that a heritage survey is about identifying the cultural values. It's not about giving a green light to mining companies to mine, and the heritage process is made up on the basis of work programs, so the activity and the impact, so that for our members to make an informed decision they have to be told what the exploration company intends to do and on the basis of that they then approve or give recommendations as to how that activity could happen or where it could happen within that area, and members of the company accompanies the survey team to make adjustments at the time on the ground based on their work program.

There's an example referred to in the chamber's submission, or the small

explorers' submission, where companies have been made to go back and redo their work survey. There are examples that I am personally aware of where some of those small explorers, when they have had roads cleared and they have got approval to drill in certain areas, on their way back from their original drilling site they decided to drill a hole on the side of a road, an existing track, and drilled it near burial sites and caused quite a bit of conflict. Things got very protracted. It took I think six to seven months before it was resolved and that was simply because they didn't tell anyone what was going on and when they decided to drill, they drilled in the wrong spot. Had they said it up-front, they would have been told to stay away from that area.

We're talking about large areas and it also increases the cost. My survey team is travelling sometimes a thousand kilometres to get to a location and it takes a day to get there. Then they have to conduct these surveys and it takes a couple of days. What level of activity the company wants cleared determines how long they stay out there. Then it takes them a day to get back. So these costs add up.

MR WOODS: Sorry, I distracted you from your discussion.

MR BERGMANN (KE): The government also produced no evidence whatsoever in support of the contention that an NTRB or traditional owner costs are affecting the fundamental economic viability of exploration, or that there has been a growth in adversarial and opportunistic practices and focus on the short-term revenue-raising in the name of native title groups and native title holders on many occasions, with the greater share of revenue directed not to traditional owners but to NTRBs or other native title business brokers.

Look, I've been hearing this all the time. There have been opinion pieces in the newspaper, but I haven't seen the qualitative evidence to support that. I can understand that, as in any market, you get a range of players, but the rep bodies are audited. I'm audited independently for our members on all the things that we do and I can't imagine in that context how - I refer to that kind of practice as gouging, opportunistic.

As in any kind of business, you might get the odd players playing like that, but the overwhelming majority of representative bodies, I think, operate in quite a transparent way, and I think it would be illegal in the sense of a lot of these things are brokered by lawyers inside rep bodies and these practices would be a breach of their professional conduct in terms of how they would maintain their practice certificate. So I'm just really concerned that the sensational media stuff is being put up there as some legitimate kind of basis, but I haven't seen any evidence of those kinds of practices.

MS COMRIE (KE): It might be worth talking about the heritage costs just there, if you don't mind.

MR WOODS: Yes, please.

MS COMRIE (KE): Just raising some of the issues, it's quite commonly spoken about, the level of payments that go directly to traditional owners.

MR WOODS: This is the 15 per cent of the $50,000 per survey that goes to the TOs?

MS COMRIE (KE): Yes. We just don't have any idea which providers the government spoke to. Yamatji put in a submission and clearly stated that a significant portion of their survey costs go directly to traditional owners. It's the same with ours.

MR WOODS: So are you happy to put on the record a sort of breakdown of costs for your surveys, just to get the record straight?

MR BERGMANN (KE): Yes. For us, in broad terms it's one-third, one-third, one-third. There's generally one-third towards the costs of traditional owners, one-third in terms of - - -

MR WOODS: And that's their meeting fees and daily fees and - - -

MS COMRIE (KE): No, that's just their payment.

MR WOODS: Okay.

MS COMRIE (KE): So 30 per cent total goes straight into traditional owners' pockets in terms of their payment for attending the surveys.

MR WOODS: Okay, attendance fees. Yes?

MR BERGMANN (KE): Then one-third is the operation cost: vehicles, fuel - - -

MR WOODS: Camping, food.

MS COMRIE (KE): Yes.

MR WOODS: Logistics.

MR BERGMANN (KE): Management cost. What's the other third?

MS COMRIE (KE): Professional consultants.

MR BERGMANN (KE): Professional. Anthropologists, their costs and so on. KRED created a heritage business called Ethis, and for taxation reasons our advice is that it should be a separate entity from the PBI, so the income it generates is clearly tracked and declared with the Taxation Office, but we turned over in a 12-month period, last reporting period, roughly $3 million. Of that $3 million there was a surplus of about $270,000 which is, I think, around a 7 per cent profit - hardly the gouging that we've been accused of.

MR WOODS: That 7 per cent is over and above the payments to the TOs for attendance?

MR BERGMANN (KE): Yes.

MS COMRIE (KE): But that is then reinvested back in other native title services that we provide, as directed by our members.

MR BERGMANN (KE): For good corporate governance you should have six months' cash in your bank to run the company. That's not six months' operating cost, so it will take a long time to build up that cash surplus as well as support the members, so it's hardly the gouging or the acquisition. Some of those surveys costs range anything from $15,000 to $20,000 a day. There's nothing to hide about that. That's what it costs, and they were the books that we ran to see, in a 12-month period - we didn't even make a 12-month surplus in the overall activity that we did, so I think, in terms of the cost in the Kimberley and what we're doing, we've picked the market quite reasonably.

Also, when I was in the Kimberley Land Council, this unit often ran at a loss and had to be subsidised by Commonwealth NTRB activities in terms of paying staff salaries to keep them in that position and KRED doesn't get funded to operate by any government. We're trying to live up to the mandate of running a business professionally and it requires us to charge what it takes to keep that service open.

The other thing about those costs is that they have increased since I was in the Land Council, with TO fees ranging from $200 a day in those days, over 10 years ago, to $500 to $1000 a day, and we have a model where senior people get paid $1000 a day.

MR WOODS: The senior cultural advisers?

MR BERGMANN (KE): Yes.

MS COMRIE (KE): And it's important to note how in demand those people with extensive cultural knowledge are, particularly some of those Canning Basin groups. It's very difficult for us to get them in because of the amount of work that they're

engaged in, so it's a fair recompense for their time, because they are in-demand, essentially very skilled workers.

MR BERGMANN (KE): So from the work that we'd done in the previous financial year, 46 per cent of all exploration was happening just in my traditional owner group, the Nyikina Mangala claim, and our senior people were basically almost employed full-time. They were working one week on, one week off, which took them away from their community and their - - -

MR WOODS: Responsibilities.

MR BERGMANN (KE): Helping run their community, and their governance and all this sort of stuff, and for giving the industry certainty, you need those senior people to give the information about those processes, and KRED has a philosophy "We only do it once." If we don't have the right people, we'll pay for the survey to happen ourselves, so we make sure we have all the right people to get it done properly once.

When I was in the Kimberley Land Council, sometimes it would take three years for a company just to get access to a claim group meeting, with all the other pressures that were on top of us. During that time I had five matters in litigation for native title determination and the Commonwealth didn't provide funding for heritage staff or future act staff, so you had to add it on the end of claim group meetings.

It cost anything from 50 to 200 thousand dollars to call a claim group meeting, depending on the issues and the groups and what was going on, and so mining companies would be invited to fill the gap on the end of one day, and after two days sitting out bush dealing with meetings and politics and claim group information, everyone wants to go home, and if everyone goes home and those mining companies turn up and they only have a handful of people, they can't make a decision.

So it's this lack of resourcing to have people in a position so they can engage fully and understand what's going on - it isn't there - and so you get the perception of industry saying they don't understand what is necessary to be done behind the scenes to ensure you've got good governance in place, and that when a land council or their representatives say, "The group have agreed to this," that it's binding.

Otherwise, you get cases where - and I think the biggest controversial example, although it wasn't about heritage surveys, was the James Price Point decision where, despite all the criticism, the Kimberley Land Council's process was reviewed by a judge in the Federal Court and it's come up as being one of the best processes that the judge has ever seen, and despite the combined claim having all that conflict, the decision was binding on the group and still is today, although they're about to dissolve the claim, from what I see.

MR WOODS: Can I just pick up a point. You said that from your point of view it's important to only do the survey once and that if it wasn't done properly, you'd then go back and sort it out, but is that once per exploration permit and - - -

MR BERGMANN (KE): Once per activity.

MR WOODS: Yes. If there is a similar activity, is there some way in which the knowledge can be progressively accumulated so that there is greater certainty and potentially less need to be undertaking surveys as areas become identified, as there is a greater understanding? If a separate explorer comes in but the previous survey has identified that this area doesn't contain significant activities, doesn't contain burial sites, isn't a sacred place, various characteristics, how can we get to a stage where that explorer can then also with confidence say, "All right, that's been surveyed and I know that I can go to this area but I can't go to this, this and this"?

I also understand the point that the cultural significance is a living significance and that it will evolve over time, so I'm not unaware of that issue, but how is it possible to build up a level of ongoing current relevant cultural understanding of areas so that we don't have to keep doing full surveys in every case, or is that just not going to be possible?

MR BERGMANN (KE): It is in our agreements. That is a possibility. It's opened. But once the company has delivered a work program then the native title group - we have restructured the way claim groups authorise their representatives, so in all our member groups they authorise their named applicants or a committee of the claim group to have the ultimate decision and to get away from the cost and the delays in being able to hold meetings from the Land Council.

The Land Council in the Kimberleys, and all the other LCs, takes instructions from the group as a whole, so it requires a big notice, a big claim group meeting, a lot of infrastructure to make it happen. So what's gradually happened is, the increase in exploration activities required us to be able to respond quicker, which meant the claim group has now authorised committees or the named applicants to make those decisions, so effectively it's anything from six to maybe 16 people; a lot smaller group to get together. The companies present their information to the smaller group. The smaller group makes a decision, based on that, whether an exploration clearance is required or not.

A lot of that information was also held in the Land Council in their library, which is over 30 years of knowledge that's been collected, and in the Kimberleys we've had a history of not putting on the DIA register sites because the whole basis that the Kimberley Land Council was set up on was when the Minister for Aboriginal Affairs approved AMEC, the American oil and gas explorer, to drill at Noonkanbah.

It was to drill on an initiation ground that was being used at Pea Hill and that caused the big conflict, which caused the coming together of the Kimberley Land Council. So our group have had a political position that we would record and hold that information ourselves.

Groups now are starting to create their land management and datasets, both environmental and cultural knowledge. No-one is funding this. We're just putting this together, and that's increasing the opportunity to make those kinds of decisions. Whether we would ever get to that state I think is another question.

The other thing about the Kimberleys and, I would say, large parts of the Pilbara in the inland areas is that a lot of Aboriginal people walked off the desert in the 60s and early 70s and so that oral history of knowledge and creation stories is not, you know, some report; it's people who lived on the land.

MR WOODS: Personal experience, yes.

MR BERGMANN (KE): Yes. And so that makes that collection of importance to pull together. With the Canning Basin, we've got some senior people who lived in the areas that used to walk 80 to 100 kilometres from one location to a location that now the gas companies are targeting for drilling. And they're not being invented; people have got incredible knowledge about what happened, who lived in the area and the complexities of that.

MR WOODS: I'm not asking for a response today, but if you were able to provide a follow-up written response that in particular looked at our recommendation 5.2, which is this issue about how to progressively build up this survey knowledge, that would be really helpful to us. Sorry, I keep distracting you.

MS COMRIE (KE): Just going back to the cost of our surveys just quickly, I want to make a couple of other points in regards to the amount for professional consultants as Wayne said earlier. We think it's reasonable to expect that Aboriginal people are entitled to this expert advice and we also make sure that our traditional owner groups essentially pick their professional consultants. That actually enhances the process, we think, overall, because usually there's been a long-term relationship with those consultants. They have a very high base knowledge of the group, a very high base knowledge of the country that the group comes from, and so we'd identify that as actually value-adding to the survey process. The key thing is they are trusted by the traditional owners.

MR WOODS: Yes, which is very important.

MR BERGMANN (KE): And I guess that adds to the heritage reports being done once. Most conflicts that I'm aware of happen in this area where companies drive

into a town - and there are examples in the Kimberley that I'm personally aware of - and go, "Hey, can you come out on a survey?" and, in the context of people being desperate, "Here's 500 bucks," and they jump in a car and they go for a drive and they jump out, and then they find a Land Council staff later and say, "Oh, this bloke gave me 500 bucks and I went for a drive with him." "What did you do?" "Oh, I don't know." There are examples like this happening and that's when the conflict happens, because then people get informed about it and then we eventually pin down - because we know where he went and we know who's got an exploration in that area.

There was an example of a company that doesn't exist, where they did that and brought a helicopter up and just landed in a community, and two TOs jumped in because they had a chequebook there and they said, "Look, if you jump in now, I'll give you 500 bucks," and as a result of that, they tried to rely on the report. We tried to get a copy of the report - an anthropologist that we didn't think was credible - and they wouldn't give us a copy of the report, but then they agreed that they would pay for a new survey which would have representatives from the community authorised by the community.

MR WOODS: That's just good process.

MR BERGMANN (KE): Yes. I want to also say, I wasn't able to pin down the exact value they say the exploration industry has, but on the Department of Mines site they were saying $97 billion in 2012 was the value exploration and mining had to WA and there were some issues about it's costing $100 million for traditional owner participation for heritage surveys, and on a percentage basis that's .1 of a per cent.

MS COMRIE (KE): And we're one of the largest. We do provide a lot of heritage surveys in the Kimberley and, as was said, our turnover was $3 million, and we can't count on one hand the number of other providers in the state that turn over more than we do, so I do not know where industry gets that $100 million figure.

MR WOODS: I'm conscious of the time, but I'm also conscious that I've been interrupting you in the process.

MR BERGMANN (KE): That's okay.

MR WOODS: But if you could focus through to your remaining key points.

MR BERGMANN (KE): The other thing was the claim that registering sites delivers protection for them. I think Argyle is an example where sites were registered. Noonkanbah was an example where sites were registered. So there are examples where sites are registered. The Burrup - I'm not aware of all the detail.

These are examples where sites have been registered and companies are getting section 18 consents to drive through them, hence the Kimberley Land Council's position that we found it was far better to protect cultural knowledge and value and information by not having those places registered, by making the companies come back to us each time to do the work properly.

The state also outlined a case study that refers to the restricted, burdensome and inflexible requirements for companies to clearly outline their work programs. The study mentions an incidence where a company undertaking drilling was sent back by an organisation. A few times this has happened in the Kimberley where I think, as you mentioned, it's about good process. We make no bones about making companies do things properly, to consult further with traditional owners after requesting changes to the location of drilling holes while on a survey.

MS COMRIE (KE): We have examples of where companies don't have a fully clear work plan. They want to change a drilling location and they put significant pressure on the traditional owners and the anthropologist that's out there to change a work program, and we very clearly say that that is not going to happen. They have to come back to the authorised group who have the correct cultural authority to do that. We don't make any apologies for that. That's good process. That protects our members' interests. Do you want to just move on to the commission's recommendations?

MR BERGMANN (KE): Recommendation 3.1. Information disclosed is not always adequate, requiring us to go backwards and forwards with the companies to collect data and detailed maps. The whole process for heritage surveys is generated by a future act notice. The information provided on that future act notice is inadequate. As soon as the company makes contact with the Land Council, so begins the request for information giving better detail.

I was meant to bring an example of what a map would look like on a future act notice. It's essentially GPS coordinates. You'd be lucky to pick up a geographical - like, you can't work out where it is. So that whole process from the very start triggers a process that creates instant delay. You've got to start exchanging letters to ask for more information so people can identify where the company wants to go. I think on the other side of the coin, the department requires the company to disclose to us; they could set better information requirements at the start.

MR WOODS: Are they aware of that and are you negotiating with them on that?

MR BERGMANN (KE): I think every company, no. It's not just the Kimberleys; it's everyone. If you can't work out where you're going to go, you need better maps.

MR WOODS: Yes, okay.

MR BERGMANN (KE): It allows us also to work out which are the right families and that to go to those areas.

Recommendation 3.2. One of the pressures for native title groups in dealing with very small explorers with no resources is that they're operating on no social licence to operate and no intention of gaining one or negotiating in good faith with the native title group. On the spectrum are serious players, right through to explorers camping out in cars around the Kimberley, so we've got the full gamut of people from one end of the spectrum to the other.

What I'm saying here for productivity is that the future act notice is weak and doesn't require the consent of traditional owners. The Native Title Act puts you through a notice period and after the expiry of that notice period, as long as there are letters in exchange between the Land Council and the company, the National Native Title Tribunal will grant the tenement. So those who have short-term views don't need - because the very first thing that's triggered from the rep body and from our members' side is signing a heritage protection agreement, which is essentially a process document saying, "You will pay our costs and you will give us the information about what you will do and then we'll go out, carry out the survey and tell you whether those activities can happen in that area, whether they impact on our values or not." So the future act process in the Native Title Act creates a basis, I think, for contention and delay, besides, in my view, being inconsistent with United Nations declarations. Anyway - - -

MR WOODS: A broader agenda.

MR BERGMANN (KE): I guess one of the key things that did have a bit of a glimmer of hope when I was the CEO of the Land Council is that there was a stage when the state provided some level of funding to a future act unit and needs rep body, and that allowed the rep bodies to facilitate negotiation of the heritage agreements to get activity happening a lot quicker. The state government doesn't provide any further funding for those activities, which was essentially wages. So I think the government should consider providing some level of resources or making the industry pay for proper representation at that first step.

I was also involved in standard heritage agreements through the state and some of the rep bodies signed off on standard heritage agreements. When it came to the Kimberley, because companies were signing up to our standard agreement, the industry refused to adopt our standard agreement as part of the state's regional standard agreements and therefore we said, "Well, what's the point?" We've got companies saying, "No means no," and they won't destroy a site unless we say yes, but the industry wanted to say, "No, we can go to the minister to destroy a site." So we had this tension, and the result of that was no standard Kimberley agreement was

signed, but companies still continued to negotiate directly with the Land Council and signed our standard heritage agreement. So I think they just didn't want a policy precedent to be made, because I know a number of other groups wanted the same standards we had applied throughout the state.

MR WOODS: At the risk of our time running totally over, do you have a view on the Queensland approach of agreements rather than ministerial decision-making as applies in WA? In Queensland it's all driven by agreements between parties rather than having a ministerial override.

MR BERGMANN (KE): I think the cultural property belongs to our traditional owners. An agreement process in how to deal with it would be more appropriate and it would provide more certainty in the community. I think that from our side, we lean more towards Aboriginal heritage matters are for the native title holders. I know the state is thinking about how they deal with the broader heading that any Aboriginal person in the state can claim heritage values. In the Kimberleys, we're more on the side of "Well, it's the original occupiers of the land, and their descendants have the say about how to deal with that." I think that allows Aboriginal people to adopt what best suits them.

At the moment we're operating from the basis of protecting our cultural rights. Industry find it difficult to deal with those cultural rights in the sense that "they have no value". They have a huge value. They have both a social and a cultural value, and they also have an economic value. People feel ashamed to talk about that in that sense - that it is some sacrilege - but any jurisdiction in the world dealing with heritage values, also in a modern economy, deals with them in terms of economic value, and industry try to say, "Oh, we'll protect your heritage value as long as it's equal to zero." So there's a debate, I think, in industry that they need to get over, and they have to deal with Aboriginal people in the way that they will deal with any other valued stakeholder with a land interest. Heritage is one of the issues we deal with.

I think in broad terms, to increase the efficiency of exploration, they need to bring more balance back into Aboriginal traditional owner rights in the exploration process, which goes back to how the Native Title Act is drafted. That's a policy kind of question. The other question is, the biggest multiplier effect was because of the uncertainty that Aboriginal people had in dealing with their values, in allowing and sharing that knowledge with explorers, because there's no guarantee to protect them, so you have to be very careful what you tell industry about what you can and can't do.

So putting resources on the demand side of Aboriginal people on this curve, I think, will increase the supply side of people participating and supporting exploration activity, because the opportunity cost that we all suffer is that we can't build the economies or the markets of our community because we're so busy protecting our

rights and therefore you let activity happen in your region very slowly and not consistently, so I think on that supply and demand side, Aboriginal rep bodies or their representatives should have more certainty about the resources to deal with this, have more certainty about "You can protect your interests. You don't need to be frightened of it."

The biggest example that I think showed it is in the early days with James Price Point during the Labor Party's reign. Geoff Gallop and Alan Carpenter said if traditional owners didn't want an LNG facility on the coast, they could have a veto. I had 14 native title groups around the coast. I had a task force board made up of representatives of about 56 traditional owners involved in selecting the location and trying to find the best location. That changed, with the change of government saying, "It's government's job to make these decisions," and then the thinking and participation in supporting the final settlement, the dynamics of that, all changed.

I think it's no different to exploration. If Aboriginal people had more confidence that they could protect things in their region, they are more likely to find solutions than just prevent them.

MR WOODS: Sure.

MR BERGMANN (KE): I think that's it.

MR WOODS: Thank you. You've given a very comprehensive tour through the issues, for which we are very grateful. Jonathan, I realise that I've been hogging the questioning. Are there particular things that you want to raise?

MR COPPEL: I think you mentioned it earlier: if in writing you could give your views to the recommendations in the report.

MR BERGMANN (KE): Yes.

MR COPPEL: You did mention at one point that any reforms to the exploration industry would have significant impacts, so if you could perhaps say how these recommendations, in your view, would have impacts and the consequences of that for the reform recommendations that we're making, that would be very helpful.

MR BERGMANN (KE): Yes.

MR WOODS: Yes. Certainly I noticed you're drawing on some extensive notes, so somebody has been very busy; but that would be excellent if you were able to turn that into a submission to us.

MR BERGMANN (KE): Yes.

MR WOODS: And you may want to adjust some of it in the light of today's questions. But, picking up Jonathan's point, provide that sort of base material and philosophy of approach, which is absolutely fundamental and very useful to us, but also then go through each individual recommendation and if you have views on either whether it meets your own criteria for being implementable or if you can suggest concrete and useful ways to amend the recommendation so that it would be implementable. If you fundamentally object to it, say so as well, but where you can support the recommendation but think that it could be worded differently to better achieve its underlying objectives, that would be exceedingly helpful to us.

MR BERGMANN (KE): I guess the final point then is that the umbrella issue for us - consistently for everyone - is certainty.

MS COMRIE (KE): Yes.

MR BERGMANN (KE): The more uncertainty you make on the Aboriginal side, the more uncertainty that we have to push back on industry, so it's a matter of, I think, finding that balance, because the other option for the state is to flood the marketplace with exploration tenements, and Kimberley has been insular, insulated from that. I think we get three or four hundred exploration tenements. Oil and gas are larger. The Pilbara is 2000 - obviously a lot more. If the Kimberleys were to be flooded with 1000 or 500 or just double what we've got, it would be catastrophic. If all those companies came up and signed heritage agreements, then our heritage agreement, things would just run, we'd be satisfied, but they don't, and so you're spending all your time in the courts or the legal process trying to pressure them to sign up.

We have a number of matters before the courts that we're objecting to that have taken over 12 months, and there's the cost of that representation, and the chances are, we understand, that the rights in making sure this company signs a heritage agreement isn't something which they need to consider to grant it. So you've got this uncertainty. Basically, granting that tenement without protecting our heritage rights creates lots of uncertainty and anxiety on our side, and so therefore the only way to get the company back is to try and create anxiety and uncertainty for them, and you get this tension and I don't think anyone is really the winner, because if they want to do the right thing, I think Aboriginal people will try and help find the solution.

MR WOODS: Excellent. Thank you very much. We'll adjourn now until 1.20, when we'll call for AMEC.

(Luncheon adjournment)

MR WOODS: Our next participants are from AMEC. Could you please, each of you separately, state your name, the position you hold and the organisation you represent.

MR BENNISON (AMEC): Simon Bennison, chief executive officer, Association of Mining and Exploration Companies.

MR SHORT (AMEC): Graham Short, national policy manager, Association of Mining and Exploration Companies.

MR WOODS: Thank you, gentlemen, and if you can transmit back to your organisation and your member bodies our gratitude for the high level of cooperation and thoughtful contribution that you've already made to this inquiry. The submission contained a wealth of information. The roundtables were very instructive and we have now also a direct relationship with some of your membership who can provide us on-the-ground interpretation of broader issues. In all of those respects we've been very grateful for the support and information that you've been providing to us. Do you have an opening statement you wish to make?

MR BENNISON (AMEC): Yes, we do, and I'm quite happy to go ahead and read that out if you wish.

MR WOODS: Yes, please.

MR BENNISON (AMEC): Thank you very much for the opportunity to come along this afternoon and add to our original submission and also to provide some preliminary commentary on the recommendations that have come from the Productivity Commission. We do have some concerns in the recommendations and I'll allude to those in my opening statement and before we have some discussion.

AMEC supports the general thrust of the recommendations made by the commission. However, it considers the recommendations fail to offer any real and immediate solutions to substantially streamline the approvals process or reduce the cost of regulation. The recommendations merely affirm good regulatory practice that governments should be undertaking as a matter of course. The commission's use of the generic term "governments" throughout the recommendations is unfortunate. If there are specific governments the recommendations are directed towards, then the commission would benefit by identifying them so that those governments can undertake a process to remove barriers to exploration from their regulatory system.

AMEC is still considering the content and recommendations contained in the draft report. However, it intends to raise a number of concerns in respect of the importance of streamlining the overall approvals process, the suggestion of cash bidding for mineral tenements and use of cost recovery for pre-competitive

public-good geoscientific data. Streamlining of the overall approvals process is of key importance to the AMEC membership. AMEC considers that further streamlining of these approvals processes through all jurisdictions is a fundamental issue that requires more profiling and addressing in more detail. The draft report does not appear, unfortunately, to have afforded this issue the level of priority that we believe it needs.

AMEC considers that all approvals agencies should be encouraged to identify where any duplications might be occurring and implement strategies to eliminate any identified and unnecessary overlapping administrative and decision-making processes. Also, in a second point, they should also be encouraged to drive increased efficiencies by reviewing and promoting a reduction in time lines, and also develop and implement clear escalation policies to address parallel processing, to look at delegation of responsibilities and also in the development of approvals-related training packages. In a third point, they should also be encouraged to increase transparency and accountability through publicly available performance indicators and reports, integrated environmental heritage and geological data libraries, integrated online lodgment and tracking systems.

I would just like to make several points in regard to the cash bidding process that has been identified in the recommendations of the commission. From our point of view the commission has not made the case that cash bidding for tenements is an effective allocation method for Australia. Cash bidding relies upon a significant level of competition between explorers to generate returns to the government. AMEC argues that the competition does not sufficiently exist to justify cash bidding for minerals-related tenements. Furthermore, without the other side of the equation - that is, cash bidding's effect on royalty streams - AMEC is of the view that the commission's report misleads the reader to conclude that cash bidding could be construed to be an acceptable allocation method. I quote, by the commission's own admission:

> A full assessment of exploration tenement allocation mechanisms requires consideration of the link between cash bidding and subsequent royalty payments. However, given that examination of financial barriers to exploration (including royalty and tax arrangements) is excluded from this inquiry's terms of reference, it has not been possible for the commission to fully compare the relative merits of alternative allocation mechanisms for exploration licences.

As detailed in the original submission, AMEC remains concerned that the cash bidding process enshrines a system where those companies with the largest cash reserves win the most prospective tenements; not the company most likely to develop any discovery. In the meantime, AMEC notes with concern the commission's observation that:

> No single method of allocating exploration permits is likely to suit all situations in Australia. However, cash bidding still appears to be superior to work program bidding.

AMEC considers that this issue requires further consideration and analysis before cash bidding for minerals tenements becomes what we might see as a norm.

I would just like now to make a couple of comments on the cost recovery approach to geoscientific data. The commission has provided significant evidence for the free provision by government of pre-competitive geoscience data. Therefore, the commission's recommendation that the government should monitor the results of New South Wales cost recovery invites other agencies to do the same. AMEC has some preliminary evidence to suggest that the New South Wales model has had an adverse impact on exploration in New South Wales. This is based on information extracted from the New South Wales government database, where there has been a decrease of 26 per cent in exploration licence holdings in the nine months to April 2013.

Since the introduction of the levy there has been an above-average trend of relinquishment, notwithstanding current market conditions. The relinquishment of these holdings is by a vast number of the exploration companies in New South Wales. This suggests the introduction has had a negative impact on exploration. The obvious conclusion is that the government will need to increase fees to cover the loss of revenue, which will force further relinquishment. In AMEC's view the New South Wales cost recovery model is not cost recovery for service provision at all. It is in fact a tax. The New South Wales model imposes the charge across all tenement holders, regardless of the activity occurring, for the use by a specific group of industry stakeholders.

AMEC is also of the strong view that cost recovery is a last-resort public policy option for funding government activities. We saw in the Northern Territory budget, earlier this year, a very similar approach where a 1 per cent tax has been applied across the board to companies in the context of funding core activities within the agency, particularly in the geoscientific area and also in their tenement management division. Part of that tax is also now being applied to the attention on fixing up abandoned mine sites and looking at the environmental component in rectifying those situations.

AMEC is also of the strong view that cost recovery is a last-resort public policy option for funding government activities. Cost recovery should only be considered after all other alternatives have been fully assessed and addressed, such as removal of duplication, increased efficiency, legislative and regulatory review, organisational restructures, devolution and delegation of regulatory responsibility, industry

self-regulation, education and training, et cetera. In AMEC's view, decisions to implement cost recovery are made prematurely without thorough engagement with stakeholders and investigation of all policy options and unintended consequences. At that point I would like to conclude my opening remarks. Thank you.

MR WOODS: Thank you very much. There are two specific issues, being cost recovery and cash bidding, which we can probably deal with reasonably quickly, and then there is the more substantive issue of how to put a further level of definition to our draft recommendations so that they more specifically target particular ways to improve overall approvals processes. With your indulgence, if we can now treat them in that manner.

MR BENNISON (AMEC): Sure.

MR WOODS: On the cost recovery, as you correctly note, we went no further than suggesting that there should be monitoring. The purpose of the monitoring is to generate evidence, and you're starting to provide some evidence. You have a more fundamental objection to the issue and we do, in our report, identify the public good that comes out of developing information that is publicly available about our mineralogy and geology more broadly. We agree that there is a substantial degree of public good relating to that information and that therefore warrants public funding but it would be remiss of us not to explore to what extent alternate funding models may have some role to play. Therefore we went as far as proposing monitoring and evaluation but not further to propose its introduction.

Your views are clearly strongly felt and you are generating information. I'm not sure that too much more debate - I think we're probably fairly clear on your views and you understand the reason why we've put it there, but if you want to provide any further rejoinder I'm quite happy to debate it further.

MR BENNISON (AMEC): No thanks. Look, we will obviously elaborate on that in our submission back to your report, but it is clear that governments are doing this out of desperation, as well as a general philosophy of, "Well, how do we fix a budget shortfall?" I think the lack of consultation and the lack of more lateral thinking within government agencies to address the problem of, if you like, prioritising strategies to look at the collection of pre-competitive geoscientific data. It really disappoints us and I think it would do well to engage industry far closer - you obviously spent a lot of time and money in this space anyway - to look at ways in which some of the government programs can be prioritised.

I think the Northern Territory is a classic in this case and they could have done well to sit down with industry before they decided a tax was going to be the appropriate way to address the problem. I think the example being set by some of these agencies is very questionable and may at some stage lead to legal challenge.

MR WOODS: We would certainly welcome from you, in addition to what's now on the public record today, your considered views on issues of consultation with industry on how to make the most effective use of the funding that is currently already provided through the public funding process for pre-competitive geoscientific information gathering. We explore, in our draft report, issues of certainty of funding and the importance of having ongoing block funding so that there is an established program of work, rather than relying on a two, three or four-year injection of funds for a particular event.

Now, they can have a role, but to the extent that they dominate over a regular baseline funding, that can create a series of distortions and poor allocation of resources.

MR SHORT (AMEC): Mr Chairman, could I just clarify, are you referring to Geoscience Australia and the pre-competitive data that's gathered by the federal agency, or are you referring to both - - -

MR WOODS: I'm treating it more generally; the state agencies as well as GA.

MR SHORT (AMEC): I'm assuming that you would be fully aware that the funding arrangements for Geoscience Australia was the subject of a review in 2010, I think it was.

MR WOODS: Yes.

MR SHORT (AMEC): It included some strong recommendations that the funding for GA come out of the public purse for a matter of years.

MR WOODS: Yes.

MR SHORT (AMEC): I think from the state point of view obviously that's a matter of ongoing review by the various state and territory jurisdictions, and they have different funding arrangements, I think, even from the West Australian Geological Survey. I think they have over the past. I'm not quite sure what the current state of play is but they're funded through a program known as the Royalties for Regions program, and I'm assuming that's still the case, providing some ongoing certainty, if you like, in terms of that funding base.

MR WOODS: I think it's always incumbent on organisations who are seeking more funding to first demonstrate that what funding they have is being used as efficiently and effectively as possible. To the extent that that may involve great collaboration on priority setting, that may solve more of the problem than going out looking for additional funding, but there are a number of issues and your submission might like

to sort of set up some criteria, whether they relate to the importance of having ongoing baseline funding, the prioritisation of work programs, the level of consultation, those sorts of things. So by setting that up as an appropriate set of criteria, then issues of cost recovery can be weighed against those criteria.

MR SHORT (AMEC): Maybe if I can also draw attention to another issue, and that is the overall definition of cost recovery and what actually it means. You talk to different people and cost recovery could indicate, under certain models, 100 per cent cost recovery. On the other hand, cost recovery could well be an application fee or some sort of fee or charge that's raised through provision of a particular service, as distinct from a full 100 per cent. It's a significant difference, and obviously different impact, particularly on industry.

MR WOODS: Jonathan, have you got comments on this one?

MR COPPEL: On the cost recovery? No, I'm happy to continue.

MR WOODS: I think we've probably exhausted where we can move on that one. On the cash bidding, I should advise that we've had various debates between commissioners, and between commissioners and team, and various other discussions about where's the right way to land on cash bidding. Our report reflects that at this stage in the process the commission recognises that cash bidding is not a panacea to the issue of the appropriate allocation of tenements; that in fact the diversity of situations that arise - and you referred yourself to the lack of competition or, in your words, that competition does not sufficiently exist to justify cash bidding for mineral-related tenements.

The exploration, to the extent it might be brownfield extension of existing operations versus very speculative greenfields versus greenfields, particularly more so in petroleum perhaps, but where there is greater certainty and it's a matter of proving up exactly what is there and why, rather than being out in the middle of the Tanami looking for a speculative strike - so there are very different situations in the exploration scenarios, and cash bidding has certain characteristics, particularly relating to where there is greater certainty of discovery of an economic resource, that cash bidding can bring forward some of the government's revenue from the rent that discovery generates, that there are broader issues relating to allocation.

The one thing that we did form a fairly firm view on was that if you have cash bidding you don't then at the same time do a program of works bidding. Obviously you have to have a subsequent program of works to generate your approvals but you don't try and put the two together. Our report didn't come up with a clear and conclusive view as to exactly when and where cash bidding versus other allocation methods might apply, and so we do welcome your contribution to the debate, and to the extent you can then develop your evidence about what are the particular

characteristics of cash bidding where it may prove effective.

Clearly where there isn't competition then it's not going to be appropriate and that may apply to more of the industry than we might first think. So we're happy to receive the views that you've already expressed - further development of those views in your response. Are there any points in our draft report you are seeking further clarification of? It's not a long exposition and perhaps our final report should develop that area.

MR BENNISON (AMEC): On cash bidding?

MR WOODS: Yes, on cash bidding - much further.

MR BENNISON (AMEC): No, not really. I don't think there are any other comments that we won't cover off on the general allocation process in our submission on your report. The trouble is, with a lot of these issues they can be taken in isolation and you've got to look at the industry as a whole, not only the divergence in the commodity types - and one example that really exists in this country on cash bidding is based on a particular commodity type. If you can ring fence that and say, well, that has certain parameters around it that can validate cash bidding for all these reasons, and we still argue that they don't, but as with a lot of government policy it becomes a contagion and what gets picked up in one state can easily flow into another for all the wrong reasons.

Proper evaluation is quite often not done by governments that have got a driver, ie Treasury, who really don't understand the complexities of the industry, particularly from the group of small operators - we've got nearly 1000 companies, particularly in our space, in exploration, and we've got that number of companies because of the high-risk nature of discovery in Australia. If you marginalise that group because of a cash bidding process, you really are going to destroy discovery in Australia. Sadly, the industry is extraordinarily competitive and a large cashed-up company that can afford to warehouse real estate, if you like, can unfortunately distort the whole market and really work against the interests of the country ultimately in new discoveries and the revenue streams that come out of new discoveries.

So I think you've got to look at the whole development scenario of the resource sector, particularly in the base metals and not just the bulks, and look at how important it is to have the viability of those 100 discoverers and how that could be impacted. I don't think anyone has done that evaluation. They don't do it; not only in the allocation process but they don't do it, as we briefly discussed, in the cost recovery. This has an accumulative effect right across the policy setting of government until they finally squeeze them out of the sector. It's just something that can be borne in mind and we'll certainly elaborate our submission on the report.

MR COPPEL: Again, I don't have anything more on those two points.

MR WOODS: All right, let's get more to the issue that warrants particular attention, and that's your view, and to some extent we acknowledge there being bases for that view that our recommendations at this stage are at a level — not all of them; I think some of them are directly implementable to create efficiencies — but some of them are still at the more principle level, and partly that's why we've put out a draft, so we can say, "Well, here's the evidence that we have. Here's the analysis that we've undertaken and, based on that, this is what we can confidently say as representing our views." What we like to do between draft and final is urge people to support their submissions with more specific evidence which will allow us then to drill down into those recommendations and create an even more operable situation.

So we understand your views to an extent. We would agree with those views. How do we move from where we are in the draft to a final report that drills down in some places even further, but evidence based, to improve the actual situations? One recommendation that you made in your overview comments is that we target specific governments. We have from time to time in the draft report identified those governments where we think best practice warrants being looked at by others, and we're happy to take that further to say, "All right, here's a set of good governance principles and we think that in the case of Queensland, in relation to heritage agreements or something" - or whatever it might be, even if it was in a different state or whatever - "here is a model that, from an our examination and from the evidence of those in the field, works better than others".

So that's a way forward that we can identify, but we invite you to provide more concrete evidence that will support a more-operable level of recommendations where that currently isn't the state.

MR BENNISON (AMEC): Yes.

MR COPPEL: If I could just give a specific example of that, we've looked at the time taken for various approvals and we recognise that the duration of a tenement can be partly eroded to the extent that approval time frames take up a significant proportion of that duration of the tenement. We're aiming to try and be specific in terms of a recommendation on how to address that. We've identified three options. One is to try and extend the duration for the period extra that was taken for an approval. The other is simply an ad hoc addition to the tenement duration. Do you have any specific views on which of the various options are a preferable one? That would help us also, I think, make our recommendations less general and more specific

MR BENNISON (AMEC): We can both touch on a couple. A couple immediately

come to mind. In WA, for example, we've been working to get such things as program of work applications extended out from 12 months to two to three to four to five years. This varies across the country and we have picked the eyes out of what we believe is a fairly workable solution, and often that relates to the length of the program being completed. So if you've got a drilling program that's going to go for two or three years but would get interrupted by rain and seasonal weather or whatever, then the applicant has the chance to vary that to complete the program, so it's not going to make any difference to the original application, except in time.

We have been looking at those sort of applications having a far more flexible approach to the time lines. It takes pressure off agencies that just do a 12-month turnover, who have got a backlog maybe of 1000 applications. It's going to halve the time obviously required to assess those applications and also potentially gain efficiencies in the amount of staff required. That, using program of works as a classic example, can apply across other assessment procedures, too, that may be far less cumbersome. It might be for a water licence, it might be for some other instrument that has a requirement of a 60 or 90-day time frame, but it could be restricted down to a 20 or 30-day time frame, and a lot of those exist across the country at the moment.

So from a timing point of view there is a lot of room to move currently, as we see it, across numerous agencies in the country to reduce those time lines down and be far more efficient in how they're managed. In a number of cases there are just far too many agencies that are involved in the process. The duplication that's going on and some of the processes being used to address that are fairly cumbersome. We've had a number of agencies that have interagency MOUs, which has provided some modicum of improvement, but can go an enormous distance further in the context of delegation of those authorisations to a particular agency, getting towards more of a one-stop shop approach and certainly looking at improving the time lines and the need to process these on a recurrent basis, whether it's 12, 24, 36, whatever, so trying to push that out to something that's far more realistic, given the context of the industry itself.

I think there is a lot of room to move in this space. I guess I'm digressing a little bit, but to look how to manage this we've looked at the whole streamlining process and I think a number of states - and we've spoken to cabinet committees in various states in relation to benchmarking on some of the strong attributes in the West Australian system, where they have streamlining across the agencies, with a system that will allow an applicant to follow it through all the approvals.

MR WOODS: Yes, the tracking.

MR BENNISON (AMEC): I think the online tracking component of it will help streamline it down, shorten the approval time line, build efficiencies in - we still

recognise the onus on the proponent to play the game - but it will be critically important to make sure that anyone, including the other agencies - if they have a concern then the lead agency that actually is managing this application can be advised of any concern from another agency. There are a lot of processes which are being installed at the moment, which I think will seriously improve the overall time lines, the cost, and that's a serious concern to us where we see the size of agencies built to a level that's almost frightening - to where they used to be.

MR WOODS: It would be very helpful to us if you, through your network of entities - and I guess they predominantly operate in WA, NT and a bit of the east coast - - -

MR BENNISON (AMEC): Queensland, yes.

MR WOODS: - - - to actually pick the significant improvements and explain why they add value, rather than sort of a broad brush approach. I guess in part I'm reacting to things like in your original submission where you were saying things like, "Well, each state's got its different exploration licence terminology and length of validity and you've got to take all. In fact, four of the five call it an exploration licence and one calls it an exploration permit, and they all range between five and six years." That sort of thing distracts from good concrete operational improvements with your support.

By generating the evidence and giving an evaluation of what works and what doesn't, we can target real things that will mean actual benefits to your members while still protecting the general intent of the underlying legislation. I would urge you to carefully focus your subsequent submissions on those things that will actually add real value significantly but that you can demonstrate why.

MR SHORT (AMEC): It would also be fair to say that a lot of this is a work in progress, and it's a work in progress through various jurisdictions at different levels, and certainly I know - well, we've heard some colleagues from WA Department of Mines and Petroleum, who have undoubtedly followed the proceedings with some interest, and it would be fair to say that significant progress has been made by that agency in terms of its functions. But as Simon has indicated, there are a number of agencies and there's a number of hurdles that exploration companies - bearing in mind that's what we're talking about, not mining - need to go through to get to the approval stage to start even actually drilling a hole.

One of the things that we've mentioned in our report is the average turnaround time to get access to an exploration licence over the last 10 years is 542 days. The question is whether that's reasonable. I think you know what our thoughts are about that, bearing in mind every day costs more money in terms of operation and administration. So in terms of our approach, and again Simon alluded to it, we've

been talking about the issues within agencies of duplication and applications actually going to different agencies for effectively the same thing. Agencies need to identify where those duplications exist. Some of that work is happening and it's certainly happening in WA, and in WA they're looking to change that by way of MOUs or just maybe there's some sort of other instrument that's used to pass that delegation of power, if you like.

Increased efficiency is a significant issue that we would certainly continue to promote, and again, that's just that general drive of increased productivity and, as Simon has indicated, the transparency and accountability. Some of these projects and things that happen aren't necessarily publicly available in terms of the data so that we can measure performance.

MR BENNISON (AMEC): I might add that I guess the catalyst for agencies to change their practices has not been strong, and that's part of the problem. So somehow you've got to get some leadership in this whole process, from ministers down to director-general level, et cetera and further through the system, that actually drives change - changes culture in particular within certain agencies - and actually find the resources, particularly the financial - and I know that doesn't come into this process but that is often the excuse why things don't progress in improving and streamlining and time lines and so forth, because systems to be put in place to manage this far more effectively in this day and age don't come cheap, especially if they've got to interface with other agencies which quite often are incompatible.

So there are issues there and I think at long last - you know, a couple of states in particular have acknowledged that the investment is well worthwhile and are heading down this path and have made the necessary budget allocations to start setting an example of how things can be done far more efficiently and effectively.

MR COPPEL: Can I just take you up on that point. You said you need a catalyst for change, and change is often cultural, so it's very hard to sort of recommend a cultural change and you mentioned one of the barriers. Another approach to regulation in this area that has been suggested - in fact it was highly recommended earlier this morning - is using more intensively tools such as strategic planning and assessment. In a different context that approach was piloted and it failed because the culture of the agencies at the officer level wasn't able to make that switch from looking at a project on a project-by-project basis to sort of a broader basis.

So I've two questions. One is on how to provide a catalyst for regulator conduct changes and the other one I'm interested in is hearing your views on the use of strategic planning and assessments. Do you think that is something that would be able to provide a substitute for looking at approvals on a project-by-project basis and contribute to overall streamlining of the various processes for the different approvals that are needed? Or does it run the risk of being something that's added on top of

what's already there?

MR BENNISON (AMEC): I think there's certainly the opportunity and we're seeing it at the moment, and it's mentioned in your report, where we have gone from a very prescriptive approach - ticking a box and having the classical train wreck, as we've referred to, where you have 1000 pages compiling an EIS now on an average project - to a risk based assessment. I think that risk based model, which is really going through some teething issues at the moment, can provide a serious panacea to a lot of the assessment process, and that's right across the board. I guess it's in just about every aspect of the approvals, whether it goes through the heritage side of it to a POW or an EIS or whatever the case may be.

The bottom line is we are looking at what poses a risk to the objectives of the agency, whether it's environment or regulation or whatever the case may be. I think that is starting to get traction. I think that's a shift in culture at the officer level because they've got to, rather than just look at a simple approach, tick and go through every box and make sure that they have a big document here that's the guidelines on how to assess an application. I think if we can transition out of that approach, as we've been trying to do at the moment, there's a lot of upside that new approaches to assessment can be done that can be quite successful.

Agencies are now looking at, well, is their legislation really relevant in this day and age, and are all their regulatory environment and their policy guidelines all relevant in this day and age? A lot of them haven't been reviewed for decades. I think if you took the whole list which accumulates over time and cut it in half, would it really change the nature of their business? And the answer is: probably not.

So those exercises have to be gone through and I think you have to take the officer level through that process as well. I think a lot of the senior management within the agencies have got to be confident that they're supporting the government's objectives in trying to protect the environment, regulate it efficiently and effectively, but at the same time get approvals through in a way that's cost-effective and in the interests of the state and country. I think that can be done but it's really going to have to shift some thinking in a number of the agencies, and they are embedded in a very strong prescriptive mind-set.

We're finding it quite a challenge for us. When we take a fresh idea from one state and go and speak to the agencies in another and say, "Look, this is fantastic. Why don't you try it?" you really do get some serious push back. But now I think, working at the higher levels within government - because there is such a driver now for efficiency gains financially and the need to get projects on the ground because we're going to run out, and there's no question that there's a limit to the number of mines that are producing at the moment, and that's going to impact on revenue streams and they see the imperative there - or at least Treasury do - and I think if

they don't accelerate and improve the approvals system, this is really going to bite them not too far down the track.

MR SHORT (AMEC): If I can just add, in terms of the strategic assessment approach, I'm assuming you're alluding to the environmental conservational values and environmental approvals. There could well be some good arguments for strategic assessment but that certainly takes into consideration an all-in approach, particularly if it's obviously on a regional basis. From an environmental point of view you're assuming in a particular region all of the conservation values are in that whole region and that's not necessarily the case, obviously, in terms of some of the more rare flora and fauna. I think there are some benefits but at the same time I think there needs to be great care in terms of taking that particular approach.

MR COPPEL: Is this an example of flora and fauna where it may be very rare within that particular area but there are other areas where it's not?

MR SHORT (AMEC): Correct, yes. So in that particular region there might be a 10 square kilometre area that particularly has very high conservation value but the rest of it does not. The same situation could well apply to heritage values as well. So again, great care needs to be taken and I know that we've got colleagues in the room that are promoting that particular approach.

MR BENNISON (AMEC): Can I just pick up on one thing that was said earlier, too, and this is about the nomenclature that surrounds the industry as well. I mean, you're quite right, it is very difficult, even if we do risk based assessment, to get the terminology consistent across the country. What might be a significant residual impact in one state is quite different in another. We are awfully frustrated in our role when, as we do, we go from each state and territory, trying to get the best policy introduced and benchmark it on what we think is best practice.

They have such different terminology that we would love to see some - and I didn't think I would ever say this, but we'd love to see some sort of nationalisation of the terminology in both the statutory framework as well as on the ground in practice, because everyone's interpretation is just so different at the moment and it does frustrate us trying to get this through. We're trying to institute policy changes in a timely manner. As minor as that may sound, it is one of our key frustrations.

MR COPPEL: You mentioned risk based regulation. Are there other sorts of candidates where there is this diversity across jurisdictions that creates problems? In a broader context, offsets for instance, the other project that I'm involved with has different interpretations to the rest of the applications that - - -

MR BENNISON (AMEC): It was in the back of my mind when I was actually thinking about that, but I think it's right across the board. Whether it's in the

instruments through the actual resource agency or an environmental agency, or an Indigenous agency or Aboriginal Affairs agency, the problems are the same. There's inconsistency in terminology and it really does create a headache for us. We're obviously trying to address it through the standing committees at the federal level to a certain degree, and encourage the ministers attending those processes and the director-generals to seriously look at it.

There has been some glimmer of hope, particularly in the land access and land use arrangements, where the national framework is being mooted, but again, because the statutory arrangements are so different at ground level, you've just got to wonder how realistic it is to implement something of that nature, particularly a land access arrangement. We've noticed it ourselves, even at the local level in New South Wales - and we've all seen it - trying to get land access arrangements or agreements through between the resource sector and landowners has been an absolute nightmare. We've had it in the same situation with Aboriginal interests, too, in trying to get an agreement that will satisfy all needs. Each one is done on an individual basis. If you come out with a template it lasts five minutes. So you've got that frustration that's adding to the process as well.

MR WOODS: I guess what struck me from our travels around on this particular inquiry, and even some of the evidence that was presented this morning, is that on the other side, such as on heritage issues, there is a common intent to try and streamline and make more workable a set of arrangements, but there seemed to be few forums in which that can be set down and actually thrashed through. Is there actually a lack of opportunities to try and reconcile the various interests into a commonly-agreed process or do those exist but keep breaking down? Where lies the problem?

MR BENNISON (AMEC): I think there have been terrific improvements in recent years in the consultation process between industry and government and the other stakeholder groups. Most agencies have developed an interactive liaison group of some kind or another, not only in the context of getting the issues on the table with everyone present and taking it back to ministers and the agency hierarchy to get resolved, but also in trying to create reform in a serious way where particular groups are pulled together for a specific task - it may only have a life of six to 12 months - and say, "Look, here is a reform agenda that we've got to complete. Here's our own objective, so let's achieve that."

I think they have made serious inroads into improving the processes between the stakeholders and government, and need to be endorsed as a very effective mechanism if done well. I think ministers have got to take responsibility to make sure that they oversee some of those processes so that they are a direct conduit between the outcomes of that group and changes in policy at that level, that highest level. Sometimes they don't like it. We jump up and down and say, "Look, you

know, we've got to have a mechanism to influence changes here, and you've got to provide it too."

So we worked hard at getting some of the state agencies and ministers to actually change their approach to doing business, and I think we've made pretty good inroads in that instance; a long way to go. I think far more can be done at the federal level, in particular. We found more reluctance for engagement there, and particularly at the standing committee level. I think far more can be done to interact with industry on that basis and that probably, for us, is a last bastion going in to create some change on stakeholder engagement and trying to influence better government policy.

I think all the issues we've been discussing, tragically - particularly in the environmental space - have been forgone to a certain degree with the loss of improved bilateral processes that were going to come out of - implied in the last year. We would be very keen to see that back on the table as soon as possible so that the duplication that's happening at the federal and state level can be overcome and the delegatory arrangements that were proposed actually come into play. I think the advances that could be done through that process would be enormous, and I think to throw the baby out with the bath water, as it was viewed by us, if there are particular cases and instances where the federal government has concern, it should try and carve those out but not at the cost of improving the whole process across the country.

MR SHORT (AMEC): If I can just add, I think obviously stakeholder engagement and consultation is fundamental to this whole inquiry. Obviously the engagement with key stakeholders and between the various groups in the industry and those that are associated is fundamental so that we each understand each other's view and opinion. Certainly from an AMEC perspective we're very keen for that to occur, to sit down and go through the issues, and try and identify where you have agreement and those areas that you don't, and see if we can work through and improve the situation.

At the end of the day, ultimately it can be a win-win for everybody and ultimately in the national interest, particularly from an exploration point of view, and obviously from an exploration point of view hopefully end up with a discovery, which obviously is a rare occurrence, which subsequently leads to a mine, which subsequently leads to all the benefits and flow-on economic and social dividends that come out of that. So consultation is fundamental, and if I can just also add, I think another crucial component of all of this is education and awareness and, again, everybody understanding each other's position.

MR WOODS: We've put forward a number of principles in our draft, such as that the regulation should be targeted at the specific impact being contemplated and that you shouldn't bring forward possible regulation of mining onto exploration, et cetera.

It would be helpful, in your rejoinder submission, to identify which of those sorts of principles you do support, as well as identifying those areas where you want to raise issues with where we are heading in our draft.

MR BENNISON (AMEC): We can do that.

MR WOODS: I would anticipate that there might be a useful list of principles there that are ones you can see are important to uphold. That would be helpful to us. If we could come out of this inquiry with six to 10 developed specific changes that would make greater efficiencies in getting the exploration on the ground while preserving the underlying intents of the heritage, environmental and other regulation, then I think that would be a very valuable contribution.

MR BENNISON (AMEC): We'll certainly bring those forward in our submission to the report, and I think in essence we've touched on obviously the key issues that are very dear to our heart. There are some of the intricacies - and you mentioned offsets and so forth earlier. I guess we're watching a bit of an evolution go on within the community and within regulation that does concern us, and offset is a classic in that space. It's also now become an aspect of exploration that concerns are where exploration programs are now being offset. We believe this is just way over the top and against really what the whole objective of offsets was designed to achieve, where they become just standard monitoring programs and not targeting the key aspects of protection in the context of a significant residual impact.

We're very concerned at the federal-state interface and delegatory arrangements, as we mentioned earlier, but there certainly are clear distinctions between the mining regulatory environment and exploration that have been mentioned in some parts in the report, and we'll tease those out to highlight what we think should be a priority for industry anyway.

MR WOODS: Excellent.

MR COPPEL: My only other comment, in your submission, if you've identified any areas that are gaps in our report. We've already discussed the point about the level of generality of some of the recommendations. What I'm referring to here in terms of gaps are not so much the specificity of the recommendations but whether there are other areas that actually bear on regulation that act as a barrier but haven't been picked up. That would also be helpful.

MR SHORT (AMEC): The obvious one, of course, and it's beyond the terms of reference, is the financial barriers, because none of this will happen if there's no funding, and that's exactly what's happening at the moment.

MR WOODS: I think there is a distinction to be made, though, between the

taxation-type funding issues and the budgetary support for good process. I would urge you not to throw out the latter as being inclusive in the former.

MR BENNISON (AMEC): Sure.

MR WOODS: So where you can identify that investment in good process might be appropriate, we would see that as within our terms of reference and of course we can't also stop you from, in submissions to us, making comments on things that are clearly outside of our terms of reference.

MR BENNISON (AMEC): Thank you for that, and we will, but we're certainly not interested in going into the taxation space. We're doing that through another forum at the moment.

MR WOODS: Yes, there are other forums.

MR BENNISON (AMEC): I think it comes out to, for us, the big issue right across industry at the moment is the cost of production. There's no getting away from that. That just happens to be a reality. Those costs directly sheet home to exactly what we're talking about now. Everything we discussed at the moment has a cost factor related to it, so you can't avoid that.

MR WOODS: But if I can just comment on that, and I was contemplating it last night as I was flying over, you look at the costs escalation and we've got graphs that show the cost per metre drilled, and all of those things, but what we really need to do is understand what specifically is driving it - whether it's wage rates, whether it's the cost of hiring drill rigs, wet or dry, whether it is the time delays and therefore unutilised capacity payments that you're making because of survey requirements or consultation requirements.

It is undeniable that the end cost is escalating, but if some of them are a response to broader economic industry cycles of supply and demand, so when there's massive exploration and there's a premium on rigs and the rig owners up the price to get some of that rent, that really is just "welcome to reality of the marketplace" and this industry more than others knows those cycles. So how much of them are those sorts of issues and how much of them are actually the response to the increased regulatory burdens that are unnecessarily imposed, et cetera?

I couldn't think of the evidence that we've had that actually helps me answer that question. So I know what the aggregate is doing but how much of it is cycle issues and how much of it is very specifically driven home to things that we, in this report, can do something about? I don't know that answer.

MR BENNISON (AMEC): We actually did quote one particular case study and

that was by Barry Carbon, who alluded to the cost over time and delay, and I think there are quite a number of case studies like that that can be quoted, and there are a few Barrys around the place who are living and breathing this, who are very capable of assisting us in putting those situations to you.

MR WOODS: Yes.

MR BENNISON (AMEC): And they're real, and financially they're enormous, and that's part of the problem that falls out of this process. Amongst them was one and a half million dollars, I think from memory. It's astronomical and that cost can be directly related back to the process, so it's not something that's dreamed up.

MR WOODS: No.

MR BENNISON (AMEC): It's case history, and I think there are a number of initiatives in your report that we can certainly roll into a policy environment, provided there's government will to do it, that can make a significant change and we'd be remiss not to take advantage of it. So from our point of view we're very keen to reinforce those in our submission and put together those half-dozen priorities as we see them. If you really wanted to sink your teeth into something that's going to make a difference, what would it be?

MR SHORT (AMEC): And just to carry on with that theme, again getting back to the WA Department of Mines and Petroleum, in the last two weeks they've approached us to say that they're reviewing their policies and guidelines as part of that particular process. We've responded by saying, "Can you give us an inventory?" because when you go to their web site you'll see that the number of policies and guidelines that relate to our industry is significant, to the point that we asked for that information two weeks ago and we're still waiting - not with criticism of the department but just pointing out the sheer extent, ranging from mining legislation to environmental legislation, to heritage issues to safety matters, all of which cut across exploration and all of which increase the regulatory burden on each and every company, not the least of which is the actual reporting requirements and duplication within reporting, and having to fill in this form, having to fill in that form. It's significant.

But anyway, we certainly welcome the review by the department and we'll participate in that, but our immediate reaction has been, okay, which of those policies and guidelines is essential, or are they just - for example, in guidelines, are they just for information purposes, advisory check list type pieces of information, as opposed to being required by legislation and/or regulation?

MR WOODS: All right. I think we might conclude at that point unless there are any particular areas that you haven't covered that you want to raise.

MR BENNISON (AMEC): One very quick one, and I couldn't find much detail in the report, and that was to do with your recommendation that dealt with the size of tenements.

MR WOODS: Yes.

MR BENNISON (AMEC): Can I just ask what was really behind that recommendation 3.2? Was that oil and gas or was it - - -

MR WOODS: Some of it was to do with being in - one of the eastern states having odd-shaped tenements that were sort of created, not necessarily with the interests of what was the most efficient way of generating an economic resource. Also, the process of relinquishment in itself can lead to parts of tenements being relinquished progressively under the requirements, but then when they're re-put out for a tender or allocation process, if they're not re-aggregated into something that's meaningful, you can end up with tenement sizes and shapes that wouldn't generate an economic resource extraction process. But if you have a view on that, that it's not really a significant issue, then that would be useful to us.

MR SHORT (AMEC): Would the observation mainly relate to petroleum, oil and gas tenements?

MR WOODS: The oil and gas issue in particular, more so than minerals.

MR BENNISON (AMEC): I just couldn't sheet that back to anything in the mineral sector that was an issue for us.

MR WOODS: Okay, and that's useful for us, even so, for you to say, "Well, we don't recognise that as a significant issue for us." Terrific. Thank you for the contributions that you've made to date.

MR BENNISON (AMEC): Pleasure; thank you.

MR WOODS: We look forward to your submission based on our draft.

MR BENNISON (AMEC): Thank you very much.

MR SHORT (AMEC): Thank you.

MR WOODS: Can I call forth the Yamatji Marlpa Aboriginal Corporation. Thank you for appearing today and thank you for your patience in waiting. Could you please, each of you separately, identify yourself: your name, the position you hold and the organisation you represent.

DR COLEGATE (YMAC): Christina Colegate, communications officer at Yamatji Marlpa Aboriginal Corporation.

MR MEEGAN (YMAC): Michael Meegan, acting chief executive officer, ordinarily the principal legal officer.

MS BLOM (YMAC): Frida Blom, project manager for heritage.

MR WOODS: Thank you. Today you've provided us with a submission. You also, Frida and others, were very kind to host us for a discussion in our earlier visit. We've been very pleased to have your contribution to date. We're also grateful for you turning up today. Are there some opening comments that you wish to make?

DR COLEGATE (YMAC): Yes, thank you. We'd like to thank you for the opportunity to make this unscheduled presentation. We really appreciate that flexibility. I'd like to acknowledge AMEC's presentation today and just note that we share in common much frustration over some of the more dysfunctional aspects of administration processes within the state government of WA, and that far from being poles apart on these issues, in fact Yamatji Marlpa Aboriginal Corporation is actively working with industry to develop, outside of formal regulatory processes, more cooperative, consultative and ultimately expedient ways of speeding up heritage and native title approval processes and improving the outcomes of those processes for Aboriginal people.

We would also acknowledge KRED's presentation and endorse everything that they've raised. We share, obviously, a number of interests in terms of the business of providing heritage services in Western Australia. We don't share all their policies and practices, and I just want to make that clear. However, the underlying policy and logistical challenges are shared across our region which, for the record, covers the Pilbara, Gascoyne and Murchison regions of Western Australia.

MR WOODS: Do you bump up basically against - - -

DR COLEGATE (YMAC): A border, yes. Our representative area under the Native Title Act regime for representative bodies does border with the Kimberley.

MR WOODS: You don't go out, though, as far. They go right across to the WA border.

DR COLEGATE (YMAC): We extend as far east as the Western Desert mobs, which is where Central Desert Native Title Services and Kimberley kicks in.

MR WOODS: You don't go out through the Canning Basin area and the Canning Stock Route, et cetera?

DR COLEGATE (YMAC): Parts of it do weave through our region.

MR MEEGAN (YMAC): Just certain parts of it, and we certainly go south of Geraldton - we abut the South West Land and Sea Council - and right up north to South Broome and as you go east, I think, into the desert, sort of like Jigalong and those sorts of places. I think there's a section that would possibly come close to it, and then we go down. We abut the Goldfields Land and Sea Council.

MR WOODS: Right. That helps.

DR COLEGATE (YMAC): Because KRED covered so much of what was in their report and the WA submission, I'd like to largely leave that aside.

MR WOODS: I notice your submission to us had a number of views about the WA submission. KRED's probably done that, as well as your submission covered that.

DR COLEGATE (YMAC): Yes, we covered the majority of it.

MR WOODS: It's now on the record.

DR COLEGATE (YMAC): So what I'd like to do is just focus our comments on the draft report and, in particular, the recommendations in relation to Aboriginal heritage.

MR WOODS: Yes, that would be great.

DR COLEGATE (YMAC): On the whole, as an overarching comment, I'd say that we think that the report is extremely well balanced and measured, and in particular we strongly support the emphasis on the need for greater transparency and a balance between procedural fairness and expediency. An example of that would be in the treatment of appeals processes and the need for fairness and equity around that.

In particular, the main comments we'd like to make today relate to draft recommendation 5.2, relating to the lodgment of surveys with the relevant authority, and recommendation 5.3, which relates to adopting a risk management assessment approach. Again, we'd say that in principle and in optimum circumstances these are very constructive recommendations but, given the context that we operate in under Western Australian Aboriginal heritage protection, the heritage protection regime in

WA, these are simply not feasible and at this time we could never envisage our clients supporting these recommendations to be implemented.

Two key issues stand in the way. First, Aboriginal people are largely marginalised and rendered powerless under the regulatory regime in Western Australia, under the Aboriginal Heritage Act. They are rarely, if ever, actually a party to a regulatory process. We have actually, through consultation and development with proponents and industry peak bodies, developed over the years a range of ways to in effect contract Aboriginal people into agreements so that there are formal obligations to consult and develop management plans, et cetera. But that doesn't arise out of the Aboriginal Heritage Act. That's arisen out of negotiating processes outside of the system.

The other issue that stands in the way of those two recommendations being feasible at this time is that the administrative burden on the Department of Aboriginal Affairs, which is the relevant authority for managing heritage in WA, is completely unmanageable and, by their admission, dysfunctional, and thereby provides no comfort or trust for traditional owners to rely on such processes, such as implementing a due diligence regime, for example, or the lodgment of surveys, consultants' reports.

I think the two recommendations allow us to flesh out those points. For example, with the lodging of all surveys with the relevant authority, we can understand the rationale behind that and the concern for proponents that country is sometimes surveyed more than once because reports are either unreliable, dated or they have no access to them. However, the lodgment of a consultant's report for most relevant Aboriginal people that are custodians of heritage sites would not provide the relevant or adequate comfort that those sites will be protected and managed into the future, largely because they're not party to the development of that report. They often won't see the report before it's lodged with the authority and they will have no guarantee of how that report is used in the approvals process into the future.

This is largely due to the way that section 18 applications operate under the act. I'll keep coming back to it but I think while there are these constructive suggestions of ways to improve administrative processes and Aboriginal heritage registers, there's this fundamental problem that undermines that working, and that is the way that the section 18 regime works in WA.

To paint a scenario, say we implemented this recommendation where consultant reports were lodged with the Department of Aboriginal Affairs, and the same applies now under the Heritage Register, proponents are able to go to the register, see whether a site is registered over the area that they wish to operate, and then lodge an application under section 18 for permission to validly disturb or

destroy that site. Relevant Aboriginal people are never a party to that process, so that application goes to the Aboriginal Cultural Material Committee, which makes recommendations to the minister as to whether that section 18 should be granted. If, for example, that application is denied to the proponent, then the proponent has the right to appeal that decision. However, the Aboriginal informant that lodged the site is not a party to that process, therefore they don't have any appeal rights because they're not actually part of the application in any way.

Rather than thinking that this needs a revolutionary reform, I think what needs to happen is fairly basic and standard procedural practices whereby there's an automatic mechanism to notify the relevant Aboriginal party once a section 18 is lodged. Currently, unless there is an agreement negotiated that specifies that a proponent must notify or consult prior to lodging a section 18 report, our officers are required to monitor the ACMC's timetables or meeting agendas to see when issues are coming up.

MR WOODS: Are you familiar with the Queensland arrangement of agreements rather than - - -

DR COLEGATE (YMAC): Only to the extent that I read about it in the report.

MR WOODS: We'd be interested in your views on that in any subsequent written submission.

DR COLEGATE (YMAC): Just a minor comment, and I think we raised this with Jonathan in another context, but one of the comments we were going to make about the report is that in Western Australia there is agreement-making about how heritage will be managed in WA. It arises out of the native title process, not the heritage process, and that's the only way that we can actually create our own mechanisms to trigger that notification and consultation.

MR WOODS: Which is why the rep bodies process.

DR COLEGATE (YMAC): I'd also add that this is the reason, this is the disincentive to register sites on the Aboriginal Heritage Register. I know in the WA government submission the singular reason was that it was all about money and fees and traditional owners and native title rep bodies' revenue raising. However, really we would come back and say no, the disincentive lies in the marginalisation of relevant Aboriginal parties under the regime to have any say over what happens once that site is lodged. Going back to what Wayne Bergmann spoke of earlier in the day, until there is greater certainty for Aboriginal people, the certainty for proponents will also be very high.

MR MEEGAN (YMAC): Can I just make a comment about that as well? When I

look at the agreement-making - look, I'm sorry. I didn't know I was coming in until 11.45 today, so I wasn't aware of the Queensland system, but in relation to what's happened, let's say in the Pilbara as an example, there has been in effect a private regulatory system set up between some of those groups and Rio, where in the negotiated agreements over seven to 10 years there have been very detailed heritage regimes put in place. So the traditional owners had a say in that and they've come to an agreement in relation to certain areas that we have agreed will be excluded from their operations. In other areas there will be certain rights given in relation to objecting to those, and other places where the traditional owners, by virtue of the fact that they're entering into an agreement and agreeing to take benefits, will not object to the mining operations.

So in simple terms we say to the traditional owners, "What you're giving up and what you're getting in response for that," and as a result of those sorts of processes where those agreements are made, what we're finding is - and Frida can attest to this - that the traditional owners are satisfied that they've been properly consulted. They've come up with a workable system, and then in response to that, when the heritage surveys are required or there's monitoring required, all those sorts of things, they're very engaged in that process.

MR WOODS: It would be really, really helpful if you could nail that point with examples of where they are consulted at the front end and they're party to the process, that they can then come up with workable solutions with the industry, rather than be seen as part of a problem of getting onto country. So to the extent you're able to elaborate on that and draw on demonstrations of where that's had good effect, that would be very, very helpful.

MR MEEGAN (YMAC): I can certainly arrange for that to happen. Just by way of sort of a comparison, in late 2011 we were contacted by one of the agencies within the state government and they said that they wanted us to agree to a heritage regime which was far less than even the original standard heritage agreement, and our response to that was to say, "Look, we do have a preferred heritage agreement and we'd like to negotiate with you about that." So the response was to say, "We're going to go off and just engage our own consultant and they will contact traditional owners themselves," so that lack of consultation in that process.

Because the Aboriginal Heritage Act in the way it's set up allowed them to speak to a person that wasn't necessarily part of those people that actually spoke for country, it was very unsatisfactory. So what will happen there, I suspect, is that later down the track there could be other processes that would be brought in because a native title party or the people that speak for the country through that native title group will be heard. I think it was, you know, a false saving.

DR COLEGATE (YMAC): I think it's largely underestimated how important the

protection of heritage is to traditional owners and other Aboriginal people in this country. Wayne Bergmann was talking about the conflict within community that arises when heritage sites are either accidentally or through a bit of a rush disturbed. I think it's ignorant to suggest that this issue is solely about money. As a native title rep body, a large proportion of our lawyer's time in meetings is spent talking about heritage protection when there's a long list of other issues to address. I think the record needs to be set straight that this is a much more complicated nuanced issue than just about heritage surveys being a source of income for Aboriginal people.

MR WOODS: Wayne was offering to identify what are the actual costs of conducting surveys. Presumably you've got that same sort of information.

DR COLEGATE (YMAC): We've provided that in the submission already, actually.

MR WOODS: That's right, yes.

DR COLEGATE (YMAC): I would just say the same applies to a risk management strategy. Recently the Department of Aboriginal Affairs, then Indigenous Affairs, released a discussion paper with proposals to reform the heritage regime and part of it involved a system similar to this where sites would be assessed as low risk, medium risk, high risk. Again, the strongest objection we had to this system is that the relevant Aboriginal people were not written into this process and therefore it was all suggested that it would be done in-house within the department.

The inability of the department to handle its current administrative burden gives us very little comfort. That introduction of a new process where risk assessment over damage to Aboriginal heritage will be done internally within the department is, quite frankly, scary. I know that last week in the parliament the Minister for Aboriginal Affairs noted that there were over 6000 lodged sites waiting assessment by the ACMC, and I think this is where we share a frustration with resource companies that there's just not the resources being put into the administration of the Aboriginal Heritage Register. The ACMC is not well-equipped to deal with the volume of assessment that they need to get through and this all trickles down and creates these ongoing tensions between Aboriginal parties and industry.

MR MEEGAN (YMAC): Can I just briefly comment in relation to 5.2, if I can put my lawyer hat on for the moment. We're often told by the state government that heritage is quite different from native title, and I think Wayne has already spoken to you about it today, but the whole basis upon which a heritage agreement comes is under the Native Title Act. It is a future act. The whole basis upon which that has been successfully negotiated is when we represent the native title parties who are able to do that. As we've over the years conducted a great deal of research, almost

completely across the Pilbara, and are now conducting a regional approach across the Yamatji area, as an organisation we're becoming far more confident with those people that speak for country, so that gives a greater level of confidence.

That information, from a lawyer's perspective, is legally professionally privileged, so that information is not just speaking about the survey but is indicative of that person's right to speak for country, which is part of a native title application. So from a lawyer's perspective who's representing a native title group, the concern that information in a heritage survey which is relevant to a native title claim is lodged with the state government, who is the principal respondent to native title proceedings, has real concerns as well as to how that information could be used. The way that that's managed often in a private negotiation is in relation to agreements that provide for surveys to be done and the appropriate release of information, subject to the instructions of a group, or information provided to a mining company about where it can and cannot go, to facilitate the exploration and prospecting of country.

MR WOODS: We'd appreciate your advice on how to operationalise this but what we're trying to do is have a situation where there is a progressive development of understanding and the layer upon layer of information is added so that there is greater certainty for explorers, and ultimately other users of land, as to where activity can and can't operate; much the same as sort of the geological surveys and the environmental surveys. I understand legal privilege issues but we've got to find that constructive way of progressively enhancing understanding by all parties of where sites are that need to be avoided and where others are that there is greater certainty of being able to undertake actions.

MR COPPEL: On that point can I ask, in relation to 5.2, whether the issues on the first bullet point, which is lodging heritage surveys, or on the second, which is aimed at sort of building up some form of cultural map of Indigenous heritage, are a bit akin to pre-competitive geoscience data, or is it both? Is there a distinction between the heritage survey lodging and building up some form of mapping of Indigenous heritage that needs to be drawn here?

MR MEEGAN (YMAC): There is a difference. There is certainly information in a heritage survey which is, of its nature, certainly very confidential. In terms of the information about what is a site, if I can just generally use that expression, that is obviously the culmination of that work. What we find in relation to - are two things; the progressive nature of the understanding of that information about where a mining company could and couldn't go, and then the understanding by the mining company as to what is to be a place to keep away from.

Our experience is that's happening now through relationship, so where agreements are reached with mining companies and have been reached - and Frida might be able to talk more about this - we are already in a process with some of these

resource companies where, as a result of the regimes that we've set up, we are able to come back when a new area is to be explored and have monitors or senior people talk about whether or not there is the need to conduct a heritage survey.

MR WOODS: I can understand it in the case of mining where there is a long-term relationship, but in an exploration situation where it might be a five-year or six-year tenement, the next explorer who comes through - it would be desirable to try and limit the amount of new information that they are required to generate. So I understand the relationship-building but it applies more in the case of a long-term relationship with a mining company than it does with an exploration company, which may be for a very limited period.

DR COLEGATE (YMAC): I think one of the key problems is that there is actually no obligation at the moment for the next explorer to enter into an agreement setting out how that would proceed, and that's the problem, so there's a gap in the regulatory - - -

MR WOODS: If you can resolve that thing we can - - -

DR COLEGATE (YMAC): There's a gap there.

MR WOODS: Yes.

DR COLEGATE (YMAC): The act also doesn't specify a survey needs to be done. It needs to be done so you actually have the information so you don't breach the act, but again it's that silence in the act about fair process, balancing these competing interests, I think, that leads to a lot of the feelings of frustration and tension.

MR WOODS: Other points?

MS BLOM (YMAC): I guess my experience from the ground is that we need to think about this also in terms of the recommendations that come out of reports from heritage surveys. So if you imagine consultation happening in your neighbourhood, the recommendations you would give on somebody building a road next to your house, a mine pit next to your house, or a rail line or a waste dump, it would probably be very different. You might agree to that road because of certain circumstances. Imagine this then: these people live on country. They don't only live in the cities, they also live in communities where these things are happening very close to them.

So I guess that taking you back also to look at - it is recommendation oriented on surveys and I think that also ties into resource companies not understanding why you need a new survey for a different activity. It will have very different impacts

and traditional owners are well aware of the different impacts on the environment that will lead to - you know, significant waterholes that hold cultural significance. I think it ties into understanding that process that has been put in place through agreements and how that will then also be very separate from a cultural mapping of country, because those tie in very specific ethnographic values, rather than perhaps archaeological values or other values considered sites under the act. Yes, I definitely see those as very separate issues.

MR WOODS: I don't think anyone is disputing that if it's a totally different form of activity and has a different impact that that needs approval in its own right. It's just a matter of trying to limit the amount of rediscovery that needs to occur for similar events. It's just trying to narrow down what's required, not to try and assume that an approval for an aerial survey will be as good as putting in tracks and dropping a well here and there, at the extreme.

DR COLEGATE (YMAC): Again, I think that comes back to a level of trust in the administrative kind of provisions around that.

MR WOODS: Yes. Other points?

DR COLEGATE (YMAC): No, I just had some conclusions to reiterate. I think overcoming a lot of the frustrations experienced by both the resource industry and Aboriginal parties could be achieved by formally writing-in Aboriginal parties to these regulatory approval processes so that they are parties with appeal rights, with rights to procedural fairness, and overall adopting a consultative rather than adversarial approach would be useful by the state. I note the contrast. AMEC noted that consultation and information had improved markedly between the state and industry and we're aware of that.

We are associate members of the Chamber of Minerals and Energy in Western Australia, and that's the key place that we receive information about government changes to process and policy relating to native title and Aboriginal heritage. They have a dedicated industry group that meets with senior bureaucrats within relevant departments dealing with Aboriginal heritage and native title. There's no equivalent for people working within native title representative bodies and heritage service providers. I think if this culture was to change we'd see a move away from short-term opportunities by all parties and a much more sustainable long-term view about how to manage and protect Aboriginal heritage in this state.

MR WOODS: And find solutions.

DR COLEGATE (YMAC): Yes.

MR MEEGAN (YMAC): Sorry, just to briefly add to that as well, and I think

Wayne has already spoken about the fact that the state government used to fund future act officers but they now don't. Just to give you a little bit of insight in relation to the fact that we've committed to funding future act officers out of the Commonwealth funding, because it is a future act, and there are processes that we've put in place, bearing in mind that there's a cost to the mining companies of coming to a meeting. There's costs about the toing and froing of instructions and those sorts of things, so we've actually tried to put in a whole range of processes where we actually get staged instructions from our clients so that the future act officers who are working in Perth don't have to go back to the group, because the biggest problem in native title is that you're representing a group sometimes of 500 to 1000 people and getting an instruction is a huge exercise, whereas if I was representing yourself it would be a relatively straightforward exercise.

So to avoid that we have these staged instructions so that the future act officers continue to work on and reach agreement on these matters without the need to go back to the client, or where there's perhaps a need for the mining company to have a communication with a working group, and again we try and have a smaller group and a large community that has authority to make decisions on heritage issues, rather than in some cases asking the mining company to contribute towards the full cost of the meeting we can slot in an hour. So we're really constantly trying to say, "What's fair here? What's appropriate to sort of strike that balance in terms of those things?" We largely find that even with the smaller explorers and prospectors we can find ways to come up with what is a system and agreement which does strike that balance and ultimately meets the needs of the traditional owners to look after country.

MR WOODS: Thank you. I appreciate that you've sort of come on short notice but it's been an excellent presentation and thank you for not only your cooperation and contributions earlier, but for today, and I do look forward to your rejoinder submission.

MR MEEGAN (YMAC): Thank you.

DR COLEGATE (YMAC): Thank you.

MR WOODS: Thank you very much. There being no other parties present, apart from staff of course, we will adjourn today's hearings and resume in Brisbane. Thank you.

AT 2.55 PM THE INQUIRY WAS ADJOURNED UNTIL
WEDNESDAY, 3 JULY 2013