Australian Government
Productivity Commission

PRODUCTIVITY COMMISSION

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

MR M. WOODS, Presiding Commissioner
MR J. COPPEL, Commissioner

TRANSCRIPT OF PROCEEDINGS

AT CANBERRA ON THURSDAY, 4 JULY 2013, AT 10.18 AM

Continued from 3/7/13 in Brisbane

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MR WOODS: I would like to welcome all to the Canberra 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 and 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. In developing the draft report, the commission conducted a number of industry visits and received 34 submissions. I'd like to express our thanks and those of the staff for the courtesy extended to us in our visits and deliberations so far and for the thoughtful contributions that so many have already made during the course of this inquiry.

These hearings represent the next stage of the inquiry and a final report will be presented to 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 made available on the public record. At the end of the scheduled hearings for today, I will provide an opportunity for any persons present to make an unscheduled presentation should they wish to do so. Are you able to hear at this stage, Melbourne?

MR KNOWLES (ACF): The volume is better, but I've missed the odd word. I think the bandwidth is probably letting us down a bit.

MR WOODS: Yes. Thank you. I would like to welcome to the hearings our first participants, the Australian Conservation Foundation. Could you please, each of you, for the record give your name, the organisation you represent and the position you hold.

MS ZOMER (ACF): Thank you. My name is Saffron Zomer. I'm the national liaison officer with the Australian Conservation Foundation.

MR KNOWLES (ACF): And my name is Tristan Knowles and I'm an economist with the Australian Conservation Foundation.

MR WOODS: Excellent. Thank you. We have recently received a document which will become your submission. Presumably you'll finish it off at the end of these hearings in case there are any matters that you wish to elaborate on or amend as a result of these hearings, so thank you for that. Do you have an opening statement that either of you may wish to make?

MS ZOMER (ACF): Just very briefly. I'm happy to leave the substance of what we have to submit as on the document that we've given you, but I just wanted to highlight for your information, because this isn't contained in the submission, that the subject of EPBC reform is one that's of key interest to a lot of environment

stakeholders and in particular around the subject of the possibility of devolvement of Commonwealth decision-making powers under the act to the states via bilateral agreements, as is currently allowed under the act. Is it possible for me to table an additional document with you?

MR WOODS: Indeed it is.

MS ZOMER (ACF): This is the main collaboration of environment NGOs on this subject. It goes under the name of the Places You Love alliance and it's currently 39 organisations, including national and local groups, all of whom are very active on this subject.

Just to give you a flavour of how significant this issue is to Australians who care about the environment, during the last sitting fortnight the environment minister received over 45,000 emails from concerned voters asking him to protect national parks under the EPBC Act and also to retain federal decision-making powers under the act and not devolve them to the states, and hundreds of members of parliament received phone calls into their electorate offices. So I'm here speaking for a fairly broad range of environment stakeholders.

Then I wanted to just flag that I wrote my section of this submission with a view to the issues paper, but I've since actually had a look at the overview of your draft report and I wanted to just draw your attention to a couple of places that we would have some issues with if they were to remain as they currently are in the final version.

One place that I wanted to flag for you was page 17 of the overview. You have a few paragraphs regarding crown land and I think I'd have further submissions to make in respect of that, but most importantly I wanted to draw your attention to page 22, where the draft report makes a recommendation that the previous COAG agenda on devolving the approval processes under the EPBC Act be returned to and a timetable for implementation set. That is an extremely problematic agenda from our perspective and I would like the opportunity to just fill you in on some of those issues.

MR WOODS: That would be good. Further introductory comments or - - -

MS ZOMER (ACF): Tristan, do you want to jump in?

MR KNOWLES (ACF): Do you have a copy of what I guess would be our draft submission?

MR WOODS: We do, yes.

MR KNOWLES (ACF): My opening statement would be just in relation to that, so I'm happy just to wait until you perhaps go through any questions or any points of clarity.

MR WOODS: Okay, thank you for that. Do you want to elaborate on your points first and then we'll go through the questioning?

MS ZOMER (ACF): Sure. I guess the most pertinent is to go directly to this question of whether it's in the nation's interests for COAG to expedite the accreditation of state and territory environment approval processes under the EPBC Act.

At the outset I would say that we're not necessarily opposed to harmonisation of regulatory reforms and we think that there are some efficiencies that could be found within the environment assessment process, but we would never support the devolvement of Commonwealth approval powers under the act being devolved to the states.

You will be aware that in 2012 at the end of the year SEWPaC actually released draft standards under which they were countenancing proceeding with these bilateral agreements and those were, according to our analysis, basically embodying the minimum requirements of the EPBC Act. The Australian Network of Environmental Defender's Offices has done a very good analysis of state and territory regulatory regimes and their conclusion was that there is not one state or territory which currently has a state based regulatory regime which could meet minimum standards under the EPBC Act, so if those bilateral agreements were to proceed in the short term, it could not be done without loss of environmental servants. That's a key concern for us.

What we see as being a critical first step if we're going to make greater use of bilateral assessments for the assessment section is that national standards should be codified that are objective and science based and rigorous so that states have a benchmark and they can see where they need to get their own regulatory regimes up to the mark so that they meet minimum EPB standards. Once they have done that, then there could be far greater use of assessment bilaterals which would deliver significant efficiencies.

We would still maintain, however, that these nine matters of national environment significance are of national significance and it's fitting that the national government, which is answerable to the people of Australia, has oversight of those matters. State governments have a troubling record of making decisions on some very potentially destructive developments that were prevented through the use of federal oversight powers and we would be very concerned at losing that protection into the future.

MR WOODS: And we did have the benefit of the Environmental Defender's Offices yesterday presenting evidence and they've also contributed a submission to this inquiry. Yes, they were indeed fully thorough in their analysis and it was very helpful.

MS ZOMER (ACF): They tend to be thorough.

MR WOODS: Yes.

MS ZOMER (ACF): They're lawyers.

MR WOODS: And it was a very helpful contribution to our inquiry.

MS ZOMER (ACF): I'm glad to hear that they were in here, yes.

MR WOODS: It is important that you do distinguish between assessments and approvals, because the wording of your submission as it currently stands talks about devolving Commonwealth decisions, and I was just wondering: decisions in relation to assessments or decisions in relation to approvals? I think that distinction is important. And I note your views on the possibility of assessments: provided there are appropriate guidelines and benchmarks, there are some efficiencies that can be achieved in that space.

Under the approvals issue, which clearly you've focused in on and have clear views on, is there a possibility of a process whereby the Commonwealth, while always retaining the ultimate power - I mean, it can't devolve its total responsibilities, but it can devolve processes that can be undertaken, so is it possible to contemplate a situation where the Commonwealth devolves to the states an approvals process and all of the lead-up to that approval while retaining some right to veto that approval? Is there a part-way house in this, or legally are we going to bind ourselves into problematic areas?

MS ZOMER (ACF): I think that's a tricky one to answer. My sense would be that that kind of part-way house that you're referring to is a so-called one stop shop, whereas a state agency coordinates the Commonwealth and state processes such that a business only interfaces with one agency and only sees one combined set of paperwork, one combined set of conditions, and receives the decision as one.

Where I think it's problematic is if you begin to accredit processes that wind up enabling states to make decisions without those being referred back to the Commonwealth, because I think a lot of the devil here is in the detail of how that would actually play out. How much oversight, how much direct involvement would the Commonwealth have? Would compliance from the states be carefully

monitored? How quickly could they call something back? Would there be retrospectivity? There are a lot of issues there that would need to be considered to ensure that that was environmentally robust and I would be uncomfortable with countenancing it without a very high level of assurance.

MR COPPEL: There was once a bilateral approval with respect to the Opera House in New South Wales. Were they the same issues there or was that something which is considered different from - - -

MS ZOMER (ACF): To be honest, I have not focused on that as it's not a critical endangered species hotspot. It just doesn't really fall within our remit that closely, so I can't really speak to that, but I could get back to you if you have an interest.

MR COPPEL: Could I just come back to the bilateral assessment process, because you mentioned that there were a number of areas where efficiencies could be gained and you noted the setting of national assessment standards.

MS ZOMER (ACF): Yes.

MR COPPEL: Do you have other examples where the assessment process could be improved through efficiency; efficiency gains could be made?

MS ZOMER (ACF): I think that's a key one. I actually have a short briefing paper on this that I could put in as an appendix to our submission if that would be of assistance. Another key area that's been highlighted to us in our conversation with business stakeholders is that in the order of 70 per cent of referrals under the EPBC Act at present do not actually require formal Commonwealth approval, so there's an enormous amount of work being done by business for no purpose and we see that there is a lot of opportunity extra-legislatively for the department to do a better job of providing guidelines, and any work that we can do to provide objective, science based, clear guidance for business so that they will know what kinds of activities are likely to require referral and what kinds are likely to be okay without engaging in the process at all, that would save an enormous amount of compliance work.

MR COPPEL: When a bilateral assessment is used, which is typically more for offshore at the moment, do you think there's scope for greater use of that tool?

MS ZOMER (ACF): Yes, I think there is. I think it's in the order of 30 per cent of matters currently under bilateral assessments, and if state regulatory regimes were improved, we would be comfortable with seeing that increase.

MR COPPEL: And the water trigger that was recently introduced explicitly excludes any sort of bilateral assessment. Is that something that you think should also be open to use through a bilateral assessment?

MS ZOMER (ACF): My understanding is it excludes the use of a bilateral approval. I don't know that it goes to assessment specifically. I'd have to go back to the wording of the legislation on that.

MR COPPEL: Okay. My understanding was it was the assessment.

MS ZOMER (ACF): You may be right.

MR COPPEL: Because there are no approval agreements.

MS ZOMER (ACF): Right. I would need to go back and double-check. I don't have the wording of the act in my mind.

MR COPPEL: Just to take this a bit further, the EPBC Act also has the option for strategic assessments, which is another tool which is providing the scope to look at cumulative impacts, but it also provides the scope to look at an area that may be subject to multiple developments or multiple exploration areas.

MS ZOMER (ACF): Yes.

MR COPPEL: And the assessment would be at the strategic assessment stage and then subsequent areas that are covered by the strategic assessment wouldn't be the subject of proposal-by-proposal assessments. What is your view on the use of the tool of strategic assessments and do you think it would also be a way of getting efficiency gains through that sort of mechanism?

MS ZOMER (ACF): As you've described it just then, we would be in support of more strategic assessments because of their advantages in terms of capturing cumulative impacts, which are particularly important when you're looking at a number of small developments, which is often the case in terms of exploration issues, particularly with CSG, and we also do see them as potentially delivering efficiency benefits for all stakeholders because they have the potential to put in place things like a traffic lights system so that it's just clear to everybody concerned that certain areas are no-go zones and certain areas will probably be okay for various types of development. That kind of information is very helpful for forward planning for businesses and then also gives environmental stakeholders confidence that the areas that they really care about are going to be looked after.

Our only concern with that is that, as you described it, there is a strategic assessment in place which provides overall guidance and assistance with forward planning, but there is also a case-by-case assessment of each development proposal as it comes up. Where we see problems arising is when you just use a strategic assessment as a tool for skipping that case-by-case assessment process, because that

also in our experience tends to provide a lot of additional useful information.

MR WOODS: So, sorry, on that you're arguing for both strategic assessments and case-by-case approvals.

MS ZOMER (ACF): Yes.

MR WOODS: But is there an asymmetric approach to this; that is, that if the strategic assessment at a high level identifies and probably, you might contemplate, quarantines certain areas, then you'd say, "Well, you can't do anything in those because the strategic assessment prohibits it," but if it's in an area that is not quarantined, then you still want a project-by-project? So is there an asymmetry happening there? Would you also allow a case-by-case, project-by-project examination in an area that a strategic assessment identified as of high conservation value but the actual project being contemplated may have low or minimal impact?

MS ZOMER (ACF): I guess the position I would start from is that the EPBC Act isn't currently doing a very good job at protecting our environmental values and every time we measure them we see most of those indicators of environmental health are regressing. One of the things that the act doesn't do very well is capture cumulative impacts, so the advantage of a strategic assessment primarily from our point of view is that it puts in place a desperately needed environmental protection that is currently lacking. That would be our primary motivation for encouraging it, and I think the advantage in terms of efficiency is that once you do put clear guidelines in place, it just, as I was saying before, provides a lot more up-front information for stakeholders to know "Is it worth progressing with a development proposal in this area? Perhaps not, because it's a high conservation value area that is potentially off limits."

MR COPPEL: But in those cases where there's a capacity for a certain degree of exploration that doesn't engender adverse environmental impacts and that strategic assessment has looked at, for instance, issues in relation to salinity and water and developed a plan for how to manage that issue, when a project then is within that strategic assessment, are you suggesting that they also in that assessment for the project cover the same issue that has been addressed in the strategic assessment? I can see issues that are not part of a project - - -

MS ZOMER (ACF): Yes.

MR COPPEL: I can see issues in a project that may not have been covered in the strategic assessment that would be picked up in a project assessment, but those that are already covered in a strategic assessment, I can't see why you would be doing it again.

MS ZOMER (ACF): Yes, and if we're talking about a direct duplication of having to produce the same material twice for two different purposes, then yes, we would never argue that that was necessary, the way you put it there. One thing that I would flag though is, if we're talking about certain types of land tenure, so for example a national park or parts of the reserve system, I would say that even if exploration activities are likely to be of low impact, we would still take the position that they should not be permitted in those areas, for the good reason that we've made a decision as a community that those areas are quarantined for conservation values, and if we're not going to allow extraction, there doesn't seem much point in allowing exploration.

MR COPPEL: Do you see value in the knowledge of the resource value that would potentially come from exploration?

MS ZOMER (ACF): I do, and I also have a caution about it, and the reason is that we are pretty good as a community at articulating the value of minerals deposits and economic ventures. We are not very good at articulating the value of natural systems and ecosystem services, and as soon as you begin to quantify one set of values without quantifying a second set of values, it's very hard to make a rigorous assessment of exactly where the public interest lies. So I would say if we're going to put more resources into getting that knowledge about what mineral resources are available under public lands, we should, as we make in our recommendations, put a lot more effort into environmental assessment so that we have information about what those natural assets are. I think that's really important.

MR KNOWLES (ACF): That's part of the role of Geoscience Australia in that pre-commercial stage of mineral exploration and understanding the resource base, so it's not as if we're completely in the dark here. That pre-commercial exploration already exists to identify, at a broad level, the potential resource base.

MR WOODS: Yes, although to some extent there's a difference between if an area is assessed for its various worth - whether it's its mineral resources, its landscape, its biodiversity, its heritage values - before an area is declared, and so one could argue that all of those matters should be on the table when a decision is made to declare an area, and then there's the second, where there is an existing declared area, whether it is still in the public interest to understand the full value of that area, and that's where you're exercising the caution in valuing, that the environmental attributes or heritage, or related, may not be seen to be of comparable value to the hard monetary value that can be attributed to a mineral deposit.

MS ZOMER (ACF): I think that is our experience in terms of how we talk about values.

MR WOODS: Can I just go a little bit back onto the strategic assessments. In

terms of the level of scientific knowledge and the duration of the value of an assessment - so if we've got a strategic assessment that has been made, say, 10 years ago but has a 30-year life, science has come some further way. Not only that; the understanding of the particular environments and the interactions and related issues continues to grow, and one would imagine that would happen ongoing. So is there some balance needed between a strategic assessment to give some level of broad certainty at a point in time? But what's the duration of that certainty? Is it a 10-year duration because the more surveying that is done, the more investment that is done, as you say, on environmental or other matters, the greater the scientific understanding of the interactions? So do we talk 10 years, do we talk 30 years? What does a strategic assessment look like?

MS ZOMER (ACF): In terms of the appropriate time frame to be looking at these things over, I have a feeling that it would depend a little bit on what types of issues were being looked at. For example, when I've heard scientists testifying to this issue around groundwater, the time frames can be extremely long in terms of how long it takes for us to see impacts materialise, but I don't have an answer for you in terms of what I think is the ideal time frame or how often a strategic assessment should be revisited. I would have to take that on notice.

MR WOODS: And I would not expect you to be able to give a definitive answer, but it is an issue that we have to consider if we're going to more actively promote strategic assessments, as to just what they constitute and what value by way of certainty to the various stakeholders, including explorers.

MS ZOMER (ACF): Yes. No, that makes sense to me and, as our information is better, it makes sense that sometimes those decisions might be revisited.

MR COPPEL: Earlier you correctly noted that exploration is an area which triggers much the EPBC Act, but you also mention the new water trigger, which is one I think that would change that situation, particularly in relation to gas exploration. What is your view on this new trigger?

MS ZOMER (ACF): We supported it. We think that water is obviously a matter of national strategic interest and, given the complexity of how groundwater and surface water systems interact and the long timescales at which these things generally move and the many stakeholders who are concerned, it seems appropriate to us that leadership at the federal level is where these types of activities should be regulated from.

MR COPPEL: They are some of the arguments that were put in favour of the trigger, but the EPBC Act is specifically aimed at protecting matters of national environmental significance. How does that trigger relate to improving matters of national environmental significance in your view?

MS ZOMER (ACF): I think what you're going to is that it's an industry-specific trigger. Is that a concern that - - -

MR COPPEL: That wasn't really where I was going, but there are sometimes issues that are raised in relation to the industry being covered by a particular piece of legislation rather than the activity that creates an impact, which is the purpose of the regulation, to address - - -

MS ZOMER (ACF): I'm not sure if I understand exactly what you're asking me to speak to, but my sense is that the EPBC Act is structured to give federal oversight of a number of matters that are perceived to be of national interest and I think that water fits into that set quite well. In the same way that migratory species cross jurisdictions and need to be handled at the federal level, water is an area that crosses a lot of jurisdictions and that involves a lot of stakeholders. I see a lot of parallels between the matters that were covered under the previous eight triggers and this new one. I don't see any inconsistency with adding that matter to the act, if that was what your question was getting to.

MR COPPEL: I was asking basically how it will improve. I mean, you've given an example of - - -

MS ZOMER (ACF): How will it improve? Well, we have all yet to see how this plays out in practice, and, obviously, how it actually winds up being implemented by the minister at the time is the main point, and that's another problem with the act; we really need much better objective standards so that there is less discretionary decision-making from the politicians of the day.

In our experience, when we've looked at how the state jurisdictions and the Commonwealth have approached questions of environmental protection over the years, we see a lot of issues at the state level, including pretty significant conflicts of interest and lack of capacity in terms of how they staff their departments. If you have a look at the auditor-general's reports on state environment departments, there are some fairly concerning reports made. There was one year in Victoria that the auditor-general found that the state department there, at its current rate of progress, would take 22 years to complete the required management statements for the listed species and communities in that state.

The point that I'm making is that the states are not well resourced. They have political issues that really prevent them from making arm's-length decisions, and on a matter as critical as water, we see federal checks and balances on those decisions as a huge benefit to the environment.

MR COPPEL: Okay.

MR WOODS: With the focus, though, being on the impact on water as distinct from the industry that is - - -

MS ZOMER (ACF): Well, the way that that legislation was framed, it picks out two industries which do have a very significant impact on water resources. I would argue that shale-type gas and other unconventional mining should be in there as well. They're not. But I think the point is that the industries that are targeted by that trigger do have significant impacts; there's no denying that.

MR WOODS: But the underlying issue is the impact on the water.

MS ZOMER (ACF): Yes.

MR WOODS: Not necessarily what industry classification generates that impact.

MS ZOMER (ACF): I'd agree with that.

MR WOODS: One of the matters of national environmental significance that we touch on in our report is the Commonwealth marine area which triggers but doesn't lead to controlled actions for the vast majority of activity, but it does pick up particularly sonar-related issues. Is there a practical way of developing operational guidelines that can remove a lot of unnecessary administrative activity?

MS ZOMER (ACF): I have to admit I am not an expert in marine, but my gut answer to that would be yes, provided that they were properly approached and met all of our requirements around regulatory reform as we outline in our submission.

MR WOODS: And I don't think anyone is disputing that, but it would just be nice to be able to develop again a greater certainty of what is and isn't a matter of concern and regulate those that are of concern but allow greater certainty to operators on other matters. The West Kimberley is another sort of example of a large spatial approach to - - -

MR KNOWLES (ACF): This goes partly to the heart of why there are some weaknesses in strategic assessments, because a strategic assessment might overlay a regional set of parameters for what development is appropriate for a particular region, but it's project-level risks and uncertainties that ultimately determine if there's an impact on a matter of national environmental significance, and this is where I guess things do get a bit tricky, because you do need to have that level of project detail to see whether or not there's adequate risk mitigation and strategies are in place.

MR WOODS: Yes, and I don't want to resort to anecdotal evidence, but I've

personally in a private capacity spent a fair amount of time through the West Kimberley.

MS ZOMER (ACF): Lucky you.

MR WOODS: It is a fascinating and wonderful area, but it is a very large area and there are already multiple land uses in that area, ranging from tourism to grazing to all sorts of other things, and one would hope that the regulation focuses on the potential damage of a particular activity and not have a sort of widespread approach that attributes something to an industry more generally.

MS ZOMER (ACF): If I may just add to that, though. I don't disagree with that statement in principle, but I would just note that in terms of minerals extraction as an industry as opposed to agriculture or tourism or anything else, there are much more serious concerns from our perspective in terms of the possibility of sequential land use and the possibility of sites being properly rehabilitated, and there are many examples.

You might be familiar with Mount Morgan, that overflowed in the recent Queensland floods. There is no corporate entity that's responsible for that environmental damage and it's the Queensland taxpayers who are left picking up the bill for it and, to be honest, that site may not be rehabilitatable, and there are, I don't know, some 50,000 orphan mine sites like that around the country in a similar situation. So I do think that the risks of permanent damage that is very significant and has lasting impacts on the environment and the communities who live around there is particularly concerning with respect to some industries over and above others.

MR WOODS: And it's the risks that we need to focus in on.

MR COPPEL: One theme that is present in the draft report is the importance of transparency, transparency in decisions, and we note that a number of decisions can be made at the ministerial level and suggest that one way to improve transparency would be to, when a decision is made, provide reasons for why that decision was taken. Is that something that you think would support better transparency?

MS ZOMER (ACF): ACF doesn't have a position on that particular point. My sense would be that, yes, more information for external stakeholders is always of assistance. I'd add to that that objective standards by which ministerial decisions are required to be made would also be of huge assistance and that robust third party rights so that concerned stakeholders can take action if reasons are not acceptable to them would be a very helpful addition as well.

MR COPPEL: So in relation to the latter, that would be in terms of some form of

merit based appeal or judicial appeal?

MS ZOMER (ACF): Yes, I think so.

MR COPPEL: Which of the two, or - - -

MS ZOMER (ACF): We haven't landed on a clear position in terms of what the ideal rights for third parties should be and I would probably defer to an EDO opinion on that. My concern is that there has to be a process by which decision-makers can be held accountable and they have to be based on genuine access to information and standing in the legal process in whatever form is appropriate.

MR WOODS: And EDO are coming back to us, so if you want to, flick that to them.

MS ZOMER (ACF): Okay, I will. Yes, I'll follow up with them for sure.

MR WOODS: We don't particularly care where it comes from, but - - -

MS ZOMER (ACF): Yes. It is a very important point though, so I'm glad that you raised it.

MR WOODS: And it's something that they're good at. You raise in your proposed submission the issue of uranium, so I might as well allow you to make some points on that for the purpose of the record today, but I note that you also cover it in some detail in your proposed submission; but here's an opportunity to go on the record with your views.

MS ZOMER (ACF): I don't have a great deal to add. I guess the main point of this section of the submission is just that uranium is a unique industry. It's one that the community is extremely concerned around and we've seen pretty concerted pressure from industry to dilute regulatory regimes around it and protections for environment and community.

We think that it needs to be treated, as it is, as a special case and that not only should the protections that are currently in place not be weakened but actually we need some very industry-specific investigations and potentially actions to make the way that we handle uranium mining and milling more ethical.

MR WOODS: And you argue that there needs to be greater scientific understanding of environmental matters. Better scientific understanding of the risks associated with exploration and mining and milling of uranium-related products may in fact provide greater comfort, if it's understood exactly what those risks are. I mean, it may go one way or the other, but you presumably also want to argue that we

need a proper scientific basis for this discussion rather than a broader-motive discussion.

MS ZOMER (ACF): Yes, and in our experience, when there is proper scientific inquiry that's evidence based into uranium, they generally fall on the side of greater precautions.

MR WOODS: We note that your proposed submission at this point only makes some brief reference to the draft that we put out in May, but it would certainly be very helpful to us if you used the material you've got here but focused it more explicitly on each of the recommendations, and also where you think that we don't have a recommendation or haven't fully explored a particular area and you consider that you would recommend to us a view, we'd greatly appreciate that as well.

MS ZOMER (ACF): Yes. What we wrote was mostly looking at the issues paper, but now I realise it would probably be more helpful if we go directly to the draft report, so we can adjust and resubmit that.

MR WOODS: Yes. I think most of the material is here. It's a matter of refocusing some of it, addressing explicit matters raised. Let me just check our draft recommendations to see if there are any others.

MS ZOMER (ACF): Is it possible to get a hard copy of that draft report, because it's awfully large to read on the screen.

MR WOODS: Absolutely. We can give you barrel-loads.

MR COPPEL: I've got a spare one here, actually.

MS ZOMER (ACF): Really? Too easy.

MR WOODS: Yes, we will flood you with them.

MS ZOMER (ACF): Beautiful.

MR WOODS: I think we've probably covered most of the matters raised here. We'll also be having SEWPaC come and give evidence during the day and we had, in WA, the Conservation Council.

MS ZOMER (ACF): If you are wrapping up, I know we haven't really taken much advantage of Tristan, who's suffering through the technology. I think Tristan did a very good job of doing this in the submission, but I'd like to have on the record today that we just feel like the whole dialogue that's been had in the public space around this question of EPBC regulation has been making much of the wrong issue, and I

just wondered if I could get Tristan to summarise our position here in terms of what the actual economic issue is and why this isn't really the place that we should be spending as much of our energy as we have been. Can I just get you to jump in, Tristan?

MR WOODS: Yes, the floor is yours.

MR KNOWLES (ACF): Thanks. I guess that was the basis of the work I did in ACF on this topic. It was just to look at the economic arguments used to sort of justify this investigation into non-financial barriers to minerals and petroleum exploration, but you only have to look at the submissions by industry themselves, such as the New South Wales Minerals Council submission. In that they say:

> It should be noted that financial barriers, including company funding, commodity prices, administrative costs and taxes will always be greater for mineral explorers than non-financial barriers.

I think what we're doing to an extent in this inquiry is attributing any perceived competitive disadvantage that exists for a number of reasons - economic, legal, social, environmental - to one sort of narrower set of issues, which is sort of environmental. If you boil them all down, it's largely environmental regulation and that is what this all comes down to.

It would have been nice if you guys had a remit to look more broadly at the competitive issues facing minerals and petroleum exploration because I think we're ignoring such a big part of what drives things here, and the conclusions we came to were that it's a highly cyclical activity, which anyone in the industry knows, and it's driven largely by commodity prices.

Yes, costs are going up, but the main reason they tend to be going up is because the resource base is declining - the great deposits that are sort of being found and are in production - and in recent years production in those areas has expanded because it's easier to expand in a brownfield site than it is in a greenfield site, which is exactly why Glencore, after acquiring Xstrata, has been divesting itself of a lot of the greenfield sites that Xstrata was pursuing. So I think that's rational, expected behaviour and I think I would be more surprised and worried about the economy if we were seeing increased greenfield exploration when we could more cheaply pursue brownfield exploration. So I'm not particularly concerned about that.

There's not much discussion about our competitive position vis-a-vis competitors, and you obviously have to look at particular minerals to do this. We talk broadly at sort of a minerals and petroleum level, but obviously when you're talking minerals in Australia it's largely sort of gold and base metals and you really have to look at who we're competing against.

Anyone in the industry knows this, but I think the public debate is very myopic and very fragmented in terms of what Australia can do ourselves, but I think this risks a bit of a race to the bottom as we compete against places like - I've listed them in the submission. We're competing for oil and gold supplies against Colombia, Ecuador, Central Africa, West Africa, China, and then places in Canada as well, and Alaska. Copper, you're looking at Latin America, PNG, Central Africa and China. Iron ore, you're looking at South Africa, India, Brazil. Coal, you're looking at Indonesia, Mongolia, Vietnam and South Africa. So we've got some pretty tough competitors out there from a cost perspective and from a regulatory perspective, but most places face other non-regulatory barriers in terms of the level of certainty, in terms of regulatory frameworks, and corruption and lack of information, lack of a skilled resource base.

So I just think that the debate is overly simplistic given the complexities of the global markets we're competing in, and when we look at the weight of the evidence we still don't find that there is a really big case to look at this issue. There's probably some tweaking around the edges and, as Saffron said, there are some efficiency gains to be had, but I think there's definitely making a mountain out of a molehill. I won't go into why that might be the case. I'm not sure why, but to some extent perhaps it reflects that it is one area that we can control, and we can't necessarily control a lot of the prices, but I just think we do risk attributing too much of our perceived lack of competitiveness to entirely the wrong variables.

That's the sum of, I guess, the economics that we did as our background brief as to what this issue was about, so I'm happy to talk about anything else in more detail, but that's the sum of it.

MR WOODS: Okay. I commend to you our draft report because we've said exactly those things in some detail, with considerable in-depth analysis, and that's what you would expect from a bunch of economists at the Productivity Commission. So I trust you will find our draft report good reading.

MR KNOWLES (ACF): Yes.

MR WOODS: It will align largely with the view that you express in terms of the situation facing the Australian resource industry; the cyclical nature; the high prices generating a lot of interest on brownfield exploration to prove up reserves while prices are high.

Interestingly, greenfields exploration has remained relatively stable; it's just that brownfields has increased significantly as people take the opportunity of the current cycle, and so the shares look as if there's some underlying significant change on greenfield but it has remained reasonably stable.

MR KNOWLES (ACF): Yes. It's actually the opposite for petroleum, because you're got a lot of offshore which is greenfield, and so it's actually the complete opposite for petroleum based on the figures that you've reported.

MR WOODS: Yes.

MR KNOWLES (ACF): I just think that, yes, it is more nuanced and, yes, I do have a copy of the draft report but I haven't had a chance to have a look at it yet, so I'll get stuck into that a bit and see if I can frame what I've written back into the context of any recommendations that follow from your economic discussion of this topic.

MR WOODS: Okay, that would be very helpful.

MR COPPEL: Thank you.

MR WOODS: Also I think as you read through the draft you will note that we're very keen to ensure that we preserve the underlying objective of regulation, whether it's heritage or environment or access to land and related matters. It's a matter of what is the efficiency and effectiveness with which that is done that is our concern during this inquiry, to try and protect the essence of the objectives but to remove any unnecessary or duplicative process.

MR KNOWLES (ACF): Yes, and I think that goes to the heart of what you're seeing with the resources sector. They are increasingly going to marginal deposits and that often means that there's an existing land use and so the opportunity cost of one land use over another is a bigger issue than it is when you're in Kalgoorlie in the middle of Western Australia. So, yes, I do think that a lot of these issues are long-term structural issues as well and we just have to be careful that we don't disregard, as you said, those other values that society places on resources and areas at the expense of one industry position.

MR WOODS: Very good. Do you have any other concluding points either of you wish to make?

MS ZOMER (ACF): No, I'm all good, thank you.

MR COPPEL: Thank you.

MR WOODS: Okay. We do look forward to you recrafting this a little. As I say, I think most of the material is there, but if you could just redirect it to the draft, and we look forward to your reaction to a reading of the draft.

MS ZOMER (ACF): And thank you very much for the opportunity. We appreciate that.

MR WOODS: You've been very helpful. Thank you very much. We will have a short adjournment. Our next participant is scheduled to arrive at 11.20. Thank you very much.

MR WOODS: Our next participant in these hearings is from the Australian Property Institute. Could you please for the record state your name, the organisation you are representing and the position you hold.

PROF SHEEHAN (API): My name is Prof John Sheehan. I am the chair of the Government Liaison Committee and past president of the New South Wales division of the Australian Property Institute. I am also deputy director of the Asia-Pacific Centre for Complex Real Property Rights at the University of Technology, Sydney. We should one day get a shorter name for that centre.

MR WOODS: Thank you for that. You've presented us with a wealth of material, can I say, and I've had the benefit of reading some of the papers that provide background, but I confess I haven't fully explored the various case law examples that you've also very kindly put on the public record; they're public documents anyway, but put on the record for the purpose of this inquiry. It does particularly raise a number of issues and you draw on the Halfpenny Investments v Sydney Gas Operations as one of the principal ones.

PROF SHEEHAN (API): Yes.

MR WOODS: We have been through that. I was particularly interested in looking at the access and compensation arrangement as determined in that, and the explanation leading up to that was, I thought, quite an instructive document. So thank you for doing that. Do you have an opening statement you wish to make?

PROF SHEEHAN (API): Yes. Thank you for that. I'll come back to the Halfpenny decision in a minute. As you probably know, it's one of the very few decisions that the courts have made in respect of compensation when there's the entry onto property as a result of, say, coal seam gas, for example.

At the outset, our interest as the institute in this particular inquiry was as a result of the publication of the draft report by the commission and in particular, as I said in some correspondence to the commission on 4 June, in respect of your draft recommendation where it was mentioned in respect of compensation that:

> State and territory governments should ensure that land-holders are informed that reasonable legal costs incurred by them in negotiating a land access agreement are compensable by explorers.

I think one of the issues is that certainly there is a need for the land-holders to have access to the payment of reasonable legal costs when they're negotiating with an explorer, who may ultimately become a producer, but we're particularly at the moment interested in this recommendation because, as you'll see - and I've only got one copy; it's been left with you. Actually, I think there are three bound copies there.

There's a report out by the Department of Finance and Services. It's a small bound copy. I think you've got your hand on it there. Yes. That's just only been released in the last couple of days and that's an inquiry into the Just Terms legislation in New South Wales.

As I said at the outset, my role as chair of the Government Liaison Committee in the institute has been to prepare for our submission to that particular inquiry and it runs, strangely enough, somewhat after your inquiry but, in an odd way, quite parallel because one of the issues that we have seen there is that there is a disconnect between some of the legislation in New South Wales - and forgive me; today I'll be mainly focusing on New South Wales legislation, but you could read it as very similar in the other states. There is a disconnect between the Land Acquisition (Just Terms Compensation) Act 1991 in New South Wales and some of the other legislation which impinges upon private property rights, and I'm thinking particularly of the Petroleum (Onshore) legislation, 1991, and also the Mining Act. There are a couple of other bits of legislation, but they're not salient to what we're talking about this morning.

I say a disconnect because it's interesting that the Environmental Planning and Assessment Act 1979 in New South Wales, which is the planning legislation, has a requirement there that where there is, for example, a rezoning of land to open space, it automatically triggers straight through to the Land Acquisition (Just Terms Compensation) Act for compensation, as does some of the other legislation such as pipeline legislation.

It is an anomaly, I think, that the two mining legislations, the Petroleum (Onshore) and the Mining Act in New South Wales, have their own criteria, and I have provided you there with copies of section 107 of the Petroleum (Onshore) Act just for your information as commissioners, to understand - and I'll take you particularly to section 109 in that "Part 11 Compensation" in the Petroleum (Onshore) Act, where it sort of sets out under subsection (1)(a) down to (f) the compensation protocols, I suppose you'd call them, that are set in place under section 109 for the assessment of compensation when there is exploration or even production on a property.

MR WOODS: Sorry, 109?

PROF SHEEHAN (API): 109 subsection (1)(a) down to (f).

MR WOODS: Thank you.

PROF SHEEHAN (API): I think it's worthwhile looking at that and then, as you mentioned before, the fact that the Halfpenny case - and in fact all of those cases that I've given you just for completeness, and there are not many cases. They evidence, I

think, an issue in relation to compensation when it's only what we call a partial taking. Pretty obviously there's no whole taking of a property for the purposes of either entry or production, but there's a long history in compensation assessment in all the six states, two territories and in the Commonwealth about the way in which compensation is dealt with when private property rights are affected by some form of commutation by the state, either indirectly through a third party like a mining explorer or whether it might be for some other purpose - building a railway or whatever.

What tends to happen is that over time, certainly going back over the last two or three hundred years, what's emerged is that the compensation provisions in those six states, two territories and the Commonwealth have become really quite expansive and they have recognised the fact that it isn't just the market value that might be affected of a property, it's a whole range of other issues which are part of the compensable rights that the landowner has.

In some respects I think the best example - I know you've been provided with a copy of it - is sections 54 through to 59 of the Land Acquisition (Just Terms Compensation) Act, and I think particularly if you'd look at 55(8)(f). That's under the Land Acquisition (Just Terms Compensation) Act.

It is very similar to what's in 109 of the Petroleum (Onshore) legislation, but the way in which those very few cases on coal seam gas have been dealt with shows, I think, a limitation. They're very nice people, I imagine, the mining wardens, but I would assume their expertise is in the area of mining and exploration and production. It's certainly not in an understanding of compensation.

I say that because in that particular case that you mentioned at the outset, the Halfpenny case, which was back in 2004, the chief mining warden made a comment on page 5, where he said:

> I do not interpret section 72 to mean that if there is any "improvement" upon the land which is owned by Halfpenny Investments that consequently there can be no exploration at all upon that parcel of land.

He goes on in that case to quite narrowly construe what is an improvement, and I think it's quite fascinating, because I obtained a copy of - again just New South Wales legislation; I'll hand this up to you for your own information. Under the Valuation of Land Act 1916, which is the rating and taxing legislation in New South Wales, under the Definitions section, which is section 4, it defines "land improvements", and if you would bear with me for a minute.

Keeping in mind that the chief mining warden so narrowly construed "improvements", in the subsidiary legislation in New South Wales this is how they

define "land improvements": "clearing of land" under subsection (a); "the picking up and removal of stone" in (b); "improvement of soil fertility or the structure of the soil" under (c); "restoration or improvement of land", on the surface, "by excavation, filling, grading or levelling". It goes on. (d) talks about other forms of levelling associated with the erection of building structures, "carrying out of any work" - the word important there is "any" - or "the operations of any mine or extractive industry"; "the reclamation of land by draining" and "underground drains".

That of course is an offset against the calculation of the statutory land value for rating purposes. I contrast that - and I'd hand it up to you if you want to have it just for your own records - with the way in which the chief mining warden in Halfpenny very narrowly construed "improvements" and, as a result of that, he came down to the decision, as you will see in there, where he said, "Well, look, it's really just the surface of the wells themselves" - or let's say the exploration well - and he says on page 6 there, in the second main paragraph, that this area will simply be regarded as being "that site consisting of 25 metres by 25 metres", regarding that as the "workover area", and then he goes on to give some very narrow calculations in relation to the widths of roads. That's under page 6 in the judgment.

I think you've got to contrast that with the way in which under the Land Acquisition (Just Terms Compensation) Act, for the purposes of rating and taxing, improvements are regarded quite widely. I think that probably explains why that and the other judgments are so narrow in the way that they interpret compensation due to the landowner. It simply comes down to the fact that you've got the surface area of the well and maybe some subsidiary land around it calculated in square metres, and just the length of the road, say from a public road, onto it.

That really is in contrast to the way in which compensation generally is put. I think it's also a failing in the way in which the judgments as have occurred by the various mining wardens over the years - in the way in which they interpret compensation, because what they're doing is saying it's just the surface of the land occupied for the well, and also the accessways.

In a hypothetical example - and it reflects into the way in which the Land Acquisition (Just Terms Compensation) Act is written - they talk about such things as, under 55(c), "any loss attributable to severance". If I said to you let's imagine theoretically a small rural property that might have, say, five wells on it and you might have to have, say, five roads constructed to get to the well, and if it moves to production you might have to have, say, a gas line running through, one of the fascinating things there would be that fairly obviously, if it's an integrated property that's being used for some agricultural purpose, having those five roads, imagining five separate roads to five wells, means that the bits between the V's are now no longer useful and they're going to be significantly degraded in terms of the utility for whatever that enterprise was being used for previously.

That point I think is missed in all of the judgments. That's not necessarily a criticism that we're making, as the institute, of the mining wardens. It's simply the fact of, as I said at the outset, the Petroleum (Onshore) legislation and the mining legislation in New South Wales, and indeed, generally speaking, in all of the states. It comes from another era and it hasn't sort of developed as has compensation law in the broader community in terms of the impact upon private property rights.

As I said in our letter originally to Melissa Edwards in your commission on 4 June there, we believe, particularly in the case of New South Wales - and that's the submission that we have made to the Just Terms review there - that there need to be amendments made to the New South Wales Petroleum (Onshore) legislation and the mining legislation to reflect what is set out in sections 54, 55 and particularly 59 of the Land Acquisition (Just Terms Compensation) Act.

You might well ask me why is the institute saying that. Well, it is a mismatch. Obviously under sections 55 and onwards in the land acquisition legislation, the compensation is more fulsome and it reflects the reality of what the disadvantage is that the private property owner suffers when there is an activity on their property which is only what's called a partial taking.

One of the other issues of course which particularly drew our attention, with respect, to the commission's draft recommendation 4.2 is the fact that it only refers to adequate access to funding for "reasonable legal costs". As I said, with great respect to the commission - and it's probably to our fault that we hadn't made a submission prior to you doing your draft report - I think it's fairly obvious when you look at the Land Acquisition (Just Terms Compensation) Act that it reflects under section 59 the sort of costs which a private landowner has to deal with when he's encountering a body such as, say, an acquiring authority, or even a mining company that's very experienced in creating these sorts of agreements, remembering that under the legislation that the landowner can't lock the gate. The landowner has an obligation to enter into meaningful negotiations with the explorer and if it isn't successful it then, of course, goes to some form of arbitration, which of course in these cases in the past has been the mining wardens.

I draw particularly your attention to 59(b) - or, sorry, 59(a) talks about legal costs, which reflects your recommendation in your draft 4.2 recommendation, but it also says, for example, "valuation fees", and other financial costs under (c).

Ordinarily, when a property is being acquired, even partially, what tends to happen in all the six states, two territories and the Commonwealth: not only is the legal cost met by the acquiring authority - or assume the third party; miner - what also happens is that the other sorts of professional advice that the landowner has to receive are also met.

Obviously it's slightly the other way around. It tends to be more often than not that a valuer is called in - a member of our institute - to advise on what is the impact upon that property. There is a small, somewhat elite group of members of the institute who are skilled in compensation assessment. They do a lot of expert evidence. I, for example, was a commissioner in the Land and Environment Court for a couple of years doing those sorts of judgments on compensation. They're a particular skill part of the institute's membership and they're the people who are ordinarily engaged by a landowner when he or she receives a note that there's going to be something occurring on their property which they can't resist, and of course they might receive, for example, hydrological advice about the impact on an aquifer, which is salient to what we're probably talking about here. Also they might receive advice about, for example, contamination - all sorts of issues - before they then ultimately end up in the hands of their solicitor, who gives them some legal advice about the technicalities of the legislation and then puts forward a fulsome claim for compensation. As I said, it reflects what is in that particular part: 55, and particularly 59 of the Land Acquisition (Just Terms Compensation) Act.

So I foreshadow that in the submission that we're doing in the institute at the moment in relation to the New South Wales land acquisition legislation we will be putting forward more fully our views in relation to compensation being harmonised with the land acquisition legislation, particularly the harmonisation under section 109 of the Petroleum (Onshore) Act.

I think the other problem, if you didn't mind me saying also, is that it's very rare, certainly amongst the six forums that I've conducted for the institute in preparation for our submission to the New South Wales government on that review - we've certainly become aware of the fact that it is rare for a landowner to deal with the state or a third party using legislation to enter upon their property and to do things. It's extremely rare, and so consequently it's something that they're not set up to do automatically.

They might be a shopkeeper, they might be a farmer, they could be anyone - someone occupying, living, in a house, or even a tenant - and so it's obviously disturbing. It's something that tends to sort of be "Well, what am I going to do? How do I stand up to that? I might want it to happen, but if it's going to happen, well, I obviously have to get proper advice because the legislation sets out the compensation."

I mention that particularly about the rarity of it because that's been recognised by the compensation case law over many years, for the very reason that it actually states in the Land Acquisition (Just Terms Compensation) Act that one of the issues is solatium, and I take you to section 60 of the Land Acquisition (Just Terms Compensation) Act, because the case law that created solatium is that at the end of

the day we can do all the calculations we want in terms of all those heads of compensation, it's still the fact that the landowner is being disturbed by the commutation of all or part of their rights, and in the case law you see references to "imponderable losses", "disturbance" and things like that, which can't be calculated, and they simply allow for the principal place of residence some - I think it's up to $25,000 the presiding judge can decide is an appropriate payment. So we have all this list, in a formulaic manner I suppose, of the compensation that's set out and then finally we get down to the fact that on top of everything else it is a compulsory acquisition. You cannot resist the state or the third party using that statute, and so on top of that there is this extra payment. That certainly isn't reflected in the coal seam gas decisions. There is this very, very narrow construction.

It's been suggested to me that that is for one of two reasons. Either the mining wardens over the years have not been aware of the way in which compensation legislation has developed in the six states, two territories and the Commonwealth - that's one view - or another one could be that they have chosen to only look at a very mechanistic way of looking at the compensation, because the other bits under, for example, section 109 are not easy things.

If you're not skilled in the area of compensation assessment, to look at things like, say, subsection (c) there, "by severance of land from other land of the land-holder", it is an area which is so specialised that even some members of our institute who are registered valuers wouldn't touch it, because getting involved into severance compensation is very difficult. You have to look at the property, look at the impact upon its utility and decide what the impact of that might be on the overall value, and hence a claim for compensation under subsection (c). I apologise for being longwinded, but I wanted to take you through all of that.

MR WOODS: No, carry on. I'm jotting down the questions.

PROF SHEEHAN (API): That's the reason why we're here today, because I know that it is primarily about a submission we're putting into the New South Wales government on the review of their legislation, but in fairness - and I'm not taking a state's view here - the New South Wales legislation came out of the Public Works Act 1912, out of the original colonies' legislations prior to the creation of the Commonwealth of Australia in 1901, so in some ways the Land Acquisition (Just Terms Compensation) Act in New South Wales really has the longest genealogy, I suppose, of any, and in some respects it could be argued that's why a lot of the case law coming out of my old court, the Land and Environment Court, has been regarded as somewhat of a benchmark for the other jurisdictions, and in fact even around the world. Thank you.

MR WOODS: Thank you very much. We do appreciate the amount of material that you've put before us.

PROF SHEEHAN (API): It's my pleasure.

MR WOODS: If I could pick up some of the questions. I'm wondering if some of the debate is more about the competence of the authorities in relation to determining compensation rather than the construction of the law.

If we start with severance, under the Land Acquisition (Just Terms Compensation) Act, section 55(c), we talk about "any loss attributable to severance" and then that is further developed in section 58, which then provides a definition of "loss attributable to severance". But then when we look to 109(1)(c) in the Petroleum (Onshore) Act, we find the cause "by severance of land from other land of the land-holder". So is the issue of severance one of the Petroleum (Onshore) Act being deficient or is it a matter of the authorities who administer the act and to whom appeals can be directed not being skilled in understanding the issue of severance?

PROF SHEEHAN (API): I agree with the second part of it. The legislation is written correctly. In fact, you're quite right. Originally when I looked at this, I thought to myself, "Well, gee whiz, section 109 subsection (1)(a) to (f) looks very, very much like I'm looking at 59 in the Land Acquisition (Just Terms Compensation) Act," but then you look at the way in which the cases have been decided and the mining wardens simply say, "Well, look, we're just going to look at the easy bit," which is going to be the area of the well and the area of the access roads and some of the things like that.

MR WOODS: Whereas in fact if the road cuts off a small triangle of the paddock, that's not included under the Warden's Court calculation.

PROF SHEEHAN (API): That's right.

MR WOODS: But it reduces its value.

PROF SHEEHAN (API): Exactly. I think that they are in the wrong place, and the very reason why the institute has taken the view that in our submission to the New South Wales government - I'm foreshadowing it going in at the end of next week - we will be saying, "Look, in fairness there's no reason. The property rights are the same whatever bit of legislation you're talking about, so the compensation should be the same too." So really what should happen is, the home for appeals and compensation should end up in the hands of the Land and Environment Court of New South Wales as the court of decision in relation to compensation. It's the wrong place in the mining wardens' courts.

MR WOODS: I think it would be helpful if in any subsequent correspondence to us you made clear what is the particular focus. I think that can apply in the case of

severance. You can demonstrate that the law is sufficient in both cases but the administration of the law comes from two different perspectives.

PROF SHEEHAN (API): Absolutely.

MR WOODS: There is a broader question in relation to whether we need those sections in the Petroleum (Onshore) Act or whether it could, by reference, direct itself to the sections of the Land Acquisition (Just Terms Compensation) Act, but we'll get to that.

PROF SHEEHAN (API): Can I just say too that in fact under the Environmental Planning and Assessment Act 1979 that's exactly what happens there. It leaves you under no - you cannot make a mistake, because when you look at land which is rezoned for open space and then no longer having a capability of private use, it triggers inverse compulsory acquisition and it says then that "This will be dealt with by the Land Acquisition (Just Terms Compensation) Act." It doesn't set a separate set of rules there, and other legislation also does the same. I'm picking up your point there.

MR WOODS: Yes.

PROF SHEEHAN (API): We will be arguing that that legislation should - you could even in fact remove that section completely and refer to the Land Acquisition (Just Terms Compensation) Act.

MR WOODS: And the benefit of that is that, as different acts get amended for different reasons at different times, they can start the same and diverge - - -

PROF SHEEHAN (API): Exactly.

MR WOODS: - - - and you find that in relation to harmonisation of acts amongst the states, if you do it by mirror legislation you have one act which is the principal act that retains its integrity, but if you have a range of acts that start the same in different states, they don't remain the same.

PROF SHEEHAN (API): I'd agree with that, and one of the other issues is that we have already foreshadowed in our first submission to the Department of Finance and Services, the New South Wales government, that - and last year, speaking to David Russell SC, the barrister who's chairing the review, I pointed out to him that from my perspective as a property rights person, it was a nonsense that, for example, Torrens is the same in Gol Gol on the New South Wales side of the Murray River, as it is in Mildura, as it is in the Riverland. "If you happen to be building a pipeline through those three jurisdictions," I said, "we're dealing with the same legal creature but the way in which the compensation is assessed in each of those states is just subtly

different," and one of the arguments that we have put forward is that we believe that there should be harmonisation in the six states in relation to the manner in which compensation is calculated.

MR WOODS: I'm wondering, when you're referring to solatium under section 60 of the Land Acquisition (Just Terms Compensation) Act whether you slightly oversold its benefits, because it does only relate to where a person is required to relocate their principal place of residence.

PROF SHEEHAN (API): Sure.

MR WOODS: So in the case of where they get to retain their principal place of residence but their land is affected, then this section has no merit and no applicability.

PROF SHEEHAN (API): That's right, but you will find that quite a lot of the rural properties are properties that people have as their principal place of residence, and also I suppose we're just not focusing on solatium, but I think the concern, which you picked up before correctly, with respect, is that the way in which the case law has developed over the years in the hands of the mining wardens' courts is that they have chosen for whatever reason to not deal with those other harder bits of the compensation question. I'm not casting aspersions on the mining wardens' capacity but what I am saying is, they're skilled obviously in mining areas but I don't expect them to have the level of skill that, say, Justice Biscoe in the Land and Environment Court had, who deals with primarily compensation matters.

MR WOODS: But just returning briefly to section 60, in most cases where the farmer is located as their principal place of residence on their property, they don't need to relocate that residence.

PROF SHEEHAN (API): No.

MR WOODS: The activity goes around the residence and in fact there are usually buffers that apply.

PROF SHEEHAN (API): True.

MR WOODS: But nonetheless. The next question that I'd welcome your views on is the difference between land acquisition in the sense of being acquired for another purpose for the long term, such as for road construction or to be taken over for an open-cut mine or whatever it might be, as distinct from the temporary disturbance that may come about, whether that temporary disturbance relates to exploration, which is the focus of this inquiry, and so that temporary disturbance may be a matter of days, weeks or months, or even a slightly more long-term but still temporary

disturbance such as production of gas from wells, but rehabilitation may occur in a 20-year or longer time frame. But let's focus on exploration because that's what this inquiry is about. Can the Land Acquisition (Just Terms Compensation) Act as currently constructed properly conceive of and address the issues of temporary alienation of land?

PROF SHEEHAN (API): Yes, simply, it does, assuming you're using a statutory power, because you're going to be forcing the landowner to yield, so there has to be some instrument created. It might be the forcing of a leasehold interest or a licence, whatever it might be, which then triggers compensation. It is as a result of a - inverted commas - "taking" of some whole or part of the property right, whatever it might be, and that then triggers, of course, compensation. There's no distinguishing in the act between temporary and permanent. As long as it's driven by what we call a commutation of a property right of some length, that's it.

MR WOODS: Case law demonstrates that they're able to sort of impute a rent for a period of three months or a year or whatever.

PROF SHEEHAN (API): Well, it's not quite as simple as that. I wish it was. What tends to happen is - if you don't mind, I'll just give a very short example.

MR WOODS: Please.

PROF SHEEHAN (API): A good example could be a permanent but very, very mild reduction of a person's property right. It might be a high-tension transmission line where you've got, say, five towers. Now, it's only an easement. The property right is still held, it's still freehold title, but what tends to happen is that the compensation for the surface of the land occupied, and maybe a certain curtilage around it where the tower is, is taken as 99.9 per cent of the freehold value, for obvious reasons, because it's going to have most likely a man-proof fence around it and the land has no utility any longer.

The interesting question is, of course, the area where you've got the transmission line wires running above. That's of course where the easement is, but it doesn't have an impact upon the utility of your land. You might well argue, "Well, that's just a smear on the title, a blot on the title."

MR WOODS: But you wouldn't put your house under it.

PROF SHEEHAN (API): You couldn't put a house under it because they won't allow you to put things like that.

MR WOODS: Yes.

PROF SHEEHAN (API): You might be able to put a swimming pool underneath it, but most of these properties are going to be in rural areas. More particularly, of course, they have to have an accessway along there for a four-wheel drive to check it, so you can't really plant a perennial crop there and you can't put any substantial buildings; you couldn't anyway. But the reality is that we have a sliding scale about that loss of utility.

If it can be shown that experience shows that the transmission line needs to be inspected maybe only once a year, there's a minimal impact upon the utility. However, there's a general view emerging, I think, amongst compensation assessors in our institute that you don't know when you're going to have a storm. I don't want to get into any argument about climate change, but certainly there seems to be evidence that the climate is becoming more unexpected, and so from the point of view of transmission line people, they might only expect to run a four-wheel drive along that to check the wires once a year, or run a helicopter up, but if you get a lot of storms unexpectedly, you might have them there two or three times a year and if you're going to be planting strawberries underneath it, well, you'd like to think carefully about that. So increasingly - I'm seeing it in both the work that I do and certainly in the past in some of the judgments - we're seeing a higher level of percentage loss of value of that property even though it's only a smear on the title; but it's the actual use of that land in terms of it being affected.

I'm coming back to your point there. You can see what's happening is that there's a greater reality, I think, that "Well, you've got something like a temporary utility of a property, say for 18 months, to put a coal seam gas exploratory well on the property," but as those two academic papers I left with you suggest, the geology tends to indicate in a lot of cases it's just a matter of proving up where the resource is, so they're not going to drill five wells, just simply "Oh, we might go and do that today." They do it because of a very sound reason and it's fairly likely that some of those wells will move to production.

The other reality is that in a lot of areas - and fairly sensibly - like transmission line constructors do, they prefer not to go where river flats and highly valuable agricultural land is. They will tend to go onto the slopes. They will tend to go into the areas where there will be less disturbance to the property. But there's a trick with that, because quite often you find out that you're then onto areas where, because you've got a slope, the soil is more friable, more easily damaged, and the question of restoration becomes extremely problematic, and in some cases once it's disturbed, because the soil may be so fragile on an angle, it's effectively lost its utility for many years.

MR WOODS: Can I just focus in just a little further under the Land Acquisition (Just Terms Compensation) Act in terms of temporary alienation of land or loss of utility of the land. An example outside of mining might be where there's a new

roadwork but that they want to establish a temporary depot, so they take over part of a paddock for 12 months and use that for their works vehicles and temporary buildings and the like, but they then rehabilitate the site. Is this act robust for those purposes?

PROF SHEEHAN (API): Yes.

MR WOODS: So they can actually calculate the period of time for - - -

PROF SHEEHAN (API): Yes.

MR WOODS: The example that you raised is still a more permanent alienation or reduction in use of the land.

PROF SHEEHAN (API): Of course.

MR WOODS: But there are examples where it is strictly of a temporary nature, with rehabilitation.

PROF SHEEHAN (API): Absolutely. I can give you an example there. You've chosen a perfect example, which is one I've used in teaching over the years in terms of compensation. I became aware of a property some years ago with a widening of the Princes Highway south of, I think, the Narooma area, where the Roads and Traffic Authority wanted to acquire, I can't remember, maybe five acres for a works depot, as you quite rightly said, and the example was given that the Roads and Traffic Authority entered into a lease for, I can't remember, maybe two years while they did the works there and the farmer negotiated what he thought was a reasonable price; he wasn't unhappy with the rental. But what it meant was that after two years, because there was tar mixed up on the property, there were steel shavings, the comment back was "It was effectively taken from me" because it became impossible to rehabilitate.

So rehabilitation is one of those issues that's now casting the mind a lot of compensation assessors, because it's not actually what occurs when they're building a transmission line, it's where the works depot is temporarily, because all of a sudden you find out that paddock has now got steel shavings all over it, and it may have phenols on it, for example, and there's only a limit to what you can do to stop contamination. It simply happens sometimes and therefore you've got to be very careful.

MR COPPEL: What about in relation to the use of the land and nuisance associated with that use, for instance in the context of drilling a well, so maybe light, noise, dust?

MR WOODS: Weeds.

MR COPPEL: Weeds. Are those areas that are picked up through the compensation act?

PROF SHEEHAN (API): They are. One of the phrases of course is, you will see under 55(d), "any loss attributable to disturbance" and that is related to such things as injurious affectation of the adjoining lands. A prime example, again to give a good example of that, would be where you might want to have a temporary sewerage facility on a property while they're upgrading something else and you might, for example, have a dairy farm and all of a sudden your milk ends up sort of chocolate milk for some reason, and so you've got a major problem there. So even though you've done nothing to the adjoining land, as a result of that activity, albeit only temporarily, it means that there's a significant loss and that's where losses attributable to disturbance come in.

A prime example would be where you've got, say, fumes coming from some sort of production plant which is going to be semi-permanent - I mean semi-permanent in the sense that it's only going to be there for three years - but you find out it's there for 10 years because there are delays in funding or whatever else. The Pacific Highways is a prime example where it's been subject to Commonwealth-state discussions about funding. If you happen to have a temporary works depot on some property, well, you don't know how long it's going to be there.

MR WOODS: There's also a distinction between the owner of the land, particularly in the rural environment, and in some cases the beneficial user of the land, who will be somebody who has taken a lease over it for the purpose of operating a farm. Again, are the rights of both parties properly protected under the Land Acquisition (Just Terms Compensation) Act and has this matter been raised under the Petroleum (Onshore) Act and found to be deficient?

PROF SHEEHAN (API): In the case of the Land Acquisition (Just Terms Compensation) Act, the test is an interest in land. It can be in the tenurial pyramid, because you've got freehold, down to just the licence, as long as it's a legal right, which doesn't necessarily have to be an exclusive right. I mean, you can have a licence for the same purpose over the same part of land. So that's fairly clear in there.

I notice in the Petroleum (Onshore) Act it speaks about the landowner, but in one of the cases, Australian Gas Light Company v O'Grady, which I know you've got there, the 1986 decision of the mining warden, 4 February 1986, there was a fascinating discussion by the mining warden where he indicated that there was a woman who was living in the property. He was an absentee landlord. He was the landowner, but it turned out that a Ms J. Burrell - this is the decision of the

Australian Gas Light Company v O'Grady and Burrell, 4 February 1986, Chief Mining Warden McMahon. There's a discussion in there about Ms J. Burrell, who was occupying, I assume, a residence on the property free of charge and given access to the benefits of the property in return for being, effectively, the unpaid manager of the property.

The mining warden didn't understand the fact that - well, he may have, because it didn't end up in somewhere like the Land and Environment Court, but he didn't understand that she actually had a compensable right, because under the Land Acquisition (Just Terms Compensation) Act she has an interest in the land. As long as she's seen to be doing something for financial benefit to the landowner, it creates an interest. I think one of the issues is, we know from basic contract law it has to be valuable consideration; not necessarily monetary consideration but consideration that has a monetary equivalent.

MR WOODS: So again the question there is, is that a deficiency of the Petroleum (Onshore) Act or is it a deficiency of those who are charged with undertaking functions under that act to fully comprehend what may constitute an interest in the land?

PROF SHEEHAN (API): The answer to your question is "both". There should be a clear statement, as there is in the Land Acquisition (Just Terms Compensation) Act, about an interest in land. That should be in the Petroleum (Onshore). Secondly, there should be - or it's not evident in the case law that they do understand the issue of property rights.

MR COPPEL: Can I bring you back to the draft recommendation 4.2.

PROF SHEEHAN (API): And a very nice recommendation it was too.

MR COPPEL: Thank you. It's referring to the legal costs associated with negotiating a land access agreement, and that land access agreement would then relate to compensation, among other things.

PROF SHEEHAN (API): Of course.

MR COPPEL: Bearing in mind what you've said this morning, is there anything in this particular recommendation that stands out as worthy of drawing to our particular attention in terms of how it's written here?

PROF SHEEHAN (API): Yes, there is.

MR WOODS: So would you be suggesting that what's involved in section 59 be migrated into that?

PROF SHEEHAN (API): Yes. You've pre-empted my comment. I wasn't being facetious saying it was a very nice recommendation. It is a nice recommendation in the sense that it's saying that - there are two salient parts, I think, of the commission's recommendation, with respect: that you're saying that there is "should ensure that landowners are informed" - that's nearly a mandatory thing there - "that reasonable legal costs incurred by them in negotiating land access agreement are compensable". So it's a statement of a mandatory responsibility upon the holder of the petroleum tenement - call them that - but secondly, of course, it should recognise that the legal costs are only part and parcel of those costs incurred by the landowner in trying to gain that balance.

In one of those papers you will read that there is an issue - I'll take you to it just for your own reference, for the record. It was the paper I sent to you by Peter Shannon entitled Coal Seam Gas Compensation Agreements, 31 March 2002. It was presented to the 50th annual Queensland Law Society Symposium.

MR WOODS: I read it with interest.

PROF SHEEHAN (API): He raises a point at page 9 where he says:

> ... a landowner who is completely unfamiliar with the industry, to protect their own interest and fend for themselves in dealing with a highly resourced, extensively experienced repeat player, with control of virtually all the relevant information a landowner needs and who can force entry anyway if the process fails. Thankfully a land-holder does now have the availability of legal assistance and access to accounting and valuation advice.

I know this is about the Queensland legislation, and I'm speaking specifically about New South Wales, but even in Shannon's paper there, he speaks about the fact that it's accounting advice, valuation advice. Again, coming back to your point, it's about the issue of, say, the impact of disturbance upon his agribusiness, for example. He can only know those things by getting accounting advice and knowing what the impact of, say, severance and disturbance might be for the period of time.

I think the other point is that it's also picking up that point in that other scholarly article I gave you, which was Fibbens, Mak and Williams, 2013, Coal Seam Gas Extraction. Fibbens, Mak and Williams make a point on - there's no pagination.

MR WOODS: No.

PROF SHEEHAN (API): Tricky. It has been published. It's the fifth page under

the heading Introduction to the Problem, and then it's a subheading Entry and Occupation: A Pragmatic View, the fifth paragraph. It talks there about this issue of gaining information about the length of occupancy and I think it's quite important when you read those two paragraphs, one starting "While not constituting an acquisition" and then "In reality", the next one there.

You can see the problem that the landowner faces, because we're dealing with a question of just how long the exploration might be, just how long will there be this activity occurring, and we know that there is always going to be uncertainty in relation to exploration activities, but in fairness, as the papers show there, there's certainly an understanding by the coal seam gas explorers that they would have a fairly significant understanding of the likelihood of a quantity of coal seam gas being there that they can utilise.

I mention that because if you go to the other paper - sorry to do this to you - Shannon's paper, he makes the point on page 18 which I think gets us to this issue. This is on page 18 of Shannon's paper. That's the Law Society one.

MR WOODS: Yes.

PROF SHEEHAN (API): Right down the end, he makes a point there about this issue of futurity. He says here that the issue of futurity and the assessment of damage has been dealt with in areas like tort and contract law and he quotes there from the decision of the High Court in Poseidon v Adelaide Petroleum. It was a High Court decision of 1994. He goes on to say there:

> The damages then will be ascertained by reference to the degree of probabilities or possibilities inherent in the plaintiff's succeeding had the plaintiff been given the chance with a contract promise.

What he's really saying there is that in the exercise of trying to understand what losses are being incurred by the landowner, you've got to recognise - which is coming in with Poseidon, the High Court case there, where it says, "Look, there's always going to a grey area and effectively what you do, you've got to defer," and the case law tells us that in the broader property conversation area: "You have to defer. There's a balance. You've got to bend towards the dispossessed owner," because of the lack of balance between the two bodies, the two parties.

MR WOODS: But is that largely arising through the attempt to create ex ante a lump sum of compensation that takes into account a range?

PROF SHEEHAN (API): Sure.

MR WOODS: Whereas in the case of alienation of land for the purpose of a gas

well, you could determine an annual rental sum and then for such time until the land is returned in an appropriate manner, that rental shall continue to be paid.

PROF SHEEHAN (API): Sure.

MR WOODS: But case law doesn't seem to provide - - -

PROF SHEEHAN (API): Not the mining courts.

MR WOODS: No.

PROF SHEEHAN (API): No, they don't. The other guidance, I suppose, if you can read it as a temporary occupancy, if you go to that entry on occupation, the pragmatic view, those paragraphs under Fibbens, Mak and Williams, there is a very, very interesting discussion there about the problem of just how long you may well be there in terms of the length of occupancy, and that was quite good there, because what they're saying is, "Look, the miner may only indicate they might be there for a few months, or maybe six months or 12 months," and they go on to say that although the actual term is hard to define, it's not really a temporary occupation of land, for all those issues I mentioned before.

Looking at it through the lens of the Land Acquisition (Just Terms Compensation) Act, that would be on the basis that the court would say, "Well, on balance there's going to be significantly more time spent where this land can't be utilised by the landowner," and that would be reflected in the compensation. It would be reflected in such things as the disturbance and the severance provisions.

MR WOODS: But is there sufficient case law under the Land Acquisition (Just Terms Compensation) Act that allows some confidence in the idea of determining an annual sum for the period indeterminate at the point ex ante?

PROF SHEEHAN (API): There have been a lot of cases over the years. For example, if I was being called in to give evidence on a matter, on behalf of the landowner I would obviously be gaining some expert mining advice about the likelihood of what would happen, how long would they be there, and then I would incorporate that in my compensation assessment, and that's the standard way in which it's done.

MR WOODS: But still to bring forward that assessment to a one-off payment ex ante? I'm talking about a progressive payment determined by the length.

PROF SHEEHAN (API): What tends to happen in the judgments that enter into the court, there is more often than not a capital sum paid - - -

MR WOODS: Yes, exactly.

PROF SHEEHAN (API): - - - which reflects the present value of that future rent.

MR WOODS: Sure, I understand that, but that in part is my concern: that in some of these cases where the period is very uncertain, there may be greater equity on both sides if it were possible to determine an annual sum that is payable for the duration.

PROF SHEEHAN (API): There is a problem. Yes, I can certainly recall some case law over many years - remember, there's a very large body of case law in the Land and Environment Court, but I can certainly recall some judgments where there's been an attempt to produce an ongoing rental, but it's not something in my experience the court is particularly comfortable with, because the capital - - -

MR WOODS: No, I understand that. They want to deal with it once and be done.

PROF SHEEHAN (API): Exactly, but I think the landowner also requires that - - -

MR WOODS: It creates a certainty.

PROF SHEEHAN (API): - - - because going back to court isn't a very good thing to do, and one of the problems in all of these judgments that you see in the Mining Warden's Court is that they say, "Well, the landowner can go back again," and I thought, "Whoa, hang on for a minute. He's not really wanting to do that," because if he goes to the Mining Warden's Court once and he's got, say, a barrister and a solicitor, we know what legal costs are.

MR WOODS: We do. In fact, we're doing an inquiry to access the justice system. That concludes my set of questions. Are there any matters that we haven't explored that you wish to raise?

PROF SHEEHAN (API): No, that's fine. I've left a copy with you there of the just-released paper, which is for your own information. I assume that you have in your commission records a copy of the General Purpose Standing Committee No 5 report by the Legislative Council on coal seam gas?

MR WOODS: I can't answer that off the top of my head.

PROF SHEEHAN (API): If you haven't - you may. But I've tagged there the relevant bits I have referred to a number of times.

MR WOODS: Excellent. Thank you.

PROF SHEEHAN (API): They look at other issues in coal seam gas. I'm only

interested in the compensation issue.

MR WOODS: Yes.

PROF SHEEHAN (API): Thank you very much.

MR WOODS: Thank you very much.

MR COPPEL: Thank you.

PROF SHEEHAN (API): My pleasure.

MR WOODS: We will adjourn until 1.20.

(Luncheon adjournment)

MR WOODS: We resume the Canberra hearings into the inquiry into mineral and energy resource exploration. I invite our next participants; if you could please each give your name and the organisation you are representing.

DR DRIPPS (SEWPaC): My name is Kimberley Dripps. I am deputy secretary within the Department of Sustainability, Environment, Water, Population and Communities.

MR KNUDSON (SEWPaC): My name is Dean Knudson. I am the first assistant secretary of environmental assessment and compliance within the same department.

MR WOODS: Excellent. Do you have an opening statement you wish to make?

DR DRIPPS (SEWPaC): Yes, thank you. The Australian government Department of Sustainability, Environment, Water, Population and Communities welcomes the opportunity to contribute to the inquiry. As the commission is aware, the department has portfolio responsibilities in administering the Environment Protection and Biodiversity Conservation Act. The EPBC Act is the Australian government's central piece of environment legislation and provides the legal framework to protect matters of national environmental significance, including nationally and internationally important flora, fauna, ecological communities, heritage places and Commonwealth marine areas.

The EPBC Act has also been amended in June 2013 to include a new matter of national environmental significance. This new matter provides protection for water resources in relation to coal seam gas and large coalmining development. The EPBC Act enables the Commonwealth to join with the states and territories in providing a national scheme of environment and heritage protection and biodiversity conservation within the context of ecologically sustainable development. The government is committed to environmental reform that delivers strong environmental outcomes and greater efficiency.

My representation to the commission today is made in the context of these commitments to improve the effectiveness and efficiency of national environmental law while maintaining the high environmental standards our community expects. The department prepared a submission to assist the commission with its inquiry. The submission included an overview of the mechanisms which streamline and improve the efficiency of assessment and approvals processes under the EPBC Act and some ongoing work in this area.

The department's submission indicated that the EPBC Act is unlikely to present a significant barrier to exploration, given that very few exploration activities require assessment under the EPBC Act. Only 13 of the 439 exploration referrals have required assessment and approval under the act since the act's commencement in

2000, and only one exploration activity was refused. It was determined by the minister as clearly unacceptable because it was proposed within and immediately adjacent to the Ningaloo coast World Heritage area and was proposed during the nesting and hatching period for loggerhead turtles.

Proponents are only required to refer proposed actions to the department where the action is likely to have a significant impact on a matter of national environmental significance. We do provide guidance on what constitutes significant impact but some proponents prefer to refer actions to the department to provide themselves with certainty and to demonstrate compliance with potentially relevant legislation. The majority of exploration referral decisions were made within the statutory time frame of 20 business days. As I've said previously, further assessment under the act is only required if it's determined that the action is likely to have a significant impact on a matter of national environmental significance.

MR WOODS: Thank you. You will have seen our draft report and I'd be pleased to discuss with you various of our recommendations. One refers to the Multiple Land Use Framework endorsed by the Standing Council on Energy and Resources and it intersects with your interests in terms of the proposal that when new national parks or conservation reserves are being examined for whether they should be so declared, it would be appropriate to understand the full suite of values of an area; so not only their biodiversity and their heritage values but also to understand whether there's any mineral wealth or tourism value and the like.

Do you have a view on whether that's currently done to the maximum extent appropriate, or whether there needs to be greater effort made to understand the full suite of values of an area before it is considered for declaration as a national park or conservation reserve or related area?

DR DRIPPS (SEWPaC): Yes. In starting that response I would say that the only land tenure that I'm aware of in Australia that prohibits exploration and mining activities is a World Heritage declaration. So Australia has 19 World Heritage areas and we can provide you with a list, but they're things like Kakadu and Ayers Rock and things like that.

MR WOODS: Yes, we understand those.

DR DRIPPS (SEWPaC): In the vast majority of other cases it's possible to extract resources in those areas, depending on an appropriate assessment of impact. We also have an intersection in this regard with areas of state law, so the states are responsible for determining the conservation status of land in terms of new national parks and things like that. That's not a Commonwealth responsibility.

MR WOODS: Commonwealth ministers may comment on that from time to time

though.

DR DRIPPS (SEWPaC): They may, yes, and they have recently, as you're well aware.

MR WOODS: Yes.

DR DRIPPS (SEWPaC): From a policy perspective, the declaration or assignation, if you like, of a conservation classification to a piece of land needs to be based on the science and the evidence that that land has particular conservation values. With regard to exploration and mining, from a policy perspective there are different levels of impact on environment from different kinds of activities. So there's a substantively different impact from open-cut longwall mining than there is from extraction of underground - certain types of underground.

So from that policy perspective it's perfectly possible for there to be coexistence or planning of an extractive activity as being a temporary land use. However, it's from a biological perspective easy for people to think that a couple of access tracks in, for example, an arrangement of coal seam gas wells is not likely to have a significant impact on the environment because the actual footprint is not very large. However, if you're dealing with consideration of creatures that need to be able to walk places but get themselves run over along the way, that kind of networked approach can be quite damaging.

MR WOODS: So your focus is on the impact of the actual proposed activity, rather than a sort of industry based classification of activities. Tourism might be acceptable but exploration or mining wouldn't be. So you're more focused on the impact of the particular activity proposed?

DR DRIPPS (SEWPaC): Yes.

MR WOODS: In which case, looking at the newly-announced water trigger, what's the rationale for focusing on and identifying two industries rather than on the impacts that any industry may have that could be detrimental to the underlying water aquifer or other water activity?

DR DRIPPS (SEWPaC): The water trigger came to pass in response to a very high level of community concern about the impacts of those industries on water resources and the fact that those impacts are very poorly understood. The response to that would have to be that the national partnership agreement that existed that required the referral of those projects to an independent expert scientific committee was not progressing with as much haste and speed as was expected by the parliament, and the parliament decided to make this new law in this case.

MR WOODS: But is it possible that other industries related, albeit - shale oil, et cetera - may have a similar impact on water aquifers but some industries are in, some industries are out, rather than focusing on is that particular activity likely to be detrimental to that?

DR DRIPPS (SEWPaC): I would suggest that the best summary of the likely impacts of the shale oil industry on the environment are probably included in the Prime Minister's Science, Engineering and Innovation Council report that's been recently prepared.

MR WOODS: Yes.

DR DRIPPS (SEWPaC): I'm not an expert on water impacts of those industries but they are different.

MR WOODS: I understand that. Thank you for that. Can I look at the issue of strategic assessments. To an extent the commission can see value in those, in that they give a broad level of certainty to proponents of activities in areas as to whether they are in an area of high conservation or heritage or other importance, or in an area that has been assessed as of lower importance or able to sustain more activity. Do you have a view on whether the strategic assessment approach should extend further, depending on where your answer comes out, as to how you reconcile issues of increasing knowledge about the particular ecosystems and greater scientific understanding of interactions, how that evolves over time, but strategic assessments have the ability to sort of create a level of certainty for a period, whether it's 10 years or 20 or 30 years. There are a range of issues in that space.

DR DRIPPS (SEWPaC): Yes. As you may be aware, we're about five years into the journey of strategic assessments and are being internationally recognised for the way in which Australia is undertaking these assessments because they just do, as you've indicated, a strategic overview of what's there and what activity may be permitted. They can also approve classes of actions for the life of the strategic assessment. So within the ones that we have done already, they provide EPBC approval, for example, for urban development activity in Melbourne, urban development activity in Sydney, irrigation development in Tasmania.

A couple of the ones that we have in the pipeline begin to foreshadow, if you like, the potential future application of that strategic assessment tool, and I draw three to your attention. One would be the Queensland coastal strategic assessment, which is covering the entire Great Barrier Reef World Heritage area property. The second set would the agreements that have been entered into with the private companies in the Pilbara in Western Australia, both BHP and Rio Tinto, for assessment of their iron ore and railway and, where necessary, port activities in the Pilbara, and the announcement by Minister Gray at the APPEA conference just

recently about the proposition to undertake a strategic approach with NOPSEMA.

They're all different in terms of their applicability. The Queensland strategic assessment is very much focused on what laws exist, how do those laws apply in particular places, and how do those laws protect the matters of national environmental significance to the same standard as would be the case under the EPBC Act if there was an individual assessment done. That's the model, if you like, of the Queensland assessment. They have a number of different development laws and associated policies that go with them. When we come to assess that project we will look at how those laws interact and run some case studies along the coast of particular applications in particular places that hopefully will demonstrate that they meet the required standards of the EPBC Act.

Should that be the case, then the Queensland government's program could be endorsed by the minister and particular classes of actions could be approved by the minister. So, for example, they may choose to put forward urban developments or linear infrastructure such as roads or, moving a little bit further into the future, maybe even port developments. Those things would then be approved under the EPBC Act and not require separate assessments. One of the things they will have to do as part of that process is identify some conservation priorities where offset funding will be directed to provide a trade-off, if you like, for the damage that's done in other areas of the property.

The approach being taken in the Pilbara strategic assessments is very much around both a geographic context in terms of which matters are likely to be impacted by the proposed projects, what offsetting frameworks might be compatible with the Western Australian land tenure system in the Pilbara, and how might communities be engaged in actively managing other parts of the Pilbara, apart from the pieces that are being actively mined, to preserve on balance the conservation values across the entire Pilbara.

We are also exploring the use of the strategic assessment tool with NOPSEMA to look at the manner in which they undertake their environmental management planning process. There are some challenges, as you would appreciate. The first challenge with NOPSEMA would be that the decision-making process, in many people's view, is different between what we do and what they do, even though they've both got the word "environment" in the title. Our decision-making process is very much should an extractive activity be put in a particular place, and their focus is very much on how would an extractive activity be managed once it was in a particular place. So there are some matters to work through with them.

The other challenge, from the perspective of the resource companies, is the timing of the NOPSEMA environmental management plans is much later in the process than is usually the case for an EPBC referral, so there needs to be

engagement with industry around the appropriateness of that timing and whether it gives the investment certainty that's necessary for projects in that context.

In terms of your second question about what happens over 20 years when we find five more threatened things along the way, or those kinds of things, there is embedded within any strategic assessment a piece that's about the identification of matters of national environmental significance, and there are also review processes that exist within them that allow them to respond to either identification of further matters or things that people are concerned about. We should probably provide you with some additional information from the Melbourne example of how the addition of an additional environmental ecological community has been handled, as an example of how that works.

MR WOODS: Excellent.

DR DRIPPS (SEWPaC): So I think there's tremendous potential in strategic assessments to do quite a lot more and even possibly to be used to accredit different laws that people might have in place.

MR WOODS: Do they have to be, in part, flexible documents to recognise changing knowledge and scientific projects?

DR DRIPPS (SEWPaC): They have to be able to be reviewed and renewed as appropriate, so they're not set in stone for 25 years, but they don't provide certainty for industry if they change every five minutes.

MR WOODS: No, and it's that balance that's of interest to us. In a related way, some groups within society are looking to strategic assessments to quarantine large areas. They're sort of wanting to take an asymmetric approach to it, that if it's a quarantined area then no activity can be permitted in it; if it's not a quarantined area then there should be project-by-project assessment as to whether it will create an impact that is unacceptable, but clearly that's not the perception that you come with, with strategic assessments.

DR DRIPPS (SEWPaC): No, that's not the way that the act is able to operate and it's not the way we have administered it.

MR WOODS: There are certainly groups who would encourage that approach, but it's not the basis of a report.

DR DRIPPS (SEWPaC): And that's the approach that's used in Europe. There's a strategic environmental assessment and then a case-by-case assessment and approval, which seems a bit pointless really.

MR COPPEL: And the way you would see this operating in an area where there is a strategic assessment that has covered particular types of impacts - say, for example, in relation to water use for drilling a bore - that the assessment, assuming it was under EPBC, for that particular activity would be covered in the strategic assessment and not needed for a particular project assessment?

DR DRIPPS (SEWPaC): Yes.

MR COPPEL: Which gets very close to a bilateral approval but it's - - -

DR DRIPPS (SEWPaC): That actually goes further than approvals bilateral because it takes away the EPBC Act assessment requirement.

MR COPPEL: What distinguishes those two tools in terms of the response to them? The most common response that we've heard is that the standards are not up to the Commonwealth level and the states, which is a question of the negotiation itself in terms of getting those standards there. Why, then, wouldn't it be possible to have standards at state level that are able to be accredited, that would then enable a development - speaking a little bit broader than exploration here because I realise it's not triggered very often.

DR DRIPPS (SEWPaC): The approvals bilateral provisions under the act, as you say, do require that the equivalent standards be met by the state systems. There is nothing that stops the states from meeting the required standards. As I've given evidence to, I think, one of the Senate inquiries or estimates in the last six months or so, what I've said is that we can train our staff to meet the standards required by the EPBC Act and they operate as delegates on behalf of the minister. So from a theoretical and practical perspective, there is nothing that stops that.

We do find a level of variability among the jurisdictions, both in terms of the level of resourcing that exists within their planning and environmental assessment capabilities, but also in the way in which their state acts work, so in some instances planning legislation requires that environmental matters are considered in a particular way. In some cases they require that there be due consideration. In some cases there is essentially a power of veto by an environment minister and in some cases there isn't. So there are some considerable variations across the jurisdictions in terms of the way in which their planning legislation works and, indeed, in many jurisdictions, multiple pieces of legislation that apply to different projects.

I do always find it quite fascinating that it's us that's causing the green tape and not things that might be multiple within state jurisdictions - but that's an observation that's probably impertinent and inappropriate.

MR WOODS: And that's not one that the commission has come to.

DR DRIPPS (SEWPaC): So from that perspective it's theoretically possible. In many cases the manner of operation of those state laws would need to be modified in order to meet the standards and expectations of the EPBC Act. If they weren't modified and approvals bilaterals were entered into, then those approvals bilaterals themselves would be highly likely to be challenged in court successfully by people who didn't think that that was the right way to go about things.

MR WOODS: So there are two related issues. There's one as to whether the competence of state officials could be such that they could also, in effect, be delegates through an approvals bilateral, but then there's the legislative restraints that currently exist. So they would be operating under state law.

DR DRIPPS (SEWPaC): Yes.

MR WOODS: Have you or the states, or collectively, prepared a schedule of legislative amendments that would be required for the states to become a party to the bilaterals for approvals?

DR DRIPPS (SEWPaC): No.

MR WOODS: Is there any intention to do so that you're aware of?

DR DRIPPS (SEWPaC): Not that I'm aware of. As you would be aware, the work in progressing the approvals bilaterals halted on about 7 December last year after the COAG meeting, so there were those kinds of things being contemplated but they haven't been done.

MR WOODS: That would be a necessary component of that process; that they would need to amend their laws such that the officials operating under those were operating in a manner that was compatible with the processes under EPBC?

DR DRIPPS (SEWPaC): I think that's probably true. I don't think the negotiations had reached the point where you could be definitive about that conclusion in the case of every jurisdiction.

MR WOODS: Okay. The Environmental Defender's Office have given us evidence and they certainly have a very clear view, from their own perspective, of the legislative limitations of the states in this area, as you would appreciate.

DR DRIPPS (SEWPaC): And there is the question of whether all matters ought to be included in such approvals bilaterals. I mean, there are some things - the Commonwealth marine areas, for example - where the states don't actually have jurisdiction. There are some things that attract a vast amount of international media

attention, and political and diplomatic attention, like the World Heritage properties - and obviously Commonwealth actions. Then there are things like the amendment to the water trigger act that occurred in the House of Representatives that excluded it from being devolved to states under an approvals bilateral, so there is some complexity of that.

MR WOODS: You did mention the Commonwealth marine area.

DR DRIPPS (SEWPaC): Yes.

MR WOODS: Is it the intention to assist explorers - in our particular case of focus but potential users of that area more generally - with a greater set of guidelines so that they understand, in effect, almost a strategic assessment of the Commonwealth marine area so that they have a greater ex ante understanding of what areas are sensitive and why, and what activities may or may not be permitted?

DR DRIPPS (SEWPaC): There's been quite a bit of that done through the management planning process for the Commonwealth marine reserves that were declared last year, and there has been zoning of those Commonwealth marine reserves according to the IUCN classifications and some very, very careful analysis of the likely acreage releases and the areas of high prospectivity, the associated zoning of IUCN category 6, which is multiple use, in a number of places. So what we did was where the biological values could be protected equally by applying greater protection to areas with less resource productivity, that was done as part of the process of undertaking that marine planning exercise, including very close engagement with the colleagues from Resources, Energy and Tourism and associated portfolios.

We have seismic guidelines that were negotiated between industry and green environmental NGOs and ourselves some years ago. As I indicated previously, the proposition is that further work with NOPSEMA will be announced sometime soon.

MR WOODS: That's helpful and we'll follow some of those leads up further. Can you also explain, for the purpose of this inquiry, what was the intention behind the identification of West Kimberley and what are the subsequent steps to take that would again provide some certainty to explorers and potentially miners as to where, what and why they may be able to undertake activity in the West Kimberley?

DR DRIPPS (SEWPaC): The West Kimberley National Heritage area was listed in 2011 - 31 August, I think. As part of that listing process some guidance was provided at the time in terms of the kinds of activities that might be likely to require referral under the EPBC Act for the different areas. The other thing that was done at the time was the different values for which the place was listed were provided in map based format. Part of the area is listed for, for example, Indigenous rock art; part of

the area is identified for the homestead values and the stories of early settlement. Some of the churches are specifically included in the listed place. So the values exist in about seven or eight different layers, and those are available in that form to anyone who wants them.

So the guidance material that was prepared attempted to keep a traffic light sort of based system, depending on the activity that was contemplated. As you identified, National Heritage listing doesn't prevent development from occurring. What it does is requires consideration of whether there is likely to be an impact on the National Heritage values and if there is likely to be an impact in assessment under the EPBC Act. Do you have at the top of your head the projects that we're assessing in the Kimberley at the moment, or which triggers? We might have to get that.

MR KNUDSON (SEWPaC): Yes.

MR COPPEL: Can I come back to the water trigger. You mentioned earlier that it expressly excluded potential for a bilateral approval.

DR DRIPPS (SEWPaC): It does.

MR COPPEL: We also understood that it expressly excluded the potential for a bilateral assessment.

DR DRIPPS (SEWPaC): No, it doesn't. It specifically includes continued assessment under an assessment bilateral with a state. That's in section 24, I think. So there is a section in that act that was passed that refers to assessment bilaterals and specifically includes them.

MR COPPEL: Okay, thanks for that. In your submission you identify a number of areas where you're working on how to improve the process for environmental protection and at the same time facilitate these other activities. You mentioned strategic assessment, which we've covered. You mentioned offsets and you mentioned one other area that escapes me - called improving efficiency. Can you explain a little bit more what would come under that first heading of Improving Efficiency?

DR DRIPPS (SEWPaC): I'll ask Dean to do that.

MR KNUDSON (SEWPaC): There's a range of activities that we're doing within the department to try and improve our efficiency as a regulator. One of the first things that we've done is we've organised ourselves according to jurisdiction, and that's reflected with the fact that the environment is assured regulatory space. So we've found that even doing that simple act has significantly improved the amount of communication and its regularity and reliability with other jurisdictions.

The other thing that we've done fairly recently is we've instituted a client service charter and the main point of that is that it explicitly sets out for major projects an expectation of what the Commonwealth is expecting but, even more importantly, what proponents can expect from us. More to the point in that, it establishes the fact that there will be a case manager assigned to any of these projects and in addition to that there will be a forward schedule of meetings associated with key milestones in the assessment process.

So what we've found is that when you lay down those benchmarks - and we've done it for a few projects but more on an ad hoc basis when it was required for various circumstances - that's led to a greater level of visibility for the senior management and a greater level of transparency for the proponents, and that's been working well.

The other things that I would highlight in terms of efficiency: we are in the process of taking a look at the amount of guidance that we provide to proponents, and some of that can be on very administrative elements of the act but also we want to get to a space where, for example on the water trigger, we can talk about what a standard terms of reference for an environmental impact statement would look like, so that proponents, if they're in the coal seam or coalmining industry, know right up-front, "Here's the standard elements." We're doing that in discussions with the states to make sure that, as much as possible, there's alignment there. Quite frankly, on the terms of reference you would expect that to be the case.

On the back end of the process what we're working towards is a standard set of conditions, and what those conditions would do would be to manage through the various potential water-related impacts, and the expectation is when there is a state condition that effectively achieves that objective, there would be no need for an additional Commonwealth requirement. That's an approach that I think we want to try and repeat across a number of the industrial sectors, but I just wanted to outline the approach that we're taking with the application of the water trigger and where we want to get to on that.

DR DRIPPS (SEWPaC): There's probably a couple of other things from the last 12 months. Just over 12 months or just under 12 months ago we undertook a renegotiation of the assessment bilateral with Queensland under quite a bit of public scrutiny and very, very quickly. The fact is that if both parties are willing, those things can be renegotiated and very, very quickly. The Queensland one was done in such a way that it was very clear - the handling of particular matters between the state and the Commonwealth, deadlines for getting back to certain things and the assumptions that would be made if those deadlines weren't met.

So very, very short turnaround time frames that allow the state to conclude that

the Commonwealth has no views if those time lines aren't met, and those kind of things, can be very, very useful at taking time out of the process. As Dean has indicated, within the department the systematisation of the case management has been quite important and, unfortunately, the department had been in a place - and this is on the public record - to a range of IT reviews - of systemically under-investing in its IT for quite a long time up until about two or three years ago. The Shepherd review springs to mind. I think this was the name of the IT review.

So we've moved from a paper based system of case management to at least an electronic database system of case management within the last two and a half years and that has made the retrieval and tracking and organisation of the cases much more effective than it used to be.

One other piece of work that is an area of potential focus for efficiency, slightly beyond the scope of the department, is in the area of proponent capability. What we found after releasing the offset strategy and policy last year, for example, is we've undertaken a heap of training engagements around the country for state officials and for consultants within the environmental assessment industry in how that policy tool works.

So that, combined with a project that I did with the deputy secretary of RET a couple of years ago where some of the proponents actually said, "Well, because we do environmental assessments once every five years and then the environmental assessment people move on to being environmental management people on a project, we're perhaps not as contemporary or up to date with the way in which the act operates as we might be or if we would be if we were only doing that step in the process," might be something that's worth considering.

MR COPPEL: What about looking at the scope of a number of processes that can be accredited under a bilateral? You've focused on some of the ambitious - - -

DR DRIPPS (SEWPaC): It would be great to expand the scope of the assessment bilaterals.

MR WOODS: Are there constraints to doing that?

DR DRIPPS (SEWPaC): As far as I understand, it's the willingness of states to put things forward.

MR KNUDSON (SEWPaC): We've written to a number of the states recently to seek their views on whether there are amendments to the existing bilateral agreements that they would like to enter into, including taking a look at the scope of those bilateral assessment agreements.

MR WOODS: The bilateral assessment agreement with New South Wales that had lapsed; where are we at with that?

DR DRIPPS (SEWPaC): We're still at the stage of early-stage negotiation with them, so we've sent a couple of very inviting correspondences across to them and we're looking forward to being able to discuss that assessment bilateral with them in detail very soon.

MR WOODS: You're waiting for a response?

DR DRIPPS (SEWPaC): I think we are.

MR KNUDSON (SEWPaC): That's right.

DR DRIPPS (SEWPaC): Yes.

MR WOODS: Very good.

MR COPPEL: Just one final question. Coming back to strategic assessments, you've also put out a document that explains the interest in using this tool, learning from the tool and using the tool more extensively. Are there issues there in relation to removing an obstacle to the use of strategic assessments that is associated with who funds the actual strategic assessment?

DR DRIPPS (SEWPaC): In my experience the "who funds" question is not the first question people ask. The first question is around trust in relationships and essentially the question is, "Do we believe that the Commonwealth is actually fair dinkum about getting to the end of this and doing what they're saying at the beginning can be done?" So the experience, for example, with urban development has been that that was a very key question from a number of jurisdictions at early stages of the strategic assessments. Now we've got some runs on the board, people can see that we're actually quite serious about it. I think it's a matter of confidence rather than funding that's the impediment in the first instance but obviously funding is often something that people request. I don't think in this instance that funding by itself would fix the problem.

MR KNUDSON (SEWPaC): The experience that I've seen when comparing versus other countries is as was described Dr Dripps in the European circumstances. That also applies in North America. When they're doing strategic assessments there's no particular benefit, at the end of the day, other than a more profound understanding of what's there, which then forms the individual assessments. So that incentive I think is pretty significant.

The other pieces we are starting to see, because we're building up that

credibility and starting to develop all of these, we're seeing things like a group of 10 mining companies in the Upper Hunter Valley coming together on 14 different mines and collaborating to do a strategic assessment. That's because they've figured that not only is there that incentive but they've done the calculation of, "What would it cost us individually to do our individual assessment versus if we can - if we're all looking at the same issues, then why not do that in an integrated way?"

We're seeing that on a smaller scale, even at the side of strategic assessments, so the example would be the work that's been done around Abbot Point and a number of the proponents in that space to try to do some cumulative impact assessment work which is informing the individual assessments. We are seeing that collaboration but clearly there's a line of incentives that makes sense for industry to explore that.

MR COPPEL: Okay, thank you. I think we're done.

MR WOODS: Certainly taken up my list. Are there any matters that you wish to raise that you feel have not been pursued to their finality at this point?

DR DRIPPS (SEWPaC): No, I don't think so. I think the key message, if you like, from our perspective is that there are a range of different ways of removing administrative burden from the process of administering the act that we're responsible for administering. As I said previously to Matthew Butlin when he did a VCEC inquiry into an act I was administering, we can't pay for analysis like this so we very much appreciate the opportunity.

MR WOODS: Thank you very much. I'll call an end to that particular part of the proceedings. Are APPEA present in sufficient numbers? Thanks very much.

MR WOODS: I invite our next participants, APPEA, to individually state your name, the organisation you represent and the position you hold.

MR BYERS (APPEA): Thank you, Mr Commissioner. Let me just lead off. My name is David Byers, chief executive of APPEA, and with me today is - - -

MR WOODS: They will need to identify themselves separately. If we could, we might start at one end and work around.

MR MULLEN (APPEA): My name is Noel Mullen. I work with the Australian Petroleum Production and Exploration Association and I'm the deputy chief executive.

MR WOODS: Thank you.

MR STICKLAND (APPEA): My name is Peter Stickland. I'm exploration manager with MEO Australia. I'm also a director of APPEA and I chair the APPEA Exploration Committee.

MR WOODS: Thank you.

MR KNUDSEN (APPEA): My name is Keld Knudsen. I work for APPEA as the associate director for environment.

MR WOODS: Thank you.

MS VALENCE (APPEA): My name is Clare Valence. I'm policy director for exploration at APPEA.

MR WOODS: Thank you very much, and can I thank your association for your active engagement in the inquiry to date. We've had the benefit of visiting and undertaking some preliminary discussions. We've had the benefit of a submission and we've got the benefit of your initial response to our draft, so we're very grateful for the time and effort that you've put into this inquiry. We've got some notes from you which no doubt you'll turn into a submission after this hearing, so in anticipation - whoever is about to start writing - thank you for their efforts. It has been exceedingly helpful. Do you have an opening statement you wish to make?

MR BYERS (APPEA): A very brief one, if I may, commissioner. Of course we do thank you for your comments and welcome the opportunity to appear today. We wanted in our opening comments just to focus on an area that we think has got the greatest opportunity for improvement, and that is with respect to environment management, which is of course chapter 6 of the draft report. The simple point there, before I go to the detail of that, is just to make a couple of preliminary points.

One of the things that we would urge as part of the commission's deliberations is the need for appropriate transition to be paid attention to as we start to look at hopefully some beneficial changes in the way in which the regulations are applied. Transitional issues are going to be very important and I say that on the back of the experience that we had with the management of the transition to NOPSEMA becoming a regulator for environmental matters, along with safety and operational matters. That was only effective from 1 January of last year but as an industry we did experience considerable significant and costly challenges through that transition, so that's the first point that I would like to make and highlight and I'm happy to talk further about that, if you would like.

The second thing was just simply to say that we've had a good chance to have a study of the recommendations with respect to environmental matters and we would agree with the commission's recommendations on each and all of those. There are probably a couple of things that I would like to elaborate on but perhaps at this point I will just say as a general statement that we do endorse all of the recommendations from the commission in that regard.

The third thing I just wanted to respond to directly. On page 184 of the draft report there is an invitation for further information which is with respect to the marine environment trigger, and certainly in our view we do again agree with the statement from the commission that there is some scope to be able to narrow down and confine that marine environment trigger. It is exceptionally broad and is a matter which is - again it goes to some of the ways in which the regulations get put in place in practice. It extends the potential reach of the regulation and I will talk about that in a second.

The final point I just wanted to make by way of opening is even since we've seen that the draft report was put together, the situation unfortunately with regard to environmental duplication is getting worse. We have in the last month seen the passage of an industry-specific water trigger which applies, as there's no doubt the commission is aware, to water sources linked to coal seam gas extraction activity and major coalmining. One of the issues that we have really with the environmental regulation is that the report has come along at a very timely passage in history, but unfortunately things are not getting any easier.

MR WOODS: All right. If we can take up some of those issues, and can I start by exploring just briefly one of the areas that you haven't focused on. When I look at the exploration activity, wells spudded, there are more wells spudded onshore in the last couple of years than offshore, metres drilled et cetera, but you don't focus on heritage issues. There's a lot of onshore activity. What is it about the heritage legislation or the participants in the heritage debate that you find this doesn't generate such level of angst for you, and are there lessons that can be learned from that?

MR BYERS (APPEA): I will consult with my colleagues or ask my colleagues to speak in a second, but I think it's probably due to the areas in which onshore exploration activity is taking place. As the industry expands and we start to get into areas such as shale gas, then we do expect that there will be more interaction with heritage areas. But primarily because the onshore extract activity has been with regard to conventional gas, which has been primarily in central Australia and also in some onshore parts of Victoria and New South Wales, the coal seam gas areas have tended to be in areas which probably haven't' been touched by the heritage legislation.

MR MULLEN (APPEA): Just an observation about extrapolating from the statistics trends about whether in fact that has led to challenges with the respective legislation; I think it's important to recognise that a lot of the activity that takes place in onshore areas is within what we would already call mature basins.

MR WOODS: So it's brownfields.

MR MULLEN (APPEA): Brownfields areas, for example the Cooper Basin. There's been a heightening degree of activity in that area in the last three or four years as the participants have tried to prove up additional reserves. So I think the areas where there's been pressure for the industry have been some of the greenfield areas which haven't necessarily been covered by native title agreements or cultural heritage issues haven't been addressed in the past. I think it's fair to say that that will be an emerging issue.

MR WOODS: I think the Canning Basin might be a good example.

MR BYERS (APPEA): Yes, that's quite possible but, of course, activity is only just starting there. Similarly, in the Northern Territory we expect that will become increasingly an issue as companies start to do exploration for shale gas through the Northern Territory. A lot of the exploration leases cover a large area, over 90 per cent of the Northern Territory, and I think it's really been more of a factor of the relative level of activity, that being a relatively new part of the industry, but it will be an issue for us in the future.

MR WOODS: But to date, in those new areas your members aren't flagging that as proving to be a significant issue?

MR BYERS (APPEA): No, but I think the whole native title area, for example, is one where it hasn't really been a big issue for the industry and it hasn't been flagged as a major area, but it's a growing area for us.

MR WOODS: Okay. I was just curious, particularly given that you are moving

into some new areas. I guess that's a wait and watch type.

MR COPPEL: Can I pick up on this point you made earlier in relation to transition to the new arrangements. We have a recommendation which suggests that the Commonwealth accredit NOPSEMA for environmental approvals, which was actually announced the day before the draft report was published. I'd be interested if you could elaborate a little bit more on the sorts of issues and concerns that relate to transitioning.

MR BYERS (APPEA): Yes. I think what we saw when NOPSEMA took on its environmental responsibilities, there were a couple of workshops in advance of that, probably in about October 2011, but very little else by way of guidance. In fact I remember myself attending a couple of workshops and NOPSEMA as a body was very reluctant to give any guidance as to what it was looking for. In some ways that relates to, I think, the kind of regime that it is, being a risk based regime, and the proponent is called upon to outline the risks in specific cases and then identify what you're doing to manage those risks.

NOPSEMA was reluctant to step into the space of giving specific guidance as to what it was looking for, so I understand that being from a point of view of the way in which the regulatory regime worked. But from a practical sense, the counselling that we gave to both the Australian government and also to NOPSEMA was that they needed to acknowledge the fact that what was being asked for, particularly in the environmental area, was quite new and their expectations weren't always terribly clear, and that at least for a period of six to 12 months perhaps there needed to be a bit of a settling in period so that the industry came to understand exactly what - for example, when the NOPSEMA regime is looking at reducing risks to as low as reasonably practical, what does that actually mean by way of some examples or by way of some practical case studies?

So that's the kind of thing which didn't happen with regard to NOPSEMA taking on its environmental responsibilities. And while again directionally sound, we as an industry very much endorse that approach of a risk based regime. The criticism that we would make of the way in which that regime was handled was that it meant that the industry itself couldn't adjust to some of the new requirements at a time of, effectively, peak activity. Peak activity, lots of activity, lots of expectations of when approvals could be obtained, and therefore consequential impacts on things like drilling schedules and then quite high cost burden for the industry in being able to rejig drilling schedules and in some cases having to cancel rig contracts and the like. I can't give you numbers.

MR STICKLAND (APPEA): Anecdotally the figure is probably in the $100 million range over the entire industry from those rejiggings that needed to occur, so it's a very, very substantial figure.

MR MULLEN (APPEA): Can I just build on David's comments as well? I think one of the other issues around any sort of transition, particularly for our industry, is that with the work program bidding system which forms the basis of most of the work that's undertaken on the exploration in the industry, a lot of the commitments are made on the basis of a certain understanding of what the regulatory framework is. That regulatory framework changes.

Perhaps the optimistic time lines that companies may have had in place, which effectively shaped their original bids, needed to be reconsidered on the context of the new operational framework, and I think a number of the companies may have had time lines within their own thought processes in terms of what they would do in terms of undertaking exploration activity which subsequently had to be revisited during this transitional period. I think that has taken longer than expected. I don't know if Peter has got any comments on that, but that's a structural issue that's associated with any transition, I think, per se.

MR COPPEL: On that, in our report we identify the expectation that environmental protection - or the standard has increased and, because of that, the time involved in getting various approvals will also increase and the duration of the tenement hasn't changed for many, many years. We've put a number of proposals to try and address consequences of that, rather than the sources of it. One is that ad hoc increase in duration of a year, another is to try and calculate what the average increase in duration is and extend it by that amount. A third is to start the duration from the point that all approvals have been granted. We're interested in getting feedback on those proposals and would be interested in your views, or any other alternative.

MR BYERS (APPEA): We'll certainly turn our minds to those specific matters when we respond in detail, but I can say directly we would endorse those sorts of steps. They would be helpful steps. Part of I think what we have here is - you know, on the back of what has happened globally, we had a regulator who was very, very conservative about the degree of guidance that it was prepared to give to the industry. It's been now 18 months, 20 months down the track. Things are working a lot better but it does - we look back on that time, particularly through the initial period of that transition, and think that could have been handled a lot better with a lot less expense to the industry.

I think the other issue was that NOPSEMA was called upon to do effectively a standing start in its resourcing as well, so it probably didn't have the capabilities from day one to be able to deal with such a huge wave of environmental approval requests.

MR STICKLAND (APPEA): Can I just challenge one of the assumptions that you made in that statement. That was that as the expectation for environmental standards

has increased, therefore the time frame for approvals logically increases as well. I think as we become more sophisticated with our application of environmental standards it's not necessarily the case that time frames should increase. I mean, our expectation should be that as we get better at it and as we know areas better and we see different exploration techniques applied consistently and successfully, that perhaps the time lines for approval should actually improve rather than go the other way.

MR WOODS: They were the aspirations. Can I raise the Commonwealth marine environment trigger. We heard evidence, which is on public record, from SEWPaC, explaining the steps they have taken to identify zones within the Commonwealth marine environment that could be multi-use, could be protected for various reasons. Are you suggesting that that's not sufficient and that there needs to be a greater granularity of understanding of what is and isn't permitted within the marine area?

MR BYERS (APPEA): I would say two things about the multi-use criteria. In our view, at least as an industry, what the multi-use criteria should do is to give equal weight to matters of economic development and resources and environmental matters. In practice, we find what happens is that those matters of being able to identify and discover resource - the economic development aspects - are subordinate to environmental matters, so some of the restrictions that get imposed in multi-use zones reflect that philosophy.

The second thing I would say about multi-use zones is that the concern we have is that we have now, with the new system of marine parks in place covering very substantial territory, what we're finding is a slow creep of what we would call buffer zones on buffer zones. So in essence, if you're close to the boundary of those it might be designated to be a multi-use zone but in practice there's a kind of arbitrary - it's unfair probably to say that it's arbitrary in all circumstances, but there is a kind of subtle shifting of the boundary to say, "If you're this close to the boundary of a marine park zone then it may be multi-use but in practice you really can't go into something which is close enough to the marine boundary."

So what we're finding is that while - and I think it stems from that approach that it's the environmental values to be accorded greater weight than the economic values.

MR WOODS: Are you able to document that or is this a sense that you get from the decisions?

MR BYERS (APPEA): No, we can actually - there's probably one or two. We would have to check with the companies to see if they are prepared to be public about that. But perhaps, Keld, have you recently checked with the two companies concerned? I'm aware of two cases specifically of this being an issue.

MR KNUDSEN (APPEA): We can take that on notice.

MR WOODS: That would be helpful because we have received other evidence from groups whose predominant concern is the environment, and not for offshore but onshore that they're concerned about identifying the mineral wealth of an area that may be in a conservation zone or nature park may lead to the inevitability of the economic value being given greater weight than the environmental value. So that seems somewhat diametrically opposed to your experience, so to the extent that you're able to give evidence, albeit a slightly different environment but similar principles apply, that would be helpful.

MR BYERS (APPEA): Yes. We would be very keen to show that because that's been an experience that we've had quite directly, and something which is a great concern to the industry, really on the oil side. When we're talking about offshore oil, it's only found in a couple of different jurisdictions, including the Carnarvon Basin in Western Australia. I think the number is something like 80 per cent or thereabouts of Australia's oil is coming from that district now. Once you start to encroach on any of the ability to develop those oil resources then that has a significant impact.

The second thing I will say just with regard to - and the commission's report quite rightly makes some very positive comments in respect of the multiple land use guidelines under the SCER process.

MR WOODS: Yes.

MR BYERS (APPEA): We would endorse those but here again we're founding our experience is that when it comes to this sort of issue of the best use of resources, we've got to ensure that it's not only maximising the social benefits and also maximising the environmental benefits, but also there's economic benefits. It's that principle of - you know, the concern we have is that insufficient weight will be given to the development or to the exploration of resources and identification of what's there. It adds to the cost, or the potential cost to the community, effectively an opportunity cost in not knowing what is - you know, how those resources can be best managed to the community's benefit.

MR WOODS: How do you operationalise such a way of coming to a balanced decision? Do you do it by way of attempting to more explicitly set out guidelines? Do you do it through a process of consultation that may be required? I understand the view that you are putting on behalf of your industry but what's the practical way in which that can be achieved?

MR BYERS (APPEA): I think some of those things could be useful but I think it's also the case that it's less interference, if you like, in what is the least interventionist

part of the process, which is exploration, and understanding the true nature of exploration, particularly for oil and gas resources, is not something which has a lot of environmental consequences. What we find is that there's probably a lack of understanding of that basic principle among some of the state governments or some of the regulators that when it comes to the impact that you're going to have in that phase, ensuring that you're able to do that identification, can give you a much better idea of what the resource base is, rather than putting lots of restrictions around it.

But yes, guidelines and perhaps some understanding, and basically according a greater weight to the need that what this endeavour is all about is basically maximising the return for the community from these resources, rather than what tends to be seen to be an activity which is to the industry's benefit. It's to the community's benefit as well.

MR WOODS: And underlying theme in our draft report is that the regulation should fit the intended activity and be proportionate to the impact that that specific activity would have, and presumably that's consistent with - - -

MR BYERS (APPEA): Which is a principle we would strongly support.

MR COPPEL: One of the other themes that we bring up in the draft report are some of the issues relating to odd-sized tenements, problems with using ships. We have a recommendation that address that but we're trying to get a sense of how significant those sorts of impacts are. I was wondering if you could speak to that particular recommendation and the particular issues.

MR BYERS (APPEA): I'll pass to my colleague, Mr Stickland, here.

MR STICKLAND (APPEA): It's a good issue to raise and there is a minimum quantum that makes sense to explore at that immature stage. It does vary a little bit between an area being a frontier exploration interest through to a more mature area of interest. Obviously at the frontier scale a block needs to be in the order of thousands of square kilometres to make sense, because you're scoping with a very broad brush at that stage.

My observation would be I think in the federal jurisdiction at the moment the figures are pretty much about right. They use a five-minute by five-minute graticular, which is roughly about nine by nine square kilometres, depending on where you are on the earth. Typically most blocks would be - well, they have been issued at down to a single graticular but they're typically at a minimum of, say, about four of those graticulars. That seems to work in mature areas of exploration in the offshore environment.

I'm less familiar with all of the onshore jurisdictions but I would imagine that

something of that sort of nature would be about as small as you'd want to go, so of the order of 100 square kilometres typically, and that would only apply in the most mature areas. As you move back into more frontier areas that increases by orders of magnitude.

MR WOODS: But in terms of the actual behaviour of the regulators, is this an area where we do need to make a recommendation or can we be satisfied that between industry regulators you sort this out and we can withdraw from this space?

MR STICKLAND (APPEA): That's a good question.

MR BYERS (APPEA): I think that's probably right actually. It's not, in our view, a major issue for our industry but it is something that we can sort out with the Department of Resources.

MR MULLEN (APPEA): I think it's also recognised that there's an institutionalised constraint here, just in terms of the way that acreage is relinquished in terms of the turnover of the acreage, so you do end up quite often with these little - it's like a Swiss cheese, not quite in that extreme but it can resemble a block of Swiss cheese. It is difficult for the regulator to be able to put together packages of acreage that are of a meaningful size. So I think we do understand that it is a challenging area, but I think Peter's comments in relation to frontier areas is right on the mark.

Things have to be of a size that really provide the incentive for the companies to go through the process of the regulations and also there is the ultimate objective here, which is the discovery of hydrocarbons, so these two things need to be balanced and size is important.

MR WOODS: But for the purposes of this report we could make reference to the issue in the text

Mr MULLEN (APPEA): Yes.

MR WOODS: --- but, given the great weight placed upon each of our recommendations, we could take that one out of the list.

Mr MULLEN (APPEA): That's so.

MR COPPEL: One of the other themes that cuts across this report is speaking to leading or good regulatory practices will improve the process. One of the themes that recurs frequently is the role that can be played by transparent practices. We talk about one way of achieving more transparency would be for when there are decisions that are made at the ministerial level, that the decision is also accompanied by an explanation for that decision. I was wondering if you had any views on the role that

better transparency can play in terms of improving regulatory practices but also in terms of this specific area.

MR BYERS (APPEA): Yes, and we did note that you made some comments in respect of recommendations on some of those matters - recommendation 3.1, for example - and that is actually the practice which applies, certainly in the federal

jurisdiction now with regard to granting of licences. It may well be not so clear in some of the state jurisdictions, I think. It may well be the case but we would certainly support that - New South Wales being one of them, I believe. We would certainly support that as a general endeavour.

More broadly on the issue of transparency, what we find in the regimes which, if you like, you could describe as prescriptive regulatory regimes where an approval might be granted subject to conditions, is that some of the conditions, at least in our view - and I know we have to sort of support this by way of some evidence - but some of the conditions can be quite capricious. They can be ones which might have been publicly applied. They've been made public on particular development or a particular application and then they're applied to another sometimes quite unrelated circumstance. It's this phenomena, I suppose, of lifting the bar that we find with regulatory practice where you have an imposition of a condition.

So I think transparency is one of the critical things there for regulators to explain why they are levying this particular prescriptive condition, and I know we previously, as part of round one, have given you some examples of this from our Cutting Green Tape report, and which go to, for example, seismic operations where we would say that there are some quite capricious conditions and quite inconsistent conditions which have been let in through prescriptive regimes, compared to those which come by way of a risk management regime.

MR COPPEL: You may have caught the tail end of the previous participant. We were speaking about strategic assessments as a tool that can be used in relation to certain approvals and one that also can capture, in principle, cumulative impacts. There are a number of examples of where strategic assessments are being developed. I was wondering if you saw a role for strategic assessment in offshore areas and if there are any risks associated with such an approach replacing a project by project - - -

MR BYERS (APPEA): Something that perhaps we'd like to come back to you on with some more gathered thoughts, but it hasn't been much of a pattern for the offshore oil and gas industry to have strategic assessments done.

MR KNUDSEN (APPEA): I guess maybe just to touch on that a bit, the Commonwealth government has gone through a process that's been very similar to strategic assessment, through a bioregional planning process, and they have done a number of bioregions around Australia and identified certain aspects that are important to that region, and certain pressures, and I guess it's pretty safe to say that our companies have found that process to be very encouraging as far as being able to adequately assess what values have been identified by the government.

To touch on the transparency part, there are parts of that bioregional planning

process that companies would have liked to have had more say or more input into, but generally anything that gives a term of risk-averse history, more information as to what they consider, would be obviously welcomed. I guess that's something I'd have to take notice to the individual companies directly as to how they might go about it but it just seems to make sense, when there's a number of users in a region, that that's considered at that sort of level.

MR WOODS: Then again, a few onshore companies' strategic assessments are progressively increasing in number. Whether they see any advantage to that for them would be helpful. Are there matters that you want to raise with us that we haven't - - -

MR BYERS (APPEA): Just a couple, if I may, and again probably just to expand on some of my comments I've made with regard to the marine protected areas. One of the consequences, and it's interesting, your table 6.3. It looks at this in a particular way but one of the consequences of having such a broadly defined area is that it causes, I would describe, a behavioural reaction within the industry. The way I would explain this is as follows. As that table 6.3 illustrates, a lot of things are referred for assessment but very few things are considered to be controlled actions.

I think what we're finding in the industry is because the consequences of having delayed approvals are such that they have big financial and other consequences, what happens is that a behavioural response within the industry which we need to take some account for is to push everything through. It might not come out the other side as a controlled action but what you've got is a lot of activity at the front end with people - no-one wants to be the person who decided that it didn't need to be controlled action and it gets sort of looked at in a different way, and therefore causes a whole project to come to a shuddering halt.

I don't quite know what you do about that, other than to say that one of the things that probably some more consideration needs to be given to is some threshold criteria so that you can screen out a lot of activities which really don't need to be referred by some better guidance as to what needs to be referred. That's a comment I would make with respect to the way in which things are now with the marine areas.

The concern that I have - and this is only, if you like, a perspective or seeing something which may well become a trend - is now with the new water trigger and the very broadly defined impacts that that will have, although I note that the Department of Environment today has published its significant impact guidelines. But the concern we have as an industry is that that is going to cause exploration activity to be funnelled through an entire process where people are being asked to refer matters through for the EPBC Act approval. They are getting well away, as the commission report points out, from the original purpose of the EPBC Act, which was really to respond to international treaty obligations and the like.

So by now the inclusion of these very broadly defined marine protected areas on the one hand and now also impacts on water sources from coal seam gas and major coalfields, we're extending into much bigger areas which are going to be caught by the EPBC Act, causing that very, very conservative behavioural reaction within the industry that things get over-referred. That has a workload consequence, obviously, for the Department of Environment and it certainly has a very big impact for the industry.

MR WOODS: Do you have any concrete operational proposals that would - you know, you were talking about sort of filtering processes, so if it is of this character then with some certainty - well, you'd want absolute certainty, actually - that this therefore won't be caught. Then you go down through, so there are sort of cost-effective - - -

MR BYERS (APPEA): We have actually made some submissions to - it was in fact with a similar problem with NOPSEMA, so we'd be happy to make those available to the commission.

MR WOODS: Yes, that would be helpful. That raises a broader question of mine. When you look through our recommendations, we're very keen to give them a greater operational perspective and to the extent - in your formal response to them, if you can identify where in those recommendations you can tighten them, where you can give them great weight of implementation, that would be very helpful to us. Whether we agree or not is another question, but we'd certainly welcome your input on that.

MR BYERS (APPEA): We'll certainly make some submissions on those points. Just a couple of other points, if I may, and again with now the water trigger being introduced into the act, one of the things of course which has come with that, which has postdated this report, has been the screening out of any opportunities for bilateral arrangements, which goes to the heart of one of the commission's recommendations, which is a sound one, which is to invest more purpose and time and effort into those bilateral arrangements in one whole area of endeavour. It screamed out entirely that there's no opportunity for that by legislation. Anyway, put that in the category of a comment rather than a request for anything to happen.

Perhaps a couple of final things but we might comment on some other areas, rather than just the environmental areas. I think, Peter, you were going to make some comments on the cash bidding aspect.

MR STICKLAND (APPEA): Sure. In APPEA's report it talks about one of the fundamental measures that the industry has of itself is its finding costs; so how much do we spend to discover so many barrels or means of (indistinct) gas. So one of the issues that I flagged is the increase in the cost component that goes - the burden that

goes on the industry. The two examples that I have for that that have arisen recently were the introduction of cash bidding, which from an industry perspective is dead money, and that's money that - you get no technical benefit in terms of activity from that. So that's just a straight increase to finding costs and therefore a reduction in productivity of the industry.

The second one was the move to NOPSEMA and a user-pays fee service. There was the intention to remove the fees on transfers of title, and particularly at the exploration stage that can be an issue. I understand that is meant to be coming but it's been delayed and perhaps you'd just like to make sure that it does actually get through at some point.

MR WOODS: You may want to include that in your submission so that we can move that particular part of the agenda along, but the cash bidding one is one where we have deliberated. We haven't come out with a final view but we'd be interested in your written submission on any further elaboration. I mean, I know you've already dealt with it in part but if there is any other argument that you wish to make. Whether cash bidding is potentially more appropriate, say, in brownfield exploration where the level of certainty is high and there may be high competition, and whether that can be a differentiating factor, whether you have that in association with programs of works or whether it replaces programs of works, you'd still need a program of work for approval purposes but not necessarily for selection of the preferred owner of that tenement. Some of those issues would be very helpful.

MR STICKLAND (APPEA): Okay.

MR MULLEN (APPEA): I think from our perspective we look at cash bidding and the work program bidding system through the prism of an exploration policy. I think sometimes in other areas within areas of government it's looked at from a revenue perspective rather than an exploration policy perspective. It's very important that these two issues are separated because one can confuse the other.

MR WOODS: But that's why if you had a principles based position and elaborated that, that would be helpful to our understanding.

MR BYERS (APPEA): The final area that we just wanted to touch on was in the acreage allocation area and the cycle time between the close of bid and the allocation of the award.

MR STICKLAND (APPEA): Sure, and I'm sensitive to a recent example. Our company was award a block in late November - sorry, late May from the November bid round, so it was approximately a six-month time from bid submission to bid award, and our block was awarded along with a number of other blocks in the round. There was no competing bid, so there was a single bidder on a number of block - not

all of the blocks but on some of the blocks - and yet it still took six months to award that acreage.

MR WOODS: That award then still requires you to go through all the approvals, the environmental - - -

MR STICKLAND (APPEA): Of course, yes. That's simply that, yes, you're entitled to the acreage. Any activity you undertake is still then on an activity-by-activity basis. All those approvals are required as well.

MR WOODS: Is this the Commonwealth or a state?

MR STICKLAND (APPEA): This is in a Commonwealth context.

MR WOODS: Okay.

MR STICKLAND (APPEA): And my observation there is that companies make quite a significant investment in their analysis and preparation of a bid and bid submission to explore an area, and then you've got this dead time between when the applications are acquired and the block is then awarded, and from a time/value of money perspective and opportunity cost and exposure to market risk, that can be quite a significant period of time. It seems like that should be able to be done much quicker. It should be measured in weeks, not months, I would imagine. Maybe days is a bit optimistic, but let's say weeks.

MR WOODS: Yes, I understand that, particularly if you've got a track record of having undertaken other explorations within the guidelines and the like. If you're a new player in the field, one might want to have greater due diligence, but if you have a track record, that would be different.

MR STICKLAND (APPEA): You can imagine different tiers of issues. If there are no competing bids and you're an established player with a track record, then it should be relatively quick. If you start layering on other complexities, it may take longer.

MR WOODS: And the officials responsible were not able to give you a satisfactory reason for the delay? Are you satisfied with the reasoning you were given?

MR STICKLAND (APPEA): No.

MR BYERS (APPEA): It was attributed to the minister not having been appointed yet.

MR WOODS: There you go.

MR COPPEL: We have the recommendation which is in relation to time lines and publishing of time lines, but we don't specify periods. The idea behind that is that there's a bit of peer pressure to actually meet those time lines. We don't specify what they are, but that would be specified. I'm not sure if that's sufficient or whether something further than that would address those sorts of examples.

MR STICKLAND (APPEA): My plea would be that they are both publicised time lines and those time lines are also not unduly long.

MR COPPEL: Absolutely.

MR WOODS: Other matters?

MR STICKLAND (APPEA): Nothing further.

MR MULLEN (APPEA): Can I just raise one other issue?

MR WOODS: Of course.

MR STICKLAND (APPEA): I was wrong.

MR MULLEN (APPEA): As the champion of the small companies in the industry, I'd just like to raise an issue around the consequences of what can happen with delays in processes for companies, and Peter might be able to elaborate on this one further. Small companies, particularly Australian based companies, are almost completely reliant on equity markets to raise funding, and the appetite of equity markets and investors who would be prepared to invest in particularly exploration companies is around drilling wells and running seismic and - - -

MR WOODS: And getting reports back, hopefully positive.

MR MULLEN (APPEA): And they have a very interesting risk profile insomuch as they're quite prepared to take the high risk in terms of the money sometimes being lost, but they can become quite agitated when money just sits in bank accounts because approvals can't be received or there are other issues that are outside the control of the companies for those actions to be undertaken.

We should always be mindful of the fact that the system is very dynamic in terms of large, medium and small companies in the industry and we need to have a vibrancy at all three levels to make sure that the ecosystem works efficiently, and I think sometimes the views of the small companies can be a little bit lost in terms of their frustrations in terms of the delays that they face.

Now, some of them are actually outside the control of everyone, and one of the issues that Peter has pointed out to me is that there was a big dip in the number of wells drilled onshore two or three years ago and that was because it rained a lot, and obviously they're events that are outside the control of the industry, but I think it's incumbent on us all to understand that the health of that part of the industry is dependent on them being able to get out and do things. I don't know whether you want to comment from the MEO perspective.

MR STICKLAND (APPEA): Sure, not just from MEO. I've worked in a couple of small companies in the last eight years that are both ASX listed. I was previously managing director and CEO of Tap Oil before I joined MEO. I'm very conscious that small companies' lifeline is access to equity capital, because they don't often have production and so, as they go to raise money, the offering they're making to the investment market is their forward exploration program, and there are two critical things that investors look for. One is the time frame within which that activity is going to occur. It needs to be consistent with their investment horizon - ideally relatively short - and it needs to be certain that you can actually undertake that activity.

So a number of things that we have discussed, be it marine parks or EPBC triggers, heritage issues, all play into that area: that companies can find themselves caught in the chasm between having undertaken commitments to activity but then perhaps struggling to raise the equity capital to undertake them because of the uncertainty in the events and the time frame with which approvals are acquired to achieve those events.

MR WOODS: Yes, I saw that very significant dip. I was looking back over the previous years and thinking droughts are probably good for at least some activity.

MR STICKLAND (APPEA): Yes. It was affecting production to the basin as well, because a number of the smaller companies or the smaller field areas were completely flooded in and they weren't able to get to them.

MR WOODS: Yes. Thank you for that. All right, that being the case, again thank you for your contributions and, in anticipation, your next contribution to this inquiry. Thank you very much. Is there anybody present who may wish to come forward and make a statement to the commission? That being the case, I conclude these hearings.

AT 2.51 PM THE INQUIRY WAS ADJOURNED ACCORDINGLY