



**LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY**

**Ninth Assembly**

**Sessional Committee  
on  
Environment and Sustainable Development**

*The efficacy of establishing an  
Environmental Protection Agency  
in the Northern Territory*

**Volume 3**

**HANSARD TRANSCRIPTS**

**COMMITTEE REPORT NO. 2**

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Northern Territory  
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## **MEMBERS OF THE COMMITTEE**

Ms Delia Lawrie, MLA (Chair)

Mr Tim Baldwin, MLA

Mr Matthew Bonson, MLA

Mr Stephen Dunham, MLA

Mr Elliot McAdam, MLA

Mr Gerry Wood, MLA

### **Committee Secretariat:**

Secretary: Mr Graham Gadd

Researcher/ Administrative Assistant: Ms Maria Viegas

Committee Administrative Assistants: Ms Liz M<sup>c</sup>Farlane  
Ms Kim Cowcher



## TRANSCRIPT NO. 1

**ENVIRONMENTAL PROTECTION  
AUTHORITY - WESTERN AUSTRALIA**  
EPA WA Offices, Perth, Western Australia  
Wednesday, 3 March 2004

**PRESENT:**

## Committee:

Ms Delia Lawrie, MLA (Chair)  
Mr Tim Baldwin, MLA  
Mr Matthew Bonson, MLA  
Mr Elliot M<sup>C</sup>Adam, MLA  
Mr Gerry Wood, MLA

## Apologies:

Mr Stephen Dunham, MLA

## Secretariat:

Mr Graham Gadd (Secretary)  
Ms Maria Viegas (Administrative/ Research Assistant)

## Attended by:

Dr Wally Cox (Chairman)  
Mr Derek Carew-Hopkins (A/ Chief Executive)  
Mr Rob Sippe (Director, Policy Co-ordination and A/ Director, Environmental Impact Assessment)  
Mr Ray Wallis (Assistant Director, Policy Co-ordination)  
Mr Colin Murray (Assistant Director, Environmental Impact Assessment)  
Mr Warren Tracey (Assistant Director, Environmental Impact Assessment)  
Mr Robert Atkins (Director Environmental Management)  
Mr Graeme French (Executive Officer)  
Mr Tim Gentle (A/ Manager, Mining and Industrial Assessments Branch)  
Mr Darren Walsh (A/ Appeals Convenor)  
Mr Bill Biggs (General Manager, Safety, Health and Environment Division)

**Note: This transcript is a verbatim, unedited proof of the proceedings and should be read as such.**

**Dr Cox:** is what it does before you go into a detail program during the day. Let's keep it informal, happy to answer any questions you may have. I've got to race off and chair

the State Tender Committee at 9.45 AM, I'll be back again for lunch and I'll join you at the end of the day, happy to answer questions about anything and everything. The Environmental Protection Authority is setup under an Act of Parliament, and the appropriate piece of legislation, we have given you a copy, is the Environment Protection Act 1996, which has been amended on a number of occasions and I'll highlight one significant amendment that took place because that's the big difference between us and South Australia.

The Authority is a statutory entity, that comprises 5 people, no more. So I'm a full time Chairperson, there are 4 part time members and if you like, I can explore the sort of type of skills and competencies we have around the table, and we are supported by the Department of the Environment. We're supported by way of a structure where by some 70 odd people in the Department of the Environment, set up as in environment and Protection Authority Service Unit. They service us but in terms my management, they're accountable in fact through their CEO, and it's an arrangement which, I am happy to explore with you.

The roles are very much, personally a policy role, that is, we are charged by the Act to give advice to the Minister about environment policies, and we do that through a frame work currently called, Environmental Protection Policies, which are more than policies, they're actually statutes. It's black letter law, but there's a big framework that goes around it, so it starts off as a policy, in other words, statement of intent, it talks about some non negotiable that is standards, it talks about guidelines, and there's practise, and then of course the fact of the law follows, and it says thou can do this, thou can't do that, they'll give you the penalties if you don't do the right thing.

We are currently reviewing that because we have advice from Parliamentary Council, we are in fact better off, splitting policy and law, and we internally totally support that so the way we're heading, which Rob will elaborate on later on, is we'll probably set up a series called the "State Environmental Policies", which will be policies endorsed by Cabinet,

so it will become the government policies, and they'll be a series of them set up, and then if there's a need for law, there will an environmental protection policy which is the law component only, and will be quite short and sharp rather than currently having a combination of the two, and on the way through our people can actually give you some examples on how we've used these environmental protection policies, including the water you see behind you, which is the Swan River, it's part of a catchment called the Swan Canning Catchment, there is an Environmental Protection Policy that covers that particular environment. It's mainly about statements of intent. It's about the value system that applies, the environmental values, it talks about objectives, it talks about criteria, it talks about behaviours, there's not much law in it at all, in other words you don't need an instrument that has black letter law for really what is a policy document. So that's why there's a split that will be taking place shortly.

It occupies probably on average, about 20% of our time. It's an area that in reality consumes most of our time and resources, and that of course is the Environmental Impact Assessment process, which is quite a formal process in many ways it's no different to what I suspect, to what other constituencies do. Under the Act, I won't quote to the clause numbers, but we have an assembly of things that have to be put to the EPA, by whom?

Firstly, there's a whole series of people called Referral Authorities. They are out there as the decision makers of their own right, and local government comes in that category, for example, other government agencies that have got decision making roles, or the proponent themselves, can refer the submission to us for assessment.

There's also third party referral. Any member of the community can refer anything to us at all. We then have a process where our officers register the referral as it comes in, and we then have 28 days to set a level of assessment, unless there's inadequate information, in which case we go back to the proponent and asked for more information. We've got an infinite amount of time to give clarification to

make sure we understand the proposal, and the nature of the submission, to enable us to determine if there are going to be environmental impacts or not and the magnitude of those environmental impacts, but normally we try and accommodate if the information's adequate, and come up with a level of assessment within that 28 day period. The levels of assessment, I can't quite ..... or not, but if not I could quickly talk from memory anyway.

**Mr BALDWIN:** Can I just ask a question?

**Dr COX:** Yes, anytime you like.

**Mr BALDWIN:** The public referrals, are they usually of a substantial basis, I mean do people put a lot of effort into them, or there's a formula they follow.

**Dr COX:** They don't have to put much effort into it. All they've got to do is express a concern about a project, and that merely becomes the referral, so then we have to do the work to make it judgement as for the significant environmental impacts or not, and the most recent example that comes to mind, was a sub division. It was south-west of the state, in our wine growing regions, where people are very conscious about the need to protect vegetation. The sub division taking place, the community were very concerned about the impact of that sub division on the native vegetation and the fauna that went with it. They referred it to us and we actually came to an agreement that it needed to be assessed. Now you should of, the logical question is why wasn't it in fact being assessed, the reason why, the local authority hadn't referred it. So the local authority was negligent in terms of not referring it to us. The community was very sensitive to the issue, and referred it. So if you look it from legislation that your domain, I would certainly suggest that there ought to be the right of the third party of referral, and then you would approach the manager to make sure you don't get the malicious referrals that just hold processes up.

**Mr BALDWIN:** But you would get some of those ones wouldn't you?

**Dr COX:** Ahh, you do but our process is good since we've got 28 days to

make a decision. So if somebody refers something to us, where there is no environmental impacts at all, and no significant environmental impacts, we then say, not assessed.

Now I think your actually doing what the detail of the decision processes?

In that case I won't steal Rob's fun there in terms of the details of the process that effectively, Rob comes to me every Wednesday afternoon, in fact today while your in this room, he'll come to me and he'll bring a pile of files in, and we go through the submissions that are really for judgement calls about levels of assessment, and I have the delegated authority from the board to set the levels of assessment. That happens every Wednesday, we then advertise it on Monday, so the public is aware of what the level of assessment is and there's a process which Rob goes into.

The third role, is a fairly recent role and that's partly because we've been amalgamating agencies of government to try and get some rationale and rationality into government, the public sector. There's been too many agencies of government, so we are compressing them into a number of larger departments. That's grown to be sort of a conflict of within the Department of the Environment, which is a merger between the Water Rivers Commission and the Department of Environmental Protection. This department used to police that department. They're now sitting in the same department so you can't have that happening. As a consequence, the Minister, our Act was changed, and the Minister's given us the role of auditing compliance with ministerial conditions, where somebody inside that Agency has a condition or a project, that has conditions attached to it. So the Water Rivers Commission component of the Department has responsibility for preparing water management plans. If those water management plans have conditions proposed on them, we are the authors. So we've just taken on that role. We did it recently for some waste treatment plants as well. They're open reports. We put them on the table and quite often they're controversial when people haven't done the right thing. We're completely open and

honest, and people expect us to be completely open and honest, because we are independent.

Now we're not independent in the sense of, independent of government. We're a statutory authority set up of an act of parliament. There's a clause in the Act, which is very, very important clause, that enhances our credibility no end. The clause says, that I can not be directed, nor can the board be directed in terms of the advice we give. We can direct them to the process, we can be directed in terms of issues that need to be addressed by us, but when it comes to the content of the advice, we cannot be directed, and that is very, very important, and that's why we've also got very open processes, so we've got a very high level of credibility in terms of what we put on the table is unbiased, unprejudiced advice to government, even though government informed by the minister, is the final vehicle.

Our Board comprises of 5 members, and I'm the only full time person. The Act has qualifications to be a board member, which is very much about, collectably around the table there being a range of skills and competencies that relate to the environment. So as Chair that, it doesn't have to be so specific on environmental scientists, or soil scientist, there's no environmental law, it doesn't say that, but effectively what we've got around the table, is 5 people. Give you some flavour of the background, I'm a long serving public servant before I retired from the public service, soil scientist by training, and I headed up a range of government agencies including regional development, so many of them I can't remember anymore. Water Authority Western Australia, East Perth and Subiaco Redevelopment Authorities, the Department of Conservation and Land Management, and I set up the Ministry of Culture and the Arts. So a range of backgrounds, a lot of them actually relating to the environment, so this is a pretty easy job for me, in the sense that I know the topic, I know the players and it comes together relatively easily.

We've got somebody around the table who is the manager and director of a company

that specialises in water treatment and waste water treatment processes, so he brings an industry perspective to the discussions. We have a person, who is a former Deputy Chief Executive of CSIRO, Dr Roy Green, who some of you may know, he brings an unbiased scientific policy role to the debate. We have a Senior Lecturer from Edith Cowan University, who used to work in a Victoria EPA and EPA here, who is a absolute wiz on the emissions atmospheric contamination, so she brings a fair bit of expertise to the table. Then we have a lady who actually comes out of the environmental movement, and we were quite concerned about the fact that she was going to become ultra green, who we were going to have all these debates that would be polarised one way or the other, but she effectively comes with fantastic green credentials, but she listens to information that comes to the view, basically information from the table. So 5 people, quite diverse backgrounds, are forming a very nice team to come up with, in every case is consensus decisions, we don't vote, every time we talk our way into consensus.

**Madam Chair:** Do you have the ability to vote.

**Dr COX:** To vote, Oh yes, too right. The Act in fact has the ability to vote, and also I've got 2 votes, the normal vote, and the final vote, if the numbers weren't to be balanced, but you don't want to get to the stage as having 3 x 2s, 4 x 1s, because then it becomes them and us, so you try and talk it through, make sure there's enough information on the table, so you'll come today common decision, despite the fact you've got different value systems, but I'll talk a bit later about how we actually come up with a shared value system, that's pretty important to getting coherence out of the whole thing.

Our highlight of the fact that we are utterly independent of the terms of the advice we give and it's a very open process, so everybody can look up what we say and why we say it.

A little bit of elaboration in terms of the service provision. There was a time when in fact the EPA and the Department were the same thing, and that of course is what

you see in most of the other states, so as you go around the rest of Australia, you'll see in many cases the EPA being the total entity - the board and the department, here they are two separate beasts. Why, because in the late 80s, we had a individual who was a very powerful, as both the Chairman, and the CEO, and in the eyes of the then opposition, he was too powerful, so they had a platform during the 1991 election campaign that if they got into power, they would in fact split the roles, and that is what happened in 1991, the legislation was put through to split the role of the Chair and the CEO, and all of a sudden we're back to having 2 entities.

I favour the South Australian and other models where in fact you've got some integration, I think the separation we've got, is somewhat artificial, which means that the process has some discontinuities in it and you get much more continuity if in fact you have a single agency that covers the whole spectrum of a board, and the agency as one, as opposed to two. But having said that, the agency gives us fantastic service in a sense there are 70 odd people, very capable people, very committed people, who provide a very high level of support to us, and I have absolutely no complaints of the level of support we get it all, but it is through a spirit of cooperation, and there have been times when the Chairman, and the CEO have been at loggerheads, and that has lead to some unpleasant reasonable harm, not particularly desirable, and that is why I favour the South Australia type model, even though that currently, the arrangement here is working very well.

**Mr MCADAM:** So where you've got the situation where loggerheads, how do you then...?

**Dr COX:** Well that happens and I like it here, because I'm the sort of person that can work with other people, and the acting CEO is the same sort of person, we can work together, so there is no issues. The act actually provides a solution that means the Ministers has to get involved, but the Minister should never have to get involved in those sort of issues, there not policy issues, there just bun fights about people and personalities. So you're better off resolving the issue through a structural

solution, rather than force the Minister to buy into arguments that he or she shouldn't have to.

There's a role we play, where the Act doesn't actually say we have to play, but it's very much about leadership. Because of our independence, we are highly respected for the sense that we don't have a patch of territory we are trying to protect, we are open, we listen to anybody, have are happy to have a little talk to anybody. As a consequence we play a major role if there is a leadership of then both the public sector, and the community at large. We play that leadership role in a number of ways, and one of those is we put out our position statements, they're are actually EPA position statements, they're not government position statements. A lot we do, take green houses as an example Green house is an emerging issue, so we in fact prepare a discussion paper we'll put out into the community, we harvest that feedback from the community, and then we put out a EPA guidance statement or position statement, which says; here is our view on the issue of green house, and within an expectation that when proponents comes to us for a project to be assessed, they in fact abide by that position statement. There's no legal basis to it, that about a leadership role, setting an example, raising expectations, sometimes that gets translated under the government policy, and is now a draft government green house strategy on the table, out for public consultation. Other times it becomes law, in other words things change to effectively turn our position statements into law, but we lead the debate on a range of issues.

**MR GADD:** So in essence you are providing a best practice statement?

**Dr COX:** Yes well, that comes to look at a position statement is merely is a defacto policy, not government policy, it is an EPA policy . It says; here is a desired outcome, this practise is normally about how you get there. We've got another document that does that, which actually the next one, the guidance statements are best practise statements. So on a range of issues, we have guidance statements which are very much about what we expect to see if somebody come before us with a proposition.

**Mr BALDWIN:** How do you merge that with government's policy statements, I mean does that, at some point in time you might be working on an emissions type position paper, and they might be doing similar, just in technical terms, how does it work, do you brief them?

**Dr COX:** I'll give you an example,. The issue of offsets comes up time and time again, things like that. We like, you've got lots of vegetation, and some of it's very highly valued, it needs to be protected, the Trade Development comes to us and says; we won't to knock off this bit of bush. Quietly we say to them; yes, you can develop, put your development here, but your going to have to actually acquire another piece of bush somewhere of equal conservation value and put into the conservation estate, we call that an offset.

Another example, would be we've got an air shed that is fully allocated, for example Quinala, in terms of things like salt and dioxide. If a new interim wants to come in, they've actually got to buy their way in by encouraging someone else to produce their emissions and paying for it, they then get the off set so to speak. So there is a concept of offsets. Now there is a number of agencies of government who use offsets, and so there in tool policies, but they're inconsistent, somebody does it this way, somebody does it that way. So we're currently going through a process where we are providing the leadership role, we bring all those people around the table, in fact we had a meeting here last week, to come up with the goal of putting together an offset policy that will in fact be an EPA policy, surprise, surprise if it becomes government policy, so we'll put it through the loop. It starts off as being an EPA policy. Other government department's will adhere to it, because we've gone through good process. They own the outcome of it all, and then at the appropriate time, and the Minister by the way is very supportive of this process, because she is really concerned about the fact that there are conflict in policies. She'll then effectively endorse it, and she may or may not take it to Cabinet, but in either case, if she endorses it or it goes through the cabinet process, it becomes the government polices. So we are providing a

leadership role, so the conflict that you are hypothesising couldn't take place, just doesn't take place, because we are always aware of what's happening, so we try and make sure that they all align...

**Mr BALDWIN:** But in this case of offsets, unions support getting everybody around the table, not government saying you've got a problem...

**Dr COX:** No, in this case we instigated it, because we recognise that we were having difficulty dealing with an issue, because there's all sort of equity issues come up, and we've got to be very careful we don't ----- . You could have approval if you do this, that could almost be seen as black mail. So policy framework, and rationale framework, objective framework, and we very quickly found that other people were also in this game, including the public conservation land management, our planning people, and others, and we found that it is massive inconsistencies, and they are very keen to have a common policy.

So we're providing a leadership role, do the staff of the government, at the moment we told the minister we were doing it, she said, 'fantastic' you know, '100 miles an hour', because she could sit with the inequities, if people got a problem, they go to her.

**Madam CHAIR:** Yes that was going to be my question, that when you say ok, we've got a ..... however we want to work off the position statement, at what point do you have a discussion with the minister, to say this will intend...

**Dr COX:** Look we'd make a judgement call, if it's a political issue, or a political sensitive issue, we'd have a discussion fairly early on. If it's a technical issue, we may in fact not tell until we finished it, just before we are about to publish it to make sure that there's no surprises, all well and no surprises for obvious reasons. So it's a juggle thing, there's no routine formula to run it at all.

Now on the other hand though, there are election policies, that come our way to turning them into doable and workable policies. So this one on Environmental

Protection Policy for the coastal areas. There was an election commitment, we have been asked to turn that into environment and protection policy for the government, and we are currently undertaking that. In fact that's where the issue came up about DPP appropriateness through of the law. We're better off talking about policy dealing with the issue, it needs some law, puts some law behind it.

So the first leadership role, is one of putting out a whole series of position statements, if you want a sample of those, either Rob or Graham. Oh you've already got them, ok your way ahead of us. There's a sample of them, I'm not sure if you've got them all, but there's certainly is samples.

The guide to statements are there to the best practises documents, on a whole range of issues, in other words what we expect opponents to do, when they do about a particular issue and then of course the start of the journey or variation of the leadership roles discussion papers on a range of issues, that may turn into position statements, may turn into guidance statements, but may be just discussion papers to raise awareness or get some debate going on a particular issue.

Process, Rob will go with the process in great detail, but I just want to emphasise 2 particular points, and that is, the process is utterly and completely transparent, but one exception, what do I mean by that. It's transparent in the sense that the level of assessment we said, is advertised in the West Australian, which is the only week to daily newspaper. The submission from the proponent, Rob will go into all sorts of submissions that come forward, are released to the public for comment, made freely available, our findings are put out in a way of a bulletin, and I suspect you've probably got a few examples of those as well, if not, we can give you some examples of those. Again, we advertise those in the newspaper that they're available, they're available on our website, so people can pull them up at any time at all. There's the appeals process, the appeal convenor, rights over a report, which is publicly available, the minister makes those determination, determination publicly available, so the whole process utterly

transparent, you can't hide it, there's one part though, where there is no transparency, and that is the EPA meetings are not open to the public. So the vote, the 5 EPA members had, is in this room, the debate is attended by officers and advisors, and before we make a decision, we get the proponent the opportunity to put a point of view, we give any significant opponents the ability to put a point of view in this room, before we make a decision, but whether we actually make the decision, we do a, get a closed room, so to speak. The public, the Act doesn't say they can't be invited, but the tradition is we haven't been invited.

**Mr BALDWIN:** So just on that, when you've have a proponent, and any serious objectors, are they in the room together, or are they separately...

**Dr COX:** I'll give you a bit of insight, it really comes down to being consulted. I'll give you an example, currently we're assessing an extension of the highway, road, highway state 7, we settle a level of assessment as public environmental reviews, significance and with the issues, we think there has to be a public participation in the process. So we encourage the proponent to go into a consultative process with the community, and they have done that by setting up a cost safe committee, we've had a whole series of representatives from people from that area, vote for and against. So they solved an awful lot of issues through that process. Now, when we do an assessment, we always try and do a sight visit, so a couple of weeks ago, we actually went out to the sight and on the sight we gave the proponent, which is the Mains Roads Department of Western Australia, the ability to explain the project to us. We then gave the leaders of 3 of the opposition groups, the ability to put their point of view while we're travelling around, so each of them had, as long as they wanted, so it took 10-15 minutes just to put a point of view as to why they proposed to part or of the project.

When the public submissions close, and again, Rob will talk about that. When the public submissions close and the EPA has presented a strategy for the assessment, which is before we make the final decision, we will give main roads the opportunity to

come here to that meeting and put a point a view, and either the opponents will be there again, either sitting in here at the same time, so they can listen to each other, or they come in sequentially. If your behaviours are quite good, you don't have across the table confrontation, because their directing their comments that way. Then finally when we make the decision, or the day we make the decision, we might in fact give those same people another opportunity to put a point of view, so the debate is fully informed by all points of view, before a decision is made. So all I am saying, other than being transparent, but also the next part, the next point of view is consultative, very consultative to make sure that we are very informed, there is also a second purpose for it, and that is that the community that is affected by something is rarely informed, and on the way through the proponent and the community can come to a shared point of view. So a lot of contact can sort it out before they come to us, although that is not always the case, quite often they are issues that are reconcilable, and we've got to come to a view.

Well, that's a bit of a overview in terms of the EPA per say, there's all sorts of processes underpin that, which people during the day will talk to you about it, but I'm quite happy to have a discussion session about anything at all.

**Mr BONSON:** Well just as, and obviously we're looking at a provision in the EPA that has to be started up period. How was it in Western Australia, when people coming to terms with an EPA coming in, and you know how do people get the role and responsibility of the EPA, and all the resource implications. Because I just looked at the Northern Territory, a bit like Western Australia, quite large wide spread, lots of communities all over the place, how do people come to terms with it.

**Dr COX:** Yes, well I wasn't around when it started, nor was Rob, we both came out from the Department of Agriculture areas years ago. I was actually was around in WA as a public servant when the whole thing started, and it actually came out from debate that started out in the 60s, where people started to became more environmentally conscious. It was at a time,

when WA was going through a massive development boom, it was a time when the iron ore mine started, a time when other things started, and people really started to say to themselves, that we need to start looking after the environment if the next generation is going to have the same benefits that we had back in the 60s. It was a labor government from memory, it would have had to been a labor government, their the ones that are usually more environmentally in tune, it was a labour government that put in that legislation.

Needless to say a cross sectional committee, in Western Australia, it's usually labor governments that are more environmental conscious. They put up legislation, that effectively ----- that department. The department was called Conservation and the Environment, and subsequently the EPA, resource indicators at that stage were insignificant, in the sense that, you usually put together a department, by taking bits from other departments, because there's usually people with the feel of environmental issues in other government agencies, and they in fact got rolled into 1.

But the moment, you do that though, you raise expectations, that is, the community at large have a expectation, if you say as an agency, you're going to deliver on something, so very quickly you need to hire expertise in the areas, that you currently haven't got expertise in, e.g; air emissions, water quality, biodiversity which you may or may not have, so very quickly you'll find that you've got to have some expertise there pulling together, and also if you currently don't assess projects, I'm not sure whether you do or don't, don't assess projects, all I am saying is that need to staff that can actually manage that process and handle the assessment process.

Now, in our case, what I'm saying to you, is that we have 70 people supporting our process, now we are bigger than you in terms of population, probably bigger than you in terms of the number and size of projects, so although you have got some very big projects on the rise as well. So in proportion you could have a go at the sort of resources you need to look after the process, but the 70, in fact are supported by

many more, because they've got the ability to call upon the experts of Department of Conservation and Management, they've got expertise on biodiversity. We've got the ability to go to the Water Group Commission, a component of the Department of the Environment, and ask for expertise on water type issues, we can go out to the CSIRO and ask for their expertise, and we can go to the university. So you've got a core that really pulls things together, but the information comes from anywhere and everywhere, because you gave me what the best information is. So there are very significant resource implications if you want to do it properly, and one bit of advice, if you can't resource it adequately, don't do it. There is no use raising expectations to here, and then delivering it to there, because your going to have a credibility gap forever, and in fact you're going to destroy the agency before you set it up, these people have expectations, and then you can't deliver it on that, so if you are going to do it, do it well, resource it adequately.

The part of the question you asked though, was how do you actually build up an ethos and an expectation and knowledge about the agency, now for a bit of the 40 years of history, it's easy in the sense of, like any new agency you start of, a new product, a new function, you make sure that you start raising awareness in the community, so the first entity, and the first Chairman, and the first CEO need to go out there and knock on doors, and say, 'here we are, here's what we do'. You start of with the peak bodies, you start of with Chambers of Commerce, the Chambers of Mines, your local authorities, you send out messages about the role, the aim, the processes, and you go through a education campaign.

You then find though, that as people participate in the process it becomes a two way learning curve, and after a while the process becomes understood, the process becomes accepted, and thereafter it's just a maintenance type role, I still go out there, and do 6, 7, 8, 9, 10 events per month where you talk a little bit about the EPA, and particular project, listen to people. It's just a process that is never going to stop, it needs to keep a dialogue with the community. Not sure if that answers all of your questions.

**Mr BONSON:** No, that was good, yes thanks.

**Mr MCADAM:** Yeah, I've just got one question Wally, quite a part from seeking advice from different agencies, are you able to obtain a independent, totally independent advice, do you have budget for that.

**Dr COX:** The second part is missing, but the first part is there. We have the ability under our Act, and through custom practise to go and seek independent advice from anywhere, but of cause on occasions you have got to be able to write a cheque to pay for it. Most agencies I've got within WA at the present time, I'm under a fair bit of budgetary stress, so are we, so our capacity to go and hire consultants at present, is highly limited by the lack of resources. But having said that, if we were ever flushed for a project, where we absolutely needed expertise we didn't have, and we needed independent expertise, we have the total support of our minister, who would help us find some resources. But we've also designed a different way of doing it, and I'll just share that with you. Without affecting our independence, even though it raises a perception issue, take Pinjarra as an example. Pinjarra is an aluminium refinery where they turn Bauxite into alumina, it's run by Alcora. They recently asked for what they called an efficiency upgrade with actually an expansion program. The big issue these days with alumina refineries close to population centres, is some of the emissions. They have in the case of ----- been known to cause a whole range of symptoms that are not life threatening, but certainly inconvenience people.

We work very closely with the Health Department, and the head of that part of the Health department and I have worked out a process. We're both short of resources and expertise in that particular area, that is the health impact side of it. So we went to the company and made a proposition, we said to the company, 'we want you to put in place a process, and pay for it, whereby at the end of the process, we can accept a report, without us having to second guess the report'.

So we in fact said 'we want to put in place an independent group of experts, you pay for them, we'll tell you if who and if they are acceptable or not', and they happily accepted that because it was going to save them time, right, so they don't mind paying for it. Secondly, we said it to them, 'you then got to put in place an independent reference panel, experts from around Australia and the World', we will get the report from the independent consultants, we'll go to the reference panel, and the reference panel will in fact say whether those results are adequate, appropriate, processes of etiquette process or not, and they'll write a report to us and we'll actually just accept their report. Now, legally if we don't like what they say for whatever reason, we can always start our own process, but that way we've got, I think independence, we've got a good process and it was paid for by the company, now what's the issue?, the issues of perceptions,. The perception is that they're buying approvals, right, but by keeping it all at arms length, and by making sure that we approve the reference panel, and we approve the consultants. We are in control of the process and interestingly enough in the case of Pinjarra, nobody asked any questions, everybody thought it was a good process. But I think there are going to be times when you've got projects that are very controversial, and you've got to be very careful about them accepting it. So the reality is, it's independent, particularly the person who addresses the perception issues.

**Mr WOOD:** The budget for yourselves, does that include the 70 people in the department?

**Dr COX:** Yes, look we don't have a budget, we're an anomaly, because of the split that took place in 99, our budget actually sits within the Department of the Environment's budget, there is no parliamentary line item for the EPA. Now we can do it with a administrative stroke of a pen. We can actually have a line item in the Department of Environment budget, and it then goes to parliament, but because of the split in 99, the EPA budget sits within the department, we've got a budget then allocated, not allocated, it's negotiated, between us and the department, and we

then control that part of it. But we are not accountable to parliament for that expenditure, we're only accountable internally for that expenditure.

**Mr WOOD:** Are those 70 people, more or less, they don't work for the department, they work for you.

**Dr COX:** They work for us, but they're paid for by the department.

**Mr GADD/WOOD:** So they're you might say, they're the expert people you need to resource for the job, and that's what we'd have to look at.

**Dr COX:** Yes, in our case, a board of 5 supported by 7.

**Mr WOOD:** That's what I was going to ask, were they there, or are they sent 70 extra people.

**Dr COX:** No, they are there now, although I don't think they will rate a 40 year period, right, because at one stage there was a single agency.

**Madam CHAIR:** Wally, I've read the review of the enforcement submission guidelines, ----- it struck me that the 4 things, I need to go over clarity. There's a view that people want to increase the penalties. How is industry's view on that ...

**Dr COX:** Mixed. Let me clarify something for a start, the only part of that review that impacts on EPA, that's where this artificial split comes in, that's why I favour a single agency, as opposed to 2. Is that the conditions that we put in place, in our case, it's our decision to advise the minister. So our advice to the minister should be more specific than it has been in the past. So rather than talking about for example, a future plan ----- putting in place an environmental management plan as being one of the conditions, we should actually stipulate the limits, the non negotiable, right. Can't reach them with the ----- prawns, you can't do this, or can't do that, so you put the limits in place. In the case of emissions, you say you must meet the network standards, you must be very specific about conditions, because some of these conditions of the past, have been

ordered to diffuse, which means that when it comes to the enforcement side of it, or the policeman side of it, there's so much ambiguity, there's nothing you can pin people down on. Ok, so that's the only part that affects the EPA, the rest of it's actually is the department's role. They have the enforcement role, not the EPA, because of the split I talked about previously.

Now having said that, anytime I go and visit stakeholders, like I'm doing for 2 days this week, going to Port Hedland, they all want to talk about enforcement. Industry is not overly impressed by that approach at all. Industry and I'm now talking about big industry, in the main are responsible, in the main is highly competent, it has lots of competent staff who work for them, consultants that work with them, and they would much rather have a practice based on best practice, in other words, a licence that says, ok you start here, but you keep improving. The attitude of coming in and something going wrong, and using a big stick, doesn't impress those in industries one iota.

Now you always need to have the reserve power though, to prosecute if someone does not do the right thing, there's no doubt about that at all. They respect that right for that reserve power to be there, but they don't see that as the most efficient way of getting the best out outcome for large industries.

Now let's move away from large industries. The moment you go to small industries, there's usually a lack of competencies inside the organisation, in terms of environmental issues, but they can't afford, and they will want to hire consultants to help them with the processes, they quite often deliberately ignore the rules of the game, so in that case, there's actually a expectation in the community, and even amongst their bigger brothers, that the policemen have got to come in there and come in regularly, to make sure those people also comply. Now it doesn't mean to say those people like it, but its fair to say that their representatives like the Chamber recognise the need for the enforcement law.

Now the reason why we had that review, is in part because I think the cultural issue and

a resourcing issue. The cultural issue seems to bit a little bit too easy, nobody could really enforce the regulation for quite some time, and there are people who are deliberately breaking the rules and getting away with it, so the community was getting quite concerned about that.

The second issue, is a couple of high profile issues, that lead to it hitting the headlines, and very quickly on the response came back, 'why aren't you policing your own rules?', and one of the reasons why in fact, the inspection hadn't been taken place, is that the department over the years, it's not a shot at any political party at all, but I've been around and worked with all governments and a whole range of ministers. The reality is over the last 10 years now, we've received resources been, reallocated from a range of government services into health, education and law, because their the 3 community priorities, and we've only got a fine old resource, they have got to come from somewhere. The reality is they come from the smaller agencies that deal with the less sensitive areas, and every now and then you go too far and you get the crisis, and then you respond. And that's what happened in the case of that whole enforcement area, the crisis hit, the responses, more resources, new leadership, fix it. It should have never really get to that stage.

**Mr WOOD:** Can you police local government, for instance you were saying, ... local government plenty of control, so they approved the subdivision that really went outside of the environmental guidelines.

**Dr COX:** It's interesting, the answer is no. They are moved to refer the proposal to us, there's no penalty for non referral.

**Mr BALDWIN:** So it's not obligatory for them....

**Dr COX:** Well, no it's obligatory but there is no penalty. The act actually promotes they have to, they can make a jump at it alright, you can say '-----'. But the Act requires to, because there's no penalty that says if you don't, this has happened.

**Mr SIPPE:** There is probably 2 things in there, 1 is that local government level, any town planning scheme, or scheme amendment must be referred to the EPA, so we can at the moment go with the scheme, rather than the project, because it's lot more efficient of course, and secondly, we've just had amendements to the legislation, end of last year, which now make it an offence to actually commence a project, not within the EPA system. So I suppose assumedly if local government was a component, and that an Act was a project, which was being assessed by EPA, and they went ahead and initiated that project, before the approvals were given, that is now an offence as of the end of last year.

**Madam CHAIR:** Just further on the review, in terms of enforcement and prosecution that it talks about some compliance incentives, what's the major compliance incentives mechanism are in place in terms of compliance incentives?

**Mr FRENCH:** Well Rob Atkins.. is coming in later to talk about ??.

**Mr SIPPE:** He actually manages that area, so he can.

**Mr FRENCH:** The enforcement side actually comes under the department rather than the EPA, so it is the CEO that controls prosecutions, and Rob works within the department, so he'll be able to answer that.

**Mr SIPPE:** Yes 2:30, Roberts on.

**Mr McADAM:** I've got one perhaps observation is that, do you have any, we in the Territory have got a lot of indigenous communities and organisations to oversee, and the same applies ..... Relationships with indigenous organisations, key stakeholders?

**Mr COX:** Between us or the proponents?

**Mr McADAM:** What I mean is in the context of your authority.

**Mr COX:** Ok, right well your quite right, almost every mining project, and every major land development project outside the

metropolitan area, there is indigenous interest in the proposal and developments.

Now those interests are protected in a number of ways, but also we go out of our way to make sure they're involved in the process. There's actually specific legislation dealing with aboriginal sites, and every proponent has to go through that process as well as our process, so quite a separate process. So if a mining company wants to develop a mine in a particular location, in terms of these specific site of interest, in the Aboriginal communities, a very separate process that they go through to get approval or no approval.

In our process, the generic process I outline and Rob will elaborate on in much more detail, picks up on the ability for representative aboriginal groups or individuals to be part of that process. I think it's fair to say, that most of them are very --- with the process and use it to good effect to put a point of view. By the time a mining proposal comes to us, if it comes to us, I qualify that statement in a minute, there's usually been extensive negotiations between the Aboriginals who got interest in that piece of land and the mining company, and they've usually come to some agreement. So by the time it comes to us, there's usually no outstanding issues in that area.

The reason why I qualify my statement, is there are so many, you'd be the same, we get so many exploration and mining lease applications, that if they all had to go through our process, we'd confiscate this process. We've got an arrangement with the Department of Industry and Resources, which used to be the Mines Department, but now linked with another government agency. Whereby, effectively and we've got a MOU between us, whereby they effectively deal with all the small things, and that takes a lot of stuff off our plate, we only deal with the bigger projects. In other words, projects that are going to have a real environmental impact or a real social impact, whereas the ones that are just bread and butter type things, that other department in fact takes care of, but under a framework that's been put in place, we have in delegated our powers put in place a screening process, where they effectively

screen out anything that is not important, and they send the rest up to us.

**Madam CHAIR:** In that MOU available?.

**Mr FRENCH:** And there's a session after lunch on that, it's actually an important issue, point, and we are going to brief after lunch.

**Mr COX:** And I'm sure your project has equal as much development, because you're a mining state, we're a mining state, and if all our stuff has to go through your EPA it's....

**Mr McADAM:** So that Fitzroy project, ...

**Mr COX:** It's not a project, it is in the pipeline. For example, there is no project, right. There's a, by the way, the Honourable Bridge, use to be my minister, when I was heading up the Water Authority, which is equivalent to your Power and Water. It's a concept, they never copy on a concept, so it's never been assessed, but boy if it ever became a project, it would get a very hard time, because those Aboriginal communities there have a particular view, about contaminating that water and other...

**Mr BONSON:** Just one other question I suppose, is that the Swann River, a big issue environmentally down here in Perth, we've got the Darwin Harbour, what's some of the things that come out of the Swann River experience over the last 20 years?

**Dr COX:** A whole heap of surprisal things. The Swann River has been precious to the people of Perth for a long time now, and there's actually a authority that currently manages it, it's a management authority, the name of it is called the Swann River Trust. It has a board of its own, it has management staff of it's own, has operating staff of its own, and historically it is a group of people that keeps it clean, rakes up the weed, picks up the rubbish, builds those retaining walls that you see around the edges, when there is no beach. But it also has planning powers, in other words, anybody who within a certain distance of the banks of the Swann River wanted them to take out a development, had to go through

the Swann River Trust to get planning approval, so that that project will not adversely impact on the river.

In effect we know it hasn't worked in the sense that, in this day and age the things that adversely impact on a river, are things you can't actually see, it is nutrients flowing in and causing things like algae blooms that in turn are cause fish kills. So the government announced about a month ago, two months ago now, that it would significantly increase the resources for the Swan River Trust but also significantly increase the powers of their Act to effectively give them the role of a catchment manager, so they will have many more powers to effectively ensure that you control the amount of nutrients coming into the river to the extent you can control it. You can't control what comes into the wheat belt via a river, but you can certainly control what comes into the river by way of drains from the metropolitan area.

**Mr BALDWIN:** But the catchment area is going to be much larger than that...

**Dr COX:** It will be enlarged. Interestingly enough, though, it will not go into the wheat belt. You might say, why not?. Well, it becomes mission impossible. There is a second reason why, it is a technical reason. The wheat belt, the Swan River starts off as the Avon River in the wheat belt, it flows in the winter time. It is a very saline river, and most of that water flows straight out again. It is actually the water that comes in from the drains in summer time that causes the algal blooms. So you control what you can rather than manage what you can't manage. But its powers will be considerably enhanced, its resources have already been significantly enhanced, and that is a response to the fact that even though it looks fantastic, underneath it, the quality is deteriorating quite badly, and that is in relation to the nutrients coming in from a variety of sources.

The other thing about our river is it is a people's perception issue. There is a series of Drainage Forums, which is trying to fix the drains issue. We had some focus groups and the focus groups basically told us there was nothing wrong with the river.

We know there is, right, and there have been headlines about fish kills, but what the public at large are telling us, 'when we drive past that river, it looks fantastic, there is nothing wrong with it!' As a consequence, when it came to willingness to pay extra to fix the river, there was no desire to make a contribution at all because there was no problem. So it makes it very, very hard to strike a special levy specifically to fix the Swan River and the only way to do it is to effectively, our water authority controls the drainage system, along with local authorities, is to gradually creep up the rates over time, so to get adequate revenue from that source as well, of course, as some general government money, to fix up the ...

**Mr BALDWIN:** You had better take your leave.

**Dr COX:** Yes. Other wise I will be late for the next meeting. But I will join you at lunch time and I will be happy again to elaborate on the issues you wanted to explore. Enjoy the rest of the day.

**Mr FRENCH:** We were also going to talk about the service arrangements. We had a couple of things. There will be more coffee coming in as we go on and if you can just help yourself during the morning to coffee and cakes, okay. What we will do, Dianne, would you like to introduce yourself, you did just miss the start...

**Ms KATHCHERAN:** Yes my apologies for my lateness, I got stuck in the traffic, it was more than the usual morning this morning. My name is Dianne Kathcheran, and I am actually, I have been appointed to the department of health two months ago, to initiate a process to implement health impact assessment. At the moment we are going through a process of trying to determine how that process will proceed, and whether or not it should be returned to the environmental impact assessment process here, and utilise the wonderful expertise and all of the advantages of the EPA. I really thank you for allowing me to sit in on this today, because it is going to be incredibly informative for me as well, so thank you. I will try to keep to the background. Mine is really just as an observer.

**Mr SIPPE:** I am just going to tell a couple of stories I think, before we get into the service arrangements of putting the EPA at the department. The first one is that the EPA as an institution has been going about 32 years. It started on 1<sup>st</sup> January 1972. It started because it was then, John Tonkin was the premier, and there was a number of controversies which arose out of the sixties which were ----- . And the government of the day was under some pressure to do something, and they had this vision of setting up an EPA because the Americans set up their EPA in 1970, just the year before, they put in a start about a year and a half before. So John Tonkin was on the steps of parliament house, and all the TV was there and the newspapers were there and they were saying, 'Mr Premier what are you going to do about all this?' And famously, Mr Tonkin said, 'We are going to have an EPA and we are going to give them some teeth'. And that was really good. But he was the Minister for the environment as well. And that was really the turning point because what the then government gave, they gave the EPA 3 teeth, that's it, but 3 very important teeth, and what he has spoken in parliament at some length. It gave them independence from political direction, and that is quite a big tooth. There are not that many public authorities that have that. There is the commissioner for police, there is the Auditor-General and the Ombudsman, there is the director of public prosecutions, and anything to do with the Northern Territory as well. But there are not that many that actually are there. And the EPA is one in Western Australia. They gave EPA the right to publish; again, a pretty powerful right. So they even had a direction for the right to publish. It also gave the EPA primacy, the environment protection act has primacy over all of those legislations. So they were the 3 great powers, the 3 great teeth, which have persisted until today.

But with all good democracies, there is counter balancing and accountabilities. You can't have powers without accountabilities. The first accountability for the EPA is its advisory. It does not make decisions. So it has independence but it is advisory. The second one is, on a number of key things that the EPA does, there are public appeal

rights. The appeals are in fact heard by the minister, and you will hear much more about that today. That is the second great accountability. The 3<sup>rd</sup> one is, as Roy has already described, all its processes are open and transparent, so we can get access to them.

In fact, there is sort of 2 great eras of the EPA and I really should declare my bias I suppose, from the start. I am only showing support of the institution of the EPA, I don't normally admit this, and I suppose the tape is running, is it? But I have been here since 1975 so I was here when the number of offices for the EPA could fit in half of this conference table. It has really been my life's work, working for the EPA and obviously, I love the work, and that is why I am still here.

But the reason I think it has succeeded in Western Australia, is this very fine balance between powers and accountabilities, and governments, I think, successive governments have seen the value in that balance. Because what the EPA really does for government, and it is a big, I guess it is a big plus for political government, is it takes the heat out of environmental decisions for governance. Because EPA deals with the heat through a systematic and orderly process then delivers the government public advice, and the government can accept or reject that advice, as it has done. I mean, there is no obligation, and indeed, there has not been an obligation for governments in the past to accept it, but they generally do, because generally we think it's pretty good. I mean, there's not a riot in the streets if they don't but they do generally give a good reason not to, and it is generally because there is a greater social good or a greater economic good. Because EPA's advice is you know, environmental. But I think it has worked very well. As you would well recognise, we are the only state with this really set up, in Australia.

**Mr BALDWIN:** Rob can I? The independence of it, Wally's position, is that ministerially appointed or is it parliament appoints, like the Ombudsman is an officer of the department, the Auditor-General is the.

**Mr SIPPE:** Very good point. Much discussion when the thing was set up in the first place, but it is actually the government executive council, I mean, strictly speaking.

**Mr BALDWIN:** ministerially appointed?

**Mr SIPPE:** ministerial appointed yeah.

**Mr BONSON:** And the other side to that is the Auditor-General work in the Northern Territory, is a seven year appointment. What's Wally's?

**Mr SIPPE:** Wally is actually on a 3 year appointment I think, yeah, they vary. They go up to 7 years but I think Wally only wanted 3.

**Mr FRENCH:** We have never really gone that far I don't think, 7 years.

**Mr SIPPE:** No we have but, 5 or 7...

**Madam CHAIR:** So it's maximum is 7?

**Mr SIPPE:** Maximum 7, yeah. I should actually note a point about political government and EPA, because I've been close to the system for a long, long time. I must say to successive governments and Ministers, great credit in my view. With a few small exceptions, they have actually respected the independence of the EPA. And I think that is, it is testament to the fact that it means it has actually has worked. There have been, there is occasional nibbles you know, a bit of a lean here, a bit of a lean there, but usually Chairmen are of sufficient calibre to say 'hey, Minister, I don't think you should ask me that question', or 'I don't think you should make that point to me, Minister'. And generally ministers understand what the thing is and they sort of, it get dealt with very diplomatic and very gentlemanly, if I can use that term. But you know, that is an interesting point, because people can get into all sorts of ways to deliver outcomes to things, but that really has not happened, to the best of my knowledge, and I have been fairly close to it.

Talking about two great years, in the EPA. The first great year was really from '72 to about '86, when the Act wasn't that powerful and a lot of things were done, apart from those sort of, the greatly over-rating stuff I

have talked about, a lot of stuff was done by sort of bluff and subterfuge. In '87 we got our new legislation which are pretty much what we've got now, and that was a significant change, because a lot of things we actually did in good practice, really became black letter law. All the environmental assessment stuff, and we re-jigged the environment protection policy stuff, and a whole range of other things, all the pollution control stuff came in. So with it, a much tighter and much firmer Act. I was involved in the EPA end of it, rather than the enforcement and compliance of pollution region. When we wrote all the powers and accountabilities, we had four great public rights in our mind, it is a very public and transparent process, and this is the public's right to know, the public's right to be informed, the public's right to be heard, and the public's right to object. And if you, a lot has been written in a quite, complicated legal way. We would actually see peppered through that legislation, this over riding theme of balancing powers and accountabilities, and accountabilities to public are based on those 4 great principles. I think it is certainly a service in good stead and I think has survived the distances of consequence.

Anyway, that is just some stories about how it all happened. My topic is really to tell you how we as government officers provide services to the EPA, and this can be pretty dry, but I mean, look, I'll put that up, and it is in your legislation, but the important point, rather than the actual words, the important point is that the Act actually contains a provision that the minister is responsible for providing the services. In practice, of course, it happens between the CEO and the Chairman but ultimately, it has the power, there is a part down the bottom, saying that this section doesn't limit the incorporation of section 24, it should be, 24 is the clause which says that you can also go outside the department and get help from within the government, public sector, which while you're .... So there is a head of power to make it happen and I suppose that is really the only principle I want to illustrate.

We have a service arrangement which is written and signed off. It is in your papers. This is quite interesting because this is something obviously I was involved in, in my

role as coordinator of EPA services, and it had its genesis or there was series of geneses, at a time when, the then former Chairman and then former CEO actually weren't seeing eye to eye, and it was, we drafted up something which didn't really see the light of day because I think, the various parties and things was legally enforceful, and they wanted to bash each other over the head with it, so it was quite interesting. They we went through a phase of the gentleman's understanding, which was when the cap was changed, and then when we were 'mogged', as we say, Machinery Of Government Review in Western Australia, came through under the current government, and we were navigating a bigger department, and amalgamated, we set up a formal arrangement...

**Madam CHAIR:** How did you amalgamate with, when you became bigger, what was the growth that occurred? Where did you go?

**Mr SIPPE:** Well, the agencies that were amalgamated were the Department of Environmental Protection, which was then formally the EPA which was then formally the Department of Conservation and Environment, so that the environment stream of government, amalgamated with the waters and rivers commission at the end of town, and they proprietored the catchment groups, water resource managers and planners and protectors; the ----- trust people, for example, they belong to us; and the Keep Australia Beautiful Council, the litter people. We now have the office of, the water policy have joined the club.

**Madam CHAIR:** So do you have say, soil air water, in that?

**Mr SIPPE:** No. Soil is still with agriculture. We have air and water. The management of conservation and the management of forests is with CALM, conservation and land management.

**Madam CHAIR:** And mines is still with...

**Mr SIPPE:** Mines and industry amalgamated, they are Industry and Resources now.

**Mr BALDWIN:** Have they got their own environmental group?

**Mr SIPPE:** They do, yeah. In fact, Bill Biggs, who is coming to see you this afternoon, is head of that group. Now, with the service arrangement, you have got there, but I will just pick out a couple of highlights in this, because you can read it for yourself, but it is only going to be of general interest to the everyone. The things we put in it, this is the one that has been signed off, including endorsed by the Minister, it sort of obviously describes the usual role, responsibilities, operating principles, but you've actually put in special protocols, that is probably the more interesting bits. Because the EPA is independent of government, how does it get to sort of know about things that are going to Cabinet, or Ministerial Council, I think he might have met once or twice. How does the department know about what is on the EPA agendas, what happens when the department is actually a proponent for an action that the EPA has to assess?

So we have got some special protocols which are listed there on how the party will behave under those circumstances and that is probably quite important, because as people change you would have those sort of procedural rules in place, to make sure that the flow of information works. They obviously describe what sort of services we provide. And that is got some business protocols about, that the EPA really has to be involved in the business planning process and the allocation of rules to them, I guess from our group, that how we represent the EPA externally.

Finally, and very importantly the staff wanted, post amalgamation, staff wanted the ability to provide advice to the EPA without fear or favour, i.e., they wanted to be able to give their best professional advice about something without necessarily having to present a whole of agency viewpoint. Now, this is obviously quite a political scene because the former environment department always had that, but the people we know ----- with have never had it. So what about that measure of protection? I think it is extremely important. If you are going to have an independent authority, you must be able to

have staff to be able to provide their best advice. This authority has got a system like that, it makes an inclusion, but if you have sanitised advice coming in, then the system will actually crumble, so I think you actually need to have a policing and measurable protection of that.

**Mr BALDWIN:** So Rob, how does that work? I mean, are you saying that an individual departmental officer can come along to the EPA and say, 'Even though you have got our report, I believe something else'.

**Mr SIPPE:** Well, without saying they got our report.

**Mr BALDWIN:** Whatever it is.

**Mr SIPPE:** We don't have a problem if 1 group of the department says, 'for these reasons we think that', and another group of the department says, 'we hear your point but for these reasons we think that'. We don't have a problem with that because in environment there is often no black and white. If you have a group, for example, whose job it is to protect the marine environment, they'll say, 'if you were to protect the marine environment, you really should do this'. But someone else will come in and say, 'Well, I am dealing with ----- processes, and if you do that you are going to do that'; and the authority must have access to both points of view, before they decide. And so it's got to be professional. There's got to be no surprises, so that everybody knows what's coming up; and people don't ambush each other or behave badly. It's just different points of view about something which is quite complex and quite difficult.

**Madam CHAIR:** So have you got the 'no surprises' in the programs or are they just starting to practiced it?

**Mr SIPPE:** No well, it certainly, I think it's not actually written down but it's certainly on the way...

**Madam CHAIR:** So the advice is shared across the divisions of the agency?

**Mr SIPPE:** Yeah. We actually share, with the advice that we give the authority,

we actually give the proponents, just before they come to the meeting, so it's not as if it is a secret.

**Mr FRENCH:** They get a copy of the briefing notes.

**Mr SIPPE:** We actually give the briefing notes out, so when they come in, and any key interest groups, they get in as well, so it's not as if it's a secret process in that sense. And that is to write the checks and balances on what we were talking about this morning.

**Mr WOOD:** One of the easiest things is to come up with planning it out overall was that you would get a, what do you call it, a sanitised report from the department, and the department could be a whole range of different, many departments. And I used to tell the planning authority, and what used to annoy you was that you knew the person is one of those people in there that can agree with what the sanitised versions are. So to some extent, do you get around that by allowing those smaller groups to have their professional say?

**Mr SIPPE:** Yep, that's right. I still go to the planning authority here, but I have been ----- debacle for many years, so I know just what you're talking about. Yeah, I don't want to make a big thing of this because as you'd attend, it's not a big thing, but we do allow people to present their view without fear or favour, and it's written down, and that's an important principle, and it works.

**Mr BONSON:** So often you might get a proponent turning up to do some, it was the EPA action quoting a briefing paper that they might have received, outlining the issues. Well, it actually says here, X, Y and Z.

**Mr SIPPE:** Yeah, I disagree with it for these reasons, yeah.

**Mr BONSON:** Or they might say 'I do agree with this and this is something that we should favour strongly'.

**Mr SIPPE:** Yep.

**Mr BALDWIN:** There was also a bit of a culpable change in the ----- for the fact

that you can have different divisions within departments and different departments, you know, the normal screening would have been either through a hierarchy, a report like Gerry's talking about the sanitised version of consensus throughout the...

**Mr SIPPE:** But I don't think, but the EPA has always operated like this since day one, so it has gone up, it's not different to the environment people, it's actually different to outside of it being sort of clubbed in.

**Mr BALDWIN:** Yeah, that's where I am coming from...

**Mr SIPPE:** Yeah and that is considering any cultural change. But a former CEO here who took over the amalgamated ATSIC, he did too. He got quite a shock when he came to the meetings and we had 1 sort of classic case, and I think Ray was there as well, it was to do with wetland protection, and there were sort of various viewpoints, and I saw the look on his face, and he was quite astounded that different departments within the organisation had different views, and he wasn't quite prepared for that.

**Mr WALLIS:** I disagree with the CEO.

[all laughing]

**Mr BALDWIN:** It's a good shift but there's such a thing as cultural change within it.

**Mr FRENCH:** From his department, he was on from the water side, the water and rivers commission, and they've got their own board, and he was on the board. And basically their reports that came up, came through the CEO into the board, and so they were used to operating that way not this way. It was a bit of a shock.

**Mr WALLIS:** So you've got one voice, so the dissenting voices were totally foreign to them and absolutely normal behaviour for us.

**Mr SIPPE:** Yes but I don't want to over emphasise it. We won't have to dissent all the time, we don't argue. It is not -----

forever but that is protection extra. Well, I think I've laboured that point too long.

**Madam CHAIR:** No, we laboured it.

**Mr WOOD:** I think it's good for those professionals, because I need to talk to people out of shop, and say 'this is what we really think', but you won't get that answer when you see the final report.

**Mr SIPPE:** I mean an issue of a good debate, you'd have to just think of a good product. Because what happens is when it gets to the next level up, the whole thing can go off the rails, because people's opinions in the building are obviously reflecting the people's opinions outside the building, and if you don't get it all tucked away in an orderly process, the whole thing unravels. So there is a benefit from allowing this, it means you get a better product, a more robust product, and then when the government makes decisions, it is much more defensible. So there is a reward in putting the panel up there.

I don't expect you to read this, but I just want to really point out the physical arrangements. You'll see there's 2 divisions. This is what Wally said, 70 people, and I am actually currently doing both of these directors' jobs at the moment for a number of reasons. So this is the EPA's service unit, and you can see, we are sort of joined with a dotted line to the rest of the agency. And the rest of the agency does things like obviously, this is really corporate services, Robert Atkins, we were talking today, he does essentially pollution management issues and waste management issues. Regional operations, you would obviously have a regional service delivery mob here in this state. Resource management, that's where you dump water, primarily dump water, and resource science, that's about both water and air science, that's where you house all the structure. In the agency we've got 4 boards I think. We've got the EPA, the Water Rivers Commission Board, the Waste Management Board, the Keep Australia Beautiful Council, The Sovereign Trust, 5 boards with varying degrees of power and accountabilities. For example, the EPA is independent of us, a foot of government and other private services. The Water Rivers

Commission Board is actually currently the employer of numbers of staff and the accounting person for budgets, and that is about to change, because the legislation is in the House, but it hasn't got through yet. So the Keep Australia Beautiful Council is an advisory board, the Sovereign Trust is a board of management, so it is quite a mixture.

In fact, this model really came out of the MOG exercise, and it's what I'd call like a homogenised model, where you put all of the departments in a blender, you push the button and you froth them all up and you try and get some sort of consistency. We're just taking a bit of a look ourselves and thinking we really struggle to make an homogenised agency work, because the goals and objectives of the boards that we report to are different. That is, because the Water Rivers Commission is actually a proponent for the process the EPA assesses. So we actually, we've been trying to get .... for the conflict of interest. So our thinking now is maybe, and we're just talking about an executive level, maybe we'd better start looking at what we'd generally call the Westfarmers model, they are I think the most successful company in WA. Where essentially they have sort of business units, all overlain by Michael Chaiy who really sets the strategic direction and monitors the performance and gives people here flight instructions and they report back to him on that. So where you might get sort of more autonomy in business groupings, but all overlain by achieving agreed outcomes. So we are just talking about that idea. But at this stage we are still mugged so, under current government system, so we are probably not going to go private, particularly if you're going to ... Because obviously, we've got, widely divergent responsibilities...

**Mr WOOD:** Just from the top end down, how does the Minister for the Environment or the government stop, putting input into the environmental issues? Will government, or does this arise in the EPA, or do they say, 'I'm the minister for the environment and I think this is a good idea, where do I go from there'.

**Mr SIPPE:** Well, the Minister has got lots of referral. I mean the EPA is only 1

part of the environment game here. Our current minister is very interested in compliance and enforcement issues, and of course, that's all mainly government department stuff, of which the CEO is probably director for it and accountable...

**Madam CHAIR:** So hence the review for example.

**Mr SIPPE:** Yeah, and that's really all sort of this stream, and that's really a straight line to the Minister. The Minister refers things here quite frequently on a whole range of things. She asks the commission to be reviewed or she asks for policy advice on this, and that's quite a good stop gap for the Minister, because the Minister can do something without having administered this case herself, which is a very good cooling off period. If the political heat is on, and you want to do something, well, be it an independent review of a structure that's already existing, the advice goes public so there's no secrets, the EPA consults with everybody so everyone's got their point of view, the Minister gets the report and then can decide. By this time, the heat's gone out of the situation and she can make a nice considered decision.

**Mr BALDWIN:** And one would think, follow the recommendations. Maybe.

**Mr SIPPE:** Normally, because normally the recommendations are pretty good. I suppose that the nearest analogy I refer to, is that the EPA tends to act a bit like a court in that sense, because they hear the evidence, they sift their way through the evidence, people come and have their say, and then they retreat to their chambers and write up the report, and in this case it is an advisory report rather than a law-making report, but they are usually pretty good. They are pretty open and transparent.

**Mr WOOD:** Sorry, just to get it clear in my head. Say there was a sub-division proposal. Someone projects it to you, you do an assessment, the environment protection authority comes up with a decision, it is all signed off by the Minister; is that correct?

**Mr SIPPE:** Yeah, the EPA's advice goes to the minister, and the minister makes a decision.

**Mr WOOD:** And that happens for every decision he is going to make?

**Mr SIPPE:** Everything that the EPA does, it is implicitly involved in the assessment of specific proposals, yeah, it all ends up with the Minister making the decisions. Now, we will go through that in some detail, with Colin Murray.

**Mr FRENCH:** You'll have that part with Colin on the environment, you'll also have a session with Darren Walsh from the Ministers office, to go through how it's sited.

**Mr WOOD:** And the appeals...

**Mr SIPPE:** Yeah. So EPA, independent advice, EPA has appeals, the Minister determines appeals, the minister makes decisions on conditions being enforced...

**Mr BALDWIN:** The same for us Gerry, except we haven't got an EPA, we've got an environmental office, with the same rights of sign off.

**Mr SIPPE:** So that's really all I wanted to cover on the services, except to say one final comment. What I think is important from my perspective, is what I call the hearts and minds argument. If you want an EPA with the sort of powers and accountabilities that we have to actually work, you have to have people working for them whose hearts and minds are with the EPA. Without that, it will die. If I've done anything since June 2001, since the amalgamation, it is to promote within the broader agency, the hearts and minds argument to the EPA's leadership, where these two divisions, really, their job is to look after the institution and the functions of the EPA and that is our primary job. Now, that does cause lots of tensions, as you'd expect, because it's addressed the organisation between other things. But it is the only way, I believe, that the EPA will actually survive, in the usual form. Graeme.

**Mr BONSON:** Actually, Rob, could I ask you a question? You mentioned

in your presentation about WA being different to the EPA circumstances in the rest of Australia. Could you just highlight it a bit better?

**Mr SIPPE:** The way the EPA, I guess those powers, the powers and accountability are a different collection. I mean, the obvious ones are Victoria, New South Wales, the 2 big EPA's, although New South Wales is no longer an EPA, they just amalgamated up to a bigger department. They have been essentially, emission and pollution control agencies and then pollution management agencies. They haven't had an environmental impact assessment, with responsibilities especially in Victoria, they haven't had a big role in environmental policy either. Victorians have had EPPs, the statutory policies, but they haven't been big players in environmental policy per se. So they really come from states that had a big manufacturing base.

**Madam CHAIR:** They're more regulatory?

**Mr SIPPE:** Yeah. Absolutely. They have been regulatory instruments. South Australia is again, and I think you have from South Australia, a former colleague here, Paul Vogel, who was actually in WA just last week so he mentioned that you were going to see him. You will see that South Australia is pretty much a regulatory model as well. Whereas that end of it over here, is actually a departmental function and the EPA has got the policy and the impact assessment inserted. So that's really the major difference in...

**Madam CHAIR:** I haven't been able to track it down, but there was evidently some research done out at Manchester University and the WA model got the best rap of the Australian models.

**Mr SIPPE:** Yes, actually real models.

**Madam CHAIR:** Yes.

**Mr SIPPE:** Yeah, that was Professor Christopher Wood. He did benchmarking exercises around the world on, this is about, this is ... for environmental impact assessment, rather than EPA models. And he set I think 16 or 18 criteria, what was world's best practice in EIA, then he scored

a number of jurisdictions against it, and WA scored extremely highly on that. In fact, the one thing we weren't doing well at the time, this was a few years back now, hopefully we have covered with our next topic, which is the issue of environmental status, because one of the reasons. I mean the real impetus for that was Christopher Wood's report, where he said, 'we are not giving up -----, and we've got the process of greatly investigating that, but you're not letting the rules be known clearly enough. Anyway I will come back to that in a minute, that's my next topic in fact.

**Madam CHAIR:** Yeah because it does go that whole, certainly for a jurisdiction like the Territory, where certainly we have got the role of the office of environment, but we have had no EPA as such. If we are to go down the path of this parliamentary committee recommending EPA and *ipso facto*, what model, which is our terms of reference, one of the core issues obviously, that we are about to engage a whole consultation process throughout the Territory with stakeholders; is how the interface between industry, stable development and the roles of the EPA, how we manage that process, is to me a sort of critical issue. It seems there is a view of general acceptance of industry of the role of EPA, what it does, how it does it?

**Mr SIPPE:** I would say yes, bearing in mind that the EPA is not the regulative industry directly.

**Madam CHAIR:** That has helped, has it do you think? getting to the department for regulations?

**Mr SIPPE:** Yeah, I think, because the industry I think had a very fair voice. They got the job, this is really for new development proposals essentially. Their job is to present their post, the case is heard on its merits, they ----- visits, they have the opportunity to brief the authority in person, they have a right of reply against the authority's advice through the appeals process, and ultimately, they get a right of appeal against the conditions that are set. So they've got 3 appeal rights. They've got the appeal on the level of assessment, they participate in the process, they appeal against the EPA's advice, and they can also

appeal on the conditions. So they get a pretty fair run. So it would not be surprising for the industry to think that they were pretty well done by, you know, they have got an opportunity to have their say. And ultimately, when the Minister makes her decision, if they were to lean on the Minister politically for other reasons they can, and they do, I guess.

**Madam CHAIR:** And do you think that 28 day timeline is critical too, to industry acceptance, because a lot of people who had issues about EPA processes say it will get you bogged down in projects, we can get bogged down in EPA processes. That is the criticism you hear.

**Mr SIPPE:** The 2 biggest prizes for the proponents since Adam was a boy, on environmental approvals practice, is the uncertainty of delays. Certainly, I am going to talk about the Minister, will address that. Delays are really interesting. We suffer the same sort of broad allegations as every other jurisdiction in the world, on this. In fact, I used to be director of EIA before I changed the policy on that, back again, and Graeme used to be the manager of the EIA process up there, for me. And we fixed it. Quite simply. We just plotted every project, every stage.

**Mr FRENCH:** We just planned an actual timeline so you could actually work out where the delays were, and 90% of the cases, or all of them basically, was always the proponent.

**Mr SIPPE:** Yeah, so every time someone whinged we just went flop, and in fact, when it came to the, in May in 1992 we had a major iron ore development, the Marinbu one in Hammersly Island, right near the Karajie National Park. It was very controversial, and the government actually excised a patch of the national park out, the greens were up in arms and it was pretty hostile. The company had a pretty aggressive PR campaign in the media because of this. But we just quietly said to them, our points to the company, don't even dream of going down this route because this is the evidence, guys. And we met every deadline we said we were going to do, and they missed every one, and I said 'you pick a fight with us, and we are going to take you

on the front page'. And basically, there wasn't a murmur about process at all, because we had the evidence.

**Mr FRENCH:** We have gone one step further now. If you look at our website, we all published on the website, and it's colour chartered, just with a timeline, so nobody can raise ... over timelines.

**Mr WALLIS:** Squeaky clean, we are.

**Mr SIPPE:** That's what I would say to somebody who asks. They do. If you had a complicated project with a lot of public interest, and you wanted to get to a resolution, somebody's got to grind their way through those issues. Famously, we once had a Minister who used to say, 'if you want an answer today, it's no, if you want to wait for a while, it might be yes'. But I like your style. I'll even give him that because he's a good Minister. And it's a bit like that. Sometimes, if you want an answer now from ... the answer's no, because there are too many uncertainties. But if you want to wait a minute, and let us grind our way through and manage these issues, we think it will be yes. And the smart ones understand that and you get to that point I mentioned.

**Mr FRENCH:** You are going to have to move on to ...

**Mr SIPPE:** We've covered half of policies already, so. I should introduce Ray Wallis. Ray is assistant director in the policy and coordination division and Ray's going to talk about 2 of the 4 bits this morning. He's going to talk about EPPs and he's going to talk about state and environment for me and I'll do the bits in the middle. But I am just going to do a couple of comments on...

**Mr Wallis:** This is an ----- of the sort of policy issues we have, on a lot of the policies we have in Western Australia. And you see where, we're talking about this lot down here, but there are a range of other ones and you've got to see there is some sort of broader context. The quotes with regards came from a former premier, Brian Burke, who once when challenged on, and it was a bit different from the core promises that John Howard got out, but when challenged upon in his party platform, he said they were a spiritual guide, that is what

is going on. I love that quote, so I use it all the time.

But pretty good direction from cabinet, treaties, or memoranda of understanding and bilateral arrangements, are really treaties in a legal sense. We have statutory EPPS, we are able to discuss, we have memoranda of understanding which we are going to talk to you about. This isn't my department but we have ones on land, include like racism, and a range of other things. We've obviously got operational policies about how people should behave. And finally at the bottom, you have these things, which are with the EPA's bits and pieces. And because I'm nearing the time I'm not going to show you that, or that. But I'm going to give you, lobby, I think you should do something that we don't do very well, because you've got the chance. Whatever you do, you are going to set something up newer, whatever it might be.

And if you do nothing else, if the body you are going to establish has any sort of policy role, I think you really should make sure that you in-build some policy evaluation. It is really the forgotten bit of policy, and there are just some best practice principles that you need to do. We don't do that very well here. We have been trying hard but we are just struggling, we haven't got enough people and money to actually make it happen. But in my observation, and when I say governments I am speaking about small 'g' governments here, which is government agencies and ----- all rolled into one. Extremely good at developing policy and setting it out; generally pretty poor; and I am saying, are we really hitting the mark? Because despite that, some of these policies actually have underpinning programs, are costing quite a lot of money. So that is like a best practice check list which I won't go through in any detail, but I want to just give you a couple of examples, to try and pin down what I'm talking about.

The top one is my very favourite. I lecture the university students on environmental policy and this is one of my favourite slides. This is the national audit office looking at the land care program, with \$400m, and some \$1.25b, which really are Commonwealth programs underpinning Commonwealth policy announcements. And that was their

evaluation, we just spent you know, nearly \$2b and no one knows where it went, and what you achieved there, which is pretty damning I think. And in Western Australia, we have argued for certainly an EHT and EHT2??? but they really should devote that 1% - 2% of the budget for good evaluation of those programs, are they achieving the policy outcomes; and we haven't got a skerrick of ----- for that...

**Mr Wood:** Do you ever evaluate the amount of paperwork that the people who receive land care funding had to do, they received funds 10 months after they put their application in.

**Mr SIPPE:** Yeah, we know about that. Obviously, we use a broad evaluation, ---- 1940 ----- . We are introducing better evaluation of you know, EPP, but they would be black letter law policies, and so we should. I suppose just a little thing where our department actually did some evaluation, we have 2 air problems in Perth. We have photochemical smog problems in summer, in fact, we haven't had Shirley in today to show you but we did pretty good this summer; and then we have wood heater haze in winter. So much so that we are actually now breaching World Health Organisation guidelines for both those, at probably 6 to 8 times a year. But the teams are looking into this, so we are obviously consumed. We had a program called 'Less Smoke, Clean Air' and this was all about people using pot belly stoves properly. We have sort of temperature inversions here in winter where it gets quite cool, and smoke goes out of the chimney, plops down and gets into a depression, and they fill up with smoke and it's a big issue, looking at the smoke in the air....

With this campaign, it was about behavioural change. We had funds. We did 3 surveys, 1 at the start of the thing, 1 in the middle and 1 at the end, so we had good evaluation data. We had free TV ads, I mean Channel 7 is part of the community service obligation, that's the biggest TV station in Perth, biggest coverage, and they gave us free community time, they made the ads and they ran them for us at peak times, it was fantastic. At the end of it, we had evaluated all the effort we had, all the money we spent and everything else, and

we basically found that people recalled the - ----- argument but were not quite sure what they should be doing about it.

So we put a huge effort into this program to hold that, and our return on that with evaluation was, we really the behaviour will change, like the people had some recollection of what it was all about. And that is a very salutary lesson, because without that evaluation we might have thought we had hit the mark, and we would have thought let's do it again next year, let's get another \$100 000 into that, because that's solving the problem. Wrong.

**Mr GADD:** Perceptions only.

**Mr SIPPE:** Yeah. So what we did, what we tackled, so there is ----- going to all the wood yards, and said 'you're not going to sell the wood, once you have gone over the 7 figure, and we bought a lot of moisture meters and said, 'now we are going to penalise you, and it was a complete behavioural change to reach them all, you know...

**Madam CHAIR:** You went down to the source.

**Mr SIPPE:** Yeah, because that's not the final affect, because people go in the bush themselves and they'll burn it in the back yard, but at least that's had some sort of material improvement. We wanted to try the behavioural one first because that's what we do, rather than go regulatory first up, but.

**Madam CHAIR:** Hit the kids at schools. They're the home Nazis.

**Mr SIPPE:** We actually looked at that extensively in public education. I don't know what it's like in the Territory but we've had, it is enormously energy consuming trying to influence the education department to pick up environmental messages. It's enormously energy consuming to get teachers to pick up stuff out of their library or out of the thing that you're using. My wife is a teacher so I know this, and she is pretty tuned in with environmental issues and she's at school, and she said 'hey, we've got racks of this stuff'. You are trying to get teachers who are pretty busy to pick up,

even if it is a made to order package, just what they want, you know; they creatures of habit, they are busy, their lives are pretty full, to actually have them jump in and use that. Usually 10% people will do it first up, because they are keen and committed. The last 10% will never change, but the 80% in the middle, you've really got to get out there into the schools and work hard to get them to shift.

And it's great if you can do that, then you can go into the schools and have a ----- to see if it will work. But you just can't....., again we have just demonstrated time and time again, it just doesn't work.

**Mr FRENCH:** But we do have a community group that works in the department, and we actually have an air watch program in the schools and they link to the weather stations weather on the news, and the reports the kids will....

**Mr SIPPE:** Yeah and that works well because it is well resourced, we got Commonwealth funding for that as well, it is well resourced, you get people on the ground to do it, actually go out in the schools, they actually, you've got their butts in the school working with the teachers, working with the kids. And they just pick a bite sized chunk, they go 'let's do 6 schools, if we can handle six we'll do six'. So those sorts of things work but they are very resource hungry.

That's all I really want to say about----- into policy. Just to reiterate, the EPA's got those handful of policy issues which we can use. The main ones are EPPs which were our cover, ..... and ... will talk about those in a minute, and then state environment report. EPA also uses its assessment reports, to get policy statements out too. We have a section in assessment of reports on development processes called 'other advice'. And if there's a policy issue that comes out of the assessment of an individual project, the EPA gives public advice to the government through that medium, a very powerful one. Nothing focuses the mind more than if you've got something other people want. So you've got approval, a lot of people won't, and it really sharpens up their mind, and it's a good opportunity to start making broader leafed changes, about behaviour and

things, you know, in the community. So that works quite well too.

**Mr McADAM:** Just on the evaluation from the education side, what about industry and private sector, is there any partnerships with them in terms of, are there any education packages?

**Mr SIPPE:** Yes. In fact, the air watch one which we just spoke about is heavily industry subsidised, or funded. It wouldn't happen other wise. The Commonwealth funds, in fact I don't think we put any money into it at all. I think Robert Hill put some money in, when he was Minister. I believe the gas, and the gas is...

**Mr WALLIS:** Virtually all those programs and packages are, though. I mean, I was heavily involved in the cleaning the ----- program and that was a joint government private sector. But at the end of the day you still have the same problem, it is a lot of energy and it comes down to personalities, individuals, school teachers, liaison officers. Where they are working, it's working. When they move, the program falls over. You know, it is just really hard to keep it going.

**Mr SIPPE:** Okay, I am going to shut up for a while and get a cup of coffee, I will ask Ray to talk to you about protection policies.....

**11:49:50 BREAK**

**11:59:19 RECOMMENCED**

**Mr WALLIS:** Okay, I'm going to briefly talk about Environment Protection Policies, and I am going to do it quite quickly because I realise you are running out of time. I have just spent the last 2 days in Canberra, so what I have done is just simply to circulate a paper that I have prepared for a workshop, no a conference, 20<sup>th</sup> February, which the local environment defender's office ran. So the principle solicitors for that body could get a whole number of speakers which they invited me to talk about this topic. So I've made this available to you because it just simply summarises some lessons that we've learnt. So I'll presume that you can get access to copies of the Acts that you'll need.

So in principle, for Environmental Protection Policies, it basically says you can set up an Environmental Protection Policy to do a number of things, so that you can have a force of law to have regulations subsequently or just to control in the component environment. There is a suite of section that actually describe the process by which you establish an Environmental Protection Policy, and I'll come to that later. But just very quickly, where we are at the moment, I guess, we have a number of EPPs in existence, for a range of different things. So I'll just quickly give you a flavour to that.

Goldfields is an EPP established for the control of ambient SO<sub>2</sub> levels in the Kalgoorlie-Boulder-Coolgardie area of the state, due to smelting gold and so on. The Goldfield 203 EPP is a 3<sup>rd</sup> in the series for that one. The first one I think, I have to work backwards now, can't remember the original date, certainly before my time, in the early 90s, and every 7 years they are reviewed and upgraded and so on, and in that case there has been a very significant decline in the total emissions of SO<sub>2</sub> and hence the ambient levels of SO<sub>2</sub> in the city of Kalgoorlie over that period of time. Because some of that's been sparked by a combination of pressure from the EPA putting these sorts of policies out, and industry wanting to make more money and new technology coming on line, so those 3 things working in tandem have reduced over the 20 years or so, the SO<sub>2</sub> levels.

**Mr FRENCH:** What sparked that one was that with all the smelting that was going on, when all the wind was lined up and all the smell was lined up, and the emissions came into town. People were ending up in hospital with asthma attacks...

**Mr WALLIS:** It was quite horrendous, I wasn't there at the time but I understand it was pretty bad.

**Mr SIPPE:** World class emissions. It needed the ----- to bring it back into line.

**Mr WALLIS:** The western swamp tortoise, is a critter that lives upstream, on the periphery of the city, in 2 little tiny reserves, it's the only habitat in the world, it's the world's most endangered reptile, and

it's taken us something like 10 years to get this policy in place. Because there is incredible land owner disagreement about how to do it, and the whole issue of property rights, and not in my back yard, and all these sorts of things, is fundamental to this one. Because it's about people who brought land on the periphery of the city, thinking in time that the land will be subdivided for housing, using that as there superannuation if you like. Finding that now that they won't be able to subdivide the land because we're trying to protect this little critter, and so there is obviously there's a standoff there, but that was actually gazetted in 02.

The implementation strategy that however, is through the planning system, so it dealt with wide-zoning controls if you like, but I'll come back to how some of these things are implemented later.

So I'm just giving you the flavour of sorts of the whole system and how they all work. Ozone is to do with ozone depleting gases, CFC's and all those sorts of entities, according to international agreements and so on. So that one is quite straight forward. Kiwanis??, is the same similar for Kalgoorlie, it's the SO<sub>2</sub> and particularly the emissions for the K??? industrial strip, south of Perth, and again it's been reviewed a number of times. South west wetlands, and the Swann Coastal Plains Lakes policies are to do with the wetlands, that exist in the southern half of the state basically. On the Swann Coastal Plain, which is everything you can see up to the hills, at the foot of the hills there, that's the Darling Escarpment, and to the sea, it's the Swann Coastal Plain, and it stretches, we don't have a map for distance, yes we do?. It stretches from up here, effectively it starts up here in Gin Gin, and stretches all the way down to Mussel town, so it's quite a long strip, many tens of thousands of wetlands in that area, subject to incredible land use densification, many have been bold over an urbanised drained and so on, so there's been a desire to protect what's remaining. So that's what those are delivering to do, as the south west wetlands is for lakes that are our wetlands, that are over the dying range and the rest that are not on the plain.

Pearl H???, a lake a estuary system to the south of Perth, and the Swann H???, is this river system here. So they're very different and part of the issue is that, as a team, I guess I have only been involved in this topic now for a few years, these have been going for quite some time. We should now start want best do these and get them implemented, the reality is when we do our 7 year check on some of them, and the coastal plain wetlands is a classic, because there wasn't a proper implementation mechanism, and responsible bodies to make policy work. There were no monitoring what happened, it is very difficult to determine after 7 years whether in fact that policy was worth while doing.

Now, one of the things I do need to go through and I don't have a diagram unfortunately to get, actually I could get, do you want to go and get this one made? I do apologise, this is what happens when you come back from Canberra, and haven't done everything that you wanted to do. I'll talk about the process when that diagram comes back.

We are in the current development of a number of other EPP's, Cobentown?, is the area south of Perth, it's this embayment?, here, you currently see there. This embayment here, we are currently sitting there, this is the embayment here, this is Garden Island, half of Garden Island is a major military base, submarine base, and the -----, industrial strip along here and there's a lot of new suburbs going in all the way through here. This body of water is a multi purpose body of water, and has been subject in the past to a degree of -----, and loss of sea grasses and stuff like that. So this particular policy is designed to control water quality in Cobentown?, hence the system of Coburn town?, recognising that it's a major port and military facility, industrial strip, recreation strip, huge fishing grounds, you know a whole heap of stuff goes on in there. That's one that's held in development, we're also doing the Ambion?? Air one, which is the implementation of the air nepin??, the national measure, and that's how this state will implement that one, so that's for the 6 gases to do with the Ambient? Air admissions.

We were asked to look at the coastal zone policy which was for planning on the coastal zone, and we are basically saying that's a no go, it's not appropriate instrument to do coastal zone work.

**Mr BALDWIN:** Why do you say that Ray?

**Mr WALLIS:** Because coastal issues are largely planning matters, and the way we have been working with EPPs, is to, says to actually define the criteria, now if you look at the coast of Western Australia, it's so big, that you couldn't find criteria for that in any sense of a way, if you chopped it up in little pieces you may be able to do it, and we're saying is that it's not really the right way to go, I'll come back to that in a minute, how we might use these.

So all I'm giving you there, is flavour of thoughts of policies that there are, how we do those, is the next important point, before I can get on to why they work in some cases, and say in others, or not as well as we would hope, I should say. This is a blend of statutory processes which I refer to earlier with all those numbers, control the ozone, which are slightly darker boxes, and the other boxes are non statutory stretch which we've included the way we do things. The bottom line is when we look at all of these things and what's been happening, is we need to have very clear policies, we need to have good implementation mechanisms, and we need to have those mechanisms accountable in some way, if you don't have those things then it becomes very difficult to know whether you've achieved what you set out to do. So we're spending a lot more time than we used to in the early parts of this, than we have done in the past. Let me just run through the statutory bits first. The EPA prepares a draft for public comment and discussion, puts it out for a period of time, that it considers appropriate, receives the public submissions, it may or may not revise a draft pending upon how, and what comes out, we then premiers and prewise draft for public inspection and with the Trades Minister, and the Minister then has the option of approving, or not approving it, basically if the Minister approves, it's presented, it sits in parliament for just ----- - 4 more days, and then it's appointed. So it's process again, where it's advisory to the

Minister in the first instance, and the Minister has the option to sent it back, and disallow etc. Now what has happened in the past, is that these steps have been progressed fairly quickly and we get up to a situation where the Minister is asked to consult, and that's where we have spent a lot of time in the ministerial consultation stage, which means my officers who work normally to the EPA, are also, we change hats and we start working for the Minister, and we spend a lot of our time doing ministerial consultation phase. Now what we can do to in changing the process, is to spend more time with our EPA hat on back up here, so that all the problems are ironed out before its transmitted to the Minister, so the Ministerial Consultation phase can be shortened, there shouldn't be any hidden bugs in the system, we should have ironed it out, and indeed in the new changes to the Act, there's a provision for the Minister to not even have to consult, prior to that she had to consult.

So, we deliberately spending more time at the beginning, so we've devised documents other than policies, so we've expanded. We've created some discussion documents, so we wanted to write a policy for Coburn town, this is what we think we will do, this is what we think should be in it, what do you reckon? So there's that public debate and we facilitate that discussion, pour all the information before we start to even draft an EPP.

We've now entered into an arrangement with parliamentary council with specific legal instruments, that we don't actually draft them, they're drafted by parliamentary council and we put that out for comment, and we put explanatory documents out along side of those, so that people can see how there going. In the case of Coburn town, we are also working with an established body to implement that, so the Coburn Town Management Council is put in place, so you had a responsible body, they had to also develop in tandem with the policy, the implementation strategy, so they all were able to put out their draft and final management plan effectively. So you had, if you like, not just a policy you now had several documents, you had an explanatory document to the policy, you had the draft policy that Parliamentary Council created,

and you had a explanatory document about what it all meant, and you actually had a implementation strategy from the responsible body, and all the players.

So everyone knew how it was fitted together and how it was going to be reported and responded to, and all that is done right back up here, before it gets to the Minister, so that by the time it gets there, all the argument over 'well these figures are too tight' and 'the industry wants this', and 'the conservation group wants that', the EPA can have all those discussions and arguments, you can hear them, and in fact in the case of the Coburn town, we were lobbied quite strongly by ----- Industry Council who saw that this was going to impact upon them in some way, and the EPA said, 'right bring your experts to the table, makes only fair if we then offer that equivalent capacity to other parties, that are not are going to bring additional views to the table in a fair process'. So that was agreed to. So what I guess I'm saying is we put more effort into EPA, sorting the story out, rather than getting the minister to sought it out.

So I guess that's the broad process and when a process only festers, I guess at changing our behaviour and our practices so we can do it a little bit better, and then have when we come to reviewing it, we have a 7 year statutory review, but we've realised of course that we actually need some interim evaluations, and we're now starting to undertake some experimental ones of those, where we can say, do a 12 month report, which we would provide to the EPA, EPA could then put a summarise of that in there annual report, if they so wished, but we then need a developing database by which we can do the 7 year review without having to go back and say, 'Oh, we haven't measured anything'.

So we've learnt a lot I guess in the last few years of experience at this time, and we've been changing how it's been done. I'm not sure I want to say a great deal more on those.

**Madam CHAIR:** At what point of the 7 year statutory review, ok you've mentioned your 12 months interim report, and yet you have got a tracking process, at what point does

the heavy end of the work purpose for that 7 year statutory review, is it a 6 ½ years or is from 7 years onwards.

**Dr COX:** Ok, it would be nearly 6 years where we'd press the start button. For example the Swann Canny EPP?, has to have it's review such that the, if it's going to be a new EPP?, that advice is to be provided to the Minister by, I think by July of next year, we will press the start button very soon. But we actually already doing some background work, which we that, so we know it's a complex one and we've got some problems. In some of the other ones and in particularly the area mission ones, like the gold field ones that I mentioned, the ozone Kalgoorlie. They're easier because those requirements are implemented through regulations and licensing, so industries licences can form to the policy under the licensing agreement that are required data to the department, and the department also does monitoring in the Ambient Air, so there is already data coming in fairly regularly and we have, historically, been able to annual reports for those sorts of ones. The other ones I've talked about, the wetlands, we haven't been. So the lesson here in terms of the Environment Protection Policy, if I was going to give some general advice, is that they need to be quite focussed about what they are trying to address, and you need to have a implementing mechanism, and preferably a responsible entity, it doesn't matter what that entity is, if you don't it just doesn't happen, because we have great difficulty in encouraging people to do things, when they've got 10 000 other things to do, whether it is different government agencies, or local government. So the ones that have been critical lessons are those 2 and the evaluation process, what else can I say about those.

**Mr WOOD:** Just on that, the EPA with this policy, was it made with determination, like if you had someone Swann Canning, the development of Swann Canning area, do you have policy for that area? Is the guideline for the EPA or does, what sort of...

**Dr COX:** The EPP's, once there in place, basically yes, all decisions need to conform to that policy. Once it's gazetted,

the Environment Protection Policies has the same weight as if they were part of the Act. So they can have the full force of the law, that also means as if for example in the Swann Canning EPP, the environment quality out here had to be x, and water criteria had to be a, b, and c, and then as a developed proposal, the EPA would have to make it's decision on that development in the context of that policy.

**Mr WOOD:** Now say the group made a policy on Swann Canning?, and to implement that policy would require for instance, certain wetlands being reserved dock for instance, or certain changes which may wonder why compensation for the land owner, and 2 might require some fairly large work to occur, it might be artificial ----- Is those things thought of before that policy is actually put into ...

**Mr WALLIS:** Yes, we will have those discussions as part of that very early step. Under this Act of course, there is no compensation to land owners under the EPA. But that will all come out in the argument, that's why I said that in the case of the Western Swamp tortoise, it took 10 years to argue that through, if you like, because of those very issues. So does that answering your question?

**Mr WOOD:** It is just enforces my argument, that because we're a little bit luckier that subdivisions now should take into account the mistakes we have made in the past in parts of Australia, because I think today, you wouldn't allow a subdivision to occur that close to the land.

**Mr WALLIS:** That is exactly right. And we're just in the process looking at wetlands for example again, and trying to do it better, so that the planning instrumentalities of the future have a very clear guideline as to where the wetland is, I mean we had originally had a 92 EP? Wetland policy that had wetlands drawn from satellite imaging, as a particular date, December 92, I think it was. But there was still errors in it, as a matter of scale, but now we are actually developing a register that has accurate c...?, mapping, so it makes it much easier to see whether you are in fact affecting my land owned my land or whether I think you might be, getting emphatic about it.

So there's a line of things that we've approved, but I think we'll have enforcement capability much more than the past.

**Madam CHAIR:** In terms of evaluation, would that include for example of an audit of Department of Conservation lands in terms of what it's doing with wetland management?

**Mr WALLIS:** Not on their land, no, it would be really a case of if we had a list of wetlands that we were protecting, we would be asking questions like, are they still protected, have there been decisions made that have caused any of those wetlands to be lost, ie. The EPA may have under the current EPP, it can under part 4, through DIA?, processes. Excise those wetlands from the register, and approve a housing division or a road through it, or whatever.

**Madam CHAIR:** So ----- provides a break out, or break in, in a sense.

**Mr WALLIS:** Under the current policy, it does, it may not under the future one, I mean that's something to be debated.

**Mr WOOD:** Swann has any protection?

**Mr WALLIS:** The Swann River?

**Mr WOOD:** Yes, do the rivers help protect, or do you just take wetlands here and there...

**Mr SIPPE:** There is an EPP for the river.

**Mr WALLIS:** The policy is from the mouth of the river, near full lengths of the river, and it's catchment all through its catchment, but it's mainly focussed on the water by itself, the range, so this side of the range is the case. But the whole of the catchment, which is huge, the ----- Catchment.

**Madam CHAIR:** The Darwin Harbour management plan could progress to be an EPP, under this statutory process.

**Mr WALLIS:** You could set, what we do in EPP's, we set environmental values, and the environmental values can be ecosystem

protection and those sorts of things, but also what you would normally be regarded as beneficial uses, so navigation, shipping, fishing, swimming, whatever that what might happen to be. Ideally, being precisely where they apply and, what requirements are for water quality or anything else. If you've got a proponent comes along with a development proposition, or the harbour wants to do something, then you can have a debate in the context of some ----- . Whereas if you don't have a policy you just sort of, fluff around and you make it on the run. It's a tool for getting in front of the game, it takes a long time to get these up, because the processes are quite long winded, but in a sense that's part of its robustness I guess, at the end of the day.

**Madam CHAIR:** Is section 4 commonly used? That ability to break in, and ...

**Mr WALLIS:** In the case of wetlands we are talking about.

**Mr SIPPE:** Well, I don't think it is used for the Wetlands Protection Policy, because it's coercive. The power to go and fill, drain, mine or pollute in the wetland without authorisation, the authorisation route is via part 4 and a government decision. So it provides a check or balance on an absolute statement, the capacity to be on the move, because there may be circumstances where draining wetlands will actually improve it, if it's been flooded because of urban land clearing, and water table rises as they do in Swann Coastal Plain. You actually might want to drain it to retain the vegetation, but under the policy you couldn't, but if you put forward a proposition to drain it, for a good environmental cause, that would then be allowing through the mechanism.

**Mr WALLIS:** You try to weigh that up, it will be a public process.

**Mr WOOD:** Do you look at agricultural issues by ----- and land credit as a...

**Mr WALLIS:** It can cover anything on these, we haven't done that through...

**Madam CHAIR:** How long have you had this statutory process, is it from 87 that you've had this process in place from the legislative...?

**Mr SIPPE:** We had it initially in 72, but the fact the provision that it so comes with, we never use them. With the new Act of 87 we started to run policies seriously.

**Madam CHAIR:** Is this one of the dynamics that set the WA EPA apart from the Departmental structure of other EPA's in other jurisdictions?

**Mr SIPPE:** I was actually going to make a point on this, most Australian states have EPP's, Sydney, Victoria, NSW and Queensland, ourselves, operating slightly differently in different jurisdictions because the EPA initiates ours and the government decides any other ones we give to the Department or the EPA, which is really a directory body like a government agency, initiates them then the government approves. So that should come in slightly different ways, but the end result is the same. They're a policy which gets tabled in parliament for ----- essentially.

I think, there are 3 points on EPP. First of all, my advice is I think you should have them, because they are a extremely useful mechanism for dealing with huge impacts for broad load based discharges and a whole range of other things, so they are very useful instruments. Whether or not you run through the EPA, if you get there, there worth having, I think most other states have them for that reason.

Secondly, my advice is don't call them policies, because it gets very confusing. Traditionally they are called policies, policy is such a loaded word, we can't think of a better name, so if you think of a better name, let us know, because we'll pinch it.

**Mr BALDWIN:** Like what? We have got a thing called the Plans and Management which are almost EPA's, they are based on beneficial uses...

**Madam CHAIR:** Environment Protection Plans, that is not so much a...

**Mr SIPPE:** That could be useful, it's just that the word policy, is a difficult word to deal with, these aren't policies, this is an Act of law, so let's not get confused by calling it policy. In fact once approved and subject

just -----, they should have force of law, as if part of the Act, this is a unique provision in Western Australia law, it's the only instrument that has this, it is actually higher than regulations. It causes the Parliamentary Council and other councils all sorts of trouble because it actually has an ill-defined legal status. But what is basically says, because the Acts' so powerful, the Act has primacy, all the other legislation, all the other things, the EPP then has those same powers attached to it, that's why it takes so long, because everyone's nervous, because you're actually writing black letter law, without going a different way and it has got a higher stage of regulations. So for all those reasons I wouldn't call them policy if I had my chance again, not that it was my decision in the first place, but I think that is an instrument worth having, ultimately. I think there worthy to keep at a higher order of just regulations, because regulations tend to be subordinate instruments, which really are a little bit constraining what to do. Often the enforcement powers and regulations are a little bit less than what you can get away with policy. Policy can be a pretty heavy hitting thing, in fact the Kalgoorlie one has basically changed the base of the Kalgoorlie gold industry, because they had 3 smelters in the middle of the town, and they were sending everyone to hospital with asthma, and we said 'hey, this is a long time improvement plan for you guys, under pinned by law', and that resulted in those 3 smelters being amalgamated to 1 and shifting out of town, and we have got the great chimney stacks north of town, where the ----- impact the town the least. So it actually changed the whole face of Kalgoorlie as a consequence, that was planned and managed step down approach into air quality, so the industry had time to adjust, but everyone knew what the rules were on the table and it went to the Department, so the whole of the government was locked into it.

**Mr GADD:** Was that an absolute?

**Mr SIPPE:** That was ....., yep and we took Western Mining to court over it, and we won, they took us to the appeal court, and we lost, and then we took them to court again and won. So there's blood on the floor over this one, we in fact got someone in court on the wetlands one right now, the

case is a bit heavy, they haven't made a decision yet.

**Mr WALLIS:** If it was the one down south, he was just found guilty.

**Mr FRENCH:** In fact, the one with the Western Mining one, the industry groups itself, they wanted to fight it.

**Mr WALLIS:** They fought on point of law about industry self regulation thing, and they were going to by saying 'it was in this ----- -- that we are not guilty' and the industry was saying 'hey guys', we would get a sledgehammer across the eyes etc., but Western Mining went that way and guess what has happened? The whole of ----as Australia ----- towards this, as Wally explained earlier.

Enforcement and compliance, not just because of the Western Mining case, but that certainly didn't help it.

I'm going to make up a lot of time now, because I'm going to cover position and guide statements very briefly, these are two other policy instruments of the EPA uses.

**Mr FRENCH:** If you can get a copy of your notes, would you mind giving it to ---- and Graham just to put into their -----?

**Mr WALLIS:** Yes, I will get a clean copy.

**Mr SIPPE:** I will do a extremely quick summary of these. Position statements we introduced in 97/98, they're about EPA visions and values, that what people think and feels about things. It provides a policy formulation in ----- management for promotion ----- . The interest in these and this is probably one of the one's, where it provides the basis of taking a difficult issue forward. The draft is pretty simply, it's inclusive, we get people around the table, in fact the EPA has got outside consultants to draft these, the one on sustainability is that mentioned? We actually got Professor Ian Low from Queensland, to draft it for us, we took him out as preliminary, and that is really for areas and emissions, that are distinct from debating the points, because the points really are points of principles, you either ---- them or you don't. But if there is error emissions, we go through that process in the media -----, and there is just

some examples which, I think Graeme has included some.

But that is a pretty desperate range of things, this is about the cat range area, NW of Western Australia. It is interesting in lots of ways because it is one of the few genuinely new environmental issues to come out in the 30 years.

Most environment issues are pretty well known, but this one is new, this tropical fauna, these are living fossils that live in the casket formation in the limestone, and they link to when Australia was a subcontinent with south America and south Africa and Antarctica, and these little fellows are similar but different where Australia joined up, so they actually live in fossils 220 million years old, and they are extremely special last habitat and very vulnerable to change there water table and all sorts of things, but the best place for them is cat range. So that is one of the reasons we need to provide some vital protection for these little fellows.

**Mr MURRAY:** It is fair just to add that cat range is now going forward as a World Heritage nomination. With these sorts of values as a key resource.

**Mr SIPPE:** They ask specially about salinity and things like that. The EPA hasn't tacked salinity head on per say, although it has been able to get on to do, to capitalise things that are already there. It is like a sort of super saturated solution, it you put 1 more crystal salt in the -----, the whole thing is just blown.

The EPA on salinity, it had played a big part in salinity because the Department of Agriculture and other people were heavily involved. Salinity, I might add is a big issue in WA as you probably know despite the amount of money that has gone to the Murray-Darling Basin, it is actually the worst problem in Australia, in our wheat belt by a country mile, we actually get the money. The EPA issued its annual report and really just took on the community and said, 'you have been talking about this problem for 60 years and no one is doing anything, it is about time we got of our butts and actually did something about it.

That is really what the fundamental message is. And for some reason, and it was quite fortunate. It must have been slow

news Saturday that day because it actually hit the front page of the Western Australian, and got a huge amount of coverage, and that was just the last little push to get the issue properly dealt with in Western Australia. People would be talking about it and fussing about it, and spending dribs and drabs of money, and it sort of coincided with the NHT stuff and it was just a very ----- role, and someone had enough courage to come out and say, 'guys, it's bad and it's getting worse, we have got to do something about it, and let's get off our butts and do something. So that's a sort of a very powerful role the EPAs can play by just getting difficult issues moved forward.

The other one they did was this, and this is still running. They put out this issue statement on native vegetation, and this is really about clearing, clearing policy. What is being said is, 'as far as we're concerned there should be no more clearing of the wheat belt for all the obvious reasons'. Salinity is going up, water quality, biodiversity, erosion, salinisation, acidity, everything you can think of. And one of the problems is, because it is all over the ----, so why would you do anymore clearing ? It's a pretty obvious equation. But you've got property rights for farmers, and a whole range of things. The consequence of this was that the government has finally enacted clear and controlled legislation under our legislation. It was passed about a thousand farms, which haven't been cleaned yet because the regulations aren't finalised. And our Ministers had a very hostile reception a couple of weeks back in the country on Langy???? farm, it's about objecting to cleaning controls on land. It's a little bit less about the clearing controls and it's more about getting the equity issues, which are of course the big ones, when you look at clearing controls. And the government, through our Minister, has just extended the consultative phase for 2 weeks, but I think he's still got a mind to try and get the regulations up by about April-May. That will then put reasonably tight controls on land clearing in Western Australia.

**Mr BALDWIN:** So just as an aside, what do they have to go through to do some reasonable sort of sized clearing now? Before your act? After this legislation?

**Mr SIPPE:** They'll need a permit.

**Mr BALDWIN:** What sort of assessment will that be?

**Mr SIPPE:** The assessment will be done primarily at a departmental level but if it reaches a certain threshold, a *la* mining, a *la* town planning. Then we get the EPA in. The department will manage it to a certain level but the tenet basis is the presumption against. There is a presumption against clearing so if you get a permit, I mean, you are bucking the odds. So that is really the whole tenet of the thing. There are a lot of exemptions. For example, if it is an approved mine or an improved planning scheme, then we don't have to go. Firebreaks and all that sort of stuff. The wetlands, and sustainability of the ranges...

**Mr BALDWIN:** What standing do they have in law, those position papers?

**Mr SIPPE:** None.

**Mr BALDWIN:** They're guidelines?

**Mr SIPPE:** Yeah. They are purely, they are the core position though because they really represent the EPA's position in time. And after 5 years, that position may well change. But they are meant to be ....

**Mr BALDWIN:** Yes, it's a strong message.

**Mr SIPPE:** Yeah, a strong message that's right. And the good thing for governments are, they can either accept it or reject it. They can take notice of it or not. They can distance themselves or they can say 'yeah, we will do something'. So they would be quite powerful in regard, I think quite well received.

**Madam CHAIR:** So what's the public perception on the reference to the Minister you know, certainly feeling the heat on the land clearing one? Is the public perception more than an EPA position statement, intrinsically linked to the position of government?

**Mr SIPPE:** It's hard to know. It's a very good question. It's hard to know. I don't think the general public would know an

EPA position, if they tripped over it. I just don't think...

**Madam CHAIR:** This is stakeholders?

**Mr SIPPE:** Yeah, key stakeholders' influences. And we make no pretext of trying to put the general public position on these campaigns, because I mean, it's just a waste of time. I'm talking about campaigns with whole parties, you know, and how successful that was. We spent \$1000 on that, so why would you spend \$1000 on this? It's really designed for the system, to change the system into doing something better. And the systems are the key stakeholders and key government agencies and the government itself, and in that regard I think they do work well and are quite well regarded. And because the stakeholders are an educated system, they don't really see the EPA in the government. They don't see the confusion of roles because they've grown up with it.

**Madam CHAIR:** But they do see the importance of it as flagging future direction, benchmarks, a shifting of the goal posts if you like.

**Mr SIPPE:** Yeah. They get some publicity, when they come out, obviously in the papers you pick up because they are usually saying something, or a suggestion maybe used to get some coverage. But by and large you know, not made with the general community. There's the useless, I mean, they have access to the website and things but it's not a major arm of it. That's our position statement, it's just to, on guide statements. These are actually a little bit older, in the sense that, we put them in 1985, these are the things that I was talking about. The impetus for this came out of the Christopher Wood review, we had in our minds for a long time. We used to call them the rules of environmental acceptability. They were about the environmental impact assessment process and the findings that the EPA makes at the end of the day. What should proponents aim to achieve to get their project approved, what are the rules? And really we ummed and ahned and we had, within the impact assessment division, we tried to get this off the ground for years, and nothing was happening because we are all too busy assessing projects, as you are.

One of the reasons I think we got it off the ground was because I actually shifted jobs. I went to the policy job and I took this task with me, the impact assessment, and that freed up enough time for the people in my division to actually kick it off. Because they weren't bogged down with growing ----- assessment. So we actually started at long last. The whole idea was really to increase certainty and reduce delays and the Environmental Impact Assessment process. The 2 great cries of industry since time began were covered through these processes. While this is aimed primarily at increasing the certainty, it also has the effect of reducing delays, because if you know what you're aiming for, you can design your project to meet it. It's simple.

**Madam CHAIR:** It's what industry really seeks, isn't it, those parameters?

**Mr SIPPE:** Yeah. And also it records, what I call recording wisdom. I mean, we were reinventing the wheel. You'd lose staff, the EPA members have changed, Ministers will change, everything changes, and of course, if you don't record the wisdom you'd lose it, and you have to reinvent the wheel every time. So if you start writing these things down properly, to say this is what we do.... Self-preservation goal.

One of the main messages about this as a policy though is that there's a price to pay, and the price to pay is that you lose flexibility. What proponents are traditionally like, they've argued for increased settings, but they also like the flexibility of having the case heard on its merits, so they can argue the toss about their individual and unique circumstances for their project. As soon as you have guidance statements, which give rules out, the EPA needs to be persistent with those, it is not obliged to be, but logically, why do it if you're not? Proponents lose flexibility and they seem to start whinging you know, 'but I want to do this, I want to clear more mangroves than your guidance says, why can't I', sort of thing.

So there is a price to be paid but we think it's worth it. We think this is enough, we have attained just enough flexibility to allow proponents their natural justice right to have

their case heard on its merits. The whole EO process is based on the proponents' natural justice right to have their case heard on its merits; a very important thing for them. So we can't jeopardise that, any guidances we put out, that is what we call them, guidances, but nevertheless, the ultimate realisation is proponents do not have a white canvass on which to paint.

**Mr BALDWIN:** But the guidelines, in the case of mangroves, how specific are they. I mean, a guideline is something that, you usually have some grey areas.

**Mr SIPPE:** In this area here, you should not fall over any mangroves, this is the highest concentration value of mangroves.

**Mr BALDWIN:** Give me another example. In this area here, you will clear only x amount? Or between, is there a grey area?

**Mr SIPPE:** Yep, that sort of approach yeah. Ethnic primary producers, which are really sea grasses and corals and algal mats and things in the ocean. So we said 'you should select from the area and within an area, if there is high conservation, you clear none, you disturb none', some say you can have that and some say you have that. So we actually quantify the level of impact which we think is sustainable. It has been pretty brave in some of these areas because the science is not necessarily robust. But if people want certainty, or at least have an indicative certainty, someone's got to be brave and say 'this is what we think', 'Our best professional judgement is we think you can disturb 10% in this area, and if you want to go to 11%, sorry guys, you'll have to give a pretty good case'. We're not saying no, but you have to have a bloody good case.

**Madam CHAIR:** How do you review guidance statements, how do you update them?

**Mr SIPPE:** I think every 5 years, from memory, so we're actually coming into the upgrade cycle. We actually have done some haven't we, we have upgraded some.

**Mr MURRAY:** Because they are an administrative document, effectively, you

do an administrative review, you would consult with your stakeholders, in the end, but you may not change it.

**Madam CHAIR:** Sure. But if you actually review it, I was just wondering what timeframes.

**Mr SIPPE:** Yeah, the review hasn't been quite quick because ---- have been preparing new evidence from the table, then it won't change. A lot of this stuff misses the ----- hierarchy for contaminated land, but that is not going to change very much because we pretty much know what the contaminants are already. This is the mangroves on the Pilbara coast, we pretty much know that too. There's not been any new science in mangroves in the last 5 years so that one rolls over. This is off-side risk. This is the risk rules for off-side industrial. The EPA set a level of a quantified individual risk for \$1m a year, see risk of death, that hasn't changed because that's a guideline. This is best practice proposal, and that's a philosophical statement of what best practice actually means. If we call it best practice, then for industrial proposals, the best practice means the EPA. I just grabbed these out of the library yesterday. There is a [sandy and subterranean fauna in groundwater caves] This is a guide which underpins the [Cape Rainfern] I was talking about. So if you want to go in sampling for these [re...? fauna] this is how you should do it. So we offer those sorts of guides, and we've got about 50 or so of these in various stages at the moment.

**Mr BONSON:** What one good issue is in the Northern Territory in the Darwin Harbour at the moment with mangroves. I just refer to the Swann River. We talk about the cost of the issue out there in the general public, is we think the Swann River is okay, we don't want to go to a levy or you know, an incremental rates rise etc. So how do we manage the issue of, well if we affect this environment in a negative way, the environmental cost in dollar terms is x y z. Do you ever come up with figures like that to persuade an argument to say, well, this is the limit of what you should be doing to the environment?

**Mr SIPPE:** I'm just trying to think, the EPA has never done that.

**Mr WALLIS:** The salinity argument had dollars attached to it, it had a lot of agricultural productivity.

**Mr SIPPE:** But it's not an EPA thing. No, it's a government thing. Because the EPA traditionally doesn't deal with economics, that's not our brief.

**Mr BONSON:** But I'd be interested just to, the government side of things then. How did they formulate that argument about salinity about it being across the long term?

**Mr WALLIS:** Well, it was trying to I guess get them to understand the scope and scale of the issue, by saying you know, we have x amount of dry land salinity, it affects so many tens of hectares, thousands of hectares, of crop propriety land. What effects does it have on agricultural activity, so it was a .... argument. The reality is if you look at it now, or more recently, it was done by the national land and water resources ....., so in fact, it's not agricultural activity that is a critical issue, it's the damn infrastructure. Rather it is how the building, it is much, much more costly, with a loss of productive agricultural land. Because agriculture can in fact adapt, and it is, and so land that was marginal for use (a) can be now put to use (b), it is still part of agriculture and you make money out of it, it is salty land, but it is very difficult to deal with buildings and roads and railways. So it was simply a way of getting people to understand the magnitude of the problem and then how they might marshal the political will to do something about it. So I guess that's the best example, because that actually got the prime minister motivated with the national ----- together...

**Mr SIPPE:** Yeah, it's an interesting question. I mean, Wally talked earlier about, is he chooses a committee to look at the drainage of the Swann River and it was in that context he was saying that people aren't interested in a drainage levy. But he wasn't so much talking about a general levy for saving the Swann. I think he was really talking about a drainage levy to protect the Swann in that regard. The Swann is a very interesting case, the Western Australian

local newspaper, did a survey in the last 6 months, and we ran a sort of survey of state icons of various things. And the Swann River was being voted by the Western Australian public as the number 1 icon in the state, and that is probably because most of the people who read the Australian live in Perth, so that's pretty heavy weight in that regard. So it obviously has iconic status, and the fact that the current government sees that, and has reacted to it, is sort of underpinned it.

I mean, the Swann River Trust has got more money than, I just dream about the sort of cheque they just got in the last couple of months, and the fact that they've got increased powers, really, is the government shoring up this public iconic value placed on the Swann. So the government has responded with consolidated funds, they haven't actually responded in the levy sense. Because the levy thing was really more confined to the drainage thing. But the drainage argument hasn't yet run its course, I think there's still a bit to happen. I wouldn't be at all surprised if there's differential rating for drainage comes out. I mean, we've got an election next February and it won't be coming out between now and February, but after that we might get a run...

**Mr FRENCH:** Bearing in mind the time I think we need to move on to environmental impact assessment, but there's plenty of time for discussion at lunch time and at drinks at the end of the day.

**Madam CHAIR:** Just one question. The state of the environment reporting in. Every 4 years

**Mr WALLIS:** No we don't have legislation. We are one of the few states that don't. And you're the only territory that doesn't do it, as of December because Victoria is now past its requirements to do ----- . In the past, state environment reporting was done by government. So the one I was involved in which was the '96 cycle to '98, the department of environment of the day coordinated that basically. But we did it as a joint exercise between government and community, we set up joint regional groups throughout the state, and they put their information in terms of

environmental values, issues that they thought were important, that were a problem in their patch. We had a steering committee which was chaired by the CEO of the day, and we had basically two [ICs] from ... and that was also some community people on that steering committee. That process led to the production of a draft report. We were the first state to put out a draft SOE report and to my knowledge we are still the only one. That went out in '97 and when it was finalised in '98, and I won't give you a copy of the draft because there is not many around.

**Mr FRENCH:** There's probably a package ...

**Mr WALLIS:** All right, no problem. What's happened now is that we are overdue for the next one, and we have to deferred it on 2 occasions due to funding, and the process the Minister has asked would the EPA do the SOE not government. And the EPA's response was 'yes, we'll do it, provided it's resourced'. And then there was no resources in the first arc'. The Minister came back and said 'what can you do in the meantime', so we did a number of things to prepare the ground for doing SOE reporting, and we are still basically waiting on doing the resolution of budgeting.

**Madam CHAIR:** What's the resource implication that you saw last time in '97-'98 on a state of environment report? Is there a sort of nominal budget figure that you know it takes?

**Mr WALLIS:** Actually I've just come back from a meeting in Canberra, where all states and territories sat down and discussed this very point. And it varies. But typically, they range from 6 full time staff and about \$1m in New South Wales to do it, on a 3 year cycle, they're moving from 3 to 4. We probably did a check list, we had nearly no operational budget when I started, and 3 staff, 4 actually, we ran the program. Doing the report is actually like a peak in the workload and demand, the intervening years because it pops back. So somewhere in between those ranges is the true costs. So really we are saying we need existing staff we have, which is the same sort of order, and additional funds to get it done.

**Madam CHAIR:** Have you got a quota on the...?

**Mr WALLIS:** We're asking for about \$300 000 a year for the cycle. I will give you a copy of our current .... just to give you a feel for what's required to do it over the 3 years. Obviously the work peaks and drops in that period, but we just pass that down. The EPA has set up, has agreed to undertake the SOE report for the cycle, and the 5 members of the EPA have been joined by a number of others, 6 others, who come from various walks of life and represent I guess, not so representative, but have backgrounds and skills that are, in my point of view, are actually useful in getting the report done. So for example, we have a journalist from the ABC, we have people from the industry, and conservation people, so on We have already started putting out some discussion papers.

The most important thing was one in particular, which was; What does the public want from the SOE? A SOE consultation paper was released back in September by the Minister, at June's national sustainability conference that was held in Fremantle, and that was out for 3 months for public comment. And last week, all the public submissions were compiled and will be up on the web page now, as a result of the last steering committee's meeting. So we are underway. We still have yet to push the Go button until we know exactly where the funding is. But the principle is engagement with the community to ensure that we have a joint exercise, that people are involved, because we want to change behaviour, we've got changed policies, so that we get things right, and it's not business as usual. So we're not trying to produce an SOE report that simply says, 'we did what we did 5 years ago we will do the same we will do an update'. It's more than that. It's about what do we need to change to make things better.

**Mr BALDWIN:** And the EPA will publish that, not give it to the Minister until it has been published?

**Mr WALLIS:** Well, yes they have already agreed that they'll do a draft. What we did last time, and I'm pretty sure we'll do the same again, even though the EPA the

author, and with the comments with a -----  
 --- turn to be, is, I would soon like to see that go through cabinet, the draft, and get capital endorsement to the draft for public comment. That actually in trains government in the system, so you can't actually hide behind anything you don't want the community to know about. Though it also makes it easier for government when it comes to actually responding to the document saying, 'hey the pies only this big, we can only do this part of all of these problems', and that happen last time, and we actually then helped coordinate and helped produce government response to the SA report, and we have just compiled and released the review of the governments responses. So they were 180 odd responses that government said it would undertake, this is the status of ----- it was some years later. So did that occur, do I extend that occur. Doesn't say whether they worked, or they were effective, it just says how it actually happened. So the EPA will probably look at the extent to which some of these occur, whether they are relevant in the future and so on.

**Mr SIPPE:** Just to say, the EPA always gives the Minister a copy of it's report before it published them.

**Mr WALLIS:** Just those 2 I think, yes because it goes with the State Environment Report for the last one, that goes with...

**Mr SIPPE:** We are running late, I am going to give you 1 second on the Environment Impact Assessment before handing you across to Colin Murray who is one of the assistant Directors in the ----- division and he will take you through the process that we run in WA.

I have though about a couple of things about Environmental Impact Assessment. First of all it started out life as a political response to environmental concerns. In fact it is probably the main political response by governments involvement in environmental concerns since the 70s, late 60s-70s. It's been very successful for a couple of reasons, first of all it provides and orderly systematic process for community concerns to be heard, and all those things it would seem. Mostly it enables decision makers to differentiate between managing

the actual impacts of the development, from the values that people place on the change, that's a extremely important point, because the actual impact themselves is one thing, but the value of perceptions people place on them are quite another. What impact assessment does is enable those 2, often 2 conflicting things to be finally brought together in a double decision. That way, it is major success in my view and I have been involved in this now for 28 or 30 years, has been, it actually manages change in the community, that's what it really does. The planning process does that as well, for these bits but for the environment bits the --- -- basically does that. And that is the reason it has survived, and it still gets resourced and people get to participated, the laws are eventually getting stronger. It's now in place in over 200 countries around the world, and there can't be too many more countries in the world than 200, I am not sure what the current count is, perhaps Athens Olympics will tell us. Most countries now have impact assessment as you do in the territory, and there's good reasons for it, plenty of other reasons. But Colin will take you through what we do here.

**Mr MURRAY:** I'm going to go through this fairly fast, and I've also, given the time, I will print some slides as I go through, so if I am going too fast, put your hand up or by all means ask questions as you go. Ron has just given you an introduction, but what I am going to do, is just quickly outline one of the legislative requirements that are in the Environmental Protection Act in relation to Environmental Impact Assessment. Their fundamentally supported by the administrative procedures. We've had some recent legislative changes, which I will be very brief on, and then I just want to finish on a couple of case studies, one of which is the expansion of the Ord?, where we actually had direct involvement with Northern Territory government, and that process worked, and worked well.

One of our primary legislative requirements, an important part is that environment assessment is mandated under the Environmental Protection Act part 4, but the Act is fairly light on in terms of the detail, all of the details in terms of process fundamentally is left to administrative procedures, and I think that systems works

very well, it allows, it means for a start you don't have to define everything in legislation. But what you do have to do is to find some of your key bits. So the Act defines environment, and defines proposal, which is the 2 key context for Environmental Impact Assessment here. Environment fundamentally is biodiversity and it's surroundings. There is a constraint in the sense that there has to be an effect on the environment before the EPA can consider it, and that's where there are limitations on social and economic matters, but there lifting and I will come to that.

Proposal is plan program policy project development operation of undertaking, so it's starts at a very conceptual level, and comes down to a quite very detailed level, so it is very broad. But what the Act does do, is it places responsibilities of who may refer to the EPA, or shall refer to the EPA and I will discuss some of these in more detail. It outlines some basic philosophical positions, like the importance of transparency, exposure of everything to the public, reporting expectations and things like that. The role of decision making authorities so other government agencies and local government have an important role in this process.

Effectively there is one very brief clause in the Act that says; 'the EPA shall determine the form, content and timing of environmental impact assessment', that one clause provides the full power to the EPA, it's the director's clause, but it gives full control to the EPA. The EPA is an independent statutory authority, it can only be directed in very limited ways, so again, there is very limited capacity for direction in terms of form, content and timing, apart from that, which the EPA determines.

**Mr FRENCH:** A major -----  
----- of procedures (laughing).

**Mr MURRAY:** The Act provides for appeals processes, and makes it clear the decisions are the Minister's decisions, not the EPA, the EPA gives advice.

There's also a compliance order responsibility, specifically in the Act in relation to the conditions that follow the decisions and they are delegated to the

department, rather than the EPA. There is a whole part of the Act, part 7 which deals with the appeal's process, because that very much a statutory, a statutory instrument, but appeals are to the Minister and decisions by the Minister. Relating to process, the Act provides for administrative procedures, they may or may not be gazetted, they may or may not be regulated. The current administer of procedures that we are working on have been gazetted but they have no statutory power, they are pre-regulated.

Importantly, the role of decision makers also the Act places limitations on them, for instance there is a limitation on decision making authorities, not to make an approval decision while the project is being subject to informal assessment by the EPA. They can reject it, but they cannot allow it to be implemented, while it's being assessed by the EPA, they have to wait for that parliamentary decision. Once they've done it, they can run their processes in parallel, they just have to wait. Why there is responsibilities in terms of referrals which I've mentioned.

In broad terms, this illustrates 1 of 2 assessment processes that the EPA participates in, I'll call them section 38, and section 48. Section 38 is the standard proposal assessment that we do, a development proposal for instance, mine, the Ord project went through this process. The other process section 48a relates to the relationship between environment and planning, at a statutory level, and I've got a couple of illustrations for that. Importantly the way the EPA provides advice and tries to influence outcomes, it uses guidance statements and position statements to influence, but there is a provision under the Act section 16, which delivers the functions of the EPA, where the EPA can actually then give advice in a public way, it non statutory, non binding, but is simply the EPA informing the Minister or the community. What we find is that's a 2 way thing, we have opponents who want that advice right up early, so they understand what the limitations and opportunities are. The government also uses this to get advice from the EPA, it's a primary advice to government and they want to get it, and this is one of the mechanism for doing it, so

what the EPA's been doing is using section 16 to get strategic advice, and it's very much advice. Then we have a process of statutory impact assessment, and we now have recently what is called assessment of strategic proposals. So that is very much the conceptual end of the business.

Then what we have under section 38 are significant proposals, and they're down at the other end, there the much more specific development, the mines and so on. We potentially have a hierarchy where you can go from giving, the EPA can give very early section 16 advice, it can then have a referred and assessed a strategic proposal, which can then either automatically lead to, what is called a dry proposal, which is deemed approved, because it's consistent with that. Alternatively, if they're issues which aren't addressed there, can still be addressed as a significant proposal. So there are a series of steps that you can go through, depending on how much information you provide up front, if it's all up front, then in fact, you tend to deal with things at the higher level from low level, rather than lower level.

**Mr FRENCH:** The advantage of that system, it gives you people certainty very early in the piece.

**Madam CHAIR:** Couldn't under that step though, either party say, 'Ok section 16 is used early days for advice', at say section 38, there were still having issues, couldn't they say that there was a pre-existing bias from the section 16 advice, that carried through. Has that been contested?

**Mr MURRAY:** The second example I'll talk to you about, is where the EPA is going to have to deal with that right now, that's with the ... Gas development on Barrow Island and I'll come to that and explain. The issue there is fundamentally, the EPA has given section 16 advice, and the EPA recommended that development not happen. Well not on site, well not on the island. The government has made a principle decision to allow the development, within a portion of that island. The EPA is now assessing it, because it is now assessing the development, so it's no longer dealing with the principles, it's now dealing with the very specifics, and that's

going to be an interesting thing. Most importantly, I think it comes back to 2 things, the EPA has an important role in giving advice, but it is the government that makes the decisions in all cases.

Fundamentally the credibility of the EPA in a public role and in fact the government, is to ensure that the advice it gives is reasonable, it doesn't have to be acceptable to the government, but it has to be reasonable, it has to deal with the issues. Government's appointed to make decisions, and that's the way we work.

**Mr WOOD:** It is transparent, so the government knows it will have to answer to the public to why it doesn't accept those things.

**Mr MURRAY:** Yes, and in fact there's a whole range of appeals processes which make it mandatory for advice that comes from the EPA, to be subject to third party appeal, and for the Minister in a transparent way to deal with those appeals and make decisions. So transparency is a fundamental requirement throughout. We also have the assessment of planning schemes, the EPA can give advice under section 16, it can then deal with planning schemes, and then depending of the level of the information can still further assess these later on.

**Mr FRENCH:** In reality, in most times it is the planning scheme that is assessed. You don't run through that hierarchy every time, it's only on those rare occasions.

**Mr MURRAY:** Very quickly, this is the standard of the assessment process that the EPA runs for proposal. I've got a copy of administrative procedures which actually give flow charts for these things, I'm not going to give you flow charts. But in crude terms the process is, there is a requirement for referral. Decision making authorities are obliged to refer, everyone else has options. The EPA makes a decision, it makes a decision either to assess or not to assess, that's appealable to the public. It then sets these levels of assessment levels, these are the normal ones, public enquiry is in fact the statutory is legislated in the Act, it's never been used,

and the reason it has never been used is because, if the EPA does recommend a public enquiry, it has to get the Minister's agreement, but once the Minister agrees, the public enquiry is a royal commission, it has the powers of a royal commission, so it's really the last resort.

In broad terms there is a structure to these, the first 2, really are expedited approvals, this is the one that really says right up front, 'it's not going to happen, the EPA will not support it, and will recommend it against it'. These 2 are the normal full blown public process, your EIS kind of process.

**Mr BALDWIN:** Can I just go to the top, and we talked about it earlier, before the EPA, but the referral, can the EPA pick up the project on it's own, it can just ...

**Mr MURRAY:** If the EPA is aware that there is something out there and no one sent it in, the EPA can go to the proponent, or go to someone and say 'we understand, we want it'.

**Mr WOOD:** This would be the case that happens up our way, where no one lives nearby.

**Mr MURRAY:** Yes, all this and there is enough for even the Pilbarra? at the moment, but it doesn't use that power very often.

**Mr BONSON:** Just one other thing, that the EPA cornered, as the local member can write in a letter and say ...

**Mr MURRAY:** The local member is the member of the public. The decision making authorities and government agencies and local government who have to give approval to the opponents. The Minister for environment, the public is anyone, ok everyone has standing.

**Madam CHAIR:** Anyone in that jurisdiction?

**Mr MURRAY:** Anyone who has standing.

**Mr WOOD:** In the whole of Western Australia.

**Mr SIPPE:** Interesting, we don't give a test for that, we don't run a test on anyone,

to see what their nationality is if they write to us, we check on it's merits, if it is reasonable. I have to got to say in all honesty, and it was pretty good, and it's fairly rare to get a significant tow back, if you haven't heard about it, the company and the member of public. A lot of people write about problems in their back yard, which we have to ask them, but it is pretty rare to find one that is...

**Mr MURRAY:** When we are assessing a proposed tourist development on Exmouth peninsular on Igloo?? Reef, we got a whole lot of submissions from international, all over the place. There was a very strong international campaign about that project, but they were all valid submissions, the Ord, for instance the Ord expansion could have been initiated by Northern Territory and in fact when I talk about it, we included the Northern Territory as part WA for that process. All the commercial links are there already, and your right, timed just horrible.

Basically, the other steps are the EPA determines the form and scope of the assessment, it defines the rules, there's a requirement for a proponent to prepare an environmental document, which relates to the scope of the assessment, the EPA has to agree to that document going out. The EPA finds a public review period, not by the Act, but through the administrative procedures, the EPA then submits it advice in a report to the Minister, currently with publishing it. The Act specifies that the Minister publishes it, but if we do it, there is a 2 week statutory appeal period, but the Minister receives her report 2-3 days before the publishment, so there's no surprise, but until that time the Minister has not seen the outcome of the EPA's assessment.

**Mr BALDWIN:** Not even back at where the proponent prepares the ....

**Mr MURRAY:** See what the proponents saying, and we will provide the minister with copies of that documentation, but that's the proponents view.

**Mr BALDWIN:** Yes, but then the EPA is going to have a look at that and say 'no we want something extra', surely the Minister can look at that.

**Mr MURRAY:** The test of this, the EPA has 3 tests, one is; does it cover the environmental issues, does it cover those issues in a credible way, and does it present that information in a way that the public can understand.

What the EPA specifically says to the proponents in agreeing to the release that document, is that the EPA has not made an assessment beyond those 3 criteria. Because the outcome here may well be that the EPA recommends that the project not be implemented. This again is the natural justice issue, the proponent has an opportunity and has to have a opportunity to present their view to the public and to the Minister.

**Mr BALDWIN:** Yes, ours are a little bit more, just trying to figure out whether it's better or worse than yours, when a proponent comes in with an application, and you are keeping an eye on whether the EPA can get an environment ----- . They talk to the environment office, who then work out with them the sorts of issues they've got to cover, that actually goes to the Minister, who then puts it out, and says, 'is there anything else that people want to cover in this whole process'. It then comes back after that comment, and then the draft goes out for the real public comment, and the real work to be done, and the scientific documents be done, and that comes back in. The scoping step.

**Mr MURRAY:** The scoping step, and in fact for the EPA, that process isn't fundamentally different, except it's done by the EPA rather than the Minister. Here for instance for full environment management program, which is the normal high order one, and in fact can happen for PERs?, where there's a full public involvement, there's in fact a requirement for the scope and document to go out for public consultation.

In fact your system and our system are not fundamentally different, you don't have a EPA as such, but the other thing I noticed when we doing the audit assessment is that the advice that goes to the Minister, isn't subject to comment before a decision is made.

**Mr BALDWIN:** No, I find that very interesting, I think it would be a good thing, but it actually got published having being the environment minister, because your getting the information that's been out there in the public realm, and all of a sudden the doors are closing and it gets to you, I'd prefer see it being published, before it comes to you, you can make the political choice which every way you want.

**Mr SIPPE:** Then everything is on the table, big strength for a minister.

**Mr MURRAY:** The minister for Environment like it, although the first reaction is that it constrains them, but it doesn't, it provides them with all the information rather than just some of the information. It provides an opportunity for the public, basically to critique, this is very much what they do, they critiquing the advice going to the minister, so that in a sense they're providing full options for the Minister, and that's the way it works and it works very well.

The other thing that we find most important, is because Ministers have those defined roles, it's much easier for Ministers to step back and say; 'well, look there is a due process that's being run by an appropriate body'. This doesn't stop the Minister from seeking advice at any time.

**Mr BALDWIN:** Can I just ask about a little mechanical thing? When your going through one of these processes, the EPA is going through an EIS or something, and somebody's got some cutting edge technical information that you can't actually, although they insist that it can't go out in public. How do you handle that because it's an issue I've come across a few times, and it's pretty hard to handle.

**Mr MURRAY:** We deal with it all the time, we have got a specific clause in the Act which says, for starters it's actually a draconian law. If an proponent says they have commercial confidential information and it's accepted as commercial confidential information, then in fact it is absolutely restricted, and if that information is released by staff, then in fact there is a prison sentence involved. So the penalties are

very substantial for the release of that, what we do, we often have industrial projects which come forward. In most cases there comfortable with dealing with the generic description, it's just the specific catalyst that their dealing with, there confidential.

In most cases, people who are informed have a pretty good idea of what it is, but we respect the confidentiality, what we do with the proponent document is we ask for them to deal with it at the generic level. In such a way, that people understand what the issue and implications are, because fundamentally it's not the process per say that we're interested in, it's the consequences, it is the problem.

**Mr SIPPE:** I can only think of one project since 1987, it was synthetic gem stones, project, but because the process was so secret and because of the commercial competition for it, that we didn't go through the process, because got very tired. That's the only one I think in all those years, and we've dealt with thousands.

**Mr MURRAY:** Over the years, you get people saying 'this tiny little piece of information, I don't want either', it is written documents.

**Mr SIPPE:** The other 5 times it's genuine, it's a bit of key technology or something that normally for competition though, that's fine.

**Mr MURRAY:** In terms of staff from here, the Act is very clear. No one has ever complained that we have breached it. The other assessment is the assessment and planning schemes, and this came in, in 1996, so it's a more recent thing. Is a response to 2 things, 1 is we had a supreme court ruling that in fact said; the EPA couldn't assess something which was at a conceptual level of a proposal, if it was too far removed from having an impact on the environment. Now that did a whole set of things, it took out that early certainty that proponents wanted, it took out the opportunity for the EPA to give that early advice, the early warnings, and things like that, that caused us mayhem. So what we started doing was using section 16, to give that advice, we didn't avoid it. The other thing was in the planning system, especially

if they want certainty as early as possible, and we want give it as early as possible, if we leave it to the end, to the subdivision point, it just kills us, the Minister's lead staff want it, we just can't cope, there's no options.

You end up with huge bun fights, and compensation issues, and you just don't want to be there. So what we've done, is in a similar way to the previous chart that I showed you, there are 2 forms of planning documents, there's a non statutory approach which deals with the state level planning, region plans, district plans, and local plans, but then we have the statutory -- -- amendments, which are the legal documents. What we do is we give section 16 advice on these, to try influence them, right up front, saying, 'these are areas which should set aside for conservation rather than for industrial or urban or whatever'. Then what we're saying is once that fundamental decisions been made, 'you go and look after the local bush areas, and things like that, as much as possible we don't want to do that, we've looked after the regional, the broad scale stuff'.

We now have strategic assessment which brings us back into the capacity to deal with these things in a statutory way, this happens as part of the Act amendments, in November last year. So we can now go back into at formally assessing these things and effectively giving advice, and having environmentally conditions set up. Then they can proceed down and influence the statutory document.

With the statutory documents, we've got regent schemes, for instance all of Perth is subject to a regent scheme, which effectively just are colours on the map showing zones.

**Mr BALDWIN:** Who does these by the way, because it's different in the Northern Territory, regional level is state government or?

**Mr MURRAY:** All of this is state government, regent is state government, town planning schemes are local authorities, subdivision applications go back into state government.

**Banter**

For instance the broad scheme for the metropolitan region is culled there is no text, so when the EPA assesses it, and applies conditions, we have real issues about how we applied conditions which get transferred into substance planning decision, when you have no text, so there are some legal issues. We certainly deal with, unfortunately, and I do say that, every scheme amendment has to be referred to the EPA every one of them. There is no discretion, because the planners want certainty, the developers want certainty, and this was the way, because fundamentally if the EPA chooses not to assess the town planning scheme, it can't come in later, so it's a one of shot. Which means we are actually assessing things that we don't necessarily want to and we certainly in some cases assessing things before the local government or the land developer is ready.

**Mr FRENCH:** Well basically all those little ones are saying -----.

**Mr MURRAY:** While I will explain this, we are not actively promoting this. But the key message I think I want to give from this is, that we've kept environment and planning separate, as there are specific responsibilities, but what this has attempted to do is try to provide a mechanism where you get a combined approval of process, identifying in dealing with environmental issues, at the same time as your dealing with planning issues at the strategic level.

**Mr BALDWIN:** You get them to beef up the regional schemes with as much text as possible, they go to the EPA and then after that they...

**Mr MURRAY:** That is what we are trying to do. What we are finding is that the way planning works, now what their doing is their putting up schemes which deal with large lot holdings, including multiple land owners, they are then coming in and having a provision for a specific subdivision design to be automatically included in the scheme, which isn't subject to assessment. So under the old rule before we could, until the end of last year where we couldn't do non statutory plans, we were having to

come in at subdivision level, we were obliged to, because that's the way the planning system was constructed in, we hated it. You know, we've areas down there which might have 30 or 40 different individual land owners, being subject to a scheme, and if we wanted to deal with local conservation issues, this case there are some, we would have to each and everyone subdivisions, even though the scheme is actually coming up with a funding and sharing arrangement, and all the good things that they should do. Strategic assessment for us will allow us to actually deal with that, and in fact the planners are now understanding that there's an opportunity for us to do it, in a effective way.

**Mr WOOD:** For clarification, when you are dealing with, you're an environment protection agency, are you dealing when it comes to subdivision, the length of a street, so you are only dealing with the effect on the environment, and that doesn't include the safety environment, you hinted that it might.

**Mr SIPPE:** We avoid it. It's a very difficult question, social means of mankind, as individual or in social groupings, that's what you mean, the definition, and if you look at things like as odour, or ascetics, or even air emissions. Mostly you indicate a species, people are affected more than anything else, there's only a couple of exceptions. So you can't really divorce environment and social, quite that neatly. We deal with all that sort of social stuff, the stuff we don't deal with are things like affect on property rights, property values, we look at community dislocation, and those sorts of issues, which are really more, I am not sure how you define those, but they are really things that planners have to deal with, that's with the normal process. So there is a grey area in the middle, where we deal with all the effects of ----- but when you get into how humans behave in their social groupings, and how it affects individual rights like property value and things, we don't ---- .

**Mr WOOD:** Like with open space for instance? ----- which might be environmental -----.

**Mr SIPPE:** Regional conservation yes, public recreation generally no. But essentially, we stop at what you want to call, regional conservation values and after that is all planning.

We do regional conservation in conservation of the planet anyway, we have a joint partnership they don't pay for it though (laughing).

**Mr MURRAY:** They have to do it and we have got some discretion, so we would rather work with them, make sure the rules are set and then for them to actually apply the rule to their administrative process.

I have jumped a head a lot, most of what I just jumped through were in fact related to describing the administrative procedure, but you have got those and I have also got a copy of my full overheads to give you anyhow, and they are really a summary of the stuff.

One of the things that the administrative procedures do describe, in fact also relates to our relationship with the Commonwealth. The first 2 levels of assessment, assessment referral information and environment protection statement which are the expedited guesses, are not covered neatly under the Commonwealth environment protection guidelines of conservation. But what we do as part of the negotiations on bilateral, which Rob led, was in fact made provisions in the bilateral for assessment on referral information and environment protection statement to be dealt with. So that we raised them and said 'look we know you guys are uncomfortable with them but there are still levels of assessment which are appropriate for us, they deal with the issues and they deal with the business that we need to. So we have constructed in such a way that as much as possible, it is similar to the Commonwealth based level of assessment.

What we certainly have is, ----- has been equivalent to Commonwealth and in fact your EIS is equivalent to an -----.  
We do have bilateral with the Commonwealth as you do. The -----  
-- in 2002, but we were unable to implement it until we had the head power in the new

Environment Protection Act, which was -----  
-- in November last year.

So we now have the head power and in fact the bilateral is in place and implementing. The EPA is quite clear, it will work on a cooperative or joint bus in assessment of projects, where their 'cross border'. We cant ----- too many with the Northern Territory and until we have done the audit we hadn't dealt with any.  
So we are very open to that sort of thing.

I just want to highlights some things, some important provisions. Decision making authorities are prevented from getting approval, but they can go through their special process to not allow it, and if that's the case, we can stop assessing. Importantly we found in some cases, that rule was not adequate, because for some projects, and land clearing is one, that's a deemed approved, so in fact they can't withhold. We found there was no decision making authority, so now what we've put is, proponents are effectively under strain. For 99 out of 100 projects that we have now assessed are different, but we do have proponents who aren't pushing the system as much as possible, this clarifies that.

**Mr FRENCH:** I will just give you an example for that, the point you raised here about the land clearing it used to go to ----- department and there is a 90 day rule, that they have a determination one way or the other. It was because it is not just to say 'no' they had a requirement where they had to give an answer 'yes' or 'no'. They had to say 'no' within 90 days, if they said nothing it was then approved.

**Mr MURRAY:** There is a purpose for that, but land care has shifted a lot as well. One of the important things that we are often criticised about is that there is a statutory process of changing the environmental conditions, once the Minister has given approval. That can sometimes be quite onerous and sometimes it needs to be but other times, the Act just made it very hard to do it quickly or expeditiously when the issues were minor, they had already been addressed. So, we've actually made some changes to allow for the Minister to make changes, where the environmental

outcome is no different. That's the bi-lateral.

We've also inserted, most importantly, a provision for bonds or other forms of financial assurances. The EPA the *Environment Protection Act* had no capacity to do so. Now the bridge is there for any instrument under the Act. But importantly, it comes out of a situations where UK over its 20, 25 years of assessment, on of probably less than a handful of projects has actually recommended that there needs to be something beyond the condition which is legally enforceable and all of our environmental conditions are legally enforceable and prosecutable, you want some better assurance. And the project that is in the forefront of my mind, was a major iron ore project, which was yet to start, where they were going to affect a significant wetland. It was a spring, it had Aboriginal heritage values, it had significant environmental values. They were going to de-water the mine, or de-body, which was going to have a significant effect elsewhere. So, they were going to set up an arrangement where they supplemented the water, around the spring to try and maintain water levels. They were going to have to do that for at least 25 years after they finished funding. And we were just concerned that, in the current commercial world, people don't want to hang around that long.

And, although they were subject to law, we just felt that there needed to be a bit more inducement. So, that inducement is there. And equally, and something which we have been doing, but we wanted some assurance and that is the EPA can terminate an assessment, if the project is clearly dead. Someone else doesn't approve it, or a proponent stops doing it, and it's important to finish somehow or other.

**Mr FRENCH:** We currently have a number of .....that are in a section (?). .....suspended, and so the proponent may not worked them for 2 or 3 years but is still on the force. And until we have had that provision put in, you know, in the statutes, there was no power question. we used to just use that way of doing this.

We did a 30 day letter. A whole range of administrative mechanisms we used and system.

**Mr MURRAY:** We have used the recent changes to tidy up and clarify a whole set of legal questions. And in fact to address some Supreme Court decisions we have had one thing we have done but, if they came back, you had to start the process where it was, before you suspended it, that this now allows for a fully terminated, get-out which we didn't like.

This gets to the social and economic issues. These new principles, 5 new principles inserted as object and principles of the Act quite up front, but the first 4 of the nationally agreed, ecologically sustainable development principles. Importantly decision makers under the *Environmental Protection Act* and including the EPA have to have regard. That's the limit of the compulsion but the interesting question is that, in dealing with precautionary, intergenerational equity and these principles, it's really pushing the EPA into starting to consider more overtly, social and economic issues. And in fact there's, we haven't asked the question but we have had some quiet discussions with the State Solicitors Office who are of the view that, 'yeah, look, there have been some boundaries, the EPA has not pushed the boundaries, except once when it took it to the Supreme Court and lost. But this gives a bit more comfort to the ability of the EPA, not necessarily its willingness but certainly its ability to start addressing these in a more overt way. What it will be doing is asking proponents to address them, because they are not constrained and in fact, in most of the cases, they want to present these arguments to support their project anyhow.

Just, one of the issues that's going around everywhere and including in WA is ecologically sustainable development. And all of those sorts of things so, part of it is that we have now got those ESP principles currently in the Act. There is still recognition that environment is one of the key thrusts .....bottom line assessment. What the state is trying to do is work out 'how does it do it' and we are dealing with a couple of projects; one which was-----, I'll briefly talk on; there's another project which is a major

expansion of ----- facilities in Fremantle but where they want, the proponent wants to go through this and demonstrate from their point of view of the project.

Although the EPA roll is limited it has an assured process where there is a high degree of public confidence and it's likely that, well certainly one of the options is to piggy back social and economic to the EPA's process, not necessarily by the EPA but relate it. The government is developing its ----- assessment approaches, published the report but there's still a lot of process going on. But the other thing the government is doing at the moment is in fact looking about how all of the fundamental approval processes for projects can deliver more efficient, more timely, more effective processing. In general they are not targeting, although proponents often criticise the EIA process and the EPA but in general, what they are really doing is saying, 'government approvals as a whole is the problem'. Most of the standards that the EPA already applies, like defining time lines and the like and having guidance statements, are now going to be encouraged to be applied by other approval processes to improve the certainty.

I just want to talk about ----- Ord, which was chosen, primarily it was a large assessment and it involved the Northern Territory. We did this as a joint assessment with the Department of Land Planning and Environment but it was the EPA which led it by agreement and it was our assessment process which was followed. Now, because ours was much more statutory, all of our steps were followed and what we did was then introduce Northern Territory people into that process. We maintained that close consultation from beginning to end which included not just the regulators but also Northern Territory Museum and other places have got a lot more expertise in the Kimberley than you find in Perth. Certainly, so in fact, we relied for a lot of the specific information from people out of Darwin, not Perth. And we found that very, very useful.

We did the 2 stage assessment of the project. What we wanted to do was to make, to deal with effectively, what were the consequences of clearing of the land and then what were the implications of,

particularly for management about developing and operating the land for the long term. And so we actually did it as a 2 stage assessment, there were 2 reports, one on each of these – WA and Northern Territory both produced their reports but Northern Territory report was effectively a cut and paste of the WA EPA, with some minor additions, but that was partly because we were including the Northern Territory right from the beginning, we included the Commonwealth as well, but they weren't assessing. We ignored state boundaries because we extended the appeal rights to anyone and in fact, the Northern Territory people did appeal. They appealed under our process, to our Minister. But in determining the appeals, at our encouragement and by agreement, the WA Minister consulted the Northern Territory Minister, when the WA Minister was determining appeals and equally, when the WA minister was setting the environmental conditions that was the only consultation with the Northern Territory Minister.

So, there was transparency throughout, in terms of both jurisdictions. At the time...

**Madam CHAIR:** Was this you Tim?

**Mr BALDWIN:** Most of it I think.

**Mr MURRAY:** Oh, I'm disappointed [laughs]. That was the aspiration and I understood that's certainly, I saw the correspondence but I wasn't involved in the consultation.

**Mr BALDWIN:** Sorry, which part are you talking about? This process.

**Mr MURRAY:** The consultation, specifically with Northern Territory one on the board.

**Madam CHAIR:** You got the phone calls.

**Mr MURRAY:** Well, I know we drafted the letters.

**Mr BALDWIN:** When did this start?

**Mr MURRAY:** We reported in 2002, started 1999. So I was at the front end of it and then...

**Madam CHAIR:** Then Colin was at the back end.

**Mr MURRAY:** I hope we made the right decision.

**Chair:** Oh, he always does.

**Mr MURRAY:** The WA minister approved the project, set environmental conditions which were negotiated and agreed by the Northern Territory. Then the Northern Territory report was finalised to take into account the appeals and the issues raised through any appeals. The model then, and I'm not sure what will happen now, depending on what we see as a new proposal, regulatory control then was intended to be partly the WA partly the Northern Territory, depending on where the impacts were going to be and who had the greater control. WA Minister ----- on his warehoused the approval, so the approval lives and they are current, and WA Government is currently doing investigations to fill some of the outstanding environmental work that has to be done. Then they will work out with the Northern Territory what happens. Just on that, if the project fundamentally changes, from the Westfarmers project they have put up, it will be back in and we have been saying that from the beginning.

**Mr WOOD:** That was based on the Westfarmers application.

**Mr BALDWIN:** Well that was.....

**Madam CHAIR:** That was.

**Mr MURRAY:** It was a Westfarmers project. But we tried to do it on the basis that we knew where Westfarmers were going to sell the land, so we tried to take some of those things on board but now, that was a development which was going to be constructed over 3 years, it was going to be effectively corporate land-holding, initially, and it was going to be relatively easy to control. And one of the things that the Northern Territory regulators, as well as regulates here said this: 'Once you start on something it becomes a problem.' So, one of the outstanding issues is to make sure you set up a management structure which enables

easy control and effective control of all of the land.

Gorgon Gas, which is a project on Barrow Island offshore from the Pilbara, a very significant gas resource further offshore. Barrow Island is one of the first nature reserves to ----- in Western Australia, the whole of the island, even though some portions, operating oil fields, .....nature reserve, it is the highest protection status. It means that both Houses in parliament need to agree to change it for the best purpose.

In this case, and this is where the bottom line approach comes, there has been a 2-stage approach, which is in fact encouraged by the developer or the proponent Chevron Texico and really, what they wanted to do was to address an issue of government policy. Policy, which was no mining, or exploration in nature reserves or national parks. And here they were wanting to put a very substantial gas processing plant within the middle, within a nature reserve.

So, what they have done, is they done a 2-stage approach. They asked for and they have obtained environmental, social and economic advice at a near principle level on building in a nature reserve, as we mentioned earlier, the EPA has not supported it, that development being built on Barrow Island. But the government has given an interest with a decision. But that in principle decision effectively says, 'if you can obtain all of your relevant approvals, it is possible for you to build within 300 hectares of a very substantial -----, it is not an approval to build. And so what we now have is the assessment of the specific project. And so now we are dealing with all of the specific issues and having identified things like quarantine and risk to fauna and other risk to fauna and things like that, it is now clear the proponent to have to demonstrate how they will manage those risks in a way which will be compatible with the island being a nature reserve.

So that's, that's the task, but fundamentally it will be the government which makes the decision.

**Madam CHAIR:** And the EPA's advice that suggests alternate locations was that part of the advice or just advice on that location?

**Mr MURRAY:** Well, we had, we have a situation where Chevron Texico put, their proposition was; 'there was only one site which is economically viable'. Even though, in the mid-'90's we were actually assessing Chevron Texico's .....project on Barrow Peninsula. But they pulled the pin and so the assessment stopped. They just said there is only one place that this can go and that's Barrow.

**Mr BALDWIN:** What is it, LNG?

**Mr MURRAY:** That's LNG, yes.

**Mr SIPPE:** I mean that usually explains why, what you might want to use essentially is, it is quite high in carbon dioxide and that's .....CO<sub>2</sub> out, they want to pump it into the ex-oil reservoirs .....island and because, if it has to set the mainland to bring it back again, the cost of the piping, you have to get special high quality stainless steel piping to cope with the high level of acidity and the CO<sub>2</sub> so that would cost an extra billion dollars and push the project ----- . So that was one of the main rationales for not...

**Mr BONSON:** An extra billion dollars was that?

**Mr SIPPE:** An extra billion was it?.....

**Mr MURRAY:** Something like a billion dollars..

**Mr SIPPE:** The company was floating around.

**Mr MURRAY:** But the ability to actually get into the project economics of the proponents, very difficult. The government did employ some economic consultants to try and evaluate that and their advice was that, as best as they could get into those books, then the company's position seemed to be reasonable. But there's all sorts of arguments about, 'well, you know, can you analyse a billion dollars over the life of the project of 30 years', and all those sorts of things.

**Mr SIPPE:** The interesting point is of course, the government didn't follow the EPA's advice.

**Mr BALDWIN:** No, or their own policy.

**Mr BONSON:** So, what was the fallout because obviously, there's political fallout from all that.

**Mr MURRAY:** We are now assessing the actual project.

**Mr BONSON:** No but, sorry, I'm talking about the wider Western Australian community.

**Mr SIPPE:** Oh, um, the voluntary conservation movement had just fought a long, hard campaign on Lingaloo Reef which you probably .....and I think they were pretty much spent, for the time, this one came up and so they were feeling a bit, they have only really, the post-government decision when their campaign only started so it was actually very late and it really hasn't got a lot of legs at the moment. Now, it will be trotted out between now and next February when the election...

**Madam CHAIR:** Exactly. It will become hot.

**Mr SIPPE:** But right now it's pretty quiet. In fact the leader of the Conservation Council, our local Conservation Council has just quit and is standing for the Greens to the Senate in the next Commonwealth election and so there is discontinuity in the conservation moves, all these sorts of things are happening. But it will be trotted out again but for some reason, people haven't connected with Barrow Island as they do with Lingaloo Reef. The Lingaloo Reef campaign was absolutely brilliantly run. Brilliantly run, you know, they had Tim Winton and all sorts of people dragged in.

**Mr BONSON:** We heard about it, it was news in the Territory.

**Mr SIPPE:** If you had to run a campaign, it was international news. If you are going to run a campaign against something, it was a pretty class act.

**Mr MURRAY:** It was the slickest, best organised opposition movement that we have seen, even better than the forest movement and that's been pretty effective here but it has taken a long time to generate it. People just did not like the idea of seeing the possible effect on whale sharks and things like that. They didn't necessarily understand that what they didn't want, is to see that change.

**Madam CHAIR:** I would just like to thank you Colin, on behalf of the committee for the information you have given us. We appreciate the time and the effort you put in for us.

### BREAK

**Mr FRENCH:** What we are going to do, we are going to ----- with the Agenda. One of the external people, Bills Biggs, who has come out to talk about the Memorandum of Understanding on Mining, is just running late. So Rob Atkins is kindly going to come one forward to the 2:30 p.m. spot number 6, to talk about Works Approval Licenses, Contaminated Sites and Controlled Waste. Okay, now I will hand over to Rob

**Mr ATKINS:** As Graeme said, I'm going to run through 3 areas, there sort of in the same work area, but they're unrelated in terms of our administration of legislation, and it's covered under 2 pieces of legislation, Environment Protection Act and it's regulations, and also the New Contaminated Site Act, which I think you've seen the Contaminated Sites Bill, there's a copy in the papers. That actually went through parliament at the end of November, and is due to be proclaimed on 1<sup>st</sup> July, more on that when we come to it.

So first of all, I just want to cover an industry of regulations, which covers work's approvals and licensing and touch on the ----- Reviews that some of you have read. Just an overview we have over somewhere between 900 and 1 000 licensed prescribed premises, under the Act there's a schedule that describes premises, so it is the type of premises that have to be licensed. So premises isn't described and doesn't require a license, although it can be a licensed if the owner wants it. So we've had 900 of those,

and the principle is there to have premises licensed that require licenses to be adapted to the circumstances and it might change over time. We're currently reviewing our prescribed premises, we actually want to cut down on the number of licenses to about ½ of what we have currently got. There's a lot of licenses premises that over time or groups of licenses, classes of licenses, with license conditions that remain pretty stable, and are the same from one premises to another. There ideally covered by registration under regulations, created regulations accept those operating conditions, and then all the premises has to do is be registered, and that comes to 1400 registered premises. Currently we have regulations governing 1400 registrations, which aren't required to be renewed from year to year, at the moment we have got 900 licenses that are required to be renewed from year to year.

**Mr FRENCH:** When you talk about prescribed premises it's mainly premises that have an off site emission of some sort that your talking about.

**Mr ATKINS:** Yes, they have an off-site emission that has a risk of impacting on human health or the environment, but they're also restricted on the main focus on things like; major refinery, mining operations, which are quite complex are not easily fitting to, if you a like a tailor made set of conditions, you've got to look at each proposal, individually.

**Mr WOOD:**-----land fill?

**Mr ATKINS:** Land fields are covered by licenses at the moment, that's one of the prescribed premises that I want to change to, a registered premises, because land fill conditions are fairly standard, and land fills are best set up through the Works Approval Process, so their properly designed and constructed in the first place, but once the land fill is in place, it's monitoring and management requirements are pretty descriptive, and don't change from one land fill to the other, it might be different for different classes of land fills, but within a class of land fill, the operating and licensing conditions are pretty standard, so that's one of the prescribed premises we are going to

take off that describe, and put into registered list.

Works Approvals, we've processed about 50 works approval per annum. Works Approval is as it states, its an approval to actually construct a facility, and it's triggered by 1 of 3 triggering mechanism. It may come out of an EPA assessment, so the EPA has done an assessment on a proposal, Minister has set conditions, in order for them then to construct whatever they have got approval for, they'll need a works approval, than make an application to get a works approval. Works Approval may or may not subsequently require a license, as a prescribed premises. So EPA process can trigger works approval, if it is a prescribed premises that triggers a works approval, or if it is a works that is going to convert something that is currently not regulated into a prescribed premises that will trigger a works approval, as well. The last trigger for a works approval, is you've got something that's currently operating and it's operating conditions are going to change, such that it changes the level of emissions, or the characteristics of the emissions, then that will trigger a works approval as well. Works approval pretty straight forward, I wasn't going to go any more detail with that.

We currently have about 50 staff doing licensing, plus technical support from air quality noise and water quality areas, but there is about 50 staff doing licensing and compliance work and mainly deployed in our 6 regional offices. License fees are net appropriated, and we're currently generating about \$7m funds from the 900 licensed premises per year, and that funds the licensing process, it also provides some funding to the EPA's environmental impact assessment process, some funding to the technical support areas are there, and noise and water as well.

There's also a range of generic regulations, that cover regulations of industry. The license structure, licenses are essentially licenses to permit an emission or a discharge, and so they focus on emission points, types of emission, and limits that might be placed on emissions. Licenses historically have had a very big component of operating controls, so one of the ways in

which the department has regulated an emission is through the operating conditions of the plant. You will notice if you've read Rob's WELCO report, Rob was recommending that we move away from license conditions that set operating conditions and move to emissions performance based conditions, with monitoring and reporting requirements, and that's mainly because operating conditions are difficult to enforce in law in terms of determining if they're in breach or not, wherein very clearly if there's a emission level set, and they have reached that emission level, it is much more straight forward. Licenses also become very complex, some of them are up to 20 or 30 pages long, and they have 20 or 30, 40 or 50 conditions attached to them, so they're a nightmare for the licensee, and a nightmare for the regulator. So one of main things that has come out of WELCO, is to simplify licenses to a emission performance and move operating controls, and other considerations that might guide industry on how it manages it's emissions, into what's called a environmental improvement plan, or for small and simple licenses into an assessment report, which is the second dot point here.

The assessment report is a new thing that we've just introduced, so when a license comes up for either renewal or for issuing for the first time, the assessment officer actually writes a short report, might be 1 page or might be 4 pages, just setting the background and context of the license, and the emission, environmental impact, and environmental issues surrounding the emissions, and then an explanation that supports the setting of the conditions.

That assessment report, while it's not part of the license, there's a companion for the license both in terms of community consultation and in terms of guidance to the licensee, previously a lot of that information, has been contained, in what's called the preamble of a license, which is not legally enforceable, so what we're doing is taking that stuff out of a license, it's not legally enforced and putting in an assessment report, so that makes it again, much more straight forward.

We're only in early days with assessment reports, we've only done a very few of them, but ultimately we'll have a fairly pro-form template for assessment reports, that will actually trigger assessment officers in the sorts of things that they'll need to look at. The situation we've got ourselves into with those 900 licenses, and with annual renewals, and strange as it seems, 90% of the annual renewals fall between August and October each year, so I don't need to point out to you the logistical nightmare that that actually presents, I've never actually got a satisfactory explanation from anybody as to why that is the case.

So we've got too many licenses, we have too much administrative work that we have to turn over licenses each year, so we're not paying enough attention to compliance and annual performance of licenses. Many of our big licensees have to provide an annual environment report, which actually sets out how they perform within their license year, and those reports again, are quite meaty, and in that short we've got to re-issue licenses that are just not getting proper consideration. That has led to a lot of loss of community trust, which again generates more work through complaint. So it's that cycle that's driving the change that we're looking at.

I've already mentioned that we're placing greater emphasis on the Works Approval Process, in other words, get the thing right when it's first set up. Land fills is a good example of that, focussing conditions on emissions, and taking more of a risk base approach to which types of premises need to be retained as licensed, under the prescribed premises schedule, and which ones we can move off to registrations to cover under regulations. Which still require enforcement action, but not as much as administration in terms of administering a license. Rob was quite critical that many of our license conditions were not legally enforceable, and we've certainly had some bad experiences, prosecution briefs in that regard. So one of our big emphasises and high priority in terms of implementing WELCA, is focusing on reviewing a license conditions.

Another plank of WELCA, was improved community consultation, and there's a

couple of initiatives there, one was developing what is called a tripartite consultation process, and we've pinched that from the Victorians, so if you know the Victorian VIP tripartite process, we're picking up the same model, adapting it to our own purposes, where we'll have a community consultation group which involves round table with the industry, local community, and the regulators, including local government to review license performance each year, and review the re-issuing of licenses. It will also, dropping down to the last dot point, the driving process for developing environment improvement plan. So where an industry's performance is lacking within the local community, like there's a dust issue, or an emissions issue that is chronically repeating itself, this tripartite process can be used to work with the industry over a number of years to improve the whole industry performance and reduce those impacts on the community. Previously that process has been driven by a license condition amendment, so it's a statutory process, and putting more of that operational control stuff into license conditions, which is a really inadequate way with dealing with it. So we are removing that from the statutory process into a community consultative process.

A couple of other areas that are really important, particularly in the mining area, which is obviously big in Western Australia, and a significant issue in the Northern Territory, is that through the Department of Industry and Resources, which is the DIR. Under the Mines Act and dangerous goods legislation, mining companies are fairly strongly regulated by DIR, and there also regulated by ourselves in terms of their industry emissions. So there's a reasonable amount of duplication and overlap between industry and resources regulation and ourselves, quite apart from the fact that you've got 2 regulators, regulating 1 premises, so I want to look at opportunities to cut out the duplication, but also look at, moving more towards only 1 agency doing the regulating on behalf of the other agency. There's been a lack of trust between the ---- departments historically. Smiles, so obviously it's the same in other places. I think the environment is right in Western Australia to try overcome that lack of trust and proper memoranda of understanding,

and proper policies and guidelines, and some training.

Having the mine site regulators looking after the environmental regulations side as well. Particularly in a mining area we're really only looking at dust, noise, and waste discharges, be it air emissions or liquid discharges from the industrial process part of the mine. So if they've got a crushing, or processing plant, or a rotor or something like that, we license that, but the hole in the ground and everything to do with that, is DIR. For most mines we're the smaller player, just as important, but a smaller player, so it's makes sense to actually delegate some of that regulatory responsibility to DIR, and I know for a lot of people, that's heresy .

**Mr McADAM:** Are these discussions going on with industry at the moment?

**Mr ATKINS:** I've only got as far flagging it with industry, and they're really keen because they're getting sick of us turning up one day, and then tomorrow the other blokes turning up out there, and getting some slightly conflicting advice. In terms of our annual environment reports, they're happy to write a fairly thick annual environmental report for us, and then change it to suite the requirements of DIR. So there are certainly advantages to having 1 regulator, and we can also cut down on our duplication on enforcing the law. I've talked to senior management of DIR, and they are fairly keen on this as well. So it's only got as far as it's a good idea, it's my intention throughout this year to actively progress that.

**Madam CHAIR:** That certainly in terms of the territory are critical aspects for this committee to consider, we would be interested, if possible at any stage, if you could address it to parliament in relation to us, on that issue of proposed training, how you receive information from DIR. What process you ultimately identify, we'd be interested in seeing, that is what core industry obviously.

**Mr ATKINS:** I gathered it would be, and you've got some mining activities up there that are a lot more controversial than Gold

and Iron Ore, with Uranium mining and all those sorts of things.

**Mr WOOD:** Why isn't it, that faced with the regulations don't come under the Department of Environment, and why take them out as mining....

**Mr ATKINS:** That's the other side of the argument, I guess the splits basically historical, you know the Mining Act and dangerous goods legislation, and mines department were in place, many decades before the Environment Protection Act. So it's really ...

**Mr WOOD:** Some of our mines you've got a pencil line there, one department deals outside the fence, the other inside the fence, if you had an independent body looking at the mining, you take away the belief of why are mines checking on the environmental side of mines, when they are really there for encourage mining. So you've got someone looking at it not necessarily from a mining perspective.

**Mr ATKINS:** Really you are without legislation, inside the fence you've got some parts of it, administered by mines department, some parts administered by us, so it's actually quite complex. If we don't go down that path, we'll be tripping over each other in the future, and resources are so scarce. If you go out to Kalgoorlie, the mines department out there is probably 3 times the size of our office out there, and we're running ragged with a whole lot of other emissions issues. Most complaints to the community is dust and noise from blasting, and not from the bits we administer anyway.

**Madam CHAIR:** I was just thinking in terms of this being an issue to consider what your knowledge of other jurisdictions are on it, do they all sit elsewhere regulatory list with mining or do some sit over in environment.

**Mr ATKINS:** I don't have direct experience with that, but I've not heard where there's anywhere where it's together. A lot of other states who brought planning and environment together, but mining because it's actually a resource thing, tends to practically stay separately. I don't know what sort of relationships they might have

between the 2, so I really can't answer your question.

Offences, there's 3 levels of offences, tier 1, 2, and 3. Tier 1 is the highest level, which is environmental harm, and environmental harm is in simplistic terms, it's physical change, physical damage to environment, it's knocking down trees, digging holes, and those sorts of things, rather than pollution as an emission or discharge, that's just coming with a new amendments to the act. Pollution and unreasonable emission, is quite an interesting one, it's an odour, dust odour or magnetic radiation that has an unreasonable impact on health or emanative of the environment or people. So you don't actually have to prove pollution at an unreasonable omission. We're actually prosecuting a case at the moment, bearing a prosecution case at the moment, where we have an odour impact on the community, and with the evidence that we are using for the case, it is simply a witness statement of, 'I couldn't turn my air conditions off or on', so we are actually using that as a bit of a test case for a reasonable omission within the departments. The department has been hung up for many years trying to prove pollution, which is quite hard, as you could probably imagine.

- Tier 1; high penalties for individuals, and for companies and has jail term associated with it as well, and has to be prosecuted through the courts.
- Tier 2; which is next level down, breaches of license conditions, protection notices, and those sorts of things, can either be dealt with through prosecution through the court or through modified penalties.
- Tier 3; which is a breach of regulations, can either be through infringement notice, fine or it can be prosecuted through the courts.

**Mr BALDWIN:** Just on the reservoir emissions, is noise going into their now or is it starting -----

**Mr ATKINS:** Noise is covered by specific environment noise regulations. It is a set of regulations with a fine when you are in breach of the Act. They are not all that easy to administer.

**Mr WOOD:** A dog from barking and noises from stereos, boom boxes (laughing).

**Mr FRENCH:** Is it still the case where a lot of the noise issues are delegated out to the local communities?

**Mr ATKINS:** The way we are operating it is that the Department administers noise regulations for prescribed premises, in other words the industries that are licensees, and all other noise issues go out to local government.

Every time local government doesn't deal with the claimants that attract the work, they bounce it back to us, but we are getting tougher about bouncing it back and we seem to have the Ministers support on that at this stage. One of the problems is that the main tentacle expertise lies with us and so anything other is fairly straight forward, noise investigation and monitoring. But local government has to ask for us to come to help them anyway, but that is a capability issue and we have got quite a small but very good noise unit here.

I am conscious of the time, so I want to move onto contaminated sites area now. Contaminated site issues have, up till now, or up until next July are dealt with under the Environmental Protection Act and largely through either EPA processes or through Prosecution of Solutions.

The limitations that we have is contamination has to be moving off site, has to be causing pollution or at risk of causing pollution for us to require the owner, or occupier or polluter to do anything about it, under the Environment Protection Act, because it only deals with pollutions. So if you've got a contaminated site, where the contamination is contained on site, not moving anywhere, but compromises the future use of the land, or you have got a contamination plume that is moving on site like say, nitrate plume or a nutrient plume where it's very difficult to prove it's causing pollution, but it's desirable to clean it up, the Environment Protection Act is not terribly adequate.

The act also does not prevent anybody from selling their contaminated site to someone else without disclosure. So we're dealing with a number of contaminated sites at the moment, some really obvious one, like old fertiliser works and waste industry sites, under the Environmental Protection Act, only because there obvious pollution, and we have an owner. Other issues are causing problems, so the contaminated sites legislation, really is aimed picking up those sorts of deficiencies, it's taken 10 years to develop, people have retired and died in the life of this legislation, in fact there's probably nobody dealing with the legislation now, that was when it was originally moved, that includes myself.

So the definition of contamination, which is always contentious, it's the presence of substance above background levels, that poses a risk to human health or the environment. It only has to oppose a risk, it doesn't actually have to be causing it, but that is another issue.

The act will make it a legal obligation for land owners to report contaminated sites to the department. It will be a requirement if they transfer land to disclose that it's contaminated. It will be a requirement to disclose the land if it's contaminated, if they are going for development application to change the use of that land. The Department will be able to classify, or have a classification system, for reported sites, basically people will lodge information with the department on their site, the department will go through a classification system, I won't go through that classification system now, but it's set out in there, there are 7 classifications starting from uncontaminated through to contaminated requirement mediation.

**Mr WOOD:** A memorial, could you ----- if someone might have passed away, just a notice?

**Mr ATKINS:** It is a notice on a title, so if you do a title search of everything. So what is actually going to be happening in the conveyancing world is, if you want to buy property A, your settlement officer doing the land title land searches and so forth will be able to see from the land title search, where there is a contaminated site tag on that land.

There'll be a process in the act for assigning responsibility for mediation, under the hierarchy under the polluter initially, if the polluter can't be identified, it will be the current land owner, if there is a mortgagee situation, then it will be the financier, or for state government owned sites, or orphan sites, it will be the state government. An orphan site, is a site that the original polluting owner is no longer in possession of the land, and that land has become contaminated through an activity that was lawfully approved at the time. Things like fertiliser works, that may have been there 100 years ago, and they've got a big nitrate or sulfite plume or whatever underneath it and the company is long gone, some other person has the site, it that person can get an exemption, than that site will become an orphan site of the government, and it has to pick up the bill for.

**Mr BONSON:** I understand on the way down to Swan River, when I went on the tour, down here there is a site that was redeveloped on the right hand side ending towards where Fremantle was.

**Mr ATKINS:** Yes the swimming residential site (laughing). They were the fertiliser work site and the state engineering worksite. So there was a mixture of the state owned facility and the fertiliser company that had long gone and that was remediated by the government. The way we are doing it is: Landcorp is our, is the government's development arm, Landcorp is going to become the owner of government orphaned sites and it will set up a revolving fund for the investigation and remediation and then selling the land for profit and then those profits go back in to pay for the remediation and that's what happened with the one down near the ----- development and they made quite a tidy sum of money out of it which paid for the remediation of the site.

The East Perth Clayswood Cove? area is another area where the old gas works site was there and that was about a \$14m decontamination exercise because they had to go 50 m out into the river, and that was paid for by, more than paid for by the redevelopment. Not all sites are going to be nice development jewels like that. We have

got a waste storage site up in Midland which is not of particular interest to anybody, which cost several million dollars to remediate but the redevelopment of that for the current land uses in the area, which is fairly low market stuff, quite paid for the remediation.

**Mr GADD:** Is this legislation also targeted picking up any old cattle dipping sites and all that sort of thing?

**Mr ATKINS:** It will pick up any site that fits the definitions of contamination and what's got local government a bit jumpy in the first instance, of course, is all landfills are contaminated sites. So local governments are sitting on quite a large liability there. But in terms of the site, providing the contamination is not moving and that the use of the land is comparable with the level of contamination, then they don't have an obligation to remediate.

**Mr WOOD:** How does salt come into this? The potential to present a risk to harm the healthy environment around.....is salt regarded an contaminant?

**Mr ATKINS:** I think, in terms of pragmatics, there is a Contaminated Sites Committee, which will classify sites. So, it will actually be the final arbiter in terms of classification and determining appeals. So that committee will have the ability to say to this site over here, is not contaminated, for whatever reason.

**MADAM CHAIR:** What was industry's reaction to this legislation? You say it took 10 years in the making?

**Mr ATKINS:** 10 years, yeah. I think pretty nervous. But I think because it has taken so long, they have sort of grown with it, so industry are fairly supportive of this, in fact industry are probably, current industry are probably the least of our problem, because in fact, under the current Environmental Protection Act, a number of contaminated sites that we are dealing with, with current industries, are being quite co-operative and basically doing a lot of it voluntarily than doing things with the Act that actually can't require them to do yet.

It's the old sites that are the probable sites where there had been industrial site that somebody has bought some time in the last 50 years without knowing what's there.

**Madam CHAIR:** Multiple owners.

**Mr ATKINS:** Yeah, multiple owners, not aware, don't have any affinity with the fact that it's contaminated, want to develop it for housing, they are the ones that are really going to be the problem. The other one is; people living down the plume of a petrol station, and there is a petrol plume under their house. That's a particular issue as well. The act intends that the owner of the petrol station is the polluter and therefore responsible for remediating that site. But it doesn't remove the fact that you are living on top of a site that is contaminated and that could actually affect your land owners, particularly if you are a private citizen.

**Madam CHAIR:** Because of the disclosure that is now required.

**Mr ATKINS:** Because of the disclosure that is now required. That's the politically riskiest area and in terms of social equity, that guideline is the most difficult one to reconcile. Because we don't want to be upsetting a whole lot of ordinary citizens because somebody else has stuck a plume underneath their house.

One of the significant things about the act that we can't do at the moment is that the department will have the power to issue a regulatory notice to a landowner, occupier, requiring them to undertake an investigation to determine the extent of contamination and necessary remediation and can also issue a regulatory notice requiring remediation to be undertaken. Ordinarily we wouldn't do that if the contamination is contained but if there is a plume moving on site, they are the situations we want to be able to bang a notice on people and say, 'look, you have a plume moving on-site, you are at risk of human health or the environment, you have got 100 days to clean it up'.

So, when people are sitting on contamination that's not moving, not at risk to them or the community, it's compatible with the current land use, no action is

required. When they want to transfer it, when they want to change the land use or the contamination starts moving off-site, they will be the triggers for an owner to have to do something. And that's sort of calmed local government down, tip sites were automatic, then there is no obligation for them to do more but if they are starting to cause pollution or they want to change the land use that the tips on, that will trigger the act.

**Madam CHAIR:** Can I ask you, who assumes the responsibility for determining whether or not there is movement on the site, where it's potentially unknown?

**Mr ATKINS:** Essentially the department and the Contaminated Sites Committee. I suppose there's 2, there's a couple of ways in which a site can get on the radar screen: 1; disclosure by the landowner 2; somebody off-site, say, gets contamination in their bore and where is that coming from; 3; is that you, as a landowner have provided us with information, we've had a look at it. For instance, a petrol station in sandy soil, there is a reasonable chance that there is an off-site plume, you are over a ground water mound or something like that, we can then require you, under notice, to do an investigation to determine whether or not you have got an off-site effect. So, there's a couple of different pathways there.

We are also developing using the Victoria and New South Wales model of accredited auditors for contaminated sites so you, as a landowner, don't have to do the work yourself, you can use an accredited auditor to do your work and advise the department on the level of contamination and the need for work.

The Contaminated Sites Management Fund is for state owned and orphaned sites and that fund is notionally in existence, it doesn't really have money in it.

There's just, a resource thing that may be interesting to you. We have a new resource for allocation over the next 4 years to get the act and the administrative systems in place and get the data base up and running and get the whole administration of the .....with some governments owned site investigation and some remediation and

that's \$14.5m over 4 years. A million dollars a year of that is the administration cost for the department, the rest of it is either database development funding or it's for a government site investigation with some remediation, there's a couple of sites that have been identified by government need to be remediated, there's a whole lot of yet uncovered.

And we've written to all government departments, asking them to do an assessment of all of their land-holdings and facilities and infrastructure and advised us on the potential for contaminated sites they might have, and that's got people like power companies, power authority of course and transport authorities are copping a bit. There's lots of power stations around and lots of diesel dripping everywhere. So some departments are coming back and saying, 'don't have anything' and others have got quite an inventory to put together.

And there's quite a big liability looming for government in the out years that we are discussing with Treasury as to how that might work.

**Mr WOOD:** Where does your material go? That you have removed from a contaminated site?

**Mr ATKINS:** First principle is on site remediation, so, if you can do on-site treatment as much as possible, and then we have class 3 and class 4 landfill depending on what the level of residual contamination is that has been taken off site. Class 3 is a ----- line, a ----- landfill which can take low level and industrial contamination; class 4 takes higher controlled waste levels of contamination and there's one class 5 tip which is called Mt Walton, which is part of the way between Southern Cross and Coolgardie out in the middle of nowhere. That takes the real -----.

**Mr WOOD:** The low level radiation...

**Mr ATKINS:** That takes low level radiation, and high level control contaminated soil. So, that housing development you saw down the river, there was a proportion of this contamination from that went to Mt Walton, I think. Some that went to Redhill which is a class 4 landfill, the

only one that we have got, up on the hill and there's 2 cells containing themselves in public open space on-site which is low level stuff.

So we are anxious to reduce land fill so, the first principle is on-site treatment as much as possible.

That's a sort of a racy trip through contaminated sites. That brochure actually gives a, breakdown and you have got the Bills...

So, we are just on the home run here with the controlled waste regulations.

A controlled waste regulations are for transport and disposal of liquid, either biological or industrial wastes. So basically sewage, grease, septic, grease trap waste and low concentration bulk liquid industrial waste, acid based solvents, metal finishing products, all those salts, all those sorts of things. Its basically liquids, not solids and it's a requirement to have a permit to transfer those wastes from a waste generator source to a perceivable treatment destination.

It provides for licensing of the carriers, the drivers, and the vehicles themselves that transport control waste on public roads. The place that old regulations, where the waste generators were actually licensed and the waste transporters have their own transfer permit. We are moving away from licensing for the waste generators because there are a lot of them. A lot of them transient in terms that they may only be around for a few years. There is limiting, is things like photographic processing works, fish and chip shops, those sorts of things, so we have never had a good handle on the full range of those sort of people. So, we are moving away from them and moving towards the transport company for which there is fewer of them but they do all of the transporting.

The range of, it comes out of the days when there was no regulation of these things and a lot of septic tank drivers were just driving in the bush and dumping their loads, down creeks and things like that. So it came out of needing to stop that practice and keep track of that and it's grown to be a worthwhile liquid, industrial waste as well.

It doesn't apply to municipal solid waste, so basically household rubbish. It doesn't apply to chemical waste, control waste that remains on the waste generator's property. So, if a big company has generated these sorts of wastes but treats it on-site, that's not regulated by these regulations and control waste, that's transferred by pipeline, so reticulated sewerage system for instance, or chemical waste pipelines are not covered by these regulations. Obviously a chemical waste pipeline would be covered by Environmental Protection Act described premises of licensing.

And it doesn't cover control waste that can be deposited in either the class 1 or 2 or 3 landfills. So that means, sludges and solids that may come out of the treatment of controlled wastes that goes to these landfills isn't covered by permit. So, if you have a tanker load of dirty acid waste going from a waste generator to a treatment facility that requires a permit, after treatment there is a sludge that needs to go to landfill, the transport of that sludge doesn't require a permit. But the premises may be regulated as a licensed premises.

So just going through the process, controlled waste produced by waste generator. The waste generator's required to store the waste on-site in the appropriate manner. The waste generator may or may not be regulated by other regulations, for instance: fish and chip shops are regulated under the Health Act, there may be a prescribed premises or it may be regulated under the Dangerous Goods Regulations or it may not be regulated at all. The waste generator contacts a licensed carrier; the licensed carrier then applies through the Internet, to the Department of Environment for a transfer permit. The transfer permit is for 1 load of waste, 1 truck-load of waste which may have several pick up points. So at the beginning of each day, each truck has to log on; get a \$20 permit to pick up, say, 5 loads from 5 destinations – all that's logged on to the system, so our data base has all that information; the carrier goes around, picks up the loads and takes it to a disposal site, which may be a waste treatment works or it may be an oil recycling plant. On receipt at that plant, the plant receiving operator checks in the load, confirms that

the load has in it what the permit says it has in it. The treatment facility has access to the same data base, so it can check what was registered and check against what comes in on the manifest. Once that's checked off, the permit is closed off on the data base.

So, what we are seeing is we are seeing how much waste is actually entering the transport arena. We can keep track of who the clients are for each transport company, we can keep track of the destination that each transport company is going to and keep track of what waste is going from each place to each place. It means we are going to get a much better handle on the range of controlled waste that is being generated. At the moment we don't have a good handle on what is being generated and how much and the data is very poor. It also means in terms of regulating it, at the moment we send inspectors out, who do spot checks on the trucking companies, who may or may not find breaches. We can do pattern analysis of this building to see whether the number of waste generators is changing or the range of waste generators is changing, where the amount of waste being transferred from the waste generator is increasing or decreasing and where it is going to. So, if we start seeing changes in what's happening with the waste, one of the waste transporters, we can go and ask questions and find out why. It may simply be because the business has changed its process or gone out of business or whatever, but it may be that the waste generator is actually not paying the full fees to the waste transport company and sending some of it down the backyard as well. So, it will mean that we will be able to target our enforcement instead of just hit and miss by driving around the street.

**Mr WOOD:** Can you confirm particular chemicals in a tank, or do you take samples or ...

**Mr ATKINS:** We also do that as well. So, it means that if we're suspicious from looking at a data base of what somebody may be doing, we can go out and do some sampling checks on their trucks. We will continue to do the random checking but by this pattern analysis, we will be able to target some of our inspections as well.

Waste transporters aren't allowed to mix different classes of waste. There's 14 classes of waste, of controlled waste and they can't mix loads. So, if they are going around and picking up class 10, one truck's got to pick up only class 10. There is some of the classes can be mixed a little bit but generally the classes have got to be kept separate. So the data base would keep these 14 classes separate that way.

**Mr BALDWIN:** Did you say, Robert that there's \$20 per day, for trucking every day?

**Mr ATKINS:** Per permit. So, every time they log on for permit, they pay \$20.

**Mr BALDWIN:** Ok, so it's for the period of the job...

**Mr ATKINS:** It's the period of that tanker load. Now that means small tankers and big tankers, so the bigger the tanker, obviously, it's still only \$20. So, it's not on a dollar per kilolitre or anything like that, it's just on application of permit. The permit is live for 7 days for bulk wastes and 21 days for package wastes. So, if you have got a double B truck, you can take a week to fill it and you are only paying for that 1 week. This is also net appropriated so there is income from this and I've told you that at lunch, we got the calculation wrong so we are in the red with this one.

So responsibility of the waste generator, even though they are not licensed or regulated by this process, is that they do have to make sure that their stuff is stored correctly and we will know who the waste generators are because they will be the ones, will be the client base on the system. We do spot checks on them and find that they are not holding their materials correctly, then we can deal with them in terms of putting materials at risk and causing pollution or we can fire up DIR or Health Department or local council and say that 'these guys are not complying with the agreements.'

It is the waste generator's responsibility to make sure that whoever picks up their waste is properly licensed as a carrier. The carriers must all be licensed, so there is a registration fee for each company, \$200 for

the company. Each truck has to be registered and meet minimal requirements and each driver has to be registered and each driver has to go through driver training in handling controlled waste.

**Mr WOOD:** Is any of that licensing of the vehicles done through the Motor Registry...?

**Mr ATKINS:** No, it is done through our inspectors. So, basically, our inspectors have a checklist of the requirements and providing the truck is fitted out with all of those requirements and as the appropriate road transport registration as well, then they will get a permit.

**Mr BALDWIN:** And, there'd be, I know it is not the carriers but there would obviously be dump fees as well, .....when they take liquid waste or whatever, there's fees on that end of it as well?

**Mr ATKINS:** Yeah. I mean, the \$20 is a cost that goes on top of the waste generator, on top of the cost of having somebody come and take their waste away. We have 2 types of transport company; we have those treated as ----- have their own trucks, so it goes along, and then we have others that are just transporters that then have to pay a fee to dispose of it.

**Mr WOOD:** I mean, we are dealing with hazardous waste, is there a distinction between a good chemical, people distributing chlorine, a difference between chlorine and industrial chemicals?

**Mr ATKINS:** It's got to be a waste, it's got to be defined as a waste, to be covered by these regulations, things like chlorine and other industrial chemicals are covered by the Dangerous Goods Act and transport regulations, so they are not regulated by these regulations.

**Mr WOOD:** I suppose, that's what I was thinking. Why aren't those vehicles just come into the Dangerous Goods Act, why are they complacent, they are so dangerous and register them under that?

**Mr ATKINS:** The, I've had this debate with a few community groups, in fact, this stuff is hazardous, but it's low level hazard.

As I said to the Kalgoorlie community group when I talked to them, this waste doesn't require a truck to be placarded, do you know what I mean by placarded? These trucks don't have to be placarded, so they don't actually fit into the definition of dangerous goods, under the dangerous goods regulations, it's not that dangerous. I said to the Kalgoorlie community, I'd rather have truckloads of this stuff coming past my front door every day than a truckload of sodium cyanide, nitric acid, and chlorine goes up the highway all the time. Those chemicals, to my mind, are much more of a hazard to the environment than this. By the time this stuff's bogged up, it's low, it's basically low concentration liquids that's got a mixture of chemicals, salts, acids bases and low flashpoint solvents in it. So, it's hazardous by virtue of the fact of its quantity, rather than its concentration. Now, there's community perception that that's the reverse of that, that this stuff will kill you if you come within 100 m of it. That essentially if a truckload of this spilt on the road, it wouldn't be as big a hazard as a truckload of petrol spilt on the road, or sodium cyanide. So, it's low level hazardous waste really. And we try and avoid using the term 'hazardous toxic' you know, the newspaper headline term. It's a control waste that if it's dumped illegally, there is a risk to the environment.

And there's a bit of a debate on at the moment as to whether waste oil should be treated as a control waste which it is under these regulations or whether it should be exempt, because waste oil generally goes into oil recycles and comes out as -----at the other end. So, this is a pretty contentious area.

Disposal site responsibilities, it is their responsibility to check that the waste that they are receiving gets through the permit that's been issued, that the driver and the transport company are appropriately registered.

Implementation; At the moment we're progressively implementing it throughout the metropolitan area, which is where 80% or 90% of the waste is being generated. And in over the next calendar, next financial year, we will be extending it to the major country centres, starting with Kalgoorlie,

Bunbury, Albany, Geraldton, Karratha, the other major industrial areas. The industry is reluctantly received, with reasonably good grace, they were pretty unhappy about it initially, particularly of having to have another, if you like, data base that they have got to enter into but what we did, we sat down, we said: 'Ok, you guys are all computerised anyway, you all have to have daily -----'. We will work with you to design our data base so that you can do the same as your own data base. You are not having to log in two types of systems.' And from what I understand, that's working reasonably well. The only people that have access to the data base is ourselves, transport companies have restricted access to their part of the data base and the disposal operators have access to that part of the data base that's transporting to them. So, it's not publicly available. What it will do is produce a significant reporting stuff for managing hazardous waste, increasing of siting of facilities and things like that, which we are going through. That's a whole other story.

I think I've gone over time a bit.

**MEMBERS:** *Banter.*

**Mr FRENCH:** Rob are you going to give your disc?

**Mr ATKINS:** Yeah, you can have it, I haven't got a hard copy, I just didn't get time to print them out, but you can have the disc if you want to take the disc.

**Madam CHAIR:** That would be fantastic; it would help us a lot.

**Mr ATKINS:** And the disc has actually got some file notes on it as well. So, if you print it out in notes, there are a whole lot of notes behind what was on the screen.

#### BANTER

**Mr FRENCH:** Well the next we are going to do is on memorandum of understanding, how we work with other government agencies and we talked about this morning the key people who have got a couple of MOU's with the Department of Industry and Resources which incorporates what was the

most harm as well. Bill Biggs is from the environmental area, and he has agreed to talk through how it operates with Tim Gentle who is manager of our, what's the branch now called Tim?

**Mr GENTLE:** It is now called the Mining and Industrial Branch. Basically I coordinate the Environmental Impact Assessment for the process for mining and now industrial projects also for the EPA. So Bill and I have a close working relationship, we are on the phone virtually everyday aren't we Bill?

**Mr BIGGS:** It seems like it, when Tim answers his phone that is (laughing)

**Mr GENTLE:** Now I think one of the most important things, I don't know if you folks are going to visit other states, but we are also familiar with the Queensland system. Whereby what they have done is taken, as I understand it all of the environmental people out of their Mines Department and they have put the whole lot of them in their EPA. We have a different system here and I was talking to Bill earlier just before we came in about that, and the 2 of us find that hard to see how that is going to work in the long run because you are going to have sort of 2 different cultures developing apparel and you won't have the communication. We find it a real advantage, a real strength of the system that we have here that we have environmental people, Bill's group, dealing with mining and there is also another petroleum environmental group down that Mines Department. Because we have got people we can interface with directly and they also have an influence on the mine planners, the safety people, they can interact with all the other professional people or their colleagues down at the mine spot and we think that is very healthy, rather than having all the environmental people sitting in another building where they may be cut off from what really is going on. That is 1 point I wanted to make.

There may be arguments with the Queensland system, maybe it is working very well, I am only looking from a distance, it seems to me though that there is a strength in our system I think Bill agrees too.

**Mr BIGGS:** I think what we are acknowledging is that environment is an integral part of the mining world, the whole mining operation. So, most of the mining work is done by engineers and geo-technical people those sorts of people, and they should be incorporating the environmental issues in their everyday working exercise.

So we are involved by working with the regulators, from the mine safety and occupational health as well as in our own right, so we have got those close working relationships and I think that adds an extra dimension to the over-arching environmental regulation or environmental performance.

**Mr WOOD:** What guarantees do the environmental people in mines, are they going to be independent or at least in sync with the Department of Environment in the decisions they make.

**Mr BIGGS:** I think that is the cue for you to talk about the MOU.

**Mr GENTLE:** Well that is how the MOU works because there in an independent body in addition to that, so I think what Bill is saying is, it's important to have environment seen as an integral part of resource and development and mining planning and so forth, rather than as an optional add on or another -----, the system we have got here, as I said, is we have got environmental people on both sides of the equation.

And the way it works, is we have MOU's which cover both petroleum and mining, we have separate MOU's for the 2 sides of the industry, and those are referral MOU's. So when Bill's group gets a notice of intent for a new mine coming in, or exploration, they look at it in terms of the MOU, which I will explain in a minute how it works, but there are triggers in the MOU which indicate whether something is likely to be environmentally significant.

But under the Environmental Protection Act, the Department of Mines is a decision making authority as defined under the act, so they actually are required if something is

environmentally significant to refer it to the EPA.

**Madam CHAIR:** Can I just ask a question there? I take it those MOU's are public.

**Mr GENTLE:** Yes they are, very much so.

There is an existing mining, which we have been using for 10 years very successfully and we are currently just finalising a revised and actually simplified more user friendly version which should be signed very shortly

**Mr FRENCH:** Unfortunately you have the old one in your papers versus the current...

**Mr GENTLE:** Yes it is the current version but you still get...

**Madam CHAIR:** So in terms of the current one, how far off are you from finalising that?

**Mr GENTLE:** I would say within 2 months we will have it signed.

**Madam CHAIR:** And at that point do you think it will come across to us? I am just interested...

**Mr GENTLE:** We can certainly do that, I hadn't had the chance to ask Bill yet, whether we do that...

**Madam CHAIR:** Because I of our key stakeholders that were engaged ----- process sets ----- council, and they may have comments about the assets of the MOU, for example in Western Australia.

**Mr BIGGS:** In fact the local chamber were closely involved in developing this MOU, we have got the industry in very early...

**Mr GENTLE:** Then also the Conservation Commission, so we had everybody booked.

**Mr BIGGS:** But I see no reason not to give you a copy, so I think if Tim can maybe e-mail you a copy. There are a few little fine tuning bits that need to be done but the basics of it are very functional, but it is very functional, and more functional than the old one.

**Mr GENTLE:** And I can also send you copy of the off-shore petroleum MOU which is in a second state, in fact it is half signed, it just went through the...

**Madam CHAIR:** So Gaddy have you got your business cards here?  
We will get our secretariat to give you his card, that would be great.

**Mr GENTLE:** So the MOU's deal only with the referral of proposes to the EPA under the Environmental Protection Act, and they include various triggers. For example in the existing MOU, ----- triggers if it is the size of a mine if it is above a certain ---- -- and then it gets referred to a ----- . -- ----- a particularly sensitive area, close to a national park, a nature reserve, close the coast of a river, things of that nature, so they come across automatic.

In addition the Mines Department can use it's judgement, if there is something unusual, perhaps a new form of processing particularly some form of environmental risk and Bill has got a couple of examples he is going to tell you about in a minute just to illustrate that point.

So they can also use their judgement, they should use their judgement to refer things to the EPA. In addition the EPA, if it has concerns about a proposal it can actually call something in, and in addition to that a member of the public can do what is called a 3<sup>rd</sup> party referral and can refer something, which happens periodically.

When we receive a referral we then look to see whether we have got sufficient information when we have sufficient information, we make a recommendation to the EPA as to the appropriate level of environment, which may be a formal environmental impact assessment, it comes in various levels, or any formal assessment or non-assessment.

But in each case it is still advertised for public information and transparency and the public has a right of appeal on the level of assessment.

It is also, in the new MOU, we have introduced further transparency so that -----

----- it is now going on your website. So everything that comes into the Mines Department goes on that very site so that the public can see what is going on, and we also can have a look so we can say 'we are fully aware of what is going on'. There have been some concerns from some...

**Madam CHAIR:** In terms of declaration licence, applications, new mines. So what about those, is that the information that goes on the website?

**Mr BIGGS:** What we are doing, at this stage it is mostly productive mining exercises and we are currently working through the exploration, we get so many, too many exploration applications currently to be able to manage them and we are working through that at the moment.

But the process is, as soon as we receive a proposal we will put it onto our website so the public have got access to it, it also provides a check reference for Tim's group to make sure that they know about everything that is happening. And it provides an opportunity for the community to either engage with the proponent which is the way we would encourage them to do it directly, or if they failed in that than they can come to us and we can facilitate that, that connection with the proponent.

**Mr GENTLE:** There had been some concern from the Conservation Council with the existing idea that, while they thought it was working fine they weren't sure, they thought there was a bit of a black box arrangement down at the Mines Department and everything. So they are pleased to have that transparency...

**Mr BIGGS:** It was all secret business I suppose.

**Mr GENTLE:** So there is now this clear transparency and that also ----- side of things also. Bill would you now like to launch into your 2 examples, I think they give a scope on clearly how the things works.

**Mr BIGGS:** I guess one of the things that is interesting, the trigger to the MOU in the first place was there seemed to be a quite high level of duplication that, in my

department when you were doing a high level of environmental assessment of proposals that were coming in and then that was duplicated again in the EPA or DEP process. So I think that everyone...

**Mr GENTLE:** Those were the days when we saw everything, so when a truckload every morning came up the road to us...

**Mr BIGGS:** At the time it was busy, I think there were 300 or more proposals coming in each year plus numerous, probably 1500 or more exploration applications. So the work was literally draining these guys and they really weren't adding any value to it. The ones that needed looking at, if you like, the ones that were insensitive areas or had specific issues of that, whether they were community issues or whatever would probably at the very maximum 10% more like 5% of proposals that came in.

So most of it was business as usual, regular stuff it was more of the same, so that was the history behind the MOU and really we have carried that on. I think the second important part is the ----- of trust and the working relationship between us on the one side, and I take your comment Gerry about how do you know we are doing the right thing and we are not either too close to the industry or in their pockets.

How does Tim know that we are actually doing the job properly, I think that is something that is built up over they years that Tim's staff have worked very closely with my staff, they have worked first hand, we have kept them involved at every stage and I think the real practical evidence is there that we have worked.

I would say that there is an opportunity to work it the other way and do some deals and push things through but I don't believe it is in the interest of the industry in the long term, and I am certainly not following that path.

I can't speak for who might follow me, but I really can't see it happening. We are also putting in place those transparency factors that Tim mentioned to ensure that that can't happen in the future. There was a problem with, it was very much secret business, proposals would disappear into our group, it

would all get assessed and approved and we would reassure the world that everything was done right but there was no way of looking in and actually tracking to see what was happening.

It was a weakness, we did have a series of committees where the community could come on liaison groups and discuss those issues and we would open up and show them how things are working, but I think it has really come to a point where there is an expectation today that everything should be there on your screen when you want to look at it. So we are moving in that direction.

How it works, there are certainly a number of projects of a large complex that trigger a number of aspects, whether they are social, I know you are not supposed to look at them but often they are the issues that come up because people have perceptions about the environmental impacts.

**Mr GENTLE:** Well, community concern is...

**Mr BIGGS:** Is a major issue. So big projects like the iron ore industry, we had the mineral sands project down at ----- on the south coast, which was in a very sensitive area in a very active environmentally aware community. There was no question, it obviously needed to go through a very transparent open system that was assessed by the EPA as an independent 3<sup>rd</sup> party. But others are on the fringe and they are the ones I think that are probably of most interest and a recent one, we had a proposal up in the Kimberley, ----- probably heard it is one that on face value it looked reasonably innocuous and what we saw at first glance, didn't appear to attract any need for intensive assessment. We gave it to some of our chemists who had a good look at it and came back and said 'there were some questions here that we need to follow through', and to do with ARD water management. We then talked to Tim and said 'this is not as simple as it looks'.

**Mr GENTLE:** ARD being Acid Rock Drainage?

**Mr BIGGS:** Sorry, Acid Rock Drainage.

**Mr WOODS:** I knew that.

**Mr BIGGS:** It was in the principle catchment to the Argyle and the whole Kununurra, I think there was a nickel operation that had the potential to have huge knock on effects. And yet at first glance it seemed to go through and they certainly went to the EPA and said 'here is our project, it is pretty safe, it is pretty normal and we think it can work'. We had a look at it and we put it back to these guys and they said 'no, we need to look at it, it needs a very close assessment'.

The options were formal assessment, so it went through the whole EPA process or the company could do all the work up front. Now if they stepped into the formal assessment they loose control of it, they decided to do all the work, they worked closely with us we had meetings with them regularly and I think that is the key to the success of this process that it is an inclusive process. In other words Tim's people are there we bring our water and rivers people in, if there is a health issue, the Health Department get involved obviously our own engineering geo-technical specialist as well as the environmental guys, they are all involved at those meetings with the company.

**Mr GENTLE:** And in fact the EPA Chairman, at the start of the negotiations took them to one side and said 'in it's current form it is likely to get a 'no' from the EPA'. So they gave them quite an impetus to work with us.

**Mr BIGGS:** That was a good incentive, I appreciate that.

But that was a good example, they came good with the requirements, the metal, all the issues that we raised, they did a full community consultation, everyone was informed all the way through. So when the project hit the table here it was with great familiarity there was confidence that the process could be managed, and it got an informal assessment with advice from the EPA.

**Mr WOOD:** Do many companies start at that basis, not wait until they more or less get pushed into it, but do they say 'we have used your guidance statements and those

other statements, we have followed those here is the document...

**Mr GENTLE:** The bigger companies are the more experienced with a certainty. With our new players, or perhaps less experienced consultants, is where there is problems.

**Mr BIGGS:** Sally Malay??? started off on the wrong foot. They had bad advice from a consultant who wrote them a project proposal in their words, would get their approval and it didn't, it actually cost them initially about a 6 month delay because we rejected the proposal.

**Mr BALDWIN:** In this case though did they go through, they didn't go through EIS or anything, they had...

**Mr GENTLE:** We didn't put them through one, we thought we would be quicker in that they could fix it up because it was a simple issue, so I think that's why we took that particular way.

**Mr BALDWIN:** Had it of been referred to the EPA, and they were sort of saying 'perhaps you will get a 'no', but we will put it through a pretty stringent process'. The would set at least a DER or an EIS. So there is another process that you saying that they can go through?

**Mr GENTLE:** Well in this particular case we have held off on recommending a level of assessment and it was a negotiation process as I said, because it was only the 1 issue to do with it. And the technical advice would have effected and then spread to quick, the thing was manageable it was just that they had bad advice.

So in this case I guess we made an exception, we didn't think it was necessary to put it forward to the EIA, and because there wasn't great public concern there wasn't a great number of stakeholders in a remote area like that. We were in fact trying to save them some time rather than going through what might have taken a year to do the full process.

**Mr BALDWIN:** So the conditions that apply under EIA, and through the MOU are applying through the...

**Mr GENTLE:** And that is the working fact. Tim's group came to us.

**Mr BALDWIN:** But in other cases such as this, you would need a referral to the EPA.

**Mr BIGGS:** Yes in fact once we saw the issues, we immediately came to Tim and said 'we need your advice on this'. You have looked at this already and said 'it looks alright, we'd had a look at it and we think there are issues here we want you to ask some hard questions, we are already asking them but we need your advice on whether it is still acceptable under your past decision'.

And I think it is that working relationship that makes the MOU work. In this case the company realised their mistake, got some good advice from consultants, got right on track and did a really good job of this. But we have got other cases where it hasn't worked so well and that is where, it is important that we use the triggers in this, but I can't remember if Tim mentioned it, probably the biggest element is judgement if there is any doubt, I mean, many of the cases that come in we are not certain of the environmental impacts or how they can be managed because we have got communications with the EPA and with Tim's group, we immediately come to them and seek their advice.

So what we are trying to do is act as an independent agent and maintain that status and our capability by always keeping in touch and referring to the EPA.

The risk to us is that we can provide a very good service to the mining industry but only as long as we have credibility with the industry but also the community. Once we lose that community credibility we won't have a role to play, we will be gone.

**Madam CHAIR:** To me that fits with, I guess some community perceptions of the Department of Mines in the Territory, and looking in the context of an EPA process or a relationship such as your describing in a model sense work. It goes to credibility...

**Mr BIGGS:** We wouldn't have the credibility if we didn't have the EPA to go to, to defer to on those decisions.

**Madam CHAIR:** So you think it enhances credibility, it's a useful tool?

**Mr BIGGS:** Absolutely

**Mr GENTLE:** We also provide support, we are sitting them next to them sometimes at a meeting, in that case for example, and we say 'look the EPA is going to give you a note, lets sit and talk through and try and find the solution'.

**Mr FRENCH:** That's for those difficult ones, but for a large number of projects that we used to see, there's just the standard prescriptions developed...

**Madam CHAIR:** We're talking about the 5%.

**Mr WOOD:** One of the reasons you got a exemption from bring an EIS?, is that if your dealing with one issue, and in effect, many people in the community, there needs to be someone out there who represents the community, in the middle of the desert or something, there is no-one there, who was the Devil's Advocate, or the person...

Representing the public....

**Mr GENTLE:** The Sunny Malay one was a good example, because we said to the company, if you don't get sign off from the community, and we will ask the community, so you identify who are your community, immediate community, and will ask them whether they're happy, so you have to get documented sign off from the community. That's the strength of the system, my staff were in the regions, we worked there continuously, we have the connections, we know what's going on, we work with the mining companies, we have knowledge of mining and how it proceeds.

Tim's people and the people in the DUE don't have that knowledge for experience. So we have that strength of information. We can test whether the company has done the work on the ground, my people are in constant contact with conservation movement, the aboriginal groups, in the

regional areas, and we have good rapport with them, they will ring us up if they have got a problem, and they do it all the time. So if there's a issue, and the company's not dealing properly with the community we will find out. If we're suspicious, we can go and contact them, and make that connection ourselves.

**Mr BALDWIN:** At the end of the day, if people are still unhappy, this if from ----- they can make an individual referral.

**Mr GENTLE:** Absolutely, they've got that security. In this particular case, there was actually an appeal against the informal assessor, the local environment made an appeal, and that was considered by the Minister. The Minister saw the process had been put in place, the questions had been answered, and she was satisfied with this.

**Mr MCADAM:** Can I ask what the issue was?

**Mr GENTLE:** It was the acid mine drainage, so these guys called it, in fact the new terms a hostile -----, it had a great acid form of potential, which could have polluted the surrounding environment for decades afterwards.

**Mr BIGGS:** In fact after the whole consultation process, we put a condition on the company, that all the tailings, which were very reactive still, had to be replaced in the pit, and the condition of approval, and that came from the community consultation process, was that material shouldn't be left on the surface, where it had the potential released into the Argyle Dam system, that the company had to put it into the ground, and they agreed to that. So the process is quite robust in that sense, and in fact we didn't have to make those decisions, that was pressure from the community.

That was a good example, and there was a lot of work between us. I think this process is about collaboration, it's not about a license for us to go ahead. The majority of our work is additional pits, satellite pits, extensions of waste dumps, pit's cut backs, extensions to ----- dams, all that sort of work which, once the initial decisions been made, these guys don't really need to know

anything about it, it really is just business as usual.

Rehabilitation is our business, is our responsibility.

**Mr GENTLE:** The EPA can recommend conditions, if it's gone through a form of assessment, and it typically does, dealing with closure, rehabilitation, mine planning, those sorts of things.

In one case there was even a condition requiring, this is a particular contentious one, requiring that the company should take on an environmental officer which it didn't have, and what is qualification, his or her qualifications should be.

**Mr BIGGS:** We've had a number of proposals come in that maybe didn't really justify a formal assessment, but because the company took an aggressive stance, and we're prepared to be reasonable, and negotiation some outcomes, we put them through the process, and that allows us then to put ministerial conditions on that high level in a very open transparent manner. For things like; how they manage it, the environmental management plans that needs to be in place, the issues that do need to be managed. It also brings in all the other decision making authorities, into that contract if you like, because it is quite clearly spelt out, and I think the requirement for an environmental officer was entirely due to the intransigents of the company, in refusing to acknowledge what was today, accepted management practice?

**Mr GENTLE:** So we are not normally so prescriptive but that was a reflection of the level of trust and the culture of the company in requesting and thinking of that case.

**Mr BIGGS:** We do need to be wide awake, we did have one in the last few weeks, a proposal came in, we have a certification process, where if a company gets a sign off from the EPA, the Department of Environment, ----- and all the other DNA's, and they come to us and say 'everyone is happy with this, here are the signatures, here's the pieces of paper'. We'll virtually give it a rubber stamp, once we've done our fairly superficial

assessment. This company came to Tim's group and said 'look we're bringing this to you because this operations in a stock group reserve and under the MOU?, that's a trigger, it's the only reason why you guys need to look at', your guys looked at it, the information there, was quite clear, there was nothing else that justified it, came to us, and we started asking questions, and it turned out to be another really nickel sulphite deposit, in a wide drainage line, creek line, within a close proximity with the coast, mangroves, in a cyclone belt, prone to flooding, and tidal waves. They were planning a number bio leach pads, on the surface, right in the middle of the drainage channel, this highly sulphuric material, full of heavy metals, and we said 'sorry, but we can't believe that these guys have said no'. And when we saw the document that they showed these guys, it didn't really have any of that in it, it was ....

**Madam CHAIR:** It goes to the stuff disclosure though, and what aspects do you have in terms of that level of disclosure?

**Mr BIGGS:** Well, in fact, under the *Environmental Protection Act* they are required to give, I don't know the exact words but they are required to give accurate information to the EPA and there's actually penalties if they don't do that.

**Madam CHAIR:** So, would you then follow that up, in terms of ...

**Mr BIGGS:** We could do and we are now following it up and we are seeking further information and we are getting very close to making a decision .....

**Mr BALDWIN:** Big black cross against their name...

**Mr WOOD:** And omission of details is also recorded.

**Mr GENTLE:** We haven't tested it legally, but I would certainly say so.

**Mr BIGGS:** I'd say, long and drawn out process, to work that one through. We've got much better ways of dealing with it.

**Mr WOOD:** We will now employ 2 environmental officers.

**Mr BIGGS:** Exactly.

**Mr GENTLE:** You will now start from scratch with the condition 1.

**Mr BIGGS:** And that's what we said to them. Look, I am sorry, this is completely inappropriate, we sent the documentation back to them and said, you know, come back and talk to us and we will tell you what you have to do. And really, they are saying, 'But we wanted to start next month'. First of March.

**Mr FRENCH:** We have 2 problems here at times. When there's constraint on costs, the price of minerals drops, the first thing to do is drop environmental things and oil companies, which makes it difficult for us. Now what was the second thing I was thinking of? The first one is, 'Oh, which has been talked before us is consultants, now, when they are bidding for a consultant to do a job, some people are putting in a very low price, what do you get for low price? You low product which is causing problems

**Mr BIGGS:** And that's something I guess would be nice to talk to you guys, about how you deal with consultants who provide specialist service (?) but don't really meet the, cut the quality. That's our biggest hassle, I think, that many of the companies....don't understand...

**Mr GENTLE:** Which is being done on consultants too, because they are being undercut.

**Mr McADAM:** The market place should work that out shouldn't it, the companies in the industry?

**Mr BIGGS:** We have a role in that in that, we must be prepared not to accept rubbish and that's probably something that we have been too soft on in the past

**Mr GENTLE:** Because you do have a certain selection process don't you?

**Mr BIGGS:** Yeah.

**Mr BONSON:** So, there's no, like consultants don't have to reach, there is not a register of consultants that people could go to and say 'well these are the 10 consultants'?

**Mr GENTLE:** There is a consultant association and it's, we are shortly the EPA is having a one day workshop to discuss these sorts of issues. Because they have the same concerns. Now there's the tail end of the consultants, some of whom are not even members of the Consultants Association who are under-bidding other people and not performing as they should. And it is in fact a concern, or should be a concern for companies because it then means that they are being held up and having to go through a lot more -----

**Mr BONSON:** Well, saving \$10 000 might cost them \$0.5m.

**Mr GENTLE:** It might cost them another year.

**Mr McADAM:** I still say it is up the industry associations -----

**Mr BIGGS:** I think you are right. I also spend a lot of time talking to the Environmental Consultant's Association, I also talk to industry organisations a lot and I used to believe it wasn't my job to tell them but now it has such a huge impact on us, I believe it is in my interest to tell them that, 'look, if you are getting consultants, these are the ones you need to talk to, these ones could cause you problems and we would check or double check their work'.

**Mr GENTLE:** Or EPA wouldn't be that brave, they are having a one day workshop but we will not be naming names.

**Mr BIGGS:** There might well be a pattern .....which ones take a bit longer.....

**Mr BALDWIN:** Wouldn't the EPA do one of their guideline type things on that? I mean,

**Mr BIGGS:** On the quality of documentation?

**Mr BALDWIN:** On the standard of input required to get something....

**Mr GENTLE:** They are starting; they have done that for the sort of surveys that are required, minimum survey requirements for flora and fauna.

**Mr FRENCH:** Well, we are actually picking up early too now, is that we changed the process in that we used to issue guidelines which was developed internally to the proponent, saying, 'these issues need to address an environmental document, but now we've changed to call it a scoping document. We get the proponent to prepare the scoping document, what do you think you need to cover and that actually has to now come into a full board meeting for a sign off, when the past was delegated below the board to the Chairman or whoever, and that way they set the direction and the goal posts right up front.

**Mr BALDWIN:** I am thinking more of the mining applications. The problem you've got...

**Mr BIGGS:** We are going to follow that path because if we take the role of advising people all the time about what they should and shouldn't do, they will never learn so we are saying to them...

**Mr BALDWIN:** Yeah. You are doing their ----- for them.

**Mr BIGGS:** Yeah, exactly, so we are saying, 'you come to us, tell us what the issues are, we will tell you whether you are right or wrong', because we have probably got a good idea and 'we want you to tell us how you are going to manage that'.

**Mr BALDWIN:** Or the 2 levels of application. First there's you put it in, we'll scope it up, you put it back out there and we'll, the agencies will all comment and we won't accept it as an application until we get that final one, which then you would hope would have the level that we require.

**Mr BIGGS:** We are caught in an issue at the moment that the industry is pushing really hard to tighten up the approvals process, to shorten it up, make it much more easier, streamline it and unfortunately

lots of the measures are conflicting with that. They are contradictory to that. So, it really is up to the industry, I think, to become professional and do the job properly.

**Mr GENTLE:** Well, it is up to them to do their homework, before they come to us.

**Mr BALDWIN:** Well, that's where Elliot's right. I mean they have got to sort themselves out but if they are not, you have got to set the bar somewhere and say, 'jump over this'.

**Mr BIGGS:** One of the things we are looking at is an auditing process for the performance of consultants and/or companies so that you can actually go back to them.

**Mr BALDWIN:** That's a brave move.

**Mr BIGGS:** It is a brave move and we have resisted it for a long time but there are a few companies that persist, even though we have been to them, been to their professional organisations and said, 'this behaviour isn't good enough, the standard's not good enough'. They haven't listened, they haven't made the changes.

**Mr FRENCH:** That's excellent.

**Mr BIGGS:** But it's pretty....

**Mr BALDWIN:** I wouldn't want to be on the government side and saying, 'You, you and you, you register this level and you don't.

**Mr BIGGS:** We don't intend to, we'll go to their professional organisations and say, 'look, we need, you need to investigate these people, they are not delivering the service to their clients that they claim to, And here's some evidence. Is this good enough?' And, leave it to them and I think, one would hope that their professional organisations would follow that through.

**Mr FRENCH:** We are doing something similar but not in the same vein. You know, a lot of our bigger projects now, besides having a .....document from here, we also, a bit like Wally's talking about this morning, not quite the same order, we actually also put in place peer reviews, of

the documentation. And so, we actually assign who is on the peer review, the company agrees, the company pays, and that's .....and we'll just accept it because we know the expertise is there and that's a bit like...

**Mr BIGGS:** That's a good idea.

**Mr FRENCH:** It is paid for and done by the company before it comes to us. For 1 particular proposal, the documents never come to us, because having got through the peer review groups, it took years (laughing). But I just want to draw up on the board. This is something Barry Cardy did and when I first came in '86, Barry, the new Act came in then and he used to espouse this wheel all the time and it's still relevant. Were you here then Jim or not?

**Mr BIGGS:** No. Before my time.

**Mr FRENCH:** Oh, ok. It went into the base run; I've always tried to find it again. But he just, very simply, you know, we have got different departments now, DOI is now Mines, Petroleum, we've got main roads, we've got planning, we've got WaterCorp and each of those departments, because you are talking about, you know, 'where's the resources coming from to resource your EPA', each department still has it's own environment area, as Bill is with the mines department. And they interact with the EPA but each department keeps its own because you need to have that environment within each department. You can't just put it all, well for our system anyway, we can't, we don't want to put it all into the one pocket. We want keep the expertise out there and have those linkages and as we talked about: there's 2 MOUs with mining and petroleum with ourselves; there's an MOU with main roads department, having to do with main road's proposals. We have tried many a time, getting an MOU with the plans, but it needs to be said, so we now have the Act changed in '96 where there's the referral arrangements for the town planning schemes and high orders, so we are getting away from the sub-divisions because we, it is a bit of a power play from who was doing what. And with WaterCorp, WaterCorp aren't really a government agency, what are they called now? They are called a Trading Corporation. Well they

have a very good environmental group that interact with us directly. But that's the wheel. That's the way we tend to operate within Western Australia.

**Mr BALDWIN:** So, Bill the bottom line, I guess since MOU is a published document and now you are putting all the applications out there publicly, all the environmental groups that you deal with on a daily basis, are they happier? I mean are they less suspicious with the arrangement now?

**Mr BIGGS:** We haven't quite got all the way. At the moment we are only publishing that we have received the document. We don't make the document available on the web. We were making them available in our library quite openly until a mining company complains with the *Privacy Act* about making it publicly available, so, we have got opinion on that so they are all out at the library now, while we look at doing it a different way.

**Madam CHAIR:** Oh, ok. So it's only the application proposals that are listed on ....

**Mr BIGGS:** But we have taken the attitude, if someone rings up, we put them in touch with the company, if the company don't deal with them, then we will, we are not going to approve it because what's the issue that they are hiding? So, we ultimately can stand on the hose, as long as it takes.

**Mr GENTLE:** Have you had many people ring up?

**Mr BIGGS:** No. I think probably 2 or 3 projects a year, will get contacted by the community or some other outside agency. It doesn't happen.

**Mr WOOD:** I think they used that method for me, when I rang up about distracted (?) mining sites. I ring up and 'I don't agree with that particular site', I get a phone call from the company. I keep wondering why. I said: 'But I wrote to the department, I didn't write to the company.' The department doesn't seem to take it up. So you say you direct that miner to ----- and he goes -----

**Mr BIGGS:** Of course!

**Mr McADAM:** You will have to cut that out mate!

**Mr BALDWIN:** No, but that would be normal...

**Mr WOOD:** It doesn't apply with planning for instance. I mean if I object to a multi-story building, I don't get the, they don't necessarily say, 'go and ring up the objectors'. You meet the Development Consent Authority.

**Mr BIGGS:** I think it depends on whether you are making a formal objection, which would be different or to whether you are just general inquiry what .....

**Mr WOOD:** Well, I noticed an advertisement in the paper, dig up 3 quarters of Darwin Harbour, I think that's not too good, so I say, 'please don't do that', I get a phone call from the gentleman who is digging up the harbour. And I just think that that process, he says, 'you want your driveway re-gravelled?'. So, I just thought the process sometimes when it's formal, through an advertisement in the paper, to put your objection, in our case, to get ----- I think' no, I'd rather sit down and discuss this issue'.

**Mr BIGGS:** And I think that's always open. The door is always open. We will always deal with an issue that the company, that the mining company doesn't deal with.

**Mr WOOD:** It can be sometimes policy, not actually against the miner. The government is allowed that person to dig up that area, you are actually going crook at that because you don't think the whole issue should be the allowed area to be mined. And, so I've got to sort of deal with this bloke.

**Mr BIGGS:** And they are the issues we would actually put through to the EPA. If it's serious and not a frivolous or vexatious claim, or a general inquiry, we would put it through then to get opinion or advice from the EPA.

**Madam CHAIR:** Just on that, in the context of where a committee looking at whether or not to establish an EPA, if we do – what

model? Clearly in the Territory, you know, Gerry's big bug area's, extractive mining, quarries around his area. How does the EPA deal with pre-exist scenarios. You know, we would be walking into perhaps establishing an EPA where there's a whole lot of quarry sites without rehab occurring. Or perhaps, you know, poor processes, contamination issues, the whole box and dice, in terms of establishing an authority from scratch.

**Mr BIGGS:** This is no substitute for good regulation. This is about setting it up in the first, this is about going into the future. Is about setting it up to work, going forward. Looking back on old stuff, it's about good regulation. If you don't regulate, using the powers that you have, the EPA is not going to fix it.

**Mr GENTLE:** The EPA's got ----- proposals, or extension to existing proposals in some cases. But you have got to have regulations to licences works approvals, mines Department, whatever to deal with those things you just described.

**Mr BIGGS:** Yeah. I think, my view of the EPA and this, Tim will correct me if I am far off the track but is, the EPA really looks at a proposal and says, 'is it reasonable to do this, in this place, with the facts that we have today?' And if they make the decision, 'yes it is', then our role is to define then how, that operation is carried out and it meets the standards that the EPA have set, have had to be met. So, if they say there will be no pollution and no water, discharged from the site, our job is to make sure that whatever they do there, achieves those outcomes. So, they are the wise men on the hill that say, 'yes or no, it can go ahead' and you have got to take account of these things, and it's our job to make sure that happens and we would then use that judgement also and those standards if you like, across the rest of the industry to say, 'this is the standard that the EPA is putting up, as representing what the community expects'. It's then our job to enact that across the whole of the mining industry. And that's on, on the wheel there that Graham drew up, I would see that working in those different areas. And certainly with WaterCorp, they are well resourced, they have got a very

strong environmental group and they are doing some great stuff.

**Mr GENTLE:** Mostly at CPA, EPA

**MEMBERS:** [Laughter]

**Mr BIGGS:** Yeah. They buy them very cheaply. And the same with main roads, you know, they have got a very strong environmental group there.

**Mr WOOD:** Who looks after you or do you separate; extract the mining industry from .....

**Mr BIGGS:** Extractive industries, which is why we are giving it a rice mile, because it is a little bit awkward for us, because of the quirk of the legislation, it's not dealt with by the mines department. So, it's us dealing with local government for extracting industries.

**Mr WOOD:** Are they ----- control?.

**Mr BIGGS:** This is historical. Historically, all the shires with main roads, sorry were country road associations. So, their thing was gravel and building materials and all that, so that was their power base and that's reflected all the way through our legislation, so, basic raw materials come under the *Local Government Act* and we don't touch them.

**Mr FRENCH:** So.....in the Territory.

**Mr WOOD:** No wonder we don't have any rates to fix up our roads, sorry that's another issue. They rate those mining sites so they have some control.

**Mr BIGGS:** Absolutely. They licence them. Each shire licenses so they charge fees, they charge rates, it's an income.

**Mr WOOD:** Does that now trigger an assessment?

**Mr BIGGS:** Some of them do.

**Mr FRENCH:** They are also a decision-making authority so, if they believe it's having a significant impact on the environment, they must refer to the EPA.

**Mr WOOD:** And a member of the public to ring up....

**Mr BIGGS:** And frequently do.

**Madam CHAIR:** There's a lot of Gerry's here.

**Mr WOOD:** I imagine they would have, ----- belong to the area where most of the standard bills, all of Darwin come from and I'm not opposed to that but it's always been a fairly less regulatory section of the mining industry rather than a formal mine....

**Mr BIGGS:** It's poorly regulated here.

**Mr GENTLE:** It's and Achilles heal of the Western Australian system...

**Mr BIGGS:** We have a local extractive industry form assessments on our .....

**Members:** Banter.

**Mr GENTLE:** We have got one up in the hills which is a kilometre long pit and that's called an extractive industry. And it's a monster and there's people living within a kilometre of this town, local planning.

**Mr BALDWIN:** Is there local legislation across all the shires that keep them to probably regulate their extractions?

**Mr BIGGS:** It is fairly uniform. They do have their own by-laws, it varies to some extent but they do have, they all have provisions for extractive industry licensing. But it is nothing as strong as the mines department has in terms of bonds and so forth.

**Mr BALDWIN:** Yeah, but it would change from shire to shire wouldn't it?

**Mr GENTLE:** Yes. It's their interpretation. And some shires, like Midlands have got a very tight management on their extractive industries but if you go down in the south it's woeful. You know, if you want some sand, I know just the spot.

**MEMBERS:** [Laughter]

**Mr GENTLE:** Well, in fact, we had one case which shall be nameless, where the shire president's actually operated the quarry .....self.

**MEMBERS:** [Banter]

**Mr BIGGS:** We are pressing on with time so...

**Mr FRENCH:** Our next person is Darren Walsh.

**Madam CHAIR:** Order.

**Mr FRENCH:** Our next person is Darren Walsh, Manager of Planning and Infrastructure these days, with the environmental impact assessment. Darren's been seconded and acting down as the appeals convenor at the Minister's office and Darren's going to give us a bit of a run-down on appeals and also, he's going to pick up the Minister's component about government consideration of EPA bias and decision making, how that actually occurs because they are sort of intertwined to some extent with the appeals process. Correct? Thanks .....

**Mr WALSH:** I'm not sure how you are running but hopefully it has been pretty informal so far,

**Madam CHAIR:** Absolutely.

**Mr WALSH:** So, I expect you to 'butt in' and I've sort of got some, I don't know whether I will bother with overheads or not but I'm prepared to talk to environmental things of the topics last week about the appeals process, so it's very hot.

There might be something from a political point of view, people are quite interested in because the *Environmental Protection Act* appeal system is actually one that provides a direct appeals process to the Minister for the Environment and includes third party appeal rights, which is relatively unique in terms of jurisdictions around and there's pros and cons associated with it and there's views, in terms of whether it's the right way or the wrong way and I'm sure, you know, Ministers who have to deal with this sort of stuff, probably have different views about whether it's good or bad, depending on the

issues that they have got to deal with. But it certainly links the Minister very strongly to the EPA decision making process in a lot of ways and also in terms of a lot of the processes that the department deals with in terms of some pollution matters. So, it's quite an interesting area.

I'll go through a number of the more detailed points for appeal and there are a lot of them.

**Madam CHAIR:** Has that been in place since '86?

**Mr WALSH:** Since '86 when the Act came in. And there has been no real changes although with the recent amendments to the Act, there has been some refinements and, I guess, some new provisions put in, which actually shore up the system that we have had in place for some time. But yeah, it goes way back. If you talk to a guy, Rob Sticky, he'll tell you that it was sort of initially put in really as an absolute last resort and that the systems grown to a beast that it was never intended to be in terms of, you know, the volume of appeals we deal with and the intricacy of the involvement of the Ministers potential in some of these things, I think, has evolved a bit over time. And probably changes a bit from Minister to Minister and government to government in terms of the sort of role the Minister seems to have.

As I mentioned before, probably one of the critical things that our appeal system has is 3<sup>rd</sup> party appeals. So, listening to the tail end of that conversation, we often end up with situations where local people are opposed to quarry or another development, it goes to the EPA, the EPA say 'well, it is not assessed, it is not really of the magnitude'. People are not happy with that, they realise they have got an opportunity to get directly to a Minister and so they use the appeal process, often to try and deal with a local issue and often, people come to the appeals process to try and seek an outcome but the appeal process may never do, which really a decision about whether you can actually assess something or not, should be even made on fairly concrete grounds but people will use that. So what you have often is local issues drawn into the appeal process, which has got its pros and cons. But at the other end of the scale, is, it's also

a system in process that provides with some, I think, very good checks and balances, in the system. It's not there to sort of override or double guess or overrule the EPA, it's meant to be one that actually perhaps builds on that and has the scope to actually take into account some broader issues than the EPA may be able to. And ultimately provides the Minister for the Environment with a pretty important decision making role in terms of the development procedure and under what sort of conditions and measures need to be applied. So, depending on which way you look at it, it's really well regarded by some, not so by others and there's a whole lot of views around town in terms of whether it actually should go to a more tribunal based system and less political system but I will step through some of the key features that ....

**Mr FRENCH:** We fought to keep it as an administrative appeals process, rather than a tribunal.

**Mr WALSH:** Yeah. There's a reason with the recent establishment or proposed establishment of the Statutory Appeals Tribunal it was initially included in that but it came back out. It's one of the, probably one of the few decision making roles where ministers deal with appeals, even the Minister for Planning now has delegated her sort of role in appeals largely to a tribunal system.

**Madam CHAIR:** What's the thinking about keeping away from tribunal system?

**Mr WALSH:** I think it's simple, tribunals are legalistic. One of the things that I think is complex is that at the moment you don't have to have any standing to submit an appeal and if you go to a tribunal system, it's obviously probably going to be longer, even though it's criticism about how long it takes to deal with things. Tribunals can get bogged down in terms of process and those sorts of things and without some sort of control on standing, you end up in tribunal process that might sort of blow out forever. I think, if you went to a tribunal you would become more legalistic, even though most of the lawyers who are promoting a tribunal based system, they would say: 'Oh yeah, but you wouldn't need representation, you

wouldn't need lawyers.' And I think, yeah, right! So I think, very quickly, you could get to the situation, say like the New South Wales Land and Environment Court where it becomes a litigious legalistic based system where it just becomes inflexible and can't deal with it. I think, there'd be real concerns, I imagine, from the EPA and some of the decision makers about well, what does it diminish their role in terms of then having a judicial type body overseeing sort of every decision they make, potentially. And I think there's some, you know, that concern would be valid to a point but not to another, so there are those complexities there. I think the key things at the moment is it is simple, provides access for all, can be dealt with fairly quickly and allows for a fair amount of ministerial discretion, whereas, one of the dangers from a broader government point of view with going to a tribunal based system is you could have very important government projects end up in the hands of the tribunal, which is a non-elected tribunal and it might take a least legalistic or narrow approach, so, you might get into a tribunal and you have a project, knocked off. It's a key government project, due to a tribunal decision and then you end up with government taking the tribunal to the Supreme Court, it can get, sort of, a bit out of control....

**Mr BALDWIN:** So, what's your job as the convener, they come to you and ....

**Mr WALSH:** Yeah. Basically, my role is to administer the process on behalf of the Minister. So, people appeal directly to the Minister, my office then takes the appeals, investigates them, talks to people, you know, gets them understanding on all the issues, provides a report to the Minister who makes the final call, which I guess is what we are saying here. And my job is to really co-ordinate that whole process, make sure it works reasonably well, try to provide some consistency and provide direct advice to the Minister. So, I report directly to the Minister on appeal matters.

**Mr BALDWIN:** You've got a great job. You don't take any flak.

**Mr WALSH:** I do if the Minister does, you know what it's like. It's sort of, it's good and bad sort of reporting directly to the

Minister. If everything goes well, it's really good, you know, my predecessor said, 'Well, we don't take any glory, we just bask in the glow.' I thought well that's not a bad way of looking at it, but if I get it wrong, the Minister gets it wrong, there's not too many people to look to, so, it's good and bad in that point of view.

**Mr WOOD:** So the Minister determines what appeals will be accepted?

**Mr WALSH:** No, there's a pretty well regulated process that says, providing you have your appeal in on time, that it actually puts some on reasonable grounds, it will be dealt with and sometimes we get arguments from proponents who try and say, 'well, this appeal shouldn't even be considered because it wasn't in on time or it doesn't actually properly address it' and we tend to actually deal with what we get, provided if it's, if it's received out of time, we just say, 'from a statutory point of view, we can't deal with it'. But, we tend to deal with what comes in, even though often, you could argue that well, 'it doesn't really address the environmental issues etc, etc'. If it is a really poorly constructed appeal, it would be dealt with pretty quickly but we may get say, on a particular project, where it's typically say, an EPA report that's saying a major proposal can go ahead but that people are opposed to. We might get 30 or 40 or 50 appeals from different individuals and organisations, each having a different point of view about the same thing and we, it is our role is to distil all of that, work through it, consult with people, investigate the issues and ultimately sort of, report to the Minister on final outcome. And, you know, in the majority of cases, she accepts that advice or doesn't, there's still situations where the minister or the minister's office may have a different view and she might make a final call that's not quite in accordance with what my office's recommendation is but, it's reasonably

----- and while it's separate and independent, you know, there is interaction, particularly at critical points in terms of bringing it all together.

**Mr WOOD:** What about commercial objections – is there a section in there that says no commercial objections?

**Mr WALSH:** No, it doesn't.

**Mr WOOD:** So, it's about sub-division and another bloke's got a sub-division down the road...

**Mr WALSH:** It has to be on environmental grounds.

**Mr WOOD:** Yeah, but he might be using that as a means of stalling that one, sub-division off the ground....

**Mr WALSH:** often we will get, and in my view we often get appeals that are driven by other motives – but at the end of the day, we've got to deal with environmental grounds and environmental grounds only. So, if somebody did that, we would still be required to look at environmental issues as they stand and deal with it on that basis, even though you may well know that somebody's made a different .....back.

**Madam CHAIR:** What's the time-frame?

**Mr WALSH:** They vary. With a really simple level of assessment appeal, one to 1 or 2 months, and it is something that the Minister is quite conscious of and we are trying to get that down. On bigger proposals, where it's multiple appeals against an EPA report recommendations, particularly if they are contentious projects, they can blow out quite a lot and we have had cases where, you know, 6 to 12 months, that's an area that there has been criticism of the process and we are working on actually increasing the resource in our office to try and get time frames down and keep them pretty tight. With licence appeals against pollution licences and things, sometimes they take a little bit longer but, the ones we try and focus on quickly are the ones that are getting in the way of development proceeding or not proceeding so level of assessment appeals and EPA reports is what we are trying to focus on quickly.

So level of assessment appeals and the EPA reports are what we try and focus on quickly. We've got a large number of appeals and complex issues, it takes a fair bit of investigation and consultation to do that, so it can ....

**Mr FRENCH:** Darren, how many in your office?

**Mr WALSH:** There are 4 of us, myself, 2 other ....., before that it was less than that, so we're a very small outfit, and we're currently going through the internal government ..., of getting more resources, but even with the Minister's firm fist on that , it takes a bit of time.

**Madam CHAIR:** Do you outsource to the Department of Justice?

**Mr WALSH:** No, we don't, sometimes we establish appeals committees, where we may bring in people on other agencies, or set up specialist committees which helps us to some extent, but we probably only do 2 or 3 of those a year.

**Madam CHAIR:** Only on the complex ones?

**Mr WALSH:** Yes, typically or one where there might be a conflict of interesting terms. I've had a couple of proposals when I was here at EPA, in those cases, I've taken a view, that it's just not appropriate place legally or politically for me to be seen directly involved, so we established committees for those.

**Mr BALDWIN:** So how many would you handle a year?..., or are you getting to that.

**Mr WALSH:** No I can tell you know. In 2003, we dealt with 380 appeals, they probably relate to 100 different projects or licenses. In 2002, we dealt with 422, In 2001, 181, and 2002, 254, so 2002 onwards, we see some particularly substantial increases in the numbers, and yes the workload fairly high. The other thing that is difficult for us, in terms of keeping the pressure on, is we're often the bottle neck in the process, so you have a proponent that's been through a 18 month EPA process, and it's pretty bitter and twisted about all that, he gets spat out the other end, usually with outcome that sort of favourable, they can live with, then they come to our process, and they go 'Christ, here we go again'. That's really difficult because we're getting a lot of pressure from people saying, 'hang on a minute, you're our last point of call, we want our decision'. We say 'yes, fine but we

have to look at things properly'. Certainly, out of this government and the way the appeals process is treated, it has become a much more consultative process where we seek to meet with all the panels and get everybody involved, so the short cut of that is difficult, so given a volume of work, sort of fairly extensive processes we follow, is quite a challenge.

**Mr BALDWIN:** That's the problem with having the open ended 3<sup>rd</sup> party appeals, you have to go through all that, there has to be a way to allow some 3<sup>rd</sup> party appeals that might be under the new information or something.

**Madam CHAIR:** Is that being considered? You've gone through the draft of amendments last year, to the Act, has there been some consideration for appeals or things like that?...

**Mr WALSH:** No, not really, I think it is always one of those things that is discussed around town in different forms, but I am not aware that there has been any solid move to actually do anything about it, it maybe that it's one of the key things that's looked at in next review of the Act, and those sorts of things. It's sort of a tricky one, from Ministerial point of view, it can be really useful to have an appeal system, where the Minister can make the final call on things, project of states significant, you have control, where there is actually really good political ----- from a decision and things, so the Coral coast marine redevelopment, which is often knocked back by government on appeal, can be seen as big plus. The other side of it is; it probably exposes Ministers a lot more, in terms of decision making, typically appeals issues are pretty contentious, it's often the last ditch attempt by the community to stop something, and Ministers have to say 'yes' or 'no' to things, and it is hard to keep everybody happy.

**Mr BALDWIN:** As you said, been out there 18 months in public realm, they have had every opportunity to put their view forward. To come and rehash it all at last minute, so I agree to confine it to any new information that hasn't been seen before, and that would be a job for you to say, 'no we have dealt with that'...

**Mr WALSH:** It's pretty much the case, to will just pick something up that goes through what the key considerations are, that really is one of them. But you still have to work through lot of stuff to get to that sometimes.

**Mr FRENCH:** When Darren seeking advice on these appeals, one of the areas he comes to is the EPA service unit, so the EPA service unit has to write a large report on each of those appeals, respond back, which will probably go to anybody else

**Mr WALSH:** I guess the 3 key things that we should be looking at in an appeals process, as the process is outlined, the act would probably -----, 99% of the time that's the case. There are times when the appeals process, has found that there has been some problems there, the second, has the appeal, subsequent new investigation, discover new information, the EPA may not had, or come out of the woodwork. One thing that I am sort of mindful of, it seems to be a bit of trend is, often I am getting feedback from conservation groups; 'we really did well EPA process, because we decided we prefer to come to appeals the process instead, because they have got direct access to Minister, which I think probably is not designed to be, so could create problems, so it is a bit of a tricky one.

**Mr BALDWIN:** There is the simple amendment straight away, if you weren't a objector at front end, can't be at the back end.

**Mr WOOD:** You can put a ----- protection in, in the first place

**Mr WALSH:** They complain they're on holidays.

**Mr BALDWIN:** There has to be some rules.

**Madam CHAIR:** These key considerations, principles ....operate in the Act? Or.....

**Mr WALSH:** Yes, that right, there's basically guides and principles.

**Madam CHAIR:** Are they in the documentation guideline?

**Mr WALSH:** We can get a copy here.

**Madam CHAIR:** That would be useful.

**Mr WALSH:** That is fine. I have a website which will show later, there is a fair bit of information in terms background. One thing the new legislation brought in, was a requirement to, it allows us to develop administrative guidelines for the appeals process. So that is probably before we start to deal with some of this stuff here.

Final one which is a bit of a subjective one I suppose, are the conclusions, recommendations of the EPA or DOE?? Reasonable accordance with logical, and commonsense acceptance of facts, that's where there's most scope for subjective considerations. So that is meant to be what the things about. Often being a Ministerial process, you can move around in search of, before you look at it, other things as well.

**Mr WOOD:** Does the Minister deal with more than one per folio?

**Mr WALSH:** She doesn't now...

**Mr WOOD:** That must be a big blow on the Minister, on the appeals...

**Madam CHAIR:** 300?

**Mr WOOD:** That's a fairly, a lot of work, a lot of responsibility on her when it comes to a decision that she has read it all properly.

**Mr WALSH:** Yes it is.

**Mr BALDWIN:** It's only an extra file a day.

**Mr WALSH:** I certainly know that the current Minister is very careful with appeals because of an ultimate realistic nature of the outcomes. And what he will typically have is an appeal determination, a simple matter, it may be a 5 – 10 page document that requires some pretty careful analysis. So it is a fairly substantial workload and that is where our, someone made comments before, I think there is probably different views amongst different Ministers in terms of whether it is good or bad. Sometimes it is but it certainly adds a lot in terms of

workload, and it is an area where you can't afford to be wrong.

**Mr WOOD:** There would be a lot of late night reading...

**Mr BALDWIN:** There would probably be a lot of 'underarms' in the Cabinet too?'

**Mr WOOD:** Yes I was going to say, does it go to Cabinet sometimes?

**Mr WALSH:** Rarely.

**Mr WOOD:** Is that what you did Tim? (laughter)

**Mr BALDWIN:** I bet a lot will go underarm.

**Mr WALSH:** I am sure there is a lot of ----- and I suppose Cabinet, or in-cabinet informal discussions but, it would be extremely rare that a Minister actually fully takes the decision to Cabinets.

**Mr WOOD:** Unless they had a bit of a conflict themselves.

**Mr WALSH:** Yes that's right. Those sorts of things but generally, I am sure there are discussions amongst Ministers concerning those processes but, particularly Environment, they just don't have the numbers in cabinet, so you have to be a bit careful about taking things depending on what the issue was.

But it does have some constraints and often the Minister for Environment is having to determine appeals on other Ministers projects, which again, gets a bit difficult and you really don't want to go into Cabinet...

**Mr WOOD:** The Government can appeal as well?

**Mr WALSH:** Yes, it often does. I don't think we have ever seen other Minister appealing, but the agency will. For example, Department of Transport, if it hits a proponent for a project and it is unhappy with the EPA's report, it may submit an appeal. We have got one dealing with one of the ----- WaterCorporation, so the Government Training Enterprise is as well as agencies that might be proponents, the planning commission regularly puts in appeals.

So you often get that as well.

**Mr BALDWIN:** So what is your statutory position?

**Mr WALSH:** It is now under the Act. It wasn't previously and it is only until a few months ago. And it has been a position that has sort of evolved over time when the legislation was first established, I think there was 1 person who was also the Minister's PBS as well. Then there was a review done by a guy called Peter Johnson I think in the -----, and he recommended this convenor position that sort of has evolved, that now the Act provides for a statutory appointed by the Governor. After 5 years it's a appointment of Government...

**Mr BALDWIN:** Which gives you a bit of assurity...

**Mr WALSH:** It does and I think that is pretty important. I guess government will have to deal with that soon because we are all sort of in acting positions and at some point soon they will have to make an appointment of all these positions. You have got no idea of how many actually want to give it up. It starts at the top and filters down.

**Madam CHAIR:** We have seen a few come through today.

**Mr WALSH:** Yes that's right. I was looking at the list but everyone on our list is 'acting'. But I am actually the appeals convenor due to a temporary vacancy in the office, so I am not actually acting, technically I am...

**Mr FRENCH:** You have actually made some good points though that are worth considering ----- to the EPA. Because when it first started the appeals, we didn't get many appeals but we didn't have a very informed public when this first came out, so we got very few and that is why, you had just 1 person in the Minister's office.

But now they are so well organised and exactly as Darren said, sometimes they try and by-pass the system to get to a Minister and they actually do a lot of, I can't think of

the word, but they try to get to the Minister independently...

**Mr WALSH:** Look I had a case yesterday where I met with 3 Conservation groups about an appeal I had for that proposal. I thought I gave them a really good hearing, went through all their staff and said 'look I am going to go back to the proponent, get some information and when I have got something more, I will come back to you and we will talk again'. I then found out that that group had approached the Ministers senior policy officer wanting to meet with him about this issue. So you think 'well...'

**Mr FRENCH:** I thought the comment you made to him was pretty good about the new information, which was in 3 points, was quite a good thing to erase.

**Mr BALDWIN:** You have also got to be an objector at the front end -----

**Madam CHAIR:** You mentioned the administrative guidelines, so how far off are those, in the end?

**Mr WALSH:** At the moment, we're focussing getting appeal numbers and timeframes down, maybe within 6 months I would like to add them up. It will probably be just actually formalising what we already we do, but we probably need to go through some sort of process in terms of stakeholder input to that. So that is...

**Madam CHAIR:** That will blow it out, yes.

**Mr WALSH:** The issue of standing to one that has really meant a lot, and I think it is a fair one, in a way, I don't quite know what the solution is. Because if you are going to be ultraistic and say there is a 3<sup>rd</sup> party appeals process, you have to manage it in a way that has a reasonable approach towards it. There is that risk that people can seek to use the appeals process, for something more than it was designed for, that other processes should be dealing with.

One issue, it is one of those things that in time you can take up with the EPA chairman, but because the appeals process is very consultative, it gives people hearing. If there was a better opportunity for people

to have that hearing during the EPA assessment, consideration process, maybe could obviate some of it. Are people coming to process, because process first opportunity to do face to face hearing etc., Wally's did lot of work in terms, that sort of thing. There's sort of things we're seeing appeals process actually built back into other parts of process, earlier on and deal with there.

Just to quickly run through the sorts of appeals we have. Most regular we have, is the decision of the EPA, not to assess a proposal, often local groups, many cases refer proposal to EPA, because council, planning Ministers are going to approve it, then we'll get a decision seeking a formal assessment by EPA, most people see that as really important, because it is going to slow the thing down, and potentially lead to a 'no'. Might be a ----- and say 'well look it is not really over the bar for formal assessment, we're not going to say no anyway, so why worry'. The Minister typically, sides with EPA, there have been some occasions where the level of assessment has come back or she said 'no, the EPA has to fully assess project'.

Probably the other fundamental one is this one, which is the Report and Recommendations from the EPA and that is usually where the EPA has said 'yes, a proposal can proceed.' And you get then lots again, people who don't want to proceed it, having a last ditch effort there. Or where the EPA has said, 'no proposal should proceed.' I have got one at the moment, with Mains Road saying; 'EPA is terrible it has got it wrong.' Or the EPA has said it can proceed, but under very strict conditions, we will often have a ----- come to us and seek to have the final decision from the Minister, relax the conditions recommended by EPA. So you do get a mixture there but probably the larger volume is for people who are opposed to proposal.

We have a 14 day appeals period, from the time which the EPA goes in the paper notifying that, there is a lot of criticism of that. Community groups saying; 14 days is not long enough, so we get that all the time.

**Mr BALDWIN:** Well why don't you give them 21 days and bring it up to about \$1000.

**Madam CHAIR:** I thought 'Gee \$10 that is cheap'

**Mr WALSH:** Well I haven't got my calculator but a \$10 fee was set in 1986, instead of being indexed. So what is \$10 worth now.

**Mr BALDWIN:** Yeah \$1000 bucks

**Mr FRENCH:** One of the things that does happen, with the 14 days, if someone wants to put an appeal on that and they haven't done the homework, what we say is if you just put the dot points, these are the issues that I am going to appeal and they are environmental issues, then Darren will accept it on the basis that the detail will come within so many days after that. But the fact of the matter is there issues...

**Mr WALSH:** We do allow for further information to come in. So there is ways and means around that.

The other area, growing trend at the moment, and I guess is a fraction of the number of the key pollution type issues that government has been dealing with over the last few years. Appeals against DOE pollution licenses that we had on various industries and more and more were getting community groups appealing saying; licenses are too slack, they don't go far enough in terms of dealing with pollution, and that is a growing issue. Certainly, there has been a number of appeal decisions, that the Minister has made they are tightening up licenses, and that has been fairly ongoing.

So you will have people from community appealing the conditions on licenses, seeking stronger ones.

**Mr WOOD:** So the Minister can approve and upgrade restrictions?

**Mr WALSH:** Yes.

**Mr WOOD:** That means the Minister has to also be aware of all those applications where does he get technical knowledge about upgrading, it's not just in

the Act, someone must get technical advice and say 'well you can update from this point'.

**Mr WALSH:** Yes we will get advice from the Department on that and sometimes my office is actually taking it further and continue to follow it up and get technical advice because what you don't want is the Minister making an appeal decision that actually is impractical or can't deliver on something in it.

Part of our job is to follow that through so that we have got a pretty level confidence and the final decision is actually deliverable as well.

**Mr WOOD:** And the ----- can always be updated...

**Mr WALSH:** The first point of call for advice is the department, they provide the majority of their advice, on those sorts of things.

I have seen all the dates we have ----- and there is a fairly detailed overview of the various appeals provisions and the like.

Recent amendments to the Act, provide there are some new appeal areas, and they are mainly in response to some additional things that have gone into Act, about clearing permits in particular, environmental protection notices and other things.

It actually formalises, and as I mentioned to our statutory permission appeals convenor, it was never there before and it defines functions. It provides for the appeals convenor to assume a role of appeals committee, and under Act it actually lays out what an appeals committee can do, how these function, what considerations it needs to take account. So what it basically says; when I am operating in terms of investigating appeals, I am operating as though I am an appeals committee, then abide by the Act in terms of how I conduct myself. It allows appeals panel to be convened, and that probably responds to one of the question before where, allows me to convene an appeals panel to perhaps provide specialist advice on an issue. Say there was issue that related to a complex hydrological matter, that I clearly had no

information on, or I needed independent advice from the Department, I can then through that process form an appeals panel to advise me, that I then take on to Minister from there. So that's something that is fairly useful, and something that I think we will use more and more. It allows for preparation, publication of the administrative procedures and guidelines.

**Madam CHAIR:** Do you think that's one of the tools you could use to facilitate a lot of it.

**Mr WALSH:** Definitely. In terms of some of the key process considerations, I guess one of my most important roles, is to try and ensure that appeals have an orderly controlled passage, so opponents know where they're going, and ----- know what the process is all about, where to go from there. Often, I had a meeting this morning with proponent, and the key thing he wanted to know; what's going to be involved in process, how do I have input, what are the timeframes. So we try and give as much confidence in that as we can. Predicting timeframes is always difficult, it is the first question I'm always asked, usually I dance around it, because I can't actually control until I'm probably well advanced in the investigation, I have got good feel for things, I have got a good understanding of what the Minister's position might be on something without having to sort of necessarily briefed her on it, but start to get a feel for things, I can't necessary give that up front.

We had one recently in Kwinana/???, which was small scale proposal that if the guy was telling me truth, he had proposed to relocate from Victoria, it was a small scale chemical blending facility, it was going to be producing pesticide and some of the community got a bit uptight about that and submitted appeals. He was putting a story that, unless he got appeals decision by X date, he was going to go broke, bankrupt. I said; 'Look, can't give you that', he got upset, the reason I couldn't give him that, last thing I want to do say; 'yes, we'll sort out in 3 weeks', then in 2 ½ weeks find out from Jim, we have real problem here, you're not telling truth, or there's more to that, then might have even more. So that is why I'm often very cautious about that, that's the good example again, where a bottle neck in system, people come in, and put a fair bit of

pressure on us, you've got to just try and deal with it.

A lot of equity in our processes, we try make sure all parties treated equally, so everybody same hearing, same opportunity for input. There is sometimes criticism from community, given that you are in a political decision making process, you take things to a point, but ultimately particularly towards end, you do need to then exclude the public from the process. And sometimes there has been criticism, Oh gee at the end of the day the appeals process lead to a negotiated outcome behind closed doors, gee what a big surprise. How can you conduct an appeals process when you are dealing with a highly contentious issue in public environment, you just can't actually do that. But there had been those criticisms.

And I think it is fair to say, we try very hard to make sure there is equitable treatment all the way along, think we have opportunities for multiple input if it's required, but it gets to point where, when we bring it all together, basically then it is a Ministerial process, the community part of the process needs to be aware of that.

A lot of it is about maintain public confidence in the office through transparency and equity and it's hard to get a read on that, I don't know if Graham has any views, but I'm not picking up any major negatives around town. One thing I do find is that, we have regular clients, quite often, even though the majority decision don't go their way, next time I end up dealing with them about another issue, they seem to deal with me...

**Madam CHAIR:** There not hostile?

**Mr WALSH:** There not hostile and they seem to respect the process -----.  
So it is hard to know what they say behind your back.

**Mr BALDWIN:** Do any of them ever get a wink?

**Mr WALSH:** Yes, they do. So I think they get enough winds here and there and the other thing is, that particularly with the professional conservational organisations

they use, I think the appeal process to some extent to get messages through to the Minister on issues. And they focus on a proposal but they are actually driving at a larger issue, and I guess that is good as well.

It is not a legalistic when you talk about for and generic base, so there are pro's and con's with that. I think there is mainly pro's for it being non-legalistic but, there is other...

**Mr McADAM:** Just on the appeals process, I mean I just figure if you go for expertise, as required. What about community representation some days, would you access ----- community or what?

**Mr WALSH:** Sometimes where appeals committees are formed, we have had community type people on them, typically we need people with expertise either of them on environmental issues or certainly on process. It is fairly rare actually that we do that so at this point its not slightly limited, it is probably the best way to put it.

**Mr McADAM:** Is that a private sector?

**Mr WALSH:** Usually government and possible private sector consultants. Most of them don't have any conflict of interest, but we have used a mixture of Government people and private sector people.  
All of the ----- they like local government reps.

**Mr WOOD:** Do you have a panel there with Department of Environment people on it?

**Mr WALSH:** We wouldn't as such, one things that we can do and will do soon, is actually establish a panel or a name of a list of people we can draw from. Typically probably wouldn't use someone from the DOE, because of the conflict of interest, but we may have people from other agencies, say Conservation Land Management Planning and others where we can draw on them, depending on the issues.

Recently we had an appeals committee that had, a person from the appeals office,

private consultant, and a rep from Department of Conservation, Land and Management, that worked pretty well. We also had another appeals committee recently, which has been a person from Fisheries person, who run that one for us. One of the important things is a good understanding of the process, the whole deal, you don't want somebody coming out with a crazy recommendation, because ultimately its going to be part of a report, you don't want to upset the Minister, so you need to have a reasonable level of confidence, you've got to get measured and sensible advice, that is independent and proper but it is not going to create a hand grenade for the Minister as well.

Natural Justice and Right of Reply, we probably use the principles of natural justice fairly well. If you ask lawyer to do audit as to whether; every single principle of natural justice was fully applied, the answer would probably be no. We actually do provide for right of apply, we give the EPA the opportunity to respond to appeals we give proponents the opportunity to respond to appeals. And where the parties are prepared to, we'll often go back to the panel and say; The EPA or proponent seek this in response to your issues, and give them another response to do that.

That's a bit of a tricky one, more and more I am getting requests from -----, to have copies of the EPA's or the departments advice on appeals. That's not necessarily a problem, but it can be because often the motives are more about wanting to then criticise, what poor advice the EPA gave on appeals, or the department in particular, with sort of people who have used 'the department's not operating anywhere as well in terms of pollution management', and what that advice I'm sure offer to criticise rather than getting down to issues over an appeal. It's one that we're working on with both departments and EPA Chairman in terms of what is the right middle ground in term of dealing with that.

**Mr FRENCH:** I treat it as deliberative, unless the decision has not been made under the FOI, I have an arrangement with our ----- people. While in a sense it is deliberative, by ----- appeal, the -----

**Mr BALDWIN:** The Minister makes ----- decision....

**Mr FRENCH:** If after a decision is made, they want to hear, fine.

**Mr WALSH:** But the problem is though that the Department is providing it. Not your advice!, on departmental appeals, so what is happening is that it means 'well hang on a minute DOE will provide it their open and transparent, what is the ----- problem?

**Mr FRENCH:** Well that is same if ----- and I think she heard that advice and she is taking -----.

**Madam CHAIR:** This is where ----- inspiration Graham.

**Mr FRENCH:** No this is the independence of the EPA. It is something I have raised with Wally and also Gerry as well, so at some point I think we will probably converge in terms of ----- approach.

Consultative process, it's a very consultative process, which seem to meet the -----, as much as we can, we do. We'll often go out to an area, if more remote, regional location, often many cases, go onsite, meeting with proponents as well as opponents and that I guess is one of the things that really drives the timeframe to a large extent as well. More and more we are actually mediating outcomes through the appeal process, which from a political point of view can be really good, because a Minister can show that through a mediating, consulting approach, we have got a much better outcome, and we have actually helped to address community concerns. A more hard nosed view, is 'is that really role of appeals process, and is that something that should be done somewhere else'.

**Madam CHAIR:** Extraordinary isn't it? Mediation within appeal, that's the duality of roles. Obviously outcome driven, it works. When I heard you use the word mediation before, I was amazed.

**Mr BONSON:** Just one issue there with the consultation stuff, one big issue in NT of course, is Native Title Land Rights, which

obviously you guys don't have here, which have known title issues, so does how does that come about, what is your dealings with land title owners, is there many appeals for them?

**Mr WALSH:** Yes, in recent times we've received appeals from Land Title claimants, who are often, with mainly pure environment concerns with mining projects for example, we've had some of those. More recently we had native title claimants up around Port Hedland and Karratha, appealing against licenses and proposals due to concerns of potential impact of dust on rock art, and we actually mediated outcome on that, it was pretty good, where we resolved the situation through an outcome, that company could live with, contributed to a rock art study, and Aboriginal co-operations in that situation were comfortable, it was a good outcome.

They now have appealed another one saying, one of the negatives of the positives is when you have these successful mediated outcomes, 'Gee that's a good process'. The claimants in those situations represented by, I am not sure which legal service, it is , but there are 3 different corporations, so there's lawyers involved, and we don't actually deal directly with claimants, the people we deal with are; the representatives, and legal representatives.

**Mr BONSON:** So it might be the Western Australia Aboriginal Legal Service, or they might have the Kimberley Land Council, or something like that.

**Mr WALSH:** People we deal with are generally the lawyers, we'll rarely go out and meet with people, in that case, we got outcomes, that everyone was pretty comfortable with. I might say, because we are dealing with lawyers, I had challenges in keeping the process on track, because they want to meet, they can't meet for a while, when we think they're ready to meet, they change their mind, it drags it out a bit.

It works when a licensee is not directly affected, I'm a bit relaxed about it, apart from what it does with our stats.

**Mr FRENCH:** The Licenses would continue.

**Mr WALSH:** It prevails in the meantime. So that's sort of, the last 6 months, we've seen more and more of it, and I suspect we may see more particularly where you've got lawyers involved assisting native title.

**Mr BONSON:** It's only been in the last 6 months, well that's interesting isn't it?

**Mr WALSH:** Certainly in my experience, I've been in this job about 12 months plus, certainly my experience has been, it's something we've seen more of, I don't know if we had a lot before.

Neutrality is the other one, that means that technically I'm independent and all that sort of stuff, in practise I guess your not, but we like to present ourselves as pretty neutral. Often people say 'well you guys at the EPA say this, and said that', and I'll say 'well, no it's not the EPA, we're actually separate', but it is ultimately still season upon season, we are not some truly independent body, we still are answerable to a Minister, and still need to respect everybody's view around town.

The only other thing I might just quickly go to, which is probably quite interesting is the sort of appeal outcomes we might have. A lot of the other stuff you think people are raising questions. You may get no change, which basically says 'appeal dismissed' and 'no formal assessment' or 'the EPA was right',----- . We may have an appeal where they are in part or are they in full, all that mediated negotiated outcome. Common outcomes are; a project being sent back to the EPA for formal assessment or for reassessment, probably not common, probably 5%.

**Mr FRENCH:** There is actually more now than it had before. It is one of the only areas the Minister can direct their EPA's under section 43, which is to fully or publicly assess the proposals.

**Mr WALSH:** Or send it back to the EPA for another decision, we did one on that recently, we said 'well I don't ----- EPA - ----- on the level assessment'

**Mr FRENCH:** Which doesn't mean to say, the EPA doesn't make the same

decision, again and the thing goes out for another further 2 weeks.

**Mr WALSH:** Probably under the current Minister, the last 2 have been common outcomes in terms of changes to proposals and additional conditions, with licenses or works approvals, we've seen quite a lot of fine tuning of that. It's pretty rare not to have an appeal outcome now where the Minister doesn't stamp something on it, in terms of major proposals or contentious industrial premises ----- . It is probably rare that we don't actually arguably add some value or at least some changes, and that is where I guess from a broad political point of view the Minister is hopefully being viewed by people who are using the appeals process as, adding quite a lot of value and listening to the concerns of doing that.

But I get criticism from the other camp saying, 'well hang on a minute this is just a crazy process where you get people ----- --- come to the situation where the Minister upholds their views unnecessarily'. So there is sort of pro's and con's either way with that but...

**Mr BALDWIN:** So you have got no friends anywhere?

**Mr WALSH:** No you don't. I am happy to talk about that more informally, but I guess, and I think it varies from Minister to Minister and Graham is probably better at it in the long run than me in terms of the process, but previous Ministers might have had different views and positions. Other Ministers ----- than the current Minister, but this current Minister is reactive to community issues and wants to take them on. So I think there is a lot of scope for the Minister to promote his or her philosophies in terms of approach to ----- and decision making processes in this way, and that is sort of, often you do get that influence in it if you like.

Probably some key examples that we've dealt with recently, are of interest to people, you probably heard of the Coral Bay one, which was probably one of the more famous ones, which was major one. We often have things like Port Proposal down at Kwinana recently, that the EPA, reported on, the

Minister sent it back the EPA for further assessment but confined to the types of conditions to be applied. I guess it was almost figment of time, but because the process took a long time, the sort of conditions the EPA are recommending in it's report, were probably a bit superseded in terms of trends and changes, and things like dredging approach have been seriously changed as a result of problem project. So that was one where the Minister was saying; ' I am not saying proposals shouldn't proceed, but before I make a final decision on conditions to be applied, I need more advice from the EPA.

Recent forest management plan, was an interesting one, where the Minister through appeal of determination, actually added a lot of additional conditions to the project, that came directly out of the appeals process. Sometimes we have projects change quite a lot through appeals process, where additional land will be given up for conservation, that's where we get criticism from proponents that they are held over barrel in that regard, might be some lead into that.

We had project recently, up in the hills, where it was a water treatment plant, water storage tanks, as result of major public outcry, that probably meant the proposal was going to be sent back to the EPA for fuller assessment, in that case the proponent and water cooperation agreed to remove the water treatment plant from the proposal, so they only proceeded with a modified version of the proposal and the Minister was happy and let him go with that.

Sometimes you get substantial changes in that, some of the more contentious pollution based things like the aluminium refineries, were having a major renovation issue down at a place called ----- with the aluminium refinery there, through appeals, the Ministers consistently tightened up, the license and added extra requirements on our car in terms of, monitoring the omission deductions, and likewise with the cement works, called Coburg Cement, which is in a situation that is fairly close to residential areas. So you tend to have fairly contentious premises under the minister's eye, and I guess the response over the last few years has often been to continued to

type things in response to issues raised in appeals.

The other real big outcome, I suppose, which I have hinted at a bit is; access and the right to be heard. So access to the Minister in terms of a, making a point and the ability to be heard on that point is something that I think is a fairly important outcome for a lot of ----- . That view is probably not shared by a lot of proponents but certainly that has been one of the positive bits of feedback you do get, which is often accounted by some fairly negative feedback from the outside leader.

I think it is one these things where, in an ultraistic sense I think is a very good appeal system, It gives people good access, it does lead to adding value, it provides good checks and balances, there's always room for improvement and refinement, overall all parties, probably accept it and think it's good thing, as to whether alternative models, would be better or worse, I suppose in some ways you might have to try them, and see what happens. I think, some key issues can be looked out over time, things like standing process, whether should be confined, those sorts of things. Probably find from political view, there', for a minister, pros and cons in having the process.

Pros are about having control and influence in terms of dealing with major projects, and being able to ensure the governments agenda is not frustrated by some sort of external tribunal process. The down side is that you probably have to make more tough decisions, than what you would have, otherwise if you didn't have appeals process. I know some of the toughest decisions, the current Ministers are having to deal with have been proposals through the appeals system, and there no hiding, you have to make a call either way. There's a down side to that as well as a upside.

**Mr FRENCH:** In 2 minutes one other component that we haven't talked about and that is the governments consideration of the EPA's advice, I will see if I can describe...

So the consideration of the EPA's advice section bulletin. What happens is when it goes up, Darren also negotiates the conditions and so what happens is the

DMA's are a ----- by decision making authorities. They are sent out in condition to the ---- their comment within 21 days and at the same time the appeal is still going and if there are no appeals because they have been dismissed and they don't provide any comment than the conditions are then set by the Minister through Darren putting that up to the Minister. If there are appeals and the outcome of those appeals, is the appeals upheld than Darren has to do another loop with the DMA to say 'look sorry, the conditions have changed because this is not being upheld', you get the DMA as a sign off the second time around.

And normally that can be done by faxes because it is only a small change, it doesn't need a lot of time to consider, there is a 3<sup>rd</sup> aspect I can't think off. There are actually appeal provisions for proponents on the final conditions.

**Mr WALSH:** Well that is right, when the Minister issues those final conditions and the proponent themselves has a final right of appeal against the conditions. Normally...

**Madam CHAIR:** An appeal back to whom, back to the Minister, ----- the final conditions?

**Mr FRENCH:** Yes to the Minister, but in that case it has to go an appeals committee and the Minister is bound by the appeals committee's decision. We get very few but that is an interesting one.

**Mr WALSH:** Yes but in a normal course of events the proponent waves that right of appeal immediately so they can get their final approval the next day, because they don't want to be held up through another Bill process. It may be that they will not accept it...

**Madam CHAIR:** Then they are called on to it.

**Mr FRENCH:** But yes that role does require my office to co-ordinate with all of the other Ministerial portfolios on the final conditions of projects. Sometimes, like the EPA recommends it's conditions other Ministers might have a real problem with it and say 'well I am only going to agree with the proposal going ahead unless you know,

X, Y or Z conditions are put in or a removed or whatever.

So that can often be really frustrating particularly where it has followed on from a long assessment along the appeals process, than you get to that and you have got proponents who are absolutely tearing their hair out saying 'we thought we were over the line and now what are you telling me, that we have to consult with other Ministers and Minister X has got a problem with it'. So we still have to continue to resolve that one as well.

It is only probably a small percentage that get complicated but when they do they can get difficult, and I think it has been an odd one, but only 1 or 2 where the consensus is not there then it goes to Cabinet.

**Mr WALSH:** Under the Act, it basically says 'The Minister shall consult with the Ministers on a decision and reach an agreement on whether a proposal should be seen and what conditions should apply', and it says if there is a dispute it should go to the Governor, but basically before you do that you try and sort it out amongst each other.

**Mr BALDWIN:** ----- in-camera...

**Mr WALSH:** Yes that is right and most of the time, it is sorted out ----- an assessment anyway. You get some pretty high level negotiation going on and at a point it can get really interesting especially if it's a government agency-----

**Mr FRENCH:** Or where it's a staff strategic project and you have got a BHP or somebody whispering to the Minister for states developments saying, 'the people down in environment are going feral'.

So that can happen as well, where within government you'll have another Minister saying 'well I think we have gone a bit too far with this one', saying it on behalf of the proponent, so it gets interesting as well from time to time.

**Mr WALSH:** Well you've got a great job!

**Mr FRENCH:** Everyone keeps telling me that.

**Mr WALSH:** Well that is the end of the day but there is an opportunity to talk to the people who presented during the day and help yourself to some drinks.

## TRANSCRIPT NO. 2

**PROFESSOR JOHN BAILEY - MURDOCH UNIVERSITY**

School of Environmental Sciences  
Associate Professor  
of Environmental Assessment  
Thursday, 4 March 2004

**PRESENT:**

Committee:

Ms Delia Lawrie, MLA (Chair)  
Mr Tim Baldwin, MLA  
Mr Matthew Bonson, MLA  
Mr Elliot M<sup>C</sup>Adam, MLA  
Mr Gerry Wood, MLA

Apologies:

Mr Stephen Dunham

Secretariat:

Mr Graham Gadd (Secretary)  
Ms Maria Viegas (Administrative/ Research Assistant)

Attended by:

Professor John Bailey

**Note: Due to recording failure, a transcript of this briefing is unavailable. The meeting notes are provided as record of the proceedings, and should be read as such.**

**BACKGROUND**

- Associate Professor – Murdoch University, teaching Environmental Policy and Law
- PJB mid 80's on EPA Board (1 of 3 members until 1986 then 1 of 5) 1985 - 1993
- Also currently Chair of Conservation Commission WA
- Independent authorities such as EPA – need to be small and non-representative
- 3 Members OK. 5 getting too big
- Extra 2 added in a changed dynamic in which consensus was less sought and more "imposed"(WA)
- Non-representative – very important, even essential

- Public perception: EPA decisions are believed because they are seen to be expert and independent
- EPAs don't rock boat too much, but can a little.
- There isn't one EPA model that is 100% perfect (in terms of integration with pollution control, environmental planning etc).

**FUNCTIONS OF AN EPA**

- Environmental assessment and policy
- Integrate resource management; pollution issues
- An independent commission/authority can more easily cross department silos. But they must have access to their own financial and human resources.

**Key Issue** – How can 3-5 people get it right?

- Conflict between EPA Chair and Head of Department resolved during 1986-1993 with dual role of Chair & Head of Environment Department. Ultimately it is the people who make it work or don't.
- The appointment problem is the challenge – I'm not sure what the point was here therefore maybe delete.
- EPA can be independent. The Minister can't.
- If EPA is concerned primarily with environmental governance, then it is easier for it to cross departmental silos.
- EIA administrative procedures – smaller proposals can be screened out of EIA and into pollution control.
- EP Act prevails over planning
- sustainability used to justify weakened environmental controls, therefore leading to tensions in development planning
- sustainability assessment for EPA would aggregate important considerations too much

**Key Issue** – definition of environment

- danger of broadening the definition too much
- some (non-environmental) health impact assessment should be separate
- but note cross over of health and environment
- geographical constraints

**Caution** – don't broaden scope too far into social and health

## REVIEW PROCESS

- In WA - 1991 review - only one required in legislation
- should be every 5 years

## HOW TO RESOURCE

- servicing issues matter less if the wrong people are appointed
- Department CEO and EPA Chair need to work together.
- Or be one and the same? Eg. Barry Carbon
- Ministerial appointment? Parliamentary Appointment?
- Appointment process – challenge to perception of independence
- Tenure of EPA members – WA 3 year renewable

## Board Members' Tenure

Choices:

1. Maximum 5 years
2. 3 years renewable (only once)
3. ≤ 3 non renewable

- Avoid perception of making it a career.
- Relationship between pollution and decision making process; i.e. should pollution control be subject to EIA/EPA oversight
- EIA – pollution licensing - rules could be tightened between process

## Structural problems

- Don't internalise the reasons for decisions
- Externalise – keep threads of argument clear
- EPA – should have a greater strategic/regional \_ planning function
- 5 year review process
- Cockburn Cement case → Supreme Court – stressed limits to definition of environment
- Risk – public risk standards – not included, beyond EPA jurisdiction – i.e. acute not chronic effects
- If people are affected is it not an environmental issue?
- Public risk not included in definition of environment
- Relying on the good will of proponent to manage issue
- Advisory body - Expert body drawn from public

- Consultants – statutory relationship conflict of interest
- Ontario Class Assessments – classes of proposals – that do not warrant individual Environmental Assessment, ie. routine activities such as highway construction and maintenance, forest management activities; conservation authorities works and other public sector activities (**further information supplied post meeting by PJB**)

[http://www.ene.gov.on.ca/envision/env\\_reg/ea/english/General\\_info/What\\_are\\_Class\\_EAs.htm](http://www.ene.gov.on.ca/envision/env_reg/ea/english/General_info/What_are_Class_EAs.htm)

Approval, if granted applies to the entire class of undertakings and the procedures described in the document. No need to obtain separate approval under the Act for each specific project, provided the class planning process is adhered to for the specific project

- Test cases set conditions ie. Local drainage schemes; road widening in parks
- Canada – funding – proponents pay
- Public inquiry – powers set too high yet good mechanism for high profile contentious issues
- Canadian federal public inquiry process

## Environmental assessment panel

- Official advisory panel drawn from a pool of potential members
- Engage with stakeholders using culturally specific techniques
- Reasons for judgement – include in assessment report

## APPEALS

- Tests for interventions are required
- Criteria for 3<sup>rd</sup> party appeals likewise
- Requiring 3<sup>rd</sup> party appeals to be restricted to submitters
- only with new information
- problems with reasoning – i.e. an argument rather than a restated opposition is important
- must be non-legalistic
- role of tribunal/ convenor must be of mediation and negotiation
- Don't want to simply repeat the process under EIA
- convenor can call experts but not necessary – different function
- testing of EPA process only

**Accredited consultants** – essential  
Environment Institute of Australia and New Zealand – accredited environmental consultants

- Don't want compromised advice to Government
- Use MOU tools to clarify relationship between similar processes
- Consultants – potential for significant conflicts of interest

Canada model

intervenor funding, industry has to pay

perhaps peer reviewed EIAs

good in theory may not be in practice

1 group, 1 project – cultural specific tools to be used per group

EPA involved, 1 of the EPA, 1 as observer

#### **Hearing Process**

- EPA discretion – highest level of assessment
- transparency
- certification/ accreditation of consultants
- self accreditation under government rules?

not yet into strategic assessment , but it will be important to ensure that vertical linkages are in place between different tiers to gain full benefit



TRANSCRIPT NO. 3

**ENVIRONMENTAL PROTECTION  
AUTHORITY - SOUTH AUSTRALIA**

EPA SA Offices, Adelaide, South Australia  
Friday, 5 March 2004

**PRESENT:**

## Committee:

Ms Delia Lawrie, MLA (Chair)  
Mr Tim Baldwin, MLA  
Mr Matthew Bonson, MLA  
Mr Elliot M<sup>C</sup>Adam, MLA  
Mr Gerry Wood, MLA

## Apologies:

Mr Stephen Dunham

## Secretariat:

Mr Graham Gadd (Secretary)  
Ms Maria Viegas (Administrative/ Research Assistant)

## Attended by:

Dr Paul Vogel (Chief Executive)  
Mr Max Harvey (Deputy Chief Executive & Director Operation Division)  
Mr John O'Daly (Director, Corporate and Business Support Services Division)  
Mr John Cugley (A/ Director Monitoring and Evaluation Division)  
Mr Peter Dolan (A/ Director, Pollution Avoidance Division)  
Mr Wil Van Deur (Director, Policy and Strategic Support Division)  
Mr Tony Circelli (Manager, Office of the Chief Executive)

**Note: *This transcript is a verbatim, unedited proof of the proceedings and should be read as such.***

**Dr VOGEL:** We might make a start if that's all right by you.....

**Madam CHAIR:** Absolutely.

**Dr VOGEL:** So, we'll, what I thought we'd do, is I'll, I think you have got a copy of the agenda in front of you. I will just give a bit of a brief intro and introduce some of my directors. One's missing, at the moment, in action but he'll be along shortly and then

perhaps we could, I don't know if everyone's met the members of your committee, so we could quickly do that.

Yeah, I'm Paul Vogel. I'm Chief Executive and also Chair of the EPA Board in South Australia. I have been here 16 months from WA and enjoying every minute of it. On my left is John O'Daly, our Director of Corporate and Business Support; Peter Dolan, Director of Pollution Avoidance; John Cugley, Director of Monitoring and Evaluation; Wil Van Deur is Acting in the Director of Policy and Strategic Studies, that's Strategic Services; Max Harvey, next on your left, he is Deputy Chief Executive and Director of Operations; and missing in action is Graham Palmer who is our Acting Director of Radiation Protection which is a new function for the EPA in South Australia – only two EPAs in Australia have radiation protection, us and New South Wales. It will become clear when Graham does a talk about why radiation protection. You are probably well aware of why radiation protection is such a critical issue to this government and how it needs to be managed.

Just a bit of stuff. So, a very sincere welcome to South Australia. We are very, very pleased that you have come and spoken with us. I am very proud of the model we have got in South Australia. Having been here for 16 months, I can later on perhaps provide some useful comparisons between this and the West Australia model, which I'm pretty familiar with as well. But, welcome to South Australia and I hope you have a chance perhaps to stay on for the weekend to see some of the WOMADELAIDE World Music Festival that's on this weekend as well.

As I said, I've been here for 16 months. I spent the last, before I came here, last couple of years in Geoff Gallop's, heading up his environmental policy area in premier and Cabinet and then for quite a while before that as a senior executive in the Department of Environment Protection, which is now the Department of Environment and who knows what it will be after the election, but I've had a fairly extensive background in environmental protection, plus a whole bunch of other things over a long career.

So, I think, that challenge for coming over here was that government had, this government had clearly made a very strong political commitment to having an independent EPA that, as this organisation was a division of the Department of Environment and Heritage prior to that split and had an Executive Director, they both created some legislation which made the EPA an independent statutory authority in its own right, we have got a Chief Executive and a Chair of the Board. And that was a significant event because I think the EPA had been criticised before that as being a bit of a toothless tiger, didn't have adequate legislation, didn't have adequate resources and didn't have much of a profile. Whether that's entirely fair or not, it is not for me to judge. I came after that, I think perhaps some of that was a media hype but certainly we now have very strong legislation and we are going through another change – amendments to our act which will give us, hopefully, the minister is very keen to get this through the civil enforcement powers and that will be the first EPA in South Australia we will have civil enforcement powers. The difference, interestingly, the difference between United States and Australia in terms of environmental protection prosecution, in the United States they generally use, say 95% of the time they use civil enforcement, whereas in Australia it is almost all criminal prosecution. So, having both tools available to us as an EPA, we think is a major step forward. So we have got very strong legislation, up to \$2m fines for reckless environmental damage and a whole range of other mechanisms which give us a suite of tools which are very, very powerful by both Australian and I think the international standards.

The role of the Chief Executive and also it's Chair is one where I am accountable and can only be directed by the Board and not by the minister, so that's a very powerful difference between all the other EPAs, so the minister is at arm's length in decisions that the EPA makes in relation to matters in administration and enforcement of the act. But clearly, as a CEO, I am also accountable, in the sense of I am appropriated by parliament still, so I sort of have a dual role in terms of all the accountabilities under the *Financial*

*Administration Act, the Public Sector Management Act, Ombudsman and FOI, so I am captured by all that but in accordance under the Environmental Protection Act which gives me the, I guess the independence from direction by minister. And that was, I think that became much clearer after the first few months when we had very clear legal advice, the minister became very clear about what that independence meant because if I am directed by him, it has to be through a direction through parliament. Now, that hasn't happened before and it is unlikely to happen. I think if that does happen, I think there has been a breakdown in the relationship and communication between the CE and Board and minister and I think it's those relationships which are critical to this arrangement – having the corporate government arrangements that we do, probably wouldn't work in the private sector but it does work, so far, very effectively in the public sector because of the relationship between the CE, the Board and the minister. And it is about having the minister having confidence in the CE and in that working relationship and in the members of the Board. So, it is a powerful model but it clearly needs to be managed very, very carefully.*

So that, and of course that independence comes with it, enormous responsibility to ensure that we are equitable, fair and consistent in the administration of the *Environmental Protection Act* and the *Radiation Protection Act*. So that is something that of course out there in the business world and in the community, they expect to see that. But the environmental watch dog is being fair and consistent in its treatment of public and private sector organisations. That had been something of a difficult point. Within a short time of being here, we are prosecuting a state government instrumentality, that's done through the DPP, so we show no fear of favour, even though there were a few shutters when that occurred. If we are not shown to be consistent in that, then we straight away will be shown to be under the influence of government. So, I think that's an important point. We have to gain the respect of both the business community and the broader public in that regard.

So, lets, just going on, quickly now, I just want to talk very briefly about our structure which I think is one of those bureaucratic things. We all have to have structures and what-have-you and you will hear more about this as each director talks about their roles and functions and what-have-you. So, you can see, as I said before, the Chief Executive is accountable to the Board but has a relationship with the minister in terms of the roles and functions of normal Chief Executive but has a particular set of powers in relation to enforced administration of the *Environmental Protection Act*. So we are set up like that, we are going through a recruitment process at the moment for 3 directors positions, so we hope to have those filled in the next few months. That's Radiation Protection, Pollution Avoidance and Monitoring of Evaluation.

So, we have about a \$25m budget, around about 230 people and when I came here it was about 180, so we had a budget injection in the first financial year that I was here and that was again government's recognition, setting up an independent agency, you have got to give adequate resources and you have got to give it adequate legislation to enable it to do it's job.

The other thing that is important, I think, and this is something I discussed with Rob Sippe in Western Australia, the, we operate in the environment and conservation portfolio of 3 chief executives, Environment and Heritage; Water, Land Biodiversity Conservation; and EPA as a portfolio chief executive group at a strategic level and we also, each CEO meets individually with the Minister for one hour each week. Now that is, in my view, has been a major driver for the relationship and understanding and anticipating what the minister requires based on the 'no surprise' philosophy and I think you will find that if you don't have that, that the Minister's willing to commit that time to working with CEOs, things can become unstuck pretty quickly, in an area that's as sensitive and complex as environmental protection.

So, yeah, about 230 people, \$25m and John will talk later on about how that is funded but significantly we also, the waste levies and 5% of the waste levies that we

collect and all the fines and expiation fees all go into a special environment protection fund which can be spent through the authority of the Board on particular projects. But we also are appropriated through parliament, we have about \$8m - \$10m worth of revenue that comes in, so we are not entirely a net appropriated agency but we are about 2/3 of appropriation through Parliament.

Let me just, I just want to make a couple of statements about environmental regulation and we are going through a strategic planning process with the Board at the moment and in doing that I thought it was useful for me or for the Board to articulate why you need an environmental regulator, and I think, in discussions with the staff and EPA, I continue to stick up for the regulator because I think it's, from time to time regulators are maligned in Australian society but when they fail, like whether it's therapeutic goods or HIH with the credential regulator, when they fail, there is an enormous fallout, you end up with Royal Commissions, like they had in Western Australia and the finance brokers are not adequately regulated and what-have-you. So, there is a need for a regulator and I've summarised in our draft strategic plan the reasons why you need an environmental regulator and largely it's about the fact that there is market failure. So, you have got the impacts of pollution discharges are excluded from market transactions, so, you need a regulator to level the playing field a bit.

It also provides a clear framework and operating rules for environmental protection management and you can set sustainability criteria for our land and water through various policies and regulatory frameworks, it acts as a catalyst for improved environmental performance and environmental sustainable behaviour and it meets community and government expectations that activities that have a potential to cause environmental harm are managed to ensure that those risks to the community and environmental health are minimised and acceptable.

Another important role the regulators are ensuring are cumulative impacts of human impact are recognised and addressed and

finally and importantly, providing better information to the community on current and emerging environmental issues and actively engaging them in those issues.

So, we are about changing behaviour, whether it's the behaviour of the community, whether it's the behaviour of government or behaviour of industry we have a range of tools which normally cover as most regulators as regulation, market instruments, community education and co-operative action. So, using those sort of tools and a hybrid of those depending on the situation, we have those, I guess those functions.

So, look, without I think any more ado, I think I will hand over to Max Harvey who will talk to you about some of the history. He's, Max is probably close to the longest serving...

**Mr HARVEY:** Oh, god, it's a worry Paul.

**Dr VOGEL:** Senior Executive, the history of the EPA and you might find that useful, but look, if you have got questions as you go and you want to...

**Madam CHAIR:** I was just going to say, can we just break because we are fairly, as all politicians are, we are fairly nouse parkers, and we like to talk a fair bit.

One of the things that we have been curious about is selection process for the role of the Chair, or CEO or the combined role. What's your selection process Paul?

**Dr VOGEL:** The selection process for this position was advertisement and head hunters and use that sort of usual process. Interview twice with a selection panel of another CE, the deputy head of the Public Service Commission type arrangement we have plus another person across government and then, so it's 2 of those sorts of interviews and then a, about a 45 minute one on one chat with the minister.

**Madam CHAIR:** So, appointed by minister.

**Dr VOGEL:** No, appointed by, on recommendation of the selection panel to Cabinet and then to the government but

because of the nature of the position and the CE having to work very closely with the minister, the minister has to have confidence that the person, that the panel thinks is ok, is actually someone, so it's not political interference in it, it's about working relationships. So, they are very clear about that, that the selection panel makes a recommendation to cabinet but the minister, the panel might pick a dud, it's unlikely but from time to, I think it's just useful for the minister to know the sort of person who he is going to be working with, probably hopefully over the next 5 years.

**Mr BALDWIN:** Do you think Paul, that it takes away a little bit of the independence, or the perception of independence and we talked to your ex-colleagues in Perth about this and should it be appointed say by, a committee of the parliament or something.

**Dr VOGEL:** Well, it's interesting; I've had this discussion with the minister here. You have got, you know the normal CEs are sort of a departmental head, this is sort of the hierarchy of independence, at this level, and you've got the DPP and the Auditor-General here appointed by parliament, so I sit somewhere in-between. Now, if you wanted to go, to make it truly independent of government you would have had it appointed by parliament.

**Mr BALDWIN:** But then you run the risk of the minister and the CE not getting on...

**Dr VOGEL:** Yeah. And that happens from time to time. I mean DPPs in both states I worked had a run-in from time to time with government. That can be pretty messy, so this is somewhere in-between. But because the DPP and the Auditor-General aren't accountable also to a board, is a different relationship again, so the Board is appointed by Cabinet and by government but then those people are chosen clearly by the government, so there is also that perception that if you have chosen the board, then how independent is that? But those people take their job very seriously and they are chosen on a basis of their skills and knowledge and expertise and not who they represent, what organisation they represent. So, it has been a challenging time dealing the Board, these are people from very senior positions across

government and the community. They take that job seriously and give me, really some very clear directions about where we are going as an EPA which is very different from where it was before. The previous Board was more an operational Board than it was a Strategic Corporate Government's Board.

So, I think it's about as independent as you can get, short of a DPP Ombudsman type of role.

**Madam CHAIR:** What about the Board, how many Board members?

**Dr VOGEL:** 9 in total, including me.

**Madam CHAIR:** Ok, we've heard in Western Australia, very strong evidence to believe that you should have very small boards, 3, maximum 5. How do you find 9?

**Dr VOGEL:** That depends on the functions of the Board, I think the Board, you have got in Western Australia only deals with, well, essentially deals with impact assessment. They don't deal with environmental regulation, so, once you have got those sort of issues to do with prosecution, I think you need a broader range of skills that represent community, risk communication, public sector management, etc. So I think the Board structure and institutional arrangements, I think reflect the functions the legislation gives the Board. This Board has a much greater role in terms of corporate governance than the EPA Board in WA, so they are very, very different arrangements and that there have been, I mean, you will find in Western Australia's history, there has been a fair amount of tension between the Board and the administrative entity in terms of, you have got basically a lot of power in the Board with no resources, if you resource them, then you have got some other sorts of difficulties, you have got to be financially accountable to government. So, if you actually want them providing independent advice and they are only an Advisory Board, so that's a very big difference. They only advise government. This Board actually makes decisions, independent of government. So, they are very different functions and very different statutory powers that they have.

**Mr BALDWIN:** So you don't, that's very interesting. How, what role does the minister play then?

**Dr VOGEL:** The minister, well, basically accepts Board policy direction to government, so if we want an independent EPA, we want to give you strong legislation, so it's about getting good legislation up, making sure we have adequate budgets. If there are, I guess policies, he's across government, he makes me aware of them, if I am not already aware. So it really is providing this organisation with the adequate legislation, resources and policy guidance.

**Mr BALDWIN:** So, in a sense of governance, your powers are greater than executive government in some cases.

**Dr VOGEL:** In so far as the *Environmental Protection Act's* concerned, yes. Now, at the end of the day, if government doesn't like the things that we do, they get rid of us. If we go feral, that's just easy to say, you re-appoint the Board and you get rid of the CEO. So, it is about, you know, the performance of the EPA will be judged about how we actually are protecting the environment, in a partnership way with the community and business. And if we have got business right off side because we are going feral, and we have got the community thinking we are weak as water, you know, somewhere in-between there, you have got to find the balance and you know, in the past it has been said that if you have got, on a particular issue, if you have got business really offside and you have got the community offside then something has got to be right, because you know if the businesses, if every organisation out in the business community thinks you are doing the right thing and you think, whoa!, wait a minute, are we too good.

So it's a very fine balance you tread and the Board takes those matters very, very seriously. You know, if there's a serious prosecution, the Board gets involved in looking at the environmental, economic and social issue because our legislation will, I'll come to that later, is, does talk about sustainability, does talk about precaution and prevention, pollution prevention and ESD and all those things that are in there.

So giving effect to that, we are grappling with that now – how does the Board give effect to those sustainability principles within its decisions?

**Mr MCADAM:** Just the composition of the Board, what sort of representation from different sectors?

**Dr VOGEL:** We have someone from, the Chief Executive of the South Australian Wine Associations, that are representing industry; Simon Stone who is Chair of the Aquaculture Council, again an industry, a burgeoning industry group; Stephan Haines who is the CEO of a major local government here and also an acting CEO of the Business, Manufacturing and Trade Department here; Megan Diasis is an environmental lawyer; Anne Shaw Rungy is a director of a consulting company here that has very strong skills in this communication, the community consultation, strategic planning; Alan Homes who is CE of the Department of Environment and Heritage, has enormous experience in natural resource management; help me out here. Mike Elliot, he is the ex-leader of the Democrats here, is a community advocate, has very strong skills and knowledge about community advocacy and environmental protection and was on the Environment Resource and Development Committee, that led to the, basically led to the establishment of the independent EPA. So, we tried to cover the legislation actually proscribes a minimum set of skills and expertise that the Board wishes to have at its...

**Mr BALDWIN:** But it also prescribes the representative Board.

**Dr VOGEL:** No, it's a skills based Board.

**Mr BALDWIN:** So, it's totally skills based.

**Dr VOGEL:** It's totally skills based.

**Mr BALDWIN:** Ok. It's just you were rattling off some industry groups before.

**Dr VOGEL:** No, only because they were coming from what the process was, the minister would write to various community and industry bodies and say

would you like to put forward some names for my consideration. It's not a nomination, but it's just saying, who would you like to put forward, but not as a representative person.

**Mr BALDWIN:** Can I just go back a bit to that other point you made and your powers? How does what you do, mesh with government policy? If government wants to do a coastal development or something, and it's their platform, how do you sort of get across where they want to head whilst maintaining all those environmental considerations but...

**Dr VOGEL:** Yeah, I understand. There's a process, if there's a major development that is proposed, it goes through the development planning approvals process and we are a referral body in that process on a case by case, project by project basis. So, we would provide environmental advice as one of the referring bodies into that decision making process and for some referrals we are a directive body so that if we say this is it, that's it, otherwise the proposal doesn't proceed, in others we are advisory. So, they can take our advice or not and the risk is if that they don't and it goes pear shaped they'll expect us to pick it up of course so, we are working through that now – how much directive power, how much advisory power we have. But if there's a whole of government policy, development of say a strategy to deal with coastal development, there would be generally a whole of government steering committee set up and we would be part of that.

**Mr WOOD:** Paul, I suppose from a democratic point of view, you have got more power than the minister, well, you can make decisions but you are not elected by community. Is there a problem there with the minister having to wear something that you make, in other words, he takes the flack but you don't, simply because, whereas in Western Australia for instance, being an advisory Board, the minister can override that advice or it can support that advice so, in the end the minister makes that decision, he's elected by the people...

**Madam CHAIR:** Or she.

**Mr WOOD:** Or she, generically. So, is that missing in this process?

**Dr VOGEL:** I don't think so. Again, the difference between the two Boards is pretty critical here. On development proposals that come to the EPA, they provide, they set up environmental advice to do with that particular proposal, government then looks at broader sustainability issues and says, 'well, thank you very much EPA, but we believe the economic and social issues here override that advice, we are not going to proceed down that path'. Now the Gorgon Gas one is an example of that. The EPA said, 'this cannot be managed from an environmental perspective', government makes a different decision and that's how it should be, but they are making decisions about proposals, whether they go ahead or not. This Board is actually, so it's advisory in that sense. We are only, in terms of the environmental impact assessment process in this state, we are only one body that will provide advice into that process. Although parts of it will be directive and Peter Dolan will cover off on a bit of this later, you will hear more of that later, but we are not, we don't manage the process of environmental impact assessment, nor are we the body that gives advice to ministers about whether a proposal is environmentally totally environmentally acceptable. It's a large chunk of that but there are other referral bodies across government that would be asked for advice.

So, it's not that we, and I think a perception that we have more power than the minister, the only power that we have that government gives us is through the legislation. Anything else than that is .....so we are constrained by the legislation which has gone through the parliament which is a democratic process. So, if they don't like the sort of powers that we have, they amend the legislation. So that's the constraint and the balance and check is, that all our policies be they statutory policies like environment protection policies or regulations have to go through the parliamentary process, so and so there are strong balances and checks in the system.

**Madam CHAIR:** Regulations are scrutinised by the Scrutiny Committee in parliament as well.

**Dr VOGEL:** Yep. So you have all those, well very strong balances and checks and if we do things, it's not that I would do, if I was going to do something that clearly was going to cause government embarrassment, it is just politic of me to advise the minister that this is what we are going to do, not that that's going to influence my decision, but minister, I can say, 'look we are going to prosecute a major government instrumentality next week, for doing this, this and this and we are going to be in court'. Now I don't want him to read about it in the press, but I'm not telling him so that he can say, 'Ooh, well, I'd rather you didn't do that.' Because as soon he does that, that's interference and I've got problems. So, it does rely on me being and the Board being absolutely clear about the vision of responsibilities and accountabilities.

**Madam CHAIR:** We have received the same advice in Western Australia, they have a no surprise way of operating as well, you know, the minister would receive things three days before they are published, that sort of stuff.

**Dr VOGEL:** Yeah. I mean, over there, you have got the Chairman of the Board of the EPA, might say, he could take advice from a whole range of organisations about a particular proposal, including the Department for the Environment, but the Board doesn't necessarily have to agree with what the Department for Environment says either, it's only one input in their decision making process, they then advise government, and often, not often, sometimes it's occurred that there has been a conflict between the EPA Board and the Department of Environmental Protection. Because ultimately if the proposal goes ahead it needs to be licensed and that's carried out by another arm of the regulator which is not controlled by the Board. So, they have had for a long time, difficulties in meshing parts of their legislation at an institutional level.

**Madam CHAIR:** That was raised in Western Australia by the Chair, by Professor Cox, indicating that he saw weaknesses in that

system of a lack of integration through to the licensing aspects. Is that your experience, you think it's a stronger model here.

**Dr VOGEL:** Yeah, absolutely, I think, and it's because of the difference that this state has in dealing with impact assessment is also a reason why this is a strong process. Now we are going through a process at the moment, across government, looking at that impact assessment, how it links at a strategic level across government, the State Environment Report we put out last year, in it raised concerns about the integration of impact assessment and land use planning at a regional level, not dealing adequately with cumulative impact, and so, we are going through some changes as well, in that regard.

**Madam CHAIR:** Thank you for that. Sorry about us butting in and....

**Dr VOGEL:** No, no, no, if it's not clear here, just keep on asking questions because it's, and this is only a sort of a, for me a 16 month old model but it's only about a couple of years old in terms of some of the fine points about accountabilities and responsibilities and executive and the Westminster system and the democracy, so we are working through it but I have to say that the constraint is the legislation and anything that we do in terms of policy needs to go through parliament.

**Mr HARVEY:** Right. So, we look at establishing the EPA. I guess I hark back to 1980's and pollution management was distributed, dispersed pretty much through, right across government. Water resources were being managed by the entering Water Supply Department, waste through the South Australian Waste Management Commission; air and noise through the Department (probably then of Environment and Planning I suspect). Recognising that, the government back in 1989 made an election commitment to review the organisation of pollution control and monitoring. Just to give you some idea of the timing of this and it was pretty much a bi-partisan process too, there was a commitment in 1989 – there was the release of the discussion paper, a green paper in July '91, there was a response to

the discussion paper which I will talk about, in '92, it was debated in August '93, assented to in October '93 and ultimately proclaimed in May '95. So it was about a 6 year process between conception and actually delivering it. With regard to the green paper, it basically involved 7 key initiatives: establishing the South Australian Environment Protection Authority, as the prime agency; introducing the new act to effectively, I suppose at the time it was pretty much a one stop shop, it certainly meant that rather than if one was working in wages, if you could transfer something to another medium be it from land to air, if you were always perhaps that way inclined, it meant that we really had to look at everything far more holistic, and I think its been very valuable from that prospective.

Strengthening, we talked about Paul Smith between planning development basically to provide us with powers of direction with government. One other thing, environment resources development board, any decision authority makes, judicious, obviously scrupulous, with our decision making process.

Opening up the regulatory control standards and policies for public consultations group, I think has been very valuable, fair to say, that it will probably run into problems but in term of timing, the process become overwhelming in some respect, the time taken to get policies through, has just been too long, to be frank. Combining staff from number of government agencies, to come up with single officer and inspectorate.

**Madam CHAIR:** When did that combination occur, back in the mid 90's?

**Mr HARVEY:** It might have happened 94, I think would be about right.

**Madam CHAIR:** Who identified staff to come in, was there a particular working party steering committee?

**Mr CUGLEY:** I think it was the Executive Director at the time ....

**Mr HARVEY:** Yes, the head Director was established, I think horse trading between the different departments, the waste management, I was involved in the waste

management division, that just came across lock stock and barrel. There was a pollution management division in environment, that I think would have gone across lock stock and barrel. If any debate, it would have been with water and entering water supply department, to be honest, I don't recall anything about that, John do you recall.

**Mr CUGLEY:** I know there were discussions with Executive Director in water supply at the time, eventually positions were advertised, identified what skills they wanted, advertised and filled.

**Mr VAN DUER:** The other major concern, were environment impact assessment actually lying, because the old Department Environment and Planning, was actually broken up and a new planning department created, it was eventually decided environment impact would then sit under the new development act, that was created at the same time as the Environment Protection Act, two seemed complimentary, so the legislation was good opportunity at same time. That was probably the major decision and there was a fair bit of debate at all levels because I worked in the ----- at that stage and it was on always a day to day basis of which branch you would go into. And that is still an interesting one I think, where it should lie.

**Mr MCADAM:** What about mining?

**Mr HARVEY:** I'll talk about that later, actually (laughter).

**Mr WOOD:** Do you have to add new positions to the job ....?

**Mr HARVEY:** No effectively there was probably and Executive Director model being a new position, but effective to the fact ----- in 1996.

**Mr WOOD:** So except for certain positions, we are making a change to the number of public service positions.

**Mr HARVEY:** That's right.

**Mr VAN DUER:** I think we originally gave 90 -----

**Mr HARVEY:** I can recall conversations with the ----- Executive Director, I think he had about 72 people, he was saying, 'Gee wouldn't it be good if we get to 80'. Things change I guess.

One of the things disappeared down one of the cracks, in the discussion papers, talked about the charter on Environmental Quality, and I am not quite sure where that went actually. But in many ways then principles that were going to be embedded into that charter, are now incorporating the act, when you talk about proportional principle, ESD, these sorts of things. Along with that was encouraging industry environment improvement programs, that's really been probably more of the important aspect in legislation, in terms of getting environmental improvement, by in large, in non confrontational way, you can end up embedding environment improvement into companies business plan, we found that and I think of states too, have found that a remarkably successful process.

I suppose this gives a bit of a flavour at the time from the Crown Solicitor, he spoke about this after a contaminated land episode caused a lot of grief at the time, and interestingly enough we are still coming to grips with site contamination. He just indicated with this one, where there were problems with the way that the controls were being disbursed around different government departments.

With regards to the discussion paper itself, and this will just give you some idea, there are only 88 persons and organisations who receive submissions, on that basis you could say it wasn't a real burning issue. The submissions, most of them related to funding, and there was support for the ----- . Quite clearly industry wanted to make sure that our fees didn't render with South Australia industry non competitive with other jurisdiction. With enforcement there was 58, and it was interesting, there was a debate which probably still goes on, between enforcement, and effectively using the EPA, as a consulting arm of government in many ways.

I think it would be fair to say that in the early days of the EPA, we pushed very much on, I suppose the advisory, the advisory facility

role and it caused us no end of trouble and we will talk about that later too I think. We really had some difficulties in the early days with enforcement.

Public participation, there was endorsement public participation in our programs. Relationships with other authorities that related primarily to our relationship with the Commonwealth, this was all done pre nipsy..., I think that process is obviously developed far more now. The need for standard setting and monitoring, strong support particularly for adoption of national standards, and again industry concerns SA needed to be level footing with other states.

There was the Environmental charter and that was an interesting one, which is probably why it went west, some thought it was a good idea some people thought it wasn't a good idea. It's interesting that there was some concern about the proportionally principle becoming a key principle governing environmental management, that's now embedded in the Environmental Protection Act.

Staffing, again there's the need for appropriate staff and skills, fundamental efficiency and effectiveness of the EPA. As I say, at the time, I can't recall strong debate on the issue, generally speaking there was pretty fair support from both labor who was in power, when things passed and lost government probably within a few months after that.

The principles that were used in draft bill, were the importing immigration of pollution control mechanisms with licensing, there was licensing for waste production, waste transport and disposal, that was then put in with licensing for air pollution for example, so again, there was a strong emphasise on immigration. Flexibility of methods to achieve compliance, prosecutions, expiations, still don't use enough expiation. I think one of the things we probably need to look at in terms of other states are pollution infringement notices, Western Australia I think has fines of \$1500, Victoria has fines of \$5000. Our expiations I think about \$320, which is pretty much a speeding fine. If you look at that for cooperation, there is not a hell of a lot of disincentive.

Looking at notices, like Environment Protection Orders, information and education, certainly with new structure the EPA has been wanting to debate, as to what the role of education is in the organisation. I think it's fair to say the minister has probably mellowed on it.

When the new structure was set up, there was a strong emphasise on enforcement of the legislation, really at the expense of education, there has to be an acceptance, that enforcement and education do have a place alongside each other, I think perhaps the minister has adjusted his thinking on that, it's fair to say.

Again, negotiation on environmental improvement programs.

Transparency of EPA administration in terms public registers, we have a public register, it's one of those that doesn't get a lot of use, we might have 5 or 10 enquiries a months, I think it's important that it's there. The public involvement in Environmental Protection Policies, I must confess, I'm lost now as to what public involvement in environmental protection orders would have been. It is certainly not a of democratic process, it's an enforcement tool, and annual reporting. Again as public involvement in the policies, in junctions, I'll talk about that later in compliance and enforcement, there's a section where people can take third party action, if they see fit. Another issue that was raised was an environment forum. I think from memory, that was going to have about 30 people, generally people in organisations, thought this was going to be absolutely useless, and pretty much unmanageable. Infact I don't even think we got to a stage where we had a meeting in the forum, it was never appointed. I think everyone started to realise they were getting a tiger by the tail in many ways. That's where we changed from a forum to public round tables, and that happened pretty quickly after, it would have been within 18 months after.

**Mr CERCELLI:** With 7 round tables under our belt, the board was actually thinking of going back to a forum operation, and we will be meeting with stakeholders on a regular basis but it sort of, gone full circle.

**Mr HARVEY:** It's certainly different to the round table.

**Mr VAN DEUR:** It was what happened when the legislation was changed because it was seen as being unworkable. The ----- -- from the forum was also seen as being one, community consultation. So what they did instead was take the framework from the forum, and we changed those things to what we call 'prescribed bodies'. So you've got pretty much the same capture of stakeholders, but we are forced to consult within environment policy and so forth, and we use it for things like regulation etc.

So the consultation aspect is still satisfied, but it is satisfied in a far more workable way, than sitting around a table with a whole group of people, arguing over particular clause in the policy.

**Mr HARVEY:** Certainly in ----- rules, strapped along the licenses. I still think we need to look at, well I think do now we are effectively providing the country certainly with the span of their licence. With single licenses now where some companies had 3 licenses, they now only have 1. Interestingly enough, the same rules and accountabilities for public authorities, Paul is saying that's something we have to be very careful of. One of the sticking points for all industry is, they don't mind environment regulations, they just want to make sure that everyone is regulated in same way, and we have to got be very sensitive to that, both across industry, within industry, certainly across government private sector.

Finally, prior to what was proposed before we really got started, there was staff of about 90, there was funding of about \$8m, that was coming \$4.2m, from fuel franchise, from memory about .2c @ litre on leaded, that was found to be unconstitutional, so we had to get rid of that one.

**CHAIR:** Sounds like a tax (laughter)

**Mr HARVEY:** It was an acquired tax. Waste levies @ \$2.6m, eco license fees \$1.1m and small amounts from fines and expiations, got to very careful with fines and expiations to base programs on fines is risky.

**Mr WOOD:** What was waste levy?

**Mr HARVEY:** The waste levy arose from the Waste Management Act, and been around since 1982. At the time I think probably looking at those figures maybe \$2 a ton. That was used partly from regulation of waste, partly for waste management programs. That waste levy now is \$10 a ton, which \$5 comes to EPA, \$5 to Zero Waste SA. Zero Waste SA is a body which has just been set up, infact legislation just got through in the last couple of weeks. Basically it is aimed at education, infrastructure provision, and providing policy guidance on waste minimisation issues.

**Mr BALDWIN:** Is that a government authority or local government?

**Mr HARVEY:** Yes, it's got strong representation from local government.

**Mr BALDWIN:** It's a statutory board?

**Mr HARVEY:** It is a statutory board.

**Mr WOOD:** What sort of waste we talking about, local government has it's own waste?

**Mr HARVEY:** Basically waste that goes to landfills, effectively.

**Mr WOOD:** So it doesn't matter who the landfill is owned by.

**Mr HARVEY:** Oh sorry, there is a proviso there, \$10 is received for waste being disposed of for rental serving metropolitan area. For local government rates it is about 1/2 that, and it is based on weight weighed through weigh bridge, based on population. Infact if you look at a rural council the south east, it is based on .4 tonnes per person, per year, there's a formula in the regulation, .4 per year multiplied number the of people in the last ABS census. That's assuming people in rural areas generate less waste than people in cities, I think on all the information we have got that they don't. But that is something that really is a residual. That was the political response at the time and it is something that...

**Madam CHAIR:** When did that come in?

**Mr HARVEY:** That would have been, effect of the principal, in the early 80's

**Mr BALDWIN:** So Max, who is paying this money? The Local Government Authority or the...

**Mr HARVEY:** The waste producer, the cost is being passed on. Local government feels as if there paying it.

**Mr BALDWIN:** I just want to get this right. Local government will set a garbage rate to their rate payers one would imagine?

**Mr HARVEY:** Yes.

**Mr BALDWIN:** They handle the waste into the landfill, apart from everything else they pay this levy to this new authority \$10, that then gets split...

**Mr HARVEY:** Well the money comes to the EPA and then we split it up.

**Mr BALDWIN:** You get your bit first (laughter)

**Mr VOGEL:** By a statute the percentages are prescribed.

**Mr HARVEY:** I guess we have, I think about 25% of our wages would be local government, the rest of it would be ----- to land waste or commercial.

With construction demolition I would say we have got some pretty major resource recovery programs, about ½ tonnes per year gets recovered and recycled, so that is becoming less and less of an issue in terms of the waste levy.

And it gets to the stage, and I suppose one of the arguments of the waste levy \$10 and we are still lagging, I think behind Victoria and New South Wales, was really to ----- - as an incentive for equals to landfill cost and diverting waste away from landfill to resource recovery programs.

**Mr GADD:** Is that actually recovered through rates and what have you.

**Mr HARVEY:** Well if you look at the cost per household, it is not truly substantial

when you are talking about single dollars rather than 10's or 20 times, again, if you look at what we estimated the person ----- - and individual would be based on tonnes per person per year. If a household, you might be -----

**Mr BALDWIN:** What, the total garbage ----

**Mr HARVEY:** Oh no no, that is the levy.

**Mr BALDWIN:** But there is a...

**Mr HARVEY:** They would be talking to you, you could be talking and get caught in the garden with the garbage collection, maybe?????

So essentially that is the difference between those maybe you talk about 60 cents. I have had many debates with industry as to how much people are willing to pay. I suspect a hell of a lot more than 60 cents.

**Mr BALDWIN:** Are they state run landfills as well?

**Mr HARVEY:** No infact, I suppose the last major local government landfill proposal was through another Landfill Project Act closes December this year. After that, effectively all major landfills in the state will be run by politics.

**Mr VOGEL:** That has cause us a little bit of grief, when we had the issue of disposal of very low level radioactive waste, which is very low level. It is not a level which might go a repository but it is the cost of the waste, acceptance being, and local authorities have of course been taking this for a long time until we did an audit and they realised they were taking it, and they said 'we don't want it anymore'.

So that actually raises that issue in the communities and local governments minds, they have got to find some way in dealing with that.

But zero waste was particularly set up so that it would take that sort of facilitatory promotion infrastructure thing away from the regulator, so that there was no conflict between a regulator saying or EPA saying 'that is a terrific piece of waste to energy

technology we would like to promote that with 1 section of the organisation and the regulator comes along and says 'the air quality is substantially upset here' and they drive this thing into the ground.

So the government wants to perhaps divorce those 2 things, separate the powers and create a new organisation to be funded through an increase in the waste levy.

But the increase will actually still be insufficient to drive sufficient waste from the Waste Resource Recovery.

**Mr HARVEY:** I think one of the issues with private sector landfills is that it is going to be a great challenge in getting resource diversions, despite if there be a financial incentive for some companies just to ----- as much of the land as they can.

**Mr VOGEL:** I will go through this next, just before I do this I was just thinking before about how we talked about balances and cheques in the system. Max mentioned and I have got the environment resources development committee of parliament. We also have a environment resources development court, so South Australia like I guess, New South Wales has a specialist court for dealing with these sorts of matters. We have judges who are familiar with the Environment Protection Act and the Planning Act and I think you get a faster turn around time and you get judges who actually understand the complexities of dealing with environmental issues because there is just a huge amount of uncertainty around that.

From time to time I think, certainly this state hasn't ----- in relation to uncertainty and serious risk. So that is important I think, plus there is also the third party appeal on decisions etc.. If you start going through the hierarchy of balances and cheques in the system they are considerable in this state in terms of the power that I have compared to the minister.

I don't think the minister would like to think I had more power than him in this regard, but certainly with all those balances and cheques that is not the case I don't believe.

I will talk a bit later on about the comparison between WA and SA. I think it is quite

important. Did you speak to Wally and Rob, are they -----

**Madam CHAIR:** Yes, we spoke to them plus several others.

**Mr VOGEL:** Yes Okay that is good, they have spoken obviously. These guys have been around for a while, if you have spoken to Chairman of the Board from about 3 Chairmans ago, you have got a very, very different view. You heard about that did you?

**Madam CHAIR:** We heard about it.

**Mr BALDWIN:** Professor John Bailey we went and spent time with him.

**Mr VOGEL:** Oh well he would know about it because he was on all those Boards or what have you, he had tremendous insight into all that. I think that is quite fundamental to again about relationship between CE and Chairs and what have you, so it is really quite a fundamental issue.

Part of this presentation I think we have covered before, so Tony we might just go straight to, both the objects really are and this is different again from WA and other pieces of environment legislation.

Our Act does talk about ESD so it covers all those principals that makes a biodiversity corporate ----- take into consideration economic and social long and short term issues etc.

But importantly we have also got in our Act, an important principle about that you need to take all reasonable and practicable measures. So there is no point, if we say you need to get down to a certain level of admission to comply or to reduce the impact, if there is no technology around that enables that to happen than that is unreasonable to ask a company to spend millions and millions of dollars to investigate technology that might not even work.

So there is a reasonable and practicability test in our legislation for the decisions we make and that is a very powerful test. I think that gives the industry the comfort that we are not going to come in as a feral EPA and demand things to be done which have been done no where else in the world and

way beyond best practise, so that is an important principle in our Act.

I have to say at the moment we are talking to an environmental lawyer about how we actually give effect to those principals in our decisions. So getting some debate going on the organisation of the Board about decision making transparency, sustainability and precaution.

So in terms of function where you can prepare, these are statutory environment protection policies, they have the same power of legislation as you would be aware and we contribute to these national measures. I know the Northern Territory participates in these national process of well developing national ----- equality, site contamination assessment, movement control of waste etc ... Facilitate the objects by all parties, the usual environmental authorisation and conducting investigations for compliance under the Act and undertaking final monitoring.

Now those last 2, I think are particularly important, the government here wanted a very strong regulatory and investigation arm of the organisation so we now have and in fact have had for a little while an investigation arm of the organisation. So we now have and in fact have had for a little while an investigations unit and I think WA has gone down that path, other states like NSW and Victoria have had it for a little while.

With having a group like that we have now just finalised a compliance and enforcement policy which is basically a escalating response hierarchy depending on the circumstances and a whole range of things, so that our people, the community and industry know that under most circumstances, most situations how we are going to react. So it should be no surprise to a company or a community person when they get expiated, that we thought this might happen, so that policy is just about to be approved by the board.

**Mr WOOD:** You were just talking about industries cant be expected to search new developments of poison control, does the government itself use some of its resources

to look into new, to ----- the certain development in pollution control.

**Mr VOGEL:** Not so much the pollution control, we have a sustainability program within Peter Doles??? division which works with industry on cleaner production, eco efficiencies, a relatively small program, much smaller than Queensland for example. But we work with industry in that sense but what we do do in terms of the research and John Coby will talk about this later on.

We have a very extensive Adelaide Coastal Water study which is trying to understand the impacts of human discharges on the marine environment and then using that, that scientific understanding to underpin management responses across catchments across industries etc. So we do get involved in research and that involves companies like, Mobil and TXU and SA Water, so we do undertake that sort of research and development. Working with companies is usually through a sustainability and training program through Business SA, so we train people in Environmental Management as well. But we as an organisation don't spend a lot of money researching new pollution control technologies and government doesn't generally invest in pollution control technologies. They tend to come out of market sources, so as the regulator says 'you need to do this', there is a search for those sort of technologies around the world.

So environmental regulation can actually drive some of those environmental improvements and searches internationally for 'what is the best available technology to deal with these sorts of situations.

Later on we will probably talk about some situations where as a regulator, and a lot of regulators face this difficulty, historically we have made some very ordinary land planning decisions which have put very noxious industries very close to communities. Dealing with those sorts of situations causes environmental regulators extraordinary problems, particularly if you have got serious health risks and you have got a company that is employing 800 people or 1000 people putting noxious materials, and they want to expand, how do you

actually assess that from a health risk assessment from technology based drivers, from understanding about what air quality impacts and health impacts there might be.

So what part of our roll will be as a regulator by setting what sustainability ----- and if -----air land and water drives industry to look for technological improvements.

Just continuing on, best practice environmental management, I think we are also moving as an organisation if we expect another industry we need to be a best practice regulator. Then sure, we have a policy advisory role to the Minister and we administer the Act and assign other Acts, for example Radiation Protection Act, which as I said is now within the ambit of the EPA as well. That was transferred to the EPA at the time of creation of the independent agency. In that sense radiation Minister is still the key decision maker, because it is not the Radiation Protection Act, is outside my independent role, I guess. The Minister is still the key decision maker although the EPA board is advised that we do have a Statutory Radiation Protection Committee, made up of industry, hospitals, researchers etc.. that I also Chair, but that is an advisory board only. Or it is created under a statute.

**Mr BALDWIN:** So as the Minister with the portfolio of Radiation...

**Mr VOGEL:** Not radiation, it just comes under environment. Because it is under the EPA, the Minister for the Environment basically is briefed by the Minister of Radiation, why we should -----, he is the spokesperson that comes to the Waste Depository or Olympic Damn or whatever it might be.

**Mr CIRCELLI:** I am going to talk about the governing arrangements for the EPA, and as I mentioned to ----- originally it is a unique situation, we just had a change to how the governing arrangements work. Dr Pauls has sort of detailed how they currently work, but what I want to go through is how it used to work and then you can see a bit of comparison between the 2 models.

So, previous arrangements, the new governing arrangements, talk about Board membership which we have touched on anyway and the new powers on offences that have recently been introduced for the EPA and a current legislative agenda. But firstly, the Environmental Protection Authority, it is actually a body corporate, it is capable of being sued and it's capable of actually suing as well in its corporate name. But also, being the instrumentality of the Crown, which means that it can still hold assets on behalf of the Crown.

The actual authority is subject to the direction of the minister and this is detailed in the act but it actually says, it's subject to the direction of the minister, except in a number of situations and those situations are quite broad. The first one is in actually making a recommendation or a report to the minister so if the Board, who is the governing body of the Environmental Protection Authority, it wants to make a report to the minister, the minister can't direct the Board on that report and very importantly, the minister can't direct the Board on any matters in undertaking compliance and enforcement activities under the act, which is a very large part of what we do. But having said that, there's a lot of other issues that aren't specified as compliance and enforcement activities that the minister can make directions to the EPA but those directions need to be in writing and they also need to be published each year in our annual report and so if the direction is made, it does need to be open and it needs to be transparent.

**Mr BALDWIN:** What sort of directions are you talking about here?

**Mr CIRCELLI:** Well, I mean, I was just about to say, in the history of the EPA since 1995, there has not been one actual direction from a minister to the EPA. It's seen as, it would occur, I think, in very exceptional circumstances. Normally it's through that relationship, I think, that Paul was talking about that if the minister has got a view on something then that would be the way it comes back, rather than saying you must do this or you must go down a particular approach. It's very contentious and given that this current government's mandate is to make the EPA a more

independent body and it's put change in place to make that happen, they are under quite close scrutiny at the moment in terms of making sure that they aren't influencing in a direct fashion the operations of the EPA.

**Dr VOGEL:** It would be like our investigators and Crown law advice might be that yes, this prosecution can stand up perhaps to be of a significant government instrumentality and the minister directed me not to prosecute.

**Mr BALDWIN:** I'm not sure.

**Mr CIRCELLI:** It couldn't do that.

**Dr VOGEL:** He can't but if he put before parliament he might.

**Mr CIRCELLI:** Oh, he'd have to remove this bit about the compliance enforcement. But it might be on say, our strategic directions for instance, or sustainability program...

**Madam CHAIR:** Undertake a study.

**Mr CIRCELLI:** Undertake a study...

**Dr VOGEL:** Or legislation change is another one.

**Mr CIRCELLI:** Well, legislation change we, the minister has control.

**Dr VOGEL:** Control of the act and say I want you to investigate.

**Mr CIRCELLI:** There's a whole host of things in terms of how we do our business.

**Madam CHAIR:** It's was an enabling clause (?) by the sounds of it. It was a just in case enabling clause (?) that was open to total scrutiny because of the reporting back. But reporting back through the annual report, not to parliament.

**Mr VOGEL:** The Annual Report now needs to go to the Environment Resource Development Committee or Parliament. But there is really the...

**Madam CHAIR:** Some of that is enforced by the numbers so then it is dragged back to parliament.

**Mr BALDWIN:** So it is interesting that it sort of exists as a clause of the new legislation, that the Minister cancelled ----- very contentious...

**Mr VOGEL:** It is limited, it is pretty clear where he can and where he can't.

**Mr CIRCELLI:** As we mentioned the EPA Board, which has recently been separated from the corporate entity, and I will talk about that in a minute. The EPA is the Corporate entity's governing body and the Chief Executive Reports the EPA Board rather than the Ministers Board as mentioned.

To the previous EPA structure, we had the Minister sitting at the top as you would expect and on the left hand side you have got Environmental Protection Authority which at that point, this is 3 years ago, the Environment Protection Authority is both a corporate entity but also it was the name of the Board. So there was no such thing as an Environment Protection Authority Board at that point.

So they had a very unique status in being a corporate entity in their own right. There was a informal relationship between the Chief Executive, the Chief Executive in that structure was around for half a year but prior to that it was an Executive Director, who reported to another Chief Executive in a greater portfolio and so previously, for the majority of this structure anyway, we had a corporate entity with no real formal arrangement with an Executive Director who reported to a Chief Executive of a portfolio who reported to the Minister.

Now underneath the Executive Director, we had the administrative agency. It was called the Environment Protection Authority in it's sort of last stages but it had a number of different names and it had Office of Environment Protection, it had Environment Protection Agency, Environment Protection Authority. We had 3 different names and it caused no end of confusion and one of the problems that we had trying to make people out there who really don't care at the end of

the day, but get different messages of Environment Protection Authority, and this other crown, they just couldn't understand what the 2 were. When people finally figured it out, they realised that the officers, the bureaucrats the government people enabling all this administration was actually responsible through to the Minister rather than to the corporate entity. So even though, with our hand on our hearts, there really wasn't too much interference through that process, the perception was that there was certainly a potential for the interference to occur, that is not an evident argument. But the perception was that there was interference through the officers of the EPA and also because the Chief Executive and prior to that, the Executive Director of the administering unit, because they didn't really report to the Corporate Entity and they reported to the Minister effectively, and appointed by the Minister, then that relationship was a very, very difficult relationship to manage because the Chief Executive there is really reporting to one body but answerable to another body, in terms of administering the Act. The responsibility of administering the Act was on that corporate entity not on the Chief Executive, which is the Chief Executive was there to help them administer that Act.

So you can see that it looks like quite a clumsy relationship but, I would have to say working in it for nearly 10 years it worked quite good, it was quite an effective, I don't know what the other views were, but it really did work quite well for such an informal relationship.

Anyway with that being said, there was a lot of, well I guess the new government, the new labor government came into power 2 years ago, made one of its selection platforms to sort this arrangement out, it was also subject to scrutiny from the Environment and Resources Development Committee in Parliament which looked at a number of different models around the country and advised on a new model for the Environment Protection Authority. The one that the Minister chose, I guess it was a bit of a hybrid of what came out of that committee review that wasn't exactly what the committee advised.

So what came up? It was almost 2 years ago now...

**Madam CHAIR:** I wouldn't mind getting a copy of that committee's revised model, if that is possible.

**Mr CIRCELLI:** I have got spare copies I can give you one if you like.

**Madam CHAIR:** Yes that would be great.

**Mr CIRCELLI:** It does actually do a little bit of your work, in terms of investigating some of the models that you used in the other states.

**Mr VOGEL:** The committee actually also used a paper that was a recent public discussion on the powers of the authority and that was provided to the committee. So we have got copies of that you can use that as well, because that actually discusses various models throughout the country at that time.

**Mr CIRCELLI:** As I mentioned, it is the new governing body where the Chief Executive of the EPA which is actually established under the Environment Protection Act now, is the *ex-officio* Chair of the Board. The Board has a collective set of skills rather than being representational in any particular group and it must have anywhere between 7 and 9 members and we have those other rules that it has to have at least 1 woman and at least 1 man.

**Madam CHAIR:** What term of membership, how long are they?

**Mr CIRCELLI:** At the moment they are able to be members for 2 years, but they are able to be renewed as well.

**Madam CHAIR:** Up to a period?

**Mr CIRCELLI:** Yes up to a period of 2 years, but they can be reviewed as many times as they like. Though we are currently looking at changes that change that from 2 to 3 years, because 2 years for a job like this, it just takes so long for people not experienced with the EPA to understand the business.

**Mr VOGEL:** And if they are all appointed at the same time for 2 years, it would be quite a problem.

**Mr VAN DUER:** Ultimately that is what we will be doing, at the moment they are all expiring this time next year, except for one. Also what occurred was a revision in the Environment Protection Authorities functions, which Paul mentioned. There was a slight but quite intentional shift to make it a more regulatory focused organisation, but without removing the Education and the other behavioural change programs that we had in our functions previously. But there was a concerted effort to make it at least to ensure that we had the enforcement and compliance side of things very clearly stated in the functions. I will just go to something previous, I will do to the model that we have currently got now which is previously to a degree, but essentially it is a very linear model and it starts again with the Minister at the top and you have got this new corporate entity which is really the name of the organisation now. If you look at any sort of corporate name, BHP, you have got the name of an organisation, you have got a Corporate Board of that corporate entity and then you have got a Chief Executive reporting to that corporate board and then the Chief Executive is responsible for the operations of the organisation.

Now, it is quite intentional that the organisation which is the administered entity under the public, under the South Australian Government Public Service, is actually called the same name as the corporate entity but that is just really so we can just use that one word out there, to reduce that confusion. All we use now is Environment Protection Authority (EPA) and because the Chief Executive is answerable to the Board in every respect and must undertake the resolutions of the Board, and everyone else is reporting to the Chief Executive, but basically we are all working for the Board through this arrangement.

**Mr BALDWIN:** But how does that work with the Chief Executive being the *ex officio* Chair, like your answerable to the Board yet you Chair the Board.

**Mr VOGEL:** How do I rectify all that? That is the one issue that we have worked

through pretty carefully. As I said it works in the public sector governments' arrangement. That arrangement in fact has been phased out under the ASIC rules, they don't like having CEO's and non executive Chairs on the Board, so I think that is going.

But in the public sector models, it works quite well because my performance again as the Board, although the Board doesn't appoint me, but as CEO and Chair the decisions that the Board makes are given immediate effect through the CEO being Chief Executive of the administrative organisation.

I walk out of here and straight away those decisions are being implemented. What happened before, there was a lack, there was a disconnect between the decisions that the Board would make and how they were implemented by the organisation, there was not a clear linkage between the decisions of the Board and the implementations. So that happens straight away now.

The only difficulty would come in, if the Board directs we in a way which is contrary to government policy, then I have got a problem. But the mechanism we have for dealing with that is, you are sensible about the people you appoint to the Board, and the Board is very clear about why they are there under the government policy. You are constrained by the legislation, and they develop policies which go through a statutory process as well. So there are balances and cheques and I have been trying for sometime, it is nice to mention a situation where the Board would direct me in a way that is totally contrary to government policy.

It is difficult to envisage a situation where the Board would be brave enough to do that because it would have to be such a significant issue and it is totally contradictory, that it can't be negotiated or compromised through.

So I have been trying to think of a situation where that might happen, and it hasn't even come close on any of these things but you are right potentially, the Board could direct me in a way that would be contrary to the

policy and my first reaction to that would be 'you deal with it here'.

**Mr BALDWIN:** But one of the issues that could arise and lets take a scenario. Lets just say you are responsible for the operational day to day of the staff of 230. The Board is also responsible for that, you might turn out to be a dump manager but it is the Board's responsibility then to pull you up, because they don't go down to the next level. So they are actually going to be reviewing your performance but you are sitting there as the Chair, one would have to think that you would have to come in as an Executive Officer, give your ----- and then excuse yourself as the Chair.

**Mr VOGEL:** Yes, that will happen. When there is a performance assessment I am not there, so there will be the Deputy Chair which will change through the next piece of legislation, the amendments would be the Deputy Chair would assume my role, I leave the room and there is a discussion my performance agreement is with the Board not as other CE's with the Minister, so I can't be ----- for that, quite right.

**Mr BALDWIN:** So is all of that spelt out where, in the legislation or the policy document or...

**Mr VOGEL:** That one isn't, that performance...

**Mr CIRCELLI:** The actual rule in terms of the roles of Board and so forth, are pretty much through just government guidelines really. In terms of what is in the Act it really just establishes the system and it says that the Board can establish it's own procedures, if they are not actually listed in the Act it can establish it's own procedures and they are the procedures of that particular Board.

We have a bit of a problem at the moment, whereas if at the moment, if Paul is not available to attend a meeting it just doesn't occur. If he is not available then the Deputy Chief Executive of the organisation has to come in and fill his shoes as Chief Executive and that is Max. Max will have to come and chair the Board and that sort of is a funny sort of arrangement, because really what the Board wants is, the Board wants

one of it's own members to fill Paul's shoes, in the case that Paul is not available. So that is what we are currently changing at the moment.

**Mr VOGEL:** Yes, so we will change that so one of the Board members will become Chair in my absence.

**Mr BALDWIN:** You mentioned just before, that in the private sector, this has become a real issue and the whole direction is now, not to get into these situations. It just seems funny that in the public sector, you take along the model...

**Mr CIRCELLI:** One of the issues that drove, ----- the minute this went through parliament it did actually receive quite a bit of scrutiny from the Opposition of why you would make the Chief Executive, Chair of the actually Board and why not just a member of the Board, Chair. And one of the issues was the fact the previous structure had a part time Chair and that was a very difficult thing to manage from an operational point of view, because he was a QC very, very busy did the job magnificently he is just retired from the Board. But from an operational perspective, it was very difficult to get in when you needed to and when an issue blew up to pull him out of this own situation was very difficult.

Now we have actually got the Chief Executive sitting here in the organisation and he also happens to be the Chair when he sits in that room with the Board. But ----- he is always there he is always available which makes the response of the organisation so much different, or the ----- -- for the organisation -----.

**Mr BALDWIN:** Rob and the others in Western Australia said that would be the, if you could do it, that is the best sample. I am just interested in where you get your----- policy and direction from...

**Mr VOGEL:** As Tony says there is rules and procedures guideline and that reflects government guidelines about how corporate Boards do with things like strategic policy and finally they are also responsible for financial performance as well as my performance. So they have to use the

corporate governance roles and as I think Tony has explained very well, being the same person in this situation is very different than the situation in Western Australia, where a Chair could flip his hats and say 'well thanks very much Minister but I am not going to do that in my capacity'.

That straight away creates conflict for government and having worked through that in Western Australia, I am acutely aware that you have got to work very carefully to avoid those situations and work through them at this level before it even hits the Minister.

**Mr BALDWIN:** What do you actually call it, is it a government owned corporation, is it a statutory authority.

**Mr VOGEL:** Statutory authority.

**Mr BALDWIN:** Is that how you call your business divisions in government here, or...

**Mr VOGEL:** If it is a statutory authority that is a form through legislation but no, I have ----- to the departments.

**Mr BALDWIN:** The Minister for ----- is normally ----- so if we weren't part of this structure, if we were

**Mr VOGEL:** It would be a department, might be a departmental head. Say for example with the EPA model you have got Derek ----- Hopkins is the departmental head for the Department of Environment, but Wally Cox is the Chair of the EPA Board.

**Mr CIRCELLI:** But say South Australian Water, is that what it is called?

**Mr VOGEL:** SA Water, that is a corporation. It has a Board and a Managing Director.

**Mr CIRCELLI:** That is the other thing regarding this is that most other Chief Executives in the public sector are appointed under the Public Sector Management Act, whereas Paul is actually appointed under the Environment Protection Act and through the government and most other Chief Executives are appointed through the Premier.

So there is an extra level of independence because it goes beyond the Premier of the State, it has actually gone to the Government.

**Mr BALDWIN:** But they can't actually sack him.

**Mr VOGEL:** Yes they can. They can sack me but unlike the DPP, I can be sacked by Parliament or through both houses in Parliament agreeing, by the Auditor-General and what have you. So it is not that level of independence, I said it was somewhere between the Department Head and a DPP.

**Mr BALDWIN:** But a Minister on his own can't sack you.

**Mr VOGEL:** But if they want to get rid of you I am sure the Minister can convince Cabinet that that is a good thing to do.

**Mr CIRCELLI:** Really, the only thing we haven't really talked about on this, is that this new structure has actually established and brought a corporate role to the Board. Previously it was responsible for administering the Act and not so much the programs of the organisations or having direct control over the programs that don't relate to compliance and enforcement activities that the organisation undertook.

Now everything that this organisation does, that really does fall under their banner which includes also the management of the finances and so forth.

As I mentioned, it was really aimed to enhance both the actual and things that perceive EPA independence from the previous structure.

Though previously about the attributes of the Board, so in the Act we are require, the Governor has to be of the opinion that the Board at any particular time has the collective skills of that issue and they are a bit more detailed in the Act, but just very briefly you have got to have skills in Environment Protection or Natural Resource Management, Industry and Commerce or --- ----- Development, Environment and Conservation, Waste Management Industry,

Environmental Law, Public Sector Management and Global Government.

It doesn't really matter, you could have 7 people covering all those issues, you could have 9 people covering those issues and overlapping and we have actually got quite a good overlap of a lot of those particular skills.

**Mr BALDWIN:** Have you found though that the prescribed attributes in the Bill have made it difficult to always maintain on the Board, or is there plenty of people out there with...

**Mr CIRCELLI:** The one area, I think that we had a lot of problems with was the Environmental Law side. It would have been better just to have law I think, mediation and law, something like that. Because having Environmental Law there it is such a small industry and I imagine in----- -- it is going to be even smaller.

**Mr BALDWIN:** You would be flat out finding it!

**Mr CIRCELLI:** Well the problem we had, well it is not even, there is a few out there but they have got potential conflicts with a lot of what this ----- does and none of them want to be involved with it because a lot of it is their work. So we actually manage to find a very capable independent solicitor who advises promptly to government on government policy and government work on national development policy.

So she was actually a unique find for us but we had a lot of troubles.

**Mr VOGEL:** IN CAMERA EVIDENCE

**Mr BALDWIN:** So would you advise collectively, that you would get that prescriptive...

**Mr VOGEL:** Look I think that is a minimalist set of skills. I can go beyond that, so all that says is 'what government wants is to at least cover those things' I haven't come from an environment where you prescribed skills nor do you prescribe bodies that you consult with, so it is quite unusual to come to this state where you

actually prescribe a body. So as soon as the body changes name, I think you basically have some operating rules and administering instructions about those sorts of things.

So I am not all that shook about that, because that might change. For example, now that we have radiation in here, I can still go and get radiation expertise if I think that is required. It does actually say 'I have to have those' so if I don't, if I lose a person on the Board with Environmental Law experience, I have to go and get another Environmental Lawyer.

**Madam CHAIR:** So we are actually fishing around, it might be proved if we were to look at models, being ----- prescriptive.

**Mr BALDWIN:** certainly without putting it in the legislation.

**Mr VOGEL:** must admit I am not a huge fan of prescribing skills because they have a short lifetime.

**Mr BALDWIN:** hey block somebody else out.

**Mr WOOD:** ust to get it clear in my mind, the Western Australian Board looked at things like sub-divisions. Do you look at that sort of thing?

**Mr VOGEL:** Yes occasionally they are referred to us, but normally sub-divisions are dealt through the planning process and we don't get, some sub-divisions we do depending on what part of the environment they are interfering. A sensitive part of the environment like the water shed up here, they may well get referred to our Development Assessment Commission and we then asked to provide advice into that process. If we say 'these are environmental issues' they will make their decision. They are the decision making body we are advisory, so we do get, the development along the Murray with the new River Murray Act, which is proclaimed development along that as being particularly sensitive and therefore we get involved.

So we do get involved in, whether it is actually a part of the environment and development is occurring.

**Mr WOOD:** In Western Australia they also looked at main roads with that view. Is that sort of...

**Mr VOGEL:** I don't think we get involved with major arterial roads. We probably got involved with, I guess the southern express way.

**Mr CIRCELLI:** Just in terms of the not the main, it was to do with the earth works, specific things that are licensed under our Act.

**Mr VOGEL:** The issue is associated with it rather than from an Impact Assessment point of view looking at all the environmental factors to do with say, regional air quality of putting a major arterial road in, and all the associated infrastructure issues about it. EPA has a much broader role in providing the totality of environmental advice to government on those sorts of developments. We don't provide that, it is very specific advice on particular issues associated with the development. So they are very different roles.

Western Australia probably has, by international benchmarks, the most sophisticated EIA process in the world and I think Robert would have probably told you that...

Madam CHAIR: Yes, we kept mentioning the Manchester study???

**Mr VOGEL:** Yes so it is, in terms of public scrutiny and appeals and rigour, it's pretty hard to beat and it has been benchmarked. ----- Cox would also say you can always improve on those systems as well.

**Mr WOOD:** Who, say there is a big sub-division going on in somewhere like the Adelaide Hills or something like that. Who assesses that from an environmental point of view, if 1 of the community group up there says 'look there are these problems', who's job is it normally to asses that planning?

**Mr VOGEL:** We have, and particularly in the watershed, and my directors will correct me if I am wrong. But we have had a particularly recent case where there was a

sub-division in a sense to be part of the watershed and we conducted risk assessments. So we are saying that those particular allotments pose a particular risk if you are going to put a house on them and because it is in the watershed protection area, it is defined by legislation that needs to go to the Development Assessment Commission which acts as the decision maker for those sub-divisions.

So it gets the proposal, it looks at it and says 'well we need some advice on this about the environmental issues, it corresponds with the EPA so it says 'What are the issues here' we say, 'there is some serious water quality issues, if you do this you will establish a precedent for development in these sensitive areas and because the Adelaide Hills supply 60% plus of Adelaide's water you are creating a accumulative impact problem, our advice is no'.

They can either take it or not and that case they said 'we agree with the EPA, the answer is no, you can't proceed'. Of course then, it hits the fan, EPA has ----- development rights, conversation, blah, blah, blah, blah, blah.

**Mr WOOD:** Because you can now step in?

**Mr CUGLEY:** Well there are some parts of development that are regarded as significant environmental impact, and we have got powers of direction under that. So when the application gets referred to us we can direct the Development Assessment Commission or the local council, depending on the relevant planning authority to implement that, and that can be powers of refusal, or we can direct them to attach certain conditions associated with that development, and they have to do that.

Then there is another section where we have advisory powers, where we can formally advise council or The Development Assessment Commission, but we think that certain conditions ought to be applied or that the development should be refused. But they can choose to ignore that advice if they so choose.

**Mr WOOD:** The reason I ask, I think I am getting a little bit of the track, was whether this group of people can handle sub-division total.

**Mr VOGEL:** At that level of the organisation, this board will not deal with those sorts of issues, this is a highly strategic board that deals with major policy issues in the organisation, major decisions, financial performance, strategic directions. If it gets involved in that level of decision making, they won't come to a board meeting because they are not...

**Mr WOOD:** That is the difference between the Board in Western Australia and the Board here, that is what I am trying to get across.

**Mr VOGEL:** Yes, and I am being filled with more detail, they have very different functions.

**Mr CUGLEY:** Previously the previous authority, which was essentially the Board used to get involved in some of those decisions, particularly the larger decisions. But that has now changed and the new Board is much more strategic.

**Mr VAN DEUR:** I think that is one of the problems though is exactly what ----- . Because a lot of concerns in the community arise from poor planning decisions and as John has indicated there are certain things that are referred to us by the Development Legislation. By they really relate to activities that we would end up either licensing or very similar and they don't go down to the level of sub-division so in certain areas, yes, like Adelaide Hills, it might be referred. The alternative you can have a subdivision, in North Adelaide Plains for example, of the residential going right next to industrial, then if that goes ahead, we might not even see it, then we get all complaints, why we've got dust, why have we got odour, why have we got noise.

**Mr BALDWIN:** Then doesn't that point to...

**Mr VOGEL:** That's what we're dealing with at the moment, the Economic Development Board, has made that point very clearly, there is now a group of about, a

sort of plethora of CEOs, that have now responsibility at looking at those strategic land issues and how we can do it better.

**Mr BALDWIN:** I think that's where were coming from, Gerry has got a bit of a planning thing, but surely the EPA would get involved about that strategic land use.

**Mr VOGEL:** The problem we have here, is for reasonable land use plans that exist, they don't have sufficient power, and they don't direct development to the development plan, what's the state is doing now, is developing new planning act, it is going to change all development plans, I think it will have much greater control about what you can do within development plans that meet regional planning objectives, and you don't end up with situation, 'god help us my success is having to deal with these lands who are planning catastrophes. That have put incompatible land use close to each other. So I think government has very clearly given us this bunch of CEOs the job of sorting all that stuff out, and we are looking at some case studies across SA saying; these are systematic of a problem, what happen here, what do we need to fix in the system, so that we don't perpetuate that misery of creating.

**Mr BALDWIN:** And somewhere up there, by a level EPA...

**Mr VOGEL:** Yes we were there, we were at that meeting and then whether or not we change legislation or policy whatever it might be, about getting more strategic about assessment, linked to regional land use planning. And it comes down the fact, the EIA in this state, like every state, is predictive and reactive, it does not deal well with strategic issues or accumulative impact. That is a fundamental problem, it's not a strategic tool, in it's current form.

**Mr BALDWIN:** That's been Western Australia's problem, they've followed the planning all the way from strategic, to regional, to local, then ... down here with all the applications.

**Mr VOGEL:** Project by project. But unless you get that right, what they're trying to do over there, and I think we should be heading the same way here to, you set the

strategic framework, then say; if you meet all these requirements your in, your EIA then becomes basically a very small amount of documentation to comply with the regional and strategic assessment issues. You do that progressively across the state, starting from your high priority areas. Otherwise what you do is as it happened in Coburn Sound. I'm sure Rob spoke about that. They started doing the strategic assessment in that area, because your getting all these projects coming out, we're actually moving the coastline westwards here, what's going to happen to hydrodynamics of the bay, when you have got all this multiple use going on.

So EPA said 'we'll provide strategic advice through their Act'. But they can't actually do an assessment, because if there's not a proposal, there is one proposal for them and the Act constrains them in getting other organisations to provide information to do with that assessment, when they're not part of the process, so it's a difficult issue, but absolutely essential.

**Mr BALDWIN:** The Minister in that case would ask them to do this.

**Mr VOGEL:** Yes, so the Chair says 'I want a strategic assessment of that', they say; 'right we can do that under one of our functions' and here's the advice. But it's a negotiated process. Then when proposal comes in, it says; 'right you can do this', and it's manageable. So I think we absolutely have to get that way.

What's happened up here in Adelaide hills, all of sudden I find out at a meeting, that there were 10 000 hectares of blue gum gone in a very sensitive environment, well you say 'was that the most appropriate land use, it might be complying with the development plan, but did the state actually want 10 000 hectares of blue gum for forestry industry, when you consider the water quality and ascetics, all the pesticides that might be used etc'. So it's getting the decision making shoved up higher, so the government signs off on regional land use plan, and you do strategic assessment as part of that.

**Mr BALDWIN:** Yes, it's important if we are going to have an EPA that we get that right,

from beginning, because we've seen there's problems there.

**Mr VOGEL:** Absolutely, I think we all struggle with that one.

**Madam CHAIR:** One of the tools that Mr Bailey suggested that we consider, is what he called class assessment that he used in Ontario?. A list about bench marking, doing assessment, testing the assessment conditions on a proposal, which actually sets bench marks for proposal, sets conditions that would have to be met to get a proposal of that land up. Have you heard of that, do you have a view on that?

**Mr VOGEL:** I'm aware of it, you've got to look at environment where that development going. So you only have to understand to the receiving environment that it is in, and how they look at alternatives and are they going to employ best practise, have they got separation distances in. But if you have got a, I think the suggestion is if you have a model set of conditions that you apply to a particular industrial development, then I think you can do up to an extent.

So if your going to have missions of knocks and socks, or what have you, then you say; 'these are the standard you meet, what control technology you use is not our business'. But you can do that through basically determining what standards they need to meet, but it still has to be commensurate with the environment your putting that development in, and that maybe 2 particular ground water issues, that are associated with that site, that might not be relevant somewhere else.

I think you have to look at it from a ecosystem based approach, and a reasonable one where you putting that development. You can develop model conditions depending on how much detail you want to go down.

**Mr BALDWIN:** Well we have already talked about this, but this is the area of responsibility for the current board, and it really is at that corporate level, it's about setting the strategies, it is about reviewing the operations of the EPA and so forth. When we talked briefly about how many operational issues do they deal with, really

what we are talking about now is, probably ½ dozen absolutely quite very sensitive issues that might come to them per year. They have already dealt with maybe 3 or 4 key enforcement compliance issues.

**Mr VOGEL:** But importantly the reason they come to the Board, is that because they have, there is a theme in there or thread, there is a common policy strategic issue, if they say for example. If there's a lot of issue to do with legal waste dumping, that I informed them about, and we're undertake a major prosecution, they say; 'well what's going wrong out there, why all this illegal dumping occurring, what does EPA need to do about that at a policy level or legatory level'. It's not saying; 'let's have a investigation reports', it is saying at policy level 'what do we need to do'.

**Mr CIRCELLI:** Very quickly, the additional strategy powers that came in with this new EPA governing model 2 years ago, was basically a doubling of major penalties under the Environment Protection Authority, so most serious offence previously was creating serious environment harm which is defined under our act, 'intentionally, recklessly, and with knowledge', previously it was \$1m fine, maximum \$1m, now it's up to \$2m.

And similarly all the way down for those major offences, have pretty much been doubled.

It also reduced the onus of proof that the EPA needs to take on some of those intentional and reckless charges, they have been inherently very difficult to prove, when and if they actually proceed to trial, many times have been successful on them, because people negotiated a settlement and agreed facts.

**Mr BONSON:** You don't have negligence in there, it has to be intentional.

**Mr VOGEL:** There are strict liability offences in there as well, but there a lower tier. There is strict liability, you've done the offence, you've cause the pollution and harm, there's a maximum penalty for that, they are maybe a ½ - ¼ of the total fine of these ones here, where there's a intentional element in there and reckless element and

so forth. So there's a 2 tiered system for all of the major offences.

It also removed an exemption that we had under the act, relating to uranium mining in the state, and other issues dealing with radioactive substances. So previously anything that was managed under the Radiation Protection Control Act was not subject to the Environment Protection Act powers. That's now been removed, effectively what that means now, is that we actually have power on all uranium mining in this state. That really means all the third party civil powers that exist under the Act can now be utilised by third parties, on some of those issues. Also on transparency of that industry is brought into line with every other industry. So there's been some substantial changes, that we're stealing implications of now, still working through those issues. Another exemption removing matters that we dealt with under marine waters, pollution from ships, which really related to oil spills predominantly was also removed from the Act.

As I mentioned previously, there's 3 tiers of General Environmental Offences, this is the real benefit, bringing all this other legislation into one, so the noise, the air, the waste and so forth, all those issues are now managed through a common general offence system. They have their own environment protection policies dealing specifically with them. Overlaying all that, is really these very serious and general offences.

**Mr BONSON:** What are the stats on environment convictions and people being charged?

**Mr VOGEL:** We can give you that, we have had quite a listing of all the prosecutions, but they are probably...

**Mr HARVEY:** The biggest one we've had was against South Claw?, in the Barossa, they put very high power ..., into a stream, probably killed about 3 or 4km of it. The maximum fine was from memory was \$65???, under section 83, there was a requirement to tell us where there has been an incident causing the environment harm, they were fined about \$60k for the serious harm, and I think there was another line of offences, so all up it was about \$125k. It

truly -----disappointed because our investigators found emails that quite clearly showed that the company was well aware of the ----- items.

**Mr CIRCELLI:** One of the issues we had, we mentioned the Specialist Environment Resource Development Board at the moment and they had a limitation in terms of the maximum penalty they can issue, bit like a magistrates court, at the moment they can only go up to a maximum \$120k for any particular offence. Which is a problem, because we have offences here up to \$2m, so we're trying to address that from a policy issue as well. The Government had policy commitment prior to coming into power, to change that, we're still working on that.

Just quickly, in terms of the currently legislative agenda, we really have very limited powers to deal with site contaminations, to deal with historic pollutions, pollutions been caused prior introduction of act 1995.

#### **BANTER**

Well in terms of the benefits of it, Peter has, we've benchmarked this, we have been under a lot of scrutiny nationally over this system, so we've had to do the work in terms of the benefit to the system. This particular review, this has recently been expanded, a whole host of new items that came into being with the deposit from 1<sup>st</sup> January last year. What this one aims to do is to address some the difficulties in the system, that we've experienced over the last few years. It's not expanding as such this stage, it's more addressing some of the issues.

**Mr BALDWIN:** So the EPA doing the review?

**Mr CIRCELLI:** Yes, we basically prepare advice for minister, then the minister agrees or disagrees, we want to go further or contract...

**Madam CHAIR:** What's the timeframe of that review, when it's anticipated to be?

**Mr BALDWIN:** It is actually out for public consultation quite shortly.

**Mr VANDUER:** At the moment, that's one of things that policy handles, proposals and legislations gone through cabinet, it's actually in parliamentary council at the moment, preparing the draft legislation, from that we go to consultation. Which is probably interesting for you, because when it comes out, we can always provide that ....

**Mr DOLAN:** We are also, we extended the regulations, 1<sup>st</sup> January last year, we are about to start review of the effectiveness of that expansion, economically and environmentally. That really starts in April, the review, after 12 months of operation, we expanded regulations.

**Mr BONSON:** We are second guessing the review, at what stage .....

#### **BANTER**

**Mr DOLAN:** We've just started another advertising campaign to remind people, we've expanded regulations, but we believe there's been something like 30% increase in recyclable goods moving to the state in terms of collection of liquid paper boards, milk cartons in particular have been a big expanding one.

By expanding and the publicity around us is expanding, also has increased our collection rates for other things, plastic bottles and glass bottles. People are more aware again that there is 5 cents in the bottle. So we believe it is in the order of 30% increase in recyclables.

**Mr BALDWIN:** I see it all through the mall, we have got recycle bins, it is great.

**Mr CUGLEY:** You see people going along with large bags...

**Mr BALDWIN:** Going to the bins (laughter)

**Madam CHAIR:** What about regional towns, small towns, vast distances away?

**Mr DOLAN:** Bear in mind that ----- has been in this state since 1977. So it's been very widely accepted indeed. We also have very strong group, teaching our kids, Keep Australia Beautiful. Now their very strong in regional towns, in particular, we

had a Tidy Towns program for instance, that is extremely strong in South Australia. Part of that will maintain the strength in South Australia, and there's a lot of small communities who are very interested in recycling and doing these things, as a community should. So the cultures there to keep that running.

### LUNCH BREAK

**Mr VOGEL:** I'll pass you over to Max, who will talk a bit about compliance and enforcement, which is pretty important for a regulator.

**Mr HARVEY:** I manage operation division, we have about 82 people at movement, who administer the licenses, and I have about 45 authorised officers, we have a base in Adelaide, also a office down at Mount Gambier, in the south of the state, and at Murray Bridge for dealing with River Murray issues. I think it's fair to say; we've gone through a bit of a transformation with regards to compliance and enforcement, this was, the city measured it quite clearly, ridicules a terrible weapon. I think we were pretty much a victim, and I think we had an issue with the major sewerage treatment works at Boulevard, which is 12, 15 kms out of town, some of their ponds went off, and if you went down in street below, it smelt as if you had your head down my septic tank basically. It wasn't pretty at all. We had real problems, infact we failed to come up with a case against SA Waters at the time, and that's where it leads to this sort of thing. Quite clearly there was material harm, nuisance of a wide spread nature, the odour covered about ½ Adelaide metropolitan area, and here where the prime environment regulator, couldn't demonstrate, didn't have the where with all, to develop a case, as a result of that we re-establish the investigation's unit, which currently at the moment, we have about 6.5 investigators, they're all ex SA Police, they're been in involved in major crime, drug squads, and I think it's been important, it's given us the rigger in terms of investigation, it's a real skill, technical, professional scientists just don't have, they don't have the discipline, a lot don't have the backbone that is required and don't feel it's part of their job description...

**Mr VOGEL:** It is amazing the attention you get when one of those guys or women, walks into a room whether it be a business or whatever, with a tape recorder. You would certainly get their attention.

**Mr HARVEY:** And even if an investigation failed, I think the company or industry being investigated realises we're dead serious about some of these things, so I think it's been important. That's where it has changed and that's the sort of media you get now, that good looking fellow there, .....

I think it would be fair to say, certainly the media perception and I think probably the public perceptions has really done an about turn because of the strength we've been able to demonstrate with enforcement. Look, although we focus on importance enforcement, but it's probably only about 10% of our duties, so much of it is to do with negotiation, and discussions, they say development improvement programs, which in the end you are going get far better environment outcomes, just from that sort of process. We can enforce if we have to, I wouldn't say it's fear, I think it's probably important that there's respect, and I think what we have developed in last few years, is respect for the organisations regulator.

**Mr BALDWIN:** So Max, how far do you go with the provision of advice? So you go in, you know there's a problem, you talk to a company, and they say 'ok we're here we won't get to a point, we'd like to see....'

**Mr HARVEY:** We can provide someone, we probably have the best resource in terms of environment skills in the state without any doubt. I have got a technical support group which has waste management engineers, and these sort of waste management engineers, but at end of day we just don't have the resources to provide advice, we could probably direct, some guidance's to where people can get the information. Ultimately we have just got to rely on consultants to ...

**Mr VOGEL:** We're not a consultancy service, we have to be very careful, we don't provide a free consultancy service, for which then we have to come in and get heavy about, so we do negotiate through

environment improvement programs, saying 'this is a outcome, we'd like to see these sorts of things', and then that becomes part of the license commission. But it is important that as an excerpt of that, that compliance and negotiations conducted within a framework of enforcement. So it's not a alternative, your not saying; 'well, try and negotiate this one out, so we can avoid', it's conducted with an umbrella, that is a very, very clear distinction with some other approaches.

**Mr BONSON:** Have you had cases where people refuse to take part in an investigation?

**Mr HARVEY:** No, we've had problems with going to court at times, one of the issues we do have, and Tony touched on it with some of his clients. With the burden of ..., for environmental usage which is on a lower scale, that's really cut, I mean had to sort of knowing the knowledge that your causing an environment nuisance. We certainly had problems with that and there's an amendment now, that's a stricter fence.

In terms of people, well presumably exercising their rights, they don't have to say anything, they don't have to cooperate, we haven't had that sort of issues.

This is where we talked about mines, interaction with other Acts, the Environment Protection Act is subject to the Roxby Downs Indenture Ratification Act, so we can't effectively go outside that piece of particular legislation, what that really means I think we're still trying to come to grips with. The Olympic? Down Western Mining is licensed, we've probably increased our influence with getting rid of constraints in regard to radioactive substances. But we're still in early throws where that stands. We have redeveloped memorandum of understanding with primary industries, in regards to mines and petroleum. The Act doesn't comply in terms of petroleum expiration activity, but argue it could with regard to pipelines, and these sorts of things. One of the things we're looking at, given you have a ruptured pipeline, in north of the state, quite often Perth would be there before we would be, what we're looking at is authorising them. We do have problem with petroleum Act in that they have statements

of environmental objectives, which they can say 'if you have a spill and you clean it up, your complying with your statement environmental objectives'. Which you get into internal loop, where if we want to take action that company can legitimately say, we've complied with petroleum Act'. Now I think that's a pretty good defence in terms of Environment Protection Act. So we're still, there is some uncertainty there, and it's something we have to look at a bit more closely.

**Mr WOOD:** How do you deal with agriculture, land clearing and GM crops, do they come under...?

**Mr HARVEY:** Specific land clearing doesn't it. Land clearing is under the Native Vegetation Act, native vegetation council deals with that.

**Mr WOOD:** They could cause----- couldn't it, land clearing?

**Mr HARVEY:** If you talk about harm and then talk about whether is harm and salinisation then, that might be as soon as it gets into stream, and exceeds some criteria, but we don't control the activity of land clearing.

**Mr VOGEL:** The ----- that is a very mature piece of legislation, that has been around for 15 years.

**Mr HARVEY:**

**Mr VAN DUER:** Yes I think we are the only state that----- . We have authorised that.

**Mr HARVEY:** We cleared most of it anyway (laughter)

**Mr WOOD:** I know the Torrens, they planted ash didn't they to replace them all.

**Mr HARVEY:** The other issue is, at the moment there are exclusion under the mining act, with regard to waste produced and disposed on land, contained in the area on the lease of the license, so as part of our amendments to the Act this year, we're certainly looking at this particular section of the Act, be interesting to see where that goes.

**Madam CHAIR:** In WA we were told that EPA Act has primacy, clearly here it doesn't.

**Mr HARVEY:** Not in these terms it doesn't.

**Mr VAN DUER:** Which in some ways, seems very restrictive and in other ways you can still do a lot.

**Mr VOGEL:** Your right, in WA, to the extent where there aren't these sorts of exclusions, but this is something the government is keen to resolve, I think, over the next couple of terms. It is anachronism, having activity that has the potential to cause environment harm, not subject to contemporary primary legislation in 2004, in my view, is not on.

**Mr VAN DUER:** I think the history part is interesting because, these were here not for sound and environmental reasons, but because the mining industry and the minister at the time were extremely powerful, and they basically were going to jeopardise the legislation going through, and that's what happened to this extent, so I think that they should be changed.

**Mr HARVEY:** The statutory instruments we use, environmental authorisation and licenses, we had about 1800 licenses, and they vary from A for Abattoirs, Z for Zinc platers??? or something like that.

As part of licenses previously we use environment improvement programs, and I think that is one of the fundamental tools we use in making sure we do get environmental approval. In by in large, incorporation of the company, make sure that they can meet their targets. We have environment protection policies, we've just had a water policy go through, as of 1 October last year. We are currently reviewing noise policy, and air policy, and developing a waste policy. There is also environment performance grievance, that's not a tool that we've used very much, although we're looking at it in terms providing a relaxation of fees, where the company gives an undertaking to reduce it's pollution load, and environment performance agreement can be used to reduce it license fee, as long as it meets some targets over 3 or 4 year period.

Importantly section 25, generally environment duty, which requires a person if undertakes any activity that pollutes or might pollutes and takes all reason practicable, and Paul was mentioning the regional and practical measures to reduce or minimise harm. A lot of our compliance work really is based on the general environmental duties. Certainly, a lot of environment protection orders we serve would be because it's regional duty.

Common breaches we have, operating without a license, breached the license conditions which can be serious offences, causing environmental harm, as I say, we've probably only had 1, with Southcorp, where there's been a breach of serious environmental harm, breaches of policies, some of those breaches can be expiated, there's a lot to say in having pollution infringement notices where there's something more than just a speeding fine, for some of these things.

A breach of policy at times can create quite serious environmental nuisance. Material harm or environmental nuisance, we're changing environmental nuisance provisions now to make it easier in terms of evidence.

**Mr WOOD:** Max, can I just ask a question there. On the environmental nuisance, that covers noise?

**Mr HARVEY:** Yes.

**Mr WOOD:** Does that cover domestic noise?

**Madam CHAIR:** Barking dogs.

**Mr HARVEY:** South Australian Police take care of parties and domestic noise.

**Mr WOOD:** Is there a day when they find...

**Mr CIRCELLI:** Very rare. Normally police, for domestic issues, use a general duty and issue an emergency order that last for 72 hours. That is what they have got powers for in the state at the moment. If it is a regular thing, then they have the power to take the equipment or to,

they need to actually come to us if they want to issue a long standing environment protection order.

Environmental Usage Provisions could be used, but you have got to demonstrate that you have gone through those lower tiers but it is an escalating enforcement approach that Paul talked about previously.

**Mr WOOD:** You had to have a \$30 000 fine...

**Mr CIRCELLI:** That is there, but it has never been used...

**Mr WOOD:** Not for that ----- money, just for industrial knowledge.

**Mr CIRCELLI:** Well, it is for all that, but there has got to be very good circumstances to go and start using a \$30 000 maximum penalty.

**Mr WOOD:** That would fix it up quickly wouldn't it (laughter)

**Mr HARVEY:** I know that police at times have confiscated stereos, I think they put 1 young fellow in the slammer for an overnight stay.

**Mr DOLAN:** I can give you an example, I signed it all yesterday in support of a regional police officer, where if there was loud music at parties nightly over a period of 4 months, the police had visited the site 25 times and issued 5 Environment Protection Orders in 2 months. So what we have done is I signed off on an order with a definite time frame, that makes requirements on the residents that their music isn't audible within the house of the neighbour, with the discretion of the officer.

So the police officer then, if they breach their order they have been issued, ----- . But it is only when sufficient evidence has been, we have now had about 3 of those where we have got extreme ongoing non-compliance. It tends to happen with people who understand the system very well and know that as long as they space their parties over the 3, 4 days, the Environment - ----- under 72 hours, so we have had a number of cases where people have

had a party once a week, that is not a problem.

**Mr HARVEY:** It would be worth advising the police to take this more serious approach on them.

**Mr DOLAN:** Particularly with police officers in small towns where they don't have a lot of back for some of these things and it is taking away from other duties, they have approached us seeking that support. So we are starting to do that now.

**Mr BONSON:** I was just going to ask something else.

**Mr HARVEY:** I was just going to say, we try to stay away from domestic issues like the plague basically. In terms of resources, we just don't have the resources to do that we haven't prioritised what main priorities exist.

We do have a customer help desk where kids can lodge their complaints and in terms of a lot of these neighbour's view, we will refer them to community mediation services and they can basically say 'you sort it out, you do as best you can to sort it out with your neighbour before we will have anything to do with it'.

We have been doing that for a bit over 12 months now and it seems to have worked remarkably well. I think by putting onus on people to actually do something themselves rather than saying 'the government ought to do something about it', I think they should sit back and contemplate just how serious the issue is.

To be honest about it, we don't know whether some of these can say 'well bloody government they are not doing a damn thing about it' and just remain dissatisfied.

**Madam CHAIR:** Don't worry they blame their colleagues anyway.

**Mr HARVEY:** Or whether they actually do try and approach their neighbours and try to resolve the situation in a reasonably civilised way. But to use an authority like the EPA to pull out a domestic dispute, it is just a easy to use a sledgehammer to crack a wall.

**Mr BONSON:** My question might be answered in the civil liberties, so I will just wait until...

**Mr HARVEY:** Finally, section 83 of the Act, talks about notifying the authority if an incident has caused or has the potential of causing environmental harm, that's really if we can ensure that if any remediation action is required, it can be taken. The courts have regarded that one quite seriously, it has been, as I was saying as ----- . In fact the offence for not notifying us was higher than the penalty of causing serious environment harm. Speaking from environmental duty, that's not an offence in it's own right, but it is certainly used in terms of serving environment protection orders.

With regards to our enforcement options, we're pretty close to finalising our compliance and enforcement policy now, the issues we can do, is issue a formal warning letter, and that goes on the public register so that it's available, we can use civil enforcement, environmental protection orders, clean up orders, or court orders.

Talk about civil remedies later, we haven't used court orders, it is something that I think we really need to look at. But certainly environmental protection orders are an important part of our armoury, there's a possibility of expiation. Police probably use expiation, more than we do. Prosecution, we don't prosecute a lot, we probably average about 4-8 a year, something like that. I think that 4-8, we do a hell of lot more investigations. As I said earlier, I think the investigation itself, is a very important tool in getting people to realise their responsibilities.

With regard to civil remedies, applications can be made to the EPA court, for restraining orders, requiring action, making good environment damage, ...

**Mr BONSON:** This is a question concerning environmental damage. If there is an effect on the environment, is it the company or the body, the association, has it got the ability to remedy that environmental damage. Who steps in to try and fill that bridge, to try and fix that environmental damage.

**Mr CIRCELLI:** We have the power to do that on their behalf and then recover cost, we have those powers, or they could bring someone else as a third party, normally what will happen, they will bring in a waste management, if it's a spill of something of some nature.

**Mr BONSON:** What I'm talking about, if the theoretical company isn't that large, but there is massive environmental damage. Do you guys go and fix it up...

**Mr HARVEY:** That would be done on a case by case basis. If there was the risk to public health or serious affects on the environment, I think that the state government would have to take some sort of action. But there is no, that would be done on a case by case basis depending on cost, depending on the harm, we would have to put in a submission to the government for funding, we also have clean up authorisation where...

**Mr CIRCELLI:** We have got the powers to recover costs is what I am saying.

**Mr HARVEY:** There is also clean up authorisations where we can undertake the work ourselves, and recover costs. We haven't tried to exercise it very much, I've been involved in those in the past with other legislations. I know there was one guy that gave us a hard time, we ended up having to bankrupt him, that's where you have to be a little bit careful, this guy who I thought had a bit of money, in the end only had a phone.

**Mr VOGEL:** And we took that (laughter)

**Mr HARVEY:** The factors we consider in determining enforcement options, degree of environmental harm, existence of mitigating circumstances, compliance history, couple----- that was mainly Directors, we still haven't prosecuted a Director and...

**Madam CHAIR:** You didn't try it under Southcorp?

**Mr HARVEY:** We are trying to get Southcorp now actually, but it is proving to be far more difficult than we would have thought at the time. So I might know a little bit more about that next time. ----- the

prosecution, it obviously is beneath the deterrence within an industry. They are pretty standard I think most states would be in compliance guidelines, do that effectively with some other law enforcement.

One of the problems with the prosecution, is the time it takes to do that sort of thing. You can use an Environmental Protection Order to get someone to do something, gets immediate big money up front, you solve the problem.

Whereas with prosecution, we have someone that gets to court maybe 2 years after the offence, now you lose any sort of deterrent. Under those sorts of circumstances, people have forgotten what the offence was and I don't think it helps us as much as we would like. Where prosecution measurers have been taken against others arising out of the same incident gets back to just making sure that we are handling these things equitably.

Environment protection orders are the things we use most of all in terms of enforcement, I think it's a really strong tool in making sure we have fast action, making sure something has ceased, or ensure remedial action taken. That is really a sign that we're starting to exercise far more rigorously the way we enforce the Act. Although I think this year, we've dropped down a bit to, but certainly floating around the 100 orders, affectively recovered per week.

In terms of enforcement, the public and media demands strong enforcement from authority. In the early days, we really sought a cooperative approach, and almost a lack of willingness to look at enforcement, seen as a sign of weakness from the authority, and it perhaps led to a lack of respect, and I think one thing you do have to have for the authorities is respect, if you don't have that, you really are not going to get anywhere I suspect.

Adverse publicity given for environmental offences, concerned licensees, using Southcorp. I mean Southcorp are very lucky they don't bottle Southcorp wine, if we had a prosecutor at Penfolds, or Lindemans, we would have had a far greater impact on them than Southcorp,

they were able to hide behind a corporate screen in the end to protect themselves. Strong enforcement actually can have an impact on a whole industry, again it gets back to us making sure that people realise we're dinkum about it.

**Mr VOGEL:** Thanks Max very good, we'll move onto now to some short presentation, if you would like Delia, by Divisional Director's that cover the strategic areas of the organisation and the work we're doing.

**Mr CUGLEY:** Monitoring Evaluation Division, as the name suggest in terms of where we operate, we run monitoring programs, and they would be for hot spot ambient, water, ambient means water surrounding, if somebody were to ask you; 'what the water quality like on the River Murray for example', the ambient programs are designed to answer that sort of question. It's a broad program where you're looking essentially for trends over time.

**Mr BALDWIN:** Do you have water in the River Murray? (laughter)

**Mr CUGLEY:** Not exactly 100% water. We also run hot spot programs, they really look at impacts that might occur over a relatively short period of time, so you are looking at impact. So collecting data, we then very strong on turning that data into information, in the form of usually reports, there's assessment of data that we collect, that goes into reports, which are then published on the web, hard copy, they might be different things, they might be quite thick reports, they might be brochures, they might be flyers, depending on the nature of it.

What we try and do to produce information that's easy to understand, backed up by good science, presently simply, but solid foundation. These things include; the SOE report, State of Environment Report.

**Madam CHAIR:** How regularly do you do the SOE report, how many years, 5 years?

**Mr CUGLEY:** It has been running here in South Australia, since about 1987, then about every 5 years, 88 I think, after that every 5 years. We've got assessment reports, brochures, whole range of different

material that comes out. We turn that very strong turning that information into knowledge and understanding. We've got some major investigations going to do exactly that, one is the Adelaide coastal water study, that really is a \$3m study, looking at the reasons behind the loss of seagrass, along the metropolitan coastline, seagrasses that stabilise the sand, if you lose the seagrass the sand starts to move, you get more erosion, the seabed falls, you get heavier more intense storms hitting the coast, you get greater erosion, the whole thing snowballs and eventually results in people houses falling into the ocean.

So that's fairly significant and that is basically a 3, 4 year investigation.

**Madam CHAIR:** That's joint industry funded?

**Mr CUGLEY:** Funded within the state, there is no federal funding, lot of state government agencies, catchment boards, also some private industries contributing to that as well. There's a number of projects on the port river, there was a senate enquiry into the Port River, and the Gulf of St Vincent, a couple of years ago, and they concluded the Port River was the most polluted waterway in Australia, which is a bit strange, given the Marabanong in Melbourne, Parramatta River in Sydney, anyway that was their conclusion.

As a result of that, we got \$1.5m to do some significant work in that area, with the object of really reducing the nutrient loads going into the Port River, very substantially over a period of about 5 years.

Developing a model for the Adelaide Air Shed. We were interested in developing some sort of predictive capability so that we'll know what the air quality is going to be like tomorrow, rather than looking backwards in time, so that is a pretty big capability. We are also working in the Mount Lofty Ranges water shed, to get a better understanding of things occurring up there. That's a really interesting one, lot of pollution that we face in SA, particularly in the water shed is diffuse pollution, about ¾ of the pollution that we get in water, is run off from roads, run off from agricultural land, pesticide spraying, those sorts of things that

are not point sources. Similarly for air quality, a lot of pollution there is due to motor vehicles, 80% of the problem we've got are motor vehicles, and some due to solar fuel heaters. Largely not point source, it's largely diffuse source, there really are some challenges there.

So having got good understanding, it is then a matter of turning that into policy, that can be capital P policy in terms of environmental protection policies, we've recently done water quality EPP, but it can be small p policy where government comes in and says; 'we've got a major problem here, we're going to have to put more funding in, or we are going to have to run a number of initiatives to try to rectify the problem, they could be planning changes to legislation. There is a mix of policy issues, but essentially about changing behaviour. That is the intent of it.

Having done that you go back up monitor again, to see if that's effective or not, so it's a bit of cyclic sort of pattern. So that is essentially the philosophy behind what we do. When you think about the EPA, and what we're trying to achieve. Although it is not probably written in the objects of the Act, and not very clearly, it is essentially about changing behaviour, particularly in relation to waste discharges, or pollution discharges, if you like. When you think about that, there are basically 3 pillars, that unpin that, there is; licensing and enforcement, there you can take almost immediate action, if you see a problem, you go out and prosecute or you fine and things can be dealt with quickly in space of few days, perhaps few weeks.

There also are things, market based instruments we're looking at those at the moment, things like; low based licensing, where people are charged for amount material they put out to environment, there's nutrients offsets, there's things called; wetland banking. These are all quite interesting ideas, starting to be explored around Australia. There's tradable pollution permits, there all examples of that.

The idea with these, it's the 1820 rule, you can get a company to make 80% improvement to their discharge at 20% of total cost that it might take to fix whole problem, and the other 20% problem takes 80% of the funding.

It's really about saying to polluters, maybe you've got a point, to go further you might have to, the cost of dealing with 1kg of a pollutant, might be something like \$500 to remove another kg per annum that's going out to the environment. 'Is that the best way to spend that money?', the answer to that in many cases is; no, it is probably not because if you look at all that pollutants that's going into that system, you'll find in many cases, it's the diffused pollutants, that are the problem, it maybe those diffused pollutants at a relatively modest price. So you might be able to achieve a reduction of, at the moment it cost you \$5 per kg per annum to deal with some of the diffuse pollution problems, by installing wetlands, doing other sort of relatively simple measures. So how do you shift the funding from there to there? If you spend your money, you're going to get a much bigger bang for your buck by putting into there.

So these things are essentially about doing that, it is essentially about having a mechanism, whereby people can buy something in exchange for a right, if you like, to pollute, there are caveats associated with that, but the money derived from that, then can be used to tackle diffused pollution which is area, you struggle to find ways to deal with that, never enough money basically.

So that is a very interesting area and we are starting to get into some of those things. I know in NSW, EPA has started to tackle some of those as well, I think it is quite exciting and it's about using market based instruments to help you achieve your environmental objectives. The third pillar is education, education is broader sense, changing people ways in which they do things, the time frames here are going upwards, that's a few days to a few weeks, this is a few months to a few years, this is generational stuff, it's very hard to measure, measuring these things get harder as you go in this direction. It's very important, you go in school yards now, you see kids in primary schools, they're all wearing hats, slip, slop slap programs are all taking off, they are really changing behaviour in that area. If you can achieve the same sort of things in the environmental area, then you really are achieving what your setting out to

achieve. But a point of all of this is, that you need a good mix of all of these, you can do that, by 1 of these which you can do a lot more effectively if you have all 3 operating well together. Some of the programs that we are running here, are things like; water watch, frog census program, air watch, working on segment going on Channel 9 news which should be quite interesting. We also run a water care program, which is a whole of government program aimed at joining together all the government initiatives on water, there are a number of different agencies involved in it. Some from a conservation prospective, some from water quality prospective, but they are all interlinked. What we want to get across, is that the government has got this whole of government response, if you like, to dealing with water quality issues. So it's how to deal with that effectively is really quite a challenge, and we are really starting to get better strategic handle on how we run those programs, and bring them together. So for example, if you went into an area, and you did an audit of industries, there's a wonderful opportunity, to also target schools in that area, run education programs within the community, things in newspapers how people can change, you can bring it all together, you might end up with much better result than just simply auditing industries and getting them to try and change their practises just through that mechanisms.

**Mr VOGEL:** Thanks a lot John, any questions for John that you think of, a strategic overview of the work rather than getting into ----- . But that is, in a nutshell about as I said before about changing behaviour is a long term process and it is not something that we can do in a couple of years. Which is a challenge for sustainability.

Peter Dolan is the Director of pollution avoidance and he will just talk briefly about his programs.

**Mr DOLAN:** Sorry I is not because I dislike what John just drew up, I just wanted to start, I always like to tell people why my division is called pollution avoidance just in case people don't realise. Operations are usually straight forward monitoring evaluations as read, but I always like to tell people this. I don't know how many of you

are familiar with pollution or waste management hierarchy as a principle of environment protection.

Pollution Management hierarchy is about; what is the most effective method, to prevent pollution that harms the environment, basically that's the order, if you avoid generating the waste with the pollutant to start with, it is clearly the most effective both environmentally and cost wise. If you can't avoid generating your waste pollutant, you try and reduce the overall quantity, if you can't reduce it, you try and reuse it, the waste. If you can't reuse, you recycle it, into something you can use. If you can't recycle it, you treat it to much sure it's environment benign, if you can produce it volume or what have you and then you either dispose or omit it in a sustainable way of some sort, if you can.

So that's the hierarchy of it, so pollution avoidance takes it's name from the top of that, the aspiration of just trying to avoid generation of pollution in the first place, the context system, why we are called -----.

The functions we deal with in my division, cover pretty much the whole range of issues that the EPA covers, we run pollution avoidance reduction probes to do with watering catchments, air quality noise control, litterate and container deposit, waste management recycling, resource recovery, and eco efficiency or industry sustainability.

A few examples; we're involved with some of Johns people as well, in issues on air quality, due to motor vehicles, 70% or thereabouts of air pollution in Adelaide, is to do with mobile sources, and long term projects are things like; input to Australian Design rules of motor vehicles, trying to reduce omissions from motor vehicles, pretty blunt instrument, it's got long ..., but we're involved in that sort of work, it's an avoidance issue, if you like.

**Mr WOOD:** Is there much work done on general traffic noise, like relationships with road services.

**Mr DOLAN:** Yes, the states just put out a state transport strategy, and we were heavily consulted in, in the sort of things they are trying to do; in terms of planning for

where road goes, road surfaces, noise barriers.

**Madam CHAIR:** Modes of transport?

**Mr DOLAN:** We were less involved with that, you have got the transport people. But we were involved, so we have been involved with things like, testing of bio diesel to replace diesel buses, promotion of compressed natural gas, as source of power for buses, rather than diesel and those sorts of things. So we are involved with those sort of issues.

**Mr WOOD:** And Harley Davidsons?

**Mr DOLAN:** To that avoidance, similar with this other example. In waste management, we were involved in recycle infrastructure, collection of recyclables, a lot of that work moved to new body that was set up called; Zero waste SA, the legislation for that body passed last week, they have been set up since last July, but they actually are depending on legislation with ----- last week. Almost all the staff were in my division originally, they moved across to the new group to give more focus on aspirational goal, of zero waste and land fill, they're far better resourced, they use to do that with me as well, to increase the waste levy, and we were trying there to produce waste and landfill, promote avoidance with productions and recycling and so forth.

So we're run a wide variety of programs across those areas. We're also absolute base line avoidance activity for EPA, is in development assessment, if you don't let a factory go the wrong place, or the wrong thing be built in the wrong place, it's huge avoidance of later impacts, so we manage the development assessment process or the input of EPA development assessment process. In some cases we have directive power, usually there is a tie between the Development Act here and the Environment Protection Act, if things of major prescribed activity and major environment significance are Development Act, we have directive power, with effectively detailed proposal if we're not happy with it. The reason for that if we don't veto, at that stage, we must grant them a license under the Environmental Protection Act. It's a bit of a certainly thing, if they get through the development test,

which they get a license, so it exercises that power. For a number of other types of development, we provide advice, planning authority can have regard to that advice, generally those are things that we don't license.

**Mr BALDWIN:** In that case, something that's going before the planning authority, that's a major development, who says what level of assessment, you guys get input, sometimes you get to direct, but who sets the ....

**Mr DOLAN:** The development regulations have actually got schedules of what activities have to be referred to us for advice, clearly stated which ones are classed as major, it's better to ----- a risk, we seem to ----- the risk associated with that sort of development. So if there is a list basically, the planning authority have to look at that list and decide where it fits.

**Mr BALDWIN:** From that stage though, there's environmental assessment, it might be EIS? Or PER?..., who sets that?

**Mr DOLAN:** At the moment, there's a major assessment panel, determine whether particular proposals should be assessed as a major development of not and also sets what level of assessment is required. There is a proposal to change the Development Act, there is a Bill around the place now for consultation, what is called a Sustainable Development Act, that actually gets rid of the major assessments panel, and brings in a new structure in.

**Mr BALDWIN:** EPA doesn't have any determination of it, what level of assessment?

**Mr VOGEL:** I sit on a major developments panel, essentially EPA sits on a major developments panel. If it is removed and something else comes in place, we would like to think that we are still there.

**Mr DOLAN:** So the EPA will always represent us on the panel. So how can certain powers do a veto proposal on environmental grounds if necessary, if we don't have opportunity at the time, we must then give a licence, or there is no restriction

conditions I could say, really in terms of that, but I am quite certain that developers, if they get through assessment process, they'll actually get a Bill ----- or operate what they want to.

Similar to agriculture, at the end of 2001, there was a new agriculture Act passed in this state, it brought all agriculture under our agriculture Act, with one license, there are obviously ----- components to that. The minister for agriculture who licenses agriculture operations, of which there is a current 650 in this state, has to refer all licenses and variations licenses to EPA, again we have veto power. So on the environmental conditions we are happy, and he or she can't issue a agriculture license, so we've got a reasonable lot of power from that point of view, and it's in the legislation, there are appeal provisions, and we have to state our reason, so if we reject one, we have to state clearly what our reasons were and that is providing the outcome and all that sort of stuff.

That is a fundamental avoidance or reduction exercise, it's not having the wrong thing built to start with.

Finally, we provide local government support and also support to externally authorised officers, so example, the order I signed in persistent there; police, these people are doing things that otherwise we might have to do, where we don't want to put resource into domestic noise, and other things, so we provide technical, a little bit of legal, technical advice of how to handle particular circumstances where council office is all that is needed, because they got no technical expertise, and some of these things require training, we loan them noise monitors, which we calibrate, so council officer has a calibrated instrument, which we know will take decent sample. We give them guidance on how we go about resolving a noise issue, they are actually doing the work our there. We're currently trying to address -----, to about 10 councils, there are currently 170 authorised officers in councils spread across the state, which authorise the Environmental Protection Act.

So Max has got 40-45 and we have got 170 in councils dealing mainly with domestic

issues local things. But there are certain things where technically they are not going to be able to deal with like, the air pollution things though, the issues are a bit technically complex to deal with so we...

**Mr BALDWIN:** Why does it rest with them, is that a historical thing, does that come through local government?

**Mr DOLAN:** Specifically, in the local presence, it's a realisation that they can provide better service to community in their area in certain things.

**Mr BALDWIN:** The EPA doesn't fund them.

**Mr DOLAN:** No, instead we provide training under our Act, help with standard letters. We have just about finished our second version of our manual for authorised officer, we provide guidance how to deal with these things, we give them buddy inspection or send an officer out with them to help them learn how to resolve certain things, we loan technical equipment, to make sure it's calibrated. So, we don't give direct funding, but we lend the our support to enable them to do that. Most of its an ancillary thing for there activity, so depending on council ....

**Mr BALDWIN:** So it is an ancillary what for, in the terms of town planning or...

**Mr DOLAN:** The council has already had general inspectors, environment health officers with the state for all sorts of purposes, they look at cleanliness in restaurants, dispose of waste, barking dogs, .....

**Mr BALDWIN:** Is the Act liable to them, under their bylaws?

**Mr DOLAN:** For those things yes, so in this case, it's extra activity for them. But they already have inspector type people, it's a matter of training those people to deal with them when they come up. Some councils would have 100's of these a year, others might have 5, so it really depends on where they are We find this particularly useful in remote areas, like Ceduna in the far west coast, where the officers recognise the EPA, it's not coming out because other

Smokey wood heater, we're not going to travel the distance, and so they approach us wanting the advice about how to deal with these sorts of things, so it's a service we provide.

Other key issues are, Zero Waste pretty new, it sort of broke off from us last July, the legislation actually went through last week, and they are basically dealing with non regulatory aspects of waste and resource recovery recycling, some of the issues for us are that; they are doing the waste infrastructure, things like that but most proponents want the EPA at the table as well, so they want to know what a licence have in it. So despite the fact we split them off, and their dealing with waste infrastructure and planning strategies and things, we haven't actually saved much workload on some of these things because the proponents still want to know what the EPA is going to say about it, so the industry exercise about who is responsible for what, there is a lot of array in that.

We're negotiating with local government, about sharing responsibility for environment protection, a lot of councils do that now with, there is a Bill going through, I don't know if Tony mentioned it earlier, they are building an Act which provides extra powers including, cost recovery for councils, inspection fees, variety of other things, so we can general some revenues ..... The reviews of the various environment protection policies have been mentioned before, they are going to need a lot of effort in terms of what direct offences if you want to have any, what sort of expiations you might have, how you might deal with issues of assessments and things. Impacts of aquaculture, aquaculture being a boom in SA, it's only been around for 10 years, as I said, we've got 650 odd operators right now, of those only 30 financial viable, so there's all sorts of issues about very rapid expansion of a new industry, in areas been before, ----- went through all these issues, they were very short in their rationalisation of the industry and so forth. Sometimes environment is forgotten in those sorts of things.

Expansion of ... deposit we spent it last January, still coming to terms of how well that worked and so forth and we have got

amendments coming up to simplify some systems, in that process. There is a whole range of national issues on the agenda to do with waste and recycling, everything from plastic bags to, I was reading one yesterday about shredder/flock, which is the fluffy bit when you mince a car in a dirty great machine, so you when you shred a motor vehicle, you end up with mix of vinyls, padding and plastics, in a nice sort of fluffy bundle. It is an issue but we deal with it, it's not huge issue for us, because the size of our economy, but Australia wide it's quite an issue. Substance and fuel standards, we've also done a lot of work recently on noise guidelines, wind farms are really big thing at moment, we've set up wind farm guidelines for assessment of noise to the wind farm proposals, which are then been picked up by NSW, Victoria and ACT.

**Mr BONSON:** Do they actually make a lot of noise do they?

**Mr DOLAN:** They have that potential, wind farms all about sighting, once you build a wind farm, we don't license wind farms, nor can I imagine us licensing them because once their built and operating, a license has really no effect, I mean what conditions do you put on operating licence for a wind farm.

**Mr CIRCELLI:** They have a bit of a low boom associated with them. Once you get to a certain speed...

**Mr DOLAN:** There is a certain background noise which can be intrusive to some people. So the guidelines are about sighting and about how you decide where you go in relation to assisting residents and this sort of thing.

The other issue is, wind farms will be very interesting, is that, who do you go to about noise measurement. With noise measurement you always correct the wind, because wind through microphones causes havoc with the background measurements, we've been to a lot of technical workers with 'how do you measure wind farms?', because they can vary in places that are windy, so your normal techniques of measuring noise, are not very effective on a wind farm sightings of the wind. So there are issues like that.

**Mr VOGEL:** Will Vandeur is acting in the position of Director of this Division and he will just give you a brief overview of that one.

**Mr VANDEUR:** Thanks Paul. Essentially what John and Peter have been talking about is also our bread and butter, because to have effective organisation, you have to have ground breaking legislation and be aware of what you've got and where it's starting to fall down. So in constant process of looking at legislation as Tony mentioned, there is 1 Bill going to parliament to amend the Act in near future. There will be another one hopefully later this year, which will introduce site contamination provisions. I have mentioned also the CDL changes, so this is ongoing, but it actually comes up from monitoring, it comes up from avoidance barge, where there's gaps in what we can do, how can we correct this, what legislation do we need. The references made to the EIR committee earlier today, looking at environment protection, after Max's toothless tiger. 1 of the things that actually came out and we had a review of the whole Act, was the Act was very structurally sound, a lot of it was things like; how do we investigate properly to make sure we get prosecutions rather the lack of prosecutions? rather than for the lack of prosecutions. So a lot of its about legislative side, which includes the environmental protection policies, these are the middle tier of enforcement, they can have very substantial penalties because we set categories for anything up to \$250 000, and again strict liabilities, or where there's reckless and intentional.

We have one new policy, which is the water policy that John mention, which is pretty ground breaking in Australia in lot of ways, also have our lot of core transitional policies. As Max mentioned, when this Act came in, it actually repealed ½ dozen other acts, so there was Act for waste management, clean air Act, etc..

The essential bits about legislation and the - ---- under that were translated into transitional policies, and they are out of date. So we are actually reviewing at this very current time, a new air, a new waste policy and a new noise policy, they will be trying to drive those into the direction of where we want to go and be for the next few

years. All legislation constantly reviewed as you know.

We also play a major role in supporting Paul and the Minister on the Environment Protection Heritage Council, cause that's at a national level. Lot of the issues as Peter mentioned are, plastic bags are CDL, these are the issues that keep coming up. A lot of these have been brought up in South Australia, CDL has been brought onto the national agenda, plastic bags have been brought onto the national agenda and there are other issues. So these are constantly coming up.

1 part of this units division is the policy and the legislative side. If we get that right, again as John says, we'll end up with a whole variety of things that will lead to behavioural change in the community for those 3 pillars. We also have another function which is the communication and marketing which also feeds into this whole environmental education aspect. Information leading to attitudinal change, leading to behavioural change, that's the only way you'll end up with a sustainable society in the long run. Legislation won't do it by itself, so you have to have all 3 tiers.

The other one, I will be brief about these, is essential assisting in the strategic business, getting strategic plan developed, organising the round tables and so forth, setting up these frameworks for consultation, making sure that the community including industry is engaged constantly, so that we actually have an interactive process.

The other part, the division plays large role in cabinet process, so we move things through the cabinet and into the parliament and support the Minister on the floor of the parliament. But this government in particular, has taken a very 'you must consult' attitude, and that's not only with community but between agencies, and so often cabinet hears one agencies view and nothing else. So as part of cabinet requirements in developing any cabinet submission, we have to go to other agencies.

**Mr BALDWIN:** Wasn't that a standard procedure?

**Mr VANDUER:** No, it was more who shall I talk to, now it's actually more as mandated under the cabinet handbook. So under previous governments, both persuasions, cabinet process was allowed to run, if it was necessary to give to us, to get the support of -----, if we talked to them about something, but not necessary to develop an agency etc. etc..

**Mr BALDWIN:** All our cabinet submissions have comments by every other agency, including some Commonwealth ones.

**Mr VANDUER:** So essentially that's our role to make sure that we have this interaction with all the divisions to make sure that what they're doing is in support legislatively, that the policies they're trying to implement are up to date, and actually are good for at least another 5 years at any point of time.

**Mr BALDWIN:** Not sure whether it relates, but it's the national packaging in cabinet. Are your signatories still there? Do you get money out of that when it come to the EPA, I won't go into detail, but I just want to...

**Mr DOLAN:** Yes the traditional funding that the industry puts in, everything should be covered with money. We are spending money at the moment, and we get \$ for \$ funding on those projects, ..

**Mr BALDWIN:** Does the EPA get it?

**Mr DOLAN:** No, it depends on the project, for example, we're giving funds to local government, who achieve certain recycling tasks, so the bonus for achieving a collection rate. So 1 of the council recently got \$200k prize, half was paid for by the ----- and half was paid for by the industry fund. We don't get the money, but it helps us supply money.

**Mr VOGEL:** The last of the Operation Division, before we get to money is Graham Palmer, the Director the Radiation Protection Division. As I said, Radiation is a new function for EPA, in SA, but very clear government commitment to manage it in this one.

**Mr PALMER:** As Paul said earlier, we administer the Radiation Protection and

Control Act, and that Act ----- and delegations to the Chief Executive and officers of the Radiation Protection division. We administer regulations under that Act, primary ones being, well the only ones being; The Ionising Radiation Regulations and the Transport Regulations. Ionising radiation covers x-ray machines, and radioactive resources, we don't have regulations for what we call; non-ionising radiation which covers things like; ultra violet light, and lasers, radio frequency radiation and extremely high ----- of magnetic fields.

The Ionising Radiation Regulations were recently revised to include more modern requirements for medical x ray machines, but they cover whole range of things such as; divisions for licensing for people to handle radioactive substances, and use x ray machines, and provisions for registration of x ray apparatus which includes; industrial scientific and medical type apparatus. Also provisions for licensing of uranium mines, now the Act provides for those licensing and registration, the Radio Protection Control Transport Regulations have been recently revised, now 2003 regulations, which adopted a national and international code of practice for transporting radioactive materials. That's the legislation we administer.

The role of the EPA Board has been discussed by Paul earlier, but we also have a radiation protection committee, which the Radiation Protection Division is the secretariat for that committee. Paul Vogel is the Chair of the committee and there's a number of emerging issues; The role of the EPA Board, Ordering a range of material from South Australia with an emphasise on storage, we have recently completed an audit of radioactive material in South Australia and that audit covered all practices of where radioactive waste was produced and also ----- used.

We came up with large number of recommendations for future management of radioactive waste and controls of storage of radio materials.

Regulations of radiation aspects, uranium mines are emerging issues, as mentioned earlier, some overlap in terms of jurisdiction, between the EPA and the mines

department, and the radiation protection division. So the administration of the EP act and Radiation Protection Control Act and mining legislation are all sort of overlapping at the moment. With regards to Radiation Protection, the Radiation Protection Division is responsible primarily for the radiation safety and health of people, in the areas that dispose of radioactive waste on mine sites that is still under jurisdiction of Mines Department. But the Mines Department still sets the advice of the Radiation Protection Division for any approvals, of the disposals that occur on the mine.

Another issue is the review of the Radiation Protection Control Act, which as you see in the 1982 Act, it has undergone a number of changes over the years, but there has been a recent national competition policy review of radiation protection legislation throughout Australia. While our current Act isn't very much out of stat. with the modern requirements for committees and so forth and also controls on radiation, it is out of date and needs updating.

**Mr VOGEL:** Thanks very much Graham, and interesting area.

**Mr WOOD:** The Commonwealth would play a role also?

**Mr PALMER:** The Commonwealth has it's own -----, Australian Nuclear Science Radiation Protection and Nuclear Safety Act, administered by ....., of Commonwealth funds, so all commonwealth entities are now covered by that Act. Previously when the Commonwealth didn't have regulations and an Act, the states did regulate commonwealth priorities such as; CSIRO, but we only loosely regulate defence. If defence for example had x ray machines, and they wished to be compliant with the state, or to purchase an x ray machine, and want them to be checked for state regulations, then we would have a jurisdiction there, but it was only lose jurisdiction.

**Mr WOOD:** Do they have any control over the management of uranium mine, the Commonwealth?

**Mr PALMER:** They do only, from an environment assessment and approval sites

of things. They do in the NT I think, through the Office of Supervising Scientists, but not so in SA.

**Mr VOGEL:** Thanks Graham. We have recently concluded it and government is now implementing through the EPA, I think is the most comprehensive ----- of radioactive waste in Australia so it has given us a very good feel for where radioactive waste is store and generated and how safely it is stored across the state. So it has been a very valuable exercise for us.

John O'Daly is our Director of Corporate and Business Support and he wants to talk a bit about money which is of interest to us all, in our personal and business lives.

**Mr O'DALY:** Well you have heard about the structure of the EPA, and what we do. Now I'll tell you how we go about funding it.

There's 4 basic sources of funds that run EPA. We've got direct revenue, from things like license fees and waste levies and so on. We've got an environment protection fund, which I'll explain later, we get parliamentary appropriation and other external sources, including Commonwealth government, private bodies, cash imports, other government agencies, and so on.

In terms of our split up licenses and levies, principle behind charging, we do own full cost recovery, we don't always achieve it, but we are heading in that direction, and certainly that is government policy, we try and aim for full cost recovery when we can. Currently, the amount of appropriation we receive from government funds the agency, about 36 ½ %, external funds about 8%, other revenue which is our licenses and levies and so on, is just under 56%. That figure is climbing, as time goes by, so our impact on government net lending is around about \$8m at the moment, which is pretty good.

I'll just give you a quick breakdown on our other revenue, I mentioned it was licenses and levies. Apparently we're getting about \$4m, from our license fees, levies, inc. solid waste levies, that Max talked about, is about \$5.3m, we get about \$300 000 from liquid waste, we get about \$300 000 from section 7 referrals, the land of business

conveyancing act, I am not sure if you guys have that, we get enquiries related to encumbrances on land and properties that are sold or transferred and we get a revenue stream from that. We get about \$900 000 from radiation licenses and levies, inc. mines, and other income which include some of the external stuff is just over \$1m.

**Mr BALDWIN:** Is CDL as a levy...

**Mr O'DALY:** We get no income whatsoever from CDL, none at all.

**Mr BONSON:** That's about 16.5 just on my calculations...

**Mr O'DALY:** In terms of revenue, we get about \$16m revenue, and the balance made up through government appropriations, that our balance and ...

**Mr BONSON:** How much is that again, sorry?

**Mr O'DALY:** Just over \$8m from the government.

The next item is the Environment Protection Fund, which is 1 of our sources of revenue. The environmental protection fund, is set up under the Environment Protection Act, and it determines that a percentage of all our licenses, and levies, will be paid into this fund and the percentage is set by regulations, that regulation currently says; 5% of all our collection will be put in this fund. The fund can be used according to what's prescribed in the Act, so certain things that can be spent on with approval of the authority and the minister.

**Mr BALDWIN:** But not operation.

**Mr O'DALY:** It can be used to administer the departments, so your administrating the act, so that it is reasonably broad. It is quite handy.

**Mr VOGEL:** I will talk about that a bit later one, there are some policy issues around that.

**Mr O'DALY:** It also collects fees, fines and penalties, so every time we go out and take someone to court, we have a win, that money actually goes into this fund, rather than to government general revenue. Also

the costs of investigations and enforcement actually get put into this fund as well.

**Mr BONSON:** So you will fine them plus get costs from them as well?

**Mr O'DALY:** Yes. Sometimes the reverse happens, where we lose a case and be get hit with the cost. It happens and that will generally be charged to the funds.

**Mr BONSON:** So what we have heard about the fines, it is more than likely to cost the ----- the fines then?

**Mr O'DALY:** Generally not. I think the case that Max talked about before where we got about \$120 000, I think the costs for that were about \$30 000 or \$40 000. Then there is a bit of a positive benefit there but as we have said before, if the maximum penalty had been doubled with the new Act up to \$2m, I mean we never got anywhere near that but the potential is there.

We are not looking at penalties and fines as a source of revenue for operating activities really, it is not what we are on about.

Just in terms of the Environmental Protection Fund, the average annual income from this 5% is about \$800 000. This year the budget that we've had approved for the Environment Protection Fund, is \$2.5m, so we're spending more than we receive, on an annual basis and how we do that, is because we built up these fairly large reserves over the years, where we obviously haven't spent as much as we've been receiving for what ever reasons, so we've been lucky enough to have approval from cabinet to draw down some of that reserve funds and implement some new programs.

**Mr BALDWIN:** So that fund has been around prior to...

**Mr O'DALY:** The fund was set up when the Act was established in 1993, and it's been accumulating revenue ever since. There is a distinction between administered funds and controlled funds, and that's an accounting term which says that; if an agency has direct control over their money, it goes into 1 bucket of funds, that's where the main part of environment protection

authorities funded from, so money we get from Treasury is a controlled fund. At this point in time, the environment protection fund is treated as administered fund, because primarily was controlled only by the authority or board of the authority, and since we've become independent that's become a little bit less clear, and really could say that the fund controlled, well it definitely is controlled by the authority. So there really is no need for distinction anymore. When we part of the Department of Environment and Heritage, it was very clear, because the Department of Environment and Heritage had no control of the environmental protection fund whatsoever, only if the board did So that made it quite clear who had control over that money. That's less clear now, and as I have said there's -----, to have a look at that and see whether it's actually necessary to keep the funds separate for normal operating, like the 5% of licenses and levies, there is really no point in keeping them separate, the fees and fines which still go into that fund to fund major initiatives or oil spills or to pay for any costs that were against us. So we are looking to changing that.

Government appropriation, obviously this is the balance of our budget. We go through a process every financial year, where government gives us expenditure authority for the total amount of our budget, so whilst we collect \$12m odd of revenue, we actually get appropriated by parliament, for the tune \$25m, and that's all we're allowed to spend, according to the parliamentary rules.

They also set Revenue Targets for us, so we say our forward estimates are about \$16m in revenue or whatever and we actually have to achieve that otherwise we have to trim back our expenditure.

**Mr VOGEL:** And do they apply efficiency dividends?

**Mr O'DALY:** They certainly do, they have stop annoyinng me though now, they have changed their mind to come out into the open call it ----- (laughter)

**Mr VOGEL:** We are not using any euphemisms any more.

**Mr O'DALY:** But even though we are an independent authority, that's a good point that we are very much subject on the same budget process as is for rest of government agencies, we still have to comply with budget cuts, we still have to bid for any new initiatives and so on, so we're no different from any other government agency that way, really.

**Mr BALDWIN:** When you said they appropriated to the total level of your budget, including your estimated revenue income and if it's additional?

**Mr O'DALY:** If we get additional revenue, generally that's a win fall, unless we have good reason for getting for example, if we get additional revenue from the Commonwealth, which wasn't taken into account, we apply for an increase in our expenditure authority, and they give us approval to actually submit it.

**Mr BALDWIN:** So if you have a couple of big fines that were successful, is that still a matter for -----

**Mr O'DALY:** We still have to apply to be able to use that, and generally...

**Mr BALDWIN:** You would go and argue the case?

**Mr VOGEL:** There is a bit of a problem with that, we are having a bit of a policy analysis about, now that we have pretty substantial fines available to the courts, if we were to get several serious prosecutions in 1 year, we might start thinking 'well gee, we can actually fund ourselves through prosecution', so you have got to be very careful of attention between-----.

So I think I am a bit concerned about that, so we are actually having a hard look at where we want to fund an agency from prosecution, and I think that is a really dangerous way to go, that is a personal view.

Then appropriating a regulator, as a principle I think is wrong.

**Mr O'DALY:** Just a final observation I will make about the way we are funded now as an independent body compared to when

we were part of larger department. It seems to be much better in that, we are able to push our own case much harder with Treasury, then we were as part of the larger organisation, we had to have all our funding bids prioritised internally, before they would even go to Treasury, whereas now we can put in our top priorities direct through the minister, to Treasury and Finance, and we get equal billing with them.

**Mr VOGEL:** Yes it's a negotiation now between the 3 Chief Executives and the Minister on the priorities for the totalled new initiatives, but they are ranked within the agency. But not necessarily ranked across the portfolio, there is some sense of that of that but it is not, in negotiations with the Treasurer, that is not clear until there is a trade-off type situation. As I said that has been an enormously powerful tool for us, we were successful last year, I am pretty confident that we will get site contamination legislation funding as well.

So I think we are treated as an equal in that negotiating arrangement.

And the other I might say, we talked about that policy division. For agencies of our size, when you get past about 150 people, the issue of coordination and integration is quite critical, and you do need to have very good mechanisms for ensuring coordination and integration across the organisation, but how we also deal with our key stakeholders, for example; the health agencies, the transport, planning agency, you really do have to put in place formal mechanisms, we've done that, for example, in dealing with air quality or enforcement of water quality is to have cross divisional teams from policy, technical, implementation, legal, people dealing with these issues, so that we develop sound policies, and we don't find someone developing statutory policies, that are impossible to implement or enforce. I've seen that happen before in other organisation, very terrific policy content, in a policy, and it's impossible to enforce, so you actually don't achieve the environmental act if you want.

So that's been a fundamental shift to about emphasis on coordination and integration.

**Mr CUGLEY:** We also have very good relationship with some of the key agencies

around the traps, ....., and services for example. We meet regularly with them on a quarterly basis, on an officer to officer level, that's always good contact anyway, we just make it more formal. Likewise with Cleaning SA, we meet on the same sort of basis, so setting up other arrangements with some other agencies.

**Mr VOGEL:** Well that is about it, you have probably got policy information for 2 or what have you, but would you like to go through as an open session now, just grab a sandwich and then have an informal chat, but feel free.

**Mr BONSON:** Before we do that, can we get a little picture with you guys...

**Madam CHAIR:** We have some media inquiries late last night.

**Mr VOGEL:** Where would you like us? This is Terry Clarke, he is our media PR Communications, he is an ex-journo so be very careful of what you say.

**Madam CHAIR:** So the big question for us, jurisdiction without an EPA, fundamentally would you say, creating an independent EPA is the way to go?

**Mr VOGEL:** In my view, absolutely. I think the profile of the EPA since its independence and not just in terms of statute, but independent of another organisation and of new direction and with all those balances and cheques, I think it is a terrific model.

I think the next view of ours, this was modelled on a Victorian approach but still is different than that. I think Mick Bourke doesn't have a statutory board that he is accountable to, he is the board.

So far I would have to say I am extremely pleased with it, we have had very good response, I mean you always get criticisms from whatever model you have got and you can always improve it I think, whether it be legislation or policy or institutional range, or whatever it is. But all in all, I would have to say that this is working very, very well there is a good group of people here and good structures and I think it is a good model.

**Mr BALDWIN:** The question that has been hitting me all the through this morning is, what does the Department of Environment do? (laughter)

**Mr VOGEL:** DEH actually runs all the National Parks, the whole Parks system, the Conservation Estate, Marine and Coasts, Office of Sustainability.

What half they took out of EPA, the Environmental Policy people and created an office of sustainability, so I have had to rebuild a policy in and there is a few that the EPA don't give policy but I think we are this effective with the Minister of that view.

So coasts, Conservation Estate, Office of Sustainability, Heritage.

**Mr BALDWIN:** Prior to this did you have a Parks of a Conservation Commission?

**Mr VOGEL:** Yes, there is a National Parks, it is still part of DEA so they run all that.

**Madam CHAIR:** One of the other issues that came back, if we recommended an EPA and we look at a recommended model, do we recommend a staged implementation. Certainly I asked in favour of Western Australia, given it is green field for our jurisdiction, would you perhaps appoint your Chair and give them a year out of running through testing aspects, the structure, putting their toes in various things, doing the discussions around with the stakeholders in the jurisdictions before you actually go to a ----- day.

**Mr BALDWIN:** The thing that is important, the ----- need time to get up to speed with the new Act, and particularly a complex Act like Environment Protection Act we got our Act in and passed in 1993. It was acclaimed we were ----- . I think it would be fair to say that it took us quite a few years to really understand how to use a protecting...

**Mr CIRCELLI:** I think the question you are asking though is, between the time when the Act was passed and it came into operation in 1995, you actually were setting up, I think ----- had been appointed and a whole bunch of other things had been done, to actually keep the agency running

before the legislation actually came into effect. I think that's...

**Mr VOGEL:** It might be that you need a, whilst the legislation is being developed there is an implementation committee. You have got to have a group of people who are well versed in setting up governments arrangements, institutional arrangements, dealing with a new government function. I mean this stuff just won't happen through osmosis and the best will of beaurocrats, you actually need a driving force government to say 'we establish a pretty high powered group of individuals in from other parts of Australia' for example, for people who set up these organisations, it is that organisation theory, the management structure and legislation, the linkages and all those sorts of things.

So it is not, I think you actually have to have a project planned to say; legislation, institutional arrangements and all the other bits and funding that go with it. So creation of some body, I think will be useful.

**Mr BALDWIN:** But once affective,-----, the Office of Environment have -----, But the Office of Environment Protection Service is 4 staff and is headed by the person who ----- They formed in 1992, I think it was. 1992/93 the Act wasn't even written at the time when they came together and it gradually extended from there.

**Mr CIRCELLI:** So do they have an input into the parliamentary...

**Mr BALDWIN:** They said it was 4 people, most of whom had quite a bit of experience in environment before hand, and it grew from there basically. So by the time the Act actually commenced in 1995 there were 7 or 8 staff at time and it has substantially grown since then

**Mr CIRCELLI:** We didn't talk about any parliament process.

**Mr BALDWIN:** The appeals process that we have. I guess it is probably more associated with the -----

**Mr CIRCELLI:** That is where you can actually ----- You can ----- and all the organisations can take action or to make ----- something. Essentially what we can normally do but it is able to be, if anyone had a particular interest in the matter, so it is quite forward ranging.

**Mr HARVEY:** There has only been 1 case where it has been used and the part that we didn't have a lot to do with, is starting the child care centre, noise from kids...

**Mr VOGEL:** Which is why we want to go down the civil remedies path, is that it is a proof issue. So we are very keen to progress that as fast as we can, because that would give us something where the time between an offence and a penalty can be significantly short from the communities mind and the companies.

You have done something wrong, you cop it sweet but you get on with your business, because we actually have to maintain a relationship with business and that is a big difference from being in a court, if you are in divorce proceedings, you actually don't want to have much to do with your partner or ex-partner after you have been through the divorce proceedings, but business is recognised and we recognise that we actually maintain a on-going relationship with business.

So it is a different dynamic that you are talking about, rather than a normal prosecution.

**Mr VAN DEUR:** I think while differentiating the current Act, which has civil remedies which are basically 3<sup>rd</sup> party things. What we are handling at the moment is a Bill which introduces civil penalties, which is still more internal but it doesn't go through the court system. And that is based on the American model basically, so that will be -----

**Mr BALDWIN:** What about an appeal, where you have made a decision, let's say it is 1 of your directive powers. Either way you would have ----- would want an appeal or the proponent, depending on which way you made your decision, would want to appeal. So how does that work?

**Mr HARVEY:** We have got a lot of those at the moment where, we have got 1 against Bill May's ----- right now, where the community has joined a court action. So there is a community input there where it effectively then, is assessed by the court and the community at the same time.

**Mr CIRCELLI:** Well that can't ----  
----- . But the appeal is obviously against the person we issued the order against. ---  
----- where the ----- the community has actually applied to the court to joined with us, ----- but they asked to joined with us.

**Mr BALDWIN:** Who are they then represented by, a community organisation?

**Mr CIRCELLI:** The court decided that as an individual rather than a community group itself, 1 person.

**Mr HARVEY:** Your question is also in relation to the payment to Director Panel.

**Mr VAN DEUR:** Which is then the Bill of Rights layout for the Development Act, because they are actually a referral to us.

**Mr VOGEL:** They are the decision maker, so the appeals are with the decision maker not with the advising body.

**Mr DOLAN:** It is fair to say that we get very few where we direct a refusal. We have been joined to appeals, have regard to our advice and agreed with us so we can proceed. Then they have housed or we have joined the appeal they basically rejected on our advice, so very few actually when the direct refusal...

**Mr BALDWIN:** Is there appeal though in the courts?

## TRANSCRIPT NO. 4

**KATHERINE PUBLIC HEARING**

Knotts Crossing Resort Conference Room

Monday, 31 May 2004

**PRESENT:**

## Committee:

Ms Delia Lawrie, MLA (Chair)

Mr Tim Baldwin, MLA

Mr Stephen Dunham, MLA

Mr Elliot M<sup>c</sup>Adam, MLA

Mr Gerry Wood, MLA

## Apologies:

Mr Matthew Bonson, MLA

## Secretariat:

Mr Graham Gadd (Secretary)

Ms Maria Viegas (Administrative/ Research Assistant)

## Attended by:

Mr J Etty – Organic Producers Association NT Inc.

Mr P Jack – Katherine Town Council

Ms Sharon Hillen – Katherine Landcare Group

Ms Anne Shepherd – Katherine Town Council

Mrs Elisabeth Clark – Bush Nursery

Mr David Higgen – Katherine Horticultural Association

**Note:** *This transcript is a verbatim, unedited proof of the proceedings and should be read as such.*

**Madam CHAIR:** I'll call to order. I formally open a public hearing of the Legislative Northern Territory Committee. It is a sessional committee on Environment and Sustainable Development. The terms of reference and the reason why we are is that we are looking at the efficacy if the establishment of an Environment Protection Agency for the Northern Territory, inclusive but not restrictive too arguments for and against the establishment of an Environmental Protection Agency for the NT; options for the structure of an Environmental Protection Agency taking in to account the demographic, geographic

and financial context of the NT; and if a particular model is recommended, options for its staged introduction.

I am Delia Lawrie and I am the Chair of the Committee and with me are members of the Legislative Assembly, member for Drysdale Mr Stephen Dunham, member for Daly Mr Tim Baldwin, member for Barkly Mr Elliot McAdam and member for Nelson Mr Gerry Wood. We are a bipartisan committee consisting of government members, opposition members and the Independent. There are apologies from the member for Millner Mr Matthew Bonson who is detained on business in Darwin. With us is the Secretary of the Committee Mr Graham Gadd, an Officer of the Legislative Assembly as well as Maria Viegas.

This is a public hearing that is being recorded. It is transcribed in the normal manner of Hansard and those transcripts are written up. For the purposes of transcription we would ask if you have anything to contribute you state your name so that we can follow who said what throughout the proceedings. We rely on these public hearings when we inform the committee on its deliberations.

I will kick off by just giving a brief history of why we are here. The Northern Territory Parliament has referred to this committee the inquiry into whether or not the Northern Territory establish an EPA and if so, what structure, what model and we have had some months of research now. We have been to Western Australia and had a look at their model for an EPA. We have been to South Australia and had a look at that model. Katherine is the first of public hearings that we will conduct throughout the Territory. We are going to Tennant Creek and Alice Springs on this particular trip this week and there are also public hearings scheduled for Darwin and out of Darwin.

The idea of being here is to hear from you, members of the community, what your views are on whether or not you would like to see an EPA established in the Territory. Currently we are the only jurisdiction in Australia that does not have one. We do have an Office of Environment and Heritage which has legislative powers to protect the

environment and investigate to make sure that various mechanisms are occurring to safeguard the environment. For example they have the power of EIS's, environmental studies to ensure that any proposed developments are in keeping with the environment's needs.

After that brief introduction I will hand it over to yourselves to see if there are any questions you have or any comments you want to make.

**Mrs CLARKE:** I am Liz Clarke. I would just to ask, with the development of an EPA does that mean that people from each government section has their own environmental officer, does that mean that these people will be taken out of those areas and put in to the one group? Or are you still going to retain these people in these positions.

**Madam CHAIR:** That goes to the issue of structure and structure is an issue that we get to once we have created the threshold view as a committee as to whether or not we create an EPA. The answer to that is not necessarily so. For example in other jurisdictions we received evidence in Western Australia that they have kept their environmental experts in the Department of Mines and Energy and we have got comparative totals of EPA's throughout Australia. Some have, the Department of Environment has pulled together significant expertise from various departments that in the past would have been separate, however, some models chose to keep their expertise within different agencies. So that goes to the issue of structure and we are open to hearing from people such as yourself as to what you think would be the better structure if the Territory was to implement an EPA.

**Mr BALDWIN:** Liz so you have a view on that, about if there was an independent EPA?

**Mrs CLARK:** I think one of the problems that the horticultural sector can see is that we are already having to deal with a lot of environmental things as part of the quality control and so on and a lot of people just view this as an extra thing on top of what is

already here and why we need to go down that path.

**Mr BALDWIN:** Yes and that is a comment that has been reflected in written submissions that we have got from a number of different sources, cattlemen, Horticultural Association...

**Mr DUNHAM:** ... mining

**Mr BALDWIN:** ... mining and it is something that has been raised on our interstate trips as well; do you actually need an independent and another layer and that is the threshold question.

**Mrs CLARKE:** And given that, if you do hold environmental people in those other government departments as they are now, that means we are going to have 2 lots of you know, it has to be an overlap.

**Madam CHAIR:** It depends on as I say a structure. For example some business submissions are that they would prefer a one-stop-shop model. They would prefer one lead agency to feed into where they get their various projects or expansions ticked off on. Whether that is mining or horticultural, a range of issues so again I do not think a jurisdiction the size of the Territory would be looking a model that has duplication in it. If there was a model it would be looking at a streamline model and how you best do that. I do not think anyone in the Territory could see the need for duplication. We are a small jurisdiction.

**Mr DUNHAM:** But there is on the other hand a need to have plurality of opinion so if you go to a one-stop-shop and they have 1 opinion and if it doesn't pick up the diversity in different industries those industries would clamour that they are not being heard. So overlap is 1 way of saying that you should only have 1 person. Singularity of viewpoint is a problem because sometimes the lobbyists in these different groups have different attitudes to how things should go so there is also coming from industry, we have specific and unique needs and we want to make sure that is somehow mirrored in whatever it is you set up so it is not just sitting there as an auditor in judgment of what we are doing, but it is also a facilitator to get stuff done and it also

respects how we do business with our environment.

So that is the trade off I guess. Whether just have 1 group with 1 opinion and 1 layer, or whether you have something that is wide enough to capture all of the interests that come out of the industries. Which is sort of how it is now. I mean mining, water, pastoral, food, you could capture all of those public servants in to 1 instrumentality if you wanted too, but there is probably good argument to say that there are specific and unique needs in some of those that should be uniquely addressed. We want to hear from you pretty much.

**Mr McADAM:** I suppose the other issue too which has to be taken in to consideration is the cost. We are a small jurisdiction and it has certainly been put to me that where possible there should be no cost to industry and I refer to industry across the board, so all of those issues have to be factored into whatever recommendations I guess, that we come up with, that we put to parliament.

**Mr WOOD:** I think the other thing is that people are looking for something where the government hasn't got too much control over it. They are looking for an independent Environment Protection Agency so whether you can combine resources that we have already got with something that has that independence and flexibility that may be it doesn't have at the present time under a CEO and a Minister, whether you can get use the resources we have got and still give independence. I think in Western Australia it was only reportable straight to the Minister and they advised the Minister and of course they advised him in public. They would say this is our recommendation on a particular project and if the Minister decided to override that in public well it is on his head I suppose. So you have got that system or you have got another system where they have got, in South Australia they have nearly got ultimate power.

**Mr BALDWIN:** They have got ultimate power.

**Mr WOOD:** So we have to look at that as well, because which is the best system? And in Tasmania we think that they tend to do it through the department. We haven't

really looked at their system but there may be another option. They are a small jurisdiction so we would certainly like to see how they operate their, I'm not sure they call it an EPA.

**Mr BALDWIN:** No, they call it the Office of the Environment and it is within the departmental structure.

**Mr WOOD:** So there is another option there. I would hate to see what happened in South Australia where they said they started off with 70, I'm not saying we didn't start off with 70, and have now got 210 so you end up with a bureaucracy in itself.

**Madam CHAIR:** Are there any other questions or comments? We really are here to hear your opinion and your questions guide us too in our considerations.

**Mr ETTY:** Yes well that is changing. I am just here as a farmer and as a local. I also live downstream of Mount Todd which I have a few problems with. I wouldn't be able to go along there as an independent person and complain and get satisfaction that they have rights to release tailings, or water in to the Egress River at certain times in the wet season and there is also massive leaks and spills that has gone on there unabated now. If I brought up those problems to anybody it would probably be quite easily be brushed aside or, 'We will look into it and we will get back to you', so that there is the government's unwillingness to investigate things that don't look good and it probably doesn't matter which government it is, it is there and it doesn't look good and it is going to cost somebody money. Now if you don't bring those up you probably have a few more friends possibly, or you might save a river on the other hand. It depends on whether you want to have you know, just be in a nice sort of cuddly guy around town or if you take things seriously and you would like to maintain environmental integrity for a lot longer. And if it takes a group of people to monitor those things who are independent of government and hopefully have a bit of wisdom and knowledge, then possibly it is a necessary evil as much as another layer of government which is not what anybody particularly wants. But I think if you get the right people there it possibly could be a

good thing and may be it doesn't have to be too big to cost too much and quite possibly with the right people there, could save a lot of money and save some foolish mistakes that seem to happen when things get pushed through too quickly and certain lobby groups and other vested interests are unable to make it happen and they do not necessarily have the common good for (a) the environment or downstream people or whatever may be.

I couldn't see it as being a totally bad thing unless you have totally bad people in there.

**Mr McADAM:** I could be corrected on this, but I think the Western Australian model for instance if an industry group were to make a complaint or ...

**Madam CHAIR:** Individuals can.

**Mr McADAM:** ... or individuals, I think there is then a compulsion on the part of an agency to respond. I mean you are not necessarily set aside is what I am saying under the Western Australian model. So there is a compulsion on the part of that agency to actually at least investigate it.

**Mr ETTY:** You can have an ombudsman that deals with business malfunctions or possibly government not servicing people equally and so I mean it is a means of safeguarding water resources and land and the whole sort of environmental future. I don't think unless it was employing or getting people here who had a sort of manipulative style or 1 or 2 progress certain types of industry then it couldn't, you know couldn't be all that bad as long as it is open and honest basically.

**Mr BALDWIN:** John what would you think about, this is right off the top of the head, an environmental advocate that was an officer say of the parliament like the Auditor-General or the ombudsman you mentioned and whilst you might keep all the environmental processes where they are now, that rather than setting up the big independent bells and whistles and all, you had an officer of the parliament that had a compulsion the same way as Elliot talked about to investigate those sorts of issues and also the issues of whether processes are being followed within the department itself? You know, when it comes to say

doing an EIS or whatever. What do you think about that?

**Mr ETTY:** Well it is probably the Holden version of an EPA but it may be government might say that is all they call afford in the Northern Territory and that is how they value the environment and they wouldn't agree with that of course, but if you think you know, it's a cost thing and if that will do the job may be that is enough, the Environmental Ombudsman if you like, as long as the person is credible and can work within all departments then I suppose it is a start and might not create that great big layer of bureaucracy that people might fear.

**Mr BALDWIN:** It is just a thought, I am just asking ...

**Mr ETTY:** Then that puts power in one person which is also a dangerous thing.

**Mr BALDWIN:** It can be, but when they answer to the parliament it is parliament that can actually get rid of them as well.

**Mr ETTY:** Yeah?

**Mr BALDWIN:** It is a statutory position, officer holder.

**Mr ETTY:** Is there anywhere where there is a provision like that?

**Mr BALDWIN:** No, but it is probably a step between a totally independent bureaucratic entity and something that we have got now or in fact Tasmania has probably got. So if you are looking for an advocate to ensure that processes are being done properly and complaints are being handled effectively, maybe it is a step that's all. I am not advocating it. It is an idea that has been put to me so I am running it past you.

**Mr ETTY:** Yeah, well I'd say it is a Holden version I suppose and you know, can't afford the Rolls Royce yet.

**Mr DUNHAM:** Maybe a Rolls Royce is not what you want. It has got to be an appropriate thing rather than the most expensive thing and if a Holden is more appropriate than a Rolls Royce, may be that's what we should look at. We haven't talked about that in committee but the

Health Ombudsman for instance has been set up and that is a pretty good model because what they can do is access files that you as an individual might find difficult. They can go in with the full authority of parliament and pull files out and have a look at them and they cost you nothing. In terms of other remedies through court systems and legal remedies they are pretty expensive. So that is I think may be what we should be looking at, something that is cheap, effective, appropriate for its needs ...

**Mr ETTY:** And if they have the ability to cut right in a go and investigate something like a ...

**Mr DUNHAM:** ... without fear.

**Mr ETTY:** ... this is CIA get out of my way ...

**Mr DUNHAM:** That is how the Auditor-General works and the ...

**Mr BALDWIN:** DPP, all of those, Ombudsman.

**Mr DUNHAM:** John the two leaks, or how many leaks ...

**Madam CHAIR:** You are next Gerry.

**Mr DUNHAM:** Just I just ask about the leaks from Mount Todd, how did you know about them?

**Mr ETTY:** Don't think I'm at liberty to even say it in this forum.

**Mr DUNHAM:** I suppose the point I am getting to, is it is probably good, it reflects on the current system, if you could just use that as an example, you were made aware that there was a leak upstream of your farm ...

**Mr ETTY:** I have actually seen it but ...

**Mr DUNHAM:** So what did you do with it, where did it go? Did you report it?

**Mr ETTY:** Well, I was there with the environmental officer at the time and he actually didn't see it because he was too busy seeing the big picture and couldn't see the little leak coming out of the dam wall and I told him about it and then other people there and then they sort of had rectified that,

at that time and then there has been subsequent leaks, I mean it is 1.5 km this great big thing.

**Mr DUNHAM:** When it was found that your problem was fixed, or it wasn't?

**Mr ETTY:** I didn't go back up there because it is a closed shop. I just went on there on a tour because I was talking to my management at the time about them putting that wet season tailings into the Egress river which, so I was going to bowl out, come and talk to you about it so they all come up and we talked, this after it actually went broke the second time and then we just drove around to look at it because he was like, you know pretty content to do that. But he just went straight past where this thing is leaking and I just said, 'hang on let's go back and look at this' and I said, 'What's this?', and he said, 'Oh, hadn't seen that before.' I couldn't believe it and he's the environmental officer so it makes me really worry and I think it probably needs some more independent people who aren't relating to a job and aren't in a career path that opening their mouth and speaking up might jeopardise that. People just aren't secure enough to be honest about things like that so I think it is a big problem.

**Madam CHAIR:** Gerry you have been wanting to finish.

**Mr WOOD:** I probably don't quite look at an EPA as an ombudsman's type role, I see the ombudsman as someone who comes in after the event has happened. I see the EPA as someone that thoroughly checks out a project, whether it is a subdivision up the road here on the highway, whether it is the wharf precinct in Darwin, whether it is a mine before it starts, it looks at that project to see what the sustainability is and to see whether there are some flaws in the design, what were the environmental issues, could be also heritage. I see that as their role and the people I would see on an EPA are fairly qualified people who can understand some of these issues. I haven't got a problem with the idea of an ombudsman but I see them coming in later if someone hasn't done their job because obviously someone has got to complain about what has happened rather than be the EPA. I think you would run in to the same problem that Steve was

saying before about having 1 person having 1 idea. I would see something like a board that had some people with good technical expertise. They could be also represented by members of the community but I would expect those people to have some fairly good knowledge of what we are dealing with, whether it is subdivisions, whether it is wharf briefings, whether it is an LNG plant, whether it is something else; might be large scale agricultural, horticultural production in an area ...

**Madam CHAIR:** That combine expertise.

**Mr WOOD:** It can bring in people too but I would say they look at the upfront project and they consider that pretty carefully and the ombudsman may come in later if some mistakes have been made.

**Mr ETTY:** Yeah I think that is ideal. I mean ...

**Mr WOOD:** That is a Ford model by the way. Yeah not the Holden one, sorry.

**Mr ETTY:** Forward model probably, forward planning model.

**Madam CHAIR:** Elliot McAdam.

**Mr McADAM:** I think Gerry has basically alluded to what I was going to say because I think it is very important to facilitate, to ensure that the outcomes are going to be compatible across the community. There have been examples for instance where X goes down a certain path and then finds out, 'Sorry, we can't go any further', and that's why I think to me it is very important that whatever the role this group or this agency might have, that quite apart from having an investigative role which is really the end result, which I think is what perhaps Tim might be talking about, I'm not too certain, but I just think there has to be a role of ensuring that best practice is the end outcome and that you have got someone guiding it because half the time a certain element where in my electorate there are certain occasions where someone goes down a certain path only to find out that halfway down they have to go back to step 1. I see that as a role too, in turn, of ensuring that there is good practice. That

standards are met facilitating an outcome. So I guess it just adds to yours.

**Madam CHAIR:** The advice that we received for example in Western Australia was that with a small independent EPA of say 4 to 5 people, it is quite workable working in with in that instance the department, so in our instance it would be the Office of Environment and Heritage. And they had self-referencing powers, they could choose to investigate anything but any individual or industry or government agency, anyone could reference something to them. They did a first cut of that reference if you like, decided whether or not to go ahead and investigate. They would do an initial assessment to see whether it was something they believed should be investigated, that is that it was vexatious or spurious and if it wasn't vexatious or spurious they would then go in to an investigation.

The other aspect of Western Australia that is different and gets, if you like big marks throughout the world, there was a study done by Manchester University on all the world's EPAs and Western Australia came up very highly on their list of very good Best Model Good Practice because they also delve in to the area of policy so they could do an EPA investigation on water and water usage in Western Australia and come out with at the end of that process, guidelines about what they believe would be best practice for water usage in Western Australia. Those guidelines were not binding on government or agencies, but they were there if you like to set the bar at where as a community, Western Australia might want to reach too. They would also look at various areas which were under intensive development, a particular bay area that they did an investigation of in Western Australia a bit like you are starting to see areas around the coast of the Northern Territory become quite popular in terms of possible development sites and they would say, 'Okay, we are going to investigate this whole land usage area here in terms of all the land usage, similar I guess if you like to the Daly River process that we have got going on right now with Farley. It would be that forward planning, bring all the stakeholders in together and then do a comprehensive research about what is most

compatible with the environment as well as the community's sustainable development needs.

So there is that issue that our committee will look at, is if we go down the path of an EPA is it purely, what I all the old style EPA of forward planning and investigation where things have gone wrong, or does it also set policy which are not binding on governments but do set the bar, the guidelines. We heard for example that there is a Canadian model that deals with the indigenous people, the Inuits and that model is very much about 1 member of the EPA would go out with expertise that they have purchased in depending on what the inquiry is about and do a lot of talking, sitting down in groups with people. Now that would probably be more appropriate in a sense of our indigenous communities than highly written submission based models that exist around Australia.

**Ms HILLEN:** Sharon Hillen from the Katherine Landcare Group. Currently through the environmental unit of government, are they more reactive than proactive in that they are not directly linked with development consent for example with large subdivisions, so no environmental impact assessments are taking place at all unless there is, like may be with a large mine or something like that, but is there anything happening proactively today?

**Madam CHAIR:** They are linked in to the EIS process and they undertake EISs, particularly in planning yes, the Office of Environment and Heritage does have that role. We are yet to receive a submission from them but certainly various people I have spoken too believe that they are a toothless tiger and they are pretty weak in the government bureaucratic system and there are varying opinions on that. We have got a former minister here who might want to add to that.

**Mr BALDWIN:** It is very strongly linked into the planning process, the Office of the Environment as it stands today. I think where the grey area comes in is a matter of conjecture as to whether or not environmental assessments should take place and that is something when you, for instance if you get a large development that

is going to happen, where does the decision get made for the need for a PER, an EIS or whatever it is. It is probably a little bit fuzzy so that could be tightened up, there is no doubt about it. But it has worked reasonably well and that will be a matter of opinion that people will have as to when you need an EIS or a major study of any type.

But certainly there are triggers that set it off, but yeah I would have to say it could be tightened but how you tighten it is the thing. Do you put a bar there for everyone to jump over for any little development because the triggers are usually within the planning concepts, probably where they should be.

**Ms HILLEN:** But a decision can be made at a planning concept level and then gets down to the point where large areas, particularly agricultural or pastoral lands are subdivided and clearing and water use is done without any environmental impact whatsoever to date. It just does not happen right now.

**Mr BALDWIN:** Yeah but that the point is you could put it in to the planning process to trigger an environmental process and that happens and it is in there, but we can all think of various circumstances where it doesn't happen, but certainly the triggers can be put in to the planning area. Litchfield plan for instance, any clearing over half of a 5 acre block, over 50%, you will need permission and things. It doesn't trigger an EIS but there is a permission stage and all the rest of it. Now you can put all that in for environmental studies as well so it can go in at that end, but does an EPA, and independent EPA also do planning? That is the question you are trying to answer and if you want them to do planning as well, it is a whole different ball game.

**Ms HILLEN:** My concern is that large scale subdivision of land and then the large scale use of water and land and cleared land by industry is basically about to happen sort of thing in the Daly, and there has been very little environment assessment done on that work. How would an EPA, I mean the current system obviously does not interfere with that, hasn't even had a look in, in that particular process.

**Mr BALDWIN:** Yeah it hasn't happened, but that is the point. The point is that back in the, you might have said back in the 70's when they were doing the Admarr scheme it should have been done there and probably you are right, it should have been probably. If it happens today, let's say it's the Douglas Station and someone wants to subdivide it because that is the one that they are talking about subdividing, is there a trigger to make sure it happens? No there is not, but it is a ministerial discretion at the moment and should the trigger be there? Probably it should and that goes in the planning end of things.

**Madam CHAIR:** Gerry.

**Mr WOOD:** I agree with most of what Tim was saying. I think that 1 of the problems that you have got is that you have got freehold land and you have got pastoral land and you have got Aboriginal land as well in Litchfield Shire which has actually now come in to line with the rest of freehold land in the Territory, you can only clear 1 ha of land without permission and further on from that you require an application to the Development Consent Authority. You have problems I suppose where you have got different types of Development Consent Authorities. In Litchfield you have public meetings where people can attend a meeting like this and put their points of view. In areas like Dundee most of Coomalie, areas that are outside you might say municipal boundaries at least, it is only the Minister and he usually passes it off to 1 of his departmental members and they look at it. I think that system is not good. I think the system for applications for anything relative to planning, except the minor matters, should be at a public meeting. So you have got that issue which would also I suppose, I don't know whether it affects all of Katherine, I don't know whether the farms are in the Development Consent Authority or, this is the smaller farms ...

**Mr BALDWIN:** No, anything outside the town boundaries are not ...

**Mr WOOD:** So, to me that gives you an imbalance straight away. As regards to pastoral properties, I still think that that should be a much more open system and may be that is where the EPA would come

in. At the moment they are only allowed to clear land without permission of the Pastoral Lands Boards I think for homestead, fences ...

**Mr BALDWIN:** Without permission.

**Mr WOOD:** Without permission ...

**Mr BALDWIN:** And boundary fences, that sort of thing.

**Mr WOOD:** The issue I would have is that when they do apply for permission, how much is open to the public for discussion. Again that may be where an EPA comes in, but irregardless of an EPA I still think that a lot of that should be open to the public and I remember when the Douglas Daly was being opened up, I lived on the Daly for a while, I think it was sad that some basic principles hadn't been set down and perhaps it is where land use objectives for these areas have got to be set out clearly where the river, even it was X amount of metres from the river had been declared off limits straight away, it would have been nothing. Even though I do not quite agree with that system, I think you should look on the ground and then say this bit of land needs to be the buffer. It might be 200m this way, might a kilometre that way, it just depends on the way the river fits but at least there should have been something occur right up front at the beginning. Sadly it probably did not happen but at least we are looking at it more closely now. So I think that land use objectives for some of these areas also are very important so that people coming in to these areas know that they cannot do certain things up front and then the EPA knows also that, that is the rules before they make a judgment.

**Mr BALDWIN:** So I think the point is that the *Planning Act* should cover more areas and it should contain the triggers for the environmental stuff and that is what has happened at the Douglas Daly. They have got an interim control order over the place which is part of the *Planning Act* that has been applied by the Minister as the consent authority. He is the consent authority for anywhere outside of municipal areas or anywhere that has got a planning authority so I think it is a good point that it sits in the

*Planning Act* and triggers for environmental concerns.

**Ms HILLEN:** Sitting on the Daly Region Reference Group myself, it is very clear that the 12 pieces of legislation which are basically looking after the environment in that particular area, like you say they have no teeth, they are weak and they certainly do not have environmental protection. I mean they are simply not proactive enough as pieces of legislation to protect the environment. I mean right now, except for what is happening there, I mean potentially industry there could do anything.

**Mr BALDWIN:** Well they can't clear. There is a moratorium on.

**Ms HILLEN:** Well I mean part from this particular situation.

**Mr WOOD:** Are you referring to the *Soil and Water Act* which I used to always like was pretty toothless in the first place. There is nothing to really force people to doing certain actions. They are there but there is not, my feeling when I was on the Litchfield Council was that they were there but they favoured more the developer than the conservation side. But I am not sure the soil was reviewed. One of the Acts was under review.

**Mr BALDWIN:** The *Water Act* has actually got very powerful penalties in it. It is whether or not it is applied and that comes back to what John was saying.

**Mr ETTY:** Well they are only \$2 000 fines.

**Mr BALDWIN:** Yeah, 2 000 units though I think aren't they?

**Madam CHAIR:** 2 000 penalty units, or ...

**Mr ETTY:** No, \$2 000.

**Madam CHAIR:** Most of the changing, that may not have been done. Most of them have been changed over to penalty units but that might be one piece that isn't.

**Mr HIGGEN:** David Higgen, Katherine Horticultural Association. Firstly I apologise for being late, we had a call at a late stage. So my question may well have been

addressed earlier on. I am just curious as to what is driving the thrust for establishment of an EPA? Is it for example the notion that the electorate arm of government does not trust the bureaucracy to implement appropriately the existing legislation? If so I find that puzzling and if not, what is the issue? Why do we need an EPA rather than bigger teeth and a bigger axe included in the legislation that was referred to a moment ago, for example?

**Madam CHAIR:** Okay, the answer to the question simply is there was an election commitment made by Clare Martin as Leader of the Opposition prior to the 2001 election that if elected a Labor government would consider introducing an EPA. The process the government identified for that consider was not a government process, but a parliamentary process. We were referenced as a parliamentary committee. We are the Environment and Sustainable Development Committee so the government could reference across to this parliamentary committee to, and I read the words:

*Look in to the efficacy of the establishment of an Environment Protection Agency for the NT, inclusive of but not restrictive to arguments for and against the establishment of an EPA, options for the structure of an EPA taking in to account the demographic, geographic, financial context of the NT and if a particular model is recommended, options for its staged introduction.*

So there is a threshold issue of whether or not the committee would recommend the establishment of an EPA. That issue hasn't been resolved by this committee because we are undertaking public hearings as well as a lot of research into this issue and if the committee agrees with the implementation of an EPA for the Territory, what type of model would be appropriate for the Territory, given the particular aspects of the Territory.

**Mr HIGGEN:** Okay, I guess my concern is that it becomes another body. Another arm of government. My question I guess, possibly rhetorical, would be why not, like the notion of 2000 penalty units, I understand a penalty unit is worth \$110

today, that is \$220 000, that should be a reasonable, just for starters, a reasonable inducement for people to play the game. If there were triggers and checks and balances through the existing legislation then it would seem to me that, that prima facie would be quite an appropriate way to go down the track. I guess I also would have a concern about the EPA being comfortably beyond the reach of government. It seems to me that government and its agencies are, or the government is elected and its agencies are presumably charged with implementing the will of the government and hopefully that also reflects the will of the people in this democratic system that we operate under. I would be a bit concerned that something such as an EPA and obviously that hasn't been defined other than by name, could be perhaps a bit beyond that process. I would be interested in your comments.

**Mr BALDWIN:** Well you did miss the preliminary opening by Madam Chair here and that is that there are EPAs around Australia, models, that are completely independent of government. The South Australian model would have to be the best example of that where they operate, is that right?

**Mr HIGGEN:** No.

**Mr BALDWIN:** No? Who do you reckon is more independent?

**Madam CHAIR:** WA is the most independent, but again it is not binding on government. So what Mr Baldwin is getting too in terms of South Australia is, their decisions are binding.

**Mr BALDWIN:** That's right, so it is more independent.

**Madam CHAIR:** It is stronger. It is not necessarily perceived as more independent because the Chair of the EPA is also the CEO of the Department of Environment so I guess the perception of independence is not necessarily as strong as the view that Western Australia is very independent because they are separate. The Chair of the EPA is not the CEO of the department. They are 2 separate positions; they are quite separate entities, obviously though

EPA decisions if implemented and drilled down, are drilled down by the department. But the government, the Minister makes a call on whether they accept or reject those decisions of the EPA. So to your issue of the democratic process and the will of the people, there is an example in Western Australia where the EPA have rejected a proposal for development and the government of the day has decided to go against the EPA's decision and are approving the development. Again that goes to the issue of structure. How much independence do you give them, what weight do you give ultimately the Ministerial responsibility, or do you do the triggers to parliament which also another model that has been raised by various members of this committee, do you allow the triggers to be bureaucratic triggers rather than separate to bureaucracy? There are all those structural issues that we have got before us.

**Mr BALDWIN:** And to just add to that, the South Australian model is that when they make their decision it is binding on government. So to me that is a higher level of independence in 1 form so you can have any range you like. The thing that we have got to come up with is what level, no they don't have planning we are talking the decision making.

**Madam CHAIR:** The South Australian model doesn't delve in to issues of planning whereas Western Australia does, so again it depends on the structure. Western Australia do not have direct involvement in mines and energy but they have links to them though.

**Mr HIGGEN:** Is that really a reflection on those groups then? Are they really reflection of the situation where you ask 3 experts and get 4 different opinions, absolutely, logically and precisely, argued according to science and all the best information on the day?

**Madam CHAIR:** The advice from Western Australia and South Australia is that depending on the people the system either works or fails.

**Mr DUNHAM:** I think your query is pretty good. I mean essentially you are saying, 'You made your mind up', I don't know, I

think government's got its mind made up. The promise looked pretty clear to me. Basically it said we don't have one in the Territory, the left does and we will give you one...

**Madam CHAIR:** No it didn't.

**Mr DUNHAM:** So we are saying, well may be not ...

**Madam CHAIR:** That is not true.

**Mr BALDWIN:** But we are sent out now to define that thing and we will go back to parliament and we will make recommendations, but they don't necessarily have to be taken into account either.

**Madam CHAIR:** That is right.

**Mr BALDWIN:** So there is a lot of steps to this thing and we are now in our 3<sup>rd</sup> year into this term of parliament so in the next year it could well be that this thing starts to move pretty quickly and we use as our justification for meetings such as this that we have consulted with you. We understand the views of Territorians and here are our recommendations. It does not necessarily have to mean that it will be shaped in any way such as this and there are some of us, and I am one of them, who are sceptical about even this process. Whether we are just set off on a feel good thing where go around and hug people and at the end of the day government may well have had its mind made up. So I think they are issues for us to judge further down the line, but we will put our best endeavours in to it, to describing how this thing might work. And for me I am a pragmatist. I reckon it has got to work on whether it works. You have to work out what its job is and then work out a structure to do that and if we can do it better with what we have got, they are obviously recommendations that flow as option may be (a) or may be (b).

So if Acts aren't being implemented because of the will of various bureaucrats or the penalty clauses are not strong enough, they are easy remedies. That is easy stuff to fix. So let's see where we go, but at the moment we are in the, we don't know, we haven't got our minds made up and we are

asking you. And like I said, there are some, including myself, who are sceptical about that.

**Madam CHAIR:** Gerry.

**Mr WOOD:** David may be I have got it wrong, but the general feeling I have got so far is that there certainly is a range of industry groups who see it as another layer of bureaucracy and oppose it, whereas most of the environmental groups and others support the concept. So someone is going to have to find a balancing trick and people make a decision one way or the other. You would have to also look at what sort of projects if it does come in to existence, what sort of projects should it look at. As I think Tim said before, we aren't looking at little minor 2 block subdivisions on 5 acres down the road. You wouldn't expect the EPA to step in unless it was to subdivide the Egress River or something, but generally speaking I would imagine you are looking at projects that have got some fairly large scale environmental issues involved and the other thing is, I know people have been talking about different models, we do have a Development Consent Authority and I do wonder whether something like that could actually have an Environmental Protection Agency attached to it so it could trigger itself and say listen, this project requires us to have a much more independent assessment of that outside of the department and if the Development Consent Authority meets you would come in and there will be a department sitting on the other side there who will put forward its ideas, their government's ideas, but whether really in some cases you need an Environmental Protection Agency which will come in and say, 'No, no, we are giving an independent assessment, we don't agree with the government, etc. etc.'

I take your point. I would hate to see something that (1) is over-bureaucratic and expensive and (2) held up reasonable development ad infinitum. Not that I don't think that you should seriously look at certain development, but I think there were cases in Western Australia where some development took an awful long time to get approval because you also have third party appeal and if people were just being nasty

and vexatious and didn't want to accept the final decision, it could drag things on for a long time.

**Madam CHAIR:** They could also be dismissive of the vexatious though.

**Mr WOOD:** That's right. But you, whatever you want I think its got to be efficient. Its got to be effective, I think efficacy means, and I think its got to, and the people have got to support it as well. If people don't support the EPA, if they haven't got any faith in it then it is never going to work.

**Mr HIGGEN:** I guess it concerns me, John's example of going for a walk with a departmental officer around the banks of the Mount Todd mine and 'Hello, what's this sort of goo here?'. 'Oh don't know mate, didn't see it before'. Well that to me really implies a failure of that department to be on the ground and looking at stuff.

**Mr ETTY:** He's actually working for the mine. He wasn't a departmental person.

**Mr HIGGEN:** Well perhaps there should have been a departmental officer.

**Mr ETTY:** Unfortunately, it wouldn't make much difference.

**Mr HIGGEN:** Because that to me, to me that is a failure of process. There should have been somebody there paid to do that sort of ...

**Mr WOOD:** And perhaps, through Madam Chair, I raised the question in parliament about the rehabilitation of Mount Todd and was there enough money. Now we are looking at it after the event. It should have been at the beginning, an EPA set out exactly what money should be set aside and someone making sure there is money in the bank if it does go broke and in this case we tend to have a mine where there isn't enough money to do the rehabilitation so your EPA needs to be up front and hopefully you don't need the ombudsman person later on to say, 'Why did it all fail?' If it is done correctly then if it does fail then there are already guidelines in place to make sure that the mine is closed down and rehabilitated.

**Mr ETTY:** Well it shouldn't have started up without having that money there because its too big a disaster and the rest of the community is going to cop the bill in the future and if they don't tidy it up then you are going to start having sulphides and all the other rubbish that is still up there and bleaching through, its going to affect the river system. And you get rid of that river system and then you have got other problems somewhere else.

**Mr HIGGEN:** I have got to argue with Gerry. That could have been a job or a task that fitted fairly and squarely within one corner of the Development Consent Authority appropriately modified or expanded or whatever.

**Mr WOOD:** Well you are probably right there. Sometimes I used to have with department over certain developments; middle of the harbour would be a classic example. I reckon that would be a classic place for an environmental protection agency to look at industrial development in the Darwin region. Independent and then at least I would probably have more faith than what I see coming out of the department. So I think there are cases where we should an independent body looking at those things. I think mines, especially gold mines should have perhaps an EPA look at them before they get off the ground.

**Madam CHAIR:** Any other questions, queries, comments.

**Ms HILLEN:** Sharon Hillen from the Katherine Landcare Group. From my experiences in the last few meetings with the Daly Regional Reference Group it seems that there is a lot similar discussion about watchdog bodies, legislation, weak legislation that needs to be changed, stand alone committees looking at integrated catchment management. All those different sorts of things are being discussed and the draft plan is about to be written and I would just recommend that your committee actually maybe look into some of the minutes or some of the comments that have been made about the structures that are being developed out of that process. It seems from trying to gather all the best information that government has to date in the Douglas Daly considering there has

been activity there by government for the last 30 years or so that the information is very poor and that it is very difficult to make informed decisions about how to best protect the environment and cultural values of an area in line with sustainable development. There just seems to be a very small amount of good information about environmental values and cultural values and there is not a lot of information to actually make informed decisions about and if an EPA or something were to be in place and an isolated body or independent body could actually provide this group for example, the Daly Regional Reference Group with some ideas because what is happening within government is not, and the information that government has, has not been compiled over the years, and they have like 46 years of water data for example, none of that information has actually been compiled to look at how best we can use it and protect the environment and use it for industry. The information and the way it has been compiled is actually quite restrictive and it is just levels and things like that.

**Mr WOOD:** Through Madam Chair, I would just like on issues of water I gather, and I may be wrong here, that the Commonwealth stopped funding monitoring sites. When I first came to the Territory you would see monitoring sites, those pipes on the rivers everywhere and many of those sites are not used any more. I suppose you could even look at saying to the Commonwealth, 'Have you failed to some extent as well?'. I know those sites are used in the Litchfield Shire, the few of them that are left they are used for monitoring water into Darwin harbour so that is something that needs to be looked at as well; pick up the role of the Commonwealth because we do only have the National Rivers Review, well it wasn't a review. They were doing surveys of the river and I don't know what has happened to that as well.

**Ms HILLEN:** It is just of interest that similar things are being discussed in this forum and that there is some potential of some duplication with the recommendations that are going to come out of the Daly. So I just thought it would be good for you guys to look into that window to see, especially the difficulty that we are going through trying to

come up with something that is sustainable and...

**Mr WOOD:** Is yours the Rick Fallu group, or...

**Ms HILLEN:** Yes.

**Mr WOOD:** Because I mean Rick hasn't had his Darwin meeting yet as well, so I was just wondering when you said they are going to come out with a...

**Ms HILLEN:** No, we've got another week to actually put in our own parts of the text and things. By the Darwin meeting there will be a draft document that the group looks at.

**Mr BALDWIN:** That the group looks at, and then August.

**Ms HILLEN:** Yeah, it is being written now.

**Mr WOOD:** And would I be fair to say, you have a catchment about a third the size of Victoria and I think people keep forgetting that this is a pretty mammoth piece of land to deal with and all sorts of geography within it. If you are going to come up with a real recommendation that someone can say, 'I believe that is a good recommendation', we hope that all the information that has come in to your body has got something scientific behind it to base it on, or cultural or whatever.

**Madam CHAIR:** I think where this is heading has been useful, but we are not here to go over the Daly Region Reference Group. I pick up on what you said Sharon and we will actually link in to that process because as you said, there has been a fair amount of identification of Acts, legislation in terms of their strengths and weaknesses ...

**Ms HILLEN:** ...and structures.

**Madam CHAIR:** ... and structures in terms of what the reference group is dealing with and I used it as an example earlier on as something that elsewhere in other jurisdictions, EPA's actually do that body of work and create reference groups like the one you are on to do that body of work, so it is appropriate and certainly our secretary will gather that information for us.

**Ms SHEPHERD:** Anne Shepherd. I certainly support the establishment of an EPA. I wonder though about residential subdivisions and how it would apply there and I have to think if Katherine East where a large section of that subdivision is drained in to an aquapond that goes in to the Katherine River and it is after the event again, but I think that we really need to apply it to residential subdivisions as well. Particularly when there is underground water involved.

**Madam CHAIR:** South Australia applies theirs to residential subdivisions and again it does a larger picture rather than a small picture so that was something Tim Baldwin raised before. It is about identifying a structure, whether the EPA has planning in the Territory because our Office of Environment and Heritage already links in to EISs in terms of planning, it would be strange to then take that away if you are creating an EPA structure so that the likelihood is that whether we go with what we got or whether create something improved or enhanced depending on how people look at it, or more bureaucratic or problematic, it will most likely have planning in it and yes, looking at the way things work in other jurisdictions, subdivisions would be appropriate because they are the planning before the event and looking at issues, we had a look at a few examples when we were away in the other jurisdictions of how they identified where drainage goes, the ----- environmental impact around the subdivision. Western Australia even gave us the example of subdivision issues that the community had referenced to their EPA. I couldn't see one sitting without involvement in significant subdivisions.

**Mr ETTY:** Just wondering, would an EPA have the ability to call in any science or documentation ...

**Madam CHAIR:** They all do.

**Mr ETTY:** Whichever is sort of applicable, and the greatest knowledge available to make the best decision.

**Madam CHAIR:** The reality of an EPA is that you can't have the complete body of expertise sitting within the work they do because its land, its water, its air, there is a

whole vast variety of environmental issues whether it is planning or mining or land clearing, horticultural issues, they are all quite significantly different and they require different expertise. Every structure, every model we have looked at, every one that exists if it requires any expertise, that expertise is either expertise from within government agencies, expertise from academics, universities, environmental scientists, there are some private consultancies around that they buy in. There is a whole range of expertise out there that all EPAs say, right we are doing, we require XYZ expertise on this process and if they don't have it within their own store of experts, they purchase it in. They couldn't do it otherwise.

**Mr ETTY:** Right so it gives you a greater pool of knowledge which we probably aren't lacking at the moment but certain acts, or certain departments might only call 1 person who has only been in the Territory for a couple of years and may not be here in 2 years later, so someone new comes in and they've got the turnover of new people who have the qualifications but not necessarily the on ground experience, so we don't really have the benefit of many years of knowledge and then they possibly leave because of financial constraints, can't afford, or because of politics within a department can't or won't bring in somebody else so there just seems to be a lack of coordination and cooperation in some of the environmental areas.

**Madam CHAIR:** And again the strengths and weaknesses, often its how much they consult with the various stakeholders. There is no use having a process that is separate too the community, the industry, the environmentalists, whoever has got a particular view. A bit like the Daly Region Reference Group. If it was just going ahead with the process without any consultation with the various stakeholders it would fail. Any EPA structure would have to have consultative processes in its layers.

**Mr BALDWIN:** Any EPA John would have to also operate within its budgetary constraints like any other authority...

**Mr ETTY:** Everybody does.

**Mr BALDWIN:** ... so you are still going to have that problem and just on the other side, in fairness to the department of infrastructure, planning and all those, within their budgetary constraints they have got the access now to go and pull in any type of expertise they like and they do, very regularly, through consultancies and all the rest of it without ministerial approval, so long as it is within their budget and it is within the program area that they need the expertise. We have the argument about, is it the right expertise and all the rest of it, but they can do that now. Whether they do or not is another thing.

**Madam CHAIR:** Gerry.

**Mr WOOD:** I mean one point of discussion is sometimes when there is a big project a big company is required to get an EIS and of course it hires that company to do it and I don't know whether any company has ever had an EIS which has said it should never go ahead. And maybe that is where the role of the EPA is because it might decide that it will bring in a consultant to do a job itself just to help itself come up with a conclusion about a particular enterprise that has been put forward.

**Mr BALDWIN:** That happens now Gerry. Under an EIS what happens is that the company pays for it, but they have to go with the selection of the department, the Office of the Environment. The Office of the Environment and the Minister actually choose them.

**Mr WOOD:** I haven't seen one that they have actually employed, so far. The ones that I have seen in the Litchfield area.

**Mr BALDWIN:** What, that they haven't recommended to employ.

**Mr WOOD:** No that they have employed because its been ...

**Mr BALDWIN:** No they pay for them.

**Mr WOOD:** That's right.

**Mr BALDWIN:** But it is chosen by the office.

**Mr WOOD:** I will have a look at that because the ones that I have seen they have been chosen by the company. And I agree that that is the way it should be and I am told that New South Wales for instance, and I may be wrong here, but if you are on a council area where planning is different than the Northern Territory, the council can say, 'Well that is the company we picked but you pay for it.'..

**Mr BALDWIN:** The same applies here.

**Mr WOOD:** ... so it reports back to the council.

**Mr BALDWIN:** There is a lady that has just retired that should be sitting here, Barbara Singer, that could tell you the whole process. She is very good and she has written a submission.

**Madam CHAIR:** We wrote to every government agency and we are getting their submissions in at the moment and that includes obviously the Office of Environment and Heritage so all the significant industry groups are providing this committee with submissions. Obviously the environmentalists are providing us with submissions as well as government agencies.

**Mr ETTY:** So who will make the final decision?

**Madam CHAIR / Mr BALDWIN:** The government.

**Madam Chair:** We only make recommendations to parliament as a committee and government can chose to reject or adopt our recommendations.

**Ms SHEPHERD:** Delia when would you expect it to be finalised, or the recommendations go to ...

**Mr BALDWIN:** Before the next election.

**Madam CHAIR:** Apart from the cynicism, we are what is called a Sessional Committee. We only exist for the life of this parliament, so yes we do have that timeframe hanging over our head. The committee is hopefully of this year, but it may not be until the later sittings this year

though, given the body of work that we are getting through.

**Mr WOOD:** I think David might have missed the beginning, we are interested in the Tasmanian model because it is different than the others because it sort of hangs off the department rather than we think, they haven't quite said how the model works, but from what we have heard it is more an adjunct to the department rather than as set up in other places. We would like to see how it works because we actually met some environmental consultants in South Australia, when I say we not this group but Tim Baldwin and myself met a company that was doing major rehabilitation work throughout Australia. In the plane that went from Perth to Adelaide I just happened to be sitting with the boss of the company and he invited us around to see what they did. When we asked 1 of the people that actually physically does the work which is the best state for getting a result, that is you get the tick when you finish your work, they said Tasmania. And we said, 'Why?' and he said, 'They still work within a department.' So I think we really are ...

**Madam CHAIR:** They are still logging old state forests, old growth forests in Tasmania too.

**Mr DUNHAM:** Ohh, salmon might be polluted and Canadian ...

**Mr WOOD:** I could probably say, without the cynicism as well, I think we as a group should at least look at what system is there simply because they are a small jurisdiction just the same as us and even though we are bigger, they would still have isolation issues as well because they have got large areas of wilderness and to some extent we have the same. So I think we should at least be looking at all sides of the story before we make a decision. And we will not make the final decision, we will only make a recommendation.

**Madam CHAIR:** We may indeed not be able to agree as a committee and in that instance 2 reports will go to parliament. There can be dissent.

**Mr ETTY:** There might be 3.

**Madam CHAIR:** There could be 3.

**All:** There could be 5, or 6.

**Madam CHAIR:** We were able to reach consent on the issue of cane toads, but whether we reach consent on this remains to be seen.

**Mr WOOD:** We have just got to get them to agree in putting the fence up. (laughing)

**Mr DUNHAM:** When you talk about timing, the cane toad report dropped in October last year and it just got passed 2 weeks ago so it took several weeks even to be debated in parliament so this can be a bit like making laws. It can take a long time and at the end of the day there is 13 blokes in government and essentially what they want will happen.

**Mr McADAM:** There is nothing unusual about that, is there? (laughing)

**Mr DUNHAM:** But it doesn't mean that you can't use a device such as this to make sure you are on the, this is all transcribed all for the parliamentary record. You are all essentially giving evidence under oath almost the same as we do in parliament, so have your 2 bobs worth. Put in a submission even if you are too late here to make sure we hear from you. Because at the end of the day, whatever it is we all live with it whatever we come up with.

**Mr WOOD:** Madam Chair. This is not the fountain of all knowledge and the reason we come down to these parts of the world is to hear what you have to say because you might have some ideas that are great and that is what we need, we need to pick out the best ideas that are being given out throughout the Territory. I will certainly be listening to other ideas that people have. My biggest concern really is that we don't start up something that becomes the snowball going down the hill that we can't control and it gets too big. If we can make something that is tightly knit and doesn't cost the world and does the job, well that is probably where we should be aiming for.

**Ms CLARKE:** What about Queensland, what do they have?

**Madam CHAIR:** Queensland has an EPA linked to the department and they are very, very, very large. They are one of the larger EPA models around in terms of jurisdictions. They have brought in various other government agencies together in to their Department of the Environment. They get involved in everything the Queensland EPA and the CEO of the department is the Chair of the EPA, similar to the South Australian model, but bigger. I think there though the government, again the Minister makes a final call to except or reject and you will find that in pretty well all the instances except South Australia. Some people see there is a checks and balance in that. Western Australia has a very strong appeal system because the independence of their EPA and there is meant to be 4, that can delay it. The Appeal Commissioner we spoke to in Western Australia from the EPA there, he saw his role as a facilitator, as a negotiator. He reached negotiated outcomes for EPA decisions, rather than enforcing a result, he went back and quickly renegotiated through a process. Again you have to look first of all at the threshold issue then the structure and then see where your checks and balances go in to that. Whether you have an appeal process or whether the ministerial discretion is the ultimate process.

**Mr ETTY:** Is there any option to regionalise it?

**Mr BALDWIN:** Yes, right across the Territory. That is the option. You mean across jurisdictions or within the Territory?

**Mr ETTY:** Yeah, within the Territory. I mean we have a Darwin Consent Authority which certainly works within Darwin region but doesn't involve consent in Katherine.

**Madam CHAIR:** Dependent on the structure, if you had just an independent EPA with 4 or 5 people on it separate to the department, obviously in the context of the Territory you would try and chose someone from Central Australia, to be 1 of those 4 or 5, someone from a horticultural/pastoralist background perhaps to make up that 4 or 5, so wether that comes from the Katherine area. If it's a departmental structure you would be tapping in to your existing regional officers.

**Mr BALDWIN:** But the answer is yes John because that is how the planning authorities do work. You have Darwin, Palmerston, Litchfield, Katherine, and Coomalie as small entities that have a common Chair through the whole lot. Now whether or not you have to move a body of people that stay consistent and then pick up a few locals as you go around, who knows. That is about the structure, but you could do it, it is not impossible.

**Madam CHAIR:** I don't see how you can get away without it.

**Mr WOOD:** There are pluses and minuses for either argument. You could argue that by having one aloof, you might say from the local political issues, they can come up more independent answers and it depends I suppose on the project you are looking at. It might require someone to be a little bit separate from some of the local politics. I can show you now the Litchfield Development Consent Authority has 2 members from the government on it. They have no relationship at all with Litchfield which is sad from my point of view, especially when you are dealing with local issues. So I can see that there can be pluses and minuses depending on how it is set up. It may depend really on the project that you are talking about. I haven't got an open mind on that one yet.

**Madam CHAIR:** Any other queries or comments? Members, committee, anything else you want to add.

**Mr BALDWIN:** Well we are open until 7.30, we can just chat amongst ourselves.

**Madam CHAIR:** Yes, but be aware that Maria is working. If we have exhausted our questions and comments I will formally close the Katherine public hearing of the Environment and Sustainable Development Inquiry into whether or not the Territory establish an EPA. I thank you for your attendance. We do have light refreshments so we invite you to stay around and chat individually to members of the committee. It is an opportunity obviously to continue some of the discussion we have had here today and we really appreciate the

attendance that you have given us. Thank you and it is formally closed.

**Mr GADD:** Can I just say something from the South Australian experience. They are busy at this stage trying claw back development proposals because the developments are all stuck with the local councils. So the EPA there is trying to clamour back those sort of development projects where they have got stone quarries in the middle of residential areas. Inappropriate industries next to residential areas, all that sort of thing. They are trying to claw back that development process. I think the Territory is a lot further in front than that, because the development is central.

**Mr DUNHAM:** That is one of their major concerns. They can set the policy and guidelines but they don't have any control over what is actually happening in the little regions.

**Mr BALDWIN:** The point is that in most other states of Australia planning is at council level whereas here it is with the Territory and not at the council. Ex-councillor over there might argue differently.

**Mr WOOD:** Oh no, well I think again that realising again, has a go at local government controlling planning, it's probably a matter of keeping things in perspective. I have no problem with the government running overall plan for the Territory and it depends how far you bring that down, but I think that local government can certainly handle a waiver of whether a shed should be within 20 m of a boundary. I think that is the sort of stuff that should be in the Development Consent Authority. It should be handled at least at a council meeting, so it is a matter of where you draw that line with regards planning which is local and which is Territory and really, I suppose you could argue which is for the better.

**Mr BALDWIN:** That's what we are asking you Anne, what do you think.

**Ms SHEPHERD:** I think that planning should be with local government.

**Mr DUNHAM:** Labor supported that once but they changed their minds.

**Mr BALDWIN:** Now they are way too tricky.

**Mr WOOD:** And that will only sit within the guidelines you are given anyway.

**Mr BALDWIN:** Old toxic industries going back 50 years that the councils haven't kept records of where the dumps are and where the toxic wastes and stuff are. It's all gone.

**Ms SHEPHERD:** They weren't toxic 50 years ago, though were they?

**Mr DUNHAM:** But you are now getting to the stage where they are building on top of ground and they don't really know what's underneath and been there before.

## TRANSCRIPT NO. 5

**TENNANT CREEK PUBLIC HEARING**

Tennant Creek Town Council Chamber  
Tuesday, 1 June 2004

**PRESENT:**

## Committee:

Ms Delia Lawrie, MLA (Chair)  
Mr Tim Baldwin, MLA  
Mr Stephen Dunham, MLA  
Mr Elliot M<sup>c</sup>Adam, MLA  
Mr Gerry Wood, MLA

## Apologies:

Mr Matthew Bonson, MLA

## Secretariat:

Mr Graham Gadd (Secretary)  
Ms Maria Viegas (Administrative/ Research Assistant)

## Attended by:

Mr Rod Swanson – Tennant Creek Auto Spares  
Mr Dave Wormald – Tennant Creek Town Council  
Mr Mike Fogarty – Peko Rehabilitation Project Pty Ltd  
Mr Michael Dougall  
Mr Peter Egan  
Mrs Gayle Dougall – Barkly Electorate Office  
Ms Naomi Bannister  
Mr Neil Price – Department of Business, Industry and Resource Development, Mines and Energy Division  
Ms Colleen Westover – Barkly Landcare

**Note:** *This transcript is a verbatim, unedited proof of the proceedings and should be read as such.*

**MADAM CHAIR:** I will declare open the Legislative Assembly of the Northern Territory, Sessional committee on environment and sustainable development public hearing in Tennant Creek, thank you all for attending this evening. The committee has been provided with terms of reference from the Northern Territory Legislative Assembly. Our terms of reference are to inquire into the efficacy of

the establishment of an Environment Protection Agency for the territory, inclusive of but not restricted to, arguments for and against the establishment of an EPA for the NT. Options for the structure of a EPA taking into account the demographic, geographic, and financial context of the NT, and if a particular model is recommended, options for its staged implementation. That in a nutshell our terms of reference, so we've had the threshold issue before us, of whether or not we recommend the territory create an Environment Protection Agency, or an Environment Protection Authority, and if we do recommend it as a parliamentary committee, what structure and what nature of implementation. Recommendations of parliamentary committees goes to the parliament, government can choose to adopt or reject those recommendations. We are a bipartisan committee, we have members of opposition, and government on the committee, it's the nature of committee such as this, that the government chairs a committee, and we also have the independent member for Nelson.

I'll just take a moment to introduce the committee to you, I'm Delia Lawrie, I am the member for Karama, and Chair of the committee. With me is your local member here, the member for Barkly, Elliot McAdam, also I have Gerry Wood, the member for Nelson, Independent as I mentioned, and the member for Drysdale, Mr Stephen Dunham, and member for Daly, Mr Tim Baldwin. Assisting us very ably, is our committee Secretary, Mr Graham Gadd, and Mary Viegas, over in the corner.

You see recording equipment in front of you, it's because we are being recorded, this is transcribed, just as we do with Hansards, so what you say is on the public record, and will be minuted and published as part of the committee's finding, it is a open public hearing, and we thank you for attending. What I have done, because ...

interjection...

**MADAM CHAIR** contd... Yes, if you do want to say in something in confidence, you can let us know, and we will make arrangements for that to occur. What I've

done in public meetings, is to just give a snapshot of what we've done as a committee to date, and what we're about. The public hearings, we were in Katherine yesterday, and we'll be in Alice Springs tomorrow, and we'll hold 1 up in Darwin, and then make an assessment of where else we go to in the territory if required. As a committee, we spent the initial months of this inquiry researching EPAs throughout Australia, we've pulled that information together, and collated it, so we have a basic knowledge of EPAs, and how they exist and operate elsewhere in Australia. The Territory is the only jurisdiction left in Australia without an EPA. We're now obviously in the public hearing phase, but we've also been receiving written submissions. Graham how many written submissions approximately do we have?

**Mr GADD:** About 38, 28 sorry.

**MADAM CHAIR:** 28 written submissions from all major stakeholders, the Environment Council, the Minerals Council, local governments are feeding into the submissions process as well, so there's that body at work. We visited Western Australia, in Western Australia the EPA there is rated amongst the best practise models there in the world, by a study done by Manchester University. In Western Australia they have an independent EPA, they have a few members of the EPA committee, who sits separate to the Department of Environment, and they make their decisions, those decisions however are not binding on government, the Minister can accept or reject the decisions, and there has been a notable case in Western Australia where that has been the case.

We went over to South Australia, a very different model to Western Australia, South Australia, the EPA committee is actually also attached to the department, because the Chair of the EPA is the CEO of the Department of Environment. So 2 different models have been researched by this committee to date. In a nutshell that is what we've been doing, we are very keen to hear from the public, from industry, from all stakeholders, just their views, and what we have found in going around and talking to people, is they have many questions of us,

and we'll answer them as best we can. Do any other members of the committee have anything to add to that.

**Mr DUNHAM:** No, I think you've covered it well.

**MADAM CHAIR:** Thank you. So at this stage, we'll just leave it open for any comments, or any questions that you may have. Each of you have come along with some interest obviously.

**Mr DUNHAM:** That, was a quick meeting.

**???:** Well are you looking at a particular model? Western Australia model, South Australia model.

**MADAM CHAIR:** We're looking at all the models, because as a committee, we haven't made the threshold decisions obviously as to whether or not to have a EPA, and that, it would have to be based largely on the response that we receive, throughout the Territory, assessing the submissions. Each model has strengths and weaknesses, in Western Australia they said that, they are considered as I said as one of the best practised models in the world, that people like the independent nature of the EPA, that they had a lot of faith in it, as because it was so independent, however in talking to the Chair of the EPA, he said the problem was in the decisions weren't being drilled down into implementations. So sometimes they'd make decisions that in a practical sense you couldn't implement, because they didn't have that close connection in a departmental sense. To overcome some of the concerns about the nature of decisions of such an independent EPA, that had an appeal process, we also heard from the appeal commissioner there, and he said that the bulk of his work he negotiated outcomes. So if there was a EPA decision, that was appealed, he then went on a conciliatory and negotiated process to negotiate the outcome between the stakeholders.

Western Australia doesn't get as involved in, they've kept mining operationally in the mining department in terms of the environmental officers, but the EPA does oversee that process. So operationally,

mines continues to do the environmental auditing, off the mines, but there are references to the EPA. So the EPAs kept informed of what's occurring in the sector, and there are some triggers, that if they need to something will feed up to the EPA itself. The EPA in Western Australia is self referencing, it can choose to undertake an inquiry by it's own volition, but any member of the public can refer any matter to the EPA in Western Australia, so it's, if you like, quite broad powers in that respect. They do a first wash on those references though, if they are found to be vexatious, or not necessarily requiring a EPA investigation, they reject the application. Though in that sense, it's got some strengths and weaknesses in there, so say they have issues with implementation and drilling it back down into the department.

In South Australia, they think they've got a good model there, they found it to be a robust model. They don't have as much involvement in planning issues, as Western Australia does, planning has stayed in the Department of Planning, whereas the Western Australian EPA involves itself in, making subdivisions for example, planning around major subdivisions. But yet they say, having the whole resources of the department is of enormous benefit to them, they've got the water experts, the soil experts, the air experts, the noise experts all at their finger tips. The difference between South Australia, and Western Australia again, is Western Australia has moved into policy, they are setting environment policy, they undertake an inquiry, 1 inquiry they told us about was a bay area of the coast of Western Australia which is starting to become quite popular in terms of development, so they define an area, and said that they will investigate that area, and they came up with best practise, for it's future development. That again, is only guidelines, it's not binding policy on the government, so they were moving more into establishing environmental bars, and that was seen as a progressive step internationally.

That you know, the Territory again we're a small jurisdiction, if this committee was to recommend an EPA, we'd have to look at the practical aspects of that. I don't think anyone would be looking for duplication, for

starters. You know, there's no massive resource out there that we can wack into the Territory budget. I might that just at this stage, ask you to do, if you like to identify yourselves, who you are, as a way of breaking the ice.

**Mr BALDWIN:** Before you speak, so that Hansards for recording purposes.

**Mr WORMALD:** I'll start if you like, if everyone's shy. I'm Dave Wormald, I'm the CEO of the Tennant Creek Town Council. Can I just say that the current council, which will change next Tuesday night at 7 o'clock, has said that they support the establishment of an adequate Environmental Protection Agency in the Territory, and they have also said that they would be happy to comment on any options, both on the structures and so on that you are then addressing tonight. Unfortunately we haven't at this time, you probably know from elsewhere, that local government is sort of a bit hectic at the moment, we're in the middle of budgets, and rates, and business plans, and the new councils. So we really are quite busy, and we really haven't had time you know, and I haven't got spare staff to address it, and I certainly didn't have time myself. We also decided to take part in tonight's session, that's why I'm here. I liked your comments about practicability, but it needs to be practical, and I don't think you want to se up another whole great new massive beauracy, if you've got people that who can already contribute to it, but that's about all I could add to the situation at the moment.

**Mr SWANSON:** I'm Rob Swanson, I'm representing private enterprises at the moment actually until Friday I hope. I'm a little bit interested why the model in Western Australia falls down from action from government, that's a little bit interesting, why they can't collate the 2 and be cohesive on that, if they're supporting it.

**MADAM CHAIR:** It's the independent nature of the EPA board itself, their an entity unto themselves, their resourced by the department in terms of the secretariat, but they are their own identity, and they're not indebted into the department.

**Mr SWANSON:** It seems though, that you have 2 separate ways though, ones going policy, and ones going implementation.

**MADAM CHAIR:** In terms the difference between South Australia, and ...

**Mr SWANSON:** Yes, the difference between the two.

**Mr BALDWIN:** Yes, another critical difference in that is the, the legislation in Western Australia allows the EPA to make a recommendation to the government, which they do or do not follow, it's up to them. Whereas in South Australia, the decision is made by the EPA, separate to government. So it could make final decisions without referring to government, without conferring with them, and once they make the decision apart from appeal mechanisms, that's final, it's very different, they have a very significant difference.

**MADAM CHAIR:** So the CEO of the department, is also the Chair of the EPA in South Australia said in a practical sense he does, obviously work with government, he wouldn't see survival in not working with government.

Members interjection.

**Mr BALDWIN:** It's a bit strange their policies are not quite as up to date as Western Australia.

**MADAM CHAIR:** Western Australia is unique, in that the EPA sets policy, the other's don't.

**Mr BALDWIN:** It only sets policy in terms of putting out papers, guidelines, so government can have a separate policy to the EPA, which as you say is a bit sort of all over the place.

**MADAM CHAIR:** But it is seen as a real benchmark, whatever the extensive inquiries that the EPA might do, you know, they might do a water inquiry in Western Australia, and the bodywork they would come up with in terms of best water usage, and the guidelines, is seen as very much a credible and environment benchmark, it shifts the parameters within that jurisdiction.

**Mr SWANSON:** So your feeling seems to be to travel along the lines of the South Australia model is it?

Members interjecting.

**MADAM CHAIR:** No, we've all probably got very different views.

**Mr BALDWIN:** There's the first question that Delia pointed out, does the government have one, the labour government on coming into the election said we will, it was debateable whether they said 'we'll have one', or 'we'll look at having one'...

**MADAM CHAIR:** You said we would consider it, it is in writing.

**Mr BALDWIN:** And now that we're doing it, because a bipartisan committee, there will be different points of view, even from us. There could be 3 different papers and recommendations from this committee, the Independents, the Government members, and the Opposition members. So it's the game still on, and there's no ...

**Mr DUNHAM:** At the end of the day, what we write might have no weight at all, because it's solved by parliament. So why we'd like to think we've got a fairly powerful capacity to write a submission that influences a vote in parliament, at the end of the day, it'll be a government vote, and it might not be reflective of anything we have written, necessarily. So I guess, 1 of our important task here is to consult, and it is to hear. So I mean there are people that have been to other places where there are EPA's, and there's people we have been dealing with, where they've got this status that higher than government decision making, and there are people here who have had problems with the current system, believe that could be cleaned up in some ways, so all of those are good things to feed us, pretty much.

**Mr WOOD:** A number of people have said they want an EPA, and I suppose no one has said in their response exactly what they mean, by an EPA, that's probably what we're searching for. What hasn't been mentioned, we're all interested in the Tasmanian model, without going down there, but we've had reports that from 1

environmental consultant group they actually do work in decontaminated and contaminated sites in South Australia, they felt the Tasmanian model was best, and it's not set up like the rest, it's sort of within the department to some extent, using existing structures, so whether that's the way we should go, we don't know. It's at least a small jurisdiction like ourselves, because in the end, certainly budget considerations are going to be very important. The South Australian model, from what we heard, they started off with 70 staff, and I'm not interested in employing 70 staff, but they got 70 staff, they now about 210 in staff numbers. It's a danger you'll get a snowball affect, and have another layer of beauracy that you don't need.

So I think it's important that we at least we discuss all the issues, and might come up with a 3<sup>rd</sup> or 4<sup>th</sup> option for all we know, but it might something just unique to the Northern Territory, but there's certainly from the letters we've received, certainly split both directions industry, not all together, but industry tends to be saying we don't want another level of beauracy, as an EPA, there's a lot of environmental groups, and some of the councils have said, we do want one. So trying to find the way through that, is going to be the difficulty for this committee.

**Mr EGAN:** You mentioned with the South Australian model that mining's handled in one area principally and the other issue are

**MADAM CHAIR:** Western Australia.

**Mr EGAN:** Sorry, Western Australia is handled separately is it?, Ok.

**MADAM CHAIR:** There got links to each other though, and there are triggers.

**Mr EGAN:** With the Territory these as I understand that there's a couple of bodies that mining is looked after through the mining side of things, and environment looked after through infrastructure planning and environment. With an EPA, well, I suppose what sort of value adding will it provide with regards to the structures that are in place now.

**Mr BALDWIN:** Good question.

**MADAM CHAIR:** In terms of some of the feedback for example, certainly the environmentalist done have a lot of faith in the system we've had to date, in terms of ensuring that environmental impact assessments are done, perhaps where they should have been or could have been done. I know Gerry was talking in parliament, giving his area, his got a whole lot of disused quarry sites, around the Litchfield shire, which you know there's been no environmental remediation done of those sites. People use, certainly in Darwin, the example of the Wickham Point gas development, where they feel as though the process wasn't as open and transparent, and independent in terms of the environmental impact assessments on that. Some people would argue that it was a perfectly sound process, and often issues come up around the issue of town planning, new subdivisions, the classic environmental debate going on at the moment in terms of a planning sense in the Territory, is the Daly River region. Government put a moratorium an on further development there, pending a Daly region reference group which is undertaking a process not dissimilar to a EPA process. So you know, I guess there's issues were posed both to Government, and to Opposition, over the years as to why don't we have a environment protection structure that other jurisdictions have, do we need one, that's very much part of the process that this committee's undertaking. Is it valuated, that is what we have to assess, or is it going to create barriers, and problems that a small jurisdiction doesn't necessarily need, there all the questions.

**Mr BALDWIN:** I'd like to add to that. I guess when you talk about value adding, does a EPA value add on to what we've got today, that's mining looking after mining environment office, office of the environment looking after environmental concerns. I guess it could be argued that an EPA forms a independent look at the environment, so the environment is always looked after by this independent body. Now, the question then is the question of independents, and you've heard some examples of South Australia, Western Australia, and you could go round those all night. Are they independent or aren't they? Does it make a difference, is it a name, called independents, I don't know. Does the office

of environment do a good job? I'd say it does, but I was one of their Ministers once, does the Department of Mines do a good job in looking after mining? I'd say it does, I wasn't their Minister at one time, but you know, it's all these things, and do you bring them together, do you leave them separate, and do you make it more independent?, that's really the argument, for value adding.

**Mr FOGARTY:** Is Dr Brien O'Brien the first head of the EPA in Western Australia?, I believe he was, that's going back 20 years ago. He was under a lot of pressure, and he made quite a few decisions which weren't popular with the population or the government at various stages, and I think he was eventually retrenched, I think that's the case. But it did seem to be his decisions, did seem to be fair, and not influenced by radical groups, or by politicians, and it seemed a very good system. Whether he lent one way or the other, unnecessarily I don't know, but to the average observer, it seemed to be pretty good.

**MADAM CHAIR:** The advice we've received in both Western Australia and South Australia talking to the EPA Chairs, and the experts who work there, an EPA would be good, fail or succeed, based on the calibre on the people working for it, and that holds as true as we know in any business or organisation. There's a former EPA Chair, talked about in very high esteem throughout Australia, who is currently over in New Zealand, running the environment processes over there. So we're very acutely aware of that advice, that we've received in both jurisdictions, and really in a way it holds true in that example you gave Mike you know, could have been a good person, but it's often how decisions are packaged up, or perhaps presented, and how inclusive the process has been.

We met with the professor in Western Australia, who John Bailey, did some critical insights into EPA structures and processes for us, and he pointed to some Canadian models which he thought would be perhaps if we were considering a process in the Territory would be useful for us to consider, because they dealt with an ability for the process to go out to the Inuit people, and be inclusive, so it wasn't it a heavy documented written based process, it was more say 1

member of the committee would go out with some experts, and go out into the regions, and areas, and sit down around in a group like this, and chat through various issues, and it was a more inclusive model, and he said given your indigenous population in the Territory, you may want to put in structures if you do have a EPA, of being able to identify a committee that has 1 member of the EPA on it, but they pull in experts, depending on what development they're looking at, what's being proposed, or what's being considered, in terms of an inquiry, and they go out and do it that way, but in all cases, in all EPA's it's a case of buying in expertise, depending on what particular matter is before them, whether it's a water expert, or soil expert, or noise expert.

**Mr SWANSON:** Will your recommendation go so far as personnel?

**MADAM CHAIR:** No, recommendation would identify, you know the structure and the issue of implementation, it may be you know, it will be hopefully, certainly the threshold issue of whether or not we have one, and it will then say Independent, or a joint position of Chair and CEO, but no we won't be saying we recommend these 3 top people.

**Mr DUNHAM:** There's an issue though, I mean, along with Independents comes accountability, so it's a truism to say if you've got the right person, it's a good job, it's a bad person, it's a bad job. The problem we've got is that, if we've got a bad person, in a Independent job, you can't get rid of them. So if you've got an Independent statutory authority, and we have several of them now, we have the professor Fells, we have Auditor Generals, and Ombudsman, and things like that, but to get rid of them, they've virtually got to go mad, or bankrupt, or do something that offends the laws of the place. If you set that up outside the political system which has it's own methods of accountability through the ballot box, you could well end up with, as Delia said, the wrong person, and there's nothing you can do about it, and in a small jurisdiction like this, I think that potential is very real. So accountability has got to be when you say 'can we describe the person', maybe not, but we should be able to describe the process if this is a genuinely independent

arms length from government process, there's got to be some capacity for the community view to be put, and it could be contrary to this 1 individual, who has the total power of saying 'well, it's not going to be park', or 'there will be no more mining in Tennant' or where ever it is. So it's in a democracy I think it is a tricky thing to pick somebody who's totally independent from the democratic process, and dress them up as Independent, and then give them the capacity to make the decisions in the best interest of the community, because they don't go to the ballot box, we do. So I think, the accountability fundamental has got to go with the Independents fundamental, and ...

**MADAM CHAIR:** It is part of the structure?

**Mr DUNHAM:** The more independent that they are, potentially less the capacity for them to be beholden to any community if they chose not to, and these are arguments you get now, about the courts, and about the referrals, and competition and all that sort of stuff now. Not to say it's a bad thing to have Independents, but somewhere in there, there's got to be the voice of the people heard, who might have a contrary opinion to this 1 individual.

**Mr DOUGALL:** Michael Dougall, I'm the regional Director for the Department of Chief Minister Infrastructure Planning Environmental here for the Barkly. I suppose I need to put on a previous hat or two because I've been very much involved in waste management, in my later years, and certainly worked with the EPA in Victoria, well I haven't been employed by them, so I was in local government, that is how I have been involved with them.

The issue that I would think that concerns me is waste management, and certainly the cost of waste management, and certainly we obviously need for it to be looked at, and obviously an EPA is one way to look at this. Not certainly from a cost aspect, from within large municipalities, but I guess it opens a question to me of course the ability for different areas across the Territory, to be able to meet if you ever set of standard, or using waste management as an example, you know you came in and tried to set certainly the standards that apply in Victoria, I was responsible for managing the kits, and I know all about it. Up here we're basically

bankrupt in, a lot of the municipalities, let alone when you get out in the communities, and I guess my concern would be certainly with an EPA, or an organisation, where somebody might start looking at what some of the other, what happened in other areas around Australia, and all this is given as example by the way. It's a matter of trying to make the model fit, the diversity that we've got across the Territory, and I guess that's the concern that I have.

**Mr WOOD:** Something that we're discussing today is I suppose, the Territory is developing Territory in the first place, and if we have an EPA that gets the reputation as being fairly long winded, or takes a long time to come up with decision, or I think some of decisions in Western Australia took up to 2 years. Do we have the risk of scaring people off, say 'well no, we really don't want to spend that time in the Territory because it is really too difficult', and you raise the similar issue you know with -----. I know Litchfield Shire has certainly got a problem where you know, to do the things that is required licensed for would cost a fortune. It may happen eventually, I couldn't see it happening over night, because there wouldn't be the funds. But I think you would want a EPA that recognises what your saying, and also recognises the Territory is developing, and needs development to expand it's economic base, and you've got balance that again, with the environment, but I'd hate to see it bogged down, and scare development away all together.

**Mr McADAM:** I just want to add to what you said Peter, in regards to enhancing I think you mentioned valuating to the existing arrangements of structures, ie. environment and mining. I mean again, who knows what we're going to come up, because there's still evidence to be got, but already there are examples where very clearly there needs to be certainty on the part of industry. There certainly needs to be and I used the word continuity, and I use that in a sense where there has to be some sort of framework, you know that business and the environment has to work towards. I just give you an example, and to me this is one of the critical things, and Gerry's raised it to, in terms of the Territory as a developing jurisdiction, competing against the northern parts of Queensland, and of course Western

Australia. So you'll always have to be mindful of that balance between economic development and the environmental imperatives. The example that I always use, and I know it caused a degree of angst in regards to a particular mining company, who proceeded down the path of securing all of the compliances step by step, and then being told that probably half way through the process after committing \$Xm into facilities, infrastructure, development in another country, to be told they couldn't go ahead because there was now an environmental concern that was raised.

Of course, that was uncertainty on a part of the company in question, and it just tells me that quite a part of what we come up with, that we have to improve that process, because I don't think we should, the Territory, which probably has a reasonable reputation at this point in respect what's been done thus far. We don't want to reach a situation where we are tagged with, we put in place that something that inhibits what I describe as sustainable responsible development. So what I'm really saying is that already I think we've identified that there are certain things that can happen, in respect to improving the process quite apart from coming up with a model for an EPA. To me that's a most important thing, and most of the committees we sit on, I don't know if we're any different, but this sort of stuff gets reported back to government, in terms of existing matters that may inhibit either environmental or economic imperatives, so that's where I'm coming from. The other thing too is, I honestly don't believe because of the jurisdiction we don't want duplication, and you certainly don't need any added cost to industry, and in respect to funding it. So somehow there has to be dollars found without any impost on, I'm talking about added impost, or further impost on existing industry. So my belief is that it's got to be found within existing resources, that's my personal belief, and of course you know this committee will take all those things in consideration towards the end. I think there is a real opportunity to come up here with a balance, in terms of providing certainty and continuity from both those people who represent environment concerns, and industry concerns.

You'll always get a blue now and again, but that's where the EPA person can come in and try and provide a facilitator to the outcome, and that's what they do in Western Australia, so there's some good models to incorporate.

**Ms WESTOVER:** Colleen Westover of Barkly Landcare Conservation Association. I'm curious to where Landcare, and natural resource management groups would possibly fit into the EPA, or is it solely going to be for government processes and ...

**MADAM CHAIR:** In terms of other jurisdiction, they'd feed straight into the EPA in a very direct way, they refer issues to the EPA for consideration, and certainly are guests in many cases they would prompt the body of research to be done, which assist Landcare in terms of the results, so there is a direct relationship between Landcare groups, environment groups, and EPA's in every other jurisdiction, it's not just an internal government process at all, it's very much a process that these externally in both industry and environment groups.

**Ms WESTOVER:** So would an EPA, and the Landcare groups, and NRM groups would that still be separate ...

**MADAM CHAIR:** Oh look that goes with the issue of structure, in Queensland they've created a very large Department of Environment that has aspects, it has natural resource management, in that which then feeds into the EPA. Whereas in Western Australia natural resources are separate to the Department of Environment, so different models around different jurisdictions, it goes to the issue of structure, and what would best fit in the context of the Territory, so I would be interested to hear your views on that.

**Ms WESTOVER:** It would be good to have a body that we solely went to, to go through to get funding, it is different to what we have at the moment, and pushing our issues in the regions very difficult to get back to the government, to make that a priority. So that's where their integrating their own plan in doing it currently is, because we are going to be need a process to get that happening, but where that ends up, it would

be good to have someone like the EPA there to monitor that.

**Mr DUNHAM:** That's the other critical issue to Independents. Because if you not resourced your not Independent.

**MADAM CHAIR:** That's right.

**Mr DUNHAM:** So essentially the problem with the 70 to 200 staff in South Australia is they said 'well, we're going to do this much work, we're Independent, give us the money we're off', and they got it.

**MADAM CHAIR:** But, they got in large from other departments, ...

**Mr DUNHAM:** I mean in an organisation like yours which is Independent and you are reliant on government for funding, your independent status is essentially at the whim of government financing. So these are critical fundamentals to just what does independence mean, what is the 'a', is it an agency, is it an authority. So those issues relating to their antimonious capacity will relate to like I said, funding, resourcing, accountability, how reflected they are of community opinion. There's a lot of environmental issues come up that create a lot of steam, and you will never ever have everybody happy all the time, you will always get desperate groups that polarise the issues. So in the middle of this is this oracle, that supposed to be making the decision, and I think our system actually needs plurality. We talked about overlap, but I think it's actually good to have different groups that strongly support Landcare, or strongly support mining, or strongly support water quality or whatever. To me that's good because they're not overlapping each other, they're presenting views from their specific industry that are parochial to that industry. So my model would look more to not the sole agency type thing, but I'd look for making sure it's dispersed across a number of players, in my own opinion.

**Mr PRICE:** I'll put my 2 bobs worth in. Neil Price I'm with DBIRD with Mines and Energy. My understanding of this sort of legal framework in the Territory is that with any sort of infrastructural development, or resource development project from the mid scale to the extremely large type stuff like

the gas in Darwin. Is that once you call the Administrator in, all bets are off, that there will be environmental issues that may arise with a company collapsing or something like that. They certainly, the environmental staff certainly goes to the back of the queue, the other creditors are right in there. So no matter what government in power, there is with the existing regime, you've got a big problem there, that the government of the day is going to wear it, if the companies fall over with these sort of resource development projects, and large infrastructural projects, so that's the current regime. The other observation is that while things are going really well economically for these companies, the environment is not a problem, it's when there's a down turn in commodity prices, or there's a hiccup somewhere else in the corporation, that's where you can get some problem. One of the better example that I can think of is the Canadian methanol company that were swinging through the trees in Darwin there, there was a slight delay in the offshore oil and gas stuff, they folded their tents and left within 24 hours, that's the sort of stuff, so that's the existing regime. So I think, one of the issues here is that you almost need a --- ---, keeping an eye on the financial health of the larger players in the Territory...

**Mr BALDWIN:** Just on that, hows the bond going, I mean, most of these companies have to put forward bonds and ...

**Mr PRICE:** I'm only familiar with mining are, the new Mine Management Act spells out fairly detailed stuff about the amount of bond that has to be posted, but with these larger projects, there's no way that if things go a bit pear shape that that will cover the costs, and I could quote a few examples there but I won't. So it's very hard to put a realistic cost on the true cost of rehabilitation if something goes wrong, but that's just part of the system, and part of the risks. I mean, nothing will happen if you try and sort of get all the risks down, so there's that issue there as well, but certainly I would support a small group of people in an EPA position as a smoke detector, that the minute someone starts sort of circulating some substantial stories, they have got limited power to follow up with the various agencies, as to whether or not that there's anything there, and report informally to a select standing committee, or

similar forum. I'm familiar with New South Wales, and that EPA thing started off with a couple of people in a shed in western New South Wales, and it turned out to be absolute monster of an organisation, with very prescriptive powers, not the way to go.

My suggestion is that the small group of people have limited powers to, if need be, they have powers to look into issues. Basically, because it's a major risk to the Territory, the existing situation, government wears it every time.

**Mr BALDWIN:** Are you suggesting as an option, that Department of Mines, stays over there, and environment people stay over there, and you've got a board that have these powers your talking about they can investigate both areas, whatever.

**Mr PRICE:** Cross government sort of role, because with all these sort of things as you people really well know there's an enormous amount of pressure put on public servants and yourselves, when you're dealing with really high flying stuff, that's for sure, so if things do start going a bit wrong, maybe there is this group that can actually serve a very constructive role who can step in and say, well hang on a minute, we better have a bit of look.

**Mr BALDWIN:** They could be triggered either by their own volition or complaint from somebody or whatever.

**Mr PRICE:** The best description is the smoke detector, ...

**Mr BALDWIN:** Yes, but somebody has to come to them if there not safe themselves ...

**Mr MCADAM:** That's what happens in Western Australia doesn't it? Where members of the community or organisation can actually then approach the EPA?, and there is a compulsion on part of the EPA then to at least investigate as I understand it.

**Mr PRICE:** With all these mid level to large organisations, there'll be a \$2m to \$3m legal bill at least just in setting up the company structures, but once they get the administrator in, you've got no hope of every

getting to the larger companies with the cash behind them to get them up.

**Mr WOOD:** Comment on that, there was a comment made in Katherine last night about whether you could basically use the existing departments to strengthen the propensities, have more people involved in the regulatory process, that's just an option, you are just saying 'why aren't we're using what we've got, and build up that strength', and have people doing the role of smoke detecting within the department, or do think there would be too much pressure for people not to do that?

**Mr SWANSON:** Comparison of costs on the procedures implemented right now, as against the EPA, in either form, is there any costing comparisons been done, in regard to that?

**MADAM CHAIR:** Not yet. With cost out structures, again we obviously know whata the current process cost. We have got the current budgets to assess that with, and in deliberating with the committee if we were looking at heading down a particular path, part of what we would have to do is, is do some cost estimates against it, but we are not at that stage of this inquiry yet.

**Mr SWANSON:** Of course, the main concern is that in the South Australian exercise we use close to 220 personnel.

**MADAM CHAIR:** But I have to say, in terms of South Australia, what they did say to us, is that it evolved over time and what is was, was the negotiations intra agency and inter agencies across the department to say; 'we're at this stage, their's our body of expertise sitting over there in the other department', and they were literally picking up pieces and divisions of departments, where they found over time that they were more useful to go into the Department of Environment. So they did evolutionary restructuring of public services as they went along, so that growth of 70 staff to 200 or something, wasn't new jobs, it was a restructuring of existing jobs within the agencies.

**Mr SWANSON:** But you were taking that from somewhere else, aren't you?

**MADAM CHAIR:** Yes, so that division would come under, so you know the water division of an agency, was decided to bring them over into the Department of Environment, waste management assessment division, as they evolved into, that was part of growth. They said; and they actually don't think they necessarily stopped at where they are headed.

**Mr SWANSON:** From a cross point of view, would appear, that this facilitator role between the system we've got now, would appear to be the best option, wouldn't it. An arbitrator or a facilitator between the 2 parties.

**MADAM CHAIR:** I think that you know, I don't want to speak on behalf of the entire community, but my prospective ...

**Mr BALDWIN:** I think it an option, no doubt about it.

**Mr SWANSON:** Probably be the best cost option.

**MADAM CHAIR:** We far more likely as a committee to get a recommendation accepted by government, the less expensive they are. Now that's a practical reality when we deal with these committees, there's competitive process for the budget as we know, this isn't the core priority as stated by government, it doesn't fit within health and education, and law and order. So we're out there fighting for the dollar like any other process, to be realistic and to get our recommendations adopted, we'd want to come up with a pretty cost effective model.

**Mr WOOD:** You've got the other option of whether you could privatise and EPA, in other words you, when it is needed you would contract it out to body to do it.

**Mr DUNHAM:** Or develop it to local government, a lot of options. We give it to you blokes, and say, you do it, make sure everything 'tickey boo', we'll set the parameters, and come and talk to us at the grants commission.

Members interjecting.

**Mr WORMALD:** I spent 42 years down south with 3 big councils, that handled planning, perhaps that not at all similar.

Members interjecting.

**Mr BALDWIN:** I think when I was in local government, as an elected member, you and I had this similar view about local government and planning, but we won't go there.

Members interjecting.

**MADAM CHAIR:** Are there any other queries, or comments.

**Mr EGAN:** Is there any state in the developed world without a EPA, or isn't it inevitable.

**MADAM CHAIR:** It seems inevitable, we are, I don't know of any other in the developed world. We haven't done kind of research, it might be interesting for us to do that.

**Mr BALDWIN:** Well, it is debateable if Tasmania is and EPA.

**MADAM CHAIR:** It is described as on.

**Mr BALDWIN:** Yes but you know, Independent?  
An EPA, we could actually almost call the Department of the Office of Environment, in fact the government currently calls our office of environment, the Independent Office of Environment, and it sits fairly squarely inside a department with a CEO that answers to a Minister. So you could call it an EPA, you know you wouldn't call it an independent EPA, but you call it EPA.

**MADAM CHAIR:** There is a natural, the Office of Environment and Heritage, if you were looking at the EPA structure, that is the natural geneses of it. Where you've got your expertise currently sitting.

**Mr DUNHAM:** The better question might be, is there a place where you can have unfettered development with no legislative perimeters, and that's probably nowhere, but if you need to describe a beast, thus as an EPA, there's probably lots of places that

don't have one. But I think if you look for instance at our various dangerous drugs for instance, the poisons, herbicides, and in health, waters in another department, mining in another department, lands and planning issues, heritage issues, they are all to do with the environment, the built environment, the natural environment, cultural values or whatever, the Aboriginal Land Rights Act. So we've probably got lots of statutes here. The issue is not whether we've got legislation that fetters development, and contains it to within what the government of the day wants. The issue is whether you have a singular authority with that name on it's door called an EPA, and I don't think you do need an EPA myself. I think you need to visit each of those and make sure they are robust, and that they do have a sense of doing what the government's wish is, about protecting whatever it is that they charged with. But I don't think you need to capture all that into 1 group necessarily. The pragmatic issue is, do you have legislation that does protect our natural built and heritage environment?

**Mr FOGARTY:** What about the rest of the worlds perception on you, or the Western Australia' s perception on you?

**Mr DUNHAM:** In terms of?

**Mr FOGARTY:** Well, do you have an EPA or is it independent?

**Mr DUNHAM:** Well, yes that comes into it. Hang a sign on the door whether your independent, is something that goes to structure.

**Mr WOOD:** We do have a Development Consent Authority, and that's got it's imperfections, that I mentioned in Katherine, where in some places you can go to public meetings, and because it's a full authority, other places it's just the Minister, Development Consent Authority, places outside municipalities. Whether an EPA could be an off shoot of that, or becomes a part of it, or something like that, there's an existing structure that already does deal with certain matters, that does include the possible use of a EIS in it's deliberation, so it maybe that's a possibility as well, as an existing structure there, we perhaps revamp it on certain occasions, expand it to cover

bigger and more controversial developments, and other times it just goes back to what it is at the present time.

Because the EPA is looking at subdivisions, DCA looks at subdivisions, EPA looks at development, LNG Plant Development Consent Authority looks at that. See, lot of things we're talking about, the Development and Consent Authority already does look at, and it is independent of the Minister to a certain extent, but a Minister can over ride. At least it is out there in the public, and you can attend meetings, you can put in your points of view, so perhaps there options there as well. But it certainly, I'd take up the point that if we do have one, and it's not seen to be independent, then all the good work that we might be able to do might fall flat, and you might just continue controversy, saying I was never independent, so I think the independence is important if we're going to have one.

**MADAM CHAIR:** You've heard I guess the diversity of you sitting on this committee, and we listen to each other all the time. I'm keen to extract any comments or queries from the good people of Tennant Creek.

**Mr WORMALD:** Can I ask Madam Chair, whether we will get an opportunity, I am not saying we need to by the way, because things are enough hectic on this committee for you to just go away and do it. But will we get a chance to comment on an options paper do you think?

**MADAM CHAIR:** A process, we intend to put our recommendations to government, and I would say that, any government that is looking with setting a new process or structure, would then put that back out in the public arena. So from this committee, highly doubtful. The way we're working in our time frames and things like that. Realistically though if the government, particularly in the context of an election year, 2005 was going to embark on a new process for the Territory, I would be amazed if they didn't put it out into a discussion, out in the public arena again.

**Mr WORMALD:** I wasn't suggesting you would need to by the way, because ...

**MADAM CHAIR:** No, but that is a good suggestion, and that is something that I think is appropriate for you to feed into a public hearing like this, that there is a view that calces for example various committee stakeholders, and I'm sure the Minerals Council, the Environment Committee, they would all like to have another go at any structure that was recommended and adopted, or if government came up with a completely different structure, but I think it would be politically suicide not to put it back out in the public domain, in election year.

**Mr WORMALD:** I think that councils view is that there should be something there to make sure things are Ok, but we don't want a hamstring development do we?

**Mr DUNHAM:** Maybe I'd say that a different way, we're actually not reporting to government. The government has given us the Terms of Reference we are reporting to parliament, and when we go back to parliament, we'll actually table it, and it will probably take some months to be debated. So you'll end up with a printed report that is a public document. Then it will be tabled as a, and the full debate could take some months, so there's plenty of opportunity for you to lobby local government, industry groups, have your say publicly, and it will be a document that bears the imprimatur, and the stamp of parliament, and it may have dissenting reports in there and all that sort of stuff, and you then can take to the next step which will go back to a full debate in parliament. So there should be some months, yes.

**Mr WORMALD:** Certainly from discussion here, I'm sure that we'd be a lot better be able to make a constructive comment on the -----, rather, because we've heard all opinions, and I think some good opinions have been expressed all around.

**Mr BALDWIN:** That's where it really gets down to it, when there's some options to look at.

**Mr DUNHAM:** The development one ...

**Members:** interjection.

**MADAM CHAIR:** It maybe this committee says in our report to parliament that there is

option a, there is option b and there's option c and here are the costing against the 3.

**Mr FOGARTY:** We're concerned about hamstring development, it may work in the other way, if you do your -----, you get passed it, you can go ahead. Now without that you likely to get something else that sticks up it's head and you're stuffed, I'm not saying you have got -----but it would have cost a small company millions in overtime. -----this is what a small company needs in particular, and certainly mining companies.

**MADAM CHAIR:** That's feedback we've had from other jurisdiction, particularly South Australia said that since they have put in the new legislative resume, and their structure. The feedback their getting from industry is, it has actually improved processes to get things done, because they know what process to go through and who to deal with, it's been the feedback down south.

**Mr PRICE:** Barbara Singer's comments would be interesting.

**Mr DUNHAM:** She's written to us.

**Mr BALDWIN:** She has written on behalf on the department, before she left.

**MADAM CHAIR:** We've got significant submissions from government departments, we wrote to all the departments inviting their submissions, because each of them have various pieces of legislation that could be impacted upon.

**Mr SWANSON:** The EPA doesn't have to consist of 'Greenies', I mean you can have...

**MADAM CHAIR:** The advice that we've received from Western Australia and South Australia was we don't make it a stake holder driven EPA, you don't put the stake holders on the EPA, you put expertise and community representatives. So that it's not someone from the mineral sector saying 'this is what we should do', it's not someone from the environment sector saying, 'this is what we should do'. It's more of a consensus of expertise and broader community view, as of that is a positive

model, but once you try to stop your EPA boards with stake holders they become dysfunctional.

**Mr SWANSON:** That's why I was a bit interested with the recommendation of personnel.

**MADAM CHAIR:** Things like that we can say, 'this is the advice we've received and we recommend you follow this type of a structure'. Because all stake holder groups have got a nature of feeding into an EPA, and the public process of their involvement to get their say. It's seen as problematic to have them as the EPA.

**Mr WOOD:** There was one bit of advice, one idea that was given to me was in the case of Western Australia where the Ord River scheme was looked at, Western Australia gave their EPA studies on both sides of the border. I think the hint was why couldn't we occasionally borrow someone else's EPA, I gather legislation was approved that allowed them to come and assess the Northern Territory part of the Ord River scheme. Maybe we, just hire them, the expertise is there, they've proven themselves, because there not there, they'll listen to the stake holders, but they're there because of their expertise, so there's another option there.

Members interjecting.

**Mr FOGARTY:** Did you study the Ord Landing and Coral Bay? I think you might have, that raised the obvious, I think the EPA recommended the Ord's Landing, and the state government initially over-ruled it, and the people at Exmouth rubbed their hands together and built the marina, because that was barred down there ...

**MADAM CHAIR:** We looked at one at Barrow Island, which was...

**Mr WOOD:** The government then take out on their own peril, that's where the political side comes back into it, if the government over rides the EPA, well see you at the election.

Members interjecting.

**MADAM CHAIR:** Yes, they gave us the example of Barrow Island, and they say that obviously that there big issues, anything that the EPA deals with that is of such a significant size, they are matters that inevitably are very lengthy and complex, with polarised community views, and highly problematic and great amount of expertise and research that goes into it. Whilst everyone would like to see a quick process and a ----- structure, sometimes the issues are of such scale and that requires -----, lengthy research.

**Mr BALDWIN:** Some of our processes even now currently takes quite a long time. There's a prawn farm just being approved in Darwin, it's EIS took nearly 2 years, and it was nothing that really delayed it in a big way, it just takes that long, to get all the materials together, to go and find all the scientific evidence that's needed to ensure the environments safe.

All those processes are triggered by applications, whether it's a mining application, or a fishing licence application, or a planning application, there all triggered, so those processes are all there. It's the independent that's the thing.

**Mr WOOD:** A particular prawn farm had 2 EIS's, one was over ruled, which cost the public a fair bit of money...

**Mr FOGARTY:** Same could have had happened in Western Australia with the Independent EPA, so there you go!

Members interjecting.

**Mr EGAN:** As it is now, you mentioned health and mining and environment, other areas where's there's expertise, and that expertise is developed within that discipline, if you looked at an EPA which maybe brought that expertise together, I just wonder what ability there is for them to retain there knowledge and experience and expertise in those particular disciplines that they may have come from. I suppose to think about what the links might be in the future.

**MADAM CHAIR:** I went and spoke to Queensland, and sent them to the committee to process to find out just how they coped with that, because they pulled

theirs together into a larger department. They seemed to think it had enhanced their knowledge and that the officers with the expertise, the expertise isn't lost because their constantly doing the work in that particular field. So if they happened to be soil specialists, they had strong links with the horticultural sector, and they still continued to work in that field. It's more of an agency structure, rather than a departure from links with the industry or the particular field that their specialist in. So in Queensland the advice I received, is that it's worked, it's robust, it's healthy, they put their expertise out into other agencies if required, pull them in from other agencies if require. A lot of the expertise in the environmental scientists area is, can be often external expertise, academics for example, are hired from universities. Consultancies are becoming very much the vogue around Australia, and environmental consultancies do some major project work.

It's horses for courses, there's no 1 that is completely dysfunctional, some as you've heard in New South Wales, are more prescriptive, some more than others. They tend to be the larger jurisdictions, where you've already got well established development, and well established industries, highly competitive nature, they can I guess if you like, can afford to be more prescriptive, smaller jurisdiction like ours were out their competing and trying to draw in development. I don't think we could afford to be as prescriptive as the larger jurisdiction, but again that's just advice that I've received. I don't know if it completely answers your question though.

Is there anything else anyone wants to add? You've sat up the back, you don't have anything you wanted to say?

**Ms BANNISTER:** I'm Naomi Bannister, just here as a community representative, just that I support the establishment of an EPA. I guess, talking about the fact that the expertise might be in the different areas at the moment, but I think there's benefits of drawing that all together simply just to be gained from that, and people working together. Government departments sometimes work well together, and sometimes they don't, put people together then they are working together.

**MADAM CHAIR:** Members of the committee, anything anyone wants to add.

**Mr DUNHAM:** Except the town looks very nice, it does, so there people up there doing a bit of reading and stuff, and the rain, and litter doesn't look so bad, so good on you. Your environmental credentials are at the best.

**Mr BALDWIN:** It must be that new mayor, eh? (laughing)

**Mr DUNHAM:** Must be. Clean Green. (laughing)

**Mr BALDWIN:** The other mayor did a great job too.

**MADAM CHAIR:** Alright, I might formally close the EPA inquiry Tennant Creek public hearing, and invite people here to hang around and have a chat to committee members if you want to have any discussions off the record. Thank you all very much for attending, we appreciate it, and we hope you read our ultimate report with some interest having participated in this process, see what we come up with, thank you.

Meeting concluded 18:44:11



## TRANSCRIPT NO. 6

**ALICE SPRINGS PUBLIC HEARING**  
 Crowne Plaza Alice Springs Conference  
 Room  
 Thursday, 3 June 2004

**PRESENT:**

## Committee:

Ms Delia Lawrie, MLA (Chair)  
 Mr Tim Baldwin, MLA  
 Mr Stephen Dunham, MLA  
 Mr Elliot M<sup>C</sup>Adam, MLA  
 Mr Gerry Wood, MLA

## Apologies:

Mr Matthew Bonson, MLA

## Secretariat:

Mr Graham Gadd (Secretary)  
 Ms Maria Viegas (Administrative/ Research  
 Assistant)

## Attended by:

Mr Glen Marshall – Arid Lands Environment  
 Centre  
 Mr Col Stanton – Department of  
 Infrastructure, Planning & Environment  
 Mr Loic Fields – Alice Springs Town Council  
 Ms Jill Weighell  
 Mr Pete Turner  
 Mr Bill Low – Low Ecological Services

**Note: This transcript is a verbatim,  
 unedited proof of the proceedings and  
 should be read as such.**

**Madam CHAIR:** I will call to order the Legislative Assembly of the Northern Territory Sessional Committee on the Environment and Sustainable Development. The public hearing in Alice Springs, an inquiry into the efficacy of the establishment of an Environmental Protection Agency for the NT, inclusive of but not restricted to: arguments for and against the establishment of an EPA for the NT, options for the structure of an Environment Protection Agency, taking into account the demographic, geographic and financial context of the NT and, if a particular model is recommended, options for its staged introduction.

I will start by introducing members of the committee. I am Delia Lawrie, I am the member for Karama and I am the Chair of the committee. With me is Mr Elliot McAdam, the member for Barkly. We are both members of the government. With us is the independent member for Nelson, Mr Gerry Wood. Apologies at this stage from the Opposition members, the member for Daly Mr Tim Baldwin and the member for Drysdale, Mr Stephen Dunham. They will be attending, they will be tag teaming throughout today's public hearing; they have another meeting going on at the same time, an unavoidable clash. With us also is Mr Graeme Gadd, who is secretary of the committee, and Maria Viegas who is the assistant to the committee. We are conducting public hearings throughout the NT. We have had public hearings in Katherine and Tennant Creek and obviously we are here today. We will be back up and having a public meeting in Darwin in a couple of weeks' time and will make an assessment after that, as to whether we travel to other sites in the Territory. We have received about 28 written submissions to date on the inquiry into whether or not we should establish an EPA. There is that threshold issue that the committee must grapple with first and foremost, that is, whether or not we recommend the establishment of the Environment Protection Agency, or indeed, an Environment Protection Authority. That threshold question still remains a question. As a committee we have not deliberated and determined the outcome of that question.

We have embarked on a research process to date, we have comparative tables of all EPAs across the Australian jurisdictions, noting that the Northern Territory to date is the sole remaining jurisdiction in Australia without an EPA in any form. EPAs throughout Australia vary through their structure and nature. We went to Western Australia as a committee and had a look at the EPA there, we had extensive meetings with the EPA and staff of the Department of Environment, fully briefed on that process. Western Australia is considered to be a more independent model of an EPA. It has a small board, that board is quite separate to the department, the Chair of the EPA is

not the CEO of the department, they operate quite independently, and their decisions are not binding on government. They recommend, they make a recommendation in terms of their decisions, government may or may not accept the EPA recommendations. There is a pretty famous case going on at the moment in Western Australia, Barrow Island, where the EPA recommended against a gas plant development, the government overturned that decision. In South Australia, we travelled across to South Australia and looked at the model there because it is a model that has brought about legislative changes fairly recently with the change of government in that jurisdiction. It is a model that has the EPA sitting nestled within and linked to the Department of Environment. The Chair of the EPA in South Australia is the CEO of the Department of Environment, and we heard extensively the pros and cons of that model as well.

We have chosen to look at those 2 because they, as jurisdictions, have similarity to the Northern Territory. They have both coastal and arid areas, they have a range of geographic and environmental regions, as well as obviously in Western Australia and South Australia, they have mining which is a significant industry in the Territory, largely impacted on by the work or otherwise of EPAs. Also they are seen as developing jurisdictions, the Territory is very much a developing jurisdiction rather than a developed jurisdiction like New South Wales and Victoria. Hence the logic behind our considering those particular models. We have heard evidence from experts interstate, an EPA works will fail based on the people who are the EPA. We have heard evidence interstate that you should not put stakeholders on any Board of the EPA. Rather, you should choose experts and community representatives, leaving stakeholders to a lobbying process rather than being on an EPA Board. We have heard of failures in EPAs in the past because they have been stocked with stakeholders, for example, Minerals Council, the environment centres, etc.

In a very rough nutshell, that is the work we have done to date, that is a bit of a thumbnail sketch of the 2 models we have looked at. We have conducted the public

hearings in a rather informal sense. What we will do, though, firstly I would like to thank you, Glen Marshall, for indicating your attendance here today. Glen is from the Arid Lands Environment Centre and he will make a submission to our committee and then there will be a bit of a question and answer session, and then anyone else who wants to have words to the committee, by all means. We are being recorded for the purposes of transcript. That transcript will be published as part of the public hearing documents of the EPA inquiry, so for transcript purposes I would ask anyone speaking to say their name first. It makes the transcribing job by Maria a hell of a lot easier. We are on oath, if you like; we have the privilege of parliament in this committee so you can say pretty well what you like but bearing in mind, it should be honest and truthful. So I will just hand it over to you, Glen, to kick off proceedings for us.

**Mr MARSHALL:** Thank you Madam Chair. Glen Marshall from the Arid Lands Environment Centre. We would like to thank the committee today for allowing us to make this presentation to the public hearing. You will be aware that when letters were put in, in the first round to your inquiry, we only put in a brief submission. We have got a more detailed submission today and I will talk to that and then I will table it for you, so thank you. I will use the term ALEC for the Arid Lands Environment Centre, it just makes it a bit easier.

ALEC believes that the Northern Territory requires a Rolls Royce model of an EPA, that it should be an independent statutory constituted body. I will go into more detail in that, we feel that is required to protect and enhance the unique environment of the Northern Territory for future generations. We feel this is particularly important at this point in time, as you indicated yourself, Madam Chair, we are in a developing process, we are trying to juggle things like nature based tourism activities and all of our diverse eco-systems with an unprecedented phase of industry resource and horticultural development, particularly in the Top End. In Central Australia, the emergence of Desert Knowledge as a knowledge economy driver, we feel demands an innovative best practice approach to environmental protection, on

the grounds that it is part and parcel of developing a knowledge economy. We feel that without vigorous and transparent environmental protection policies and planning assessments, monitoring, enforcement and education, that there is an increased likelihood of short to long term environmental management problems such as those crippling the Murray Darling Basin, and I make particular reference to the Daly Basin there; or issues we have seen in the past like Mt Todd mine where there is just no money for rehabilitation, and whose problem is that. At the moment it is the taxpayers' problem but nothing is being done. In Central Australia I would particularly like to focus on the ongoing slow decline in the region's unique biodiversity, due to a lack of regionally coordinated management tools for the place. So whilst there isn't major developments going on other than the occasional mine, we do believe that across the whole of the arid region there is, and it is documented, that there is biodiversity decline, and we feel that an EPA is in a very good position to actually take that on board and come up with an integrated approach to doing something about it.

As we all know, the vast economic cost of poor environmental management that results from lost production, reduced tourism revenue and costly rehabilitation works as seen from other states, we feel that is adequate justification for resourcing a Rolls Royce model of an EPA that encompasses the best bits of other state models. We feel that the investment made up front in that type of EPA is just going to pay for itself time and time again. When you look at Murray Darling Basin, the billions of dollars that are predicted to be needed to fix that situation. We feel an EPA should have a broad focus, to encompass not only the traditional regulatory roles related to environmental acts but also requires a broad spectrum of initiatives as we talked about earlier, as I talked about earlier for Central Australia, to cope with biodiversity.

**Madam CHAIR:** Policy Setting, like Western Australia, when you talk about broad spectrum?

**Mr MARSHALL:** Sure. I can go into that a bit. And as an over-riding principle, we believe the EPA should represent the interests of the Northern Territory's unique environment, not that of governments, businesses, interest groups of individuals, and I do concur with your statement about not having interest groups on EPA Boards.

With respect to the question 'Why have an EPA?', we believe there are numerous inadequacies in the current NT environmental protection arrangements and I will move through those one by one, and give reasons for that. Currently Ministers are not obliged to provide written justification if they choose to ignore environmental considerations before issuing their approvals for developments. We think this is particularly relevant because as you know, Ministers make their decisions on whether to approve developments or not under a range of scenarios, and that includes the influence of developers, ministerial colleagues and others, and the Ministers themselves generally only have limited environmental knowledge on which to base their decisions. We are talking about a legal aspect here, where whilst that may not occur often, there is the legal potential for that to happen. As an example, the Merkerala Court subdivision in Alice Springs, which is in the middle of Coolibah Swamp there, near the YMCA, it was granted ministerial approval in the mid-1990s despite the Development Consent Authority recommendation against it. One of the issues of concern was the likely impact of salt on building foundations due to its location in the middle of Coolibah Swamp.

As I said, the Minister overturned a recommendation of the Development Consent Authority there, and despite measures being put in place to mitigate this issue, significant concerns still remain that salt will impact on buildings and obviously that exposes the government to potential litigation. We feel that if a statutory EPA had been in place, then the minister would have been obliged to provide transparent reasons why such a significant environmental issue was over-ridden prior to his decision to proceed; where as you know, current company that, once the

decision is made it is not appealable. The lack of rehabilitation funds for the Mt Todd Mine as I mentioned earlier, is we feel, another example of poorly planned decisions, leaving significant environmental and economic cost for the taxpayers in the community. We feel that a best practice statutory EPA would have recommended mandatory rehabilitation bonds to be lodged before the project commenced. The responsible Minister would be obliged to act in accordance with this unless providing clear written recommendations as to why he felt that wasn't necessary, and then compliance would have been monitored by the EPA under the model we propose, and I will come to the model; I will just talk through some of this stuff first.

Currently the Minister for Environment and Heritage has full control over the constitution and role of the Office of Environment and Heritage of DIPE, with limited checks and balances on that power. So we are going to come back to a legal responsibility issue. Now, that means that the Minister can change the Office of Environment and Heritage constitution without any parliamentary or public scrutiny, and it leaves the Office of Environment and Heritage vulnerable to inappropriate directions by the Minister on particular issues. We think that that makes the OEH far from an independent watchdog on environmental issues, and that it erodes public faith in the process. We must say that the creation of a separate ministry for Environment and Heritage, more lately by the Labor government has been a good move in terms of removing the very obvious conflict of interest that previously existed, where Minister Vatskalis at the time was responsible for all DIPE divisions including the Office of Environment and Heritage.

Because the Office of Environment and Heritage is not a statutory body and hence is not independently accountable to parliament via annual reporting requirements, we feel it is difficult for the government and the community to assess whether that office is meeting its environmental protection responsibilities; so again, a process issue where it sets up the possibility for environmental protection not to be maximised. Currently, government agencies can be both proponents of

projects and the regulator of subsequent environmental compliance conditions, setting up potential conflict of interest situations. I will use DBIRD as an example of that, the Department of Business, Industry and Resource Development, with respect to mining proposals. currently DBIRD works cooperatively with mining companies to assist their exploration for economically minable deposits, which obviously results in close working relationships on many occasions. If a deposit is proved viable then the level of environmental assessment is jointly decided by DBIRD and OEH, draft environmental impact statement guidelines are set by OEH if required and circulated for public comment. Give them back to the mining company to address queries and concerns and recommendations are then compiled, for operating conditions are then are compiled by the Office of Environment and Heritage and passed to the environment Minister. At the moment the Minister has the legal right to amend the operating condition recommendations before passing them on to the mining Minister and DBIRD and the proponent. Now, we feel that is just another example where the Minister has, it is not a very good process for that to be the case.

Coming back to DBIRD, it is then the responsibility of DBIRD to monitor the compliance of those environmental conditions and we feel that creates a significant potential conflict of interest, where that agency that has worked very closely with that mining company to get the thing started actually becomes their regulator. We feel that an independent EPA would alleviate any of these potential conflict of interest situations and increase public confidence in the process. On that matter, we feel that having the Office of Environment and Heritage housed within the Department of Infrastructure, Planning and Environment still sets up potential situations where EPA employees have obviously a close working relationship with other DIPE staff, but as you have said earlier, EPAs and other organisations are made or broken by the individuals within there, and we feel that there is potential for those individuals to go easy on various proposals just because of that close relationship.

**Madam CHAIR:** So you're would be saying the Office of Environment and Heritage be outside DIPE in structure?

**Mr MARSHALL:** Potentially. We obviously recognise, and particularly in Central Australia here, where there is very limited resources; I mean, we have got 1 person, Peter Bannister, who is within the Office of Environment and Heritage, working on environmental issues, 1 person out of a total staff of 22, we believe, in the office. I mean, for starters, we believe that, and Peter says clearly himself, that he only ever gets time to respond to queries and day to day things, he doesn't get any opportunity to set any sort of strategic framework for what he does. So on that front, we feel not only that more staff are required in Central Australia with expertise and experience, but that if an independent, if a totally separate office is set up, then if that office is not going to be adequately resourced for phones and admin. purposes and vehicles etc., then obviously it makes more sense to potentially maintain the EPA within administratively linked to an agency like DIPE but legally separate, just so that you can cost share. We understand that very well as an organisation ourselves. We run an independent organisation and just so much of our time and effort and resources and money get chewed up by just keeping the place ticking over, you know. It's not a useful thing when your main charter is environmental management work.

With respect to the potential conflict of interest with government agencies, we have been told by what we feel are reliable sources that there are pastoralists in Central Australia who have illegally cleared land and then have been granted retrospective permission for this clearance by the Pastoral Land Board and if true, this is a very clear case of the regulating agency being too close to their proponent. We believe that comes from a very reputable source.

**Madam CHAIR:** Have you reported these cases?

**Mr MARSHALL:** Not myself personally. I would have to check whether ALEC has done that. Next point, we feel there is an

inadequate formal public input into government policies and directions on environmental protection. We do feel there are limited mechanisms to enhance the community's expertise or to capture local knowledge on issues. We understand there are things like the Development Consent Authority in place to attempt to capture some of that stuff, but we do feel that's quite a, perhaps if I use the example of environmental impact assessment processes where government will work through with proponents on things which then, an add is put in the paper and the, is it Butu mines?

**Mr McADAM:** Butu Resources.

**Mr MARSHALL:** Butu Resources. The EIS statement for that was advertised in the Northern Territory News and in a national paper, we understand, and it was only advertised in the Centralian Advocate a week later as a sort of secondary thought, and most people in Alice Springs only buy the Centralian Advocate so we feel that sort of thing; and then once it's advertised it is up to interested public person to go and make the effort to go through all the processes to actually put something in. We feel that could be a lot better managed by government and that an EPA would be an organisation who could have that as a significant part of their charter.

We currently feel there are significant gaps in environmental protection tools in use in the Northern Territory. A couple of examples of that are, diffuse and some optimal land management practices on pastoral and Aboriginal land in Central Australia are resulting in slow decline of biodiversity values, as we talked about earlier. Think of it as a death by a thousand cuts, that there is not single thing that an EPA under a traditional charter would hone in on, but it's happening out there. You know, whilst a mine might be doing something on a very localised scale, across the 10 000 km<sup>2</sup> next to it there is degradation going on which the EPA, under its normal sort of charter, doesn't get a chance to hone in on. And we feel that the EPA, a best practice EPA, would be a good way to tie together a lot of the initiatives which help develop tools for land managers and governments to actually reverse and

enhance that process, such as tools that are out there and being used already elsewhere, financial incentives to protect and enhance biodiversity of lands. You know, for pastoralists to undertake environmental management systems, that sort of thing; and I know that there are, you know, there is a pilot environmental management system program going on in Central Australia at the moment, but it's only pilot and it needs resourcing to move forward, and it needs to be tied within a broader context of other initiatives and tools. We believe an EPA would be perfectly placed to coordinate and grow such schemes and to monitor the outcomes of them, and to refine them over time. So the full box and dice in one spot.

Another example, private land developers in Central Australia are given very little assistance to develop best practice energy and water management systems, for their proposed subdivisions. Currently out west of town, we have got the proposed whitegum subdivision, were they are proposing 500 1 acre lots as a stand-alone satellite town. As an example of suboptimal systems for that the effluent management system that has been proposed by the developer is single house site, on site aerated waste for the treatment plants, which to the developer is a least-cost option because they get, the owner of the block has to pay for and manage that system in perpetuity. And it's by no means best practice situation where, because it's likely to result in on off site pollution, knowing how aerated systems work in other states, and it doesn't provide any meaningful substitution of effluent for palatable water. So a far better scenario under that case would be to have all effluent transferred down to the bottom of the subdivision, managed as a resource, treated up and brought back into houses as a secondary garden water supply. Now, whilst you might think that is sort of outside the scope of what you think of what an EPA does, the reality is in Central Australia at the moment that government doesn't provide any assistance like that, for developers to actually achieve best practice, and you know, when the government is putting a lot of money and effort into developing a desert knowledge economy down here, that seems quite anomalous when they have

been putting \$25m into a desert knowledge precinct out of town and yet they are allowing subdivisions to happen which are you know, business as usual, that would have happened 20 years ago. So we feel again that an EPA is a good way to capture a lot of that stuff, in non-traditional EPA roles, to come up with best practice for urban settlements.

The lack of economic tools such as trading schemes for pollutant discharges to air and water, we feel will place the Northern Territory businesses at an economic disadvantage in coming years compared to interstate enterprises. We feel an EPA can develop such incentive programs in conjunction with industry and can then monitor compliance with the scheme. So we fully appreciate that industry, and industry I am sure appreciates this as well, are going to need to make changes to the way they do things, both on environmental grounds and purely on economic grounds as well. And we believe that they need help to do that. They need a regulatory framework to achieve it and they need encouragement. We don't think that's in place at the moment in the Northern Territory and we believe an EPA could do it. The lack of a regular state of the environment report for the NT, we also feel is a critical missing tool, as it provides locally appropriate benchmark information on the existing conditions of areas, the main pressures affecting them and appropriate management responses. As I talked about earlier, we feel there is a grossly inadequate resourcing of EPA like functions in Central Australia at the moment, with only one employee in the Office of Environment and Heritage who actually focuses on environmental issues here, Peter Bannister, he's just reacting to day to day issues rather than developing anything more. And I've already spoken about, if an independent EPA is created then it needs to be adequately resourced and if there's not adequately resourcing for administrative purposes, then I think it should be looked at to tie that in with existing government funds.

We feel there is a lack of expertise, poor agency commitment and inadequate legislation that at the moment, result in poor enforcement outcomes and I will use the cyanide spill on the Tanami Road in March

2002 as a classic example of that, where there was clear evidence that deliberate dumping occurred by the truck driver. Both of his valves were opened up and he stopped on the side of the road, he wasn't an idiot, he knew what he was doing, and yet the environmental investigations there were done by police and worksafe staff where police were asked to take samples of the product, and a clever solicitor was able to discredit that process and have it thrown out in minutes, when it came to looking at prosecution. So you just would not expect that to happen if experienced EPA staff were in charge of those investigations, so we feel that's a classic case where an EPA would provide better outcomes. And the flow on effect of that of course is that where one company is so easily able to get away with an action like that, that it engenders a feeling in other companies that, oh gees, if we do this, we don't actually want to do something wrong but if we do, we're likely to get away with it so there's no big drama on that. There have only been 2 environmental pollution prosecutions in Central Australia in the past 10 years, that's the BP and Shell fuel depot leaks in the mid-1990s and I think that speaks volumes itself, that there has only ever been those 2. There are issues like waste water management that still remain a problem. If you go up the end of Smith St down to the old abattoir site you'll find that Pat has stock piles of 20 or 30 full 40 gallon drums of waste oil there that is clearly not up to scratch in terms of its management.

And we feel, second last point as to why we need an independent EPA, the accumulative impact of numerous small developments are not assessed or regulated for their impact on a broad scale. So it's sort of taking that point a little earlier that I was talking about, just a little bit further, about death by a thousand cuts. Another example of that where land clearing and the seeding of buffel grass and bore establishment by pastoralists in Central Australia is having an effect and it is not one managed by an over-arching regional plan that is underpinned by good science. The Pastoral Land Board, for example, rarely denies permission for pastoralists to clear land. At Arakuda Station, permission was, that is out on the Plenty Highway, between the Plenty and

Sandover, permission was recently granted for the clearing of land and deliberate seeding with buffel grass, despite widespread understanding by government agencies, the community, and we feel pastoralists, that the random spread of buffel grass has resulted in massive fires and significant biodiversity declines on pastoral properties, national parks and Aboriginal land in recent years. As you know, buffel grass doesn't stay within the boundaries of a pastoral property where it's seeded, and it's having really, really problematic effects on biodiversity at the moment. Interestingly, the manager of Arakuda Station, Chris Nott, is also the Chair of the Central Australian Land Management Organisation, the Pastoralists Land Care Group, which we do find quite extraordinary, given that the pastoral land care group has received national awards in the past for environmental practices, environmental management practices with greater control and that sort of thing. And yet there is the Chair seeding buffel grass. We believe that a best practice EPA should have the scope and resources to assess these accumulative impacts and develop policies that control such activities, including things like an immediate moratorium on seeding buffel grass until its biodiversity impacts are better understood. There is no other government agency in Central Australia standing up on that issue at the moment, despite particularly divisions within DIPE having serious concerns about it, there is just nothing being done, and that has got to be a serious issue for us, and that for us rings alarm bells that the current process isn't quite good enough.

We also feel, as a last point, that there is inadequate education and training of communities and businesses on optimising environmental outcomes. So obviously the more that businesses and the community people know about environmental issues, what impacts them, how to address those issues themselves in a pro-active way, and just how to improve people's attitudes on environmental management, we feel that's got to be a positive thing. And we feel that at the moment that is not something that's done in a coordinated way, certainly not in Central Australia. I mean, there are various organisations playing a role, including ourselves, but there could be a lot more

done. An example, and it is a small example but, a campaign to educate Alice Springs home owners on salt importation to the town's soils by over watering of gardens, because salt is now being more recognised by DIPE as going to be a serious issue in this town for building foundations in years to come, because there are hundreds if not thousands of tons of salt being brought through the gap there in our earth and water supply, over short periods of time. We believe an EPA with a broad charter, that would be able to coordinate education and training programs of various government agencies and also tap into initiatives that ourselves are doing and we could tap into what they're doing obviously.

So having said that as to why we believe there needs to be an EPA, we believe, and I'll talk now about the EPA's role and then go on to what we think should be the structure of an EPA.

We believe the following roles are critical for robust and effective best practice EPA. Reviewing and developing legislation, policies, goals, standards, guidelines and codes of practice relevant to environmental protection, so some of that more traditional role that EPAs do elsewhere; and then of course, monitoring and enforcing this operating framework. Environmental planning in conjunction with other government agencies and community bodies, and we feel that's quite critical because as you alluded to earlier, Delia, that an EPA stands or falls on the quality of its staff, and we believe that an EPA should be attracting significantly experienced staff, local expertise, and with broad knowledge on environmental issues so that a lot of that broad area of environment planning work can be undertaken. Part of the role of an EPA, we believe, is ensuring that due recognition is given to economic, social and environmental costs and benefits, of environmental protection initiatives, both in proposed and existing developments. And we believe that should start at square one in terms of saying well, if there was a Rolls Royce model of an EPA roll here, where obviously there would be additional government resources and funding required to do that, we believe that even a rudimentary assessment of the environmental, social and economic

benefits and costs of that over time, that it would indicate clear justification for investing up front like that. The EPA, part of its role should be conducting or commissioning scientific and economic research that allows fully informed decision making. Again, we feel in Central Australia that it is such a critical gap. We know that there's, and issue like the Desert Knowledge Cooperative Research Centre now, which are starting to address some of those issues. But again, we feel that there needs to be an organisation which has a focus on coordinating that sort of work and we feel that an EPA is the way to do it.

Coordinating education and training programs for people in businesses so that they can protect, restore and enhance their environment, as we talked about earlier, with upskilling the population; and assisting other government agencies, or assisting government agencies, to optimise environmental outcomes within government. And an example of that is as simple as developing a generic green office policy for energy, water, paper and office resources. But we don't have that, which the environmental centre finds to be quite an interesting situation given that the benefits of that sort of thing have been recognised for so long and a whole of government approach shouldn't be too hard. So there's an agency that can drive that.

For the structure of an EPA, the Arid Lands Environment Centre is non expert on this, so we don't actually put forward a particular model, but what we have included here is some facets of an EPA that we feel should be included, and there are 4 of those. We feel it should be an independent statutorily constituted agency. As you know, that's a common model across Australia and it will provide the necessary accountability, free from political interference, and separation from government agencies, to operate as a best practice environmental protection regulator. We believe it should be statutory so that only the parliament has the power to approve changes to its constitution; I think that's a flaw in the current system.

The second point is it should be governed by an independent board, an independent board would provide an overall strategic direction for the EPA and would be immune

from Ministerial interference, and we feel should comprise the CEO of an EPA, not necessarily in a Chairing role, and expert community members selected by an open and advertised process. Thirdly, it should have formal accountability by annual reports and written reasons for all decisions, just so that the transparency is there for everyone to understand. We believe that accountability should include regular meetings with government agencies, industry, interest groups and the community, so that the EPA can maximise its engagement.

Lastly, there should be an appeals procedure for decisions. The appeals process would allow both developers and community members with legitimate concerns for the affect on environment, to appeal decisions on different grounds; for example, as to whether environmental assessment should be undertaken, what level of assessment occurs, queries into EPA recommendations, and decisions by Ministers or government agencies. We feel this is a far superior model to current advice, for example, in the Development Consumer Authority process, where only developers can appeal decisions. We believe, as a community organisation, that that has serious flaws.

Just to finish off, as an organisation in a regional centre of the Territory, we feel it's critical that an EPA maintains a well resourced, experienced and expert regional presence, across the whole Territory. This will ensure that critical local input to EPA activities and perspectives, and maintain an effective but independent working relationship with government agencies based in regions, as well as local industries, Aboriginal organisations, Aboriginal communities, pastoralists, and the general community.

So just to finish off, it is hopefully clear to you that the Arid Lands Environment Centre believes that the Northern Territory should be taking the best bits of other state models, as a Rolls Royce EPA development, because the Territory not only deserves it but we think that it requires it, as it moves into a significant development phase. Thank you.

**Madam CHAIR:** Thank you Glen. Members of the committee, any questions?

**Mr WOOD:** When you ask for a Rolls Royce model, who will find the money? I mean, I know you're saying government should put more resources into it and I know you're saying there'd be a cost benefit analysis that you might say in the future it would pick up those costs, but in reality, we would have to find the costs now, find the money now, to operate a Rolls Royce model. The Territory hasn't got a large population, we know that South Australia, for instance, started off with a staff of 70 and has now got a staff of 210, so do you see any way around that? Or do you think we could have a small board which uses the expertise of the department that we have now, and still be regarded as a Rolls Royce model?

**Mr MARSHALL:** We did consider that and as we said, because of our lack of detailed knowledge on how EPA structures work, we actually took that part out of our submission, talking about the staged roll out of an EPA as per the last point of the inquiry. Yes, we fully appreciate that you're not going to just bang something out of it straight away, and if that South Australian model is as you say, then you know, I'm sure we'd feel that that would be an appropriate model to investigate, in terms of starting small and working up. And we have actually talked about that in terms of, if we could in the first instance create an independent board, and then that independent board works towards moving towards a best practice EPA. And we actually felt that that might be where something like the Desert Knowledge Cooperative Research Centre may really have a role in terms of assisting that board to determine what is the cost benefit of implementing, in stages, a Rolls Royce model. A good example of that at the moment is the Alice Springs earth and water management strategy where you'll know that there has been \$7m committed to date for an effluent reuse scheme, there's a project setting up with Power and Water at the moment for a major water efficiency program that will cost the town for \$2m. But a lot of that stuff just, it's virtually impossible at the moment to determine which of those ones in an ideal situation we would go with, because the full cost of water and electricity in Alice Springs is not understood, because

the externalities involved with that have never been incorporated. But there is a currently a proposal up with the federal government through CSIRO, to use Alice Springs as a case study to actually determine that full cost of water and development model that other regional centres can utilise. But just to use that as an example that it can happen, there are examples out there of how you go about that least cost analysis, and it might be something very useful for these guys to do, and this might be a good case study to use of whether an EPA, how resourced should an EPA be?

**Mr WOOD:** You did mention scientific research as a role for the EPA. What's wrong with the existing CRC or why couldn't that be the body that did scientific research in that area.

**Mr MARSHALL:** Which CRC?

**Mr WOOD:** The Desert.

**Mr MARSHALL:** Desert Knowledge CRC?

**Mr WOOD:** Yes.

**Mr MARSHALL:** It's just getting off the ground and it is doing, it is expected to do work on natural resource management issues, including some of that broader scale stuff. There's always going to be areas where an EPA is going to need detailed information to be able to make a detailed decision and if that information is not available, then I guess we're saying that the EPA should be in a position to either have the expertise to do it themselves or to be able to commission work, and that commissioned work may come through the CRC for Desert Knowledge.

**Madam CHAIR:** Yeah, the various proposals around the place in terms of an EPA, there's the issue of perception of independence. Do you think a small board where the Chair is also the CEO of the department is still an effective model? Like South Australia, for example? Because in Western Australia, we did hear from the Chair there, who is completely independent from the department, that their decisions often weren't implemented, that he as Chair of the Board, being separate to the

department, had no ability to follow through the drilling and the implementation of the decision process back through the department. That there was this sort of complete period of a break and it really left a lot of the implementation aspects, to his view, less than what they could be; whereas in South Australia we heard very strongly it was of benefit to have that link between the board, the impetus of decisions, and the feed down into implementation by the department.

**Mr MARSHALL:** The Western Australian Chair felt that he was compromised by?

**Madam CHAIR:** Not compromised, he just didn't have the ability to actually implement decisions because he was separate to the department.

**Mr MARSHALL:** Right. Well it's a bit of a balance act, isn't it. So if you're within the department then you become exposed to other potential conflicts of interest, as opposed to potentially being in a better position to get things done, I guess.

**Madam CHAIR:** So ALEC doesn't have a view on that? A preferred?

**Mr MARSHALL:** I'd have to be realistic and say we don't have enough expertise or background knowledge to make an informed comment on that.

**Madam CHAIR:** And in terms of existing government departments and agencies that you would see an EPA working closely with, in terms of expertise, what are some of the agencies you think realistically, expertise-wise, would be useful?

**Mr MARSHALL:** In DIPE, if you are thinking of Central Australia, then DIPE of course has got various people across various fields, and people like Col. There's obviously the health department as well, with respect to say monitoring compliance of effluent management systems on remote communities, for example; there's obvious expertise within there. And yet that is an example of a process which is really lacking due to lack of people on the ground to go out and check compliance. You know, the instigation of a self-regulation process, a self-licensing process from trades people

that department of health officials clearly state doesn't work. And I work in that field, I do septic tank work on remote communities, and you just see it all the time, you know. Pipes that are put in running uphill etc. on septic systems, you know. But the expertise is there, but there's not the resources for those people to actually be able to see that through for good environmental outcomes.

**Mr McADAM:** I just wanted to say I thought your presentation was very useful, in fact excellent. You referred to 2 matters which I understand are current at this stage, 1 being the white gums development, and you also referred to Alcoota Station pastoral lease. Are you in a position to advise in terms of what responses you're getting in terms of issues that you've raised. I mean, you said that you heard that reported in respect of the Alcoota matter. But for instance, in the white gums development issue? I mean, you would go to Mr Bannister, would you, and say 'look, we've got some concerns etc. etc'. Is that the process?

**Mr MARSHALL:** The Alcoota example we have been following up strongly, the example that I used to which we potentially haven't followed up is the one where land clearing has happened and then there's been approval.

**Mr McADAM:** That's just in other places?

**Mr MARSHALL:** That's not Alcoota?, that's a different thing.

**Mr McADAM:** I beg you pardon.

**Mr MARSHALL:** Alcoota? has applied for permission to clear and then to seed buffel grass and it was the seeding of buffel grass that we found really concerning. Yeah, we are currently seeking through Freedom of Information Legislation the decision making process to allow that. We have been in touch with the pastoral landlord indicating that you know, we think that wasn't quite good enough. I'd need to check whether one of our people has actually written a letter to the Minister but I know there is a letter on its way to the Minister, if it hasn't already gone, on that particular issue. So yeah, we've attempted to follow up on that.

I mean, the response we've had to that sort of thing is that buffel grass is not a declared listed weed for Central Australia and so the NT Government doesn't have any legislative power to do anything about it, but we feel that as a duty of care to the environment and as a precautionary principle, then the least you could do is say 'look, let's stop deliberately seeding the stuff until we know where it's going'. So we certainly put those views forward.

With the white gum subdivision, I've had conversations just the other day with Power and Water Corporation asking them that question of how much are they obliged to assist developers in getting best practice outcomes. Mark Skinner, who has been in charge of water services here in town, he's now in charge of it for a breeding scheme, said that they have got very little role to play. He said that if developers came to them and really tried to work with them to optimise things then Power and Water might be able to do some stuff, but he said they are certainly under no obligation to do so. And it is more a regulator's responsibility and I don't know that DIPE is pro-active at all in that regard.

**Mr WOOD:** Environmental health is meant to be the people who approve or not approve septic.

**Mr MARSHALL:** Yeah, I mean, what I'm talking about here is best practice versus what just happens to work, you know.

**Madam CHAIR:** Yeah, it's a pro-active encouragement of better systems rather than a monitoring of what is put in place.

**Mr MARSHALL:** Of business as usual, yeah. But that's where we feel that there is a real lack of that in Central Australia, I'm not sure about the Top End. But there's no real processes that really encourage developers to really strive for the best, and to help them over hurdles, like up front capital costs, where there is a community benefit from the up front capital cost that the developer potentially shouldn't have to wear all that cost, if it is found to be cost-prohibitive; but you know, if it's clear that over the long term the community benefits significantly, then there should be processes in place to assist that.

**Madam CHAIR:** Gerry

**Mr WOOD:** But if a department was doing its job on septic for instance, from my understanding it is environmental health that looks after the approvals for septic and we know the science behind anaerobic and aerobic systems, don't you feel that really should be, I mean if there are failings of staff here I don't know, don't you think that surely could fit within a department's regime. That they could actually specify that a certain type of septic tank has to go in. I know in Litchfield Shire there are subdivisions there where it is clearly stated by the department that you must put in a certain sort of septic system. Now do you really think that that should be an EPA's job or do you think that really the expertise we ought to have in a department should be enough to cover that?

**Mr MARSHALL:** There is no doubt the expertise ought to exist within the departments, it's just that it's not, the departments aren't resourced enough to focus on that sort of stuff. They are not directed to focus on that sort of stuff, the staff down at that level aren't, and that is where we feel that an EPA by bringing all this stuff together in to a robust, invigorating atmosphere and well resourced atmosphere for its staff and with the direction to say, 'Let's go best practice rather than just business as usual that works,' then you are far more likely to get better outcomes over time. And as we say, if Alice Springs is to develop itself as the capital of Desert Knowledge Australia what is the point in building a best practice \$25 m precinct down south of town when Larrapinta subdivision or the Mount Johns valley subdivision is normal old business as usual where single households in Alice Springs are the second highest water users in Australia after Kalgoorlie. We use almost 2000 litres a day of water on average in a house, most of that going on the garden. So 'whoopie' do if something fantastic is happening out south of town, but new developments continue to be very average as far as resource consumption goes.

**Mr WOOD:** Would you see the role of the EPA as regards to setting policies would be far more important in that case? In other

words, if you could set an overall policy for any development put in a certain area around Alice Springs there were guiding principles or even legal principles that had to come in to place if a subdivision was to be approved by the Development Consent Authority and you were overriding requirements and the EPA would set those at the beginning?

**Mr MARSHALL:** Sure, I think that would be one of the more critical roles of an EPA. The reason that we are arguing for the actual on ground roll out of those policies to be held with an EPA is because it is clearly shown at the moment that NT government agencies are not working proactively in that respect because of lack of resourcing issues. I don't see why that would change in terms of lack of resourcing, but if there was a clear understanding from government that an EPA as an integral unit could really kick some goals, then there is greater likelihood for that to win a case with government leaders.

**Madam CHAIR:** In Western Australia it is regarded as one of the better models worldwide in terms of the EPA because it has a unique aspect to it, which is policy. It identifies policy whether it is water use policy or a policy about development around a particular bay, geographic area that the EPA has chosen to investigate. That policy published in the form of guidelines is not binding, but it is really recognised as setting the bar in terms of best practice so I guess what Gerry was getting to is that role that the EPA in Western Australia plays in that. For example, it could do an investigation into subdivisions in the arid centre and produce guidelines, publish guidelines to say that if you are going to create subdivisions these are the integral aspects of the design for best practice from resource management and the environment. So that is very much a role that the Western Australian EPA is currently playing. But it is fairly unique in Australia. Most of them are more the regulatory monitoring aspects.

**Mr MARSHALL:** You would have no argument from the ALEC, but that should be one of the key priorities of any sort of EPA which is developed in the Northern

Territory. Key priority to set policies which move forward environmental outcomes.

**Madam CHAIR:** We have heard, just my final question on that before I hand over to Elliot, we have heard though from industry, particularly the mining sector, that at this stage of the Territory's development to introduce an EPA would cease development. Investors would just not come in.

**Mr MARSHALL:** Yes, but we heard the same thing when native title dropped on the table didn't we? I mean, it is rubbish, what a rubbish statement to make. How is an EPA going to stop significant developments like that? We are not necessarily talking about significant changes to the compliance requirements of mines, we are just talking about in the mining context we are talking about a different process to ensure that there is full accountability and openness about how that process occurs. I don't buy.

**Mr McADAM:** Yeah Glen I have just got one question really and I think you referred to equalisation or a regional focus and given the unique environment of Central Australia and I incorporate the Barkly into that as well, is there, I mean I would be interested to hear from you and I know that there are cost factors here, but could there be a separate focus in respect to what we are talking about in regards to Central Australia because you know desert knowledge stuff and a whole range of other matters that are quite unique and specific to this region. I am not suggesting that you separate or divorce the overall vision or the over-arching approach policy, development or what have you, but is there a need for a more of a regional focus?

**Mr MARSHALL:** Yes, is the answer and I think I can safely say on behalf of the environment centre that we would relish a degree of autonomy for a regional aspect of an EPA. Again to use other examples, so many houses in Alice Springs are poorly designed for our climate. Now there are some management tools out there right now to work through some of that stuff, particularly housing energy rating schemes, that sort of thing which work right now in Central Australia but we don't have those in place here because there is not a tropical

equivalent and so Central Australia is constrained while we wait for the Top End to catch up with a tropical scheme so the NT government can roll out a Territory wide program. That is having a serious detrimental effect on housing development in Central Australia. I think that might be a useful example to say the same thing for an EPA in the Northern Territory if Central Australia is waiting for particular issues to happen up in the Top End so that they can be rolled out Territory wide then that is to the detriment of the environmental values of Central Australia. And I would think particularly now that we have got this desert knowledge initiative really rolling out, but a lot of that autonomy of the EPA actually should potentially roll through to other state arid focused initiatives. There probably should be a closer relationship, for example with the Georgina Diamond Tenant Catchment Advisory Committee than there is with the Top End issue.

**Mr ELLIOT:** I have just got one other thing and perhaps other people might like to comment on that because indigenous housing in the bush is just higgledy piggledy adhoc, septic and all that sort of stuff. What I am saying is, it is incorporated as part of an EPA but it just seems to me and I would be interested to hear from other people in terms of why we continue to do what we do in respect to development in the bush quite opposed from suburbs around Alice Springs and within Tennant Creek. What I am talking about is Indigenous communities out in the bush. Have you guys ever got involved in that issue?

**Mr MARSHALL:** Yeah, well I actually run a consulting arm of the Arid Lands Environment Centre, it's a trading name called the Centre for Sustainable Arid Towns and it is a self-funding consulting arm and a lot of work I do is out bush with remote housing. For example with the IHAN guidelines, the guidelines are good, but it just doesn't happen on the ground in practice.

**Mr McADAM:** Why not?

**Mr MARSHALL:** Well there is just not the commitment from the regulators to take it a step further and say, in some areas, to say

right you may have the option of putting a northern veranda on a house and we would encourage you to do it because it makes sense for sole gain, but you have got no choice but to put a second skin on your western wall because it provides shade to stop those internal rooms there being 38° at midnight. Now there is nothing to stop regulators doing that and at the moment the guidelines just aren't working. They are just not moving people through to on ground outcomes.

**Madam CHAIR:** Alright what I might do is give us a 10 minute recess. It is 11:10 thereabouts now. I propose that we just have a short break so people can get a glass of water, cup of coffee, etc. and we will be back in here at 11:20. Glen thank you.

**Mr MARSHALL:** Have you finished with me?

**Madam CHAIR:** We have finished with you but we invite you to stay around and listen and you might have further questions for the committee as you hear other people bringing up issues and us responding to them. So thank you very much.

**Madam CHAIR:** I call to order the Legislative Assembly of the Northern Territory's sessional committee on the Environment and Sustainable Development, the inquiry into the establishment of an Environment Protection Agency for the NT, arguments for and against, options for the structure and if a model is recommended options for its staged introduction. We have had a short recess. The committee public hearing in Alice Springs resumes and I invite anyone present to come forward and talk to us about their views, or indeed have an exchange of questions and answers with us. Don't be shy, we are a friendly bunch and I welcome the member for Daly Mr Tim Baldwin and the member for Drysdale Mr Stephen Dunham who were apologies earlier on in the session due to another meeting. But they have rejoined us and thank you.

**Mr BALDWIN:** Thank you Madam Chair.

**Mr DUNHAM:** Thank you.

**Madam CHAIR:** There is also an apology for the member for Millner Mr Matthew Bonson who is detained in Darwin. Con?

***IN CAMERA EVIDENCE RECEIVED***

**Madam CHAIR:** Alright, so are you taking the opportunity to have discussions outside of the formal hearing.

***IN CAMERA EVIDENCE RECEIVED***

**Madam CHAIR:** Good.

**Mr DUNHAM:** Can I just point out to you, committees of parliament we are actually covered by the rules of parliament while we meet here so you can give evidence here and you are fully protected by the same protections of parliament. You can't be, what you say will go on to a Hansard record that is true and you will be recorded, but you cannot be penalised in any way for that because it is contempt of our parliament. So if you want to say something, feel free. You are fully protected by parliamentary privilege. Not a problem.

**Madam CHAIR:** I indicated that earlier on.

***IN CAMERA EVIDENCE RECEIVED***

**Mr McADAM:** It just seems to me --- that perhaps what you, let me know if I am wrong or interpreting you wrongly, but it just seems to me that everything has been adhoc, its all based on guidelines, etc, but there could well be an opportunity in respect to developing frameworks or templates in respect to specific industries, again across this overarching outcome, which may be a good thing in terms of involving stakeholders, community organisations, town councils, pastoralists, mining industry, in terms of trying to work with them, in terms of coming out with some sort of, I don't know if framework is the right word, but certainly something which provides certainty, continuity in terms of process, across industry if necessary as required. Is that what you are also saying? There is an ideal opportunity to work with, because it is a new situation and there is no EPA here so the challenge is, how do you go forward in terms of the establishment of an EPA if indeed there is going to be one

and no decision has been made at this stage. But regardless of that sort of stuff, it seems to me that you are also saying that there is also an opportunity here in terms of government playing a role with industry and other stakeholders in terms of going forward anyway. Is that also what you are saying?

***IN CAMERA EVIDENCE RECEIVED***

**Mr McADAM:** And I suppose what I'm also leading to, you are never going to get the perfect outcome. There is always going to be, it's a balancing act in terms of how you right something but at the very least by going down this path that you're setting, you are basically changing the culture in terms of how people respond across industry, across the community, across stakeholders.

***IN CAMERA EVIDENCE RECEIVED***

**Mr McADAM:** That's the same as land rights was a swear word 20 odd, whatever it was 25 years ago and then you've got native title as a swear word as well. So it's this process in terms of how you try and,

**Madam CHAIR:** Public awareness.

**Mr McADAM:** Yeah, its public awareness but it is a bit more than that because what we are really talking about is sustainable development in a social economic sense.

***IN CAMERA EVIDENCE RECEIVED***

**Mr McADAM:** Well sorry I said that.

**Mr STANTON:** It is a very big word that some people don't understand. But every sentence you read, or paragraph you read there is sustainable of this, and sustainable of this.

**Mr McADAM:** Yes, it's a bit like participation and partnerships.

**Mr DUNHAM:** Consultation.

**Mr McADAM:** Consultation.

***IN CAMERA EVIDENCE RECEIVED***

**Madam CHAIR:** Thank you Con. Members anything to add?

**Mr WOOD:** Yeah, I was just going to say, you said the Development Consent Authority, you said some gentleman in the Development Consent Authority ignored your advice. Would you see that could be any different in an EPA. I mean you are going to have a group of people who could...

**Mr STANTON:** I hope not. If it goes to the EPA that would be your last stand. That would be your last ask of saying 'give us some options, you guys are the supplier. But if they are not going to be able to do that, what is the sense in having them. If you have got everything to put in to place but they keep knocking you back the EPA stands up to say, 'No hang on a minute, here's all the evidence whether its scientific, whether it's the best practice, whatever'. They're the ones that should be able to say there and then 'yes we've weighed it all up and you're sorry it was the view of the consent team, its not going ahead'.

**Mr WOOD:** But even regardless of the process you would be speaking to various groups, sometimes those groups will have different points of views and someone is going to lose. It could be the department. So that will always happen even with an EPA I would imagine.

***IN CAMERA EVIDENCE RECEIVED***

**Mr DUNHAM:** You listening to this Gerry? The government tried to prohibit the horses in Gerry's area and he nearly had a posy.

**Mr WOOD:** 1 horse per hectre.

**Mr DUNHAM:** 1 horse per hectre. 3 strikes and you're out they told him. You didn't like that aye Gerry?

**Mr WOOD:** We've got to find our balance of course.

***IN CAMERA EVIDENCE RECEIVED***

**Mr McADAM:** That's a PER.

***IN CAMERA EVIDENCE RECEIVED***

**Mr McADAM:** Its closed now. I thought it only went out 2 weeks ago?

**IN CAMERA EVIDENCE RECEIVED**

**Mr DUNHAM:** This is terrible.

**Madam CHAIR:** I am sure the member for Barkly will chase that one up.

**Mr McADAM:** I suppose what I'm trying to get at in terms of what you are saying is there is a lot of work to be done here before you actually arrive at an EPA. There could well be arguments, there is already regulatory or indeed impediments in respect to dealing with some of these sorts of issues. It comes back to my point about a culture thing and I mean by just coming up with an EPA I don't think we are going to resolve it. That is my initial point. But some of that you work with to a point in time and I mean this is just my own personal point of view, it is like may be appointing someone, you know an EPA something like that, a very small unit, developing these frameworks or whatever you want to call them, templates, MAUs, what have you. But arriving at a point in time where all the players are reasonably happy.

You are not going to get everyone happy is a point I am trying to make, but by having the sort of person who has got the experience, expertise, local knowledge of the Territory, and that is pretty important and of course exposure in other jurisdictions, but that process of arriving at something within a 5 year period. That is just my personal point of view, it is not yet an opportunity to get ----- and if you look at some of these issues that you refer to in the process, you know what I mean?

**IN CAMERA EVIDENCE RECEIVED**

**Mr McADAM:** No, I am talking about something with a bit of teeth at the end of it but at the very least you have got people who are more than aware of what the requirements will be in to the future in terms of industry, stakeholders, indigenous organisations, IHANT and all that sort of mob you know. You've already got the guidelines in place in respect to some of these sorts of things but...

**Mr DUNHAM:** Can I ask Colin Stanton a question? Is Tungingerra's nursery still

going in the -----thing, is that still going? It used to be the Little Sisters.

**Mr STANTON:** Yeah.

**Mr DUNHAM:** Are they still doing soil con work, shelter work and planting with new houses does anyone know?

**Mr STANTON:** Yes they are.

**Mr DUNHAM:** They are. That's a good program.

**Mr LOW:** But not as much as they want to.

**Madam CHAIR:** Sorry can we just have your name for transcript purposes so that we can identify your comments.

**Mr LOW:** I'm not sure of the process in here. When I was here at 10 o'clock this morning I missed it, what do I need to do?

**Madam CHAIR:** Just state your name.

**Mr LOW:** Bill Low.

**Madam CHAIR:** Thank you. I just explained this morning we are recording these proceedings. We will transcript them and comments will be part of the published outcomes of the inquiry so to assist our transcriber we just when we first speak, state our names so she can then follow up throughout the proceedings. We have gone in to a fairly informal chat session which is part of the nature of how our committee operates so I am encouraging those of you who are here to speak up. Whether it is comments you want to make and whether you are for or against an EPA, whether you have a particular view on what's needed or not needed, we really encourage you to speak up this morning.

**Mr TURNER:** I am Peter Turner. Everyone knows me on talkback. If you are serious about an EPA it has got to have teeth. Not a toothless tiger like many government agencies are. But you know we talk about the Buffel Grass, look at the centre, I look at the centre. It was a mistake a long time ago but it is here. It has got to be managed properly and the tragedy of it is people don't like it being burnt off because it creates a lot of problems. But if you get it early it will

save problems. I'm talking about my dad's country at Alcoota, we have to come to a decision on the grass. That buffel grass is hard to keep under control, especially when you get this sort of weather coming and if you don't get that opportunity to burn it off when its in a good season, right, you know when it's the right time of the year, you create fire with many losses out here. You know, it doesn't matter how much clearing you do, its the buffel grass intense heat. It is in a lot of ways killing the environment because there is no control over it and it is a big problem for the desert you know. Cattlemen, from a long time ago my dad is well known in the Territory, the Turners. Do you know when the CSIRO came out, 'Oh this is good for the cattle', after it was put in, and you know, he is gone now, he said 'big mistake'. It has created a massive problem you know. And it's a thing when you bring in this foreign stuff into this country, you have got to do it in a sensible way and a lot of it is caused through government departments and the like. And EPA, if its going to be legitimate, it has got to be able to police and look at as Colin was saying, the areas, how its going to affect the areas where its in because if you don't go there when you've been putting something in, you know look what's happening in the top end, cane toads is going to ruin your environment unless you stop them.

It is things you read like that, we have got to wake up and start thinking. We are talking greenies. Everyone has got green in them, your kids, the future. What are we going to leave for our children if we don't control our man made disasters and we've got to learn how to do it in the proper way. Like in Alice Springs we have a problem here with the town and no doubt Col will back it up because over development caused by greedy developers and those people in your line of work who are letting it happen. Politicians, you are letting greedy developers run rough shod over environment, which is very fragile. I see houses built on mountains, that these mountains are called 'moving mountains', rain come back, I know people who have got to get a backhoe in every time it rains because some idiot in the government said, and probably told them don't put the houses there, but they don't want to listen. They build houses where there is going to be a

disaster, you know. And we are talking environment, this is probably, you know the EPA has got to be introduced, it has got to be a tiger that has got bite because all the agencies that we have, as you've been told, you go knocking your head against the wall. And you can see it, you've only got to be 'Joe Blo' like me and drives around the country and see what's happening and we are allowing this to go on without the real thinking you know. Common sense thinking. Listening to what old people were saying a long time ago. I remember when they put the Casino in, Barkly's Hotel. Don't put it here, because you will go under water. The first year they built it, the two-up was a swimming pool. Now that's hurt the government of the day right, who was involved in that allowing it to happen because they don't want to listen. Politics is interesting, and I am not joking, you have got a job to do. But if you want to continue doing it, you know people are starting to grow green in the world because the world is a growing mess because of our greed and until we wake up and think of the future for our young generations, what are we going to leave them if we don't start thinking what we are going to do. You know, we were once great innovators of our environment you know. Now we are all turning it in to rubbish. You know that's an environmental issue. The classic example is this Howard government right. I go up to them and say 'Why wouldn't you have recycling before all this waste products we've got going on now', they are saying it's a bit hard. The comment that came out was, 'it's too costly and expensive', well hang on, you people that are involved in politics have got to realise that a cost expective, if you get this stuff because there is people who make chairs, should be able to get it back from recycling.

It is a big thing, recycling what waste you do. Rubbish. We are starting to move now to get rid of plastic bags, which is a good thing. If you are going to really legit, you have to start looking at animals and tigers and say, 'hey don't do it'. Like one horse on, stamping on a 100 horses. Cattle, we have got to turn up and say to cattlemen, 'Cattlemen you are over stocked, cut your herd down', because the biggest thing here is cattlemen in this country whether we like it or not, you know and some of you are cattlemen, you can follow you are involved

in it. You know you maybe made a disaster when you over stocked your country and this is a very environmental dangerous thing to overstock. And for years people are waking up thinking 'My God, we did overstock'. You know, when you know you are overstocked is because then you have cattle dying in their thousands when droughts on, and this land is very volatile and you know the past practice, my old dad was great cattleman, as some families know, and he did make that comment, he was a wild man, but he made that comment and his biggest blunder was he overstocked, our country. You should only have what you did, we should have had looked at our bush environment and farmed our bush very carefully We started doing desert knowledge I believe, and things like that, it's time we start waking up, if we really want to look in the future of the Territory, and mind you, I'm looking at my own land here, but I've been up to Darwin a few years ago, and what blows me out, is you top enders, I am worried about the day we ruin everything, the cultivation of cotton is one of the worst products, good to have an area, but you should only grow in areas where it is sustainable, and not an area where it shouldn't be, because it loves water. In the Territory we've got to learn from other countries and states, that there's a lot of that stuff not appearing ----- We just started a mass clear vegetation, you can save it or not, but I tell you what! I've been up past the Daly, this is just 2 years ago, and we're going along the east coast of Australia, and other areas are starting to wake up and regenerate their dream. We're got to start thinking those in politics, and say 'hang on, listen Joe you want to grow something there, your not going to put those hundreds thousands square km's to grow a crop that can affect the whole environment, just grow a little bit, don't be greedy'. And until you do that, where are we going to get. Hopefully an EPA, if it's done properly will address those issues, but you people in politics, have got to make it so it has got a tooth, and bites. That's all I've got to say.

**Madam CHAIR:** Thank you Pete. Any questions from the committee?  
Alright, anyone else want to contribute?, Alice Springs Town Council want a chance?

**Mr FIELDS:** Lawrie Fields from the Alice Springs Town Council. Could I just offer a couple of comments, primarily I'm here to kind of relay to my colleagues on progress and discussions, however. Firstly, in terms of council operations, I think generally speaking we try to keep in mind green matters, with our general operations, and project works. However, if an EPA were established and were able to provide additional guidance and regulation to council, we would be more than happy to look at ways in which we could approve our operations in terms environment sensitive matters, and I think this would a positive thing for both council and Alice Springs as a whole. Secondly, although obviously beyond the scope of council's comment in the current planning scheme, I think our council is certainly supporting any further regulations that supports the introduction of your energy conservation design in new subdivisions, including approved government methods of great water reuse etc. I think something that council will certainly look at favourably. In regards to a project that we've been recently been conducting which has been in conjunction with the Commonwealth Government, we've been researching waste oil management, in remote communities, and some of the things we've found in that project is although there is a very high awareness of the importance of managing waste and appropriate disposal techniques within remote community councils. Quite often there role, there is firstly a lack of funding, certainly there is a lack of coordinated approach to waste management in remote areas. I think this has environmental considerations, especially considering a lot of these are in remote and presumably ecologically sensitive areas. I think if an EPA was able to provide a coordinated environmental planning framework of some sort for the entire region, I think that's something that would very much benefit central Australia, and I think that could be a very important role, that the proposed EPA could fulfil.

**Madam CHAIR:** Thank you for your contribution. Members of the committee, any questions, no we've gone quite.

**Mr McADAM:** No, just on this oil thing, your saying that you're presently doing some work at the moment.

**Mr FIELDS:** Yes, we have been completing a 12 month research and development project, on the topic of waste oil management of Central Australia.

**Mr McADAM:** Do you want to elaborate a bit more in terms of the work thus far, and a bit more practical things, or the more...

**Mr FIELDS:** On the project itself?

**Mr McADAM:** Yes.

**Mr FIELDS:** We would like to say we have been conducting the project for about 12 months. The project has been split into 2 phases, firstly we looked at basically, analysing the amount of oil coming into Central Australia, as opposed to that which is appropriately collected and exported to a reprocessing facility, we found primarily the recovery rate of Central Australia is about 67%. Which while that addressed our within Alice Springs represents a reasonable recovery rate, however we did notice as part of our findings of remote areas were not actually serviced by a formalised recovery network as such. We then pursued in phase 2 to further research this management in more remote areas, and we now working on a proposal to the Commonwealth Department of Environmental Heritage to implement a firstly an upgrade of storage facilities within community councils. Which are often waste oil stored in 44 gallon drums, which is exposed to the elements and this has all the negative implications of leakage, and spillage due to weather, environmental impact on the container.

Secondly, our proposal will include a method for recovering that oil to Alice Springs fulfilled and exported to appropriate reprocessing. I would like to say during that program, we've had an opportunity to kind of gather some information about waste management in remote areas, and it is our opinion that a greater deal of coordination and resourcing would be of both a benefit in terms of public health and environment in these areas.

**Mr McADAM:** Do you know how much, probably nil recovery in terms of bush communities I dare say.

**Mr FIELDS:** Power and Water serviced generators and oil engines, they typically reasonably well serviced, they included in the contract a recovery -----, a reasonable proportion of communities however have extreme difficulties with exporting waste oils that come from the council workshops, community vehicles, and stuff.

**Mr McADAM:** How do they get rid of stuff from generators, and do someone goes and picks that up do they?

**Mr FIELDS:** Well, yes typically yes. What happens is that the maintenance contractor from Power and Water has it written into their contract that they include that in their course. Previously, that quite often doesn't include the other waste oils within the community.

**Mr DUNHAM:** Whose got the contract for storage in Alice?

**Mr FIELDS:** In Alice?, there are 2 private companies that currently offer collection services, those being grease monkey, and waste master. Councils currently in the process of setting up a waste oil , original waste oil storage facility at the landfill. Which will primarily be to service waste oil coming in from remote communities as part of our proposal.

**Mr DUNHAM:** Where do they send it?

**Mr FIELDS:** The options typically at the moment, the waste oil is exported to Adelaide to...

**Mr McADAM:** What about this refinery out of town, do they take them in?

**Mr FIELDS:** I was going to mention that. Central oil refinery certainly is an option for exporting the waste oil, they reprocess it and turn it into a burner fuel, which is then sold as a product. However, do ----- with this facility, makes it an uncertain destination for the oil.

**Mr DUNHAM:** It's a big problem in Darwin, Caltex has the contract there, and their storage at capacity, right throughout the town, the only storage they have is being decommissioned by the government, and they're saying that South Australia is refusing to take any more oil, and that the only site in the Territory is really Mataranka Mine facility where they burn it. So that's a significant top end problem is waste oil, I'm surprised your getting 67%, and I would be very surprised if that figures accurate, and cooking oils, you wouldn't be getting any where near that. So your talking motor oils aren't you?

**Mr FIELDS:** Just to qualify that, yes, our study was looking at specifically your engine and industrial oils, excluding organic oils, radiator coolants etc, that couldn't be incorporated in out of system that we export to a reprocessing facility.

**Madam CHAIR:** Yes, well done. Would you in terms of your study and your proposals by matter of course send those details to the Northern Territory Office of Environment and Heritage.

**Mr FIELDS:** Not as such, we've been dealing directly with the Department of Heritage in Canberra, yes. We would be certainly be happy to forward it on information.

**Madam CHAIR:** I think it would be useful, yes. Is there any one else here that wants to participate in our inquiry?

**Mr LOW:** Bill Low, I'm a private consultant here in town, and work in environmental ecologic matters, but I am here more out of curiosity to know where the EPA might go, and what powers and independence and that sort of thing it might have. Historically I suppose, that the number of EPA's that have been set around Australia, and some of them have worked extremely well for one. Then when they started having too much power up there in and they got their parts pulled off, and they had to fall back into line and became much less effective. So if the same things going to happen here, and I no doubt that it probably will. Just because government organisations will have to follow the social line I suppose, I was going to say political but that's probably

not the best way to go. There are some environments, in terms of maintaining people and operations, and we are a virgining population, and it's going to get worst before it gets better.

If it's just another organisation which will not have any more powers than the current government department has, I guess I don't see no real need for it. But if you people can enlighten me, I'd really like to know about it. I think that there is a very much a need for guidance, education, best practise information to get out to the public, the users, theres probably a lot more done in that area, and 1 of our contracts is to be the airport environmental officer, where we had that role at the airport here in town, where we offer a service of educating people before we can bring out the big hammer, and say 'your doing it wrong', they need to know what they need to be doing. And even if there is legislation, acts and all that sort of thing, there is a constant requirement for people to be educated. There are new people coming into the game all the time, and there is a constant requirement for that to happen.

But you've got to show people, and that's probably another way to go, demonstration that these things are working like, I will give you an idea, it's setting out a good example. But there needs to be teeth in the operation and some means of making people toe the line, when they don't want to toe the line. Because there is always this economic argument that they can't afford to, but I guess 1 of the arguments is, as Peter said, 'if we can't afford to now, we certainly can't afford to let that happen, which is going to destroy the future'. We've got to take a long term point of view as well as the, plus keeping the people occupied and meeting social requirements and needs, I suppose. That's my main points.

**Madam CHAIR:** Okay on behalf of the committee I'll respond to your query about any decision of whether or not to have an EPA. I stated at the outset this morning that this inquiry is very much in a public hearing phase, after having done some research on EPAs throughout other jurisdictions, specifically obviously Australia, but we have heard evidence about New Zealand and Canada. We have made no threshold decision as to whether or not to recommend an EPA, at this stage of the

inquiry. That is obviously the threshold question before this committee and those deliberations will be made later this year, and any recommendations of the committee go through parliament in a report that we table, that has now come to the inquiry. Indeed, that may be a consent report, that is, the whole of the committee agrees on the details of those recommendations. But it could also be the situation of dissent report within the report, that is, some members of the committee have a different view. We have received a whole diverse range of submissions to the inquiry to date; there are 28 written submissions and a series of oral submissions in the public hearings we have conducted to date, which is Katherine, Tennant Creek and Alice today. We have yet to have our public hearing in Darwin where we will see the major industry stakeholders submitting to us orally in addition to their written submissions. So there is no answer to your query, in terms of are we recommending an EPA. We don't have that deliberation made yet. We do know though, in terms of our inquiry terms of reference, that if we do recommend an EPA we are asked to recommend a structure and a model and also consider implementation. So we have those issues before us and we've taken a great deal of evidence as well as expert opinion from interstate and in the Territory, and we are continuing to gather that evidence. Our deliberations on our recommendations will be in the latter part of this year.

**Mr BALDWIN:** Have you had experience around Australia with other EPAs?

**Mr LOW:** I have known a number of people who have worked with EPAs in other states so yes, I do have, second hand experience, not first hand.

**Mr BALDWIN:** What's your view of the other models around Australia, without comparing

**Mr LOW:** Well the Western Australian model was a very good one. It was set up, going back quite a few years when Barry Coulter was the leader of it. That organisation, while it's doing a very good job, they were showing people how to do things, but they also carried a big stick and

that was where the problem came in, because they hit too many people too hard, and the government pulled them into line. I guess another example of one that I don't have a lot of experience with, the Victorian one, but that seems to have gone bureaucratically parallel to I suppose, and very much in the line of well, the big stick approach.

And there needs to be a lot more of I think, guidance and educating people on how to, on what they should be doing. Because it's like what Peter says, that when his old man was working on the countryside, and whatever he did he properly managed it, people didn't know what to do. The way they used to grow cattle in England or Europe or whatever, they could carry 1 piece to the, a very small area, and not realising that you couldn't do that here. And it took many generations for that to develop and my experience in that area, over the last 30 years, is that there has been a vast improvement in our management of these lands. Because people have become aware, the kids have gone off to uni and got educated and brought back new ideas which influence the old man, and the old man then thinks better, but it was the kids that were bringing those new ideas in and things became much more sustainable, I guess in terms of operation. We still have problems with this. As Col says, we have got horse populations and it's always the newcomers that buy the blocks out of town thinking they've got 5 acres and they think they can carry as many horses as they want to and it's just not true. Our calculations show that they should have about .2 of a horse on each 5 acre block out there, they just don't realise.

**Mr BALDWIN:** It's not the eating part of the horse that's, the fertiliser part.

**Mr LOW:** The defecating part is a fertiliser.

**Madam CHAIR:** That's right. Thank you for that. Any more questions?

**Mr LOW:** Just 1 more question. If anything comes out of this, I think it certainly needs to be more funding for existing services and whatever to help them...

**Mr BALDWIN:** You'll be happy to know that it's been a strong theme all the way through, is the resource issue.

**Mr LOW:** It's the biggest problem we have.

**Mr BALDWIN:** Col, just on that horse thing, as an aside really, I mean it is an issue. You said in part that there's legislation there that restricts the amount of horses per block, and then we keep talking about more teeth, more teeth. Why is it, I mean, who's supposed to go and act and take the horses off, or use the teeth that are there, I guess is what I'm saying.

**Mr STANTON:** Well I supposed in the old days, we had what they called a Soil Conservation Advisory Board, I don't know if you remember that. I don't know where that is now. I mean, everyone in the department just is like 'what!'

**Mr BALDWIN:** Oh, it's disappeared, all right.

**Mr STANTON:** And they used to have had the, like if you had any issues, and once again, you went and saw the person and said hey, 2 horses, get the others off. 'Nah, nick off' etc. Then it had to go to the Soil Conservation Advisory Board, then they thought well, if you've got a case, let's send it up to the district soil conservation officer, and if he feels that it is or not, then he signs off and says 'right, get those horses off'. Then he comes back to that same approach as you're saying, that education. Bring it back down to the officer again, and make people aware of what is happening with the 5 or 6 dead horses, and go through that again.

In our building regulations or the planning regulations, they don't recognise it, but it's in our Soil Conservation Act, because the rural blocks, during the dust control project, it was all, it was a restricted use area, under the soil erosion hazards, it's in there, 2 horses. But nobody wants to go down the path of the normal stuff.

**Mr BALDWIN:** Prosecuting.

**Mr STANTON:** Prosecuting, yeah.

**Mr BALDWIN:** So that's an inherent problem, isn't it? The teeth are there, that's written up in an act, law.

**Mr STANTON:** Yes but then you've got, some clarification, of some of the legals who reckon you haven't got a case, you don't even go there, because there's something missing in that deed, like it might be written, but legally it isn't where they could pull something out here and make a hole there, and get it back up there etc. etc. So as it has no teeth, so don't even go down that line.

**Madam CHAIR:** So the legislation has not even been tested and there is legal advice that don't test this because it's weak. It's flawed.

**Mr STANTON:** Yes.

**Mr WOOD:** One of the other problems was, especially planning legislation, was that you've got to 'dob' someone in, and a neighbour is not going to 'dob' another neighbour in unless it wants a bit of a bun fight. I get phone calls that say 'look, there's a bloke clearing the land, please don't let them know who dopped them in'. And I think that was put in, I suppose governments were trying to find a balance between allowing people to do something on their block without being too restrictive and too over, the stock was too heavy; but to some extent it went the other way. But I just might make a comment. You said there's lots of acts. I mean, 1 act we found for a problem we had was for a person who had 2 ½ acres, you know, one hectare, who had 2 horses on there and had just dust. It was the health act. There's a section in the health act under stables which is probably stronger than any other act. A person complained about the dust was affecting their health, the health inspector went in and the 2 horses weren't there the next day. So some legislation is stronger than other legislation.

#### ***IN CAMERA EVIDENCE RECEIVED***

**Mr DUNHAM:** Doing the same job twice.

**Mr WOOD:** Well you're right. In fact the case I'd said about the health inspector, we first went to the planning authority, said

under that, it's intensive agriculture, and they said oh we can't do that. We said 'what about the soil conservation because there's a lagoon right at the base of this block and it was all bare'. 'No, you won't get anywhere with that'. Have you tried the health act, and that's the one that worked. But you're probably right. Maybe that's all we've got to do is start to bring these things under 1 act instead of a whole series of acts.

**Mr STANTON:** And the funny thing is we had a chopper pilot in there who owned a chopper, and that was where he was going to work to and from, from his pad on his rural property. We couldn't pin him under the Soil Conservation Act, from all the dust rising. So Pete could get him on this Noise Pollution Act, so Pete's hiding in the bushes in all different types of weather and times with a noise meter, recording all the noises. And the same thing is airconditioning, he's called out to the noise pollution act, and he's hiding under the next door neighbour's place, clicking on somebody's aircon, 'Right, got you mate!' So I'm going to ask him about microwaves and things and say, 'Got you mate'. It is just crazy, because you have got to revert to another Act to make something happen.

**Mr TURNER:** And that's the problem I think, over legislation.

**Mr STANTON:** All of these things can be forwarded into one package, under one act.

**Madam CHAIR:** Part of the inquiry processes we have written to all agencies, and we are identifying the various pieces of legislation that this inquiry impacts upon, and are asking agencies for comments on various improvements that they may see come out of this process. And we have been receiving significant submissions from agencies which have been very helpful. Other people do see that this inquiry is an opportunity for some of the cleaning up that's been talked about today. You are from the Tourist Commission. Do you have anything to add or any questions?

**Ms WEIGHELL:** Not at this stage, we will issue a formal....

**Madam CHAIR:** Is there anything else from the members of the committee? Anything that anyone wants to add to our discussions this morning?

**Mr BALDWIN:** Have you got a year?

**Madam CHAIR:** Apart from, we'll hear it all on Talkback...

**Mr BALDWIN:** Through the Chair, it is probably worth pointing out that when we do our report, that it will be tabled in parliament so everybody gets the chance to look at it, comment on it, organisations obviously would have their say as to what they think of our recommendations. Parliament then debates it but at the end of the day, government, being a part of parliament, takes note of it and then they will decide; 1. on an EPA, if they want one; 2. on the structure, model, independence and so on. So it's worth just pointing that out, that when we do actually hand in our report, it's to parliament, and whilst we debate it, you also have a chance on commenting and perhaps adding some pressure to government, of the way you think you should, to come up with a solution. That's the process.

**Madam CHAIR:** Yeah and we do, the reason why we're taking your details as you attend public hearings or provide written submissions, we do send people who have participated in this process a copy of our report, so you will receive our report, which we aim to have ready by the end of this year or at the latest, early next year, depending on the process of gathering evidence and information that we're part way through. So look, on behalf of the committee I'd like to thank you for your participation today. It's been invaluable for us to hear from residents of Central Australia, both in your professional capacities as well as your personal commitment to our red centre; your views on the need or otherwise for an EPA; and we really thank you for the exchange that we have been able to have this morning. It has been an open and highly informative exchange, and it has certainly given us committee members a lot of information to go away and consider during our deliberations. So on behalf of the

committee, thank you very much and I'll close the public hearing in Alice Springs.

TRANSCRIPT NO. 7

**DARWIN PUBLIC HEARING**  
Litchfield Room, Parliament House, Darwin  
Friday, 11 June 2004

**PRESENT:**

## Committee:

Ms Delia Lawrie, MLA (Chair)  
Mr Stephen Dunham, MLA  
Mr Gerry Wood, MLA

## Apologies:

Mr Tim Baldwin, MLA  
Mr Elliot M<sup>c</sup>Adam, MLA

## Secretariat:

Mr Graham Gadd (Secretary)  
Ms Maria Viegas (Administrative/ Research Assistant)

## Attended by:

Mr Matthew O'Reilly – NT Greens  
Mr Peter M<sup>c</sup>Linden – Local Government Association of the NT  
Mr Rowan Hutson - Bechtel  
Mr Jarrad Holmes – Threatened Species Network  
Mr Peter Robinson – Environment Centre Northern Territory  
Mr Tom Cowen – Environmental Defenders Office (NT)  
Ms Penny Doust – ABC  
Mr Andrew Buick – Office of the Chief Minister  
Ms Barb Singer  
Mr Steve Sutton – Office of Environment and Heritage  
Mr Geoff Casey – Private small mine operator  
Ms Rachael Wedd – Northern Land Council  
Mr Tony Scherer – Palmerston City Council  
Mr Luccio Cercarelli – Palmerston City Council  
Mr V and Mrs M Taylor  
Mr Gordon ???  
Ms Amanda Ward  
Ms Susan Penfold – Arafura Timor Research Facility  
Ms Angelika Hesse – Darwin City Council  
Mr Mark Wakeham  
Mr Garry Scott  
Mr Jas Anand – DIPE

Ms Lorna Woods – Keep Australia Beautiful Council

Ms Michelle Andrews – Department of Environment, WA

Mr Alan Hughes – DBIRD

Ms Lorraine Davies – Department of the Chief Minister

Mr R Wilson – Northern Territory Minerals Council

Mr N Henwood – Northern Territory Minerals Council

Ms K Purick - Northern Territory Minerals Council

Ms Lisa Victor - Northern Territory Minerals Council

Mr Steven Vellacott - Northern Territory Minerals Council

Mr Duncan Dean – Save Darwin Harbour Group

Ms Alison Buchanan – ABC

Mr Adam Troy

**Note:** *This transcript is a verbatim, unedited proof of the proceedings and should be read as such.*

**Madam CHAIR:** I call to order the EPA Inquiry of the Legislative Assembly of the Northern Territory Sessional Committee on the Environment and Sustainable Development. The committee's terms of reference are, the efficacy of the establishment of an Environment Protection Agency for the Northern Territory, inclusive of but not restricted to:

- (a) arguments and against the establishment of an EPA for the Northern Territory;
- (b) options for the structure of an EPA taking into account the demographic, geographic and financial context of the Northern Territory; and
- (c) if a particular model is recommended, options for its staged introduction.

I am the Chair of the committee. I am the member for Karama, Delia Lawrie. With me are 2 fellow committee members, member for Drysdale, Mr Stephen Dunham and the member for Millner, Mr Matthew Bonson. The member for Nelson, the Independent member, Mr Gerry Wood is on his way. He is delayed. He is currently attending a funeral. We have apologies from the

member for Barkly, Mr Elliot McAdam and the member for Daly, Mr Tim Baldwin who are unable to be here today. They have participated in all other EPA hearings down the track to date.

I just have a few housekeeping matters to note. There are toilets as you came in the front door. There are toilets just off to our right hand side here. Help yourself to tea, coffee, water and biscuits throughout the hearing. We will be breaking for lunch at 12 o'clock. We have a program and I will run through that program in a moment. I just want to say that all public inquiries by committees of Parliament have the privilege of Parliament. They are being recorded for the purpose of transcription by Hansard and what you say will be forming part of the committee's reports that are ultimately tabled in parliament.

For those who are on our list to make individual or organisation submissions today, what we will do is ask you to come forward because there is a recording device on this centre table. It really is just to make it easier for our Hansard people. Everyone here has an opportunity to participate to whatever degree they would like. We are very keen to hear from Territorians, from a wide range of opinions on whether or not they would like to see the establishment of an EPA. Bearing in mind, the Northern Territory is having this inquiry because we are the only jurisdiction without an EPA in Australia.

The schedule is at 10.10, in just a couple of minutes' time, we will hear from Mr Matthew O'Reilly from the Northern Territory Greens. He has 20 minutes if he requires and there will be a short question and discussion period after that. We will then move on to Mr Peter Robinson who is from the Environment Centre, Ms Linda Cutress, Worldwide Fund for Nature and Mr Gerard Holmes from the Threatened Species, Network Coordinator of Northern Savannahs and this involves a laptop presentation, hence the screen. Again, there will be a short question and discussion session after that and then we will move into a submission from the Northern Territory Minerals Council, a variety of people attending with Ms Kezia Purich, the Chief Executive Officer. Again, that will be

followed by a short question and discussion period, then the break for lunch.

Into the afternoon we have got Mr Geoff Casey who is a private small mine operator, with questions and discussion to follow and Mr Duncan Dean, convenor of the Save the Darwin Harbour group, with questions and discussions. There is a period after 2 o'clock where we do not have people scheduled in so anyone who is present who wants to participate has plenty of opportunity at that stage to do so. We are scheduled to close the hearing at 3 o'clock, however it is the nature of this committee that we are fairly informal, we are very friendly, and if we have wound up the business before 3 o'clock we tend to close it then so as not to hold up staff who are here working hard for us today.

Without further ado, Matthew, I will ask you to come forward and make the presentation on behalf of the Northern Territory Greens. Thank you for being here today.

**Mr O'REILLY:** Thank you for having me. Thank you for this opportunity for the Northern Territory Greens to make a submission to this inquiry. What I will be doing is going through a few issues that we think should be taken into consideration in the establishment of an EPA and after that we will be quite a bit of focus on impact assessment and how the EPA should play a role in impact assessment in the future. The Northern Territory Greens feel that any argument that the Northern Territory environment is in a pristine condition is untrue. We may not have suffered the impacts of broad scale land clearing and intensive agriculture, massive ore extraction or established industrial pollution like other jurisdictions but our environment is in a state of decline. It is a death by a thousand cuts and is still continuing today.

An EPA could reverse this destructive trend and establish processes for reversing our Territory's wide loss of bio-diversity and eco systems. In 50 years time when other states and countries are bemoaning their lost environmental values and bio-diversity, we will have the opportunity to still have our greatest assets here for the world to enjoy. We need to look to the future with the establishment of an EPA with teeth, to value

preserving our rangelands, deserts, savannahs, wetlands, rivers and coastlines for future generations to enjoy will far outweigh any short term profits that can be made from the exploitation and destruction.

First of all, we feel it is probably not necessary in the establishment of an EPA to actually separate the Office of Environmental Heritage and split environment and heritage into separate areas. We feel it is quite fine to establish an Environment and Heritage Protection Authority. They will often have to communicate closely on impact assessment and other proposals and the heritage is a valuable part of our environment and should remain part of a future authority rather than splitting it up into a different department. A future Environment Protection Authority should be given enforcement and discretionary powers over other acts and their subsidiary regulations. This should be achieved through making the EPA act sit on top of other acts and be able to audit other departments if it feels necessary for how they are achieving environmental outcomes.

There are a number of acts which the EPA could sit on top of and whether or not they need to be amended to actually allow the EPA to do that role and we are not in a position to say but there may be some minor amendments needed, otherwise the EPA may be able to sit on top without amendments. One example may be the *Water Act* where the water extraction does not have any review process or environmental assessment process at the moment. That may need to be amended if the EPA is to have some sort of control on water extraction in the Territory. Another key area we feel needs to be addressed and it is a glaring omission at the moment and that is development by indigenous people on indigenous land.

The constraints being placed on indigenous people to comply with environmental regulations are large and often they make it hard for Aboriginals to make development on indigenous land happen without going into joint management proposals. We are not suggesting that there should be double standards applied, what we are suggesting is that the EPA should look, if an EPA is established, look at making better

communication arrangements to actually communicate environmental assessment requirements and environmental requirements to indigenous people in groups so that they are aware of what they are required to meet in environmental assessment processes.

An example of that is the Tiwi Islands Silver Culture Project, their forestry project where the Northern Territory did not require any environmental assessment process to be undertaken and they then found that the Commonwealth did require that process and so they had to go through it anyway. We do not feel the EPA should assist in indigenous environmental assessment but it should be able to communicate environmental issues to indigenous people properly and may be the government should look at another area of government to assist indigenous people to actually go through environmental processes because obviously indigenous land makes up almost 50% of land, almost 80% of the coastline. Indigenous people need to develop their land, they need to create jobs and we need to try and assist that process.

We feel that public participation in an EPA should be increased. It is a very hard process to get public participation. I think the fact that we have had so many submissions in this inquiry, that we have got so many people here today shows that there is a great demand in the community to participate in environmental processes and there should be greater emphasis put on involving the public in impact assessment and the other roles of an EPA. An area that is very often overlooked in impact assessment and other environmental areas is the social and cultural impacts of development and other areas. The social environment is a part of the environment and the Northern Territory Greens feel that there should be a much greater emphasis placed on social and cultural impacts of development, especially in regional and remote areas of the Northern Territory.

The only 2 strong social impacts that have occurred to date are both in the Ranger/Kakadu region which was the original Fox Report and the Kakadu Regional Social Impact Assessment study. Both of those were very good reports and

obviously that sort of focus may not be able to be achieved in all sorts of impact assessments, but definitely a greater focus on social impacts, especially baseline studies. It is very hard to actually analyse and see what sort of impact has occurred in Nhulunbuy for example, because there was no baseline social impact studies taken so we do not actually know and we cannot prove what sort of impacts have occurred because of the establishment at Nhulunbuy of the Alcan bauxite mine.

Baseline studies are an important part, not just for social impact and cultural impact, but also environmental impacts. The EPA should have a strong role in environmental planning. Environmental planning should be a first step in development in the Territory. At the moment the Greens recognise 3 stages of development. The pre-impact assessment, the impact assessment phase and the post impact assessment phase. Generally looking at alternative types of development should take place at the beginning. The EPA should be in a good position to establish good alternative sites before a development application reaches the impact assessment stage. This can avoid all sorts of problems like the Howard River aquaculture development and other sorts of developments where you really need to have a good site and alternative development locations analysed before you get to that formal process.

Another area the Greens feel very strongly about, is recognising the cumulative impacts of development and the affects on the environment. Often impact assessments and other sorts of environmental regulations do not take into consideration cumulative impacts. Again, death by a thousand cuts. We feel that you do have to look at the broader environment and regional type planning via regional, catchment based, local and community impacts are important to look at in impact assessment processes and other environmental processes that an EPA may be involved in. We feel that an appeals process should be established, not just for the public but all proponents who feel that the impact assessment process and other environmental

processes have not been adequately looked at, so there should be an appeals mechanism both at the scoping screening phase where you screen developments for different types of assessment processes. Projects may have a PER recommended, an environmental impact assessment recommended or an assessment based on preliminary documentation. There should be a right to appeal that process for the public, for all proponents to say they thing there should be a different level of assessment applied.

The public and all proponents should be able to appeal at all stages. At the scoping phase, to appeal the omission or inclusion of different elements within the terms of reference and guidelines, and the final report should be if there are omissions the public or other proponents feel have been made should have a right of appeal at the final submission and a right of appeal of the final decision of the EPA. We feel there should be stronger mechanisms for an EPA and other regulatory agencies to enforce environmental protection commitments. It needs a stronger regulatory backing to enforce environmental commitments that proponents agree to at the assessment stage. Even when they do have the power, the present precedents do not encourage disciplinary action and this is because usually agencies that promote development are also the enforcement and regulatory agencies. We feel this may involve a conflict of interest and often results in no disciplinary action being taken without public pressure.

The example of the Ranger Uranium Mine is a case in point. There have been over 170 breaches at Ranger detected by the Commonwealth watchdog ERIS. DBIRD has only chosen to take regulatory action on the most recent breach that involved human safety. The truth of the matter we feel is that a mining agency is simply not prepared in some cases to take disciplinary action against miners and the same can be said about DBIRD and the Pastoral Land Board, they are simply not prepared to take disciplinary action against pastoralists. Another area that the Greens feel needs to be taken into consideration is the liability for environmental damage. Good examples of

areas where companies have gone bankrupt or insolvent and walked away from environmental problems are the Mt Todd gold mine, aquaculture developments near Channel Island. There should be some sort of mechanism put in place if there are not environmental bonds and rehabilitation, bonds for these sorts of developments established. A process whereby an EPA or the Justice Department can pursue directors and parent companies so that the public is not held responsible and forced to rehabilitate these areas, that it is actually the people who are ultimately responsible for the destruction should be held responsible.

The EPA should be able to direct mines or other developments to conduct follow-up impact assessments after 5 or 10 years if deemed necessary. This is not a requirement but if there is strong public pressure, just to indicate that commitments and assumptions made in the initial impact assessments have not proven true, an EPA should have the ability to call for a follow-up impact assessment 5 or 10 years after the initial assessment. The EPA should produce an annual report but it should also produce a monthly newsletter. This comes back to public participation and public awareness. An EPA, if it produces a monthly newsletter can keep the public and interested bodies aware of what it is pursuing and what it is doing on a regular basis. At present, from personal experience, it is very hard to keep track of all the different development applications and things that are ongoing. You have to keep checking websites of different departments to see what sort of environmental reviews are taking place. Parks and Wildlife may have reviews, the Department of Lands and Planning, so a regular monthly newsletter by an EPA would keep the public well informed of what is going on in the environment and what it is involved in.

I will just discuss a couple of more points before I get on to more detail on impact assessment. We feel that once the government has proceeded with an EPA and other bodies are taking monitoring data and that may be mines, that may be DIPE, monitoring data of these developments should be made public, the public should have a right to look at monitoring data and

make its own assessment as to whether they are meeting their commitments in environmental safeguards. It should not be kept behind closed doors and then brought forward only where there is public pressure. It should be made public and the public should be able to see monitoring data at all stages. We feel the EPA should produce scientific guidelines to actually establish baseline and minimum requirements for science in the impact assessments. We feel that, generally speaking, science in impact assessments is of poor quality and poor reliability and minimum standards should be established by an EPA and should be constantly reviewed and upgraded as science becomes better to basically make proponents adhere to minimum scientific requirements.

Independence of an EPA board should be maintained. EPA should be a separate statutory authority and the board should represent a broad cross-section of the community but appointees should show good environmental credentials. It is not good enough to have an EPA board dominated by industry or business or government representatives. There should be good community representation and all representatives should have sound environmental credentials. The public should have confidence in the board whose focus is environmental protection, not developmental approval. There are other departments that take the place of industry development and economic development and an EPA's role is to be a watchdog of those departments, not to be a rubber stamp development approval process.

Coming on from that, the EPA should not be an approvals agency, it should maintain an agency based on environmental sustainability and promoting ecologically, culturally and socially sustainable development. It is the role of other departments to promote industry and to promote economic development. The role of an EPA is to make sure that those developments take place in an environmentally responsible way. The Greens are not against development but we do want development to take place in an environmentally responsible way. There has been lots of research undertaken in other jurisdictions to show that

environmental impact assessments and scoping processes of other EPAs tend to become a development approvals process and give legitimacy to proponent's proposals. We feel an EPA should really have strong public support and should not be seen as a development approval process but a strong environmental regulator.

EPA is the way of the future. The powers that we are lobbying for will be common around the world in 20 years and in the end can become a world leader. In the environment we already have a clean and green image, an EPA with strong powers would enforce the clean and green image and set the way for future development in the Territory. Obviously our tourism industry is of high significance and an EPA would give reassurance for the community for the environment is a high priority of the Northern Territory. Mining and pastoralism are strong parts of our economy and they should be protected, an EPA should not be able to undermine those other departments that look after those roles, but they should have a place in watching those departments and industries to ensure they do maintain environmental integrity.

An interesting part of the environment and EPA which is not really established in the Northern Territory but is established in other parts of the world, and increasing in Australia, is environmental economics. That involves the trading in pollution credits, water, emissions and salinity. It is widespread in other parts of the world and is becoming more so in Australia. Carbon and nitrogen trading will become common place in the future, we feel inevitable, and setting an EPA in place now will put the Northern Territory in a good position when these types of markets become main stream and it also provides a good incentive for development on Aboriginal land. If different pollution quotas are allocated on a catchment wide basis, and water quotas are applied on catchment bases, then indigenous landowners who own 50% of the land and many of our rivers and water aquifers will have a strong financial incentive to enter into development on their land.

If the amount of pollution and water is restricted across the Territory, I will just try

and clarify that. There is going to be a premium on areas that have no pollution and no water extraction ongoing at the present time. If no further development can take place because of cumulative impacts and economic environmental trading in other catchments in parts of Australia and in the Northern Territory, there will be strong incentives for indigenous people to undertake development on their own land where it can no longer take place on other people's land in other areas. I am not suggesting that that is a reason to undertake pollution on indigenous land, but indigenous people should have the, it will provide an economic asset in the future if this type of system becomes broad scale for indigenous people. At present their asset is their land, this applies additional assets to indigenous people.

I will have a discussion on the impact assessment process. I have already discussed quite a lot of the issues. I will just go through some more. We feel there should be a better scoping process established in impact assessment processes. There needs to be greater time allocated for public comment on terms of reference and guidelines. The 14 days is not enough for members of the public to adequately respond to draft guidelines. 1 month would be a more appropriate timeframe. The scoping phase is one of the most important in the impact assessment process. If important issues are excluded from the terms of reference it is very hard to get them corrected in the final report. In 1997 Dr Bruce Moon demonstrated in his paper on Queensland's impact assessment process and how the Queensland Government used inadequate scoping processes to undermine the whole process.

There should be an option included in the impact assessment to call for a public inquiry. At present there is no legislative framework in the *Impact Assessment Act* for the government or the EPA to call for a public commission of inquiry. Most other states have this option in legislation and the Northern Territory should also have this option available for major developments. Along with the government or the EPA triggering this type of impact assessment, it should also be able to be triggered through a prescribed number of petitioners lobbying

government. There should be independent production of impact assessment statements. The current system involving impact studies, the preparation lacks credibility largely because it is the developer or a consultant chosen by the developer and it is they who prepare the statement, thus the statement is not independent and many recent EIAs have been shown to contain major flaws.

Supporters of the current system argued that only the proponent or his consultant will have adequate access to information to prepare a rigorous EIS, however the incentive for the developers and their consultants to dissemble and produce false EIS information is obviously great and consequently many projects have been approved with large adverse environmental impacts. Legal mechanisms for requiring proponents to produce adequate data must be developed. As consultants are chosen by the developers, their reputation is obviously established by their ability to produce an EIS that will lead to an approval. Consultants who regularly produce adverse finding would be unlikely to prosper, thus the current system inherently produces an environmental compliant consultants who often treat public consultation and participation with cynicism and disdain.

The EIA should be prepared independently for the proponent by consultants who are chosen independently of the proponent or its allies. EIS's will be prepared by a panel including but not excluding comprised of experts, under the supervision of a public body such as the EPA. While costs of the preparation of the EIS must be borne by the proponents it is essential that the consultants be chosen independently of a proponent or their allies and be answerable to a panel that is not dominated by them. This contrasts with the present system where consultants are employed to prepare EIS by the proponent of development so it is unlikely that a non-development option will be recommended or even considered in these circumstances.

There should be improved public participation in EIS's. Decision making instructions and issues must be incorporate mechanisms for public participation. There should be stronger focus on cultural and

social impacts. Cumulative impacts should be taken into consideration. There should be free access to impact assessment documents. At present the public needs to spend up to \$100 to receive EIS documentation in hard copy form or viewed a public library. This is not good enough. EIS documents and guides should be provided free of charge to members of the public. Not all members of the public have access to the Internet and cannot download these sorts of documents.

Baseline data must be collected in EIS preparation. At present the standard of baseline data collection in science, social and cultural economics is faulty and flawed and not of very high quality and it means it is very hard to look back in retrospect and see how the impacts have affected the environment and the social and cultural environment. There should be a greater focus on alternatives and system processes rather than cost benefits analysis and risk analysis. The use of risk assessment as a model for EIS is deeply flawed. A far better model to use is alternative assessment and I quote here from O'Brien in 2000.

Risk assessment always asks the wrong question. It asks how much damage is safe instead of asking how little damage is possible? Furthermore, risk assessment conveniently never ask, is the proposed activity needed? It never asks is the proposed activity ethical? It never asks what would be the cumulative impact of this activity combined with all the other damaging activities to which humans and non-human are exposed to at this location? And risk assessments never ask are the less damaging way to accomplish the same purpose?

An alternative assessment process takes these into consideration and looks at the best possible alternatives. Science in impact assessment needs to vastly improve. Many researchers have demonstrated that science in impact assessment is deeply flawed. In 1994 Fairweather has grouped problems with science in EIS into 3 groups, the relevance of science in the EIS, the quality of science and the accessibility of science. We recommend you look at Fairweather's work to see the problems of impact assessment and how they can be

overcome. The screening process should be open to public participation. At present only the scoping process and the impact assessment process is open to public participation. We recommend that the public be involved at the screening process prior to scoping.

The public should have the right to appeal EPA decisions. The public should be able to refer an issue to the EPA if the issue has fallen through the gaps, so the public have a right to lodge if, for example, the public may have concerns about the release of a particular pasture species or the release, in southern Australia there is an impact assessment process ongoing in the release of bumble bees, so something like this may fall through the gap and the public should have the right to refer that matter back to the EPA. There should be a schedule of designated development created by the EPA. This should assist developers and the public to be aware of what type of impact assessment process would be required for each type of development. The EPA, the government and the public should retain the power to upgrade assessment processes if necessary.

I will close my submission there but I encourage the panel, the committee, to look at our submissions. It has been very hard to cover all these issues in 20 minutes but I encourage you to read both of our submissions we are lodging and to take them into consideration. Thank you.

**Madam CHAIR:** Thank you Matthew. Members of the committee, do you have any questions?

**Mr DUNHAM:** Yes, I have some. You said the Northern Territory environment is in a state of decline. Can you give me the features of that?

**Mr O'REILLY:** Yes, sure. There are 3 tiers to that. There are weeds, feral animals and fire. They are the 3 main degrading processes that are at work in the Northern Territory and they are being, community groups are addressing those in a large scale way but there are still institutional problems with addressing weeds, fire management and feral animal management. I think an EPA can take, it is

not really relevant to the Territory, but if an EPA had have been in place to assess cane toads when they were released in Queensland we may not be facing the cane toad problems now. I spoke about some bumble bees being released in southern Australia. There is an impact assessment process undergoing for bumble bees so the degradation of the environment through weeds, fire and feral animals is ongoing, particularly in the areas of indigenous land. Mission grass and gamba grass are affecting our tropical savannahs in northern Australia, buffel grass is affecting the environment in southern desert areas around Alice Springs.

**Mr DUNHAM:** I agree with you by the way. But what you said was that it is in a state of decline and I agree that they are features, and you said an EPA could reverse the trend. I guess my question to you is why would you need an EPA to do that when it is issues of government priority, of good will, by reinforcing legislation if that is what is necessary? And resourcing. So I could not necessarily follow one step to the next because I would have thought that all of those things have statutes applying to them now and all of them, for instance in the budget that has just dropped, could address issues of priority. So I do not see it as a catch-all that is going to fix things up if through normal processes the government is not inclined to do it anyway.

**Mr O'REILLY:** I guess when I was saying it could reverse this rate of decline what I was more referring to is the progressive release of further weed species, further feral species that is ongoing in the Territory. The assessment process for the release of these types of things could be increased through an EPA, it could have the ability to draw in the release of a new pasture species for instance and to reverse the trend in the release of new species. I mean, it is...

**Mr DUNHAM:** I am not against that either. I guess what I am saying is I agree there is a potential for degradation and the 3 you mentioned are big and I agree the EPA could look at them. What I am saying is that it does not necessarily follow that you need an EPA. If those things are issues they can be addressed tomorrow. So I would have thought if this committee has a finding that

we do not need an EPA, that may well be one of our options, they are still issues of consequence and I would have thought that to twin fixing those issues with the fact that you had to have an EPA is diminishing your options.

**Mr O'REILLY:** I see what you are saying. I think the benefit of an EPA in these circumstance is that it would sit on top of all sorts of other legislation, Parks and Wildlife, weeds and feral legislation and it could take a holistic view of the whole process and sort of I guess put environmental planning processes in place, it could actually coordinate a whole of government approach to these types of things which at the moment there are lots of departments that have different responsibilities for different areas, an EPA could bring all of those into one peak body and then through a whole of government approach.

**Mr BONSON:** Matthew, we had an opportunity to go to Western Australia and South Australia to look at different EPA's in those 2 states. Do you have an opinion on a model that would be suitable to the Northern Territory.

**Mr O'REILLY:** I have had a look at all of the models and there is, obviously no 1 model. I think the Territory should probably take the opportunity to pick and choose the best bits of legislation and actually create its own type of legislation that is relevant to the Territory. Obviously we are starting to go into a new industrialisation phase it seems in the Northern Territory, particularly in this Top End region. I think that because of the size of the Territory and a lot of development takes place in regional areas of the Territory I think we need to have an EPA and legislation that is responding to Territory needs, but is there a best practice legislation that takes the best parts of all legislations around the country? I would not actually recommend 1 particular form for the Territory. I think we really need to take the best pieces out of each.

**Madam CHAIR:** Going to that question of model and picking the better aspects out of the various other EPA's, some people hold the view that the West Australian model is the best model because of the absolute independence of the EPA Board, it sits quite

separately to the department. Advice we received from the Chair in Western Australia of that EPA Board is that actually it is a faulty model because they do not get the opportunity to drill their EPA Board decisions back down through the agency levels, meaning they only do 1 aspect of what they would really like to do.

In South Australia, the Chair of the EPA is also the CEO of the agency, of the Department of Environment. His view was, having come from operating at a very senior level in Western Australia that that is a better model because...

**Mr O'REILLY:** The South Australian model you are saying?

**Madam CHAIR:** Yes, it is the South Australian Chair who is also the CEO of the Department of Environment says he obviously has the abilities to branch across both. Independence is an issue of integrity of the individuals who sit on the board rather than the linkage between the structures. Does the Northern Territory Greens have a view on that?

**Mr O'REILLY:** It is a question of the individual but I think there is also the question of public perceptions and integrity and I know the public in many ways is very cynical of these types of things, and in many ways the Greens are very cynical of these types of things. That may or may not be correct, but I think a separate statutory authority has benefits in public confidence, and institutionally there may be reasons to argue against it, again because of this working with other departments issues. I think that there are ways to work around that and I think statutory independence gives the public a great deal of confidence in the system. At the moment it is put forward that the Office of Environment and Heritage is very independent and that may well be and I have reason to probably think that it is, but there is a lot of public cynicism about that sort of process when they are actually made aware of the processes that are involved in the current set up.

**Mr DUNHAM:** On the same theme, you talked about independence and I could not find it in your submission, but you talked

about each stage being appealable, including the final decision.

**Mr O'REILLY:** Yes.

**Mr DUNHAM:** Now, sooner or later you have got to make a decision right?

**Mr O'REILLY:** Yes.

**Mr DUNHAM:** Are you seeing the final decision as resting with the EPA or with the Minister? And whichever one it is who do then appeal to if one of them says 'Sorry, we don't agree with you'?

**Mr O'REILLY:** I think there should be a judicial appeals process available for the final hurdle. I think at those...

**Mr DUNHAM:** You are talking about, for every proposal and...

**Mr O'REILLY:** Yes, I should clarify that...

**Mr DUNHAM:** ...at every stage and now you are telling us there should be a judicial thing.

**Mr O'REILLY:** No, I should clarify. There should be an appeals process for the basic stages, we feel, within the EPA process itself.

**Mr DUNHAM:** For every proposal?

**Mr O'REILLY:** Every proposal should be able to be appealed by the proponent or by the public. At the final hurdle there should be an appeals process that should be able to proceed through a judicial process. I cannot comment on how to avoid frivolous appeals but I think that there are systems in place at the moment within government where there are appeals mechanisms in place that avoid frivolous appeals processes and I think, it may seem overkill to have appeals at each stage of an impact assessment process. But each stage is crucial and important and if errors were made at the beginning they can flow through to the end. So you do need to have strong and rigorous screening, scoping, impact assessment and decision making processes that the public has confidence in.

Legally I do not know you would avoid the frivolous types of appeals processes but there don't seem to be terribly huge problems with the appeals process. I think where there is appeals processes in other sort of developments and other sorts of environmental places is there is a tendency not to have terribly frivolous appeals. I think that we can avoid that but there needs to be rigorous public scrutiny of each stage of the development proposals.

**Mr DUNHAM:** You also have problems with Ranger which is supervised by what was the Office of the Supervising Scientist, now ERIS, there would be some that would argue that that is a fairly potent organisation, it is certainly independent of the Territory government. It is very well resourced and has been for some time. They have done numerous baseline studies on all sorts of stuff and you seem to indicate that that was not working, so...

**Mr O'REILLY:** What I was actually thinking, I think ERIS do a wonderful job and ERIS have pointed out of these 170 breaches that have occurred over the last 10 years, ERIS were the ones that found those breaches. ERIS however is not the regulatory authority. The regulatory authority is the Department of Mining and when ERIS finds these breaches, it does a wonderful job of baseline science, but it is actually the Department of Business, Industry, Research and Development that is the regulatory authority and who then have to take action on those breaches. The only time now it is as determined to put forward as action to be taken by the Justice Department is after the problem with human safety. All the other 170 breaches that have occurred in the environment, DBIRD has not taken any action on. DBIRD is the regulatory authority and ERIS is the scientific research authority. Just to clarify, ERIS do a wonderful job but they are not the people who take action.

**Mr BONSON:** Matthew, from the work that you have done so far there seems to be, and I may be able to remember them, but there seems to be 4 main issues. There is the independence of an EPA or the perception of the independency is important to the public. The powers that an EPA might have and what they can actually do about breaches of or the affects on the

environment, resourcing of an EPA and that is an issue within itself, especially in our small jurisdiction and the 4<sup>th</sup> one seems to be appeals, the appeals process. Is that about right from what you think?

**Mr O'REILLY:** Yes, they are the core areas. I think obviously that everything that is raised the public should be looked at and when issues that are raised can generally can transpose to the public perception so everything that is raised by different bodies is probably relevant. Those core areas are definitely important things to look at. I think a review, particularly a review of the impact assessment process, so it may be almost beyond the scope of this committee to say that the *Environmental Impact Assessment Act* needs to be looked at but I think that will be the core piece of legislation that an EPA would look after and for an EPA to function properly and to have public confidence I think this committee should seriously look at the *Environmental Impact Assessment Act* also.

**Madam CHAIR:** All right, Members and Matthew, I am just conscious of the time. We are now 5 minutes over but it is the nature of these questions that leads to other questions. I thank you for your submission...

**Mr DUNHAM:** I have got one more question.

**Madam CHAIR:** Ok, Mr Dunham.

**Mr DUNHAM:** Apart from the fact that it costs \$100, which you have already commented on, are the Greens happy with the environmental assessment on the waterfront development?

**Mr O'REILLY:** There are some concerns about public participation, at this stage, prior to the screening and the scoping phase of what we running, so the early stages of environment impact assessment, the pre-impact assessment stages, we feel that there could have been better public participation in that time. I have not...

**Mr DUNHAM:** So you are happy to sign off on that or...

**Mr O'REILLY:** I have not yet looked at that particular impact assessment because I have been looking at other sorts of things at the moment but some other members of the Greens have been looking at the wharf development and I think they will be making submissions about it.

**Mr DUNHAM:** The comment from our party is that it is a pretty hard thing to do when you haven't seen the proposal, but I haven't heard your comment on it.

**Mr O'REILLY:** Yes, well I am not in a position to make comment because I have not looked at the proposal personally myself.

**Madam CHAIR:** Matthew, thank you very much for your submission and we will give it due consideration. Thank you.

**Mr O'REILLY:** Thank you.

**Madam CHAIR:** I will just take this opportunity to remind everyone to keep their mobile phones switched off. Unfortunately if they are on silent that still interferes with the recording equipment we have got in this room, so in this room we would ask you to actually have them switched off rather than on silent. Also, anyone who does provide any evidence today, for the purposes of Hansard, we get you to state your name just so that Hansard can keep it going so that is why you would have heard me refer to Mr Bonson, Mr Dunham, it really is to help Hansard track through in terms of transcript.

I will invite up to the recording devices, and by all means if there are not enough chairs then bring some chairs forward. The next submission we will be hearing from Mr Peter Robinson, Ms Linda Cutress, Mr Jarrod Holmes.

**Mr ROBINSON:** There is actually a change.

**Madam CHAIR:** A change? Well when you are all seated I will get you to state your names. I note that Mr Wakeham is here. And I will let the 3 of you decide as to who goes first.

**Mr ROBINSON:** Thank you, Peter Robinson, I am Campaign Coordinator for

the Environment Centre of the Northern Territory.

**Mr WAKEHAM:** Mark Wakeham, I am Ex-coordinator of the Environment Centre of the Northern Territory and a councillor of the Australian Conservation Foundation who is a signatory to this submission although I am not actually representing ACF today. They are looking for new representatives at the moment.

**Mr DUNHAM:** So who do you represent? Just an individual?

**Mr WAKEHAM:** I am here as ex-coordinator of the Environment Centre.

**Mr DUNHAM:** All right, yes.

**Mr COWEN:** Tom Cowen, I have just taken up the position as principal lawyer of the Environmental Defender's Office, Corner of Manton and McMinn Streets. The Environmental Defender's Office has been a contributor to the submission that Peter is going make and I will just take a couple of minutes at the end of his presentation if I may.

**Madam CHAIR:** Absolutely, Tom. Thank you, Mark. Thank you, Peter and thank you, Tom. Hand over to you Peter.

**Mr ROBINSON:** Thank you very much for the opportunity to appear before you today. As indicated, this submission is a joint submission on behalf of the listed organisations there. The Environment Centre, the Australian Conservation Foundation, the Northern Territory Office of the Environmental Defender's Office, Australian Marine Conservation Society, the Worldwide Fund for Nature and the Threatened Species Network.

First of all just touching on government policy for background purposes or at least party policy just in terms of trying to develop a framework of where we are heading on this. Labor will establish an authority to protect the environment and administer the *Environmental Assessment Act* and in relation to the environmental impact statement process. So that is taken from the platform of the ALP. I have got a hand-out here that I would like to pass up if I can

do that just to set out the current arrangement in terms of the Office of the Environment and where it sits in government.

**Madam CHAIR:** I will just introduce Mr Graham Gadd to everyone in the room. He is the Secretary of the committee.

**Mr ROBINSON:** Just from the flow chart you are able to see that the Office of the Environment sits down the bottom of that departmental hierarchy within the Department of Infrastructure, Planning and the Environment. Why we feel the Northern Territory needs an EPA? First of all we believe that it is the responsibility of government to ensure that the environmental challenges of the Northern Territory are fully, transparently and effectively addressed. We believe this requires a high level body that has standing and authority in government and in the community and is able to provide strong leadership within government and within the community. We believe that in order to retain or maintain or establish public confidence in environmental protection measures, we need a body that is properly resourced, has a high degree of independence, is very transparent and is very accountable.

We certainly believe that with the level of development that is underway or planned for the Territory at the moment, it is obviously very important that we have a body that is able to do high quality, strategically integrated planning, is capable of detailed, independent assessment and is very diligent in monitoring and auditing to ensure compliance. In relation to that, sorry Graham, I have got another quick little handout for you and is just the latest round of media discussion about the plans for the substantial industrialisation process based on gas reserves in the Territory. One of our concerns is that this very substantial process with major environmental and social implications is not being properly assessed at a strategic level so we seem to be conducting this process in a fairly piecemeal and ad hoc fashion at the moment which can eventually have very significant environmental implications.

We would argue that due to a combination of rising public expectations, changing obligations at a national and international level and the increasing industrialising pressures that any environmental protection body in the Northern Territory faces an increasingly large and complex work load which requires a significantly enhanced capability beyond what is currently in place in the Northern Territory. We certainly agree that we require a more sophisticated and integrated whole of government response to the environmental challenges of the Northern Territory...

**Madam CHAIR:** Peter I will just stop you there for a second and welcome Mr Gerry Wood, the Independent member for Nelson. Gerry, we understand you have been delayed at a funeral. Our commiserations. Sorry Peter.

**Mr ROBINSON:** So, yes, we want to see a more sophisticated and integrated whole of government response on the environment. At the moment things are sort of hidden away in different departments or offices and not necessarily very well integrated or very sophisticated in the way they are handled. We have got the current process where implementation, management and reviewing environmental components of various legislation spread across many agencies most of whom do not have the environmental or environmental protection as a significant or major part their brief or legislation. As a consequence the environmental protection measures do not receive the sort of attention that they require, including in the area of audit and review and we believe that only a dedicated EPA can provide this sort of comprehensive and integrated approach to environmental management across the whole of government.

Just looking at what is happening in other states and I am aware obviously that you have done your own investigations and it would be interesting to compare notes perhaps. In New South Wales, a statutory public sector agency with an independent board. Victoria has a statutory agency with an independent board. Queensland has a non-statutory government department with separate divisions for environmental impact assessment, policy, development and

environmental planning. South Australia has an independent statutory EPA governed by an independent board. Tasmania, our understanding I think may be contrary to what yours is. Tasmania does not have an EPA. I will have to may be look into that at some stage. It has a Board of Environmental Management and Pollution Control, but I suppose we have a difference of an opinion as to what constitutes an EPA in that regard. The Australian Capital Territory has an independent statutory agency. Our understanding of the budget, just reading that strand I suppose in terms of what it is going to cost the ACT EPA as we understand it has a total budget in the vicinity of about \$3m per annum.

Western Australia which obviously has an EPA and is unique in Australia in that it also has a Department and there is obviously an inter-relationship between those bodies. The EPA itself is basically a 5 person board and then it draws services from the Department of the Environment and it has a total annual budget, taking into account those different components, of approximately \$20m per annum. So what would the Northern Territory EPA look like? We believe we have the capacity here to introduce something that is very much national best practice. That would mean an independent statutory agency with statutory objects and statutory responsibilities, governed by an independent board, we would have formal accountability, we would be constituted in separate divisions to avoid conflicts of interest, and it would obviously need to be adequately resourced including appropriate funding and expert and experienced staff.

The functions, and there are a wide range of them carried out by EPA's in different jurisdictions which we would like to see picked up in the Territory. Environmental planning, policy development, impact assessment, monitoring, enforcement, a registry of information, facilitating community consultation, encouraging voluntary initiatives, design of environmental economic instruments, environmental education and finally, producing state of the environment reports. That last one is a function that EPA's carry out in other states and is a useful reporting mechanism to see

how different jurisdictions are handling their environmental responsibilities.

**Mr DUNHAM:** Can I just ask you a question. We are skirting around the issue here of whether it has the final decision and even the matrix you have put up, different states have different – some are appealable, they go to the ministers...

**Mr ROBINSON:** Can you let me move through the rest of the...

**Mr DUNHAM:** Yes, I just want that description there. Do you see it as a decision making body? Is that the environmental planning?

**Mr ROBINSON:** The environmental planning is putting in place a framework within which development can occur.

**Mr DUNHAM:** So we are talking about application by application, it would go through that environmental planning? This seems to be describing the structure of the thing but is there a process in there where they actually tick off on assessments?

**Mr ROBINSON:** Well as I say if you just let me move through to the next stage of the presentation we might actually address that. And finally, the function of auditing other government institutions as to their performance in regard to their environmental responsibilities and its sustainability. So these are all functions that are carried out to some extent, or in some cases fully in other jurisdictions and they are all things that EPA's can do and we would like to see at least over time progressively taken onboard by an EPA in the Territory.

In relation to the appeals process and we certainly believe that it is imperative that we have a strong appeals process in the Territory to provide a check and balance on the EPA's decisions and ensure robust decisions making process generally. Appealable decisions would include the EPA's decisions about whether to assess a proposal, what level of assessment, the EPA's final report and recommendations and finally, the relevant agency or Minister's decision about the proposals. So we would envisage, as happens in other jurisdictions

that each of those stages would be subject to an appeal process.

**Madam CHAIR:** By an appeals commissioner or...

**Mr DUNHAM:** To who?

**Mr ROBINSON:** Well, there are different models.

**Madam CHAIR:** Yes. Do you have a view on the model for the appeal?

**Mr ROBINSON:** Well, in Western Australia which is ground more familiar, there is an independent appeals commissioner who hears appeals and decides on appeals, so that is certainly one model and that would be certainly one that would be well suited to the Territory.

**Madam CHAIR:** Sorry about that but we did the judicial one before.

**Mr ROBINSON:** Well I think the judicial one is something that addresses issues at a government level rather than an EPA process level. That is something that applies to various acts and various Ministers in accordance with the fulfilment of their responsibilities. There is nothing new about judicial review process or appeal process. That already exists in many cases. In relation to the staged introduction we obviously acknowledge that establishing an EPA will take some time and depending on what model is chosen, some level of resourcing, and can be brought in, in stages. Obviously the most important first step is to actually enact an act to set up an EPA and to appoint an independent board to that body.

Some of the legislative requirements required to create an EPA include first of all the actual creation of an act, establishment of the board. The act obviously needs to specify the powers, objects and functions of the EPA. It needs to specify the immunity of the EPA from Ministerial direction which of course is a cornerstone of the independence of the body. It needs to specifically bind the crown. The act needs to require that the EPA prepare written, publicly available reasons for its decisions which once again is the standard procedure

in most cases around the world these days. The act would require the EPA to publish all its reports and recommendations in respect of environmental impact assessments and it would enable environmental conditions to be put in place as part of all development and management scheme decisions. It would provide that the relevant decision making agency or Minister must implement the EPA's recommendation or recommendations unless it or they public written reasons for not doing so and that of course is important from the point of view of transparency so that everyone can see what was recommended to whom, what decisions were ultimately made by whom and on what grounds so that everybody knows exactly what is going on.

The act would also provide that the EPA was to audit other government agencies and statutory corporations, specify that the EPA has the power to institute enforcement action in respect of any breach of an act in relation to environmental requirements and finally and importantly, the act would specifically allow for third parties to bring enforcement action in cases where the EPA does not choose to. And once again that is now increasingly a standard provision in legislation so that third parties have the opportunity and right to intervene to make sure that government bodies are actually doing what they are supposed to be doing under their legislation. Just some further legislative changes, and first of all in relation to the *Environmental Assessment Act* itself, the act would need to be amended to transfer the Minister's powers to the EPA, i.e for example in terms of, deciding whether a project requires assessment and at what level. The EPA needs to be given the power to call in proposals for assessment rather than just waiting for proponents to actually bring them forward.

There needs to be the ability for the public to actually refer matters to the EPA for assessment. The EPA needs to have the power to conduct its own investigations. The act would include a list of matters or developments which must be referred to the EPA. It would set out factors that must be considered assessments, including cumulative and downstream impacts, and the act would need to set out what community consultation requirements are.

In relation to the *Waste Management and Pollution Control Act* that also would need to be amended. The EPA should be the administrator of this act and need to specify activities that need approval or licence. Once again third parties should have the right to bring enforcement action. Finally in relation to the *Crown Land Act* a management plan should be required for Crown land and the community should be consulted about managing the Crown land.

In relation to the funding issue, our understanding is that the current Office of the Environment has a budget of approximately \$5m or \$6m. We believe that is not a large sum of money by any standards, but in relation to the funding issue our first and main point would be that we consider the resourcing of an agency like this to be an investment rather than a cost. We believe it will end up saving government and the community money by preventing, or early intervention in problem areas. When you look at what the government appears to be prepared to spend on other projects and developments without too much hassle, the budget we would be looking at for the establishment of an EPA would be quite small, probably about one tenth of what the government is prepared to spend on the Darwin Harbour development, about one fifth of what it appears to be prepared to spend on one road upgrade in the Litchfield National Park.

We believe that some of the subsidies that are currently being put in to other forms of development should be redirected to should be considered in the context of funding for a body like the EPA. There is scope for things like the container deposit legislation, if that were introduced, to raise significant sums of money which once again could be allocated to the functions of the EPA. Assessments should be done on a cost recovery basis where developers pay for the time the EPA spends on assessing their development proposals and my understanding from, for example, South Australia is that whilst it's government funding is in the vicinity of \$10m a year, it actually receives more than that per annum in fees and charges for the services that it provides, so roughly \$11m dollars I think last year, so obviously there is considerable scope for an EPA to source

funds other than directly from consolidated revenue or some other government source.

Licence and development approval fees should factor in the cost of the environmental degradation which the approved development results in. This is known as load based fees, cost recovery basis for monitoring. We certainly believe that an EPA should not be expected to be some money making enterprise. It is obviously there providing a community service. Some of the benefits of that service will be very difficult to quantify but would none the less be very substantial but not in direct financial terms to the government and so if you are looking at a narrow cost benefit analysis or financial cost, it might run at a deficit overall, but in terms of all the other savings and what have you, we would argue would be very much a plus for the community. Fees charges and fines collected by the EPA should be allocated to its budget. Bonds should be required from developers and the interest on these allocated to the EPA budget. Once again, all of these are in place in different jurisdiction to some extent or other.

So that is the substance of our submission. You have all got copies of it and we are happy go into that in further detail. Before we take your questions, Tom has got further additional comments that he would like to make.

**Madam CHAIR:** Sure. Thank you, Peter.

**Mr COWEN:** I must apologise. I have got some copies of this. It will only take a couple of minutes but I do not quite have enough, my humble apologies for that. The review has 2 fundamental goals as far as I see it and the 1<sup>st</sup> is to answer the question of what is the best way to achieve better environmental outcomes? And this first goal is rightly the focus of attention of this committee, will better environmental outcomes to be achieved through change, hopefully enhanced planning and management systems and is an EPA the best way to achieve this? I believe that Peter's presentation and our combined submission which is over 27 pages and I urge you to read it carefully, I am sure you will. I believe that submission addresses the first goal so I will not say much more

about that, but what I would like to do is look at the second goal as I see it and this is in response to the opportunity that this review presents. Succinctly put, the second goal is to create better legislatively outcomes and I would like to spend just a few moments talking about this prospect and turning the committee's minds to this possibility.

What is meant by better legislative outcomes? As Peter pointed out and as our submission has described in detail the current legislative regime is disconnected, disordered in the way it deals with environmental protection and management. For example the Department of Infrastructure, Planning and Environment is responsible for implementing over 100 legislative instruments. Many although not all of these pieces of legislation regulate activities that may have an impact on the environment. The DIPE web page devoted to the environment division lists 5 specifically and they are the 5 that people tend to have in their mind when they are thinking about environmental protection, but in fact there are a vast number of legislative instruments that in some way regulate activities that have an impact on the environment.

Similarly other departments are responsible for legislation that directly regulates activities that may have impacts on the environment and although these legislative instruments regulate activities that impact on the environment, not all of them actually incorporate in their objectives or in the body of the instrument measures designed to protect the environment. Other pieces of legislation that regulate activities for further potential environmental impact is great, only provide minimal environmental management or protection measures. For example the *Pastoral Lands Act* which is an act that provides for the management of large tracts of Northern Territory land and looking at the map it seems to be over 50% although I am sure the relevant department could say precisely what that figure is. This act has only 3 references to environmental protection measures. 1 is within the objectives of the act and the others refer in general terms to conditions of the lease and are couched in terms that make better environmental outcomes compliance easily avoidable.

This is a piece of legislation that ought to have as a central core principle the protection of the environment, and this is suggested in subjectives but not carried though into the body of the act. An examination of the act reveals that it is more about the administration of the lease system and less about the environmental responsibilities and duties that being a custodian of the land warrants. In a busy department that has a lot of other responsibilities and where the environmental responsibilities are not front and centre of the legislation the protection of the environment may be overlooked or given second tier status. So this review, this committee and its review presents a golden opportunity to set the foundations to achieve a coherent body of legislation that has environmental management and protection as its core principle. It presents an opportunity to bring the body of legislation that deals with the environment into a logical and cohesive framework. I say 'Set the foundations' because the process will not be simple, easy or speedy.

However, it is the sort of task that can begin with the legislative instrument that creates, empowers and defines the role of an EPA and it is the sort of task that an EPA should have the competence to, and be required to carry on with. We do not want to focus on the negatives and it was pointed out in the introduction to our submission that it is the science that is telling us there is a problem and the currency of the problem. Here we have an opportunity to look positively at how we can put in place systems that will produce better outcomes. It is not possible at this stage to go into detail of how to make the legislative regime more cohesive and more coherent. I just want to alert the committee, as legislators, to this opportunity and I thank you for the chance to do so at this time. Thank you.

**Madam CHAIR:** Thank you, Tom. Mark, do you have anything to add?

**Mr WAKEHAM:** No, I am going to assist with questions if needed.

**Madam CHAIR:** All right. Members of the committee, do you have any questions to Peter or Tom on their submissions.

**Mr BONSON:** You were just talking about strategic planning and obviously finding the balance between development and protecting the environment. Could you expand on how you can see the EPA, when you talk about strategic planning, is it 12 months, is it 5 months, is it 20 years down the track?

**Mr ROBINSON:** Well it would probably be different in different contexts. If we take, I suppose the gas industrialisation process as an example we do need a body which is able to scope out just what is potentially coming on-stream through that process in terms of supplies and downstream processing and the facilities that would be required and the sorts of industries that are being talked about in terms of being based around that development process. To try and build up a picture of what may be afoot or possible and then to work through what the implications of different scenarios would be. If development occurs at this scale, what are the impacts going to be? What are the requirements going to be in terms of facilities and infrastructure and what have you, and then start to make some, give the community and government some clarity about just what the implications would be depending on what scenarios were actually chosen. And then you can have following on from that some proper planning process, detailed planning process, but in the first instance I think we all need a better understanding of just the scale of what is under discussion and what the implications of what that might be across a whole range of issues and locations.

**Mr WAKEHAM:** Could I give another example that?

**Madam CHAIR:** Yes.

**Mr WAKEHAM:** For instance, we have had problems with environmental impact assessments of aquaculture proposals in the Northern Territory in the past and to date we have lacked any aquaculture plan which outlines what sort of areas might be suitable for aquaculture. 2 or 3 years ago we had a case where Shoal Bay was identified by somebody within government as a good place for aquaculture and also a prawn farm was proposed for that area.

Subsequently, when the public found out that that was the proposed site it was found that it was a very unsuitable site, and that cost the government somewhere in the order of \$100 000 to foot the bill for another public environment report for the aquaculture development to be moved to Wickham Point.

And EPA could do some planning for that whole industry which would identify what sort of sites might be appropriate and what sort of sites definitely would not be appropriate so that you could take the heat out of the individual environmental impact assessments by ensuring that they were located in a broadly acceptable location in the first place.

**Madam CHAIR:** So in that sense the function that Western Australia EPA explained to our committee when we were there when they set guidelines and they might choose a particular area but it could be aquaculture, it could be a whole bay region on the coast of Western Australia where they look at the planning aspects of that and said they would hold an inquiry into that particular topic, whether it is a geographic based topic or an industry based topic and then they produce guidelines that are not binding, but set best practice framework. Is that the sort of model you are suggesting?

**Mr ROBINSON:** That is right. It is a policy role but it is also a land use planning role which comes before you even start talking about a particular project in a particular location.

**Madam CHAIR:** It is not binding in Western Australia. They are guidelines.

**Mr ROBINSON:** They do have the capability to produce what are known as environmental protection policies which do have the force of law but that is rare. The more important thing, as Mark has indicated as well, is to get some openness about the planning process and about what is being proposed or what is possible in relation to things like aquaculture or gas development or what have you, to scope it out in an open and transparent fashion.

**Mr WOOD:** I would just like to say something about the aquaculture. I do not think anything has changed actually. The new Litchfield area plan has got an area marked out at Glyde Point which I think is a repeat of the area that was marked out at Shoal Bay. There is not enough, we still use the straight line syndrome for some of our developments, we do not work around things, we work through them and I would say that the Shoal Bay aquaculture cost more than \$100 000. It cost I think at least \$2m in compensation and I think another EIS had a share, that was for the time it lost for the developer in developing a new site and I think there may have been another application for money from that developer and lost later on in the preparation of an EIS, so it cost a fair bit of money for the government and I think it was poor planning in the first place, but be that as it may, we do have a Department of Environment and Heritage, Peter.

What I was going to ask you is one of the concerns that has certainly been put to us is that industry does not want another level of bureaucracy, they see that it is just sort of, but one, it could drive some industries away but they see that it will be harder to develop in the Territory. How do you see the role of the Department of Environment and Heritage? I will say that again. What role do you see they would play if an EPA that you put up on the screen there came into being, would happen? Because a lot of those things in theory and probably in practice, is what the department already does. So where would the Department of Environment and Heritage go?

**Mr ROBINSON:** Well first of all my understanding is that we do not actually have a department of Environment and Heritage. We have an office which is a part of a department. Well, as set out in our submission I think that we see that various elements of the existing Office of the Environment would form the nucleus of, or would be integrated into an EPA. Some of the things that they do at the moment would obviously form part of the core business of an EPA but there would also be a lot of other things that they cannot do at the moment either legislatively or because lack of resources that an EPA would do. It

would be a case of expanding it, increasing its powers and making its functions and objects statutory based rather than discretionary, so it would be a case of building on what is there at the moment but turning it into something that looks more like what happens in just about every other jurisdiction in Australia.

**Mr WOOD:** If you take the South Australian case and what was quoted to us, they started off with a staff number of 70 and now have something like 210 people. I think that sends signals to people that, you know, these things can get out of hand if you are not careful and we are a small jurisdiction. We might not be small in area but we are certainly small in population. I think we have to bear in mind that there are some costs there that government would have to bare. Do you think we could have something may be slightly different that the other states that still did the job, but may be a hybrid of the Office of Environment and Heritage and an EPA.

**Mr ROBINSON:** Well I think there are certain fundamentals that are absolutely required such as the statutory basis of the organisation, its independence from Ministerial direction, its capacity to take a leading role in things like auditing other departments' performance on the environment. There are certain fundamentals which as far as we are concerned you cannot do without but having said that an EPA for the Northern Territory will undoubtedly be a hybrid, it will not look anything like entirely like any other EPA. I think that is a given. It is just a question of making sure that certain fundamentals are put in place otherwise you might as well not do anything and just continue with the existing arrangement which we believe and we think our submission demonstrates is just completely unsatisfactory. And I would just say again that if governments of the Territory think that on the one hand we can become this sort of world leader in industrialisation and development, for example through the development of the gas industry and then on the other hand have a, pardon the phrase, a Mickey Mouse Office of the Environment with a couple of million dollars funding to supposedly assess and regulate that development then, you know, it is not acceptable.

**Mr WOOD:** Just following on again from that a lot of planning in parts of the Territory especially the populated areas are done by the Development Consent Authority. Do you see a role for them in an EPA because again your breakdown of an EPA covers many of the areas that the Development Consent Authority does. Would you see perhaps their role being taken over by an EPA or how do you think they would fit? Again, what I am looking at is to try and stop duplication. If we can do the thing once, it would a lot easier for business and probably a lot easier for people who are trying to look at various projects and I think Tom was referring to the heaps of legislation that has environment in it, but as a means of trying to reduce this duplication, do you see a role for the Development Consent Authority or should it be taken over by the EPA?

**Mr ROBINSON:** I do not think our submission envisages the development consent process disappearing or being taken over. It simply says that an enhanced EPA will feed more directly into that process, it will make recommendations relevant to that process and if that process decides to ignore the advice and recommendations of an EPA then it will have to publish its reasons as to why it has ignored the advice and recommendations of the EPA. So it is a matter of enhancing the environmental input into that process rather than doing away with it or taking it over.

**Mr WOOD:** The reason I raised that is because in Western Australia the EPA looks after, it deals with subdivisions for instance, and our DCA looks after subdivisions.

**Mr ROBINSON:** No, I don't think that's correct, sorry.

**Mr WOOD:** When we spoke to Western Australia they looked after major subdivision proposals.

**Mr ROBINSON:** They conduct assessments as they would here but they are not the planning...

**Mr WOOD:** But again, that is why I am saying if you could avoid that duplication, they conduct the assessment and make some sort of decision over those sorts of

large projects. If it has to then go back to the DCA I just see duplication. That is what I am trying to find out whether we can get a process, in a small jurisdiction like the Territory which amalgamates, may be, and perhaps as a hybrid form that is not going to put that big level of bureaucracy that some developers see could happen.

**Mr WAKEHAM:** I think by having very clearly defined *Environment Protection Authority Act* we will make a much clearer demarcation between environmental assessment and development assessment for planning approvals and hopefully that clear demarcation will mean that it will be clear who the first port of call is for a developer. Do they need to talk to the EPA or do they need to be talking with the Planning Authorities. If it is well constituted and very well defined it should make life easier in terms of working out which regulatory body needs to be consulted first, whether it does need to go through both of those agencies or whether in some cases may be the EPA approval is satisfactory.

**Mr WOOD:** Just one last question, Madam Chair. You mentioned that the EPA would provide a service and therefore they could charge for that service. But if it is going to provide a service that it has a dollar value for, and charge a developer, do you think the developer has the right to say 'I would like to go to someone else for that service'. I mean, after all a government department could therefore just set a fee and the developer might say 'I can get exactly the same ...

**Mr DUNHAM:** A monopoly provider, Gerry.

**Mr WOOD:** That is right, yes.

**Mr DUNHAM:** They have got a captive clientele.

**Mr ROBINSON:** Well they could go and get it somewhere else but it would not have the same statutory authority as it would if they got it from the EPA. In other words, they could not do it legally. Ultimately, they could not do it.

**Mr WOOD:** I suppose the argument I am trying to put is that why should they charge? We have set them up as a body that is

going to give an independent assessment. We have told the developer you must go through this process and then we go ahead and charge them a set price.

**Mr ROBINSON:** Well, look that cost recovery model is something that is increasingly adopted by governments in all the different jurisdictions around Australia and around the world. I agree, there are issues around that whole business of bodies like this charging. But all we are setting out is that in other EPA's there is a cost recovery mechanism, in the example of South Australia they raise, you know...

**Madam CHAIR:** Waste management transport is one for example.

**Mr ROBINSON:** Yes, that is right. There are already those sorts of mechanisms in place to some extent here and across other jurisdictions. There are issues, it needs to be set up very correctly so that there is no opportunity for it to be misused or to compromise anybody or any organisation, so it has to be done properly but it is one mechanism by which some of the funding or resourcing of an EPA can actually be ensured. But it does have to be done very carefully and very properly, I agree.

**Mr WAKEHAM:** Cost recovery is a principle which is already in a whole lot of government processes. If I wanted to comment on a planning proposal I need to go to the Department of Infrastructure, Planning and Environment and pay \$2 per page for a photocopy of the development application, so it is not just developer that government is recovering costs from.

**Madam CHAIR:** All right. Mr Dunham you had some questions?

**Mr DUNHAM:** Yes. Your first slide was about the current government's commitment to set up an EPA. Are you curious that one of our terms of reference is to decide whether we actually want one or not?

**Mr ROBINSON:** Well, obviously we are always wanting clarity from political parties and from governments as to what their policy is. We are always seeking clarity.

**Mr DUNAHM:** You've got the policy and you are not in front of a committee and one of its terms of reference is to decide whether we even want an EPA, and I have got to tell you that it is a matter of significant debate whether you have this thing called an EPA.

**Mr ROBINSON:** Of course it is a matter of debate and I suppose that is why we are here, but it is not always clear from the outside whether for example a party policy automatically translates into a government policy when they become the government. Obviously ideally it would, and the public would probably expect that it does but on the other hand it is quite appropriate for a government to set up an inquiry into doing something that it is committed to before it actually does it so that it makes sure it does it properly.

**Mr DUNHAM:** That is the second term anyway, that is that. The second this is you talked about in your discussion independence and you mentioned some of the key words, which I agree with you on. Resourcing is obviously key to independence and accountability, and an appeals mechanism and it is these things I have difficulty with because if the thing is totally independent and you are talking about third party appeals in one of your things in decisions against the EPA so I suppose what I am asking you is who makes the final decision? If it appealable all the way ad infinitum it is possible you never, ever actually get to a decision. So if you had the Western Australian model where the Minister can, as you describe it, overturn it or he has got to give reasons for it, or the South Australian model where the decision of the EPA is final, who gets to make the decision? Eventually that has got to be unappealable surely?

**Mr ROBINSON:** Decisions are made at all sorts of different stages along any given process. Some decisions are made, for example, by an EPA, some decisions are made by a Minister, some decisions are made by Cabinet, some decisions are made by parliament. It is increasingly the case in all jurisdictions that appeals mechanisms are in place at various stages along various processes. It is entirely proper and correct, as happens in Western Australia that the public for example can appeal against a

decision to set a level of assessment on a development. It is entirely appropriate that the public should have the right to appeal against the report and recommendations of an EPA following an assessment. It is done elsewhere; it works well; the time that is taken over those appeals obviously depends on the seriousness of the development so if you have got a very, very major development then yes it is going to be a time consuming process. But that is only right and proper.

**Mr DUNHAM:** But that decision is then final?

**Mr ROBINSON:** The final decision is...

**Mr DUNHAM:** Is unappealable?

**Mr ROBINSON:**...is almost always made by a Minister or a government.

**Mr DUNHAM:** Okay, because that gets to my next issue and that is accountability. If this thing is totally independent, I mean we are accountable at the ballot box if we do things that incense the community and if you set up this independent agency that has no, everybody is independent on it, they have never had any connections with industry or whatever, how do you keep a check on that thing?

**Mr ROBINSON:** Well, we have set out in our...

**Mr DUNHAM:** And who eventually, I mean apart from the acts that I have seen where you have to be a bankrupt or subject to...

**Mr ROBINSON:** I think you are misinterpreting independence for being a law unto itself. It is certainly not a law unto itself. In most instances all it will do is produce proposals, plans, advice and recommendations that go to a Minister or to a government. It doesn't actually make the final decision about whether a particular development will go ahead. That is certainly not what happens in Western Australia for example. The independent statutory EPA in Western Australia makes advice and recommendations to a Minister who ultimately makes the decision obviously in consultation with Cabinet. So it is an independent body. It is accountable to

parliament and to the public, but it is not a law unto itself. It advises government, the crucial thing is to make sure that that advice is independent and that the decision making processes leading up to that advice are independent. What happens to that advice once it is made is a matter mostly for government. So that is what independence means. It doesn't mean it just goes off and makes all these decisions willy nilly and then they have got the force of law and everybody sidelined. That is not what happens.

**Mr BONSON:** Just to pick up on that Peter, the evidence that we got from Western Australia was the route is that the advice would go to the Minister ...

**Mr ROBINSON:** Yes.

**Mr BONSON:** ...on a large proportion of the time, 95% of the time he would follow that advice. On the times that he didn't it was the times that it had become a political issue within, for his government, within the public arena.

**Mr ROBINSON:** Absolutely, and rightly so.

**Mr BONSON:** And that was the evidence of the ...

**Mr ROBINSON:** Yes so we have to make sure we do not misconstrue what independence means in this context. It doesn't mean that they are, as I say, a decision making body that makes decisions across the board which then stand no matter what anybody else says. I mean that is not how the EPA's operate in other jurisdictions.

**Mr DUNHAM:** It is interesting because the word independent now seems to be appended to Office of the Environment and Heritage, not on your chart, but certainly on publications I have seen and it has now occurred appeared as a word to describe as that agency there.

**Mr ROBINSON:** Well obviously the government wants to at least give the impression, if not be able to demonstrate that the existing arrangement does have a high degree of independence, we would argue that it doesn't and that various

fundamental changes are required to actually give it independence. I mean the existing Office of the Environment is directly subject to daily ministerial decision making, intervention, what have you. That is what independence means for example in the Western Australia context. The Minister for the Environment in WA cannot direct the EPA. The Minister like anybody else can refer matters to the EPA, the EPA then goes through its statutory processes, provides advice to the Minister or the government and then the government has to make the resulting decisions.

**Madam CHAIR:** Alright. I am just conscious of the time. We are now in overtime again. Are there any pressing questions left by the committee? Peter thank you very much for your submission and the answers that you have provided to the committee on the questions. Tom, thoroughly enjoyed your submission, thank you.

**Mr COWEN:** Thank you very much for the opportunity to give it.

**Madam CHAIR:** Thank you very much, and Mark thanks a lot for coming along and helping out.

**Mr ROBINSON:** Can I just advise that we, subsequent to sending through this submission about a week ago, some further mostly minor changes and corrections have been made. I have sent through the final version which hopefully the secretary has.

**Mr DUNHAM:** We have got that.

**Mr ROBINSON:** So if you could replace that you perhaps...

**Madam CHAIR:** With the final?

**Mr ROBINSON:** Yes.

**Madam CHAIR:** Lovely.

**Mr ROBINSON:** Mostly minor, but important to us.

**Madam CHAIR:** No problem, thank you. Just at this point I want to acknowledge the presence in the room of Barbara Singer who is the former Director of the Office of

Environment and Heritage. Barbara welcome. She is a woman who is well known throughout Australia as having led the government's environmental work in the Territory for many, many years and we thank you for your work over the years Barbara. You are highly regarded throughout Australia.

**Mr DUNHAM:** Hear, hear!

**Madam CHAIR:** I would like to invite to the table now the next group who are going to be providing us with a submission, the Northern Territory Minerals Council. We have the Chief Executive Officer Kezia Purick and Kezia I believe you have other people who will join you, don't be shy.

**Mr DUNHAM:** Don't be shy.

**Madam CHAIR:** Don't be shy, come forward. We are going to run out of chairs so bring the odd chair with you if you could. We invite you forward simply because we have recording equipment up the front that is all. Again just for housekeeping, the way we work here is, if you could introduce yourselves first of all. We are recording this. This inquiry has parliamentary privilege and everything is recorded and everything is transcribed and ultimately attached to the report that gets tabled to parliament by this committee and just to assist our Hansard transcribers we ask for that formality of names first, so Kezia I will lead off with you.

**Ms PURICK:** My name is Kezia Purick. I am the Chief Executive Officer with the Minerals Council and appearing with me here today on my right, Steve Vellacott who is a member of our Environmental Committee, Neville Henwood who is a member of the Executive Committee and Robert Wilson who is Chairman of our Environmental Committee within the Minerals Council.

**Madam CHAIR:** Thank you Kezia and we will get started.

**Ms PURICK:** Well I guess, we put our submission in, I'm sure you have got it all there in front of you. We have gone through the terms of reference; we discussed it extensively in industry. We discussed it extensively with our state counterparts and

whilst the Minerals Council and industry have no issue with regulation per-se we do have some issues in regards to the establishment of a new and separate government agency, for want of better words. I think the work 'independent' is grossly misused, it is almost devoid of meaning these days. It is very emotive. It is used everywhere around the countryside and we haven't really entered in to that debate at all in our submission. We have focused more on the environmental assessment regulation in the Northern Territory and how this works with the minerals and petroleum industry. We have also commented on the industry's performance and management here in the Northern Territory, not only its statutory performance but also its non-statutory performance and why it does what it does. We also believe, and you will see in our executive summary, that the whole inquiry, the principles against which improved outcomes should be judged are very important. It is no good we believe in saying that this is a good idea, let's do it. There has to be some kind of accountability and you must know that the outcomes are true and proper, be judging them against principles. The principles that we believe they should be judged by including the certainty of regulatory regime for investors; efficiency including streamline assessment and approval processes; cost effectiveness, timeliness; transparency; objective and fair and the seamless integration of regulatory processes.

In assessing the current system against these principles, the Minerals Council believes that major changes to the current arrangements cannot be justified and indeed they could reduce the efficiencies at least in the short term. This is of concern to the Minerals Council and should be to the Territory as a whole, as should be the impact regulatory uncertainty can bring by major structural change in administrative and government arrangements, given that it is already a difficult economic climate in the Northern Territory and it is also a difficult investment climate for the minerals industry in Australia. We acknowledge that there are interests in the Territory that could accommodate some change in arrangements for environmental regulation and administrative support, but we do not

believe that they can be sustained at this time.

The industry does understand that there are changes in the social and political environment in which it operates and we do respond to those changes and also to the changes in community expectations and their needs. We do not believe that by setting up a new agency this will address those changing needs and aspirations of community and government and government's capacity to manage industry in the short term and long term environmental performance. We said in our submission, having said all those comments, the Minerals Council is always prepared and keen to work with government and its regulatory regime and its legislative processes and will continue to do so. We do believe that the current system is working. If there are ways that it could be improved or should be improved, then they need to be looked at before a monumental leap in to establishing a new structure and a new regime which may not fit the Northern Territory landscape. Environmental protection agencies, whether they be in Australia or interstate, one size does not fit all and that would be our concern; that interstate examples are lifted and tried to model and to fit in to the Northern Territory scene.

As I said previously, we are all aware of the difficult times economically that we are going through and as with our industry, it is difficult and we will come out in the end but we do not want any uncertainty in the meantime. That is probably a bit of a snapshot so if there are questions, any of our representatives here would be happy to try and answer them.

**Madam CHAIR:** Is there anything first of all that anyone wants to add before we go in to questions?

**Mr DUNHAM:** Is that a widely held view throughout the industry or are some of the smaller players more apprehensive than the bigger players, or is it a common view through the industry that – I suppose what I am getting to is that the bigger players obviously work with EPAs in other states...

**Ms PURICK:** They do.

**Mr DUNHAM:** ...and may be the smaller players don't so is there some disquiet among those 2 segments because of a lack of understanding of it, or is it even the big players that do have an understanding in other places have some disquiet about how you might have some arrangement that is similar here?

**Ms PURICK:** A couple of parts to your question. The Minerals Council represents the majority of operators and explorers in the Northern Territory, both from a mining perspective and from a petroleum perspective. Regrettably we do not have a lot of small players in the Territory that are spending money here. There are some small explorers that do have tenements and they are keen to spend money, so we tend to have a global level of players and some junior explorers that do operate and a small operator at Tennant Creek. The submission that we have put is pretty much across the industry in the Territory. There wasn't really any dissent within the membership when we were discussing this, it's just that we ourselves question, given that it has been talked about if there are ways that things could improve, how would we go about it.

**Mr DUNHAM:** Yes.

**Ms PURICK:** So it is a pretty universal felt view in the industry.

**Mr DUNHAM:** Good.

**Mr BONSON:** There are a couple of things just in your general statement at the beginning. The evidence that we heard from the Western Australian persons who were involved in the EPA, 20 years I think they have been going in Western Australia and obviously Western Australia is the largest mining producing state...

**Ms PURICK:** It is.

**Mr BONSON:**...in Australia, was that the EPA, it's ability to take politics out of a decision on the environment and act on the science and that was a major benefit to everyone within Western Australia. So you had the science of whatever the development was, people dealt with that. You had representatives from obviously the

mining industry and other developers including interest groups and then you had the science of it and they produced a recommendation, obviously that went to the Minister. The other, and I will get you to comment on that in a second, the other issue that came out of what they were saying in Western Australia, the major issue for the developer was time limits which you also mentioned and within the EPA they actually set times of when certain things had to be done. Certain criteria where cut-off points are reached and what they found was that was very effective in giving certainty to a developer on a development project and I notice that one of the things that you are saying is that by changing the regulatory regime within the Territory could create uncertainty, how do you respond to that evidence that we were getting from Western Australia considering that it is over 20 years?

**Ms PURICK:** Well in regards to, and Steve is familiar with the WA scene so he might want to add some comments as well, but in regards to the decisions based on science, a lot of what the current minerals and energy group make the decisions on is on the science of the project and also what they intend to do, where they intend do it and how they intend to do it. I mean it is not a political decision whether the mine gets the go ahead or it doesn't get the go ahead. They have an environmental assessment process that they are judged on and they must go through and obviously the company, the proponent goes through the commercial aspects and feasibility of the project, but in the environmental aspects that would be very much based on the science. I am not as familiar with the WA scene as perhaps some of the others. Steve might want to comments on the WA scene. He has had some interaction with it in regards to what it was like from perhaps the proponents point of view, or some other point of view.

**Mr VELLACOTT:** Yes I guess knowing the history of what happened I guess, and legislation throughout Australia. A lot of it was actually developed not to get the science right, the environmental science right, but to try and get the social science right so that is a serious consideration I think in the whole thing. Two is that people

in the community wanted to be involved in the decision making process at the higher level and that is where a lot of that move came from. The difference between the history there and here is that we are now 30 years on and there is a raft of legislation that the NT has now that was never that form of legislation, like the *Mining Management Act* to look after the mining industry for example, was never there in Western Australia at those times or other places as well. So the context is quite different but I think one thing that does not change is the overall social and political, I guess influence and ambience in the area if you like. There is always going to be pressure from the community to be involved in the decision making and sometime that process is actually used not only to deal with the environmental issues but a whole raft of other issues that people do not have another means to, so there is a danger that the process gets blown out and people use the process for a range of other reasons. Its really just identifying, I think those problems can be identified and dealt with, there is always a danger that the environmental approval process, or assessment process or whatever is going to balloon out and create other issues.

**Mr HENWOOD:** If I could just add something here. The underlying assumption in your question is that the current regime in the Territory does have that problem with politics being involved in the decision making. I think the whole industry would be surprised if you could come up with any examples of it.

**Mr BONSON:** I think the issue is that there is a perception and what the evidence from the Western Australian EPA which had been going for a long time, was that that perception had been taken out of the equation and that the timeliness issues that we raised were within their regime which was the major issue in Western Australia for the developer was the timeliness. When things were going to be reaching cut off points for matters to step forward and I would be interested to let you guys tackle that time limits issue. When I talk about politics of the thing it is a generalisation; like I say it is the perception whether or not that has been happening in the Territory and we could all day about that. But time limits is

an issue I would like to address. The difficulty I have is that there is an EPA in every other state and...

**Ms PURICK:** Yes but so what? We are the only state that has an open speed limit. I mean just because they have all got an EPA does that make us better or worse? They also have issues with pollution from the number of cars, we don't.

**Mr HENWOOD:** I also respectfully ...

**Mr BONSON:** I suppose what I am looking for is evidence to support the argument rather than your 'so what'.

**Mr HENWOOD:** I respectfully suggest that we already have it to in everything other than name. In what way is the process by which the Department of Infrastructure, Planning and the Environment, I heard the previous speaker talking about the process being to do the investigation and make a recommendation to the Minister. That is exactly what happens here isn't it? So what is it apart from name and another bureaucracy that is different here to what all the other states have?

**Madam CHAIR:** One of the, on the subject of mining in the Territory, one of the public hearings we had in Katherine one of the people there raised the issue of Mt Todd and the lack of rehab and some environmental concerns surrounding Mt Todd. Do you think in that context that we have a strong enough system here in terms of environmental protection around mining? Obviously we have very much an industry norm now, we have had plenty of really positive submissions from the mining sector in Tennant Creek about the great rehab work they were doing, but there was that concern that if there was an area that could be tightened up in terms of what Kezia said about looking at what is working now and what could be improved rather than necessarily establishing an agency, I guess the Mt Todd example has popped up time and time again. I would be interested in your feed back on that.

**Mr HENWOOD:** Well the Mt Todd example is a very particular one where the problem which arose was the lack of an environmental rehab bond at the outset.

That has been pretty much fixed, or at least the mechanism is there to fix that in the new *Mining Management Act* which has come in since then and that issue shouldn't arise again.

**Ms PURICK:** The issue of a Mt Todd, I mean it is Mt Todd in contemporary time, it would possibly have been Rum Jungle in times gone by...

**Madam CHAIR:** That was raised.

**Ms PURICK:**...well it will be raised. It is just one of those issues. What industry and what society did 30, 40 years ago is very different to what industry and society does these days, but the issue of a Mt Todd from the government point of view, from the political point of view may well arise in the future where government has to make the decision on a project what is best for community in regards to say the final approval of whether a company should put up a \$5m environmental bond or \$10m. So if you have a proponent that comes to the table and say, 'I can develop a project which will employ 240 people', as Mt Todd did and it generated \$80m in to the Katherine community in the procurement of goods and services in one year. Just in to Katherine without the procurement of goods and services in to the Darwin community and the payment of royalties and taxes and rents to the Northern Territory government. So government has this balancing act that they will always have in any major project development, whether it be a Mt Todd, an LNG plant, or whether it be something else, a fertilizer plant. These are the mechanisms in place, we want to encourage investment and as Neville said, with the new *Mining Management Act* what happened previously won't happen.

**Mr HENWOOD:** There will still be a decision though whether the Minister ultimately wishes to have the investment and take the risk or not and the only element of risk is that the government may well be left with picking up the bill to do the rehab work. There is no, the mining industry would never suggest the rehab doesn't need to be done...

**Ms PURICK:** No.

**Mr HENWOOD:**...but at the end of the day that balancing act will remain. The legislative regime is probably better now than it was then to deal with that.

**Madam CHAIR:** The evidence we received in Western Australia from EPA officers there, was that they feel it works in Western Australia in terms of the mining sector because they have kept the operational aspects within the mines section, the mines department, mines division in Western Australia and that their advice to our Northern Territory committee in our inquiry was that if you do go down the path of establishing an EPA, which by the way they said we should for a whole host of other reasons it wasn't the mining sector, they said do keep your operational aspects within the mining agency because they felt it was better to have your specialists, your environmental specialists with a knowledge of mining sitting within that agency rather than taking them out and putting them with other environmental specialists. Do you have a view on that?

**Mr HENWOOD:** Well that is the way it works here, now.

**Madam CHAIR:** Yes, that is right.

**Mr HENWOOD:** because the environmental assessment process is not run by DBIRD, it is run by DIPE and the operational aspects are run by DBIRD.

**Madam CHAIR:** So in a sense you are supporting, well you absolutely are supporting what currently exists...

**Ms PURICK:** The current regime.

**Madam CHAIR:**...Western Australia's advice is the way it works here is the way they find it works so how do you see the establishment of an agency which has a whole host of functions important broadly across the environmental spectrum to be a disadvantage to the mining sector.

**Mr VELLACOTT:** Could I just make another point about the Western Australia situation, it is still a government agency that is providing all that operational and environmental advice.

**Madam CHAIR:** Yes.

**Mr VELLACOTT:** The Environmental Protection Authority there is really just a, it is a small board basically that has specific functions, but in terms of on going operational scientific advice on environmental matters and development of policy, a whole range of things that are still a government agency in Western Australia.

**Madam CHAIR:** That's right.

**Mr VELLACOTT:** So we are just supporting the comment that it is the same situation as we have got here.

**Madam CHAIR:** Yes, but I guess what I am trying to get to is, that where you see the disincentives of an EPA board and the work they do more broadly on environmental policy, environmental assessments, you know developments, a whole range of things quite, mining is just one aspect of obviously environmental impact in the Territory. There are a whole range we hear as we travel around as an environment committee. One of the greatest impacts is weeds, introduced grasses in the pastoral areas and things like that. So what I have been hearing from the mining sector is, 'what we have got works', and what I have heard from Western Australia is operationally how we have got ours established is workable and very similar to how their's works, so I guess I am trying to get to where the concern is about an EPA with those broader powers, with those auditing powers of government agencies and things like that, where you would see that as a disincentive to mining investment in the Territory?

**Ms PURICK:** They have those auditing powers already under the *Mining Management Act*

**Madam CHAIR:** That is right.

**Ms PURICK:** Which is handled by the DBIRD department.

**Madam CHAIR:** So you know, because a lot of the inquiry, input that we are getting is that this is an opportunity to coordinate, look at cohesive, re-look at all the various legislation. We had a submission just a few

minutes ago saying that there is 100 pieces of legislation in DIPE along that mentions the environment. There is a whole range of various pieces of legislation than an EPA is offering the mechanism that brings a lot of that together and makes it more of a central coordinated perspective.

**Ms PURICK:** But isn't that what the department is doing? If it has got 100 pieces of environmental legislation, well they are all within one agency, so it is already there.

**Mr HENWOOD:** What is it that it will do that the Office of Environment and Heritage isn't already empowered to do?

**Madam CHAIR:** Policy

**Mr HENWOOD:** That would be the question. You are just talking about a change of name and another bureaucracy if I can put it that way, and to answer the question directly I suppose the industry wouldn't see any difficulty with that provided that there wasn't an additional cost burden.

**Madam CHAIR:** Sure.

**Mr HENWOOD:** I heard the previous speaker say that it should be a fee for service arrangement which we would have a great deal of difficulty with.

**Madam CHAIR:** So you wouldn't want increased bureaucratic procedures? You wouldn't want more layers...

**Ms PURICK:** No.

**Madam CHAIR:**...and you wouldn't want additional costs? They are the fundamentals in this submission.

**Mr DUNHAM:** Predictability.

**Ms PURICK:** Predictability.

**Madam CHAIR:** Certainty.

**Mr HENWOOD:** And accountability is the important thing which I think was raised previously. There is a lot of talk as I think Kezia said earlier about this notion of independence, but independent of what? Clearly it is not contemplated to be

independent of government so independent of what?

**Mr DUNHAM:** I think we got a feeling in Tennant and they were players that had worked in Western Australia and here, that there was a fear about an independent group that had an antipathy towards mining more than a regulatory type role and that was put more in a sense that they didn't understand the industry more than anything else. So there was a feeling that the independence meant that rather than facilitating and helping and making sure the thing was structured properly, that it was actually more a stand right back type policing. And in evidence given there was also a feeling that a model such as that could have the potential to scare away potential miners and development.

**Ms PURICK:** The science of the industry is very important with the, we loosely call it, people with the knowledge of the industry, but within the minerals and energy group are scientists. Predominantly the people that they employ in those crucial roles of auditing environmental assessment and ensuring that the *Mine Management Act* is complied with, are all at the professional level. So it is not that you have got people in there that particularly like mining, they are there because they are looking at the science of the project and the industry. And that is why we have been so strongly supportive of maintaining what we loosely call a 'one stop shop' because it is not that they know the industry as a personal thing; they know it because of the nature of the industry. As people would know, the industry is very different to any other industry in regards to its size, its risks, the nature of its business being a 24 hour business and location. And obviously there are the economic issues but that aside, and that is why the *Mining Management Act* which is one of the better pieces of mining legislation in Australia is so specific and that is why you need the people that know about that. They need to know about geoscience, they need to know about the geomechanics part, they need to know about tailings and voids, but also to know about an operation of a mine. So it is no good necessarily just having an environmental person that has got no idea of geology and unfortunately that has started to come

through in some of the universities. Environmental scientists are coming out of the system and they have had very little geological or geo-science background in their qualifications. There are probably very good environmental scientists that come in to our industry but they have to be almost retrained to understand the geo-science of the industry.

**Mr WOOD:** You have covered some of the areas that I was looking at, but I think that the area where I see an EPA, and I am not saying I am looking to a big EPA I will say what I said to the speaker before that whether an EPA could take those pieces of departments and most of them put them in to one. Use the resources from those first departments and not create necessarily an extra level but combine things and still operate as an EPA. I don't know whether that is the way to go. But I think what people are looking for is a belief that the decision-making procession is open and one of the difficulties I have in the mining industry and I realise in fact that mining may not be completely in your belly wick but it comes under mining.

**Ms PURICK:** We have some members at the quarries.

**Mr WOOD:** But I believe where you have the right of the *Mining Act* to override the *Planning Act*, straight away it means that the public is not involved except by a notification in the paper. I will give you a classic example. Just arrived on my desk in the last 2 days is a reply to 2 authorities in the Middle Arm Peninsula that I objected to last August and I get a letter saying we have approved it now. I do not think that is a satisfactory process. From a departmental point of view I believe an EPA would at least have queried the decision to mine Middle Arm and if you look at some of the early Middle Arm extractive mining it was right to the boundary of mangroves which has now been changed to the 8 m contour. You would have to ask where is the openness in the decision-making process. Where were the environmental protection people who should have realised and I don't think you have to be an environmental geologist or geo-scientist to realise that mining to the edge of mangroves was just a stupid idea. We know that that will kill mangroves from

the erosion, from the wash from those mines. So I think there has definitely needed to be a more open process.

We have that process in built up area, you take Wickham Point. When the LNG plant went forward one of the reasons it got so much open discussion is one, it was in the Litchfield Shire and therefore the Development Consent Authority looked at it so therefore there was a public process. But if the LNG plant was developed south of Daly River the chances of people having that same process would probably be far less.

**Mr HENWOOD:** Does that follow; there would have been an EIS still. Isn't that the process?

**Mr WOOD:** The difference is...

**Madam CHAIR:** DCA doesn't...

**Mr WOOD:**...that the Development Consent Authority allows the public to sit at a meeting like this to object openly. A lot of other places, those things are done like those authorisations that were done in Middle Arm. I sent a letter, I get a reply what, 8 months later. There is no public process I can go and discuss that, except what they have done in some places is told me to go out and meet the miner on site. I think that what the public want out of an EPA is the right to be able to say in an open and transparent forum like a Development Consent Authority, they want to put their particular objections or support for a particular proposal. Whether it is mining or whether it is industrial development, I see that as a benefit of an EPA but I certainly do not want to see an EPA that just turns into an almighty big bureaucracy.

**Mr HENWOOD:** Well perhaps there are 2 issues that arise out of that. The first one is that I am not sure how extractive tenements are dealt with but in relation to other mining tenements, I am pretty sure they are both the same, there is a public process. If there is an objection it should if appropriate be referred to a hearing in the Warden's Court which is an open court process. That doesn't always happen which raises the second point. Without making any comment about the validity or otherwise of

your suggestions, it is not always a good idea to let every objector hold up a process with ill-founded and unrelated objections, because there will be those occasions when there are objections for objections sake and there needs to be, for want of a better word, a hurdle. Somebody needs to make the assessment as to whether it needs to go to the next step and if the suggestion is that it is an automatic right to turn up as per the Planning Authority process just because you have put in an objection and that holds up the process, then that would not be something that industry would endorse.

**Mr WOOD:** Just to comment on that, I don't think that process in the Development Consent Authority necessarily holds up development. It allows that person to give their opinion. The Development Consent Authority then makes a decision on whether that objection was valid. They end up making a ruling about that development. It doesn't necessarily hold up because objectors don't have any appeal.

**Mr HENWOOD:** I guess the example you gave, the question there is 'Is it an issue that you are suggesting should apply to every grant of an extractive mineral tenement? I am not sure about that. Or is it something where perhaps the EIS process wasn't followed when perhaps it should have been? But if you are suggesting an additional process then we would be interested to see what that is but we have difficulties supporting yet a third process because if the proposal was regarded as environmentally significant it should have gone through the *Environmental Assessment Act* process and from what you are saying perhaps it did not and it should have, but I am not sure that establishing an EPA would change that. What you need to do is change the legislation, whether it be the *Mining Act* or the *Environmental Assessment Act* to make sure those things are caught.

**Mr DUNHAM:** The triggers.

**Mr WOOD:** I guess and perhaps you have to work on the basis that everything is open and transparent and the public can have the ability to comment and you work from that lowest common denominator and then work back. Presently I think it is as if the public

get in the road then, Well we will make the system – you know you can write a letter, that is it. I am not sure if that is really what we are about. The other issue with extractive mining has certainly been rehabilitation. You only have to fly over Litchfield Shire and if you can believe that there has been adequate rehabilitation I will eat my hat. In some places there is certainly some good rehabilitation and there is some very poor rehabilitation and an EPA may be able to say to the department or whatever who probably should have been forcing that issue a bit more, that something has got to be done.

**Mr HENWOOD:** It is the conclusion that we would need some persuading on. You may be right.

**Mr VELLACOTT:** I will just to add to that. I am sure an EPA could do that if you gave the EPA that charter, but the bottom line is I guess from where we are sitting is there is a range of issues that people might have on their mind that they believe some all-encompassing organisation might be able to do but the important thing is to actually look at each of those issues and decide what is the best thing to do and very often it may be a problem either where that issue originated with the person or the organisation, or it may have something to do with the current legislation we have got. Or the way in which that legislation is actually being utilised. So the points we made further in our submission is, let's have a look at the issues and find the most effective and efficient way of dealing with those, because there is a range of them, rather than automatically moving to a solution which is a sort of all encompassing panacea type emotional thing.

**Mr HENWOOD:** Which won't be a solution on its own without changing the legislation that it administers and you can do that anyway.

**Ms PURICK:** We have had members coming to us about the *Environmental Assessment Act* and particular area which have caused them concern and just getting to the legislation. Not how it has been managed by the department, just the legislation itself and that is part of what we have said in here: Identify the issues,

whether it be a regulatory, whether it be administrative arrangements with government agencies, whether it be something else of a technical nature, whether it be something of a scientific nature, address those issues and then if the outcome is that 'yes we need to move down this route' in regards to legislation, this route in regards to structural change, then do it then. I guess we probably just think at this stage it is seems to be putting the cart before the horse and I agree with some of your comments in regards to the extractive sector and we as the Minerals Council do have members, they are the ones that rehabilitate not the other ones, and it is something that we constantly talk about and we haven't even come up with a good solution as to how to bring up the poor performers because like any industry you are judged by your lowest denominator and your poorest performers. And in the minds of the public anything that is dug out of the ground is mining, whether it be gravel, sand or gold so that is an issue that we have as an industry that we are trying to deal with at this moment.

**Mr WOOD:** Could I just say that I am addressing the Extractive Minerals Council next week for dinner.

**Ms PURICK:** Could you be very open and blunt with them?

**Mr WOOD:** I know them fairly well. Just as a final comment what we are trying to get out of this of course is to get different people's ideas. I am not saying that the way I mentioned is 'The Way', but I would just be interested in your comments as to whether it is a possibility.

**Ms PURICK:** Sure.

**Madam CHAIR:** No further questions? I am just aware of the time. We are overtime now. I would like on behalf of the committee thank you all for coming here today. I know you are very busy people. You make a great contribution to the Territory and we will certainly take due consideration in to your submission and it has enhanced being able to discuss it as well as receive it in writing. So thank you for the time today. I invite everyone to stay and join us for a light lunch and refreshments. It is an opportunity for

informal discussion and we will go into recess now and resume at 1.00 pm. Thank you.

Recess – resume at 1 pm.

**Madam CHAIR:** Call to order. The sessional committee on Environment and Sustainable Development of the Legislative Assembly of the Northern Territory. As you are aware our terms of reference are the efficacy of the establishment of an Environmental Protection Agency for the Northern Territory, inclusive of but not restrictive of:

- (a) arguments for an against the establishment of an EPA for the Northern Territory;
- (b) options for the structure of an EPA taking in to account the demographic and financial context of the Northern Territory; and
- (c) if a particular model is recommended, options for its staged introduction.

I thank the people who have participated so far this morning and this afternoon we are moving in to our last sessions for the day. I would invite forward Mr Geoff Casey who is a private small mine operator in the Northern Territory.

Hello Mr Casey. Thank you for requesting to make a submission to our committee and I will repeat what you have probably already heard this morning that the inquiry has the privilege of parliament. All proceedings here are recorded and they will be transcribed by Hansard and they will be published as part of the inquiry's findings and tabled in parliament. For the purposes of accuracy we would ask you to state your name and basically we can proceed when you are ready.

**Mr CASEY:** Geoff Casey. I am part of a family group that has been mining in the Northern Territory since 1958 with mixed successes and by and large we have seen the way the legislation and regulations have changed over those years and increasingly it is becoming more and more difficult for small operators to exist in the field. There is a fairly stringent regulatory regime in place through the Mines and Energy Department

at present as far as environmental issues. I think actually that has been there for a long time but in different forms and different structures but this regulation is just getting tighter and tighter and there is more and more upfront cost which is making life increasingly difficult for small operators such as ourselves. Much of this regulation, if not all of it, is skewed towards the bigger operations and it is not really appropriate for a small scale operation because the small operation might be working in areas of say 3 to 5 hectares at a time with progressive rehabilitation taking place as you are continuing on. Pluvial mining is an area that there is a huge potential for here in the Northern Territory but it almost doesn't exist in the field. I can remember when I was a lot younger there was probably 150-200 people in the Mt Wells, Pine Creek area who were small operators, explorers or whatever and they were making a living out of what they were doing and the environmental damage that they were inflicting was pretty minimal. Let's face it, as soon as we got out of our primeval swamp we started changing the environment and even areas where people do not go in to the animals that live there are creating erosion gullies through their kangaroo patch and all that sort of stuff. So change is inevitable I think as far as the environment is concerned but it doesn't need to be hastened in undesirable ways. The mining industry, and I will speak only for the small sector because the Chamber of Mines and the peak bodies really do not have a great deal of interest in the small operators because they are not members and they do not contribute to their coffers at all so they don't want to know about them. But the small mining sector is the sector that actually finds mines. The big companies might develop them but they don't discover them in the first place. I don't think there is a mine in Australia that wasn't originally found by a small operator and I see the idea of an Environmental Protection Authority as being pretty much the final nail in the coffin of the small operator. That would extend also to the smaller contractors doing road maintenance and things like that with small bora pits that they have to put in. It is not to say that these bora pits and things do not have to be done properly and rehabilitated, but if you have got to spend thousands of dollars on doing an environmental impact

study before you have even turned a sod of earth, that is dead money and 9 times out of 10 you would say, 'Well the job is not worth it' and you walk away from it. Or a little job becomes very expensive so the community suffers because these little jobs that should not cost a lot, do. By way of example, in our own operation at Fountain Head, we did an environmental impact study for an area that was under application, I think it was about 120 hectares that was under application, there was about \$12 000 or \$15 000 worth of work engaging 2 consultants to prepare the environmental impact study on the area and a particular area we discovered an unnamed species of ground orchid which was duly reported. and the recommendation came from the guru of orchids in Australia, Dr Jones, I think his name is, down in Canberra, that this was a totally unique area and should not be mined. That went in the EIS that we submitted and it caused a bit of consternation amongst some circles but that was it. In our proposal we proposed that either this area could be left alone or if it was going to be disturbed we had outlined a plan how we could rehabilitate it and bring it back to its previous condition. That was accepted by the department and I think from memory it was suggested that we leave it alone. That area is protected by a reserve today so it hasn't been dug up at all. In our own situation, it was suggested here by I think the Greens presenter that we should have people on an Environmental Protection Authority Board who have good environmental credentials. As we have also learnt today, the mining industry is a specialist industry and I have coped flack from people with environmental credentials because in our process of recovering gold we use mercury and as we all know, mercury is quite toxic. But we recover the mercury that we use but that doesn't seem to satisfy a lot of people. The other point that they cannot seem to understand even when you explain it to them is that in that particular area that we working, there is free mercury in the ground already at levels that would send the environmental people right out of their tree. They would sort of declare the whole area a disaster zone. We are recovering probably about .1 of a gram per metre of mercury out of the ground. It is not economically viable as a mercury mine but it is a useful little bi-product. It means that we do not have to go and buy mercury. But I

make that point just to demonstrate the fact that we do need people who have got specialist knowledge of the industry and the same I think would apply to the fishing industry or other industries that are specialist in their nature, but the mining industry I think is probably one of the most specialised and unique industries that exist up here at present.

To work on a bush adage, if it is not broken don't fix it. Fine tune it perhaps. I think probably some more resources could be put the way of the Department of Mines for example and I am sure that there are probably other departments that would concur with that suggestion. But in that situation and you have got people who are specialised in environmental issues but they are also specialised in the industry that they are seeking to monitor. I think in that sense it works out to be a situation that (a) doesn't cost the community at large an absolute fortune by building a new bureaucracy and (b) it serves the interests of industry. I know the mining industry has to be particularly careful as far as the environment is concerned because there is an awful lot of people out there watching them and watching them very closely so if we put our foot wrong there is usually somebody there lurking behind a tree that is going to run the flag up and say, 'Look at that, they have done something wrong'.

So it is just a matter of survival. The small miners I think are just about an extinct breed of people but that is probably due to other factors not only this sort of thing. I think in a lot of ways environmental issues as they have been have been handled quite well by the department and I think that by and large there has been efforts from within the department to try and see small mining continue, but those efforts are usually thwarted by people higher up the tree because there is a cell within the department that believes there is no place in the industry or on the face of the earth for small miners and unfortunately they often are the ones that are advising Ministers and things like that. So the Ministers get less than accurate advice. If we ended up with an organisation such as the proposed EPA that was going to be forcing people to put up huge bonds, having to go through lengthy processes that each stage, I think 4 levels

were suggested somewhere along the line this morning, each level being appealable, I can see a project taking years to get off the ground. I know from my own point of view my simple solution there would be, or my simple answer to that, would be, 'Why bother?'

As a group we have developed I think some of the best pluvial mining technology in Australia. We have been responsible for other companies utilising ideas and processes that have been very successful. Our own environmental credentials I think are quite good; we were one of the earliest to promote the idea of not planting grasses on rehabilitated areas but to plant trees first so that the trees have got a chance to establish themselves. It takes nearly 5 years to get grasses going, so you can have a tree that is probably 4 metres high or better in that time so by the time you have a grass understorey, which is subject to fire, the trees are big enough to withstand that pressure and we developed that principle out at Bono Harbour about 25 years ago and that principle was adopted by Renison at Pine Creek. We have had close relationships with Renison, with Peko, the big companies. We have worked in joint venture with them. CSR and probably most of the big companies over the years we have had some contact with them or worked in joint venture with them as a junior partner. Obviously they have got the resources we haven't got but we have worked in well and those big companies all recognise the fact that the industry needs big players, it needs small operators. So I think that to create an EPA would simply create another bureaucracy because things can start off with the absolute best intentions, but unfortunately people get involved. That is the real problem: they have got people in there and you get somebody starting to, whether it is the people in the organisation themselves they decide they have to build a bureaucracy or they have to build their own empire or something – I don't know what motivates these people. I can remember the Department of Mines used to be I think about 5 inspectors, a couple of secretaries and the director and they all lived in a tin shed down on Wood Street. And there was more mining activity in the Northern Territory in those days and you saw the Director of Mines in the field. At least once

a year he used to do a tour of the Territory. There have been I suppose some disasters. Rum Jungle was mentioned this morning. Rum Jungle was mined and worked on the best available technology that was then, but here we are 50 years later and we know a lot more and we understand why things have happened that have happened at Rum Jungle. A lot of people have said 'Oh it was the uranium, it was this, it was that'. Well the truth of the matter was it was the sulphide material in the waste rock dumps that oxidised and put acid in to the creeks. Nobody thought of that unfortunately. Times change, we learn a lot more and we cannot really apply the values of today to projects that were implemented 40 or 50 years ago because we have learnt a lot more since then.

Basically I am saying that we do have to be aware of the environmental situation and that doesn't only apply to the plants and the trees and animals and things like that. Mining and development has a social impact as well and that has to be considered. It is not something I have had to have a lot to do with myself so I won't say I real big on that idea because most everything I do is out in the middle of nowhere and I don't disturb anybody so that is good, they don't disturb me either. Basically I suppose what I am saying is; it ain't broke so don't fix it. Try and tune it by all means and the system we have got I think works well. I suppose as a born and bred Territorian I get irritated by the cry that we are the only jurisdiction that doesn't have one of these things so we should have one because everybody else has one. My answer to that is, Why? If we can do the job a different well why not? If we worked on the principle that everybody else is doing this so we have got to do it, we would still be living in caves. Nobody would have ventured out to cut down a tree to build a house.

I guess that is it. Short and sweet.

**Madam CHAIR:** Thank you Mr Casey. Members of the committee, questions?

**Mr BONSON:** I only have 1 question I suppose, how many, can you estimate how many small operators there are in your circumstance?

**Mr CASEY:** There is only a handful. I am just trying to think of who qualifies there. I have been shut down by the railways because my access is cut off. Tommy Harbrow is probably still floating around – he is down in Pine Creek I know that. Probably only half a dozen in the Territory I guess. We are just about all gone.

**Madam CHAIR:** Do you find, you say that the current system is working – it's not broke so don't try and fix it – do you find that as a small operator you are given all the information and assistance that you need in terms of environmental impact requirements? When you have gone obviously out and explored and you have identified the site to develop, do you find there is a good working relationship existing? Were you able to be advised of what requirements you have got to get through?

**Mr CASEY:** I think so, yes. I know in my own cases the department has provided me with, like a framework to follow if you like. Sort of suggested topics of what they are looking for information on so essentially we just sort of expand on those sort of titles. I have made suggestions about say water quality control. I suggested using a particular plant for extracting any heavy metals and things like that that might have been occurring. The department came back and say, 'Well we would prefer you use something else, a different plant', for whatever reason. So yes, I think at that level I think that the department is open to discussion and being helpful to the smaller operators. I would expect that that would probably extend to some extent at least to the bigger companies but then they have got the resources. They have probably got all those frameworks there already on a computer or something so I don't quite know as far as that goes.

**Mr DUNHAM:** We have heard a bit of a commentary about how the department has got no teeth or they don't actually go and force miners to comply. Have you had instances where they have done that; they have come on to your site and said 'we want this fixed or that fixed', or 'we are not happy with this process' or anything?

**Mr CASEY:** Yes, yes. I have had my knuckles rapped. Not in terms of being fined or anything like that but I have had an inspector that has come in and said, 'Well look Geoff, we don't think is up to scratch and you have got to fix something'. The ventilation in my gold room I think was the last thing I got rapped over the knuckles on.

**Madam CHAIR:** Did they give you timeframes to fix it?

**Mr CASEY:** Well basically the situation was that we had put the thing in to a container, we were using a shipping container as a gold room and we had a door at the side, PA door and the end doors as per normal and then a window with glass, like louvres and it was air-conditioned. We were told that basically if we didn't operate with the end doors open we wouldn't be operating so basically we were just told what was expected and that if the inspector rocked in there again and we were working with the back doors shut that would be it. They would shut us down. Like it was sort of a, pretty matter of fact sort of thing. I can't remember the particular inspector that came in that day but he was pretty cheesed off with us. We didn't really think we had a problem because the mercury that we were using at the time was under water so it didn't really have the opportunity to fume because mercury vapour is quite unhealthy.

**Mr WOOD:** Geoff do you think, are you totally against an EPA or could you see an EPA basically working on a sort of sliding scale as regards to the importance of projects so that big projects 'yeah you have to bring in EPAs and it might come to a point where these little projects are dealt with by the department because they are relatively small and taking up the issue that you say that you have to go to a large process it would make you very difficult to continue as a viable project?

**Mr CASEY:** Well I think Gerry to a very real extent at present we have got that in place because I was thinking about the, Bridge Creek there was a project down there at Bridge Creek. I can't remember exactly who was doing it, it might have been Northern Gold, but that went to a public forum like a, I can't remember the Environmental Impact Statement or ...

**Mr WOOD:** EPR?

**Mr CASEY:** Yeah, whatever it was it was put on public display. There was I think 3 months or something for backward and forwards on that and essentially the public had an opportunity under the existing regime to comment on that project. It was a larger scale project. So yeah I would say, well that is basically in place now and it happens anyway so – my great concern Gerry is that we are going to build another bureaucracy and it is going to be overtaken by people who really do not understand our industry, and the same will probably happen to other industries, they are very good at understanding the relationship between the birds and the bees and the trees and whatever, but they don't quite see how that sort of fits into the scheme of trying to do something. Unfortunately it is just the way it seems to go. Government in general, I can remember, over my lifetime of experience with working with the government and I started working fulltime with my parents in 1972, so over 30 odd years various government departments have gone from being practical hands on people, well Steve would know – he used to be in the department years and years ago and he could tell you how different it is today to what it used to be. Effectively people were hands on; it was practical; it was sort of there, now we are getting a lot of administrators in there and with all due respect to the people in the department, they are all trying to do their job as best they can I know, but we are just overtaken with administrators and paper shufflers. I am not being derogatory to the people there, but that is the way it is and we have so many people who have got this big battalion sort of mentality and they seem to think that because you are going to go out and you are going to develop a gold mine you are going to make an absolute fortune so you can afford to write up all these reams and reams of stuff, I have got a name for it but never mind – it is not polite and there is a lady present – but that costs money and it costs time and even if you know what you are writing yourself, because I am Geoff Casey dirt digger, I am not Jo Blow PhD in environmental science and whatever else. My knowledge is based on walking around the bush, stubbing my toes on stumps and

whatever else and looking at the thing and seeing how the qualls and the goannas and the water birds and whatever else live and what trees they run up and down and wherever, because my knowledge is based on a practical basis, and I have got no formal qualifications in environmental science or anything else like as far as that goes, anything I write is not worth the paper it is written on. If it is written by some academic who has probably never even been on the ground except for the 1 hour visit they made to have a quick look around the place, that is acceptable. Because you have letters after your name that is good – if you haven't, forget it. That is the way it goes.

**Madam CHAIR:** Alright Geoff. On behalf of the committee thank you for giving us your time to today to come in and make a submission.

**Mr CASEY:** Hope it was useful.

**Madam CHAIR:** It has been useful indeed and I hope that you find our deliberations are taken into account.

**Mr CASEY:** Well that is up to you guys aye. I can't do anything else.

**Mr DUNHAM:** What you want to find is gold.

**Mr CASEY:** Yeah. I just want to get out of town aye. I don't want to stay here thanks. It's nice to visit here, but it ain't the place it used to be.

**Madam CHAIR:** Thanks Geoff. The next submission we receive is from Mr Duncan Dean who is convenor of the Save the Darwin Harbour Group. Mr Dean if you come forward to our front table where the recording equipment is. I keep repeating myself but it has got a purpose. The inquiry has parliamentary privilege. What you say is being recorded, it will be transcribed by Hansard and it will be tabled in parliament ultimately as part of our report. We thank you for coming here today and for taking the time to make a submission to the inquiry in to the EPA. You have heard the terms of reference, I can repeat them if you require?

**Mr DEAN:** No it is fine Madam Chair thank you.

**Madam CHAIR:** Without further ado we have got you listed down, we are a little bit off starting late. You have got about 20 minutes for your submissions and there is about 10 minutes of questions and answers.

**Mr DEAN:** I will try and keep it within that timeframe.

**Madam CHAIR:** That is alright, I will give you a bit of an indication where we go.

**Mr DEAN:** Madam Chairperson I represent the Save Darwin Harbour Group. We wrote to you in February this year asking for positive consideration for an Environmental Protection Authority for the Northern Territory. We all know that the Northern Territory is on the cusp of unprecedented economic development and that much of this development will undeniably have a dramatic affect on the Territory's environment in the future. That goes without saying. However there is a couple of things I will use to draw your attention to what I think is being objective about the need for an EPA.

The world's largest free standing LNG tank now rises dramatically and starkly 50m above the mangroves, less than 6km from where we are sitting. It is 100m wide and it sits straight across from the about to be developed wharf precinct. I didn't realise how big it was going to be and what it was going to look like, although I had imagined it. This new and weird Darwin icon probably compares to the big pineapple or big banana down south, but it is there for the Conaco Phillips gas plant which will soon be spewing out on an annual basis over 6 000 000 tonnes of carbon dioxide, 6000 tonnes of nitrous oxide, 2000 tonnes of carbon monoxide, 1000 tonnes of sulphide dioxide and 500 tonnes of particular matter. All within 6 km as I said of where we are sitting today.

We know that there was an IPA done, there was an EIS process for that gas plant but we think probably the planning mechanisms that put it in that location may be would have been better served by an EPA having some input in to what was going on at the

time when the gas plant was given its endorsement about 5 years ago. A second gas pipeline is now planned to run up the middle of Darwin harbour right down the centre alongside the first one that was planned and that will have nearly 2 m of rock fill going for about 17 km straight up the guts of the harbour and there is no doubt that that will change forever the natural silt and sand drift which is part and parcel of the ecology of the Darwin harbour.

I flew in from south the other day and the captain of our 737 obligingly took a wide flight path around the harbour giving passengers on my side of the aircraft a first hand close up look at Darwin and its harbour and its surroundings now and I and the passenger beside me were horrified at the dramatic ugly and environmentally damaging recent changes to Darwin and its once magnificent harbour. The new East Arm Port area which was once native flora is now a vast orange clay pan and gravel scar on the landscape. It will need a million trees to get it back to where it was as far as tourists and people coming in from down south seeing as their first view of the Northern Territory a bit of green instead of newly developed industry. Where are the rehabilitation plans for the new port? No idea. An EPA may have put something in place or may have been instrumental in making sure that once the new port, which of course is very necessary for our trade with Asia and import/export in to the future. It needs rehabilitation and we believe that an EPA would probably have been quite helpful in ensuring that that process took place and took place swiftly rather than as it is now just sitting there like a giant orange scar.

The Weir Peninsula, or Middle Warm as it is commonly known has another huge orange clay slash appearing across it which of course is the Wickham Point gas plant up the northern end. But that peninsula too is also being rapidly scarred at its base by what appears to be uncontrolled gravel and sand mining with the accompanying damage to the natural environment right across the base of the peninsula. We were horrified to see this and disappointed that there is no rehabilitation evident. Whether or not rehabilitation is due to take place on that mining, and by the way there are more

mining leases now in the last 3 or 4 years than there were in the previous 5 years of government but that is another story, were horrified that there doesn't seem to be any rehabilitation in train or likely for that damaged area.

So what was just a few years ago a clean, green international tourism tropical Darwin harbour gateway to the famous Australian outback has now become a industrialised eyesore in the eyes of domestic and international tourists and locals arriving in our small but rapidly developing city and region. While these dramatic changes are largely due to ad hoc development and the lack of foresight and strategic planning mechanisms in the Northern Territory the fact that we do not have an environmental authority or watchdog in the Northern Territory is not helping this situation.

The Darwin harbour recently had its regional plan of management tabled in the Legislative Assembly as you well know but there is no specific legislation behind that plan of management to ensure that over the forthcoming years it will have strength to implement the many recommendations in that plan. That plan could well and truly become another lame duck effort of planning which will sit on a shelf gathering dust because there is no Environmental Protection Agency in the Northern Territory to ensure that the recommendations are implemented. The Office of Environment and Heritage is here, we have got that under the Minister and that is fine, however it will never have the resources or the expertise or the unbiased independent directions of an EPA. The commercial use of Darwin harbour by oil and gas related enterprise and by the new East Arm Port and related shipping is set to exculpate hugely over the next few years. We are going to have tankers 300m long carrying 145 000 tonnes of liquified natural gas drawing 13m in and out on a regular basis every week with huge tugs pulling them backwards and forwards. The face of the harbour and the surrounding region is changing dramatically and is set to change a lot more very soon, in the next couple of years and we do not have an Environmental Protection Authority or agency, reporting to the Minister sure but with an independent open public process to ensure that these

things are done in a logical, sensitive and sustainable way.

I think the key issue here is focusing on an independent organisation. Sure it will report to the Minister but it will be a public process and that is the major issue I think that we want to see taken up. An EPA has a statutory guarantee that it is not a closed process and it is a public process open to public scrutiny.

The Northern Territory stands alone in Australia as the only jurisdiction that does not have an environmental protection safeguard through an authority or an agency and we have heard the argument that it is too expensive, it is going to be another bureaucracy, if its not broke don't fix it, just put up with what we have got, but you know the argument that it is going to be too expensive for our small population to afford an EPA is rubbish. There is nothing wrong with a small EPA. You don't have to have a 600 staffer EPA. 10 people can be the beginnings of an EPA and they can call on for big projects as Gerry was mentioning earlier, more staff or expand or get in consultants when they need to for major projects. You can separate the small projects from the large projects and an EPA can adjust itself accordingly. It doesn't have to be a huge bureaucracy set in place forever dealing with the up and down of economic development in the same pattern all the time. That is not the case. So on this occasion I think Madam Chair, size doesn't matter. We don't need a huge EPA, we can get away with a small one.

There is huge expansion in the wind for the bauxite processing plant on the Gove Peninsula, a major redevelopment of the bauxite mining process over there. That particular redevelopment has got potential to do mammoth damage to the environment if it is not monitored effectively and we are not sure that the small Northern Territory Government's department is enough, or office is enough, to cope with all that is going on now and in the future in the next few years. It is a huge amount of development about to take place and the Office of Environment and Heritage just doesn't have the capacity and it is not built to undertake such huge project assessments.

So from inner city building developments, remote agriculture and fisheries projects, oil and gas industry developments to the many more varied projects of all shapes and sizes that are planned for the short and medium term future of the Northern Territory, there is no real current capacity for our Territory now to ensure that environmental sustainability and commonsense will prevail in development.

Madam Chair we in the Northern Territory are still looked at by southerners as cowboy country sometimes, where anything goes and you can have a go at anything and I must say that remains largely true and there is nothing wrong with that either. It is good to have that sort of attitude as long as it is not anything goes all the time and there are controls. Have a go at anything, sure but without the guarantee of ongoing social, cultural and particularly environmental monitoring by an EPA to ensure viable sustainability for the many projects now underway and proposed for the Top End and the Territory as a whole, we are setting ourselves up for failure in the eyes of Territorians, Australians and internationally. We could become a laughing stock to the environmental community unless we ensure that we have some firm base of monitoring control of environmental factors as we develop. We could become known as a developmentalist state without concern for an environmentally sustainable future.

Madam Chair the Save Darwin Harbour Group respectfully requests that your sessional committee recommends to the Northern Territory Legislative Assembly for the earliest possible introduction of legislation to provide for an EPA for the Northern Territory.

**Madam CHAIR:** Thank you Duncan for your submission. We will move in to the question session. Any questions, Gerry?

**Mr WOOD:** Duncan you mentioned the LNG plant at Wickham Point. Now the LNG plant had two EIS's or PEO's, I get them muddled up; EIS's I think, done. One was done at its first stage where I think 1 tank was the requirements for that first development and then it asked for permission to expand to, I think, 3 tanks.

They went through both a planning process and an EIS process. What advantage do you see an EPA having over that process?

**Mr DEAN:** Well Gerry we think there are alternatives. Why that tank is not underground I will never know for a starter. If we had of had an EPA 6 or 7 years ago when that was first being negotiated with Phillips Petroleum when Shane Stone I think was Chief Minister, or even before that, if we had an EPA then I am not sure things wouldn't have developed quite differently. I think probably maybe it wouldn't have even been built on that location and let's leave the Glide Point argument out of it. I just think that an EPA is one of those organisations which has a wide view independent from government direct control, it has statutory authority and it can have input to major developmental projects like that gas plant and things can change because you have got it there. Not only does it canvass community opinion more regularly than some governments might do, but at the same time it speaks with the authority for the public after looking at all the issues around any particular development. So what you see with an EPA and that gas plant over there may have been a different outcome. I don't know but I think it would have been a much more secure process for that gas plant to develop somewhere in the Top End, whether it is there or not, with an EPA in place at the time. And as a matter of interest, when were we told, when was the general public told that it was going to be a one monolith giant, highest, largest gas plant in the world built in the middle of harbour. Last time I heard it was 3 tanks, anyway it is sad.

**Mr BONSON:** A model of the different EPAs, have you had a look around Australia, do you have an idea of a model?

**Mr DEAN:** Yes Matthew, there are a number of models and some of them are pretty large, like the Victorian model has 600 staff. I was told that one was small but I don't think it is that small. I can see staged development as the terms of reference required. It doesn't have to suddenly happen that we have 100 people suddenly made in to a brand new EPA. A staged development is an option and I think that the government could consider looking at an

EPA which is distinct and separate from other EPAs although it does have common values and common themes, but it is engineered to suit the Northern Territory. In fact I am almost certain in my mind anyway, and I think our members agree, that an EPA for the Northern Territory needs to be looked at very carefully so that it does suit particularly the Northern Territory and its current stages of development rather than just picking up a model from Queensland or WA and saying let's copy that. That wouldn't be good enough because we are quite a different area, quite a different state.

**Mr BONSON:** If we make a model unique to the Territory, how do we design a process, if you have an opinion, what interest groups would be talked to about getting that model designed specifically for the Northern Territory?

**Mr DEAN:** Yeah, good question, but I wouldn't nominate specific groups. I would just say that the widest possible consultation will need to take place and incorporating all NGOs and interest groups such as ours need to have some sort of a say because we have members, they are members of the public and their future and their children's futures will be influenced by what we do now. So the process, I don't know but it would need to be fast but at the same time contradictorily highly consultative.

**Madam CHAIR:** Okay Duncan, no further questions. Thank you very much for your submission.

That finishes the submissions that we were advised of and we still as an inquiry with a public hearing here in Darwin have time to hear from other people. Is there anyone else who wants to come forward and participate in today's public hearing? If you want to speak, come forward to the chair and you have to state your name for the purposes of Hansard.

**Mr Adam TROY:** My name is Adam Troy.

**Madam CHAIR:** We have parliamentary privilege in this inquiry so you can feel free in what you say, just bearing in mind that it will be transcribed by Hansard and ultimately tabled in parliament as part of this inquiry. By all means, just go ahead.

**Mr TROY:** I would just like to refer to the gentleman's previous questions and statements perhaps against the different models, in comparison of the different models of what might be a good model for an EPA. I have had the experience of having worked in WA on construction in quite a number of sites in Western Australia, building mine sites and that sort of things as a rigger and I have found the EPA over there to be very stringent and the end result of construction processes over there often ends in quite a substantially, not improved but in appearance wise quite a substantially, how do I say it, strong environment as a result of the processes of the EPA in Western Australia and I know that a lot of construction processes refer certainly to the EPA before they begin. You know you have to sign off on clauses and that sort of thing. Even before you put a shovel in the ground you sign the paper at the moment that you dig for underground services and things like that. So I would say that the Western Australia model is perhaps at least a model worth looking at. Having worked in the north and in the south of Western Australia I find them to be quite stringent.

**Mr BONSON:** When you are saying strong environment Adam, are you saying it makes for better practice, it makes operation of that industry better? Is that what you mean by strong environment?

**Mr TROY:** I couldn't necessarily say that it would certainly improve the industry but the processes there are designed to at least benefit the environment and they do what they can to at least make sure that things are right with the environment. They are not necessarily business orientated the processes that we have to go through. They are more sort of designed to protect the environment, particularly with rehab situations and things like that and at the culmination of any project they make sure that the environment is repaired and restored to its best at the end of each job. Whether that is a small job like digging a hole or whether it is moving mountains, the culmination at the end is overall the environment is repaired to its original, or as best, nearest to its original situation.

**Madam CHAIR:** Anything further to add? No more questions? Thank you and just for your information, we went to Western Australia and spoke to the WA EPA, both the board members, the Chair and officers there so it is a model that has been brought to our attention that we have thoroughly investigated. We have also been to South Australia and had a look at that EPA model. So according to a Manchester University study of EPAs worldwide, the Western Australia model is one of the best practice models in the world so certainly there are some experts who concur with your opinion. Thank you for your hands on perspective on that.

**Mr TROY:** Thank you.

**Madam CHAIR:** We appreciate it. Is there anyone else who want to take this opportunity to put forward their comments or any perspective that they have for or against? Tom would you like to come back?

**Mr Tom COWAN:** May I come back please?

**Madam CHAIR:** Absolutely.

**Mr COWAN:** I would just like to make a couple of points about some of the things that have been raised by other groups if I may?

**Madam CHAIR:** Certainly.

**Mr COWAN:** Firstly Geoff Casey, the small miner, now the situation in NSW where I was practising before I went to Papua New Guinea was that when the EPA was established they had a list of what they called 'designated' developments so that if your proposal fell within that list you had to produce an EIS. After a number of years they realised that the burden was falling onerously on small miners in particular so, for instance, a fellow who wanted to go down the beach and collect some shell grit, you know a trailer of shell grit a week or something like this, he had to do an EIS and there really wasn't a need for it, so the situation in NSW has changed. They changed the legislation to describe extractive industries on a tonnage basis per year, so above a certain level yes you had

to do an EIS, below that level it wasn't necessary. So that might be one thing that the committee could consider when you get down to the nuts and bolts and this, if you make a decision obviously to go for an EPA.

The other one on the structure of the EPA, I had a friend who used to work in the DMR in Sydney and he was an engineer in the top 5 in the DMR there, and he got head hunted by the New Zealand equivalent of the DMR and they had about the same road length as the NSW DMR. In NSW they had 35 000 employees, in New Zealand they had 8. He was 1 of 8 people. Everything was contracted out so there are obviously an extreme of options that you could think about for implementing this. As member Wood is particularly concerned about the blow out of and size of the bureaucracy and so on, there are different ways that you can handle it, but ultimately I guess it comes down to the government deciding that this is the way that we want to structure it and that is how we will proceed with it.

**Madam CHAIR:** That is a good point Tom and certainly Mr Dunham has pointed out at other public hearings but for purposes of clarifying to members of the public here, our committee makes recommendations to parliament. Now those recommendations could either be consent recommendations, that is all the committee members have agreed to the recommendations, we have all signed off and it goes in as consent. Indeed it could be a situation of a dissent report as well; that is some members of the committee don't agree with the majority consent position so both the reports would be tabled. But ultimately government can choose to accept or reject any or all of those recommendations so in terms of outcome, ultimate outcome, it still remains a government decision, just to pick up on your last point.

**Mr COWAN:** Okay. That is all I had to say. Thank you very much for the opportunity to come back again.

**Madam CHAIR:** Thank you very much Tom. Is there anyone else? Please come forward?

**Ms WARD:** Hi, I am Amanda Ward. As an environmental practitioner working in the

gas and resource industry for the last 8 years, I can only talk about my experience working with small companies and big companies and I have worked all around Australia apart from Tasmania. One thing I noticed was the perception up here is that there is no political will to enforce legislation, whereas in Queensland there is. And there is more of an emphasis on compliance in Queensland whereas there is not really up here. So I think having an EPA up here to streamline that would be good and it would raise the bar potentially for environmental compliance and have the political will to do that.

**Mr DUNHAM:** But it still depends on whether the government of the day resources it and wants to seal it on really doesn't it?

**Ms WARD:** Yes.

**Mr DUNHAM:** I mean whether you have it or not, whether you have the structure whether or not an EPA or a super EPA, it still depends on whether you resource it and whether you are disposed to have the thing with some potency or not?

**Ms WARD:** The government has to walk the talk and the legislation has to be there to backup what the EPA is saying. That is just in my experiences in environment working in mining and gas.

**Mr DUNHAM:** And where are you working here now?

**Ms WARD:** Wickham Point.

**Mr DUNHAM:** That's alright, there are a lot of us in this room who like what is happening at Wickham Point.

**Madam CHAIR:** So in your experience in other jurisdictions, you have found it hasn't been a barrier? Obviously you have heard some submissions here today, where people have said that it would be the nail in the coffin of industry and it would be another bureaucratic overlay that is really not needed. That in fact we should turn our attention to fixing or fine tuning what exists if there is deficiency in what exists rather than creating a whole new structure.

**Ms WARD:** Well I can talk about the legislative process in Queensland because I have been involved as a consultant in getting mines approved. The EPA was a one stop shop and it was a good process. There was timeframes by which decisions had to be made and it was upfront. There was an informative, consultative process so we got feedback if we went providing the appropriate information, we got feedback so we could provide that information to enable the EPA to make a decision. It was very transparent and the Minerals Council talked about the cost of fees and things like that, well if you look at the cost of fees as a percentage of the overall project it is minimal. If you are talking about \$100m project, you are looking at the EPA costs as a minimal thing and I think you need those costs to help the EPA survive and it is not a huge burden. But for small miners, as Geoff Casey pointed out, in Queensland it is a stepped approach as well.

**Mr DUNHAM:** Have you been involved with mine management plans up here?

**Ms WARD:** Not up here no. I have only come up to do the gas plant.

**Mr DUNHAM:** Because its quite similar.

**Ms WARD:** Oh okay. Yep. And I know when you include environmental management at the mine planning stage areas the opportunity for the company to save money when they are looking at rehab down the track. So that has just been from my own experience doing, decommissioning mine sites and also mine planning as well.

**Mr WOOD:** What role does the Department of Mines play in Queensland?

**Ms WARD:** When I first got in to mining the 'enviros' were in the DME so the environmental section was administered by the Department of Mines, now it has changed over to the EPA because there was a perception of a conflict of interest whereas the same department was approving the mine, yet ensuring compliance. So it then went to the EPA so you have still got all your submissions I believe, I was only involved in the environmental submissions and we just

submitted all that to the EPA. But you have other development processes as well like your *Planning Act* and your *Mining Act*.

**Mr WOOD:** What does the Department of Mines do then without the environment, what is its credits?

**Ms WARD:** It administers the *Mining Act* so there are other approvals apart from just your environmental licensing.

**Mr WOOD:** Looking after the management plan and things like that as well?

**Ms WARD:** The Environmental Management Plan is administered through the EPA.

**Mr WOOD:** But we notice the management plans that are done in the Territory they cover the things like Work Health. I mean they cover safety on sites as well, so when they are doing an audit they didn't do just environment, they did a lot of other things.

**Ms WARD:** In my experience with EPA it is just strictly environment; it wasn't health and safety as well. What they do is they, your environmental management plan and your plan of operations have to comply with the Act and the *Environmental Protection Act* spells out what is required and then they go and audit against that compliance, they issue an Environmental Authority which tells you your hours of operation, pollution levels you are allowed and what monitoring reporting and things like that and then they measure compliance against that.

**Madam CHAIR:** Any other questions. Amanda thank you very much. It was a very good perspective for us to hear. Thank you.

Is there anyone else who wants to take this opportunity to comment to the inquiry.

**Mr DUNHAM:** Put your hand up Maria.

**Madam CHAIR:** Alright that being the case, I want to thank everyone who has contributed today. It very much enhances our ability to come up with fair considerations the more people who do provide input. We are up to something like 33 written submissions, so quite aside from

the oral submissions you have heard today we have got those 33 written submissions and we have had significant submissions in Katherine, Tennant Creek and Alice Springs, as well as obviously our trips to Western Australia and South Australia to look at EPA models there. Other members of course have also taken their own time to look at other EPA models and we have also done a lot of research in the committee in terms of comparative models. We are a committee who have not made a decision, we are very much in the research phase. We wanted to certainly put all decision making off until after we had conducted our public hearings so as Chair I am unable to give interested people here today any indication of where we are headed on this. You would have garnered some inclines in to where we are headed by various questions, but I can say we are a diverse committee in view and I think that has been reflected in the diversity of submissions we have received today.

I thank everyone for coming in committing your time and here's hoping that we come up with a report that people will find adequate to meet the Territory's needs into the future.

I will formally close the public hearing today and thank you very much for your attendance.



TRANSCRIPT NO. 8

**PALMERSTON PUBLIC HEARING**

Palmerston City Council Chambers

Monday, 19 July 2004

**PRESENT:**

Committee:

Ms Delia Lawrie, MLA (Chair)

Mr Stephen Dunham, MLA

Apologies:

Mr Tim Baldwin, MLA

Mr Matthew Bonson, MLA

Mr Elliot M<sup>C</sup>Adam, MLA

Mr Gerry Wood, MLA

Secretariat:

Mr Graham Gadd (Secretary)

Ms Maria Viegas (Administrative/ Research Assistant)

Attended by:

Mr Duncan Dean - Save Darwin Harbour Group

**Note:** *This transcript is a verbatim, unedited proof of the proceedings and should be read as such.*

**Madam CHAIR:** Alright well we will get started. I formally open the Environment and Sustainable Development Sessional Committee Public Hearing in Palmerston on this Monday 19 July 2004, and I welcome Mr Duncan Dean a member of the Palmerston public who has come here today.

Apologies have been received for today's public hearing, apologies are from committee members, the member for Millner Matthew Bonson, the member for Barkly Elliot McAdam and the member for Daly Tim Baldwin. Further apologies are from the Palmerston Mayor Annette Burke and Alderman Judy Joyce and in attendance we have committee Chair, member for Karama Delia Lawrie and the committee member, member for Drysdale Mr Stephen Dunham, and thank you everyone for attending on this lovely dry season afternoon.

The Terms of Reference for the committee are to look at the establishment often in the Environmental Protection Agency for the NT inclusive but not restricted to. Arguments for and against the establishment of an EPA for the NT, options for the structure of an EPA taking into account demographic, geographic and financial context for the NT and if a particular model is recommended, options for it's staged introduction.

Now Duncan we have received a submission from yourself already and thank you for that...

**Mr DEAN:** Yes.

**CHAIR:** Is there anything, while you are here, while you have the opportunity that you either want to add to that in an oral sense or any questions you have of the committee?

**Mr DEAN:** Yes, I don't think there is anything new, really that I could say Chair thank you for that. I suppose if it is okay with the committee, I could just reinforce a couple of the points that I made in the initial submission...

**CHAIR:** Sure.

**Mr DEAN:** I think probably the most important one to my mind, is that the Northern Territory is undergoing at this time a period of extraordinary development and it is not likely that it will ever see a decade that is coming now again, we have got gas, oil, a new railroad, connection to Asia and the rest of the world through the focal point of Darwin.

This huge development taking place over on the Gove peninsula with the Alcan expansion, which looks like it is likely to go ahead and all in all you could say that probably we are heading for a period of a heavy expansion in industry and along with that, we are the only state or the only territory in Australia that doesn't have an independent Environmental Protection Agency of some sort.

Whilst it might be considered by many in Government at least, and possibly by quite a few in industry that an arm of Government, such as an agency or a branch of Government or a subsidised agency would be sufficient. I think the

general perception in the community is 2-fold. One is that wouldn't be seen by the public as being completely independent and secondly, that sort of Government connection is always likely to be levelled at Government as a conflict of interest because the controlling factor will be the Minister and his Department, in that sort of agency which is connected to Government.

So in summary all I would say is that, yes from my perspective and from those people that I have talked to that are concerned with the environment particularly, we in the Northern Territory do need some form of independent body, such as an independent Environmental Protection Agency of some sort and in my opinion and those of some of my colleagues, it doesn't have to be a very large organisation which is in fact sometimes the problem that people see with it, that you are going to be top heavy in Government and you are going to have a couple of hundred people, multi-million dollar organisation looking after the submission to do with the environment. We don't think that is necessary, we think it could be handled maybe even with the current office staff, for a start being moved across to a more independent body and then on occasion, when in fact industry is really pressing on the environment than extra resources can be gathered by that agency and used for a period and then it can go back to a smaller size.

So a reactive Environmental Protection Agency I suppose you could say, growing and shrinking depending on the need, but a core group nevertheless which is seen to be independent and also of course there is an election promise that was made by the new Government that they would look seriously at an Environmental Protection Authority, and that is why we are here today. That is about it.

**CHAIR:** Sure, do you have any questions of the committee that are outstanding to you.

**Mr DUNHAM:** \*\*\*\*\*Receives phone call saying that the Member for Nelson, Mr Gerry Wood, is held up.\*\*\*\*\*

**CHAIR:** Maria can you add the member for Nelson to the apologies list, thanks.

**Mr DEAN:** Madam Chair, I think probably the only question I have for you, is whether or not this committee has in fact searched planet Earth for a similar situation to see whether there are any precedents or examples that it could draw from, which could cover a small state, rapidly developing up with a wide area to cover and considering those similar issues, even though you will never find something as unique and similar to the Northern Territory, I just ask whether or not a detailed search has been made of that precedents?

**CHAIR:** You have certainly obviously looked at it all and done comparative tables etc. of all the Australian jurisdictions, we have also looked at New Zealand and Canada as other, if you like, Commonwealth based similar legal based jurisdictions and there has been a study done by Manchester University, which did some comparative tables of all EPA throughout the world and certainly our researchers have tapped into that process so that we don't have to reinvent a wheel that is pretty well been covered by good science and research and interestingly enough out of that, one of the top EPA's was identified as the Western Australian model which is why one of our decision was to go and visit Western Australia as well as visit a different model again in South Australia and jurisdictions that we saw broadly comparative, in terms of the geography, you know the sparsity of distance between communities, Indigenous communities, the urban centres, mining, geographic changes that they have in those areas as well.

So that is broadly speaking how we would approach, I suppose the investigative stages to date.

**Mr DEAN:** Fine okay, that makes me feel comfortable that research has been done.

**CHAIR:** Yes, we have got a really good research officer here, in Maria and Gaddy has got a wealth of experience in previous environment committees which have similar processes.

Do you have anything you want to add Stephen?

**Mr DUNHAM:** I guess the thing to say Duncan is that we haven't got our mind

made up about the models yet. It is really data gathering at the moment, we haven't really as a committee, started to sort through some of that other than broad discussions. So I think you could say that it is not a closed process, we are not looking at it in terms of just plagiarising a model with the same rules, I think as you personally alerted they would be fairly full-hearted, given the capacity to borrow from anything that even looks like us, so we might end up inventing our own.

**CHAIR:** Alright, look I am aware that everyone has got other commitments and I thank everyone for attending and I will formally close at 5:34 PM, thank you.