SUBCOMMITTEE OF THE STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS

2012–13 AGENCY ANNUAL REPORT HEARINGS

TRANSCRIPT OF EVIDENCE
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WEDNESDAY, 6 NOVEMBER 2013

SESSION TWO
OFFICE OF THE ENVIRONMENTAL PROTECTION AUTHORITY

Members

Hon Ken Travers (Chair)
Hon Peter Katsambanis (Deputy Chair)
Hon Alanna Clohesy

Hearing commenced at 1.00 pm

Mr KIMBERLEY TAYLOR
General Manager, examined:

Mr DARREN FOSTER
Director, Strategic Policy and Planning, examined:

The CHAIR: On behalf of the Legislative Council Standing Committee on Estimates and Financial Operations, I would like to welcome you to today's hearing. Can you confirm that you have read, understood and signed a document headed "Information for Witnesses"?

The Witnesses: Yes.

The CHAIR: Witnesses need to be aware of the severe penalties that apply to persons providing false or misleading testimony to a parliamentary committee. It is essential that all your testimony before the committee is complete and truthful to the best of your knowledge. This hearing is being recorded by Hansard, and a transcript of your evidence will be provided to you. The hearing is being held in public, although there is discretion available to the committee to hear evidence in private either of its own motion or at the witness's request. If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session before answering the question. Government agencies and departments have an important role and duty in assisting Parliament to review agency outcomes on behalf of the people of Western Australia. The committee values your assistance with this.

Members, are there any questions?

Hon PETER KATSAMBANIS: Initially, I would like to have clarified for me—I am sorry; you probably get this question a lot—the differences in your scope and range of what you do compared with the EPA.

Mr Taylor: I can give a brief overview, and Darren might like to add to it. The Environmental Protection Authority is the statutory authority set up under the Environmental Protection Act; it has five members, of which one is a full-time chairman. They are independent of government to the extent that the advice they give is independent, and they are, in effect, an advisory body that gives advice and makes recommendations to the minister about major development approvals and about policy and other environmental advice. We are a department of state, set up to provide services and support to the EPA. We do analysis and we provide them with advice and recommendations. One of our roles is to support the EPA and provide advice and recommendations to them on which they form positions and make recommendations to the minister. But as a department of state, we also service the minister and do other matters consistent with a government agency. So I am the CEO, in effect, of a government department and I am employed by the Public Sector Commissioner. I have a performance agreement with the minister, and I have service level agreements with the Treasurer—the same as any other CEO—but we provide services to this independent body as such.

Hon PETER KATSAMBANIS: How do you provide those services to the EPA? Do you provide them through some service agreement or some other way?

Mr Taylor: We do not have a formal agreement; it is very much through established practices and procedures, and, as the EPA has a full-time chairman, regular interaction with that chairman. The sorts of information we provide to them are statutory processes set out under the act, so there are certain procedures to be followed, time lines to be followed and the like. There are established practices and procedures within which we operate. The EPA has a strategic plan that sets out a

broad high-level framework within which they wish to operate, and then we prepare a corporate plan in line with that strategic plan, so again they know the actions, they know the matters we will be attending to and doing as part of us servicing them. It is a somewhat unusual relationship. The work we provide to the EPA then also falls back to our agency's responsibilities, which are picked up through our budget processes and KPIs to government, and our KPIs and financial management responsibility through the annual reporting. So it is an unusual arrangement. They are not a board of management to us or our employers; they are a body we service, but we are accountable to government for the provision of that service to them.

Hon PETER KATSAMBANIS: So they do not actually, for want of a better term, "buy" your services; you are funded by the government to provide a level of service to the EPA?

Mr Taylor: Yes.

Hon PETER KATSAMBANIS: Who actually makes the determination of what level of service are they going to require from you?

Mr Taylor: The act provides that the minister is required to provide such services to the EPA as is reasonably required for them to undertake their functions, and so that is established through the normal budgetary processes and that provides the statutory basis for them to be provided their services.

Hon ALANNA CLOHESY: I wanted to get into some of the specifics in the annual report. I wanted to go first of all to the Ord River irrigation area stage 2.

Mr Taylor: Could you refer me to the page, please?

The CHAIR: Page 35, I think.

Hon ALANNA CLOHESY: Page 32. It says in there that the Department of State Development requested changes to the implementation conditions and the proponent commitments—that is, the minister's commitments—for the Ord project. Why did the department request further amendments?

Mr Taylor: The original assessment approval, I think, was conducted in the early 2000s, so there has been a substantial period of time since the original assessment. As you would appreciate, the state has been looking at how the scheme might be developed and who might be a proponent, and just as time has moved along and they have looked at the various development options, it has been necessary to review the conditions to see that the conditions are contemporary in terms of current understanding and knowledge of environmental impacts, but also that they are consistent with the form of development that the government is intending for the area. We are now looking at an individual proponent developing the whole of the area; when the original approval was done, it was not clear as to how it might be developed and so it was just updating it to reflect the current thinking.

Hon ALANNA CLOHESY: So that is what is referred to as "contemporary implementation conditions"?

Mr Taylor: Yes.

Hon ALANNA CLOHESY: Were there any other conditions that are considered contemporary?

Mr Taylor: The majority of the conditions set as part of the original assessment are maintained, so certainly in terms of all the environmental outcomes that need to be achieved, they were maintained—there was no lessening of those environment outcomes. It was more the administrative mechanism by which they might be achieved and who would be doing what.

Hon ALANNA CLOHESY: I think that is probably all on that one. Do you want to change topics?

The CHAIR: All right. Keep going.

Hon ALANNA CLOHESY: Page 37 and across to Onslow and the sea component.

Mr Taylor: Sorry, page?

Hon ALANNA CLOHESY: Page 37. I am just finding the statistic. Can you come back to me, Ken, I just want to find the right figure?

The CHAIR: On page 35 you have "Draft Environmental Assessment Guideline — Environmental Offsets". What is your role in negotiating offsets to counterbalance any significant environmental impacts?

Mr Foster: Look, offsets are part and parcel of environmental impact assessment, and we play a role as government officers in working with proponents and other agencies that have an interest in matters that might be being impacted to formulate an offset arrangement that is reasonable and proportionate to the matters being impacted. So we play a role in that in facilitating meetings, guiding proponents on past offsets that might be have been reached in relation to like proposals or similar proposals, and generally making sure there is an offset arrangement that is clear in its intent, purpose and outcome and that is enforceable, because we perform the enforcement function for the state as well. So we play a role to that extent.

The CHAIR: That is the extent of your role in terms of you do not negotiate it, but you are involved in the negotiations to the extent that it allows you to be confident you can enforce it, should it —

Mr Foster: Enforce, but also to make sure it is reasonable and proportionate to the impacts. But I guess that one of the distinctions between the EPA and the Office of the Environmental Protection Authority is that the final recommendation to government about the shape and nature of an offset is made by the EPA, and it does so in its public reports, and officers have no final say on any offsets. That is a matter for EPA to recommend to government and it is for government to accept, reject or modify that recommendation.

Mr Taylor: There have been concerns in industry in the past that negotiations for offsets have not been done in a transparent way. We, working with the EPA, have sought to set out a process that is far more transparent so that as we go through an environmental impact assessment, the significant impacts are identified, the proponent can put their view forward about what is an appropriate offset, there is a public process and then the EPA can make a recommendation to the minister. At the end of the day, the minister makes the final determination. To try to further improve the transparency of this matter, the government has set up an offsets register so that all offsets now go on that register so that it is quite clear what has been agreed; why and who is providing what. So there has been a fair bit of work associated with improving the way environmental offsets are established, because I think in the past there were legitimate criticisms that the negotiations were not open and transparent and there was not clarity around what needed to be provided. Significant effort has been made to provide more clarity about what is required but also to make it more transparent.

The CHAIR: You mentioned the offsets register. When did that actually come into effect then?

Mr Foster: I cannot recall the exact date, but it was certainly about three months ago, so perhaps 1 July.

Mr Taylor: It was just commissioned around 1 July, and the intention is to populate it with past decisions. Certainly from our agency's perspective, we will be looking to populate it back for about eight years so that all the information from our perspective, having been involved with the environmental impact assessment process, is backdated for that purpose.

The CHAIR: So that is why the language is unusual. I could not quite work it out from the language of the annual report, so it actually came into being after the end of the financial year.

Mr Taylor: Yes. I think it was probably 1 July or something like that—early July.

The CHAIR: So when you were writing the annual report, it was probably in place but it had not actually been —

Mr Foster: We had to do quite a bit of testing of it to make sure it captured the information we needed and to make sure it was reasonably user-friendly and had all the information the public might want. That took a bit of refinement before it was finally rolled out on, I think, 1 July.

[1.15 pm]

The CHAIR: In terms of the register, does that require you to have new skill sets or human resource capacity as a result of that or is it using existing resources or does it need new resources?

Mr Foster: It is using existing resources. It is actually being administered by the Department of Environment Regulation, not so much us, but we have been part of a working group contributing to it. It does not really require any new resources, just a bit of thinking about what information needs to be in it and how to organise it so it is reasonably easy to interrogate and user friendly. There are also issues for us in terms of back casting over previous decisions that in past years may be not as clear in their intent and the detail, so trying to allow for, I guess, some continuous improvement in the detail of offset arrangements as we go forward.

Mr Taylor: All states are, I guess, looking at ways to improve the process around offsets. I think we could say that Western Australia is advanced in its thinking and its application. I think some of the other states are starting to look at what we are doing here as well. It is not an easy issue. How do you value the environment? It is very challenging.

The CHAIR: If you have a rare and threatened ecological community, how easy is it to say, "We'll buy that bit of land because that's got the threatened ecological community that still has got only half the threatened ecological community you once had"?

Mr Taylor: Exactly; yes. It is a very challenging area. It is one we have been trying to make work and I guess we see that transparency is critical about it. At least if you are transparent, people can criticise you and you have to try to justify why you have chosen the particular course of action.

The CHAIR: It is interesting; it is one of those classic areas, where, depending on which side of the fence you sit on; it is either an unreasonable imposition or it does not actually protect the environment. Obviously, the register is part of trying to get that accountability. But are there other mechanisms people can look to to say, "Yes, we are getting a reasonable outcome through those negotiated offsets; there is a benefit for the environment", and, if so, what are those other mechanisms?

Mr Foster: Transparency is a pretty critical thing because that has a cleansing effect. It is all out there and it is capable of being appealed and so on. I guess one of the other advantages we have in this state is that we have got this body, the EPA, an independent set of non-public servants who cast their eye over these things. They have in their act the job of protecting the environment. They make the judgement of whether the offset is reasonable and properly answers the matter being impacted. Sometimes they come to the view that the matter just cannot be offset and there is no offset possible for the impact and they might form the view that the proposal should not be implemented. They have done that in a number of cases. They are the independent umpire, if you like, on the acceptability of the offset. I guess one of the other things we have learned is to put a lot more emphasis on the detail of the conditioning around the offset—the formal ministerial conditions—to make sure they are sufficiently detailed and robust to allow them to be audited, not next year but 10 or 15 years from now and show there has been some delivery of the intended outcome. We have got a lot better in recent years at the conditioning end of it, so that there is some sort of legal mechanism to enforce. Historically, offsets often took a form of proponent commitments, so there was a general set of commitments made often not given much legal status. They were just taken as offered by the proponent, so there was not any particular scrutiny as to whether they were reasonable and proportionate to the impact or maybe unnecessary and over the top—that happens as

well sometimes—and then conditioned so they can be enforced. I think we have got a lot better at that in recent years and ensuring that these things are all put through that scrutiny of the EPA. In the past the EPA tended to let offsets happen outside its process, either in the appeals process or through direct discussions between proponents and other agencies. Now they have stepped in and said, "If there are going to be offsets, they will have to go through the EPA's board and the EPA will form a view and recommend to the minister. That then has the effect of causing them to be in the public eye because they are published in EPA reports and capable of being appealed. It is a much more open and transparent process than it has been in the past.

Mr Taylor: There was a set of guidelines referred to as "Draft Guidelines" prepared by the state regarding the application of offsets released last year. There was lot of criticism from, particularly industry, about them as not being sufficiently clear about what was required and not sufficient specification and there has been a working group working with CME and AMEC to develop improved guidelines. That work is significantly advanced, and it is likely that new draft guidelines will come out early next year for, again, some further targeted consultation. It is all part of work in progress to try to improve things—the very sorts of things you are identifying—because it is not a simple matter and we need those guidelines and clarity.

The CHAIR: Pardon my ignorance on this: in a very simple sense, often the offset is simply purchasing a multiplied factor of land, particularly in the metropolitan area. If you want to clear land in the Perth metropolitan area, you have to buy a certain amount of land and then it is transferred to PaW generally for the ongoing management of it. There must be some more complex offsets that are entered into in trying to restore degraded land to revegetate it to a better quality, which is that longer-term mechanism. What happens if it is simply not able to be achieved, even though they have tried their best endeavours and they are not able to achieve protecting the threatened ecological community whatever the heightened conservation value of the land they are required to rehabilitate?

Mr Taylor: You certainly seem to have a good understanding of it when you refer to threatened ecological communities and the rehabilitations. I think you have a good grasp.

Mr Foster: The EPA has a set of policy documents that date back to 2006 that it draws upon in making some of these judgements about those offsets and in complex cases you speak of. One of the decision-making principles about offsets is what the degree of confidence is in something like rehab. If it is rehab on site, which is rehabilitating a project where you have disturbed, it is not an offset because that is part of normal management practice. If you decide to rehabilitate an adjacent area of bushland of similar values and improve its value through some program, one of the key questions for the EPA is what confidence do we have that can and will occur? Is the science in the rehab techniques for that particular type of vegetation to give the confidence that will occur, or is it part of the state where the science is a bit dubious about the likely success of rehabilitation or improvement of that land? In which case they might say, "We want you to do it over a greater area", or "That offset is not acceptable because we do not have any confidence, then we have to look for something else." One of the challenges we have in WA in the offset space is that we have some characteristics here that are a bit different from other states and territories in the sense that we have very little freehold land on our land mass compared to, say, Victoria. The notion of like for like, which is the purest form of offset—you impact on one area but you trade off with another area of equivalent values, get that into secure tenure and so on and conserve it—is very hard to do here in a lot of parts of the state because much of the state is covered by pastoral leases and mining tenements. There are multiple uses, so that brings into question the issue of, "If you offer up a portion of a pastoral lease for some conservation purpose, does that preclude mining in the future?" If it does not, the EPA might say, "That's not going to stand up as an offset because it will be at risk in the future." That is one of the complexities we have here that makes it more challenging. The other thing is impacts on the marine environment because nobody owns it. You cannot find a like-for-like or equivalent tenure. So sometimes we look to research as offsets. There might be some sort

of research program to improve the state of knowledge of that asset. That is not perfect as an offset but sometimes it is the best you can come up with given the characteristics of that environment.

The CHAIR: I guess the other one that has always challenged is that often, again in urban areas, you want to clear land, and one of the key ones is obviously feeding grounds for Carnaby's cockatoos—I think it is Carnaby's cockatoos —

Mr Taylor: Yes.

The CHAIR: — so the argument is you buy five times as much land on the Swan coastal plain, but outside the metropolitan area. Is not that land also part of the existing feeding grounds of Carnaby's cockatoo and the owner of that land would not be able to clear that land anyway, so where is the net benefit to the state or the environment when you do that offset? I have never quite understood. Is there a logic I am missing?

Mr Taylor: You certainly know all the right questions.

Mr Foster: No. I think that is exactly the issue that challenges the environment portfolio and those offsets you refer to are usually commonwealth ones, not state ones, because they are concerned with those individual species. We tend to try to take a more landscape perspective on things.

The CHAIR: If the commonwealth was not sitting over the top of that, would not our EPA need to come in? People often complain about the dual system, but, in a sense, the system has now adapted so that the EPA in WA does not do certain things because it knows that the federal biodiversity legislation will. Probably the only argument is that it may be a bit stronger in the way you have to get permission before you do something and if you do not and the onus is on the proponent to pre-empt the damage rather than making the application to do it.

Mr Foster: Yes. The point you make is quite right, so the critical question is: what is the net habitat for that species and are we adding to the net habitat? In a sense you are not really adding to the net habitat; you might be, effectively, getting an offset that gives you something with some more secure tenure, which means it has got greater protection, which is less risk of being removed later on. The other option in those circumstances is rehabilitating areas, planting up with Banksia or whatever is the food source on areas that are already cleared. That would be another offset but you have to then factor in a lag time because obviously they need their fast food quickly. It takes several years for Banksia woodland to grow to be a food source. Lag times are taken into account and that sometimes drives the ratio issue as well.

Mr Taylor: It will drive it towards more the rehabilitation and re-establishment. As you were saying, "We are going to set aside an existing area and save it as increased protection." I think we will probably have to move more in that direction of the rehabilitation aspect.

The CHAIR: I am happy to declare my vested interest now. I really want to see people being forced to fund rehabilitation on the Gnangara mound because I have a personal interest because it is in my electorate. I am watching all the pine trees get taken out, and that is fine. The land at the moment is being left to be quite weed-infested and degraded; meanwhile I see land being cleared down the road in the northern corridor and land purchases being made in the middle of nowhere. It has always struck me that the logical thing is to say to those land developers in the northern corridor start working with PaW—is it now—to be revegetating the Gnangara mound. I still have the 1996 plan for the reconstruction of Gnangara regional park that was done with great song and dance in the mid-1990s and all we have at the moment is pine trees and degraded land where pine trees once were.

Mr Taylor: It is a very significant issue. I was previously with the Department of Water and think there was about 22 000 hectares of pines to come off. There needs to be a long-term solution and approach and rehabilitation needs to be a critical part of that. The state government is going through a strategic assessment of the Perth–Peel region and development of the Perth–Peel region with the commonwealth to get approval for long-term development. Certainly development and

rehabilitation of the Gnangara mound is front and centre in that. I think we would be hopeful that process will lead to some firmer decisions around the long-term use and rehabilitation of the mound. As we, as you say, develop more urban areas which will take the cocky habitat out, that becomes the primary mechanism available to offset it because there will not be enough areas outside Perth to keep buying. I think there is a process in train—it is taking a long time to get there—that should lead to that sort of outcome.

[1.30 pm]

The CHAIR: Even then, there is still the slight question that one of the problems is the pines that have become the feeding ground for some of those birds as well. Although it is not the natural habitat, they are still an important part of the feeding grounds, so you still have to work out what role they actually play now, whether they are a better feeding ground as a pine than they are as banksia.

Mr Taylor: I think they are doing some work around that to get a better scientific understanding of the food value of the pines versus the banksia.

The CHAIR: My frustration is that for quite a while not much work has been done.

Mr Taylor: And the pines keep coming down.

The CHAIR: Yes; you drive past and literally see weed-infested paddocks.

Mr Taylor: It is just such a large piece of land close to Perth that there needs to be a strategic long-term plan for it.

The CHAIR: When I was in government I was part of trying to kick off that strategic assessment, and when doing some work on development of the northern corridor I got completely sick and tired of everyone whingeing about offsets for Carnaby's cockatoo; surely we need to look at the Swan coastal plain as a whole. Sometimes the wheels take longer to turn than you want.

Mr Foster: That is exactly what the exercise is about—trying to look at it holistically so that individual proponents are not running the gauntlet of the commonwealth on their own and that there is some master plan about where development can occur and what should be protected, what offsets there should be and do it on a grand scale.

The CHAIR: I should let one of my colleagues ask some questions.

Hon PETER KATSAMBANIS: I just want to talk a little bit about the key effectiveness indicators. I notice that one of them is 100 per cent achievement of approved projects with actual impacts not exceeding those predicted during the assessment. How do you actually measure the fact that a project did not have impacts exceeding those predicted during the assessment? Is it done on a project-by-project basis? Is it done by audit? Does it rely on, for want of a better term, a dob-in?

Mr Taylor: That is a very, very good question, and it is one of the hardest elements of having an effective measure for the work that the agency does. We have been in discussion with the Office of the Auditor General for two years to try to come up with a better effectiveness indicator, one which can be more rigorously measured. I guess where I come from with this effectiveness indicator is that if the environment impact assessment process is operating well for the state, then we will not get developments which will have major environmental impacts which are not predicted. The intent is really around "major". If you have a project and it ends up clearing two hectares more than what it actually predicted during the project, to me that is not necessarily the key element of the environment impact assessment process; it is where a project has a major impact beyond which was assessed. As an example—this is going back a fair way—members may be aware of the Port Geographe development, where there has been substantial problems with accumulation of weed on that beach for a long, long time. That was assessed by the EPA in the early 90s, and that impact was not necessarily foreseen, or the size of the impact was not foreseen. That is not to say that the environment impact assessment process in itself was the failure, because the environment impact

assessment process relies on information from other parties. But at the end of the day, there is an issue associated with that development which the state would like to have avoided. When they are at that scale, we would then say that they were impacts which were not adequately predicted. When we say "zero", it is referring to any new ones like that which come up in that particular year.

Are there any new projects that have been assessed through the environment impact assessment process, and they might have been assessed three years ago, five years ago, but are there any projects that have come through where there has been that major impact? They are known really through the monitoring, the reporting and the dob-in and all those sorts of things, so that they can be detected and reported. As another illustration, members may be aware of the south east metropolitan regional council waste facility. There have been ongoing odour problems associated with that facility around the community. Again, that was one that came through the EIA process. The extent of the odours was not reasonably predicted at that time, and that would again be the sort of project that we would notify in this effectiveness indicator, if a new one had come up during the last 12 months. From our perspective, since the act was put in place in 1986, there has been something like 1 000 projects go through the EIA process, and we would identify less than about five where there have been significant impacts beyond those which were predicted. We have had some which have had significant impacts on communities; certainly Port Geographe, Esperance and around the south east metropolitan waste facility, but in terms of actual significant impacts on the biophysical environment in Western Australia, we have been fortunate to date that we have not had a project that has had a major or catastrophic impact on the environment. That, to me, is really the primary role of the EIA in this state; we have very many large developments occurring in this state, and it is about seeing that they do not result in large impacts on the environment which are a legacy to the community or a legacy to the state.

I am sorry to be a bit longwinded about that; it is hard to convey, and the Auditor General always asks me as CEO: "How can I be certain in what you're saying?" I am wrestling in between trying to come up with an indicator which is precise and can be measured, which I think might not provide any meaningful information to the state, as distinct from if I am involved in an environment impact assessment process for a mine and it results in the tailing dams bursting, destroying 10 kilometres of a river, then that is when I think we have potentially failed the process. There will be other parties involved, but that to me is the primary purpose of the EIA process, and that is really what I think we should be measured on. Sorry to be a bit longwinded about that.

The CHAIR: About one of the projects that you mentioned, Port Geographe: when that has been found to have failed, and what role do you have as an agency in trying to work out who has to address the impacts? I have never understood why the state has picked up—I will put the question out, and then you can tell me whether you have a role in it or who it is and why it ended up. The state has ended up having to pick up the cost of remediating that problem. I understand the developer went bankrupt, but the land that that developer owned has still gone on to a bank or whoever, the mortgagee of that land. Once we have done the remediation work at that site, I would imagine the value of that land is going to go back through the roof, because at the moment no-one wants to live there. If the remediation work is successful, significant benefits to the owners of the land.

Mr Taylor: In a perfect sense, if there had have been an ongoing viable developer there, we should have taken action under our conditions to require them to undertake certain works, but as you said, the whole ownership of that project has been very complex over the year and it is my understanding and it has been run through the Department of Transport that in the state stepping in and taking some action, it is taking some action with respect to the land, so it is, I think—I am not certain on this—taking an interest in that to recover some of its funds. It is not just stepping in and saying, "We're going to fix this up and landowner, you're going to take the benefits from this". I think there is quite a complex commercial relationship being established between the Department of Transport and the mortgagor and mortgagee of the property and the State Solicitor's Office. But the

fundamental point is that if there is a breach of conditions, we should step in and operate, but in this case there just was not a proponent that could undertake those —

The CHAIR: And you do not have the right to step in and take action against the owner of the land, so when that proponent goes under and the land, which is effectively the key asset, transfers to the mortgagee, you do not have the capacity to chase that land going to the mortgagee; you only have capacity against the actual original proponent to take action?

Mr Taylor: I am not certain. It is complicated by the fact that this assessment was done such a long time ago as well, and the conditions at that time were not as robust as they are now. I think it is partly to do with the timing. I think these days, if there was uncertainty around the development there is now a power in the act to put a bond in place. In such a case now, the minister might put a bond on for, say, $10 million or $15 million so that is in place so that when the development proceeds, if there are uncertainties, they can be addressed through that bond mechanism. So there are instruments now that were not foreseen back in 1992, but they are very much, to me, at the heart of the environment impact assessment process. There should be a process which predicts the impact; if the impacts are greater than are predicted, there should be a mechanism of government to take action and to see that that is taken. It should not necessarily result in an impairment or loss for the community or for the government of Western Australia.

The CHAIR: When you put a bond in place in those circumstances, how long would that bond last?

Mr Taylor: As long as the minister wishes to maintain it. We are jumping projects, but when the government permitted Magellan Metals to recommence exporting lead carbonate through the Fremantle port, the company was required to put a bond of, I think, about $5 million, and that bond is maintained and will be maintained until such time as the government is satisfied that its performances are adequate. The minister has the power under the act to set it, and he makes the choice as to when it is relinquished.

The CHAIR: Just finally on that, if the bond is set at $5 million, is there a capacity if it stays in place for a period of time to increase it to maintain the real value of it?

Mr Taylor: I think you are right; it has actually escalated in accordance with some form of CPI.

Hon PETER KATSAMBANIS: Back to the key efficiency indicators, I use them because they indicate the sort of interface you have with the people who are relying on your agency for assessments in particular. I notice that 81 per cent of assessments in 2012–13 met the agreed initial time lines. Do you have any indication of the nature of the assessments that did not meet the time lines? Were they the larger ones, the more complex ones, or were they short ones that simply exceeded the time line by a day or two?

Mr Taylor: As you point out, they do tend to be the ones that are more contentious and more complex, so without having the precise information, as an example, the EPA assessed a small marina proposal at Point Grey in the Mandurah estuary. Certainly, there was a lot of local concern regarding that one, and I think that would have been one of the ones that went over the agreed time line, simply because there was more information needed from the proponent to justify the impacts than were foreseen at the beginning of the project, so they tend to be the ones where there are more complexities and there are more community concerns, so there needs to be a higher degree of information and justification to satisfy the EPA, because at the end of the day, the EPA needs to be the one that is satisfied that it has sufficient information to make its report to the minister. Another one would probably likely be the Mangles Bay Marina down in Rockingham, which has been quite contentious for a long time, with different views in the community, and I think that would have been one that, again, did not meet the desired timeframe.

Hon PETER KATSAMBANIS: In 2012–13, that 19 per cent that did not meet the initial time frame—what actual number would that represent?

Mr Taylor: I think we completed about 40 assessments.

Hon PETER KATSAMBANIS: So about eight that were not completed on time.

Mr Taylor: Yes.

Hon PETER KATSAMBANIS: Do you keep statistics around the initial agreed timeline and how far over the time line those developments were?

Mr Taylor: Yes; I apologise, I should know this. In the EPA report to the minister, there was a schedule of the initial time line and what we reached, so there is a clear, transparent record that that has occurred.

Hon PETER KATSAMBANIS: Since there is only eight, would you be able to provide those on notice to us?

Mr Taylor: Yes. I am estimating it was 20 per cent of 40; it actually may be less than that.

[1.45 pm]

Hon PETER KATSAMBANIS: It might be six or it might be nine.

Mr Taylor: Absolutely. We can show that, and that is what we have aimed to do. In some cases, it is not the agency's processes; it might be the proponent taking longer than they forecast to come back to us. In that breakdown we will probably be able to show where the extra delays were in that sense.

Hon PETER KATSAMBANIS: I appreciate that just because there is a delay, it does not necessarily mean the delay was on your side.

Mr Foster: There is one other driver of delay at times: in 2010 we adopted a practice of consulting the proponents on draft conditions, basically, to ensure that conditions are robust and implementable. It is not an argument about whether there should or should not be conditions; it is about reasons they cannot implement it or whether we have got the numbers wrong or anything like that. It is designed to take unnecessary appeals out of the appeals process on really minor procedural or technical issues. We have taken the view that even though we try to do that within a period—we give five working days for the proponent to look at those conditions and five working days for us to digest their issues and then finalise the EPA's report—if it takes a bit longer, that it is a good investment because it means the overall timelines for the whole process, including the appeal and the minister's end of the process, is sped up because we are not wasting time on unnecessary appeals. That is one of the drivers.

Hon PETER KATSAMBANIS: I accept that. I did not ask the question because I am not suggesting in any way the delay is all on the agency's side. That process is a good example of how you can change things and streamline them to get better outcomes. Whether we comply with the initial time line or not is effectively irrelevant if we can cut out the appeal process and we can get to the stage where a proposed condition is changed but the same outcome is achieved more cost effectively or is time effective or whatever. I think that is great and I am not criticising that.

Also, in relation to these KPIs, the percentage of audited projects where all environmental conditions have been met has shown quite a sharp rise between 2010–11 and 2012–13. In 2010–11, only 58 per cent of audited projects complied with all the conditions, yet by 2012–13 we had got up to 84 per cent. What has led to that increase in compliance?

Mr Taylor: I have to apologise. I do not know why it was so low in 2010–11. I started in the agency around that time. I am not sure why it was so low—I cannot think or recall. Certainly, we would see 80 per cent as a minimum benchmark. A lot of these noncompliances are of a more minor and administrative nature. They may not have submitted a report on time or the like. We will come back to you with some information about why it was so low. Certainly, in the last two years and at the start of this year, we would see around 80 per cent as being the minimum mark we would like to see.

The CHAIR: We will take that as supplementary information.

[*Supplementary Information No B1*.]

Hon PETER KATSAMBANIS: Why is it 80 per cent and not 100 per cent? If you have been through a robust process and you have set a series of conditions and now you are effectively providing the draft conditions for comment that will eliminate the comment, "This is way too hard or too technical", and you wash that out before the final conditions are determined, why would you not be aiming for 100 per cent?

Mr Taylor: A lot of them tend to be of an administrative nature, with companies not reporting on time, so we report them as noncompliant, but to actually have a formal sanction against them is not a necessary action. It is not realistic for us as an agency to achieve 100 per cent, because it is reliant as much on the performance of the company itself as it is on our processes to see that they comply. I guess 80 per cent is seen as a balance in that if we are not getting 80 per cent, then our agency is not putting enough pressure on them to make sure they comply, but at the same time we cannot put so much pressure on them that they cannot achieve 100 per cent.

Hon PETER KATSAMBANIS: When there is noncompliance, what are the tools available to you, either to encourage compliance or to penalise the noncompliance?

Mr Taylor: The existing legislation is problematic in enforcement action in that any breach of a condition under our part of the act under ministerial approval is classified as a tier 1 criminal offence. Obviously, the degree of enforcement action and evidence to mount a prosecution is exceedingly large in the context of the types of breaches we have had, so there has never been a prosecution under part IV of the Environmental Protection Act.

Hon PETER KATSAMBANIS: That was going to be my next question.

Mr Taylor: It is something we have been talking to government about. We would like to see a better range of tools so that we could have fit-for-purpose enforcement actions, including prosecutions, depending on the severity of the noncompliance. At the moment, it is really just typically through a letter or statement of noncompliance and saying, "If you don't get back into compliance within a reasonable time, then we will take further action." We find once companies are notified of a matter of noncompliance, they take action. We have always had companies taking steps to make sure they come back into compliance within a reasonable time frame. It is really a coercive mechanism to get them back into compliance, but we would like some better mechanisms.

Hon PETER KATSAMBANIS: Where is that proposed legislative change at the moment?

Mr Taylor: The government is considering a range of amendments to legislation, and that is part of what the government is considering as part of its legislative prioritisation as to where that might slot in.

Hon PETER KATSAMBANIS: Have you made a submission to your minister around legislative changes you would like to see in this area?

Mr Taylor: Yes, there has been consultation. I am being cautious, because these are obviously decisions of government and ministers as to when they wish to proceed. It has been a recognised issue for some time. This goes back to when the act was started. The act was enacted in 1986 and there has not been a change since that time to provide better penalties for part IV. All I can really say is that it has been considered.

Hon PETER KATSAMBANIS: I refer to some of the other KPIs you have. I am now going to page 822 of budget paper No 2 showing efficiency indicators, with "Average Cost per Environmental Assessment" hovering around the $40 000-odd mark. Is that cost to the agency?

Mr Foster: Yes. I should say that we are in the process of a pretty major revision of our KPIs, because some of them need tidying up, and this is one of them. When we talk about average cost

per assessment that, I think, would lead anyone to believe that is the cost for an individual proposal going through the EPA, which is actually not what it means.

Hon PETER KATSAMBANIS: I do not think anyone here is under that misapprehension, I must say.

Mr Foster: That is because there are overheads loaded into that and a range of activities that are under the broad umbrella of assessment. It is not necessarily an individual proposal; there are multiple things it could be. We are currently revising our KPIs to tidy up some of that language and to have better metrics about what the units of assessment output mean—if that makes any sense.

Hon PETER KATSAMBANIS: What percentage of those agency costs do you recover from applicants through the process?

Mr Taylor: None at the moment.

Hon PETER KATSAMBANIS: Nil?

Mr Taylor: That is at the moment. The budget proposes to introduce cost recovery, but there has not been a formal decision to implement that. That is under consideration.

Hon PETER KATSAMBANIS: If you are going to go to some form of cost recovery, will you undertake some process to determine the efficiency of your service and how you can drive down the costs of the service before you implement cost recovery?

Mr Taylor: We have been working through that process of improving efficiency over the last two or three years and we believe we have achieved that and have demonstrated it. Certainly, we accept that if you are going to go to cost recovery, you have to generate further efficiencies. The way we are looking at it at the moment is that if cost recovery is introduced, initially we would only seek to recoup a certain percentage. It might be 20 per cent or 40 per cent; we would not be charging 100 per cent. Certainly when we have had discussions with the Economic Regulation Authority previously, it has said we should target 80 per cent maximum recovery because the other 20 per cent should be about driving efficiency. I agree with your point that there needs to be an efficiency consideration in it, and it cannot be that the agency has this many resources and that we will continue to recover what we get.

Hon PETER KATSAMBANIS: I am very keen to see that. At the end of the day, whether you cost recover or not it is important, because if you are not recovering it from the proponents, you are recovering it from the taxpayers.

Mr Taylor: From both sides, I would agree.

The CHAIR: In terms of cost recovery, are you talking about over and above the money that is allocated in your budget? Page 825 refers to environmental impact assessment fees of $4 million, $4.1 million, $4.2 million and $4.2 million.

Mr Taylor: That has been proposed to be implemented and commenced in this year, but at this stage legislation does not exist to implement the fees. That matter is still being considered by government as to if and when that cost recovery would be implemented. At this stage, there is zero cost recovery and there has not been a final decision of government as to the extent of legislation regarding how much would be recovered. If the government decided to recover the $4 million that was placed in the budget, it would represent about 40 per cent of the actual cost in those areas where the services are being provided.

Hon PETER KATSAMBANIS: Again, the chairman seems to have foreshadowed my question and it has been answered.

The CHAIR: Surely the government has taken the policy decision to implement 40 per cent cost recovery through fees, which I think is what you say that figure represents.

Mr Taylor: Without being cute with words, as part of the government's budget process there was a decision to introduce cost recovery, but there has not been government approval yet for the drafting of legislation to allow it to happen. There are a number of steps, as you would appreciate, in implementing the budget and at this stage there has not been a decision to draft the legislation to enable it to occur.

The CHAIR: Realistically then, it is unlikely you are going to collect $4 million this financial year. In fact, I am looking at the legislative agenda for this year and it is not going to get through this year, so that means the earliest you will get legislation into the Parliament is maybe February next year. Then there are a couple of weeks here and there to get it through the various houses, and I assume there are some regulations to be put in place. Realistically it cannot occur and you will not recoup the fees until 1 July 2014 at the earliest.

Mr Taylor: Yes.

Hon ALANNA CLOHESY: I would like to go to some of the detail of the environmental impact assessments. Where is the Toro Energy project approvals process at as we speak?

Mr Taylor: The original mine has both state and commonwealth environmental approval, but the company has recently acquired a further project and has commenced discussion with us regarding how the environmental approval for that further project would be carried out. That is still just at the early stages of discussion.

[2.00 pm]

Hon ALANNA CLOHESY: In terms of the conditions that were placed on the first approval, are those conditions public?

Mr Taylor: Yes; all of the conditions set by these approvals are available publicly through the Environmental Protection Authority's website.

Hon ALANNA CLOHESY: In the development of new conditions, what sort of public consultation is there as part of that process?

Mr Taylor: The practice that the mines have been assessed to date has been that there has been a public review period of eight to 12 weeks associated with the environmental review document. Also, once the EPA reports there is an appeal provision on the EPA's report. I would anticipate with the assessment of the extension project that there would be a public review period and there would be the appeal process as required under the act. Just given the public interest in such a project, I would imagine it would have a public period.

Hon ALANNA CLOHESY: We do not have a sort of time frame on that?

Mr Taylor: Not at this stage that I know for certain.

Hon ALANNA CLOHESY: Moving on to the banded iron formation ranges, there are a couple of approvals there, were there not? I think the EPA recommended that individual proposals can be managed to meet the EPA's objectives for those ranges—there were two. In the context of the significant flora, vegetation and fauna values, what sort of guarantees are made that those projects can go ahead while this flora and vegetation will not be affected and not have any major impact made on them? On one hand you are saying there will be an impact, but on the other hand you are saying it can it can go ahead on the basis of that; it is a generic question—I am looking at page 21.

Mr Taylor: It is a very fair and valid question.

Mr Foster: In our business every project has an impact, so the question is: is the impact acceptable or not; and, if so, can you make it more acceptable with stringent conditions? That is the sort of issue the EPA turns its mind to on individual proposals. They have quite an interest in this area, the Yilgarn Craton on the banded iron formation ranges, because of the high biodiversity values they have. Obviously, there is a sliding scale with some of those areas more important than others, and

the EPA makes case-by-case decisions about whether impacts on particular parts of the ranges or nearby are acceptable or can be made acceptable with conditions, or whether they cannot be. They make individual decisions on that.

Mr Taylor: There are about 20 banded iron ore formation ranges and the EPA would take a view that from the knowledge of the region these were of lesser significance, but it is certainly mindful that you need to look at that regionally and come up with appropriate regional conservation outcomes in that context, so not just death by a thousand cuts.

Hon ALANNA CLOHESY: So there is a sliding scale of significance, then?

Mr Taylor: Yes; there has been a lot of investigation and there is mapping of what they call the biodiversity hotspots—the number of species associated with each range. The EPA would have assessed these in that regional context not just in isolation.

The CHAIR: My understanding of those areas is that part of the uniqueness that each one is so unique. Even after you have done a strategic assessment, which is your point, you still have to come back and assess each individual application and the likelihood that in each area they will have unique biodiversity and conservation values. I am not arguing against a strategic assessment, but you are still going to have this problem that with every individual application you are still going to be hitting a brick wall that you will be putting at risk some significant environmental values.

Mr Foster: Yes, and that is precisely the judgement the EPA is making every time. You are right that these ranges have lots of unique values, so is not a collection of the ranges; individual ranges have unique values, but some of them have more value than others. They might have two dozen unique taxa that are not found anywhere else on the planet, which is the characteristic of these ranges. The EPA has to make a judgement about whether the precise footprint of the mine is going to have such a significant impact on those unique values that you would recommend against or whether you can manage impacts with conditions. In the two cases in the last financial year they felt that they were perhaps on the margins of the most important areas and the impacts were not so significant that you would actually say no, but rather that you can condition to try to manage the impacts. That is why they took that view. With other areas there might be a different outcome. They have to make judgements about the values, but also the cumulative impact, because you make lots of individual decisions that could add up to a very big problem in due course. They look at the conservation context, so how much of this area is in conservation estate, what A-class reserves there are, for instance, and what are the values at risk, and then make that judgement about acceptability and recommend it to government.

The CHAIR: Just so I am clear, it strikes me there is a risk in all of that that ultimately with declared, threatened or rare vegetation and fauna in those areas you get to a point that there is a risk you will wipe them out, which I would have thought is one of the fundamental underpinnings of what you are trying to do, which is to stop that ever occurring.

Mr Foster: But not all the species are of that highest conservation status. They might be declared rare flora and you would obviously be very concerned about that, but there might be high or medium-value vegetation or flora and fauna, and those sorts of judgements the EPA makes on the nature of the values, how significant they are and how significant the impacts are likely to be, bearing in my this is quite a large area. The Yilgarn Craton goes from the south of the Pilbara almost to the bottom of the goldfields. Not everything within that is a banded ironstone formation range; they are dotted all across the landscape. The coincidence of the mine and the range do not always absolutely overlap.

The CHAIR: But there is a reason they are called banded iron!

Mr Taylor: The variability of the environment over the ranges is the challenging part. As we have seen, you can focus either on individual plant species, say plant species A, and so you do not want to destroy that species, but one of the things about the ranges is that it is the collection of plants

together. Some people might have a view that if you protect individual species, whether it really matters that we have the association or collection of plants together. So there are those degrees of judgement on each range as to whether you are protecting just individual species or the collections of plants, and that is where some of the judgement has to be made. We have seen cases where approval has been given for a particular range and they have said, "You must avoid those particular plant species." But if you look at a picture now of that range, you have this great big mine and this great big hole there and at the top on this little ridge you have some plants sitting there. You and I would say, "What is the conservation value of that?" From the purest botanical perspective you can say that you have conserved the plants, but it is trying to find that balance where on some ranges you can lose large parts of it, but on some other ranges you really want to try to keep the intactness and on those ones you keep the associations of plants as well. There are all of those things being worked through in this space and it is probably one of the more significant environmental issues the state is facing in the coming few years. That is compared to the assessment of the iron ore mines in the Pilbara, which largely tend to be more run of the mill, although the cumulative impacts are becoming more significant there in terms of the individual places now in the midwest are becoming more and more challenging. While it is not our direct purview, the economics around development in the midwest and the Yilgarn has a much different basis than in the Pilbara. You have got some real differences coming in terms of the environmental approval.

The CHAIR: Going back to that threatened community on the top of the range, how successful are you going to be maintaining them depending on what the qualities were that meant that they actually survived there in the first place? It is mentioned in your annual report that it is the uniqueness of the environment that has actually meant that those particular plants have survived in that area. They are probably endemic to the whole area, but environments change.

Mr Taylor: If you disturb the ecology, are you really going to conserve them on a long-term basis?

The CHAIR: And particularly, again, when you get into fauna, is there a relationship to the flora and the fauna? I am sorry to interrupt you.

Hon ALANNA CLOHESY: That was all good.

The CHAIR: Where is the Helena–Aurora Range up to? I think there are desires of many to have as an A-class nature reserve. Is that something you would be involved in or is that something that is part of the EPA's recent announcements that to be allowed to continue to do any work in this area we have got to get on and declare that area. I will not even try to say the Aboriginal name, but I am sure someone else will!

Mr Foster: Bungalbin. The EPA in its annual report recently made some observations about the values of the banded iron formation ranges and in particular their concern about the Helena–Aurora Range, otherwise known as Bungalbin. That is what is called a conservation park. The Department of Parks and Wildlife has responsibilities there. The EPA has simply made the observation that they have been party to recommending approval to an expansion of quite a large number of mines, but they are concerned that the conservation commitments are not being delivered at the same pace and that then raises the whole cumulative impact question again. If nothing is going to conservation, you are potentially causing death by a thousand cuts with incremental approvals of mines. They raised those initially in their annual report. That particular area they focused on is in the Mt Manning area, north of Southern Cross. The EPA did a site visit there in August and expressed the view that they were concerned about any further development within the Helena–Aurora conservation park, which is in the Mt Manning area. We have live proposals we have to deal with in the area and decisions have not been made about those at this stage, but the EPA has signalled its concern about the impact on those areas, which in their minds are the jewel in the crown, I guess.

The CHAIR: I think in their report they talked about a presumption of not doing any further approvals until there is a declaration. As an agency are you now involved in trying to make that happen?

Mr Foster: I will just correct one thing. They did not insist upon an A-class nature reserve; they did not suggest that in their report. What they said was where there had been existing commitments about A-class nature reserves, they ought to be delivered. In that particular area, the A-class nature reserve the government identified in September 2010—the 2010 framework that was established talks about the Die Hardy Range being the A-class nature reserve. That has not occurred yet and the EPA also pointed to another one called Mungarda, which is on the western side of the Yilgarn Craton closer towards Geraldton, and they were concerned it had not been implemented either—another A-class reserve. They did not make any specific observation about Helena–Aurora Range being part of an A-class reserve. The conservation movement certainly has made that point. EPA has in the past, but the EPA are saying that there are conservation commitments that really ought to be actioned and we are increasingly concerned about the risk of impacts to the highest biodiversity value parts of the banded iron formation ranges, which is Helena–Aurora, and signalling they have a concern about that. That is the context or the mindset that they will bring to their consideration of any proposals in that area. They still have to deal with those proposals—they cannot not deal with them—but that is setting the scene for their decision making.

[2.15 pm]

Mr Taylor: So they did use the presumption against.

Mr Foster: Yes.

Mr Taylor: The Department of Parks and Wildlife would have the role within government to advance any park status. Our role is if companies do propose to mine in those areas, then we carry out that environmental protection assessment and advise the EPA. And we do have referral of a project in that area, so our process would be to see that that is assessed and that the EPA makes a recommendation to the minister as to whether or not the project should be approved. We are looking at it from a project assessment approval perspective and DPaW is looking at it from the perspective of what the conservation area status should be.

The CHAIR: So in terms of making it happen at DPaW.

Mr Taylor: Yes.

The CHAIR: But obviously in terms of those specifics, then you would take some guidance from what the EPA said. When you are preparing that assessment for the EPA, you would obviously have some mind to that. Is it likely that when you are putting forward an assessment in those situations, one of the things you might look at for this to be assessed is whether you need to declare it as an A-class reserve over the whole area or whether elements of the conservation park that was identified as part of the whole framework for the Mt Manning region need to be implemented. Is that something that you would then potentially do as part of your assessment? I know you cannot give us what you are going to do in your assessment.

Mr Taylor: You are right to an extent in the practical way that it will play out. But for procedural fairness, I guess we need to look at that mine on its merits and, coming back to what we talked about earlier, looking at what are the values of that range. If we look at the values of that range and that is judged to be the highest, then you would make that advice to the EPA and it would make its advice on that. We are not necessarily formally looking at what the reserve is set at, but if we are saying that it is the highest value range, it is really implying that it should have a high conservation status. So, they run in parallel. I am not trying to be cute there.

The CHAIR: No, and I do understand that you have an obligation to —

Mr Taylor: We have got to be cautious. We cannot just simply say to the company proponent that we think it is an A-class reserve and therefore they should not go there. The fact is that the government has not made it an A-class reserve; at this stage, all it is is a conservation park. We need to consider and the project and provide advice to the EPA in the context of what is there. There is no government policy to say that it will be an A-class reserve. The EPA has got a

presumption and we will give advice, but it will make its decision in the end and we have got to look at it in toto and on balance of all the matters that are there.

The CHAIR: But, fundamentally, for both yourself and the proponents it would actually make things probably a lot simpler if the government got on and made clear what its decisions on that was.

Mr Taylor: Yes, exactly.

The CHAIR: Because that would then allow you to be informed, rather than —

Mr Taylor: Exactly, and sometimes industry likes that because it gives certainty on what the go and no-go areas are. There are few fixed no-go areas in that Yilgarn area at the moment. But you are right, if that is then set and fixed, then the assessments are straightforward and you do not need to go through more lengthy assessments.

Hon PETER KATSAMBANIS: I just want to ask some questions around the SEAK task force and what has happened. It is about three ministers ago, I think, that we started off with a SEAK task force under Hon Donna Faragher; then it reported to Hon Bill Marmion; and now we have the new minister, Hon Albert Jacob.

The CHAIR: We are still trying to seek it out!

Hon PETER KATSAMBANIS: Yes, we are indeed.

Mr Taylor: I am going to handball this one to Darren!

Hon PETER KATSAMBANIS: The report recommended that shared environmental assessment knowledge model should be implemented, and it recommended quite a conservative approach. Then the federal government had some nice things to say about it and suggested that it might be done jointly. Then the Western Australian government had committed funds—I think they are still committed—and I know the office of the EPA has expressed no opinion as to who should host or lead this sort of project, but have we decided who is going to host or lead it? Have we had any further progress since the annual report?

Mr Foster: I think you are quoting from the EPA's annual report.

Hon PETER KATSAMBANIS: I was paraphrasing, yes.

Mr Foster: The SEAK task force was put together by Minister Faragher, as you indicated. The chairman of the EPA chaired that task force, which was to look at this question of how to make better use of all the information we gather about the biodiversity of this state through the EIA process, which tends to get used once and then never reused because it is not put in a place or made available for other proponents to join up biological survey over a region, which would make a lot of sense from our point of view in terms of efficient and effective approval processes and increasing our knowledge of the environment, which otherwise government would not necessarily have the wherewithal to do. The SEAK task force made recommendations about exploring ways to aggregate this information but quite a few issues arose in the development of that report around intellectual property and sensitivity that proponents have about sharing information and whether the government has got sufficient power to make this information publicly available. There are a whole lot of complexities about it, so the final recommendation was to tread very carefully in this space and also avoid building some enormous expensive database that is going to cost a fortune to maintain and replicate other databases that might exist elsewhere in government. The federal government was also active in this space and we wanted to see what they might be putting on the table in terms of resources as well, and we left that report with the minister. During the election campaign there was a commitment to an environmental data library and the EPA saw that as very positive and a sort of natural extension of, or going in the same direction as, what the SEAK task force was recommending. That commitment is owned or administered by the Department of Mines and Petroleum and agencies are working together on exploring what that might mean, how to bring

the information together, what the end users need and want, and how to make the best use of it. I do think anyone argues against the value of joining up all that disparate information and making bigger sense of our environment, but there are a lot of, I guess, implementation complexities around it that we have to work through, which is why we have advocated being quite slow and conservative about investing in this space until we have a very good fix on what the end users want and what we are really trying to seek to get out of it.

Hon PETER KATSAMBANIS: I appreciate that. Is it now with Mines and Petroleum as the lead agency?

Mr Foster: For that election commitment, which we see as sort of subsuming the SEAK agenda, I guess.

Hon PETER KATSAMBANIS: Thank you for that. Where is the lie of the land at the moment with the more conceptual discussions at this stage around streamlining federal and state approval processes? What is happening on an agency-to-agency basis about creating a one-stop shop or a streamlined process to ensure that duplication is removed?

Mr Taylor: The commonwealth is liaising with the Department of the Premier and Cabinet on establishing a memorandum of understanding, which would set in play a process to both upgrade the existing bilateral agreement, which is for assessment of projects, but then also move to a bilateral for the state to have approvals bilateral agreement where it would be a one-stop shop, and if you obtain the state approval, that would cover the commonwealth approval as well. So, the intention I think is that that MOU would be signed somewhere in the nearish future and that would set the process underway for the commonwealth–state negotiations to proceed to the establishment of the bilateral agreements. From our perspective, it is probably one of the most important things that could be done environmentally in this nation to make things more efficient. This is partly a personal view, not a CEO view.

Hon PETER KATSAMBANIS: I do not disagree with you in any way. I have already made a couple of speeches about it in the Parliament.

Mr Taylor: The overlapping duplication from my perspective in terms of environmental outcomes is clearly poor government, but we will see where we get to on that.

Hon ALANNA CLOHESY: Does your agency have responsibility under any other acts to provide environmental assessments?

Mr Taylor: No, it is just under the Environmental Protection Act.

Hon ALANNA CLOHESY: So you do not do assessments under other acts on behalf of other agencies or just do assessments under other acts like that?

Mr Foster: No. The only one is we can do assessments on behalf of the commonwealth, which is through their Environment Protection and Biodiversity Conservation Act. So we do assessments of commonwealth matters for one of our types of assessment—the public environmental review level of assessment. We can do that on behalf of the commonwealth through an intergovernmental agreement.

Mr Taylor: We are accredited for a certain number of assessments. But as an illustration, it was not last year but I think the year before there were 80 controlled actions in Western Australia, which means that they triggered the commonwealth EPBC act and only eight of those were assessed through the accreditation bilateral agreement through the state process.

Hon ALANNA CLOHESY: So there is no environmental assessment done under, say, the Mining Act and the petroleum and geothermal energy resources environmental regulation act?

Mr Foster: Our act is in two parts. There are two types of activity. There is part IV for significant proposals that come to the EPA, and then there is also vegetation clearing under part V. Vegetation

clearing permits are administered by the Department of Environment Regulation and also the Department of Mines and Petroleum. But that is the Department of Environment Regulation's area of responsibility, not ours.

Hon ALANNA CLOHESY: So it is not you.

Mr Foster: No.

Hon ALANNA CLOHESY: Does your office have a memorandum of understanding with the Department of Mines?

Mr Taylor: Yes, we do. They have responsibilities for environmental management protection under their legislation as well, and to avoid duplication and overlap and to share information we have an MOU with them, and we have an MOU with DPaW and DER. We have MOUs with those agencies wherever there are common matters on environmental approvals.

Hon ALANNA CLOHESY: As part of those MOUs, do you not necessarily do environmental assessment for those other agencies under their acts?

Mr Taylor: No; that is right. They have their legislation and the MOUs usually set up a process. Because our environmental assessment process is really about the major projects in the state, we might just deal with, say, 30 or 40 major projects a year; whereas they may deal with 2 000 mining tenements and DER might deal with 150 clearing permits. We are only involved with the major ones, but we have an MOU where if they get an application and we consider that it is major, they might refer that to us and we assess it under our process. But if they are of a lesser or smaller scale, then we might say, "Well, no, you can handle the environmental approval under your legislation." So it is making sure that each party is aware of what the other party is doing and, as far as possible, we avoid duplication and overlap to the extent that it is possible under the legislation.

Hon ALANNA CLOHESY: So, if you wanted to know who was undertaking the environmental assessment of a piece of land but you did not know under which legislation the environmental assessment was being undertaken, how would you go about finding that out?

Mr Taylor: Certainly from our perspective, anything that is referred to us for consideration we have a public notification process. So that is notified to particular people. I am not sure what the other agencies do in terms of their notification but I know that DMP is certainly moving to increase its transparency, because they have recognised that that is something that they need to do more fully. I think with respect to the Department of Environment Regulation with their clearing permits I am pretty sure that they advertise theirs when they get them so that the public is aware of them. I think all agencies are moving to make sure that there is publicly available information about what is being considered by them.

Hon ALANNA CLOHESY: But there is no interagency sharing of information across all of the agencies, I guess, sharing of that kind of information.

[2.30 pm]

Mr Foster: There is no one central database, if that is what you are referring to. We certainly share a lot of information between agencies and we are reasonably aware of what others are doing. But, our act, the Environmental Protection Act, sets up a responsibility for us to deal with significant proposals. Obviously, if you ask an NGO member what a significant proposal is, it might be something very different to what we would consider a significant proposal. Usually, if it impacts upon multiple environmental values, then that is something that ordinarily we would look at. We have got a test to apply to make a judgement about what is significant or not. Where the EPA has a view that the issues are not so significant as to warrant full impact assessment by the EPA, it may form a view that there are other regulators who have got sufficient tools in their act to evaluate any potential impacts or manage any particular issues. That sometimes is pretty confusing, I think, for external audiences to come to grips with, but it is very hard to have a definitive list of what is in and

what is out because "significance" necessarily implies a judgement and it is based on a whole series of criteria including public interest and the sensitivity of the receiving environment—a whole range of criteria.

Hon ALANNA CLOHESY: Certainly, if there was accessibility to what is being determined, what is under determination as what is significant, then I think the public interest access might kind of escalate a little bit. Public interest may assist in that determination of what is significant.

Mr Foster: Yes. We have been moving over the last few years to put more of our processes online and make them more readily available. We are a very small agency, so within the extent of our capacity we are trying to do that. A lot more of our advice, the advice the EPA gives to other regulators, is now online that has not been in the past. We do RSS feeds and email notifications and put everything up on the web to do with any new proposals that are referred where there is automatically a seven-day public comment period on it. When the EPA makes a determination, that is public; when it makes a final report, that is public. It is actually one of the strengths of the process. But, obviously, again there is a whole range of views about how much information we should have available and where we think there is more that we can do, and that will happen over time, as we can.

Hon ALANNA CLOHESY: In terms of your relationship with the other agencies, particularly mines and petroleum, that MOU, is that public?

Mr Foster: Yes, it is on the EPA's website. In fact, we have MOUs with a number of agencies and often that is just to try to give some greater clarity about what should be referred to us because our act, the EP act, puts the onus on other agencies to refer matters that may have a significant impact on the environment to the EPA. This really gives them some guidance about what sort of things and what sort of areas might trigger that.

Hon ALANNA CLOHESY: So what sort of areas under the MOU are not reported on in a public way? Are there any areas under the MOU that are not reported, or the types of decisions that might be made?

Mr Foster: None that I am aware of. When there is a statutory decision made by the EPA, it is published. So, I am not aware of anything of those key decisions and so on that is not made public. I mean, the public reporting is a pretty strong part of the EPA's tradition.

Hon ALANNA CLOHESY: I have not got anything in mind in particular.

Mr Taylor: Yes, a fair question.

Hon ALANNA CLOHESY: Is there published somewhere an explanation of the process used to determine if a proposal will be assessed under the EPA? Is that on your website?

Mr Foster: Yes. We have guidance, so we publish a lot of policy and guidance about how we make decisions and what sort of things are taken into account. We have administrative procedures that are published as well; they are gazetted. That sets out some decision-making principles and process steps. The EPA makes a judgement around significance and there is a guidance that actually sets out how it applies that sort of judgement and forms a view as to what it should be assessing and what should be left to other processes or what should not be assessed because there are no significant issues. Obviously, that is a very contentious judgement. NGOs in particular have a view that we should be assessing a lot more than we do, but the act is quite clear about significance and if you go back to the original second reading speech, there is some definition around that. We are very careful to apply a test and make a judgement based on a whole series of criteria and publish that decision.

Hon ALANNA CLOHESY: Similarly, under other acts which you do not administer, you would not have any influence over those about what should be assessed and what determines that.

Mr Foster: Only to the extent that our act actually obliges other agencies to refer matters to the EPA that may have a significant impact on the environment. Our MOUs that we have in place, we

then try and put some flesh on the bones there and explain to those agencies what sort of things you might want to take into account in making a decision. But the onus is very much on them to refer anything that may have a significant impact on the environment to the EPA. We also have in the Planning and Development Act a mandatory requirement that any scheme amendments are referred to the EPA, so there is not even a test about whether they have a significant impact on the environment; they are just referred. Then we make a judgement about whether there are likely impacts or not and form a view.

Hon ALANNA CLOHESY: I guess just in terms of legislative standing, what kind of mechanisms, what kind of controls, do you have over those other agencies—or do you—or is it intergovernmental, cross-sectorial?

Mr Taylor: There is a key provision in the environmental impact assessment act which says that any decision-maker must refer any sort of significant application or significant development proposal it gets to the EPA. There is a statutory requirement in that sense that if an application is lodged with them that is deemed to be significant, it must come to us. There is a degree of judgement, obviously, on their part. What we do is provide them with as much guidance as we can to say, "That's above the bar; it needs to come to us." Anything else, no—we will interact with them, but we do not have any formal statutory mechanism to —

Hon ALANNA CLOHESY: You do not have a stick.

Mr Taylor: No.

Mr Foster: Having said that, the EPA, though, does have pretty wide powers that it could exercise if it had sufficient concern that there were adverse environmental outcomes arising, to look at that problem, identify and diagnose what the problem is and make that advice available to government. I guess one of the avenues for the EPA to take that sort of wider world look is through its annual report, which it recently published. It is not a traditional Financial Management Act–style annual report; it is the authority's report under its act where it is taking this view about how the environment is faring with all the developments occurring—whether it is development that has been through the EPA's process or not, overall how is the environment faring—and if there are any areas of concern, they draw that to attention. There are opportunities for the EPA to look at other processes, engage with other parts of government, seek advice or seek to be reassured about other parts of government's processes if need be. It has had a very good engagement with the Department of Mines and Petroleum in recent years to do with hydraulic fracturing, where the EPA published a bulletin and sort of gave some signals to the Department of Mines and Petroleum about some areas that they might want to attend to within their legislative purview. They have responded and that has resulted in greater transparency and a very high degree of disclosure of chemicals used in the fracking process, so the EPA can influence in that way and has done from time to time.

The CHAIR: I just had one final question going back to the impact assessments. You may not be able to answer this, but I assume in light of the fact that it is unlikely—I think you confirmed that you are not going to get it this year—is your expectation then that you will get an additional top-up from Treasury to what was previously budgeted?

Mr Taylor: We have made a submission to Treasury regarding that, yes.

The CHAIR: But at this stage, it is not determined whether you have to actually find savings of that amount.

Mr Taylor: It will be considered as part of the midyear review, so we will know in December.

The CHAIR: I will just finish off, and we are finishing early, too!

The committee will forward any additional questions it has to you via the minister in writing in the next couple of days together with the transcript of evidence, which includes the questions you have taken on notice. Responses to these questions will be requested within 10 working days of receipt of

the questions. Should you be unable to meet this due date, please advise the committee in writing as soon as possible before the due date. The advice is to include specific reasons as to why the due date cannot be met. If members have any unasked questions, I ask them to submit them to the committee clerk at the close of this hearing. On behalf of the committee, can I again thank you very much for your attendance this afternoon.

Mr Taylor: We appreciate the questions.

Hearing concluded at 2.40 pm