STANDING COMMITTEE ON ENVIRONMENT AND PUBLIC AFFAIRS

PETITION 42 — OPPOSE ENVIRONMENTAL PROTECTION (ENVIRONMENTALLY SENSITIVE AREAS) NOTICE 2005

TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 11 MARCH 2015

SESSION ONE

Members

Hon Simon O'Brien (Chairman)
Hon Stephen Dawson (Deputy Chairman)
Hon Brian Ellis
Hon Paul Brown
Hon Samantha Rowe

Hearing commenced at 9.58 am

Mr MURRAY NIXON
President, Gingin Private Property Rights Group, examined:

Mr MILAN ZAKLAN
Representing a combined property rights group, examined:

The CHAIRMAN: On behalf of the committee, I would like to welcome our witnesses and the public gallery to our hearing this morning. At the outset, I ask our witnesses to, in turn, state their name and the capacity in which they are appearing.

Mr Nixon: Murray Nixon. I am president of the Gingin Private Property Rights Group Inc.

Mr Zaklan: My name is Milan Zaklan. I am from the Pastoralists and Graziers Association, but appearing on behalf of a combined property rights industry group.

The CHAIRMAN: Are you appearing, Mr Zaklan, as an officer of the Pastoralists and Graziers Association this morning?

Mr Zaklan: I am appearing as a spokesman for a combined property rights working group, which I can explain.

The CHAIRMAN: But are you here as a representative of the PGA?

Mr Zaklan: No.

The CHAIRMAN: Okay, thanks. Gentlemen, you will have signed a document entitled "Information for Witnesses". Did you both read and understand that document?

The Witnesses: Yes, Mr Chairman.

The CHAIRMAN: These proceedings are being recorded by Hansard and a transcript of your evidence will be provided to you. To assist the committee and Hansard, I would ask that if you are quoting from any document, that you identify that document by its full title, for the record. I remind you that the transcript will become a matter for the public record and 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. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege. Mr Nixon, we have quite a bit of material to cover today so we will have to do it with dispatch. We have noted your submission and some further information that you have provided; nonetheless, it might be helpful if I invite you to make an opening statement to summarise the purpose of your petition.

Mr Nixon: Thank you, Mr Chairman. It is a very long story and I will try to be brief. Property rights became an issue when the commonwealth government signed up to international agreements and the states were obliged to introduce uniform or matching legislation. When I was a member of Parliament in that period, we became aware of a Swan coastal plain lakes policy, which had been introduced by Hon Julian Grill. It had come up for its five-year review period. It was a simple policy that described important lakes on the Swan coastal plain. When it came up for a review period, it was going to become a greatly expanded document that removed the rights of property owners to farm in the way that they had traditionally done—you were not allowed to have a motor vehicle on a wetland, you were not allowed to have a non-indigenous animal, which was a problem

with all the cows, sheep and sheep dogs. My shire at Gingin was badly affected. The then minister Cheryl Edwardes came to a public meeting with the shire and understanding the implications of the policy she refused to sign off on it. There was then a change of government at the end of 2000, when it was rejigged. We were still discussing the amendments to that policy in 2005. With that in mind, I invited the then minister Mark McGowan to visit our property and have a look at the implications of the policy. I reminded him that if the policy was approved he would be a criminal because he had driven across a wetland when he crossed the road. He came back to Parliament and made a statement, which is included in your package, that clearly said that he believed that the environment was well protected with current legislation. Now although we had been arguing for something like six years about the Swan coastal plains wetland policy, no-one became aware that in April 2005 a notice had been published in the *Government Gazette*, which declared not only the wetlands on the Swan coastal plain but basically all the wetlands throughout the south west land division in Western Australian environmentally sensitive areas. The mapping was probably started by the Water and Rivers Commission, who were in charge of it in those days. They were mainly aerial photographs and desktop studies and they were not proven. We have included a copy of the article in the *Gazette*. None of us seem to be aware that it had any public consultation. You would be aware that normally an environmental protection policy is subject to quite rigorous public examination before it becomes law. In this case that does not appear to have been done. Even more important than that, the notice lists a defined wetland that includes, for instance, wetlands of international importance—well, no-one can object to that—and nationally important wetlands, well, nobody can object to that, but (c) tacked on the bottom reads —

> a wetland designated as a conservation category wetland in the geomorphic wetland maps … available from, the Department;

It says "a wetland", it does not say "the wetland". Anyone reading the notice would think that yes, a wetland would be assessed and if it was of great importance it would be declared an environmentally sensitive area. This document slept until a farmer, Peter Swift, who farmed south of Manjimup, was charged with clearing in an environmentally sensitive area without a permit. I contacted the PGA and the President of the WA Farmers Federation and neither of them was aware of the notice or how the area became declared. It was then that we discovered that this was the document that had made that property an ESA.

The CHAIRMAN: For the record, you are referring to the ESA notice of 2005.

Mr Nixon: The Environmental Protection Act 1986—and I have got copies of them here but it is quite interesting that this is the size of the act in 1986, and when it was abandoned in 1994 it rather grew in size. It is rather confusing, and I do not think there is any legislation that is as complicated as environmental legislation. Normally, you can look up the index and find out what it means. With this act there is the act, the policies, and the regulations, and they are not particularly clear. The big problem in the act is that they define clearing, amongst other things, as grazing. Obviously, I believe the reason they did it is that they did not want people buying 10 000 goats and putting them on 100 acres and clearing it by that manner, so to protect it the object was to declare grazing as clearing. That is the problem because for any property that is listed as an ESA on the geomorphic maps, the law says that you are not allowed to graze it. I have the greatest of sympathy and respect for both the minister and the department that are trying to deal with the problem. Since we have been involved in it, particularly with the Peter Swift case, they have done their very best to be helpful and they have now made a declaration that if land is already cleared, although it is shown on the maps, it is no longer an ESA. That is very helpful but the problem is that it is not in black and white law, and the change of minister, departmental head or government or a court case could well lead a magistrate or judge to interpret it as recorded—grazing is clearing. Also, there is another draft document—I suppose I had better refer to it—that is out for public consultation and, once again, they are trying to define clearing in a practical manner. I refer to this document here. I do not know whether it has yet been proved as a permanent—this one is marked as a draft you see —

The CHAIRMAN: What is the title of the document?

Mr Nixon: It is "A guide to grazing, clearing and native vegetation" under part V, division 2 of the Environmental Protection Act 1986. That document is very handy but the problem with it is, like all these documents, that it clearly says that it is not a legal document and that you should seek advice. You might note that in the minister's letter replying to my submission, there is a clause there that they disown responsibility for any advice given. Once when I chaired probably this committee but by a different time—the committee that handled petitions—we dealt with a report that let the Parliament be recorded online. Law print gave evidence and they clearly said that the only legal document is something that we have printed, and indeed that is why, if you look up an act on the internet you will find a little line at the bottom that says this is not a legal document. I believe that by putting the wetlands onto the bottom of established policies and not making it subject to public consultation there is a problem. The other strange thing of course is that—you all know the method—normally, the minister publishes a policy or regulation in the *Government Gazette* and nobody reads the *Government Gazette*. It is then tabled in Parliament but normally it is sent to the Joint Standing Committee on Delegated Legislation. I have been able to ascertain that it was certainly tabled. The minister in his letter claims that information was sent to the committee, and I hope that is true, but unusually this document, which destroyed the property rights of perhaps 3 000 or 4 000 landowners, that if introduced into the wording of the notice would cause economic failure to everybody, was never reported to Parliament. Certainly, any member of Parliament who was there should have gone to the trouble of reading the document and seeing if he was happy with it, but it snuck through without any debate at all. It was only when Peter Swift was charged, and I have been keeping a pretty good eye on these things for the last 15 years, that anybody became aware of it. That is the brief summary.

[10.10 am]

The CHAIRMAN: I think you have summarised it very well. Now we need to get on with some other questions to clarify the terms of your petition which, in part, seeks the repeal of the ESA notice. Why would it be appropriate to do that and what, if anything, do you think it should be replaced with?

Mr Nixon: I am of the view that because the geomorphic maps were tacked on to existing policies, the existing policies would stand in their own right. Effectively, it would remove automatic listing of all the wetlands across the state without any field proof as ESAs. In other words, if you are operating under the Swan coastal plain lakes policy, you operate under that policy. If you are operating under the Ramsar agreement, you operate under that policy. But from a practical point of view, the important thing is to remove those clauses that include the geomorphic maps.

The CHAIRMAN: Let us get down to some practical effects then. The petition states that if ESAs were fully implemented it would destroy the livelihood of an estimated 3 000 to 4 000 property owners and their communities from Kalbarri through to the south west corner to east of Esperance. This ESA has been in force now coming up to 10 years. Has that happened, that 3 000 to 4 000 property owners and their associated communities have been adversely affected?

Mr Nixon: No; the law as it is could affect them. I know of three farmers who have been badly affected. Peter Swift is the most recent one. Our group funded the court case because we believed it was an important case to test the law. Of course, Peter won the case, but at the end of the day it has destroyed the man and the bank is about to foreclose on his property. It is an absolute tragedy. That is why we did that. There is a map here of naked vegetation on wetlands. Because of the scale it is a bit hard to follow, but if you take the Swan coastal plain, basically from Armadale to Dunsborough, you will find that all the blue is environmentally sensitive area. This indicates that perhaps 90 per cent of the best grazing country in Western Australia is covered by the notice; that it is illegal to graze stock on ESAs. I am aware of one farmer in that area who had a 100 acre block with a few trees on it—of course, most of those blocks have trees in them—for normal shade and

shelter. I think he was probably dobbed in by somebody. He received a letter from the department that unless he removed his stock from that kikuyu paddock with shade and shelter in it, he would be charged. That is one case.

We have a person here today in the gallery who had a property that was resumed by the Department of Water because it wanted it as water catchment. He bought a large property with only a little bit cleared because it had a wetland on it. The local land conservation group advised him to plant perennials; it is marvellous country for perennials. The only trouble was that he then got a visit to say that he was clearing an environmentally sensitive area and he was in big trouble. In the end to get out of the problem he had to give away—"give away" is the term—a large proportion that was uncleared, otherwise he would have had to reinstate the area he planted for pasture. To make it worse, there was a drain through the property, which was designed to keep salinity under control, but he was not allowed to maintain the drain. That is another case.

One of my near neighbours—that is how I first heard about this—had been charged with mechanically clearing trees. As it turned out, it was not a lake, it was high rainfall country with a high watertable and little melaleucas about this high had come up on his cleared land, so he had a little grader on the back of a small tractor, and he graded them off. Once again, he was an elderly gentleman. This case put him into a state of depression and although in the end he was let off, that man has been destroyed. I have seen this happen, and that is why I am very concerned about it.

The CHAIRMAN: Just so we make it explicit, do you as the principal petitioner accept that some land has a special environmental sensitivity and needs to be protected by being classified as an environmentally sensitive area?

Mr Nixon: Yes, but I think what happened is that the Waters and Rivers Commission correctly had the Semeniuks do maps. There is nothing wrong with that; it is a very responsible action. But those maps were never designed to be an all-embracing environmentally sensitive area; it was just so that people could understand it as a geomorphic area. What should have happened is that if there was a wetland there that was not covered by the Swan coastal plain lakes policy, and it was not a Ramsar lake, if they wanted to protect it, yes, there was nothing wrong with that. But if, by the protection, it meant that the farmer, acting lawfully, was unable to continue to farm the property, it should have been purchased. In other words, we believe that if property rights are taken, compensation should be available on just terms. There is a view that because there is not such a clause in our Constitution, that it does not exist. But the Law Reform Commission of Western Australia makes it very clear that the Magna Carta is still part of Western Australia's law.

The CHAIRMAN: The Minister for Environment advised us that since 12 July 2005, 924 permits within ESAs had been issued. Is the permit mechanism to clear an ESA, or on an ESA, not suitable for landowners who are farmers?

Mr Nixon: Yes, I am aware of that, and I have a reply here somewhere. The figure is probably correct. There is no way I can tell how many permits have been listed. But I do have a letter that was sent to one of our members by his local member, which quotes the minister as saying that, I think, 105 permits have been granted for clearing agricultural land, and it quotes some for cropping, grazing and horticulture and it adds up to only about 60. The figures are a bit rubbery. If the second letter is correct, about only 70 or 80 permits have been granted. It could well be that people were not even aware that they were ESAs because under the law of the land, if you want to clear bush, you have to apply for a permit. Everyone is well aware of the general clearing regulations. They have been well advertised and they are well known. In my view, if somebody wanted to clear bush, they would make an application in the normal way. It could well be that some of those that have been granted on ESAs, they did not even know. But I am sure that most of them were granted for things like roads and perhaps the Kwinana railway. As you are aware, it was not long ago that when you drove up the Mitchell Freeway you could see them filling wetlands to build houses on.

The CHAIRMAN: I am going to ask if my colleagues have some questions before I ask any more. We have a visiting member here, Hon Mark Lewis. I might see if he has a question he wants to ask.

[10.20 am]

Hon MARK LEWIS: Thank you for allowing me to be in here today. You referred to the issue of "tacking" the Swan coastal plain. My understanding is that that is not just a word; it has some definition around it. Could you explain that, because I think there is more to that word than the committee might understand. It probably needs a little explanation.

Mr Nixon: You might notice that I have put it in capitals, because I believe it is a very important word. You as members of Parliament would be aware, certainly with legislation, that you cannot tack things on to a bill. You cannot have a road traffic act and have a little clause at the bottom stating that you are not allowed to mow your lawn on a Sunday morning, because that is tacking, with the object of getting something through that has not been debated in its own right. In that case, I believe that the list of environmentally sensitive areas in the notice generally—I will not argue whether I agree with them—are well-established policies. Somehow or other that little clause was tacked on. You will note the wording—"a wetland", not "all the wetlands". I believe that that has been tacked on to get it through, when you think that you have been arguing about the Swan coastal plain's wetland for over five years and this was snuck through with virtually no public consultation. I have a written reply rebutting some of the minister's letter, and I am sure the committee can go through that at their leisure.

The CHAIRMAN: Just for the record, you provided that by way of further correspondence, and I will advise that we will consider that in due course.

The committee is also aware that 17 organisations were consulted prior to the making of the ESA notice. Section 51B requires that consultation, if you wish, be sought. Seventeen organisations were consulted. Are you aware of any individuals being invited to comment?

Mr Nixon: No, and as I say, our group was in communication with the Minister for Environment. We had 200 to 300 people. I do not know whether Hon Brian Ellis was there, but the Gingin Town Hall was packed. Hon Kim Chance, who was the minister for agriculture at that stage was at the meeting. It was a huge area of public concern. I have included an extract from *Hansard* in your package which shows that Mark McGowan made a statement to Parliament that he had been to Gingin and met with former member Murray Nixon and he believed that the environment was well protected and, therefore, would not proceed —

The CHAIRMAN: With respect though, that was in 2006.

Mr Nixon: That is the point.

The CHAIRMAN: The ESA notice, dated before that —

Mr Nixon: Exactly the point I am making.

The CHAIRMAN: And of course before that there are very similar regs, and the ESA notice is a reflection of those earlier regulations. In effect, if then Minister McGowan was saying that he thought the provisions of legislation were satisfactory, was he not actually reaffirming that the ESA was satisfactory?

Mr Nixon: No, you are exactly right, Mr Chairman, but because we had argued for five years about the Swan coastal plain policy, and the notice achieves exactly the same thing, but over the south west land division, greatly expanded, it is surprising that it did not have any major public discussion. Now the minister in his letter—obviously I have a fair bit of sympathy for him—says that the procedure was followed. I said in my letter there that I hope the committee can make inquiries and see who was asked. But I make the point that if somebody is going to lose the right to farm their property, they have an interest in the matter. If you are a conservation group, you are very interested in it, but you are not going to lose any skin. I would have thought that the most

important people to consult were those who were actually going to suffer the consequences of the change of law.

The CHAIRMAN: Would it be the case, do you think, that because the terms of the ESA notice tend to be sweeping and generic—"wetlands", for example—that that might be the reason you cannot just ask every person in the state who might be anywhere within cooee of a wetland. Was that the reason? And is that reasonable?

Mr Nixon: Well, maybe, but I would like to see that the act clearly says that it is going to ask groups. Section 51B(4) on page 94 of the Environmental Protection Act states —

> Before a notice is published under this section the Minister shall —
>
> (a) seek comments on it from the Authority and from any public authority or person which or who has, in the opinion of the Minister, an interest in its subject matter; and
>
> (b) take into account any comments received from the Authority or such a public authority or person.

In my view, anyone reading that would believe that those people affected would at least be aware of it. We all know that nobody reads the *Government Gazette*, but you would have thought that at least they would have gone to the rural press and announced the intention of the notice. As I say, when the Peter Swift case came up, I spoke to the president of WAFF and the president of the PGA and they are unaware of it. My colleague here, Zak, who is the policy officer of the PGA, of course arrived a little after that. I am sure that in his evidence he will explain that their records do not indicate any notice from the department.

The CHAIRMAN: That leads on to the 17 bodies that were consulted, or from whom comment was sought. Presumably they were peak bodies of some type because the minister of the day wanted to —

Mr Nixon: Fulfil the act.

The CHAIRMAN: — fulfil the act and because of the potential numbers involved went to peak bodies instead of individuals, one presumes.

Mr Nixon: Yes, but you also have to speak to individuals. Certainly, no organisation can give away anybody's personal property rights. They do not have that power and they do not have that right.

Hon BRIAN ELLIS: Apart from the argument about the ESAs and the general argument, would it be helpful that an ESA be on the certificate of title because, as you pointed out, in a lot of cases the purchaser does not even know there is an ESA and the onus is on him to find out?

Mr Nixon: You are right. May I say, as a former member, I started an inquiry into property rights. It was mainly driven by Monica Holmes, who at that stage was the member for Southern River, because the people in her electorate with wetlands were being very badly treated by poor advice, poor assessment of wetlands and tremendous planning problems. We started an inquiry. I got the sack and then Kim Chance chaired it for a while. In the end a report was published under the chairmanship of Barry House. It made something like 30 recommendations, one of which was that people should be advised of any restriction on the use of their title. It is interesting—I have probably claimed some of the credit since we have been making this a public issue, particularly following the Peter Swift case—that Landgate has at long last, within only the last 12 months, published a list of interests. If you have a property you can now go to Landgate and if it has native vegetation it will say whether it is subject to native vegetation clearing laws or perhaps a native title claim or a heritage claim. At least you can now get the book, which costs about $36. I have a property for sale at present, but you still have to get legal advice because all the government pamphlets that are not published by law print are not legal documents. It clearly says "seek legal advice". It is becoming an absolute can of worms to try to sort out what your property rights are.

In my view, property rights are indivisible. What you are granted when you buy that title can only be taken away, firstly, if you are advised and, secondly, if you receive compensation.

[10.30 am]

The CHAIRMAN: I am referring here to a document that we have just made public, which is a letter—an EM in effect—to the Chairman of the Joint Standing Committee on Delegated Legislation in April 2005 in respect of Environmental Protection (Environmentally Sensitive Areas) Notice 2005, which you would be interested to know advises that it includes the same list of environmentally sensitive areas as are included in regulation 6 of the Environmental Protection (Clearing of Native Vegetation) Regulations 2004. It also tells us that consultation was undertaken with a number of peak bodies—we have already mentioned that—and they include AlintaGas, the Association of Mining and Exploration Companies, the Australian Petroleum Production and Exploration Association, the Chamber of Minerals and Energy, the Conservation Council, the Department of Conservation and Land Management, the Department of Industry and Resources, the Department for Planning and Infrastructure, the Environmental Defenders Office, the Environmental Protection Authority, Main Roads WA, the Pastoralists and Graziers Association, Public Transport Authority, Roadside Conservation Committee, WA Farmers Federation, WA Local Government Association and Water Corporation. They are presumably the 17 I was referring to. I notice that the Pastoralists and Graziers Association and the WA Farmers Federation are on the list. I do not know if you or Mr Zaklan can advise us about what was the attitude of those organisations when they were asked.

Mr Nixon: I think it is probably wise for my colleague to make some comments.

Mr Zaklan: Some of this was before my appointment. Going through our records, we certainly made some submissions to the Swan coastal plain wetland policy and those with our objections, but I am unaware of the inclusion. Quite often we find that we may attend meetings and that is considered as consultation with us, whether we object to the outcomes of that or not. I would have to say that I do not have any knowledge of that.

The CHAIRMAN: Okay, you were not with the PGA at the time—that is noted—and you are not here representing the PGA, so possibly that is something we might follow up later as to what was the response given by the PGA to the request for comment.

Mr Zaklan: Happy to assist you.

The CHAIRMAN: If you could assist with that, that would be good. In the meantime, you are in a position to observe the effects of the ESAs and we invite you now to make some comments about your observations.

Mr Zaklan: Thank you. Mr Nixon has obviously discussed a lot of points, so there is no point going back over them, but just to give you a bit of a history on the working group that I represent. When we became aware in the Peter Swift case of his prosecution, I spoke to people generally about the knowledge of the notice and very little understanding at that time was had on that. We formed in early 2003 an association of what we considered interested bodies in this, and that comprised the Pastoralists and Graziers Association, the Western Australian Farmers Federation, Gingin Private Property Rights Group and also the WA Property Rights Group. We first held a meeting in March 2003 just to gauge the extent of the knowledge amongst us and also our members. We all have members of our organisation on the Environmental Protection (Environmentally Sensitive Areas) Notice 2005, particularly relating to V&C Semeniuk consulting group for wetland mapping, which is included in the 2005 notice. That is where we first became aware of it. It became evident that there was not a lot of people who knew about the notice or understood the notice or, in fact, were aware of the ramifications of the notice. The listing of that wetland, as I understand, was as a result of the Water and Rivers Commission's report of 1987. The report says that at that time the Water and Rivers Commission was concerned that the wetlands were being rapidly cleared, so it

commissioned V&C Semeniuk to research and map the wetlands in the south west land division, which is the particular area we are talking about. I note in the summary of the report of that year—I raise it because I understand that that was what was included in the notice—that it states that due to a large number of wetlands and remoteness of many wetlands, and the difficulty to access, it is not possible to address all the selection criteria with time and budget constraints. We cannot see where there was any ground proofing done of the wetlands that they included in the ESA. Normally, if there is an endangered species of some sort that has been noted on land, it is referred to in the *Gazette*. Section 4(5) of the 2005 notice states —

> An area that would otherwise be an environmentally sensitive area because of this clause is not an environmentally sensitive area unless … the owner, occupier or person responsible for the care and maintenance of the land has been notified of the area.

I note that Hon Brian Ellis asked the question about whether they should be listed on some land record. The areas of wetland that we are talking about were included in bulk as ESAs. That is why there is a lot of confusion out there. I am sure that most of the operators of the land there to this day would not be aware that they are on an ESA until such time as there is a prosecution. The original reason the report was commissioned for the rapid clearing of native vegetation, for example, cannot happen in 2015 because that is well covered in the Environmental Protection Act. You cannot clear without a permit, so if it is a wetland with native vegetation on it, obviously, as Mr Nixon said, you do not necessarily know it is an ESA. The cause for the commissioning in this day and age is very much gone as there is grazing of the wetlands guidelines that have been referred to, so that determines to what extent grazing becomes killing. In there it mentions that you can eat twigs, for example, providing that it is sustainable. That is basically why we would ask that that notice be reviewed.

The CHAIRMAN: Reviewed, or —

Mr Zaklan: Removed, I am sorry.

The CHAIRMAN: Okay. Mr Nixon, do you have something to add?

[10.40 am]

Mr Nixon: Zak referred to the clause where the owner must be notified. That does not reflect on wetlands; it is for rare and endangered species. If somebody finds a rare and endangered species, the owner must be notified before it is put in the restricted area. In my response to the minister's letter I raised the question: how is a rare and endangered species discovered? Mike Calen recently was informed that he had a rare and endangered flora on his property. He said that they never went and asked him to visit the property. Are officers trespassing on private land to establish these rare species? It is a very difficult area. As I say in my notes, the way the law is at present with the inconvenience if you find either rare flora or fauna, it is a great encouragement for property owners to carry a shotgun on automatic, so that if they do come across a rare and endangered species, they deal with them. That is a dreadful situation. If you are going to save rare and endangered species, it is important that you get the cooperation of the landowner. Bullyboy tactics are not going to achieve what we are after.

The CHAIRMAN: Members, I note that we are over time. I know our witnesses certainly would not want us to inconvenience the Department of Environment Regulation who are up there, so we had better not keep them waiting too long. I have a question here, and I know Mr Dawson has one, and a couple of others. If we are all quick, we will get through them.

The government proposes amending the law to permit clearing an ESA with an impact that is trivial if the CEO approves this clearing. Have you heard of that?

Mr Nixon: Yes.

The CHAIRMAN: Does that proposal address any of the concerns you have about ESAs?

Mr Nixon: Yes. There is a problem with how you determine trivial and significant. It would take a while to go through it. But the problem with the act is—see, you are not allowed to do anything to harm any native flora or fauna in Western Australia, unless you have a permit for an exemption. When you are talking environmental harm, how do you measure it? A very green person might say that a 1 000-year-old red gum was worth $10 million. On the other hand, a farmer who finds that it is in the way of his centre pivot might think it is a nuisance and he wants to clear it. It is very, very difficult to define a value for environmental damage, and that is a problem.

Hon STEPHEN DAWSON: Along the same lines, the minister has advised us that amendments to the EP act are being drafted to respond to these concerns. Are either you or Mr Zaklan being consulted on those amendments?

Mr Nixon: Apart from this petition, as you know we made approaches to the Premier's office and I have been negotiating with the minister. We had the minister and his policy adviser on our property, just as we did with Mark McGowan. I made a submission to the minister and he replied to me that because the matter was being discussed by this committee, he would not answer my letter, so it is in your hands, committee.

The CHAIRMAN: It's our fault now!

Mr Nixon: No, no—it is your problem. I think the minister and the department and doing their very best to work around a very difficult piece of legislation.

Hon STEPHEN DAWSON: They have been out to visit, but are you at the table in terms of any amendments being drafted now?

Mr Nixon: Not really, no. As I say, there is that draft, which I showed earlier, and that is very helpful. It finds a way of bending the act as far as I think you could possibly bend it, so I think they are doing their best, yes.

Hon PAUL BROWN: Mr Nixon, when you were a member of Parliament, in 2004 we modified the land clearing regulations to effectively lock up uncleared land. The committee was talking earlier about the fact that in the Badgingarra, Dandaragan and Eneabba area only as late as the 1970s and 1980s much land was sold and some farmers were able to clear that quite effectively and very quickly; others took a more circumspect approach and cleared small parcels of land and left a lot of vegetation around. In 2004 they were effectively locked up. Why have you focused through this petition just on the ESA land and not on the wider agricultural area that has been locked up, also through that land clearing act, which I would have thought would have impacted a lot more farmers and have the same erosion of property rights that the effect of ESAs does?

Mr Nixon: It is certainly a problem and, as you say, in that midlands area, because it was the last patch opened up there were a lot of farmers there very badly affected. In my view they should have received compensation. In my submission I note that a lot of this grew out of commonwealth legislation. There was an agreement that was signed by the then Premier, Richard Court, and the then Prime Minister, Paul Keating, to pay compensation to landowners who were affected by the clearing control. Later on when it became law they said that it was an agreement, not an act, and therefore it did not apply. The difference is, in this case people were farming and had a right to graze stock. My property has been farmed for over 150 years, settled probably in the 1840s, freehold back to 1865. Stock has grazed it for over 150 years. You have lost a right you had. The person who bought a property certainly had the intention of clearing it. He lost potential, but he could continue to do what he had done up to that point. But I agree, it is dreadful.

Hon PAUL BROWN: Just going back to what the Chair said earlier about the new proposed amendments and the impact that is trivial: particularly on your property, along those areas covered by an ESA, which expanded across the whole area, would you consider grazing a trivial part of the industry on that land?

Mr Nixon: That is a very handy little document. Under the rules, if you are farming an area that is not environmentally sensitive and if it has native bush on it, as most grazing properties have for shade and shelter, you could continue to graze it to the extent it has been grazed in the past; in other words, in a sustainable manner. In my view the same thing should apply to wetlands. You need to have shade and shelter for the stock and as long as they are not damaging it and destroying it, I think it should continue. Fortunately in the higher rainfall country, of which most is affected, it grows very well. You are battling to keep it clear, rather than trying to keep it low. I must admit, this notice presumably also includes most of the salt lakes of the wheatbelt. Samphire is native vegetation, and farmers are grazing it. They have done so for 100 years.

There is another interesting point: any area that grows riparian vegetation is an ESA; all the high rainfall country grows rushes and reeds. I do not think it was the intention of the drafters of the legislation to prevent people grazing rushes and reeds, but the black-and-white ruling is that any farmer who is grazing wetlands with rushes and reeds is committing a criminal offence, so that certainly needs to be tidied up. They have to give a definition of whether you are allowed to grow rushes and reeds, because they are native vegetation.

The CHAIRMAN: Hon Mark Lewis, we do not have time for one more, but ask it anyway.

Hon MARK LEWIS: I refer to "A guide to grazing, clearing and native vegetation" and it goes to this issue of trivial. In the normal course of grazing, because the death of a plant is substantial, even according to the guidelines, it is therefore relevant to the EP act. In your history as a grower, do animals cause death to plants, any plant? Because if they do, under these guidelines that is substantial.

Mr Nixon: My bull has a great dislike for small trees, so it is possible that he would commit a criminal act. But generally speaking, grazed sensibly, the native vegetation sustains grazing. Obviously, it was put in the act to prevent people from overgrazing.

[10.50 am]

Hon MARK LEWIS: If your bull pulls a plant out of the ground and eats it—do they do that from time to time?

Mr Nixon: They smash it more than pull it.

Hon MARK LEWIS: In my animal husbandry background, animals do pull plants out, particularly when they are young, and in that sense to me that is substantial damage.

Mr Nixon: Particularly with rushes, reeds and samphire; that is the problem.

Hon MARK LEWIS: I still think there are complications, even though this is trying to get around the current issue. It is your contention, Mr Nixon, that a landowner under section 51B has interest in the strict definition of the legal sense of the word, and probably rights and ownership and land matters. Even though it went to the 17 stakeholders, I am hearing—please correct me if I am wrong—that you are contending that because they have an interest in the land, under section 51B they should have been notified. Is that right?

Mr Nixon: Yes, the landowners have an interest; the other groups are only interested because they are not going to lose anything.

The CHAIRMAN: Thanks for confirming that. We have really exhausted our time now, gentlemen, but thank you very much for your attendance. We can of course clarify matters outside of this formal hearing. It has been a very useful exercise. Thanks very much for lending us the benefit of your experience. We will now close this hearing and immediately commence our next hearing.

Hearing concluded at 10.54 am