HEALTH AND COMMUNITY SERVICES COMMITTEE

Members present:

Mr TJ Ruthenberg MP (Chair)
Ms RM Bates MP
Dr AR Douglas MP
Mr JD Hathaway MP
Mr JM Krause MP
Mrs DC Scott MP
Mr DE Shuttleworth MP

Staff present:

Ms S Cawcutt (Research Director)
Mr K Holden (Principal Research Officer)

PUBLIC HEARING—NATURE CONSERVATION AND OTHER LEGISLATION AMENDMENT BILL (NO. 2) 2013

TRANSCRIPT OF PROCEEDINGS

FRIDAY, 20 SEPTEMBER 2013

Brisbane

FRIDAY, 20 SEPTEMBER 2013

Committee met at 1.59 pm

STEWART, Mr Murray, Executive Officer, Queensland Outdoor Recreation Federation

CHAIR: Good afternoon and welcome. I declare this public hearing on the Nature Conservation and Other Legislation Bill (No. 2) 2013 open. My name is Trevor Ruthenberg. I am the member for Kallangur and chair of the committee. With me here are Ms Ros Bates MP, the member for Mudgeeraba; Mr Jon Krause MP, the member for Beaudesert, is on the phone with us; Mr Dale Shuttleworth MP, the member for Ferny Grove; Dr Alex Douglas MP, the member for Gaven; Mr John Hathaway MP, the member for Townsville; and Mrs Desley Scott MP, the member for Woodridge, replacing Mrs Jo-Ann Miller MP, the member for Bundamba, who is unable to attend.

I remind those present that these proceedings are similar to parliament and are subject to the Legislative Assembly's standing rules and orders. Under the standing orders, members of the public may be admitted to or excluded from the hearing at the discretion of the committee. Mobile phones or other electronic devices should now be turned to off or silent, please. Witnesses are not required to give evidence under oath, but I remind witnesses that intentionally misleading the committee is a serious offence. Hansard is making a transcript of the proceedings. The committee intends to publish the transcripts of today's proceedings unless there is good reason not to. I also remind people that these proceedings are being broadcast live on the parliamentary website. Our first witness today is Mr Murray Stewart of the Queensland Outdoor Recreation Federation. Mr Stewart, I would invite you to make an opening statement.

Mr STEWART: Thank you very much, Mr Chairman. I appreciate the opportunity to speak to you here today. Today, as mentioned, I represent the Queensland Outdoor Recreation Federation, which is recognised as the peak industry body representing the interests of outdoor recreation users here in Queensland.

A federation aim is to assist the communication between our different user groups and all levels of government on outdoor recreation related issues. Therefore, we represent the diversity of opinions across the whole sector. As outlined in our brief submission, we are fundamentally supportive of the sentiment behind the bill and we are excited about the opportunities that it offers the state and our sector especially. There are a few operational concerns raised by our members that I have outlined in our submission and I would just like to expand on those a little bit more.

Can I first start by looking at some findings from a review in psychographic research that was conducted by QORF for QPWS—Queensland Parks and Wildlife Service—earlier this year just to put some context around our submission and some of the concerns. Within this research, it showed that the ratio of recreational visits by Queenslanders to protected areas managed by QPWS compared with visits to protected areas by international tourists is approximately 51 to eight—that is, for everyone 51 visits by Queenslanders to a national park or protected area only eight international tourists visit. While the research entails some methodological limitations, these figures highlight the overwhelming importance of acknowledging Queensland recreation users as a critical stakeholder. With that in mind, I would like to reiterate the importance of the intent in the wording of the amendment of section 4, the object of the act. Part (b) states—

The use and enjoyment of protected areas by the community.

As outlined in our submission, this needs to be given the same or a higher priority and privilege than the commercial use outlined in part (c). Unfortunately, I do not have an answer on how to value the community needs against commercial gain, but consideration is needed in the development of future management plans.

While many of the other submissions to the committee raised issue with commercial operations, our members have raised concerns over the increase in recreational use and the management of the various user groups. The committee would already be aware of the issue of user-group conflict and it is vital that a whole-of-community approach is taken to the development of the management plans. We understand the complexities and inefficiencies of the current management plan process, but believe that community consultation should be the starting point of

any planning process. Management plans should be developed from within the community. The local community has an intimate understanding of the protected areas and, in many cases, have a unique bond with these areas. There is real scepticism among our members as to how flexible an already written draft plan will be once community input is given.

There are also issues of emerging recreation. I describe them as widgets and gadgets. We are seeing new recreation machines or reinventions of old recreation pastimes almost on a daily basis. Just to give you an example of this is slacklining. How do we capture the need of slackers, as they are referred to, without engaging them from the very start? While we appreciate the skill and knowledge within the department, we feel that there is a different skill set and knowledge base that sits outside the department that should be engaged and utilised from the very beginning. Obviously, not every plan has to be a blue sky plan and we are happy to have guidelines around what is appropriate for particular areas to facilitate this reduction in red tape.

Following on is the determination of the need of a management plan and community consultation. Currently, the amendment is worded in a way that it is entirely to the minister's discretion whether or not a management plan and/or public consultation is needed. We feel that there needs to be some statutory automatic and community trigger that requires a management plan to be developed. For example, if a new commercial activity is to occur in a protected place, then a management plan with community consultation should be in place, not a management statement.

As mentioned in our submission, there are also concerns about the notification process for public consultation. While we understand that it is the minister's intent to email registered stakeholders of a notification, it is not formalised in these amendments. We believe that simply posting a notice on the department's website is not adequate and a more formal notification process is definitely needed.

I apologise if it is mentioned in the bill but I had trouble finding it, and that is reference to the exclusive use of particular areas. By that I refer to the situation that may occur where a commercial operator is able to lease or gain exclusive use of a protected area that severely impacts on the enjoyment of other users. For example, is it possible under the amendment, for, say, the cliffs at Mount Ngungun at the Glass House Mountains to be leased to a commercial operator for exclusive use? There needs to be consideration given to how this may be managed moving forward. This comes back to my opening comments about how we value that community recreation.

We agree with the policy objective of red tape reduction. We would like to make mention that this philosophy needs to be continued through to the day-to-day operation of the protected areas. I would like to mention that QPWS was congratulated by QORF members at a recent recreation industry forum for its achievements in streamlining its permit process. Continual improvement and industry best practice initiatives should be part of the management plan process. However, this should not be an opportunity to reduce on-ground services.

On the flip side of this red tape reduction, concerns have been raised about the resourcing of the department to develop management plans in a timely manner. The sweeping changes as proposed will require the development of a number of management plans. We would ask that the appropriate resources be committed to ensure that the bureaucracy can keep up with the expectations of industry and the community.

In relation to the civil immunity coverage, we would like clarification as to the coverage of volunteers who are, for example, working as part of a trail care group. As outlined, this coverage extends only to employees and volunteers of the relevant department managing the land. Can volunteers and volunteer groups be held liable if they are working with the permission of the department? Many of these volunteer groups are unstructured and rely on the protection of the land manager. As you can imagine, these volunteers are a real asset to the land managers and it would be a shame to see anything get in their way.

Currently, many community and user groups enjoy specific-access agreements in protected areas. These members have also indicated their willingness to continue these arrangements and, therefore, should be given grandfather rights to ensure no loss of current access. We realise that this is a new government, but our memory remains of the promises then backflips made by the previous government in relation to access for our horse riding community under the South East Queensland Forests Agreements. While I am talking about the horse riding community, I would like to thank the Hon. Steven Dickson MP for addressing the future of horse riding in the Queensland forum just this week. Given the proposed changes to the act, much of the bureaucracy surrounding the SEQ horse trail network will be removed. Something that was raised at this forum is the

continuation of the horse trails scientific monitoring program. The industry representatives at the forum would like to see this program continue for the full 20 years as outlined on the Department of National Parks, Recreation, Sport and Racing website. Given the nature of multiuse trails, it is difficult to specifically identify the impact of just horses and it would be an industry wish to expand this research to include all trail users. This scientific monitoring would provide quality data on the real impacts of activity in our protected areas. I apology for diverting a little bit from my submission there, but that was something that was just raised recently.

The last thing that I would like to mention in the submission as well is a simple clerical issue in the fact that education should be included as a use in both the regional park and state forest tenures. While I am sure it is the intention of the amendments to allow outdoor education in schools into these areas, it is not formalised in the documents and may pose future issues in relation to permits and things along those lines. Thank you again for the opportunity to present to you today.

CHAIR: Thank you, Mr Stewart.

Mrs SCOTT: In your submission you have mentioned that the federation is relatively relaxed about the new civil liability restrictions. Have you had a chance to look over the Queensland Law Society submission and, if so, has that changed your attitude at all?

Mr Stewart: I am sorry, no, I have not had the opportunity to look at that

Mrs SCOTT: That is fine. Are you concerned about the impact that the changes will have on outdoor recreation providers in that they may shift civil liability from the state on to private providers?

Mr Stewart: More so on to our volunteer groups and to those people who are currently working with QPWS and other land managers. As I mentioned, they are often unstructured community based groups that are working with parks—fixing trails, clearing out damage, helping out and things like that. We would just like clarification to make sure that they are covered. If the government is no longer going to be sued, the insurance companies are now going to chase someone else and does it fall back on to them? So they are an amazing resource and it would be a real shame if that were to end. There are some formalised agreements in place as we see out at Gap Creek and things along those lines, but a lot of it is quite informal. They are just working in cooperation with the local rangers and things along those lines. So it is more so looking at the volunteer groups and the clubs as well if they were to be active in those areas as well to make sure that that liability did not transfer then to them

Mrs SCOTT: Thank you.

Dr DOUGLAS: I was interested in your statement about your concern about the management plan and management statements, which certainly has been raised earlier when we discussed it with the department itself. I am curious to know what you perceive might be the consequences for the public percentage wise in the most popular areas where people would want to go where a plan might be avoided by having a statement, thereby the impact to that community organisation or people who go in there may be excluded by virtue of not being able to participate in a process. Can you give us an idea numerically what that might be and where that might be?

Mr Stewart: I do not have that research with me, but just to give you an idea of numerics, if you look at, for example, Queenslanders participation in physical activity from the ERASS report of 2012, 30 per cent of activity occurs as trail based activity. So this is on this sort of stuff. Total football combined is 15 per cent. So there are a lot of people out there using these trails. At the moment, we are seeing not so much a push but it has been an easy option to use multiuse trails where we have everybody on the one trail format. That is what I was mentioning in the scientific study with the horse trails network. It is set up just on forestry road so it is hard to determine if it is the horse, if it is four-wheel drivers, motorbikers, pushbikers and things from there. I am sorry, I do not have exact statistics on what would happen with that. Something that did come up at the forum on Wednesday night that I think is pertinent when we were meeting with Parks—and this came from Seqwater—is as legitimate activities moved into an area, illegitimate activities moved out.

So as they created agreements for mountain biking clubs to come on and build their own trails, all illegal trails started to stop. This is something that sort of turned my head around there, thinking that people do want to do the right thing but they are just being forced to do the wrong thing. Well, not being forced to do the wrong thing, but they are doing the wrong thing. I think if we can legitimise a lot of these activities through the management plans, that will take away all the illegal stuff that we are seeing happening out there now, and I think that is a key message as to why these management plans need to be developed from the ground up, so that we have an understanding of what the needs are and what the demands are in those particular areas as well.

Dr DOUGLAS: So it then could be said that a proper community consultative management plan would in most cases remove a lot of the illegal activity, particularly that type of activity that causes concern to people?

Mr Stewart: I believe so, yes.

Dr DOUGLAS: Would you say that that is more than that 30 per cent; that it is 50 per cent plus or maybe higher?

Mr Stewart: As the minister said on Wednesday, he was really interested in receiving feedback from the community. It was great, and this is something that we have not seen before. If the community is involved, I think that we are going to see some great outcomes from this. Sorry, I cannot give you a percentage of what we will see but, for example, out at Gap Creek there, now that they have got an area to build their trails and do all that sort of stuff, there is no need to make illegal trails elsewhere because they have been given an area.

Mr SHUTTLEWORTH: Mr Stewart, in one of the abbreviated member comments attached to your submission there is a statement that says—

... I work pretty hard at selling my vision of the 'bigger picture' to our people, and in that picture I have no doubt that the current amendments are necessary to breathe life into our parks. If we don't do something about engaging the general public, then public expenditure on minor parks will decline, and they will be lost through neglect and apathy.

Could you perhaps expand on what the person making that submission may have been leading to? Has it been evident over the years, and how do you see this legislation turning that around?

Mr Stewart: Yes, it is a bit of an outdoor education/outdoor recreation philosophy, I guess, that when you start engaging people with an area they become actively involved in that area, and by pushing people away from the area they start to disengage.

Just coming back to something that the minister said, by engaging these people will actually make this the greenest government in Queensland's history, and I believe that he is actually accurate in what he is saying with that. What he's saying here is that by engaging people into these areas, by actively letting them become involved in those areas, they will actually build a relationship with those areas and strengthen those areas. I think that is the philosophy.

It is very interesting to talk to these people. The mountain bikers are a great example about how passionate they are of the environment that they live in and they recreate in, and I think that is exactly what that sentiment is about. It is about engagement rather than locking them out.

Mr HATHAWAY: Thanks very much for your presentation and your submission. I note you mentioned the operational considerations. In fact, it is your lead bullet point. A common theme throughout is that before any commercial activity takes place there is a need for a management plan. I am just wondering whether your members have an idea of the scope of a management plan versus a management statement. I note that the Auditor-General's report stated that only 17 per cent of all of our national parks had any sort of management framework; most of them were statements; and there is an estimated cost of $60 million and 30 years just to bring it through—or about two or three years for each management plan.

Mr Stewart: That is right.

Mr HATHAWAY: If your members wanted to participate in an activity, are they then prepared to wait those three years or whatever for a management plan to be struck for a particular area?

Mr Stewart: Yes, and this is something we actually discussed. It is a little bit of an unknown, given the changes in the legislation and the development of the management plans and how it no longer has to go through the rigours that it did beforehand. We are hoping that these can actually be developed quite quickly. Again, as I said, not every plan needs to be a blue sky plan. We can have some structure around it. We can have some systems based on that to try and develop these quickly, and again that is why I referred to the resourcing so that we can get these management plans happening quickly and things like that. I believe that we have waited a long time now; we can wait a little bit longer if there is light at the end of the tunnel, definitely.

Ms BATES: Mr Stewart, I certainly agree with your comments about mountain bike clubs. I have got the Gold Coast Mountain Bike Club around Hinze Dam on the Gold Coast and we have just given them $77,500 to increase their tracks by 11 kilometres. It is interesting that you mentioned the volunteers. Before this funding from June of this year, just from that one club they have put in 1400 hours. So I just wanted to make a comment that I do agree with you about the incredible work that our volunteers already do.

Mr Stewart: Exactly.

CHAIR: Mr Stewart, let me follow up just on a couple of small things. This is to help me try and develop my own thought process. If an organisation, be it commercial, noncommercial or recreational, makes an application to undertake a particular activity in a national park or forest—let's stick with national parks for a minute—rather than doing a management plan for the entire national park, what about something along the lines of an impact assessment with a risk-mitigation response based on the activity that they are dealing with? I guess I am coming from the viewpoint of how much it costs and how long it takes to do a management plan for an entire park, as opposed to potentially honing in on a particular activity and its impact on a particular area. Do you have any response to that?

Mr Stewart: I think that is a fantastic idea. There are specific areas within parks that people want access to—not the whole park—so that would definitely be a great outcome. If you said that the processes for a full management plan are too long and let's just look at a specific area that then gets developed or comes across into the management plan that would definitely be workable. As I said, most of these user groups are after a particular spot; they are not after the whole area. They are prepared to say, 'This area suits our activity perfectly. Can we somehow organise that activity to happen in that spot?' I think that would be a fantastic outcome.

CHAIR: Let me follow up with another point, and that is notifications. Something we do as committees is we have lists of stakeholder groups so when a particular bill comes forward, we can quickly notify stakeholder groups of that bill. If there is a change in the notification requirement around that moving to only be the website, what about if we were to notify those stakeholder groups and then it was their responsibility to notify their members?

Mr Stewart: That would be great. The minister articulated that on Wednesday and said this is what our plan is, but it is not actually in the legislation. So we would be very happy with that outcome if it was mandatory rather than—

CHAIR: But if it was operational policy, would that give comfort—

Mr Stewart: Yes, definitely.

CHAIR:—as opposed to being in the legislation—

Mr Stewart: No, definitely. Definitely. That is for sure.

CHAIR: Does anyone else on the committee want to ask any other questions? If not, Mr Stewart, thank you.

Mr Stewart: Thank you very much.

CHAIR: Can you please thank your organisation. We understand that even if it is a short submission, there is a lot of effort that goes into this, especially with the diverse range of groups that you deal with, and we appreciate your time.

PIPER, Mr Terry, Chief Operating Officer, Balkanu Cape York Development Corporation

STINTON, Mrs Marita, Legal Officer, Cape York Land Council

HARRIGAN, Mr Les, Traditional Owner

CHAIR: Mr Piper, would you like to start with an opening statement? You can have 15 or so minutes, and then we will ask some questions based on your submission.

Mr Piper: I think Les and I will share the opening statement. We are from Balkanu Cape York Development Corporation, Marita is from the Cape York Land Council, and together the two organisations over the last seven or eight years have been working with the state government on negotiating the joint management of national parks on Cape York.

That's been a very good process. We have had some fantastic outcomes, and we are on the verge at the moment of doing the seven national parks arrangements around Cape Melville and the Olkola national parks which will be to the west of Laura. We do that through Indigenous management agreements, through native title agreements and it is all done under the Aboriginal Land Act, the Cape York Peninsula Heritage Act and the Nature Conservation Act. We are contracted by the Queensland government to do that, and we work very closely with Queensland government staff on that. We have been working on the previous Nature Conservation Act. Overall many of these amendments we are happy with, it is just the way that they fit within the kind of hierarchy. It will have implications for the parks on Cape York. It is unusual for people from Cape York to come down to present to a committee, but we thought it was important to come down to talk to the committee. I thought it would be useful as well for Les, who is from Lakefield National Park, to give a bit of an overview of the work that he does there and how things are going at Lakefield.

Mr Harrigan: As a TO and a member—

CHAIR: Sorry, just for the purpose of Hansard, 'TO' is traditional owner.

Mr Harrigan: Yes. We have been working well with the state government and QPWS as a management partnership in Lakefield. This has gone on for two and a half years now, and we are working well together. We do a lot of groundwork with fencing and pest management. Our boys go out and give support in road management, gravel pits, pest management, baiting and stuff like that. It's been going great for QPWS and the land trust. We have been working hard. It took a fair bit of years—like, 18 years—to actually develop Indigenous management with all of this documentation here. We need to look further into tourism and stuff like that, and we are hoping to achieve that soon.

With Lakefield, there are 75 families involved with the place, two clan groups. It is the second biggest national park in Queensland. All of the operation that goes on in the park is well managed. They all stick to the day-to-day principles of their duties and all that, and I am constantly keep involved with our RICs up there—rangers in charge—and all the other state government, QPWS.

As for me, I would just like to see more employment come to the place, more tourists. We get a lot of tourists coming through, and there is not enough information on the cultural side of Lakefield, the history of Lakefield, and I think it would be good to see more of that come into Lakefield.

As well we have our joint management meetings every six months. We put all of our reports out on the table between the two parties, and we do not find any errors with our paperwork and reports. Everyone is real impressed with what we do on both sides. We have our board meetings every three months to keep QPWS intact with us. We have an AGM at the end of the year and we look at new elections, but everybody is pleased with the board. I have been there now since it started, and they just keep voting me back on to give all the guys privileges and jobs and stuff like that and go out dealing with the oil resources. We also set up meetings. My job is to set meetings up with all the pastoralists to talk about how they manage outside the park boundaries and things like that.

CHAIR: Thank you, Mr Harrigan. That is fantastic.

Mr Piper: We thought that would give context to our submission. I do not think we will go through our submission in detail. We will just go through the key points and the things that we wanted to raise. Firstly, we have been working with the state government. We were familiar with

some of these amendments that were coming up, although some of them have come up more recently. The land council attended a briefing some time ago, and we have also written to Minister Dickson over time about a couple of the amendments. So there has been consultation. I think some of that has not been noted in the explanatory notes, but we have been consulting about this.

One of the things that we are concerned about is that there are some things in the amendments, particularly to do with the management planning, that could be inconsistent with the agreements that are in place. Lakefield is probably one of the parks on Cape York that does particularly need a management plan and the management agreement does have agreement around the preparation of a management plan. One of the things we have raised is how the legislation operates with existing agreements that are in place on those parks.

We do feel that not every park on Cape York needs a management plan. Statements of management intent or whatever is intended would be appropriate for a lot of the parks. We do suggest that parks can be aggregated into a management plan. So there are a number of parks on Cape York that are adjacent or not far from each other that could still be pulled together into one overall management plan. Our preference is that there are areas like Lakefield and Mungkan Kandju which are probably well suited to management plans, and there are a number of parks that do not need them. Also, the suggestion of whether you can do a management plan for a part of a park, particularly those areas that are under high use, is probably something that should be considered.

We support the intention of broadening the object of the Nature Conservation Act. Our only concern with that was the wording, 'the involvement of indigenous people in the management of protected areas in which they have an interest'. Our concern was that that may be interpreted as a legal or equitable interest in terms of the legal definition of interest in land. So that is why we have suggested to add 'under Aboriginal tradition or island custom' to that.

One of our concerns particularly with the amendments has been the changing of the management principles of national parks. So we support the additional two management principles for recreation and ecotourism, but historically you have had three management principles plus the requirement to manage a park in accordance with Aboriginal tradition. So the way the management principles will line up now is the requirement to manage the national parks which are Aboriginal land in accordance with Aboriginal tradition will now be seventh—much lower in that hierarchy.

Just to explain the importance of that, an example is when we were negotiating Mungkan Kandju National Park. Some people wanted clan boundaries and all that mapped which is a long exercise. We said, 'No. The park has to be managed in accordance with Aboriginal tradition,' and that means that you have to consult the right people in making decisions for particular areas of land. So managing in accordance with Aboriginal tradition is not so much about protecting cultural values and cultural resources. It is much more about the decision-making processes that are gone through. So our view is that that decision-making process cannot be subservient to the ecotourism and recreation provisions. It has to be higher than that.

Our suggestion, so it is not so messy, is to have it inserted below the cardinal principle. So you have the cardinal principle of managing national parks; then a national park (CYPAL) or (Aboriginal land) is to be managed in accordance with Aboriginal tradition; and then list all of the management principles. So that is something that we do feel very strongly about. As Les said, many of these parks have numbers of groups and families whose land is within the parks and it is very important to people to manage in accordance with Aboriginal tradition, that the decision-making processes are in accordance with Aboriginal tradition.

The regional parks concept and moving resources reserves into regional parks is something we do not necessarily have a problem with, but we would like to have traditional owners consulted about that. Resources reserves on Cape York tend to be a holding tenure before those areas go into national park to allow for mining exploration or other exploration. So normally they would be moving into a national park (Aboriginal land). So we would want consultation about that.

We understand the special management areas are to do with national park (scientific)—those parks that have hairy-nosed wombat on them—and they may not apply to Cape York. If that kind of thing did apply to Cape York, we want to make sure that the traditional owners of that area are fully involved in decisions about special management areas.

In terms of the removal of the requirement for a management plan, as I have said, we support the need for management plans on some of those parks. It is part of the agreement. So the agreement that Les negotiated with the rest of his group requires a management plan for Lakefield. So there are some parks where management plans are well justified.

That is the general thrust of our submission. Some of the other matters in there are things that we have raised. We are happy to take questions on them but they are probably not things that we need to discuss as far as our submission is concerned.

Ms Stinton: I will just add a couple of quick comments. The first comment is just a general one. I think the thrust of the picture that we are wanting to present and the issues that we have identified do seem to flow from what we see as an overall lack of consideration or real acknowledgement of the special position of the traditional owners of Cape York. We would certainly say that, rather than being just another stakeholder in a national park management process, there does need to be a real understanding and acknowledgement that they are actually title holders for a number of the parks currently, and it is proposed that other groups will move through into that position over a process of some years. If there was that acknowledgement and if there were provisions built into the bill to accommodate that and to address some of the inconsistencies that arise, then, as Terry and Les have said, there is certainly support for the intentions behind the bill.

There are some concerning legal issues, and we have gone into those in the submissions. Certainly one of the key concerns is that the bill as it stands will create these legal inconsistencies between provisions that are in the Indigenous management agreements that are in place for a number of the parks. There will be obligations on both the state and the traditional owners in those agreements that will be inconsistent with what will be in the act. We do not really see how that can be addressed unless consideration is given to it and it is dealt with now.

There is one additional issue that we did not incorporate into our submissions that were lodged prior to the cut-off date. The land council has sent a letter, which I am not sure whether it has made it through—

CHAIR: Yes, we have received that.

Ms Stinton: So just to touch on that very briefly in relation to the issue about reducing the state's exposure to liability, we have identified that the provisions do cover off Indigenous landholders who have Indigenous management agreements in place, so that is good. But there is then a gap in terms of those traditional owners, whether they are native title holders or otherwise, who do not yet have agreements in place, who have not yet had the opportunity to go through that process with the state. At the moment they do not appear to be covered and there is a concern that they would therefore be left exposed to liability. There are a number of groups—for example, the Eastern Kuku Yalanji people—who have ILUAs, Indigenous land use agreements, in place, so they have contractual arrangements. We believe that it is certainly possible that they could be left exposed to liability if someone was injured and in circumstances where that injured person would not then be able to take action against the state. I think we have probably covered most of the key issues.

Mr Piper: In our submission we did flag that there was some supplementary material that we were going to get to you on Monday. I hope it is not too late. It is not going to add more issues. It may just add some clarity to a couple of things we have raised.

CHAIR: Send it on in. I cannot imagine the committee denying that being tabled. I am glad you are here, Ms Stinton. My understanding—and please understand that I am a long way from being an expert on this situation; I have done a little bit of background—is that native title is federal legislation and where it determines an outcome that determination overrides state legislation. Let me give you an example. When I read through your submission, it was well argued but there seemed to be some conflicts between what I would understand to be federally determined outcomes from federal legislation and this bill. In particular, many times through the submission there seemed to be this conflict in Indigenous management agreements. My understanding would be that where the federal legislation and this legislation conflicted it was the federal legislation that would be upheld.

Mr Piper: I might be able to answer that. In terms of the process that we go through on the national parks, we do not actually do a determination of native title. It is done under a native title agreement under the Native Title Act. So we do an Indigenous land use agreement, but there is not a determination of native title in that process. So it is a negotiated agreement between traditional owners and the state. In terms of the provisions within the Nature Conservation Act, as we negotiate these agreements, the state will say, 'The Nature Conservation Act does not allow us to do that or that will fetter a minister's discretion.' While we are doing a native title agreement under the federal act, it is under Queensland legislation.

CHAIR: So where does the Indigenous management agreement then feature in that process?

Ms Stinton: An Indigenous management agreement is something that is negotiated under the auspices of the state legislation and it may be done in conjunction with an agreement that is negotiated under the federal Native Title Act, but there is a lot of time and effort that is put into making sure that there is compliance with both pieces of legislation. So if there is during that process something that is identified where the parties say, 'Hang on a minute, if we put this in here we are going to have problems with the Native Title Act,' then there are provisions placed into the agreement to make sure that the federal legislation is covered off as well.

CHAIR: Given that, wouldn't most of this conflict then be able to be resolved based on that?

Ms Stinton: No. The federal legislation really only deals with very specific things, and it would not go into the level of detail that is negotiated in these sorts of agreements. That is all very much structured on the basis of what is in the Nature Conservation Act and the outcomes that have been proposed and sought at a state level. There is one issue that we have identified that may have that conflict with the Native Title Act. I think we have raised this specifically in relation to the proposed new offence for selling meat or other products sourced from dugong or turtle. We do have some concerns that in relation to that particular proposed amendment it might raise issues under the Commonwealth Native Title Act. But, in terms of the rest of what is proposed in here, we do not see that it is anything that is going to be addressed in the Commonwealth act. The inconsistencies that we have identified that arise are because of things that have been previously negotiated and placed into those Indigenous management agreements, which, as we say, are under the auspices of the Nature Conservation Act.

Mr Piper: Part of the native title agreements is that people agree to manage the park in accordance with the Nature Conservation Act. That is one of them. The position has been that declaring a national park as a future act is under the Native Title Act and so therefore it needs an agreement, but the agreement is to be consistent with the provisions of the Nature Conservation Act.

CHAIR: We will look at that a little bit more in depth. I appreciate that. Can we just look at that dugong one since we have raised that. I am actually struggling to understand—

Mr Piper: Just on that, it is not that we are advocating that people should be able to sell dugong meat at all. We are just raising that it is a possible legal issue, but we are not necessarily advocating that that is something people will want to seek.

CHAIR: As I read it, my assumption was that what you wanted to do was go into commercial production.

Mr Piper: No, we are not advocating that at all. It is just raising it as a potential issue.

CHAIR: Okay.

Mr HATHAWAY: Just by way of clarification, Mr Piper, you mentioned that you had written to Minister Dickson but I note from your submission you talk about it going to the department of Aboriginal and Torres Strait Islanders for Minister Elmes. Did you write separately to Minister Dickson?

Mr Piper: We have been corresponding with the section of the department of Minister Elmes's department and then those issues are raised with Minister Dickson's department. In terms of the specific issue about the management principles of national parks, we have written to the Premier about that and copied that to Minister Elmes and Minister Dickson because that is a pressing issue around our seven national parks negotiations at the moment. Ultimately, the traditional owners of the seven national parks have decided that we will go ahead with our dealings so we do not delay that dealing—it is due in a few weeks time—but hoping that there will be some resolution of this management principles matter.

Mr HATHAWAY: Okay.

Mrs SCOTT: From your submission it seems that the land council's overarching concern with the bill may be that it reduces Indigenous control of the national park (Cape York Peninsula Aboriginal land), so what are the main objections when it comes to these special management areas? Are there specific things you could cite?

Mr Piper: I think we understand that the special management areas may not apply. The way it has been explained to us more recently is the special management areas are to accommodate, say, those parks that were national park (scientific). Where there may be hairy-nosed wombats or if you have an area that has rabbit-eared bandicoot or bilbies in it, there are special management areas where you can step outside of the management principles a bit where it is necessary for

conservation and rehabilitation. The way it has been explained to us is that the special management areas probably will not apply to the parks on Cape York, but what we are saying is that if they do then the traditional owners should be agreeing to those particularly within the national parks which are Aboriginal land, but otherwise we do not.

Mrs SCOTT: So they are very narrow?

Mr Piper: Yes. That is the way that it has been explained to us in reducing the numbers of categories and taking away national park (scientific). Now they will have national parks with a special management area of it.

Mrs SCOTT: Thank you.

Mr SHUTTLEWORTH: My question is probably more directed towards Mr Harrigan, but certainly anyone can answer it. Last year when we introduced the first of these nature conservation amendment bills I did a little bit of research and one of the main benefits around ecotourism world-wide seemed to be evident in the South African parks where they indicated that the most significant benefit that they saw through ecotourism was the empowerment of local Indigenous communities to create a lifestyle that afforded them power over their land but also a full economy that gave them the capacity to heighten the awareness of the traditions of the land. I ask you for a bit of an overview of the benefits that you would see arising out of a bill such as this for the local Indigenous communities of the cape in terms of injecting more independence economically and about us instilling in the wider population those traditions of the land that you guys hold. I seek a general overview of the benefits of this bill that you would see.

Mr Harrigan: When tourists come to Lakefield National Park they could hear cultural talks and do cultural walks. There are areas that they do not get to see as visitors through Lakefield park when we have access to areas that we could use as a temporary tourist location for them to visit. We could monitor it ecologically and close it down when it is breeding season. With the Indigenous side of it, a lot of Indigenous groups want to identify their areas and build up capacity on the tourism side of it. It is working slowly, but we need to bring the whole group together to have meetings to look along those pathways where we want to go with tourism. Were you saying just tourism?

Mr SHUTTLEWORTH: Just the whole management of the park—that is, ecotourism and how that may provide local Indigenous communities with greater opportunity.

Mr Harrigan: It will really put a lot of people back on country for work or working in management in terms of the day-to-day principles in managing the park. Everybody has shown interest. They all call me and try to get involved. Many have branched out to other national parks now at other old country through CYPAL and Cape York Peninsula.

Mr SHUTTLEWORTH: You said 'back on land'. Rather than having your younger people having to move away from the land, do you see these types of initiatives will enable you to give them opportunity to stay on country and to invest in their future on that land?

Mr Harrigan: That is right. It will just bring families back on country to work the country, yes. The key issue there is that we are the role model for the younger generations who need to come up for their turn to take control of the park or work in that partnership management.

Ms Stinton: If I could just add, I think certainly the traditional owners welcome the idea that there might be an increase in opportunities provided by the broad objectives behind the bill, but the concern is that at the moment the technical detail does not really backup that role for traditional owners. The current arrangements recognise them as joint managers and as owners, but the proposed amendments do not really build that in as yet. So we would be very anxious to see that there are amendments which make sure that at each of those critical stages when decisions are being made and things are being done the traditional owners are up there with the state being involved in that planning process and in the decision-making process.

CHAIR: I think we are at an end. Would you like to make a closing statement? If not, is there anything you think that we should hear that we have not heard yet?

Mr Piper: No. We have come down here. We had the opportunity to do it by teleconference or by video conference, but we thought it was best to come down face to face and to meet everybody. There are some great things happening on Cape York—the whole joint management of parks and the things that are happening under the Nature Conservation Act. It is slow. It is going to take time, but there are some very good things happening up there. We want to ensure that amendments to the act do not act to the detriment of that and reinforce what is going on up there. Thank you for the opportunity to meet with you.

CHAIR: Ms Stinton, Mr Piper and Mr Harrigan, thank you. We appreciate both the effort in putting the submission together and for also getting on a plane and coming down here. It reiterates the size of our state. Thank you very much. The committee will now take a short break.

Proceedings suspended from 2.57 pm to 3.01 pm

GSCHWIND, Mr Daniel, Chief Executive Officer, Queensland Tourism Industry Council

CHAIR: I would just remind people that we are live on the parliamentary website and if you have got phones, would you please put them to silent or turn them off.

Welcome, Mr Gschwind. Could you please make an opening statement of 15 minutes or so and then we can ask you some questions.

Mr Gschwind: Thank you, Mr Chairman and committee. I appreciate the opportunity to be here today and provide some information from a tourism perspective. I speak to you as the Chief Executive of the Queensland Tourism Industry Council, which is a representative body for commercial tourism operators in this state.

We have made a submission to the committee and I will reference our submission generally. But as an opening statement, our organisation supports and has in the past supported the amendments to the act in principle with the objective of introducing greater clarity, greater certainty and greater efficiency in the management provisions that cover national parks and other land tenures that fall under the Nature Conservation Act. We also particularly or specifically support broadening the objectives of the act to explicitly allow for appropriate activities of recreation and commercial tourism that we believe are consistent with the other principles of the Nature Conservation Act.

So that is our starting point, I suppose. I want to also say that the existence and appropriate use of our national parks and nature conservation areas is fundamental to our industry, it is fundamental to the future of our industry and it is fundamental to the continuation of the benefits that tourism delivers to Queensland and Queenslanders and its regional communities.

I want to refer to a number of documents and a number of initiatives that both industry and particularly government are involved in here in Queensland. One is the 20-year plan for Queensland which is in development. Associated with that we are in the process of developing 13 destination tourism management plans for each region of Queensland, and of course we have also seen the launch and release of the ecotourism plan by the government only a few weeks back.

All of these documents—albeit that the first two sets are still under development—and also the activities under the DestinationQ initiative are dependent on the existence and availability of our national parks and other conservation areas. The recognition of the importance of those protected areas in all of those documents is critical and fundamental. As a matter of fact, in all of the consultations that we have been involved in with industry and in partnership with government, the natural attributes that Queensland has to offer rank right at the top as the most important aspects of what we have to offer in a competitive commercial tourism market. So we have a fundamental interest in the availability, the accessibility and the existence of our national parks and other conservation areas, and I say this with purpose to highlight the importance for us of being able to use it and also the importance of sustaining them and conserving and protecting them. The two things are of equal importance to us.

The figures I am about to quote you are based on national figures, but they have been adopted by the Queensland government also in the ecotourism plan. On an annual basis it is estimated that close to 8 million visits occur annually by international visitors to national park areas or other conservation parks in Queensland. The activities generated through visitation to national parks or associated with visitation to national parks are estimated to contribute more than $4 billion to the Queensland economy. That is not just international visitors; that is also domestic visitors, including Queenslanders who travel from their normal home to visit another national park. There is $4 billion worth of commercial activity generated in association with national parks in Queensland, according to the figures that we have been provided with.

In reference to the earlier presentation by the Queensland Outdoor Recreation Federation, we do not draw the line so firmly between recreational use by the community and tourism use, because it is a bit of a blurred line which is only dependant on how far you travel to go and visit a national park. We are not in conflict with community use or residents' use of national parks. We believe it is just along a spectrum and the two types of uses are consistent with each other. These are the general observations I wanted to make.

In reference to our submission I want to highlight a couple of things, particularly those areas where we flagged some concern over the bill as it stands. The first reference is to the main point of the bill, which is the broadening of the objective of the act, which we support. But we raised concerns over one particular set of words under (c) of the supplementary outcome set up to be introduced into the act where it says—

(c) the social, cultural and commercial use of protected areas in a way consistent with the natural and cultural and other values of the areas.

We believe that is a redundant and possibly ambiguous end to this sentence, and we do not believe that the 'other values of the areas' are necessary to achieve the objectives that we would like to achieve through the amendment of the act. We believe that activities that are 'consistent with the natural and cultural values' is sufficient. We do not believe the 'other values' introduces anything beneficial from our perspective and, indeed, opens the opportunities too broadly because there is no specification as to what these 'other values' might be. So we do not think it is necessary to have those last few words as part of that sentence. It is in our submission specifically.

In terms of the reduction of tenures or number of tenures as proposed by the bill, again if it helps this simplification we support it subject to a number of points that we have raised in the submission, namely, in relation to the forest reserves. We believe some of the current forest reserves are of very high conservation value and offer great potential also for future use for recreational and commercial tourism uses. We are keen to see those areas that have this high conservation value retain their current level of protection irrespective of what tenure they might end up falling into. But we certainly do not believe there should be unrestricted transfer of the current forest reserves to other tenures that would reduce, if you like, the conservation value of those areas. We think that is quite important.

Similarly, the proposed combination of the current conservation park and resource reserve we believe has challenges because the intent behind those two current tenures is clearly quite different, and we would be concerned if perhaps inadvertently current conservation areas would suddenly be subject to potential use through the creation of resource use areas in the regional parks. It is our understanding that that is not the intention, and you would be aware that a question was asked earlier on on that very point. The answer seems to suggest that what we fear was never the intent, but we would suggest that the drafting of the bill should reflect those issues and reintroduce clarity and put it beyond doubt. To quote the response to the question of 9 September—

It should be put beyond doubt that there is no opportunity for a resource use area to be declared over a current conservation park.

I do not believe that is the intent, but we would certainly like to see this clarified and not take place.

These are the main concerns that we have over the drafting of the bill. We believe the concerns here can be addressed consistently with what we believe is the intent of the bill, and we support the bill on that basis.

The other issues that we raised in our submission are less controversial, if you like, and I might make reference to the management planning process. We support that it should be substituted with the statement as proposed by the bill, because the current arrangements certainly do not work from our perspective. They are unmanageable, unwieldy, complicated and expensive. We do suggest that it would be appropriate for the process of a statement to include at least a round of public input and that the minister would seek public input prior to a statement being made. That would be our suggestion here. That is the gist of our submission, but I am obviously happy to take questions.

Mrs SCOTT: Mr Gschwind, have you done any analysis on how the changes in public liability may affect tourism operators?

Mr Gschwind: No, we have not done an analysis of what the changes would do. We have read with interest what the Law Society said. I make the observation that the public liability issue has plagued our industry in national parks in the sense that occasionally areas are closed or deemed inaccessible because there is a perceived public liability that arises for the state, and we certainly have supported restriction on exposure for that reason. We believe that people who access national parks should take a degree of responsibility for that, and we therefore support any steps that would limit or reduce the public exposure to such a risk.

CHAIR: Mr Gschwind, let me ask you: from a tourism perspective, one of the concerns that we seem to have from a lot of the submissions is the potential threat to a national park if it is opened up to commercial tourism and/or broader activity than what is currently allowed. I would be interested to hear your comments on that concern, because we had a fair few submissions that reverberate around that concern.

Mr Gschwind: As I said in my opening statement, when we seek use of national parks, it is on the basis that we understand that our customers value the natural attributes of what we have to offer. They do not want to go and see a national park that is on the brink of being destroyed and they certainly do not want to leave with a sense that they have contributed to the destruction of a national park. That is a fundamental market trend that we respond to. Our operators—the tourism operators and the 400 or so commercial operators who currently have permits to operate in national parks—are entirely committed to sustainable use and sustainable management, and not just as a glib marketing ploy but as a genuine commitment to look after the areas that they use because their very future depends on it. Operators who are unwilling or who are unable to adhere to those principles either soon go out of business or will be prosecuted because they are in breach of their permits, because the permits actually put a legal obligation on them not to do anything that undermines the park and that will continue to be the case. Tourism operators have a financial and legal incentive to do the right thing. As well they bring to it a moral commitment that they have expressed in a consistent way. I think that really cannot be underestimated and should not be downplayed at all.

We also know that internationally the value of genuinely pristine environments is increasing all the time, because not everybody around the world unfortunately does it as well as we do here. If we look at the Barrier Reef, for instance, we are now lauded as one of the most effective managers in the marine park itself. The marine park itself is recognised as one of the best marine parks in the world, even by UNESCO, and the IUCN has said that in a mission report last year. It is partly because of the interaction with the tourism industry in the marine park that that has been achieved. The same can be achieved in a terrestrial setting and is being achieved in a terrestrial setting.

There is no more protected area than those that are visited by tourists. Those areas are least likely to be threatened by other uses or by changes—and I am talking internationally here—in government policy. Those areas that are frequently visited by tourists who go there to enjoy their natural attributes are best protected.

CHAIR: You quoted some figures in regard to tourism right now. I think there are about eight million visitors coming to Queensland.

Mr Gschwind: Visits.

CHAIR: Eight million visits coming to Queensland to look at national parks and high-conservation areas. Do you have any sense at all how this bill might impact that?

Mr Gschwind: I would like to think that, with the previous amendments and the current amendments, it gives greater certainty and opportunity for commercial products to be developed that meet the consumer demand for natural experiences and also allows us to provide services that entice more people to enjoy the national parks that we have. They are not all international visitors. In fact, as was pointed out before, we have many more Australians visiting these parks and many of them with commercial operators. They do not all go there with their own four-wheel drive.

I might also add, which I should have said before when you asked me about commercial use generally, that those people visiting with a commercial operator generally go in and visit those areas in a more efficient way in the sense that they generally are in groups that reduce the vehicle use. In other words, there may be 10, 12 or more people in a bus or a four-wheel drive as opposed to individual cars. Those people are also very closely monitored. They receive interpretation of the area. They leave with a greater appreciation of the natural attributes. The commercial visitors are very, very closely monitored every step of the way. I wanted to add that to my previous answer

Mrs SCOTT: Mr Gschwind, you probably mentioned what was running through my mind during your comments. I was just thinking about the four-wheel drives on our beaches and so on. Although those people love their Fraser Island and wherever they are going and so on, at times there have been severe difficulties with the beaches and the number of vehicles accessing. I just wondered if there may come a time when we need to put a ceiling on visitor numbers or would you see most of the type of developments to be so small—if it is accommodation, for example—that it would be a natural ceiling on the number of visitors who could attend at any given time?

Mr Gschwind: It depends on the setting, but, yes. Clearly, if you refer to infrastructure that we have talked about during the previous amendment process, we certainly envisage small scale. It is occasionally suggested in the media that tourism operators want to build ‘resorts’ in national parks. Nothing could be further from the truth, because we understand that it would not work. We certainly only have in mind small scale—and I say this sincerely—appropriate development.

In terms of managing numbers, I have to say that it is generally the commercial tourism operators who want to control numbers where they are at threat of exceeding what is acceptable. It is the uncontrolled, if you like, access from the public that is far more threatening in some cases and far more detrimental, because it is in the commercial operator's interests to maintain a high standard of amenity values. An uncrowded environment is what they offer. They will get bad comments if they take their commercial visitors, who pay good money, into a crowded place. So it is very often the commercial operators who argue for greater control over the numbers and access management. So they are very much in support of a managed environment.

CHAIR: Is there anyone else who would like to ask a question?

Ms BATES: Daniel, thanks for your submission. I notice that you were making a comment about some hysteria around certain people thinking that we are going to build multistorey hotels. In fact, there is a reference to that in one of the submissions from Springbrook. I have Springbrook National Park in my electorate. I think the reference is that a big developer could just come into one of our national parks and set up a hotel. I thoroughly commend you on your comments about people coming into national parks are there to revere and respect what they would not ordinarily see. In my own electorate at some stage there was a program where there was to be a rainforest interpretative centre built down at Nerang so you could go and have a look at what Springbrook would have been like had you been able to go and visit it. So I am really pleased to hear your industry saying the sort of things that you are saying.

CHAIR: Thank you. We will take that as a comment.

Mr KRAUSE: Mr Gschwind, I had a couple of questions for you and a comment as well, but the chair's questions have basically covered what I wanted to mention. My electorate incorporates the original national park in Queensland and also one of the earlier, if not the earliest, tourist ventures—although it probably was not known by that back then—in Binna Burra, which celebrates its 80th anniversary next month. Back when they developed, they cut a path through the national park and hauled all of their supplies up a flying fox to develop Binna Burra. The point I am making—and I think you have touched on it in one of our other answers—is that tourism operators and potential ventures need certainty. Do you have a view as to whether the proposed amendments will provide certainty to allow potential tourism operations to proceed in the future?

Mr Gschwind: I think it goes a long way towards providing that certainty, absolutely. It makes unambiguous provisions for the areas under the Nature Conservation Act to be appropriately used for the purposes of commercial tourism and recreation. That is a fundamental development, given the importance to our industry and, for that matter, the importance the Queensland community places on the future of tourism. I think that it is a very fundamental to anchor that and to provide at the highest level that kind of certainty for commercial operators—absolutely.

If I could go back to the opening comment you made there, you did bring up an interesting point. The first national park in Queensland was really created as a result of commercial users who provided the state government with land allocated to them for the purposes of creating a national park, including the area still used by the neighbouring property on the plateau there, O'Reilly, who happens to be our chairman at the moment. So there is a connection there and a point that should be appropriately brought up here.

CHAIR: Thank you, Mr Gschwind. We have come to the end of our time with you. Thank you for both the submission and the effort put into the submission and your time here today. Thank you.

Mr Gschwind: Thank you.

OGILVIE, Mr Peter, Council Member, National Parks Association of Queensland

CHAIR: Welcome Mr Ogilvie. You are here in your capacity to represent the National Parks Association. Please know that we have both your personal submission plus the National Parks Association submission. I invite you to make an opening statement.

Mr Ogilvie: Thank you. I appreciate the opportunity to present to the committee. Our broad thesis is that, some of the amendments we have no problem with whatsoever, but a large part of the amendments undermine the nature conservation values of this particular piece of legislation. I would like to refer to the particular ones where we consider the act is being undermined quite substantially.

It does remove the strength from the category known as national parks. I will expand on that. It bears very little relevance to green tape reduction or reducing complexity. We would argue that some of the amendments actually increase complexity quite substantially. I will expand on that as well.

One of the primary concerns is the potential changes to the object of the act by adding a series of things such as social, cultural and commercial use of protected areas. At present the object of the Nature Conservation Act says—

The object of this Act is the conservation of nature.

The moment all of these other things are placed in there as part of the object, any court of law is obliged to look at that and say, 'This is the primary purpose of the legislation.' So the primary purpose of the legislation is substantially undermined by adding all of these things to the object. In fact, the act has a delightful logic to it. It has an object that says 'conservation'. It then tells you how that object is to be brought about and then it mentions many of the things that have been put into the object. It then produces a series of protected areas and then it has management principles for those protected areas. Because those protected areas exist in a hierarchy, the principles say what the particular class of protected area in that hierarchy can actually allow to happen.

Now what has happened here is that all of that has been thrown completely out the window, and three categories of protected area have been rolled into one and that has effectively brought all of them down to the lowest common denominator. So our first recommendation is that the object of the act should remain exactly as it is and not be changed.

There are substantial changes to management plans and the establishment of management statements. Management plans got a bit too hard for the organisation. Management statements are briefer presumably, although it does not explain exactly what size they will be. However, the changes to the management plans where they do exist—and they can only exist by virtue of the minister, whereas management statements exist by virtue of the chief executive—mean that a management plan no longer will go through two stages of public consultation; it will only go through one.

We can live with that quite happily. However, the one stage it does go through is not in fact able to be advertised publicly. It is advertised by putting it on the website of the department. Now people do not go trawling through departmental websites to find things on a regular basis. We feel that the public advertisement of any new management plan should continue. We also disagree with the list of reasons why a management plan does not even have to be advertised at all. If you look at those fairly closely, there is no logical basis for some of them. Simply because a management plan is in keeping with some component of Commonwealth legislation, it does not have to be advertised. Well that is only going to be a very small part of any management plan anyway. So we would argue that that should not be the case.

I should point out that the Office of the Queensland Parliamentary Counsel considers that certain aspects of management planning breach fundamental legislative principles, and the committee really needs to take that into account—that the notice is simply placed on the website is a breach of fundamental legislative principles. Reasons are also given as to why an amendment to a management plan should not have to be advertised. Under normal circumstances if you amend the plan it should also go to public consultation, but there is a list of reasons. Some of those reasons are quite valid. They are actually the reasons that were listed for why a draft plan should not where they are not valid but they are valid for an amendment. But there is also one reason for an amendment to a management plan—because the change ensures it is consistent with government policy. What does that mean for heaven's sake? Government policy that was advertised at a previous election or government policy that was simply thought of a few days ago?

The public does not know if the plan is amended to so-call meet government policy. Parliamentary Counsel has also said that that is in breach of fundamental legislative principles, and we believe that that should not happen.

Management statements—which are an abbreviated version, we presume, of management plans—will not go for public consultation whatsoever. We do not believe that that is appropriate because the way the legislation is now designed a plan is no longer compulsory. If there is no plan, there has to be a statement but the statement does not go to the public. The statement is the only legal document in existence that talks about how that particular national park will be managed or protected area will be managed, yet the public have no say. This is totally inappropriate in our opinion. Management statements should go through some consultation process.

The protected area classes are being rolled in—eight classes have been abolished. It is very difficult to understand why this needed to be done. As I said, it is not relevant to green-tape reduction. It does not reduce complexity. The one area that is particularly of concern is the loss of national park (scientific) and national park (recovery), which have been rolled into to the class known as national park. I should point out that the classes that do exist at present are all in line with the classes established by the International Union for Conservation of Nature and the attempt to get a world-wide agreement on categories of protected area. So in the first class under the IUCN categories there is Ia and Ib: Ia is nature reserve and national park (scientific) meets that; Ib is wilderness area and wilderness has been wiped in this process. The second class, II, is national park. Then it goes on and it is a hierarchy of protected areas where the level of protection reduces as you go further down that hierarchy. That has been totally ignored now.

So 'national park (scientific)' is a category where the park can be manipulated substantially to protect one species of animal. There are two parks—the Epping Forest National Park, which has the northern hairy-nosed wombat, and Taunton National Park, which has the bridled nail-tail wallaby—where the manipulation of the natural part of those parks is quite extensive in order to protect the last remaining animals of those species. To put that then into a national park and call it a special management area (scientific) in many ways is a nonsense. It affects the national park because it is contrary to the management principles of a national park, as they existed, and particularly the cardinal principle, which is to provide protection to the greatest possible extent, and it allows things to happen on a national park which would never be allowed under the principles for management of a national park.

The same is true of 'national park (recovery)', which was designed to be a holding area for areas that were seen to be something that could go to national park eventually but required a lot of restoration for it to happen. By then putting that into the national park category, it again is allowing something to happen on a national park, which should be our key areas, that is totally contrary to the cardinal principle, which is to provide protection to the greatest possible extent. So we strongly advocate that national park (scientific), national park (recovery) and national park be retained in their present state. That is a very strong argument that we would prosecute in any forum where this was being discussed.

In terms of the cardinal principle of managing national parks, quite a lot of the publicity has said the cardinal principle has not been touched. But in fact the explanatory notes point out that if a special management area is declared it overrides the cardinal principle, so the term 'cardinal principle' does not mean anything anymore. The explanatory notes point out that if you declare a special management area things will obviously be done that are contrary to the cardinal principle, which is to provide preservation to the greatest possible extent, and therefore it will override the cardinal principle. If you read that in the explanatory notes, it is a strange statement that they make because they almost talk about a special management area as being a separate entity from a national park.

The other thing that special management areas do is allow previous uses to continue inside the national park. Now a previous use could be anything. The only thing that I can think of that would be automatically prevented as a previous use in a national park would be mining because the act specifically says that. So we would argue that special management areas are unnecessary and add greater complexity than exists at the present moment where you actually have a national park (scientific), a national park (recovery) and a national park. So why have all this complexity? What is it in the name of? We are not sure.

We also have some concerns with 'regional park', which is a roll-up of 'conservation park' and 'resources reserve'. I might also add that the letter responding to the committee's request to the department for advice on this actually picked a flaw in the whole exercise and the department said,

'We have to talk to Parliamentary Counsel about this.' Within a regional park those areas that were resources reserves actually become a regional park with a resource area in them. However, there is nothing to stop an existing conservation park, on which mining cannot occur, being declared as a resource area because it is no longer a conservation park; it is a regional park. So the committee sent a letter to the department asking about this, and the department came back and actually admitted that there was a problem there. Our argument is that a conservation park, where the term actually means something to people, should be retained and if somebody wants to call something a regional park then that term can be used simply for the resources reserve as a separate entity altogether. The National Parks Association is very strong on matters relating to the cardinal principle for managing national parks, which is to provide protection of national parks, and we feel that this is being grossly undermined by the exercise that has occurred.

The final area relates to forest reserves. Again, we cannot see any reason why the category of 'forest reserve' has actually been wiped out. With the flexibility that 'forest reserve' offers, I see no reason why it should not be retained at all. Certainly the amendments allow the Forestry Act now to very simply and easily revoke a forest reserve and convert it into a state forest. So that can happen. However, there is no reason to wipe out the category of 'forest reserve' in order to do that.

The three final protected area categories are 'World Heritage management area', 'wilderness area' and 'international agreement area'. None of these classes have yet been declared. The argument seems to be that if you have not done it you are never going to do it and therefore we will get rid of it. I find that a totally inappropriate argument. I do not understand why that would be the case because in fact those areas were strongly advocated for use in the past. There were issues and the issues were more with the Commonwealth over why they were not used because there are matters of international agreements involved there with World Heritage and international agreement area. For that reason they were not applied but there was no reason why in the future they could not be applied. We would advocate that they should be retained because they have a purpose and it is a purpose that may exist in the future. Why get rid of them? It is not saving anything at all. Thank you, Mr Chairman.

CHAIR: Thank you. I will open it to the committee for questions. Mr Shuttleworth, I think you have one.

Mr SHUTTLEWORTH: Mr Ogilvie, I may have just completely misinterpreted your argument but, with the alignment of the three current tenures of national park into one, the argument that you put forward in your presentation and in your submission I do not understand very well at all. I must be missing the point. My understanding was that the national park level of protection was higher than those other park areas and by bundling them into one almost ensures a greater level of protection than they currently have. So I do not understand where the objection of that comes about.

Mr Ogilvie: It is interesting that you see it that way. If they were at lower levels—which one of them is and one of them isn't actually—and you put them at the higher level what the legislation actually does is say, 'We put them at a higher level but they can still do what they used to do and, by the way, the reason why they were at a higher level is overridden.' So this is where the loss is.

Let me use the example of the bridled nail-tail wallaby in Taunton National Park. The department has quite legally, because the management principles for 'national park (scientific)' allow it, been employing grazing for the purpose of keeping down buffel grass, which was choking up areas that the bridled nail-tail wallaby was using. Under normal circumstances you would not do that in a national park. In fact, in a national park it would not have been legal. But, under 'national park (scientific)', the primary purpose for Taunton National Park is to protect the last 150 bridled nail-tail wallabies in the world. It is the same with Epping Forest National Park, where the purpose is to protect the last 40 to 50 northern hairy-nosed wombats in the world. As a result of that, the park staff have actually been culling native animals which are competing with the hairy-nosed wombat.

With regard to that happening in a national park, the management principles would not allow it to happen because the management principle—the primary principle, the cardinal principle—is permanent preservation to the greatest possible extent. So what you have done is taken something that says, 'We're protecting as much as we possibly can,' but popped something into it that says, 'We can manipulate whatever we want to manipulate for a particular purpose', called it a special management area and said, 'And, by the way, it overrides the cardinal principle when it does that.' To my mind that totally undermines the national park category altogether, and there is no reason for doing it. That is the point. There was a perfectly good category of protected area that did it quite

happily. Nobody was concerned about it, and all of a sudden we are trying to stuff it into something else and basically giving national parks a disease they do not need to have. Sorry, but have I explained it sufficiently? I do not know.

CHAIR: I want to add to that, because this was actually going to be my question as well. What I am struggling with is special management area (scientific) in effect replaces what was national parks (scientific).

Mr Ogilvie: That is right.

CHAIR: So by declaring a particular area special management area (scientific), from my meagre understanding you are applying a similar principle to what would have otherwise been applied had it been declared national parks (scientific), are you not?

Mr Ogilvie: I know, but you are calling it a national park at the same time as doing it and a national park has its own management principles. So in fact you have totally undermined those management principles by putting something in there. It is like infecting somebody with a disease and saying that part of you is a diseased area—

CHAIR: But how is that different than declaring a particular area, and I understand the conservation value of this? I am not disputing that at all. How is that different than taking a piece of what is national park and declaring it national parks (scientific)? Are we not talking about semantics here?

Mr Ogilvie: No, I do not believe so, because you can take what is a national park—in fact, some of the national parks (scientific) were national parks before the category of national parks (scientific) existed. That was why the category was produced, because to do the management that was necessary to protect the wombats and the bridled nail-tail wallabies the level of manipulation could not legally be done under the previous legislation, which was the National Parks and Wildlife Act, which worked on the cardinal principle. So using the IUCN categories, we looked to the category that actually is in fact seen as one of the highest levels of protection, that is, national parks (scientific), but in fact it allows you to protect for a particular purpose which may be one animal—one species—because that species is dying out.

CHAIR: And the special management area (scientific) accomplishes the same outcome.

Mr Ogilvie: It accomplishes it to a certain extent, but it undermines the national park status while it is doing it.

Mr SHUTTLEWORTH: In my understanding of what we are trying to achieve, shouldn't the end game be that ultimately we have a greater land mass of national parks—so if you undertook a special management area for a period of time where the endangered species was rehabilitated to a level where it was self-sustaining, let us say, and then it was included within the national park? To me that is—

Mr Ogilvie: But the legislation does not say that the only special management area you can have is a special management area that was a national parks (scientific) or was a national parks (recovery). It allows the chief executive—not the minister, not parliament but the chief executive—to bang a sign in the ground that says, 'This is a special management area for a purpose I've just thought of.' It does not constrain the chief executive in any way whatsoever the way the legislation is written at the moment. The implication that has been put across in the explanatory notes is, 'Yes, we're just taking national parks (scientific) and popping it in here and we're taking national parks (recovery) and popping it in here with the national parks as well.' It is a little bit like putting all of the sick people in the ward where everything is catching because the whole exercise will affect everything, the whole national park.

So my argument is still strongly that it is far better to retain what you have got that has a primary purpose and that purpose can be seen not to be interfering with anything else, but in terms of what is being proposed the actual legislation says that a special management area can be used for a previous use. It does not say what the previous use is. It leaves it to the chief executive to do it and the chief executive does it by banging a sign in the ground and then putting a notice on the website and saying something in the *Government Gazette*. Frankly, that gives the sort of power to the chief executive to think, 'What use will I allow in a national park?' The cardinal principle means nothing any longer. It is overridden by a special management area.

CHAIR: I am just going to make a comment and then we are going to move to Mrs Scott, just to finalise this. My understanding through reading both the explanatory notes and the detail in the bill itself is that there are parameters put around when a special management area can be applied and why, and my understanding of those principles are that they do not usurp the authority of the declaration of a national park. They are fairly specific in how they can be applied and when.

Mr Ogilvie: The explanatory notes actually state that the legislation is written so that a special management area activity overrides the cardinal principle and all of the previous principles for national park management.

CHAIR: Within a particular set of boundaries and principles.

Mr Ogilvie: The principles that exist at the present moment. What they have done is added a set of principles that said, 'These are the principles for special management areas. And, by the way, the chief executive can declare it a special management area,'—and, mind you, parliamentary counsel is saying that is a fundamental legislative principle breach—and then the chief executive can actually override the cardinal principle which says—

CHAIR: We are going to move on. I think the point is well made.

Mr Ogilvie: I hope so. Thank you.

Mrs SCOTT: Mr Ogilvie, to your knowledge do you know whether any other jurisdiction has objectives in nature conservation legislation that are comparable to this bill and, if so, what have been the ramifications?

Mr Ogilvie: Jurisdictions have what—something comparable to this?

Mrs SCOTT: Yes.

Mr Ogilvie: I am not aware of any other jurisdiction that has attempted to roll all this into one, certainly not any jurisdiction in Australia that I am aware of, no.

Mrs SCOTT: Okay. Some of the stakeholders apparently were consulted on the bill before it was introduced. Are you aware that this courtesy was extended to your organisation?

Mr Ogilvie: It was extended to the National Parks Association, yes. I was not the person who was at that and, because it was confidential, the person who was there was unable to discuss it with me.

Mrs SCOTT: So you were involved in that—your organisation?

Mr Ogilvie: The National Parks Association was invited, yes, most definitely.

Mrs SCOTT: Thank you.

Ms BATES: Mr Ogilvie, earlier you mentioned national parks (recovery), particularly for restoration purposes. I have a rather controversial restoration agreement happening in Springbrook right now. I noticed on your website though—and I am obviously not attributing this quote to you because it is written by someone else—that it says that many popular tracks at Lamington, Springbrook, Main Range and Tamborine national parks are closed because of the failure of this government to make available operational funding for their repair. I just wanted to see if you were actually aware of that on your website and also the fact that places like Purlingbrook Falls have been geologically unstable for a number of years. Warrie Circuit and Hardys Lookout have also been closed for a number of years under the former government. So I just wanted to let you be aware of that on your website if you were not.

Mr Ogilvie: Okay. Thank you very much. I was aware of everything you have said. I am aware of it, yes.

Dr DOUGLAS: Mr Ogilvie, I do not want to get too much involved in what was being said before, and I took on board what you said. I am just interested in what you are saying is the potential or the possible potential outcome that you see as a result of those changes. Your concern obviously is that the director-general or whomever may well just make a decision to change that. What is your major concern? Can you detail it and tell us what you really think? We would like to know what the likelihood of those sorts of things would be as well.

Mr Ogilvie: The likelihood is that a lot of things that we may not even have anticipated at the moment potentially have a legal avenue to operate in national parks. National parks since the Nature Conservation Act came in, and in fact ever since national parks were first declared in 1908, have worked on the basis that national park is the area of strong nature conservation, strong protection and limited use of the resources. What we are seeing now is that that limited use of the resources has been thrown open to a far wider use and our argument is that that wider use has a lot of ramifications that people have not taken into account. For instance, placing a tourist resort right in the middle of a national park means roads. It means sewage. It means water issues. It means weed issues and a whole lot of issues that people do not think about when they are putting up this exercise.

Our argument would be, for instance, that a tourist resort establish on the edge of a national park and the park administers itself in concert with that, which it has done because mention was made on the phone of Binna Burra. Binna Burra and O'Reilly's guesthouse or Green Mountains are both what I consider to be very symbiotic tourist resorts with the national park. They are on private land. Unfortunately, people think they are actually on national park land. They are not and never have been. There is no tourist resort on a national park in mainland Queensland. There are three on the islands at the present moment and there is no need for them to be there inside the park. There is no need for someone to have a monopoly. Our concern is that the parks are suddenly becoming primarily recreation areas and secondarily conservation areas and we wish to retain and restore what has been the case now since parks were declared where they are primarily conservation and secondarily recreation.

CHAIR: I think that is actually a very good segue and summary. I am sorry, Mr Ogilvie, but we are at an end. We need to move on to another witness. Thank you both for your own presentation and submission and that of the organisation. We appreciate the effort and time that goes into doing that. Thank you.

Mr Ogilvie: Thank you to the committee.

BROWN, Mr Ian, Vice-President, Queensland Law Society

DUNN, Mr Matthew, Principal Policy Solicitor, Queensland Law Society

CHAIR: Mr Brown, we have about 20 minutes. I would ask you if you would make an opening statement of around 10 minutes or so to allow time for questions.

Mr Brown: Certainly. Thank you, chair, and thank you to the committee for allowing us to address you today. The Law Society's position in relation to the bill is of perhaps more narrow interest than others'. We propose only to address you in relation to the issue of the proposal of the state's liability and the exposure to liability in respect of incidents occurring in national parks. It is a matter of particular interest certainly personally to me—

CHAIR: Sorry, Mr Brown, in your submission there was a summation of Kelly v. State of Queensland. That is actually in court this week.

Mr Brown: Yes.

CHAIR: And we need to be very careful of sub judice issues. So if any comments are made, please just be mindful of that process in regard to that particular case.

Mr Brown: We certainly do not propose to address that in any substantive way other than in the abstract as it relates to legal principles generally.

As I was saying, my interest in the matter personally is a significant one. I am a long-term resident of Tamborine Mountain and we have some very beautiful national parks up there, so I am well aware of the issues relating to the importance of access to national parks. The Law Society's position really, I suppose, can be summarised in relation to two principal areas (1) that the existing law is sufficient to deal with the issues of the exposure of the state to liability for injuries sustained in national parks; (2) there is no justification for conferring upon the state immunity in relation to injuries sustained in incidents occurring in national parks.

I will deal with the first one, which is the existing law. The Law Society's position is that there seems to be a fundamental misconception that a person making a claim is automatically entitled to compensation. That seems to be the way that the media portrays these types of incidents that occur and people's entitlement to compensation. It is by no means as simple as that. The law of negligence is one that has developed over a considerable period of time and there is a considerable body of law.

The law of negligence is a very adaptive beast. In order to succeed in a claim an individual is required to establish three principal things (1) that there is a duty of care owed to them; (2) that there has been a breach of the duty; (3) that the person has suffered loss or damage as a consequence of the breach. In the society's view, the law of negligence deals very adequately with those particular issues as they relate to the liability of the state in the circumstances that we are discussing.

As I have said earlier, the law is not as simple as stating that a person who makes a claim is entitled to compensation. They must establish (a) that the state owed a duty of care and what the scope of that duty is; and (b) that the state has, by action or inaction, breached the duty.

In addition to the law of negligence we have the assistance of the Civil Liability Act, which was introduced some 10 years ago now. The Civil Liability Act serves to modify and clarify the law of negligence and particularly in relation to the types of incidents that we are potentially talking about relating to injuries sustained in national parks. The Civil Liability Act, as set out in the society's written submission, deals quite comprehensively with people who are injured in circumstances where they are undertaking dangerous recreational activities. There is no liability on the part of the state for a person who is engaging in a dangerous recreational activity in circumstances where the risk is an obvious one. There is no duty on the part of the state to warn individuals of obvious risks when they are undertaking dangerous recreational activities. There is only very limited scope for liability in circumstances where a person is engaging in what we call a dangerous recreational activity.

Secondly, in circumstances where an individual is injured as a result of the manifestation or occurrence of an inherent risk, again there would be no liability on the part of the state. An inherent risk is one that could not be avoided by reasonable care and skill. That does not obviate the duty to potentially warn of inherent risks, but that is a separate issue. In terms of the inherent risk itself and the manifestation of that risk, there is no liability in the circumstances that we are talking about on the part of the state.

Summing up the society's position in relation to the existing law, we say that clearly the existing law is quite sufficient to deal with incidents that occur in national parks.

The second point we would like to make relates to the justification for conferring immunity. It would appear that there are two bases for that. The primary justification appears to be what are referenced as dramatic increases in the liability of, and compensation paid by, public authorities for injuries on public land.

The society's fundamental position in relation to that particular issue is that there is no evidence upon which that statement could be grounded. As the society's submission outlines, when you look at the raw numbers—and I concede it is difficult in terms of the fact that the statistics do not descend into detail in terms of personal injuries claims—you can see that there are declining claims. We are talking about in a gross sense across all claims: 61 in 2009; 40 in 2010; 32 in 2011; and in 2012, where we actually have figures that relate specifically to the Department of National Parks, we have the grand total of seven claims.

In addition to that, we know that the department has corresponded with the committee by correspondence dated 9 September. In that letter they refer in the last 20 years to $2 million having been paid by the state as compensation for deaths and personal injuries sustained in national parks. That could not, we would submit, by any manner or means be considered an explosion in claims or evidence of dramatic increases in the number of claims.

The second justification appears to be that these proposed restrictions are needed because of the government's stated intention of expanding access to national parks for, among other things, undertaking commercial activities. Now, we would have assumed that if the government is entering into arrangements with third-party contractors to undertake commercial enterprises on state government land that appropriate contracts would be in place. State government guidelines require this in any event. That would also include, we would have expected, appropriate indemnities on the part of those undertaking commercial activities on Crown land in relation to any injury that might be sustained to people as a consequence of injuries sustained in the course of participating in activities that might be involved with those commercial enterprises.

So it would seem to us, in the respectful view of the Law Society, that there is simply no evidence that would justify the proposed changes, which are quite extensive. I will ask my colleague Matthew Dunn to address the fundamental legislative principles issue, but the society's very strong view about this is that in the absence of appropriate evidence, the proposed removal or granting of indemnity to the state in these circumstances is unwarranted.

Mr Dunn: We note that one of the fundamental legislative principles in the Legislative Standards Act is that legislation should not confer immunity from proceedings without adequate justification. In the Law Society's view, we have not seen the justification for that.

We also note that the Office of Parliamentary Council was of the view that the current legislation was enough to cover the civil liability issues of the state. That was a matter with which we concur. In terms of fundamental legislative principles, we would say that the onus is really on the state to show the justification for why the abolition of immunity or the apposition of liability is necessary in the circumstances.

In terms of making claims about significant increases in the numbers of claims and payments and such things, we would have hoped that there would have been a little more detail in the explanatory notes to justify why that was the case and how that had happened and what type of matters. Obviously not dealing with individual cases, because there are matters of confidentiality, but certainly aggregate numbers for particular years would have been quite useful and total payouts in particular years would have been quite useful. As a result of our inquiries we have just managed to find the total number of court actions that the Department of Environment and Resource Management was engaged in. Some of those may refer to national parks incidents; some of them may relate to native title claims; some of them might relate to purchasers who have had to resort to the Land Titles Assurance Fund. There is no way of knowing what type of litigation there was and how much was in that. So certainly we would say in terms of justification we would see an onus that there should be some more disclosure about the nature of the increase and what it was. We, in our view, have not seen that, and we would say that that therefore does not justify the breach of fundamental legislative principles.

CHAIR: I am going to ask a question initially. I am just trying to clarify some things. I am not a lawyer, so I do not have that training. The term 'reasonable' within law requires a judgement ultimately. There is an obligation for the government to warn of risk. That is my understanding.

How does the government determine what level of warning versus a particular type of risk, when 'reasonable' is the term being used?

Mr Brown: That is a complicated question because every circumstance turns on its own facts. As I outlined earlier, in relation to dangerous recreational activities there is no liability for the occurrence of an obvious risk arising out of a dangerous recreational activity and no obligation to warn about obvious risks.

Where you descend into a lower category, shall we say, then it is a matter for the occupier—the state—as it is for every occupier, to undertake an appropriate risk assessment of the site, of the activities to be undertaken on the site, of the risks which might occur, of the dangers that might be there and to respond appropriately in relation to warning people of the risks. For example, we see any number of cases that involve people who have jumped from bridges into rivers and have brought claims and been denied compensation in those claims simply on the basis that even had there been signs—and these might be cases where there is no signage—even if there had been a sign, the person would not have taken notice of the sign anyway; that the existence of a sign saying 'Do Not Jump' is adequate to discharge the obligations of the occupier. So it very much depends upon the facts of every particular case what is considered reasonable and appropriate in the circumstances.

CHAIR: I guess my concern here is when you have got a land estate the size of Tasmania spread diversely across a state the size of Queensland, I am assuming there must be a judgement made as to the cost and the potential benefit as a consequence of that cost.

Mr Brown: Certainly the Civil Liability Act itself deals with that, and there are principles set out in the Civil Liability Act in terms of the considerations for the liability of the state and public authorities when claims are made against the state or a public authority. One of those considerations are

Mr Dunn: Can I just add to that particular issue. One other reasonable indicia may be the occurrence of previous claims or the incurrence of previous significant injuries in a particular location. If there is a place that is known for the number of injuries occurring there, then it might be reasonable that that is an area to be focused on. Maybe not even from a liability point of view, but even just from a public safety point of view and trying to keep the public safe in those particular circumstances. That may act as a guide.

CHAIR: Does an indemnity statement extinguish the legal obligation of the government in regard to warning of risk?

Mr Brown: Again it would depend on the particular facts of the case. But generally an indemnity will work in this fashion: if a person brings a claim against a party who has been indemnified, that party is entitled to a full indemnity from the indemnifying party.

Mr SHUTTLEWORTH: We seem to have focused at this point on the undertaking of dangerous activity. I would think that walking on a trail through a national park would not necessarily be classified as a dangerous activity if you are on the path. Once you veer off the path, it may well become dangerous. I think what the legislation is hoping to achieve is that we do not need to have our national parks and pristine environments scattered with warning signs about veering off a path every couple of hundred metres. I guess I am after a statement in regard to that. What we are trying to balance, I think, is having signage plastered everywhere to provide adequate warning for activities that may not be necessarily deemed by a normal citizen as being a dangerous activity, because it is ordinarily not. But once you veer off the path it would be. So we do not want to see signs everywhere.

Mr Brown: I suppose I can address that by reference to the specific example that you give there. Let us assume that a person is walking along a path in a national park. That person is owed a duty of care by the state, because the state invites and encourages people to use the pathway through the national park. Let us assume that that person veers off the path and decides that they will go on a frolic of their own and they fall off a cliff. In those circumstances, it is highly unlikely that the state would be considered to have breached its duty of care. The duty of care is to provide a safe pathway and access through the national park. The duty of care does not extend to saying, 'Don't walk off the pathway and look out for this cliff.'

In those circumstances also the law of negligence is quite adaptive. No doubt, principles like the voluntary assumption of risk might apply, in which case it serves to extinguish completely liability and also contributory negligence, which can operate also to the extent of 100 per cent to exclude a person's entitlement to make a claim for compensation. The advantage of the law of

negligence in those circumstances is that it is adaptive to the particular circumstances of the case. The disadvantage, obviously, of legislation is that it is concrete and monolithic and it does not adapt to the particular circumstances of each case and it can of itself create litigation in terms of the application of the particular piece of legislation. So the society's view in relation to the particular instance that you raise is that the law of negligence is quite adaptive and, in fact, that is how the law of negligence has developed over the past decades to deal very specifically with those types of situations.

Mrs SCOTT: Would you be able to clarify how the object of an act is used by lawyers and courts to determine cases? If there are multiple objectives which may compete, how do courts weigh up these objectives?

Mr Brown: Those issues that you raise in relation to statutory interpretation and the application of legislation really only become relevant when you dealing with the specific application of legislation to the facts of a particular case. In terms of the general principles that you are talking about, I might let Matthew Dunn deal with those in terms of legislative principles.

Mrs SCOTT: Thank you.

Mr Dunn: Thanks. I think in the circumstances the current position for statutory interpretation is that, if the face of the legislation is clear, you read the legislation on its face. If the reading of the legislation on its face is either unclear or it leads to absurd results, what you are entitled to do is go to extrinsic material to be able to interpret what the actual effect of the provision is. That could be going to the objects clause of the particular legislation. It may also be going to the second reading speech of the legislation as given by the minister. It may also be reviewing the explanatory notes to the legislation where they have something useful to say. It maybe also then looking at some other type of extrinsic material that affects what the intention of parliament was in actually bringing that section into life itself. So it is one of the armoury of things that can be used to interpret a provision, but only in circumstances where it is either not clear or it leads to results that parliament could never have intended completely.

CHAIR: Thank you. Mr Brown, Mr Dunn, it has been an education. We appreciate your time. Please thank the society for us for the effort that you have gone to to produce your submission. Thank you very much.

CLARE, Mr Geoff, Executive Director, Nature Conservation Services, Conservation and Sustainability Services, Department of Environment and Heritage Protection

KLAASSEN, Mr Ben, Deputy Director-General, Queensland Parks and Wildlife Service, Department of National Parks, Recreation, Sport and Racing

SMITH, Ms Sybil, Acting Manager, Forestry Industry Development, Department of Agriculture, Fisheries and Forestry

YOUNG, Dr Liz, Director, Policy Reform, Queensland Parks and Wildlife Service, Department of National Parks, Recreation, Sport and Racing

CHAIR: Welcome. Thank you for attending. Mr Klaassen, let us start with you.

Mr Klaassen: I will just make a couple of comments and then hand over to Dr Young, who will do—

CHAIR: Just so we are aware, we will deal by department, if that okay. So we will deal with all of the issues here and then we will move to the other two departments.

Mr Klaassen: That is fine, thank you. I thank the committee for giving the department the opportunity to comment on the matters before you today. We appreciate that and we hope to be able to clarify some of the matters that that have been raised through the submission process and to provide you with appropriate information in your consideration of the bill. Dr Young has been working on this and has some material that she can provide, which will hopefully be of interest and clarification to you. So I will hand over to Dr Young now.

Dr Young: Could I just ask a point of clarification to the chair?

CHAIR: Sure.

Dr Young: We were provided with some questions prior to the meeting. Do you want me to step through those questions as a priority or talk to the submissions that have been provided?

CHAIR: If you could talk to the submissions and comments you want to make now. Some of those answers to questions maybe you could provide to us in writing if we do not get the time to deal with them today.

Dr Young: Sure.

CHAIR: Unless they are pertinent to what you want to say.

Dr Young: We did it the other way around. We addressed all the questions and then left the—

CHAIR: The questions substantially address most of the—

Dr Young: Issues.

CHAIR: We will go that that way then. That is fine. I am open to your interpretation.

Dr Young: There are a number of questions that we were asked. One of the key concerns that was raised in a number of the submissions across-the-board was in relation to how the object of the act is to be interpreted. The first question that the committee asked us to address was why is it that the object of the act needs to be changed to achieve the government's commitment to provide recreational and commercial outcomes in the management of protected areas and how does the current object of the Nature Conservation Act restrict access? In terms of addressing that question, I want to raise two main points. The first relates to certainty and how the act is interpreted. As the act is currently constructed, there are many recreational, commercial and educational activities provided for in the body of the act and in the associated regulations that sit below it. So there are plenty of times in the act when we refer to those things and different tenures allow for different uses. There is a broad variety of uses and some of these are allowed as of right under the act. So something like bushwalking would be an as-of-right activity. Some of them are allowed for under a regulatory notice and some of them actually require a permit. An example of permitted activity might be fossicking in an area.

When we are managing and regulating the act, what we want to do is to have some certainty. I think the previous question that the member for Woodridge asked of the Law Society was around how the object of the act is interpreted. If there is a question around how to interpret the act, it is the

object of the act that is referred to. Currently, the object of the act is the conservation of nature and it does not mention any other of these activities. Within the framework of the government of opening up access to national parks, then a recognition of these alternative uses of the act has been seen as appropriate within the object of the act.

The second point relates to transparency. Currently, we have an act that allows for many things other than just the conservation of nature. Without diminishing the importance or the primary purpose of the conservation of nature within the act, I think there is an extent to which some of these things that we do in protected areas, particularly those of the lower status where the protection of nature is not the only or even the primary purpose of a particular area, then becomes important. For example, it will be in regional parks but there are other tenures that currently exist where we are looking at tenures that are used as multi-use tenures. So recognising that those tenures exist under the act we see again helps in terms of people understanding what the act is for and why it is in place. I think that covers it off in terms of the intent of why we have made changes to the object of the act and to provide for the government's commitment to opening up access.

The committee also asked for some examples of the types of activities that are permitted in protected areas as a result of broadening the object of the act. It goes back to some of the content that I have just referred to but, as a general rule, the changes in the act do not necessarily result in a whole heap of new activity suddenly being allowed in national parks or other protected areas. What it does is provide clarity around being able to achieve recreational and commercial outcomes in the management of protected areas. In terms of providing examples, we can provide those as a written example to the committee.

The question of combining tenures is something that has come up in quite a number of the submissions today and the NPAQ in particular has fairly strong views in terms of whether or not this is a good thing. In terms of the department's perspective and what we are trying to achieve through a park management perspective, in the first instance a lot of it is about what we are trying to achieve in terms of public messaging around what the purposes are of different tenures. At the moment there is a broad variety of tenures under the act and I would be able to submit that two years ago, prior to doing the particular body of work that I am doing now, I could not tell you what the difference was between national park (recovery), national park (scientific), national park, conservation park, resources reserve and all rest of the areas and I suspect that I was probably more informed than the your average person within the public. In terms of providing clarity around use, there is a strong argument to say that, by having two tenures with well-defined management principles that sit around them, with national parks being primarily around the protection of nature and other matters associated with that and regional parks that are defined as a multi-use tenure that is available for many different activities, is a way of providing some pretty significant messaging.

The example that I would use in terms of the complexity and the confusion that can arise is around the term 'conservation park' as it currently exists. Conservation parks allow for a broad variety of uses. Daisy Hill is one that I am particularly familiar with as a mountain biker and enjoying the opportunity that you get at Daisy Hill to mountain bike. If you asked most people, 'What does a conservation park do?' they will say, 'Obviously, it is for conservation outcomes.' Within the act itself, I asked a member of QPWS when I first joined what does a conservation park do. I asked, 'Where is it that recreation is identified as a use of a conservation park?' The answer that I got was that if you read the object of the act and you read the management principles of the act and then if you looked at a definition of some particular part of what was in the management principles that you could find that recreation was, in fact, an allowable use in a conservation park. When people ask for clarity around the use of a different tenure type, that is the sort outcome that we believe as park managers assist us in delivering the government's commitment to ensuring that people understand what the tenures are that they were using. So if they go to a regional park they will understand that that is for a multiple variety of uses and when they go to a national park they will understand that the primary purpose is around cultural and natural protection. So the benefits of combining tenures from that perspective is less a legal one; it is also one about how people perceive what a park is about and then how they use it.

There is also then something to be said in a legislative sense by having two tenure categories that have clearly defined purposes and uses. What happens then is you can construct the legislation, when talking about tenure, as having two primary purposes that you need to provide for within the act and for regulations then to follow suit.

So instead of having eight or nine or 10 different tenures that you need to keep on repeating various activities for, what is the difference between a national park (scientific) and a national park? And if it does not have any differences, then you are cross-referencing within the legislation. A lot of

that legislative complexity and similarly within regulations can be removed; some of it cannot be removed immediately; some of it is over time. But I think it allows for a clearer act in terms of the way it is constructed.

The fourth question the committee raised was in relation specifically to the different approaches to the declaration of resource use areas and special management areas. I think that there was a bit of discussion previously about how special management area is used, and I might be able to touch on some of that briefly as well. Under the bill, a special management area over a national park is proposed to be declared by the chief executive through a gazette notice. This process provides a fairly significant and high degree of delegation. It cannot be delegated below the chief executive, but it also provides a degree of flexibility. So yes, we have to announce that through a gazette notice, but you do not have to have a regulation or create a new tenure to do something new on a particular patch of national park.

The primary intention there was to provide for a flexible tool that park managers could use to respond to specific management issues. We talked a lot about how national park (scientific) was being translated into a special management area (scientific). Those uses can continue, but I think in the future if we have got a national park where we find that there is a new or emerging issue that needs to be addressed through similar sorts of manipulative practices, instead of having to go through a process where the tenure of the park is changed, which is an extensive and time-consuming process, this allows the chief executive to make that decision. There are very specific and explicit management principles that contain both (recovery) and national park (scientific). While it is a flexible tool, it really can only be used to maintain and enhance the values of the park in the first place. It is very carefully constrained and was deliberately done so within the way that the legislation was drafted.

When it comes to existing interests—which I also notice was a point of some contention as well—a special management area for an existing interest can only be declared in the future on areas of new national park where there is an existing interest on the area that you want to make a part of that national park. For any future gazettals what we are saying is that if you have got a block of land, you want to make it a national park and there is an existing interest, what we have done in the past quite often is put something in the legislation that puts a sunset clause sometime in the future when that existing interest has to expire—it is usually 20 years down the track—when the existing managers, and, indeed, government, have no existing responsibility over the land. What we have said is in those instances we can declare a special management area for an existing interest. We have to define what that interest is, we have to permit it accordingly and it may not have a detrimental effect on the park into the future. On an existing national park in the future you cannot rock along and say, 'Hey, we want to now declare something as an existing interest national park.' It actually has to be an existing interest at the time of the gazettal of the national park.

There is clearly some existing interests on national parks now that are provided for under previous use authorities, so what we have done is we have said for those particular previous use authorities a consideration will be taken at the time when they expire as to whether or not an SMA existing interest will be provided for. If you have an apiary site on a national park now and that permit is going to expire in the future, at that point of expiry we will consider whether or not it is appropriate to allow for that to continue to take place under this particular provision, but also noting that it may not have a detrimental effect on the park around it. They are the things that we will have to take into consideration.

I think the main point that needs to be understood in terms of the special management areas is that they are predominantly designed to be a management tool for park managers to allow us to respond to the variety of things that happen in an appropriate way. If every time you want to do something in terms of a scientific action or a recovery action you have to change the tenure of a park, then what you are saying is you have to get involved in a very extensive and time-consuming process that can be done as well through the declaration of one of these areas. We see that as being in direct contrast to the use of a resource use area. These are the areas that are currently provided for under a resources reserve.

As we mentioned, we are still clarifying how we put beyond doubt what the intention of these things are, but the intention is for existing resources reserve to all become a regional park with a resource use area on it. In the future no existing conservation park that becomes a regional park will be available to come under a resource use area. In the future once a regional park has been declared you cannot have a resource use area on it. We are still working with parliamentary council to confirm the particular tool that will be used to ensure that, but that is how it is designed.

The main difference here is we see that mining is a significant use of a protected area. The only reason why we'd do this is where there has been a mining interest that we have not been able to say whether or not it is going to proceed in the future, we want to dedicate an area or have a potential gazettal of an area in the future for protected area status—and what is the impediment to doing that is that there is that mining interest there—we can put a resource use area over there until either the resource is exploited or there is a decision that it is not worth exploiting, and then it will be removed. So it creates a way that we can in fact expand the protected area estate more effectively, which is very similar to our resource reserve that's been used historically. I think it is really important to see special management areas as a flexible management tool. A resource use area is very much about defining and containing a particular use, but allowing us still to create a national park into the future.

Another theme that came up in quite a lot of submissions and that there has been a bit of concern about is what is happening to forest reserves. This is a question that is raised by the committee because it is a thing that is picked up in a variety of different submissions. The whole process that is taking place with forest reserves at the moment is we are actually undertaking an assessment of all the remaining forest reserves that are under that tenure. That assessment is a scientifically based assessment that looks at each area's nature conservation values, its cultural values, its economic values and a variety of values. Based on that, an assessment will be made of those that have the appropriate values to go to national park tenure. An assessment will also be made of those that are appropriate to go back to state forest tenure. A decision will be made about the split, and then based on that assessment those areas will go back into their relevant tenure classes and the forest reserve tenure will be of no use in the future, because we will have decided whether it should all be national park, regional park or whether it needs to go back to state forest. So that is a process that is currently underway.

The next question that was raised by the committee is how to deal with the tension between the apparent different management principles for different tenure classes. I actually want to talk about these as two separate issues.

What happens in national parks compared to what happens in regional parks are actually two quite different things because of the way that the tenure and the management principles are established. In a national park there are two types of management principles: the first of those management principles is around the cardinal principle, which is the protection of the area to the greatest possible extent; the second is to identify that there are other uses of those areas that may take place. It is very important to realise the particular language that is used in the management principles, because it says that those other uses can only take place if they are consistent with the natural or cultural values of the area. The apparent inconsistency between the cardinal principle and this secondary thing does not in fact really exist, because if another use is consistent with the natural and cultural values of an area then it is going to be consistent with the cardinal principle as well. What it does is then just brings in and flags that these other areas are used for alternative uses but recognises the constraints that have to take place, so I would not consider there to actually be a strong tension between them at all.

Regional parks are different because regional parks are going to allow for multiple uses, and these multiple uses are recognised in the management principles. You are going to have people that want to use an area for mountain biking. You might have people that want to use the same area for horse riding and for a variety of uses. This already exists in conservation parks. The management principles are not designed to resolve that tension. They identify what the appropriate uses are, and the only way that you can resolve those issues is through a planning process that identifies how those different issues are going to be resolved. So if you want to have a new pathway, what are the things that you are going to allow on that pathway? You can only make that decision when you are looking at the particular uses that people want for that. Is it horse riding? Is it mountain biking? Is it walking? If you have got a pathway that you are going to use for walking then we need to look at alternative options for the mountain bikers, and that sort of thing. Those potential conflicting uses need to be identified, and then it is a separate process for managing those differences. That is very similar to the way that the management principles currently operate for conservation parks.

There is a question around the public notification issues that have been raised in a variety of the submissions and in relation to a variety of processes. The primary matter here is that rather than going to a newspaper—which I think has been the traditional way that legislation is stipulated that you do public consultation activities—the department has actually moved towards using web based access to information as a cost-efficient approach to managing information flow to the public. This

department is not the first department to do it. In terms of the resources that are required, every time you take out an advertisement in a newspaper compared to web based, the cost is significantly greater. I think a typical ad in a newspaper cost $20,000, but to put it on our website costs us very little money.

I guess there is a concern that has been expressed around the appropriateness of using web based activities. As someone who uses the web rather than ever reading newspapers now, you could make the alternate argument. But because the resources efficiencies associated with the web are pretty significant, that is the general direction that government departments are going. Having said that, the department is able to make decisions about particular issues and whether or not it would think that putting an ad in a public newspaper is appropriate. These are the sorts of decisions that we would argue need to take place on a case-by-case basis. If there is an issue in relation to national parks that might particularly affect seniors, for example, who do use web based activities a lot less, then there is going to be a more significant emphasis on using alternative forms of communication. If we were to do a youth based project, then there would be absolutely no value in going out. The department and the minister see that there is a difference between those things that you have to have as prescribed under legislation to communicate, and those things that we would do voluntarily because we want to engage stakeholders. While you can look to legislation to do all those sorts of activities and you can stipulate what has to happen, that often results in significant resource inefficiencies; whereas, if you tailor your communication needs to whatever the outcome is that you are trying to achieve, then this can enable those sorts of communications to be much more effective and resource efficient.

The final significant issue that has been raised is around the differences between management plans and management statements. I note that the committee had quite a significant interaction with various groups who made different submissions about the difference between a management statement and a management plan. Because the legislation is new and has yet to be introduced, we are still in the process of developing exactly what will be included in the management statement, and we can provide a bit more information to the committee in terms of a written communication. But management statements, like management plans, will provide strategic direction for park management. They will provide approaches to monitoring and evaluation of park management, and they will also identify what the forward sort of strategic planning and supporting strategies are going to be to enable that. In that sense they do not differ very significantly from management plans.

From a park manager's perspective, being able to use management statements instead of management plans has significant resource implications for the department. We do not believe that it is tenable to be required to provide a management plan for every park in Queensland.

We also do not believe that it is tenable to provide for a public consultation process for that very small park that might be up north somewhere that has limited public interest. It still absorbs time and resources. The department has an interest in engaging with stakeholders when stakeholders are interested in how areas are managed. So on that basis we think that the way that the provisions are currently constructed provides a fair bit of flexibility. The statements will be posted on the website. If someone has a concern about a management statement or how a national park or a protected area is being managed, they can contact the department to raise those issues through a variety of processes, and using management plans and the resources they require to focus on those key parks where there are significant issues that require community engagement to resolve is considered to be the most significant tool. Given the time, that is our response to the eight questions that were directed to us by the committee. In the last 10 minutes, there is a question that was also the responsibility of EHP.

CHAIR: We will probably go a little bit longer because we started a little bit later. Do you have any further information you would like to share, because I would be happy for you to continue for a little bit longer?

Dr Young: Each of the submissions are obviously coming from different perspectives. In relation to the concerns raised by the NPAQ, the key issues that I have already discussed I think cover off what the department can say. Most of the other areas are actually differences of policy opinion between the NPAQ and the government of the day. So in that sense those differences are there, and it is not really the place of the department to engage too much further on those. So I think I would leave that one there. I think most of the other things that we raised the committee actually drew out through their questions.

In terms of the issues that were raised by Balkanu and Cape York Land Council, we have analysed their concerns and we have had a look at them. In our view their concerns around the legal application are not necessarily the case. Just taking, for example, the first concern that they raised—which is about how the change in management principles to a national park could impact on an IMA or an ILUA—if you look at the current wording of the management principles of a national park it actually refers to other uses. They have (a), (b) and (c), as they rightly pointed out. Paragraph (b) currently refers to other uses. All we see the those management principles as doing is specifically identifying those other uses. There is no intention for these management principles to be used that in any way that places Aboriginal tradition to be any less significant.

One of the things that we will go back and do, just to confirm, is to get some further legal advice in terms of each of the particular concerns that they have. We will get advice on the department's view. Our interpretation at the moment is that it does not have that effect; their interpretation is that it does. So the best way to resolve those issues is to go away and get some additional legal advice to confirm how the act will be applied.

The Queensland Law Society raised some concerns about the Civil Liability Act. My interpretation of how I would respond to their concerns is that there were some pretty key words that they kept using. A lot of that places significant emphasis on how courts will understand things and interpret things in varying circumstances. We have taken the perspective of as a park manager how are you to know? I know that the issue of the science has been raised, but if you are a park manager and you have a waterhole that you are trying to manage and from your perspective putting up one sign that warns of a potential risk seems adequate, as a park manager how do you know what degree of certainty do you have that when you put that one sign up a court of law will consider that to be sufficient or should it be two signs or three signs? How are you to understand or interpret that grey area?

As the chair mentioned, the protected area estate is extremely big. We manage a very vast area of land. Sometimes there are things where it is quite clear how the current legislation applies in terms of the Civil Liability Act. There are some circumstances where it is easy to say, 'We need to protect people from the overhanging cliff that might fall down and therefore a warning sign is appropriate there.' But there are plenty of examples within a protected area state that do not fit into that category. So what we are trying to do is provide that certainty for park managers in terms of how they can understand what it is that they can and cannot do or where the risks are for them.

I think it is very important to recognise that the legislation is quite constrained in the way that it does it. It very specifically links responsibility to the department for things that we know that we are responsible for. So if we build something, then we are responsible for it. If we do a controlled burn, we are responsible for it. But if it could be associated with an act of nature or there is some ambiguity about that, if it falls outside of those things for which we know we are responsible for, then that is where the civil immunity can take place.

In relation to the claim that there is insufficient evidence of the extent to which these claims are escalating, I noted that in our reply that we provided on 9 September, yes, we noted that there was $2 million worth of claims in the last 10 years, but we also noted that there is currently $11.9 million claims, I believe, that are currently still to be determined. Sure, some of those claims will not be successful but that quantum of costs I think demonstrates the escalation in costs that the department is facing in terms of the numbers. We can get some further legal advice about whether or not we can provide any further detail on that. As you understand, there are certain confidentiality issues. I think I will leave it at that.

CHAIR: If everyone is okay, we will continue for another 10 minutes past five o'clock. I think it is important that we continue while we have folks here who would like to hear some of those responses. Are there any pressing issues that any committee member wants to ask Dr Young before we move on to one of the other departments? No. I have one question and it is to do with the declaration of an SMA. Is an SMA time limited in its declaration?

Dr Young: No, but time will be specified based on an assessment of what needs to take place. So in declaring an SMA—the policy work is still to be developed around this, but the intention is that an SMA will not be forever, that a time frame will be provided in a very similar way to when we permit a particular activity, and at the end of that particular time frame we could then extend it, renew it.

CHAIR: So a review would need to be conducted in a particular time frame.

Dr Young: The review would always be conducted. For an SMA I think you are probably talking about existing interests, whereas I was actually thinking of the other ones. The intention will be to provide a time frame that is appropriate to the activity. So depending on the activity and the risks of that activity then it would be varied, and there would be a monitoring process associated with that to ensure it does not have a detrimental impact on natural and cultural values.

CHAIR: If there is nothing pressing, we will move on. Thank you, Dr Young. I will move to Ms Smith, if you would please address us.

Ms Smith: Thank you, Mr Chair. Based on the nature of the questions directed by the committee to those of us here at the table yesterday and also based on the matters raised here today, I do not propose to raise anything further unless a member has a question for me.

CHAIR: Members? No. Thank you. We appreciate that. Mr Clare, it is over to you.

Mr Clare: Thank you, Mr Chair. From an EHP perspective, our review of the submissions suggests that the two questions that have been asked would be the primary focus of what we address this afternoon. So I will address those two questions.

CHAIR: Please.

Mr Clare: The first question the committee asked related to advice that I provided at the last hearing about the new offence provision for turtle and dugong. I said that there was already an offence provision for that and the committee has asked for some clarification as to why a new offence provision would be required. The most direct answer to that is that the policy objective of this amendment is to increase the penalty for a particular action—the selling of turtle and dugong meat—that is already part of a broader offence provision, meaning the take, use and keep of dugong and turtle. But, because of the drafting considerations, it is necessary to create an additional offence to which that higher penalty would apply. That is the short and direct answer to that question. I can elaborate if you wish.

CHAIR: No. I think that is satisfactory.

Mr Clare: The second question related to the matters raised by the Balkanu and Cape York Land Council submission in relation to the potential for that additional amendment to have concerns in relation to native title. It might take a little longer to answer that. The amendment was drafted to achieve the objective I just outlined to provide an additional deterrent to the illegal trade of turtle and dugong meat. The government has an election commitment to address the illegal trade of turtle and dugong meat whilst also recognising the rights of traditional owners under native title. In putting this amendment together, we based our amendment on legal advice at the time that, as I have just mentioned, there is already a general offence provision for the sale of turtle and dugong meat and also that the Native Title Act—the law as it was known at the time—does not extend native title rights to the commercial sale of such products.

The decision that was referred to in Balkanu and Cape York Land Council's submission is very recent. It was only made last month by the High Court, and we were only aware of it as a result of the Balkanu submission, so we have not had a lot of time to look at it. On face value it does bring into question the legal advice upon which the amendment is based. It may mean that there is a potential native title right to sell. The implications of that for the amendment are unclear. We are seeking legal advice on that matter. I am not in a position to advise further at this time on whether, if the amendment was made in its current form, that would create issues or generate a liability for compensation. But what I can emphasise—and this is reflected in the explanatory notes—is that the government's intention with this amendment is not to infringe in any way native title rights, and that remains the case. At the committee's discretion, once we have firm legal advice we can provide further information to the committee.

CHAIR: Unless the committee have any other questions, we might actually finish sooner than expected. Thank you. I appreciate very much your attending here today. You sat through the whole lot and I appreciate that also. As you know, the report needs to be tabled very, very soon. So if there is any outstanding information we probably need that by early next week, if that is possible. We understand that legal advice may not come that quickly, so we will probably make some reference to that in our report, that if the minister has that advice available during the second reading debate that would be worthy of noting at that time.

It is time to draw these proceedings to a close. I thank all the departmental officials. Thank you again to all of today's witnesses. I remind you that the transcript will be available from the committee secretariat. I declare the hearing of the Health and Community Services Committee closed.

Committee adjourned at 4.59 pm