COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

ENVIRONMENT AND COMMUNICATIONS LEGISLATION COMMITTEE

Environment Protection Reform Bill 2025

Public

FRIDAY, 14 NOVEMBER 2025

CANBERRA

BY AUTHORITY OF THE SENATE

ENVIRONMENT AND COMMUNICATIONS LEGISLATION COMMITTEE

Friday, 14 November 2025

Members in attendance: Senators Ananda-Rajah, Duniam, Ghosh, Grogan, Hanson-Young, Henderson, McDonald, David Pocock, Thorpe and Walker

Terms of Reference for the Inquiry:

To inquire and report on the Environment Protection Reform Bill 2025

WITNESSES

WITNESSES

SAMUEL, Professor Graeme, AC, Private capacity

Committee met at 09:02

CHAIR (Senator Ghosh): Good morning, all. I declare open this first hearing of the Senate Environment and Communications Legislation Committee's inquiry into the Environment Protection Reform Bill 2025 and six related bills. I begin by acknowledging the traditional custodians of the land on which we meet and paying my respects to their elders past and present. I extend that respect to any Aboriginal and Torres Strait Islander peoples here today. These are public proceedings being videostreamed via the parliament's website, and a *Hansard* transcript is being made. If there are no objections, the committee authorises media recording and photography of the committee's proceedings in accordance with Senate resolution 3. I remind any media in the room or media entering the room that this permission can be revoked at any time, and the media must follow the direction of secretariat staff.

I remind all witnesses that, in giving evidence to the committee, they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence. The committee generally prefers evidence to be given in public, but, under the Senate's resolutions, witnesses have the right to request to be heard in private session. The Senate has resolved that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and should be given a reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted.

If a witness objects to answering a question, they should state the ground upon which the objection is made, and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Commonwealth officers appearing today are also reminded of the Senate order specifying the process by which a claim of public interest immunity should be raised. A copy of the order is available from the secretariat.

The extract read as follows—

Public interest immunity claims

That the Senate—

(a) notes that ministers and officers have continued to refuse to provide information to Senate committees without properly raising claims of public interest immunity as required by past resolutions of the Senate;

(b) reaffirms the principles of past resolutions of the Senate by this order, to provide ministers and officers with guidance as to the proper process for raising public interest immunity claims and to consolidate those past resolutions of the Senate;

(c) orders that the following operate as an order of continuing effect:

(1) If:

(a) a Senate committee, or a senator in the course of proceedings of a committee, requests information or a document from a Commonwealth department or agency; and

(b) an officer of the department or agency to whom the request is directed believes that it may not be in the public interest to disclose the information or document to the committee, the officer shall state to the committee the ground on which the officer believes that it may not be in the public interest to disclose the information or document to the committee, and specify the harm to the public interest that could result from the disclosure of the information or document.

(2) If, after receiving the officer's statement under paragraph (1), the committee or the senator requests the officer to refer the question of the disclosure of the information or document to a responsible minister, the officer shall refer that question to the minister.

(3) If a minister, on a reference by an officer under paragraph (2), concludes that it would not be in the public interest to disclose the information or document to the committee, the minister shall provide to the committee a statement of the ground for that conclusion, specifying the harm to the public interest that could result from the disclosure of the information or document.

(4) A minister, in a statement under paragraph (3), shall indicate whether the harm to the public interest that could result from the disclosure of the information or document to the committee could result only from the publication of the information or document by the committee, or could result, equally or in part, from the disclosure of the information or document to the committee as in camera evidence.

(5) If, after considering a statement by a minister provided under paragraph (3), the committee concludes that the statement does not sufficiently justify the withholding of the information or document from the committee, the committee shall report the matter to the Senate.

(6) A decision by a committee not to report a matter to the Senate under paragraph (5) does not prevent a senator from raising the matter in the Senate in accordance with other procedures of the Senate.

(7) A statement that information or a document is not published, or is confidential, or consists of advice to, or internal deliberations of, government, in the absence of specification of the harm to the public interest that could result from the disclosure of the information or document, is not a statement that meets the requirements of paragraph (1) or (4).

(8) If a minister concludes that a statement under paragraph (3) should more appropriately be made by the head of an agency, by reason of the independence of that agency from ministerial direction or control, the minister shall inform the committee of that conclusion and the reason for that conclusion, and shall refer the matter to the head of the agency, who shall then be required to provide a statement in accordance with paragraph (3).

(d) requires the Procedure Committee to review the operation of this order and report to the Senate by 20 August 2009.

(13 May 2009 J.1941)

(Extract, Senate Standing Orders)

CHAIR: I also remind senators of their obligations, under the behaviour code for Australian parliamentarians, to treat witnesses with dignity, courtesy, fairness and respect.

On that note, I welcome Professor Graeme Samuel. I understand information on parliamentary privilege and the protection of witnesses giving evidence to Senate committees has been provided to you?

Prof. Samuel: Yes.

CHAIR: Is there anything you wish to add about the capacity in which you appear today?

Prof. Samuel: I'm with the Monash Business School, but I think for this purpose I was the independent reviewer of the EPBC Act in 2020.

CHAIR: Thank you. I invite you to make a very short statement if you have one, but, if you're happy to proceed to questions, I think we can.

Prof. Samuel: I'm happy to proceed to questions. You have my submission.

CHAIR: Thank you. I will go first to Senator Hanson-Young, the deputy chair.

Senator HANSON-YOUNG: Thank you, Professor, for being here. We know this committee sought your opinion on things in relation to the EPBC reform a number of times, so a number of the questions you'll get asked today are ones you've covered before. Firstly, you've now seen the full package that the government has put forward.

Prof. Samuel: I have.

Senator HANSON-YOUNG: Have you seen the draft standards that have been released?

Prof. Samuel: I think there's only one that's been released: the MNES standard. I haven't had time to go through it yet. I think that's awaiting submissions by January, but I will go through that over the next few weeks.

Senator HANSON-YOUNG: Has the current minister engaged with you throughout the process of this latest iteration of the development of this package? Since the minister took office, I've had several meetings with him and with members of his office. We've talked about various elements of it, but, as it's got close to the formulation of this package, it's become the minister's process.

Senator HANSON-YOUNG: And your submission that you've given us today—you wrote that?

Prof. Samuel: I did indeed.

Senator HANSON-YOUNG: It wasn't drafted or checked by the minister's office?

Prof. Samuel: No. I've had no communications with the minister in relation to the submission, and a copy was provided to the minister's office only after the committee authorised the distribution.

Senator HANSON-YOUNG: Great. One of the issues that you raised that was fundamental to the review that you did into the existing law was there were a lot of weasel words in the act, a lot of wriggle room for decision-makers to either take a stronger environmental position or a weaker environmental position when making decisions. Is that a fair assessment?

Prof. Samuel: Absolutely. I think that goes to the heart of the criticism of the EPBC Act.

Senator HANSON-YOUNG: Are you satisfied that those weasel words have been tightened up in this iteration put forward by the minister?

Prof. Samuel: I think what will be important is the rules, as I call them—the national environmental standards. My exhortation there both in the review and subsequently in the submission is to remove the weasel words, be quite granular—and 'granular' is intended to be very detailed—be supported by guidelines and then be

supported, ultimately, by rulings by regulators. The fundamental requirement in the act is that rulings by regulators should not be inconsistent with the NES, the environmental standards. The standards are going to be the important iteration of where we're at. Of course, the important thing about the standards is that they're disallowable instruments, so they have to go before the Senate and can be disallowed by the Senate or by the House of Representatives, as the case may be. Parliamentary control over the content of the standards is preserved.

Senator HANSON-YOUNG: You are saying that, really, in order for any of this to work, it's the standards that are the linchpin. They're the rules. They have to be strong enough and they have to be enforceable.

Prof. Samuel: There is no question that, as I said in the submission, in various public comments and in the review, the standards are the fundamental foundation stone. But you've got to put in place the structures first, and that's what this legislation does. It puts in place the structures, including the power of the minister to produce standards in the form of regulations. Then, of course, there is the NEPA, the National Environment Protection Agency and Environment Information Australia. So that's putting in place all those structures, and then the standards should follow. Frankly, they're the ones, I think, that will get the greatest attention, and they need to, because they're the rules.

Senator HANSON-YOUNG: Could I ask you about forestry, because I remember having a number of conversations with you, both in public hearings such as this and in your consultation process that you ran, about your concerns that the regional forest agreements that oversee the logging of native forests in the states are exempt from existing EPBC law. Is that still a concern of yours?

Prof. Samuel: Absolutely. You'll recall, I think, that in the discussions we've had I've said—and I've said so publicly—that I hate the RFA exemption. It shouldn't be there. The only thing is that, because it's the subject of agreements which run through to 2030, it was essential that a national environmental standard be created to actually put some boundaries around the RFAs. If it were possible—I'm not sure it is—to actually remove the exemption, frankly, that's what I would do. I don't think you can do it. I think it starts to run into some serious difficulties with the states and territories.

We have seen a move made by Victoria. Originally, Premier Daniel Andrews said—how do I quite describe it?—that the RFA exemption and the deforestation of native forests would cease in 2030. I had a bit of a chuckle about that, because that was when the exemption ceased. But then he brought that forward—I think it was to January 2023 or 2024—and so Victoria's taken a lead there, and I commend it for that. But it is fundamentally important that if the RFA exemption is to still be there—I wish it weren't there in the first place, but if it is to still be there—it should be governed by a very tough national environmental standard.

Senator HANSON-YOUNG: It does seem extraordinary that the destruction and logging of native forest that is critical habitat to threatened species is exempt and has a carve-out from our national environment protection laws. It doesn't make any sense, does it?

Prof. Samuel: Well, you've heard my views. I don't like the RFA exemption. I didn't like it at the time of doing the review. I do remember at the time saying to the members of the secretariat, 'Is there any way we can abolish this and get rid of the exemption?' They said, 'No, you can't; it'd run into all sorts of'—I don't know about constitutional, but—

Senator HANSON-YOUNG: Political problems, perhaps?

Prof. Samuel: Well, yes. Invariably, when you've got this, you've got political problems, particularly with the forestry workers. But Victoria managed to deal with that or bit the bullet. It had to, by the way. I think that what VicForests was doing was—how do I put it? Well, we're under parliamentary privilege. I thought it was criminal, and I think the—

Senator HENDERSON: That doesn't mean there won't be consequences.

Prof. Samuel: Sorry? Yes, but it was. It was awful—what was occurring there—and I think Premier Andrews ultimately appreciated that and decided that was it and it had to stop.

Senator HANSON-YOUNG: Thank you. Back to the issue of various loopholes and weasel words—the fact there is too much wriggle room around the existing laws. What I'm interested in is that we have a number of submissions—and I just want to thank everybody for getting submissions in so quickly, actually, Chair. I think the community affected on these issues have—this inquiry has come along very quickly, and we've got some very thoughtful submissions. In them, there is a lot of criticism that this package puts in even more discretion for the minister of the day and that, even when the standards exist, they don't actually have to be enforced if the minister sees fit.

Prof. Samuel: I don't think they tried to, with respect, Senator. I think that the words 'not inconsistent' are very important.

Senator HANSON-YOUNG: 'Satisfied'.

Prof. Samuel: Yes, but the words 'not inconsistent', to me, seem to be the overwhelming words and the words that will govern the decisions by the regulators. As you know, I envisage that ultimately states and territories will be accredited to make those decisions; it won't be the federal minister that'll be doing it. But it's fundamentally important—it seems to me that, when you've got those rules, the rules have to be followed.

Senator HANSON-YOUNG: Yes, and I guess that's the concern—

CHAIR: I'll have to move the call on.

Senator HANSON-YOUNG: This is the last one. The concern, Professor, is that the legal strength of a test for the minister to be satisfied that the decision is not inconsistent—it's actually quite a weak legal test. How do we overcome that?

Prof. Samuel: Through the NES. I'm hoping the NES will put a straitjacket on regulators and, indeed, on the minister. One of the discussions we had with the consultative group which I've referred to—they're listed in appendix A to the report—was to say the NES are going to control what accredited states and territories can or can't do and will also control what the minister can or can't do. They said to me, 'We don't trust the states and territories.' I said, 'But the NES will keep them under control.' And then I'll have my environment assurance commissioner—we call it now the NEPA, the National Environment Protection Agency—to oversee what states and territories are doing and to oversee what the Commonwealth's doing. It was very interesting that, around the table, there was hardly an agreement as to who can be trusted: states, territories or the Commonwealth—didn't matter. I said, 'That's the nature of a democracy.'

In the end, the NEPA, as it will be, will provide an annual or maybe more regular audit report on decisions made by the minister, the Commonwealth department and states and territories—their regulators. And that report has to be tabled in parliament. Ultimately it's going to be a matter for the electorate to decide whether or not the minister has abided by the NES and the like. Ultimately there is an accountable authority. In this case the senior authority will be the federal minister, the Commonwealth minister, who will be accountable and answerable for any criticism that's made in the annual audit report that'll be put forward, in my draft, by the EAC, the environment assurance commissioner, and, in the legislation, by the National Environment Protection Agency.

Senator HANSON-YOUNG: Thank you.

CHAIR: Senator Henderson.

Senator HENDERSON: I've got a few questions, Professor Samuel, and then I'm going to hand over to my colleague Senator McDonald. Professor, Australian businesses have said of the proposed reforms that they do not work for business and cannot be supported in their current form, and that's also supported by the Western Australian Premier. He said, of the resource sector:

… we also need to make sure that industry continues to be encouraged.

Do you support the legislation in the current form, without any amendment?

Prof. Samuel: No. If you look at my submission, I've done two or three things. One is to raise a concern about the national interest exemption, or override; that didn't work out. I have to say that my recommendation on that was made in a paragraph or two, but I didn't think more carefully about how you would define 'rare circumstances', as used in the recommendation, or define what the national interest is. In the submission, I suggested that that should be removed out of the legislation; that these sorts of issues should be dealt with as part of the MNES—that is, the standards relating to matters of national environmental significance—and that the national interest should be a balancing matter. Whether the minister takes that up is for him to deal with and for parliament to deal with.

Senator HENDERSON: What is the risk if he doesn't take that up?

Prof. Samuel: Abuse of power by a minister. And, also, the risk for the minister is there will be a conga line of lobbyists outside their door saying, 'Just use the national interest exemption.' I would take it out of the legislation and simply say it is now a balancing matter that ought to be taken into account in determining approvals and assessments, and I've detailed that in the submission. Also, I've made an attempt, with the assistance of AI—I make that declaration—to provide some guidance as to what might be the national interest. But it would be impossible to set out, in detail, every item that would be regarded as the national interest. You're likely to have too many or too few. And trying to define 'defence'—it's very broad. The other thing—

Senator HENDERSON: Can I ask you to summarise, very quickly, any other amendments that you are proposing.

Prof. Samuel: I haven't proposed other amendments. What I have done, though, is to provide a caution and an exhortation, particularly in relation to the rules, the national environmental standards, that they be very explicit, quite granular and quite detailed. I identified what I called a self-help hierarchy. If I could just—

Senator HENDERSON: To move on, apologies, we've just got such limited time.

Prof. Samuel: Yes. But I just wanted to pick you up on one thing with your question. Sorry, Senator. You said that business is opposed. I'm not detecting that from the Business Council.

Senator HENDERSON: No, that's not correct. I said that business cannot support the legislation in its current form.

Prof. Samuel: I'm not picking that up from comments made by the Business Council or others. I think what they're saying is that this is a lot better than what we've had. It achieves the balance of efficiency and efficacy, which was what I tried to achieve.

Senator HENDERSON: Yes. Professor, we won't speak for other witnesses other than just to say that they've made it clear they don't, as a general proposition, want to pass the bills in their current form. Can I quickly move on, because I've got such truncated time. In your 2020 recommendations, you did not recommend an EPA. I note in your submission to this inquiry, you state that the proposed EPA structure will have a conflict of interest, which can be overcome by limiting the EPA to be specifically defined as one of audit and oversight only. I want to understand. Do you stand by your 2020 recommendation that the assessment and approval functions must stay with the department and the minister?

Prof. Samuel: It's been interesting. I think this NEPA or the EPA is an albatross that's been hanging around all this process flowing on from some promises that were made prior to the 2022 election that there be an EPA set up. I think there needs to be a clear delineation between decision-making in respect of proposals for development and the like and the oversight. Now, I had hoped, I have to say, when the review was done, that the accreditation of states and territories would take place very quickly through the use of bilateral agreements. The minister, for example, has indicated that he is in a position, potentially, to have a bilateral agreement with Western Australia. You could potentially see other states and territories following on from that, although that will be a matter for negotiation and discussion with them.

Now, if that happens, the role of the EPA to make decisions on proposals will very quickly diminish to almost nothing, and the fundamental role of NEPA will be as I envisage—that is, with the EAC. It's just a nomenclature issue—but it will fundamentally become an oversight.

Senator HENDERSON: Professor, I'm sorry to be brief. I am going to hand over to Senator McDonald, because we have lots of questions to get through.

CHAIR: Senator McDonald.

Senator McDONALD: Good morning, Professor Samuel. I want to follow on from some of Senator Henderson's questions with regard to the definitions, particularly 'net gain' and the 'net gain test' not being clear in the proposed legislation. Do you support the concept of net gain and the net gain test being allocated into the standards?

Prof. Samuel: Yes, I do. One of the issues that we were concerned about when we put together the review was this: offsets, which, actually, I was really concerned about from day one, were not resulting in either a protection of habitat or, more importantly, a net gain to the environment. So what we had was that you might have a damage to a habitat, to take an example, which was potentially going to cause more damage to the orange-bellied parrot, but what someone would do was provide an offset that would relate to koalas. That didn't seem to me to make sense. Like for like was important but equally important was that what we did had a net gain to the environment as a result. I am pleased that what the government has come up with in this legislation is something that says, 'You can't just buy your way out of a problem in terms of damage to the habitat; you've got to actually have a net gain.'

Senator McDONALD: I appreciate what you are saying, but the lack of definition of net gain and unacceptable impact, I fear, is just going to mean that for projects that we do want to see being developed—I'm assuming that your thrust is that you want to see Australian projects continue to develop whilst managing environmental impacts—this is just leaving the door open for lawfare and uncertainty, and we're just going to see a lot of money spent in the courts.

Prof. Samuel: I have to go back to the rules again and the national environmental standards. When we've got all those out there—and they're subject to review by the House of Representatives and the Senate—my exhortation, and it's in the submission, is they will be sufficiently granular that there'll be no doubt. That ought to diminish the prospect of lawfare and the prospect of merits reviews. It ought to be clear to business and to environmentalists that particular proposals either satisfy or don't satisfy the standards. That's the hierarchy of self-help that I've identified in the submission and which is provided for in the context of the legislation currently before us.

Senator McDONALD: I'm going to assume, then, that you would support additional clarity. We're seeing within the draft legislation definitions that have 'shall' or 'may' and variations right throughout the legislation. It will open the door to that lack of clarity.

Turning back to the EPA CEO, the reforms as they stand mean there is no accountability to the government, to the minister or to elected officials—the whole point of a democracy—and the CEO can't be held to account on performance outcomes. In your submission, you state your commissioner would be reporting to the minister. Do you still stand by that position—that the EPA CEO should report to the minister and be able to be terminated by the minister if their performance does not meet the statement of expectations?

Prof. Samuel: I've always been a great advocate of transparency. The EPA needs to be transparent as to its processes and the work it's doing. That needs to go before parliament, as it would by reports to the minister. That's what I proposed with the EAC, and I think the same thing is occurring with the EPA. I'm not sure 'lack of accountability' is the correct description of the way the NEPA has been established. It's important that it be independent but that, at the same time, reports are made to parliament for analysis by parliament. That will bring accountability to state and territory regulators, the Commonwealth and the Commonwealth minister, and all that will be dealt with as a result of reports being made to parliament.

Senator McDONALD: I appreciate it provides transparency but it still doesn't provide a pathway for an outcome, particularly if the parliament is not satisfied. I return to this question: should the CEO be accountable to the minister?

Prof. Samuel: I go back to my days when I was chair of the ACCC. I was always accountable to government and to the minister but I exercised an independent role as chair of the ACCC. I would assume the same thing applies here.

Senator McDONALD: You know what they say about assumptions! Let's see if we can get some clarity, because assumptions are not ideal. The New South Wales government is looking to use the MacIntosh methodology in order to justify koala habitat protections. I believe the MacIntosh methodology was one you specifically spoke against. Could you delve into your memory on that specific issue?

Prof. Samuel: You are really delving into memory! I can't help you on that, I'm sorry. I don't have enough information, and I don't have enough information as to what New South Wales is proposing to do either.

Senator McDONALD: Chair, if there is time, I would like to come back to the RFAs.

CHAIR: Senator Ananda-Rajah.

Senator ANANDA-RAJAH: Professor Samuel, thank you so much for all your work over many years. Can you convey to the committee why it is so important that we get on with these reforms. Why are they so urgent?

Prof. Samuel: I tried to explain this in the submission I made. The review was embraced by a large number of people. If anyone doubts that, I've got all the emails in the folder that I've retained, and they are emails almost universally of congratulations and of appreciation for the work done and for the outcome. That resulted particularly from the interim report and the consultation which took place. I visited over 100 different organisations, and senators and members of the House of Representatives as part of this process.

But then, following the interim report, I drew together a consultative group of 19 very focused individuals and organisations and said to them, 'This will be my review, totally independent. I've consulted with a hundred different organisations. But now, if you insist on 100 per cent of your aspirations, you won't get them. It's likely that in those circumstances you'll get nothing. So let's take a quantum leap forward, and I trust that you'll be satisfied with the review that will provide for at least 80 per cent of your aspirations.' When the review was finished and it was released in January 2021, those around that consultative group said, 'Yes, you've satisfied that undertaking.' As I say, I've got the massive congratulations on the review.

We've had five years since then. There have been various attempts made to do something, and I won't comment on the political machinations that have occurred, other than to say that I've been bewildered by what has occurred

with the current opposition, both in government and subsequently in opposition. The position there has changed over and over again, and it troubles me.

We have now a situation where a quantum leap forward has been made. In my view, 80 per cent of the aspirations of the consultative group have been achieved with this legislation. It puts in place the foundation stone. The next thing that will be built on top of that is the environmental standards. We've already got one, the MNES, as a draft. I have some views on that, which I'll put to the committee and to the department early in the new year.

Here is a chance to have a quantum leap forward and to actually take us a long way down the route of implementation of the review. That's not to say—I won't be arrogant enough to say—that the review is absolutely correct. What I will say, though, is that all the relevant stakeholders—with one exception, the Western Australian chamber of mines—turned around and said: 'Congratulations. Thank you. This is what we had hoped for in terms of the environment.'

In the concluding paragraph of my submission, I say that this is not for me. It's not even for those in the department that assisted with the review. This is for our future generations. I'm hoping they can look back to November 2025 and say, 'Thank you to our forebears for doing something to not only protect but restore our environment.'

I opened my submission—and this is the last thing I'll say on this—with something that really moved me, and that was when I visited only a few weeks ago the Healesville wildlife sanctuary. I saw the efforts that have been made by volunteers and by experts at that sanctuary to try and recover the near-extinct orange bellied parrot, which I was amazed by, and also to do some recovery work on what has become the endangered Tassie devil. It seemed to me an extraordinary thing. But, more importantly, they said to me that thousands of schoolchildren had been to the Healesville Sanctuary over the holidays, and that said to me that there were parents and children who wanted to see what wildlife was about and were particularly interested in these recovery actions that were taking place. That says to me that the next generation, for whom we're all here, really wants to see something done. This is the big opportunity to do it.

Senator ANANDA-RAJAH: Do you think that the current bills balance business as well as environmental interests adequately?

Prof. Samuel: I have to say to you, as I've said over and over in public comments, that what we tried to achieve with the review was efficiency and efficacy. I think we've done both. The ultimate implementation of the legislation, along with the environmental standards and the self-help mechanism that I've described—the self-help hierarchy is built into the legislation. Once we've got that, businesses will be able to turn around and say: 'We know exactly what's required of us. If we comply with that, we should be able to have a tick, tick, tick all the way through. If we don't comply with it, we know we're going to get a rejection.' In terms of efficiency, it really makes it a lot easier for business to deal with. But importantly, efficacy is equally there. For those that are truly concerned about the environment, as I am, as I hope the review report indicates, what it will do is say, 'Business, you can't do things which are contrary to or inconsistent with the environmental standards. You can't do things which are going to damage the environment. And if there is damage to be done by what you're proposing and it can't be avoided, remember there's the avoidance mitigation and offset hierarchy. You have to do something to provide a net gain.'

Senator DAVID POCOCK: Thank you for your time, Professor Samuel. I want to start by asking about forestry. In response to Senator Hanson-Young's questions, you described what Victoria was doing with its forests as 'criminal'. I note that New South Wales Forestry Corporation has been convicted for environmental offences more than a dozen times. Is it your view they are also a criminal organisation, and that currently native forest logging is just totally unsustainable?

Prof. Samuel: I might regret the use of the word 'criminal' but I did so recognising I was under parliamentary privilege. It's a loose expression to describe what I think is, frankly, horrendous in dealing with critical habitat, both the habitat itself but also the species that are threatened. I have never liked the regional forest agreements. They should not have been subject to an exemption. It goes back in history some time. I wait impatiently for 2030 when they expire. But I'm hoping what we'll have is an RFA environmental standard that would start to put some very tough boundaries around them, and then the sort of thing I've read about in respect of New South Wales will actually have to come to a halt. Look, we saw it happen in Victoria and it was outrageous, frankly. But the nature of politics, I think, was allowing it to continue, and great credit to Premier Daniel Andrews that he called a halt and said, 'That has got to stop. It's just not right.'

I understand the political implications and their issues relating to forestry workers, issues relating to communities that might be impacted, but, look, we've got to deal with those because we are talking about the environment and nature. I prefer to use the word 'nature' for those future generations that I've referred to in the report and referred to in my submission.

Senator DAVID POCOCK: I'm concerned that the bills as drafted represent a departure from your review in some very key areas. You'll appreciate I don't have a lot of time, so I just want to run through a few areas where reforms seemed to have departed from the review, and get your thoughts and confirmation that that is the case. It seems that a core tenet of your review was the need for greater certainty, yet the bill allows regulations to be made to inform interpretations of standards, including where they're applied and what regard a decision-maker may have. Do you agree that this does not meet the desired outcome for greater certainty?

Prof. Samuel: I'm repeating myself a bit, but the fundamental requirements, once we get the foundation structure in place, are the national environmental standards. My exaltation in this submission is that they should follow the review in their granular and specific clear nature so that decisions can't be made by regulators and applications can't be made by business or by developers that are inconsistent with those standards. So specificity is very, very important, and the standards need to be granular, they need to be specific and then, importantly, there needs to be the appropriate oversight by the NEPA over adherence to those standards. So anything that might look a bit vague in the legislation is intended to be completely overcome by the instruments which are these standards, which will be part of regulations that will be hopefully introduced the moment this legislation is in place.

CHAIR: This will have to be the last question, Senator Pocock

Senator DAVID POCOCK: Okay, I might ask a different question then. On page 44 of your review, you say, 'Each individual development may have minimal impact on the national environment, but the combined impact of development can result in significant long-term damage.' We've heard ecologists across the country talk about death by a thousand cuts. Do you think that the agricultural exemption to land clearing sometimes referred to as the 'continuous use exemption' be removed so land clearing is assessed against standards?

Prof. Samuel: I think it raises two issues. One is the importance of regional plans. I comment upon that, and they again should be the subject of an environmental standard which will describe what regional planning ought to be. 'Landscape plans' is perhaps the other way of describing it. To say that agricultural land clearing is exempt overstates it. I'd have to go through all the details, but there's a number of constraints on that. Again, the environmental standards ought to make it clear that there is nothing you can do in relation to land clearing or forestry or other issues which might impact upon critical habitat and threatened species.

Business needs to understand that if they're going to proceed with certain proposals, they've got to also take into account the environment, or nature as I want to call it. I use the word 'nature' carefully because I think words like 'the environment' get somewhat merged into issues of climate and biodiversity. Frankly, the average punter out there doesn't really know what biodiversity means, so I use the word 'nature'. That's what our schoolchildren are focused on at the moment. So anything that is going to damage nature both presently and into the future needs to be subject to strict rules in the environmental standards and they will govern the way that applications for development are dealt with.

Senator THORPE: Good morning, Professor Samuel. I want to thank you for appearing today and remind everyone that the devastation and destruction of land and water in this country is a direct result of colonisation to Indigenous people worldwide. It's not climate change; it's people who have destroyed the very thing that we need to survive. On that note, Professor Samuel, your review recommended that all standards be introduced in draft form alongside the legislation to ensure that they work together effectively. You also recommended that the First Nations engagement participation standard be developed alongside all other standards as a foundational element. Now, given we're always the afterthought and tacked on as a little token gesture in every facet of legislation in the colony, in your view, is the reform package incomplete without these standards? And how crucial is it that we see these draft standards before the bill passes?

Prof. Samuel: I think you can pass the bill, which puts in place the structure, the legislation and in particular enables the minister to be able to then promulgate instruments through regulation, the standards themselves. The important thing is that the standards are disallowable instruments; therefore, the House of Representatives or, in the context of this committee, the Senate, has the ability to reject standards if they don't meet up with the requirements that the Senate considers appropriate.

I should say, by the way, and you'll pick this up when you read chapter 2 of the review, I became quite passionate about engagement with First Nations. I was bitterly disappointed with the engagement that had occurred in the past, both in respect of joint boards of management, Kakadu and the like, and with respect to

consultation with First Nations in respect of developments. It was almost tokenistic, it was symbolic, and it was not appropriate. Therefore, I made strong recommendations there which ought to appear in the appropriate standard, the national environmental standard, relating to First Nations engagement.

It's fundamentally important that we avoid a repetition of Juukan Gorge, which occurred because there was not appropriate disclosure of the consultations that had occurred. They were potentially tokenistic, and there wasn't an appropriate disclosure of responses by the Western Australian government to those consultations. So there are a range of factors there, but there's a fundamental requirement to deal with two issues. The first is proper engagement with First Nations. You don't engage with one person when you've got about 300 communities around Australia involved in First Nations. The second thing is that, when you're dealing with joint boards of management, the members of the boards of management need to be properly informed as to their rights, their responsibilities, the legal implications and the like. My engagement, for example, with the Kakadu Board of Management showed to me in the most distressing form that that had not occurred and that needed to be rectified.

Senator THORPE: I think the people of Murujuga would argue around consultation. What we saw at Juukan is about to happen at Murujuga with the support of, unfortunately, the environment minister right now. We're going to see the desecration of Murujuga rock art. You stated in your review that environmental decisions must incorporate First Nations' ecological knowledge and that this knowledge must have equal weight in environmental decision-making. Do the current bills give First Nations people any meaningful authority, or do they continue the symbolic and tokenistic culture of 'consult and ignore'? May I remind you that consultation is not consent, even though Labor thinks it is. I understand you criticise that heavily in your review. So what's your opinion on that now?

Prof. Samuel: Again, I have to refer to the standard. The standard that was in the review was drafted in consultation with a group that was led by Aden Ridgeway and a group of about 20 members of First Nations. I'm not aware of where the current drafting of the standard is, but that's the sort of thing that ought to be the subject of a detailed standard in the manner in which I described in my previous answer.

Senator THORPE: You also mentioned in your previous answers that it's not up to one person or two people, whereas I understand that it actually is, in the consultation process so far. With the heritage alliance, which the minister is so-called consulting with, it has come down to two individuals that are speaking on behalf of all clans and nations in this country. What's your advice there in relation to your review?

Prof. Samuel: Clearly, because I don't have enough knowledge of that particular matter, I can't comment upon the way the consultation is taking place. My reference to single people was a reference to the various committees that have been established. For example, the threatened species committee, which is a fundamentally important one in identifying species that are threatened or that are potentially extinct, had one 'representative' of First Nations. That didn't seem to me to be a satisfactory way of dealing with 300 communities around Australia. The heritage council, I think, might have had two 'representatives'. That, again, didn't seem to me, particularly in dealing with heritage, to be a satisfactory way of dealing with it, although every effort was made by the chair of the council at the time—I think it was Professor David Kemp—to engage in proper consultation.

Then there are other committees. I remember one committee where I went and spoke to them and talked about this symbolic nature, and they said, 'Yes, we don't have a representative of First Nations on our committee; perhaps, we should appoint one.' I said: 'You haven't listened to a word I've been saying. We don't want representatives. What we want is proper consultation occurring with First Nations. They're vitally important in terms of dealing with heritage and dealing with the preservation of nature.' I did quote at the time a single article that had appeared in one of the newspapers following the New South Wales bushfires. It was an article referencing the expertise that could have been provided by First Nations, derived over 50,000 years, as to how to limit the bushfires. But no-one seems to—because they haven't done a university degree, they seem to be ignored.

CHAIR: Senator Thorpe, I'll have to move the call on. If you have any further questions, they can be put on notice. I'm going to move briefly to Senator McDonald, and then we'll finish with Professor Samuel. Senator McDonald.

Senator McDONALD: I want to return to your 2020 review, Professor Samuel. You recommended a commissioner, not an EPA, and I want to clarify why you chose a commissioner as your preferred option over an EPA.

Prof. Samuel: I tried to cover this before. Let me try and make it clear. I was focusing on an oversight role and a commissioner—it didn't worry me whether it was a single commissioner or two or three commissioners as the case may be; that's a decision by government. The fundamental role of the EAC, as I called it, was to oversee

the activities and the processes and the determinations that would be made by accredited state and territory regulators and governments and the Commonwealth.

I think I was probably being hopeful, I have to say, that the accreditation process would occur very quickly. That may not be the case. It's taken five years to get to this point, so I'm not sure how it will happen. Although, I do note, as I said before, that Minister Watt is already publicly stating that he is negotiating with Western Australia and the Western Australian Premier in terms of a bilateral agreement that might apply to Western Australia. I like the context of competitive federalism because, when an agreement is done with Western Australia, you can well see other states and territories saying, 'Hold on. If that's going to work for business and the environment in Western Australia, perhaps it might also work in Queensland,' or, 'in New South Wales,' or, 'in Victoria,' and we might see a rush of accreditations that could take place.

What this is about is actually saying that what we want to do is to put in place a body that can act as an oversight body. I have said to successive ministers that you don't need a body that's very large if you've got accreditation in place, because, ultimately, it won't be making assessments and determinations on proposals. That may be a bit of time down the track. We'll have to wait and see how the accreditation process occurs.

Senator McDONALD: One of the key outcomes of your review was removing duplication and red tape and green tape. The proposed reforms have proponents being required to report on scope 1 and scope 2 greenhouse emissions even though the information is not to be used for decision-making or for condition setting. However, there is duplicating superior legislation that requires emissions reporting. So we're now talking about additional time and cost for businesses who are not required by superior legislation to report, and, again, it creates litigation opportunities. What are your views on how we're duplicating these requirements, particularly given your initial point about making it a more streamlined tool?

Prof. Samuel: I wouldn't have thought that disclosure was going to be a duplication. If you've got to disclose—say, for the purposes of the safeguard mechanism—then, in my view, you should also disclose in respect of a proposal for a development that is seeking environmental approval. And scope 1 and 2 are where the disclosure occurs. What I did draw a line at, though—and Senator Hanson-Young and I have talked about this on previous occasions—was that I didn't think that a climate trigger as such ought to apply under the environment legislation. It struck me that we already have evolving policies which are in place in respect of carbon emissions where there are over 100,000 tonnes per annum that are at stake and that they should be dealt with under the evolving policies of the time. So disclosure is made. You've got to make disclosure for safeguard. You might as well make disclosure as well for your proposal in respect of an environmental approval. That needs to be backed up with proper data and proper analysis, and then at that point in time it's referred to the climate division of the department to be dealt with under the evolving policies of the time. And, as we know, those policies will evolve over time.

CHAIR: Senator McDonald, was that your final question?

Senator McDONALD: It wasn't my final question. How much more can I squeeze in?

CHAIR: Can we have one more question, and then, if you can put the remainder on notice, that would be fantastic.

Senator McDONALD: Professor Samuel, I think I'm speaking to different businesses to you. They are very actively approaching me and Senator Henderson and others about how unhappy they are about the additional uncertainty in this proposed legislation—which is what we're seeking to improve through this process. Businesses have told me that the proposed 37 definitions over eight pages of unacceptable impacts are not working. The criterion is uncertain, it's subjective, and it may catch projects that would objectively be viewed as appropriate. They cite that many already approved projects would not have been approved and that many future projects would not be able to submit an application. Suggestions to overcome this include replacing the definitions with a universal criterion and with guidance placed in the standards. Would you support that kind of clarification and change?

Prof. Samuel: As I've said over and over, I think the rules, the environmental standards, are going to be very important in terms of providing granular detail as to what's required under the act. And that's the purpose of the standards—the purpose of the regulations. The guidelines will be equally important because they will help to explain how the standards apply and how they might be interpreted. Then, I'm hoping that there'll be a compendium of rulings, very similar to what we have with the Australian Taxation Office rulings, that people can refer to and through which they can understand how things might apply.

Senator, you'll have to forgive me, but I have been involved as a regulator and as a reformer, particularly in national competition policy and subsequently with the ACCC as chair of that regulatory body, and I have to say

that I am somewhat cynical about representations that are made by business where they can see a potential opening to try and weaken law, laws or legislation, or regulation or regulators—believe me, I've been subject to that sort of approach on many occasions—in their favour. I understand what you've described, coming from various business groups. I can also say to you that the same business groups, if they're the ones that were part of the consultative group that is listed in appendix 8 to the report, all said to me that the report and the review met their imperatives. It met their requirements. And it's not surprising, after five years of chopping and changing and detecting some weaknesses on the part of various political parties in relation to what we're dealing with, that various stakeholders—be they business or conservationists or whatever—will start to say, 'Why don't we have a go at getting a 100 per cent aspiration in place, and let's forget the 80 per cent that we agreed to when Graeme Samuel sat with us as part of the consultative group?' So I am cynical.

Senator McDONALD: I appreciate that, but 37 definitions over eight pages doesn't pass, I would suggest, even the most simple of pub tests. This is a separate issue to your review. We are now looking at black-letter law and trying to implement your recommendations. What I'm trying to understand is whether or not this aligns with your recommendation for greater reduction of red tape and green tape and for clarification and certainty—or are we just sending these businesses down a legal pathway with money spent on law and not the environment?

Prof. Samuel: There seems to me to be a lot of benefit in having granularity in the requirements of the law. Granularity enables business to be able to say: 'This is more efficient. I know what it is I've got to do. I know what it is I can't do and am not permitted to do.' And that's the self-help mechanism that I refer to in my submission and which is encompassed within the legislation. Granularity, whether it's in the legislation or in the rules, the environmental standards, is fundamentally important to providing efficiency—at the same time as providing detailed instructions to regulators as to what they can allow and what they can't allow. All that seems to me to be very much in favour of business while at the same time, in terms of efficiency and efficacy, providing a very effective set of rules that will then be able to tell regulators and proponents of developments, 'This is what you can do, this is what you can't do, and this is how we're going to bring about a net gain to our nature.'

CHAIR: If there are any further questions, if you would put them on notice, that would be wonderful. Thank you, Professor Samuel, for your evidence today. If you took any questions on notice or later receive any, could you please endeavour to provide the answers to the secretariat as soon as possible. You go with the committee's thanks.

FORRESTER, Ms Nicole, Chief Regenerative Officer, World Wide Fund for Nature Australia

LAWLESS, Ms Eleanor (Elle), Senior Nature Campaigner, Greenpeace Australia Pacific

O'SHANASSY, Ms Kelly, Chief Executive Officer, Australian Conservation Foundation

RITTER, Mr David, Chief Executive Officer, Greenpeace Australia Pacific

SYDES, Mr Brendan, National Biodiversity Policy Adviser, Australian Conservation Foundation

[09:59]

CHAIR: Welcome. I understand that information on parliamentary privilege and the protection of witnesses giving evidence to Senate committees has been provided to the witnesses today. I'm seeing some nodding at the table. We're running a little bit behind time. I appreciate the effort that's gone into your submissions. You are welcome to make a short opening statement, but, if you're happy to rely on the submission or submit the opening statement, that would definitely assist us logistically.

Mr Ritter: I'm very happy to assist you, Chair. There are opening statements prepared, but we'll hand those up in the interests of time. Perhaps, for a one sentence summary, it's the position of our groups that the bills, as they're currently presented, are inadequate to protect nature.

Ms O'Shanassy: I'm happy to continue.

CHAIR: Thank you. I will go to Senator Hanson-Young.

Senator HANSON-YOUNG: Thank you all for being here, and thank you for getting your submissions in so quickly. I understand that the timeframe has been very short for this hearing. Of course, this inquiry goes until the end of March. If there is other information that comes out, please feel free to feed things into us. You've all said, overarchingly, that this package doesn't deliver what nature needs as it is. Could I ask you: are you worried about more loopholes being in the legislation than the legislation that exists right now?

Ms O'Shanassy: Yes, because the 25-year-old act enables extinction and enables destruction of habitat because it has discretion, it has loopholes, and it doesn't have a rules based focus to it. There are some elements of the reforms that help that, such as the national environmental standards, which provide those rules and a National EPA that should be the decision-maker, but, then, these nature advances that have been made have been unwound or undermined by greater levels of discretion, by the idea of devolving the responsibility of decision-making to other states, territories and NOPSEMA, where we believe the federal government should hold that responsibility. There are opportunities for efficiency in assessments and, of course, for the carve-outs for protecting forests, and for protecting climate. Climate is not in the current act and is not in these proposed amendments, meaning that we can't actually protect nature in this country unless we protect forests and we have a clear plan to have a look at what future projects' impact on climate change would be.

Senator HANSON-YOUNG: You mentioned the carve-outs that currently exist and haven't been fixed by the government's proposal that's before us. The two striking ones are of course the RFA exemption and the continuous use exemption. So that we're all clear, what those exemptions practically do is allow for the logging or bulldozing of forests and woodlands, even if there are native species that are threatened living there. Isn't that correct?

Mr Ritter: Yes. This is absolutely fundamental to some of the existing problems with the act that are not addressed in the package that's currently being put to you. The idea that you can protect nature while you are having vast swathes of Australia's forests and woodlands being cut down without referring to whether that is going to impact endangered species or whether it's going to impact critical habitats is obviously absurd. We see the consequences of that absurdity in the destruction that's actually occurring, for example, in the Great Barrier Reef catchment area. We know full well that the consequence of the devastation for the reef as well as for the terrestrial habitat was half a million hectares taken down in 2019-20 and 2022-23. That is the consequence of the bulldozing of forests and woodlands in an agricultural context through continuous use exemptions and through state exemptions. Then we of course see other carnage that occurs as a consequence of the exemption of the RFAs that were very colourfully described by Professor Samuel just now to the committee.

Senator HANSON-YOUNG: They're gaping holes in protection. The fact is that this package fails to protect our forests and bush, even when it's the home of endangered animals. What about some of the other concerns you've got? There is even more discretionary language in this package. I asked Professor Samuel earlier about his major concerns with the existing law—that it is riddled with get-out clauses, weasel words and wriggle room—but there's now even more discretionary language in this. Are you concerned about that?

Ms O'Shanassy: Absolutely, because, if you don't fix the discretion, you won't protect nature, but you also won't develop this country. You can't have a renewable powered Australia move forward if no-one knows the rules around how you develop a renewable energy site, for example. The key to both protecting nature and having efficiency in our decision-making processes and assessment processes is having clear rules that don't have any weasel words in them and a decision-maker that is a professional at it, that is a regulator that does it on a daily basis, understands the environment, understands business needs and can educate business on what they need. That's the National EPA.

Those two elements are critically important to make this law work for nature—I won't speak for the business community, but I think they would say 'and work for business'. Unfortunately, while there are some advancements in the bills on that, they're then undermined by these weasel words that I think Professor Samuel talked about. There's the opportunity to devolve or accredit, but it's really devolving decision-making responsibility to others where the time taken is in the assessment process. The federal government should maintain its decisions. It can have joint assessment processes with states and territories that maintain the decision-making through the National EPA.

Senator HANSON-YOUNG: Let me be clear about that. I'm keen to know whether this is a concern you all have. This devolution of powers or accrediting states to make the decision as opposed to having that held at the federal level—is that a problem for you?

Mr Ritter: We're just being polite to one another here.

Ms O'Shanassy: And Nicole.

Mr Ritter: And Nicole. Matters of national environmental significance are properly the subject of the national government, and we don't support the shifting of those sacred obligations out from the national government, no.

Senator HANSON-YOUNG: So you don't have a problem with either the states or the federal government doing the assessment, but the final decision should sit at a federal level? Let's take WA, for example. A proponent in WA wants to establish a new mine, and, if the state is accredited under the rules and under the standards, it could be accredited to run the assessment. But you don't think it should be left to the Cook government to make the final decision?

Ms O'Shanassy: Yes. Matters of national environmental significance should be the responsibility of the federal government. Also, we've often talked about a joint assessment process. Yes, states can be accredited to do that work as long as—we have some issues also with some of the processes, particularly around the streamlined approval process. How are communities going to be engaged properly in that? Communities are reaching out to us terrified by not understanding and, seemingly, having the opportunity for their say curtailed. So you need to have a community engagement standard, which doesn't exist, and a First Nations engagement standard. First Nations communities have also reached out to us since the bills have gone out.

Whilst we think a good structure for efficiency is to have standards where everyone just knows from day one what they have to do—and those standards should include ones for nature and for engagement. You can meet those, and, if you meet all of those standards, then maybe you can qualify for a faster assessment process. But, if you don't know what your community engagement requirements are, then you should not qualify for a streamline. So get the standards right. They provide the rules so that everyone knows what they need to do, and then you can have a single assessment process. It can be accredited or it could be shared. But the decision-making, which doesn't take the time, needs to be held by the federal government and, we say, the National EPA, because different governments make different decisions on nature, and that's not right.

Senator HANSON-YOUNG: One of the key issues that's been raised by other submitters in this realm is the overriding of the water trigger. Are you concerned about that? It seems extraordinary that there is—the Albanese government extended the water trigger. It was put there by the Gillard government originally, and this is something that was meant to safeguard Australia's precious water supply, particularly for communities, as well as the environment. Are you worried that that water trigger can be overridden by a state government that is desperate to please the miners?

Mr Sydes: Yes. We don't support this proposal at all. As you've referred to, there's currently a limitation written into the EPBC Act that prevents that water resources trigger from being devolved to state and territory governments. The proposal is for that to be removed. The only reason to do that, because a water trigger only applies to coal and gas projects, is to facilitate the approval of coal and gas projects.

As you said, the water trigger was introduced under the Gillard government when Tony Burke was the environment minister. It was a response to community concerns about the impact on water resources from coal and gas projects. The government responded to those concerns and introduced a trigger. It was clear that that

needed to stay with the federal government, as you've also said. As you know, it was expanded—responding once again to community concerns, including First Nations concerns about the scope of the water trigger—to unconventional gas in 2023. To now say, 'We'll remove that limitation and allow for that water-trigger approval process to be devolved to state and territory governments,' is extraordinary and dismissive of the community concerns that were recognised when the trigger was first introduced and when it was expanded, noting that both of those things happened under ALP governments. The government is fond at times of referring to the limitations that they're subject to under Howard-era laws. These are initiatives and expansions that were put in place—what's covered under the legislation of the Gillard government, initially, and then the Albanese government.

Mr Ritter: Greenpeace would strongly share that view.

Senator HANSON-YOUNG: So the only people who would be happy about that happening would be the mining companies. Removing the water trigger is a sop to the mining companies, isn't it?

Mr Sydes: Or the Northern Territory government or the Queensland government, who'd much prefer to have the Commonwealth out of the way when it comes to these matters.

Senator HANSON-YOUNG: What about the fast-tracking of coal and gas projects that this new package would allow to happen? Coal and gas can use the streamline process. They can use the go-zone process. They can use the national interest exemption, if that's what the minister of the day likes. Coal and gas can even access this new offsets program. Are you worried about what this package will do to accelerate fossil fuels?

Mr Ritter: Yes. These things would be clearly inappropriate. Our overarching view would be that climate harm is real and that climate harm is part of the physical reality that the people of Australia and nature are facing. In order for this act to do what it says on the cover, it needs to have ways of appropriately embedding what climate harm is doing to nature in Australia within the aegis of the act. The idea that anything would be introduced to makes it easier to do more harm to nature is simply obscene. There are multiple ways, we would argue, that the act can instead be improved to take proper account of the harm that climate impacts are doing to nature.

Senator HANSON-YOUNG: You make a good point. While these proposed changes require disclosure of anticipated emissions for some projects, there's no consideration of what that should mean. In fact, the minister is prohibited from considering it in making a decision. That seems absurd to me. New environment laws in 2025 that don't take into consideration the damage that climate pollution is doing to nature? How can these really be described as environmental protection laws?

Ms O'Shanassy: That's right. In particular, it's the scope 3 emissions from these projects that are coming up through the EPBC assessment process that are the knockout punch for nature. They are the emissions, as I'm sure we all know, that are released when the oil and gas is burnt overseas. That is not covered by any Australian policy or law, and there is nothing in place at the moment by any government to try to drive that transition away from the fossil fuel exports to clean exports. There's a lot of talk, but there's nothing else there. So, when the government and the minister say it is covered, it is untrue that it is covered. It is a knockout punch for nature alongside the habitat destruction that is enabled through this current bill, which is why we want to see the bill substantially amended. The current status quo is horrific for nature, and that can't be allowed to continue. The bill as it stands is highly problematic. It has some decent architecture and a lot of that has been undermined by things that could be easily fixed.

Senator HANSON-YOUNG: It seems to me that, based on the problems that exist within the package that's been put on the table—and I take your point that even the bits that are potentially beneficial are then undermined—you have an override of the water trigger, you don't stop native forest logging and land clearing and it can fast-track coal and gas, expanding fossil fuels. So, as it is, this is worse than what we've currently got in law. This isn't a step forward if it were to pass in this form, is it?

Ms O'Shanassy: No. With amendments, it could be a substantial step forward because a number of those equivocations or weasel words can just be removed. The national environmental standards can be made granular, as Professor Samuel talked about so that we provide that rules based decision-making but also help the business community know what they are required to meet. So this is not something that our groups support, which is very disappointing because we have worked on this for so long. It can be amended. We hope that the parliament can work on that. In the five years since Graeme did his original work, and 10 years after the original review, nature, habitat and forest destruction and climate pollution are really going unchecked in this country. If we do not protect nature, we cannot protect ourselves, our economy, our jobs or our lives.

Senator HANSON-YOUNG: You've referenced the standards and the rules quite a few times and that they need to be robust and enforceable. There's this tension, right? The way that the law's written means that the

minister can apply the standards, but doesn't necessarily have to. There are all these exemptions to that or abilities to justify not doing that. That the strength of an enforcement is not there in the current draft of this legislation is obviously a problem. But the standards themselves are not in the law of this package. There are going to be regulations that sit outside it. Have you had a look at the two draft standards that have been released so far?

Mr Sydes: Yes.

Senator HANSON-YOUNG: Let's take the national environmental standards—those that are relating to matters of environmental significance. What's your take on those that you've seen so far? Do you think that they're sufficient? If they were enforceable—they're currently not in the way the legislation is drafted—do the standards themselves stack up?

Mr Sydes: As a statement of high-level outcomes—which is one of the things the standards are supposed to do—I think they're a reasonable starting point. They lack the granularity, though, that Professor Samuel was talking about. It's unfortunate, perhaps, that he hasn't had a chance to have a look at them yet. I'm sure he'd look at them and say, 'This is just not what I had in mind,' in terms of the granularity—the detail—that was supposed to be in these standards as subordinate instruments.

There are some specific things that he recommended in his standard for matters of national environmental significance that haven't flowed through into the draft standards. For instance, some suggestions around dealing with cumulative impacts seem to be absent from the current draft standard, as well as the very specific suggestion from Professor Samuel around climate and considering avoidance and mitigation proposals in the context of different climate scenarios. There's a lot of focus on emissions and how they're dealt with in the system, but he also recognised the need for the fact of a changing climate to be considered across the board in decision-making when you're looking at things like what the impact on threatened species' habitats is going to be and whether this is an appropriate proposal to proceed with. That hasn't been picked up in the standard at all. That's deeply unfortunate.

CHAIR: Senator Hanson-Young, after this question I'm going to rotate the call.

Senator HANSON-YOUNG: Do you think that those climate impacts are things that should be picked up in the existing NES standard or are you proposing that there should be a climate standard that sits outside that?

Mr Sydes: I think the consequences of climate change for the things that the act is supposed to protect need to be picked up across the board. They definitely need to be picked up in the core standard—the one for matters of national environmental significance that I was just referring to—and they should be deeply embedded in the architecture of the act. They're not at the moment, and there is no proposal to change that, and that's fundamentally problematic.

Senator HANSON-YOUNG: You're saying that a reference to that and the importance of that being considered needs to be in the legislation itself. It's that fundamental.

Mr Sydes: Absolutely. I think that a simple way of doing this would be to write something into the legislation right at the outset saying that climate change is important from a whole range of different perspectives. You need to take it into account, you need to consider those factors in any decisions under this legislation.

Senator HANSON-YOUNG: I'm hearing from you that that's different to the approvals of projects.

Mr Sydes: It's broader than just the approvals of projects.

Senator HANSON-YOUNG: Yes, it's that the climate crisis itself is putting pressure on nature and our threatened species.

Mr Sydes: Correct.

Ms O'Shanassy: It is broader, but it would then be applied through an assessment, yes.

CHAIR: Senator Duniam.

Senator DUNIAM: Thanks, all, for coming. It's good to see you again. It's been a while. I want to start with the broad issue of minister versus department decision-making, or EPA decision-making processes. Where do you draw the line, or where should it be, in your view? How much discretion should the minister have?

Ms O'Shanassy: I have worked in a regulator, like Graeme, and then I also worked in a department. I was shocked by the level of direction that you get in a department—because I was very young at the time—versus a regulator. So having the regulator is very important. I think what the minister and the parliament should do is set the rules: the standards, the setting in the act. They set the rules which the regulator must implement and cannot move outside of. That's quite a standard form of regulation in Australia. All the EPAs in Australia operate in that way, although most don't cover nature issues.

Then the regulator should undertake the assessments and decisions based on those rules set by the government. For those in the business community who say, 'Well, the elected officials should be the ones that are making the decisions,' ultimately, they are setting the rules. The regulator is just implementing those rules and can't go outside. That is our view. There could be a call-in power in exceptional national emergency situations, but otherwise it should be the regulator.

We will note that 99 per cent of the decisions that are currently made are made by a department under the EPBC Act. So it is essentially happening, except for the big, difficult ones where the politics gets involved. I would note that it is very difficult to donate money to a regulator. It is easier to donate money to a political party, and that can—and, we believe, does—affect the decisions relating to EPBC.

Senator DUNIAM: I have just two things on that, and if anyone else has views on that first question I'd be interested to know. Your contention is that there should be very limited—and we'll come back to the issue of when a minister should be able to make a decision. You said 'with exceptions', like in a national emergency situation. But you also made a point there about the difference between, in this instance, APS staff and the level of direction or guidance provided by government or a minister versus an independent regulator. So 99 per cent are made by officials within DCCEEW, but they would also be subject to some direction or guidance from the minister. Is that right under the current EPBC Act?

Ms O'Shanassy: Yes, because the current act delegates the decision-making to the department and possibly others. Under the current proposed legislation, the minister would be able to delegate decisions to the EPA. In my view, that is better than the current situation because EPAs are regulators. They have a culture of regulation and don't have to do anything else to service the minister. Having worked in both, that is my very strong experience. But we need a fully independent EPA that reports to a board—and that question was put to Professor Samuel—so that they can independently—and quite efficiently, by the way—apply the law and the standards set by the government and parliament of the day.

Senator DUNIAM: On this limitation, as you put it, I'm looking at your submission here, Ms O'Shanassy, on page 2, where you say:

The "rules based approach" of new Standards and legislative definitions of unacceptable impacts is undermined by exemptions, particularly the national interest exemption and the proposed new "national interest approvals".

You're suggesting that the former, being the national interest exemptions, should be limited to national emergency. Can you explain to me what you would define that as?

Ms O'Shanassy: I believe that, in the department's submission, they have defined it. I read it, and it seemed appropriate for that national emergency.

Senator DUNIAM: I haven't read their submission.

Ms O'Shanassy: It could be things like fires—

Senator DUNIAM: 'Things like fires'?

Ms O'Shanassy: for example, where you have to take an urgent action to help Australians. But it is not a coal company or a gas company that wants to open up a new mine that needs exemption or approval.

Senator DUNIAM: We will, at the end of this, as part of a negotiation with government, have to seek to amend the proposed laws in line with what you or other witnesses might be saying to get this as strong as possible. You've given me the example of a natural disaster, a fire—or are you just suggesting?

Mr Sydes: I can elaborate on this. The bills include two things: defence and security and national disasters. The minister, in being asked about this earlier in the piece, said the power is limited to those things but then correctly conceded later on that that wasn't a limitation. They gave a flavour of when the national interest exemption power could be used. Our contention would be that it should be limited to those things. Indeed, if my recollection serves me correctly—I don't have the legislation, because we weren't allowed to take it away with us—the proposal that was put forward when we were looking at draft legislation last term was that the power be confined in that way. It's important it is confined in that way, because otherwise the power is open to abuse in terms of being used in different circumstances that clearly shouldn't qualify under a broad public-interest override.

Senator HANSON-YOUNG: Can I just clarify something, Senator Duniam? Are you suggesting that the national-interest criteria or reference in there was not what was put to you in the consultation?

Mr Sydes: I'm referring to the consultation last term on the nature-positive bills in and the draft legislation.

Senator HANSON-YOUNG: Oh, the secret one. So, this time round, was it put to you that it wouldn't just be in the case of emergencies or defence? There would be this broader, undefined national interest?

Mr Sydes: I'm sorry, I'd have to check the papers. But I don't think the detail of this particular exemption has been the subject of extensive discussion in the last few months.

Senator HANSON-YOUNG: I think that might be right.

Ms O'Shanassy: I will take the opportunity to push back a little bit on both Professor Samuel's comments and the department's statement that, because you have a consultation process and the processes being used on this over the years have been both numerous and flawed in every way—which is impressive! Because you go in and are consulted, you give feedback. It doesn't mean you've provided consent in any way. In fact, we haven't. Much of what's in these amendments wasn't put to us in the conversations both with the minister and with other stakeholders. We are very happy to go in and provide our view, because we want to help create solutions for Australia, but I think that has been misrepresented as consent—

Senator HANSON-YOUNG: Endorsement.

Ms O'Shanassy: or endorsement. Obviously, from what we're saying—

Senator HANSON-YOUNG: You're not endorsing it.

Ms O'Shanassy: We do not.

Mr Ritter: They are matters that were the subject of robust disagreement. That occurred in the context of a process where ministers were seeking to achieve consensus. We can respect that intention, but the robust disagreement characterised the conversation.

Senator HANSON-YOUNG: Is it fair to say that there wasn't consensus reached across the board on this package that was put in that's been tabled by the minister?

Mr Ritter: Well, I think it's a very lengthy package for a starter, but I think it's also very fair to say—in fact, we've heard this from other interests as well. No, there wasn't consensus.

Senator HANSON-YOUNG: Thank you, Senator Duniam.

Senator DUNIAM: A great partnership here—agreeing on so much!

Senator GROGAN: So bizarre!

CHAIR: Senators, levity has a place but a limited one.

Senator DUNIAM: Senate committees are not where it lives; you're right.

Senator HANSON-YOUNG: I believe in climate change.

Senator DUNIAM: So do I! So do we.

CHAIR: Senators, please to order. I appreciate—

Senator HANSON-YOUNG: You don't believe in—

CHAIR: That includes everyone, Senator Hanson-Young, Senator Henderson and Senator Grogan. I appreciate the exchange, but, if we will come back—

Senator HANSON-YOUNG: I have more in common with Senator Mark Lachlan than I do with you!

CHAIR: Alright. That's enough. We have limited time with these witnesses. I appreciate that there's an enjoyment out of this, but we need to keep moving. Senator Duniam.

Senator DUNIAM: So we've dealt with that. Just to be clear, your preference for ministerial intervention is limited to those exceptional circumstances which are natural disasters and security and defence. Have you sighted a definition of what they would be, beyond what was provided in the last term of parliament?

Ms O'Shanassy: No, I don't believe we have, because—

Senator DUNIAM: Have you provided a suggestion to government as to what that might be?

Ms O'Shanassy: No—well, not in the few days that the bills have been out.

Senator DUNIAM: Have you consulted prior to—between May—

Ms O'Shanassy: As Brendan mentioned, I don't believe that came up—or I've missed it, for the last couple of months. David?

Mr Ritter: It's testing memory, but—

Senator DUNIAM: Oh, sorry—have you—

Ms O'Shanassy: There's a lot in these bills that we've never discussed.

Senator DUNIAM: No, but—

Mr Sydes: I'm sorry—we are full of suggestions.

Ms O'Shanassy: Oh, yes!

Mr Sydes: We have, multiple times, suggested how this particular exemption, section 158 of the EPBC Act, needs to be reformed.

Senator DUNIAM: In this term?

Mr Sydes: Yes, I believe so, but certainly throughout this whole process since the Samuel review.

Senator DUNIAM: Finally, in terms of the types of projects, obviously projects of different types will have different impacts, both at the point in time that a project is undertaken and, often, legacy impacts as well, with regard to climate and emissions et cetera. Are we talking a level playing field here? I know that there is a hierarchy of assessments and things, but you've referenced coal and gas. In Tasmania, there's a huge amount of contention over the Robbins Island wind farm, and, in fact, more significantly, the transmission line associated with it from where the lines come to the mainland across to where it enters the grid. Are you saying we have to have a completely level playing field—that these laws would be blind to the nature of the project in their application?

Ms O'Shanassy: Yes, really. I'll add an exception to that: if you include climate impacts. We want Australia powered by renewables, but we don't want high-value forests ripped down in order to build those renewables—and you don't have to, because we're the most cleared country in the world, so we can build renewables without damaging nature. That is guided by an EPBC Act that has clear standards which is applied to everyone. So 'no carve-outs' is a mantra we've been speaking to. That includes the renewable ener—I can't even speak!

Senator DUNIAM: It's Friday!

Ms O'Shanassy: I'm still jet-lagged from coming back!

Mr Sydes: The renewables industry.

Ms O'Shanassy: Yes, thanks.

Ms Lawless: I think what Kelly is saying—

Ms O'Shanassy: Trying to say!

Ms Lawless: and what Greenpeace would agree with, too, is that all projects that have impacts on matters of a national environmental significance should be assessed under the act and that there should be no carve-outs, and, in addition, if projects have an impact of emissions impacting nature, then that should be considered in the assessment.

Ms O'Shanassy: So the caveat was that you can have positive benefits for nature—for climate change—which you might want to consider. That's why I mentioned that. I just wanted to note that Nicole from WWF hasn't had a chance to say anything, so you might have questions specifically for WWF.

Senator DUNIAM: I don't have any group-specific, but, if WWF want to pipe up and answer any, they'd be more than welcome to. Just on this issue of accreditation and devolution of assessment approval to state and territory agencies, can you just run me through your concerns around that. As I understand it, if there is accreditation, notionally, the Commonwealth are saying that this state or territory EPA is equipped and meets our standard. Your concerns with that are—how could you summarise them best?

Ms O'Shanassy: Well, because we've had examples of where state governments have approved highly damaging, obviously unacceptable, projects, like a 3,000-unit housing development on Moreton Bay in Queensland, at Toondah Harbour, and the federal government has said no to that. In part, that can be resolved if you have rules that are granular, that are very strong and that apply to everyone, but there are still conflicts of interest that states have that the federal government doesn't have, and there is a responsibility on the federal government—put to it under law but also under global treaties—that the government has to uphold, and that is why we think the federal government should be the decision-maker.

There are also proposals to, essentially, fully accredit NOPSEMA with 'able to make decisions on offshore projects'—gas projects in particular, which scares the bejesus out of me. If you have a national EPA, you have a regulator that is equipped and used to making decisions in timelines. They can be held to account by a minister or preferably a board. But, if you're accrediting everyone else to make decisions, they don't necessarily have that regulatory mindset at all. Their laws can change, and the bill allows accreditation to last through some changes to state-level laws. So it is much more efficient for this country, and much better for nature, to have a single decision-maker at the federal level that is set up to do it and will make decisions in appropriate timelines and to make sure that the assessment process—I'll use the North West Shelf example. It was a terrible decision, but that was a six-year assessment process; it wasn't a six-year approval process. They needed to do scientific research.

That time was necessary to do the assessment. That's the bit that takes the time. You can build in efficiencies there by having merged assessments, joint assessments or accredited processes.

Mr Sydes: I'll add to that. The key issue, really, is that you can put in place a whole elaborate architecture around trying to provide assurance that the Commonwealth's responsibilities—which, I guess, represent public aspirations around the Commonwealth's role, as well as our international commitments—can be delivered through accreditation frameworks and so forth, but the best way to deliver assurance is to keep your hands on the steering wheel. It's to be the driver of the bus when it comes to approval decision-making rather than thinking you can do that from the back seat of the bus—ensuring that national standards and so forth are applied. If you've got that final say in making approval decisions, then that's the best assurance that's possible.

Senator DUNIAM: With regard to the decision by the Queensland government, you referenced the example of the 3,000-lot housing estate that was approved by the Queensland state government but rejected by the Commonwealth. Then you referenced conflicts of interest that may arise in the state setting but not in the Commonwealth setting. What's the conflict of interest that was present in that state decision-making process?

Ms O'Shanassy: There were donations uncovered by the proponent to parties and to governments at both levels, but that was—

Senator DUNIAM: Do you mean federal and state?

Ms O'Shanassy: Yes, federal and state. And there were different federal government decisions made under different political parties. The government that rejected it was 10 years after a different government of a different political persuasion said that it needed to go to the next level of assessment.

But there are conflicts of interest because a state government is closer to the economy of that state. It's closer to the economic needs of that state and to the pressures that corporations can apply to fast-track or approve projects that should never be approved. This was 3,000 homes on top of a Ramsar wetland. It should have been obvious that that should have been a fast no—and I think it's probably used by the current government as an obvious example of a fast no—but the state government approved it.

Senator DUNIAM: It's like that Port of Hastings terminal that was on a Ramsar listed wetland.

Ms O'Shanassy: That is a great example because that was the state government, as the proponent, saying, 'We should put a renewable energy project on top of a Ramsar wetland,' and the federal government said, 'It's our responsibility to protect Ramsar wetlands, so, no, that's not going to happen.' That was the state government doing it, so clearly there was a conflict of interest, which is why the federal government should maintain its responsibilities.

CHAIR: Senator Grogan.

Senator GROGAN: On that point, you're talking about it as if the state government rules will apply. That's not the case. It would be the federal government rules and structures that would apply. Even if you were accrediting the states, it's the federal law that they would be applying, and it would be overseen by the federal government.

Mr Sydes: That's not strictly correct, I don't think. The state government's regulations would be accredited—and not just regulations, by the way. They don't necessarily have to be entirely within formal regulations. They can be non-regulatory instruments as well. They need to be accredited against the standards, but it's not that the states are being given the EPBC Act and the standards and so forth to administer; it's their regulatory systems that are accredited.

Senator GROGAN: But they have to apply the federal structures. That's the point. Anyway, that wasn't the point I wanted to discuss, so I'm going to move on. I'm just going to say that I think your interpretation is not—but we'll clean that up when the department comes in and just be really clear about that. I've read all your submissions, and you've stepped out all of the things that you are concerned about within the bill and the kinds of amendments you would like to see come forward. Is there anything that you do like?

Ms O'Shanassy: There is indeed.

Senator GROGAN: Excellent!

Ms O'Shanassy: Nicole, do you want to have a go?

Ms Forrester: I just want to thank my colleagues from ACF and Greenpeace, who have done an excellent job. There's nothing in addition that I would say to the remarks that they've already made, to add to the record. Putting aside those things that we would like to see very much improved through potential amendments through this process, there are, as Professor Samuel noted, step-change inclusions in the draft reform bills which, if those amendments could be achieved, would actually create a critical improvement into the way that the Australian

laws are able to protect our nature. I would add that, right now, the act itself is failing, so it is important that we are able to come together in a constructive way to look for improvements, building upon what is already noted to be good—for example, the inclusion of unacceptable impacts and critical habitat definitions.

We'd like to see an improvement around, as already mentioned, closing the deforestation loopholes. We'd strongly welcome the inclusion of new national environmental standards, noting that they need to be strong and outcomes based so that the regulator, the EPA, is able to have the best possible framework from which to both protect nature and, as Professor Samuel mentioned, provide clarity and consistency to give them certainty around investment. We're also very pleased to see the mitigation hierarchy included, but we would like to see some tightening around the absolute net gain requirements. We think there's a little more to do there. Of course, we're pleased to see the introduction of the EPA and the announcement of increased enforcement penalties. But, as other colleagues have mentioned, the climate harm relating to matters of national environmental significance are clearly something that needs to be addressed. Finally, we're welcoming the establishment of the Environment Information Australia agency that really would provide robust opportunity to have clear and comprehensive data. In short, yes, there are significant improvements on the current act included in the package.

Mr Ritter: Senator, could I just follow on my colleague's comments? I do want to put on record that we do greatly appreciate the urgency being now shown to the crisis of nature in Australia. That's terrific. Also, if it might be possible, I'd like to say a few words about percentages and metaphors because it's extraordinary how percentages and metaphors can get their own life in public policy debates. I'm very, very sympathetic to the favourable aura that attaches to the idea of being 80 per cent there or 80 per cent good. Have you ever tried to have a bath where the bath is 95 per cent complete but the plug is not in?

Senator GROGAN: I think you might find I have!

Mr Ritter: Well, there you go, Senator! Or have you had a house that you're reassured is complete, except the windows or the doors haven't been put on? What we're talking about here is some architecture that could be built upon to enable the fulsome protection of nature, but it isn't there in the package that we've seen. We need that architecture to be fully built out to properly protect nature. And we're not coming from a level playing field. We see elements of industry that very proudly talk about the boom they have overseen over the past 20 or how every many years you want to put the boom over. That is not the case with nature. Nature is not booming. Nature is in radical decline, and the threats are increasing. So, when we think about the metaphors on the percentages, let's be really careful that they don't have a life of their own that undermines what hopefully this parliament is trying to do here.

Senator GROGAN: I must say that I'm with Professor Samuel on this, having been around it for so long, for so many years. We very nearly came to an agreement in 2013 to make improvements. Then we had 10 years of nothing happening. We're here now and I'm deeply concerned that, in between my emission-loving, fossil-fuel and coal-fired-power building friends and then—

Senator HENDERSON: Koala lovers.

Senator GROGAN: I didn't interrupt you. We all know that you love the koalas as well.

Senator Henderson interjecting—

Senator Grogan interjecting—

Senator Hanson-Young interjecting—

CHAIR: Senators, I appreciate the passion on this subject and I appreciate that I wasn't in the chair for a moment.

Senator HANSON-YOUNG: She took total advantage of that.

CHAIR: Instead of litigating who is responsible for that little intermission, let's return to our favoured process, which is questions from senators and answers from witnesses.

Senator GROGAN: Guilty as charged, Chair. My apologies. But I do worry that as we sit here and we listen to commentary that we will end up precisely nowhere. I would say that getting 80 per cent there would be a situation where we would be better off than we are today on some environmental laws that we know don't work. That would get the best improvement we can within what this environment. People talk about having the numbers, but the numbers are in the House. They are not in the Senate. In the Senate, we have to find a solution to improve the situation we are in. I don't know how you or various people are going to feel if this doesn't happen, but I know how I'm going to feel.

Senator HANSON-YOUNG: If 80 per cent includes fast-tracking coal and gas and expanding fossil fuels I don't think it's really 80 per cent. It's backwards.

Senator GROGAN: Like I said, I'm backing Professor Samuel here.

CHAIR: We will be going to morning tea soon. But, Senator Pocock, I understand you have questions. Keep them as brief as you can, please.

Senator DAVID POCOCK: I thank all of you for your submissions, your work and being here today. I want to pick up on the point that Senator Grogan was making. We know that Australia is a world leader in mammal extinction. We are the only developed country considered a deforestation hotspot. We have seen biodiversity in decline for the whole time that we've had the EPBC Act. I understand from your opening statement that the bills in their current form will not reverse or even halt the decline of nature. Is that your takeaway? If the current proposals are passed, we're not actually going to see an improvement?

Ms O'Shanassy: That's correct. I would say to Senator Grogan—who has just escaped for a second—please get us to 80 per cent. This is not there. It's nowhere near there, but it can get there. As you have mentioned, Senator Pocock, we're in an extinction crisis. Every day matters and every decision matters. This is 15 years down the track. So we really need to get to 80 per cent. We don't want perfection. We would love perfection, but I've never experienced it when it comes to a process from parliament—no offence!—or any process, really.

Senator DAVID POCOCK: Does ACF have any concerns about the operation of the offset scheme as proposed?

Ms O'Shanassy: Offsets are broken and do not work, shockingly! There have been many examples of that and many reviews that show that. They need to be improved but linking them to a market mechanism that is unproven and new and actually proven not to work in states where similar things are working, such as New South Wales, is a massive risk. I just don't think we should go there. We need to figure out how those systems should work before we would allow a legal process to use a market to provide offsets when the offsets themselves fundamentally don't work.

There are other issues with the offset program's recommendations, such as the idea that you could destroy one particular type of habitat and replace it with a completely different one that may not be relevant, and, when you're talking about koala habitat being decimated in New South Wales and koalas going extinct very soon in our lives, you can't do that, so we need to go back and have a look at that. The offset program needs to be better than as recommended, and there are a number of amendments and suggestions that have been put forward many times over the years.

Senator DAVID POCOCK: Thank you. I might come back to that if I have time. Greenpeace, your organisation has done a lot of work on Labor's approval of one of the largest fossil fuel projects in our history, the North West Shelf. I'm interested in your view on the national interest exemption. We've heard governments over many years talk about gas exports being in our national interest. I'm interested in whether you're concerned that projects like the North West Shelf would, under these laws, be completely exempted from environmental laws.

Mr Ritter: It's absolutely fundamental that national interest be confined in the way my colleague from ACF described that it should be—the very narrowest of circumstances. For a nation that is already suffering from extreme climate harm—which, as the Commonwealth government's own national outlook assessment has made abundantly clear, is only going to get worse—the idea that massive fossil fuel polluting projects can possibly be in the national interest, let alone in nature's interest, is beyond absurd.

Ms O'Shanassy: We know it's a real risk because, before the last election, a potential prime minister said that within 30 days they would approve that in the interests of the nation. So this is open to political interference.

Senator DAVID POCOCK: As the bills are currently drafted, this sort of project, if it's deemed to be in the national interest, could actually be exempted. Is that your reading?

Mr Ritter: It's why we have called for these things to be either simply removed or massively tightened up because there simply cannot be that risk allowed.

Ms Lawless: We've recommended that all fossil fuel projects not ever be considered to be in the national interest.

Ms O'Shanassy: Yes, that should be obvious.

Senator DAVID POCOCK: This is to ACF. The minister has been in the media claiming that standards will apply to regional forestry agreements. Is that your reading? Is that correct?

Mr Sydes: The point that we've made here is that there is no assurance in the bills that that promise will be delivered. In fact, I'd say the commentary that 'we are proposing to apply standards to regional forest agreements' is more of a deflection than an actual reassurance or an answer, in the sense that unless there's something in the legislation that deals with the current exemptions for native forest logging under regional forest agreements—

unless there's something in these amendments that addresses that—then there's no real pathway for actually applying the standards. I think this is the point that Professor Samuel was making this morning as well. Without getting into the complexities about how you reformulate the current exemption or remove it, there is just a fundamental starting point that, unless you're actually changing the EPBC Act and in some way addressing that current arrangement—the fact that native forest logging under regional forest agreements is exempt from the EPBC Act—then, for the recommendations he made in terms of applying standards and bringing regional forest agreements in under the EPBC Act framework, there's no reassurance that they're going ever going to happen.

Senator HANSON-YOUNG: It's legally not true.

Senator DAVID POCOCK: So the RFA exemption, which, as you said, Professor Samuel said he hated, remains in the bills as they're currently drafted. Is it correct?

Mr Sydes: There are critical provisions in relation to this in section 38 and section 42 in the legislation, and they are unchanged by the bill.

CHAIR: Senator Pocock, I might move the call on, unless you have one final question.

Senator DAVID POCOCK: I do. Thanks, Chair. Your submission also raises serious concerns about the continuous use exemption. Is there any reason this loophole could not be closed as part of these reforms?

Mr Ritter: There is no reason that this loophole can simply not be closed as part of these reforms, and all of our groups are calling for it to be closed in the strongest possible terms—that being fundamental to the protection of nature.

Senator DAVID POCOCK: Thank you very much. I'll put some more questions on notice.

CHAIR: Senator Hanson-Young.

Senator HANSON-YOUNG: Listening to all the evidence that you've given today and hearing both the desperation that you have for laws that actually do protect nature—what's on the table doesn't do that. Actually, if it's passed as it is, it would take us backwards, because it puts in more loopholes, fast-tracks coal and gas, and expands fossil fuels. Are you frustrated that all this legislation is being talked about in terms of how we deal with approvals rather than how we put protection in place? It strikes me that all of the discussion is on how we make approvals work for business and industry rather than what actual laws are in place for the good of protecting nature. Do you think it's upside down?

Ms O'Shanassy: Absolutely. It needs to do what it says on the label. It needs to protect the environment and conserve biodiversity. It hasn't done that in the last 25 years. Without substantial amendment, it won't do that. But it needs to do that, because that's the thing that underpins everything else, including the businesses and industries that are asking for the approvals. If you do not have forests that have bees that pollinate your crops, a safe climate to operate in, or the flood and erosion control that nature offers, you cannot have an economy.

We've shown over and over again that Australia's economy is wholly dependent on nature, but 50 per cent of it is quite highly dependent on nature. This is not a 'jobs and economy versus nature' thing. You need to protect nature in order to live on this planet and very much to service the businesses that are asking for projects to be approved. This is the only law in the country that protects matters of national environmental significance. That's why it exists, so it needs to do that.

Senator HANSON-YOUNG: It's meant to do that.

Ms O'Shanassy: It's meant to do that. It needs to do that. It needs to be amended to do that.

Mr Ritter: It's why we would say that this is a legacy opportunity for the parliament. It's why we would call on all parliamentarians to seize the moment to do what is necessary to protect nature, because, at some point in the future, there are going to be some new generations of young Australians, and they're going to be wondering what this parliament did in 2025. They're going to be hoping that this was the parliament that enabled flocks of birds to rise from native Australian forests and Australian rivers to be full of fish. They're not going to be sitting there thinking, 'Gee, I wonder if those legislators back in 2025 managed to do something to streamline some bureaucratic process that enabled more pollution and emptied the grey skies that I'm now looking at.'

Senator HANSON-YOUNG: Thank you.

CHAIR: I have just one question before we go to our break, picking up from what you just said there, Mr Ritter, in part of your earlier answer. May I take it from that that you consider the reform of the EPBC Act a matter of urgency?

Mr Ritter: We would unquestionably consider the reform of the EPBC Act a matter of urgency, because it is, as my colleague said, the one act that is there to protect nature, and nature is in deep trouble.

CHAIR: I thank you all for your evidence and your attendance today. The committee is grateful for both that and your submissions. If you've taken any questions on notice or received any, could you endeavour to come back to the secretariat as soon as possible. That would be wonderful. We'll take a short break.

Proceedings suspended from 11:03 to 11:15

CHURCHILL, Mr William, Chief Policy and Impact Officer, Clean Energy Council [by video link]

McELREA, Mr David, Chief Advocacy Officer, Smart Energy Council [by video link]

CHAIR: I now welcome representatives of the Clean Energy Council and the Smart Energy Council. I understand that information on parliamentary privilege and the protection of witnesses giving evidence to Senate committees has been provided to you. We have invited very short opening statements with a preference for a submitted opening statement, if that is possible. If you have an opening statement, be as brief as you can, then I will invite the committee members to ask questions.

Mr Churchill: Thank you, Chair. I might take a moment to submit an opening statement. Thank you for having us. The Clean Energy Council represents almost 1,000 companies across the clean energy spectrum. The membership covers utility scale wind, solar builders and operators, OEM providers, equipment providers, investors, financiers and a host of other businesses involved in the clean energy sector. All these businesses are in some way touched by the EPBC Act, and there is universal agreement that the environmental laws are failing nature and are in urgent need of renewal and a refresh to ensure they are fit for purpose to meet Australia's modern needs. As senators will recall, the work to review the EPBC Act was commenced by Professor Graeme Samuel in 2019 and released in 2021. It's been nearly five years since the review was conducted, and we're still in a holding pattern waiting for reform.

The previous attempt to reform the EPBC Act was unsuccessful, and our members and industries are hoping this attempt will be successful. To underscore the urgency of action, I remind the Senate we're halfway towards the next review period of the EPBC Act. Reform of the act is vital to protection of our environment and then giving clarity to industry so it can meet the expectations of the community and its environmental obligations in protecting the environment. Our submission to the committee today is jointly made between the Clean Energy Council and the Smart Energy Council. We prepared our brief submission on short notice and would like to reserve our right to provide further supplementary details as the committee continues its deliberations on this bill.

In summary, we can provide cautious support for the legislative package being put forward by the Australian government. We know we're still in the process of fully understanding the implications of the provisions in this bill, including those around unacceptable impacts and how decision-making will occur under the proposed regime. However, we do regard the bill as a positive step for environmental law reform, which has proven difficult for the parliament to progress in in many years. In short, we believe this proposal is better than the status quo. To close, we also wish to explicitly acknowledge the consultative and cooperative manner the minister and his department have taken towards these reforms. We are very pleased with the outcomes. Thank you for your time. I look forward to questions.

CHAIR: Thank you. Mr McElrea, do you have anything to add to that?

Mr McElrea: I'm happy to adopt the statement of my colleague, Mr Churchill.

Senator HANSON-YOUNG: Thank you both for being here today and for your submission. I understand you have a number of concerns about the way the legislation is currently drafted. Could I get you to touch on the uncertainty and lack of clarification you feel exists with the unacceptable impact test and the decision-making role in relation to that. A number of submitters have raised this particular clause with us. I'm keen to understand what your major concerns with it are.

Mr McElrea: I can take that. To echo my colleague's statement, we have been engaged with the government. We really do want to acknowledge that they have been engaging for the last six months on these clauses, but they've only been public for a few weeks. I think both organisations have used that occasion to share the drafting with our members. Our members are still trying to work through some of the finer details with environmental consultants and the like about what terms like roosting or foraging might mean in practice, in a site. Broadly, they and we support the government's attempt at more precision. There's just some more understanding that they want to do around what those terms might mean in practice on the ground and some more engagement with the government on that. They would like that.

On decision-making, I think—possibly it's been clarified a bit since our submission and surely will be this afternoon—there's a little bit of uncertainty about when the unacceptable impact question will be applied. At the moment, you have a referral decision. The minister or the delegate determines whether it's clearly unacceptable. Is it supposed to be that? As I understand it, what would happen under this is that you would go through the 'clearly unacceptable' process, but then you would still be assessed for whether you have a significant impact. It's not clear, for example, whether the significant impact criteria that are currently applied by the department would still be applied and how the two would work together. We're looking for some clarification. We engaged well with the

government and the department, and we're hoping to get that clarification over the next week or so. As of today, we're still a little unclear of that.

Senator HANSON-YOUNG: Could I ask whether—obviously, your industry's keen to make sure that you can get faster and simpler approvals for renewable energy projects so that we can get on with the energy transition—the way the bill is drafted, as it is, doesn't actually guarantee that renewables projects will get any faster approvals or access? You're not going to the front of the queue, necessarily. Coal, gas and fossil fuels get access to exactly the same things—a streamlined process, national interest exemptions, the go-zones. You're still going to be in a race with coal, gas and fossil fuels under the current legislation. Do you think that's a problem?

Mr McElrea: I don't know that I'd characterise it as a problem. I think it's the case that the government has sought to generally improve provisos under the act. We support some of the changes to administrative procedures that they've outlined. I think, ideally, they should speed up applications or reduce unnecessary bureaucracy for all claims. Regional planning, again, we think is particularly important for renewable energy. I don't necessarily think it's a zero-sum game between us and coal and gas.

Senator HANSON-YOUNG: Surely you want to see the further build of renewables because we've got to reduce carbon pollution.

Mr McElrea: Yes, indeed. The fact is that as far I'm aware, renewable energy projects are the largest number of projects by volume in the systems—by some measure, twice as much as the next largest, which, in my understanding, is residential housing. It's the largest by volume. They can be very complex, particularly wind farms, because you're assessing their operation and their construction. As we put forward in our submission, we're keen to engage with the government on how we can continue to protect nature and also speed that up. Government policy is an 82 per cent renewable energy target by 2030 and to speed up its explicit policies, and the net zero plan is to speed up renewable energy projects. We're very keen to continue to engage on that, on behalf of our sector, on how we can best achieve that. We have some ideas. We think we can continue to protect nature. We would welcome that; that's an ongoing conversation, I think, for government.

Senator HANSON-YOUNG: Are you dismayed and shocked at yesterday's announcement by the coalition?

Senator GROGAN: I'm not sure how relevant that is, Chair.

Senator HANSON-YOUNG: It's very relevant. These bills could pass with the Greens' support, if we could make sure they protect nature, protect forests and stop the further expansion of fossil fuels, or the government's going to have to work with the Barnaby Joyce-led coalition over here.

Senator McDONALD: Point of order.

CHAIR: Senator McDonald, I think I can anticipate your point of order. As I turn to the deputy chair, with a smile on my face: that was perhaps a difficult question for the witness to answer in relation to the various parties. If the witness wants to make a brief comment about the bills in that context—

Senator HANSON-YOUNG: I'm keen to understand whether the—

Senator HENDERSON: On the point of order, I agree that not only does this put the witness in a very difficult position; we are here to inquire into these bills. This sort of commentary is not constructive or helpful. I would ask that Senator Hanson-Young be asked to return to the matters before this committee today.

CHAIR: Sorry, Senator McDonald, I cut you off before you got to your point of order; I thought I understood where it was going, and I understand where Senator Henderson's point of order is going. I think there is a balance to be struck here between the need to stay focused on the legislation we are inquiring into and recognising that that legislation occurs in a political context. If I might deal with it this way, Senator Hanson-Young: I will give the witnesses an opportunity to give a brief answer to the question that you've put, and then I'll come back to you for your next question.

Senator GROGAN: Surely our coalition colleagues don't want to know the opinion—

CHAIR: Senator Grogan!

Senator HANSON-YOUNG: Chair, I'll tell you why it's relevant to the witnesses. In their submission they talk about the need for ensuring that the processes for approvals align with Australia's net zero policy, and we've got a number of senators who will be voting on this legislation who do not align with that policy. The submitters talk about the need for changes to the EPBC Act and the clarification required in this package, as it's been put forward, to ensure we can get to net zero.

CHAIR: I understand that. I will give the witnesses an opportunity to answer the question.

Senator HENDERSON: Sorry, Chair; I will take literally 20 seconds. I don't disagree with Senator Hanson-Young in terms of some of the substantive issues, but the characterisation particularly in relation to Mr Joyce was inappropriate. I would ask that we not make those sorts of reflections going forward.

Senator HANSON-YOUNG: I can't promise that!

CHAIR: I understand this is a highly politically contested space. There was a substantive element to Senator Hanson-Young's question that dealt with the context in which the bills are being considered; if the witnesses would like to answer that, that would be good. Then, perhaps—not that you need this guidance—you can stay away from some of the more specific political aspects like reference to Senator Joyce—sorry; Mr Joyce!

Senator GROGAN: Maybe soon-to-be-senator Joyce!

Senator McDONALD: Chair, I'm sorry to take up time, but, if we're going to be reflecting on people in the other place and making jokes about it, it makes the whole day a joke. I'm here for serious questions—

Senator HANSON-YOUNG: You are a joke; that's the problem!

CHAIR: No, Senator Hanson-Young—

Senator HANSON-YOUNG: The whole coalition has become a joke. The whole country is laughing at you. You are a joke. You're a clown show.

CHAIR: Senator Hanson-Young, please!

Senator McDONALD: Outrageous!

CHAIR: We need to bring the temperature down now. I don't think the hearings are in that category, Senator McDonald, but I accept your point about the issue about raising Mr Joyce specifically. If we can—

Senator HENDERSON: Sorry, I don't want to take up more time, but the statement just made by Senator Hanson-Young is completely inappropriate. Imputations on other senators, in the context of any proceeding, are completely inappropriate—

Senator HANSON-YOUNG: I was actually talking about the party—

Senator HENDERSON: 'You are a joke,' was said. I'm just saying that we should try and focus on the merits or otherwise of these bills. Can I ask that those reflections are not made on other senators?

Senator HANSON-YOUNG: I'll keep my comments to the coalition.

CHAIR: And, to the extent that we keep the focus here on the legislation and on questions and answers—I've given the witnesses an opportunity to step in and answer the question earlier. I'm keen to keep this process moving so we can get to the substance of it. Senator Hanson-Young, may I ask you to move to your next question. I'm not sure they knew how to answer that.

Senator HANSON-YOUNG: Yes, that's fine. I would be keen to know what the Smart Energy Council and the Clean Energy Council think of policies that dump net zero given the importance of this industry to Australia's economy and our future environment. In that context, one of the recommendations you make is that there should be a specific standard for renewable energy projects or a specific national environment standard for renewable energy projects. Could I get you to unpack that please.

Mr McElrea: Certainly. I think that's what I was referring to earlier. Again, I think we're at an initial stage of our engagement with government, and with the Senate as we speak today, on this issue. We merely put it forward on the basis that we think there's a strong national interest, a strong economic interest and climate interest, in accelerating the rollout of renewable energy generation in this country. It is government policy as well, so we are seeking to put forward ideas about how the government can meet their policy. We think we can do that in a way that both preserves nature and hastens the construction of these projects as it's clearly in the national interest.

One of the ways we put forward is something like adaptive management which could be a policy that the department adopts where it is comfortable with how the impact on nature is managed while allowing construction to occur. You normally have an 18-month to two-year break between approval, which is final investment decision, and when ground is broken. That is a period, for example, when you could continue surveying and the like to be very sure that any impact that a wind farm might have could be mitigated. There are other things my colleague, Mr Churchill, might get to in due course about how we mitigate the impact of operating wind farms as well.

CHAIR: Senator Henderson.

Senator HENDERSON: I wanted to start by asking you, Mr McElrea, what has changed between the proposal by the former environment minister Ms Plibersek and the proposal now put forward by Minister Watt. In

asking that question, I do note the political context—you previously worked for Ms Plibersek as a deputy chief of staff. Is that correct?

Mr McElrea: That's correct, yes.

Senator HENDERSON: Could you explain that context, please?

Mr McElrea: Firstly, I'm appearing in a representative capacity, not a personal capacity, and I am restricted in what I can say about matters I might know about from previous roles. I would just say that I think the legislation the previous government put forward was for an EPA and Environment Information Australia. It didn't put forward any legislation for unacceptable impacts or anything like that, so that's a fairly substantive difference between the two packages of legislation that's obvious. The meat of most of the submissions you're hearing is not on the decision-maker; it's on the law that that decision-maker is applying.

Senator HENDERSON: That deal obviously collapsed. Do you have greater prospects or hope that there will be resolution in relation to what's before the parliament now?

Mr McElrea: That's a question for you, Senator, not for me. I would like to think so—

Senator HENDERSON: I'm asking you. Based on the draft of the bills, what is your position? Do you believe these should be passed in the current form? You've obviously expressed some concerns, as we know.

Mr McElrea: I refer to Mr Churchill's statement. This bill is better than the status quo. We have in our submission and just then expressed some questions, but I think that, ideally, these are matters we can work through quickly with the government. Possibly over the course of today, I suspect other witnesses you're hearing from, particularly from the business community, based on my engagement with them in the lead-up to this, will ask similar questions. Ideally, they can be answered to the satisfaction of stakeholders, which might enable it to go through. We'll watch that with interest.

Again, I'm aware, as you have raised for others who have also worked on this for a long time in this room. It would be a shame if the parliament was yet again unable to progress reform when there are clear wins for business and for nature.

Senator HENDERSON: I want to go back to an earlier point that was raised about your submission, which notes that you haven't had time to properly assess the impact of the new unacceptable-impact criteria. Given that you're seeking for these reforms to be passed, would you support removing the unacceptable-impact test from the legislation and instead moving that criteria to the national standards?

Mr McElrea: I might have to take that on notice as to what the implications of that would be? I suspect the Clerk of the Senate would say to you that that wouldn't be appropriate for regulation, to be honest, but I don't know. I'd have to take it on notice.

Senator HENDERSON: Alright. I go back to what's before the parliament now. Could I get some clarity? Do you support the bills being passed without any amendment?

Mr McElrea: We're seeking some clarification and hoping to get that clarification as a result of this process. Subject to that clarification—and I'll let my colleagues speak—we're broadly supportive of the bills.

Senator HENDERSON: To be clear how do you summarise your concerns such that some clarifications are required?

Mr McElrea: There are some concerns around some of the language in 'unacceptable impacts'. What some of those implications are. I think you'll hear from other witnesses from the business community who will raise similar concerns today. I think what is easily done is probably just a bit more clarity on a decision-making framework, which we just haven't seen yet but I think could be addressed by the department today, I'm sure. Probably the only other one thing that again others will raise from the business community is that, whilst we support net gain, in the legislative context there is whether that attaches to each protected matter individually. I think there's one other matter we seek clarification on. Is the minister for NEPA required to have net gain for every single protected matter, or can they look at net gain as a sort of overall test? Those are the points of clarification we're seeking, as are the other business bodies.

Senator HENDERSON: We obviously want to understand what your concerns are, but isn't it the case that some renewable energy projects do cause significant environmental harm? Surely that's an issue for communities, particularly in regional areas.

Mr McElrea: In the event that, under the current framework, they trigger the act, that has potential for a significant impact. If you clear any nature, you are causing an impact, so they're assessed on that basis, as are all other projects—on the same basis. We're not arguing that that shouldn't occur or that these projects shouldn't be

assessed under that. We're quite happy for that; that's important for all projects. There's no issue with that or with them continuing to be assessed, as they are now.

Senator HENDERSON: I'll give you an example across Western Victoria. There's a lot of controversy around the rollout of high powered transmission lines and wind farms. Going back at least 15 years, communities in Western Victoria have been raising significant concerns about brolga populations being severely diminished by the impact of wind farms. There were very few concerns raised about that at the time. How do you balance the renewable energy projects with the consequential environmental harm that might be caused, including for brolgas and other protected species?

Mr McElrea: I think that line is frequently drawn. There are many renewable energy projects that operate very well in accordance with nature. Renewable energy companies take their obligations to nature seriously. My colleague, Mr Churchill, might be able to provide more detail on this, but there are many systems in place to manage these impacts, and I know he's got some of that detail for you, Senator.

Senator HENDERSON: Just to pick up on that, there are environmental harms, but there's another major wind farm being proposed outside Geelong which would impact on a regional airport, which is a very important firefighting centre. The needs of those regional communities, including in relation to the airport, have been literally disregarded. I would put to you that renewable energy companies, when rolling out these projects, could not give a rat's, to a large degree, about the impact on local communities. It's made worse because, in Victoria, there are now no rights of appeal. What do you say to those communities when they feel they have no rights to stand up against renewable energy projects when they either cause environmental destruction or destruction to the fabric of their local community?

Mr McElrea: I disagree with the premise of that statement. I don't think that's correct. I think that renewable energy companies do engage with communities, and they do engage with and take seriously their obligations under state, federal and local environmental law. They engage with First Nations communities. I just don't accept that characterisation, and, again, Mr Churchill will provide examples.

Senator HENDERSON: But the facts, Mr McElrea, do not support what you say. I will go back to the Waubra Wind Farm in Western Victoria, where Acciona had the temerity to construct a turbine 300 metres from someone's home. They could not care less. Acciona, I would put to you, is one of the very worst in terms of companies rolling out renewable energy projects, particularly across Western Victoria. Time and time again, we have seen renewable energy companies that could not care less about the welfare of or economic harm to regional communities or about the environmental harm to regional communities.

Senator ANANDA-RAJAH: Chair, point of order. There's a lot of misinformation being disseminated here with that question.

Senator HENDERSON: No, there's no point of order.

CHAIR: Hold on—

Senator ANANDA-RAJAH: It's highly emotionally charged and factually incorrect.

Senator HENDERSON: There is no point of order.

Senator ANANDA-RAJAH: It is factually incorrect, Senator Henderson—the things that you've said.

CHAIR: Let me deal—

Senator HENDERSON: It is not factually incorrect. You go and have a look at the *Four Corners* story on the Waubra Wind Farm.

Senator ANANDA-RAJAH: I just can't do three days of hearings looking at misinformation or disinformation. We have had engagement on the ground with farmers from Western District as well as Gippsland.

CHAIR: Senators, senators, senators—

Senator HENDERSON: [inaudible] get out of Melbourne. Go find out—

Senator ANANDA-RAJAH: I have, FYI.

CHAIR: Hold on, a point of order has been raised. I will rule on that point of order.

Senator HENDERSON: There's no point of order. That a debating [inaudible].

Senator ANANDA-RAJAH: That's not your place to say.

CHAIR: I will rule on this, Senator Henderson, in the same way that—

Senator ANANDA-RAJAH: I think what you say should be based in fact.

CHAIR: Sorry, while I have the call, please—a point of order has been raised. I don't think the point of order stands in terms of what has been raised. I am, however, concerned about ensuring that the questions asked are relevant to the legislation. Mr Churchill, I think you were indicating that you wished to answer Senator Henderson's proposition. I'd then come back to the focus of the inquiry—the legislation.

Senator HENDERSON: I am talking about unacceptable impacts, including those on communities, but I'm very happy to ask Mr Churchill if he wants to add to the answers that Mr McElrea has given.

Mr Churchill: I'm more than happy to respond to your statement claiming that the industry does not consult widely or does not care about its impacts on nature, how it can mitigate those or how it can work collaboratively with regional communities and the farmers and landowners whose properties and assets are built upon. I think it's disingenuous to suggest that the industry does not care, and I don't think that is fair to put upon the thousands of people who work in the industry and are living and working regional and communities. They do care deeply, and they make all the efforts to consult properly.

Can it be better? In instances, yes. Is it being well done in many other instances? Yes, and I think the CEC's recent publication of its Best Practice Charter is an excellent catalogue of the work the industry does to work with communities to provide excellent outcomes—social, economic, environmental. These are projects that make excellent contributions to regional communities in regional Australia, and I think it's complete unfair to characterise the people who work in the industry as not caring about the industry and the communities where they live, work and operate.

Senator HENDERSON: I'm interested in the facts of these matters, and I look at a number of major renewable energy projects in western Victoria. I was actually part of a direct negotiation myself with ACCIONA in relation to one particular wind farm, and we were treated with profound disrespect. I've had direct experience of being on the other end of a renewable energy company, ACCIONA, and they continue to be one of the worst when it comes to meaningfully consulting with communities. But I will move on, because I know there are lots of other questions.

Senator ANANDA-RAJAH: How does this relate to the legislation?

Mr Churchill: I don't think that's fair. I'm very happy to talk to you about it after if you'd like to continue the discussion. I can speak as far as those members and say to you that they do consult extensively.

Senator HENDERSON: I'm not going to be told how perfect the renewable energy companies are.

Mr Churchill: I'm disagreeing with your assessment. That's all.

CHAIR: I think we've reached the end of that particular road.

Senator HENDERSON: I will hand over to Senator McDonald now.

CHAIR: Certainly, but I'll have to move the call on pretty swiftly. Senator McDonald.

Senator McDONALD: I note that Professor Samuel's recommendation didn't include an EPA but instead recommended a commissioner. The proposed EPA structure and the CEO role is very different from those recommendations because the CEO cannot be held to account for their performance outcomes. Do you support a change to include the CEO being more accountable?

Mr McElrea: To be honest, we haven't had significant feedback from our members on the EPA parts of this bill. They've been more focused on the substantive law changes rather than the EPA. We might have to take that on notice to check in. It's not something I feel like I've had a proper chance to discuss. I don't know if Mr Churchill feels differently.

Mr Churchill: I reflect your views, David.

Senator McDONALD: Please take on notice if there are any concerns from your membership around that. You made some comments around renewable projects preserving nature, but I'm wondering how you equate the work of renewable energy projects with agricultural land and food production land. Are you suggesting that renewable projects preserve nature because of—I'm not sure. Could you expand on that? I just don't think that we've got an equivalency between how renewable projects could get special approval processes and food-producing land areas couldn't.

Mr McElrea: Well, we're here to represent the renewable sector. I'll let the agricultural sector speak for itself. For the reasons I gave to Senator Hanson-Young earlier, we are trying to reflect what is a government policy. The government has put forward a policy; it wishes to speed up renewable energy approvals. We are responding to a government signal for our sector.

As to why, I think, as I said, it is because the transition to renewable electricity generation is critical in the long term for nature but also for the economic future of Australia. It will lower power prices, it will drive jobs and it will drive investment. We've seen that time and time again. There are strong economic reasons why—and it will reduce pollution. So there are strong economic, climate and social reasons why you'd want that to occur and why we think the government policy is a good one.

Senator McDONALD: Right. So you're happy, then, that the renewable projects would get a streamlined approvals process but other, more traditional industries like food production and mining would not? You're saying that you could have an impact on land or a net gain through offsets, and you'll let other industries fight for themselves?

Mr McElrea: No, that's not what I've said at all or what we've said. As I said to Senator Hanson-Young, I think this is particularly a wind-farm issue. Wind farms are different—they have to be assessed both for their construction and for their operation. They run turbines, and you have birds and bats—right?—including migratory species. So there's an additional complexity to their operation. Now, if you clear your land for a farm, that's almost certainly not going to hit this act. That's No. 1. Generally speaking, it's the act of clearing it that you're looking at, not the act of operating it. That is another reason why you might look at an adaptive management framework. You can put conditions in place about how you want both the collection of evidence and the operation of that wind farm to be managed so that you can be confident of its impact on nature.

Those are the sorts of things, we think, that are relatively unique to this sector. What we've said is we'd just like the opportunity to explore that with the government, as part of this bill or generally.

Senator McDONALD: Alright. How many of your members or your member projects will not be eligible for the new streamlined pathways?

Mr McElrea: I'd have to take that on notice.

Senator McDONALD: Okay. The removal of the existing streamlined pathways for projects that can't meet the upfront paperwork requirements is what I'm referring to. That will remove options for your members for faster pathways for their future applications. That is my understanding. I want to clarify that with you.

Mr McElrea: Again, we—I think Mr Churchill is the same—probably just have to take that on notice.

Senator McDONALD: Okay. I have another question on that. What are your views, then, on the existing streamlined pathways? Would you support retaining those existing streamlined pathways so that faster approvals can be options for all types of applications?

Mr McElrea: I'm not quite sure I understand the question. What are the existing streamlined pathways that you're referring to? Do you mean ones that are proposed or that are under the current arrangements?

Senator McDONALD: There are existing streamlined pathways. You'd be aware of those. Those are the ones that are being used currently by your member projects. And, under this legislation, it is proposed that they be abolished and there be new streamlined pathways.

Mr McElrea: Right.

Senator McDONALD: I'm trying to clarify whether or not there should be a mechanism to allow those existing streamlined pathways to run concurrently alongside the new ones.

Mr McElrea: I just want to make sure I understand the question. Are you asking whether you should retain, for example, preliminary documentation arrangements as well as the new proposed streamlined pathways? I don't want to answer the wrong question.

Senator McDONALD: Yes.

Mr McElrea: For existing projects, once you're in the system, I'm not sure you would be able to transfer. I might have to take that on notice. I haven't turned my mind to that. I don't know if Mr Churchill has.

Mr Churchill: No. I'd have to take that on notice as well.

Senator McDONALD: I'm sure your members will have a very clear view on the existing pathways that they've been using which would no longer be available under this new legislation. So I would recommend that you do speak to them. I hope that they are understanding that this is their opportunity to be recommending changes to this legislation. If they haven't briefed you then they're missing a good opportunity. Do you know what the current timeframe is for your members to have applications approved?

Mr McElrea: Not offhand. I'd have to take that on notice. I don't know if Mr Churchill does.

Mr Churchill: I was reading a speech transcript earlier this week that in 2018 EPBC approval took around 500 days. Since 2018 that has blown out to 830. So it is getting longer.

Senator McDONALD: When you come back on notice with the answer to that, I think it will provide some clarity over existing pathways and new pathways that would be useful.

Senator WALKER: My first questions are for the Clean Energy Council. I note that your organisation has some public commentary around the need for urgency in passing these bills. Would you mind just re-explaining to the committee why, in your view, this is urgent.

Mr Churchill: If we look at the situation that Australia is in at the moment, we need new electricity generation. More than 90 per cent of our existing coal fired fleet is due to retire in the next decade. It's essential that we start building not just new capacity for the additional demand that's coming on to the grid but the replacement capacity that is also going to be required with the exit of our ageing coal fired fleet. The cheapest form of new energy is clean energy. That's what we need to be constructing. That is wind and solar, backed by hydro and batteries. It's urgent that we get the work underway. If we had a time machine, we'd go back 10 years. We wish we'd started this sooner, but this is the hand that we've been dealt with. It's essential that we have new electricity generation entering into the grid, but it needs to be done responsibly. You want to do it right. The way to do it right is by having strong environmental measures in place that can facilitate the development while protecting and preserving nature.

Senator WALKER: We know that with the current legislation there are a lot of problems. Do you see there being issues with how the current legislation interacts with the rollout of renewable energy?

Mr Churchill: I think that we need to have a harmonious relationship between the two. It's important that the deployment of clean energy is done responsibly so we are protecting nature and the environment. But we are up against the clock here. We have exiting coal-fired power stations that are due to retire voluntarily or involuntarily, either through breakdowns or being retired. We need to build new generation. It needs to be done properly. We need to be protecting nature. There are tools and measures that can be adapted and put in place to ensure environmental impacts are minimised, but we are up against the clock.

Senator WALKER: Looking at the current legislation before us now, in your view, what are some of the improvements that are going to support the really important rollout of renewable energy?

Mr Churchill: Certainly, I think the creation of standards is incredibly important. That's one that's been noted and called for by the industry for years. We strongly support the proposed reforms to the offset framework. Similarly, we strongly support provisions on bioregional planning and changes to the strategic and bilateral assessments. There are a number of things, as outlined in our submission, that the industry is strongly supportive of. Again, as we've expressed already, we're reserving the right to get some further clarification and information from our members. We're happy to provide additional information in supplementary submissions.

As I sort of pointed out during our opening comments, we have a chance, now, to fix our broken environmental laws. We don't want to lose the opportunity again. I think a lot of these issues can be resolved over the course of the committee's deliberations. The bill is moving towards where the industry needs things to go and is, I think, giving people the certainty that they need.

Senator WALKER: Going back to your public commentary, I note there was quite a significant focus in it on the benefits of the proposed restorations fund for renewable projects. Would you mind talking us through what you see as the benefits for industry and for restoration from that fund?

Mr Churchill: We strongly support the proposed reforms to the offset framework, including the creation of those restoration contributions. That flexibility, provided through the mechanism, delivers better outcomes for businesses and nature. It would enable proponents who may not be best placed to undertake on-ground restoration to discharge some of their offset obligations through a payment while allowing contribution holders to do, at a landscape scale, restoration. I use that as an example of on-the-ground alternative options around finding land. It may be able to contribute towards regional environmental restoration options or eradication of invasive species and invasive weeds—making real environmental impacts at a regional level, rather than simply purchasing a block of property and using that and destroying it that way. There are really good opportunities there for good environmental outcomes that can be delivered.

Senator WALKER: I've just got one quick question for the Smart Energy Council. I note that in your public commentary you said:

> We are in a race against time. Every month of delay pushes us further from achieving energy security, emissions reduction and lower power bills.

Would you mind articulating for the committee why you see reforms, such as those to the EPBC Act, as important and urgent?

Mr McElrea: Certainly. As Mr Churchill has pointed out, there is a lot in this that is good and a lot in this that is great and that will, ideally, speed up processing as well as preserving nature. We must increase our renewable energy generation in this country in accordance with our goals. That's the best way to reduce power prices, reduce pollution, become a renewable energy superpower, build the industries of the future and create more jobs. The sooner we do that, the better it is for this nation. Environmental law reform is certainly not the only thing, by any means, that will do that, but reforms in that area that can assist will be welcome and should assist us in achieving what is clearly in our national interest.

CHAIR: I'd like to thank the witnesses for their evidence today and for their appearance and also for the submission that has been provided. You have taken some questions on notice. If you could provide responses to those questions as soon as possible, we would be appreciative. Thank you once again.

BURNETT, Dr Peter, Councillor, Biodiversity Council

MAYBERY, Ms Ellen, Senior Specialist Lawyer, Environmental Justice Australia [by video link]

SILBERT, Ms Nicola, Senior Lawyer, Environmental Justice Australia [by video link]

SZOKE-BURKE, Mr Sam, Biodiversity Policy and Campaign Manager, Wilderness Society

TREZISE, Mr James, Chief Executive Officer, Biodiversity Council

WINTLE, Professor Brendan, Lead Councillor, Biodiversity Council [by video link]

[12:03]

CHAIR: Welcome. I understand that information on parliamentary privilege and the protection of witnesses giving evidence to Senate committees has been provided to you. You may have heard my earlier remarks about our desire to keep opening statements short. If you are able to provide it in writing rather than giving it now, in the interests of time, we would appreciate that; otherwise, are there any opening statements? We will then go to questions.

Prof. Wintle: I believe James has tabled our statement.

Mr Szoke-Burke: We are happy to table ours as well in the interests of time.

Ms Maybery: On behalf of Environmental Justice Australia, I will just very shortly say these bills are the biggest rewrite of our national environment laws in a generation. It's a huge opportunity. Our written submission identifies five key areas that need to be resolved. Those fixes are clear, can be done, and we call on the Senate to do so.

Senator HANSON-YOUNG: Thank you all for your time today and for giving us your thoughts, opinions and expertise on this package so quickly. All of your submissions talk about the fact that there are gaping holes in this package, that there are more carve-outs, there is a lack of clarity, there is a lack of certainty that protection will be enforced, and that coal and gas will be fast tracked under these new laws, expanding fossil fuels. It doesn't include actions to stop rampant deforestation. It fails to address the issues in native forest logging, and it has problems with just handing powers over to the states without any guarantees that nature will actually be protected. A lot of work would have to go into fixing this, wouldn't it?

Mr Trezise: Yes.

Senator HANSON-YOUNG: From a legal perspective, maybe to Environmental Justice Australia, I am concerned at the increase in loopholes, the lack of clarity and the further discretion that are in this package. Are you worried that under this package the way it is that in fact there will be more environmental destruction, not less?

Ms Maybery: We are definitely concerned with the bills as they are currently drafted for the range of reasons you have just listed, including a raft of new loopholes being introduced and existing loopholes like the regional forest agreement exemption, and the continuation of use exemption remaining unresolved despite clear recommendations that those issues need to be remedied in the reviews of the act.

In terms of how the current package looks for nature, bearing in mind that this is the Environment Protection and Biodiversity Conservation Act—that is the role of the act; that is the basis on which the Commonwealth has the power to make this legislation—there are a range of issues in the act that would need to be resolved so that it could serve that purpose. The test of the minister being 'satisfied' that is peppered hundreds of times throughout the bills does not provide the certainty that nature and industry require from the legislation and, as you say, there is a long list of other loopholes. But what I would say, as you will see from some of the annexures to our submission, is that there are easy fixes to these things. The beauty of legislation is that the drafting can be amended before these laws are passed, and there are clear ways to resolve the issues that we see in the legislation. So it's not something that requires years and years more reform; it requires simple changes to tighten up what's proposed.

Senator HANSON-YOUNG: Is it your opinion, based on your expertise, that, if those improvements aren't made, this takes us backwards, not forwards?

Ms Maybery: As we've heard said today, there are 1,500 pages of proposed changes, and there has been a very short time to digest them. Others on this panel will have views about the actual on-the-ground impacts, but there are definitely concerning features that would need to be remedied. The proposal that states and territories would be able to make approval decisions, the scope for the minister to decide when they're satisfied and those sorts of things are of huge concern.

Senator HANSON-YOUNG: Mr Trezise, are you concerned that these laws, as they've been drafted by the government, allow the continuation of native forest logging?

Mr Trezise: I think one of the missed opportunities here is to deal with the exemption for regional forest agreements. We've seen that commercial logging operations across Australia have impacted a number of threatened species, particularly species like the greater glider, and that's been compounded by the bushfires that we saw rip across the east coast. There's a huge opportunity here to address those outdated exemptions that are no longer fit for purpose for threatened species. Fixing that loophole is a really important part of a much larger package of fixes that need to go into this legislation.

Senator HANSON-YOUNG: Does the Wilderness Society have a comment on the fact that this package as it's drafted allows our native forests to be logged, even when they're the homes of endangered species?

Mr Szoke-Burke: Yes. As James has mentioned, the regional forest agreement exemption is widely regarded as not producing positive outcomes for nature. I understand it's been subject to comment by Graeme Samuel earlier this morning—

Senator HANSON-YOUNG: He said he hated the RFA exemption.

Mr Szoke-Burke: So do the Wilderness Society supporters. This is one of a number of loopholes that we have long called for, strongly, to be removed. The idea here is that we are subjecting native forest logging and other destructive sectors to the same rules and that, hopefully, during this negotiation process in the Senate, we get to a place where the bills are actually able to improve the status quo for nature and then have protections that all sectors are subject to, without any of these sorts of carve-outs.

Senator HANSON-YOUNG: It's hard to see how they'll be fixed if the government negotiates with the climate deniers over on the coalition side.

Mr Szoke-Burke: I might leave that to the expertise of the people on your side of the panel.

Senator HANSON-YOUNG: Could I ask about the issues in relation to offsets. I know the Biodiversity Council has some particular concerns about the offset scheme as it's been prescribed in this legislation. You're worried about the offset scheme being used in a perverse way.

Mr Trezise: I might pass to Professor Wintle, who's one of the leading experts on these matters.

Prof. Wintle: Yes, we hold significant concerns about offsets and also the use of the restoration contribution fund as it's articulated. The main concern is that—we've only just seen, I think in the last 24 or 48 hours, a draft of the offset standard. All of this hinges on how good these standards are. There are some good assurances in the offset standard that that would push us towards making certain that we have like-for-like trades if offsets are implemented. But it's completely undermined by the proposal for a restoration contribution fund, where you would see proponents basically paying into a bucket and being allowed to destroy habitats without the necessary guarantees that we would ever see that destruction compensated for those particular matters. The holder of this restoration contribution fund would be allowed to deviate away from the principle of 'like for like', which is a significant concern. The holder and the Australian people hold the risk that they may not be able to find offsets for those matters that have been destroyed. We've seen this play out in a number of jurisdictions across Australia already that have instituted similar arrangements, and the general scientific consensus is that offsets have so far contributed to and accelerated the loss of biodiversity because they effectively facilitate the destruction of nature under the delusion that we can have our cake and eat it too. There are significant concerns at the moment with the way that's been set out particularly in the bills, and we're still digesting how it looks in the offset standard.

We would strongly recommend that the bills be tightened, so that, under all circumstances, if offsets are applied a like-for-like test is applied. We need to make sure that the offset standard is applied at all times and is not just left in the hands of the holder of the fund to decide what the rules will be under any particular impact. There's just way too much discretion and flexibility in the way it's articulated at the moment, and that discretion and flexibility is reflected in all six bills, unfortunately, at this stage.

Senator HANSON-YOUNG: Just to be clear: you're worried that 'pay to destroy', 'pay to bulldoze', 'pay to log' or 'pay to dig up' will end up dominating because there isn't the requirement for 'like for like'.

Prof. Wintle: There are a number of reasons why we're worried about the pay-to-destroy approach. The main reason is it's been tried in a number of places and it has not done well. In New South Wales, as Ken Henry identified in his important report on the offsets scheme in New South Wales, most of the offsets get channelled through this pay-to-destroy mechanism because it's easier and because all the risk is put into the hands of the Australian people—the taxpayer. We're finding that that holder cannot find offsets that are suitable to offset the damage that has occurred; that's a consistent finding. We're not seeing anything, particularly in the way the bills

are structured at the moment, to make us think we're going to see an improved approach here compared to what's occurred in other states—so we're quite concerned about that. The bills need to be tightened.

Senator HANSON-YOUNG: The offset scheme in New South Wales has been found to be a total failure. There are allegations of fraud and maladministration—and that's before you talk about the actual science of whether the offsets can be used to offset the actual damage particular projects have created. It seems alarming to me that the federal government would seemingly pick up a system that has so clearly been discredited, even by Australia's own Auditor-General, and implement it in this way in this package. I share your concern about that.

You've got a lot of issues with this package, as do I. I am very concerned that it doesn't close the loopholes that are currently allowing our forests and bushland to be destroyed. It does nothing on climate in terms of addressing the climate damage to nature. I want to talk about that for a moment. Are any of your groups worried that the government has ruled out any form of a climate trigger or climate considerations?

Ms Maybery: On behalf of Environmental Justice Australia, yes. I'm sure others will think similarly. An environment law in 2025 that doesn't refer to climate change and climate damage is not fit for purpose. You can't properly protect nature if you're ignoring the biggest threat to it. There are some reforms proposed to us for limited emissions disclosure, but they don't then require decision-makers to assess or prevent climate harm; fossil fuel projects can continue to be approved. Our written submission proposes some amendments to address this.

What we have seen is almost all fossil fuel projects in the last 25 years being approved under the EPBC Act. We don't think that the safeguard mechanism provides a sufficient response to the impacts that climate change has on nature for this act to not deal comprehensively with it.

Senator HANSON-YOUNG: There was an interesting opinion piece by Tim Flannery published in the *Guardian* today that calls out how damaging it would be to pass a piece of legislation that doesn't consider the climate impacts. The headline, for those watching along, is 'Labor must not partner with climate vandals on Australia's new environment laws'. Would you agree with that statement?

Senator GROGAN: It's a leading question.

Mr Trezise: It is a very leading question. I think the opportunity before this place is to pass laws that genuinely protect biodiversity and genuinely protect the places and the communities that, to be honest with you, Australians deeply care about. I think there is a very meaningful discussion to be had about how to do that in the most enduring way possible, and I think everyone on the call and everyone in the room today would love a multipartisan approach where we get behind a reform that is enduring and is not weaponised.

At the same time, it feels very difficult in the current climate around the climate policy discussion. I was sitting in the audience earlier. It's obvious to the community and to us that this is going to be a challenging piece of reform. I guess the plea to the Senate is to find a pathway that delivers meaningful reform for future generations. The current bill doesn't do it. To be really clear, the current bill doesn't get us there. The current bill is full of loopholes. The current bill puts unprecedented power in a future minister who could be exceptionally good or exceptionally bad, and it's that exceptionally bad future minister that I think everyone is really exercised about because that future minister could do huge damage to not only the environment but also the communities that people are talking about. So I think it's really important that we get the rules and safeguards in place around how this law is going to operate and to buttress against ministerial discretion and unfettered power. You've probably heard that. I think even Professor Samuel was talking about that exact point. The current bill doesn't get us there.

Senator HANSON-YOUNG: In relation to a number of those elements that allow the acceleration and fast-tracking of coal and gas under the government's proposal, coal and gas companies can have access to the streamline process, they can have access to the 'go' zones, they can have access to the accreditation approvals through various states, they can have access to the national interest exemption and they can use the offset scheme under this law as well. Are you worried that, unless there are serious amendments, coal and gas and fossil fuels will have an easier ride under this package, the way it's drafted?

Mr Szoke-Burke: I would say we're worried that any destructive sector can make use of all of those loopholes and backdoor entries you've just set out. On the topic of climate, I think it's also important that this panel remembers that there is more than one way to address and improve climate under this bill. We know that forests are a key climate change issue. We've put out research in the last month that shows that, under the Albanese government, there's been a shocking one million hectares of destruction of bushland and forests in Queensland alone. That state is now a net emitter of carbon dioxide, rather than a sink. Similarly, for native forest logging, you have Australia's Climate Change Authority putting out its target advice and calling on Australia, saying that to meet even the lower end of its carbon emission reductions targets would require ceasing logging of old-growth forests and halving reclearing rates.

So, clearly, there are multiple ways that we need to be addressing the climate crisis right now, and the Wilderness Society and our supporters are really passionate about and locked in on the fact that the two deforestation loopholes that this panel has already considered need to be closed. But then all of the new risks that have been introduced in the draft bills must be eradicated and replaced with things that will actually improve the status quo for nature, forests, koalas and greater gliders.

Senator HANSON-YOUNG: Could I ask about the draft standards. You've all mentioned in your submissions and here already this morning—as have other witnesses—that as well as the standards being enforceable, without all these get-out clauses, exemptions and discretion in the act, the standards themselves have to be robust enough. They have to be enforceable. That has to happen. But, as they're drafted at the moment, are you satisfied that, if we were able to enforce them, they would work?

Dr Burnett: We haven't seen many draft standards yet, but the ones that we saw in the previous consultation process raised lots of concerns of that type. There's nothing in the legislation to require that the standards be fit for purpose or must deliver the sort of granularity of which Professor Samuel has spoken. There is very little in the way of guardrails or requirements around the standards development process. It obviously remains to be seen what might come out of it at the end of the day if this bill were to be passed. But there are no guarantees, and that's a problem. In my view, the thrust of the Samuel reforms was to move from a case-by-case discretionary based decision-making process to a rules and standards based system. For that to work, the standards have to be rigorous, granular, as Professor Samuel says, and detailed. They have to address all the right things. And the act has to require decision-makers to comply with them, not just take them into account and pick and choose which standards apply. So there are a lot of things that need to be addressed about the standards if they are to do the job of delivering the minimum level of protection that the environment needs on a consistent national basis.

Mr Trezise: Just to add to that, we have seen very briefly the biodiversity offsets standard. That came around just a few days ago. And the draft MNES standard is open for comments. At the top level, the draft MNES standard is too vague. It's too high-level. It doesn't talk to the things that associate Dr Burnett just mentioned, which is that we need granularity to guide decision-making and we need that specificity in the legislation. They can't be considered in isolation when it's decided how those standards are going to be considered. At the moment it's at the minister's satisfaction, and the minister could be satisfied if they are not applied. The minister gets to determine how they are applied or where they are applied. So, again, we are stepping away from this kind of rule and rigor to more discretion and more flexibility. There is a bit of smoke and mirrors about it in terms of, yes, we have standards, but they are not binding. They are based on discretion. The minister can choose how to apply them or not. At the moment, the standards that we have seen, at least for MNES, are probably too high-level.

Senator HANSON-YOUNG: They're pretty vague.

Mr Trezise: I will leave it there for others on the panel to add their thoughts as well.

Prof. Wintle: If that was a throw to me, I could just add a little bit of specificity around some concerns with the offset standards. We're not seeing a compliance framework in the offset standard yet. The caveat here is that we haven't had much time to really scrutinise, but we're not seeing any kind of sufficient compliance framework that sets out clear consequences for noncompliance. Overall, the offsets standard and the offsets basis allow for a declining baseline, so you only have to achieve a net gain against a declining baseline. That's actually a way of locking in ongoing loss of biodiversity. We really should be thinking about judging the performance of all of our standards against a fixed baseline, and we need to be nature positive or net positive against a fixed baseline. We would recommend the end of the 2022 State of the Environment reporting period. We really need to tighten up, I guess, what the conditions are in which we would allow offsetting.

We also need to be really clear about what's not 'offsetable'. One of the good things that they've got in the current bill is this idea of irreplaceable habitat. The 'unacceptable impacts' clauses at the start of the bill talk about a 'quick no', where there are unacceptable impacts. We support that idea, but we don't support the way it's currently written, because it's too vague to ensure that we're actually going to have a clear and objective test, and it's still based on the minister's satisfaction at this stage. We really need to tighten up the definitions. We need to have measurable science based objective tests rather than vague terms around whether it's an unacceptable impact or an acceptable offset. We would like a list to be maintained by the Threatened Species Scientific Committee of matters—habitats, species habitats and threatened ecological communities—that cannot be offset because they're not available in restoration or it hasn't been demonstrated that they can be restored. We need clear guardrails, and, at the moment, we're just not seeing clear guardrails in the bills or in the draft standards.

Mr Szoke-Burke: I would add as well that there are a number of standards that were envisaged by Graeme Samuel that are MIA right now. You've heard there are two draft standards that are open for consultation. When we asked the department for what other standards would be part of this future framework, we understood that a

data standard and First Nations participation would occur sometime in the future. There is now radio silence about a community consultation standard, which was something that Samuel recommended, and a compliance and enforcement standard. If we start to see some of the standards in his vision drift away, we're going to be faced with new accountability and transparency risks. We need to have living accountability based on community rights to information and to participate in decisions. Having those standards on those specific matters is going to be a really important step. So we'd urge the government as well to actually keep its eye on a comprehensive package; otherwise, what proponents are going to experience is that the goalposts may change over time. To begin with, there may be zero or only two of these standards enforced. Over time, new ones might come in, and, all of a sudden, processes, rules or outcomes are going to vary. That's not what we want. We want to have certainty for nature, certainty for community and certainty for business, and the way to do that is by having a comprehensive package of all of the standards that are needed to make this system work for nature.

Ms Maybery: I would add that a reference has just been made to the First Nations engagement standard. Four years ago, the Samuel review recommended that be introduced as a matter of urgency and provided drafting around that. We've understood that that standard was in the process of co-design. As has just been said, it's now missing. But we struggle to see how essential aspects like free, prior and informed consent could be bolted onto such a complex system by way of a standard introduced in a year or two's time.

CHAIR: Thank you very much. Senator Duniam.

Senator DUNIAM: Many of you would have been a part of the process in the last parliament around the nature-positive laws. We may all have PTSD—I'm not sure—but we've certainly been here before. If we compare the packages, is the set of bills before the parliament now closer to where you want them than the nature-positive laws, or is it the reverse?

Mr Trezise: I'm happy to go first on that one. You've heard our concerns on a number of issues, but I think there are some really important things that have been included that we've talked about. It's a bigger package, first of all. This question was asked earlier of the former minister's staff and alluded to some of the dynamics that played out last term. It is a bigger package. There are some important elements: national environmental standards and the provision for them, the idea of clearly unacceptable impacts—we would certainly like to see those tightened. The increased penalty provisions are also important provisions. We are taking some steps.

But, coming back to my earlier point, there is this broader issue of ministerial override and discretion. You could potentially have clearly unacceptable impacts, but there's currently an override in there where the minister can say, 'Actually, we're going to switch that off,' and whatever can go ahead, depending on which lobbyist has gotten in at which time. That's the risk with the current system. As colleagues at Environmental Justice Australia alluded to earlier, it can be fixed. There are changes that can be made to tighten the rules around this decision-making, but the short answer to your question is: it's a much bigger package than what was brought to last parliament.

Senator DUNIAM: It's bigger but perhaps not better? It's not like for like, is it?

Mr Trezise: That's a good analogy. It's not like for like. There are components of it that are really important. They have to stay, and they have to be tightened. But there are other components that entirely undermine the potentially good new parts, so it's hard to compare.

Senator DUNIAM: On this issue of ministerial override and the impact that it may have, as you purport, on environmental outcomes, or other impacts as well, is this weaker in this legislation than the nature-positive proposal of an equivalent nature?

Mr Trezise: Now you're testing my memory.

Dr Burnett: It's very difficult to make those comparisons.

Senator DUNIAM: Why is that?

Dr Burnett: It's moved on quite a bit. As Mr Trezise says, there's a lot more on the table now.

Senator DUNIAM: But ministerial decision-making is a pretty straightforward component of this legislation.

Mr Trezise: In short, yes. There's a new proposal: the national interest proposal. That's an entirely new concept of saying, 'We're going to choose a particular project and say, "That's exempt from national environmental law."' There is currently a national interest exemption in the existing act. That has really been used for emergency response arrangements. In our view, it has been abused once or twice, to be frank. But it's not the norm, and there is a cultural norm around it. Introducing a new framework for exempting a specific project because it meets some vague national interest, of which there is no definition in the legislation—it's, 'This may include these things,' but there is no fetter on what a minister may consider to be in the national interest—is

deeply problematic because it creates a framework where, as Professor Samuel alluded to earlier, there will be a line of lobbyists knocking at the minister's door, saying, 'My project is going to deliver 5,000 jobs'—or however many jobs—'so it is in the national interest,' and it doesn't matter where it is or what it's going to impact on. We've seen former federal ministers come out speaking against this exact exemption.

Senator DUNIAM: Where do you think that sort of weighting should be considered in a decision-making process? Is it your contention that that thing should not be considered at all?

Dr Burnett: Professor Samuel's report put it on this basis: the minister should have the power to override the rules in rare cases. There will be rare cases: we're at war, there's a national disaster—those kinds of things. You do need that kind of mechanism, but, the way that the bill is drafted at the moment, the discretion is huge. There is a reference in there to defence and national security, but it's just by way of example, and it goes on to say, 'But this doesn't limit in any way the grounds that the minister might have.' It's effectively an undescribed and unfettered discretion and it's—hold on or I'll start to repeat what Mr Tresize said—

Senator DUNIAM: Dr Burnett, I appreciate that. That wasn't my question, though. If someone says, 'My project will generate 5,000 jobs,' or five gigawatts of renewable energy or whatever it might be, where does that get weighted into the decision? Where would you say that should be weighted in the decision-making process?

Mr Trezise: Where it is currently weighted in would be appropriate, which is in terms of thinking through the economic, social and environmental impacts or benefits of a particular project. I guess the challenge here is that we're talking about environmental protection legislation. At the first cut is the question: is this project going to seriously impact and negatively harm a matter of national, environmental significance? At some point, I guess the discussion shifts to how we account for the jobs that that project may develop or the regional benefits that a particular infrastructure project may deliver. But you've got to bring it back to: What are we trying to achieve with this legislation? Is this legislation about enabling and fast-tracking development or is it about protecting matters of national environmental significance? We can go into the various aspects of those—the world heritage areas and threatened species. It's obviously the threatened species that have a much wider footprint.

That is the challenge of the EIA and how those things are brought into the environmental impact assessment and into those deliberations. But, at the fundamental level, we need to be saying: 'Here are the thresholds for matters of national environmental significance. Here are the clearly unacceptable impacts. Here are the national environmental standards that govern.' That should then be shaping where proponents should be thinking about developing their projects. If we have that upfront certainty and guidance, a lot of the land use and ocean use conflict, and conflict around these, then translates into regional planning. It is a complex system. I guess you're asking how we trade off against the economic and the environmental outcomes that arise out of these decisions.

Senator DUNIAM: Yes, that is my question, because, of course, we have to have a functioning economy to thrive, as well as a liveable environment that is healthy.

Senator GROGAN: That's why you have targets.

Senator DUNIAM: Jobs targets, housing targets and all of the rest.

Mr Trezise: I can see Professor Wintle's hand up.

Prof. Wintle: I want to add to Senator Duniam's question. This act is seeking to create a disincentive to damage the environment and these matters of national environmental significance that often represent the last of the last. Where we're talking about a project that might have some high social and economic benefits, the act is trying to dissuade going to the soft target of the threatened species' habitat—that is potentially on the public land—and trying to encourage consideration of alternative pathways for development and for achieving those socioeconomic benefits. I think it's reasonable for this act to set some clear guardrails on where we say that we're not going to trade off any more on this thing because that will very likely mean the extinction of this species or the complete loss of this threatened ecological community.

Senator DUNIAM: There was obviously an agreement reached towards the end of the term in November of last year between some crossbench parties and the government around a set of laws. Were any of your organisations a part of that and has any of that been replicated in the laws that have been presented?

Mr Szoke-Burke: You might have to specify what you mean by 'that'?

Senator DUNIAM: On 25 November 2024, the then minister Tanya Plibersek wrote to Senator Hanson-Young and, on the following day, to Senator David Pocock outlining changes to the nature positive bills. I've been trying to understand what the changes would be to guarantee the support of the crossbench. Sadly, under FOI, the documents have been fully redacted.

Senator HANSON-YOUNG: That was you!

Senator DUNIAM: Have you got any insight? Were you consulted at all on any of this?

Mr Szoke-Burke: I'll say that our organisation was part of the consultation process for those bills. We had communities mobilising and advocating around the country to put the issue of forests, threatened species and community rights in environmental decisions onto the political agenda, but we weren't in that negotiation room.

Senator DUNIAM: So you have no insight?

Mr Trezise: Not to my recollection or knowledge.

Senator DUNIAM: It remains a mystery. One day we'll find out. Thanks, Chair.

CHAIR: I have a few questions. By way of a starting point, I think from each of the submissions there is an inference—correct me if I am wrong—that the current EPBC Act is not fit for purpose in order to protect nature and the environment.

Mr Szoke-Burke: Yes.

CHAIR: I see lots of nodding at the table. There's no contradiction to that. I have listened to what you've said and read your submissions about the ministerial satisfaction test but, to pick up on something that Mr Trezise said earlier, the setting of national environmental standards is a positive step in this legislation. Is that right? The setting of a test that says a minister must not approve an action that has—the unacceptable impact standard for approval is a positive step compared to the current legislation.

Mr Trezise: As a framework—from our perspective?

CHAIR: As a framework.

Mr Trezise: Yes. We want it tighter in the detail.

CHAIR: With that caveat, which I appreciate you have raised, is the concept of a net gain test a positive step from that framework perspective?

Mr Trezise: As long as it's defined in legislation.

CHAIR: In the process of accrediting a management or authorisation framework for a state or territory, for instance, with those standards, isn't it a positive thing that those standards would then be applied to the state body?

Dr Burnett: But they wouldn't necessarily be applied, and this is part of the problem. Firstly, if the minister were looking to accredit a state body, the minister would firstly have to make a regulation declaring or applying the relevant standards to that accreditation; and, secondly, there's a lot of vagueness in the accreditation requirement. The accreditation requirement is not, for example, that the state must apply the standards. It is the minister's satisfaction that the state system that he or she is accrediting is not inconsistent with the standards, which is pretty vague. There is a lot of wriggle room in there, and that is part of the concerns. There is no guarantee that there will be a standard and that it will be fit for purpose and, even if it is, that it will be applied by the minister of the day, because this could be decades in the future. There is no guarantee that it will be applied by the minister of the day or that the minister's satisfaction about the broad equivalence of the state accredited system will be well founded.

Senator HANSON-YOUNG: Sounds like a lot of hope and prayers.

CHAIR: To take it back one step to my question: the application of those three concepts, with the caveats that have been added to a state process would be an improvement on the current state of the law.

Mr Szoke-Burke: It's too hard to be definitive about this because of all of the discretionary language that my colleague was just referring to. I would say that each of those hallmark pieces you have just referenced and asked for positive words about hold the potential to do what we hope they do, but they are not there yet because of all of that discretion. Discretion is a way for politics to overcome science and structured decisions. It's the opposite of what's needed right here. If your concern is for the government to be achieving those elements as working towards nature for its legacy, then it's really important that amendments to the bills are made to actually remove this ever appearing to the minister's satisfaction test and to actually focus on objective tests that are about compliance with those standards and compliance with the unacceptable impact test. We are opposed to accreditation of approvals, but, for accreditation of assessments, you need similar objective tests, as well as appropriate forms of assurance, to make sure that any accreditation doesn't become a runaway train that the federal government no longer has any oversight or control over.

CHAIR: With respect to the issue around—

Dr Burnett: Sorry, Senator, can I just point out that Professor Wintle has his hand raised on that point.

CHAIR: Sorry, I had missed that. Professor?

Prof. Wintle: I wanted to perhaps give you, Senator, a little of what you were looking for here. I would say that a lot of the structures that have been put into these bills are positive steps. The broad structures that have been established, that you've referred to, I think, are things that we need, to improve outcomes for nature and improve the way these environmental laws work.

The problem, as many of my colleagues here have articulated, is that the detail of the wording of how those structures will be applied is currently sadly lacking, and we really need to sort that out. So it's tick on the broad structures, tick on standards, tick on the concept of unacceptable impacts and a quick no, tick on an EIA and tick on an EPA, but all of these structures that have been put in place unfortunately currently have catastrophic flaws in the way that they are planned to be implemented and the discretion that is given to the groups that would implement them.

Senator ANANDA-RAJAH: I'm just concerned that you're seeking something that is so prescriptive that it's going to ultimately be unworkable. And I see your point. This is not perfect; no-one's agreeing that this is perfect. But it's a damn sight better than what we currently have, and we simply are running out of time. If your question is one of perfection, we're just not going to get there. We're going to be back at square one, which is where we were a couple of years ago and then a decade before that.

Prof. Wintle: I don't think—

Senator ANANDA-RAJAH: So you're right—this is a golden opportunity. But, if it is so prescriptive, and it's the level of granularity that you want, the best way to protect nature is to not elect crappy governments like them—like those climate deniers sitting next to me!

Senator HENDERSON: Unparliamentary language, Chair!

CHAIR: [inaudible]

Prof. Wintle: If I could respond to that, I think the problem is that this, as it currently stands, potentially creates more risk than we currently have, because of the discretion that could be given to future governments. So, yes, I wish we could always elect governments that did fantastic things for the environment and prevented destruction and harm to nature and to the last of the last of our unique species, but, unfortunately, the reality is and history has shown that that's not always the case. We need these safeguards in place. We need much tighter wording. We're nearly there. The structures are in place in the bills. We're nearly there. And, as our colleagues from Environmental Justice point out, the changes that we need to make now could be made very easily, and that could get us across the line.

Ms Maybery: I would agree with that comment. We're definitely not seeking perfection, but I think everyone on this panel is engaging seriously with the detail of 1,500 pages worth of proposed reforms, and proposing amendments that are sitting in documents, drafted and ready to go; they could be made tomorrow. So it's not that we're proposing that this process be held up in any way, but, if the intention is to have an act that continues forward and provides certainty and protects nature, there are changes that need to be made.

CHAIR: Thank you very much for your attendance here today. We appreciate both your evidence and your submissions. If you've taken questions on notice, could you please provide those answers to the secretariat as soon as possible. At this point, we will break for lunch.

Proceedings suspended from 12:54 to 13:42

SCHNEIDERS, Mr Lyndon, Executive Director, Australian Climate and Biodiversity Foundation [by video link]

CHAIR: Welcome. Are you joined by any colleagues today, Mr Schneiders?

Mr Schneiders: It's solely me, I'm afraid. The chair, Dr Henry, is in Perth.

CHAIR: That's absolutely fine; I was just checking.

Mr Schneiders: I am coming to you from Kombumerri country in the Gold Coast hinterland.

CHAIR: Thank you. I understand that information on parliamentary privilege and the protection of witnesses giving evidence to Senate committees has been provided to you. Is that right?

Mr Schneiders: Yes, that's correct.

CHAIR: I've said this a few times today, so forgive me for the repetition in relation to opening statements. If you've got an opening statement, please make it a very short one. We'd prefer it if you could table it, if possible.

Mr Schneiders: I am happy to go if you just want to go into it. I've got views, and I'm happy to very briefly outline them, but if senators have questions we should just go straight into that. I don't mind.

CHAIR: I think that would be better. Senator Hanson-Young?

Senator HANSON-YOUNG: Mr Schneiders, thanks for being here. I appreciate your submission and you getting it to us so quickly, given where we're at in this process and the fact that this package is 115 pages long. I want to go to some of the key concerns that you've outlined. You highlight that there are major loopholes in the existing laws as it is and that this package doesn't close them. Are you worried that, under the package as it's currently drafted, our native forests and bushland will continue being destroyed even when there is native species and threatened wildlife that live there?

Mr Schneiders: Overall, when we look at the package and try to assess its likelihood of leading to an improvement in the two primary outcomes that really matter to this piece of legislation, so the protection, management and restoration of these matters of national environmental significance together with managing the impacts of economic development activities—that's really what the act seeks to do—what we've been really looking for, consistent with Professor Samuel's recommendations and, even before then, Allan Hawke's recommendations back in 2009, is consistency, repeatability and no exemptions. All parts of the economy, all sectors, all parts of the environment need to be treated equally under this law if we are to protect and preserve and restore matters of national environmental significance, which includes things like World Heritage sites, important wetlands, listed threatened species and ecological communities.

Anything in this package which continues to leave a lack of clarity, which continues to set aside the protection, assessment, management and restoration of impacts on matters of national environmental significance is a problem. As you would know from the submission, we have some ongoing issues around the treatment of deforestation under this legislation. Also we have some issues around the lack of clarity around how a new regime, which puts the protection and management of matters of national environmental significance into the centre of the new regime, will apply to the remaining regional forest agreements that are primarily in Tasmania and New South Wales.

But we do also note the expansion of this construct of national interest, particularly around this idea of national interest approvals, is also quite troubling. We're not seeing how the legislation itself is addressing the existing exemptions around deforestation, particularly continuous use under section 42 of the act, I think, and we're not seeing how the new regime, with some of the beneficial things like the creation of these binding environmental standards to protect and manage impacts on matters of national environmental significance, are going to relate to the regional forest agreements.

There are three things here. Firstly, the continuous [inaudible] doesn't seem to be addressed. That seems to be a problem given there is a potential threat to NES by clearing of vegetation. Secondly, we can't see the mechanism for ensuring the regional forest agreements are assessed and that the M and the S values are identified, assessed and protected. And, lastly, we were quite concerned that the construct of national interest exemption seems to have expanded quite considerably from what was in the previous act, and also what was recommended by Professor Samuel. I note that in his submission he raised his concern to being far more discretionary and far more wideranging than what most people would consider to be the national interest around issues like national emergencies and national security. They are the outstanding issues that we'd like to see addressed through the inquiry and through the Senate deliberations.

Senator HANSON-YOUNG: I was listening to Dr Henry's comments last week in relation to this package. He obviously touched on the issue of the national interest carve-out, which you've just gone to, describing it as

'quite peculiar'. It really does undermine any of the positive things in there. Also a lot of the wriggle room and weasel words and lack of enforcement and certainty in terms of the decision-making by the minister and other groups have highlighted that.

Dr Henry also pointed out in his interviews—I'm sorry he's not here and you're going to have to respond on his behalf, if you can.

Mr Schneiders: We act as one.

Senator HANSON-YOUNG: Right, okay. He said that none of the states and territories are doing very well on environmental protection. My concern with that is: given the devolution of powers to the states and territories, how do we manage that problem? All you need to do is look at what's going on in the Northern Territory right now. They've got a corrupt EPA. They've got a botched water planning process. They're letting some of these big fossil fuel companies and gas companies run roughshod over Indigenous communities. How do we have any faith that what is being proposed is not going to just give cover to the types of scenarios we're seeing in places like the Northern Territory?

Mr Schneiders: These are legitimate and genuine concerns. There is a lack of consistency in terms of environmental management and environmental regulation across the country; there's no doubt about that. Each jurisdiction has a different approach. Each jurisdiction is sometimes quite progressive and other times quite regressive in terms of these matters. Part of the ongoing regulation is quite an issue as well. I share the concerns being expressed and also echo some of the things Ken has talked about.

One of the strengths of the package is it does a couple of things. It hasn't been proposed previously when reforms have been looked at around the EPBC Act. It has been a consistent position, particularly from the conservative side of politics over a number of years, to try and devolve environmental decision-making powers and approval powers to the states. I have spoken against those proposals in the past, and the primary reason why the ACBF is supportive of this package is there are quite a number of checks and balances in place. It could definitely be strengthened, but, in place, through this package, it will make it harder and difficult for poor state regulation to be accredited and supported.

The primary protections that have been put in this package that haven't existed previously are twofold. One is this construct around national environmental standards, which Professor Samuel would have pointed out to you earlier in the day was the centrepiece of his submission and his independent review back in 2020. Those have never existed under the regime of the EPBC Act. We've always had process; we've never had specified environmental outcomes that had to bind decision-making by the relevant minister at the Commonwealth level—and in this instance they would be expanded to the proposed CEO of the National Environmental Protection Agency, which also would provide a floor rather than a ceiling for any ability to accredit state based decision-making processes or regimes.

The importance of putting the actual power to make standards, an uncontested power, into the primary legislation is in itself extraordinarily important because it provides decision-making clarity and direction. Some of those other important reforms that have been put in the primary legislation, rather than in policies or subordinate things like rulings and even disallowable instruments, should provide some level of confidence that if a state regime is to be considered to be accredited in any form it's got to meet the standard—and the standard has to be a high standard, because the standard is the federal government's responsibility to honour its commitments under the various treaties, including the Convention on Biological Diversity, the World Heritage Committee, the Ramsar convention and so forth.

I think there are checks and balances in this package that are different to the various packages that have been brought before the parliament over the last 20 years, and the standards are the centrepiece. That said, diligence and close attention need to be paid to these matters.

I think the other fail-safes that are sitting there for the time being in this legislation include the role of the National Environmental Protection Agency in being able to ensure compliance, enforcement and assurance of any accredited regimes. Lastly, there is always the fail-safe that any accredited arrangements do have to be brought before the Australian parliament as a disallowable instrument. I agree with the concerns. I agree with the issue that's being identified around the inconsistency of the strength of state and territory regimes. But I do also genuinely believe the package has some very important fail-safes in it.

Senator HANSON-YOUNG: Thank you.

CHAIR: The coalition.

Senator HENDERSON: Mr Schneiders, good afternoon. Thank you so much for joining us. I want to go to Professor Samuel's recommendations, which did not include an EPA; he recommended a commissioner. Of

course, the proposed EPA structure and the CEO role are very different from when he made those recommendations, such that the CEO now, under the bills, cannot be held to account for performance outcomes. Do you support a change to ensure that the CEO of the EPA is accountable?

Mr Schneiders: That's a good question. Thanks, Senator. I was quite closely involved in the process during the independent review, with a few different hats on—firstly in my former role as the national director of the Wilderness Society, and then I was working on behalf of a coalition of environment groups that engaged in the Samuel approach, and then subsequently, with the then minister Ley, I was trying to bring a package together to the Australian parliament to deliver on Graeme's initial recommendations. What is being proposed, in some respects, is consistent with what Professor Samuel said. In particular, he highlighted a whole range of problems with the previous administration of the legislation around enforcement and compliance. He also identified that there was a major problem around the ongoing implementation of existing accredited arrangements like the bilateral assessment processes. So he was very keen, as you probably would know, on building some sort of strong cop on the beat, as he called it, to ensure that compliance and enforcement was undertaken to ensure that accreditation regimes were delivering the outcomes that were required. So those functions are sitting in this bill in terms of the roles of the EPA.

In terms of the changes that are being proposed—I guess that's getting to the heart of your question—there are some other significant changes which may well benefit from greater scrutiny, so I agree with that. I think it is very important if the EPA does get stood up, depending on the powers that are afforded to it, that there is a high level of independence for the CEO, because these are extremely contentious issues—the issues around large development approvals and around what is the most appropriate way to manage the MNES and manage the natural environment. They're not black and white. So I would be restating that the maximum independence possible for the CEO is going to be important, because I think all of us who have been around these issues for a long time see how contested and how politicised these decisions can be. I think the requirement—

Senator HENDERSON: Can I just pull you up on that—sorry, Mr Schneiders. Can I just pull you up on that for one moment.

Mr Schneiders: Yes, sure.

Senator HENDERSON: Isn't this also a safeguard, though? Just say there was a CEO appointed who was arguably hostile to protecting the environment. Doesn't there need to be a safeguard under those circumstances?

Mr Schneiders: Well, I think there are a couple of safeguards—aren't there?—in normal circumstances. One of the safeguards is, of course, that the individual who would be appointed would have to abide by the conditions of the Public Service Code of Conduct and what have you. But I know your point there is good. I'm just trying—

Senator HENDERSON: Sure, and I know it's a hypothetical.

Mr Schneiders: That's right.

Senator HENDERSON: I am just saying in terms of understanding and trying to get the balance right, I guess.

Mr Schneiders: Yes, 100 per cent. I do understand. We haven't had this model in terms of environmental management before. We have got models of independent regulation of activities. As my chair would often say, significant parts of the economy are now bound by independent decision-making, including the role of the Reserve Bank. Ken does a better job of running through all of those components than I will, because I'm not an eminent economist. But I think there are checks and balances that need to be provided. I think the statement of expectations is a good balance. That is something that does enable the CEO to be clear about what their role is and what has to be delivered.

Senator HENDERSON: But the statement of expectations doesn't impose any obligations on the CEO.

Mr Schneiders: Well, it can't, can it? That's part of the issue about independence which we are all struggling with. If we want the best, highest-quality decision-making that is consistent and reliable—and I have spent a lot of time talking, as you probably know, with industry over the last many years on this matter and that is one of the things they want—we need to be minimising the ability of the minister, or the parliament sometimes, to be sticking their heads into the business, which is essentially the administration of laws and rules.

Senator HENDERSON: I won't harp on this point for too long—

Mr Schneiders: That's okay.

Senator HENDERSON: Part of the statement of expectations is that there's a strong expectation that the government rolls out renewable energy projects. If, for instance, there were renewable energy projects in areas of

pristine wilderness and, therefore, a CEO were to approve a project that destroyed pristine wilderness, wouldn't that be of concern to you?

Mr Schneiders: Of course, it would, but remember under the regime that is being proposed the role of either the CEO or the minister. When we are talking about assessments and approvals, we are still talking about ministers actually retaining the power to make assessments and approval decisions. This isn't the full-blown independent model of an EPA where the EPA is doing those things. The minister is retaining that power. What's proposed under this is a delegation of decisions to the CEO of the EPA. The minister still does have the ultimate power in terms of assessments and approvals under this proposal.

The second thing is, whether it is the minister or the CEO, under this regime the decision-making can't be inconsistent with the requirements of the national environmental standards or some of the other provisions that have been introduced into this legislation, including the construct of 'unacceptable impact' and the fast no. Industry and environmentalists have been talking about this for many, many years now. Environmentalists want a fast no and industry want a fast yes. They want to know where they shouldn't be going. So I think it is an understandable concern that you are outlining, but I do genuinely think that protections that are hardwired into the legislation around standard-making powers, the applications of the standards and the construct of unacceptable impacts would make it very difficult for the outcome that you are highlighting to occur.

Senator HENDERSON: Thank you. Chair, could we just pass to Senator Duniam for a couple of quick questions?

CHAIR: Yes, but I implore Senator Duniam to be brief.

Senator DUNIAM: I always am! We have done this dance for a while now and, unless I recall incorrectly, it is a stated aim of the Australian Climate and Biodiversity Foundation to see the end of native forest logging, is it not?

Mr Schneiders: Yes. I don't think we are hiding our light under a bushel around that one. But we do have two criteria for it. We genuinely believe that the best and highest use of native forest is for biodiversity protection and carbon storage. But I want to stress, as I always do, that we are very committed to the idea a modern Australian economy and economic development. Anyway, I just wanted to say that.

Senator DUNIAM: I do commend you on your honesty.

Senator HANSON-YOUNG: It's not economics that's keeping the native forest logging industry alive. It's taxpayers' money, actually. Let's be clear.

CHAIR: Senator Hanson-Young!

Senator DUNIAM: Well, that was an opinion. My question is this. No amount of regulation around native forestry, whether it's in an RFA or in the new EPBC Act without exemption under an RFA, would, in the eyes of your organisation, make it acceptable—is that fair to say?

Mr Schneiders: You could say that, but we are not the decision-maker here. The decision-maker around the enforcement of new environmental laws will be either the CEO of the EPA or the minister. I think what we are arguing for is consistency. And Samuel was pretty clear in 2019-20 when he said that, clearly, whatever the strengths and weaknesses were of the regional forest agreements that were put together back in the 1990s—and, as you know, I've got a nuanced view around this, given very important forests were protected through the RFA process—the simple reality is the RFAs have not been assessed. The impact of native forest logging operations in the RFAs has not been assessed against this construct of 'matters of national environmental significance'. Those outcomes are on the box, right? This is what the EPBC Act's supposed to do: provide the mechanisms for the protection, assessment and restoration, ideally, of matters of national environmental significance. Good policy suggests that, if the Australian government is committed to achieving those outcomes, there should not be a problem with having a look at the remaining RFAs to ensure that the activities that are undertaken are compliant with the Australian government's responsibilities. I don't know if AFPA still shares this position. I certainly remember that last time we had a conversation about this legislation, in the previous parliament, even AFPA was recognising that the application of environmental standards to the RFAs did make good sense.

Senator DUNIAM: Thank you for that, Mr Schneiders. I have one very last question, on the issue of the emissions disclosures proposed under this version of the legislation. I don't think in your submission you talk about—

Senator HANSON-YOUNG: Can you even say that word, or are you allergic to that word?

Senator DUNIAM: You're on fire today, you really are! I would be disappointed if you weren't. Think of those emissions from that fire over there!

The reference to emissions does relate to native forest logging, but do you have a view on the emissions disclosure regime that is proposed under this legislation—that is, whether this should be retained as part of the proposed legislation, or is better off somewhere else?

Mr Schneiders: My primary issue with the proposal that's been put forward by the Australian government is I'm just not sure what it does next. Increasingly, over the last several years, we have been getting an increasingly whole-of-economy perspective around managing and identifying emissions impacts on industry in particular. We've got the mandatory climate disclosure regime that's been brought in place recently over the last parliament. People talk about the safeguard, but, of course, the safeguard is quite limited to one particular part of the economy. It's not, as Ken would say, the perfect policy for reducing emissions—but I'd let Ken talk about that. I think there's nothing wrong, as Graham Samuel recommended, for companies to be disclosing the likely emissions associated with their development as part of seeking a development application. Most large companies are now being required to do that anyway in terms of mandatory climate disclosure regimes. I think what's unclear is what the decision-maker should do with that information.

Senator HANSON-YOUNG: They should consider it!

Mr Schneiders: Of course. And it may not be the answer that Senator Duniam's seeking here, but you know what I'm getting at, right?

Senator DUNIAM: Yes, I do.

Mr Schneiders: At the end of the day, for a decision-maker—whether it were the CEO of the proposed EPA or the minister—it would be good to understand the next step once the disclosures have been undertaken, and work out what that means in a decision-making sense and how that relates to the wider climate and emissions policies.

Senator DUNIAM: Thank you, Mr Schneiders.

Senator ANANDA-RAJAH: Mr Schneiders, can you just reiterate for us what the problems are with the current act and why it's so urgent to pass this legislation at this moment.

Mr Schneiders: Thank you, Senator. You can see from our submission we are supportive of this package and we want to see it strengthened, of course, but we ask [inaudible]. We're supportive of it for a couple of reasonable interpretations of Graeme Samuel's recommendations, and those recommendations were well thought through and did enjoy in 2020 a high level of support across [inaudible]—

CHAIR: Sorry, Mr Schneiders, we lost you in transmission for a moment.

Mr Schneiders: and the business sector.

CHAIR: Mr Schneiders, we lost that last answer. Would you mind repeating it?

Mr Schneiders: Oh, sorry. What did you get?

CHAIR: Not much. Please repeat what you said.

Mr Schneiders: No worries. From the start?

Senator ANANDA-RAJAH: Yes. Thank you.

Mr Schneiders: Okay. I'm in the wilds of the Gold Coast here. They've clearly got internet problems. I'll go back to scratch.

As you'd see from our submission, we are supportive of this package. We are very supportive of this package. We would like to see improvements, particularly regarding some of those primary threats to the natural [inaudible] and native-forest logging. So that's on the record. The strength of this is that it is a faithful representation of what Graeme Samuel recommended back in 2020. The strength of the recommendations was twofold: Graeme wasn't entering into virgin territory here with his recommendations, because he was also building on very similar recommendations that were made by Allan Hawke 10 years beforehand; and there was a high level of agreement between business and environmental interests. Something needed to change, and the direction in which Graeme was taking the reforms in the review was broadly supported.

The idea of having actual outcomes—environmental outcomes and process outcomes—in the core legislation should not be a revolutionary idea. But, certainly, for any of us who have tried to interact with EPBC over the last 25 years—and, sadly, I've been trying to do that the entire time—there are no outcomes. There is process and there is paperwork; there are no clear environmental outcomes. Graeme's construct around creating environmental standards that bind decision-makers ensures that the national interests, as represented by these matters of national environmental significance, are being protected and represented. This is in terms of not only responding to development approvals but also, into the other important part of the act, involving things like proactive activity

such as conservation plans, recovery plans and management plans for important sites and important values. Having consistency and having a set of clear rules that actually can help a decision-maker make decisions without just simply looking at either a blank piece of paper or an EIS of nine volumes and as high as a small building—having clear rules and the power to make those rules is incredibly important.

For starters, embedding the idea that the protection of matters of national environmental significance is the primary goal of the legislation is incredibly powerful. Having in place real clarity around what shouldn't happen—the corollary of what shouldn't happen is what can happen. We want an economy, and we want economic development. But we want them in a way that doesn't sacrifice the natural world, because every piece of independent advice we've been receiving for more than a generation now says the natural environment in Australia is going backwards, and that is in no-one's interest. That is not in the economic interest. It is not in the environmental interest. It's not in the national interest. That's incredibly important.

The reform's offsets are very consistent with what Graeme was recommending. I can't remember the exact terms, but he was scathing of the offset regimes. It wasn't as if he, as a businessperson, wasn't understanding that development will proceed. But he said it was a rort that we always went to the decision first to offset—never to consider avoiding and minimising impacts but always to the offset—and that the construct of 'no net loss' was effectively just leading to ongoing loss over time because of the sheer accumulative impacts of all the changes and the impact of past development on the matters of national environmental significance.

There are many other features of this legislation that we support. We support the National EPA. We support a number of these reforms. We think it is a very accurate and comprehensive delivery of what Graeme Samuel recommended. We commend, as we did in our submission, the work of DCCEEW over the last several months to try to pull this massive piece of reform together. We also note that the real work starts not when a piece of paper gets signed off by the parliament, although that's incredibly important of course; the real work comes in actually trying to implement a reformed regime that can be good for the environment and can be good for business. But we reserve our position that the loopholes that remain undermine many of the good components of the legislation that is being proposed.

Senator ANANDA-RAJAH: Would you mind, for the benefit of the people listening and the committee, explaining what the environmental benefits of the new legislation are, particularly with respect to specific measures like net gain. Most people wouldn't understand what net gain is. Could you unpack that and perhaps talk a little bit about the restoration fund and how that's different to what's in the previous legislation.

Mr Schneiders: Yes, sure. I'll come to those two matters because you specifically asked me, but I do think the most important outcome for the environment is the creation of the standard for the matters of national environmental significance and the clarity given to decision-makers around how to ensure those MNES are protected and restored going into the future. There have been some really small but incredibly important reforms sitting in this package as well, including strengthening this idea of protection—the identification and protection of critical habitat. That is habitat that's critical to threatened species. We haven't had that concept embedded in this legislation, and I think it will make a material difference and should build confidence in the system that, when development is proceeding, it's not continuing to facilitate extinction and ongoing degradation of threatened species across the landscape.

In terms of the concept of net gain, it's an important idea to be embedded in the legislation. There is a lot of work still to be done, but it's recognised by all stakeholders that there is only so much legislation can do. Actually implementing the legislation, putting in place the policies and getting the data to enable net gain to become a meaningful construct in this legislation is all ahead of us. It means what it says on the box. If development is going to happen and development is going to have a significant residual impact on protected matters—this is EPBC language; I'm sorry. Protected matters are those issues that are called matters of national environmental significance, like species and ecological communities. If there is going to be acceptable development that is going to have an ongoing impact on MNES that is not an unacceptable impact, then there need to be complementary and compensatory activities in terms of offsets that exceed the impact on that protected matter. That is quite a big change from the existing legislation and the existing policies and regime that have been put in place. It facilitates the idea of making sure that, if development is going to occur, there has to be a net gain in the abundance and the protection of these protected matters, these matters of national environmental significance.

I think it's interesting that many in industry have also recognised that the existing offsetting regime is broken, isn't working and isn't delivering for them either. I think the fact that many, if not all, of the industry groups can see some merit in trying to change the dial from just treading water in respect to the state of the natural environment to getting to a place that, when development happens, it actually has a positive impact on the protected matters is an important and quite a radical and good step.

In terms of restoration contribution funds—I think you asked that question before—again, the devil is going to be in the detail. The previous parliament and the first-term Albanese government did quite a lot of work on this. It is consistent with Samuel's recommendation in that Samuel put a very high premium on the idea that Australia couldn't say it was truly charting an ecologically sustainable development path until we were restoring nature—not just protecting the pretty places but actually doing everything we could to restore ecological function and ecological processes. I think the idea that offsetting, whether through direct offsetting or through this contribution scheme, can facilitate and provide the resources and the opportunities to restore the protected matters and bring them back to health is an important construct, but the devil is going to be in the detail, and the work over the next 12 months is going to be very important. The idea is good.

There are some guardrails and protections that are sitting in the draft standard around restoration offsets and offsets in general—they were put out by DCCEEW a few days back—and around making sure that the system doesn't get rorted. The idea that a developer, rather than taking on the responsibility themselves of managing an offset project, could simply contribute financially to the Australian government—and then to put in place what's called, I think, a restorations contribution holder backed by an advisory committee to ensure that money is spent in the right way, in the right place and on a protected matter—makes sense, I think, because a number of developers would argue that they may not have the expertise and the resources to do the job properly. The idea that the Australian government, working in partnership with others, would have the funding to do that is not a bad concept. We just need to make sure, as we look at how we implement it over the next 18 months—if this regime gets up—that it's done well, because it is a new frontier.

Senator ANANDA-RAJAH: Thank you.

CHAIR: Thank you, Mr Schneiders, for your evidence today. If there were any questions taken on notice, could you provide answers to the secretariat as soon as possible. You go with the committee's thanks for both your evidence and your submission.

Mr Schneiders: Thanks so much, and good luck with your deliberations.

CHAIR: Thank you.

BROWN, Mr Steven, Principal Adviser, Environmental Policy, Minerals Council of Australia

CONSTABLE, Ms Tania, Chief Executive Officer, Minerals Council of Australia

LOGIUDICE, Ms Anita, Director, Policy and Advocacy, Chamber of Minerals and Energy of Western Australia

McCOMBE, Mr Chris, General Manager, Sustainability, Minerals Council of Australia

[14:20]

CHAIR: I now welcome representatives from the Minerals Council of Australia and the Chamber of Minerals and Energy of Western Australia. I understand that information on parliamentary privilege and the protection of witnesses giving evidence to Senate committees has been provided to the witnesses today. Do you have any comments to make on the capacity in which you appear?

Ms Logiudice: Please call me Anita, not Ms Logiudice.

CHAIR: If you would like to make a very short opening statement, that's great; if it's possible to table it, that's even better and we can get into questions—but you have that opportunity now.

Ms Constable: The minerals industry strongly supports this bill's intent to deliver a system that protects Australia's unique environment while enabling responsible and efficient project development. At present, Australia has more than 230 operating mines, representing 11 per cent of GDP; 1.2 million jobs in the value support chain; $161 billion in goods and services, using 63,700 local suppliers; and a conservative estimate of $661 million in community support last year.

Mining capital is highly mobile. While Canada, the United States and Chile—as well as emerging mining jurisdictions, such as South America and the Middle East—are acting decisively to cut assessment and approval times and attract investment, it takes years to bring new mines and processing facilities into production in Australia. Modernising the EPBC approval process will allow our industry to deliver investment, jobs and regional benefits faster.

When mining grows faster, all Australians benefit. Developing more mines more quickly will allow Australia to responsibly produce sooner and at greater scale—from traditional commodities to critical minerals, such as copper, nickel and lithium—to support global decarbonisation and sustainable development goals. We have an immense opportunity before us to boost Australia's position and reputation as a reliable and globally leading producer of the minerals the world needs. The right reforms will help supercharge jobs, investment and Australia's prosperity. The right reforms will also help Australia to move ahead of our competitors and take the lead in the race to supply critical minerals to the world.

A reform package that achieves the right balance—protecting the environment, building public confidence and enabling the timely development of Australia's resource projects—would represent balance for the mining sector and a lasting win for Australia. The MCA has been engaging constructively with various parties on amendments so this bill can deliver better outcomes for the environment, communities and the economy.

However, several fundamental changes must be made to ensure the bill is workable, balanced and effective. The key changes are that a single clear definition of unacceptable impacts for all matters of national environmental significance is required; all existing assessment pathways should be retained; there needs to be clear accountability of the proposed National Environmental Protection Agency; compliance and enforcement measures should be balanced and proportionate; new climate disclosures should be explicitly excluded from decision-making; there needs to be greater clarity around the net gain test; and there needs to be refinement of the nuclear actions definition. While the bills include changes that will enable greater efficiency, most business gains will only happen over time. Once the bills are passed, federal and willing state and territory governments should commit to an ambitious, time-bound pathway to accredit state and territory processes. If industry's key concerns can be addressed, the MCA supports the bills being passed.

Thank you for the opportunity to appear today. We're looking forward to questions.

CHAIR: Anita.

Ms Logiudice: I have just a short statement. Thank you, Chair and committee members. The Chamber of Minerals and Energy of Western Australia represents the state's resources sector, a sector critical to the national economy, supporting around five per cent of all Australian jobs and nine per cent of GDP. CME and our members continue to support reform to the EPBC Act that delivers on all three objectives: greater accountability and transparency in decision-making, stronger environmental protection and restoration, and more efficient and robust

assessments. Successful reform that balances environmental, social and economic outcomes is essential to a wide range of national priorities, including the net zero transition and the Future Made in Australia vision.

Senator HANSON-YOUNG: Oh, you support net zero?

Ms Logiudice: Importantly, all three objectives must be delivered simultaneously. EPBC Act processes are often the first step in project feasibility assessments and final investment decisions. An approval regime that is both efficient and robust is integral to Australia's ability to compete for international investment. For that reason, improvements in assessment timeframes must be delivered alongside stronger environmental protections and greater transparency in decision-making.

Our preliminary review of the EPBC reform package identifies five priority areas requiring adjustment prior to passage: clarifying the definition of unacceptable impact to remove ambiguity and ensure practical application; guaranteeing efficient assessment pathways and timely accreditation of state systems; ensuring compliance and enforcement mechanisms are proportionate and uphold natural justice; refining the net gain test to avoid unintended consequences and improve workability; and confirming that climate disclosures are aligned with existing frameworks and do not form part of approval decisions. Additionally, it's essential that implementation of the bills and future policy development continue to be based on decision-making that's founded on the principle of ecologically sustainable development, as enshrined in the act. We look forward to continuing to work with government and this committee to ensure the reform delivers strong environmental protection, regulatory transparency and investment confidence for our sector.

CHAIR: Thank you very much. I'm going to go to Senator McDonald.

Senator McDONALD: Good afternoon to both the Minerals Council and the chamber. Thank you for the time you spent preparing your submissions for this hearing. Could I start with you please, Ms Constable. You started with some recommendations for some amendments, so I think it would be fair to say you don't support the legislation in its current form, but I'd just like to ask you to elaborate again on those areas of concern, please.

Ms Constable: Thank you, Senator. The first issue was around the definition of unacceptable impacts. It's really a critical new test that's being added to the act, and this is an area where projects will either be rejected outright or move forward. As it stands, there are 37 requirements which are unclear and subjective. It really captures vast swathes of the landscape and opens up new avenues of legal challenge. So, as drafted, we don't believe it achieves the government's intent to provide clear criteria. It's a really complex area. As has been mentioned, we consider the definitions ambiguous. The threshold is very subjective. It is set too high, as far as we are concerned. As it stands, it's a concept that has largely been untested. So, if it's added in its current form in the 37 different ways, we believe that it will be unable to be changed. So coming back to a single definition that is well understood is much preferred across all business groups from our discussions over the last three months. That's the first one.

There has also been a new assessment pathway that has been added in. We believe that the current assessment pathways should be kept there. That's a simple change as far as we're concerned. There should also be clear accountability for the proposed Environment Protection Agency. The EPA must be accountable to the public through elected officials. The government's statement of expectations should be binding or supported by direction powers similar to those of the National Offshore Petroleum Safety and Environmental Management Authority because the CEO holds a very powerful position and so that position should be removable for failing to meet expectations. Without that accountability, the EPA's role should be limited to compliance enforcement and assurance. That was originally intended under the Samuel review and within the recommendation.

There is another area related to compliance and enforcement measures. There are very high penalties and unconstrained environment protection orders. It's not so much that a single quantum has been mentioned in terms of the penalties. But not every issue is going to be exactly the same. You can have high penalties for egregious matters, but there needs to be a difference in what those penalties look like. In terms of the environment protection orders, the stop-work orders, they should only be for a specific time. They should be time bound to, at the very most, 14 days, after which court orders must be taken into account and natural justice provisions apply. They have been taken out of the act.

We mentioned new climate disclosures being explicitly excluded from decision-making, and we believe that that's important because they exist elsewhere. Climate disclosures are within other pieces of legislation. They sit within the safeguard mechanism. They also sit within the national greenhouse environment reporting requirements. The net gain test, we believe, is going to create uncertainty for proponents. It should not sit in the legislation at this stage. It should sit within the standard. It's going to take time to determine what net gain actually

means. We have a firm belief that it needs to be measurable. It needs to be able to be quantified. At this stage there is no detail around what that looks like.

The other issue that I mentioned was the refinement of the nuclear actions definition. While the intent is supported, as it is drafted it would unintentionally capture commodities unrelated to the nuclear fuel cycle. It picks up critical minerals, universities and medical facilities. Simple changes can maintain the focus on radiological risk. I think they are very important areas that need to be looked at carefully. They are fundamental in terms of amendments to the act.

Senator McDONALD: That's very comprehensive. Professor Samuel said that having the assessments function in the EPA creates a conflict of interest. You've already made some commentary around assessments in the EPA. Would you agree with that?

Ms Constable: I was involved in the Samuel review along with many other people that are appearing, including Mr Schneiders who was immediately before us. At the time of the Samuel review there was a clear intention that there should be an environment assurance commissioner—a function that looked at the compliance, enforcement and assurance function. We think that's very important and we support that. What was not supported was that that particular function also have assessment and approval powers, because, at the end of the day, you'd be putting the fox in charge of the henhouse. That should be separated out. If the intention is to make sure that there's an accreditation that goes to the states, then you don't need to deal with that right at the moment. You should be moving that to the states at the appropriate time once the standards are completed.

You have a strong cop on the beat—the compliance, enforcement and assurance—and auditing and making rules. That is totally appropriate and we fully support that audit occurring for both the states and the Commonwealth because that's missing at the moment. Then the assessment and approval function goes into the states and you get a streamlined model that provides benefits to projects because they're only being processed once. That's where the streamlining and the benefits come through industry across the board.

Senator McDONALD: I think that's a good point. If we look, most recently, to the government's agreements on critical minerals with the US, we are really seeking to ensure that these batteries, minerals, critical minerals and base metals are all more readily available both to our economy and to the world as it transitions to electrification. You made some points around the nuclear provisions that would capture some of those projects. Are you seeing productivity gains from this legislation that would allow those projects to move forward quickly so that Australia can benefit from that agreement?

Ms Constable: Once the amendments are made and we see the standards being put into place—they're very important in terms of the accreditation of the states—you will get more streamlined approvals, occurring just once. That's the issue. The benefit to business overall is that accreditation process because it will create a much faster set of timeframes for each of the projects going through. At the moment, when a proponent is considering a project, it can take as long as 16 years to get it off the ground. That is too long when you compare it to the jurisdictions that I mentioned earlier, like Canada and the United States. We've got countries right beside us, like Indonesia, and fast-moving jurisdictions in the Middle East and Africa that are coming online now. We want to be ahead of the game, and we can be through this legislation by getting the balance right, as I talked about right at the beginning.

Senator McDONALD: I think there's a suggestion that mining and good environmental outcomes are mutually exclusive. That's certainly not been my observation as I've travelled around to mine sites. What is the arrangement of net gain and the net gain test in the proposed legislation? How do you see that working? What do you see is the problem with it for projects that are being assessed currently?

Ms Constable: There's no clear understanding of what 'net gain' means. The current legislation is very subjective about how a project is assessed and the types of offsets that might be required for a project under the EPBC Act. The concept of net gain, without an explanation of what that means and how that might be tested, has been a matter of contention over the last few months with the mining industry. We want to understand what it might mean for a project before you make a final investment decision. No proponent making an investment decision will go in without understanding what the overall costs are likely to be for a project. Being able to measure it, quantifying it and having an understanding of what you might do to mitigate, if possible, towards the MNES that have been mentioned is really important.

Our suggestion was, because things are moving so quickly, to put it in the standards and work through what that means at the end of the day, because we think it's a very complex area that will require careful consideration. It needs to be tested on the ground for various projects, whether it's a mining project, a housing project, a property

project or a road, rail or infrastructure project. There are various tests that need to be done. Putting it in the legislation is not the right place. Moving it to the standards and testing it there is a better placement for it.

Senator McDONALD: I want to ask you about this idea of being able to compete with these other jurisdictions, some of which have the very poor environmental outcomes you named. What are the impacts on productivity, and, importantly, investment in Australia if we pass this legislation as it stands without amendments?

Ms Constable: I don't think the legislation can be passed without amendments going through. Some of the amendments I have talked about today are fundamental. We want to see productivity in Australia, so it's important to make sure we get the legislation right. It must protect the environment but it must also deliver gains for projects across the board. All the various participants over the last five years that we have been dealing with say exactly the same thing: it must deliver a range of benefits. We won't see those productivity gains without the streamlining; that's the key for us. The real benefits come with the streamlining of projects, because we need to have the right policy environment.

We have a number of policy areas that are constraining how we might move forward in Australia. Australia has very high wages; there should be no apologies for that. We have a high taxing environment in Australia. We have an environmental approvals process where the planning and the timeframes take far too long. We are competing for skills for our particular industry but also across the board. Importantly, energy costs are too high. All those issues combined see us as a high-cost environment—so, wherever we can reduce costs and make our industries much more productive, that's going to be a benefit for industry and, importantly, bring projects to Australia.

Senator McDONALD: I'm not sure if you had the opportunity to hear Professor Samuel's evidence this morning. He made some comments that industry will always seek to have changes and that industry is always going to be challenging regulators, and he reflected on his role with the ACCC. I just wanted to give you a right of reply on that. What would you say to that assertion?

Ms Constable: Our industry wants to see good regulation, not bad regulation. We're not opposed to regulation; regulation is necessary. What we're asking for is streamlined regulation. We make no apologies about requesting amendments that will be necessary for our industry and to benefit business and the environment overall. What we have the benefit of seeing every single day is the impact on our industry when these things are not done properly. What we've done in the last few months and indeed the last five years is look at what needs to be done, particularly around this legislation, to ensure that we get the best for the environment but also for industry. That's the difference between what Professor Samuel might be seeing and what I'm saying to you today. We're living and breathing it every single day.

Senator McDONALD: That's an important point. I certainly look at the taxes and royalties from mining that we enjoy and that as a society we then spend on Medicare and the PBS and housing funds and whatever else it might be. I think that is an important point to make—that we can have mining activities and good environmental outcomes, and we should celebrate that. Ms Constable, I want to also ask you about the current reporting of greenhouse gas emissions in the proposed legislation. I've suggested that it's a duplication of legislation. What are your views on that?

Ms Constable: Our industry track the emissions of our members as they're reported in the NGER's system and the Safeguard Mechanism. The Minerals Council represents about 80 per cent of the total value of production in the mining industry. It's a pretty good proxy for the industry overall. The Safeguard Mechanism captures scope 1 emissions, so that excludes embedded emissions from grid electricity and covers almost 90 per cent of mining facilities. Looking at the Safeguard Mechanism between the financial years of 2018 to 2024, the MCA's full-member mining facilities overall had a reduction in our emissions. We're already reported against that particular mechanism. The NGER system also includes scope 1 and 2 emissions and shows MCA full members' scope 1 and 2 emissions. We also had a reduction of emissions overall under that particular mechanism. So we've got two mechanisms where industry is picked up. Why have it in the EPBC act? It just creates more duplication. That's our argument. Why have it there if it's not going to be used down the track for other purposes? We're suggesting just removing it completely or, at the very least, making it very explicit that it will not be used as a proxy climate mechanism.

Senator McDONALD: There was a suggestion that—

CHAIR: Senator McDonald, sorry to interrupt you. Can I ask that you have one more question, then I'll move the call on.

Senator McDONALD: I'm sorry, Anita, that I haven't turned my questions to you yet. I will just finish, Ms Constable, on this idea. It's been proposed that, if you're reporting emissions data under other legislation, it would

be very simple just to provide the same numbers under this legislation. We saw under the gas legislation that each department asked for the numbers to be cut and reported in a slightly different way, which makes it very expensive. Do you think that would be the same with this emissions reporting? Could it be cut and pasted from one report to another, and it would subsequently be very easy?

Ms Constable: That's unlikely. We haven't seen it in other legislation; it is always reported in a different way. It's unclear at this stage. Regulations are yet to come. Guidance material is yet to come. So, if it's not needed, then why have it in this piece of legislation? It is already reported under two different mechanisms, which makes perfect sense.

Senator McDONALD: Thank you.

CHAIR: Senator Hanson-Young?

Senator HANSON-YOUNG: Firstly, Ms Constable, do you support net zero by 2050?

Ms Constable: The Minerals Council has a very clear position on this. We support an ambition of net zero by 2050. We support a technology-neutral approach, using all technologies, including carbon capture and storage and nuclear in the mix. Our industry is not sitting on its hands, waiting for things to be done. We are reducing emissions across the board and have at the moment 106 activities across our various members to reduce emissions. We are also focused, importantly, on getting energy costs down. That is where we sit at the moment—trying to get energy costs stabilised and to get energy costs down overall.

Senator HANSON-YOUNG: I think some of the gas companies could give some of their gas to Australians, rather than exporting it all overseas. That might help keep prices down.

Ms Constable: I'm talking about the mining industry.

Senator HANSON-YOUNG: I know. But you're talking about energy prices as well, which you mentioned. Could I ask that of the Chamber of Minerals and Energy of Western Australia. Anita, do you support net zero by 2050?

Ms Logiudice: Yes. Our members also support the Paris Agreement and Australia's climate targets, which include the target of net zero by 2050. We do support a single national regulatory framework to achieve those targets in a coordinated and efficient manner.

Senator HANSON-YOUNG: So you're both pro target?

Ms Logiudice: Yes, and we welcomed the 2035 target and the certainty it provided for industry.

Senator HANSON-YOUNG: Certainty? Targets provides certainty, don't they?

Ms Constable: We have an ambition. Each of our companies takes a different pathway, and, importantly, you need to have the flexibility to be able to reduce emissions. Not every company and not every sector is going to reduce emissions at the same time and at the same level. As I said, our industry reports under the safeguard mechanism, and that's important for most of our facilities. A lot of our companies are reporting under that safeguard mechanism.

Senator HANSON-YOUNG: Are you concerned about the uncertainty that the coalition's new policy is going to create for industry, considering they've dumped net zero?

Ms Constable: We have a very clear policy, and I'm supporting our members' views. Political parties will take a direction that they are comfortable with. What we want to make sure that we're seeing is also energy costs coming down—to be stable as a starting point, because energy costs are going through the roof. As I mentioned, one of those areas that are important in terms of policies overall is energy costs, and they have gone up by as much as 40 or 50 per cent for many of our companies. Reliability, affordability and reducing emissions—it is so important to make sure we get that three-legged stool right. And there's always tension in those areas, so we need to be working on all of it at the same time. We'll always operate within the laws of the land, but we want to make sure that we're working with government and political parties to see what might be there within the levers to try and reduce those energy costs—things around competition policy and the rules as it relates to energy. There perhaps are some ways that companies and locations and different industries might be able to work together to bring down those energy costs. In fact, we're looking at a report to try and understand what might be available to do that in the near future. We're focused on this three- to five-year period because things need to happen very shortly for our industries to remain competitive, and it's all about making sure we're competitive, because I mentioned other jurisdictions are getting ahead of us in a whole range of industries, not least of all the mining industry.

Senator HANSON-YOUNG: Generally speaking, both your organisations—the WA minerals chamber and the Minerals Council of Australia—are, overall, supportive of this package, aren't you?

Ms Constable: We support the intent of the package. I think everyone is working very hard to get this legislation through, but it requires significant amendment, as I mentioned and as Anita mentioned, to make sure it gets through.

Senator HANSON-YOUNG: You mentioned that everyone's working hard to get it through. Have you met with the minister since the legislation has been tabled?

Ms Constable: Yes, I've certainly spoken to the minister. We participate in a working group that—

Senator HANSON-YOUNG: I guess I mean beyond the working group. Outside the working group, have you met with the minister since the legislation was tabled?

Ms Constable: Yes, Senator. I've met with a range of parliamentarians around the legislation, and the minister has been one of those people.

Senator HANSON-YOUNG: You've met with a range of members of parliament. Who else have you met with?

Ms Constable: I've met with a number of people that sit within the Labor Party and the coalition—Nationals and also the Liberal Party.

Senator HANSON-YOUNG: Have you met with the Prime Minister's office?

Ms Constable: Yes, Senator.

Senator HANSON-YOUNG: Have you met with the Prime Minister?

Ms Constable: No, Senator.

Senator HANSON-YOUNG: Have you met with the Minister for Resources?

Ms Constable: With the minister's office just recently, yes.

Senator HANSON-YOUNG: Okay. What about the WA—

Ms Logiudice: No to any of those questions.

Senator HANSON-YOUNG: You haven't met with the minister since this legislation has been tabled?

Ms Logiudice: No.

Senator HANSON-YOUNG: Have you heard from the minister's office since this legislation has been tabled?

Ms Logiudice: No.

Senator HANSON-YOUNG: Have you met with Roger Cook, the WA Premier, since this legislation has been tabled?

Ms Logiudice: No.

Senator HANSON-YOUNG: And you haven't had any contact from his office?

Ms Logiudice: We've spoken to the Department of the Premier and Cabinet, yes.

Senator HANSON-YOUNG: Have you raised any concerns with them about this legislation?

Ms Logiudice: We've talked through what our preliminary—we only received the legislation shortly before it was tabled, so we have only done a very cursory review. So it was really just highlighting the issues that we've raised here—that, for our sector, we're looking for a bit more certainty around the 'unacceptable impact' definition, a bit more proportionality in the compliance and enforcement regime and some more clarity around the net gain and the net gain tests. The reason for that in a WA context is that there's not as much freehold land. A lot of land is Crown land, and a lot of it is remote, with minimal data, so often a resource company or a development, such as renewables, will be the first people in actually looking at that. So we are trying to understand how a net gain mechanism would work when we don't have a baseline—so all of the mechanics of how that test would work.

Senator HANSON-YOUNG: Ms Constable, in the Minerals Council submission—and you mentioned it when Senator McDonald asked you about concerns that you have—you mentioned this issue with the assessment pathways. I can't quite understand the point you're trying to make. What's the issue?

Ms Constable: Senator, with the new legislation there will be an assessment pathway—a single assessment pathway—

Senator HANSON-YOUNG: Streamlined?

Ms Constable: Yes, it's a streamlined pathway. However, our view is that that streamlined pathway may not be as useful for some of our projects as what is being envisaged. Smaller projects, medium-sized projects, have been used to having a number of different pathways. We're just saying: keep the streamlined pathway there, but

allow the other pathways to remain. So it's a quick fix. Don't take out those other pathways, that are already well known and understood, for projects that want to use them. That's what we mean.

Senator HANSON-YOUNG: But what do you mean by that? This legislation and this package create some extra pathways: the fast track, which is the streamlined one; the go zones—that's another fast track; the national interest exemption—that's the ultimate fast track. Aren't there enough tracks for you to choose? There are five different pathways. If this legislation were to pass the way it was, there'd be five different pathways.

Ms Constable: We're talking about what's already being taken. There's a streamlined pathway, as it relates to projects overall, but it can take longer. There have been a couple that have been removed. So we're saying: leave those there. That's what we're referring to.

Ms Logiudice: Can I just add to that? There's a couple of pathways that are used quite frequently, like referral on information, by our sector. They've been removed and replaced with the streamlined pathway, as it is named, but, in the absence of detail about some of the other tests, we're uncertain, as an industry, about whether our projects will actually qualify for the new streamlined assessment pathway. All of that detail is yet to come. So the suggestion is: while that is being worked on, retain the existing pathways so that we don't halt development.

Senator HANSON-YOUNG: Have you raised this issue with the department?

Ms Logiudice: We've raised it in our submission to this Senate inquiry.

Senator HANSON-YOUNG: To this Senate committee?

Ms Logiudice: Yes. This is really the first opportunity we've had to discuss policy.

Senator HANSON-YOUNG: Do you think this legislation should be rushed through the parliament then? If you've got some of these things that you wanted done, and the no-net-zero coalition decided to whack this through with the government, would you be happy or not?

Ms Constable: We need the amendments to occur to make sure there's a net benefit for industry as it stands, but every act needs to have appropriate scrutiny. As long as that appropriate scrutiny has occurred—through having the hearings, and having you, as senators, scrutinise that legislation and hear from a number of different participants—and as long as those amendments are made—and we suggest that the ones that we've raised are the fundamental ones; there are many you could look at, but we're talking about fundamental issues from our perspective—then it could be passed. Our concerns sit around making sure that we've got standards there to ensure that we get that streamlined approach for industry. Those standards are very important. They're going to take a little bit of time, so we want to make sure that it is very clear that those standards must come very quickly after this enabling legislation to ensure that the net benefits are there for industry.

Senator HANSON-YOUNG: How fast do you think you should be given approval for a new mine?

Ms Constable: There's no timeframe that we are saying is appropriate. We're just saying that it is taking too long and the statutory timeframes must be brought down. I mentioned 16 years, in terms of considering the mine overall. As to the statutory timeframes that are there, there's a stop-start period. It takes a long time for projects to be considered in the assessment phase and then get onto the approval phase. We want those time frames to be brought right down.

The way to do that is not to have duplicative systems but to have a single assessment and approval system that sits at a state level, is accredited by the Commonwealth, and sets clear standards and clear expectations in terms of compliance, enforcement and assurance so that the states and the Commonwealth can be audited around the decision-making. That's where the fairness and the consistency across the board comes into play, and that makes very sure that expectations on all industries, on all projects, are well-known and can be utilised. It will mean that we can unlock billions and billions of dollars' worth of projects every year. At the moment, we're losing out on about $68 billion worth of projects every single year, because we don't have the right sort of assessment and approval processes in place now.

Senator HANSON-YOUNG: Did anyone from the coalition—the Liberal Party or the National Party, but I'm more interested in the Liberal Party—consult you before they made a decision to dump net zero?

Ms Constable: That's a matter for the—

Senator HANSON-YOUNG: Did they?

Ms Constable: No.

CHAIR: That's asked and answered, and I'm going to move the call on now to Senator—

Senator HANSON-YOUNG: They all got a bit tetchy though, didn't they?

CHAIR: Let's not characterise the people in the room. Senator Ananda-Rajah?

Senator ANANDA-RAJAH: It was pretty evident from this morning that Graeme Samuels said that no-one's going to be happy with this but getting 80 per cent there is probably as good as it gets. What concessions are you willing to make in order to get these reforms through? Clearly, the old act's not working. Approval times are too long—too much red tape, too much cost, loss of business et cetera. What concessions are you willing to make?

Ms Constable: We've spent a long time—in the initial Samuels review, there was a lot of discussion about what various parties were looking for in terms of EPBC reforms. There were major concessions made by industry at that stage relating to what an assurance function might look like. Since that, we've seen a national EPA. We've seen major new concepts being brought forward. So we consider that the amendments that have been put forward—I've listened this morning to some of the evidence, and my colleagues and I have certainly had various discussions with NGOs over a long period of time. I think these issues are fundamental, and the concessions have already been made by industry, so it's a matter of making sure that just the fundamentals are addressed, and then the legislation can go through. I don't think that it's fair to say that, if everybody gets 80 per cent of what they want, something should go through. We need to make sure the fundamental issues relating to this piece of legislation are addressed, and that means that we all will win.

Senator ANANDA-RAJAH: Can you just reiterate what those critical issues are that you're discussing?

Ms Constable: They are unacceptable impacts, making sure that we keep assessment pathways, clear accountability on the EPA, compliance and enforcement measures that are balanced and proportionate, new climate disclosures being explicitly excluded from the decision-making, greater clarity around the 'net gain' test and refinement of the nuclear actions definition—it's far too broad and takes into account things that are not in the nuclear fuel cycle. Those are the issues that are fundamental, and I think you will find that they are very consistent across most business groups. We might have slight variations, and there may be other issues that are raised, but they are the critical issues that will make sure we get business projects moving forward.

Ms Logiudice: It is important to the implementation of the bill that these things are clarified, because, at the end of the day, the black letter law, if it doesn't meet the intent, then we're working at cross-purposes. So we do need that certainty to understand what is actually being set up as the legislative framework that we're working within.

Senator ANANDA-RAJAH: I am concerned that wish list you read out is going to severely water down this legislation and that is going to impact on your social licence to operate. We have seen industry after industry fall over in this country because they don't pay enough attention to social licence. Talk to me a little bit about how these reforms enable social licence and allow you to operate in this country?

Ms Constable: We have very clear standards around meeting environmental reform. There are sometimes thousands of conditions that are put on mining projects. If you've got duplication of effort occurring between the Commonwealth and the states and you're getting that number twice, for instance, it takes years going backwards and forwards, and, if there are appeals at a state level, the Commonwealth will stop their process occurring and could be vice versa.

Senator ANANDA-RAJAH: Are you speaking retrospectively or under the current draft legislation?

Ms Constable: This is under the current legislation. I will give you an example of how it works in practice. You want to make sure that that is addressed; that is what the streamlining will address. The 'unacceptable impact' issue: when you have got 37 definitions and you are trying to look at those definitions from a number of different perspectives, it is all too hard. A single definition across those MNES will create the efficiency and create certainty, because the more you have, the more ambiguity you get and the different methods—

Senator ANANDA-RAJAH: How about don't mine in the koala habitat. How about don't mine in native forests.

CHAIR: Sorry, everyone. I appreciate—

Senator HANSON-YOUNG: It is all too hard for the mining industry.

CHAIR: Senators, I appreciate we are coming to the end of the day. We will shortly go to a brief break. But while we are in session, can we please permit this to be a question-and-answer exercise. Senator Ananda-Rajah—

Senator HANSON-YOUNG: You push and you push and you push. This legislation has been written for you and it is still not good enough.

CHAIR: Senator Hanson-Young, please come to order. Senator Ananda-Rajah, if I could ask you to ask one final quick question and then we will go to a break.

Ms Logiudice: I would just like to explain that it is just about that ambiguity and needing to clarify that. In Western Australia, we've got the West Kimberley, which comprises North Kimberley, Central Kimberley by

regions in their entirety and Dampier land and all the Victorian plains by regions, the majority of them, were listed as a national heritage place in 2011, so it is pretty much the entire West Kimberley. We would consider that controlled actions proposed in the West Kimberley impacting the national heritage values could be significant, controlled actions proposed in the West Kimberly impacting the national heritage values could be significant, requiring application of the mitigation hierarchy—the other test that we're seeing introduced in this legislation—but not always unacceptable. But with the current drafting of section 527F subsection 15(b) and (c), it has some terminology in there that could potentially result in any action being considered unacceptable. It is just taking the time—it doesn't have to be another five years—to clarify what that definition of unacceptable impact is. For complexity reasons, it's such a complex piece of legislation, we really suggest that one definition of 'unacceptable impact' that is consulted on with multiple stakeholders, not just us, is a better, more simple way of going to provide that certainty, not just for the resources sector but for all proponents that interact with this act and other stakeholders that are keen to see it deliver the three objectives, not just one.

Senator HANSON-YOUNG: Unacceptable impacts is unacceptable impact on your profits—your members' profit. That is all you care about.

CHAIR: Senator Hanson-Young, sorry. Witnesses and coalition senators, I appreciate that is a response to what Senator Hanson-Young has done. Can we just come to order please. At this point we are going to take our afternoon tea break. When we return, we will be back with AMEC.

Proceedings suspended from 15:15 to 15:29

PAVIC, Mr Sash, Director, Commonwealth, Association of Mining and Exploration Companies

PEARCE, Mr Warren, Chief Executive Officer, Association of Mining and Exploration Companies

CHAIR: Thank you for being here today. I understand that information on parliamentary privilege and the protection of witnesses giving evidence to Senate committees has been provided to you. I saw you at the back of the room earlier today, so you will have heard my earlier indications around opening statements. If you have one, please keep it reasonably short and then table the balance. At the conclusion of that, I'll ask senators to ask questions.

Mr Pearce: AMEC welcomes the development of this legislation. We certainly support the intent of the reforms and we believe that this package of legislation, with some amendment, can deliver greater efficiency for industry and proponents while also providing stronger environmental protections. In that space, we believe there are a small number of significant changes that are required but that they are very achievable working together. In these issues, our members have expressed concerns with the draft legislation, including the broad nature of unacceptable impacts criteria, the lack of detail in the net gain test, the lack of a concrete timeframe around the implementation of bilateral agreements with states and territories, the inability to review the full set of national environmental standards at this time, the purpose of greenhouse gas disclosure requirements, the exclusion of the natural justice hearing rule regarding environmental protection orders and the unintended consequences of amendments to the nuclear trigger. We have provided a submission to the committee dealing with the issues that we and our members consider are the key and fundamental issues needing to be addressed. We'll also make a follow-up submission as we work our way through the remainder of legislation to see if there are any other areas that could benefit from adjustment. With that, I'm very happy to take questions.

CHAIR: Senator McDonald.

Senator McDONALD: Thank you for being here this afternoon. I think you've just answered my question in your opening statement. I was going to ask if you support the legislation in its current form and, if not, why not, and what the areas of concern are. I think you've answered that. Specifically on the net gain issues, we've just had evidence that, particularly in parts of Western Australia, where you're based, there is no baseline data. You've signalled that you think they're small, easy amendments that the government can make to get this passed, but I'm not certain that's the case, having just heard that. Could you speak to net gains and what recommendations you would have to make that workable in your view.

Mr Pearce: To clarify, what I mean is there are a small number of issues that require changes that are significant, but I do not believe that they are unachievable in a short timeframe. When it comes to the lack of environmental data, in large portions of Australia, particularly in areas that have not been substantially explored, there is a lack of environmental data. Outside of Victoria and New South Wales, that is a primary concern in any process where a proponent is seeking to bring forward a development application into the environmental approvals framework at both a state and a Commonwealth level. That means that it is difficult for environmental assessment regulators to intelligently make a judgement about the impacts a project might have. The reality is that those companies will undertake detailed flora and fauna surveys and environmental studies to provide information about the footprint of their project and some degree beyond that, but they're not in a position to undertake environmental surveys across an entire region.

I think of an example for my members in the far east Pilbara, on the way to the Northern Territory border. There are now a small range of companies making significant niobium and rare earth discoveries that we hope will turn into a new mineral jurisdiction. They are going to, in their environmental studies, turn over and discover that there are indeed a range of species that will sit in the threatened and vulnerable categories that would potentially trigger, without a broader understanding of the natural environment and the species in the region, the unacceptable impacts legislation as currently drafted. That could prevent their project. If they had a greater environmental assessment of the entire region, they may well find that the proponent's abilities to avoid and mitigate did not present such an unacceptable impact risk.

So, in this way, the legislation is proposing a range of regional planning assessments that will take place. That is something we strongly support, but it is going to take many years for that to take place. It will probably happen in the places that are the most travelled in terms of economic activity in the first instance. It could be decades before some parts of Australia receive that level of investigation, and that makes it difficult to make those assessments. That's why it's so important that we give greater clarity to the unacceptable impacts component and that we provide some level of criteria or clarity around the net gain proposition as well.

Senator McDONALD: Thank you; that's a thorough answer. I was going to ask you about unacceptable impacts. Turning back to the net gain and the net gain test, given that it's not clear in the proposed legislation and

we've just identified that there's not baseline data in large parts of Australia, do you support the concept of net gain and the net gain test, or should it be in the standards? What do you recommend in that regard?

Mr Pearce: We do support the net gain model. Indeed industry have made quite clear with the development of this legislation, both in this tranche of development and in the previous two efforts, that we are prepared to sign up to and accept a higher level of environmental protections, and net gain is one way of doing that. However, there is a lack of detail in how the net gain will be measured by government and assessed. That requires more detail for industry to have some certainty about how they would approach it and to understand the implications of how they would do it. So we propose that, before this legislation is adopted, we actually put in some criteria around how we do that in terms of a whole-of-environment approach in that area, the measures from which a company would be undertaking that, or what method they would be using, and how that continues not just in its implementation but in its ongoing management.

Senator McDONALD: I want to ask you about Professor Samuel's recommendations, which did not include an EPA but instead recommended a commissioner. The proposed EPA structure and the CEO role are very different from his recommendations—specifically that the CEO can't be held to account for their performance outcomes. What are your recommendations around ensuring that the CEO is accountable to industry, to the environment and, most importantly, to the Australian people?

Mr Pearce: We've sought that accountability in our proposals coming into this process. We were unsatisfied with the previous proposal, which would have had an entirely independent EPA making all environmental decisions. Our association and others in the industry sought to ensure that the ultimate decision-making responsibility sat with the minister, who is accountable to the parliament and to the community. We are comfortable that that is the model that is being taken forward and that the EPA would be making decisions in that space when delegated by the minister, which is essentially the arrangement we have currently, except those decisions are made by the department. Industry is relatively comfortable with that concept. We experience that at a state and territory level in a number of states, and that process has worked well in ensuring that there is good environmental advice going to the final decision-maker. That final decision-maker, in these significant matters and the contentious matters, is the minister accountable to the parliament and ultimately to the Australian people.

Senator McDONALD: Have you met with the minister on this legislation?

Mr Pearce: We've met the minister regularly over the last two or three months.

Senator McDONALD: What about the Prime Minister?

Mr Pearce: No, I am afraid not. Can you arrange that?

Senator McDONALD: Senator Hanson-Young had a burning interest in this, and I thought I should follow up and see if it was a theme that was important. I'll put the rest of my questions on notice.

CHAIR: Senator Hanson-Young.

Senator HANSON-YOUNG: I'm very grateful to Senator McDonald for ensuring that there's more information on the record. So do you think the package as it stands is better than the status quo for your industry?

Mr Pearce: Because of the unacceptable impacts component, it's hard to say that. With that change, yes, it would be. The reality here is that the legislation as proposed will provide stronger environmental protections than are currently in place.

Senator HANSON-YOUNG: Well, that's debatable, because we have heard from the experts on the environment, and that's not the case. From your perspective—your industry, which is mining and—

Mr Pearce: Let me restate. From our perspective, more would be required of us in terms of environmental protection, and we are prepared to sign up to that. However, we can't easily support legislation where it's unclear whether projects will be able to move forward on a very wide interpretation. We'd like to see that narrowed some. That interpretation may well be favourable in some instances and may not be in others, but ministers change and governments change, as do interpretations by departments and agencies. Some clarity or criteria around that space is important, but, yes, in other cases, we believe there is a overall benefit here for proponents. If the bilaterals are put in place expeditiously, there is a substantial time and cost saving for industry proponents. Indeed, that makes it much easier for industry to sign up to stronger environmental protections and additional costs in that space.

Equally, I also think this would give a greater level of comfort to industry that duplication is being taken out of this space. That is one of the primary concerns we have between the federation, which is duplicated legislation at state and federal levels that we are required to comply with but mostly doesn't provide a different outcome in terms of the conditions or the environmental outcomes.

Senator HANSON-YOUNG: In terms of the unacceptable impacts criteria, do you accept that there are some areas that just should not be mined?

Mr Pearce: Yes.

Senator HANSON-YOUNG: Where are they?

Mr Pearce: I can't tell you that, but I accept it as a principle.

Senator HANSON-YOUNG: Surely, if you've got an opinion on what's acceptable and unacceptable, you must have thought about where mining should be able to occur and where it's too precious of an environment and it is not going to be allowed.

Mr Pearce: Like you said, I'm not an environmental expert, but what I would say is this: I advise my members that, if they are seeking to undertake an exploration or mining development in a national park or a class A reserve, you are going to find a regulatory environment that is not supportive of it.

Senator HANSON-YOUNG: Do you think that you should be able to mine in national park?

Mr Pearce: No.

Senator HANSON-YOUNG: So why use that as an example? Let's not be ridiculous.

CHAIR: That's hardly fair.

Mr Pearce: Allow me to respond. The reason I gave that example is that it's quite clear in many cases where government and the parliament have made decisions about what areas are for conservation or of high conservation value. The reality is that, although we are able to explore in those areas to some degree, the chance of being able to get a mining proposal up in those spaces is very low, which is why most proponents simply don't do it. However, we should be aware that, indeed, our natural resources are extremely valuable, and certainly, as the technology changes and certain things and spaces become more important, we should not close off those opportunities before we have investigated them. I support every project going through a thorough environmental assessment, and, indeed, those that touch on federal legislation should also be assessed against national standards at the Commonwealth level.

Senator HANSON-YOUNG: Do you support the change in the legislation that exempts the water trigger in terms of state and territory decisions?

Mr Pearce: Sorry, let me come back to that. I'm not well across that part of the legislation. We focus more heavily on changes around the nuclear trigger. We'd like to see that removed for naturally occurring radioactive materials, which essentially means the intent of the legislation was to stop those things that have a nuclear component rather than dealing with things like mineral sands or rare earths, where turning over the ground can essentially pull you into a federal environmental assessment without that being the intention.

Senator HANSON-YOUNG: Can I clarify that? Are you saying you support the changes in the bill that deal with that issue or that you don't think they go far enough?

Mr Pearce: We support the intent; however, the way it's been written suggests the opposite. What it says is that they actually are including these rather than excluding them, which was our understanding of the intent of the proposal, so we need to adjust that. I think that is a non-contentious proposal.

Senator HANSON-YOUNG: Do you understand the purpose of the go zones?

Mr Pearce: I understand the purpose of the go zones, but I think that's one of those pieces that requires a substantial amount of regional planning to take place in the first place. So, yes, we do support that, but, equally, you actually need to undertake the assessments before you can intelligently make decisions about where you can and can't go. Ultimately, better environmental data across our country will give better indications to both industry and government about where we should and shouldn't be. Indeed, at an exploration level, the federal government is supporting a program that looks to map the geological resources of Australia, which gives us another lens with which to look at the places we could and couldn't go.

Senator HANSON-YOUNG: Do you accept that one of the biggest threats to Australia's environment is climate change?

Mr Pearce: Allow me to choose my own words. Yes, we do recognise the challenge that is created by man-made emissions, and indeed it is speeding climate change. We have a strong position of net zero by 2050. Many of our members are working to that. So the answer to that question is yes.

Senator HANSON-YOUNG: On your concerns around the greenhouse gas disclosure, isn't it fair enough that, if we've got environment laws that are meant to be about assessing whether projects are good or bad for the environment, it considers the climate damage to the environment?

Mr Pearce: In this instance, we're already providing greenhouse gas disclosures to multiple agencies.

Senator HANSON-YOUNG: Do you think it should be considered? If climate change is damaging to the environment, should that be considered when a decision-maker is weighing up whether or not to give something approval?

Mr Pearce: It is a decision in the safeguard process.

Senator HANSON-YOUNG: But it's not based on the approval, is it?

Mr Pearce: No.

Senator HANSON-YOUNG: That's after the fact. That's like—

Mr Pearce: No, it's not. Sorry—yes, you're are right that it is after the fact. But what I see is companies actually responding to the safeguard measures. The threshold of 100,000 tonnes would catch most small to mid-size mines that would probably, on a diesel program, produce 120,000-plus tonnes. As a consequence of safeguard as well as the expectations on our industry, many of those projects are making big investments in renewable technologies—solar, wind and battery—to ensure they can get well below the threshold. I now have companies putting forward projects with 70 to 80 per cent renewable energy powering their needs. That is a demonstration that the safeguard process is in fact working to reduce the emissions from our industry.

Senator HANSON-YOUNG: So why are you opposed to the requirement as it is in the legislation? If it's already happening, what's the problem?

Mr Pearce: Well, we're not opposed to it. What we're saying is that we're being asked to do it on multiple occasions. Ultimately, we can support that as a concession we are willing to go as long as it's not included in the assessment of those purposes. Our concern is that, if it is in this legislation—

Senator HANSON-YOUNG: What would be the purpose of it if it's not used for considering whether something should be given approval? What is the purpose?

Mr Pearce: What is the purpose of the Environmental Information Agency and the reality of actually undertaking this learning about what is happening in our environment? It provides a whole range of information that government can make a range of decisions on. I don't believe that should be made on a project-by-project basis. If your proposition is that any project that has a positive emissions profile simply shouldn't be approved then we're going to have a pretty substantial impact on our economic development here in Australia. So, yes, we provide disclosures. We act in accordance with the law. There are now, I think, three or four different agencies we provide that information to in different forms. We don't believe it needs to be in this space; however, as a concession, we are willing to accept it.

Senator HANSON-YOUNG: Just to be clear: the greenhouse gas disclosure requirement for just scopes 1 and 2, which companies already do for the safeguard, you see as a concession that the mining industry is allowing to happen?

Mr Pearce: Okay. When you put that it way, I think that's a little unreasonable. What I'm saying to you is that we already provide this data. We've been asked to it again. What we are saying over and over to the parliament is—

Senator HANSON-YOUNG: The 'concession' was your word, not mine.

Mr Pearce: You are correct; that was my word. Allow me to restate it. It is something we are willing to accept, but we are already providing it. Our message to the parliament and to governments is—

Senator HANSON-YOUNG: So it's nothing extra.

CHAIR: Senator Hanson-Young.

Senator HENDERSON: He's allowed to answer the question.

CHAIR: Yes, but also, can we—

Senator HANSON-YOUNG: If I can get a straight answer.

CHAIR: I think he is answering your question.

Mr Pearce: I have answered the question two or three times.

Senator HANSON-YOUNG: So what you're being asked to do is nothing extra?

Mr Pearce: We are already providing the information.

Senator HANSON-YOUNG: Good. Chair.

CHAIR: Thank you. Senator Grogan.

Senator GROGAN: Thank you for your time. Can I take you to the critical minerals. For a lot of your members that's their bread and butter, right?

Mr Pearce: Yes.

Senator GROGAN: In terms of the current act, can you compare how the legislation either helps or impedes now and, with the proposed legislation, what the benefits or restrictions might be?

Mr Pearce: For example, in a scenario where the legislation is passed and bilateral agreements are entered into with the state government, we would go through a bilateral process for a critical minerals project. That would remove the duplication. Currently, most projects that trigger the environmental approvals process go through a process at the state level first and then ultimately, once approved at that process, will begin a federal assessment, which usually takes an additional 12-plus months, which is added to that timeframe. If an assessment bilateral were in place, that would be where most of the time savings are. The state would then undertake the assessment of both the state legislation and the federal legislation against the national standards and would make a recommendation to both the state and federal ministers. That would remove, potentially, 12-plus months from our approvals process, assuming, of course, the company met the expected conditions and requirements. That would enable us to essentially develop projects quicker and realise investment faster, and, indeed, what we are up against in the critical minerals space is a race to market. Lots of countries are competing in this space. We are competing for this investment. Our ability to quickly get to market determines whether we can actually find the investment to build the projects and take that market share of that growing industry that provides critical minerals into the renewables technologies and into the broader decarbonisation supply chain.

Senator GROGAN: I just want to take you back to the nuclear trigger. Could you maybe unpack that a little bit more? Some people find that alarming—if we change that, is that going to have a negative impact, in terms of the protections we have in place around nuclear action? Can you just unpack that for us in terms of what the relevance to critical minerals might be?

Mr Pearce: In a sense, this deals with a thing called NORMs, naturally occurring radioactive materials. There are certain parts of our country where, if you simply walk over it, there is natural occurring radiation. If you turn over the soil, there is an element of radiation that is present. That is not dangerous; however, in the way in which we previously framed the nuclear trigger in the EPBC Act, the threshold is so low that projects that are in mineral sands and often contain elements like thorium or rare earths—both important critical minerals that we are hoping to develop—find themselves pulled into the federal EPBC legislation to get an assessment that should be fairly perfunctory but often can add 12 months to the process simply because the threshold was never intended to capture it but has by having such a low threshold. All that is proposed here is that we change the terminology from 'nuclear actions' to 'radiological exposure actions'; align it with ARPANSA, which is our radiation body; and ensure that those projects can move forward without risk and without being pulled into an unnecessary approvals process.

Senator GROGAN: I've got a quote here from you guys about and looking for 'swift passage of a well-balanced bill that will provide the certainty that the industry needs to get on with the job'. Is the urgency piece for you about the getting to market, which you explained to us previously?

Mr Pearce: It's about competing for investment in every regard. We are sabotaging ourselves with duplicative legislation that slows us down. We are in a competition for investment worldwide. We are a high-cost place of doing business for many good reasons. We have high standards, and we value those. In this space, when you are trying to move quickly—as indeed Australia is attempting to do with the United States on the critical minerals and rare earths framework—and to, essentially, provide supply to meet an immediate and urgent demand, the reality is we don't have a fit-for-purpose approvals system. We need to make changes, and that's why I believe it's important that we try to get this right. I think I've heard people today say it's not perfect, but, indeed, it offers us something substantially better than what we currently have in place. With a genuine effort from the people around this table, we can land this in a place that is workable for industry and good for the environment. Ultimately, we can stop continuing to have these arguments that have been running now for—it's been five years since the Professor Graeme Samuel reports and 15 since the Hawke review. Senator, I'd like to argue about something else.

Senator GROGAN: You and me both, Mr Pearce!

Mr Pearce: I'd really like to see our projects move forward and to take advantage of this once-in-a-generation critical minerals opportunity.

Senator GROGAN: Thank you so much. I really appreciate that.

CHAIR: I'd like to thank the witnesses for appearing here today, your evidence and your provided submission. If you have any questions on notice, could you please provide your answers to the secretariat as soon

as possible. I think there were some questions on notice foreshadowed during your testimony, which you should receive. You go with the committee's thanks.

KANDELAARS, Mr Matthew, Group Executive, Policy and Advocacy, Property Council of Australia [by video link]

SONDERGELD, Ms Eleanor, National Policy Manager, Sustainability and Regulatory Affairs, Property Council of Australia [by video link]

[15:55]

CHAIR: Welcome. I understand that information on parliamentary privilege and the protection of witnesses giving evidence to Senate committees has been provided to you; is that right?

Mr Kandelaars: Correct.

CHAIR: You may have heard my earlier remarks about opening statements. If you have one and are able to table it, that would be much appreciated. If you wish to make one, please be very brief. At the conclusion of your remarks, I'll go to questions.

Mr Kandelaars: I will be as brief as possible. Thank you, Chair and senators, for the invitation to appear at this important inquiry. We appreciate the democratic process through which this bill is being considered and our participation in that process. I acknowledge the traditional owners of the lands from which I am joining you today. I'm joining from Melbourne, so it is the Wurundjeri people of the Kulin nation. I pay my respects to their elders past and present and acknowledge their connection to country over many tens of thousands of years.

The Property Council of Australia's members pursue ecologically sustainable development to build Australia's cities and to provide the vital pipeline of housing supply so critical to support affordability. They include Australia's largest greenfield residential, industrial and commercial property participants. Our members regularly engage with the EPBC Act referral and assessment process on projects across the country. In fact, by volume, property sector is the largest user of the EPBC Act referral system. Based on this experience, the property sector recognises the critical importance of reforming the act to better deliver environmental outcomes and ensure sustainable development.

Following the Economic Reform Roundtable in August, the government announced the streamlining of the assessment of 26,000 new homes that have been stuck in the system for years. We warmly welcomed this announcement. Our members tell us this has had a materially positive impact on their experience navigating the system, with greater certainty, greater confidence and a culture of 'why not?' rather than 'why?'

In considering the legislation before this committee, our starting position is as follows. The current system is broken. It is not working for the environment. It is not providing certainty and confidence for business, and it is letting Australians down. Professor Samuel's 2020 review provides a sensible blueprint for reform, and we consider the time for talk about that reform is over. A better framework is urgently needed to improve certainty for the environment, to improve this nation's investability and to streamline the assessment of new homes right across Australia. The reforms before the committee aren't perfect, but they are better than the status quo.

Our written submission includes targeted amendments to improve the legislation but not to delay it. The proposed amendments speak largely for themselves, although I do draw the committee's attention specifically to the following aspects—and they have obviously been canvassed by a number of participants today. First are the definitions of 'unacceptable impact criteria'. While we agree it's essential that the minister has the power to disallow a project where the impact on a protected matter is unacceptable, the bill proposes lengthy and complex tests to determine this. In relation to protected species and ecological communities, the concepts of 'irreplaceable habitat' and of 'seriously impacts the viability of a protected matter' are not adequately defined. In relation to net gain, our members agree that restoration activities, whether involving onsite repair or environmental offsets should deliver restoration. Our concern with the inclusion of the net gain test in the bill and the primary legislation is that they're important definitions that will feature in the national environmental standards for offsets, which are yet to be developed. The legislation must also give new administrative arrangements for the best chance at success by embedding efficiency in the assessment process. Decision-making should be accountable and transparent with respect to statutory timelines.

In fact, Treasury data, released on 7 October, confirmed that 4,641 new homes were approved through the national environmental laws between August and the first week of October. This is due to the newly established housing taskforce that I mentioned earlier, within the department, to process the backlog of referrals. We are already seeing the benefits of a simple change, the injection of focused resources and a specialist team to process referrals. We support lasting change and reform, however, and we should seek to minimise disruption to the approval of new homes that are finally coming through this system. Reform should retain this specialist

resourcing for housing referrals for the duration of any transitional period and at least until the end of the National Housing Accord period in 2029.

Many components of the proposed reforms are a step in the right direction, so we do welcome improvement that will make landscape scale approaches, including regional plans and strategic assessments, more workable; commitments to improve the quality and availability of environmental information through the new Environment Information Australia and the ministerial power to make protection statements; and the inclusion of a new process for restoration contributions, a feature that could mobilise significant private sector investment into strategic environmental restoration projects. With our suggested and targeted amendments, these legislative reforms will form the backbone essential for developing and implementing that national environmental standards that establish a fairer and faster system for everyone, and one that balances pro-environment and pro-investment outcomes.

We look forward to your questions; we're happy to dive into any aspects of our written submissions. I will unapologetically throw to my far smarter colleague in Eleanor to answer a number of those questions.

CHAIR: Senator McDonald?

Senator McDONALD: Good afternoon. I love that you brought your phone-a-friend with you. How very wise of you. May I start by asking what the current timeframe for your members to have an application approved is?

Mr Kandelaars: Obviously, it's impossible to say in any specific circumstance. Every project, every assessment is on a case-by-case basis, but it isn't unknown for our members to be facing a process of up to four years for assessment and approval or rejection.

Senator McDONALD: What modelling have you undertaken to work out how long it will take for applications to be approved under the proposed legislation?

Mr Kandelaars: We haven't conducted any modelling per se. What we do know from extensive consultation with our members is that they see a number of the reforms proposed through the legislation before this committee as being an improvement on the status quo, removing—or certainly having the potential to remove—duplication in process and providing better certainty and confidence around statutory timelines. We have also seen, as I mentioned earlier, the streamlining of the 26,000 new homes that were announced on the back of the economic reform roundtable. There has been an injection of resources, a targeted focus. Leaving aside, if we may, for the moment, the details of the legislation, a lot of this comes down to cultural reform throughout the system. We're very hopeful that improvements, through the legislation before the committee—subject, of course, to the amendments that we floated and flagged here today, as well as in our written submission—will improve those timeframes considerably.

Senator McDONALD: Given that you've been the beneficiary of those more streamlined approval processes under the existing legislation. Would you recommend keeping that pathway as a bridge with the new pathways that have already been proposed?

Mr Kandelaars: Absolutely. We'd love to see that pathway continue. Again, we are seeing progress through this streamlined taskforce giving us better resources and a better culture—a culture of 'Why not?' rather than 'Why?' We've seen the results of that flow through, certainly to October. I mentioned the data earlier. I think it was the Treasury data on 7 October. We'd love to see the pathway continue, certainly through the transitional period but also through to the end of the current National Housing Accord period in 2029.

Senator McDONALD: How many of your members currently report scope 2 emissions?

Ms Sondergeld: It varies. All of our corporate leader and national members have a net zero target, and many of them do already report scope 1 and scope 2 emissions. With the incoming climate related financial disclosure requirements, we are seeing that there will be an uplift across our membership, not just our large corporate developers but also some smaller companies who are starting the process to be ready for that reporting.

Senator McDONALD: I'm just trying to clarify how many projects or perhaps what size of projects will now be captured under this reporting that wouldn't be otherwise and will require them to, I assume, hire additional staff or have additional compliance that they won't have to meet otherwise.

Ms Sondergeld: Based on the proposed thresholds for greenhouse gas disclosure under the EPBC reforms, we wouldn't expect property development to be captured by the requirement to disclose that emissions information on a project-by-project basis.

Senator McDONALD: So that means that none of your members will have to disclose under the EPBC. Is that correct?

Ms Sondergeld: It appears likely, yes.

Mr Kandelaars: It's not necessarily none. Obviously there are exceptions to any rule, but, based on the feedback we have and the proposed thresholds, it's unlikely to be an issue for the vast majority of our members—noting, of course, that it's an issue that others providing evidence have raised for their own sectors.

Senator McDONALD: So that's for both scope 1 and scope 2 emissions? I just want to clarify that, because I had initially asked you about scope 2.

Ms Sondergeld: Yes, that's right.

Senator McDONALD: How would the proposed 'unacceptable impacts' definitions—the 37 definitions that have been identified—affect projects of your members? Would any of the already approved or future projects fail under these new definitions?

Ms Sondergeld: That's not entirely clear to us at this stage. That speaks to some of the challenges we've identified with the clarity of some of the proposed definitions. We've provided some more detail in our written feedback, but, critically for us, it comes down to threatened ecological species as the primary point of contact between our members and EPBC referrals and controlled actions. We're really looking for some more upfront certainty about, in particular, where 'irreplaceable habitat' would be defined to be located for threatened species. Also, when it comes to assessing the viability of those impacted matters, we do question whether or not that's something that might be better placed within the conservation planning process rather than within an individual project assessment.

Senator McDONALD: Hopefully those recommendations have been heard by the government.

CHAIR: Senator Hanson-Young.

Senator HANSON-YOUNG: Thank you for your time and evidence and your submission. I'm interested in your recommendations around redefining 'irreplaceable habitat' and the link to the critical habitat register. Could you unpack that for me? I'm interested as to where you got that advice from.

Ms Sondergeld: This is something that our members have discussed now that the full package of legislation has become available. Primarily we see the move towards the critical habitat register as a positive one. It's really important that members of ours understand and can identify where there are areas that do require conservation and careful management. I suppose that is where the opportunity, potentially, to link irreplaceable habitat to that register has come—through those member based discussions. This really goes to that upfront certainty—about making sure that, where there are likely to be areas that do require that high level of conservation, those are really clearly mapped out and provided upfront so that it doesn't take anybody by surprise when there's a referral that does need to be made.

Senator HANSON-YOUNG: In relation to your concerns about the protection statements, are they, again, about not understanding what the impact of those protection statements will be? Are you asking for them to be negotiable?

Ms Sondergeld: We are broadly quite supportive of protection statements. We see this as an important feature of the legislation that will allow a more rapid response from policymakers and decision-makers to provide up-to-date environmental data. I'm not sure we would characterise our feedback as questioning the value of that particular process, but I'm happy to take any specific question on notice on that point.

Senator HANSON-YOUNG: I'll go to the overall point. The government have responded to the discussions out of their productivity roundtable about needing to prioritise housing as part of dealing with a more streamlined process under the EPBC reforms. How do you feel about the fact that this new streamlined process has been created, but there's no special mention of housing being on the fast track? In fact, at this point, everyone's on the fast track. It feels like everyone's been given a VIP card and they can go over to the VIP line—you're still going to have a queue. If everyone's got access to the Virgin premium entry line, then it's not very premium, is it?

Ms Sondergeld: Where we see housing being prioritised in the EPBC legislative settings more appropriately is likely to come through the development of bioregional plans. There are a couple that are currently underway in terms of being piloted. Those regional plans will be where priority development activities, which would include housing, are likely to be captured as a sector of priority under the reforms. The streamlined pathway itself does not, to our members, appear to be a critical change in the current legislative settings, because, largely, it just combines a couple of the assessment pathways that are currently captured by the existing settings. The most streamlined pathway, from our perspective, will really be through the bilateral and accredited process with those of the states and territories and, also, through those regional plans once they are developed.

Senator HANSON-YOUNG: So the streamlined process that the government's touting as something that is going to speed up housing approvals is actually not going to be that helpful for you?

Ms Sondergeld: There is a reduction in the statutory timeline associated with that streamlined pathway, so it is certainly an improvement.

Senator HANSON-YOUNG: But you're hanging most of your hopes on the bioregional plans—the go zones. Is that what I'm hearing?

Ms Sondergeld: In terms of something that specifically speaks to housing, yes. But, in substance, many of the proposed reforms do improve the overarching process not just for our sector but, we would posit, for others as well.

Senator HANSON-YOUNG: There are eight pilot sites for those bioregional plans. Have you had any negotiation with the government about those sites? Have they consulted you about those sites?

Ms Sondergeld: There is currently some open consultation for the New South Wales pilot. South-East Queensland is underway with piloting as well, and there are the two key sites that will cover urban development—so the housing component to the bioregional plan. We have had some limited engagement on those fronts so far, but we are looking forward to some further engagement in the future.

Senator HANSON-YOUNG: Just to be clear, does this 15-page reform package make it simpler and faster and easier for you? Is it very clear on what's going to happen?

Ms Sondergeld: The clear opportunity we see will be the development of the national environmental standards, and these reforms are really critical to provide the statutory backing to be able to progress with that process in earnest. That's really where we're seeing the most important opportunity for reform.

Senator HANSON-YOUNG: And those standards aren't in the legislation itself. We don't even have them all.

Ms Sondergeld: No; it's necessary for the legislative change to empower the development of those standards.

Mr Kandelaars: And they will be subject to an extensive consultation process—as they should be—so the legislative framework is obviously critical to kicking off that consultation and getting these reforms moving.

Senator HANSON-YOUNG: There have been two draft standards released. There's the *Matters of national environmental significance* and then the offsets one. Have you had a chance to look at both of them?

Ms Sondergeld: We have, but we have only just begun discussing the implications for those standards with our members and so we aren't able to properly comment on those at this stage.

Senator HANSON-YOUNG: You do realise that they are proposed to be in a disallowable form? They can't be amended once they're finalised; the Senate either has to accept them or not. Do you feel like you've got enough certainty from government that they're actually going to do what they need to do for you?

Mr Kandelaars: As Eleanor suggested, it's probably premature for us to comment at this point. As a member-led organisation, an industry association, we will consult. We are consulting, but we will continue that consultation with our membership before providing a definitive response on the merits or otherwise of the draft standards as they sit.

Senator HANSON-YOUNG: Thank you.

Senator WALKER: I have a few questions, but I will try to keep them nice and quick. I note that the Property Council has been publicly supportive of prioritising the reforms for this legislation. Do you see these as urgent? If so, why?

Mr Kandelaars: Yes, we do see the reforms as urgent for a few reasons. Firstly, as I suggested in my opening statement, the current system is broken. It doesn't work for the environment, it doesn't provide certainty for business and it doesn't provide certainty for the community. That is the most pressing reason for urgency. Secondly, in terms of the sector that we represent—the broad property sector but particularly, in the current context, the housing sector—we're in the midst of a housing affordability and supply crisis. As I outlined earlier to Senator McDonald, in response to her question, our members can wait for up to four years to make their way through this system. The very fact that 26,000 homes were streamlined through that assessment process—that's not to say the approval was streamlined; the assessment was streamlined—the very fact that that was necessary, shows the urgency in reforming the system.

Senator WALKER: In what ways do you think the current legislation is impeding increasing housing supply?

Mr Kandelaars: I'd probably refer back to my answer to your previous question—that is, up to four years going through the system waiting for a yes or no. Our members operate through approval systems all over the country. We operate waiting for planning approvals, going through a planning assessment in every state and territory, of course, and the Commonwealth environmental assessment and approval system. For our members, time certainty is as important as anything else. An early yes or an early no are critically important. In fact, an

early no is just as important to our members as an early yes. What we don't want, and what we can't afford, is the indefinite maybe. That's obviously having a significant impact on the number of new homes that can come to market, and therefore increase housing supply, as we're chasing a welcomed and ambitious 1.2 million new homes target.

Senator WALKER: Do you think that being able to achieve better restoration at scale will be important for both environmental outcomes and community support for more housing?

Mr Kandelaars: Yes.

Ms Sondergeld: Yes, absolutely.

Senator WALKER: Do you see this reform as important to continuing to clear the backlog, which I know has already been discussed?

Mr Kandelaars: Yes. Obviously there are two different streams here. There's the bus sitting at the station, and that is certainly the streamlining and clearing the backlog under the current system. That's critically important, but it is a bandaid over a wound, and that is the wound that is a broken system as it stands. So we do need lasting structural reform. We certainly hope that there is a way through. I'm an optimist. I believe in the powers of the Senate to constructively work together and find a way through. Obviously the bill as it stands isn't perfect—we've outlined that; we've outlined some concerns—but we do think the targeted amendments can be found. We can have a better system moving forward, one that comes sooner rather than later.

Senator WALKER: I also note that the offsets are an issue. Can you talk about how you think a restoration fund would be an improvement for the housing industry.

Ms Sondergeld: I am happy to provide a first response on that front. A restoration contribution process is something our industry sees as a welcome development. Primarily in the context of development where there may only be a small quantum of offsetting that might be required, in order to be able to contribute to more meaningful environment to outcomes, we see a restoration contribution process as a positive move, whereby a government stakeholder would be able to strategically pool funds across various different projects and invest in a greater outcome for the impacted matter. We also would welcome the optionality, I would say, when it comes to finding appropriate offsets. We think that this could be a useful tool to help support and reduce the timeframes associated with what are currently part of the post-approval delay that our members experience.

CHAIR: I would like to thank members of the Property Council for being here today and for your evidence and your submission. If you have taken any questions on notice, could you please provide the answers to the secretariat as soon as possible. There may be some that are forthcoming, if they were foreshadowed during the course of this proceeding. Go with the committee's thanks.

GADDES, Mr Shane, Head of Division, Environment Law Reform Taskforce, Department of Climate Change, Energy, the Environment and Water

GORDON, Professor, Iain, Chair, Threatened Species Scientific Committee

LAHTINEN, Ms Anna-Liisa, Acting Branch Head, Reform Strategy, Department of Climate Change, Energy, the Environment and Water

MANNING, Mr Greg, Head of Division, Environment Policy, Regions and Markets, Department of Climate Change, Energy, the Environment and Water

O'CONNOR-COX, Mr Declan, Acting Head of Division, Environment Regulation Division, Department of Climate Change, Energy, the Environment and Water

PARRY, Ms Rachel, Deputy Secretary, Department of Climate Change, Energy, the Environment and Water

WENTWORTH, Mr Blaine, Acting Branch Head, Policy and Legislation Branch, Department of Climate Change, Energy, the Environment and Water

[16:22]

CHAIR: Welcome. I understand that the Threatened Species Scientific Committee's representative may be running a little bit late, but that won't impede us from beginning. I understand that information on parliamentary privilege and the protection of witnesses giving evidence to Senate committees has been provided to you. Is that right?

Ms Parry: That's right, Senator.

CHAIR: Wonderful. I remind senators that the Senate has resolved that an officer of a department of the Commonwealth or of a state should not be asked to give opinions on matters of policy and shall be given a reasonable opportunity to refer questions asked of the officer to superior officers or minister where relevant. This revolution prohibits only the asking of questions for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. Officers are also reminded that any claim that it will be contrary to the public interest to answer a question must be made by a minister and should be accompanied by a statement setting out the basis of that claim.

I'm sure you'd have heard my earlier indication around opening statements. If you have one, I'd ask that you keep it incredibly brief. Otherwise, we'll move to questions.

Ms Parry: We will take the opportunity to make an opening statement, thank you. I have cut it back considerably, but I think it's worthwhile clarifying our submission and some of the testimony you've heard today.

As you've heard from the minister in recent months, the Australian government is committed to reforming Australia's national environmental laws and establishing a national environmental protection agency. These reforms respond to the 2020 Samuel review, which recommended a range of reforms to strengthen and streamline the EPBC Act. You will have heard throughout the day today that there is a range of views in relation to the bills, with different stakeholders who engage with the EPBC Act expressing divergent perspectives. Some are seeking more or less discretion in decision-making; more specifics in the legislation versus legislation that sets out general frameworks; stronger environmental protection versus productivity gains for business; and the full detail of all aspects of the reforms upfront versus progressing these details through implementation. In total, the balanced package of reforms to Australia's environmental laws subject to this inquiry is the culmination of years of stakeholder consultation and responds to these differing stakeholder perspectives.

As you've heard today, there is broad support for the reform and the need to move quickly in implementing these reforms. I think it's work clarifying and focusing on key aspects of the reforms in relation to the operation of individual projects, vis-a-vis the unacceptable impact criteria for protected matters. The current act already contains a legal test to protect against unacceptable impacts, but this is undefined and there are no criteria for how a minister would form a view. This results in a large degree of uncertainty. The inclusion of the unacceptable impact criteria in the reforms will clarify which impacts cannot be approved and would provide greater certainty and predictability for proponents by indicating which impacts must be avoided. These criteria have been designed in consultation with experts and stakeholders and are based on existing impact assessment guidelines. To reach a decision, the minister must consider the relevant criteria, taking into account a range of information about the protected matter as well as project information and other information received during the assessment.

The proposed reforms also include measures that will support the application of the unacceptable impact criteria, including rulings, national environmental standards and protection statements. These tools are designed to provide more certainty and predictability over how these tests will be applied and create consistency in decision-making. Increasing this transparency regarding what will and won't be approved will reduce the time and effort taken by a proponent as they will know these expectations upfront when designing their project. Similarly, I would like to address how accreditation and bilateral agreements with states and territories would operate under the reforms. The aim of these reforms is to reduce duplication between the Commonwealth and states and territories in environmental assessment and approval processes. This was a key recommendation of the Samuel review. The minister may enter into a bilateral agreement or an approval bilateral agreement with a state or territory government. Under assessment bilateral agreements, proponents can access a streamlined assessment process with only the state regulator to talk to during that process. Projects will still require an EPBC approval decision made by the Commonwealth, but these approvals can be better aligned between the state and Commonwealth.

Under approval bilateral agreements, proponents are not required to engage with the Commonwealth in order to get their project approved. The Commonwealth would take an oversight role, as envisaged by Professor Samuel, to monitor the operation of the arrangement and environmental outcomes including national environmental standards. To enter into an agreement, there are various steps: benchmarking of the state and territory legislation and supporting documents; negotiation, legal review and finalisation of the proposed agreement; public consultation for 28 days and consideration of comments; and approval by both parties entering into the agreement. The bills would deliver on the recommendations of the Samuel review to improve strengthening the accreditation framework by applying environmental protections under bilateral agreements that are consistent with the reforms. This means state and territory processes would only be accredited where they meet national environmental standards, prohibit unacceptable impacts and achieve a net gain. These bills strengthen the ongoing assurance mechanisms to ensure that environmental protection requirements are being met.

Finally, the bills improve flexibility by allowing accredited processes to incorporate documents, such as standards, as in force from time to time and allowing minor amendments to accredited processes without having to formally remake the agreement. To conclude, our submission to this inquiry details key aspects of the reforms, the extensive consultation to date, how the reforms will operate in practice and its linkages to the Samuel review. Thank you.

CHAIR: Thank you. Please provide a copy of that opening statement to the secretariat and then to members of the committee.

Ms Parry: You can.

CHAIR: I also note there are two additional witnesses at the table.

Mr O'Connor-Cox: Declan O'Connor-Cox, Acting Head of Division, Environment Regulation Division.

Prof. Gordon: Professor Iain Gordon, Chair of the Threatened Species Scientific Committee. Apologies for being slightly late.

Senator HENDERSON: Good afternoon to you all. I'm trying to understand the rush to pass the legislation. Can I confirm the minister's earlier statements that he wants the legislation passed by the end of the year.

Ms Parry: The minister has publicly stated that that is the government's intention and desire.

Senator HENDERSON: This committee is doing its work of reviewing the bill, and we don't report until March. I'm wondering why the government is not respecting the work of this committee.

Ms Parry: That would be a question for the government. We are appearing during the hearings now and next week. I think it's important to note that the government has been consulting extensively on this legislation. The Samuel review dates back five years. There has been extensive consultation. There has been a lot of work that has gone into the amendments to this piece of legislation. The minister himself has met with over 100 stakeholders. The department has met with over 160 stakeholders, and that's just in the last six months. We are hearing time and time again about how the current laws are broken. The major issues that both proponents and environment groups have with legislation are well known and well canvassed. The government has put forward what it feels is a balanced package of reforms that should be urgently passed this year.

Senator HENDERSON: That's an opinion, which I'd suggest is perhaps not for you to convey to this committee, but consultation does not equal endorsement. Almost every witness that appeared before us today is raising concerns. It appears that, despite the consultation, no-one is happy. Can I ask you to respond to the proposition that this bill does not meet the threshold in a number of very important respects, including in relation

to the unacceptable impact criteria, which has received a great deal of concern. Some witnesses today have said that that leads to greater uncertainty.

Ms Parry: I'm not sure of the specificity of your question.

Senator HENDERSON: Can I ask you to address the concerns. I imagine you've heard the evidence today.

Ms Parry: I have heard the evidence today. As I reflected in my opening statement, there are a wide range of views on these reforms. We have heard a wide range of views throughout the entire consultation process. There were a wide range of views on the Samuel review itself. Where there is a strong degree of consensus is in the fundamental aspects of Professor Samuel's recommendations. These reform bills pick up those key components. There is strong consensus that these environmental laws are currently not working for proponents and that they're not working for the environment. There is strong consensus on the need for transparent environmental standards. There is strong consensus on the need to look at much more regional and landscape planning. There is strong consensus around transparency—an upfront yes and an upfront no.

Senator HENDERSON: I am just going to focus on the areas where there is no consensus, and one of them, I'd raise—

Ms Parry: And I'm trying to indicate to you that there is a high degree of consensus in major aspects of the reform. Where we have got to in terms of where you've heard differing views today is around things like unacceptable impact criteria.

Senator HENDERSON: Could I ask why so many stakeholders have concerns about the unacceptable impact criteria. What are your recommendations to address those concerns?

Ms Parry: I'm here to provide testimony on the bills that are in front of us today. I can't speak to why different proponents have different concerns about unacceptable impact criteria. What we're trying to do is provide absolute, upfront clarity in the bill.

Senator HENDERSON: If you can't address the question, that's fine, but could I ask you to address that question. Have you made any recommendations in relation to the concerns raised by stakeholders about the unacceptable impacts? If so, what are those recommendations?

Ms Parry: We were recommending and providing advice to the government throughout the entire drafting process.

Senator HENDERSON: I'm going to stop you there because we've got very limited time.

Ms Parry: I'm trying to answer your question.

Senator HENDERSON: I'm just asking whether you've made any recommendations in relation to the concerns raised by the unacceptable impacts criteria.

Ms Parry: We have provided extensive recommendations to government throughout the entire process of the drafting of the bill and those have been incorporated into the bill that is in front of the committee today.

Senator HENDERSON: Sorry, Ms Parry, I am going to ask you to address my questions. In relation to the concerns that have been raised about the unacceptable impact criteria, if you have raised recommendations or passed those back through to the minister's office, could you please summarise what they are and, therefore, what you are recommending should be further changed in the bill to satisfy those concerns.

Ms Parry: Right now, the government has introduced a package of bills with that definition—

Senator HENDERSON: Ms Parry, you are—

Ms Parry: Senator, if I could please finish my sentence.

Senator HANSON-YOUNG: You are badgering the witness.

Senator HENDERSON: I am not. Excuse me, I am asking—

Ms Parry: I am trying to answer the question. I am genuinely trying to answer your question.

Senator ANANDA-RAJAH: Stop interrupting, Senator Henderson.

Senator HENDERSON: I just want to ask if you could please advise what those recommendations are.

Ms Parry: I am trying to answer your question. We provided extensive advice to the government that went into the formulation of the unacceptable impact criteria based on extensive consultation. The government took that advice on board and put forward a package of bills that has passed the House and is now in front of this committee. Our advice has been submitted to the government. We can hear through this inquiry process and through the ongoing consultation what some of those concerns are. We will continue to provide advice to the government, but, right now, the bill in front of this inquiry that has passed the House reflects the process to date.

Senator HENDERSON: Could we please on notice have a copy of the advices that you have provided to the minister's office, including in relation to the unacceptable impact criteria.

Ms Parry: I will take that on notice.

Senator HENDERSON: Thank you very much. I want to just address the government's purpose of these reforms. One of the stated purposes is to address productivity. The business sector has said, as currently drafted, the reforms do not deliver productivity improvements. The Business Council chief executive even said 'business still has many concerns that need addressing if we want the EPBC system to support growing the economy'. The Premier of Western Australia has also raised concerns that the government must deal with the resource sector. He says, 'We also need to make sure that the industry continues to be encouraged.' Can you outline how the legislation as drafted improves productivity?

Ms Parry: I can. There is a number of productivity enhancing measures in these reforms. One is to provide upfront criteria through unacceptable impacts in the legislation that would define quite quickly for a proponent what is a quick yes and what is a quick no. There are standards which, again, increase the transparency, so proponents know when they are developing their applications, the kind of things that an assessment officer would be taking into account as they work their way through the system. We have streamlined assessment pathways. We have reduced statutory timeframes and we have provided productivity benefits through the offsets regime, where proponents can choose to discharge their obligations as the current act allows but also, once steps have been taken to avoid and mitigate, proponents can discharge their obligations to a restoration contribution fund. Again, that has been strong feedback from industry to make sure they can discharge that at a more landscape scale and can discharge it again from a productivity benefit.

Senator HENDERSON: I may ask this to other members of the department here today. In terms of the concerns that have been raised, including about productivity, based on the bills that have been passed by the House of Representatives, has the department provided to the minister any potential further amendments to the package of bills? Have they been drafted? The minister has indicated he is willing to consider further changes, so what role has the department played in proposing further amendments to the bill which have not yet been made public?

Ms Parry: As you would be aware, as bills move through the House, the government may call on the department to draft particular amendments. We are in that process now of advising government as these bills move through. But, right now, how the government treats those amendments and considers those amendments is a matter for government.

Senator HENDERSON: I understand. Could we please on notice have a copy of those advices, including the proposed amendments that have been drafted.

Ms Parry: I will take that on notice.

Senator HENDERSON: Do you have any of those proposed amendments with you today or any documentation?

Ms Parry: No, we don't.

Senator HENDERSON: Can you give me a summary?

Ms Parry: No, I cannot.

Senator HENDERSON: And why not?

Ms Parry: Because that is a matter for government—

Senator HENDERSON: I realise that.

Ms Parry: as to which amendments they might consider. We don't have that information today. We are here to talk to the bill that is currently in front of the House.

Senator HENDERSON: No, but we are also able to ask any questions or relation to the bill.

Ms Parry: Sure, and I have agreed to take that on notice.

Senator HENDERSON: This is a different question though. You are taking on notice all the advices you have provided to the government.

Ms Parry: Yes, I am.

Senator HENDERSON: Are you able to provide us with a summary of the amendments that have been drafted to date, the further amendments?

Ms Parry: I will take that on notice.

Senator HENDERSON: Are you not able to answer that question or do you want to seek further advice—which you can do?

Ms Parry: I understand that. I'm going to take that on notice.

Senator HANSON-YOUNG: Do have a list of amendments that satisfy the mining industry and a list of amendments for satisfying the koalas?

CHAIR: Sorry, before I bring the call to you, Senator Hanson-Young, Senator Henderson, I am going to share the call in a moment.

Senator HENDERSON: I would just like to finish off. Will you take that on notice?

Ms Parry: I will take that on notice.

Senator HENDERSON: Obviously, we will be having hearings next week—we don't report until March—but we would be grateful if that information could be provided to the committee as soon as possible. I will leave it at that, Chair. Senator McDonald has further questions, but I will hand the call over.

CHAIR: I will rotate the call and come back and, once we have hit our mark, we will have another discussion.

Senator HANSON-YOUNG: Firstly, this is 1,500 pages; there is a lot in here. You have obviously heard there is a litany of concerns that people, particularly those in the environment space, have with this legislation. I am interested to understand the streamlined assessment pathways. There seems to be confusion over this, and there is even confusion between your submission and the explanatory memorandum, so I would like this cleared up. Your submission says that the streamlined assessment pathway will replace two existing pathways: the referral information and the preliminary documentation processes. You say that the public environment report pathway will be rolled into the EIS process; however, the explanatory memorandum for the bill says that the streamlined assessment pathway replaces all three existing pathways. So, which is it?

Mr Wentworth: The public environment report pathway is functionally identical to the environment impact statement pathway, so if you work through, in the existing act, those provisions, they are identical in those two sections, so that is one of the three pathways that are being removed. The explanatory memorandum is reflecting the fact that there is one new pathway that is being introduced and three pathways have been removed. In terms of practicality, the streamlined assessment pathway is aligned with the assessment on referral information.

Senator HANSON-YOUNG: Sorry, I'm missing what you are saying.

Mr Wentworth: In terms of practicality, the new streamlined assessment pathway is aligned with the assessment on referral information and preliminary documentation pathways. But the public environment report, as I said, is identical, so that was in the new system. Projects that would have been going through that pathway, would go through the EIS pathway.

Senator HANSON-YOUNG: So how many pathways are there going to be at the end of this? I am asking this because, even just in my conversations with you over the last few months, this seems to have changed. I would like to understand very clearly on the record, what are the pathways that will be available if this package passes?

Mr Wentworth: Following commencement of the new bills, there will be the accredited assessment pathway, the streamlined assessment pathway, the EIS pathway and the public inquiry pathway.

Senator HANSON-YOUNG: So that's four?

Mr Wentworth: That's correct.

Senator HANSON-YOUNG: What about the national interest exemption?

Mr Wentworth: The national interest exemption proposals are taken through one of the regular pathways. It is a consideration when going through another pathway. It's not a separate pathway by itself.

Senator HANSON-YOUNG: It's just a bonus. It's like you get the ladder if you're doing snakes and ladders. You zoom straight up if you land on the right spot.

Mr Wentworth: Sorry, I'm not sure what question you're asking there.

Senator HANSON-YOUNG: So it does create another pathway. It's extra fast.

Mr Gaddes: Maybe I could help out with that. It's the end of one of those pathways that Mr Wentworth described. At a point in time, after a full assessment has been done, if a minister decides that the project doesn't meet all of the standards—the unacceptable impact criteria and the net gain—but that project is in the national interest, then it can be approved, even though it didn't pass those tests. But it still goes through the normal assessment pathway. It's worth mentioning—

Senator HANSON-YOUNG: It could go through any of those four?

Mr Gaddes: Yes, it could go through any of those four.

Senator HANSON-YOUNG: At the end of that, if under the law as it is, as passed, it wouldn't be approved, then the minister can just come over the top and approve it anyway?

Mr Gaddes: I wouldn't quite characterise it that way. A full assessment is done, and a full consideration of whether or not it's in the national interest for that project to go ahead, even though it wasn't able to meet all of the environmental standards, is done. That could mean that it could—

Senator HANSON-YOUNG: So it's only—sorry, just to clarify—

Mr Gaddes: Can I finish, please?

Senator HANSON-YOUNG: I just want to clarify. It's only used if that application hits a hurdle—if it can't achieve all—

Mr Gaddes: It wouldn't be necessary otherwise. If the project could go through the full assessment and meet all of those standards, it would be approved in the ordinary way. There wouldn't need to be an extra consideration at the end. At the end, if it meets those criteria and if it could only meet 90 per cent of the net gain—if it couldn't quite meet some of those standards—the minister can still condition it fully except for that small residual part that can't meet the standards.

It's worth reflecting on the fact that currently the national interest exemption allows the minister of the day to rule it out altogether. The national interest approval significantly improves on that process by allowing for a full environmental assessment and then for full conditioning except for the residual part which can't meet the statutory tests. It's a substantial improvement on the current national interest exemption, which exempts the entire process from assessment and approval.

Senator HANSON-YOUNG: Where did the advice for broadening the scope of the national interest exemption come from in terms of beyond just emergency—the examples of bushfires, floods—or defence? Where did the broadening of what can be applied to—

Mr Gaddes: Professor Samuel recommended in his report that, in rare circumstances, a project which doesn't meet the national environmental standards could be approved in the national interest.

Senator HANSON-YOUNG: Yes, but Professor Samuel presented to us today that this is much broader than what he proposed or what he envisaged.

Mr Gaddes: I can only go to what was in his report, and it's consistent with one of the recommendations in his report.

Senator HANSON-YOUNG: Could I ask about the streamline process. Your submission estimates that 60 per cent of projects would go through the streamline process initially and then, over time, more. Do you stand by that?

Mr Gaddes: I could talk in the principles about what we're trying to achieve under the reforms—

Senator HANSON-YOUNG: No. You've put in your submission that you estimate 60 per cent of projects could go through the streamlined process initially. Is that correct?

Mr Gaddes: Do you want me to answer the question?

Senator HANSON-YOUNG: I would like you to be able to answer the questions if you actually follow what I'm saying. First of all, I want to know whether that is correct.

Mr Gaddes: That is correct. If it's in our submission, we consider it to be correct.

Senator HANSON-YOUNG: Good. What is then the assumption of how much more that will be improved?

Mr Gaddes: So—

Senator HANSON-YOUNG: You're saying it's 60 per cent initially, are you then aiming for 80 per cent, 90 per cent, 100 per cent?

Mr Gaddes: Can I answer now?

Senator HANSON-YOUNG: Yes, please.

Mr Gaddes: The objectives of the reform—

Senator HENDERSON: Mr Gaddes—

CHAIR: No, sorry, Senator Henderson. Don't interrupt.

Senator HENDERSON: Come on.

Mr Gaddes: are to provide more clarity. You've heard from witnesses all day that there's need for more certainty, predictability, priority for the approval process—

Senator HANSON-YOUNG: I'm not asking about—with all due respect—

Mr Gaddes: If I could answer, please—

Senator HANSON-YOUNG: I would like you to answer the questions that I'm asking you not to give the spin around the reasons why government has done something. I haven't asked for that. I'm asking for answers to my questions.

CHAIR: Senator Hanson-Young, at this point, could the witness be given an opportunity to answer? I appreciate that we're short of time, but the answer had not gone for an extended period.

Mr Gaddes: I'll get there very quickly. With greater certainty around what the regulatory requirements are on both the proponents and the decision-makers, we would expect that more proponents could provide the information up-front for a streamlined assessment. Therefore, we assume that more people would use it over time. That's the fundamentals for that figure.

Senator HANSON-YOUNG: So you don't have a model or KPIs that say to what percentage?

Mr Gaddes: No.

Senator HANSON-YOUNG: You assume in the beginning that it'll be 60 per cent, and you assume it will grow?

Mr Gaddes: Exactly.

Senator HANSON-YOUNG: Okay. The streamlined process itself does limit the existing public consultation time frames in the existing pathways, in the existing law. Is that correct?

Mr Gaddes: In some circumstances, if they went through one of the PER processes or an EIS they would be required to do additional public consultation. In those circumstances it would be limited to the consultation around the referral decision and any work that the proponent did beforehand. You may recall that the Leader of the House committed to a community engagement standard as part of the reforms.

Senator HANSON-YOUNG: Yes.

Mr Gaddes: So additional requirements for those early projects will be set out in the standard.

Senator HANSON-YOUNG: So, the department assumes that 60 per cent of projects initially will go through the streamlined process. At the moment, what pathway do a majority of projects go through?

Mr O'Connor-Cox: I don't have those figures here, but I think, if you look at that 60 per cent figure, that's around the level that go through those lower levels of assessment, if you like—those REs and PDs, from my recollection—and through accredited assessments as well. But I'd have to take on notice the exact figures.

Senator GROGAN: If I can quote you, for everyone's benefit, on page 6 it says 'the over 60 per cent of projects that currently go through these pathways'. So, I think—

Senator HANSON-YOUNG: What I'm trying to work out is, what's the most used pathway currently? And I'm surprised that you can't answer that question.

Mr Gaddes: We'll take it on notice. Those things change over time, so we will take it on notice and will get back to the committee very quickly.

Senator HANSON-YOUNG: The reason I'm interested is that all those pathways have a longer and more-thorough public consultation process than the proposed streamlined process. So I'm trying to understand how many projects are going to be put into the streamlined process—the 60 per cent of them—and therefore have less public consultation, less consultation with their local communities. Is that why you don't have the information?

Mr Gaddes: I've already taken it on notice.

CHAIR: Senator Hanson-Young, I'll have to move the call in a moment. Do you have one final question?

Senator HANSON-YOUNG: Is there any prioritisation within the streamlined pathway for the projects that the government has said are their priority? Is there anything that guarantees that housing and renewable energy projects would be prioritised, given that that's why we're being told that this whole bill needs to be rushed through?

Mr Gaddes: There's no legal pathway that guarantees that a project will go faster. But this government has made commitments for both a housing strike team and a renewables strike team, which my colleagues might like to articulate in a bit more detail, where additional resources are being provided for government priorities, which

speeds up those projects within each of those criteria. They're not legislative; they are where the government has provided additional resources and direction—

Senator HANSON-YOUNG: The administration?

Mr Gaddes: In the administration, and an indication to the department that those should be moved through faster.

Senator HANSON-YOUNG: Is there anything to stop—

CHAIR: Sorry, Senator Hanson-Young—

Senator HANSON-YOUNG: Final question—

CHAIR: Okay.

Senator HANSON-YOUNG: Is there anything to stop coal and gas projects from using the streamlined process?

Mr Gaddes: Not as it stands.

Senator GROGAN: I'm going to try to be really quick, because I have a couple of 'cleanup on aisle 5' kinds of questions. On the accreditation of the states, I know you went through that in your opening statement, Ms Parry, and you've responded to further questions. We've heard from various stakeholders that they believe that it will be the state process and therefore it won't necessarily be in line with the federal rules should these bills pass. Can you just clean that up?

Ms Parry: Sure.

Senator GROGAN: Will there be any inconsistency? Will there be any risk there?

Ms Parry: No, there won't be any inconsistency. I will call on my colleague to go into more detail. As I indicated, in essence, the accredited process can accredit state legislation, it can accredit policies and it can accredit processes, but the key there is that it accredits to the Commonwealth standards.

Senator GROGAN: If they do not reach those standards—

Ms Parry: It has to meet the Commonwealth standards. If they cannot meet those standards, it will not be accredited.

Senator GROGAN: So you would probably say that the states who are looking to accredit may need to change the way they're doing it in certain aspects to ensure they meet the Commonwealth standard?

Ms Parry: That's right.

Senator GROGAN: With the streamlined assessment pathway, I think you've cleaned it up by saying that it is the resource applied at the department that will speed up certain projects based on government priorities. We've heard the characterisation that some proponents are going to get priority into the streamline process over others—is that true?

Ms Parry: No. I want to be really clear about that as well. The same assessment pathway and even for the priorities of the government—they still have to go through the process. So it's an economy-wide assessment process. What the reforms are trying to do and what the streamlined assessment pathway is trying to do is say for those proponents who can provide all of the required information up front, right when they're developing their proposal—if we can be clear as regulators what the standards are, what the factors are that the proponent needs to take into account, what those matters of national environmental significance are and what those unacceptable impact criteria are and if a proponent has all of that up-front and can document that, they are going to work their way through the system faster irrespective of what sector they are in. It is all about transparency and providing that criteria and information right up-front for proponents to use.

Senator GROGAN: I'll move onto ministerial discretion, because that's had a bit of a bounce around the court as well. Can you talk to us about why it's drafted the way it is, and how do decision-makers deal with this in their manner of going through those approval processes?

Ms Parry: Sorry, I need to ask a qualifying question. When you say 'ministerial discretion', which element? And when you say 'why it's crafted the way it is', which element? The streamlined pathway or the package—

Senator HANSON-YOUNG: That's the problem. It's riddled throughout it. That's exactly the problem, isn't it?

Senator GROGAN: I think the issue is there are various references to ministerial discretion. Can you give us the justification for those ministerial discretions—

Ms Parry: Sure.

Senator GROGAN: and also how an assessor would then go through those tests and get to that approval decision.

Mr Gaddes: If you think about the EPBC Act, it regulates such a broad number of matters. It goes from World Heritage areas to national heritage places, Ramsar wetlands, listed threatened species and ecological communities—and there are upwards of 2,000 of those, and they are all different. We've got nuclear actions, the Great Barrier Reef Marine Park, water resources and Commonwealth marine. They are all vastly different. Some projects trigger multiples of these. So, while proponents are eager for prescription which tells them what to do in all circumstances, given those nine nationally protected matters and the diverse range of things that the act has to regulate, there needs to be some discretion so that decision-makers can weigh up the individual circumstances for a project. It's impossible to go through and say that in the middle of Australia a certain activity will be the same as an offshore wind farm in Gippsland or a nuclear action around a uranium mine. They are all different, which means it's very difficult to get a very prescriptive level of regulation which fits all the purposes. That means we do need to find, to the degree we can, rules that fit all of them, and then we must allow the decision-maker some discretion to apply those.

You will have heard all day from Professor Samuel, the NGOs and the mining sector that they are all after a degree of prescription. We are trying to provide that in the act, to the degree that we can. We will then need to follow that up with the standards and subordinate regulations, which will need to be made after this. Then we'll need to go through and do policy and guidelines after that.

Senator HANSON-YOUNG: We're a long way away.

Mr Gaddes: We have a little bit of work to do. If the Senate passes the bill, we'll get onto that work. We'll consult with people to remove the uncertainty from each of those parts of the regulatory hierarchy and give people that certainty, but there will still need to be some degree of discretion.

Senator GROGAN: Because the legislation enables the standards, do you feel—I'm getting this impression that it's kind of chicken and egg; I just want to know what your view is. If the standards were in place people might be more comfortable, but the standards are a product of the legislation passing.

Ms Parry: That's right.

Senator GROGAN: Do you have a sense of—

Ms Parry: The bill provides the head of power for the minister to create and make standards. That's first and foremost what is contained in the bill. The government has put out two draft standards as regulatory instruments. They are out for public consultation now, as we've heard today. They're currently on our website and subject to further consultation. They are disallowable instruments. The bill enables a minister to make standards.

Senator GROGAN: Great. I'm being wound up, so this is my last piece. Again, I'm hearing around and around that people are uncomfortable with the provision for accrediting NOPSEMA.

Senator HANSON-YOUNG: That's a different pathway altogether.

Mr Gaddes: I'll start with the policy rationale for doing that—

Senator GROGAN: Yes, that would be great.

Mr Gaddes: and then I'll pass to Mr Wentworth for the process that would follow. NOPSEMA has been accredited to do Environment Protection and Biodiversity Conservation Act assessments since 2015. Various stakeholders will say they've done a good job doing that. Over that time, they've developed quite a specialist capacity to work through the offshore area to the degree where the department even, at times, outsources some of the assessment work to get their experts to provide advice to us on some of our assessments. Over the period of that accreditation, they've proved to be a very good and credible regulator, and they've done a lot of environmental assessment work.

Senator GROGAN: And they've done that for 10 years?

Mr Gaddes: For 10 years. The environmental assessment process for that is very hard to change. They'd have to change their regulations and, at the same time, go through an accreditation process with DCCEEW through the strategic assessment process. The policy justification is that, in those circumstances where we can set the standards through the EPBC Act, the resources minister then simply gives effect to those standards through a regulation under the Offshore Petroleum and Greenhouse Gas Storage Act, and it's easier to change from time to time rather than having to go through and change the strategic assessment and the regulations. The same Commonwealth parliament oversees it—there's less risk than you would have with the states and territories—so it seems a more streamlined way to get to the same result.

Senator GROGAN: And they will also have to hit the Commonwealth standard—

Mr Gaddes: Exactly.

Senator GROGAN: as it stands in the bill at the moment.

Mr Gaddes: Yes.

Senator GROGAN: Thank you very much. I really appreciate it.

CHAIR: I have consulted with senators on the committee. We were set to finish at five. With your indulgence, we will continue to permit five minutes for each of Senators Pocock, Hanson-Young and Henderson to ask questions, and then we'll adjourn. I'll go to Senator Pocock.

Senator DAVID POCOCK: Thank you all for your time this afternoon. Earlier, we heard evidence from the Chamber of Minerals and Energy of Western Australia that they received a copy of the bill shortly before it was tabled in parliament. When were they provided the bills?

Ms Parry: I'm going to have to take that on notice. I don't have the exact date, and I need to verify that they did in fact receive the bills. Can I please take that on notice?

Mr Gaddes: I can confirm that they did receive the bills roughly a week before they were introduced, but we'd have to come back to the committee with the exact date that they were provided.

Senator DAVID POCOCK: Thank you. That would be great. Who else was provided the bills ahead of them being tabled in parliament?

Mr Gaddes: We'll come back with a list of stakeholders with that same question on notice.

Senator DAVID POCOCK: Thank you—the list of stakeholders and the exact date. Why were the bills given to them before they were introduced into parliament?

Mr Gaddes: The minister had been engaging in a targeted way with a range of stakeholders on a weekly basis, both at a senior level and then at a more technical level. There was not sufficient time for an exposure draft of the full bill, so we went to those targeted stakeholders and informed the ministers' roundtable group for targeted consultation shortly before the bills were introduced in the parliament.

Senator DAVID POCOCK: Whose decision was it to provide the bills to groups? Was that a decision of the department or a decision of government?

Mr Gaddes: It was a decision of the government on the advice of the department.

Senator DAVID POCOCK: Who decided which groups to give it to?

Mr Gaddes: We provided recommendations to the minister and his office, and they provided the decision back to us.

Senator DAVID POCOCK: Please can you also table or provide the advice in relation to early access to the bills.

Mr Gaddes: I think that might be subject to an order for the production of documents from the Senate already.

Senator DAVID POCOCK: That's fine. I'm asking for it here.

Senator HENDERSON: That's not material.

Mr Gaddes: Okay. We can take that on notice.

Senator DAVID POCOCK: I will move on to the Samuel review recommendations. Your submission includes an attachment, attachment A, that purports to identify how and where each Samuel review recommendation is addressed. You told Senator Henderson that all of the key aspects of the Samuel review are picked up in the legislation. I'm keen to get a bit of clarity around recommendations made but not seen in this legislative package, so could you confirm whether, in your view, the reforms implement all of the Samuel review recommendations.

Mr Gaddes: I think that I might have said 'key recommendations', not all of the Samuel recommendations. It doesn't implement all of the Samuel recommendations.

Senator DAVID POCOCK: Recommendation 2 of the Samuel review included a requirement to 'transparently disclose the full emissions of the development.' Your response in attachment A of your submission is that proponents will disclose scope 1 and 2 emissions. This is clearly not 'full emissions' as recommended by Professor Samuel. What about scope 3 emissions? Why aren't they included?

Ms Parry: That was a decision of government in terms of how the emissions were being characterised and disclosed as part of this package.

Senator DAVID POCOCK: Thank you, Ms Parry. I'd like to ask about recommendation 15 of the Samuel review, which is effectively the removal of the RFA exemption, which, he told us this morning, he hates. Your submission acknowledges this package of seven bills—more than 1,400 pages—does not include this change and says:

… it is intended that national environmental standards would apply to RFAs.

We heard evidence earlier that there is nothing in this package to end the exemption. Is that correct?

CHAIR: Senator, that's the one-minute warning.

Mr Manning: That's correct. There are no changes in the current bill before the parliament to remove that exemption.

Senator DAVID POCOCK: Why is that? What's the policy reason that a change to give effect to this recommendation is not in this legislative package?

Mr Manning: I would refer you to the comments the minister made—here in this room actually—at the last estimates hearing, where he indicated the intention to apply those standards to the RFAs and, in fact, that he's working through that at the current point in time.

Senator DAVID POCOCK: Thank you. I'm asking what the policy reason is. I've seen drafting of an amendment that's a page and a half. You've done almost 1,500 pages. Why haven't you included this?

Mr Manning: Well, the decision as to when, how and in what form the commitment that the minister has given will be taken forward is a matter for the minister.

CHAIR: Senator Pocock, I'll have to share the call. If there are any further questions—

Senator DAVID POCOCK: Can I just clarify something on that, Chair?

CHAIR: Sure. Very briefly.

Senator DAVID POCOCK: Sure. Just to clarify, there's no actual policy reason? This is just a decision of government to not close that RFA exemption?

Mr Gaddes: I can just clarify that quickly. Removing the RFA exemption and applying standards is not a simple matter to do when those industries have not been regulated under the act for quite some time, so I think there are some valid policy reasons why a quick change would not be warranted on a policy basis. These are not simple things to do.

Senator DAVID POCOCK: On notice, please, could you provide me with those reasons.

CHAIR: Senator Henderson, five minutes, and then Senator Hanson-Young, five minutes.

Senator HENDERSON: Mr Gaddes, you just referred to advice that you gave government in relation to the provisions of the bills. I'm just reiterating the importance of providing to this committee all advice given to the government in relation to these bills. Are you able to expand on any other advice that you've given to the government in relation to these bills?

Mr Gaddes: Could you narrow that down a little bit. I've been working on this project for four months, so there's been lots of advice that I've provided to government.

Senator HENDERSON: For instance, were there any nondisclosure agreements entered into in relation to your consultation?

Mr Gaddes: No.

Ms Parry: No.

Senator HENDERSON: Any confidentiality agreements?

Mr Gaddes: No.

Senator HENDERSON: Just that there were undertakings given?

Mr Gaddes: No formal undertakings were given.

Senator HENDERSON: I just reiterate the importance of us understanding all the advice given to government, which—

Mr Gaddes: I would say we did not provide the entire bills; we provided extracts of parts of the bills which were ready at the time. To the response from the Senate as to why they weren't put out: we provided them as those parts, not all the bills that were drafted. The key components the minister wanted to engage his roundtable on were shared, but not the entirety of the bills.

Senator HENDERSON: If you could provide that correspondence, please, and all the other advice you've provided, including any responses from the minister's office, we would be grateful.

For projects where it's not practical to provide upfront documentation, what percentage of applications would fall into that category?

Mr Gaddes: That falls into the category of the question we took on notice earlier. That would be the projects which go through an EIS, an accredited arrangement or the current public environment report process. That falls into a subset of that question we took on notice.

Ms Parry: Just to be clear, for more recent times we would have to break that down. The act goes back 25 years; that's quite an exhaustive piece of work, so we would want to break that down if you are looking at specific years or more recently.

Senator HENDERSON: If we could just look at since 1 July 2022; that would be a start, but we might come back to you if we want to expand that.

Ms Parry: Sure.

Senator HENDERSON: For those which don't meet the upfront pathway, will they have any way of being processed faster than today? There's a lot of concern about the current streamlined pathways being removed and the barriers that that will present for any new project.

Mr Wentworth: To expand on my previous answer, the assumption is that the projects currently going through the preliminary documentation and assessment on referral information would go through the streamlined pathway. They provide enough information upfront to access that streamlined pathway. For projects that aren't able to provide that information upfront in going through the EIS pathway, there are still improvements we're making in terms of the broader application of the act with standards and all the other information and guidance enabled under the act that would make assessment processes smoother regardless of the pathway—so it would have broader applicability.

Senator HENDERSON: Over the last six months, what engagement have you undertaken with Indigenous representatives?

Ms Parry: We have undertaken engagement with Indigenous representatives, primarily through the department's Indigenous advisory committee. I can take on notice any specific—we might have itemised it, actually. In attachment B we itemised all the engagement we have undertaken between 13 May and 29 October, and specific Indigenous organisations are listed there as well.

Senator HENDERSON: I will leave it at that and follow up with any further questions on notice. We may seek that you come back to the committee but we'll see how you go.

Senator HANSON-YOUNG: We've got until the end of March!

Senator HENDERSON: We have. And, on indulgence, it's very important that you comply—and when I say 'you', I'm talking about the minister and the department—with our requests for documents, because it's very hard for us to properly consider these bills unless we have all the relevant information.

Ms Parry: I can assure you that we will comply with any orders of the Senate.

CHAIR: Senator Hanson-Young.

Senator HANSON-YOUNG: Mr Wentworth, in relation to the answer you just gave Senator Henderson, did I hear correctly that existing applications that are on foot could go into the streamlined pathway if this legislation is passed?

Mr Wentworth: No. Existing applications would continue under the current arrangements unless they chose to re-refer, to withdraw their process and re-refer.

Senator HANSON-YOUNG: So they could pull out of the existing process and resubmit under the streamlined process. Do the emissions disclosure requirements—which we understand, of course, are only scope 1 and 2—exist for project applications regardless of which pathway they choose?

Mr Wentworth: Yes, that's correct.

Senator HANSON-YOUNG: So even if it's an EIS, if it's a streamlined process or if it's the accreditation process, disclosure would have to exist. Thanks for that clarification. This question is to the threatened species committee. Can you remind us how many species are currently on the threatened species list.

Prof. Gordon: 2,175.

Senator HANSON-YOUNG: How many of those species are guaranteed to have more protection under this package, as opposed to what currently exists?

Prof. Gordon: I cannot answer that. I don't know.

Senator HANSON-YOUNG: Has the government asked you for that advice?

Mr Gaddes: Senator, I think—

Senator HANSON-YOUNG: No—I'm asking the commissioner. Has the government asked you for that advice?

Prof. Gordon: So far the government has not asked us for that advice, as to how many species would have greater protection under this bill.

Senator HANSON-YOUNG: Have you considered the question?

Prof. Gordon: We are in the process of writing a submission, which will be tabled this coming week.

Senator HANSON-YOUNG: Is that a submission to this inquiry?

Prof. Gordon: It's a submission to the inquiry.

Senator HANSON-YOUNG: Are you worried that there's nothing that actually guarantees protection for any of these 2,175 species under this bill?

Prof. Gordon: I think that the Threatened Species Scientific Committee will continue to do our job to support the government by providing expert advice to meet the requirements for protecting Australia's unique biodiversity as best we can.

Senator HANSON-YOUNG: Habitat protection is key, isn't it, for protecting threatened species and stopping them from going extinct?

Prof. Gordon: Yes—and also ecological communities, obviously, of which there are 107 currently on the list.

Senator HANSON-YOUNG: Will climate change have an impact on our threatened species?

Prof. Gordon: Yes, that will have an impact on threatened species and ecological communities, and that needs to be taken into account in determining what the new bill will view.

Senator HANSON-YOUNG: You'd be worried, wouldn't you, if new projects that pump out a lot of carbon pollution and make climate change worse—if that weren't considered when thinking about whether animals are about to go extinct.

Prof. Gordon: I am here as the Chair of the Threatened Species Scientific Committee. We will continue to do the job that we are expected to do.

CHAIR: Senator Hanson-Young, you have one minute left.

Senator HANSON-YOUNG: Does the government have any examples you can give us of the legislation giving more protection to any of the threatened species currently on the threatened species list?

Mr Gaddes: We can point to the parts of the bill which would provide them with protection.

Senator HANSON-YOUNG: Yes, I know. I've asked this question before, and you have not been able to answer it. I don't understand why. If the whole purpose of this legislation is to fix environmental protection laws, then you should be able to tell us what further protection you're going give to the threatened species that are facing extinction.

Mr Gaddes: I'll try again. Environment protection statements is an element of the reforms which will make clearer which part of recovery plans proponents need to adhere to. Those clearer requirements will provide more protection for those species. Rulings can be used to determine critical habitat areas, which can't be developed. You've spoken extensively about regional plans and being able to set aside conservation zones which provide real benefits to threatened species—

Senator HANSON-YOUNG: I understand all that, but surely you have some idea about which species this new administration, all of these new rules, will actually save. If you don't, this all feels very administrative and not very practical.

Mr Gaddes: As the commissioner just said, there's 2,100 species. We can't go through species b species and tell you which ones will—

Senator HANSON-YOUNG: But surely you have some idea of which ones you could save. Will the Maugean skate have further protection under this legislation?

Ms Parry: As you just heard Mr Gaddes say, the intention of the reforms has been well canvassed by us today and through our submission. It does offer increased protection for all matters of MNES that the law covers.

Senator HANSON-YOUNG: What animal will you stop from going extinct under this legislation? They can't answer it.

CHAIR: Thank you, Senator Hanson-Young. We've now hit that additional time and gone, in fact, a little over. Thank you to the department for the evidence given. If you have taken questions on notice, could you provide answers to the secretariat as soon as possible. That concludes today's hearing. Thank you to all witnesses who appeared; to Hansard, Broadcasting and the secretariat for their assistance; and to my colleagues for their patience and good humour today.

Senator HANSON-YOUNG: Thank you, Chair.

Senator HENDERSON: Thank you, Chair.

CHAIR: The committee stands adjourned.

Committee adjourned at 17:20