# T R A N S C R I P T

# LEGISLATIVE COUNCIL ENVIRONMENT AND PLANNING COMMITTEE

## Inquiry into Ecosystem Decline in Victoria

Melbourne—Thursday, 11 March 2021

**MEMBERS**

Ms Sonja Terpstra—Chair
Mr Clifford Hayes—Deputy Chair
Dr Matthew Bach
Ms Melina Bath
Dr Catherine Cumming
Mr Stuart Grimley
Mr Andy Meddick
Mr Cesar Melhem
Dr Samantha Ratnam
Ms Nina Taylor

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Ms Georgie Crozier
Mr David Davis
Dr Tien Kieu
Mrs Beverley McArthur
Mr Tim Quilty

**WITNESS**

Dr Bruce Lindsay, Senior Lawyer, Environmental Justice Australia.

**The CHAIR**: I declare open the Legislative Council Environment and Planning Committee's public hearing for the Inquiry into Ecosystem Decline in Victoria. Please ensure that mobile phones have been switched to silent and that background noise is minimised.

I would like to begin this hearing by respectfully acknowledging the traditional custodians of the various lands which each of us are gathered on today and pay my respects to their ancestors, elders and families. I particularly welcome any elders or community members who are here today to impart their knowledge of this issue to the committee or who are watching the broadcast of these proceedings.

I would also like to welcome any members of the public that may be watching these proceedings via the live broadcast.

At this point I will take the opportunity to introduce the committee members to you: my name is Sonja Terpstra—I am the Chair of the Environment and Planning Committee; Clifford Hayes is the Deputy Chair; Dr Samantha Ratnam; Mr Stuart Grimley appearing with us via Zoom; Mrs Bev McArthur; and Mr Andy Meddick. Others may come in and out of the hearing at some point.

In regard to the evidence that you will be providing us today, all evidence is protected by parliamentary privilege as provided by the *Constitution Act 1975* and further subject to the provisions of the Legislative Council standing orders. Therefore the information you provide during the hearing is protected by law. You are protected against any action for what you say during this hearing, but if you go elsewhere and repeat the same things, those comments may not be protected by this privilege. Any deliberately false evidence or misleading of the committee may be considered a contempt of Parliament.

All evidence is being recorded, and you will be provided with a proof version of the transcript following the hearing. Transcripts will ultimately be made public and posted on the committee's website. If you could just for the Hansard record please state your name and the organisation you are appearing on behalf of today.

**Dr LINDSAY**: My name is Dr Bruce Lindsay. I am representing Environmental Justice Australia.

**The CHAIR**: Great, thank you. At this juncture what I will do is invite you to make your opening comments. Please keep it to 10 minutes. I will give you a 2-minute warning as we approach towards the end, and we have 45 minutes for this session. Please allow us plenty of time to ask you questions as well. Over to you, thank you.

**Dr LINDSAY**: Thank you, Chair. Okay. I thank the committee for the opportunity to appear before you today. EJA is a public interest environmental law firm. We primarily act for community groups in matters concerning protection of nature and the environment. We also have long engaged in law and policy reform work aimed at strengthening and improving our environmental laws and through those laws protecting the environment. The committee will hear in greater detail from scientists and communities of the deep peril our ecosystems presently face. Our ecological heritage is degraded. Many, if not all, Victorian ecosystems are deteriorating. Certain factors are commonplace, including habitat loss and impairment, invasive species, patterns of land and resource use, climate change and pollution. The outcome is pervasive threat of species extinction, reflected in threatened species lists and, as recently highlighted by eminent scientists, ecosystem collapse. Ecosystems do collapse into impoverished, irrecoverable shadows or ghosts of earlier forms. EJA's interest and expertise is in how our environmental and natural resources laws influence this state of affairs. I will refer to some matters and solutions raised in our written submission, but I would like to set out certain overarching propositions concerning law and its administration first.

First, the notion of ecosystem decline does not quite capture the full gravity of the situation. Some ecosystems may face steady, incremental deterioration resulting from pervasive cumulative impacts; however, ecosystems do not function in a gentle, linear fashion. They are both ordered and messy and confront non-linear changes including, as noted, collapse. Two prominent collapsing ecosystems identified by those scientists include montane ash forests and the water ecosystems of the Murray-Darling Basin. These examples are telling. Their

collapse is primarily driven by law and policy, by statutory decisions and planning—primarily logging on the one hand and water diversion on the other hand. These trajectories are the product of resource management regimes, notwithstanding their environmental or sustainability framing. These examples of decline are not unique. Statutory enabling of ecological harm such as habitat loss is pervasive in environmental and planning and resource laws, but they are exemplary of the regulated collapse of ecosystems. The conduct, circumstances and failings of these regulatory regimes have been forensically scrutinised by courts and a royal commission. We might ask whether that amounts to what has been termed elsewhere 'ecocide'.

Second, an ecosystem approach to law and governance is required. That is an obligation of international law. Law and practice need to reflect and accommodate the complexity, dynamism and integrity of natural systems. This is not currently the prevailing approach. The present approach emphasises in effect the triage of listed threatened species and a highly fragmented approach to management of discrete natural resources. The role of public land in ecosystem management is highly variable. The 2019 reforms of the *Flora and Fauna Guarantee Act* established clearly an ecosystem approach to biodiversity in law. Its intentions include not only protection but recovery and restoration of ecosystems. The issue is implementation of this Act.

Third, an ecosystems approach informs the concept of sustainability—or more accurately, ecological sustainability. Sustainability is foundational to environmental laws, planning laws, natural resources laws and public lands and marine and coastal laws. Ecological sustainability comprises a series of interlinked principles, rules and norms of law. Most relevant here are the precautionary principle, intergenerational equity and the requirement to give fundamental consideration to the conservation of biodiversity and to ecological integrity. The basic problem is that sustainability is treated at best parsimoniously in decision- and policymaking. More commonly it is given lip-service. Our view is that implementation of sustainability principles or giving effect to or acting in accordance with ecological sustainability must be the basic legal test and obligation under these laws.

Fourthly, in addition to sustainability obligations, there is another potentially powerful legal strategy. This is to recognise in law that all ecological resources are held on trust as public resources for the benefit of all Victorians. This is to set out clearly in legislation and preferably as a constitutional principle that ecological and biodiversity assets are distinctive public goods whose management and ownership vest in the Crown and which the state holds on trust for the benefit of the people. This is to embrace what is known as 'the public trust doctrine'. It requires the state to manage our natural estate in a manner that preserves, protects and as necessary restores that estate for public purposes and in the public interest. In some ways this approach is an extension of current law, which vests ownership of certain resources in the Crown, and which the courts have recognised as a type of supervisory ownership. For example, the Crown has primary authority over native wildlife, water and public lands. The public trust requires those resources to be managed ultimately for their common public, which is to say inherent ecological, properties.

In the final part of this statement I would like to deal with some more specific issues and reform directions. The FFG Act has been revised and arguably strengthened, but its influence is entirely dependent on discretionary use of instruments under the Act, such as critical habitat protections or implementation of obligations such as those applying to public authorities under section 4B. We are still awaiting implementation. We have no critical habitat protections, and we see no clear systematic efforts by the public sector to implement section 4B obligations. There has been no movement on updating or preparing action statements. Implementation of the FFG Act needs to be a priority, and we need further reform of the Act to mandate implementation.

The present biodiversity strategy is advanced as a panacea to ecological crisis and the means to so-called improvement at a landscape level. This claim is at best brave, more likely misconceived. The method of the strategy is driven by scarce and declining conservation funding. Its methodology is reflective of a predilection for threatened species modelling and limited conservation theory. In our view it has insufficient regard to the full complexities and dynamics of ecological systems. The strategy is not organised at an ecosystem level, makes no reference to ecosystem recovery or restoration theory, and it is absent of key ecological concepts, such as keystone species or non-linear change. The strategy does not systematically contend with one of the major sources of environmental degradation, statutory authorisation of harm, such as through development or resource approvals. The biodiversity strategy should be revised in order that it aligns with restoration ecology science and the revised objectives of the FFG Act.

Restoration is alluded to in law and policy, but it has no legislative guidance. Principles and standards of ecological restoration are well established in practice. They emphatically do not rest on planting a few trees or adding a bit of water. They are sophisticated scientific models, based on preventing ongoing degradation and rebuilding to the maximum degree practicable biological diversity, ecosystem complexity and function. They turn on recovery, noting that recovery, like decline, is ultimately a choice and depends on setting specific outcome targets and means for recovery. The use of environmental offsetting as a restorative device is on all the scientific and practical evidence a manifest failure. It is used as a first rather than a last resort in decision-making, it was criticised by the recent Samuels review and we know from experience that there are strong pressures to use them in the same way in Victoria, such as through planning decisions. Offset rules are not tied to restoration ecology. They largely enable decline. Compensatory approaches to ecosystem harm may be inevitable, but we need new tools in this space.

Finally, as legislators, one of your tasks is oversight of government administration. The long-term failures of environmental administration is a key source of ecological crisis. We have seen that in Auditor-General reports, on Ramsar sites and grasslands, for instance. The courts have found it in forestry. Other inquiries have found it in water management. It is not unique to Victoria. The experience of EJA and our clients and partners is that aside from weaknesses in environmental and resources laws, a key failure is in implementation, observance and enforcement of the law. We have a basic problem in the environmental rule of law. Frequently the resources are not there, the will is not there or the tools are not there to do the job of administration properly. EJA has posed responses to these problems in the form of reformed environmental assessment laws, independent institutions such as a statutory regulator, much greater opportunity for citizen enforcement and participation, and far greater transparency and scrutiny of administrative decisions. In absence of serious legal and policy reforms, the ecological situation will only get more dire. That is amplified and accelerated by climate shifts underway. If environmental laws and governance are merely a fig leaf to development and resource use business as usual, which is more or less the current situation, ecosystems not only will decline, some will collapse. Communities will bear the brunt of this. They are already aware of that. They can read the science. They are doing their best to organise in the public interest to protect ecosystems in the face of interests organised to profit from their degradation. That is my statement. Thank you, Chair.

**The CHAIR**: Great. Thank you very much. All right, we will open up for questioning. Dr Ratnam.

**Dr RATNAM**: Thank you very much, Chair. Thank you so much, Dr Lindsay, for being here and for the work that you do. I will just ask one question to start off with, and we might come around again. Taking a number of points that you have raised in your opening statement and expanding them, my understanding is in terms of the work that you do, that EJA does, you are interacting at the level of using the law to manage ecosystems, or manage the environment, to either prevent ecosystem loss, enforce the law or punish breaches of it, so using the law as a tool to manage our environment. You have talked about the laws of the *Flora and Fauna Guarantee Act*, you talked about implementation not being resourced well, and I think you talked about the biodiversity strategy as well, but I was not quite sure whether that was a strategy you were referring to. In your view, where is the biggest failing there—laws are not strong enough, there is not enough money going into enforcing them or the strategy is just not strong enough to get us there? Is one more prevalent than the other? I just want to expand on what you were saying.

**Dr LINDSAY**: Dr Ratnam, I think broadly all of the propositions that you said we would agree with and have put in our submissions and in the opening statement. At the one level, the issue is of course the design and the content of the laws themselves being insufficient, and in particular, as I referred to in relation to the FFG Act, just far too discretionary. There should be greater mandates for ecological protection and also ecological recovery. As I indicate, there is a broad range of laws that are clearly applicable in this space. In addition to, for instance, the FFG Act, planning laws and natural resource laws are all intimately relevant to the problem at hand. Unfortunately, as I point out, a major failing at the legal level, in the design of the law, is that those laws are not really designed to give proper effect, say, to ecological sustainability. They drive decline rather than sustaining or preferably improving environmental conditions. That is the issue of the design of the law itself.

The additional issue that I point out is implementation, or effectively, administration of the law. Now, this is an enormous problem not only at a formal level, say, in terms of the requirement to make things happen, and I refer to action statements as a good example. There is actually an obligation to do it, and many of them do not get done and have not been done for years. There is the use of the tools available under the FFG Act, for

instance, like critical habitat protections. There are a whole lot of other tools there that are simply never used, and we are still waiting for them to be used—or a plan to do so.

There is the issue, which is part of administration, of the question of enforcement and compliance of the law, which is an enormous failing, an enormous gap. And again, in part that is a design of the law. In many respects sufficient or appropriate tools to do so and the range of tools to do so are not there under many Acts. But also there are the will and the resources to do that—to enforce the law and ensure compliance with the law. One of the reasons we are so active in this space is that it is often left up to communities and to citizen groups to do the enforcement, whether that is in planning or forestry or water law or whatever the case may be. Now, obviously we are not going to step out of that space, and we think it should be expanded and there should be greater scope for citizen enforcement. But clearly the state, as the major public actor, needs to be actively involved in that space as well. So they are two basic failings and questions or issues that we raise, or the two broad categories under which I put them. I think the resourcing question is clearly related to the administration question in some ways, and not only is there currently enormous under-resourcing of environmental administration and environmental enforcement, but over years and decades it has declined. I think unfortunately we need to be going in the other direction.

**Dr RATNAM**: Thank you so much.

**The CHAIR**: Mr Grimley.

**Mr GRIMLEY**: Thank you, Chair. And thank you, Dr Lindsay, for your presentation. I have just got a question specifically around the Office of the Conservation Regulator. We have had a number of submitters to the inquiry that have questioned the legislative basis for the OCR, arguing that it is not independent enough, and I was just curious to know if you have any comment on the current ability of the OCR to perform its duties of compliance monitoring and enforcement.

**Dr LINDSAY**: Yes. I think it is a very important question, Sir. We would probably agree with the need to put it on a statutory footing, an independent legislative footing. As I understand, its current status is effectively as an administrative office within the department. The basis or the importance, I think, of putting it on an independent legislative or statutory footing operates at a number of levels. It creates, as a matter of law, the kind of robust, independent status of the office. That is extremely important, and it can give the office its own mandate. We have always been strongly in support of independent institutional arrangements in this space as far as possible, not only for the compliance and enforcement dimension, which is obviously what the OCR is tasked with, but also you could say in terms of, at the other end of the spectrum, assessment arrangements and so forth. Independent statutory provisions are going to provide, in law, the best protection of the authority and standing of those offices. That formal status is a precondition, I think, but it is not the only precondition really needed to make the office effective. Clearly it needs to be resourced well, and it needs to be resourced effectively. The task for the office, as I am sure the regulator said yesterday, is extensive—it is vast. It has got to cover an awful lot of legal provisions that are, by definition or inherently, difficult and complex often.

The other thing I would say in relation to the OCR is that the independent status of the office and its institutional authority and robustness are clearly crucial, but it can only do what the law enables it to do—that is, its job is to enforce the current laws. And if the current laws and their compliance and enforcement are insufficient or inadequate, or they do not provide the breadth and the flexibility and the dexterity of the tools to do administration and enforcement, then it is going to have its hands tied to some degree. For instance in relation to the *Wildlife Act*, it is being looked at, and we would argue there needs to be a broad set of tools to allow the OCR to do its job. That was brought in with the FFG Act, for instance. There is a wider set of tools available, and we support that kind of approach. Similarly, with the *Environment Protection Act,* under its reforms there is a wider set of compliance tools and enforcement tools available, and we would support that approach as well.

**Mr GRIMLEY**: Thank you.

**The CHAIR**: I might ask a question if I can. Obviously, as a lawyer, you are someone who deals in the legal framework all the time. I guess there is a theme that is coming through with a lot of our witnesses, which is that some of the legal frameworks are quite complex in the way that they interact with each other. I note your submission is around the question of resourcing and perhaps the ability to act in ways that, you know, if someone is offending the law, they can be brought to account. But do you think the frameworks that we have at

the moment are fit for purpose in the current climate? If you look at what has been enacted—I mean, I am looking at the *Wildlife Act 1975*; that is when it was first enacted, and yes, it has been amended—do you think it is worthwhile starting again, because there are lots of complexities in terms of interactions? In other words, is the framework fit for purpose in our current situation, or is it worth perhaps tweaking it? And you mentioned as well, it is not only the *Wildlife Act* and the *Flora and Fauna Guarantee Act*, but there are lots of other acts. There is the planning Act, there is a whole bunch of things—water—so what is your view about that? What would be the best way to streamline and perhaps get the most effective legislative framework?

**Dr LINDSAY**: I think, Chair, that the preceding comment to that kind of question in some ways is that ecological management is in some respects inherently complicated. That is kind of unavoidable, and also what we are trying to deal with or manage is conflicts and conflicting uses around how we manage the ecosystems and to what ends. I think it is probably not feasible in some ways to say there should be one Act that deals with all of it. I mean, that was kind of attempted at the federal level with the EPBC Act, but even there—I mean, it is an omnibus Act, but there are other Acts. Here of course for various reasons, including constitutional ones, the role of the state is somewhat different around land and resource management, for instance, and planning, and you are not necessarily going to be in a situation to dismantle all of those statutory schemes. I think that the better approach in some respects, which we alluded to in our submissions and in the opening statement, is to give authority and weight to a leading biodiversity Act or ecological Act. For instance, the FFG Act in some respects plays that role. It is not the only one. I think if the *Wildlife Act* can be better reformed it can also play a similar kind of role—so using that, as it were, as a vanguard or a leading piece of legislation in this space, as it attempts to do now but I think it does not do so strongly enough, to impose a wider set of obligations on all the other public actors that are involved in that other space and using other statutes. Inherently in some respects there is going to be a range of statutes that have to intersect and interact with each other, and I guess that is what I am getting at. The question is: how do you organise it better to achieve better outcomes?

**The CHAIR**: I think the bottom line is you are saying it is complex and complicated.

**Dr LINDSAY**: Well, it is, inherently, but I think there are ways to make it work better. I think that is the point that I am saying. The two things I would say are give the leading Act—if it is the FFG Act—real force and effect and real clout, and secondly, in all of those other Acts, those other statutes, as I have indicated in the opening statement, ensure that the underpinning principles of ecological sustainability actually have force and weight as well, because presently they do not. They vary in terms of their formula and effect and their weight, but none of them really require decision-makers to say, 'You have to implement this. This has to be the outcome'.

**The CHAIR**: Yes, I understand. Just one question before I move on, because I know we have got lots of questions that people want to ask you, and you will probably get a barrage of questions on notice from us after as well.

**Dr LINDSAY**: I am more than happy to come back, Chair, if that helps.

**The CHAIR**: That is fine. One other question just in terms of our First Nations people: how do you think you can strengthen the legal framework to have that formal recognition of a role for our First Nations people? Because I am gathering it is not there right now, so what are your views about that?

**Dr LINDSAY**: Well, ultimately First Nations people will drive that question, and they are doing it around things like treaty. I think treaty questions have to deal with, at a constitutional level, the question of their authority, the truth-telling, their role in managing our ecosystems and natural resources and the environment. They will lead that.

I think from a legal point of view there are a number of ways in which that can be designed in addition to or complementing the treaty question. Some good examples that we already have moved in some respects to in Victoria are things like bicultural arrangements, which the Yarra Act does here. I have had some qualifications about the Yarra Act, but designing it effectively as a piece of bicultural legislation over a place or over an ecosystem—well, not quite an ecosystem, but a river corridor—I think is a really valuable and important way ahead. In doing that it recognises at the heart of it in some ways is Aboriginal traditional owner understandings of country, and it is built in in that bicultural fashion into the law. That kind of tool or that kind of arrangement can certainly, I think, be really powerful and really important.

There are a lot of other ways in which it can be done. I think one of the difficulties in Victoria has been around the laws that are there like native title and the *Traditional Owner Settlement Act* and the difficulties in actually achieving gains out of that around ecosystems and natural resources. So it may be that Aboriginal people want to advance an agenda and outcomes out of those laws and make them work better for them as well, and certainly that is work we have kind of been doing with TOs, around water in particular.

**The CHAIR**: Okay, great. Thank you. Dr Bach.

**Dr BACH**: Chair, would you mind if I ceded my time at this point to Mrs McArthur? Is that all right?

**Mrs McARTHUR**: Thank you, Dr Bach, Chair and Dr Lindsay. You have been, maybe quite rightly, very critical of this government and its inability to do what you think it should be doing in the space that you occupy. You also suggest that farmers ought to be far more active in the areas of conservation and species control and so on. Why should the farming community invest further—and they already invest seriously in weed and vermin control—when their neighbours, the state, totally fail to look after the land surrounding them, whether it is roadsides or state parks and forests?

**Dr LINDSAY**: Thank you, Mrs McArthur. I think my criticisms have been of governments of all persuasions, I might add, and not just of—

**Mrs McARTHUR**: This one has been in power for 17 of the last 20 years, so—

**The CHAIR**: Well, there is a federal government there too, do not forget.

**Dr LINDSAY**: I think my comments, to the best of my ability, have been non-partisan.

**Mrs McARTHUR**: Really?

**The CHAIR**: Thank you.

**Mrs McARTHUR**: We will look at the record.

**Dr LINDSAY**: I think some of the concerns, the limitations and the failings I pointed out have certainly traversed governments going back years if not decades. On your particular question about the role of farmers and agricultural landowners in particular, and I think that really goes to the issue of invasive species management, I think there are a couple of points I would say about that. It is true there are many, many farmers and many agricultural landowners who have been doing enormously important work in recovery of landscapes over many decades. I would also say there are many farmers, in our experience, who have caused enormous damage. Like most groups in society, farmers and landowners are not monolithic.

**Mrs McARTHUR**: Like governments.

**Dr LINDSAY**: Like government. I have acted on behalf of farmers against other farmers in relation to tree-clearing cases, for instance. I think in some respects some of the most important work done by farmers has been around land care, around issues that relate to that land ethic and by farmers who have that understanding and that notion. On the issue of invasive species, invasive species are not a tenure-based issue; they traverse all tenures. They are a fundamental problem to ecosystem health across all tenures, and I think in that respect both public and private actors have a fundamental and crucial role to play in the exercise. Indeed in law, under section 20 of the *Catchment and Land Protection Act*, and section 21, they have positive duties—private landowners and public landowners—to manage these problems. I do think that there is a real need to make sure that farmers are properly compensated for that kind of work and that there are properly organised and systemic programs that allow farmers, non-landowners and other actors who are interested—community groups, the government itself—to undertake the work of invasive species management and to reduce the pressure on landscapes. I hope I have answered your question. They would be broadly my comments at this stage, I think.

**Mrs McARTHUR**: The question was really: should farmers be investing further in this area when the non-native invasive species just leap over the fence? They actually do not know about fences, weeds—

**Dr LINDSAY**: No, they do not. You are right.

**Mrs McARTHUR**: and they cause enormous trouble, so how do you ensure that is done in the farmland, which is being looked after—not by all farmers, I quite accept that, but by the majority who want a productive asset—when their neighbours, the state, are doing the job very poorly or not at all?

**Dr LINDSAY**: Well, I think, like I said, the question of invasive species is tenure blind. It is an issue with both public and private land tenures, and each has a role to play in the exercise. If your concern is really about threatened species management on public land, then the state needs to invest in that question and invest in that issue. That goes to broader conservation funding, generally. As I indicated in the opening statement, in addition to invasive species management being a major threat and pressure on ecosystems, so is the statutory enabling of harm across all of those landscapes. So I think that the role of the state is certainly in threatened species management and resourcing. The role of the state is also to look at its own conduct in not only permitting things that are damaging to happen but enabling others to do things that are damaging, and that includes farmers sometimes and that includes a whole lot of other landowners and resource users as well—developers and all sorts of actors. So I think, certainly, the state has got a role to play on its own lands, but it has to be funded to do that work.

**The CHAIR**: Thank you. Ms Taylor.

**Ms TAYLOR**: Yes. Talking about farmers versus farmers—without opening up a can of worms, which we probably will—you have got an organic farmer, and I know it can take many years to progress to that because they have to test the soil and so forth, and then you might have one who is pumping out tons of glyphosate or some other toxic chemical, into the future do you think there are ways to manage that kind of tension when you have got a different approach to farming? I am not here to judge. If that is too granular for this, you can talk more broadly.

**The CHAIR**: You can take it on notice if you cannot. But, yes, have a go.

**Dr LINDSAY**: It may be. I am not entirely sure it is in the area in which I have got the expertise to answer.

**Ms TAYLOR**: Fair enough.

**Dr LINDSAY**: Certainly different landowners are going to have different approaches to what they want to do on their land, in terms of production in this particular instance. If we are going to the basic question of ecosystem health and ecosystem management, which we are of course, then, look, I think that—

**Ms TAYLOR**: I am thinking of even run-off, the sprays et cetera—

**Dr LINDSAY**: Yes. Some of those questions I think that you are going to—run-off is an example, spray dispersal beyond property boundaries, these kinds of questions—in some respects there are legal mechanisms. I will try to approach it as a lawyer. There are legal mechanisms to try and deal with that kind of problem, and there was quite an infamous case in WA dealing with this, for instance. Having said that, and this goes to, say, the run-off or the pollution question as well, those laws and those tools are not necessarily particularly well adapted to the problem. So if you are looking at things like nuisance or negligence, it may be that if you are talking about the pollution question and run-off being an example of that—

**Ms TAYLOR**: Torts.

**Dr LINDSAY**: Well, I was thinking of the new *Environment Protection Act*. The new general duty under the *Environment Protection Act* may be better adapted to our current framework and to dealing with some of those kinds of problems, because it is intended to manage the risk. So if we are dealing with it as a pollution problem, it may be that there are means to do so. But in terms of agricultural production questions and different approaches to it, that is probably something beyond the scope of my interest or expertise at this point.

**Ms TAYLOR**: Fair enough too.

**The CHAIR**: That is okay.

**Dr LINDSAY**: I am happy to try and take it on notice if that helps.

**The CHAIR**: Well, you can. You are more than welcome to take it on notice if you want.

**Mrs McARTHUR**: And perhaps enlighten us on how much glyphosate is used by the state on roadsides—

**The CHAIR**: Sorry, Mr Hayes has not had a question yet. We have got 5 minutes to go. So, Mr Hayes, if I could get you to ask your question, that would be great.

**Mr HAYES**: Thanks, Chair. Thanks very much for your presentation, Dr Lindsay. Mine is a bit of a revolutionary question I suppose. A lot of good intentions were written into legislation back in the 70s and 80s and the flora and fauna Act. I have paid particular attention to the *Planning and Environment Act*. It was originally written—the objectives were—to balance social, economic and environmental objectives and decision-making at the local level. Over the years the power has become more and more centralised in the minister's office and more and more discretionary, and we have heard of a few things, talking about discretionary decision-making. If you are to have an OCR, how would it have sufficient clout to have effect at the high level of government, when you are talking about maybe overturning or regulating ministers' decisions? Would it be a body with the powers of, say, the Ombudsman or ICAC, or would it need powers even more enhanced than that? Because more and more the commercial interests get the imperative in decision-making, it seems to me.

**Dr LINDSAY**: If we take the OCR as a particular example, presently the OCR's role as a regulator, as we have said, is essentially compliance and enforcement. Obviously the OCR, if you were to write it into its own statute, for instance, will have functions that relate to whatever statute you want it to, so it could relate to the *Wildlife Act*, it could relate to water management, as NRAR in New South Wales primarily does. It really depends on where you want to put its effort. That is probably the first thing I would say. That more goes to the scope of its powers.

In terms of its functions, which I think is perhaps where your question is going, there is a number of ways you could use that kind of office to provide probably more in the nature of guidance or advice out of its functions and out of the operation of its powers. Tribunals have this kind of approach in some ways, too, like VCAT. For instance, VCAT's primary job is essentially making decisions, again, or doing enforcement, but it can also make recommendations in effect to government and to ministers and to the executive government and it does that all the time, where, for instance, the law is unclear, or seen to be unsatisfactory or whatever the case may be.

There are similar bodies that have that kind of advisory function in the environmental space. So New Zealand has a Parliamentary Commissioner for the Environment. It is kind of like an ombudsman for the environment; it does that kind of thing. Whether you would want to write that into legislation for the OCR is ultimately a question for you as legislators. I think that it is probably a question of trying to figure out, if you were going to do that, what is the best balance of the functions and the time and effort. It is going to take a lot of time and effort simply doing its core job of enforcing the law and ensuring the administration of the law is carried out correctly. But you can certainly see scope for saying, well, the OCR, where it identifies a shortfall, a failing, a gap, a silence, should advise government of that and then of what the government should do about it. That would seem to be a perfectly reasonable and probably a quite fruitful role for that kind of body, I think.

Other institutions have this. So I talked about the Yarra Act before. So the Birrarung Council, which is a statutory authority under the Yarra River Act, has an advisory role to the minister, for instance, as well as a role in advocacy, which is slightly askance from what we are talking about. So certainly those kinds of offices can have more than one function and it is often valuable that they do so. Again, you have got to resource it to do it, make sure it does it properly. I hope that is helpful.

**The CHAIR**: And just following up on that, I think the Victorian Auditor-General has had some involvement in this space as well, about reviewing various things, so integrity and oversight bodies do play a role.

**Dr LINDSAY**: Absolutely. And the other thing about things like the Auditor-General, the Ombudsman and those kinds of oversight bodies—and in some ways the OCR might do that kind of function—is they can take on references but they can also do things on their own motion, which I think is also a very important function.

**Mrs McARTHUR**: Sadly, they have had their funding cut.

**The CHAIR**: Sorry, you were saying—before you were rudely interrupted.

**Dr LINDSAY**: They can basically provide advice and do inquiries on their own motion, which I think is also a very important function for those kinds of oversight bodies. They are effectively given, not a free hand but a wide latitude to do their task, which I think is pretty crucial. I think it is crucial to a proper authoritative and independent role.

**The CHAIR**: Great. All right. Thank you very much for that. Our time has expired, sadly, but you will probably get some questions on notice from all of us. So I would like to thank you very much for your presentation and for answering our questions today.

**Witness withdrew.**