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Official Committee Hansard

RURAL AND REGIONAL AFFAIRS AND TRANSPORT
LEGISLATION COMMITTEE

**Reference: Australian Capital Territory (Planning and Land
Management) Amendment Bill 1997**

WEDNESDAY, 25 MARCH 1998

CANBERRA

by authority of the Senate

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SENATE
WEDNESDAY, 25 MARCH 1998
RURAL AND REGIONAL AFFAIRS AND TRANSPORT LEGISLATION
COMMITTEE

Members: Senator Crane (*Chair*), Senators Calvert, Forshaw, McGauran, O'Brien and Woodley

Substitute members: Senator Allison and Senator Lundy

Participating members: Senators Abetz, Bartlett, Boswell, Brown, Brownhill, Chapman, Bob Collins, Colston, Conroy, Cook, Eggleston, Ferris, Gibbs, Harradine, Lundy, Ian Macdonald, Sandy Macdonald, Mackay, Margetts, Murphy, Neal, Schacht, Sherry, Tierney and West

Senators attending the hearing: Senators Allison, Calvert, Lundy and O'Brien

Matter referred by the Senate for inquiry into and report on:
Australian Capital Territory (Planning and Land Management) Amendment Bill 1997

WITNESSES

CHILVERS, Ms Merrilyn Ann, Director, Australian Capital Territory Liaison Unit, Department of Transport and Regional Development, Sixth Floor, 1 Bowes Place, Woden, Australian Capital Territory 2606 35

GAYLER, Ms Dianne Louise, Assistant Secretary, Australian Capital Territory Liaison Unit, Department of Transport and Regional Development, Sixth Floor, 1 Bowes Place, Woden, Australian Capital Territory 2606 35

GROSE, Mr Rodney Edward, Acting Chief Executive, National Capital Authority, 10-12 Brisbane Avenue, Barton, Australian Capital Territory 2600 35

DUNSTONE, Mr Mark, Private Citizen, 67 Irvine Street, Watson, Australian Capital Territory 2602 41

Committee met at 7.49 a.m.

CHAIR—On 10 March 1998 the Senate referred the Australian Capital Territory (Planning and Land Management) Amendment Bill 1997 to the Senate Rural and Regional Affairs and Transport Legislation Committee for consideration and report by 31 March 1998. The committee held its first hearings on the bill on Monday 23 March and completes its hearing on the bill this morning. Today we will hold discussions with the minister's nominees from the ACT Liaison Unit of the Department of Transport and Regional Development, and with Mr Mark Dunstone. It should be noted that the committee has authorised the reporting, broadcasting and re-broadcasting of these proceedings in accordance with the rules contained in the order of the Senate of 23 August 1990 concerning the broadcasting of committee proceedings.

Before we commence taking evidence, let me place on record that all witnesses are protected by parliamentary privilege with respect to submissions made to the committee and evidence given before it. Parliamentary privilege means special rights and immunities attached to parliament, or its members, and others necessary for the discharge of the function of the parliament, without obstruction or without fear of prosecution. Any act by any person which operates to the disadvantage of a witness on account of evidence given by him or her before the Senate, or any committee of the Senate, is treated as a breach of privilege.

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CHAIR—Welcome. Would any of you like to make an opening statement?

Ms Gayler—Yes, thank you. You have the department's submission which, I understand, forms part of the evidence. I would just like to draw attention to a number of matters from the submission.

Firstly, the federal coalition policy for the ACT expressly proposes to amend the legislation before the committee to remove the legislative barriers and to open the opportunity for the ACT to move to 999-year leases. The Chief Minister has approached the government proposing this change because she suggests that the current system is antiquated and unduly restrictive. It seems to be important for the ACT economy that conditions as similar as possible to conditions elsewhere in Australia apply. This is because the ACT competes with other Australian cities and jurisdictions for attraction of investment.

The bill will not alter the current leasehold system. It merely clears the way for the ACT government and the Legislative Assembly if they wish to move to 999-year leases. The national land also will not be affected, and the lease period for national land will remain as 99 years. The government believes that the change proposed by the amendment is in keeping with the spirit of self-government which will allow the local Legislative Assembly and ACT government to manage the arrangements for the proposed new lease term.

I would like to add, also, that there appear to be some misconceptions about what the bill does and does not do. Firstly, it does not affect the capacity which currently exists, and will

continue, for the ACT government to levy land tax, rates and change of use charges. Those things remain the prerogative of the ACT government.

Nor does the bill affect the current requirements for approval and related charges when a change of use for a particular lease occurs. Those requirements are not affected by the bill. Nor are the further planning requirements related to the national capital plan and the territory plan. They are also unaffected by the bill. Finally, under the current 99-year lease arrangement, established in the existing act, it is for the ACT government and ACT Legislative Assembly to determine how the 99-year lease arrangement is put into practice.

The same will apply if this bill is enacted. The manner in which the 999-year leasing arrangements and details about how the conversion takes place will continue to be a matter for the ACT government and the ACT Legislative Assembly. Assuming the passage of this legislation, my understanding is that the ACT government proposes to develop a bill relating to the implementation of 999-year leases, and that bill will then be considered by the Legislative Assembly.

CHAIR—Would it be fair to describe this legislation as enabling legislation?

Ms Gayler—Indeed, it is.

CHAIR—As we have 24 minutes left, I propose to give everybody a six-minute window of opportunity.

Senator CALVERT—I have not been to all the hearings, but I have noticed that, in a lot of submissions, the Canberra business community have been very supportive of the proposal. Has that been your understanding in the department?

Ms Gayler—Yes, Senator. The Canberra Business Council and the Master Builders Association have both made submissions in support of the bill. Evidence was given at the earlier hearing from the Property Council and the Institute of Land Valuers. Those submissions go to the heart of the argument that, in order to attract investment in the national capital, the land tenure arrangements need to be as close as possible to those applying in the competing jurisdictions and cities in Australia.

The view that a viable comparison is with Singapore, London, Hong Kong or Amsterdam really misses the point. Canberra is competing with other cities in Australia for the investment dollar and, as the ACT increasingly needs to diversify its economy and move away from a longstanding reliance on the federal government, it needs to be in a competitive position to do so.

Senator CALVERT—There seems to be some suggestion that, in some way, going to a 999-year lease was going to be a windfall gain for commercial enterprises or leaseholders in Canberra. Is that the case?

Ms Gayler—The valuers, for example, were unable to give an estimate and they did point out that the benefits will depend somewhat on the remaining term of current leases. As I pointed out a little earlier, the ACT government's capacity to levy land tax, rates, change of use charges—and those are the three principal avenues of revenue based on land and land usage—remain unaffected.

Senator CALVERT—The point about the whole argument to me—and I presume Senator Lundy would disagree with me entirely—is why should the citizens and business people of Canberra be treated any differently from other business people and land-holders in Australia that have access to freehold title. For some reason, Professor Neutz and Professor Troy seemed to say that there was a crying need to keep the situation as it because there might be a need

down the track to renew these leases for some reason that we do not know about. Why should the people who choose to live in Canberra have uncertainty of land tenure that does not apply to other people in Australia?

Ms Gayler—The Australian constitution and the Seat of Government Act contain restrictions in relation to freeholding of land in the ACT. That given, this bill enabling 999-year leases will move ACT residents and commercial enterprises to a position much closer to the freehold situation pertaining in the other jurisdictions.

Senator CALVERT—But all national land and important land would be protected, would they not?

Ms Gayler—Yes.

Senator CALVERT—And if need be, the powers of acquisition would still apply that apply in every other state. For instance, if the ACT government decided that an area of land was important, they could still acquire it and take it back?

Ms Gayler—That is correct.

Senator LUNDY—Do you have any evidence to base your assertions on that the movement from a 99- to a 999-year lease is the critical factor that will make the ACT competitive in terms of business and, in fact, that it will not be the levies that you described—the levels of land tax, rates and change of use charges?

Ms Gayler—I do not think I asserted that the move to 999-year leases was the critical factor. I think it is perceived to be one impediment.

Senator LUNDY—Do you think that levels of land tax, rates and change of use are also a factor?

Ms Gayler—I think each jurisdiction in Australia looks at its relative competitiveness, and land tax, for example, is one of those charges that investors and current enterprises would look at.

Senator LUNDY—That is one of many. You spoke about those issues, particularly the change of use not being affected specifically by that bill. Are you also assured, to the same degree, that any subsequent legislation attempted to be passed by the ACT government will also be able to avoid the same levels of impact on those areas?

Ms Gayler—I am sorry, I do not understand the question.

Senator LUNDY—You made a statement that issues such as change of use charges, land tax, rates and the planning rights, I presume, of the NCA and the ACT Planning Authority are unaffected by this bill. We know that because this is an enabling piece of legislation. Can you be assured, and are you assured, that the subsequent ACT legislation will not affect those areas in the same way?

Ms Gayler—In respect of the national capital plan and requirements for ACT approvals not to be inconsistent with the National Capital Plan, yes. But those matters which are currently the prerogative of the ACT government—namely, whether or not there is a change of use charge and whether or not certain planning approval requirements are necessary—remain the prerogative of the ACT government and Legislative Assembly.

Senator LUNDY—I appreciate that. We heard from Minister Humphries at the previous hearing that, in fact, there is no draft for the legislation that the ACT government intends to put through at this stage. So we have no way of knowing the impact, the shape or the nature of that particular piece of legislation. What I am trying to get to the bottom of, Ms Gayler,

is that we have heard many assurances with respect to this bill but, as to the ultimate impact on the ACT, with respect to these matters, we actually have no idea because the ACT government has not been able to furnish us with any degree of detail, including matters of transition and conversion, as you described.

I do not know whether you are privy to any knowledge that this committee has not been able to get hold of, but we certainly have not been able to get beyond the general gist of what the government intends to do, which is best embodied by option 1 as described in the memorandum of this particular piece of legislation.

Ms Gayler—May I say three things in relation to that. First of all, the federal government is of the view that how the ACT implements the 999-year leasing system is a matter for the territory. Secondly, the options set out in the explanatory memorandum to the bill were, in fact, options that the Commonwealth considered in determining how to frame the bill currently before the Senate. They are not options for the ACT. Thirdly, it is my understanding that Minister Humphries proposes, in the next day or two, to write to the chairman clarifying the second matter I just referred to and outlining how the ACT would propose to proceed—namely, by way of development of a bill for the implementation, which would then go to the ACT Legislative Assembly. That is really the same way as the current 99-year leasing arrangement is implemented. The details of its implementation are not in the federal legislation; they are a matter for the ACT.

Senator LUNDY—I am very interested to hear that, Ms Gayler. Obviously the minister is now in a position to apprise the committee fully of what the government's intentions are. Perhaps I can save the committee's time by not pursuing the issue with you, but we shall look forward to Mr Humphries's correspondence. Could I just ask Mr Grose about the National Capital Authority's view—perhaps not specifically commenting on the construct of this legislation, given its enabling, but a statement about the relative views of the National Capital Authority with respect to this proposal would be most helpful.

Mr Grose—I am not sure that the National Capital Authority has a particular view on the matter. It is government policy to change the ACT Planning and Land Management Act to permit the territory government to make whatever changes they wish. It does not affect national land in the ACT which we manage, or other Commonwealth land managed by other agencies of the Commonwealth, and the particular dealings of the territory in their land are something that we do not have any control over, other than through the national capital plan. So it does not have any particular implications for the National Capital Authority.

Senator LUNDY—Where lessees have currently 99 years or whatever term remaining on their leases on designated land, do you see that as having any impact on the NCA's ability to guide the planning principles for those particular designated areas?

Mr Grose—The planning is set through the plan separate from the leasing arrangements. Whether the lease term is for 99 years or something less than that, or can be extended beyond 99 years, the plan continues unaffected by that. It is not something that we would be concerned about.

CHAIR—We will have to swap over; we will come back to you. Senator Allison.

Senator ALLISON—Can I just clarify something. I apologise to you for not being here on the previous hearing days. It is the case, is it not, that this legislation affects only new leases. We are not talking about existing leases?

Ms Gayler—This legislation does not affect any leases, unless and until the ACT government and Legislative Assembly pick up the opportunity to move to 999 years—and it certainly does not instantly convert any leases.

Senator ALLISON—I understand that. Nevertheless, is it not the case that we are talking here about new leases, not existing ones?

Ms Gayler—That is correct.

Senator ALLISON—I have a simple question. There have been, I think, at least four reviews conducted so far—back in 1976, 1983, 1988 and 1995—which all concluded that there was nothing to be gained by moving in this direction. What has changed since 1995 or since those previous reviews were done?

Ms Gayler—I think there have been 12 reviews, rather than four reviews. The first of those, the Else-Mitchell inquiry into land tenure, did recommend a move to perpetual leasehold in the ACT. The four reviews that I think you are referring to were not directed specifically to the question of the lease term; they were focused rather on the administration of the leasehold system in some cases, and in other cases on the planning arrangements. What has changed, I think, is the need for the ACT community to become more competitive and develop a more diversified economy, less reliant on federal government, and therefore a greater capacity to attract investment and industry and so on.

Senator ALLISON—Are you referring to the loss of jobs in the public sector?

Ms Gayler—The changing nature of the ACT economy and the—

Senator ALLISON—How else is it changing if not in that way?

Ms Gayler—And, yes, the various measures that the federal government has taken and the effect on Canberra, which is acknowledged. There is a perception, particularly in the business community, that the lack of security in relation to leases is one factor that affects the capacity to attract investment and to compete with other Australian cities and jurisdictions.

Senator ALLISON—What are the advantages of going to 999 years, as opposed to freehold?

Ms Gayler—The Seat of Government Act precludes a move to freehold, and 999-year leases are the nearest to the freehold arrangements that apply in the other jurisdictions in Australia.

Senator ALLISON—It is effectively freehold?

Ms Gayler—No, it is not effectively freehold.

Senator ALLISON—Then what are the differences? That is what I am asking.

Ms Gayler—The differences are quite important. It is a term lease—admittedly a 999-year term, which is a long term—which freehold is not. It is accompanied, under the ACT legislation, by the distinctive requirement for approval for changes of lease purpose and, associated with that, the lease purpose charge.

Senator ALLISON—Is that any different from a planning approval? If you want to change an approval under freehold, you still have to go through a process, do you not, if you change the use?

Ms Gayler—You do, but so do you also in the ACT, either from the National Capital Authority or from the ACT government. It is an additional control applied through the leasehold system, so it is quite different. The distinction is that the lease purpose clause applies to the particular plot of land, whereas in the other Australian jurisdictions the planning regime tends to zone particular areas, consisting of many freehold estates. That is the distinction.

CHAIR—Can I just get a clarification of a point in terms of the difference between freehold and 999-year perpetual leases. I thought one of the major differences was the fact that, while the full extent is a 999-year lease, the ACT government could choose to have certain areas where they gave a lesser period in terms of the lease.

Ms Gayler—Indeed, and I expect they will continue to do so.

CHAIR—Thank you. Senator Lundy.

Senator LUNDY—I have one final question, Ms Gayler. You have stated the government's policy and how this particular enabling piece of legislation will allow the ACT to realise more fully its growth potential and be more competitive. Are you aware of any qualitative or empirical studies that point specifically to that change from 99- to 999-year leases as being what will change the intent of business in terms of where they choose to locate, given that the range of studies to date have shown the precise opposite? They show that that specific element is not an identifiable barrier to a decision by a particular business about where they locate, and that it is far more attributable to the package of factors and this remains one small element—but not the distinguishing element—which determines a business's decision where to locate.

Ms Gayler—I do not think there is definitive research on that matter. However, perceptions in the investor community—the superannuation funds, bankers and industrial investors—are certainly a factor. All manner of things, such as the general state of the economy, are considered as part of that. In terms of particular investment location decisions, there has been some recent work by Coopers and Lybrand looking at the principal factors that, for example, multinational companies consider when determining where to invest. Of course, Australia's share of that investment from the multinational sector is quite small and the ACT's share is much, much smaller. In terms of—

Senator LUNDY—Ms Gayler, who commissioned that study?

Ms Gayler—I think Coopers and Lybrand did it of their own volition.

Senator LUNDY—Is it possible for the committee to get—

Ms Gayler—I can find some extracts I think. I have some overheads and the one that I am thinking of in particular showed the range of factors that a multinational corporation considers when it is looking to invest around the world. The fourth of a long list of factors was land matters. The first, I think, was likely revenue stream—profits, in other words—so demand for the product or the service—

Senator LUNDY—Potential market?

Ms Gayler—Yes. The fourth of those factors was land matters, but that can include a whole range of things like appropriate sorts of buildings for the particular purpose. Quite a long way further down the list was investment packages, incentive packages; though they might be important at the margins, relatively speaking they were down the list. Land was certainly a consideration and, for some, security of tenure was a factor.

Senator LUNDY—On that fourth point, the land issues, did that include things like rates, taxes, change of use and that whole package, or was it specifically the nature of tenure, that is, leasehold versus freehold?

Ms Gayler—It is not clear what was included in that bundle of land related matters. Taxes and charges and so on were another factor separately. But it is not definitive research, it is indicative.

Senator LUNDY—But it seems to be quite an important piece of evidence, given the way the government has couched the terms and description of this piece of legislation. Can I put a formal request that that study be provided to the committee and leave that with you on notice?

Ms Gayler—I may not be able to provide the study. I can provide you with the material I have, which is material presented to a recent conference and is in the nature of overheads highlighting the key points. I can certainly provide that.

Senator LUNDY—Perhaps we could get from you the title and the date it was published and we can pursue that.

Ms Gayler—Yes, certainly.

CHAIR—If you could provide what you can as quickly as possible because we have to report next Monday. I have a final question, which I asked some of the other witnesses. Has the department taken any advice from the Attorney-General's Department, or got independent legal advice, as to whether or not the Native Title Act is likely to have any impact on the changes?

Ms Gayler—Yes, and we are advised that the measure will have no effect on native title and that specific claims are dealt with by the Native Title Tribunal and the Federal Court.

CHAIR—I am sorry, I think you may have got my question around the wrong way. I asked whether the Native Title Act would have any effect.

Ms Gayler—No, we have not taken any advice on that.

CHAIR—Thank you. Previous witnesses have suggested that there were some constitutional restrictions to move to freehold in the ACT. Do you have any advice on that? Have you taken any advice from the Attorney-General's Department or wherever?

Ms Gayler—What we have done is looked at a long series of legal opinions. The constitutional lawyers have different views about whether the constitution itself precludes freehold in the ACT. However, for the purposes of this bill, it is clear that the Seat of Government Act precludes freehold property in the ACT.

CHAIR—Thank you. I would like to come back to my question with regard to the Attorney-General's Department and native title. In view of the number of opinions that have been put around with regard to the fact that at the point in time of changing a title, regardless of what that title might be, there is a window of opportunity for the revival of native title, don't you think it would be wise to have taken advice on that?

Ms Gayler—I am not sure how the situation would be any different to the situation that pertains now. For example, I think I have 30 years remaining on what was my 99-year lease. I could go in and apply for a fresh 99-year lease tomorrow. Questions of native title will be no different today, I think, than tomorrow. I do not see how the situation would be any different under a 999-year arrangement. The Native Title Tribunal will determine any such claims. The Commonwealth is bound by the Native Title Act, as is the ACT government.

CHAIR—Except that it is a totally new lease. As there are no further questions, thank you very much for appearing here today and particularly for coming early in the morning to allow us to finish our business.

[8.23 a.m.]

DUNSTONE, Mr Mark, Private Citizen, 67 Irvine Street, Watson, Australian Capital Territory 2602

CHAIR—Welcome. We have put on additional hearings to allow you to be heard. You have heard me read out all the advice regarding parliamentary privilege, so I will just bring them to your notice to save time. In relation to your submission, which came in after the other submissions, or any of the evidence that you wish to give, do you want any of that to remain in camera or can the committee release it as an open document?

Mr Dunstone—I am happy for it to be published.

CHAIR—Thank you. Is there anything you wish to say about the capacity in which you appear before the committee?

Mr Dunstone—I am here as a citizen of the Commonwealth of Australia and as a resident of the ACT.

CHAIR—Thank you. Would you like to make an opening statement?

Mr Dunstone—Yes, Mr Chairman. In my submission I have pretty clearly pointed out that I am not in support of the bill. I think it should be substantially amended, if not rejected. I believe the Commonwealth parliament has a responsibility to have effective control over the ACT, particularly the territory government. There are a number of reasons for this.

Firstly, Canberra is the nation's capital so there is a responsibility for the Commonwealth to take responsibility for that. Secondly, the land we are talking about was purchased by the Commonwealth with taxpayers' funds. It is effectively owned by the Commonwealth in trust for the citizens of Australia. And, thirdly, and probably more importantly in a practical sense, unlike the states there are no checks and balances on the ACT government.

The ACT government is more akin to a council than a state government. In the states, councils are effectively controlled by the states. Effectively, in the ACT, the local ACT government is under pressure from local commercial property interests to give them a handout of land. It is no different from local council pressure. This is crony capitalism at its worst. That is why the Senate needs to have oversight of this government.

A number of other submitters have talked about loss of planning control. I have not addressed that at all and I do not intend to. Basically, my interest is in the financial aspects of land. Senator Calvert made a few comments about the choice for ACT residents, and other people have made comments about lack of investment incentive, or discouragement of investment.

If you believe that and if you believe, for example, that the ACT deserves to enjoy freehold, and if you do not believe that there will be a windfall gain to the existing lessees, then I approve the legislation. But I ask you to do it on one condition and that is: when you do the conversion you put a restriction there so that when there is a conversion for those who convert their leases from a 99-year lease, or a 50-year lease, which many leases are, particularly commercial leases, or shorter leases for rural properties—we are not just talking about commercial and residential, we are also talking about rural—that you require them to pay the full market value. If there is no change in the value, these lessees would have to pay nothing, so they stand to lose nothing. But if there is a large change in value, the public recoups the benefit.

I have suggested certain amendments in my submission. Basically those amendments are: firstly, to increase the oversight on the ACT government's management of Commonwealth

owned assets. The land is a Commonwealth owned asset and I have suggested that there needs to be more oversight and a requirement for greater transparency, accountability and the rule of law. Professor Troy mentioned the land account that has failed to be implemented for years. What we are talking about here is the erosion of public assets over time. We need to have that accountability.

Secondly, we need to improve the competitiveness of the ACT business community. A number of people have said that and I suggest that it is not going to be done by increasing leases to 999 years. In fact, the opposite is true. If leases are increased to 999-year leases, in my view the price will go up and this will make Canberra less competitive, not more competitive.

Thirdly, it will reduce the financial burden of the ACT on the other states. Because the ACT government will bend to pressure from local commercial interests to give favours to friends, inevitably what will happen is that the ACT's ability to extract revenues will be reduced. It will become more of a burden on the rest of the country. One of the original intentions of leasehold in Canberra was to defray the cost of developing the nation's capital, and here we are looking at giving it away.

CHAIR—Can I ask you to wind up fairly quickly. Senator Lundy wants to ask some questions and she has to leave.

Mr Dunstone—The other notes I have here address some of the questions which senators have raised. The first one I had is the issue of tax versus land owner charges. A number of people have raised the issue that we are really not giving away revenues because the ACT government could levy taxes—land taxes and rates, et cetera.

Senator LUNDY—Perhaps, Mr Dunstone, I could start by asking your views on what pressures there would be, given the position you have taken, in that one of your suggestions is to insert a provision requiring the Commonwealth Grants Commission to take into account the potential financial benefits. Hypothetically speaking, presume there was some quantifiable increase in potential revenues that could be identified with revenues from this transfer from 99- to 999-year leases. Have you done any further assessment of what is likely to be the impact on the ACT's allocation from the Commonwealth Grants Commission and how that would actually offset in those big equations that are set on an annual basis?

Mr Dunstone—It is quite hard to do those calculations. The remaining financial value of the leasehold system is difficult to quantify because, as I think Patrick Troy and Max Neutze said, it requires the assessment of the value of the remaining leases. If you have a 50-year lease with 25 years remaining, it will have one value. If you have a 99-year lease with another 80 years to run, it will have another value. To be able to work out those types of values requires some assumptions on that. Julie Smith, an economist, has done some calculations of these types of values and they run into billions of dollars.

Senator LUNDY—My concern is that, whilst the basis of some of your ideas does deal with a straight-up revenue issue and how the ACT government extracts revenue from the assets it controls, the flow-on effect of that requires substantial structural change in the way that the Commonwealth-territory funding arrangements are constructed. I am just trying to get a grip on the progression of your ideas, if in fact they were implemented.

Mr Dunstone—My idea there was nothing more than that the original Commonwealth purchase of land in the ACT was intended to defray the costs of developing the ACT. It is an asset owned by the public, and my understanding is that that asset and the return to the

shareholder, or to the owner of that asset, is not taken into account in Commonwealth Grants Commission calculations.

Senator LUNDY—I find that point quite interesting in terms of the original motivations for leasehold. Is there anything perhaps in the original second reading speeches or memorandums that highlights that point and can guide us as to the philosophies that were used to establish leasehold in the first instance?

Mr Dunstone—I am not an expert on this, but my understanding is that at the end of the last century there were large amounts of land speculation and banks went under. A lot of politicians were involved in land speculation. There were large land grabs in Victoria. At the time there were a lot of political concerns about speculation, and in the land boom of the time there was a general movement among the population that it should not happen in the nation's capital. It was part of the feeling and the political situation at the time.

Senator LUNDY—I am very sorry, I have to go. We could not manage to organise child care for this morning so I have to take my daughter to school. Thank you, Mr Dunstone. I am sure other senators will follow on with more questions.

Senator ALLISON—Mr Dunstone, you recommend payment of a full market value by leaseholders who opt for the 999-year lease. Is it not the case—and I apologise if I have this wrong—that ingoing businesses, commercial enterprises, already pay what is effectively a market value as they enter that lease?

Mr Dunstone—This is one of the lies which have been told to the committee. They say that they pay a freehold price for a lease which may be 99 years. Most people, when they buy a lease or buy some sort of land title, have a solicitor look at it. Most people have a solicitor look at the contract when they buy land, whether it be freehold or leasehold. Any solicitor would tell you that if you buy a 99-year lease it is a 99-year lease and not the underlying value of the land. If they have wrongly, on the assumption, paid what they consider to be a freehold price for a leasehold, then they should not come cap in hand to the government and say, 'Oh, we thought we bought freehold, but we only got leasehold.' They should sue their solicitor.

May I point out one other example. In my submission I used an example of the sale of the Uriarra station a couple of years ago. In that article it was stated that that station was sold for \$900,000 and the real estate agent who was involved in the auction said that if that was freehold it would have sold for \$1.8 million. That is one lease, out of thousands of leases in Canberra. If we just converted that lease to 999 years, which would effectively give the economic value of the land away, that person would get a windfall gain. They paid leasehold price, not freehold price.

Senator ALLISON—So what evidence is there that there is this large difference between the price paid for the lease initially and what might be market value in freehold?

Mr Dunstone—That is one example. But what a person buys in a lease is what is written in the contract, and if you buy it for a fixed term of time that is what you have bought. If you go to a shopping mall anywhere in Canberra, you will find that nearly every one of the merchants in that shopping mall has a lease for space in that shop. They do not turn around after five years of being in that lease and go to Lend Lease and say, 'I have been here five years. I have paid my rent for five years. I think I have bought the underlying value or right of this. I want you to give it to me for ever and ever, amen.'

We do not have, if you like, single mothers who have been in public housing in the state of New South Wales for 10 years and who then, when circumstances change, expect to be told,

‘Okay, we will give you the house now.’ They do not do that, but that is effectively what the business community is doing here. It is saying, ‘We have leased this for a few years and we now want you to give it to us.’

The problem has been that, instead of charging rent each year, governments have wanted to get the money up front in this year’s budget, to have it to spend. So what they have done is that, instead of saying, ‘We will charge you a yearly rental’, they have said, ‘We will get the net present value of the revenue streams over the next so many years and you pay us a premium up front.’ But that premium up front is nothing more than the capitalised value of the annual rental streams.

CHAIR—I have a couple of questions. I refer to the question of the capacity for taxing, whether it be through a land tax, through rates or whatever. I made a point of asking the question of some previous witnesses, relating this to the Western Australian situation in the variety of titles. I have not seen anything in terms of titles in my experience—admittedly it is in another state—but I understand there is an enormous amount of similarity between the Canberra leases and Kalgoorlie leases, for example, almost word-for-word perfect. I understand that the type of lease or land-holding, whether it is freehold, perpetual, conditional purchase, another variety, et cetera, has no bearing whatsoever on the capacity of the local government in my state—not here or another state government—to raise a land tax, a rent tax or apply rates. Have you got any comment on that?

Mr Dunstone—Yes, I have. It is a very good question. The first point is that when you extract revenue as the landlord, as the owner of the land, it is easier for a government to justify it, and I think most politicians—

CHAIR—Justify what?

Mr Dunstone—Justify the revenue—asking for the money or imposing the charge. It is easier to impose a charge as the owner of the asset, and easier for a government to justify that to its electorate, than saying, ‘We are imposing an additional tax.’ Any politician will tell you that it is very difficult to impose an additional tax or raise extra revenue through taxes, but it is a lot easier to justify it if you are the owner of the property and to say, ‘We are the landlord, acting as a landlord. We are not imposing a tax on you. What we are doing is extracting rent as a landlord.’

But there are a number of other reasons for the problem with taxes versus revenue as the landlord. The first is the ability of the ACT to levy taxes when it has got to be competitive as compared with neighbouring areas, for example Queanbeyan. We cannot just levy taxes which are out of pace with other jurisdictions. We are limited in how we do that.

CHAIR—But doesn’t that make my point, that there are other pressures that determine it? And one of those things is the unimproved capital value.

Mr Dunstone—Yes there is. What I am saying is that, with a tax, there is tax competition between the states, but if you own the land it is easy to justify extracting the revenue that way. I am sorry, I have gone the wrong way around this. In terms of the most fundamental problem with tax versus landlord revenue, the most important bit is the distributional effects. Taxes will be applied to different people than the people who get the benefit from having the land.

I will give you an example. If you bring in a tax and do away with the ownership charges, for someone who has only a short period to run on their lease the value of that lease is starting to taper off because there is not a long period to run. They would have the same charge

applied to them. If you move to 999-year leases, they would have the incentive to sell up and make a run for it.

Compare that to someone who has a new lease, a 99-year lease that has just been issued, and that is converted to 999 years. They would not see much difference; it would not affect them very much at all. So the real beneficiaries of applying a tax versus the land ownership are those that have been sitting on leases or have leases that have a shorter period to run. They would get a huge benefit because they would pay the same amount as anybody else.

CHAIR—Coming back to my original question, can you point to any evidence, in any of the states or the Northern Territory, where the form of title has inhibited the existing government, whether it be local or state, in terms of applying rates or collecting land tax?

Mr Dunstone—I thought I mentioned that. Taxes are one aspect of it. You tax, if you like, the taxable capacity that is there. The other thing is getting—

CHAIR—You skirted around my question. You did not answer my question.

Mr Dunstone—Maybe I have not understood it then.

CHAIR—The question is very simple. Can you point to one skerrick of evidence from any of the states or the Northern Territory where the form of title, whether it be a 99-year lease, a 999-year lease, freehold or whatever it might be—there is a variety of titles throughout Australia—has inhibited local or state governments and they have applied different rates or taxes to different forms of title?

Mr Dunstone—No.

CHAIR—That is the point that I wanted to make. I understand the arguments why some people do not want the 999 years and why some people do. But I am finding it very hard to accept that it in fact inhibits the capacity of a government, if they so choose, to raise the tax. The thing that stops people from putting rates up or raising taxes is the pressure from the people themselves, isn't it?

Mr Dunstone—There is another way of approaching this. Unlike many of the other states, in the ACT most of the land was originally freehold. The Commonwealth government purchased that freehold. In fact, the last freehold purchase was as late as the 1970s, down at Lanyon. So it is not as though the land was just unoccupied crown land or occupied by Aboriginal communities—it probably was at some stage. Effectively, for the setting up of Canberra, most of the land was freehold, owned by farmers, and it was purchased by the Commonwealth.

What we are talking about here is giving away the economic value of that asset, and saying, 'Okay, we can still raise money by charging taxes.' This is like the federal government saying, 'We are going to privatise Telstra, but we are not going to charge anyone for the shares. We are just going to tax people to get the money back.'

CHAIR—I do not want to cut you short, but you made those points in your opening statement and I am not challenging those particular points. I am asking you to point out to me where the form of title, rather than political pressure from the people who pay the taxes or rates, has inhibited the former government, whichever applies, in their capacity or their ability to apply rates. I am putting to you that, in terms of paying rates, the form of title makes no difference whatsoever.

Mr Dunstone—You could use the same argument for any public ownership of any asset. That is what I am saying. If you have any publicly owned corporation, be it a telephone company, an electricity company or defence force industries, you could say there is no need

for the government to worry about getting revenue from privatising those assets, we might as well give it away and obtain the revenue through taxation.

CHAIR—I am sorry, I was not saying that. I was asking you a question. Could I go to one other point which has been raised here, and that is the so-called betterment factor. Do you have any comments on that?

Mr Dunstone—The word ‘betterment’ is a misnomer in the ACT. My understanding is that in the states, betterment occurs when a local government or a state government provides roads, sewerage or schools in an area and that betters the value of the land. The person who holds the freehold title has benefited financially. The land is more valuable because of public infrastructure spending on roads, sewerage, schools and those sorts of things. The governments there have what is called a betterment tax to try to recoup some of that increased value as a direct result of public spending on infrastructure.

In the ACT, ‘betterment’ is a word that is wrongly used. Here it means the rights which attach to a lease have changed. For example, someone might purchase a lease which enables them to run a 200-room hotel but then they might turn around and say, ‘Okay, we wish to change the right to run a 200-room hotel and instead put up an eight-storey office block.’ So they buy additional rights.

CHAIR—Can I rephrase my question, because public utilities are something that is provided by councils or governments or whatever. I am talking about a betterment factor in terms of the title on the land. Let me explain that by giving you an example. For many years in Western Australia there have been moves to upgrade pastoral leases, which are 99-year leases and which are to be renewed or rolled over, in 2015, to perpetual leases. I am talking about leases in terms of the 99 years or 999 years or somewhere in between, not the roads or schools or hospitals, et cetera. Do you have a comment? Some of the previous witnesses raised this.

Mr Dunstone—Previous witnesses talked about what happens when a lease expires. In a well-managed leasehold system a lease should not expire, it can be renewed beforehand. Leases are a contract with the government and they have absolute security. That is, if they are taken away you are entitled to compensation under the constitution. There is no problem with that. Banks generally require a reasonable amount of time to be remaining on a lease before they give a mortgage. So there should be provision to enable renewals 15 or 20 or 30 years before a lease expires. That is the way you should deal with it.

You can then work out the renewal charge financially and accrually. I think in the ACT it was a 10 or 15 per cent charge, and that is roughly about right to extend it for another 90 years past that date. In a well-managed leasehold system it should not be a problem, and it should not be a problem in Western Australia. That is what should happen there—you should try to build in some sort of renewal factor.

CHAIR—Could I respectfully suggest you stick to the legislation in front of us. I do not think it is your province or anyone else’s to tell the Western Australian government how to manage its land. I used that as an example to draw out a point.

We have run out of time. I thank you very much for appearing before us. Could I thank all witnesses. That ends our examination of this particular legislation. Thank you very much, and thank you *Hansard*.

Committee adjourned at 8.49 a.m.