

Dear Mr Gunner,

I refer to the submission that was provided to the Senate Standing Committee on Foreign Affairs, Defence and Trade in relation to its inquiry on *Australia's Foreign Relations (State and Territory Arrangements) Bill 2020* and *Australia's Foreign Relations (State and Territory Arrangements) (Consequential Amendments) Bill 2020*

It was very disappointing that the NT Government declined to appear at the hearing. Given the potential effects of this Bill on state and territory governments, committee members were denied the opportunity to question the states and territories on key components of the Bills.

In particular, I have taken a keen interest in the Port of Darwin. It was my hope to explore issues pertinent to the lease. The matter was raised on different occasions during the hearing. I would invite you and your officials to review the transcript of our hearings and provide any comments in response.

I am particularly interested to explore the Commonwealth's obligation in relation to consideration of arrangements.

Following is an extract from a speech I gave to the Senate on 16 June 2020.

*I now turn to the port of Darwin. The lease should never have been granted, and we should be looking to break it not only as a practical demonstration of asserting our national sovereignty and security but, potentially, as part of any compensation claim. Following its win in August 2012, the CLP started exploring the privatisation of assets, including the port. Consultants were engaged, reports were prepared throughout 2014 and, in January 2015, an exploratory process to gauge interest was launched. Thirty-three investors, including Australian and European companies, as well as Chinese owned Landbridge, registered an interest.*

*Media reports showed that Landbridge was a subsidiary of the Shandong Landbridge Group, a private company founded in 2001, and that in 2013 its billionaire owner, Ye Cheng, was named by the Chinese government as one of the top 10 'individuals caring about the development of national defence'. It was found to have extensive links to the CCP and the PLA. Indeed, in an interview in Beijing in 2016, Mr Ye said the Darwin port investment fits the company's strategy to expand its shipping and energy interests and serve China's foreign policy goal, known as One Belt, One Road.*

*In February 2015 the NT assembly appointed the Port of Darwin Select Committee. Its inquiry indicated the federal government had advised the NT government that the port was better privatised than continuing in government hands. Key recommendations in its April 2015 report were that an Australian entity control the lease and that there be FIRB and Defence consultations regarding the strategic and security risks of a potential international investor.*

*On 14 September, Malcolm Turnbull became Prime Minister. The day after, FIRB contacted Landbridge, indicating the lease and purchase of shares in the port operator were exempt under the Foreign Acquisitions and Takeovers Act, because assets owned by state, territory and local governments were exempt from FIRB scrutiny. On 13 October 2015, then Chief Minister Giles announced the 99-year lease was valued at \$506 million and included Landbridge taking a controlling stake in the port operator, Darwin Port.*

*The lease process raises a legitimate question as to why, given the years of lead time, more effort was not made by those in key federal ministerial positions, and those advising them, to remove the foreign investment exemption, given the national security implications of allowing such a critical strategic asset to be handed over to an entity with such known and close ties to the CCP and the PLA.*

*Those in key positions included then Defence Secretary Richardson, who, at the post-lease Senate inquiry, sought to defend his department's actions in the face of strident criticism from ASPI and the National Defence Association; and then DFAT Secretary Varghese, now UQ Chancellor and overseeing the debacle of the expulsion of Drew Pavlou following his criticism of CCP activities at the university. I note that then Trade Minister Robb left parliament in January 2016 and, some months later, took an \$880,000-per-annum job with Landbridge—and he's still promoting the BRI in Victoria.*

*Perhaps the answer to the 'why' lies in the fact that the lease decision was made against the background of years of dealings between Canberra and Beijing. On 7 October 2013 then Prime Minister Abbott attended the APEC summit in Bali. After meeting President Xi Jinping, he expressed confidence that he could get a free trade deal with China within 12 months. Both leaders met again on a number of occasions in 2014 and, on 17 November, President Xi addressed a joint sitting of our parliament. The next day, Minister Robb announced the \$18 billion FTA, and the FTA was subsequently signed, in June the year after.*

*Regardless of why the lease was signed, national security imperatives, including threats from China's actions in the South China Sea and the growing military requirements, are such that the lease should now be broken.*

Can you also advise:

1. Can you provide details of the nature and extent of discussions that were had with Commonwealth departments and entities, then Prime Minister Abbott and his office and other ministers and their offices in the lead up to the decision by the then NT government.
2. Were the matter to be considered under current FATA provisions, do you agree that the lease and purchase of shares in the Port of Darwin would be subject to foreign acquisition and foreign investment legislation? If so, would it contravene the national interest test?

3. Further to questions above, and assuming the Port of Darwin issue were to come before the Commonwealth today, what obligations would be on the Commonwealth during the processes set out above under the existing foreign investment legislation, under the proposed reforms to the foreign investment review framework and under the proposed foreign relations bill?
4. Given the retrospectivity aspect to the Bills, do you believe that it is open to the Commonwealth to declare the Port of Darwin lease invalid? If so, do you believe that just compensation would equate to the outstanding portion of lease (94 years)? If not, what do you consider would be just compensation?
5. In the absence of public knowledge about the lease, would any consideration any compensation would be required Landbridge?