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SENATE STANDING COMMITTEE ON

RURAL AND REGIONAL AFFAIRS AND TRANSPORT

Tuesday, 30 January 2007

Members: Senator Heffernan *(Chair)*, Senator Siewert *(Deputy Chair)*, Senators Ferris, McEwen, McGauran, Nash, O'Brien, and Sterle

Participating members: Senators Adams, Allison, Barnett, Bartlett, Bernardi, Boswell, Brandis, Bob Brown, George Campbell, Carr, Chapman, Crossin, Eggleston, Chris Evans, Faulkner, Ferguson, Fielding, Hogg, Hutchins, Joyce, Lightfoot, Ludwig, Lundy, Ian Macdonald, Mason, McLucas, Milne, Nettle, Payne, Polley, Robert Ray, Stephens, Trood, Watson and Webber

Senators in attendance: Senators Ferris, Heffernan, Joyce, McEwen, O'Brien and Sterle

Terms of reference for the inquiry:

To inquire into and report on: Airports Amendment Bill 2006

WITNESSES

Committee met at 8.58 am

CHAIR (Senator Heffernan)—Welcome. I declare open this hearing of the Senate Standing Committee on Rural and Regional Affairs and Transport inquiry into the Airports Amendment Bill 2006. The matter was referred to the committee by the Senate on 7 December 2006 for report by 26 February 2007. The bill amends the Airports Act 1996 with the aim of improving land use planning systems in place at leased federal airports to increase the focus on strategic planning, simplifying planning controls and improving development assessment processes. The bill also aligns the planning arrangements for Canberra Airport.

The committee has received 66 submissions for this inquiry and all submissions have been authorised for publication and will be available on the committee's website. I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to the committee and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee.

The committee prefers to hear all evidence in public but, under the Senate's resolutions, witnesses have the right to request to be heard in private session. It is important that witnesses give the committee notice that they intend to give evidence in camera. If a witness objects to answering a question, the witness should state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request the answer be given in camera. Such a request may of course be made at any time.

[9.00 am]

BERESFORD-WYLIE, Mr Adrian Frederic Vere Peregrine, Chief Executive, Australian Local Government Association

HRAST, Mr Andrew, Director, Transport Policy, Australian Local Government Association

FITZGERALD, Mr Peter Anthony, Executive Director, Australian Mayoral Aviation Council

HARRAGON, Mr Greg, Project Manager, Australian Mayoral Aviation Council

CHAIR—Our first session this morning includes representatives from two organisations. Gentlemen, I invite you to make an opening statement and we will go to questions after that.

Mr Beresford-Wylie—Thank you for the opportunity to make an opening statement. The Australian Local Government Association, ALGA, represents the interests of more than 700 councils at the federal level. Its membership is made up of the associations of local government in each state and territory, and the ACT government is also a member in its role as the local authority in the Australian Capital Territory. ALGA has a general interest in the effect of Commonwealth owned airports on surrounding councils. This is an issue that we have raised in several ministerial councils—the Australian Local Government Association is a member of a number of ministerial councils—including the Local Government and Planning Ministers Council and the Australian Transport Council.

Specific matters of concern to us will be dealt with in a moment, but regarding questions on individual airports we have been in touch with our associations and member associations and our constituent councils, if you like, and we have asked them to bring forward matters separately through individual submissions. I think you have received a number of submissions from state and territory associations and individual councils, so specific issues about particular airports are best addressed to those associations or councils, if they are appearing.

ALGA accepts that the aeronautical elements of major airports are part of Australia's national infrastructure and, appropriately, should remain under the control of the national government, but our concerns relate to the non-aeronautical commercial developments on airport land. While improvements in the consultation requirements for non-aeronautical developments on airport land, which would appear to be contained in these acts, are welcomed by ALGA, they do not change our fundamental concern—namely, that there are large tracts of land located within or near our urban areas on which major commercial developments are taking place outside state and local planning control.

We have identified four matters of principle with the current and proposed planning arrangements. I think these principles are a recurring theme throughout the submissions from individual councils and other local government associations. The first of those is planning. We do not think that the proposed amendments to the Airports Act 1996 address the fundamental concern of ALGA that major commercial developments on airport land in urban areas can proceed without reference to state or local government planning or policy. In our view,

commercial developments on airport land should be subject to the same planning regime as similar developments located on non-airport land.

We do not support the proposed reduction in the statutory consultation period from 90 calendar days to 45 working days. We do, however, support the requirements to make development plans more readily available to the community via the internet and stop-clock provisions for ministerial consideration of development plans. We recognise that, with respect to the bill and the consultation guidelines made under the bill, or made in association with the bill, the department will make more explicit the expectation that operators clearly demonstrate how they have given due regard to public comments for master plans, major development plans and airport strategies and environment strategies. But that is only an expectation. There is no mechanism specified as to how this should happen, and we think the bill should specify a mechanism.

On the financial side: to a large extent councils rely, for their finances, on raising rates on landowners and businesses. Commonwealth lands, such as airports, are generally excluded from paying rates. We can see no logical reason why a commercial facility on airport land should be exempt from paying rates while an identical facility on non-airport land would be required to pay rates. In addition, it is common for councils to seek developer contributions when approving major facilities, to help pay for the necessary upgrading of associated infrastructure. That is not possible for developments on airport land, and yet there is an expectation that local government will provide the necessary infrastructure.

There are also concerns for us in terms of the impact of airport commercial developments on neighbouring areas. There are a number of views, from the submissions from industry, on the issue of the impact of new commercial developments on surrounding businesses. Generally, as part of a development approval, councils and states take into account the impact of a new development on existing residents and businesses. Our concern is that developments on airports are not subject to such a process.

We accept that the aviation elements of airports are key parts of the nation's infrastructure and that planning is a matter for the Australian government. The extensive non-aviation commercial developments of recent years, however, do not, in ALGA's view, constitute key national infrastructure. We do not see that there is justification to exclude them from state and local planning regimes. In conclusion, we ask that the bill be amended to subject developments on airport land to the same scrutiny as developments on non-airport land.

CHAIR—Thank you. I now invite the Australian Mayoral Aviation Council to make an opening statement.

Mr Fitzgerald—We will not reiterate what is in our submission, but we would like to say that AMAC is the specialist or common-interest group for those areas that surround the major regular passenger transport airports throughout Australia—basically the larger airports. We have over 30 members, including in all of the capital cities, with the exception of Darwin.

There are only three issues that we really want to touch on. Firstly, I want to talk about the issue of non-aeronautical development. Printed in the *Fin Review* last week was a statement by Max Moore-Wilton about us being opposed to aerotropolises. No, we are not. We have no objection to the airports and the airport businesses and the nature of them. We have strong

objection to a commercial advantage being bestowed upon some landholders to the detriment of others within the cities that we represent.

The development land within airports is required to be zoned and use the same plan as surrounding city plans, but it is not. It is certainly not policed that way. The whole development proposal is unfair and biased. It is the only place in Australia—and, from our information, in the world—where the owner gives himself a consent. That is unfair to other landowners. It is a question of equity that we see. Whether it is done by local government or another group, there needs to be independent assessment to ensure a level playing field. I am happy to expand on any of that.

The second question we raise is the payment of rates. Again, it is unfair. Rates are not paid for developed land that is offered for occupation on airports in the same way as they would be for land outside the airport. So if you owned land, say, outside the wire fence in Perth, you pay. If you owned the 1,000 hectares that had been developed inside that area you don't pay until you are ready to pay. If you are Perth or Adelaide airport, you refuse to pay. They have been up to two years behind just by saying, 'We are not paying.' You cannot do that in your own cities, in your own homes. You have to pay. You cannot go down to the council and say, 'We don't feel like paying, so we won't.' That is what the airports do.

Another thing they do, in places like Sydney, where the rates are a factor of the valuation of the individual land, is that they change the Valuer General's valuations. So if it is valued, it is never up. If a terminal is valued at $10 million, they say: 'Oh no, that is too expensive. We are only paying for eight.' There is no consultation with us.

I only want to touch on the third question very briefly—the question of whether you use ANEF or whether you use another noise measure. ANEF is not suitable. AMAC's position has always been that we should go to the American system of the measurement of noise, where you can take the noise of an aircraft both cumulatively or in a single event. More than 20 years ago the Australian Acoustics Laboratory came up with ANEF—the Australian noise exposure factor. In Europe they use 'NEF'; it does not have the 'A' in it for 'Australian'. In America they have Ldns and Leqs. You can relate that back to one single event. I do not want to get bogged down on that because I do not think these amendments go to whether or not they use ANEFs for land use planning—it is a secondary issue. But that is our policy position.

With the airports it is willy-nilly. They try to muddy the argument against us by saying: 'You're opposed to airports. You're opposed to passenger terminals. You're opposed to aviation growth. You're opposed to aerotropolises.' That is wrong—it is rubbish. We are not. We are only opposed to non-aeronautical development that is not assessed in accordance with every other development around the place. In 1996, when this act was brought in, the federal government sold the shield of the Crown when the land involved had never been acquired by government for this purpose. All of these areas were acquired by the government for the purpose of aviation. That purpose of aviation should continue. There is a strong legal doubt as to whether or not the shield of the Crown should apply to non-aviation development. There has only been one court case held, and it related to a different question. That is the Brisbane case, but they all hang their hat on it. The issue you grapple with is whether you want fairness and equity for the people who are outside the chain wire fence for non-aviation development or whether it relates only to the land on the inside.

CHAIR—Thanks. Have you ever had an arm wrestle with Max Moore-Wilton?

Mr Beresford-Wylie—Our relationship with Max is quite good on a personal level. Our relationship with the airport, in all its forms—when it was the department of civil aviation, when it was the department of transport, when it was the FAC, when it was SACL mark 1, or SACL mark 2, in its privatised form—

CHAIR—I didn't actually want a long answer; I was pulling your leg. Thanks very much, gentlemen. I take it then that, if an airport is going to double its business by whatever method on field, you blokes would imagine that it would be a fair thing to make a contribution to the infrastructure. If I am developing a new subdivision at Liverpool, as the developer I get bunged with all the infrastructure costs and contributions. Here in the ACT one of the catastrophes is the airport road in the morning and the roundabouts out there. Should the developer of the airport make a contribution to those roadworks?

Mr Beresford-Wylie—I think you have the ACT government appearing before you later and I am sure that they will put their position forward—

CHAIR—But you do represent them.

Mr Beresford-Wylie—Yes, but we would not presume to speak for them when they are going to speak separately before this committee.

CHAIR—So that really means you do not represent them!

Mr Beresford-Wylie—We would not presume to speak separately for them. But what we can say is that, in principle, I do not see any reason why airports should not make the same contribution that others would make if they were developing non-commercial projects. To the extent that others do provide developer contributions, I think it would be perfectly appropriate for commercial developments at airports to make the same contributions.

Senator FERRIS—That point is made in the submission by the City of West Torrens, who are appearing later on this morning.

CHAIR—Senator O'Brien?

Senator O'BRIEN—Briefly touching on the rates issue, are there any other dispensations about the rating of non-occupied land, given that the airports, under their lease arrangements, are not obliged to pay a rate contribution or rate equivalent contribution for non-occupied lands? Are there any other parallels where, in non-developed land in areas represented by your members, rates were not collected? It is a general question; you may want to take that on notice.

Mr Fitzgerald—No. The answer is no. All of the land that is privately held in New South Wales and in the other states has a category. It may be a very low valuation. It could be a rural valuation as opposed to an industrial valuation. But our proposal relates to the day they put it into a master plan and offer it for occupation—because you will get to a fairly nefarious argument, which is that if you set aside 500 or 600 hectares it may in the future be used for aviation. It may be a runway or it may be industrial, but it is not yet determined. So until it is determined we do not believe the payment should be due and payable. But the day you put it into a master plan and say that this is industrial or commercial or land suitable for other occupations is the day you give yourself consent for a subdivision and that is the day the rates

should start. The department of transport's view is significantly different from that: they do not think you should pay till the tenant occupies the house. That is what they write and tell the airports.

Mr Beresford-Wylie—Senator, expanding a little bit on that: of course, in terms of non-private land there are some exemptions—obviously, if we are talking about Department of Defence land or various other categories of government land. I think there is a fairly extensive discussion in the report of another committee, the Hawker report a few years ago, about those exemptions that have applied, but they are obviously applied in the case of government owned land and, as I said, Department of Defence land in particular.

Senator O'BRIEN—Mr Fitzgerald, in your submission you talked about the constitutionality of using the 'shield of the Crown' for airport land not used for aviation purposes. Have your members considered taking the matter further, considering that that might be the case? In other words, have you contemplated taking legal action to have that matter explored or determined?

Mr Fitzgerald—That would be a last resort, and I know that two of our members are looking at it: the City of West Torrens, who will address you later today, have been on the doorstep of the court, and the City of Belmont in Perth are going over the question of rates for non-aviation land. We are also heading that way. We would much rather see a review of the bill. And now is the time to give a regime of entitlement, not a regime of good grace—that you can pay if you choose.

Senator O'BRIEN—What consultation that you as an organisation are aware of did the government enter into with your members on the changes to the Airports Act?

Mr Fitzgerald—I can answer for our specialist group: zero.

Senator O'BRIEN—So there was no consultation?

Mr Fitzgerald—We saw the ad in the paper—if we would like to make a submission.

Mr Beresford-Wylie—We were consulted on the guidelines that are being prepared by the department to complement the changes that have been made to the act. I cannot specifically recall consultation on the act itself or the amendment to the act itself.

Senator O'BRIEN—Sorry, what guidelines—the departmental guidelines?

Mr Beresford-Wylie—That is right—draft guidelines on stakeholder consultation for airport lessee companies. I think there was also a process of consultation through the ministerial council—the Australian Transport Council. Those guidelines were foreshadowed by that council and were certainly released to us and our feedback was sought on those guidelines. I have before me a copy of a letter that I think we gave to the department at the end of May 2006 providing some comments on those guidelines.

Senator O'BRIEN—Are you happy to share that letter with the committee?

Mr Beresford-Wylie—Yes. I do not see any reason why we would not share the letter. We responded specifically to the guidelines in the context that they had been given to us—as a set of guidelines. In providing our comment, we noted that it was provided without prejudice to our position that local government continues to have fundamental policy concerns about the

non-aviation developments on airport lands. We took the view that it would not be appropriate just to say, 'We don't like the guidelines, we don't think you should have any and we think you should change dramatically.' That is why we have made some practical suggestions on the guidelines themselves—given that was the context in which we were operating.

Senator O'BRIEN—What are the implications of the shortening of the consultation period for members of your organisations?

Mr Beresford-Wylie—From our perspective, we believe that shortening it makes it difficult for our councils to have adequate time to formally consider the process. Councils meet on a regular basis but to shorten the time frame to 45 days would restrict their ability to have a formal council meeting to consider proposals.

Senator O'BRIEN—Forty-five working days.

Mr Beresford-Wylie—Forty-five working days—that is correct.

Senator O'BRIEN—That is about 60 days.

Mr Beresford-Wylie—Potentially, yes.

Mr Fitzgerald—Could I add to that, Senator, that what you and I might understand to be consultation is certainly not what others might see as consultation.

Senator O'BRIEN—So your complaint is not the time so much as what consultation really means to the developer, the airport owner?

Mr Fitzgerald—The airport comes along with a set of plans and says, 'This is what we are going to do.' It does not have all the documents you would expect in a normal development application. It does not have the traffic studies or environmental studies. It does not have what happens to stormwater. There was a Bunnings built at Bankstown Airport in a floodway and what was presented to Bankstown council was, as I said: 'Here are the plans of what we have done. It is not what we are going to do but what we have done.'

Mr Harragon—Can I make the point that the question of consultation is a moot point because, without understanding the rules that apply, we cannot make an informed comment anyway. When you look at the precise terms of the master plan, anything is permissible; nothing is prohibited. If you want to put up an oil refinery, an abattoir, an IKEA store, a Crazy Clint's or a brickworks, all of that is permissible because nothing is prohibited. They have gone through and used the words that are often in state legislation that say, 'Land can be used for this purpose and for those types of activities,' but they have not included the state legislation that says, 'Any other activity is prohibited in this area.' Whilst they have gone through and painted their plans a nice colour, the colour is completely meaningless. If we do not know what the rules, standards and expectations are in respect of any development proposed on any airport land in Australia—whether we get 90 days, 60 days, 40 days or 15 days notice—it makes it very difficult for us to make any meaningful comments.

CHAIR—With the boot on the other foot, if a development outside the airport is going to impact on the airport, do you give the same rights to the airport?

Mr Harragon—Indeed.

CHAIR—There is a shit fight going on out in Queanbeyan and one mob say that this is going to probably put Canberra Airport in a position where it may have to have a curfew if people who go into a new subdivision under the flight path bleat enough about aircraft noise. What do you have to say about what the local government should do about that?

Mr Harragon—In respect of non-aeronautical commercial development, all parties should be treated equally. If a resident has a right to object, we believe that, similarly, the airport should have the right to object.

CHAIR—Do you think the process is adequate to protect airports as well as put them under scrutiny? It is a two-way street. Do you think it is adequate both ways?

Mr Harragon—I think it is.

Mr Fitzgerald—Not currently. In Victoria, for argument's sake, the airport has the right to veto any development within the City of Hume, which is one of our members.

CHAIR—If you were the airport and you knew that if a residential subdivision went under a future noise profile it could, in a way, put you out of business in terms of operational hours—

Mr Fitzgerald—It should not be there.

CHAIR—Should they have some rights?

Mr Fitzgerald—Absolutely.

CHAIR—I am sure it will come up later in this hearing.

Mr Fitzgerald—Local government's view about this is crystal clear. What we want is certainty. Developing residential land under a known flight path—with all the runway configurations—should not happen.

CHAIR—A comment was made out here by, I think, a mayor that if you are sensitive to noise you would not be stupid enough to buy in the subdivision. But if you are a salesman you are not going to tell the person buying the land that there might be a bit of noise there later.

Mr Fitzgerald—No. But, if the planning is done properly, the noise contour is on that city's planning map. Under New South Wales law, by which Queanbeyan is bound, you are obliged to put it on their section 149 certificate.

CHAIR—It seems to me that there is a bit of jiggery-pokery. Anyhow, we will get on with the questions.

Senator O'BRIEN—Has either organisation a proposal as to how the bill ought to be amended in relation to the consultation period or the way in which consultation takes place?

Mr Fitzgerald—We would support the planning institute's latest submission, a copy of which you have, to say that it should be up to the airport to prove to the minister that they have had proper consultation; the submission they make to the minister, for either major developments or for a new master plan, should explain the nature of the consultation. Our view—and it is in our submission—is that all of the documents that lead up to the granting of an individual development consent or a master plan or a master plan amendment should

become public; they should not reside in the offices of a private company who are giving themselves that same consent. They are not available to us; they are not available to anybody.

Senator O'BRIEN—Have you considered some amendment to give effect to that?

Mr Fitzgerald—Not in terms of the drafting of it but in terms of its effect.

Senator O'BRIEN—Could you provide a formal proposal to the committee?

Mr Fitzgerald—Yes, we will.

Mr Beresford-Wylie—In our submission we proposed that, if there was a desire to move to, specifically, working days, 60 working days is a more appropriate period than 45 working days. While we have not specified a particular set of words, in terms of the amendment to the bill, we recognise that the bill and the consultation guidelines that come with it make more explicit the recommendation that operators should clearly demonstrate how they have given due regard to public comments for master plans. But there is no mechanism specified. We would like to see a mechanism specified as to how operators can demonstrate that they have given due regard to public comment.

Mr Fitzgerald—I would also add that, if the minister does nothing, it should not be approved. One of the terms of the act is that, if the minister does not give approval within a statutory period, it is automatically approved. So sitting on your hands gives you consent; that is in the bill.

Mr Harragon—Can I make a point in respect of consultation. With the Sydney airport proposal they put forward two options, of about 60,000 square metres each, to develop a shopping centre at Sydney airport. It attracted a fair bit of controversy at the time. The airport subsequently withdrew those two and made an alternative proposal, which it submitted for the minister's approval without it having been seen again by any member of the public. What the minister has on his desk is some amendment of a $60,000 development that nobody except for the airport and minister has seen. The minister has it on his desk. In 90 days, if he does nothing, it will be approved.

Senator O'BRIEN—Do you mean a 60,000 square metre development?

Mr Harragon—Yes, 60,000 square metres—sorry.

Mr Fitzgerald—It is a huge shopping centre.

Mr Harragon—But you cannot regard that as consultation in any sense at all.

CHAIR—The original airport thinking, I suppose, before privatisation was that you bought a packet of Minties or something as you got on the plane. Now you are going to go to the airport to do your weekly shop, are you?

Mr Harragon—Exactly. You cannot get to the airport terminals unless you travel on the road for about a kilometre or two kilometres—

Mr Fitzgerald—Three or four kilometres.

Mr Harragon—But it is situated immediately between the ends of the two runways, well removed from anywhere remotely connected with a terminal or access to the passenger side of the airport.

Senator HEFFERNAN—What provision is there for extra parking?

Mr Harragon—They are proposing to put parking in there too, to accommodate that sort of shopping centre.

CHAIR—And the roads?

Mr Harragon—They would use our roads.

Mr Fitzgerald—There is no road amplification. But the entry point would be on Foreshore Road. In your mind's eye, think of the third runway in Sydney. It is right at the top of the third runway but south of General Holmes Drive, so it is between the third runway and General Holmes Drive. That is nowhere near either of the airport terminals. They have done no traffic studies that we have seen for the number of cars that would come onto General Holmes Drive or Foreshore Road. The state government has also given consent for a doubling in the size of the port there.

CHAIR—By way of enterprise, have you blokes had a look at how everybody deals with, for instance, the development of Schiphol or somewhere like that—what contributions they make?

Mr Fitzgerald—It is interesting that you actually raise Schiphol because Schiphol is also a shareholder in Brisbane. But Schiphol in Amsterdam has to get local government consent and the non-aviation development has to be airport related. So we are not talking about the world falling down here. What happens at Schiphol is what we would like—exactly that model. If you have a look at what has happened to your airport here—

CHAIR—There should be hotels—

Mr Fitzgerald—We have no problems with hotels, office blocks or any of those things. But the consent for all of those things in Schiphol was given by the local authority.

Senator FERRIS—I am not wanting to argue your point, because I am not. But the two airports I know best—Adelaide Airport and Canberra airport—both have shopping centres right at the other side of the airport terminals. So the point you are making about Sydney airport is in fact consistent with the development in those two other airports as well. Are you suggesting that the development would be any less offensive if it were closer to the terminals?

Mr Fitzgerald—No, not all. What we are saying is that the problems on Tapleys Hill Road in Adelaide—

Senator FERRIS—I am very familiar with them.

Mr Fitzgerald—When they opened that discount store, whatever it is called—Bay City or something—

Senator FERRIS—Harbour Town.

Mr Fitzgerald—Yes—it was a shambles.

Senator FERRIS—It was worse when IKEA opened.

Mr Fitzgerald—Right. But IKEA comes out onto Bradman avenue, doesn't it?

Senator STERLE—I would kill for a shopping centre instead of a bloody brickworks!

Mr Fitzgerald—But they are the difficulties.

Senator FERRIS—I am just making the point about location.

Mr Fitzgerald—All we are saying is that we have no problem with them doing it, but—

CHAIR—It is the process.

Mr Fitzgerald—It is the process—so that the people who own the block of land across the road on Tapleys Hill Road play by exactly the same rules. With Harbour Town it took a long time for the people who run that to even make a contribution to the lights on Tapleys Hill Road so that they could get their traffic in and out of their own development. They did not want to make that contribution. That has happened everywhere. It happened at Essendon Airport. It happens all over the place. They do not want to make any contribution. They want to put 30,000 cars a day onto General Holmes Drive, say, 'That is your problem,' and then get in and criticise us and say, 'You want to stick your nose into how airports are developed.' We are clearly non-aviation.

Mr Harragon—Senator Ferris, you mentioned the IKEA factory in Adelaide.

Senator FERRIS—It is not a factory; it is a retail outlet.

Mr Harragon—It is a shop. It has nothing whatever to do with airports. People are not going to go there and pick up their flat pack of furniture and carry it on their arm onto the aircraft. All we are saying is that, if they are going to be on those sorts of developments, they should be subject to the same rules and regulations as the people across the road.

Senator FERRIS—I am not denying that. Senator McEwen and I both come from Adelaide, and we would both remember that when IKEA first opened you needed to leave for the airport an hour earlier to get past the jam at the gate, with people trying to go into IKEA and not the airport, so I understand the point you are making.

Mr Harragon—Why should they have a competitive advantage over the other people who want to develop similar things across the road?

Senator FERRIS—I think these points will be made later by—

CHAIR—I am sure we will hear all those arguments.

Senator McEWEN—In the second reading speech that Minister Kelly made when introducing this bill into the House of Representatives she said that the amendments to the act bring the planning requirements more into line with state and territory planning regimes. I know that the states and territories have different planning regimes between them but, broadly speaking, can you give me your opinion on whether that is correct?

Mr Fitzgerald—They have used the same words. They then go on to say in their master plans that state law does not apply. If you zone something commercial—and it does not really matter which state you are in—it is used for commercial purposes, not industrial purposes and not residential purposes. But where they then go on to muddy the waters in the master plan is where they say, 'This is zoned as commercial but you can also have factories and boiling down works,' and then they list all the other things. They have not used the same compartmentalisation that you might have in a normal planning scheme, and they certainly do not have the requirements to do the environmental studies, the traffic studies and all the other

studies you would need to do outside the place; they are not required in master plans at all. So lip service only is paid, and if you were to have a very close look at whether master plans comply with the act I think you would find it would be very skinny, because the department that administers it is the department of transport, which does not have a history or background—it may have some planners in there now but certainly the background to it is not that of land use or town planning.

Senator McEWEN—Does ALGA concur with that view?

Mr Beresford-Wylie—Yes, I am happy to concur with that view. In the second reading speech the minister said that the bill proposes to reduce the statutory public comment and assessment periods, bringing them more into line, as my colleague has said—that is just the actual periods. The actual content of the documents being consulted on does not meet the same standards as you would expect for others in terms of the information available during the consultation period.

Senator McEWEN—So the time lines are similar but not all the rest of the—

Mr Beresford-Wylie—I see no reason to believe that that is not the case.

Senator McEWEN—We hear anecdotally from people who benefit from developments on airport land that local authorities should not expect to be paid the rates paid by other businesses or ratepayers within the council area, because airport land does not get the same local government services that other businesses to. Do you have a response to that comment?

Mr Fitzgerald—That is absolute nonsense. In the City of Botany Bay, where I spend most of my time, we have a lot of big organisations. We have ICI and other big organisations. We provide to the airport exactly the same services. In the City of Hume, for argument's sake, which is in Victoria where Tullamarine is, the Ford Motor Co. has a huge plant. We do not go in and seal the Ford Motor Co's internal roads, sweep their streets or mow their lawns; that is an absolute nonsense. There is provision inside. We did this fastidiously in Western Australia with Belmont Square in the City of Belmont. The services provided to the airport are exactly the same as those provided to the shopping centre of Belmont Square. In our city it is exactly the same as in Victoria. Everywhere it is exactly the same; we provide exactly the same services. They would much rather we mow their grass for free, but they do not come and mow our backyard. It is the same thing.

Senator STERLE—I take note of your passion about the consultation and all that, but we come from WA and we had a lot of consultation over the contentious issue we are faced with in Western Australia with the proposed brickworks which have been given the go-ahead. To burst your bubble, that consultation did not do us any good. What I would like to ask—and I think you might want to take it on notice—is about rates not being paid. At Perth Airport, especially, huge inroads are being made into putting in trucking companies and large retail warehouses—Foodland and Coles are moving there. It is a good idea to have them on the airport land rather than in suburbia because you have forklifts and trucks firing up at 4.30 in the morning. But would you have any idea how much money is lost in non-payment of rates to the shires—say, to the City of Belmont or even to the City of Swan? Would you be able to find that out for me?

Mr Fitzgerald—Yes, we could find that out exactly for you and we could get it to you. I can tell you that, at one stage, the City of Belmont was in excess of half a million dollars in arrears, but I understand that there has been some intervention and that has now been fixed. The City of West Torrens in Adelaide is still half a million dollars behind—they will give their own evidence shortly—and I know that in Sydney there is a dispute over a couple of million dollars.

Senator STERLE—Could you take that on notice and provide that information to the committee?

Mr Fitzgerald—Yes, we will. I was going to say another thing about the consultation. While there was much consultation about the brickworks, the real problem was that the person who gave the consent was the person leasing land to the brickworks. There was no independent third party, and that is the real difficulty.

Senator McEWEN—I will go back to my question about the equivalence between the state and territory planning regimes and the planning process under the act and the proposed amendments. Is it correct that, under the state and territories planning regime, the situation is such that if the minister does not make a decision a development is approved?

Mr Fitzgerald—If the minister does not make a decision, it is not approved.

Senator McEWEN—So that is a fundamental difference between the two systems?

Mr Fitzgerald—Yes. It is unusual that you sit on your hands and do nothing and you get a benefit.

Senator McEWEN—Thank you.

CHAIR—Do you think that we ought to have poker machines in airports?

Mr Fitzgerald—I have no view.

CHAIR—What about the other witnesses?

Mr Beresford-Wylie—Well—

CHAIR—Do you think we ought to have gambling facilities, casinos and God knows what in airports? That is where we are headed if they get this plan through.

Senator FERRIS—There is a submission from the Brisbane Airport Corporation that suggests it.

Mr Beresford-Wylie—Again, I do not have a view on that. I am not a gambler myself and I do not like gambling of any sort, to be honest.

CHAIR—Err on the side of caution!

Senator FERRIS—So it is not an issue that you have canvassed with your members?

Mr Beresford-Wylie—It is not.

Mr Fitzgerald—We have not discussed it.

CHAIR—Thank you.

[9.44 am]

McINERNEY, Councillor John Michael, Councillor, City of Sydney

CARSWELL, Mr David John, Manager, Strategic Planning, Queanbeyan City Council

MAVEC, Councillor Thomas, Deputy Mayor, Queanbeyan City Council

CHAIR—Welcome. You heard the preamble, I take it. Can I just say to the City of Sydney before we start and before you give me your name, rank and serial number that it is a pretty untidy operation for the City of Sydney to lodge a submission and then appear before us when we have not had a chance to read it. Do you think we are magicians or something?

Councillor McInerney—I apologise for that.

CHAIR—No doubt it is not your fault. You are the bunny they have sent along. But can you take a message back to whoever sent you here that we find this unacceptable.

Senator FERRIS—It makes it very difficult to question you in an intelligent way when we got this 10 minutes ago.

Councillor McInery—Yes. What I had hoped to do was to generally cover the intent or the purpose of our submission without going through the detail and leave you with that submission and detail to look at. I will pick out the major points as well and try and make up for that. I appreciate the problem.

CHAIR—We just want to make the point. We formally welcome you and Queanbeyan City Council. If you would like to make an opening statement, we would be delighted to hear from you and then we will ask you a few questions.

Councillor Mavec—Firstly, I would like to thank you and the committee for inviting Queanbeyan City Council to make this submission. The mayor, Frank Pangallo MBE, is unavailable and conveys his apologies. Queanbeyan City Council's submission is contained in a written supplementary statement which will be distributed to the committee. It elaborates on the Queanbeyan City Council's previous submission, No. 24, which you would have received beforehand. In some cases, the statement raises points additional to those raised in the original submission as well as making some recommendations. It also includes this oral statement on behalf of the mayor and that of Mr David Carswell, manager of strategic planning. Consequently it is requested that this supplementary statement in its entirety be incorporated into evidence. After I speak, a brief statement will also be made by Mr Carswell. Mr Carswell's comments are also contained and elaborated on in the supplementary statement, and he will be available to answer any questions the committee may have.

As I said in Queanbeyan council's original submission, we are a council affected by airports legislation and we have extensive experience in relation to developments at Canberra International Airport and aircraft noise issues as alluded to by the chair earlier. This experience has been gained by being approximately seven kilometres from Canberra International Airport, by being a founding member of the Canberra Airport Aircraft Noise Consultative Forum chaired by Canberra International Airport and its predecessor committee, and by comprehensively reviewing various draft master plans and major development plans

produced by the Canberra International Airport. In addition, the council has been a member of various regional planning fora and committees over the last 20 years. Consequently, I believe that the council is well-placed to comment on the practical implications of some of the changes proposed under the Airports Amendment Bill 2006.

I will briefly introduce the six items of schedule 1 of the Airports Amendment Bill 2006, which causes my council considerable concern, as well as an additional matter not dealt with by the bill which council would like to comment and make recommendations on. As mentioned above, it is then proposed that Mr Carswell will make further comment on them.

I will start with the items in the bill. In regard to these, Queanbeyan City Council has concerns with six items and their associated items. These include the purposes of a final master plan permitting non-aeronautical development at leased airports, item 23; the 20-year horizon for master plans, item 33; publication and notification procedures, items 41 and others; the reduction of consultative periods, items 42 and others; excluding Canberra International Airport from the operation of the National Capital Plan and local planning control, items 120 and 170; and the purposes of environment and strategies refining the regulatory framework for environmental matters, item 122. As well, there is an additional item not covered by the bill which in council's view should be. This is the status of the consultative guidelines, December 2006, issued by the Department of Transport and Regional Services.

In regard to all of the above, Queanbeyan City Council makes nine recommendations, which are contained in the tabled statement. There are also a number of items in the bill which are supportive. These are identified in the statement as well and will be briefly touched on by Mr Carswell. I now hand over to Mr Carswell. Thank you.

Mr Carswell—Thank you. Like the deputy mayor, Councillor Mavec, I propose to briefly address three of the seven matters raised in the written statement, if time permits—and I am mindful of the time. Accordingly, I request that members closely review all the material in the written statement so as to cover all of the Queanbeyan City Council's submission. I am also happy to answer any questions. The matters to be addressed in this verbal statement include: item 33, the 20-year horizon for master plans; items 42 and other items that propose the reduction of consultative periods discussed previously; and items 120 and 170, excluding Canberra International Airport from the operation of the National Capital Plan.

Going to item 33, the 20-year horizon for master plans, you will find a detailed review of this on pages 5 and 6 of the written statement. Item 33 of the bill provides that a draft or final master plan may, subject to specified conditions, relate to a period beyond the 20-year planning period. The stated intention of this is to enable state and land use planning agencies to implement long-term planning goals that are compatible with an airport's proposed long-term aeronautical operations. However, for a number of reasons, it is the council's submission that the Airports Act should not be amended to enable any master plan or associated ANEF to extend beyond the 20-year planning period. The reasons for this include the imposition of costs that may never be necessary. For example, the residential sector may have to comply with the Australian building standard AS2021, despite the fact that aircraft movements in, say, 2050 are never realised. It has been the council's experience over the last number of master plans produced by Canberra airport that the projections have been overstated. That is not to

say that the best efforts were not put into making those projections, but it is a long time into the future—another 50 years.

The second reason is the uncertainty of planning beyond the 20-year period for critical factors such as the future availability and costs of fossil fuels, the future of the airline industry, technological advancements and the like. Most of the people in here would have experienced the last 50 years and would know that the airline industry has changed enormously in terms of technology, Customs et cetera. All these factors make it very difficult to plan ahead for a 50-year period with any certainty.

CHAIR—It is only an odd one who is going to experience the next 50.

Mr Carswell—That is very true, Mr Chairman. A planning horizon of 15 to 20 years is a much more certain time horizon to plan for, and parallels the current 20-year planning period required by the Airports Act and local government planning. A period longer than 20 years creates potential litigation. On page 5 of the written statement I cite a number of cases. The point to be made is that all these raise issues relevant to Canberra airport's ANEF 2050. Making this section of the act more explicit could avoid this type of litigation in the future.

I will comment on section 72 of the Airports Act, which is the relevant section. It states that a draft or final master plan must relate to a period of 20 years, but it does not prevent an ultimate capacity ANEF being contained within a final master plan which is likely to extend to a much longer period. Again, this can cause uncertainty and considerable debate, as well as unwarranted costs. Indeed, it has been this council's experience that considerable debate has occurred since the preparation of Canberra International Airport's 2050 master plan, considered an ultimate capacity master plan. It is council's view that this section of the act should be tightened to ensure that a master plan and associated ANEF is prepared for a maximum 20-year period but not exceed that period. To deal with the above, the written submission makes recommendations 2 and 3, which are found on page 6 of the submission.

I now turn to the reduction of the consultative period. Items 42 and other items propose to shorten the consultative period in which the community can comment on preliminary drafts, master plans, major development plans and environment strategies from 90 calendar days to 45 business days. In the council's view, the consultative period should not be shortened for a number of reasons. The reasons include that airport developments can be of a significant size and potentially have significant external impacts which require detailed assessment. For example, Canberra International Airport has recently proposed a 65,000 square metre office extension, which will bring the total office space on the site to about 135,000 square metres.

The second reason is that issues can be highly technical, requiring stakeholders to obtain external expert advice to properly comment. There are issues such as ANEFs, traffic impacts and local and regional economic impacts as well impacts on flora and fauna. Such issues and impacts can be time consuming, and it can be time consuming to obtain expert information, particularly if there are statutory requirements such as those in section 55 of the Local Government Act, which require certain processes to be gone through before you can engage relevant consultants. Recommendation 5 on page 7 is relevant to this issue. It is also council's submission that the bills proposed ought to include ministerial 'stop the clock' powers as contained in items 48, 86 and 133.

I now go to the issue of excluding Canberra International Airport from the operations of the National Capital Plan. Canberra International Airport currently has and will continue to have, under its approved master plan, a major impact on land use planning, both within in the Australian Capital Territory and the region. I think that is indisputable. Items 120 and 170 of the bill propose to exclude Canberra airport from Commonwealth and Australian Capital Territory planning control or any other planning control except for that provided under the Airports Act. This is to be done on the basis that it will bring Canberra airport into line with all other leased federal airports in that all planning and control of developments will be governed by the act. No other reason is given.

However, there is a strong argument that, because of its location in the Australian Capital Territory, Canberra International Airport is not like any other leased federal airport. Indeed, this uniqueness is recognised in the Australian Capital Territory (Planning and Land Management) Act 1988, which I note is a Commonwealth act. For example, section 9 of that act, titled Object of Plan, states in relation to the National Capital Plan, which currently applies to Canberra airport:

The object of the Plan is to ensure that Canberra and the Territory are planned and developed in accordance with their national significance.

This, in the council's view, applies equally to Canberra International Airport. Also, section 26 of the National Capital Plan states:

The Territory Plan has no effect to the extent that it is inconsistent with the National Capital Plan, but the Territory Plan shall be taken to be consistent with the National Capital Plan to the extent that it is capable of operating concurrently with the National Capital Plan.

If the planning of the rest of the Australian Capital Territory has to be consistent with the National Capital Plan, why doesn't long-term strategic planning for the airport? A practical effect of these proposed changes would be to remove the current floor space restrictions for Canberra airport in the National Capital Plan which were inserted by amendment 44. They were inserted less than two years ago by amendment 44, which was registered in March 2005. An overview of that is found in appendix 3 of the written statement. It was registered after going through a process involving approval by the relevant Commonwealth minister and the scrutiny of the Australian parliament. Again, the question has to be asked: what has changed in less than two years?

The removal of the only commercial floor space restriction, which is 120,000 square metres for Canberra airport, would possibly—and I say 'possibly'—enable the airport to develop as a major city centre unrestricted by any effective planning controls or planning scrutiny from the Commonwealth National Capital Authority and the ACT government. Recommendation 6, found on page 8 of the written statement, is relevant to this issue.

I would like to finish on the note raised by the deputy mayor that there are a number of items in the bill which are supported. I will identify these items for the benefit of the committee: items 23, 33—although I do note a comment about the ANEF system that is found in the report—41, 57, 81 and 127; items 47, 63, 85, 106 and 132; and items 48, 86 and 133. This verbal submission, as well as that of the deputy mayor, is found in appendix 2 of the written statement. Thank you.

CHAIR—Thank you very much. Councillor McInerney, would you like to have a go?

Councillor McInerney—Yes. Our submission, by the way, is in addition to the Mayoral Aviation Council submission. Ordinarily, we, like many councils around Australia, would be happy to sit beneath the umbrella of the aviation council. While we have not met formally this year, councillors of the City of Sydney have become aware through discussions and telephone calls of the situation which this hearing is talking about, so they have asked me—and it has been done without the backing of a council meeting but just through connection between the various councillors—not only to support the aviation council's submission but to add specific matters that we think may assist you in your work. The City of Sydney regard it as so important that they have asked me to come and convey that to you today.

We are, of course, not immediately abutting the Sydney airport, but we are affected as much as almost any other council surrounding the airport through the fact that roads, public transportation and major developments are all impacted by the airport development and, to reiterate what has been said, without there being any compensation to the community, which effectively bears the cost of this development. I suppose that is really where our support of the aviation council comes to the point. It is this unfairness that we see as the most prominent factor, in that communities—and Sydney City Council is one of those—are disadvantaged because of this separation from a developer. I call them developers because it is development in the normal sense of the word. If development occurs at the airport, it is without reference to all the requirements that we have put in place and that we continue to put in place.

The City of Sydney puts very significant requirements in place for development in the city. Thirty-storey and forty-storey buildings all go ahead with major requirements. In some cases, roads need to be built or added to. Certainly there are car parking requirements in some cases. There are public contributions, which are known as section 94 contributions. All of these have been developed over the years to recognise the impact that a development will have on a community. In this case, the problem is that there is no recognition of that impact.

In a normal planning control situation, we as a council look at three things. Firstly, does the development complement the public investment and the activities of the community which have continued up to that time? For example, for the building of a railway station we will look at the relationship of residential development to that railway station. Is it a complementary activity? Does it facilitate and help the development that the community has already put in place? Then we look at whether that development meets its immediate impact. Does it impact on the surrounding streets, the landscape or something of that nature? Finally, we look at the wider controls, and that is where section 94 tends to come in. Does it need to contribute towards community facilities, libraries, open space et cetera? Those three bases are the way in which council looks at developments put before it.

Under the current legislation and even under the amendments that are before you, none of those opportunities are given to council to address the issues that I have just talked about. Our position is to reiterate that the mayoral council has said that we believe that development—and I say it is simply development; while it may be done by Macquarie or someone else, it is essentially development—must conform to those assessments and criteria to which every other development in the city has to conform. In saying that, perhaps I could close again to some extent by reiterating the point that was made by the aviation council. We are not against

development as such. As to the references to aerotropolises and gambling machines et cetera, all of those may not be possible. It is not the fact that it does occur or that it does not occur. It is the fact that it occurs without reference to the matters that I talked about, without reference to the regional context, without reference to the immediate context and without reference to the impact on the surrounding area. So that is the issue that I think you need to address.

The council has taken legal opinion on this matter in terms of the wider question. I have not brought that opinion with me, but I am very happy to bring that forward to the hearing, or to send it on later, if that is of interest. Our legal opinion, I should add, is that this is an unconstitutional process. We asked an expert in constitutional law to address that very question. Does the Constitution allow the Commonwealth government to become involved in developments which are not essentially of an aviation nature? There is no doubt that, if the aviation context is correct, then yes the Commonwealth has a role. But if it is outside that role, then it is our opinion—which we obtained not that long ago, I might add—that this is a questionable constitutional process. We have also been advised that the way in which such a challenge should eventually be mounted is by one of the councils immediately affected—not by us, in the sense that our boundaries do not touch the airport boundaries of the Sydney airport. So we would expect and hope that an adjoining council may take up our legal opinion, and we would certainly assist that to occur.

We have also been advised that the time to make that appeal is at the time of the decision being made by the Commonwealth. The point was made earlier—again, I think, by the aviation council—that it is a pity to have to get to that point. It is a pity for us as councillors to have to spend ratepayers' money to challenge an issue which might go on for a considerable amount of time. We are talking about a constitutional challenge. This is going to cost money. It is going to cost money from the City of Sydney and for those who support us. I imagine there will be many councils that will do that. It is a pity that we may have to go that far. I again appeal to this committee to consider whether there is a better way forward.

CHAIR—We heard from the Local Government Association earlier. So generally you are happy—as long as it is an equal footing thing—for development on airports. You would not mind if a casino were built at Mascot airport—or a brothel?

Councillor McInerney—I personally would mind on both of those cases. The city as a whole would expect that the process would be gone through so that the issues would be aired. For example, we as a city have a casino, which affects us dramatically. It is in our area. We pick up the tab for that. We pick up the family problems, the impact on our social services et cetera.

CHAIR—I don't have the answer, but I am sure we will get it before we finish. Under the present circumstances, would it be possible to build a brothel outside of planning on an airport?

Councillor McInerney—The answer is yes—under the current controls.

CHAIR—Someone is shaking their head, so we will come to the answer to that later. To go to Queanbeyan council, you would see the airport as an asset to the area, surely?

Mr Carswell—There is no doubt as to the airport being an asset.

CHAIR—So in the long term would part of the marketing edge for this part of Australia be the airport and its ability to operate without a curfew?

Mr Carswell—The council's position—

CHAIR—It does not have a curfew.

Mr Carswell—No. The council's position, as it is put to various authorities, including various ministers responsible, is that the airport should have a curfew.

CHAIR—You think that it should have a curfew?

Mr Carswell—Yes.

CHAIR—That answers a few questions. I refer to the proposed development as some sort of jiggery-pokery. It may be even payback, for all I know: 'You've got all this industrial development. Therefore, we'll square you blokes up by putting a development under your flight zone so we impose in the long term a curfew.' An unattached person standing at the back and looking at the argument could think that, given what is going on. I do not know what the truth is. You wouldn't be prepared to put a caveat on a development that might impose in the longer term a curfew on the airport? You wouldn't put a caveat on that—

Mr Carswell—If you are referring to the development in the south-western corridor known as Tralee and Environa, the council has considerable information before it. It is not the council's development; the council has accepted the application. We are the regulatory authority.

CHAIR—I accept that.

Mr Carswell—It is extremely unlikely that some of the effects discussed in the public media would actually occur.

CHAIR—But it is also a fact that the language is weasel language. Everyone is using jiggery-pokery language. I do not know what the truth is, but it appears to me to be jiggery-pokery. You would not put your house on the outcome of it, I bet.

Mr Carswell—There has been considerable debate about the outcome.

CHAIR—That would be an understatement.

Mr Carswell—Ultimately—

CHAIR—I am sure that Frank Sartor would like a light bulb to go on somewhere.

Mr Carswell—I have had the occasion to meet Minister Sartor recently. It is a complex issue, and he is still considering his position. Ultimately, the state government will determine—

CHAIR—What we have heard from you today is that you would like a curfew on the Canberra Airport.

Mr Carswell—That is not part of our submission.

CHAIR—But you would like a curfew.

Mr Carswell—That has been our submission in the past.

CHAIR—Do you think that the mob generally would like a curfew? If there is no-one affected at the present time—

Councillor Mavec—That is debatable.

CHAIR—Yes.

Councillor Mavec—I live in the city of Queanbeyan a kilometre from the centre of town—

CHAIR—You are taking the bait. I want you to take the bait!

Councillor Mavec—in an older area, yet I can hear the aircraft movements at night and early in the morning.

CHAIR—But was it your mayor who said, 'If you're sensitive to noise you wouldn't be such a dope as to buy in an area where there is noise'? Did he say that?

Councillor Mavec—I cannot recall that.

CHAIR—Someone over there said it.

Mr Carswell—He is talking about ANEF and compliance with ANEF standards in some detail. I do not recall him saying something like that.

CHAIR—It is all part of this jiggery-pokery. Thank you.

Senator O'BRIEN—The issues relating to this bill that I am interested in exploring are the processes of your councils in relation to responding to a proposal for a development upon an airport. How do you deal with that? Can you explain the time frame?

Mr Carswell—Normally, we review the master plan or the master development plan or the draft variation to whatever it is.

Senator O'BRIEN—Who is 'we'?

Mr Carswell—The council.

Senator O'BRIEN—The bureaucracy of the council or the councillors?

Mr Carswell—The council officers. A report is done. It makes recommendations on a particular position. That goes to the council. The council makes a decision on that. They have the opportunity to—

Senator O'BRIEN—Can you tell me what the time line is for those sorts of things? Presumably, the clock starts running when there is some advertisement or some notification.

Mr Carswell—When we become aware of it.

Senator O'BRIEN—When you become aware of it?

Mr Carswell—That is right. It was the custom in the past that Canberra Airport would have the courtesy to notify us. But that has not occurred for the recent major development plan. With that particular submission, we had to get an extension of time from the Canberra Airport, and that was produced in a matter of days with all my staff working on that.

Senator O'BRIEN—How far into the 90 days did your council become aware of that particular proposal that you have just referred to?

Mr Carswell—On the last day of those 90 days.

Senator O'BRIEN—On the 90th day?

Mr Carswell—Yes.

Senator O'BRIEN—Was there any particular reason why you did not notice any other information before that? How was it advertised?

Mr Carswell—It was because resources were directed towards the requirements of Minister Sartor in relation to those other developments which the chair referred to. All of our resources were concentrated on that.

Senator O'BRIEN—Without dealing with that specific instance, when councillors become aware of those matters and let officers know, how long would it normally take for a matter to be prepared and to get before a council meeting or a council committee meeting or both?

Mr Carswell—Probably in the order of four to six weeks, but that is without getting external expert information. There have been occasions when we would have liked to have got external expert information in terms of traffic impacts—ANEFs et cetera—and we simply have not had time. So we have simply reviewed it in house to the best of our ability and made a submission.

Councillor Mavec—We have also had to seek outside advice on economic effects, and that takes some considerable time.

Mr Carswell—I make the point that, for example, if this expert advice would exceed the threshold level of $150,000 then under the Local Government Act in New South Wales councils are obliged to go through a certain tendering process, which is quite time consuming. That in itself would take four or five weeks before it was completed—at the minimum.

Senator O'BRIEN—So there are, in some cases, legally binding reasons which would prevent a council from adequately responding in a shortened time frame?

Mr Carswell—In some cases that is correct.

Senator O'BRIEN—You are specifically referring to cases where it may be desirable to obtain outside advice and specifically where that advice is anticipated to cost more than $150,000. You would have to tender for it.

Mr Carswell—Or to cost a significant amount of money. Legally we are bound by the Local Government Act, but the council does have a purchasing manual which requires certain procedures to be undertaken, for probity reasons, in accordance with the Department of Local Government's recommendations.

Senator O'BRIEN—Given the difficulty you had in relation to the application you found out about on the 90th day of consultation, what do you say about the process of notification and advice of those proposals?

Mr Carswell—We address that in our written submission. We are suggesting that there should be a change to the bill requiring airports to notify in writing those persons identified under the various provisions labelled 'consultation', which list local government and state and territory governments, in relation to major development plans, master plans and environment strategies. Of course, in this day and age that can be done electronically.

Senator O'BRIEN—If you were notified in that way on day one, what do you say about the proposal in the bill which would shorten the consultation time?

Mr Carswell—Our submission is that the consultation time should remain as is and we support the 'stop the clock'. However, if legislators are concerned about the 'business days' aspect then it should be changed to whatever the equivalent business days are—I think 60 was mentioned earlier.

Senator O'BRIEN—That is 84 days maximum, isn't it?

Mr Carswell—That is the case.

Senator O'BRIEN—It might be a bit more because of public holidays. Your council would be satisfied in those circumstances with shortening, but only to that extent and with the caveat about notification?

Mr Carswell—In relation to that particular issue.

Senator O'BRIEN—Thank you. I have no further questions.

Senator McEWEN—I am curious as to whether you know of any further developments planned for Canberra Airport.

Councillor Mavec—They do not confide in us.

Mr Carswell—But, seriously, there are developments foreshadowed in the approved master plan.

Senator McEWEN—What are they?

Mr Carswell—Additional office space.

CHAIR—Obviously I hear all the arguments on the effect on the civic area and your business area. When you put a bore down sometimes you strike water and sometimes—bugger it—you do not. If you buy by the river you get irrigation and if you buy 100 miles off the river you do not. That is the nature of development. I want to go back: you believe there ought to be a curfew. I have heard the arguments from the Tralee development. It is a curiosity to me that they say people that buy those houses will not be impacted by the airport noise, but then there is another argument that they will. You say that, wherever it is that you live, you are impacted by the noise. Most definitely, if you are impacted, the mob at Tralee will be impacted.

Councillor Mavec—I note the noise. That does not mean I am impacted on adversely.

CHAIR—I hear that form of nonstatement. We are here to try and be fair to everyone. I hear the arguments about the competitive edge that is being gained in this type of development, and I will explore some of those other things later. If it is the council's view that there should be a curfew, couldn't a cynic say that one way to make sure that there is a curfew would be to approve a development under the airport noise profile?

Mr Carswell—I think the council's view that there should be a curfew is more associated with the potential of the airport becoming a night freight hub.

CHAIR—That may well be a great asset to the area as well. I do not want to explore that; I hear that. But I am also—looking from a far hill on all this argument—thinking, if I was a

cunning sort of a bugger and I wanted to really do a bit of payback on this, and there is an obvious advantage for office space et cetera, about how I could deal with that. It would be to perhaps cynically approve a development.

Councillor Mavec—It is not the intention of the council to do that.

CHAIR—I am sure it is not.

Councillor Mavec—It is the logical next bit of land to be developed in Queanbeyan. It is adjacent to a new subdivision of Jerrabomberra.

CHAIR—I am sure there is no other land available. I hear all those arguments.

Councillor Mavec—Our experience with Jerrabomberra is that it is not the airport noise per se; it is the perception of change. People in Jerrabomberra who are closer to the airport than the proposed Tralee development are used to it. I do not live there. I am not used to it.

CHAIR—But someone, and I think it was your mayor, did say that if you are sensitive to noise then you would not buy a house in this development. I will dig that out of the records for you and play it back to you. Surely that puts a flaw in the judgement of the council. In Junee, where I come from—I used to be the Mayor of Junee, believe it or not—we always saw Wagga as the enemy. We then decided we had better make Wagga an asset. So we have had a change of culture. We now have a 20-minute road instead of a three-quarters-of-an-hour road, and we are part of Wagga.

I would have thought that the airport, Queanbeyan, the ACT and Annabelle Pegrum, who refuses to go for an early morning drive with me out to the roundabout out there, should see everyone. This should be a conjunctive development in everyone's interest. It is a great asset for the area if you can get an airport which is used as a transport hub. You may not approve of the idea, but these are all things that ought to be played out. I look forward to going over the various pieces of evidence that we have received to try to come to a view.

Mr Carswell—On the curfew, can we submit further information to clarify the council's—

CHAIR—You certainly can. We would be delighted to receive it.

Mr Carswell—Thank you.

CHAIR—We have ignored poor old Sydney. Is there something that you want to put on the record? Before you do, I am aware that Sydney city council is not adjacent to the airport. I have heard all the arguments over the years about airport noise, but having an airport 10 minutes from the CBD is an asset in a lot of ways. I take it that part of what Sydney city council would like is to know what is going on ahead of it happening so that, if it is going to affect your planning, you can plan for that effect.

Councillor McInerney—Yes. I can only agree with you entirely. These airport have magnificent benefits. All of us know what they can do for an area, both industrially and commercially. The problem is that the structure we have now turns us into enemies—as with your Wagga example.

CHAIR—I'm trying to befriend you!

Councillor McInerney—We would like to do exactly what you were able to do up in Wagga. I might say quite cynically that the legislation was originally put in place so that the

funds that would come to the Commonwealth—we are very convinced of that—for the leaseholds of these airports would amount to something like a billion dollars. That was done because they went in with the knowledge that there was not going to be the sort of trade-off figures that I talked about before, for the payments for the roads and for the implications of the new casino. They did not have to worry about that. That is where the billion dollars came from. We would like to get back to a position before that and start to get to work with them.

CHAIR—That is a nice message. Can I send you away with a thought which has nothing to do with this? Being an old fireman I am interested. I do not know whether Sydney city council was consulted by the appropriate government that made the decision to reduce the pressure mains in Sydney but I wondered what the fire and insurance consequences of that are for Sydney city council. You do not have to answer; just go away and think about it.

Councillor McInerney—I will think about it.

CHAIR—Thank you very much.

Proceedings suspended from 10.28 am to 10.44 am

STARR, Mr Trevor Milton, Chief Executive Officer, City of West Torrens

TRAINER, The Hon. John Patrick, Mayor, City of West Torrens

CHAIR—Welcome. I invite you to make an opening statement.

Mayor Trainer—With Mr Trevor Starr, I speak not only on behalf of our council but also on behalf of the neighbouring councils of Holdfast Bay, Marion and Charles Sturt; Salisbury Council—which hosts Parafield Airport in its boundaries—the City of Adelaide and, also, by resolution of last week, I speak on behalf of all councils in metropolitan Adelaide. The City of Belmont, which is host to Perth Airport, has also placed on record—and that is in the document that you have been provided with—that they concur with our submission. We and other people from local government are here today because in 1996 the previous government passed a piece of legislation that had a lot of flaws in it and the current government has implemented it with a laissez-faire approach that has had an unfortunate and negative impact on metropolitan communities across Australia.

There are about 250 airports across Australia and 240 of them may have funding or infrastructure difficulties but by having local government involvement in their operation they do not create the detrimental effects of the large privatised airports in the capital cities. Across Australia, what have come into being are in effect half-a-dozen Vatican Cities, as I call them—cities within cities, for whom the term 'aerotropolis' has been coined. They resemble the Vatican because they are states within states and within their boundaries the normal law of the land does not apply.

Furthermore, in the same way that in 1956 a small number of businesses gained access to the electromagnetic spectrum through the issuing of a very limited number of TV licences—which were at the time called 'licences to print money'—a restricted number of businesses have privileges which are not granted to their competitors, those competitors being other land developers and other businesses which are not on the airport. Most of these capital city airports are not greenfield developments. Instead they impact on long-established suburbs. In the case of the City of West Torrens, this impact is particularly strong because it is only six kilometres from the centre of the CBD. That is of great economic benefit to the state, but, as with many other developments, the question always arises as to how much one local community has to put up with in order to benefit the broader community at large outside that local community.

Aircraft noise has been minimised, although it is still of some concern. But residents are now more concerned with new, unplanned industrial suburbs being shoehorned in around the perimeter of the airport and all the consequences that arise from that. It is very difficult for us as a council to deal with a corporation that is in effect a protected species, a corporation that uses every possible device to delay or evade paying their fair share of council rates and which rams through inappropriate developments. Another parallel to the Vatican City that you might appreciate is that of the College of Cardinals, where you do not know what is happening until you see the smoke come out of the chimney. Often, we do not know terribly much about what is happening at the airport until it is in a very advanced state and it is too late to do anything about it.

There are five points that I would like to stress. Firstly, I believe that what has happened with the airports is a misuse by the Commonwealth of privileges extended to them by state and local governments. Those privileges are in effect rented out to private corporations so that privileges which exist for the public use of public land for public purposes have become perks for favoured private businesses to use to maximise their profits at the expense of the communities in which these businesses operate.

Secondly, the airports create substantial additional strains on local communities by their very existence on alienated land, by their negative effect on the amenity of the area, by their negative effect on state and local government planning and by the traffic problems they create. But DOTARS and the airport companies have restricted, until recently, contributing adequately to the cost that they create. The concept of fee-for-service is something that is implicitly introduced into the debate and it is implied that a full range of services are not supplied to the airport. This is an argument that has been used not only for Adelaide but in the case of Perth Airport. Let me stress that no service normally supplied to a rate-paying business has ever been refused to Adelaide Airport or Perth Airport. In any case, applying the concept of fee-for-service to council rates is a nonsense. Council rates are not fees for services; council rates are a tax.

Thirdly, not only the same rating regimes but also planning principles and procedures akin to those applicable to off-airport businesses should apply within the airport. The same rules should apply on airport as off airport. Fourthly, we are dealing with corporations who have less interest in planes landing and taking off than they have in being land developers, and they gain the major part of their income from non-aviation sources. Planes landing and taking off are now just a sideline to their main business.

CHAIR—A bit like beer in the pubs.

Mayor Trainer—A very good point. Finally, the 'light-handed' approach of the federal government—and that phrase frequently turns up in correspondence—means that, by default, the federal government always seems to take the side of these large businesses over the local communities. It is understandable that DOTARS would have a certain degree of empathy for the airport operators because their constituency is the airport industry, not the hundreds of thousands of people who live near airports.

Mr Starr—I wish to add some comments. We have summarised in the document we have handed out to you the comments of our city and adjacent cities. The information is not new; it exists in the submissions that you have got. I think it indicates quite clearly the issues that remain of concern to adjacent councils. There are comments in here that are directly from the Adelaide City Council's submission and there are comments from Salisbury Council, Holdfast Bay and Charles Sturt. The thrust of most of those comments is obviously about planning and development in and around the airport. Almost 10 years on, the city of West Torrens and its neighbours still have issues relating to planning and development for the commercialisation of the airport. We accept, as I think all the councils do, that the Commonwealth will want to maintain control over the aeronautical side of the airport. So that is not an argument with us.

The argument is that the additional space that is being provided to the airports for commercialisation is planned and developed without regard for the metropolitan planning

strategy or the council's planning regime. That, in a sense, is one of the most critical parts that affect us. Obviously, there is the rating of the airport. We believe that the rating of the airport, and the contributions that are required to be paid by way of rate equivalent payments, ought to be in the legislation. Section 12 of the current legislation removes most state powers, including rating provisions, from this particular arrangement. We say that is a very short-sighted decision. It has cost our council several hundred thousands of dollars, a lot of hours and a lot of heartache.

The other issue we raise—which I hope will also be raised by the government of South Australia—is the lack of contribution towards infrastructure upgrade by either the owner, the Commonwealth, or by the leaseholder. The six million people who go through Adelaide Airport each year travel through the city of West Torrens—they do not have any other choice—and the infrastructure and roads system is grinding to a halt. The estimates are that the number of people going through the airport will double over the next 10 or 15 years. It is going to be astronomical. There will be 12 million people travelling and upwards of 35 million people visiting the airport. It is true that the airport has become almost a leisure activity. It is not an airport anymore. It is a place where you do catch planes but it is also a leisure destination.

CHAIR—Is that six million individual journeys or six million people visiting?

Mr Starr—There are six million passengers passing through the airport annually.

CHAIR—I want to go to the proposed development of Sir Donald Bradman Drive. Has West Torrens taken an audit of the potential journeys per day from the future development of both residential and light industrial?

Mr Starr—There are individual studies being done, and we asked to be party to those studies but that was rejected. There are studies being done of the proposed development to indicate the likely level of, in particular, peak-hour movements in and out of those developments. They will place concerns and constraints upon those resources.

CHAIR—If you have the studies available, would you be able to give the committee a break-up of the six million people into daily journeys from the proposed development so that we can get a bit of an idea of what it all means?

Mr Starr—Yes, we can do that.

CHAIR—It has been recently pointed out to me that the development—and this offers no criticism; we are trying to get our heads around this and inform ourselves about what all this means—along Sir Donald Bradman Drive is light industrial?

Mr Starr—I would not say it is light industrial; it is more warehousing and low-end industry.

CHAIR—It is opposite a residential area?

Mr Starr—That is correct. There is a main road between the areas.

CHAIR—The proposed development along James Melrose is going to be residential?

Mr Starr—No. James Melrose is currently listed under the master plan as recreational. It was going to have a golf course there. There was going to be a housing section for the disadvantaged in the south-eastern corner.

CHAIR—If there is a proposed—I am not saying that it is going to come to fruition—housing development there for whatever purpose, would that be leased or would people be able to buy the housing?

Mr Starr—I imagine that it would be leased. We are not privy to all that information. However, I understand that the aged care facility that has been built on the extension of the cross runway, which, I think, accommodates 80 and is intended to have another 100 buildings on there for aged care, will all be leased. Most aged care facilities are leased to the people for the duration of their lives.

CHAIR—What is the title of the land? Is it freehold?

Mr Starr—The title of the land is leasehold. What would happen is that the developers would be taking a mortgage on that based on the leasehold and they would obviously be able to get security on that. It would be registered on the title—

CHAIR—Do they pay rates?

Mr Starr—Yes, that is correct. They pay rate equivalent payments on an assessed value to the council.

CHAIR—To you fellows?

Mr Starr—That is correct.

Senator O'BRIEN—That is the assessed value of occupied land?

Mr Starr—It is valued by the Valuer-General of South Australia. The Valuer-General does all valuations in South Australia for all councils, with the exception of Adelaide City. We accept those valuations and we are bound by them. We do not object to them; we accept what they tell us.

Senator O'BRIEN—In relation to the airport, they are only required to pay rates on occupied land and on aviation land, are they?

Mr Starr—Section 26 excludes apron ways and all the aeronautical infrastructure but it also, depending on which argument you believe, ignores or does not allow rating of vacant land. There is a huge argument about when vacant land becomes rateable land and that is currently being discussed with DOTARS, the airport and us. We would argue that as soon as land is split up and a third party has an interest in the land then it ought to be rateable in exactly the same way as any off-airport developer through national competition policy would be required to pay their holding costs. We would argue quite strongly that where there is an agreement between parties, subdivision and break-up of land, the holding costs, which are rates, ought to be payable by the developer. That could be a joint agreement by the airport and a third party.

Senator O'BRIEN—What about the terminal itself? Having been there, I know that there is a significant amount of commercial development. How is that rated?

Mr Starr—Again, it is rated by the Valuer-General. It would be rated as commercial. If you look at a place like Harbour Town, for example, which has a large number of retail outlets, the type of rating that they would apply to that would be much the same—not exactly the same—as a shopping centre. So they would look at the type of customer generation out of a shopping centre and apply the same criteria to that development.

CHAIR—But they do not make a contribution to the roads?

Mr Starr—No, they do not—and the roads are actually theirs; they are not council roads.

CHAIR—Until you get out the gate.

Mr Starr—That is right.

CHAIR—But they do not make, as other developers have to make, a—

Mr Starr—No.

CHAIR—So, what are the restrictions? Is it true to the best of your knowledge that there are restrictions at present on gambling, red light areas and all those sorts of things on airports?

Mr Starr—My reading of the agreements that have been signed between the parties is that gambling is not allowed on the airport. That is my recollection of the legislation. In the case of liquor licensing, of course, state rules apply. There is a recent case in South Australia where it was intended to build a sports and social club in an area that had been vacant land for some considerable time. That went through the full gamut of the licensing magistrate and the licensing court and it was eventually rejected by the licensing court on the basis that the amenity deprivation of adjacent properties would be significant. I remember one lady in particular who gave evidence indicating that she was going to come out of the back door of her living area and five metres away there would be a six-metre high fence which obstructed her view of the hills, et cetera. So the implications of development where it is not carefully worked through and where it does not comply with other state and local government requirements can be quite horrendous.

Senator O'BRIEN—I am looking at the map you supplied us and at the roads surrounding the airport. Who is responsible for those roads? Can you take us through that?

Mr Starr—The state primarily is responsible for the roads—they are mainly arterials. Sir Donald Bradman Drive is arterial, Tapleys Hill Road is arterial and Marion Road, which is a little off in the West Richmond area, is arterial. The roads to the east in West Richmond are all council roads. For example, any development in North Plympton will lead directly out onto council roads and council infrastructure. Access for the building of the airport terminal took place via Richmond Road, a council road. That road was cut to ribbons by the heavy vehicles using it. The council will pick up the tab for that—$1 to $2 million.

Senator O'BRIEN—Is the council at liberty to open and close roads to the airport?

Mr Starr—We are fairly objective about that. We know that access is required; we have encouraged the second access from Richmond Road to the airport for some time. The state is not particularly happy with that. I think AAL would probably agree that it is desirable. We sit down and look at the impact it will have on adjacent communities and where it can be facilitated and where it is an advantage we support it. However, I have to say that the IKEA

development on the northern side of the airport had a considerable impact on adjacent properties and in fact a number of parties considered taking legal action to try to resolve the impact of the exit onto Sir Donald Bradman Drive on their properties.

Mayor Trainer—That seeks to develop 4,000 to 5,000 car movements a day. They have a 900-spot car park, and each one of those is used five times a day so there are between 4,000 and 5,000 car movements going in and out of that retail outlet just by the entrance to the airport.

Senator O'BRIEN—Which entrance? Williams Avenue?

Mayor Trainer—It is where that number six is located on the map.

Mr Starr—It is a bit down from May Terrace—Rushworth.

Senator O'BRIEN—There is another entrance?

Mr Starr—Yes, just past number three gate.

CHAIR—Is number three gate a manned gate?

Mr Starr—No, it is a gate that was put in there many years ago to facilitate access to the airport generally but in merchandising access.

CHAIR—Can you get in through it with a swipe and no recognition? No, you can't.

Mr Starr—Sorry?

CHAIR—It's all right. I have the answer.

Senator O'BRIEN—Was permission required from the state government for access onto Sir Donald Bradman Drive from the airport, another access?

Mr Starr—It was required, and permission should also have been obtained from the council, as well.

Senator O'BRIEN—Sir Donald Bradman Road is a state government road, isn't it?

Mr Starr—That is true but the verge of the road and the drainage easement was granted to the state and then passed on to local government under a 1964 agreement between the Commonwealth, the state government and the local council. So there is an area of about 10 to 15 metres that is under our care and control, and the road is the state government's road.

Senator O'BRIEN—So was there an obligation to get council approval for that crossing?

Mr Starr—We argued that there was—unsuccessfully—with the operator. IKEA actually came to us eventually and said, 'We do need this access; we are prepared to make some concessions in respect of particular pedestrian access.' We received that application from them, processed it in 24 hours and gave them approval for that access point—after a lot of discussion, also, with adjacent neighbours.

Mayor Trainer—We get the cooperation of the operators of the enterprises of the airport, like IKEA, but the difficulty for us is to know what they are actually doing and to be in communication with them, because they are kept at arm's length from us as part of the process.

Senator O'BRIEN—It has been suggested to us that there are legal advices floating around that suggest that the use of Commonwealth land acquired for aviation purposes for non-aviation purposes and the application of Commonwealth law for approvals for those non-aviation purposes is constitutionally invalid. Your council's name was mentioned as a possible legal challenger to that arrangement. What position does your council take about that?

Mr Starr—We have had advice on the constitutional issue, as indeed have several other councils. It is an arguable case on the part of our legal advisers. It is something that we have considered challenging.

CHAIR—Is that strongly arguable?

Mr Starr—It goes before a judge, so who is going to know? But lawyers are going to take us into hundreds of thousands of dollars worth of argument, and certainly the council wouldn't authorise me to do that if they didn't have a fair chance of being successful. The argument is there. The advice that is being given is yes, it is arguable. There is a good chance of winning it. There are several bases on which that challenge would be made. We have not taken up that challenge. From our point of view it is a matter of negotiation. We have attempted to negotiate these issues with the airport operator and we will continue to do that. There may come a time when council cannot abide by the process that is being foisted on us and may wish to take that course of action. But it is not taken lightly at all.

CHAIR—The only thing you can be guaranteed of in that process is that the lawyers will win.

Mr Starr—In our experience, that is true. However, there is a fundamental issue here. We have a situation where the off-airport residents and the off-airport businesses see themselves as basically supporting a commercial operation inside an airport by virtue of the fact that they are not paying their rates, by virtue of the fact that they are getting an easy approval process for their development.

CHAIR—So what happens to the run-off?

Mr Starr—The run-off goes into a series of drains. A lot of the water has to be kept on site.

CHAIR—So you deal with the run-off?

Mr Starr—It goes into our drainage system.

CHAIR—So you deal with their run-off.

Mr Starr—Yes.

CHAIR—Do they pay you to deal with their run-off?

Mr Starr—Part of the 1964 agreement said we had to take part of that run-off, but, no, they don't. In a sense, they are like any other developer. Where another developer does a subdivision, he or she is required to do a certain amount of headworks and then the arterials are our responsibility.

CHAIR—So the council, as a friendly gesture—a Junee, Wagga type gesture—suggested to them that they might recycle the water and make use of it on site?

Mr Starr—We have encouraged that. To Adelaide Airport's credit and to our own credit, we use the sewage water from Glenelg treatment works for watering. The airport recycles their water through the airport terminal. To their credit, and to our credit, we try and minimise the amount of discharge to the Gulf St Vincent.

Senator McEWEN—I would like to ask a question about water management at the airport, which is, as we know, located in a sensitive environmental area. You mentioned in your submission that the bunding development around the airport occurred without any consultation with the council. Is that correct? Can you just go through that process, and whether you believe that the amendments that are being proposed to the act will prevent that kind of thing happening again.

Mr Starr—Our view is that the bunding system which currently exists around that airport—and which has been put there over a period of years; it has not just appeared—effectively protects the airport, particularly on the southern side and the western side, from waters that would ordinarily flow through the city of West Torrens. We are built on a flood plain. We would argue strongly that, under any state regime and under any local government regime, approval for that bunding would have to be there because it places a danger on, it places a risk to, surrounding areas. It is development. It is caught by the Development Act in South Australia and would be required—

CHAIR—Are they licensed banks?

Mr Starr—No.

CHAIR—I am very familiar with unlicensed banks.

Mr Starr—You can see how the airport sits in the city of West Torrens. You need to understand that the bulk of the floodwaters that come from the hills go through the city of West Torrens. The River Torrens is immediately to the north; the Brown Hill, Keswick and Sturt Creeks are immediately to the south. A very large proportion of the water that is discharged from the hills and the cities to our east travels through the city of West Torrens. There are occasions when it would be very serious. A one in a hundred year event would see our city—and the airport, I might say, except for the bunded areas—a metre under water.

Senator McEWEN—Are you convinced by what the minister said in the second reading speech about the act ensuring that environment strategies are taken into account when developments are proposed on airports?

Mr Starr—Providing environmental issues include the impact on surrounding areas, we would be happy with that. We would be happier with some sort of regulation that is transparent and accountable. There are clauses in the arrangements now which are obviously ignored. For example, when the brand outlet was built it was built in three different stages. The reason that it was built in three different stages was that it was going to be over $10 million, and being over $10 million makes it a major development proposal and opens it up to a different set of conditions. We would be happy to see it in there, but not if it is a Clayton's requirement that can be avoided.

CHAIR—You cannot blame them for wanting to bund the thing so it does not get flooded. Have any of those banks been built lately, such as in the new development?

Mr Starr—They have been modified recently.

CHAIR—Was there a study done on whether people were going to get their backyard flooded more because of those banks over the road?

Mr Starr—Yes. We have spent hundreds of thousands of dollars on modelling floodwaters through the city of West Torrens. We know the impacts of things like the airport bunding and the airport being built up.

CHAIR—They want to protect the asset, and that is fair enough. In short, is that going to flood houses that would not have been flooded in that one in whatever event?

Mr Starr—Yes.

CHAIR—Will those people be consulted or considered?

Mr Starr—The people will probably come knocking at our door first and say—

CHAIR—But how could you approve it without—

Mr Starr—We did not approve it. We were not asked.

Senator O'BRIEN—Who did approve it?

Mr Starr—Originally, it would have been the FAC.

CHAIR—How long ago was that?

Mr Starr—10 years.

Senator McEWEN—Also in your submission—which is very comprehensive, thank you—you mentioned the issue of the supermarket development that is happening down there. I assume that that is going to go ahead?

Mr Starr—We do not know at the moment. There have been submissions made by adjacent councils. All the councils that have made submissions here have made submissions on that. The interesting thing about this is that, quite frankly, the supermarket is not required for airport purposes at all. There are supermarkets in close proximity. While they have done a retail study, that retail study is, based on my planner's advice, deficient in a number of areas and does not take into account other available areas for supermarket development. This is basically just a piece of land that would be good to have a supermarket on. It might complement the brand outlets system. People have to get in their cars to drive to it. There are no local residents to walk there. It is just a good commercial proposition, and that is the primary motivation for getting a supermarket in there.

Mayor Trainer—In terms of it being used by employees of any businesses on the airport, they would have to drive out of the airport, along Sir Donald Bradman Drive and right around in order to access it. It cannot be accessed internally from within the airport.

Senator McEWEN—What is the attitude of supermarkets around the area to this proposed new development?

Mayor Trainer—They are all dismayed.

CHAIR—When was the last time that it flooded there?

Mr Starr—We come in danger of the airport and the city of West Torrens going under within a matter of minutes several times a year. The waters that flow down from the hills flow through some of the creeks at up to 50 cubic metres a second. There are four or five of those that pass through the city. Our engineers look at the sky and hope for a break in the cloud. That is how close it gets to our city and the airport being flooded.

CHAIR—It sounds to me as though the environmental plan is 'First in, best dressed, and bugger the rest'.

Mr Starr—Your words, Mr Chairman.

CHAIR—We have another one of them on the Queensland border!

Mayor Trainer—If you look at the map of Adelaide prior to European settlement in 1836, you will find that where this airport and most of West Torrens is located was a flood plain. That was the drainage area—

CHAIR—You could probably argue that you should not have built West Torrens there too, besides not building the airport.

Mayor Trainer—That was a decision made 150 years ago and unfortunately we are stuck with it. But the argument could be made that bad planning can be absolutely disastrous. My personal position on the rates is that, although I think that the revenue stream that should be coming to the council should be proportionate, money is only money and you can always remedy that later, but you have any bad planning decisions permanently. They stay there to haunt you, 10 years later, 50 years later, 100 years later.

CHAIR—What I was trying to ask you was, given the wonderful asset that the airport is—you cannot get away from that; it is a wonderful asset—has the local flood plain been tested since all the bunding has been done?

Mr Starr—Yes, it has, and it places residential and other business at risk.

CHAIR—So it is buyer beware?

Mr Starr—It is buyer beware to a degree, but we advise our residents prior to them moving to the area that they will be living on a flood plain and there are risks involved in that. We also have an extensive program of telling them what they need to do if in fact we start facing a one in 30- or 40-years rain.

CHAIR—You have a very good weather forecaster over there. I will not name him because he might think I am putting in a free plug for him, but he very accurately forecast last year's—I had better not use bad language—season. He is forecasting an equally good season, for a nine out of 10 rainfall for three months of the spring, so you may get your test this spring, hopefully.

Mr Starr—I sit on the early flood warning committee for the Adelaide broader metropolitan area. There are a lot of dangers in Adelaide, but the airport and the city of West Torrens are some of the most critical dangers. It is not a matter of whether they will go under—one day they will go under water and the airport will close and most of the city of West Torrens will close as well.

Senator McEWEN—I would like to get back to your opinion as to whether these proposed amendments to the act will in any way solve the considerable number of problems that the West Torrens and surrounding councils have with Adelaide Airport. You have mentioned the licensed club, the supermarket, the rates forgone and still owed. I understand there is quarter of a million dollars or something still owed.

Mr Starr—There is still controversy over $400,000.

Senator McEWEN—So when does land become rateable? Are any of those problems going to be addressed by these proposed amendments?

Mr Starr—No. Our view is that they will not. If you take, for example, the increase in the threshold requiring major development plans going from $10 to $20 million, in effect what that means is that we will have 10 days to approve either a merit assessment or a complying assessment from when the airport publishes its intent to build something up to $20 million. So the average Joe Blow, if they read the back page of the *Messenger* or the *Advertiser*, will see a note there that says, 'We are intending to do this development, you've got 10 days to respond,' as we as a council have. So for developments up to $20 million, 10 days is all the notice that is required. What I think is equally as devastating is that, once they make their point, once they put across the issues that are of concern—sometimes not that great a concern but still of concern—there is no guarantee that their objections will be listened to. The new legislation suggests that will be the case, but in the absence of some rigidity and regulation it might be the same as some of the clauses under the original legislation—non-productive.

CHAIR—Is it fair to say that, if I were—once again without naming any of them—a major supermarket or shopping centre developer, I would go to a lot of trouble with the capture zone? I do not know—are there big shopping centres around here which could simply get blown out of the water with the unintended consequence of one of these?

Mr Starr—Yes, they could.

Mayor Trainer—Likewise with the state government guidelines on how many pharmacies there should be per square kilometre and per head of population in an area. The airport is free to put as many pharmacies at the airport as they like, regardless of the impact that that has on the state plans for a reasonable spread of pharmacies.

CHAIR—We have a little argument going in Sydney at present with the Balmain Tigers club. They actually want to develop a shopping centre as a part of the club because of ailing finances.

Mr Starr—To pick up that point: if a supermarket chain comes to us and says, 'We want to build a shop of 4,000, 5,000 or 6,000 square metres in your area,' the minimum period that they have to get approval is three months. They have to go through a process of submitting detailed plans to the council; it is a minimum period of three months. They are then subject to review. If we refuse it or approve it, there are then third-party rights for those people who have been notified and have objected, and that can go to a court. We would argue strongly that this legislation should have a review mechanism. There should be a mechanism whereby we, the airport or another party can go to a court and say, 'This is not reasonable; this is not acceptable.' It is exactly the same under the planning regime in every state of Australia.

CHAIR—This is a complete opposite to that, isn't it? This is a default clause where if it is not approved it goes ahead anyhow.

Mr Starr—Yes, it goes ahead automatically—and that is an absolute nonsense.

Senator McEWEN—I think you suggest in your submission that there should be something like the DAC.

Mr Starr—Yes, that is correct—some form of jurisdiction that is able to review the situation and make binding decisions.

Senator McEWEN—In her second reading speech the minister stated that the proposed amendments would bring the act into line with state and territory planning regimes.

Mr Starr—That is not true, either in terms of timing or in appeal mechanisms.

CHAIR—Thank you very much for your time and patience.

Mr Starr—Thank you.

[11.23 am]

RANDALL, Mr Gary, Acting Director, Executive Management, Hobart City Council

SHORT, Mr Tim, Economic Development Officer, Hobart City Council

CHAIR—I welcome the witnesses and invite you to make the opening statement.

Mr Randall—Thank you. With our original submission we included a copy of a response that we provided to the Hobart International Airport in relation to their major development plan. We really provided that for information, and we have put together a supplementary submission, which we will speak to today. It essentially tries to give the committee a benefit of our experience in dealing with that proposal and how that relates to the bill.

The council believes that its recent experience may provide a good working example to the committee of some of the perceived deficiencies in the way the Airports Act currently operates and the adequacy of the proposals outlined in the Airports Amendment Bill. It is noted that the council's views are limited to amendments related to developments of a non-aeronautical nature. Also, the Hobart International Airport is not located in the city of Hobart municipal area but in a neighbouring area, and therefore our comments are in response to the impacts the development will have on our city and our metropolitan region. We have not dealt with issues such as rates equivalence and contributions to infrastructure in response to this inquiry, although we do support the submissions of the Council of Capital City Lord Mayors and the Australian Local Government Association.

To assist the committee in its consideration of the Airports Amendment Bill, we have structured this submission in three parts. Firstly, we would like to deal with the issues that arise from our experience in responding to a major development plan for the Hobart International Airport under the current Airports Act provisions; secondly, we will make some comments on the Airports Amendment Bill as they relate to the issues that have been identified; and, thirdly, we will discuss matters that we feel still require some consideration in review of the Airports Act.

Just by way of background, the proposal at the Hobart International Airport is for a retail development of approximately 77,000 square metres and parking for over 2,000 cars. The proposal comprises a direct factory outlet, a bulky goods retail centre and a DIY centre. The nature of the specific tenants are unknown, except that Austexx Pty Ltd will operate the direct factory outlet component under the brand DFO.

Firstly, I will discuss issues in working with the Airports Act in responding to the major development proposal. The council has three primary concerns with the process. Firstly, the information to be provided by a proponent of a major development on airport land is inadequate to make an informed assessment of comment about particular aspects of the proposal. In our view this represents a denial of natural justice. Secondly, there is no acknowledgement in the act that development could have an impact on the surrounding region, and therefore a considered approach by the proponent to what the economic, social, and environmental impacts may be will not be undertaken. It is our view that this will not provide for sustainable development of the region but will have major long-term detrimental

impacts. Thirdly, submissions to a major development plan are made to the proponent of the development. The proponent has the opportunity to summarise all submissions received before forwarding that summary to the department along with the major development plan. It is our view that this represents a conflict of interest and a denial of natural justice and introduces concerns of bias.

I will elaborate on each of these components—firstly, inadequate information. The Hobart City Council's concern with the development, given its large size—it is three times the size of the Hobart CBD central block—is its impact on the regional economy. The draft major development plan gave scant detail of the likely impact of the development on existing retailing from an economic perspective. The reference section of the draft development plan cited a study by Essential Economics. When a copy of the study was requested, the council was advised that it was commercial-in-confidence and would not be released. It was therefore difficult for interested parties to test the assertions by the proponent that the development would be good for the regional economy.

It may well be that the study undertaken, and that is assuming one was undertaken, was an economic viability study of the development and not necessarily an economic impact assessment of the region; we do not know. As a result, the council and at least one other party had to commission their own economic impact assessments at considerable cost, which, as it turned out, demonstrated that the developments would have major adverse and long-term impacts on the surrounding regional economy. Not all parties with an interest in airport developments are able to commit resources to undertake their own assessments. In reaching their conclusions council experts used well-accepted models. However, they were unable to test or examine the model used by the proponents. How can interested parties make informed comment when they are not provided with all the relevant information? It seems a denial of natural justice that the proponents are able to rely on expert advice yet not make that advice available publicly.

Our second point is on the impact of the development. There is no requirement in the current legislation for proponents to look at their development in the context of the region where it is proposed. They are, by definition, major developments and are bound to have some impact. The question is: what is that impact? The Hobart International Airport proposal is the single largest retail development ever proposed in Tasmania — almost 20 acres of retail. Yet there is no requirement to make an assessment of its fit within the region. Our economic analysis prepared by consultants SGS Economics and Planning concludes that this development on a minimum viability basis has the potential to have a negative impact on department stores and clothing, soft goods and household goods retailers in the greater Hobart area by between 22 per cent and 26 per cent. Combined with development already approved in the area, it has been determined that it will take 17 years for the retail demand in the region to catch up with this oversupply.

Were the same proposal to be put forward under the Tasmanian planning legislation, it would be required to demonstrate its impact on the surrounding region. Just by way of demonstration, a recent case in the Tasmanian Resource Management Planning and Appeals

Tribunal in 2006 made this very point on a similar out-of-town development proposed in the north of the state.

Senator O'BRIEN—Launceston Airport?

Mr Randall—That is correct. The development was refused because of the potential impact on the regional economy and because no sound reason was given for not building the development in an existing retail area. Thirdly, as to the process of forwarding submissions, under the act all submissions are forwarded to the airport lessee, which reviews the submissions and is required to summarise them before sending that summary to the Department of Transport and Regional Services along with the draft major development plan. It is understood that the airport lessee must make comment on each of the submissions received.

This seems a most peculiar process and in our view it represents a clear conflict of interest. What other jurisdiction provides a developer with the role of assessor of third-party comments about their own development? A separation of these roles is fundamental to removing any bias or perception of bias from the process. The proponent to the development is able to view all submissions and make comment about them, presumably refuting or accepting the submissions. The parties who have made submissions have no way of knowing what comment the airport lessee has made and what value has been placed on the content of the submissions. There is no requirement to forward original submissions to the minister—hence, in our case, the campaign of lobbying and hand delivery of our submission to relevant ministers, local senators and the department. With a transparent and independent process in which we had confidence, this would not be required.

Further, in summarising those submissions, the proponent has the benefit of examining our expert advice and presumably accepting or refuting it. Hobart city, as an interested party, has no opportunity to examine the expert advice received by the proponents. Alarmingly, in the Hobart City Council's particular case, when its submission was personally delivered to the airport lessee, an employee of that company noted that the council's submission would be forwarded to the economic experts engaged by Austexx, the proposed sublessee, for their scrutiny. Again, this seems to be a patent misuse of information and a denial of natural justice, considering that the economic analysis undertaken by Essential Economics was not publicly available.

I turn now to our comments on the Airports Amendment Bill. As we noted in the introduction, our submission relates only to non-aviation developments. Therefore, as far as the actual amendments are concerned, the council's comments are limited to the sections I will refer to. As to section 92(1)(a)(iv), the council does not support the proposed changes to the period for public comment, from 90 calendar days to 45 business days. The justification for this response is that, in the Hobart situation, the critical document required to make an informed comment about the development—that is, the Essential Economics report—was not made available to the public. As a result, the council had to commission its own independent studies of the development. As you are aware, this is a time-consuming and costly process. It is submitted that 45 days would have been insufficient time for the council to consider the draft major development plan and engage appropriate expert advice, for the experts to reach a position, and for the council to consider that advice and then make a written submission.

Airport lessees cannot have it both ways—limiting the information available and shortening the time frame for intelligent, informed comment. This is also relevant with the proposed increase in the threshold limit for a development to be considered a major development, from $10 million to $20 million. The amendments effectively reduce the time available for comment, with limited information, and double the development size before that opportunity to comment is available.

With regard to section 92(2)(c), the council supports this amendment. It is clearly logical that the lessee company should demonstrate how it has had due regard to public comments. But the council submits that this amendment should be extended to require lessees to advise all of those making a submission as to how it has had due regard to their comments, simultaneous to advising the minister. As to section 93(a), the council supports the proposed amendment to allow the minister to request further information and to stop the clock. This approach is consistent with state planning requirements.

I move to the matters that we think still require some consideration, based on our experience in responding to a draft major development plan. It is submitted that there are number of outstanding issues that could be considered in further amending the Airports Act. Firstly, there should be an explicit requirement for a proponent to clearly demonstrate the impact of their development proposals—socially, environmentally and economically—on the region where the airport is located. This assessment should be provided to the minister and made publicly available. In Hobart's case, the proposed development is equivalent to another CBD being developed in a remote location with no regard to the existing retail fabric of the region or the associated social and environmental impact of the development.

Secondly, in relation to non-aviation development there should be a requirement that a planning assessment be made of the development using the appropriate local government planning scheme in force at the time. Both the act and the regulation currently state that airport master plans must use language that is consistent with local state planning laws. This is not the same as saying that a master plan and major development plans must be consistent with state planning laws. Thirdly, there should be a requirement that the proponents are required to demonstrate how the proposal is consistent with the surrounding planning scheme. Similarly, in making a decision for approval, the minister should be required to demonstrate how the proposal is consistent with the surrounding planning scheme and, if not, why a decision for approval has been made in any event.

The act should provide that the developer should provide precise information on all aspects on the proposed development in the same way that a developer would if making a development application under a state planning system. For example, part 2 of schedule 1 of the Tasmanian Land Use Planning Approvals Act states:

The objectives of the planning process established by this Act (LUPAA) are, in support of the objectives ...

The relevant objective there is:

... to ensure that the effects on the environment are considered and provide for explicit consideration of social and economic effects when decisions are made about the use and development of land …

There are numerous other references in this act noting that proponents and local government assessment should take into account all aspects of development. Fifthly, the council submits that all such information prepared by a proponent should be accessible to the public as part of the consultation process.

We believe that there should be a clear separation of roles between assessor and proponent. There is no local government process in Australia where the public must lodge the submission about a development with the developer and then have the developer view and summarise all submissions before forwarding that summary to the responsible local government for a decision. If this were the case, how would the public have any confidence that their submission was being treated fairly? Such a system is clearly open to perceptions of bias and claims of denial of natural justice. In our view, all submissions received on a proposal should go directly to the responsible Australian government department for consideration in the same way that the public lodge submissions with the appropriate local government authority across Australia.

In conclusion, Hobart City Council appreciates the fact that the government has undertaken a review of the Airports Act. The council trusts that the committee, in dealing with the Airports Amendment Bill will find the council's comments useful. The council believes that there is a strong case for the act to strengthen the requirements for development proponents to make more and better information available to the community about proposals. In particular, proponents of non-aviation development should have a requirement to demonstrate whether they comply with the relevant local planning scheme or not. Further, there are a number of procedural issues that should be addressed to eliminate perceptions of bias, denial of natural justice and conflict of interest. In closing, we wish to support the position of the Council of Capital City Lord Mayors and the Australian Local Government Association in terms of the wider principles of and concerns for local government generally regarding non-aviation airport developments.

CHAIR—Thanks very much for that. I think that we are in for an interesting session from four until five today.

Senator O'BRIEN—Is the airport in the Clarence City Council area?

CHAIR—Have they indicated to Hobart City Council a position? We are a bit mystified as to why they would not be—

Mr Randall—They are betwixt and between.

CHAIR—Is that because of the benefit of the rates or something?

Mr Randall—It is a $100 million development in their city and they are a bit on the fence, to be honest.

CHAIR—Under the proposed set-up—and I will not say what I think—

Senator O'BRIEN—That is not like you.

CHAIR—We are taking evidence, not giving it. There is an obligation to demonstrate, after you have collected the various submissions and assembled a summary of what they all mean, that you have taken into consideration any objections. Is that right?

Mr Randall—Correct.

CHAIR—But if you send me a submission and I have to consider it, I know that after a limited time I can tell you because it automatically goes through. That is a pretty good scheme, isn't it?

Mr Randall—It is a very good scheme, Chairman.

Senator O'BRIEN—You are talking about a development which in size exceeds the CBD of the city of Hobart. There are two other major shopping complexes in greater Hobart, possibly three if Kingston falls in that category. What does your study say about those other shopping precincts?

Mr Short—The study shows that perhaps Hobart CBD may be the better insulated than those other centres. The prime retail area in the city of Clarence where the airport is located would be the worst hit overall. Our study looked at all the major retail centres in the metropolitan Hobart region.

Senator O'BRIEN—You referred to a planning appeals process in relation to the northern development, which I understand is under the control of Northern Midlands Council.

Mr Short—Yes.

Senator O'BRIEN—And that the approval was objected to by the Launceston council.

Mr Randall—Correct.

Senator O'BRIEN—Under the state legislation there is the opportunity for the impacts of a decision of one local government body to be appealed against by another local government body, which sets it apart from the arrangement under this legislation because of the lack of appeal rights. But, if, for example, this development on Hobart airport land were approved under state law, Hobart City Council could appeal against that. Do I understand that correctly?

Mr Short—Yes.

Mr Randall—And, indeed, probably Launceston as well—if they consider they have an interest.

Senator O'BRIEN—You say that and I understand that Launceston Chamber of Commerce has been very active in discussing this issue. Does your study show that the economic impact will be greater in areas outside the greater Hobart area?

Mr Short—Our study looked at the municipal areas within greater Hobart and then it took Tasmania as a whole. It did not look at other areas—for example, Launceston. It certainly showed that the size of the development was big enough to impact on the entire retail offer in Tasmania. It was a small amount—I think it was three per cent across the state, but that is not bad for one development.

Senator JOYCE—The development at Hobart airport?

Mr Short—Correct.

Senator JOYCE—My God! It is big.

Mr Randall—There are 20 acres of retail.

Senator O'BRIEN—Will these amendments impact on that development or has that process been, and will continue to be, carried out under the existing legislation?

Mr Short—It is our understanding that it is already being considered under the existing framework, so the amendments will not have any effect. We understand that submissions are currently before the department for consideration.

Senator O'BRIEN—The minister is the person who has the power to make the decision under the legislation. Effectively, it is before the minister, is it?

Mr Short—That is our understanding, but we have been unable to clearly clarify that.

Mr Randall—It would be nice if we could have this proposal considered under the amendments.

Senator O'BRIEN—That might mean that it would not need to be considered—it could just run out of time and be deemed to have been approved.

Mr Randall—True.

Senator O'BRIEN—Do you know of any other approvals process which gives automatic approval after the elapsing of time and the approval process has not been completed?

Mr Short—No.

Mr Randall—Not to my knowledge.

Senator O'BRIEN—Have you been in consultation with the government about the legislation and its implications in that regard or in any other regard?

Mr Randall—The Lord Mayor did write to the Premier on a couple of issues.

Senator O'BRIEN—This is federal legislation—I am asking about consultation with the federal government.

Mr Randall—No, only through our lobbying.

Senator O'BRIEN—Thank you.

Senator JOYCE—What is your main concern? Is it the draw of business away from Hobart—$100 million investment at the airport and its effect on the commercial precinct of Hobart. Is that the major concern?

Mr Randall—That is our primary concern.

Mr Short—And the fact that it is not subject to Tasmanian planning legislation.

Senator JOYCE—I am just fleshing this out. That is what differentiates it from $100 million investment, say, in the north of Hobart—if a developer wanted to develop a $100 million shopping centre in some other area, wouldn't that basically have the same concerns?

Mr Randall—If it was not on the airport land, it would be considered under the Tasmanian legislation.

CHAIR—Senator Joyce, I will give you a briefing—it is lunchtime.

Proceedings suspended from 11.46 am to 12.45 pm

COCKBURN, Mr Milton Roy, Executive Director, Shopping Centre Council of Australia

CHAIR—I welcome the representative of the Shopping Centre Council of Australia. Milton Cockburn, how are you?

Mr Cockburn—Not bad, Senator.

CHAIR—Would you like to make an opening statement?

Mr Cockburn—A very brief one; I know you have the submission. I would like to make it clear at the outset that we have never had any concerns about the fact that land use planning and development control for aviation related developments at airports is a matter for the federal government. We have never argued to the contrary and I am not aware of anyone who has. These are matters to do with runways, terminals and aprons, which are obviously matters of national significance and they should be matters for the federal government as regulated through the Airports Act. Our concern has only ever been about non-aviation developments. We believe that non-aviation development—that is, commercial development—on airport sites should be subject to the same level of scrutiny, community consultation and planning assessment as similar developments under state or local planning laws. In other words, we believe there should be a level playing field for commercial developments irrespective of whether those developments are located on airport land or outside airport land. The federal government requires its own government businesses to comply with local planning laws. We cannot understand, therefore, why it exempts private businesses from those laws simply because they are leasing Commonwealth land.

There are elements of the Airports Amendment Bill 2006 which have addressed concerns that we have expressed over the years and, in particular, in our submission on the review of the Airports Act. We have referred to these on page 2 of our submission. But there are also retrograde measures as well as a number of anomalies that have still not been addressed in the bill and we have referred to these on page 2 of our submission. I want to nominate three particularly serious ones. The first is the increase in the threshold for the requirement for lodging a major development plan from $10 million to $20 million. We have been given no explanation as to why that increase is necessary. I am sure you would agree, Senator, that the rate of inflation under the Howard government in the last 10 years has certainly not been 100 per cent. We are concerned about the halving of the period of public consultation from 90 days to 45 days and, similar to that, the fairly significant almost halving of the period given to the minister to consider master plans and major development plans. Thirdly, we are concerned about the absence of any sort of developer contribution regime to ensure that airports pay the infrastructure costs of commercial developments on their lands and to ensure that those costs do not fall on taxpayers and ratepayers.

We have attached to our submission the submission we made to the Airports Act review in 2003. We have also attached for your information a fairly comprehensive speech that our chairman gave to the Australian Aviation Mayoral Council, which sets out in some detail our concerns. Thank you for the opportunity of appearing before you. I am happy to answer any questions.

CHAIR—Thanks very much for that. What do you imagine it means to 'demonstrate' that someone has taken public comments into account?

Mr Cockburn—I am not sure, but I see that as an improvement in the sense that previously all the airport lessee had to do when forwarding the MDP or master plan on to the department was simply to state that they had taken those things into account. We hope that the change in wording will mean that DOTARS will now take a much more rigorous approach to ensuring that they have in fact taken into account those sorts of submissions. In other words, questions will go back to the airport lessee about the submissions, asking them to point to areas where they have taken those submissions into account and perhaps to change their MDP as a result of those submissions. Like all these things, it will depend upon the degree of rigour of the bureaucrats in DOTARS. Nevertheless, we do see that as a welcome change.

CHAIR—Hands up anyone who really knows what that means. No hands went up. If you argued about that for a certain length of time, it would not matter anyhow, would it?

Mr Cockburn—It would matter in one sense—

CHAIR—But it would not matter in that the development would go ahead.

Mr Cockburn—Yes. One of the reasons why it would go ahead is that, given that the minister now only has 55 working days to consider the MDP, if he fails to make a decision in the 55 days, the development goes ahead.

CHAIR—Is there any commentary that you would like to make about that?

Mr Cockburn—Yes. In most local government and statutory regimes that I am aware of there is a deemed refusal if the planning authority does not consider the matter within the statutory time period. Here we have a reversal of that; it is a deemed approval.

CHAIR—In plainer language, would that be a loophole?

Mr Cockburn—There are 22 privatised or leased airports around—

CHAIR—I am sure that I will get a different coloured response, but this is your opportunity—

Mr Cockburn—Yes. There are 22 leased airports around Australia, all of which I think have now lodged their master plans and had them approved and many of which have lodged major development plans and had them approved. We are talking about 30-odd master plans or major development plans. We are not aware of one single instance where the minister has rejected a master plan or an MDP. That is the sort of strike rate that a private commercial developer could only dream about. To come back to your question, we are incredibly sceptical about the planning regime that exists anyway if in fact all of these things have actually been approved and, as far as we are aware, without substantial amendment. We have always regarded this process as being a bit like appealing to your mother-in-law about your wife. You can do it, and you are encouraged to do it, but you should not do it with any expectation that you are going to be heard. We do not think the bill changes that at all.

Senator McEWEN—Could you please clarify which shopping centre owners you represent; I know that Centro has been mentioned.

Mr Cockburn—We represent largely the major owners of shopping centres. We have 21 members. They range from Centro, Westfield and Colonial First State Property—the very large owners—down to a couple who only own three or four properties. We also represent Jones Lang LaSalle and Savills, which are the two major independent commercial shopping centre managers.

Senator McEWEN—Okay. I just wanted to get a sense of who you represent.

Mr Cockburn—In total, our members own around two-thirds of the gross lettable area of shopping centres in Australia.

Senator McEWEN—The thrust of your submission is that there should be a level playing field. In the minister's second reading speech she made mention of the fact that these proposed amendments to the act would bring planning for developments on airport land into line with state and territory development requirements. Is that an opinion that you share?

Mr Cockburn—No. The only way that could be done is if the government said, 'We accept that there is no justification for having different planning rules for commercial developments on airport land than for commercial developments that lie outside airport land.' Until they accept that, clearly that statement cannot be correct.

Senator McEWEN—Given that we have heard that local councils are broadly opposed to these proposed amendments and you represent a substantial proportion of shopping centre owners and managers who are also not particularly happy with the amendments, why do you think they have been proposed?

Mr Cockburn—I could not say. I have my own theories but I am not sure they are particularly relevant to the work of the committee. I would like to make it very clear that we are not opposed to the commercial development of airport land.

Senator McEWEN—I understand that.

Mr Cockburn—I want to stress that. If this land is genuinely no longer needed for aviation purposes then to us it makes sense for this land to be commercially developed. As I said, we are simply concerned about the fact that there is not a level playing field between a commercial developer operating on land just outside airports and airport lessees operating inside.

CHAIR—The people that you represent comprise two-thirds of retail shopping?

Mr Cockburn—Yes, it is two-thirds of the gross lettable area of shopping centres.

CHAIR—We have all watched the challenges of retail and the consolidation of retail. The old Concord West shopping centre disappeared—the strip shopping with no parking and all the rest of it. The model of shopping that you present has been a great convenience for the public. It is a bit of a curiosity to me. Have any of your mob made application to build one of these on an airport?

Mr Cockburn—They have not, so far.

CHAIR—Why not?

Mr Cockburn—In many cases we have already got a shopping centre just outside the airport land.

CHAIR—So it is a matter of interfering with—

Mr Cockburn—I think it is only a matter of time before that starts to occur. I have my doubts as to whether retail development is particularly viable on airport land. It is obviously the case that it is in some airports. In your home city, Senator McEwen, where you have fairly spacious land available and an airport that is only a 10-minute taxi ride from the centre of the city, it is obviously a case where it is commercially viable. But take a case like Sydney airport, which is proposing retail development on its land there now. It is probably going to be problematical as to whether people are going to battle the traffic to get out to Sydney airport in order to do their shopping. There will be a certain catchment area, obviously, available to them.

CHAIR—But the first development application that goes ahead on an airport may trigger another series of events like the old strip shopping versus the—

Mr Cockburn—A lot of the development that is on airport land now is competitive with our shopping centres. For example, Harbour Town in Adelaide is obviously a competitor to a number of shopping centres located around it. The DFO that has been constructed at Brisbane airport is obviously a major competitor to Centro Toombul. So we are living with the reality of retail development on airports.

CHAIR—This is going somewhere, believe it or not. I have grave reservations about some things that are going on—the Queanbeyan stuff. Anyhow, you are allowed to have reservations. I would have thought that if a major came to an arrangement with an airport somewhere it may well facilitate the argument for some extra planning besides the internal processes proposed under this.

Mr Cockburn—That may well be the case but, as I understand it, what is really envisaged in the development, for example, of Brisbane—I do not want to pick on Brisbane; I am just using it as an example—is an airport city. In their literature they effectively describe that as an airport city. I think it is called the Brisbane Airport City. Certainly, in public comments that the chief executive has made he envisages Brisbane airport growing up to be a city within a city in Brisbane. There is already a major direct factory outlet there. They are envisaging several other stages to that development, including further retail. If that is not throwing into stark relief the major problems that we have in terms of planning development and control of these airports, I do not know what really would. It is already happening. I do not think it takes an application to have, for example, a traditional subregional shopping centre at an airport to throw that into stark relief. I think it is already occurring.

CHAIR—Is there any analogy between this and proposals to develop shops by the likes of rugby league? Does it throw up similar issues?

Mr Cockburn—Not really. I think you are probably referring to some reported developments that are going to occur in New South Wales. Those developments, if they proceed, would obviously require the lodgement of a development application to the local council. They would be required to be assessed against the local planning scheme.

CHAIR—And they will be, but there could be a possible impact in a similar manner to the airports thing. If I were a major and I analysed some land that was adjacent to an airport—I can think of one case which I will not name where there is a lot of medium density high-rise

development going on—then I could plan the residential side of it and then plan the shops that ought to be associated with it. It could possibly blow up if there was a development at the airport.

Mr Cockburn—Do you mean if there was a development at the airport?

CHAIR—If one was not attached to the other in a planning sense.

Mr Cockburn—You mean if there is a development at the airport it might jeopardise the viability of that?

CHAIR—Yes.

Mr Cockburn—That is certainly going to be the case. That is one of the frustrations, I suppose, that people have. Those sorts of developments are not being considered in totality in terms of their relationship to or impact on other developments around them. Effectively, what is happening under the Airports Act is that these 22 airports are being treated as islands within cities operating under their own rules—rules that surrounding areas do not have to conform to. If you can only assess these developments in isolation then that is clearly going to be an outcome.

Senator McEWEN—I have a question about the developer contributions regime. You mentioned that that would be an appropriate thing to put into legislation. Mr Cockburn, if Centro were to build, for example, a shopping centre or complex, what percentage of the costs—I am not talking about airport land; I am talking about off-airport land—of the establishment of that centre would be development contributions?

Mr Cockburn—I cannot answer that. I can probably come back to you with a generalisation but it obviously depends on the particular council and the particular development. I know of a couple of instances recently where quite significant contributions have had to be made by the owner of the shopping centre to the local council to compensate for the impacts the centre would have on traffic and other things around that shopping centre. We are talking about millions of dollars—there is no question about that.

Senator STERLE—Mr Cockburn, you talk about a level playing field. For example, in my home town of Perth we have the Belmont shopping centre. What would be the situation if there was a shopping centre constructed on the airport land in Perth? What is the financial difference between one shopping centre having to pay the rates et cetera and the other centre on the airport land?

Mr Cockburn—I do not know in that instance. The owners of Belmont shopping centre are members and I could certainly come back to you with an answer to that question.

Senator STERLE—Thank you.

Mr Cockburn—I know that argument has been going on in Perth for a couple of years, not of course in relation to retail development on the airport land but in relation to development generally. I know that the Belmont council has expressed concern about that for some time.

Senator STERLE—I am sure the benefits would flow on to the community, but we will check anyway.

Mr Cockburn—In relation to rates—and certainly the representatives of the airport would be better placed to answer this—I think in some cases contributions are being made to local councils in lieu of rates. Whether they are substantial contributions and whether they reflect what would be the sort of contributions they would be required to pay if they were a rateable property, I am not sure. I have seen references to the fact that some of them are paying rate equivalents to local councils.

Senator STERLE—I have heard some figures that are quite substantial.

Mr Cockburn—I am not sure in that regard.

Senator McEWEN—When places like Harbour Town—brand outlet centres—were established on airport land that was a different kind of retailing from what Centro and Westfield do. Is there now a push to replicate the kind of retail that Centro and Westfield and your members provide on the airport land? Are they getting away from the brand outlet concept?

Mr Cockburn—Not so far. The only substantial retail development that has occurred on airport land has been the retail outlet centres—either Harbour Town or DFO. I should make it clear however that that form of retailing is not exclusively on airport land. In fact, it is probably the case that at least half of the retail outlet centres around Australia are not on airport land.

CHAIR—Thank you.

[1.07 pm]

HANLON, Mr David, Manager, Commercial and Infrastructure, Virgin Blue Airlines Pty Ltd

THOMAS, Mr Michael James, Government Relations Adviser, Virgin Blue Airlines Pty Ltd

CHAIR—Welcome. Do you have an opening statement?

Mr Thomas—On behalf of Virgin Blue, I would like to thank the committee for the opportunity to address it and to further articulate our position in relation to the Airports Amendment Bill 2006. As outlined in our submission, Virgin Blue is broadly supportive of the bill but does have reservations regarding a couple of specific provisions contained within it. These primarily relate to the changes to the ACCC monitoring arrangements and the removal of the five per cent restriction on airline ownership of non-core regulated airports. In addition, since Virgin Blue made its submission we have identified an additional area of concern. This concern relates to item 16 and 23 of the bill which relate to non-aeronautical development on airport lands. Virgin Blue is concerned about the potential for such developments, whilst being within the parameters of an airport's master plan, to impact on the further expansion of aeronautical infrastructure. Clearly, the primary focus for airports and airport operating companies should be aeronautical services. After all, that is why we have airports. Having said that, we do recognise that there is an obvious economic and social benefit from having non-aeronautical developments within airport precincts. What Virgin Blue wants to see is a sensible balance achieved between aeronautical and non-aeronautical development.

Virgin Blue would also like the government to address the emerging problem of some airport operators using this wider acceptance of commercial non-aeronautical development on airport lands to undertake valuations of those lands based on commercial opportunity costs and then using these valuations in commercial negotiation with airport users to justify proposed increases in aeronautical charges. The issue has been the subject of some examination by the recent Productivity Commission review, but Virgin Blue would like to see more action from government to address this problem. Therefore, in regard to items 16 and 23 of the bill, Virgin Blue fully supports the position and shares the concerns expressed by Qantas in its submission to this inquiry. While Virgin Blue apologises for not including these concerns within our own written submission, we hope the committee will take into account the very short time frame that was available to prepare submissions, which included the Christmas and New Year periods.

As mentioned earlier, Virgin Blue does hold some reservations regarding the specific provisions that seek to change the ACCC monitoring arrangements and the removal of the five per cent restriction on airline ownership of non-core regulated airports. As a general principle, Virgin Blue does not broadly support vertical integration within the aviation industry, especially within the context of cross-ownership between airlines and airport operator companies. Virgin Blue's objection to vertical integration of that nature is based on the potential for a competitive impact on aviation services to occur between the economic

incentives by either the airport operator or the airline that the airport operator has a financial interest in. Having said that, Virgin Blue does not object to airlines having an absolute or significant ownership in specific infrastructure at airports, such as terminal space. Direct ownership of this nature is unlikely to have the same competitive disadvantages that would arise from the cross-ownership of an entire airport.

In concluding my remarks, I just wish to address Virgin Blue's concern over the proposed changes to the monitoring, evaluation and reporting regime for the quality of airport services and facilities undertaken by the ACCC. The existing provisions of the act require the ACCC to subject core regulated airports to regulator monitoring, evaluation and reporting of quality of airport services and facilities. However, Virgin Blue contends that the provisions contained within item 152 of this bill may be used to exclude some or all core regulated airports from future ACCC monitoring and reporting. Virgin Blue strongly believes that the current quality-monitoring regime for core regulated airports should continue and that no attempt should be made to change the existing arrangements.

In conclusion, I reiterate that Virgin Blue broadly supports this bill but has some reservations, which I have outlined in our written submission and in my earlier remarks. I once again thank the committee for the opportunity to address it and I am happy to take questions.

Senator FERRIS—Could you please give us some more detail on what you call a sensible balance between aeronautical and non-aeronautical activities on airport land? That is what you referred to in a general sense. I would be interested to know in more detail what you see as that balance.

Mr Hanlon—Ultimately, the airport leasing companies were given the lease on that area or land to run an airport. The last thing we want to see is, like we did in Sydney recently, that all of a sudden the commercial interests outweigh that of aeronautical. There is a limitation on plane parking spots in Sydney and that was one of the problems when Sydney airport proposed a shopping complex being built down there. These airports and the infrastructure need to be kept for aviation and kept for the future of Australia. We cannot have competing interests through private entities taking away that infrastructure. It needs to be kept for the future. It needs to be kept for 99 years.

Senator FERRIS—Do I deduce from that answer that you are broadly in favour of the Harbour Town outlet stores that are now at, for example, Canberra airport and many of the other interstate airports? Are you in favour of that, but no more? I am just trying to establish what you mean by a sensible balance.

Mr Hanlon—I suppose a sensible balance is that ultimately these are aviation assets and they need to be kept for that. We have master plans in place that look 20 years into the future. We need to be mindful that the land is kept for future runways and future terminals. If the commercial interests of those entities take hold and all of a sudden we do not have that availability of space, infrastructure et cetera for the aviation market, then we are just going to shoot ourselves in the foot for future generations.

We do not believe the Harbour Town at Canberra Airport is an issue, because ultimately Canberra Airport has enough space for aviation needs now and into the future. Brisbane

airport is another one that has extensive land holdings and we have worked with Brisbane airport, because they have a Direct Factory Outlet, like a shopping centre, in their airport. Melbourne airport is another one we work closely with. These are the airports that have massive amounts of land and we do not see any problem with them utilising that asset and trying to get a commercial return on that. We are not there to stop them getting a commercial return on it.

Senator FERRIS—I notice you did not mention Sydney. Does that mean you did not favour the Sydney development?

Mr Hanlon—Sydney airport is a unique case because it is 887 hectares and it is very much capacity constrained or close to capacity constrained now. If we start taking what is available there and putting in commercial precincts et cetera, we are really going to be looking at a second airport in Sydney sooner rather than later—

Senator FERRIS—Don't go there!

Mr Hanlon—which gets us to another whole problem. Sydney airport is a unique one. That is why I mentioned Perth, Melbourne and Brisbane, which do have extensive areas of land and which can be used for commercial. It is not going to interfere with the aviation industry now and for a long time into the future.

CHAIR—Where are the world's most crowded airports? Would Los Angeles be one of them?

Mr Hanlon—Los Angeles, of course Heathrow, Narita—

Senator FERRIS—O'Hare, Chicago.

Senator JOYCE—Hong Kong.

Mr Hanlon—Hong Kong, yes. Hong Kong had to build a new airport.

Senator FERRIS—Hong Kong is all right now. Kai Tak was bad.

Mr Hanlon—That is the balance we are talking about. We need that sensibility. The problem now is that you have private entities in there that need a commercial return and they are looking at trying to use other means of getting that. We do not want to see prices for aeronautical services go up, and we are happy for them to use the surplus capacity for other infrastructure like shopping centres, car parks and movies—that type of stuff.

Senator O'BRIEN—I am interested in your comment that you broadly supported the Qantas submission in relation to this bill and particularly—

Mr Thomas—A correction, Senator. We restricted our support to addressing items 16 and 23.

Senator O'BRIEN—So not 39, 42, 43 or 45? You specifically do not support those?

Mr Thomas—We have general support for them.

Senator O'BRIEN—Okay. Let's have a look at 16 and 23. Qantas said in their submission:

It is imperative that non-aeronautical activities do not become the basis for the valuation by airport operators of the commercial opportunity cost of airport land used to levy charges on airlines to generate a return on capital.

Is that the sort of proposition you support?

Mr Thomas—Absolutely.

Senator O'BRIEN—What are the implications for airlines of that approach to land valuation? Virgin have had a very public exchange of views with Sydney Airport Corporation Ltd on that subject; can you expand on that.

Mr Hanlon—Pricing is built by some airports on what is called the 'opportunity cost' of the land. We have opposed that throughout all of the Productivity Commission hearings and we have spoken to government on this many times. There is no other opportunity to use aeronautical land except for an airport. The lease says that and the Airports Act says that. That comes back to the question at the start about balance. We do not want to see airport pricing go up because they can say, 'Well, if we don't put your prices up we can put a shopping centre in and get twice the rent on it.' I do not think the government sold them or gave them the 99-year leases on that premise. We want to see a proper and robust solution to that and we have fought both publicly and privately on the opportunity cost. If we start looking at commercial precincts going in and all of a sudden the price of the land generally around that precinct and within the airport itself goes up, or is seen to go up, then that could have an impact on our aviation charges. If aviation charges were to go up, if that were to happen, it would have a direct impact on the aviation market and would be a deadweight loss to society.

Senator O'BRIEN—So fares would go up—

Mr Hanlon—Absolutely. If the costs to land and take off and to use the terminal and the other aeronautical assets were to increase then fares would, by definition, go up because it is one of our costs. Fares are an important part of the overall cost basis for Virgin Blue and, if we see an increase in our costs, ultimately the price of airfares will go up. If airfares do go up then it will have a direct and detrimental impact upon the broader economy of Australia.

Senator JOYCE—In your pricing do you have any concerns about association between the ownership of the airport and the ownership of the airlines and, if that association gets any closer, could it affect the pricing competition for you guys?

Mr Hanlon—Absolutely. We have said that we do not agree with that vertical integration of an airport and an airline in having the same owners. We have said that in our submission and we certainly do not agree with that. That could happen if one airline and one major airport were owned by the same group. They could put the prices up knowing that the revenue stays within that group for that entity. Ultimately it impacts on Virgin Blue and Rex and the other smaller aviation carriers.

Senator O'BRIEN—Just returning to the questions that I was asking in particular in relation to this bill: does this bill have specific provisions which heighten your concerns about this land valuation issue and therefore the argument you developed about an ultimate impact on costs of operation and fares? What particular provisions are you specifically complaining about?

Mr Thomas—There is no specific provision within the bill regarding the pricing and opportunity cost pricing. What is contained in the bill is the addition—I think it is in section 23—of any commercial development that is approved within a master plan being approved. That was the impetus for our concern because in the master planning process significant commercial development can be approved through that master plan, which would then potentially impact upon the aeronautical services offered at an airport and their future expansion. The secondary issue of the pricing was in addition to that. If you could use the land for commercial purposes you could therefore justify an increase in landing fees and aeronautical charges based on the opportunity cost of land—and some airport operators are using this argument in their negotiations.

Senator O'BRIEN—But surely the lease which the operator has entered into requires the property to be used for aviation purposes as its primary purpose, doesn't it?

Mr Hanlon—Absolutely. That is what we are saying. There is no other opportunity; it has to be used as aviation, and we try to negotiate that out of the talks. You are right: it should not be used for anything else. It comes back to that balance.

Senator O'BRIEN—There is no opportunity cost for aviation assets other than aviation, and a fair charge for that is the issue?

Mr Hanlon—Correct, and seeing airport owners and companies trying to leverage off these commercial precincts in order to say, 'No, there is an opportunity to use that land elsewhere.'

Senator O'BRIEN—What does the ACCC say about that?

Mr Hanlon—We are going through a change at the moment with airport pricing. The Productivity Commission has sent its draft report out and we are waiting for its final report. Ultimately the ACCC will do what the government tells it to. But if we go back and look at the last decision which the ACCC looked at, which was the Sydney airport pricing decision in 2001, it went back and looked at it from an indexed historical cost basis. We believe that is a fair basis.

Senator O'BRIEN—What role does the lessor play in the valuation given that they have imposed conditions on the use of the property? Does the government play any role at all?

Mr Hanlon—No, ultimately it is the airport lease company that will try and increase its revenue or its pricing by these means.

Senator O'BRIEN—When you talk about the government telling the ACCC what to do, do you mean via legislation and regulation?

Mr Hanlon—Yes.

Senator O'BRIEN—So whatever regulatory instruments the government has promulgated will impact on the pricing regime?

Mr Hanlon—Correct.

Senator O'BRIEN—In terms of the bill before the committee, are there any provisions which in any way impact upon the issues you were discussing with Senator Joyce—that is, the vertical integration of airline and airport ownership?

Mr Hanlon—It is the five per cent. This bill talks about the five per cent on those specific airports and—

Senator O'BRIEN—That is for the secondary not the primary airports, isn't it?

Mr Hanlon—Correct—the Bankstowns and the Archerfields of the world. We do not mind that five per cent as long as it is limited to those airports. We see those as secondary airports, not main RPT operators, so we do not see that that is going to have a significant impact on the aviation market in Australia.

Senator O'BRIEN—Your new aircraft could fly into Bankstown, couldn't it?

Mr Hanlon—Yes, it could.

Senator O'BRIEN—I do not know what your plans are and I am not asking. So it could impact—

Mr Hanlon—It could in the same way as it could at Mount Isa or one of those other airports as well. But we do not believe that five per cent is a big number and we are happy if it is limited to five per cent to those airports.

Senator O'BRIEN—Otherwise this bill does not concern you about the major airports in that regard?

Mr Hanlon—As long as it does not creep in and start including those majors, correct, and our support is qualified on the support for those airports only.

Senator JOYCE—Archerfield, Tennant Creek—

Mr Hanlon—Yes, and Mount Isa—the ones that are nominated in the regulation.

CHAIR—There you go. It was not all that painful, was it? Thank you very much.

[1.28 pm]

KEECH, Mr Kenneth Gordon, Chief Executive Officer, Australian Airports Association

McARDLE, Mr John Patrick, National Chairman, Australian Airports Association

SKEHILL, Mr Stephen Francis, External Legal Adviser, Australian Airports Association

SYNNOT, Dr Russell Norman, Adviser, Australian Airports Association

CHAIR—Welcome. Do you have any comment to make on the capacity in which you appear?

Mr McArdle—I am also the Manager of Corporate Affairs and Risk for Adelaide and Parafield airports.

CHAIR—Please make an opening statement.

Mr McArdle—Thank you for the opportunity to address the committee and present the views of 22 of the 258 member airports. The Australian Airports Association generally supports the Airports Amendment Bill 2006 subject to clarification and amendment of some items in the bill. We have made a written submission which contains the consensus views of our member airports. I do not intend to speak at length on the contents of the written submission or the entire contents of the bill as we support most of the amendments; rather, I wish to concentrate this address on a few key issues.

Firstly, the privatisation of the federal airports, which began in 1996, was a major and successful initiative for generating considerable international and national interest. The leasing of the airports was predicated on the basis of the airport lessee companies being able to earn a commercial return for their shareholders.

The tender process, and consequently the prices that were paid for those leases, proceeded on that basis—that lessees' companies would operate under the Commonwealth planning scheme of the Airports Act 1996. This was clearly explained and documented to the bidders for the airport leases at the time as part of the sale and purchase agreement. Since that time there has never been any intention expressed by the Commonwealth to allow state or local governments to control developments on airports. This bill seeks to consolidate the current planning system and the system for evaluating and approving developments on airports under the existing Commonwealth regime, and the Australian Airports Association wholeheartedly supports this.

Airports are a significant element of the national transport infrastructure. Airport lessee companies have invested considerable sums of money in the aviation infrastructure on the leased lands to enhance the overall network of Australian airports and will have to invest major sums in the future if that infrastructure is to keep pace with demand. This can only happen if the airports are able to receive a commercial return from the development of these leased lands, and that necessitates an efficient planning and approval process. The collapse of Compass, Ansett and the recent September 11 issues et cetera have made financial institutions cautious of lending against aero revenues alone. To consider allowing any form of state or

territory involvement in directing the development of airports would be highly detrimental to the future development of this national aviation infrastructure.

In respect of infrastructure, the state and local government planning systems are themselves in disarray, and subject to poor evaluations from within their own planning profession. One only has to see the inconsistent approach the states and local government have to water, road, rail and ports infrastructure to see why the continuation of the existing Commonwealth controls over aviation and airport development are critical. This is further highlighted by the disturbing lack of action by state and local governments around Australia in protecting national aviation interests by allowing urban encroachment around airports. State and local governments have no necessity of balanced motivation to protect the long-term viability of airports. In these circumstances it is the Commonwealth who must then fund the noise insulation programs, fight legal battles with developers, and administer noise complaint services as a result of the oversight of state and local governments. The proposed bill does not go far enough in our view in dealing with this issue and the Commonwealth should be proactive in requiring the states to formally recognise airports and associated flight paths and not allow residential development adjacent to or under such areas.

The second issue I wish to address is the proposed increase in the cost trigger for an airport to provide a major development plan for a proposed development. The proposal to increase the amount to $20 million reflects commercial reality and the increases in construction costs over a 10-year period. In addition, the act now requires airport lessee companies to include site work costs and site preparation costs in their total project assessment, which was not included in the original $10 million. Hence, if these two factors are considered, the increase from $10 million to $20 million is fair and will only remain fair as long as a recognised inflator is included in regulation to adjust the figure regularly going forward and not to have a 10-year review period as has happened since 1996.

Thirdly, the Australian Airports Association supports the reductions in public display and government assessment times for master plans and project approvals. However, it is important to recognise that the reductions are not as large as they appear or as should have been proposed. They are still considerably longer than the comparable state and territory timings, and with the inclusion of the new stop-clock-provisions a possibility to have an open-ended assessment period has now arisen, with the possible disadvantage to on-airport developers. These proposed amendments to the approval system are sadly lacking in relation to the Commonwealth's own guiding principles for such systems as described by the development assessment forum. The stop-the-clock provisions as proposed in the bill to allow a minister to request further information will need to be heavily regulated to prevent inappropriate use or even politically motivated misuses of those powers. The Australian Airports Association has made suggestions in our written submission regarding some amendments to alleviate such prospects.

Fourthly, there are also some amendments, which would place more onerous and highly expensive constraints on airports, which are likely to defeat the objectives of their inclusion—in particular, the need for airports to prepare and lodge a completely new master plan if an Australian noise exposure forecast changes. As we have discussed in our submission, the Australian noise exposure forecast for an airport could change by the actions of a third party,

such as Airservices Australia changing a flight path, or changes to airline operating procedures. It is not considered reasonable to require an airport to develop a whole new master plan just because a third party instigates a change to an ANEF. This proposed amendment should be either removed from the bill or amended, so that only a variation to that part of that master plan that is affected by a change to an ANEF is required, or the master planning process and the ANEF system should be separated.

In summary, the Australian Airports Association supports the majority of the amendments in the bill as proposed. However, we contend that there is an opportunity for further improvement. The planning and development powers should remain with the Commonwealth and shorter display periods and assessment timings should be included in the bill. The stop-the-clock provisions should be heavily conditional to prevent inappropriate use or even political misuse. The ANEF system for long-term land-use planning is supported but should be separate from the master planning process or, alternatively, airports should not have to provide a whole new master plan every time an ANEF changes but only a variation to the affected parts. The Commonwealth must do more to prevent the states from allowing urban encroachment around airports and thereby reducing the capacity of national aviation infrastructure assets to meet essential needs in the future. I thank the committee for the opportunity to present the views of the AAA.

CHAIR—Thank you very much for that. I think everyone realises the value to a region of an airport. How many major airports in Australia do not have a curfew?

Mr McArdle—Only three major airports that I am aware of have a curfew: Coolangatta, Adelaide and Sydney. The rest of them do not have a curfew.

CHAIR—It would be great to plan into the future so that those airports, if they can, remain without a curfew. That would be a great asset to the nation, wouldn't it?

Mr McArdle—I could not agree with you more.

CHAIR—So why would Queanbeyan want to risk that?

Mr McArdle—I am not in a position to answer for Queanbeyan.

Mr Keech—We sat and listened to what they had to say earlier this morning. Frankly, it seems to me that there was insufficient recognition of the important role that Canberra Airport plays in this particular region.

CHAIR—That is the dorothy dixer for you fellas, but now comes the difficult bit: how do you demonstrate that you have taken into consideration the concerns that are raised over a development at an airport? What does the word 'demonstrate' mean?

Mr McArdle—It means to show formally in writing—

CHAIR—You are not going too well.

Mr McArdle—I will pass over to my colleague Mr Stephen Skehill.

CHAIR—Go to the lawyer. Lawyers are about the law, not the truth, so we will go to the lawyer! Courts are about the law, though, aren't they? I got in trouble the other day for saying the courts are about the law and, every now and then, it intersects with the truth. That is why you employ a lawyer.

Mr Skehill—If that amendment is passed as proposed, it will of course be a matter for the final decision of the minister as to whether he is satisfied that this has been demonstrated. Based on the current practice of some airports in this jurisdiction and several processes in other jurisdictions, I would expect that an airport would demonstrate that it has heard and responded appropriately by disclosing to the minister what has been said and what position it has taken in relation to what has been said—either by way of amendment of its plan or providing reasons for why it has not amended the plan.

CHAIR—With respect, it is not under any obligation to actually disclose everything that is said.

Mr Skehill—I think the amendment would impose that obligation because you have to demonstrate that you have taken account of what has been said. I have seen plans where there is a detailed scheduled of the comments that are made and the position.

CHAIR—So you are confident it is not just a 'lawyers feast'—that is the terminology.

Mr Skehill—Yes.

Dr Synnot—I have an observation from an earlier time. Before the EPBC Act came in, the impact of proposals act was the mechanism by which environmental assessments were done. It was commonplace, after an EIS had been on public display and all the submissions had been returned, that a response document was then handed to the federal minister. That contained all the submissions made and every response to each of those.

CHAIR—But there is no piece of paper that sets out what the format for this would be.

Senator JOYCE—Can you just say, 'I've taken it into account, I think it's a load of rubbish and there's my reply'?

Dr Synnot—Then the minister has to make a decision if that is truly demonstrated.

Mr McArdle—From my experience at a couple of airports I have worked at—

CHAIR—Sorry to have to do this to you.

Mr McArdle—No, it is fine. We have been required to submit a table of who we consulted with, what the issues were, what we did about those issues and whether we made any change to the submission. Having lodged that with the submission, we were then audited by members of the Department of Transport and Regional Services. They came out to the airport I was involved with, randomly selected a few of the letters that we received and went and spoke personally to the people who lodged those letters. We did not receive any adverse comment back from the department. So there is a process in place, but whether it is—

CHAIR—But, if all of that takes a certain amount of time, the development goes ahead anyhow.

Mr McArdle—The issue I was talking about was in respect of the master plan.

CHAIR—This is the process; this is getting back to the law on this. But I do not really expect you to respond if you feel you are being baited. I am only trying to be fair to everyone here. I think airports are great, and I think this proposition out here is madness at its best. But, to be fair to everyone, what hope is given to everyone by a proposition that says that you have to demonstrate that you have taken everything into consideration and, in any case, if the

process fools around with itself for 90 days or whatever, it is going to go ahead anyhow? It is bloody stupid, isn't it?

Mr McArdle—So we need a definition.

CHAIR—Thanks.

Mr Keech—But the minister has the opportunity to stop the clock if he is not satisfied with the enterprise.

CHAIR—Yes, but that is a political decision. What sort of a lunatic system is it? What you need is a system where an ordinary citizen sitting in the back of that room there can think, 'That makes a bit of sense.' How much confidence are you going to fill people with? I am all for the development of airports, but I am also for not blowing someone out of the sky in the development application process. What sort of a process is it when you know that when things are held up—the letter was lost in the tray or the 90 days is up—then, blow me down, it's going to go ahead? What sort of a process is that?

Senator JOYCE—It is one for the ACT, the Australian Competition Tribunal.

CHAIR—There you go; there might be room for improvement in the process. Senator O'Brien?

Senator O'BRIEN—What other regulatory systems have a default approval in the absence of a decision by the decision maker in a nominated time? Could you point us to any parallel legislation?

Mr Skehill—I do not think I can off the top of my head. Certainly, it is not uncommon for there to be provisions if there is not something done.

Senator O'BRIEN—Yes, the minister shall do things and the minister is able to be compelled if he sits on it—I understand that. But that is different from if the minister does not act. You do not have to compel him; you just get the wind.

Mr Skehill—Yes. We might take that on notice. If we can provide anything we will get back to the committee later.

Senator O'BRIEN—I am happy for you to do that.

CHAIR—Analogies, things you can touch and feel, are helpful. I will give you a little analogy: the danger I see in this is that it all turns, at the end of the day, perhaps, on the minister.

Senator O'BRIEN—Mr Skehill, in terms of changes to the cost triggers for major development, is there a parallel in this provision with any of the other development approval provisions in state legislation? I thought I heard a suggestion that the regime for the airports was somehow akin to the regime for development under state law and local government regulation. I wonder whether there is a parallel with that sort of provision in state development regulations?

Mr McArdle—No, there is not.

Senator O'BRIEN—Is it fair to say then in that regard that development on Commonwealth land—in this case, the airports—of projects falling in this category, costing

under $20 million, is an advantage cost wise and time wise, compared to development under state law?

Mr Keech—I do not believe so.

Senator O'BRIEN—Can you elaborate on why you do not believe that is the case?

Mr Keech—If these amendments go through there will be sufficient hoops, if you like, for the airports to have to jump through to get to the end result. There are 'stop-the-clock' provisions; there is monitoring by the department and a whole host of Commonwealth bodies become involved in whatever the development plans are. So it is not a simple task; in reality, it is quite an onerous task.

Mr Skehill—The $20 million is not a threshold for whether you need approval. It is only a threshold for whether you need a major development plan. All building requires approval by the Airport Building Controller. It is only stepping up to a higher level of scrutiny.

Mr McArdle—If the submission to the minister has followed the intent of the act and the regulations, the master planning process itself goes a long way to identifying what and where a development can occur at the airport. Suppose a proponent comes along and has some money and wants to invest in that airport, knowing full well that he or she, as the lessee, only has a limited amount of time left to get a return from that investment. If it is over the trigger point they are then required to do a major development plan and, in some instances, an environmental impact study with the airport. As you would be aware, that then has its own consultative and public hearing period. It then goes to the minister and the department of the environment for further accreditation. We feel that a developer on an airport, coming along after the airport has done some of the planning process for them, still has to go through a rather rigorous planning regime that the Commonwealth, be it through DOTARS or the department of the environment, administers.

Senator O'BRIEN—But the EPBC Act also applies to developments under state law, does it not?

Dr Synnot—It can.

Senator O'BRIEN—To the extent that there are environmental sensitivities, it would not matter whether it was airport land or non-airport land in that regard, would it?

Dr Synnot—The Commonwealth department would assess both if there are Commonwealth environmental sensitivities with a trigger point under the EPBC.

Senator O'BRIEN—Are you saying that the involvement of the department of the environment is routine with these developments in the case of airport land?

Dr Synnot—Each MDP is formally referred to the Department of the Environment and Heritage under section 160.

Senator O'BRIEN—Would you be better off under state law?

Mr McArdle—No.

Senator O'BRIEN—I did not think you would put your hand up for state law. It would seem to me that there is a significant advantage for development under the provisions of the Airports Act, compared to state law? You would agree with that, wouldn't you?

Dr Synnot—You would have to take that on a project-by-project basis. If you wanted to build a wind farm, for instance, it might be completely different. But if you wanted to build—

Senator O'BRIEN—That is hardly the sort of structure you would have adjacent to a runway, but—

Senator STERLE—Mind you, stranger things have happened out west!

Senator O'BRIEN—Yes.

Dr Synnot—If you wanted to build a $21 million hangar, that would be completely different. The Commonwealth system is much preferable because it is locked into a particular end outcome.

Senator O'BRIEN—So, for non-aviation development, what are you saying? Is it that you are better off under the state law or the federal law?

Mr McArdle—I am not in a position to answer whether you are better off or not, and I would expect that that could change depending on which state or territory the developer and the airport are in. It is interesting that in South Australia the South Australian government brought the two major non-aero developments that are on Adelaide Airport to Adelaide Airport to be placed at Adelaide Airport. In fact, I know the managing director of Adelaide Airport did not want one of those developments where it is, but the state said: 'That is where we want it and that is where it is going to go. So make it work.'

Senator O'BRIEN—What type of development is not suitable for airport land? Is there any?

Mr McArdle—Freehold residential is not.

CHAIR—Red light?

Mr McArdle—Brothels and gambling institutions, under the current act, are not permitted either. Neither are places of worship, for that matter.

Senator O'BRIEN—We all know about the development which was approved for Perth Airport—the brickworks. It seems to me that that is nearly as far removed from aviation purposes as you can get. Is that appropriate? Should we regard that as simply something which is in the ambit of the powers created under this legislation for the minister to approve and we should expect that to continue?

Mr Keech—There are two things. That is a matter for Perth Airport. They can speak for themselves on that particular development. As I understand it, the development went through a process and was approved.

Senator O'BRIEN—I am asking your association: is that indicative of the breadth of possibility and permitted development for this land which we should expect could continue under this bill as amended?

Mr Skehill—I think what you can say is that it is not a requirement of the act or the policy of the government that commercial development on airports should be confined to aeronautical or aeronautical-related activities. How far you go beyond that is essentially a matter for the minister as to whether he permits a particular non-aeronautic-related development.

Senator O'BRIEN—Where airport land abuts, divided only by a roadway, with residential development, there is nothing in the bill or the current legislation that prevents moderately heavy industry being placed on airport land specifically as a matter of law. It is a simply a matter of discretion. Is that what you are saying?

Dr Synnot—There are provisions under the act that, in preparing a master plan, an airport lessee company will take account of local planning schemes. So you cannot get a master plan approved unless you have compatible planning schemes on the other side of the road. Therefore, you could never have that incompatible development across the road occurring if the master plan were evaluated and approved by the minister.

CHAIR—The light industrial development at Adelaide is opposite residential development. Is that compatible?

Mr McArdle—The proposal at Adelaide was to place a Boeing 747 repair and maintenance hanger on that site in master plan mark 1. We consulted with the local residents—the Southern Lockleys Residents Association—and they said that they did not want aircraft maintenance in the vicinity of their properties. We asked them what they would prefer. They had a look at the initial draft of the master plan and said that they were not uncomfortable with offices and warehouses, which were in the then airport east precinct. So we swapped the two over, and they were happy with that. Mind you, that separation is two service roads and a four-lane highway.

CHAIR—But the choice that they were given was not a park or something. It was a 'lesser of two evils' choice, wasn't it?

Mr McArdle—It is the lesser of two evils. It is supported by a linear park.

Senator STERLE—At least they got a choice in Adelaide. The Western Australians did not.

CHAIR—We are trying to make life hard for you.

Mr McArdle—Thanks.

Senator O'BRIEN—I am trying to get some answers; I do not know what the chair is referring to. In the context of that answer, should we understand it to be the view of your organisation that the brickworks development in Perth was consistent with local planning for the surrounding area?

Dr Synnot—I cannot answer that. I am not aware of the details of that project.

Mr Keech—We do not know any of the details necessary to give you an answer to that.

Senator O'BRIEN—This has been one of the most controversial developments at airports and the association that represents airports does not know anything about this particular development. Is that what you are saying, Mr Keech?

Mr Keech—No. We know about it, but we do not know the extent of the processes that were undertaken. We know that the development was approved. It went through a certain process and—

Senator O'BRIEN—That was in the paper—we all know that.

Mr Keech—It was approved.

Senator O'BRIEN—What other work has your association done to observe the ramifications of that for your members?

Mr McArdle—None of our member airports have any obligation to seek our approval or consent to proceed with any development or any negotiation. However, we would take some interest in the outcome of the activity that they do in terms of how it may impact on our other member airports. The advice that we have received in respect of Perth is that they followed due process and the due process indicated that that development could go ahead, and it went ahead.

CHAIR—What is the difference between the way that process was managed and how it will be managed under the new legislation?

Mr McArdle—If it did not trigger the $20 million it probably would not have needed a major development plan. I do not know.

Mr Skehill—If it was less than $20 million, they would not need a major development plan. This bill has a number of provisions that reinforce the need for consideration of the relationship between an on-airport development and off-airport land use.

CHAIR—Under the old bill, you could disaggregate a development. Under the new one, can you do that?

Mr Skehill—Under the bill, if you seek to break up what is otherwise a unitary development into little bits that are each less than $20 million the minister will have a capacity to say, 'No, that is all going to be aggregated into one and you require a major development plan.' That is certainly a strengthening of the minister's hand.

CHAIR—But if you have a half-mile long strip and you do not want to trigger the $20 million limit under the new arrangements, you would be a donkey not to be able to work out a way to get around that.

Mr Skehill—Except that the minister will have a power to say: 'I see through what you are tying to do. I am going to require you to produce a major development plan for those related activities.'

CHAIR—One of the curiosities for me is why one of the majors have not gone to an airport and said, 'We want to build a major shopping complex on your land.' Do you know why they have not?

Mr Skehill—I am not in a position to answer that.

Mr Keech—It depends on your definition of the word 'major'. If you look at some of the developments that have taken place at some of the airports, the direct factory outlets could be considered to be major retailing activities.

CHAIR—I do not want to name any of the brands of the various wonderful shopping complexes, with everything from Gloria Jean's to God knows what in them, but have none of those made application?

Mr Keech—We would not be party to any of those negotiations because we would expect that they would be held commercial-in-confidence. We are not in a position to say yes or no.

Mr McArdle—These are business opportunities for the airport.

CHAIR—Can you think of other areas where commercial development applications—they could be $100 million or $200 million—are at the discretion of the minister, at the end of the day?

Dr Synnot—I am trying to think of the part 3A approvals under the New South Wales planning scheme.

CHAIR—I just wonder if it does not raise that other question, which I will not talk about—if you have the wrong bloke. I could speak ill of the dead, but I will not.

Dr Synnot—Could we take that on notice and get back to you? There are instances where other powers are exercised, and the state planning regimes—

CHAIR—I wonder whether there are dangers in the process, in other words.

Mr Skehill—I think the capacity for a minister to approve outside a development process clearly exists under state and territory law with call-in powers, where a minister can call in a development, take it out of the routine authority process and take a decision. I am not aware of another situation with a Commonwealth minister.

Senator O'BRIEN—One of the complaints about the current regime—and I do not believe it will change significantly under the proposed regime—is that, where there is a proposal for a development which goes through a public consultation period, the nature of the consultation is controlled by the airport operator and they report the consultation to the minister. Why should that not be done by the department—that is, the consultation be managed by the department and the department report to the minister? Surely that would be consistent with an arm's-length reporting of the nature of any objections?

Mr McArdle—The current arrangement at the 22 airports is that there are two statutory appointed officers monitoring what the airport does with regard to planning—the airport building controller and the airport environment officer. They are privy to the consultative process and who has been spoken to, what has been decided, and so forth. I presume, and I cannot speak for the department, that they report back to the department as the submission comes in.

Mr Skehill—Who is in a better position to explain the proposed development than the airport? Who is in a better position to respond to criticism and vary the development than the airport? I think your point is valid but appropriately answered by the requirement to demonstrate that you have consulted and had regard, and made appropriate change or had good reason for not making change.

CHAIR—So you think there is enough protection for everyone from the airport development to the minister in the process, as is proposed?

Mr Skehill—Yes, as proposed in the bill. The experience of airports is that the department does not give airports an easy run on those issues. They are quite probing in looking at what has been said and what the reaction has been—and appropriately so because otherwise they expose their minister.

Senator O'BRIEN—What is the situation of airports if this regime changes in the future? Is there any protection built into their arrangements with the Commonwealth about a guarantee with this regime where the Commonwealth manages development applications? If that were to cease, would there be compensation?

Mr Skehill—There is nothing in the legislation that says that. When the airports were offered for lease it was clearly stated that there would be a Commonwealth planning process. Because that was perceived to have advantages and greater certainty, less chance of running askew, airports would have priced their bids accordingly. Conceivably, if that were now changed, there might be a civil law action by an airport for damaged suffered. I raise that, but there is nothing specifically in the legislation that entrenches Commonwealth planning processes forever.

CHAIR—As part of the safety net for that process and to avoid lawyers' fees—and, no, there is no need to screw up your face—when you put in a new gateway on a farm you generally try to figure out how wide you want the gate to be in 30 years time. For example, headers were 12 feet and are now 42 feet. Do you think that sort of planning is identifiable in the value adding to airports with commercial development? Are they absolutely demonstrating that they are allowing for unknown development—for example, the width of planes? I am not a world traveller, but it is curious to go to Los Angeles where they are not game to taxi the planes with the engines because they have to squeeze them in. Are they allowing for all that? Can we as a government be confident that the airports are being responsible in leaving plenty of room for future development?

Mr Skehill—I would think the regime is definitely designed with that in mind. You have a master planning process which is a long-term document and can be longer than 20 years, you have the obligations in the lease that require the airport to be used as an airport and an airport lessee company would be in breach of its obligations under the lease if it did that. Leases are for 99 years. All those in this year are for a long-term planning regime designed to cope with it.

CHAIR—I guess we can ask the airports about that.

Mr Keech—The airports are prepared to step up to the mark with necessary expenditure even right now. You only have to look at what airports around Australia spent last year on upgrading facilities for the supposed imminent arrival of the A380. Hundreds of millions of dollars were spent doing works at airports to cope with the arrival of the new aircraft—so if and as and when money is needed to be spent of aeronautical improvements.

Senator O'BRIEN—If they had not, what powers did the Commonwealth have to compel the airports to do that?

Mr Keech—There are some CASA civil aviation regulations that would probably take care of that.

Senator O'BRIEN—I would have thought that, if Qantas were complaining that they wanted to buy A380s but no airport would provide facilities for them, a prudent government would have sought to ensure that those arrangements were put in place.

Mr Keech—You are probably right, but on the other hand my personal view is that it would be a foolhardy airport that did not undertake that work.

Senator O'BRIEN—Absolutely. You get more money per passenger on a big plane.

Mr Keech—Absolutely. So it is a business decision.

CHAIR—But in terms of the protection of the core business of, allegedly, travel, the rights of the tenants, in a legal sense, would not overpower the rights of the plane? In other words, if one of these big planes came along and, oops, you had used the wrong tape measure and built too far out, you would knock the building down rather than tell the plane it could not go there?

Mr McArdle—Correct.

CHAIR—And that is set out clearly somewhere?

Mr McArdle—Yes, it is. The essence of the discussion on the Airports Amendment Bill 2006 has tended to focus on only one aspect of the master planning process, and that is the non-aero development on airports. The master plan is a much more complex document in that you are required to be able to show the minister that you have taken into account future capacity needs for aviation purposes and what you are going to do about that future capacity. That requires a lot of consultation with the known carriers that we have today, anticipating who may come along and seeking information from them on what their fleet mixes are going to be 15 and 20 years out. So it is more than just a land use planning document for non-aero development, and there are requirements under the act to show all that and to get the minister to sign off on it.

CHAIR—The reason the highlight, probably, is on the add-ons rather than on the core is that people generally take the core for granted.

Senator STERLE—I think, Mr McArdle, you were saying, as part of your submission, that it is important that you take concerns of the future to groups involved in these developments. Can you tell me: what is the benefit to your members of having development on airport land?

Mr McArdle—In our introductory statement I indicated that the airports under the Airports Act 1996 issues have had to introduce new aviation infrastructure: upgrade runways, new terminals, taxis—the whole shooting match. The maintenance of those going forward is not a cheap issue. We are finding that the financiers of the world are a bit nervous about lending just on aero-generated revenues because they have seen Compass and Ansett collapse and they have seen Kendall go under. They saw the effect of increased fuel prices, even though it ultimately gets passed on to the passenger, and they saw the effects of September 11 and what that did to, particularly, international travel. Rises and falls in aviation-generated revenue make the financiers a bit nervous about lending money, so the airport operators really need to have other forms of revenue to give the financiers confidence to lend money to keep the aviation infrastructure growing and maintained.

Senator STERLE—Do you or your members have a say in what sort of development can go where? Do you have some land set aside for yourselves?

Mr McArdle—As an association?

Senator STERLE—No, the airport owners, the corporations.

Mr McArdle—Land set aside for?

Senator STERLE—Facilities for yourself. I will give you a better example. Take, for instance, Perth Airport: there is a heap of land around Perth Airport, but coming into Perth Airport is an absolute shemozzle. What used to happen up until a couple of weeks ago is that all the people who were waiting for passengers coming in used to line up along Brierley Avenue on the grass, hurting no-one, not doing anything wrong, not flattening any daisies or anything like that, and then the parking Gestapo decided that they were not going to make any money out of it so they would tear up all the grass. At night-time goons go around threatening people who are parking there because they will not pay airport parking fees where they cannot get a parking spot. What are the chances of also taking that into consideration in your planning—some free car parking for people who are waiting to pick up passengers?

Mr McArdle—That is an initiative I am sure the member airports here and those who read *Hansard* may pick up. I know that at two airports—

Senator STERLE—I do not think so, I am afraid, but I hope so.

Mr McArdle—There are a couple of airports I could name but I will not at the moment. What is called 'mobile phone parking' created a lot of interest from the consumers, so much so that the environmental officer asked the airports to do something about the vehicles that were parking on grass verges and dropping potentially hazardous materials into the grasses, which were then going into the stormwater system and then out to drown the dolphins or whatever environmentalists worry about, so there was an issue and there is pressure to do something about that.

Mr Keech—The other thing is that there is state legislation that takes care of that, whereas the same situation arose in Victoria and, because it was on the side of a freeway and there is some specific legislation with regard to freeway parking et cetera, the police took care of it. In various state jurisdictions there is different legislation.

Senator STERLE—Take it from me that in Perth it is not a risk.

Mr McArdle—But at Adelaide Airport the revenue gained from those fines goes to the City of West Torrens, not to the airport.

Senator McEWEN—I am sure that makes the City of West Torrens much happier, Mr McArdle. I go back to your earlier comments about how financiers look for some other guaranteed source of income before they invest in airport development. Would you care, in that context, to comment on the comments made by the representatives of Virgin that they did not want to see non-aeronautical activities becoming the basis of valuation by airport operators of what they charge the airlines.

Mr McArdle—I would rather not comment on it without getting advice. I will take it on notice.

Mr Skehill—That matter is currently before the Productivity Commission. The Productivity Commission has issued a draft report and we are all anxiously awaiting a final report.

Senator McEWEN—Did the department or the minister's office consult with your organisation, or representatives of it, prior to the bill being tabled?

Mr McArdle—Yes, indeed. We have been in consultation with the minister's office and the department for almost 3½ years—right through the whole process. There are no complaints there.

Senator McEWEN—They did not consult with local government?

Mr McArdle—By default, they did. I know that discussion of the Airports Act and its proposed amendments have been on the agenda of many airport consultative committees for that 3½ years.

Senator McEWEN—Have you actually had discussions about the contents of the bill itself—the amendments?

Mr McArdle—I cannot answer that.

Senator McEWEN—Can somebody answer that?

Mr McArdle—The department could probably answer that.

CHAIR—Finally, as representatives of the Airports Association, with regard to your question regarding the viability, for banking purposes, of an airport, you categorically say there is no need to have gambling, casinos, red light—

Mr Skehill—They are not allowed is what I said.

CHAIR—You are not going to argue for that in the future? You are going to rule that out today?

Mr McArdle—They are not permitted at the moment and we will live by the letter of the law.

CHAIR—Thank you very much for your time, care and attention.

Senator JOYCE—Changing the ownership guidelines and allowing people who run planes to own more than five per cent of airports in certain area is the thin end of the wedge. Do you think a competition problem will arise down the track?

Mr McArdle—No, not at all.

CHAIR—Vertical integration. Thank you very much.

[2.18 pm]

WILLEY, Mr Mark Bennett, Executive Manager Airport Planning, Brisbane Airport Corporation

ANANIAN-COOPER, Mr Alexander Paul, Manager Aviation Planning and Operations, Canberra International Airport

BYRON, Mr Stephen James, Managing Director, Canberra International Airport

McCANN, Mr Noel Edward, Director Planning, Canberra International Airport

CHAIR—Welcome. I now invite you to make an opening statement.

Mr Willey—I will lead off. I represent the owner and operator of Brisbane Airport, the Brisbane Airport Corporation. We welcome this inquiry and thank the committee for the opportunity to give evidence today. Before I read this statement I think it is timely and appropriate to make some comment about an issue that is getting a lot of press today—that is, gambling at airports.

CHAIR—Would you like to put on the record who the owner is?

Mr Willey—The owner of Brisbane Airport is Brisbane Airport Corporation Ltd.

CHAIR—Who are they?

Mr Willey—It is a group of shareholders—an unlisted public company.

CHAIR—And who are they?

Mr Willey—The owners include the Queensland government, through the Port of Brisbane, and Amsterdam Airport, Schiphol. Brisbane City Council has some ownership. The majority of the ownership are financial institutions, superannuation institutions, so, in effect, Brisbane Airport is owned by mums and dads through their superannuation policies.

CHAIR—Thank you.

Mr Willey—As I said, before I read this statement I would like to talk to that issue that is gaining a lot of attention today—that is, gambling—and try to put in context BAC's position. BAC saw that there was an anomaly in the rules that applied to on-airport and off-airport with this issue. In particular, we refer to newsagents and those sorts of outlets that are located at the airport which do not, under the current Airports Act, have an ability to sell scratchies or lotto forms. Our position is that we think they are in fact commercially disadvantaged, and we sought the opportunity of this review of the act to have that considered. We do not have any plans for casinos or poker machines at Brisbane Airport.

Having heard the evidence this morning, I am especially delighted to have the opportunity to put to bed some of the myths and misperceptions that have been allowed to go largely unchallenged. Brisbane Airport and BAC are uniquely positioned to provide constructive input to the committee's deliberations, having spent much of our first 10 years of existence undertaking two master plans, two airport environment strategies and 13 major development plans, including seven major development plans in the last 18 months.

Excluding the new parallel runway EIS-MDP, which is currently undergoing its public comment period, six of the last seven major development plans have not had a single public or agency submission. We had six major development plans approved last year. One is currently with the minister for approval. We have been through a Senate inquiry into our first master plan and a Federal Court case concerning the direct factory outlet centre at No. 1 Airport Drive, which I am pleased to say has proved to be an outstanding success and an asset for Brisbane, with none of the disastrous impacts being alleged by its many detractors.

BAC has experienced a very significant increase in the expectation for the content and structure of a major development plan. BAC acknowledges the excellent relationship it has with the Department of Transport and Regional Services and commends their professional and responsive approach to complex planning issues, despite the external influences and motives that now focus attention on airport development and planning.

Some of the submissions to this committee have chosen to ignore the significant and determined efforts made by BAC to foster a partnership approach with local and state governments to planning and development issues. These submissions are consistent only in misrepresenting the facts to support an untenable desire to gain control over airport development and, one assumes, to extract funding from airport operators to address what is becoming more and more apparent: abysmal regional infrastructure planning and delivery.

A theme of these submissions is a general mythology about airports that revolves around an apparent planning advantage relative to off-airport developers and a suggestion that airports get a free ride on infrastructure funded and built by the public purse. These submissions do not acknowledge the hundreds of millions of dollars contributed to regional infrastructure, in the form of roads, runways, terminals, water, sewerage and other services, through private investment at BAC and the contributions of other airport operators.

The submission of the Brisbane City Council, for example, bases its case almost entirely on an emotive but false claim that the direct factory outlet has caused chronic traffic congestion and, as a result, has forced council and the state government to fund urgent road upgrades out of planned sequence. I was startled to read this. No evidence of this has ever been presented to BAC because there is no such evidence. There were two isolated events in the opening month of the DFO, as there are with many openings of such centres. The alleged chronic congestion did not happen. I invite the committee, or any representative, to visit DFO's site at any time of the day to witness for themselves the real situation.

In fact, BAC does make payments to the local authority in lieu of rates. This is a negotiated agreement. BAC has a formal agreement with Brisbane City Council to limit the delivery of certain commercial facilities at No. 1 Airport Drive, staging them in harmony with regional infrastructure systems.

BAC has also made significant contributions to the state's road systems and it works in partnership with the state to facilitate project delivery. BAC is largely supportive of the comprehensive submission by the Australian Airports Association, which is a remarkable exercise in consensus, given the diverse membership and issues it faces. BAC seeks only to add to or refine aspects of the AAA submission. BAC has made a formal submission, and I draw the committee's attention to it for further detail.

Finally, it is interesting to note that about 60 submissions have been presented to the committee. Recently, under the major development plan process, BAC advertised for public comment on its plans to construct a neighbourhood-style retail shopping complex, including a supermarket, tavern and bottle shop, on the commercial precinct known as No. 1 Airport Drive. The public comment period closed recently without a single comment from either the public or the many organisations that have made so much noise about airport planning across Australia.

Brisbane Airport, like all Australian capital city airports, is of national significance, being a key element of the transport system. Its planning and development is appropriately regulated federally and should not be subservient to local planning instruments. BAC has embraced and demonstrated a collaborative approach in applying land-use principles that seek to minimise off-airport impacts and conflicts. Consultation processes have recently been strengthened with the publication of guidelines that closely align with practices demonstrated to date by BAC. It is BAC's view that, in the main, the current planning process works. It is inclusive, it is consultative and changes to it run the risk of creating less, rather than more, clarity.

I am happy to take questions on our submission. I once again thank the committee for this opportunity to speak to our submission, and we wish you well in your deliberations.

CHAIR—Thank you very much.

Mr Byron—Mr Chairman, thank you for this opportunity. The critical issue for an airport to operate successfully in the long term is to have a sympathetic and positive relationship with the community—the individuals, the people, who make up the community living and working around the airport. Every airport knows that, if you do not have the support of the people of that community, if they are against you, it is over because they will gradually, incrementally and comprehensively wind down your operation. So fundamental to us since day one has been the issue of working with our community, talking to them year after year in public meetings and working with them on improving aircraft noise issues. However, Canberra International Airport has a problem. We have a local council that is hell-bent on building under flight paths.

I want to highlight for the committee some key characteristics of Canberra airport. We are the only airport in our region and in Australia's national capital. However, we are also an airport for Sydney and New South Wales. We are the only non-curfew, 747-capable international airport for New South Wales. New South Wales does not have an airport other than Canberra airport for that—and we are in the middle of New South Wales. If you want to land a plane south of Brisbane or north of Melbourne after 11 pm or before 6 am, you had better pick Canberra. If you go west, you will find that Adelaide has a curfew and you will have to keep going to Perth. Canberra is an overflow airport for Sydney. We will not be Sydney's second airport, but we will have a role to play in freight. Also, let us not forget that Sydney airport will be at full capacity in 17 years. I think an airport at Badgerys Creek is off the agenda. In fact, if you recognise it, no more capital city airports will ever be built in this country.

Airports are a key part of the nation's economic infrastructure, but to some extent they are more important than major roads, tollways, hospitals and even mines and water because there can only be one of them for each capital city. Let us look at Canberra. The first characteristic

is that we have four dams—there is a tussle over one of them at the moment—and they are spread over two catchments. Whatever happens, we can build more dams, more pipelines, more recycling plants—whatever you like—but we can only have one airport because the community will only let us have one.

The second characteristic is that, unlike the other capital city airports, particularly on the east coast, we are not on the sea, so we cannot have half of our aircraft noise going over the sea where it will not upset members of the community. That is why it has been critically important that Commonwealth and state planners have worked for 40 years to protect the flight paths north and south of Canberra airport and keep them rural. Jerrabomberra crept in against good advice from the Commonwealth, but even it is on the edge. We have worked very hard to help the 600 houses at Jerrabomberra.

The third characteristic is that our noise footprint lies in key marginal seats: Steve Whan's seat of Monaro, in the New South Wales parliament, and Gary Nairn's seat of Eden-Monaro. They are bellwether seats. It is not a good spot for aircraft noise politics to enter the fray, and it has been going on forever. I have provided the committee with a couple of documents. In 1996, they were on about it. In the last federal election, they were campaigning for a curfew. Let me highlight this: if you go on the Australian standard—and we have made some comments that this is a standard for acoustic installation, not land use planning—even at the ANEF 20 line that you see at the margin, 42 per cent of residents are still moderately affected. What does that mean? It means that their sleep is disturbed by aircraft noise. When we are talking about a marginal seat, with hundreds of votes determining the outcome, 42 per cent of the population having their lives affected to the point where they do not sleep perfectly well is absolute dynamite.

Finally, we have a local council supported by the state member, Steve Whan, who wants to make the noise problem worse. Most councils campaign against airports to reduce the impact of aircraft noise on houses that are already there, but these guys want to build more houses under flight paths and make it worse, and they know that aircraft noise is a problem. If you look at the articles I have provided, you will see that Steve Whan worked with Lindsay Tanner 10 years ago to campaign against aircraft noise at Jerrabomberra and that Frank Pangallo campaigned for a curfew. On the one hand, they know aircraft noise is a problem; on the other hand, they want more houses.

They are talking about rezoning the rural properties of Tralee and Environa. The plans before you show the flight paths and, if you look, you will see a curved flight path that comes in from the south directly over Tralee and Environa—the rural area—that gives respite to the Jerrabomberra residents. A rezoning of those properties would deliver 4,000 homes. The developer paid about $15 million for the land and that would turn into more than $750 million on a rezoning. In a key marginal state seat, that is big bickies—and it gives them plenty of big bickies to try and work on the community.

So whilst we have worked with the community in relation to aircraft noise, the developer has also worked with the community. The developer organised their political lobbyist, Mr Paul Whalan, who was also the chief fundraiser and campaign manager for Steve Whan, to get onto the Jerrabomberra residents' committee—and he even became president. Funnily enough, over the last three years, while the developer's main lobbyist has been on the

residents' committee, the committee has gone from being anti-Tralee to pro-Tralee. The developer's main inducement is to construct a school. Jerrabomberra does not have a high school. Steve Whan's solution to a planning stuff-up at Jerrabomberra—them not having a high school—is to create a bigger one: build another 4,000 houses and the developer will offer to chip in a school.

Whan's campaign manager, Paul Whalan, has convinced the residents' association to support his client's development at Tralee so they get a school. But it does not make sense. Do you know where they want to put the school? Directly under the apex of that curved flight path you can see on the document in front of you. Under Frank Sartor's planning regime the school will not get up—the developer will get away without building the school—yet there will be 4,000 homes there. Some of the residents do want a school. We have surveyed them twice—300 in Jerrabomberra and 300 in Queanbeyan—and, funnily enough, 94 per cent of Jerrabomberra residents and 93 per cent of Queanbeyan residents say that, if houses are built at Tralee, they will complain about aircraft noise. There is no doubt about it.

The point is that these issues and this national infrastructure in the form of Canberra Airport, the only curfew-free airport in New South Wales, are too important to be trashed by a council and a member from a marginal seat weeks out from an election campaign. At the moment, we have 600 houses at Jerrabomberra under the flight path and we work with them day in, day out, month in, month out, to help them to move flight paths over to the rural area. If you build 4,000 homes, you will then have a huge community against the airport with nowhere to move the noise other than over other people's houses. And they are a marginal seat community, so they will be able to move the noise—no matter what you put on their titles—over the whole of Canberra, Queanbeyan and Jerrabomberra.

The other plan you have before you is of the flight paths that used to be there in 1995. Noise sharing is easy—you just go back to the old flight paths and everyone cops it. The key point, though, whatever the consultation provisions in the Airports Act, is that if you do not properly work with your community and your community is against your airport, you can forget it; you are finished. You will have a curfew and they will be winding back against you. The stupidity is that Steve Whan and Frank Pangallo are ignoring Frank Sartor's independent panel of inquiry. It said that there is a solution. There is an aircraft noise problem at Tralee, so do not build there. Build 25 years worth of land supply at Googong. We see that as the future: the opportunity to double Queanbeyan over the next 25 years and the opportunity to double Canberra over the next 25 years and not build one house under a flight path. Our master plan identifies that it is a no residential zone. Sartor's inquiry says not to build there. This is national infrastructure, and we want some help from the Commonwealth to make sure that they do not make this mistake. Once that catchment is polluted, it is polluted forever. Thank you for the opportunity.

CHAIR—Thank you very much. I would be very surprised if the developer owns the land. Does he own the land or own an option on the land? He would not be that bloody stupid, would he?

Mr Byron—He owns 56 per cent or $7.5 million. That $15 million can be turned into probably $800 million.

CHAIR—Good luck to him if he does it. I have to say that I was very interested to hear that Queanbeyan wants a curfew. This would guarantee it.

Mr Byron—Yes.

CHAIR—Remind me, because I cannot recall: was it the mayor who said that if you do not like aircraft noise then you just would not buy in this development? Someone said it.

Mr Byron—The developer said that recently, but the mayor said it in the past.

CHAIR—I apologise to the mayor.

Mr Byron—He said it in the past.

CHAIR—Going to Brisbane City, did you say that Brisbane City has a share in the airport?

Mr Willey—Yes, it does.

CHAIR—Would it have a conflict, given that it is part of the process of planning approval?

Mr Willey—It is frustrating, yes.

CHAIR—That is the answer?

Mr Willey—They do have a minor share—

CHAIR—It would be an identifiable conflict.

Mr Willey—Yes. They do have a minor share in the airport.

Senator O'BRIEN—What part do they play in the planning process?

Mr Willey—They have a seat on the board.

Senator O'BRIEN—No, in the planning process.

Mr Willey—I am not sure what you—

Senator O'BRIEN—They are not part of the approval process.

CHAIR—The approval process is one that at the end of the day falls over if time runs out.

Senator O'BRIEN—But that is in the minister's hands, not the council's hands. I am not sure what you mean. That is why I am trying to clarify it.

Mr Willey—Their role in the planning process is in line with the consultation requirements under the Airports Act and in line with a formal protocol that we have established with Brisbane City Council.

CHAIR—They would hardly argue against their own case and submissions, would they?

Mr Willey—You would think not. As I said, there have not been any submissions on the last six major development plans. One of those major development plans is in fact the supermarket and convenience centre at 1 Airport Drive. It is in accordance with an agreement we have with the council on the size of that facility and how we can stage its delivery.

Senator O'BRIEN—So you have gone through a pre-planning process with the council; in other words, you have some agreement with Brisbane City Council about what will and will not take place on the airport.

Mr Willey—We have. The council were part of the Federal Court action. They withdrew before the action commenced. In recognition of that withdrawal, there was a negotiated agreement with council and there was an ongoing protocol established with council under which these issues are heavily discussed.

Senator O'BRIEN—So there has been some form of planning put in place between Brisbane Airport Corporation and Brisbane City Council in the sense that you have an understanding about the sort of development that will take place and where on the airport?

Mr Willey—There is certainly a high level of discussion on development and projects at executive level between the organisations.

CHAIR—In terms of the proposed neighbourhood style shopping, which includes—

Mr Willey—It includes a supermarket and specialty shops.

CHAIR—And a tavern.

Mr Willey—Yes.

CHAIR—Who is the owner of that proposal? Is it the airport that proposes to develop it?

Mr Willey—We proposed the development, yes.

CHAIR—So Brisbane City Council will have an ownership share of the pub et cetera.

Mr Willey—Through their ownership of the corporation itself and their share of the revenues that are generated from those developments.

CHAIR—God help us.

Senator O'BRIEN—Who represents Brisbane City Council on your board?

Mr Willey—It is not decided at the moment. The lord mayor recently withdrew from the director role on the board.

CHAIR—How did they come to acquire the shares? Did they give you the land?

Senator O'BRIEN—It is pretty common.

CHAIR—Did the airport change hands into the consortium?

Mr Willey—I cannot answer that. I am not certain on that.

Senator O'BRIEN—It is not the only airport that is involved with local government—far from it. There are many around regional New South Wales, for example, that are run by local government—and in Tasmania.

CHAIR—I understand that.

Senator O'BRIEN—I am saying that for the benefit of the chair because he has probably taken off from a few of them in the not too distant past. Mr Byron, when did the independent panel that Mr Sartor commissioned report?

Mr Byron—On 1 September last year.

Senator O'BRIEN—What actions need to be taken to ensure that there is no residential development under the flight path, which I presume is controlled by CASA and Airservices?

Mr Byron—Ultimately, the Commonwealth is responsible for the airport infrastructure in this country. It is responsible for flight paths through Airservices and air safety through CASA. When the noise all turns to a bad outcome, the Commonwealth is responsible for the noise levies, the insulation and the enactment of the curfews, but the Commonwealth technically does not have a great say in the approval of residential housing.

We believe there are two issues that need to be addressed. The first is that the Australian standard is only for acoustic insulation, when you have already got the houses there and you have already stuffed it up. There needs to be an Australian standard on land use planning around airports and for where you can put residential. Secondly, we believe that when there is a master plan done under the Airports Act asking, 'How are you going to make sure that aircraft noise does not impact on the community?' and you say, 'We'll do 10 things to help the community,' and of those 10 one of them is not to build in a particular zone then we think that state governments and councils should be obliged to take that into account.

CHAIR—Did I hear some earlier arguments of: 'No, really it's not going to impact these houses. They'll be as good as gold'? Is there some sort of counterscience out there that says: 'If you buy a house in Tralee, in fact there will be no noise. The planes will fly over but there will be no noise; they are too high'?

Mr Byron—The point is that you cannot build inside this ANEF 20 line—and just outside it—and that is where Airservices, the Commonwealth government and the local members get most of their complaints, particularly in Sydney. The houses in Sydney outside of that line even have a curfew. I am talking of places where there is an airport with no curfew. The council comes here this morning and says that an ANEF should have a 20-year horizon. Are they proposing that at the end of the 20 years you demolish the houses—just take them away? That is like planning around the country based on a one in 20-year flood level or a one in 20-year drought.

CHAIR—It sounded bloody stupid to me.

Mr Byron—They have also had a go at us for our forecasts. They say our forecasts have been ambitious. They have been going on about this since our first master plan in 1998. As at 31 December 2006, we are ahead of our 1998 forecasts. We are ahead of our 2004 forecasts because we are growing faster. We forecast four per cent. That is the lowest growth rate of any capital city in the country, and we are ahead of it. We have grown at nine per cent per annum for the last 3½ years.

CHAIR—I want to try and come to grips with aircraft noise. The developer did say that, didn't he? I didn't dream that?

Mr Byron—The developer said, 'If you don't like aircraft noise, don't live there.' That is what he said on radio.

CHAIR—That is a great endorsement. I hope he has only got the option. Just kidding.

Mr Byron—But there is a great play here. People will say they will buy here and so long as things do not change—for example, so long as you do not have any aircraft at night and, in the future, you do not get busier—they will cop it. It was Councillor Tom Mavec who said it is the perception of change that gets people rattled. Of course it does, because the noise gets

worse. These people, in a marginal seat, will be able to convince their local member to move the noise away from them—and they will whack it over into the safe seats.

CHAIR—Forget about the bloody marginal seat. We want to give consideration to what is right. The airport is a great asset for the area and, as I said this morning, you all ought to be working together to fulfil the potential of what Canberra Airport can do for the area but, at the same time, look after the interests of citizens. I am aware that some of the developers, and certainly the Civic people, think they have been outsmarted by what has gone up out at the airport—and good luck to everyone. But it seems to me that, if you were a real cynic, you could argue that maybe this is a bit of payback—and I would hate to think that that was even a remote possibility. It seems extraordinary to me that you could have a proposal that may well shut down some of the great future benefits to an airport. I cannot believe it.

Mr Byron—I will give you one simple example on the curfew. If we had a 6 am curfew, as most curfews are, we probably would not have a night service from Perth because the Perth service gets in at 5.45 in the morning.

CHAIR—Does that mean there would be no pollies from Perth? Beauty! That gets rid of you, Glenn.

Senator STERLE—We could move the parliament to Perth! We do not have a curfew there.

Mr Byron—But it gets even sillier. If there were a curfew and we were to keep the Perth service, if it turns up on time or 15 minutes earlier—with the winds, it often gets a good push along—it has to sit up there doing circuits around the airport. That is an unnecessary risk to safety, and there was an incident two years ago. It consumes a great amount of fuel—there is a finite amount of fuel and it is going up in price—and it is emitting greenhouse gases just for the sake of it.

Senator FERRIS—And creating more noise.

Mr Byron—And creating more noise while it is there. It is just ridiculous.

Senator O'BRIEN—It could go up a bit higher when it does the circuits. At what hight does an aircraft, in its flight path, go over the area that is described as Tralee?

Mr Byron—On departure, it is between 3,800 and 4,500 feet above the ground. At the moment, you see the departing aircraft doing that. Their engines are at full throttle and they emit between 65 and 72 decibels of noise. The department of transport, the minister and Airservices say that, above 65 decibels, you start to give people a shake-up and they do not like it. But there is also the curved approach flight path. They come in at between 320 and 450 metres, or 1,000 feet. Again, they are at 72 decibels as they come in over Environa and Tralee. So there is plenty of noise.

CHAIR—It is one of those great curiosities, isn't it?

Senator O'BRIEN—What do you say about the objections to Canberra Airport's exemption from the National Capital Plan?

Mr Byron—We are the only airport that is subject to two sets of planning authorities. It means we have to pay two sets of application fees and get two sets of approvals. They do not

work with each other at all; there is no overlap. We have to go through all the processes. Some of them want more things than other things. What is particularly peculiar in a red-tape sense is not just the stupidity of having to do everything twice and pay twice, but that there are two Commonwealth agencies. The taxpayers are funding two sets of Commonwealth planners to give us the work-over. The clear proposition and the thing that makes sense is that you only need one set of Commonwealth planners doing their job properly. Currently they are both doing their job properly. The improvement in this legislation should mean that we have to deal with only one set of planners.

Senator O'BRIEN—It is bizarre that 'territories' lies in the same general portfolio as transport and is in the same department. We were reminded that two years ago the current plan went through a process of approval, including parliamentary approval and ministerial sign-off, and now, two years later, we are changing it. You have had some special persuasive power in this process, have you, Mr Byron? Is that how we should understand it? What has gone on?

Mr Byron—I think it is just the case that the Airports Act review—and it did take 3½ years in its gestation—was running its process separately from various incremental changes to the National Capital Plan. They were totally out of sync with each other. You try explaining this to our bankers! They just cannot understand it. 'Why have you got two sets of Commonwealth bureaucrats that regulate you differently? What happens if they've got different views?'

Can you believe it, when we extended our runway by 600 metres we had to get an MDP approval; under the Airports Act we had to get airport building controller approval; and then we had to go around and ask the National Capital Authority, and they take not only another period of time but also another slice of money as an approval fee.

Senator FERRIS—What sort of money are we talking about?

Mr Byron—For that sort of thing it is in the order of $60,000. I might have to come back specifically with that.

Senator FERRIS—Do you mean each?

Mr Byron—Yes, each. For smaller developments it is $15,000 to $25,000 dollars each.

Senator FERRIS—What sort of time is involved? You said 'another period of time'.

Mr Byron—With the National Capital Authority there is no particular time frame by which they have to make a decision, so some of their approvals have been done in seven to 10 days and some have taken four to five months. We have a regular consultation process with the airport building controller and the NCA and we will continue that. We do that quarterly. We meet regularly on all our things so sometimes things go well and sometimes things go super slowly.

It is interesting that you asked the question earlier about which jurisdiction I would rather be in. We have done a $120 million development in Canberra—in Civic. ACLA approved that in the order of 45 days from the launch of application to the end of approval. We had 21 days public consultation. That is the competing jurisdiction. Would I rather be in that jurisdiction? I would rather that time frame and that legal process; I would not really rather that planning

minister and his political will, because his political will is to oppose everything you see at the airport. So the question of which regime you might prefer is a little bit about political will.

CHAIR—How would you estimate the noise potential under this Tralee arrangement compared to the Jerrabomberra noise problem?

Mr Byron—If you had asked me two years ago I would have said it would be less because they would have had fewer movements because they only have the departures to the south, and that happens less often than the arrivals over Jerrabomberra.

CHAIR—Which is less?

Mr Byron—Tralee is less. If you asked me today, I think it is about equal. If you ask me in the future I would say that if the houses are not built there is the opportunity over a period of time to reduce the noise over Jerrabomberra towards zero—not completely, but towards zero—and have all the noise at Tralee: that is, over rural. If you take away that opportunity then you trash the long-term protection of Jerrabomberra.

CHAIR—So, one way or the other, Jerrabomberra gets more or Tralee gets more. If Tralee develops, Jerrabomberra is going to get more.

Mr Byron—That is right.

CHAIR—And depending on the political convenience at the time.

Mr Byron—Yes. And if they both squeal then you might flick it over Canberra or the whole of Queanbeyan. And then instead of 600 residents complaining and being frustrated by the airport you end up with tens of thousands of people complaining, hotlines, complaints and all those sorts of things, especially if you are talking about a freight hub. It might not be a huge number of planes but say it is five 737s each night coming in between midnight and 2 am and leaving between two and four in the morning. You only need to be woken up once and you will go ballistic. It is not fair that planes or airports do that to people. I do not want to own that infrastructure when that happens. No-one should; it is a complete stuff-up.

CHAIR—If you inherit the problem it is different from being able to plan the problem away.

Mr Byron—Yes.

Senator O'BRIEN—Mr Willey, you were talking in your submission about the traffic impact of development on the airport. I am not a resident of Brisbane but I was there yesterday. I got in on Sunday night and the hire car driver was complaining to me about being stuck in traffic jams trying to get out of the airport. What causes those?

Mr Willey—It is certainly not the only airport. Brisbane is a victim of its own success. South-east Queensland is suffering from a lack of regional infrastructure delivery. There are some issues with the road systems around the airport. In fact, the state is busy now delivering a major project to alleviate some of that congestion with the gateway upgrade project, a second gateway bridge and a new gateway alignment across the old and new airports. Brisbane City Council is busy delivering the TransApex project—the tunnel system that links all the motorway arterial flows. It will be a long time coming. They are major projects. We are

talking about $2 billion type projects and they will take many years to deliver. But, they are underway.

Senator O'BRIEN—Does the airport contribute to the problem and does it make a contribution to the cost?

Mr Willey—We make a financial contribution to upgrading the systems immediately adjacent to the airport. We have done that in the past and we continue to do that.

CHAIR—Can you provide the details of that to the committee?

Mr Willey—Exact dollars et cetera?

CHAIR—Well, you know.

Senator FERRIS—Aren't there some major roadworks associated with the development of the international airport, as well?

Mr Willey—Brisbane airport is fortunate but a bit unfortunate. It is fortunate in the huge land area it has—some 2,700 hectares. It is 3½ times the size of Sydney airport. But it is unfortunate in that the domestic terminal, which is 75 per cent of our market, is some 5½ kilometres from the airport boundary.

CHAIR—Any feed on it?

Senator O'BRIEN—The answer is no.

CHAIR—I was going to send a few cows up there.

Senator O'BRIEN—Mr Byron, regarding the factory outlet centre, if I can call it that, on the airport, did the airport have to make a financial contribution in relation to roads arising from that?

Mr Byron—In order to facilitate development to that precinct we had to carry out all of the studies and all of the construction works on the roundabouts on that road. It was 100 per cent paid for by us. We also had to pay for a $2 million upgrade to the water system. That was a major infrastructure upgrade. We pay our rates, we pay our taxes and we pay for the infrastructure upgrades.

CHAIR—You know that dreadful roundabout?

Mr Byron—Yes.

CHAIR—Do you have estimates of the traffic you generate versus the traffic that comes off that back road, wherever it comes from—Gungahlin, is it?

Mr Byron—There are two main roads. There is Pialligo Avenue, which has probably 28,000 vehicles per day. It has grown from about 26,000 over the last 3½ years. That was working even though it should have been duplicated when it reached 20,000. The ACT government budget in the year 2000 said that that road from Queanbeyan should be duplicated to the airport. It was in the ACT government's economic white paper and it is on their plans and they are going to move ahead with it. The other road is Majura Road, which comes in from the north. That used to have only 5,000 cars a day. When that happened the roundabout could handle it. It was a bit of a struggle but it handled it. Then they plugged in the road from Gungahlin up the top—very good sensible policy; should have happened—into

Majura Road, which is a long-term freeway alignment and it went from 5,000 to about 16,000 within 15 months. The roundabout is the choke point. We have been working very heavily with the ACT government since January last year. We funded about $175,000 worth of traffic studies, design analysis and work and we have participated in a working group.

CHAIR—Is there a solution coming?

Mr Byron—The solution is identified for stage 1. Stage 2 of it is to grade separate that intersection—to have a bridge off Majura Road going over Pialligo Avenue. The view is that the ACT government would talk to the Commonwealth about a fifty-fifty sort of arrangement.

CHAIR—Did you have any input into Limestone Avenue and the traffic on that road? One of the great curiosities for me, besides the fact that they want to build a couple of sets of toilets on that beautiful and revered Anzac memorial site, is that they went to a lot of trouble to build a whole lot of bridges and expensive earthworks, which I thought was going to be a wonderful dual carriageway. In fact it is only a bloody single carriageway. What was the logic there? I hope that was not your work.

Mr Byron—No. We saw that happening later than we should have and if the consultation had been better we would have gone ballistic and said, 'Don't be so stupid!'

CHAIR—Has there been an explanation? Did anyone get the sack or—

Mr Byron—I think that Jon Stanhope has run around looking for someone to sack. I think it was an ACT government issue and I will leave it for them to answer, I think.

CHAIR—I notice Simon down the back. Good afternoon, Simon. We are coming to you.

Mr Byron—One final remark just to tidy two things up. Queanbeyan council this morning claimed that there was a 120,000-square metre restriction on office development in the National Capital Plan and that that will certainly be lost if this proposal went through. They are wrong. It is not in the National Capital Plan. It never was and it is not. We put it into our last master plan voluntarily and it is at page 16 of our master plan. It is in there now and I am sure that it will stay in.

CHAIR—Could you provide to the committee information on the extra traffic volumes generated by your development?

Mr Byron—We will. We can do that. Secondly, you asked about the brickworks. You asked the last group about the $10 million or $20 million issue and whether it would have got out of the process through the $10 million turning into $20 million. I do not think that they gave the right answer, because the brickworks was triggered for MD purposes under an environmental trigger. There is plenty of focus on the $10 million or $20 million but it is only one of 18 or 19 various triggers to trigger an MDP. The brickworks, no matter what it cost, was always going to be triggered—it would be triggered now; it would be triggered in the future.

CHAIR—Thank you very much.

[3.18 pm]

CORBELL, Mr Simon, Minister for Planning, Australian Capital Territory Government

SAVERY, Mr Neil, Chief Planning Executive, Australian Capital Territory Planning and Land Authority, Australian Capital Territory Government

de CHASTEL, Ms Liz, National Policy Coordinator, Planning Institute of Australia

JAY, Ms Dianne, Chief Executive Officer, Planning Institute of Australia

CHAIR—Welcome. If you would like to make an opening statement, you may, and then we will go to questions.

Mr Corbell—I thank the committee for the opportunity to provide some additional comments to our written submission this afternoon. I would also like to thank the committee for accepting a late submission from the ACT government. The period over Christmas and New Year made it a little more difficult to finalise that, but thank you for your tolerance on that.

CHAIR—You get an official smack for that, by the way!

Mr Corbell—I would like to briefly elaborate on four elements of the ACT government's submission. The submission deals primarily with matters around the amendments to the Airports Act itself. These are the matters of most concern to us.

Essentially, the proposals currently before the parliament provide for what we believe would be very significant changes to the regulatory regime that affects the Canberra airport, and will act to the detriment of planning in the national capital and to the orderly development of Canberra as a whole. Our first and most significant concern is the proposal put forward by the government to remove the application of the National Capital Plan from Canberra airport. The consequential result of this change, if it were to be approved, would see the current limit on the total amount of commercial office space permitted at the Canberra International Airport from being removed and there being no limit, aside from that outlined in the airport master plan for the Canberra airport.

Contrary to the assertions by the airport prior to the afternoon tea break, I can confirm that the National Capital Plan does currently provide for a square metre limit on the total amount of commercial office space permitted at the airport, and that limit is 120,000 square metres of commercial office area. Even if this limit were to be adhered to, that would see more commercial office space located at the Canberra International Airport than is located in our single largest town centre, the Woden town centre. Removal of the National Capital Plan controls from the airport would mean that we would simply need to require a change to the airport master plan to permit further commercial retail or other uses occurring at the airport. We believe that this is bad policy, and it will mean that one company and only one company in the Australian Capital Territory will not have to abide by the National Capital Plan. The Commonwealth government must abide by the plan, the ACT government must abide by the plan, all other businesses and individuals in the territory must abide by the plan, but the owners of the airport will not have to abide by the plan. This we believe is a poor policy outcome. I should stress that the application of two planning regimes at the airport was a fundamental part of the airport's considerations when they were purchasing the site around

the year 2000. Indeed, Mr Byron's comments that his bankers have difficulty understanding the concept of two regulatory agencies I think is difficult to believe, given that that was a condition in place when they provided finance in the first place for the purchase of the airport.

The second issue I would like to address is infrastructure costs. The airport is not required to make any contribution to infrastructure costs associated with its development on land owned or managed by the territory. Any contribution they do make is entirely voluntary. This is another weakness of the regulatory regime currently in place. The key issue confronting the territory right now is the issue of roads around the airport. The upgrade that is required to improve road transport access around the airport is the upgrade of Pialligo Avenue and a number of other roads. This is estimated to be in the order of $45 million. There is no doubt that a range of factors have led to the increased level of congestion at the road network near the airport but there is also no doubt that the location of between 3,000 to 5,000 employees at the airport over the past five years is a generator of traffic in the area.

The third issue I would like to highlight is the issue of unfair competitive advantage, which is maintained through the legislation and also the amendments that are being considered by the parliament. The airports, as we know, are not subject to any independent review of development activity on their sites and there is no opportunity for third-party appeal or review. Yet the airport here in Canberra seeks to use those very mechanisms that are available under ACT planning legislation to hinder or frustrate competition which threatens its own commercial interests. The best example of this is the development of the retail brand outlet at the airport, or what is known as Brand Depot. The ACT government recently approved the development of a competing outlet, a Direct Factory Outlet, in Fyshwick. The Canberra International Airport has sought to use avenues available to it in the Administrative Appeals Tribunal and in the ACT Supreme Court to prevent that development from proceeding. This is a blatant abuse of their position, exempt from third-party appeal and review, and yet acting in a manner which the government considers is uncompetitive and which protects their own commercial advantage.

Finally, I would like to address the issue of the policy objectives around the management and leasing of airports. This policy was intended, when the airports were sold, to provide for additional sources of revenue to finance upgrades in aviation infrastructure. Clearly this policy, in the instance of Canberra, is not delivering. It is not delivering, despite the fact that Canberra International Airport has the highest level of non-aeronautical related revenue of any airport in the country—and that has been independently assessed by the Australian Competition and Consumer Commission. We have seen no significant or major upgrade to passenger terminal facilities since the airport was built. There has been a facelift in some areas, but the fundamental terminal infrastructure is unchanged, and Canberrans and visitors to Canberra alike continue to have to deal with what are second-rate airport facilities. This is, in the Australian Capital Territory government's view, a clear example of why, at the very least, existing regulatory control should be maintained over Canberra International Airport, and senators should give greater attention to the issue of the unfair competitive advantage airports currently exact in the areas where they are located and their continued failure to provide reasonable levels of passenger facilities, as is evidenced in the case of Canberra.

Ms Jay—Thank you for the opportunity to address the committee today. We have focused on the planning aspects of the bill in our submission, and will do so again today in our comments. Liz de Chastel is the policy and research officer with the Planning Institute, and she will make a statement which builds on the submission that we have already put to the committee.

In opening, I would like to say a couple of things. We are not going to comment specifically on individual airports, but there are some general principles that we would like to reinforce with you. We certainly believe that non-airport development on airport land should comply with state planning legislation processes and strategies. We believe that is a baseline principle that really should be built into the bill.

In general terms, we support any endeavours to amend the current legislation to ensure adequate consultation occurs for proposed developments on airport land. However, we would urge the government to go further and to ensure this development is consistent and integrated with surrounding metropolitan and regional planning regimes.

We believe that airports are well located and can become and are significant employment and commercial hubs that are significant in the overall metropolitan and regional economy. However, the principle of competitive neutrality which is promoted in the national competition policy needs to be upheld, and all developers of land should be subject to the same planning regimes as everybody else.

According to the Productivity Commission, retail and commercial development is underwriting profits for airport operators, with up to 70 per cent of revenue at Australia's privatised airports earned from non-aeronautical activities. On that basis, it seems appropriate that they should also be subject to the planning regimes that apply to other developers. I would now like to pass to Liz.

Ms de Chastel—I think you have said everything that I was going to say. I will just outline our submission in a bit more detail. The Planning Institute of Australia is the peak professional body for urban and regional planners and related professions in Australia. We have around 5,000 members represented in all states and territories and also internationally. On behalf of our members we advocate for better planning systems and actively promote economically social and environmentally sustainable communities. Within our organisation we have established a national policy committee which develops and manages our policy positions. This committee has developed a policy around development on airport land which we have submitted to you in our submission. This was done after many concerns were raised by our members about the proliferation of non-airport related activities on airport land.

I reiterate what Di said: we believe that airports are significant economic and social assets for a city or a region. This is already demonstrated in a number of our capital city airports and overseas airports which generate and create significant business and employment hubs. There are also a range of activities that have synergies with being located adjacent to an airport hub, and these are supported by our organisation. There are also arguments for non-airport development to be located on airport sites if supported by metropolitan or local plans. We also believe that the control of the aviation activities on the airport sites warrants a national regulatory regime.

As Di mentioned, we support the current amendments which seek to improve the consultation regime, although we understand there were some concerns with the time frames for some local governments. We definitely support development on airport land which fits strategically in with development of the region, is subject to the same rules for other developers in the region and takes into account infrastructure requirements. But unfortunately, as we have been hearing this afternoon, this is not always happening with development at many airports in Australia.

During the formation of our policy position we heard from many of our members who brought forward issues around the country about the stuff that was happening at the airports. I will read some of these to you. Non-airport related developments are being proposed on smaller regional airports, such as in Tasmania, and this will have severe impacts on the ability of smaller local governments to properly plan and manage development and infrastructure for their area. Of course many of these local governments are not funded other than by existing rate payers to support this, despite wide community use and service provision. In one capital city, a large well-known brand hardware store has been built on airport land just a few kilometres away from the existing zoned and serviced industrial area, potentially cannibalising or affecting the economic viability of existing traders. Many airports end up with mega retail or commercial developments which compete directly with current centres and do not necessarily cater well for the additional traffic generated, parking requirements or managing the catchment generation. I am sure you have heard many examples of this today, so I will not go on with that.

Ongoing planning concerns and disputes between airport operators, state, territory and local governments and major developers will continue under this current system. A better way to capitalise on the economic opportunities provided by airports and to make our cities and regions globally competitive is to have greater integration and a proper process for engaging all three tiers of government into decision making and funding where appropriate. For these reasons I have outlined above, PIA urges that these amendments should go further to ensure that planning decisions on airport land for non-airport activities must comply with the planning instruments that are in force, whether they be state, regional and/or local instruments.

I read this morning about the submission that the Australian Local Government Association made to the committee. They recommended that, if a proposal did not comply with a particular planning instrument, the reasons should be set out for why that proposal was approved. We would support that. We also believe that, on the other side, airport sites and developments should be integrated into metropolitan or local plans through the proper channels so that a two-way system is going on. PIA wants to see better planning outcomes for our airports and trusts the issues raised in our submission that we have presented here today and in our written submission will be considered in the committee's deliberations.

Senator O'BRIEN—To follow up on that last point: what you have emphasised from that earlier submission is that you are suggesting the airport lessor takes some sort of action to integrate the airport zones into local or state planning zones and that there should be an encouragement to do that. I am not sure if you are suggesting that that should somehow fast-

track the federal process or that there should be a slow track for those that do not fit that process. What do you think?

Ms de Chastel—If it does fit the process, if it does fit in with the metropolitan or state plan, it should get fast-tracked and that should be the incentive. But we see that at the moment there are two planning systems operating and they are not being integrated very well. We are proposing that those systems be integrated and that there is one plan that is looked at when the decision is made for the approval.

Senator O'BRIEN—There has been some comment about a provision in the legislation under which, effectively, a proposal before the minister is approved if the minister takes no action by the expiry of the time allowed for consideration. Firstly, do you know of any such parallel provision in other legislation—I understand if you do not, but you may—and, secondly, what do you think about that provision?

Ms de Chastel—I do not know of any other provisions around the country for that. Neil might know. There are none that I am aware of. It is pretty uncommon for that to happen.

Mr Corbell—Normally it is the reverse. If an explicit decision is not made within a set period of time, it is a deemed refusal.

Ms de Chastel—Yes.

Mr Corbell—In the instance that is proposed in the amendments, it is a deemed approval, which is highly unusual and is particularly concerning in the context where there is no opportunity to independently review such a decision.

Senator O'BRIEN—Or non-decision in this case.

Ms de Chastel—That would be going against all other state planning legislation and current systems that are in place.

Mr Corbell—For example, in the ACT there are set time limits for consideration of development applications. If the planning authority refuses or does not make a decision within those set time limits, it is a deemed refusal and the proponent, the applicant, has the opportunity to seek a review of that refusal in the Administrative Appeals Tribunal. So there are mechanisms to safeguard the authority simply sitting on an application and not making a decision one way or the other.

Ms Jay—It would seem very odd, given the potential implications of these sorts of applications, for the reverse to apply.

Senator O'BRIEN—It seems it is unique, from your knowledge anyway.

Ms de Chastel—Very unique, yes. You can almost make a decision by not making a decision if you like.

Senator FERRIS—A decision can be made by not making a decision.

Ms de Chastel—That's right.

CHAIR—I have to be very careful about how I put this, but, if you had a more colourful sort of a person in the process, couldn't that lead to the temptation of some colourful planning decisions under that model?

Ms Jay—You are saying that just through the effluxion of time all sorts of creative and wonderful things could occur, just as a consequence of a decision to allow time to elapse.

CHAIR—I could think of a few dead ministers—

Senator O'BRIEN—For us too?

Ms de Chastel—It also means it is likely there will not be any conditions put on that approval.

CHAIR—This need not be a witch-hunt, because usually everyone who comes through my door comes in driven by self-interest. You know that before you start. So, with great respect to everyone, I think airports are great developments but at the same time we need to protect both the airport and the approving body against any allegations of jiggery-pokery.

Ms Jay—Absolutely. You can be sure the Planning Institute does not have any vested interest. There is a really strong community interest here and we need to ensure that it is well protected.

Senator O'BRIEN—In the submission you made, Mr Corbell, about the value of the airport when purchased being in effect constrained by the double planning scheme, I take it that you are saying that the removal of that second planning scheme will be a windfall gain for the airport operator in terms of value not paid for?

Mr Corbell—There is no doubt in my mind that that is the case. The purchasers of the Canberra International Airport were aware of what regulatory scheme applied when they purchased the site, and they knew that the National Capital Plan applied as well as the requirements of the department of transport under the Airports Act. The fact that they are now lobbying for the removal of that level of regulatory control means that they achieve a level of windfall gain in terms of ease of development, which they have not previously had to the same level, and that has to improve the value of the site. That is not a value that has been captured for the taxpayer in any way. Indeed, when the airport was sold, the Commonwealth itself said that it was sold knowing that there was an additional layer of regulatory control in place because it was the airport of the national capital.

CHAIR—Unlike all the others.

Mr Corbell—Unlike all the others. It was a very explicit decision by the Commonwealth at that time that it would sell the airport with that additional level of regulatory control.

CHAIR—Do you think that Canberra airport is a great asset for the area?

Mr Corbell—Canberra airport is a very, very important asset for the national capital.

CHAIR—Do you think that part of that asset value is the fact that it does not have a curfew?

Mr Corbell—I think issues of curfew are certainly of interest in the Canberra community. The fact that is does not have a curfew does, I think, add to its value.

CHAIR—But it would also add to the opportunities that would present to this.

Mr Corbell—Indeed it does, and the ACT government has not—

CHAIR—So you would not be like Queanbeyan and want to put a curfew on it—you do not have a policy that says we should plan to get a curfew on it?

Mr Corbell—No, we do not support a curfew at the airport. We do not see the need for that as long as appropriate land use planning is in place around the airport to prevent the impact of airport noise on surrounding areas. That has successfully been the case for almost all the residential areas of the ACT. It has not been the case for some developments in Queanbeyan's local government area, but we do not see that as a reason to impose a curfew. It is a reason to continue to apply strict land use planning controls to prevent those sorts of problems occurring in the first place.

CHAIR—So you do not want to give a bit of advice today to the Queanbeyan council while you are in a forum that is pretty harmless?

Mr Corbell—We have already given our view to Queanbeyan City Council and to the New South Wales government.

Senator McEWEN—There has been some comment from representatives of the airports today that local authorities have been unable to control the development of housing around airports and therefore it is the fault of local governments that there is a problem with noise. Do you have a comment about that? Perhaps the Planning Institute might have one.

Ms Jay—One of our key concerns is about the capacity of local government to deal with some of the implications of development on airport sites. It comes down to a funding issue. What we see is that, where airport development is approved and it is a non-integrated approval, we end up with local and state governments being forced or pushed into funding infrastructure and development that supports the airport and the integration of that airport development with the local community development. I am not directly answering your question, but the concern for us is that the planning regimes in place both at state and local government levels look to ensure that there is a rational allocation of resources over time so that a community can develop in a way that will produce effective social, economic and environmental outcomes. This is starting to produce perverse outcomes, because expenditure is being focused around airport development that is not integrated with those plans. Housing is another case in point.

Ms de Chastel—The other issue there is that we support clear policy guidelines, particularly for developments around airports. Some of the states have already got those guidelines in place. Steven, in his submission, said that that would really help him direct development to other areas or whatever. We definitely support clear policy guidelines that say, 'Within these areas there shouldn't be housing; within these areas that is okay.' We support that. Most of those are driven by state governments. Local governments would really benefit from clear state guidelines in that respect.

Mr Corbell—Our view would be that the application of the National Capital Plan has been very effective in providing for a buffer around our airport here in Canberra and protecting it from the impacts of residential development. What complicates that is the fact that we have another jurisdiction within close proximity to the airport in Queanbeyan with a whole different set of planning controls. We are not able to strongly influence the decisions that either a state or a local government make in that regard, but we can put our views and we do.

The fact that statutory planning controls can work, as has been demonstrated in Canberra, indicates the importance of maintaining a uniform planning regime for all areas associated with airports, including the airports. There is no clear argument as to why the application of the only uniform planning control that we have in the ACT, which is the National Capital Plan, should not apply to the airport. The airport gets advantage from the application of that planning control in the areas surrounding it. Why shouldn't it apply to the airport?

CHAIR—What would change if dual planning goes on into the future? What might not have happened that has happened?

Mr Corbell—Are you asking about what would happen if the ACT had jurisdiction or if the National Capital Plan continued to apply?

CHAIR—The dual planning provision. What might not have happened?

Mr Corbell—It is difficult to speculate on what may happen with any certainty. We can only look at what has occurred to date and work on that. To date, we have seen retail development permitted at the airport, contrary to the retail hierarchy for the national capital, where retail development is located close to public transport routes and other services and facilities. We have an isolated retail development on Majura Road at the airport. We can only speculate that that will continue and we will see further retail uses occurring at the airport. We can also speculate that we will see a continuation in the level of commercial office space permitted at the airport and that that will continue to grow to a level well beyond the size of any of the ACT's town centres, perhaps becoming second only to the city and the Parliamentary Triangle. There will be no effective analysis of the impact of such development on the broader metropolitan strategy for the city if the National Capital Plan provisions are removed. The department of transport does not, I believe, have either the experience or the level of skill required to analyse the impact of large scale commercial or retail uses on the metropolitan structure of the city of Canberra, particularly given that there is a Commonwealth agency established to do just that, which is the National Capital Authority.

Senator FERRIS—Can I clarify something with you? Where there any developments out there that the National Capital Authority opposed?

Mr Corbell—The National Capital Authority has not opposed any of those developments, but it would be fair to speculate that there is a tension between the role of the NCA and the role of the department of transport.

CHAIR—Going back to one of my favourite subjects, which is that bloody roundabout out there, how much of that congestion is due to the Gungahlin traffic? Do you blokes have those figures?

Mr Corbell—We can certainly provide those to the committee.

CHAIR—We have asked for the airport side of that.

Mr Corbell—I do not have those to hand.

CHAIR—It seems to me that it would be a good lesson for every planner to get out there at half-past eight in the morning and see how to build something that does not work.

Mr Corbell—Yes. There is no doubt that the traffic from Gungahlin is a significant contributor. The government does not deny that. But it is also the case that any generation of activity at the airport beyond its role as an airport adds to the problems for commuters trying to get to and from the airport or finding a park at the airport. The fact that you have journeys to work going to that airport campus, particularly in the morning and afternoon peaks, which are also at the same time as when commuters need to get to the airport, highlights some of the problems with collocating those two very different activities.

CHAIR—In return for not asking you why the Limestone extension is a single carriageway, and to avoid you having to answer that, could you comment out of context on the fact that if the National Capital Authority asked you for assistance in avoiding building toilets on the site of the War Memorial you would assist them?

Senator FERRIS—I guess this is one of his pet subjects.

Mr Corbell—If they can guarantee our ownership of Googong Dam we would be very happy to assist—

Senator FERRIS—That is a big train!

Mr Corbell—otherwise, we will leave the issue of toilets on Anzac Avenue to—

CHAIR—The issue will come up, though, because I have the feeling that it is a very sacred vista there, and I do not think we should be building dunnies on it.

Senator McEWEN—You mentioned that, despite the privatisation of Canberra International Airport, there has been no new terminal yet, but I read somewhere in one of the submissions, presumably from Canberra International Airport, that there is an intention to build one.

Mr Corbell—It has been coming for some time.

Senator McEWEN—Under the proposed legislation, what do you see would be the required level of consultation with the ACT government regarding what the terminal will be like? It seems to me that, if it is built, it will probably be the biggest thing built in the ACT for a long time in terms of its impact on tourism, business, travel, size, et cetera. Are you going to get a guernsey for what it will be like?

Mr Corbell—We are not particularly concerned with the nature of aeronautical related development at the airport. We would like to see the quality of passenger facilities improved so that visitors arriving in Canberra get a better impression of our city when they first arrive. But we do not see a particular role for the ACT government in having any significant say on the aeronautical facilities themselves. That is why the airport is there, and we do not have a complaint with that. Our complaint is with non-aeronautical related development. I use the terminal as an example to say, 'Look at the amount of money that has been spent on non-aeronautical related development at the airport compared to the amount spent on aeronautical related activity.' The disparity is very large.

CHAIR—These things are always in the eye of the beholder. Thank you for your time and consideration.

[3.54 pm]

CONWAY, Mr Terry, Director, Policy and Coordination, Airports, Department of Transport and Regional Services

MRDAK, Mr Michael, Deputy Secretary, Department of Transport and Regional Services

SOUTHGATE, Mr David, Acting General Manager, Aviation Services, Department of Transport and Regional Services

WILLIAMS, Mr Neil, General Manager, Airports Branch, Department of Transport and Regional Services

CHAIR—Welcome. Do you wish to make an opening statement?

Mr Mrdak—I would like to address some key issues which seem to appear in a number of submissions. Firstly, there have been a lot of comments in the submissions and in evidence today on issues such as the reduction in consultation periods proposed in the bill and the way in which major development plans are handled both in terms of the assessment process and the thresholds which trigger major development plans.

I will just give a bit of background on the way the government's decision in relation to consultation periods has been reached. As you know, this bill reflects the outcomes of several years of review and consultation on the airports legislation, which was developed through the course of 1994 and 1995 and enacted by the parliament in 1996. It reflects a balanced approach to the key issues and challenges which have emerged in the first 10 or 11 years of privatisation of Australia's major airports. It is an attempt on our part to put in place what we think is a good balance for promoting development, which is a key part of the legislation. One of the objects of the Airports Act is to promote airport and aviation development in Australia and to continue that development while at the same time ensuring there is a balanced package of regulatory controls and requirements which ensures the public has every opportunity to be informed and to have their views taken into consideration in the development of proposals.

As the Airports Act has been in place for over 10 years, we thought it was timely to look at the issue of consultation periods. It is worth noting that most of the airports have now been through several MDP processes, and all of them have approved master plans. In our view, in the future, changes to master plans are likely to be incremental, not large. There is no nationally consistent approach to public consultation under legislation. The current 90 days in this airports legislation is, in our analysis, now the longest public consultation period in Australia. Public consultation arrangements in the states and territories can generally range from 15 to 60 calendar days. The proposal to provide for 45 business days, which equates to around 63 calendar days, still places us at the top end of state and territory consultation requirements.

In doing so, the government's decision to make these changes also reflects a commitment by the government to reduce regulatory burden. You have recently had some discussion on moves to remove Canberra airport from the National Capital Plan and the like, which is all about the government's attempts to continue to promote development and to remove regulatory burden from business operating at airports in Australia. It is also important to note

that the consultation changes we are proposing have also been balanced by more onerous requirements on the airport owners in terms of the public consultation requirements of the documents they make available to make them more easily available to the community and to interested parties.

It is also important to note that, unlike a lot of other state and territory planning legislation, the Airports Act does not provide a call-in power for the minister to call in a project or to override statutory timeframes. That is not being provided for in this bill, and there is no provision to do so, as is available under a number of state and territory regimes. That can accelerate processes and is not available under this legislation.

In relation to the major development threshold, the proposed increase from $10 million to $20 million in our view recognises the significant increase in costs of building, construction and development around Australia in the timeframes since the act was put in place. It continues the focus on ensuring that significant developments on the airport will be subject to major development plan processes. As a number of your previous witnesses today have highlighted, the trigger of the $10 million, which is currently in place—and the proposal to move to $20 million—is only one of a number of triggers for major development plan approval processes. Most importantly, there is no change proposed to the environmental triggers for the provision of Commonwealth environmental legislation assessment on projects irrespective of their value. Of course, those environmental assessment processes can be triggered by relatively small projects of relatively small monetary value if they have any significant impact on environmental issues.

Importantly, in making these changes we are also expanding the definition of 'building activities' at airports, which will capture a broader field than just development. At the moment, land clearing is not a defined activity requiring building approval. We will be bringing that into the threshold, which means the value of the projects will be more than is currently the case. That also enables us to trigger a building approval process for any land clearing, which has not been available to this point under the existing legislation.

In our view, the threshold reinforces the original intent of the parliament by focusing the regulatory process on significant developments. Also, importantly, developments which fall under that threshold will all be required to get building approval from the department, through our airport building controller. Through that process, we can ensure consistency with the airport master plan and other regulatory requirements such as environmental clearances. We would argue that the change is consistent with the current changes being made to the Public Works Committee Amendment Act 2006, which received assent at the end of last year, which increased the threshold for Public Works Committee consideration from $6 million to $15 million and provides for regulation to allow that to, essentially, be indexed. We believe that our threshold change simply mirrors the sorts of factors which led to that increase—that is, it reflects the cost of building activity in Australia as it has increased.

I would like to cover an issue that was raised this morning and, I think, has been running in the media today—that is, the capacity of airports if they are under state regimes to allow activities such as prostitution and gaming. The Airports Act prohibits any activities involving prostitution. There is a clear regulatory control which prevents any such activity. In relation to gaming, the Australian government's position is clear. The Australian government has been

clear since coming into government that it is not prepared to see major gaming such as casino type activities and the like, including poker machines, taking place at airports. There are some transitional provisions under the regulations which provide for some limited forms of gaming—which were pre-existing—and enable at some airports some gaming activities such as scratch lottery tickets, lotto and the like to be sold through retail outlets. The proposal being considered would enable that to take place at airport terminals—such as newsagents selling scratch lottery tickets and the like under state legislation—but the Australian government's position is clear: it will not allow at airports games of chance, poker machines or casino type activities.

Finally, I would like to reiterate that the department takes very seriously its role as the development approval adviser to the government. I think the airport development guidelines that were released by Deputy Prime Minister Vaile at the end of last year give weight to the government's concern to ensure that consultation processes are adequate and that the work that is undertaken by airport development proponents fully ensures that all issues are taken into account before the proposals are brought forward to government.

CHAIR—The previous witness said that he does not think your department is up to the task of dealing with the planning side of it. Would you like to respond to that? Do you outsource that?

Mr Mrdak—We do seek advice when we need to. When we receive major development plans we assess them within the department. Clearly, we do not have all the necessary technical expertise in every area that needs to be covered by a major development plan or master plan proposal, so we do engage external assistance through, say, environmental advice, airport planning advice or in relation to air safety issues. We rely very heavily on our statutory agencies the Civil Aviation Safety Authority and Airservices Australia for airport operations matters, but we do seek expert advice as needed, including planning advice to fully understand the implications of the various issues in what we are assessing.

CHAIR—Does your planning cease at the airport gate?

Mr Mrdak—It does, although, in reviewing master plans and major development plans, the act requires the airport to identify the consistency—or, where not consistent, the inconsistency—with state and local planning regimes. So we do look at that and, in our advice to ministers in relation to master plans and major development plans, we draw attention to and do an assessment of the consistency with state planning regimes and of where projects may or may not be consistent with those regimes.

CHAIR—You cannot blame airport owners for wanting to maximise their benefit on airport land, but how do we deal with the various mistakes that have been made, including the spectacular roundabout down here and the extra hours stuck in the queue to get to Adelaide?

Senator FERRIS—Yes, when IKEA opened.

Mr Mrdak—We do an assessment of those developments in terms of traffic and the like.

CHAIR—Does that mean you got it badly wrong? The evidence points that way.

Mr Mrdak—Some of the previous witnesses have highlighted that a lot of the traffic causing the problem in Canberra is not airport-generated.

CHAIR—I understand all that, but does your planning stop at the airport gate and does that make a lot of sense?

Mr Mrdak—There is no doubt that we have limitations. Our regulatory powers stop at the airport boundary. We can only advise in relation to where we see potential impacts off airport. We attempt to see whether there is a way forward with the state and local government that the airport has done. In many cases, where major development plans have been approved the airports have gone to a lot of trouble to reach agreement with state and local authorities in relation to traffic access, and we can provide the committee with details of where airports have funded infrastructure outside the airport boundary for traffic access and the like. Some of the witnesses this afternoon have highlighted those, but we would be happy to give you some examples. A great deal of effort is being made to connect airport developments with off-airport infrastructure requirements.

CHAIR—If it flood rains this spring and Adelaide gets flooded and decides to put up higher bunds, what relief can the people who are going to be affected by those higher bunds expect under the present or proposed planning arrangements which would be outside the gate of the airport?

Mr Mrdak—If the work is taking place on the airport, before Adelaide airport could do any of that work they would need to get regulatory approval from our building controller and from our airport environment officer to ensure we understood the environmental and other water flow issues. If it were likely to have an impact off the airport, we would want to see how they worked that through with local and state government before we would approve such works taking place.

CHAIR—You understand, though, that you would have to ask yourself the question. It is a bit like when the fire was coming to Canberra: it is just a bit unfortunate that no-one was about and had a look at it.

Mr Mrdak—Yes.

Senator O'BRIEN—With regard to the movement of the threshold from $10 million to $20 million, how did you make that assessment? Was it double the number or was there some cost index you referred to to make the judgement that it needed to be doubled?

Mr Mrdak—We consulted fairly broadly on the review of the act. As you could imagine, a variety of views were put forward about what the threshold should be, including some greater estimates by some parties who would like to see the MDP threshold much higher. Our assessment for ministers was that this was a reasonable lifting of the level, given the escalation of building costs in Australia over the 10-year period. As I outlined earlier, we thought it was also practical, given the requirements of the Joint Standing Committee on Public Works—

Senator O'BRIEN—Up by 150 per cent—six to 15, you told us.

Mr Mrdak—That is right.

Senator O'BRIEN—That is a 150 per cent increase; this is 100 per cent.

Mr Mrdak—We are proposing to go from 10 to 20.

Senator O'BRIEN—Why the difference? If that was indexed by 150 per cent, and you say it is a comparable thing, why did this not go up to 25?

Mr Mrdak—We thought this was a reasonable lift at this stage. As part of this, we would be providing through regulation some form of indexation to encapsulate future cost increases without having to come back to amendments to the act. We thought this was a reasonable first step in terms of lifting the threshold. We were also conscious that there were parties that would argue that thresholds should have lifted much higher.

Senator O'BRIEN—How will the indexation work?

Mr Mrdak—We will be looking at some form of escalator in the way the public works committee act will. We will be looking at the building construction index or something of that nature—or CPI.

Senator O'BRIEN—Okay. But that was not used to arrive at the current figure of $20 million.

Mr Mrdak—No, in providing advice to government we looked at what we thought would be a reasonable quantum, lifting it from 10 to 20.

Mr Williams—There was a question this morning about what other jurisdictions might be looking at it in terms of similar proposals. I might add an example. In New South Wales's state significant projects, the thresholds for those types of developments are $30 million for most developments. In the case of major commercial and retail, the threshold is $50 million.

Senator O'BRIEN—And this is $20 million.

CHAIR—What is the logic behind the reverse onus in the planning approval process?

Mr Mrdak—That provision reflects the consultation that was done on the airports legislation when it was being developed in 1994, 1995 and 1996 at the time the airport privatisation process was underway. There was a great deal of concern at the time by potential investors and also the aviation industry about whether there would be enough surety about the development regime to apply post privatisation and about how it would work, and how the Commonwealth development and planning regime would operate. At that time we took a close look at what happens overseas in other regimes. In effect, this is about providing some surety for development on airports. I have got to say that one of the outstanding successes in the leasing of our airports has been the quantum of investment that has taken place in our aeronautical infrastructure in Australia compared to the overseas experience of privatisations, and I think that is very much reflected through the regulatory and pricing regimes that were put in place at the time.

Senator O'BRIEN—You keep talking about investment in aeronautical infrastructure. Do you mean the amount that has been paid for the leaseholds or the amount that has been paid for runways and terminals? Or do you mean the amount that has been paid for development of every sort on airport land?

Mr Mrdak—No, Senator. It is reflecting the development that has taken place in aeronautical infrastructure—runways, taxiways, aero pavement, apron and terminals. If you look at the investment that has taken place across our major airports and even in some of our smaller general aviation airports under the leasing process, the investment has been much

larger than anything the government was able to do either through government ownership or then through the Federal Airports Corporation, and that Australian private airport investment has been much higher than in other privatised airports around the world. Concerns have been raised by the airline industry in other places around the world where there has essentially been an investment strike.

Senator O'BRIEN—Those figures are available, are they, and you can provide those to us?

Mr Mrdak—We can provide those. At the time of the privatisation the government had the major airports commit to development commitments. They are monitored, and I think that at this stage somewhere in the order of $700 million to $800 million of investment has been committed under development commitments. Investment has been much greater than in a number of other airports in their own facilities.

Coming back to the chairman's question, the original provision was to provide some certainty. The concerns expressed by a number of parties today about how they might operate I do not think have proven to be true. In essence, we have never reached a situation where the minister has not reached a decision on a project, and I think that is unlikely given the interest in—

CHAIR—It begs the question, doesn't it? If you have the alternative process, which is state input or somesuch, what would be different from what happens now? I do not know the answer to that but if you knew the answer to that it would solve the problem of whether—

Senator FERRIS—But Mr Corbell said that there had been no applications that the ACT planning regime had disapproved of or objected to.

Mr Mrdak—I think he was referring to the National Capital Authority process rather than the ACT government. I think the difference, Senator, is that under a number of state regimes, if you talk to people trying to build infrastructure in a number of state regimes, one of their great concerns is that the state regulatory approval process can drag out over an enormous period of time and in many ways frustrate and prevent development taking place. This regime is designed to ensure—and it was one of the objectives of the Australian government in the act—that investment takes place on our airports. We are providing some certainty. In recognising the fact that we are trying to improve the quality of the material coming forward, this bill provides for a 'stop the clock' provision. That has not been there previously.

Currently we have a situation where, once the MDP is lodged, we have 90 days to assess it and provide advice to the minister. By having the 'stop the clock' provision, we would hope that we provide some incentive for airports to lift the quality of the material being provided so we do not have the current tension where we are constantly going back within a tight time frame to get information. By the same token, I certainly think it is important that we do have some statutory process which gives some certainty to developers and, provided they are providing information that is required, we can give them a speedy assessment and we are not seen to be holding back development by being simply bloody-minded and not progressing projects. I think that has been one of the real lessons we have learned. If you look at the developments that have taken place on airport land compared to what has taken place in a number of jurisdictions in surrounding areas it is a marked contrast.

Senator McEWEN—What percentage of major development plans under the current legislation have exceeded $10 million or have not met the master plan and therefore get to DOTARS or the minister's office?

Mr Mrdak—A number of major development plans do not trigger the $10 million; they trigger an environmental threshold.

Senator McEWEN—Yes, but how many have you actually dealt with?

Mr Mrdak—That do not trigger the monetary cap?

Senator McEWEN—Yes.

Mr Mrdak—I would have to check that. A fair number would trigger an environmental issue rather than a strict financial issue of the quantum of building cost.

Senator McEWEN—How many do trigger the $10 million?

Mr Williams—Overall, there have been about 30 in terms of major development plans since 1997. Certainly in the last couple of years there has been a ramping up of development. We can provide the committee with a list of all the approved MDPs and we can try to break out the ones that have been triggered via the monetary threshold or via the environmental threshold.

Senator O'BRIEN—How long will that take?

Mr Williams—Not very long at all.

Mr Mrdak—We can probably do that in the next few days.

Senator McEWEN—Can you also tell us how many have been rejected?

Mr Williams—No proposals have been rejected.

Senator McEWEN—No MDPs or master plans?

Mr Williams—Some master plans have been rejected. We can provide details on that as well.

Mr Mrdak—There is a lot of work going on in relation to MDPs. One of your witnesses this morning talked about the process now taking place in relation to the Sydney MDP, for instance, which went through some big changes following the public consultation process. A lot of work takes place before the final MDP is lodged for the minister's consideration. A lot of the issues are worked through before the final MDP is lodged but, as Mr Williams has said, at this stage no MDPs have been rejected.

Senator McEWEN—How many do you have under consideration at the moment?

Mr Williams—Currently there are about four with the minister. There are a number out for public comment at the moment.

Senator McEWEN—And they will all be treated under the current legislation?

Mr Williams—It depends on the timing of when they get lodged as to whether they will be treated under the new amended scheme or under the old scheme.

Mr Mrdak—The bill provides transitional provisions in the schedule to the bill.

Senator McEWEN—Are any of those for Adelaide airport?

Mr Mrdak—Not that I am aware of.

Mr Williams—No.

Senator STERLE—I want to bring to your attention the media release by the minister on 12 December headed 'New airport guidelines underline community consultation'. He said:

Communities have an expectation that they will be consulted effectively about these intensely local issues. These guidelines will highlight to all parties the importance of consultation between airport lessee companies, and the relevant stakeholders, on all land use, planning and developments at leased federal airports.

… … …

The Committee's scrutiny—

this committee's—

will help ensure this legislation achieves the best outcome for airport operators and the stakeholders affected by airport development planning processes.

Why the need for new guidelines?

Mr Mrdak—There have been a number of processes over the last few years where both the airports and people making submissions have sought some clarity about what are the expectations. Importantly, the guidelines also came out of a recommendation of a Senate inquiry into the Brisbane airport master plan, which I think was in 1999 or 2000. The Senate inquiry recommended guidelines be developed for the public consultation process because of concerns that were raised in that Senate committee about the way in which Brisbane airport at that stage had undertaken consultation on its master plan. So the guidelines that were released by the minister last month have been developed over the last year or so in consultation with a range of parties through a very public process. They are designed to give some clear indication of what our requirements are right up front. A lot of these would be well known to the airport operators by virtue of the discussions they have with the department regularly about our expectations.

They are also designed to give the community some surety in relation to processes and our expectations that the developers will follow and also those making submissions will follow. I have to say that, if you look at the experience of what took place around that initial master planning process for a number of the major airports compared with the public consultation process that Brisbane airport is currently engaged in—or has recently undertaken in relation to its current MDP for the parallel runway development—there is a marked improvement. I think it is a credit to both the airport and those people involved in commenting on the process that it has been such an outstanding information and consultation process.

Senator STERLE—The consultation process for the brickworks development on the Perth airport has come to my attention. You and I have had conversations on this in other forums, and you know that every time we bump into each other I will still be raising it because it was a total disaster. If those guidelines had been in place then when nearly 5,500 local residents signed a petition protesting against the brickworks I wonder whether we would have had the same outcome or whether the minister would have taken the same stance. Sadly, would you

agree that these guidelines are all great but too late for the people in the suburbs surrounding the airport in Western Australia?

Mr Mrdak—I think it is fair to say that the views of all the residents around the airport were well known and were considered as part of the assessment of the project.

Senator STERLE—There was an earlier submission from someone—I forget who it was; I apologise—which talked about the opportunity for the Lockleys residents association, where they had a choice between a hangar and a retail outlet. I do not know how many people were involved in that, but it just gobsmacks me that you say that the residents' concerns in Western Australia were taken into consideration. I do not think, when 5½ thousand people signed a petition opposing it, that any notice was taken at all. On that, I also heard you say, Mr Mrdak, when we talked about the department's field of expertise, that sometimes you seek environmental advice. I know that, when the Environmental Protection Authority did the environmental assessment for the brickworks in Perth, there was a damning report. Your department did not take that into consideration—that is my view.

Mr Mrdak—I have a different view in terms of that. That assessment report highlighted a number of areas which needed to be addressed. The decision of the minister was that those issues could be addressed by the conditions that were placed on the development that was approved. That was the decision that was taken.

Senator O'BRIEN—I want to follow up on the provision which gives automatic approval if the application has not been dealt with in the allocated time. I understand that there is a 'stop the clock' provision, but at the end of that time—whether 'stop the clock' has worked or not—if there is no decision, it is taken to be a positive decision.

Mr Mrdak—That is the current arrangement that has been in place since 1996.

Senator O'BRIEN—That is the current arrangement?

Mr Mrdak—That is the current arrangement. As I said, that has been in place in the legislation. It was in the first legislation that was put to the parliament in 1995 that has been enacted since 1996. That is the provision that has governed development since that time.

Senator O'BRIEN—So it is not part of this amendment bill?

Mr Mrdak—It is not part of the amendment bill. The 'stop the clock' is part of this amendment bill, which is in our view an important balance. If we find there are MDPs that have not had information provided or for which there would be benefit in having additional research and the like done—and that is one of the issues that were raised in relation to the project that Senator Sterle commented on a moment ago—the 'stop the clock' provision gives the minister the capacity to ask for further information, and the 90-day clock stops. We do not have that at the moment.

At the moment, and since 1996, we have operated under the regime that if the minister does not approve or disapprove the project within the 90 days then it is deemed to be approved. As I said to the Chair, that was put in place at the time of the sale of the airports to give some surety to the airport developers. In our view, the 'stop the clock' provision reflects our experience to date and also the growing maturity of the development assessment process by both the airports and the communities commenting on the MDPs.

CHAIR—You do not think there is some halfway house here? With my evil mind, it seems to me that with this process if you ever got a corrupt minister in the process—and there have been some very spectacularly corrupt ministers in planning approval processes—it would lend itself to an undisclosed loan or something.

Mr Mrdak—I could not comment. I can understand—

CHAIR—Do you know what I mean?

Mr Mrdak—I do.

CHAIR—You really are loading up the minister. I have been offered bribes. It is no big deal. You expect people to be like that.

Senator O'BRIEN—In what jurisdiction?

CHAIR—I did the right thing about it. It was $1 million, I have to say. It was pretty spectacular. Haven't you had one yet?

Mr Mrdak—I can only say that where we have dealt with MDPs under this regime, we have never had an issue of a minister not taking a decision—

CHAIR—But it just seems to me that it is not quite tidy.

Mr Mrdak—The alternative, if the government were disposed to amend the legislation, would be to provide for what happens under state and territory regimes, where the alternative argument put by the developers and infrastructure investors is that you can spend a lot of time being dragged out by governments who—

CHAIR—I hear all the arguments and I have seen all the street battles where the poor old strip shoppers had to fight. I must say, it is very convenient to shop in a big shopping centre, where you can drive in and do all your shopping, with one car park and all the rest of it. I hear all those arguments.

Mr Mrdak—Our experience to date—and Mr Williams may wish to comment—has been that the process and the level of assessment have worked. At the end of the day ministers do look at these issues and do take decisions because they recognise that these are very important, both for development on the airport and off the airport. So I can understand the scenario you are painting, but we have not seen any evidence of that.

CHAIR—On the positive, rather than the negative, it alters the incentive for any colourful person—

Mr Mrdak—I understand your point, but the original rationale was to provide some certainty—

CHAIR—And I understand that you can be buggered around forever. I do not have the solution.

Mr Mrdak—If a minister ever chose to let the clock run out, we lose any capacity to put conditions on a project, and that is quite important. In making a decision to approve a project, the minister can set conditions under the existing legislation. That has been very important in enabling us to deal with some of the issues, such as investment on linkages on the airport, infrastructure and the like, which meet some of the concerns of state and local government.

That is another factor. Our advice would be that there is a strong advantage in taking a decision because you can control the conditions you place on the development.

Senator O'BRIEN—What change, if any, does this bill make to the relevance of local or state planning arrangements to the development proposed on airport land?

Mr Mrdak—It does not change the fundamentals. The underlying principles of the Airports Act are that state law will apply to the airport boundary, except where the Airports Act expressly provides for it, and hence we have struck out the application of state planning and environment law. It does not change the fundamental position of the act that those are struck out. The requirement that lessee companies must now demonstrate in their MDP how they have had regard to the public comment we think strengthens the ability to ensure that the concerns raised by state and local governments are properly addressed. There have been situations where, as a number of witnesses have said, we have gone through the process of trying to ensure that those issues have properly been dealt with, and in most cases we believe they are. This will strengthen that capacity by the airport being required to demonstrate that.

Also, the way we have structured the requirements for the documents and how they are made available we think will assist the public consultation process. Importantly, the guidelines which the Deputy Prime Minister issued before Christmas will now form a key part of our examination of the proposals to see whether those tests have been met and will strengthen the consultation process and ensure that state and local zoning concerns have been addressed.

Senator O'BRIEN—What are the financial implications for the Commonwealth for change to those arrangements? For example, if this bill were amended to say that the minister's consideration was required to be consistent with the state planning for the general area, what financial implications are there for the Commonwealth in that?

Mr Mrdak—I do not think there are any financial implications for the Commonwealth per se, but it may well have significant implications for development on the airport, were that to be the case. As I say, in our view the current legislation and these amendments present a balanced package between promoting developing on the airport—our view is that we have been very successful in getting investment on to our airports in Australia—against the need to ensure that local and state planning concerns, the sorts of issues that were raised by the Planning Institute and the like, are properly addressed to ensure that that takes place.

My experience is that airport operators are very cognisant of those issues and do seek to target development which is compatible with the development off the airport. It would be interesting to see further studies if they are done. In many ways the development on airport drives development around the airport boundaries. If you look at the experience of a number of our capital cities, where major development has been taking place on the airport—that is, the basic economic principle of consolidation or hotelling—you attract other development into the area. It is an interesting point: the airports have become business centres for the whole region, more than they ever have been, and that has been positive for the regions around them.

Senator O'BRIEN—You make a valid point that, if commercial development in an area brings extra traffic into that area, other businesses might also want to be there. But if the local

plan is that businesses are to be five kilometres away then that throws the local plan into chaos.

Mr Mrdak—That may be the case. We do look at that when we do our assessments of the MDPs and master plans.

Senator O'BRIEN—You have not knocked back any on that basis, clearly. You said that they have all been approved.

Mr Mrdak—But many have been modified in the process. In a number of situations which I am aware of, when airport lessee companies have gone out and got public comment, they have revised their planning development proposals to take account of those sorts of issues. One of the witnesses this morning acknowledged that, a few years ago, when Sydney airport went out to the community with a couple of MDPs for quite significant developments—

Senator O'BRIEN—Perhaps an ambit claim.

Mr Mrdak—You know the owners of Sydney airport. I am not sure that they make ambit claims; I think they just make claims. Sydney airport scaled back those developments in response to a lot of the concerns raised. The current MDP being considered by the minister has been markedly changed as a result of those comments.

Senator O'BRIEN—But no-one knows what that is other than the minister and department, apparently. That is the evidence we have.

Mr Mrdak—My recollection is that, at the time that was lodged, Sydney airport put out a public statement setting out the details of the proposal.

Senator O'BRIEN—But no-one has seen the document.

Mr Mrdak—Not as such, but I do not think there is anything in the documents that I am aware of which is different from what they set out in the public statements they made at the time about the scale and type of development they were looking at.

Senator O'BRIEN—If that is proved and it has major traffic implications, who pays?

Mr Mrdak—The issue of traffic to and from that site is the issue we are now assessing. We have engaged independent expert advice to advise us. Obviously, the airport proponent undertook their own studies and worked with New South Wales RTA. We have done our own assessment and we will be providing that advice as part of our assessment to the minister when he considers that MDP.

Senator O'BRIEN—If the Commonwealth does the approval, will it be responsible for additional transport costs?

Mr Mrdak—In many situations airports have contributed to the off-airport access infrastructure. In this situation, my understanding is that Sydney airport has reached an agreement with the RTA in relation to the immediate access. Obviously, there are broader concerns that the New South Wales government has raised about the impact on the major arterial roads in the region. But, as I think a number of witnesses have said here, it is very difficult to delineate what impact this development would have vis-a-vis the normal traffic growth in that region. Certainly in relation to the immediate access, Sydney airport has reached a proposal which we understand is broadly agreeable by RTA.

Senator O'BRIEN—We had evidence about a development on Hobart airport of a size greater than the shopping precinct in central Hobart. According to Hobart City Council, which has commissioned a social and economic impact report, this development will have a serious impact on the other businesses in that community.

CHAIR—For 17 years.

Senator O'BRIEN—What weight does a submission like that have? And how is it communicated to government, given that it had to go through the airport owner to get there?

Mr Mrdak—I will just check with Mr Williams, but I do not think that MDP has been lodged as yet. We have not received that MDP, so the assessment process has not started on it. My understanding is that, in the wake of the comments that were received by Hobart International Airport, they are now reviewing the proposal. We have not been advised of the scale of the future proposal. We are waiting for them to finalise their proposal. There is no doubt that the concerns that were raised by the council this morning and in the large number of submissions they received will have an impact on their planning for that site, but we will wait and see what their final proposal is.

Senator O'BRIEN—In that case, will the legislation as it stands or the legislation as amended apply to that project?

Mr Mrdak—Under the transitional provisions in the schedule, the legislation as it currently stands would apply because that process has been out to public comment before the proposed enactment of this bill.

Senator O'BRIEN—So there is no ability to stop the clock then?

Mr Mrdak—There would not be. I will check that, Senator, but my understanding is that under the transitional provisions we are proposing in this bill that project would be assessed under the existing provisions of the act.

Senator O'BRIEN—So there would need to be an amendment to the transitional provisions if it was desirable that it be dealt with under the new provisions?

Mr Mrdak—If we felt there was a need to apply a 'stop the clock' for further information or for the changes in the current bill to apply, we would need to change—

Senator O'BRIEN—You have not seen it; how can you know now whether it would be desirable for a 'stop the clock' provision.

Mr Mrdak—I don't. That is what I am saying: I do not know.

CHAIR—Who owns Hobart?

Mr Mrdak—Hobart International Airport is majority owned by the Tasmanian Ports Authority, which is a state government authority.

CHAIR—So the state government is planning to capture the retail market for 17 years—against the interests of all of us?

Senator O'BRIEN—I do not think it is as simple as that. They are obliged to deal with the interests of all shareholders.

CHAIR—There are some interesting conflicts of interest.

Senator O'BRIEN—The point I am making, despite the chair's attempt to divert, is that not having seen the application we do not know whether what you describe as an improvement to the scheme—'stop the clock' provisions—would be useful in relation to what we know was, at the commencement, a really major development proposal which raised major concerns in parts of the greater Hobart community.

Mr Mrdak—I do not know the exact details of what the proponent will now put forward in the final MDP.

CHAIR—Is there one of these reverse onus things on the planning decision, or does it fall over?

Mr Mrdak—No, the 90-day—

CHAIR—Fall over?

Mr Mrdak—Yes, that is right. The minister would either have to approve or reject the proposal within the 90 days otherwise it is deemed to be approved.

CHAIR—But if he does not, does it fall over or does it become a fact?

Mr Mrdak—It would become approved.

CHAIR—Under the present act?

Mr Mrdak—Yes.

Mr Williams—And under the amended act as well. We are not proposing any change to what has been in place since 1996.

CHAIR—Hell! In view of all that, how do you demonstrate that you have taken into consideration—let us stay with Hobart—all those concerns that are out there, given that they have said that it is going to put pressure on the present shopping capacity for 17 years? How do you satisfy yourself in your planning process that the developer has demonstrated that he has considered the wellbeing and interests of people? How do you do that?

Mr Mrdak—At the end of the day it comes down to our assessment of, firstly, whether any changes have been made to the proposal to reflect some form of change to try to do that. Have they made additional studies which may run counter to that?

CHAIR—Under the present arrangement they capture all the information, process it themselves and then present it to you. That is what happens, isn't it?

Mr Mrdak—That is right.

CHAIR—All right. If I have an objection for whatever reason to what is happening, how do I know, one, that they have given consideration to it and, two, that you actually know about it?

Mr Mrdak—Firstly, they are required under the current arrangements to give us a legal statement to the effect that they have considered all the submissions.

CHAIR—Yes, but they do not give you the considerations?

Mr Mrdak—Generally a lot of proponents do actually send us either precis or—

CHAIR—They are not obliged to send you all the objections.

Mr Mrdak—They are not.

CHAIR—Isn't that stupid? Why wouldn't you ask for them?

Mr Mrdak—In many cases we do go back.

CHAIR—There would be some stupid reasons, I realise that, but you may as well see them.

Mr Mrdak—Where there is a contentious project people making a submission often copy their submission to the minister or to us to ensure that we are aware of the issues. We become aware of the issues through media comment and public comment around the project. So we often do go back and have those discussions.

CHAIR—But is there a set of guidelines that sets out how you demonstrate something?

Mr Mrdak—The guidelines the Deputy Prime Minister released before Christmas do that. In relation to the amendments in this bill about demonstrating, we would be looking to see whether they have properly given us an evaluation of the comments that were received and their views on them—that is, have they done additional studies, are they able to provide clear reasoning as to why they do not agree with that and, in many cases, have they made changes to the project. We run through the suite of options.

CHAIR—Is there a fail-safe process so that a person who is very good with weasel words cannot get around it?

Mr Mrdak—At the end of the day, in our assessment for the minister we make a judgement as to whether we think that has been adequately dealt with. As I say, often that does involve talking to people who have lodged objections.

CHAIR—I think there is a chink in the armour there.

Mr Williams—In regard to this issue about the proponent putting forward the summary, this does happen in other jurisdictions. For instance, in the ACT when a development goes forward, the proponent has to put forward a consultation summary, which would do the same sort of thing. Also in South Australia the proponent is responsible for putting in writing to the minister how they have responded to the submissions.

Senator O'BRIEN—Are those two cases that you refer to publicly available?

Mr Mrdak—We can give you those.

Senator O'BRIEN—In the Airports Act case, is the developer's recital of the objections and the responses publicly available? If not, why not?

Mr Mrdak—It is not publicly available. It is part of the assessment we do for government. In some cases, the proponents may choose to release that documentation, but at this stage it is provided to the department for our assessment and advice to ministers.

Senator O'BRIEN—Why shouldn't it be transparent?

Mr Mrdak—There is no reason why not. I think that airport lessee companies may wish to make that information publicly available. Many do through, say, consultation forums on the airport and the like. I would need to check how often that happens. There is no reason why the airport lessee company would not choose to make all that available.

Senator O'BRIEN—Why doesn't the legislation require it?

Mr Mrdak—At the end of the day, that would be a judgement for the government to make as to whether we would do that. I suppose, at this stage, we are comfortable that the process does give an adequate position, but that is a judgement we reach.

CHAIR—The other obvious thing is that you could be held up in all these developments for 50 years by the planet armpit brigade. You could find reasons, if you smoke enough pot, that some things should not go ahead.

Senator O'BRIEN—I do not know what that has to do with the publication of the developer's response—

CHAIR—It has got nothing to do with it.

Senator O'BRIEN—I didn't think it did—to the submissions it receives and how they are reported to government. By publishing that the government would have to assure the public, if they had made a submission to the developer, that it had somehow found its way to the minister.

Mr Mrdak—The current act provides that it must publish a notice to the effect that the project has been approved but, as you say, it does not require release of all the detail.

CHAIR—We may well reflect upon that as a committee. Could I go to something else and change sides, as it were.

Senator O'BRIEN—As long as it is not the Anzac toilets.

CHAIR—No, not the Anzac toilets; they have had a run today. In regard to the protection of the airport developer from developments that may impinge upon the wellbeing of the airport—I am putting the boot on the other foot for a while—whatever that development is, under the present arrangements the airport developer has no protection if, say, Wagga city council, Queanbeyan city council or whoever decides to do something that is not harmonious with development alongside the airport. Are there any protection provisions?

Mr Mrdak—We do have provisions through the existing legislation regulations to protect the obstacle limitation surface so we do not have a situation where local government and states put buildings which actually impact the OLS for the airport. Obviously you would not want a situation where someone builds an umpteen-storey building right in the flight path which means you go into the OLS. We have regulatory powers.

CHAIR—Does that include noise? It seems to me that it would be a bloody shame if in the future Canberra airport is partly shut down because of aircraft noise. If you build 10, 50 or 500 houses and then there is a community meeting because the noise is just terrible, with a few professional agitators onboard eventually the airport pays the price. Given the developer of Tralee has already said, 'If you don't like noise, don't come here,' is there no protection that we can afford to the wellbeing of the Canberra airport in those circumstances? A cynic could say—and I do not know why—that it was some sort of a payback. If there is noise in Jerrabomberra which you have avoided by coming this way a bit and then you decide to develop there, you are in no-man's-land.

Mr Mrdak—We agree.

CHAIR—You cannot put a rocket up Queanbeyan?

Mr Mrdak—The department and our ministers have made their views clear over many years in relation to that development. We would not want to see incompatible development taking place in areas where you are able to protect greenfield sites for the future.

CHAIR—Is the department concerned about that?

Mr Mrdak—Very concerned. For many years we have been making it clear to planners, the community and councils that the ANEF contours are a noise metric but the noise does not stop at the boundaries of the ANEF contours. They are for planning and building purposes to give some idea, as Mr Byron earlier indicated, for attenuation and other land planning purposes, but quite clearly there will be noise. Mr Southgate in the department has over the last 10 years pioneered a whole range of noise metrics for the better information of the community. We are able to protect the obstacle limitation surfaces around these leased airports by virtue of our constitutional powers for aviation and safety.

CHAIR—Is that an obstacle?

Mr Mrdak—We do not have those powers in relation to land planning around airports. They rest with state governments. If you look at a number of the airports around Australia that have been built in over the last decade or so by inappropriate development outposts, we have been largely powerless except through powers of persuasion with state and local government.

CHAIR—Would it be a bridge too far for you to have a view on whether that proposed development has some sort of amber light as it were for the long-term wellbeing of the—

Mr Mrdak—The department has in the past put its view, as have ministers, that it would not be sensible to allow residential development to take place in the Tralee area.

CHAIR—Certainly that is the view that has been expressed by the ACT government. So where does that leave the rest of us? And I am sure Frank Sartor does not know what to do about it.

Mr Mrdak—We would hope that the New South Wales minister has regard to the findings of the public inquiry.

CHAIR—Are you listening, Frank?

Mr Mrdak—We certainly would not want to see an increase in residential density under flight paths available in and out of any airport. In Canberra, quite clearly we have an opportunity to prevent that inappropriate development taking place.

Senator McEWEN—During the course of submissions today we heard from the Australian Local Government Association and the Australian Mayoral Aviation Council that they were not consulted by DOTARS about the actual content of the bill; the Australian Airports Association said that they were. Would you like to comment on that?

Mr Mrdak—Certainly I am surprised by any comments that they were not consulted. The review of the Airports Act commenced in 2002.

Senator McEWEN—No, I am talking about the actual wording of the bill before it was put in the parliament. You know what I mean.

Mr Mrdak—No, the bill was developed by the department and was not sent out as an exposure draft to any parties that I am aware of.

Mr Williams—In terms of the Airports Association, the federal leased airports were made aware of the likely contents but not all of the contents of the bill.

Senator McEWEN—Who was made aware?

Mr Williams—The federal leased airports, essentially, were made aware of the direction of the drafting of the bill in June last year following Minister Truss's announcement at the Airports Association conference six months earlier. There was not necessarily a consultation on the bill. They were just made aware of the contents.

Mr Mrdak—There was no exposure draft.

Senator McEWEN—That courtesy was not extended to the Local Government Association and the Mayoral Aviation Council?

Mr Mrdak—As Mr Williams said, we did not provide an exposure draft of the bill to any party. The airport owners were verbally advised of the sort of direction coming out of Minister Truss's media statement in November 2005 in which he announced the outcomes of the airports review and how that would actually translate into provisions in the legislation. We did not do that with the other parties, but there was a very extensive consultation process in the lead-up to the final decision as to what would be in the amendments to the act.

Senator McEWEN—Thank you.

CHAIR—I have a final question. Your answer may assist the committee. Virgin today in their submission say:

> It could be argued that the repealing of the current 151(1) of the Act and substituting it with the Section articulated in Item 152 of the Bill is designed to exclude all core and non-core regulated airports (except for those that are listed in future Regulation) from the scrutiny of the ACCC's monitoring and reporting regime.

The amendment to the role of the ACCC in monitoring and evaluating this process may be used to exclude airports. What is the logic behind that?

Mr Mrdak—It is certainly not an attempt to exclude airports from ACCC monitoring. There are two processes here. Firstly, the ACCC has an ongoing role in relation to price monitoring of the core regulated airports. The provisions in the bill deal with the quality of service monitoring. At the time we privatised the airports, we put in place two provisions. Firstly, we regulated aeronautical prices through a CPI minus X cap. Secondly, to ensure that we did not see a diminution in service quality by virtue of the CPI minus X cap being in place by virtue of them having to drop aeronautical prices under CPI minus X—and we set an X value—we put in place quality of service monitoring.

Since that time we have moved to a different pricing arrangement: we have moved to a light-handed approach where we do not have aeronautical price controls. Hence one of the questions that has been referred to the Productivity Commission is whether we should continue to service quality monitor at all of the airports we do currently, particularly given that a number of the airports where a lot of the issues are terminals which are under long-term lease to Qantas and the others. So it does not change the fundamentals. It enables us to still

list airports for quality of service monitoring through regulation, but that will depend on what regulations the PC makes to the government and the government's response to the Productivity Commission inquiry. This simply gives us the flexibility to set a determined list of quality of service monitoring. It does not remove the ACCC price monitoring or the normal provisions of the Trade Practices Act.

CHAIR—But there will be airports that will not be listed in the regulations?

Mr Mrdak—There may be, subject to the government's consideration of the Productivity Commission final report on airport regulation which will be considered over the next few months.

Mr Williams—The ACCC currently only price monitors and does quality of service monitoring and reports in relation to the seven major capital city airports. The reference to core regulated is a broader definition, and the ACCC does not report on those at the moment. So in one respect it is bringing it into line with what is the current arrangement.

CHAIR—Yes, they do not regulate the Junee airport, I notice.

Senator O'BRIEN—I want to ask about the amendment to section 216. Can you elaborate on the intent there? That is on page 27 of the bill. I think it is items 161, 162, 163 and 164.

Mr Mrdak—These provisions reflect the Australian government's policy to consider contestability of services at Australian airports. It provides the flexibility for that if the government in the future was to decide to provide contestability for the provision of rescue and firefighting services and air traffic services at those airports. That has not been decided at this time. The department issued a discussion paper about 15 months ago in relation to the provision of rescue and firefighting services at airports. Under the current provisions of the act, only Airservices Australia or a body that works through Airservices Australia can provide those services. This would provide the flexibility, should government take a view on contestability in the future, which would provide that other parties could provide those services provided they were licensed by the safety regulator CASA.

Senator O'BRIEN—It seems that all that is occurring is that CASA is being empowered to approve that. Where does the government come in? Is that a matter that they direct CASA on?

Mr Mrdak—There would need to be policy decisions taken by the government. The government has, in the past, announced its policy to look to introduce contestability into rescue and firefighting—and previously into limited tower services. That work has been underway for some time. No final decisions have been reached as to how that might take place. These provisions would provide the flexibility that any provider must be regulated through CASA, including Airservices Australia, which is the current arrangement. CASA does license the provision of air traffic services and rescue and firefighting by Airservices Australia. This simply puts that arrangement in place quite clearly and also provides for any future providers to similarly have to be covered by that regulatory regime.

Senator O'BRIEN—They have to be covered by a regulatory regime at the moment but the only organisations that can provide it are Airservices Australia and the Australian Defence Force, aren't they?

Mr Mrdak—Under the Airports Act, that is right. This provides a broadening of the parties who may in the future be able to provide such services were they to meet CASA's regulatory tests.

Senator O'BRIEN—What are the implications? How can parliament know what the implications of that are? A government policy decision is one thing, but what are the implications in terms of the standard of a service provided under such an approval? We do not know, do we?

Mr Mrdak—The standards would be those that are currently set down by CASA. They have a manual of standards and regulatory requirements under the civil aviation regulations for the provision of air traffic services and rescue and firefighting services. They are the provisions under which Airservices and its personnel are currently licensed and operate to. What this does is remove the prohibition on any other party providing such services except Airservices, which means that potentially in the future other parties may contract with the airport operator to provide such services. This simply provides that flexibility. It does not set the standards by which they must operate. That is currently done through civil aviation legislation.

Senator McEWEN—So theoretically the airport owner could provide the emergency services and the air traffic control?

Mr Mrdak—Potentially, were they to satisfy the tests of the Civil Aviation Safety Authority, although at present the government's policy is that those are to be provided by Airservices Australia.

Senator McEWEN—I know you talked about flexibility, but is there a problem with the current situation that has led to this? My understanding is that the emergency services are provided in the main by the metropolitan fire services or by the local government emergency services or whatever.

Mr Mrdak—Rescue and firefighting services at the major airports are provided by Airservices Australia. That is a dedicated rescue and firefighting service that they provide. The policy position has been to see whether there is scope or need to move to contestability to allow other parties to come in and contract and provide those services separately to Airservices Australia. There have in the past been concerns expressed by the aviation industry about the cost of Airservices' provision of those services and the way in which they have been structured. Some of those issues still remain. There was quite a deal of concern in the aviation industry a year or so ago with the recent ACCC charges determination, which looked at the way that rescue and firefighting charges are collected. Those issues of whether there are better ways or operators who can provide the services more cheaply—

Senator McEWEN—In cheaper ways.

Senator O'BRIEN—The government has recently gone back to network pricing for these services, and that is impossible if they are separately contracted, isn't it?

Mr Mrdak—There is a network price that is essentially based on sets of aerodromes which has been raised with the ACCC. That has added a complication in terms of the capacity to break out aerodromes, given that it would determine whether any operator could operate that

service at a lower cost than Airservices given the network price. Having said that, we put a discussion paper out, as I said, about a year or 15 months ago to industry seeking comments on how a contestable rescue and firefighting regime might work. We now have submissions in on that and we are assessing those. We are yet to provide advice to the government in relation to that. But a number of submissions have highlighted the advantage, particularly for small aerodromes, of having a network price and the difficulty of moving away from that for many regional aerodromes.

Senator O'BRIEN—Exactly. But what this is flagging is that the government is considering moving away from the network pricing concept if they are asking that the legislation be changed to facilitate the possibility of the individual contracting out of services at individual airports.

Mr Mrdak—I do not think that the government has reached that decision. At this stage—

Senator O'BRIEN—Then we do not need this amendment.

Mr Mrdak—Were that decision to be taken about alternative providers, this amendment would allow that. At the moment, no-one except Airservices or a party contracting to Airservices can provide that service. The intention is to provide flexibility for the future, but no decisions have been taken in regard to that at this stage.

Senator O'BRIEN—But if there has been a decision taken to provide flexibility then that decision suggests that a contracting regime is under serious contemplation, and that cannot operate with network pricing.

Mr Mrdak—There is a longstanding government policy commitment to move to contestability in these areas. But we are still completing the work on that, particularly around the issues that have arisen since the ACCC decision to allow a network price. I do not think that I would paint it that there is a decision imminent in relation to moving to contestability, but I suppose from our point of view—

Senator O'BRIEN—You would not know whether the minister was contemplating that or not—not with any certainty.

Mr Mrdak—We have yet to provide advice to the minister in relation to the outcome of the consultation. I think at this stage the government is yet to see our assessment. It will make its decisions following that.

Senator O'BRIEN—But this would jeopardise aviation services into a number of smaller ports. You get the benefit of network pricing because contracting out would see, in some less frequented destinations, a much higher charge for these services.

Mr Mrdak—I think the government has made clear its position. It has welcomed the ACCC decision in relation to the network-charging arrangements that have been put in place through the current Airservices pricing agreement. As I say, I have not at this stage provided advice to the minister on the outcome of our consultation discussion paper. At the end of the day this amendment seeks to provide some flexibility, but that is not to say that is where the government will go. It has been 10 years since we have renewed this act. This is trying to provide some flexibility in advance for the next time we come back and review this

legislation. I do not think you should presume from this there is a change of policy from where the government is at now in the immediate future.

Senator O'BRIEN—Then we do not need these amendments. This is speculative amendment, is what you are telling us; it is not based on any policy decision other than the fact the government thinks they might want to in the future.

Mr Mrdak—But it also reflects the changes that have taken place since this act was put in place, which is that fact that Airservices—

Senator O'BRIEN—I am sorry, there is no change in this area. You are talking about prospective change.

Mr Mrdak—Certainly the change has been that Airservices is required to be licensed and its activities as an air traffic service provider and an ARFFS provider is regulated by CASA. This makes it clear that the air service at these least airports is subject to that—so it cleans that up—and at the same time it provides some flexibility. So it is very much modernising the act to stay close—

Senator O'BRIEN—So we do not need the flexibility clause but the rest could stand.

Mr Mrdak—Certainly the flexibility is there, but the first step is to make sure this is consistent with what is current practice, which is that Airservices is licensed and operated under a regulatory regime approved by CASA.

Senator O'BRIEN—The current situation could be catered for. There is nothing convincing in what you have said about the need for the other provision, given that there is no government policy decision requiring that—and it would cut across the existing arrangements for network pricing for those services.

Mr Mrdak—I can only reiterate—

Senator O'BRIEN—I do not think you can say any more. There is nothing you have said which indicates a need for that part of the amendment.

Mr Mrdak—It reflects the process which we have under way if the government were to decide to take action to move away from Airservices being the provider.

Senator O'BRIEN—Yes, but that is like asking the parliament to pass legislation to permit nuclear reactors in Bondi even though the government has not made a decision to have them there.

Mr Mrdak—I do not think it fits into that category.

Senator O'BRIEN—That might be slightly more extreme, I admit that, but it is the same principle.

Committee adjourned at 5.02 pm