



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

**SELECT COMMITTEE ON ACT SUPERMARKET
COMPETITION POLICY**

(Reference: [ACT supermarket competition policy](#))

Members:

**MS C LE COUTEUR (The Chair)
MR J HARGREAVES (The Deputy Chair)
MR Z SESELJA**

TRANSCRIPT OF EVIDENCE

CANBERRA

MONDAY, 28 MAY 2012

**Secretary to the committee:
Mr A Snedden (Ph: 6205 0199)**

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents, including requests for clarification of the transcript of evidence, relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Legislative Assembly website.

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Amended 9 August 2011

The committee met at 3.30 pm.

CORBELL, MR SIMON, Attorney-General, Minister for Police and Emergency Services and Minister for the Environment and Sustainable Development

PAPPS, MR DAVID, Director-General, Planning Policy, Environment and Sustainable Development Directorate

PONTON, MR BEN, Deputy Director-General, Planning Policy, Environment and Sustainable Development Directorate

QUIRK, MR MIKE, Team Leader, Strategic Policy, Research and Forecasting, City Planning Division, Environment and Sustainable Development Directorate

THE CHAIR: I think all who are going to be here are here. I welcome you all to this hearing of the Select Committee on ACT Supermarket Competition Policy. In particular, I welcome you, Mr Corbell, and your officials. Before we start questions, is there an opening statement that you wish to make?

Mr Corbell: No, thank you, Madam Chair.

THE CHAIR: I guess I will start with one of the vexed issues that we have been hearing about at great length. It is the appropriate size for a supermarket. I will start off particularly at local centre level. Traditionally, it seems that the supermarkets in local centres are about 300 to 700 square metres. But as I understand it, the territory plan does not actually say what size a supermarket has to be. It just has to look at the impacts on competition. So we have the situation that informally that is the sort of size—well, I do not know whether it is informally or historically—they have been but the recent approvals, Giralang being one and the newer one in Gungahlin, have all been bigger.

Does the government have a view about the appropriate size of supermarkets in local centres? I guess a corollary to this is whether this is potentially different in the newer suburbs of Gungahlin, because one of the issues with Canberra is that not all suburbs are the same size. A suburb is not necessarily a suburb. Kambah is a good example of that.

Mr Corbell: Thank you, Madam Chair, and good afternoon to you and Mr Seselja. Thank you for the opportunity to appear this afternoon.

I have probably a couple of things to say on that. The first is that obviously the committee would be familiar with the centre hierarchy for the territory and recognise the different retail functions of the hierarchy. When it comes to local centres, local centres were primarily planned to make provision for convenient shopping needs. Of course, when many local centres were planned the demographics of our community were markedly different, as were the working hours and the patterns of employment of the community.

As a result, over the past 20, 30, 40 years, we have seen significant changes in the viability of local centres. For example, when local centres were first developed it was quite common to see a local centre that would have a small supermarket but it may also have a butcher. It may also have even a deli. I can remember one of my local centres even had a deli as well as a butcher. There may have been a bakery separate

from the supermarket and there may have been a range of other retail uses.

Increasingly, that is not the case now in local centres across the territory. It is a function of increases in shopping hours, the deregulation of trading hours in particular, changes in shopping preference—people choosing to do all their shopping in a single location and therefore wanting a broader range of choice and price competition—and also changes in workforce participation, particularly amongst women over the past three to four decades, which has seen a reduction in the level of shopping, for example, that would occur during normal working hours as opposed to outside working hours. So all of this has driven changes in the viability and also the size and choice of retailing provided for at a local centre.

Coming to your more direct question then, in terms of whether the government has a view on the suitable size of a supermarket in a local centre, the government is currently reviewing the commercial zones policy in the territory plan. Consultation on that review has recently closed and the government is giving consideration to the issues raised during that consultation period.

Consideration is being given to whether there should be a specified limit on GFA in the territory plan as a result of the reviews of the commercial zones policy. Generally speaking, there was not an overriding planning control in terms of GFA for local centres when they were established. Instead, this was controlled through the lease purpose clause, if it was referred to at all, and that varied from centre to centre across the city as the city was developing.

I would make the general observation that, as planning minister, I am interested in seeing viable local centres and I am interested in seeing local centres that provide convenience for retail shopping to consumers. I want consumers, I want residents, to be able to access convenience retail shopping in their local neighbourhoods. It is particularly important in terms of the resilience of the city that people perhaps who are living in the suburban environment and who do not have the same mobility as others still have the ability to access convenience local shopping. So whatever formula we strike upon, it must be able to deliver the maintenance of a viable retail convenience offer to residents in the suburban environment.

THE CHAIR: So there is not really a policy of size of supermarket in a local centre?

Mr Corbell: Not at the local centre level. As I said, we are undertaking a review of the commercial zones policy in the territory plan, which is the opportunity to formalise some sort of guideline or more explicit direction around the size of a local supermarket in a local centre. But that work is not yet complete.

MR SESELJA: Fifteen hundred metres seems to be the working assumption of the government. Correct me if I am wrong, chair, but that seemed to be what was indicated to us by the Economic Development Directorate when we posed this question. So you might want to clarify—1,500 seemed to be the number that came out in the supermarket competition policy committee. That seemed to be the type of supermarket that is being approved in local centres. Is that not in any way the government's policy at this stage?

Mr Corbell: No, I was simply referring to what exists in the territory plan. At the moment, there is no control in the territory plan. But it is the case that the government has adopted a general policy position of looking at, when it sells land or when it looks at competition policy matters of supermarkets, in the order of 1,000 to 1,500 square metres in size.

THE CHAIR: So that is what you are normally aiming at?

Mr Corbell: That is not a planning control; that is a broader policy consideration by the government.

THE CHAIR: But it is implemented by the planning system for the lease in general? Yes, it has broader implications but you—

Mr Corbell: Yes, the point I am making is that there is no formal planning control currently in our statutory planning document—the territory plan. The government is currently giving consideration to that matter.

THE CHAIR: But you could not give potential entrants any guidance as to what size the government is currently thinking of. You have talked about local convenience shopping. In your thinking about that, have you started to factor in the new express stores which turn up principally in service stations? Also, I believe, we now have dotted throughout Civic smaller express-type stores that do the very short-term convenience shopping. Where are those going in terms of the government's thoughts?

Mr Corbell: Generally speaking, those express-type stores are taking advantage of existing statutory planning controls to permit their operation. That is a particular business model which the government does not dictate or require. It is a response by the market to what it believes is a viable business model to provide a level of convenience retailing. Whether or not that type of business model can be accommodated in local centres would depend on the planning controls in those local centres.

I note, for example, that some chains have chosen to utilise existing service station sites. That is a matter which is considered in accordance with the lease conditions for a site and the territory plan zoning for a site. But the government does not give particular regard to that type of business model. Our interest is more in what is the overriding statutory planning control that is appropriate to maintain viable local centres.

THE CHAIR: You do not think this is something which could influence the viability or otherwise of local centres? I would have thought that it very much was, where you end up with an express store, which usually seems to be 100 square metres, maybe bigger, in size and well located. I assume their business has to come from somewhere.

Mr Corbell: In that respect, they are no different from a supermarket like an IGA or some other small supermarket retailer.

THE CHAIR: Except that my understanding is that, for new local centres, the planning system is to look at the impact on other local centres. If a new supermarket

were to be established in a local centre, you would look at the impact on supermarkets in surrounding areas, but this seems to be something which is under the radar and potentially—

Mr Corbell: I am not sure what you are—

THE CHAIR: I am not trying to argue the position from any direction.

Mr Corbell: I am not sure what the question is, Ms Le Couteur.

THE CHAIR: My question is: are you looking at these new forms of what could be described as mini supermarkets happening in Canberra for a suburban point of view, principally in—

Mr Corbell: Sorry, but what is your question?

THE CHAIR: There are new mini supermarkets—express stores. Are you looking at those at all in terms of regulating supermarkets and sizes of local centres? They are convenience retailers. They are directly what we are talking about in terms of local centres.

Mr Corbell: They would have to be considered in the context of the overall GFA provisions the government thinks are appropriate for supermarket retailing at local centres. I am advised that, to date, our experience has been, generally speaking, that this type of retailing is located in a group centre or in a larger commercial area, not in a local centre.

THE CHAIR: They are often located in service stations—petrol stations.

Mr Corbell: Yes, generally speaking, most petrol stations now, because of the change in market provision, exist at a group centre level. There are instances where there are still suburban petrol stations, but they are the exception rather than the norm.

MR SESELJA: I am interested in ACTPLA's views on this question of competition within group centres between major supermarket players. We have heard a lot of evidence—and I guess a lot of reasonably conflicting evidence—about what impact this might have. I am interested, firstly, in whether ACTPLA takes these kinds of competition issues into account in considering whether to approve supermarket sites.

For instance, one of the centres that has been discussed at some length in this committee is Erindale and whether or not competition would be allowed there. First, we might ask ACTPLA how they view these things. Does ACTPLA consider the competition aspects or are you only taking a strict interpretation of the territory plan when it comes to these kinds of approvals?

Mr Quirk: ACTPLA considers efficiency in the competition policy but also accessibility, the ability of the centre to absorb the additional development and equity considerations. In a case like Erindale and Tuggeranong, where the population is going from 89,000 currently to a forecast decline of 85,000 by 2021, we consider the impact of any potential increase of source base on other centres in the area.

Having said that, even though the population is falling, the trend over time has been for real retail expenditure growth to grow at 1.5 per cent per capita. So, even though the population is falling, there is some retail expenditure growth. There is also the issue of escaped expenditure from Tuggeranong. If there was more space at Erindale, there would be attraction of expenditure from other centres. Some of that will be at the Tuggeranong town centre, but there will be some attraction from the centres in Woden as well.

MR SESELJA: With the master planning process for Erindale, what work is being done by ACTPLA to consider these issues? Obviously, that is something in the process that has been floated as part of the master planning process—that there may be a second major supermarket at Erindale. What work underpins that master planning process? Is this competition analysis being done or is it looked at on space? What are the considerations that ACTPLA is giving this?

Mr Quirk: It is more of a holistic approach. We have the retail model that has been operating for some time now. We make some assumptions in that retail model about likely future population growth, employment distribution, floor space distribution. It is a gravity model in terms of home-based expenditure; so it then allocates the expenditure depending on the attractiveness of various centres based on the amount of floor space at that centre, the range of floor space at that centre.

With the considerations for expansions at Erindale, we have fed in assumptions about likely increases in the supermarket floor space elsewhere in Canberra and the likely turnover rates at centres. We have been using a certain retail trade density of around \$10,500 a square metre. Coles have suggested that is a little bit high. They have argued that the retail trade densities are higher in Canberra than elsewhere. So we have tested a different range of retail trade densities and come up with a potential impact on other centres surrounding Erindale.

In terms of total expenditure, it is Woden town centre and the Tuggeranong town centre which lose the most expenditure, but there would be other lesser impacts on centres such as the Monash and Wanniasa group centres, the Gowrie shops and Isabella Plains.

MR SESELJA: What sort of conclusions then has ACTPLA drawn on viability of a second supermarket for Erindale?

Mr Quirk: I do not think we have finalised those impacts. We are trying to weigh up the extra benefits that a larger supermarket, a second supermarket, at Erindale would provide in terms of wider choice and impacts on prices. We are taking into account the representations of industry about why they think that would be a good idea. One of the other considerations is the size of the centre and its ability to absorb the additional development, the traffic impacts—those sorts of aspects.

MR SESELJA: When do you anticipate that ACTPLA will draw those conclusions and give advice to government on the Erindale question?

Mr Corbell: The government is currently considering the recommended final master

plan for Erindale.

MR SESELJA: So there is a recommendation to government?

Mr Corbell: There is a submission to me on the matter.

MR SESELJA: Okay. Sorry, that is a little unclear, because I just asked if ACTPLA has drawn conclusions. Presumably ACTPLA has drawn conclusions which they have then provided to government for its decision. Is that correct?

Mr Quirk: I think the space has been allocated within the Erindale master plan for future expansion. Whether that future expansion occurs has not been determined yet. It is subject to future growth, change in the population in Tuggeranong and retail expenditure trends.

MR SESELJA: But has ACTPLA made a judgement on whether or not it would be desirable to go ahead with a second supermarket for Erindale?

Mr Corbell: These matters are currently subject to cabinet consideration.

MR SESELJA: That is fine. Has ACTPLA made a judgement or not?

Mr Corbell: Again, Mr Seselja, it is not appropriate for ACTPLA officials to disclose material that has been provided to government for cabinet consideration.

MR SESELJA: I am not even at the point of asking what that conclusion is—just whether or not they have made a conclusion.

Mr Corbell: Yes, as I indicated to you, a submission has been provided to me in relation to recommendations for Erindale.

MR SESELJA: But you cannot tell us what it is?

Mr Corbell: Not at this time. It is currently before cabinet for consideration.

MR SESELJA: When does the government expect to make a decision on Erindale?

Mr Corbell: As soon as possible.

MR SESELJA: Before the election?

Mr Corbell: I would hope so, yes.

THE CHAIR: This is an issue not just for Erindale but for Kingston and Dickson. They were both centres that were talked about in terms of the Martin report. I am particularly thinking about Kingston, and this may be a question that we should have addressed to Mr Barr, but we ran out of time. We still have not got a Supabarn supermarket in Kingston, although that was one of the major outcomes from that report. Does the government have any idea why this has not happened?

Mr Corbell: That relates to direct sale considerations at Kingston, which are the responsibility of the Economic Development Directorate. So I refer you to the Economic Development Directorate.

THE CHAIR: When the master planning was starting in Dickson, I appreciate that quite a bit of work was done with Dickson itself, but there did not appear to have been any work done on the impact of changes in Dickson. I assume, given Mr Seselja's question—he obviously knows Erindale much better than me—that the same goes for planning at Erindale. There does not appear to have been work done on the impact of the changes in a group centre on surrounding centres. Is it correct that the group centres are planned purely in terms of their internal dynamics?

Mr Corbell: No. As Mr Quirk just indicated to you in his answers to Mr Seselja, analysis takes place in relation to overall levels of expenditure on retail activity and what an expansion in one centre would mean for impact on other centres. But Mr Ponton or Mr Quirk can elaborate.

Mr Quirk: If you look at the situation in north Canberra, you have had a quite large population growth. It is over 49,000 currently. It had fallen to 35,000 or thereabouts at one stage. So you have had quite a large increase in demand in north Canberra because of redevelopment and younger families moving into the area. The retail model for at least seven or eight years has indicated that north and south Canberra have been undersupplied with retail space—supermarket space. So the expansions proposed for Dickson and Kingston are really in response to this growing demand due to redevelopment and population growth in those areas.

THE CHAIR: What work did you do to look at the impact on the surrounding centres? Watson and Hackett have finally come alive again. I have had a lot of representations along the lines that what is happening in Dickson will kill those emerging centres.

Mr Quirk: That was part of the retail modelling, which indicates potential impacts on other centres. It may suggest that there will be a decline in some centres of 10 per cent or so. But you really have to look at the trading position of those individual centres and how they relate to retail trade densities overall. There is no one size fits all. I think impacts on other centres are assessed and considered when recommendations are made about supermarket expansions. But the north Canberra situation is quite an easy situation given the amount of demand that there is in the area. I think there is scope for local centres to continue to thrive, even with the expansion proposed at Dickson.

THE CHAIR: How are the effects on local centres evaluated in terms of all the criteria that you look at before deciding to expand a group centre?

Mr Quirk: I will go back to north Canberra, which is unique in some ways, because its development started prior to the group centre level in the hierarchy being introduced. It was a 1961 study that the NCDC did. In that study the consultant actually recommended that local centres not be continued in Canberra but because of social reasons and what the local centres delivered to the community, they were continued as part of the retail hierarchy.

If you look in north Canberra, you have got areas such as Ainslie and O'Connor where they have quite thriving local centres. That partly reflects the absence of a group centre in that part of north Canberra. You also have the advantage of the employment growth that has been occurring in Civic and other locations. So there is quite a deal of spillover expenditure from workers in Civic and also the employment growth that is occurring in Dickson in support of the group centre hierarchy.

We did a study in 1988. There was only one local centre in Canberra without a supermarket, and that was in Kambah. I think the local activity centre concept did not work in Kambah.

THE CHAIR: It is a strange suburb from a size point of view, with all four centres—or is it five centres?

MR SESELJA: I do not think the people of Kambah think it is a strange suburb. It is a big suburb.

THE CHAIR: Just in terms of having four centres in one suburb. That is the strange part.

Mr Quirk: At one stage there were six local activity centres. One has actually been closed. It is still policy in the territory plan, but it has actually been developed for five or more residential apartments. But getting back to north Canberra, I think the demand is there to support a wide range of retail activities. The ongoing suburban population growth is forecast to grow from about 49,000 currently to around 55,000 by 2021. I think the issue in north Canberra is how that additional demand for supermarket space will be best catered for.

MR SESELJA: I am interested in how the supermarket competition policy interacts with ACTPLA's role and with assessments under the territory plan. The first line of questioning was around the 1,500 metres. The minister made it clear that that is not in the territory plan but there is sort of a policy that relates to that. Perhaps one of the ACTPLA officials could explain to us how those two things interrelate—the assessment of development applications under the territory plan and all that goes with that and the supermarket competition policy, and where those two interrelate and where they stay separate.

Mr Ponton: To answer the question, Mr Seselja, the territory plan includes rules and criteria that specifically deal with certain issues around supermarkets, particularly in relation to local centres. As I recall, it is criterion 33. The local centres development code specifically deals with the need for the Planning and Land Authority when considering a development application in a local centre to consider the impact on other viable local centres.

In relation to the supermarket competition policy itself, whilst that is not directly reflected in the current territory plan—although, as the minister said, there is currently an overview of the commercial centre zones to actually draw in some of those aspects—it is nevertheless a consideration under section 120 of the Planning and Development Act.

So the Planning and Development Act sits above the codes. In looking at the suitability of the land and other considerations under that section, we would have regard to relevant government policy.

MR SESELJA: ACTPLA's position on this seems to have evolved somewhat over the years. I have been looking through documents where it was considering Giralang. For instance, one piece of correspondence talks about Giralang's assessment and it says: "We have modified the words with respect to the ACT government's supermarket competition policy as we were mindful in the decision making not to assess the proposal against the supermarket competition policy as this is not a relevant consideration under the territory plan. However, we had regard to the policy through the advice of the SCCC."

Mr Ponton, can you explain that to us—how you are not having regard to it but you are having regard to the advice of a committee of government?

Mr Ponton: Sure. What you have just read, in fact, is consistent with what I said. In terms of the territory plan, there is no specific requirement to consider the supermarket competition policy. However, when considering the act, section 120 of the act, which brings in other broader considerations, it is not unreasonable to consider the competition policy. We do that through receiving the advice of the competition committee—like any other referral entity.

MR SESELJA: In relation to that committee, concerns have been expressed at senior levels in ACTPLA that that committee has the potential to fetter the statutory process. I think they were the words used. Do you agree with that? If not, then how have you resolved those issues with ensuring the SCCC does not fetter the statutory process?

Mr Ponton: The supermarket competition committee, in my view, is like any other referral entity. I do not believe that it would fetter the consideration of the development application at all. In fact, the last two development applications relating to supermarkets—certainly the last two—were specifically referred by the Planning and Land Authority to the supermarket committee for its advice in relation to competition issues.

MR SESELJA: Your predecessor, Mr Savery, certainly believed that it had that potential. What is it that causes you to have a different judgement of the SCCC in relation to fettering the statutory process or interfering with the statutory decision-making process?

Mr Ponton: Quite simply, when considering a development application, I am required to consider the advice of all referral entities. I carefully consider that. If I do not believe that it is relevant, having considered it, I would discount that advice. But having said that, in relation to the supermarket competition committee, in this particular instance in relation to Giralang, the important factor for me was the advice that the committee formed the view that it would not compromise competition.

MR SESELJA: There appeared to be some tension between ACTPLA and the SCCC. In one email you say that you have been asked for some information from the SCCC secretariat in relation to the GFA calculations on Giralang. You said that you do not

intend to provide that information in view of your meeting. Why would you refuse a request from the SCCC to provide information?

Mr Ponton: I recall the email. My concern there was more in relation to how the gross floor area was calculated as opposed to the gross floor area of the supermarket itself.

MR SESELJA: Sorry, could you just clarify that? Your concern was around what, sorry?

Mr Ponton: How gross floor area is calculated for the purposes of considering the territory plan requirements.

MR SESELJA: So you were asked by this committee, which ACTPLA sits on, along with agent parts of government, for information, and you chose not to give it. What did you give them instead, then?

Mr Ponton: We provided them with details of the application itself—so the floor plans, elevations and associated documents—for the committee to consider.

MR SESELJA: So why would you not give them what they were asking for in that case?

Mr Ponton: As I said, Mr Seselja, as I recall—and it is quite some time ago—the nature of the question was specifically in relation to how we were going to calculate gross floor area. That was a matter for the Planning and Land Authority, not, in my view, a relevant consideration for the supermarket competition committee. It was a technical issue.

MR SESELJA: So you responded and told them that that was not appropriate to provide to them?

Mr Ponton: Yes.

MR SESELJA: For the record, what is the view of ACTPLA in relation to the calculation of gross floor area? There seems to be a lot of disputation on this particular point amongst industry and amongst parts of government. The former Chief Minister seemed to have a different view from what ACTPLA had. What is the view? You might clarify it. It is a pretty important point for this committee. What is included and what is not included in the calculation of gross floor area of supermarkets?

Mr Ponton: It depends on the particular application. To be honest with you, in relation to Giralang, for example, there was a significant undercroft area—

MR SESELJA: Sorry?

Mr Ponton: Undercroft. Essentially, it would otherwise have been subfloor area because of the fall of the land. That could have remained a subfloor. The proponent decided that it would provide additional car parking over and above the code. So that is gross floor area, but I do not believe that that is gross floor area for the purposes of

considering impact on other retail areas, because it is not being utilised for retail. It is simply a car park.

The actual box itself, which is in the order of 1,500 square metres, is quite clearly GFA for the purposes of retail. There was a common loading dock. If that loading dock was only for the supermarket, I would be saying that that should be included for the purposes of assessment. In the case of Giralang, as I recall, it was shared with a number of other tenancies. Therefore, it was not considered specifically for the supermarket.

MR SESELJA: So not even partially? It is considered a zero for the purposes of that calculation?

Mr Ponton: In fact, the loading dock in this particular instance was open; so it was not gross floor area for the purposes of a supermarket.

MR SESELJA: What about other storage areas?

Mr Ponton: Other storage areas, again, if they were specifically related to the supermarket, then, yes. But if it was available to all tenants, then that was dealt with separately.

THE CHAIR: Can I explore this some more? The loading dock was not included because it was used by multiple tenants. What happens if, in the fullness of time, all the tenancies have the same substantive owner? They may be still operated as multiple tenancies but, as you would be aware, some supermarkets operate liquor stores et cetera. If we end up in a situation that there is one operator of more than just the supermarket, will this mean that you would go back and recalculate the GFA?

Mr Corbell: No. The planning development approval process does not have regard to individual ownership or potential changes in ownership. It has regard to the types of issues that Mr Ponton is referring to—ie, is the area in question available to all tenancies or only one? If it is available for only one, it is considered as part of the floor area of that one tenancy. If it is potentially available to all tenancies, it is treated differently.

THE CHAIR: The point I am trying to get at—it was certainly argued in Giralang but it is applicable potentially anywhere—is just because you have more than one physical shop, that does not necessarily mean that you effectively have more than one tenancy. A supermarket can have everything in it. It could be broken up and have the liquor separately, the meat separately, the bakery separately. That was certainly one of the arguments. As you said, it depends on the situation. I think that has been one of the issues—people thinking it depends too much on the situation and it is unclear what actually is included in the GFA.

Mr Ponton: The lease purpose clause also assists in that regard. In the case of Giralang, the lease purpose clause as proposed, if supported by the Supreme Court—because the matter is currently before the courts—would limit the supermarket to 1,500 square metres. It would limit the car park to about 2,000 square metres. It would limit cafe and other uses to various sizes.

Mr Corbell: So the answer to your question, really, Ms Le Couteur, is that the lease and development conditions in the proposed lease control how the building can be physically structured. If people want to change that, they will have to vary their lease.

THE CHAIR: But just changing ownership would not require a change of lease?

Mr Corbell: A change of ownership does not impact on the lease and development conditions. The lease conditions still apply. That is what you are purchasing if you change ownership.

THE CHAIR: Yes.

MR SESELJA: I move on to look at another centre in Kambah. One of the owners of the area appeared before this committee. From memory, he was raising concerns about the direction the government was going, again, in terms of the master planning process of looking at two supermarkets versus perhaps an expanded large supermarket, which he suggested might be a better idea. I am interested in what work and analysis ACTPLA has done on that particular question at Kambah. Is the government's view or is ACTPLA's view fixed on there being supermarket competition within Kambah, or are the government and ACTPLA still open to all options, including the potential expansion of the Woolworths there?

Mr Corbell: Again, Mr Seselja, the final of the Kambah centre master plan is currently before government for its consideration. But it would be fair to say that all those options have been considered.

MR SESELJA: When was the Kambah final presented to government? When was that completed by ACTPLA and presented to government?

Mr Corbell: I would have to take that question on notice, Mr Seselja. I cannot recall.

MR SESELJA: Could you do so likewise for the Erindale master planning process?

Mr Corbell: Yes, I am happy to take the question on notice.

THE CHAIR: We have had quite a lot of evidence which basically says that Canberra has an oversupply of retail space—in particular, supermarket space. I could go through the evidence, but I assume that you have seen all the submissions yourself. I certainly have a graph in front of me with the proposed additions. I am sure you have seen all this. How does ACTPLA actually look at the amount of supermarket space that is appropriate for Canberra and how does it come to the conclusion that this should be expanding at a faster rate than the population growth?

Mr Corbell: Mike Quirk can help you with that, Ms Le Couteur.

Mr Quirk: In terms of the overall level of supermarket space in Canberra, the Coles submission identified that Canberra had slightly over the Australian average, with less space than a number of other capital cities and more space than some of the others. I think that is compounded by the higher incomes in Canberra and the higher retail

expenditure. So you could expect Canberra could support a higher level of supermarket space than many other jurisdictions.

Retail space varies quite appreciably across Canberra. In Gungahlin at the moment it is about 0.27 square metres per capita. Just going back, the retail inventory for Canberra that ACTPLA has includes a number of the mini markets and Asian supermarkets as supermarket space. So our estimate of supermarket space is a bit higher than some of the Coles or those sorts of areas—those other locations.

Given that, Gungahlin has a provision of about 0.27 square metres per capita. Tuggeranong and Belconnen have the provision of about 0.37, and the average is about 0.35. So the issue now is, with the increasing population in Canberra and increasing retail expenditure in Canberra, how much additional floor space can be supported. This is based on calculations of likely expenditure growth in various suburbs and the retail trade densities that are appropriate. The model tends to give us information about those sorts of outputs and we can give some ratios. We get a feel. The retail floor space per capita is just a measure we can use for comparison to make sure that certain areas are not under provided with space and some sort of an idea of whether supermarket space is getting ahead of overall provision.

For example, you could expect north Canberra to be able to support a high level of supermarket space because it has not just home-based expenditure; it has work-based expenditure as well. So it is not simply using an overall floor space per capita level. It is really looking at the retail expenditure trends in each catchment and looking at, on a case-by-case basis, what can be supported.

THE CHAIR: How do you take into account the huge expansion at the airport?

Mr Quirk: The airport—

THE CHAIR: I appreciate that it is out of your control. Nonetheless, it significantly impacts Kambah.

Mr Quirk: I have been thinking about this issue because airport development has annoyed me, amongst other people, over the years. The problem is that if we just say the airport has got this level of floor space and, therefore, there should be less space in Canberra, you are really resulting in Canberra residents having to travel further to access retail goods and services than if they had the ability to access those goods within the existing areas. Obviously, Costco drags expenditure across Canberra—that is the advice we are getting—and also the Woolworths supermarket. My hope is that the Woolworths supermarket at the airport will not be overly successful because of its poor location.

We do tend to factor in a certain level of retail trade going to the airport and seeing what impacts that will have on other centres. Yes, the airport is considered in the overall estimates for trade on other centres. But we have the view that, hopefully, like Brand Depot failed at the airport, the Woolworths supermarket similarly might fail at the airport because of its poor location, even though being reinforced with a Big W and a Costco in those sorts of areas will make it more attractive than, say, the Brand Depot. We do take into account the likely level of retail expenditure dragged in by a

Woolworths supermarket and also Costco in making decisions about what floor space can be supported elsewhere in Canberra.

MR SESELJA: I want to come back to ACTPLA's consideration of policy. It is still not clear to me when it comes to competition policy as such exactly what ACTPLA takes into account. Does it take into account simply what is written in the government's supermarket policy? Does it take into account the advice of various government committees? What are the relevant factors for ACTPLA in supermarket competition policy when considering development assessment?

Mr Ponton: The short answer, Mr Seselja, is that we consider the advice of the supermarket competition committee essentially as the custodian of that government policy, like we would with other government entities.

MR SESELJA: So the SCCC is sort of seen as speaking for the government when it comes to advice to ACTPLA on what the government's position is on competition.

Mr Ponton: In relation to development applications, yes.

MR SESELJA: Did you, Mr Ponton, share any of Mr Savery's concerns about the political interference in the development assessment process?

Mr Corbell: There was not political interference in the development assessment process.

MR SESELJA: Mr Savery was concerned that there was.

Mr Corbell: That is Mr Savery's view.

MR SESELJA: I know. I am asking Mr Ponton, who worked directly to Mr Savery—

Mr Corbell: That is not the government's view and we do not agree with the assertions made in that respect.

MR SESELJA: I know that, but I am asking an independent statutory officer whether he agrees.

Mr Corbell: You are asking him for an expression of his opinion rather than factual information about how ACTPLA does its job. I think it is unreasonable to ask a public servant to express an opinion. Mr Ponton, as a public servant, is here to explain government policy insofar as it is relevant to his duties or to explain factually how the Planning and Land Authority does its job, not for an expression of his own personal opinion.

MR SESELJA: That is not true. Nowhere in any of our standing orders does it say that that is the case. Mr Savery expressed a clear opinion, and it is reasonable to ask the person who worked for him, and who is now effectively in his position, whether he shares those same views.

Mr Corbell: Mr Papps is the Chief Planning Executive. If you want a view from the

Chief Planning Executive, you should ask Mr Papps.

MR SESELJA: Given Mr Papps does not have the same independence, I would—

Mr Corbell: In what respect, Mr Seselja?

MR SESELJA: Mr Ponton has dealt, as part of ACTPLA, with independent assessment of development applications. You have now gone and changed the arrangements, but I would—

Mr Corbell: No.

MR SESELJA: Sorry?

Mr Corbell: There has been no change to development assessment arrangements. What change has been there, Mr Seselja? There has been no change to development assessment arrangements.

MR SESELJA: So industry deals with Mr Ponton in the same way that they used to deal with Mr Savery. I do not think it is unreasonable that I ask him what his opinion is. I am a little bit concerned about the blocking of his particular opinion on this. Mr Savery expressed it and Mr Ponton, in fact, was asked to take over when Mr Savery stepped aside because he was so concerned about political interference. I think it is relevant whether he shares those particular concerns.

Mr Corbell: Mr Ponton acts as a delegate of the Chief Planning Executive. The Chief Planning Executive is Mr Papps. I suggest that if you want a view on this matter you ask Mr Papps as the current Chief Planning Executive.

MR SESELJA: What is it that is so concerning about Mr Ponton answering this question?

Mr Corbell: I have no concerns about what Mr Ponton would say in relation to this matter. I am, instead, litigating or prosecuting the matter about how committees and public servants interact—

MR SESELJA: We often ask public servants for their opinion.

Mr Corbell: If I can answer your question, in my view it is not the role of public servants to give their personal views or opinions in relation to government policy. Public servants are here to assist the committee with factual information or their explanation of the interpretation of legislation or documentation in their statutory role—

MR SESELJA: Hang on; we have got a chief planner who expressed this view.

Mr Corbell: Yes, and I am inviting you to ask the current Chief Planning Executive—

MR SESELJA: You have gotten rid of the guy who expressed the view. So I am

asking you whether—

Mr Corbell: I reject that assertion.

MR SESELJA: that view is shared. It seems extraordinary to me that you would block Mr Ponton from answering a question which Mr Savery had a clear view on. Mr Ponton was actually asked after Mr Savery stepped aside voluntarily, because he felt compromised from a DA process, to step into that role. Now I am asking him whether or not he shared that view. It seems highly relevant as to whether or not there has been political interference.

Mr Corbell: Public servants' personal opinions are not relevant.

MR SESELJA: It is a professional opinion. Mr Savery expressed a professional opinion.

Mr Corbell: I would simply point out to you, Mr Seselja, that Mr Ponton is the delegate of the Chief Planning Executive. The Chief Planning Executive is Mr Papps. If you would like a view on the authority's position on this matter, you should ask the authority, and the authority is, under legislation, Mr Papps.

MR SESELJA: So you will not allow Mr Ponton to answer that question?

Mr Corbell: I will not allow any public servant to be quizzed by an Assembly committee on their personal opinion—

MR SESELJA: It is not personal opinion. It is a professional opinion.

Mr Corbell: It is not the role of public servants to provide personal opinions in relation to any matter before an Assembly inquiry, whether it is this matter or any other matter.

MR SESELJA: So it is not the role of an independent statutory agency to actually consider these questions?

Mr Corbell: As I have said—

MR SESELJA: What Mr Savery expressed was very much about where that separation was between government policy and statutory role. So how can we get to the bottom of that separation if we cannot ask those who are implementing that statutory role whether there is interference?

Mr Corbell: You can ask the person who has succeeded Mr Savery as the independent authority, Mr Papps, to answer the question.

MR SESELJA: Okay, but not Mr Ponton apparently?

Mr Corbell: Mr Ponton is the delegate of the Chief Planning Executive. The Chief Planning Executive is sitting to my left and would be very happy to answer any questions you have of him as the Chief Planning Executive.

MR SESELJA: We will ask Mr Papps, then. I have put the question. It has now been blocked from going to Mr Ponton—

Mr Corbell: I have not blocked anything. I am simply adopting the position that any responsible minister would, which is that expressions of opinion by public servants, particularly those acting under delegation, are not a reasonable course of action for any committee to adopt—

MR SESELJA: So was Mr Savery out of line in expressing those opinions, then?

Mr Corbell: Mr Savery was the Chief Planning Executive and he is entitled to express a view in his statutory role as the Chief Planning Executive. You have to remember that there is a distinction between the delegate of the authority and the authority. Mr Savery, whom I have the highest respect for, and I will continue to do so, was the authority under the legislation. It was vested in him. That responsibility has now been given to Mr Papps, and Mr Papps is free to express whatever view he wishes as the authority in relation to the matters that you raise. Mr Ponton has only been the delegate of the authority. It is a different position.

THE CHAIR: Mr Papps, do you have anything to add?

Mr Papps: I think the minister has spelt out the responsibilities very clearly. I am the Chief Planning Executive. Mr Ponton in that regard, for the time that I have been in that position, has been acting as my delegate. I must admit that in the discourse I have lost the specific question that was being asked. But if it turns on the question of political interference, I can say as Chief Planning Executive that there has been none. I do not see the inconsistencies that are being posed between the consideration that either I, as Chief Planning Executive, or my delegates have made and a proper consideration of government policy as expressed in this instance through the supermarket coordination committee.

THE CHAIR: Is that the end of your question, given—

MR SESELJA: Given they are refusing to answer.

THE CHAIR: If so, I will go on to a different line.

MR SESELJA: It is really up to you as chair as to how you want to conduct it.

THE CHAIR: I do not think we are going to get anything further out of this line of questioning. I think that is abundantly clear. I will ask something I asked earlier in a bit more pointed fashion.

I talked about how you evaluated the criteria of impacts on other local centres or even group centres, because there clearly are many criteria in deciding whether or not to approve a new centre or the expansion of a centre. The other way of putting it is: in a situation where there will be a new supermarket or an expansion of a supermarket, and clearly that will have an impact on surrounding areas, how do you decide which centre is going to suffer? How do you decide which one is potentially going to die?

Mr Ponton: In relation to local centres, because obviously that is at the forefront of my mind in recent times, as I said, criterion 33 requires us to consider the impact on other viable local centres. In doing that, we require the applicant to provide us with an economic impact analysis. That is then reviewed by the Planning and Land Authority and, if necessary, we seek further independent advice directly in relation to particular issues.

The key issue for us is not so much, as you have suggested, picking which retailer will die. It is more about seeing whether there is sufficient capacity for another operator to enter into the market. That may well recognise that a particular retailer might lose some of its share, but is that reasonable in the particular circumstances? Does that mean that they will close or will it just simply mean that they will not be making quite as much as they were previously? That is the key consideration for us—ensuring that there is sufficient capacity for all operators within the particular catchment.

THE CHAIR: And you work on capacity on the basis of square metres per resident or what?

Mr Ponton: It is a lot more complicated than that.

THE CHAIR: Do you look at prices that people have paid to buy supermarkets because they bought them on the basis that they expected there would be this amount of turnover but there is now that?

Mr Ponton: It is essentially based on capacity within expenditure and also turnover of the particular centres and what the impact might be. We also look at demographics—who lives in what areas—and we also look at spending patterns. So there is a range of things that might be difficult for me to go through in detail in this forum.

THE CHAIR: If, for instance, someone had recently bought a supermarket for a high price because there was not a lot of local competition and there became local competition, the fact they had spent a lot of money on that supermarket is not relevant to your considerations?

Mr Ponton: Our concern would be that the operator of that supermarket had the capacity to continue trading.

THE CHAIR: Would that be based at all on what they paid for it or purely on the basis that you think 5,000 people should be enough to support a supermarket, which I would have assumed it was, rather than in any way what they paid for it?

Mr Ponton: The latter; that is right. What somebody paid for a particular parcel of land is not a planning consideration.

THE CHAIR: No, but it is a consideration in terms of whether a supermarket is viable because, you see—

Mr Corbell: No, it is not.

THE CHAIR: you have been talking about whether they are viable—

Mr Corbell: No, it is not.

THE CHAIR: Economically viable.

Mr Corbell: What someone chooses to pay for a supermarket is their business.

THE CHAIR: Yes.

Mr Corbell: And they might pay too much or they might get a bargain. That is up to them. That is up to their assessment as to the market.

THE CHAIR: That is what I would have thought.

Mr Corbell: But that is not a consideration in relation to whether or not there is sufficient supermarket GFA in an area. That is driven by an assessment as to level of income available in the area, the number of people in the area and what share of patronage, if you like, can be sustained within a particular area. Those have been the types of considerations. Part of that consideration is what other existing provision of that form of retail already exists in an area.

As Mr Quirk has indicated to you, the retail model gives us an assessment of overall demand. It also gives us an assessment at a finer level of detail as to how much demand and how much supply there is in each particular area. That helps to identify areas of under and oversupply—give an indication of that. Those are all factors that are taken into account in determining whether or not an area can sustain further gross floor area of supermarket retailing.

THE CHAIR: Mr Seselja, this will be the final question, because we are about to run out of time.

MR SESELJA: This is a question maybe Mr Papps cannot answer. Mr Ponton, when Mr Savery asked you whether or not his position was untenable as a result of him raising questions around political interference with the government, what did you advise him?

Mr Ponton: I did not advise him at all in that respect.

MR SESELJA: So you did not respond to that question?

Mr Ponton: No.

MR SESELJA: Why not?

Mr Ponton: That was not my place to do that.

MR SESELJA: So you were asked a question and there was no response from you?

Mr Ponton: He asked the question, as I recall, in an email of a number of people.

MR SESELJA: And no-one gave him any feedback?

Mr Ponton: Not that I am aware of.

MR SESELJA: Minister, did Mr Savery resign? It is still not clear to me. Did he resign, was he in some way asked to leave or was his contract simply not renewed? What were the actual circumstances of his finishing up with the ACT government?

Mr Corbell: Mr Savery chose to pursue other career opportunities.

MR SESELJA: So had his contract concluded or did he leave prior to the completion of his contract?

Mr Corbell: He left prior to the completion of his contract.

MR SESELJA: Was he paid out for the remainder?

Mr Corbell: I am not privy to the specific details. Those are confidential between the territory and Mr Savery.

MR SESELJA: As to whether a statutory officer is paid out for their—

Mr Corbell: I am not privy to those details.

MR SESELJA: Who is privy to those details?

Mr Corbell: I would have to take the question on notice. I do not know. It is not a matter that is negotiated between a minister and a statutory officer.

THE CHAIR: We have run out of time. Thank you, Mr Corbell, and thank you, officials, for appearing today. As per usual, there will be a transcript of this which will be sent to you for corrections. Thank you.

Mr Corbell: Thank you.

Short adjournment.

ZUMBO, ASSOCIATE PROFESSOR FRANK, private capacity

THE CHAIR: Thank you very much for agreeing to appear by phone. I believe that you have had a privilege statement emailed to you.

Prof Zumbo: I may have, but I understand how these things work, yes. You are inviting me to appear and that ascribes privilege. Is that the letter you are referring to?

THE CHAIR: That is the letter I am referring to, yes.

Prof Zumbo: Yes, I definitely got that letter, but I am well aware of privilege and committee work.

THE CHAIR: Thank you very much. We have a copy of your submission. Thank you very much. In it you say that you think the ACT supermarket policy needs to be maintained. My question is: why do you think it needs to be maintained given that Woolworths and Coles both seem to be expanding in the ACT? You state that the policy should ensure that there is not the dominance or stranglehold of Woolies and Coles but that the policy does not appear to practically address this.

Prof Zumbo: In practice, where the supermarket policy can be effective is in relation to direct sales, in relation to new property development opportunities. In relation to other aspects of supermarket policy, yes, there may be issues, nuances and what have you, but I was more concerned about the direct sales aspect of the policy. Obviously, there will be ways that Coles and Woolworths or any other operator can expand or redevelop their existing site. They could acquire independents, as they do around the country. In circumstances where you cannot stop them expanding in terms of acquisition of sites, through acquisition of independents, the ACT supermarket policy strikes an appropriate balance, I feel.

THE CHAIR: You possibly do not know enough about the ACT situation to have any comments on the actual application of it. Since the policy came out, certainly some of the submissions we have had from Supabarn and the IGAs have very much argued that it has not achieved any of those results. Supabarn has not, in fact, got a block of land as yet in Kingston and there have been new Woolworths supermarkets opened. I do not know if there have been any new Coles opened, but there have certainly been new Woolworths supermarkets opened since the policy was put into effect, whereas there have not been any new Supabarn or IGAs, I think.

Prof Zumbo: But I understood there has been the introduction of ALDI supermarkets and ALDI has been able to acquire sites as a result of the policy.

THE CHAIR: Again, I do not think any of those have been since the Martin review. I do not think there have been any new ALDIs since then. There have not been any taken up. They have been offered but ALDI has said no to them since the Martin review.

Prof Zumbo: Okay; the point is that at least they have that opportunity. But in other circumstances, in the absence of the ACT supermarket policy, it would be inevitable that Coles and Woolworths would get all new sites, all potential new sites, simply

because of their relationship with developers and, in other places, councils in terms of council land in other states. So it is just an opportunity to provide new entrants with some chance, particularly in relation to direct sales.

MR SESELJA: Professor Zumbo, there has been some criticism of the competition policy of the ACCC. I do not know if you are aware of these particular criticisms, but it is not necessarily around the restrictions on Coles and Woolies, but it has been around “picking winners”, which was the term they used in terms of trying to build up another supermarket player through direct grants, which excludes a whole range of supermarkets, not just Woolworths and Coles. I am interested in your thoughts on that aspect of the policy.

Prof Zumbo: I respectfully disagree with the ACCC. I respectfully disagree with the ACCC on a number of issues. I think the reason why we find ourselves with a highly concentrated market in the ACT in terms of supermarkets is that the ACCC allowed Cannons to be taken over by Woolworths. I am a very strong believer that we should prevent these problems from arising in the first place.

Section 50 of the Competition and Consumer Act, which is supposed to deal with stopping anti-competitive mergers, does not stop all the anti-competitive mergers that I believe it should stop. It especially does not stop creeping acquisitions whereby a Coles or a Woolworths will buy individual independents. Over time you end up with a whole lot less competition. Certainly, I would like to see more strenuous enforcement of section 50 to deal with anti-competitive mergers and creeping acquisitions.

There has been a whole debate about strengthening the law in relation to creeping acquisitions. I certainly believe that the ACCC can do a lot more not only in the supermarket sector but also the petrol market. I do not believe the ACT supermarket policy is about picking winners; rather, lowering barriers to entry.

That is the real issue in terms of direct sales in particular whereby you lower the barrier to entry, whereby you could get an independent competitor into the marketplace and, over time, you get more independent competitors into a marketplace because, as I said in the submission, if you just have two players, you have a minimum level of competition, which is described as workable and competitive or as workable competition. They are the minimum levels of competition. I would like to see a vigorously competitive market and you can have a vigorously competitive market only where you have a diversity of competitors in the marketplace.

THE CHAIR: One of the things that you suggested is online publishing of retail price information, which certainly sounds a very interesting proposition. Have you any idea practically how that would happen? Is there any way that the ACT government could in fact make the supermarkets do it?

Prof Zumbo: Subject to the ACT getting legal and constitutional advice, I do believe the ACT government could require supermarkets in the ACT to publish information online in relation to ACT supermarkets. That is another thing that needs to happen. Not only do we need to lower the barriers of entry to get the independents in, but if we are talking about a properly functioning market, an effectively functioning market, you need to have full price transparency. At the moment, consumers do not get that

full pricing information. They might get information about weekly specials and what have you, but they do not get full access.

If Coles and Woolworths are as good as they tell us they are in terms of pricing in their supermarkets, I would have thought that they would have no hesitation in providing that information. They collect that information every time an item is scanned. Every time a product is scanned, that information is there in real time about the price of a particular product. They spent a lot of money developing the flybuys programs and the Everyday Rewards program. They collect an enormous amount of information; so they have the IT infrastructure. All that needs to happen is that that information needs to be provided to the public so consumers have that information to be able to shop around.

If we are talking about promoting a more competitive ACT supermarket sector, not only do you need more efficient competitors, additional efficient competitors, but you also need full price transparency. Obviously, the supermarket policy should be seen as one part of a larger picture. You have to start somewhere and you have to start somewhere in the ACT supermarket policy. But at the end of the day, more needs to be done to get the most competitive market that you can.

At best, you have just a workably competitive market, which is the minimum level of competition. We need to undertake steps, some of which can happen in the ACT. Other steps need to be done federally. But we need to start somewhere and we need to take those steps as needed and as quickly as we can, but we will end up with just two players over time.

MR SESELJA: One of the points of difference between local players and local independents versus Coles and Woolies is the convenience of small supermarkets in the local centres. One of the criticisms that we have heard in this committee by local independents has been the increasing size of local supermarkets in recent years up to around 1,500 metres, which has invited the likes of Woolworths, in particular, into that space.

I am interested in your thoughts from a competition view. As the government refines this competition policy, that has been identified by small players as a threat to their existence. I am interested in your thoughts on whether there should be restrictions on those sizes as a way of enabling smaller players to thrive, or do you see that as an artificial way of creating competition?

Prof Zumbo: Ultimately, that is a very difficult question, only because there are various ways that need to be gone through one by one. I do not advocate and I have never advocated a market cap—that is, to try and have restrictions to a point where you effectively stop any player, whether it be a Coles or a Woolworths, from getting into a particular space. I can see for obvious self-interested reasons why independents may want to exclude Coles and Woolworths from a market below 1,500 square metres.

The reality is that, typically, Coles and Woolworths will prefer above 2,000 square metres because 1,500 square metres is suboptimal, I would have thought, in many of their approaches to this issue. But if they want to open up a supermarket less than 1,500 square metres, then I would have thought that that would be a good thing

because then you get diversity in that market below 1,500 square metres where you might only have independents.

We are not here to make sure that we have small supermarkets there all the time. If they can compete, if they can offer a better product or a higher quality, yes, they will survive on their merits. We are not here about protecting individual competitors; we are concerned to protect competition. Protecting competition means a diversity of competition across different markets, across local areas.

In the same way that I personally would not have a problem with Coles and Woolworths getting into that below 1,500 square metre mark, I assume we have no problem in encouraging more independents in that above 1,500 square metre mark and giving them the opportunity to acquire the land to do so. If independents are not given that opportunity to acquire land—those larger parcels above 1,500 or larger than 2,000 square metres—they do not get a look in to those bigger sites. So we need diversity across the markets and across different levels of the market.

THE CHAIR: You suggested considering re-establishing an ACT small business commissioner.

Prof Zumbo: Yes.

THE CHAIR: One of the things that ACTPLA is meant to do is look at the impact of new supermarkets on local centres. How do you think this person would help in terms of supermarkets as distinct from any other small businesses?

Prof Zumbo: I think a small business commissioner can help in many ways. I must say that, although I am currently a deputy small business commissioner in South Australia, all my comments today are in a private capacity. I can say that experience has shown me some particular insights about what a small business commissioner can do, so I would like to generally talk about what a small business commissioner can do based on my own research and drawing on general experiences in South Australia. I am putting this in my private capacity, and I am very happy to go into the detail.

The challenges faced by small business are many. It is not just dealing with Coles or Woolworths; it is dealing with the landlords, for example. A clear way that a small business commissioner can assist is if there is a dispute between a small business and a landlord about rent increases or about terms of a lease. The small business commissioner is there to assist in resolving those disputes.

At the moment small businesses have nowhere to go to. They can go to their lawyers, but that costs a lot of money. The ACCC does not typically get involved in individual commercial disputes. The ACCC does not involve itself in mediation. So a small business commissioner would assist in terms of those retailing-type issues with the landlord. There may be supply issues with suppliers. There may be issues with a small business and their franchisors, or you might have an IGA that has a problem with their Metcash supplier.

Small businesses face all sorts of issues. They may have issues with the local authority, with the local council, the territory government. There are all sorts of ways

a small business commissioner can help small businesses just get on with being a force as effective and competitive as they can be.

MR SESELJA: I am interested in your expanding on what kinds of powers a small business commissioner needs in those cases. As an advocate they may be useful, but what actual power do they have to say to a Westfield, for instance, “You’re not treating this particular small business well; the rent you’re proposing to increase is not fair”? What kinds of powers does a small business commissioner need in order to work?

Prof Zumbo: First I should say that I will answer the question about what powers are needed, but ultimately I do not want dwell on the power side of the equation because the real value of a small business commissioner is having the ability to invite the landlord—whether it is a big landlord or a small landlord—to participate in discussion with the tenant. It is that persuasive ability to try to get the parties together. To look at it from the power point of view simply asks lawyers to come into the equation and in some way hijack the debate.

The powers are the powers to require information, for example, so you can require a shopping centre to provide information in a particular dispute where the landlord or the franchisor is uncooperative. I have to say that, in my experience around the place and more generally in South Australia, I find that landlords, big or small, are very happy to sit down with a small business commissioner because sometimes they see some value in that small business commissioner trying to get the tenant around to a particular way of thinking. The tenant may have taken on a particular view. There may be a misunderstanding on the part of the tenant. The small business commissioner can help facilitate communication.

In South Australia we have the ability for the minister to prescribe a mandatory code of conduct. In South Australia a mandatory code of conduct would be backed by direct financial penalties. The two aspects of power that South Australia relies on include the ability to require people to supply information. I have to say that my general experience is that, even in those states which do not have that power, the larger party is still happy to come along. But in South Australia the law extends to having mandatory codes of conduct backed up by penalties. That is a gap at the federal level also. There are mandatory codes, for example, in the franchising sector at a federal level, but they are not backed up by direct financial penalties.

You can give a small business commissioner appropriate powers, but, ultimately, it is not the use of those powers that make a commissioner effective; it is the ability to have an independent person being able to assist small business and a large business come to a resolution without the unnecessary and expensive involvement of the lawyers and courts.

THE CHAIR: Getting back to creeping acquisition, that would seem to me to be something that is very difficult to deal with. Have you any suggestions of any ways the ACT, given its context, could deal with that?

Prof Zumbo: That is a very difficult question. There is no ready instrument. Although the supermarket policy deals with the creeping acquisition of sites, of direct sales sites,

by opening that direct sales process to people other than just Coles and Woolworths or by inviting certain people to bid and not others, you are providing an opportunity for independents to enter that market and prevent the creeping acquisition of new development sites in that particular context. More generally, it requires a federal response and a tightening of the Competition and Consumer Act, which is something that needs to be done at a federal level.

THE CHAIR: Yes. Going back to our previous question about the small business commissioner, given you are saying it is mostly about providing information, is there any reason why that could not be done by a business organisation? I do not know what you have in South Australia, but we have a business council and a chamber of commerce here. Could they also deal with advocacy and negotiation on behalf of their members?

Prof Zumbo: In many cases they already do that. It is not only in the ACT; they do that in other states, even where there are small business commissioners. But industry associations or business chambers can go only so far because they will not have any powers to require information and they will not be backed up by mandatory industry codes that they would enforce like a small business commissioner would enforce.

Ultimately, industry associations and business chambers may be seen as too close to one party. The advantage of a small business commissioner is the statutory independence they have and the ability to act and be seen to be independent and be an honest broker between the parties. Sometimes a business association and business chamber or industry association cannot do that.

THE CHAIR: Thank you very much, Professor Zumbo. We have exhausted our questions. Thank you very much for your submission. We will send you a copy of the transcript as soon as it is available. Then it will be published on our website.

Prof Zumbo: I think we have canvassed everything except one other suggestion I had.

THE CHAIR: The petrol prices.

Prof Zumbo: Yes.

THE CHAIR: I thought we had gone through the issues with that with the supermarkets.

MR SESELJA: I will get you to briefly expand on that. What particular aspects of the supermarket competition policy do you believe would work for service stations and how would you see that working?

Prof Zumbo: Once again, direct sales of new development opportunities and inviting independents—truly independent petrol operators—into the market. Obviously the problem you have in the ACT petrol market is the demise of or the reduction in the number of independents over a period of time. There was a time when you would fill up in Canberra on the way back to Sydney, but these days it is the other way around, but only because there are still vibrant independents in Sydney. A lot of independents in Canberra have gone. So you really need to encourage independents back into that

petrol market in the same way that you need to encourage independents across the full supermarket spectrum.

The point I am trying to make in the submission is that we can have Coles and Woolworths and we can have oil companies that act as a closed club in the sense that they shadow one another, they copy one another, they follow one another. I am not suggesting collusion; I am suggesting that they just look at one another's pricing, and that is why the ACCC currently is investigating the fact that the oil companies, Coles and Woolworths can access price information through a company called Informed Sources, hence my suggestion that all service stations should publish their prices online so at least consumers are empowered.

The key issue in my submission, including in regard to the price of petrol, is you need more independents in the market. You need true independents, you need price competitive independents in the market. You need to have full pricing transparency in the market. In this day and age with technology the way it is with smartphone apps, you can empower consumers. I am surprised that Coles and Woolworths do not do that to show off how wonderful they are, as they keep telling us. In the United Kingdom—much of the senior management in both Coles and Woolworths come from the United Kingdom—they know about the mySupermarket website. You can get some really good information there online that Australians cannot access.

Not only do you need to have independents in the market, not only do you have to have full pricing transparency, but you need to have an honest broker, hence the small business commissioner proposal.

THE CHAIR: Thank you very much, Professor Zumbo. As I said, the transcript will be sent to you as soon as possible. Thank you.

Prof Zumbo: Thank you very much.

The committee adjourned at 4.55 pm.