



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PUBLIC ACCOUNTS

(Reference: [Inquiry into commercial rates](#))

Members:

MRS V DUNNE (Chair)
MS T CHEYNE (Deputy Chair)
MS B CODY
MS N LAWDER

PROOF TRANSCRIPT OF EVIDENCE

CANBERRA

WEDNESDAY, 6 FEBRUARY 2019

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Secretary to the committee:
Dr B Lloyd (Ph: 620 50137)

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 20 May 2013

The committee met at 11.15 am.

CUMMINS, MR GREG, Chair, ACT Committee, Australian Property Institute

THE CHAIR: Good morning, and welcome to the first public hearing of the inquiry into commercial rates by the Standing Committee on Public Accounts. Today we will hear from the Australian Property Institute, the Council of Small Business Organisations Australia, and Civium. Today's proceedings will be webstreamed, recorded and transcribed, and the transcript will be published.

I advise witnesses to note the pink laminated privilege statement that is in front of them and, when they speak, to acknowledge that they have read and understood the privilege statement. If a witness is asked any questions that they are not ready to answer in hearings, witnesses may take them on notice and liaise with the committee secretary, Dr Lloyd, on how the questions are to be answered.

With those preliminaries out of the way, I welcome Mr Greg Cummins, the Chair of the ACT Committee of the Australian Property Institute, to the table. Good morning, Mr Cummins. Have you read the privilege statement?

Mr Cummins: Good morning. Yes, I have; thank you.

THE CHAIR: Do you have an opening statement that you would like to make?

Mr Cummins: I would just like to state that, on behalf of the API, we made a submission the other day. I do not know whether the committee has a copy of that.

THE CHAIR: It has been received and it will be published.

Mr Cummins: The Australian Property Institute, of which I am a member and of which I am the chairman in the ACT, is a membership organisation for property professionals, primarily, property valuers. We are impartial, objective and independent. There are more than 8,000 members Australia wide. We represent a wide range of property professionals with an impact on the wider property industry.

The API sets and maintains a high standard of professional practice, education, ethics and professional conduct for our members. In turn, the work of the institute raises the bar, we think, for the entire property profession. Members can be found across all sectors of the property profession, including private practice, public sector and academia. The broad base of qualified and skilled professionals is unique to the Australian Property Institute. The institute is committed to building and maintaining a strong base for the future of the property profession through broadening the expertise and knowledge of its membership. That is all I wish to say by way of an introduction.

THE CHAIR: In your submission you outline eight things that you see as inconsistencies and areas of unfairness in the ACT government's approach to commercial rating. You talk about the calculation of rates, the annual review, the effect of lease variation charges on unimproved values, retrospective charging, charging commercial rates for properties assessed on a residential basis, the

apportionment of rates over next year's sites, the costs of appealing and objecting, and the effect of increasing rates on the value of property. Would you like to elaborate on those? You have made a submission but, in addition to the submission, is there anything else that you would like to say about those areas?

Mr Cummins: I would like to think that our submission is fairly straightforward. I endeavoured to make it easy to understand for most parties. The submission could be separated into two areas, realistically. There are the unimproved values and how they are calculated, and the work that is done between the government valuers and private valuers. The other part is the way that the rates are calculated, which is not so much a valuation perspective but more of a revenue-based thing. We see both sides of it.

THE CHAIR: From your perspective as the Property Institute, you would see both sides: the people who make a valuation and those people who would come along and contest or object to that valuation.

Mr Cummins: Yes, that is correct.

THE CHAIR: At that high level, and perhaps with the capacity to look at what happens elsewhere, do we handle that process well in the ACT?

Mr Cummins: With mass appraisal, which is the way the unimproved values are assessed every year, they take what they call a basket of properties, and the ACT valuation office then applies that calculation, or that increase or decrease in properties, across a wide group of properties. Standing back from it, it probably seems like the most economical, quickest and easiest way to do it, but property in the ACT is a lot more detailed than that. Because we have a crown lease purpose clause, you can have two properties side by side with completely different permitted uses, and the increase in one property may well end up being the increase in the adjacent property. Because of mass appraisal, each gets five, 10 per cent or whatever the number is deemed to be as the increase.

Consequently, what also happens is that, for many years, properties often do not receive an increase in their unimproved value; then treasury, or the valuation office, decides that they need to reassess one area, and the values go up by 20 per cent or more overnight. That is then applied to the new rating values and consequently people's rates go up by an inordinate amount.

THE CHAIR: On that, it has been put to me that the Rates Act requires the valuation office to look at every block of land every year. It clearly does not do that, and what you have described as mass valuations stand in contrast to what the legislation actually says that the valuation office should be doing. How would you see us moving away from mass valuations to something which is close to what the legislation seems to require?

Mr Cummins: It is something that would take a lot more manpower and, consequently, a lot more cost. There are something like 170,000 properties in the ACT.

THE CHAIR: Yes, and we have, according to the government directory yesterday

afternoon, five valuers.

Mr Cummins: That is correct. And this is not all that they do. They perform other roles for the treasury. Lease variation charge valuations probably take up 70 per cent of their time, I would suspect. I do not know, but I would suspect that. They might get some valuations right, but getting most right, when there are so many sales and so many different areas, is pretty hard. They obviously need a lot more manpower or a different methodology for doing these.

THE CHAIR: I have some other questions but I will open it up to other members.

MS CHEYNE: With mass appraisals, it seems that, in order to do what the act says, and with the number of valuers that we have, it would be impossible. You said that one way to perhaps deal with the issue would be to have an intermediate process for appealing rating values. How has that suggestion come about? Are you able to elaborate on how it would work?

Mr Cummins: For someone to appeal their rating value?

MS CHEYNE: Yes.

Mr Cummins: I work in the private industry. We get a number of approaches every year with respect to people wanting to challenge their unimproved value. It used to cost \$20; now I think it is free. You can write to the government, as long as you do it within 60 days; you then receive a response, either reducing your value, because no-one asks for it to go up, or they say, "No, it's correct." If you do not agree with that, the next step is to go to ACAT. That involves an expense of \$50,000 to \$100,000. Only the very biggest owners can do that, obviously.

As I have suggested in my paper, by way of an example, if two parties cannot review a commercial rent review, there is always a mechanism in their lease so that they can go to a third-party valuer who looks at all of the evidence and provides an answer as to what the rent may or may not be. There is no reason that we could not have the same situation for unimproved values. There are enough experienced valuers in the ACT so that an independent party could be appointed, and both aggrieved parties could make submissions to that party, and that valuer could make a decision. It would cost, I would imagine, between \$5,000 and \$10,000 for something like that. A lot more people who are aggrieved could be assisted in that situation.

MS CHEYNE: If something like that were introduced, could we have 170,000 properties objecting? I appreciate that is extreme, but—

Mr Cummins: Yes, that is extreme.

MS CHEYNE: I am trying to think about what cost the government would be absorbing in terms of time taken to re-evaluate. Potentially, if it did go through something like ACAT or the hiring of third parties, could those costs actually balloon?

Mr Cummins: They would probably balloon for a couple of years, for two or three

years. When you say “balloon”, I do not know how many challenges there are a year, but I would not imagine that a heck of a lot would go to this next level. There might be 1,000 or something like that in the very first instance. That figure is right off the top of my head. It probably would not even involve that many; probably half of that figure may go to that level.

THE CHAIR: What you would be envisaging is that both sides would pay their costs?

Mr Cummins: Yes, they would pay 50 per cent of the costs each. One of the problems is that when you appeal you are appealing to the government, who have made the decision. Naturally, like most people, they do not like to be told they are wrong. If you get an independent party to look at it, I imagine the answers would come out 50 per cent each way.

MS LAWDER: Has the Australian Property Institute done any comparisons and contrasts of the different states and territories and their rating systems?

Mr Cummins: Realistically, not to a huge level. Different states charge their rating values on a different basis. In some states they charge on an improved value. For a house, for instance, you get charged on what is the value of the house versus, as we do, the unimproved value. I know, anecdotally, that ACT rates are probably more expensive than in a lot of other council areas or states.

Anecdotally, I am aware of properties in Fyshwick. For instance, there is a gentleman who has a 10,000-metre block in Fyshwick; his rates are circa \$50,000. He owns one in west Queanbeyan, about three kilometres away, and the rates are \$10,000. Yes, it is a huge difference that way.

MS LAWDER: And in your organisation board or general membership level, you have had that feedback about the difference between the ACT and nearby New South Wales?

Mr Cummins: Very much so, yes.

MS LAWDER: Your eight points that you have said need to be addressed are very much informed by that debate. Do you have valuers who work both in the ACT and New South Wales?

Mr Cummins: Yes, we do.

MS LAWDER: So they would be well-placed to—

Mr Cummins: Most of them are, yes. There are some who work just in the ACT but many work across both jurisdictions.

MS LAWDER: Any idea how many? Do you have to be licensed to work in both states?

Mr Cummins: No. The licensing got stopped in New South Wales about five years

ago but to be a member of the Australian Property Institute you have to have a certified practising valuer certificate to have your valuations accepted by banks, financial institutions. We have 160 members here in the ACT. Of that, circa 80 are full-time valuers and, of those 80, probably 10 work in the ACT and in Queanbeyan at the same time, I would suggest. No—more than that, 30 or 40.

MS LAWDER: Some of the valuers, I think you just said, are employed by banks as well to do—

Mr Cummins: Contracted to banks.

MS LAWDER: Do you see a discrepancy between the bank value and the ACT government's rating value?

Mr Cummins: Yes, very much so. With valuing for a bank, 90 per cent of the valuations are land and improvements, in other words the building and the land. Unimproved value is just analysed land value of the site. When doing commercial and industrial valuations we do not put a separate value on the land. Sometimes they do in residential but not in a commercial situation.

MS LAWDER: And finally, before we move on, anecdotally I have heard from some business owners, the same as you have said, about the effect of increasing rates on the value of a property. Some business owners have been able to purchase at a lower rate because owners of a vacant property are hurting from the rates increases. Has this also been a conversation?

Mr Cummins: Very much so, yes.

MS LAWDER: Do you have any feel for the quantum or the percentage of that?

Mr Cummins: It is hard to say because people sell for various reasons and various states of their own investment cycle or their own business-owning cycle. I am aware of people who have brought that on sooner than they intended to and I am aware of people who sold because their rates have just got too high and they cannot justify owning a property any more. To give a quantum of percentage or numbers, I would be guessing, yes.

MS LAWDER: It is good if you are a buyer but terrible if you are a seller?

Mr Cummins: Yes and no, because if you are a buyer you have still got to pay those rates once you buy the property. I am aware of people who looked at new blocks of land in Hume in the ACT, found out what all the costs are and then have just gone over to west Queanbeyan and bought blocks over there purely because of that.

MS CODY: Thank you for joining us today. Just following on from Ms Lawder's questions about the difference between ACT and New South Wales, you are only looking at the rates component; is that correct?

Mr Cummins: Yes.

MS CODY: There is no looking at the difference between payroll tax in the ACT and New South Wales. Let us use Queanbeyan as an example because it is nice and close.

Mr Cummins: Yes.

MS CODY: I note that there was a submission made to the committee that set out some case studies that show, in regard to properties in the ACT, that yes, absolutely, some of the commercial rates are a little dearer but the other costs of operating a business in the ACT versus Queanbeyan are very cheap—are so much less. Does that come into some of the stuff you do?

Mr Cummins: No, not really.

MS LAWDER: You are interested in the property—

Mr Cummins: I am interested in the property only, yes.

MS CODY: You were talking about the fact that people had to sell because of the cost of rates. Surely it is an overall thing when you are looking at a business rather than a property?

Mr Cummins: I have not heard of anyone saying, “No, I’m going to move to the ACT because of payroll tax in New South Wales.” I only know this from my own business interests but I am aware that payroll tax in New South Wales is more—increasing at a lower rate—but once you are paying it you are paying it. It is, yes.

MS CODY: As a previous business owner, I know that it is a combination of everything; it is a combination of your rates and your building costs, your business costs including payroll taxes, your staff costs and your on-costs. There is a package of things that go along with running a business. I assume you would agree with that?

Mr Cummins: There is a package, I must admit, and, from having New South Wales and ACT businesses, it never got to the stage where we said, “No, we won’t employ someone in New South Wales because of that.” The on-cost was always frustrating but it never got to the stage where we said we would not do it because of the payroll tax. But that is a personal point of view.

MS CODY: As I said, as a business owner I look at both rates and on-costs.

MS CHEYNE: Could I get a supp in there as well? From the feedback you have received, are more people just shutting up shop or are more people moving?

Mr Cummins: People move; they do not really shut up shop.

MS CHEYNE: Are people just going, “I can’t afford this business”?

THE CHAIR: Small business failure sort of thing?

Mr Cummins: Yes. Sometimes but not often. I would not say it is a common thing.

MS CHEYNE: It is more moving the business?

Mr Cummins: More they will relocate, yes.

MS CODY: Are you a member of a political party?

Mr Cummins: No.

MS CODY: Have you ever made a donation to a political party?

Mr Cummins: No.

MS CODY: You were talking about you personally having property in the ACT, is that correct, commercial property? Did I hear that?

Mr Cummins: Not commercial property, no.

MS CODY: Not commercial property?

Mr Cummins: No.

MS CODY: I was not sure if you also meant commercial property. I was just clarifying.

Mr Cummins: I personally do not have commercial property in the ACT, no.

MS CODY: The comments that you talk about in your submission are from people who work with you and people who work for you; is that correct? And members of the API?

Mr Cummins: Members of the API, yes, and some people work with us, yes.

MS CODY: I note in point 6 of your submission—I will give you a chance to get to it—you talk about in New South Wales being able to use a mixed use rates and how you would like to see that in the ACT. You have said in the last part of your point 6 that, instead of the current approach used in the ACT, the full site would be rated as commercial, if it was a mixed site. That is actually not correct. Were you aware of that?

Mr Cummins: No, I was not aware of that.

MS CODY: Apparently commercial business owners are able to talk to the Revenue Office and specify, if they have got 1,000 square metres of commercial and 5,000 square metres of residential in a total of 6,000 square metres, it actually gets rated accordingly. The 1,000 square metres would be commercial and the 5,000—

THE CHAIR: Could I ask you, Ms Cody, where you are getting this information from? The comments made by the API here have been repeated on a number of occasions in submissions.

MS CODY: From their website.

THE CHAIR: And my understanding is that the only way you can get around it is if the property is strata titled, and the strata units are rated according to their use.

MS CODY: Mr Cummins, do you have evidence that shows you that that is the case?

Mr Cummins: I see a lot of these rate notices and valuations that building owners ask us to look at their valuation to see if it is realistic or needs to be challenged. A lot of these are for mixed use properties and it does not say X amount for residential and X amount for commercial.

MS CODY: Has anyone bothered to try to talk to treasury about that?

Mr Cummins: Not that I am aware of, no.

MS CODY: Maybe that is something that could be—

Mr Cummins: I will check that this afternoon for you.

THE CHAIR: The evidence we heard in the previous inquiry into residential rates was that the only way around paying at a commercial rate was if the property were strata-ed and that if it was then you paid according to the use of the particular unit.

MS CODY: I was just suggesting that maybe Mr Cummins should find out.

Mr Cummins: I will follow that up.

MS CODY: That would be interesting.

MR COE: With regard to the actual values of commercial properties, obviously the values are often determined on the yield of the property. Therefore, when you have a commercial rates impact like the one that we are seeing in Canberra, what sort of impact is that having on property values and therefore the equity that people have?

Mr Cummins: Most commercial properties are bought and sold on a commercial term basis on the amount of income that they receive. The higher the rates are on a property, the less net income is available from that property. For instance, if the net income from a property is \$100,000 and rates go up by \$10,000 all of a sudden, that net income becomes \$90,000. People buying on an income of \$90,000 might have had a million dollars worth of property. Now they are only paying \$900,000 because they are capitalising that extra \$10,000.

MR COE: So people are seeing a hit to their income, but they are also potentially seeing a hit to their equity?

Mr Cummins: That is correct.

MR COE: With that said, and I am not asking you to do a back-of-the-envelope calculation here, on that basis, the total value of many commercial properties, or the

aggregate value of commercial properties in Canberra, must be taking a hit.

Mr Cummins: Yes, it would be.

MR COE: On the back of this rates decision.

Mr Cummins: That is correct.

MR COE: So we are looking at a multiplier of, say, 10. Ten to one is a price to enter—something like that?

Mr Cummins: Yes. As you say, I do not want to do a calculation in my head, because I always get those wrong.

MR COE: But there is a price-to-earnings figure of 10 to one if people want a 10 per cent yield or thereabouts.

Mr Cummins: That is right.

MR COE: Roughly.

Mr Cummins: Yes. You would be taking a 10 per cent drop in income. And it would be multiplied across the whole city.

MR COE: With that said, do you see the ACT being as attractive for investment in the commercial space, especially for industrial compared to Queanbeyan, but for commercial compared to other cities?

Mr Cummins: It would be less attractive to someone from the outside. If someone is established in an area, it is quite expensive, time consuming, et cetera to pick up and move. But for someone coming in new to the city, capital is very flexible. A big organisation, a multinational organisation or trust fund, will look to where they can get the best return from their investment. If a property is showing a lesser return here, they are just as likely to go to Adelaide, Perth or something like that. On a smaller industrial basis, as I say, if someone is already established in an area, they will grin and bear it 90 per cent of the time. But if they are looking to buy a new property, invest in something different, the odds are that they will go to where they can get the best return for their money. If that is over the border in Queanbeyan, that is where most people will go.

MS CODY: I know you said that their income takes a hit with the additional rates charges. What about the value of properties in the ACT compared to Queanbeyan? Are they more in the ACT? Surely the rates are worked on the valuation of the property.

Mr Cummins: Yes. Generally a property is more valuable in the ACT than it is in Queanbeyan. But I think that gap is starting to narrow.

THE CHAIR: There are a lot of things I would like to ask you about. One of them is not so much something that is covered in your submission but a more theoretical

approach which touches on part of the question I asked before. We have a very small valuation office in the ACT, and it is not a standalone valuation office like it is in New South Wales and many of the other states where you have essentially, in old parlance, a valuer-general, a statutory body that worked independently. Here the valuation officers are adjunct to the Revenue Office. Do you see pros and cons for that model? And what might be an optimal model?

Mr Cummins: It could be said that, being employees of treasury, the valuers there can be seen as having a conflict of interest. That is particularly when they get appeals. You are appealing to the person who has made your original decision. They are saying, "I work for the revenue department and we are sticking where we are." There does not seem to be that independence that they may have had under the statutory authority.

THE CHAIR: Forgive my ignorance, but is the model that we have in the ACT, as a sort of adjunct to the Revenue Office, unique, or does that happen elsewhere, to your knowledge?

Mr Cummins: It is unique as far as I am aware. Most states have a state valuation office that is a statutory authority.

MS CODY: Did you work in ACT treasury as a valuer?

Mr Cummins: No.

MS CODY: Have you ever worked in the public sector as a valuer?

Mr Cummins: No.

MS CODY: So this is all just anecdotal?

Mr Cummins: It is.

MS CHEYNE: In your view, is our valuation annex for the Revenue Office underresourced?

Mr Cummins: I would say so, yes.

MS CHEYNE: By how much? Perhaps I will phrase it differently. What changes need to be made to achieve some of the things that you are suggesting in your submission?

Mr Cummins: Apart from the fact that I think they probably are a couple of staff short of where they need to be, I do not know the insides of the organisation that well, so I cannot really comment on what should and should not be done in there.

THE CHAIR: For instance, would Tasmania have a state valuation office?

Mr Cummins: I do not know 100 per cent with Tasmania, but I am pretty sure that they do.

THE CHAIR: If they do, given that it is comparable in size although it has a larger geographic spread, what would their staffing establishment be?

Mr Cummins: I do not know; I would be guessing. If you wish, I can find out for the committee and let you know.

THE CHAIR: If you could find out, that would be of great benefit, thank you.

MS CHEYNE: I appreciate that you cannot answer how much more resourcing we need or quantify that, though we can perhaps compare some other jurisdictions, where have you formed the view that it is underresourced?

Mr Cummins: Purely through my dealings with them, I suppose, if I can put it that way.

MS CHEYNE: Can you expand on that?

Mr Cummins: No.

MS CHEYNE: What gives you that sense from your dealings with them? Do they tell you that? Is it because they take too long?

Mr Cummins: No. It is probably a personal point of view more than anything else. We do a lot of lease variation valuations where I have a lot of negotiation with the office, and we do wait for what at times seems to be an inordinate amount of time for these valuations to be completed. And I know that they are under the pump, for want of a better term, in getting a heck of a lot of these things out. Then when the rating time comes around, they can often shut up shop for a little while in that area of their organisation and concentrate on their rating values, so all the people go from one area to the other. It just seems that some area of their business is getting neglected, from my point of view, while they concentrate on another.

MR COE: Are there any particular parts of Canberra, or sectors, that you think have been disproportionately hit either by changes in valuations or by a lack of discretion from the Revenue Office?

Mr Cummins: One of the big problems has been where it is magnified. For many years an unimproved value may remain the same. Then it gets reassessed and it is low, below what the market probably is for that site. Then the valuation office comes along and puts it up to what the real market value is. It goes up 20 or 30 per cent sometimes. People are getting a natural CPI increase every year anyway, but then they are getting a double hit of that because all of a sudden the rating value is going up. Even though it is an average of three years, it is still often 20 per cent in one year, which is a heck of a rise.

MR COE: And an increase in the marginal rate as well, often.

Mr Cummins: That is right, yes.

MR COE: If they are not already in the top bracket.

Mr Cummins: Yes.

MR COE: What about with regard to the actual methodology for calculating that unimproved value? How they are determined seems to be a bit of a dark art, especially when people seek to appeal the Revenue Office's decision. It goes to that conflict that you mentioned earlier but also the fact that there does not seem to be a great deal of transparency about the methodology. All they can really rely upon are precedents.

Mr Cummins: It is difficult. We are the only territory that I am aware of that uses this methodology. It is all very easy when you have a lot of vacant land sales in an area or a particular type, but when there has been some time with no vacant land sales to analyse, the valuers are analysing the sales of established buildings. That is the darkest art, as you say. I know that the ACT valuation office and a range of private valuers have endeavoured to get together on several occasions to establish a common methodology for doing this. It was done on an informal basis, but that was stopped. We were making some sort of progress, but that was stopped some time ago. We would have regular meetings to discuss sales and where they may or may not sit in the market. That was stopped 18 months or two years ago.

MR COE: I know of an example where a property in Phillip was revalued from, I think, \$900,000 to \$2.6 or \$2.7 in one year or thereabouts. Obviously a third of that comes into play each year with the rolling average, but it is still pretty significant in addition to the actual ratings factors increasing. In the event that something like that happens, what recourse do you think an owner has to successfully challenge that or at least to get some answers about why that could be? Can you get a satisfactory explanation from the Revenue Office?

Mr Cummins: All you can do is appeal to the Revenue Office. They will often send you a report as to why they think the value is where it is.

MR COE: So you do get a report? If you pay that base fee to appeal or to have a review done—not talking about ACAT but just the absolute first review—will they give you some information that justifies their decision?

Mr Cummins: They generally will, yes.

MR COE: Generally speaking, do you think that information is of a standard that is adequate for making their decision?

Mr Cummins: Not if you do not get the decision you want, no.

MR COE: You could argue about the facts but do you get the quantity of information that you need; not necessarily the numbers but the quantity?

Mr Cummins: In all of those answers there are always questions, I suppose—let me put it that way—and you do not get the right to ask those questions.

MR COE: Have you taken many matters to ACAT?

Mr Cummins: Several.

MR COE: How has that experience been?

Mr Cummins: Frustrating, for want of a better term. Very long and involved. It was not expensive for me but it was expensive for the landowners. And getting the answer someone wanted or was happy with can take an inordinate amount of time, realistically.

MR COE: Were the government or the Revenue Office model litigants? Were they reasonable to deal with in that period or did they pretty much shut up shop and make you go through lawyers?

Mr Cummins: You have got to go through lawyers.

MR COE: Is there any time when you can negotiate or have a reasoned and reasonable discussion with the Revenue Office?

Mr Cummins: Not for rating values, no. Not that I am aware of.

MR COE: Is there potential for another phase in that appeal process before ACAT where you could sit down at a table and really make a—

Mr Cummins: Yes. Part of the ACAT methodology is to have a mediation session.

MR COE: But by that stage you have already engaged lawyers.

Mr Cummins: Yes, that is right; you are already at ACAT.

MR COE: And you are fully committed.

Mr Cummins: Yes. There is the opportunity to do that but, as I suggested earlier, I think it would be a better opportunity to appoint an independent expert such as an API member. I do not want to push the API just for that, but an independent expert that could come from a panel that would be government acknowledged or government approved and each party could contribute 50 per cent of costs for that. That third party could produce an independent report of where that unimproved value may be. I do not think sitting there having a conversation would work.

THE CHAIR: I am mindful of the time, but I want to go back to a point that you made before about when landowners see a big jump in their valuation. In your submission you touched not only on those but, at point 4, on the retrospective changes to rates. That has been litigated through the AAT. It seems from the AAT judgement that that is a perfectly legal thing to do, but it does raise significant questions about the ethics of retrospectively applying rates and cases that have been down that path that incurred significant increases in liability. What is the API's view about not necessarily the legality, but the appropriateness of retrospective rate reassessments?

Mr Cummins: To me it just does not seem right that the government can come back and say, "We have reassessed your unimproved value going back four years, and here

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is a bill.” I have seen bills for \$2 million, but often they are in the hundreds of thousands. And just about all of those are small business people or private owners. It creates financial hardship to find that money. They think they have completed all their obligations, they have paid their rates, and all of a sudden here is a bill. It is primarily because the ACT government did not change the unimproved value, and it is usually to do with the purpose clause change. When they had the opportunity to do it, they did not do it, and then they decided to go back a couple of years and change it. To me it is not right.

THE CHAIR: Whose fault is that, do you think?

Mr Cummins: I do not see that it is anyone but the government’s fault for doing that. They are the ones who approved the change; they are the ones who register the title. I do not see how it is anyone else’s responsibility to do that.

MS CODY: When you were answering some of Mr Coe’s questions, you mentioned real market value. Can you expand on what you mean by real market value?

Mr Cummins: I do not remember saying “real market value”, to be honest.

THE CHAIR: Presumably what someone is prepared to pay on a given day.

MS CODY: That was the point I was asking about. Is real market value what someone is prepared to pay? Is real market value what a valuer puts the property’s worth at? I did not understand what you meant by “real market value”.

Mr Cummins: I am sorry but I do not remember saying it. I do not know what context it was.

MS CODY: You were talking about the fact that rates have gone up because the real market value of the property is higher. I am paraphrasing the rest of that, but you used the words “real market value”. I just wanted to know what real market value was in your terms.

Mr Cummins: From Mr Coe’s previous statement, not just a moment ago?

MS CODY: His last round of questioning. If you would like to take that on notice and read through your answer—

THE CHAIR: That would be the best thing.

Mr Cummins: Please, could I?

MS CODY: I just wanted to know what you meant by “real market value”; that was all.

Mr Cummins: Yes, sure. As I say, I do not remember saying it or the context in which I said it. I apologise.

THE CHAIR: I think it would be fairer to ask Mr Cummins to take it on notice.

Mr Cummins: That is fine.

MS CODY: That would be lovely; thank you. Secondly, you said that you have taken a number of appeals to ACAT. Were those outcomes favourable for the property owners?

Mr Cummins: They were middle ground, I suppose.

MS CODY: I did not want you to disclose real life examples, just to get an idea.

THE CHAIR: A mixed bag?

Mr Cummins: Yes.

THE CHAIR: Thank you very much for the API's submission and your attendance here today. There are a couple of issues that you took on notice. You will receive a copy of the proof *Hansard* in a couple of days. If there is anything in that that you want to clarify, you can be in touch with Dr Lloyd. Thank you very much for your participation in the inquiry.

Mr Cummins: Thank you.

STRONG, MR PETER, Chief Executive Officer, Council of Small Business Organisations Australia

THE CHAIR: I now welcome Mr Strong, the Chief Executive Officer of the Council of Small Business Organisations of Australia. Have you had an opportunity to read and understand the pink privilege statement that is in front of you?

Mr Strong: I have, yes.

THE CHAIR: We have not yet received a submission from you, so would you like to make an opening statement in relation to the inquiry into commercial rates?

Mr Strong: Yes, thank you. I have owned businesses in the past in Canberra, particularly a retail business, the Smith's Alternative bookshop, which has now morphed into an events space. My personal experience with leasing as a business is with that particular shop and information I have heard from the business community, in my dealings in my job.

I apologise; I have not put in a submission. I did not know about this until I was asked to come along and present. I think that is one of the great problems, because in Canberra, as we all know, too many people—not the majority—focus elsewhere than on the local community. That is very frustrating. In my job I end up talking about a range of things that are not Canberra-centric.

When it comes to leasing here, an example of my education about the problem is when my shop was struggling. The car parks had been moved to the shopping centre. It was difficult. I was in the book industry. There were a few changes happening. My landlord then said the rent would be going up by a significant amount. It was probably 12 per cent, which was significant given that my sales were down. I had a good landlord; we had a good relationship. I said, "I can't do that. I'll have to leave, and you're not going to rent this shop very quickly. I think you know that." She said, "It'll be difficult." I said, "Why are you putting the rent up? Aren't you better off having me here than not having someone in this shop, having it empty?" She said, "I agree with you. Let me go and find out for you."

Of course, I am sure you have discovered this. She came back and said that the shop itself—and they were the owners of the shop—was valued on the rent you could get for the shop, so, in order to keep the value high, they were better off having it empty and saying to their financier that they could get whatever the rent might be. And that is a problem, isn't it? She said, "That's amazing, isn't it? If they had rented it out at what I would call a market rate, or a rate that could be afforded, the value of the property would drop and potentially the loan would be called in by the financier, by the bank that they were involved with.

I then investigated more, and looked at the big shopping centres, because I know they have big impacts on the community. You do not see many empty shops there. You normally see them boarded up; you cannot actually see that they are empty. They churn through a few people there, but the whole idea is that they maintain the high rent, because that is what maintains the value, which is what keeps them in the

marketplace and keeps their share price high. There is a problem there that is bigger than, of course, our local community here, but it is a problem that somehow or other needs to be looked at, when a shop is more valuable sitting empty than with someone in it and paying rent.

THE CHAIR: In relation to the inquiry and your association with small business across the country and in the ACT, have you seen a shift in the impacts of commercial rating; the impact that commercial rates have on businesses in the ACT?

Mr Strong: Yes. From my conversations, again—I have nothing apart from having discussions with people; I apologise for that—they were saying that the rents are going up. Having listened to the previous discussion, a lot of it was around the valuation of land; a lot of it is around the rates that are happening. With the people who are running businesses, whether they be in industrial areas or in other commercial areas, in retail, there is this uncertainty now about what is happening with the rent. Rent is a huge part of most businesses. Wages and rent are the bits that you are constantly looking at.

If there is no certainty then it makes it very hard to run a business. From what I am hearing in Canberra, the certainty around rent, the certainty around valuation, at the moment is questionable. As I say, having listened to that story about the backdating of a decision by four years, if I heard the previous speaker correctly, you cannot run a business when that might get backdated by six months, let alone four years.

I have gone through this with other jurisdictions, when there was a backdating of a tax decision. In this particular case, having regard to what a business had purchased and thought it could claim, it could no longer claim it. The answer I got was that those businesses should have understood that there was going to be a change of government, and prepared for it. It was an extraordinary response. One of the issues is that we cannot prepare for the backdating of government decisions. Even if we are given notice of that happening as a result of an election, that means we need to become very good at predicting election results and predicting that what people have promised will actually come to fruition.

Coming back to that uncertainty, which is what we are facing in the ACT at the moment, what I am hearing is that it is very hard to run a business. Wages are still going up. I know we hear they are not but they have gone up. They have rent going up. There is no increase in market share. The biggest landlords—normally around retail—control what is happening, and they make sure that they get a return. They will hide the fact that businesses may churn through the shopping centre. The profit or the income that people live on will drop, and that will impact eventually upon work in the ACT. It is often casual and part-time work coming out of the educational institutions, but it is what keeps our economy happening.

The uncertainty is a problem. The government should confront that and give certainty to people in real estate that rates will stop going up. If they are going to go up, at least give certainty that they are not going to be backdated, and give certainty to the business community that their rent is not going to go up to such a degree that they will just close, and lose their house.

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Again I cannot give you much deeper information, and I do apologise for that. The sort of thing that we work on is the impact upon the human being that is in that business, their family and their staff.

MS CHEYNE: Where do rates sit within the broader list of issues that small businesses raise with you in terms of running a business, and their main concerns? I am sure there are things like penalty rates and other issues that people come to you about. Are commercial rates becoming something that you are hearing more and more about?

Mr Strong: I have always heard that they are a third-party impact, because the rent will go up; we often do not own the property, we rent it. So it is a third-party impact. When we complain to the landlord and ask, “Why?” they pull out their rates notice and say, “Here’s why.” So we pay for it. Of course, the people who are renting their property will pay for any costs, and that is one of the costs that we have to pay for.

The bigger ones will add a percentage to it. They always look for a way of actually gouging, and that is how they make their money. Basically, the good ones have to pass it on, and they pass it on. In business, an increase of \$2,000 over a year is \$2,000 of mine. That is my money. I have to go and get \$2,000 worth of increase in sales, whether that be through selling more coffee or whatever it is that you happen to be selling. You have to go and get that in a very competitive market. As we know, there is lots of retail space in Canberra and there are lots of hospitality outlets in Canberra. You are competing really hard to get money. All of a sudden, if your costs go up by \$2,000, it might not seem much over a year, but it is my money.

THE CHAIR: You have to make it first.

Mr Strong: Yes. That \$2,000 might come out of school fees or a holiday. It might mean I am not going to buy a nice car; all the things that normally impact upon a family. They are the sorts of impacts that we talk about. The impact on bigger businesses is not the same, with those small amounts, but they still have to go and find a greater share of the marketplace.

In Canberra—I actually did not come here to say this, but it has to have an impact—we have lots of retail, and we have lots of hospitality. When a new precinct is created—and we have some great precincts; we have great hospitality—there is no increase in the number of people living in the ACT to match that. When Kingston foreshore opened, it affected Kingston. When various parts of Civic opened, it affected other parts. I was in the Melbourne building, and as they grew the precinct around the ANU, fewer people were walking past my particular shop, or they were walking a different way, because of the nature of it. These things impact, and you do your best to plan for them, but in the ACT, it is huge. With the change that is coming with light rail, we will see what happens there. It can be unpredictable. Also, down past the university, what do you call that precinct with the picture theatre?

THE CHAIR: New Acton.

Mr Strong: Yes. New Acton became another precinct. There are some great restaurants there, and the movie theatre. All of a sudden, again, there was no increase

in population but there was an increase in where we could go. Someone has to pay for that. The argument that comes back is, “But that’s competition. If you’re any good, Mr Strong, you would get people to come to your shop.” You think, “If it worked like that, that would be fine,” but people are moving to Kingston, and we have seen a lot of churn at Kingston foreshore. Lots of restaurants have opened and closed etcetera, because there is far too much competition. When you add on top of that the increase in rent, and the increase in costs to the landlords, that is the problem that we have. I would suggest we should stop developing precincts for a little bit. I do not mean in the new suburbs. It is always nice to have a central point in new suburbs, but I do not think we need a lot more new precincts. It should be happening naturally rather than being forced by government decisions in order to increase income through rates, I suppose.

MS CHEYNE: Are rates the number one issue that you are hearing from small businesses at the moment or is there something else?

Mr Strong: No, the other one is the increase in the amount of competition or the amount of space. If you put the two together, they say, “Even though there are empty shops around me, my rent hasn’t gone down, it’s just gone up.” But there are these empty shops, and they say to me, “I don’t get it.” I tell that story about my shop: that the valuation of that empty shop is based upon what they can get, not the fact that they are not getting anything. People say, “That’s not business; that’s called creation of a bubble.”

MS LAWDER: Do you have a ballpark figure of the number of members you have in the ACT?

Mr Strong: My members are associations. They are the people who then go and give a service to their members. My job is to do the big picture stuff or to focus on a particular issue. Sometimes it is rent. At the moment energy is a big one, as you can imagine. So my members are associations. Through them, through real estate, through pharmacies etcetera—

MS LAWDER: Like the Hume Traders Association? What kind of associations?

Mr Strong: Associations such as the Pharmacy Guild, the Real Estate Institute and the Bookkeepers Association. In the ACT, through membership, there are probably 10,000 businesses. I am guessing. The brief of COSBOA is to go out on behalf of small business. Nobody talks for all small business because we are all a bit different, but when it comes to broad policy issues, if someone is a member of one of my member’s businesses, it does not matter. We are there to make sure that people can compete, that they are treated as people and they are considered as people, not just as a shop, which has been quite an issue for us over the years.

MS LAWDER: Amongst your membership, what has been the commentary about increases such as rates and potentially forcing people interstate, across the border? Has there been discussion about that?

Mr Strong: I have had that discussion and people have said, “Why would you come to the ACT in the first place, because it is very high rent and it is a bigger percentage

of what it should be? Why would you come here?" I think that is a good question. People are talking of going over to Queanbeyan; there is no doubt. We have seen that, going back many years, businesses have set up over there.

I know one manufacturer, light manufacturer, who just said, "You would be crazy to come over to Canberra because as a business decision it makes no sense," even though most of his workers come from here. I had a good conversation with him. He said he has discussed that with his workers and they have understood it when he has shown them the figures, the difference that he would have to pay if he moved over into the ACT from Queanbeyan. All his workers just said, "We get it." He is a good employer. They are very happy with him.

MS LAWDER: You have said you know of at least one manufacturing business, but for some people is it, at this point, just talk? You grumble about the costs, "I'm going to move," but is it really going to happen, do you think?

Mr Strong: It will happen. How many it will happen with, I do not know. Listening to the previous speaker and having gone through this before, one of the issues we have got is the confusing nature of the whole thing and the information that comes from different vested interests. As I say, people have said to me plenty of times, "You don't have a lot of information do you, Mr Strong?" I say, "I don't, that's right, but I have got a lot of access to people that have that information." It is my job to then build upon that, using members. In this particular case there are people that say they are going to move, though.

The light rail out at Mitchell is something that people were excited about. What I have heard about that is that they have said, "There's no station there." They are saying, "If I do go there and someone is working with me, they are going to have to drive or walk a long way." That was just an interesting aside. That always then segued into rent.

People talk about the cost of rent, talk about the cost of labour. People have always talked about that. They have not always talked about the cost of rent. There are places around Australia where it just does not seem to come up as an issue. You are talking about the cost of energy. You are talking about the cost of staff. You are talking about a whole range of things. If you are in a big shopping centre you are talking about rent, always talking about rent there. But outside of that it is not something I hear, actually. Thank you for asking. I always hear about retail in the big shopping centres. I do not hear about it in industrial centres around Australia.

MS CODY: Thank you for coming along today.

Mr Strong: Thank you.

MS CODY: It is good to get some different views of different types of things. I have a couple of questions. Are you a member of a political party?

Mr Strong: No, never; never been there. I have been accused of being a member of all political parties.

MS CODY: I just wondered how long you have been in business in Canberra. I know

Smith's has been there for a long time. I cannot think, off the top of my head.

Mr Strong: There are all different types of businesses. As a consultant, which is still a business—I still have GST and all sorts of things—I do not employ anybody. If I do not employ anybody, that is very different. I have been a consultant probably since the late 80s in various forms. The learning curve of employing people in retail is fantastic. Once I got the shop in 2005—

MS CODY: 2005?

Mr Strong: Yes, 2005, and I sold it in 2013. There is a whole new ball game of learning. They are still businesses. In my job, we fight for everybody. Yet I know the complications rest there. The stress levels rest there. The dangers rest there. You can lose your house there. You are not going to lose your house as a consultant. Potentially it is very much so in other businesses.

MS CODY: I used to own a hairdressing salon and a courier business, so I do understand small business very, very well.

Mr Strong: It is interesting that you have got to actually experience—I learned that—certain things to understand this. Usually people only say it to me once, “It can't be that hard, Mr Strong,” or they say, “You know what you are getting into when you go into business.” I got one recently from a shadow minister, not in this jurisdiction, supposedly supporting small business, who said, “That's what you sign up for.” We were talking about mental health.

That is the thing that we have always confronted: people forget that we are people. The rent comes back into it, in mental health, as much as anything does. If there are five people in the workplace and you consider the mental health of only four, not the employer, you fail those four. Those four have been failed by us because we do not care about the one that employs them.

When I look at rent, and a whole range of other issues, my mind does go back to the stress and pressures placed upon that particular person. They can put pressures on them, like we all do, but if there are other things coming in that can be managed better then we should be managing them better for everybody in that workplace, not just the employer.

MS CODY: I could not agree with you more, actually.

Mr Strong: Yes, of course.

MS CODY: You were talking in some of your commentary earlier today about the impact that both rates and competition are having on small business in Canberra. I talk to a lot of small business owners. A lot of my friends still own small businesses. I am a bit like you.

Mr Strong: Yes.

MS CODY: But I just wanted to ask, and it is just a question: the competition

absolutely can be difficult, but do you think that the city has changed? Although there is not competition it is different now. I have been here since 1975.

Mr Strong: It is. It is different, and different to a good point. Lonsdale Street is a really good example. In Canberra, for a long time, you would not go anywhere unless you could get a car park. I know, from my shop, people in Canberra—it is just the way we were—would not walk more than 100 metres. From the government of the day—when I saw them moving all the car parks under the mall and people had to walk past three bookshops to get to mine—the answer was, “If you’re any good they will do that,” which is very silly. But in Canberra, of course, we do not do that. That is changing, if what I am seeing is right. That will continue to change over a period.

There are more precincts. I may complain about the fact that there is too much competition now, but there are more precincts. Competition is a good thing. Competition is good for the consumer; it is good for innovation. It is good to change whatever is happening.

We need to make sure that people are not punished by the fact that they cannot compete with the biggest people, which in this particular case are those that are located in the mall. I am not against malls. I go to the shopping centre. I go to the mall. What we complain about is the lack of choice. If there is only a shopping mall then we know it is going to be franchises, basically. We know what is going to be in there.

In Canberra now we have got Lonsdale Street. There are other places where people go. I notice that my old shop is going very well because they have offered something, from what I can see, that was not there before, which is live music combined with a very quirky place to be. There are good stories out there.

The thing that worries me is the impact upon the individual who has done nothing wrong, who finds that they cannot compete, even though they have got a great product, because people cannot get a car park anywhere near there. I went over to Kingston foreshore the other night and I had to park a long way away. It was quite extraordinary. Strangely, we prepared for that because the cricket was on. Yes, there are things that we have got to consider in urban planning. The impact upon business must be considered.

Can I come back to a thing that my council has been pushing for for decades. We finally thought we had it in the Australian Capital Territory, in Canberra. That was a business impact statement around big developments of shopping centres, in particular. When QIC decided to expand the Canberra Centre, the government of the day said that we needed a business impact statement. We were rapt. We thought, “Finally this is it.” What you traditionally would have had was someone saying, “We’re going to create 100 new business and 1,000 new jobs.” They will not say there are 100 businesses closing. All we want is the truth—“this is what is going to happen”—so that the community knows.

Anyway, they came out and said that everybody was in favour of this and that they did a survey and people wanted the Canberra Centre expanded. What they found was that if you are business outside the mall and you fail it is because you are a bad manager, not because of the change of nature et cetera. But of course it was done by

QIC. We never asked for an independent report.

I remember fronting someone who used to head up the shopping centre council about this. I said, “This says that if you’re outside the mall and you fail, it is because you are a bad manager.” He said, “That is the finding.” I said, “Does that mean if you are inside a mall and you fail it cannot be because you are a bad manager? It must be because you have been done over by the landlord.” He did not reply to that.

We need independent views and independent information. One of the biggest issues that we have at the moment is that you can get information from someone like me, or whoever. Governments need independent information on what is happening out there.

MR COE: With regard to the leases, earlier you mentioned the impact of the yield on the valuation, especially with regard to bank valuations, but that would extend to the sale price as well. What about with regard to changes from gross leases to net leases? Are you seeing that more and more in the ACT?

Mr Strong: I do apologise; I am not an expert on that. My members, because they are associations, bring the experts to me. I could go and seek information on that for you. I will take it on notice and get that from an expert. I cannot comment on that. Sorry.

MR COE: The reason I ask is just about whether landlords are seeing that there is too much risk in terms of energy prices, but also rates and land taxes, for them to de-risk property ownership simply by passing those outgoings on to the tenant—a way for them to manage that risk.

Mr Strong: They have to pass any increased cost on to the tenant, yes. There are several reasons. From what I have seen, and again I do not have this data in front of me, a lot of self-managed super funds and a lot of other cooperatives own properties, so they want a return. If I am dealing with a landlord directly who owns my property and rents to me—and I have done this—the relationship is normally fantastic. It is not always—I have seen some where it is not—but normally it is pretty good because we are in this together.

When it is all of a sudden a group, that becomes a different ball game. They are going to say, “No; we want a return on this. Your rent is going up. That is all there is to it.” You do not get a negotiation. As I said, when I said, “You are going to have an empty shop,” it did not matter. They bear it. If they dropped the rent, as they should have, the value would drop and they might have their loan called in by the banks. There is a real issue there that needs to be looked at. It has been resisted by the biggest landlords. They do not want a review of that, by the way.

MR COE: The drop in income is a tenth of the drop of the valuation.

Mr Strong: It is. They get around it to a degree by saying, “Okay, how about every year we give you three months free rent?” In that way, they can say to the banks, “We are still charging \$300 per metre per year” when in actual fact their return is not that. Again, any investigation of those things would be resisted by the people who would lose the most: QIC, Westfield and people like that.

MS CODY: In relation to the questions Mr Coe was just asking, is it worthwhile looking at ways of penalising people for keeping shops empty? I know it does impact on small businesses.

Mr Strong: We have looked at legislation in New South Wales in particular. The scenario is that the landlord comes to a shop and says, “From this date, your rent is going to go up.” They say, “I cannot afford that. I am going to move out. Can I stay here on the old rent until you find a replacement?” And the answer is no. We are saying that in actual fact the answer should be yes. You could be there for another two or three years; we all know that. And that gives you more time to deal with the problem.

Can I also come back to another issue? Hopefully, this will be sorted out by unfair contract terms and changes in that area. The leases that you often have—again, it is with the biggest; it is not when it is one on one—will say, “You must do a fit-out when you lease, and three to six months before the end of lease you must do another fit-out.” So you have spent \$120,000 on a fit-out, which you must do, and then six months later or three months later, they say that your rent is going up by a certain amount. You have to walk away from 120 grand. We are saying that you do the fit-out after you sign the new lease, but that is the process that they are using. I would recommend looking at the unfair contract terms that the federal government has and recommendations that have come from the ACCC recently, from Rod Sims, about changes to that and penalties against people who abuse contracts. It will change landlords.

THE CHAIR: Thank you very much for your attendance today and your participation in the inquiry. You will receive from the committee secretary a copy of the draft transcript. There were a couple of issues that you said you would come back to us with.

Mr Strong: Yes.

THE CHAIR: If there is anything in the transcript that needs clarification, take that up through Dr Lloyd.

Hearing suspended from 12.34 to 3.31 pm.

O'MARA, MR DOUG, Chief Executive Officer, Civium Property Group

THE CHAIR: Good afternoon, and welcome to the reconvened hearing of the Standing Committee on Public Accounts inquiry into commercial rates. I welcome Mr Doug O'Mara, the Chief Executive Officer of Civium. Thank you for your attendance here today. Mr O'Mara, have you had a chance to read and understand the pink privilege statement?

Mr O'Mara: Yes, I understand it.

THE CHAIR: Do you have an opening statement to make?

Mr O'Mara: We have not put in a submission. I was invited, so I am flying blind, a little. I think I can provide some reasonable insight.

THE CHAIR: To start off, could you explain to the committee what Civium Property Group does in Canberra, and what observations it has as a player in the property field in relation to the apparent rise in commercial rates?

Mr O'Mara: Civium Property Group is a diversified property services company. We service Canberra and national clients in the strata space, the commercial real estate space, the residential property management space and residential sales. We also do some work for the ACT government, selling suburban land.

We manage probably 200 commercial tenancies, predominantly in the private client market in the ACT. Across the country we have 30,000 units that we manage on behalf of strata communities and we manage about 1,000 investment properties, predominantly for local Canberra investors.

We are fairly well diversified across all segments and could provide reasonable insight into the impact not just on the commercial space but also on what we are seeing in the residential space, if that became an ancillary discussion point.

THE CHAIR: The remit of this inquiry is about commercial rates. In the past two or three years have you seen any particular patterns in the changes in rates and the impact that those changes have on commercial investors?

Mr O'Mara: We predominantly operate in the private client area. I would suggest that 80 per cent of all transactions that we are having in the Canberra property market would be by local businesses, investors or tenants.

THE CHAIR: There is not a big presence of, say, property trust type investment in the ACT?

Mr O'Mara: Not in the market that we specialise in. We are well positioned to give good feedback on the impact that rate rises over the last two, three or four-year period have had not only on local investors but also on owner-occupiers. There are two segments or tiers to the property ownership spectrum in the commercial segment in the ACT—owner-occupiers and investors.

THE CHAIR: I get the impression—and this is certainly from a number of submissions—that a lot of the owner-occupiers would be small business people who own a business unit somewhere that they run their business in; also it is an investment for their superannuation.

Mr O'Mara: Yes, either a personal investment or it could be a superannuation investment.

THE CHAIR: What is your perception of the impact that the rates changes have had in the last while?

Mr O'Mara: Predominantly, people who invest in that market are not people who invest in the top-end-of-town real estate, such as the major office towers in the CBD. They are in the secondary markets. The secondary markets are experiencing a number of challenges all at the one time. In the commercial metro markets around the ACT, just in the office space alone—and it is not the industrial space, which is also impacted, probably even more so—we have 16 per cent vacancy in the secondary office space market in the ACT at the moment.

THE CHAIR: What would you call secondary office space?

Mr O'Mara: That would be the service trades areas, such as Belconnen and Phillip, the Deakin office park, Braddon, Manuka and Kingston, those types of areas. There is a large vacancy period in that market, and there has been for quite some time. I think one in six tenancies is vacant at the moment, and has been.

With respect to the impact of the increase in rates, the increase in rates in those areas has been anywhere from, in some cases, 30 to 40 per cent over the past three to four-year period, in some cases even up to 300 per cent increases in the past three or four-year period. When you add that to the fact that there is a large vacancy rate in those areas, the small business person is being impacted and there is a significant compounding impact on property investors.

THE CHAIR: With high vacancy rates, a 16 per cent vacancy rate—correct me if I am wrong—seems like a high vacancy rate.

Mr O'Mara: That is a very high vacancy rate.

THE CHAIR: What does that do to property values in the actual market as opposed to—

Mr O'Mara: In isolation, by itself, it has a significant detrimental impact on values. In addition to that, the increase in expenses is hitting at the same time. A lot of our clients are getting to the position where they cannot even afford to keep the property because, firstly, it is vacant, and, secondly, they have the knock-on effect of a significant increase in their cost structures, which has been exacerbated by the dramatic increase in a large proportion of what we are talking about.

THE CHAIR: With land valuation, unimproved value can be determined completely in isolation from the actual market value of the property with a building on it?

Mr O'Mara: Most definitely, especially if your valuation is done statistically. I am a valuer by qualification as well. Valuations, in a statutory sense, are statistical on a large land mass or on a large affected mass. There is no reference or delineation between a block that might be on a corner versus a block that is large, or skinny but large, and you can do less on one block than on another.

There is a variable as to how you interpret a land value on a multiple of different properties. There are different variables. There could be slopes; it could involve frontages. They all have different impacts and different setbacks or improvements, depending on the segment of property you are talking about.

THE CHAIR: The Property Institute said in evidence this morning that, in addition to that, the lease purpose clause could vary from block to block, and that also would change the value of the—

Mr O'Mara: It could change, but you could argue whether or not it is being used in its current form; whether it is actually a real value or not.

MS CHEYNE: If a 16 per cent vacancy rate is high, what is a normal vacancy rate?

Mr O'Mara: A market balance would be eight per cent—six to eight per cent—where you would have a tenant and a landlord on equal standing. When we are sitting at a market rate—I think the Property Council's new stats are coming out tomorrow, but their stats were 16 per cent, and that is only in the office component. If you delve down into areas like Fyshwick, the vacancy level is significantly higher than that. I am not representing the industry bodies; I am representing my diverse clients, so I cannot tell you what the stat is on that.

MS CHEYNE: That is fine. You touched on some of the factors which were contributing to the vacancy rate. Are you able to expand on those?

Mr O'Mara: I cannot explain why there is no demand or why the tenant market has shrunk, other than that there has been new stock added. The new stock is probably more attractive to a tenant than occupying older stock in a market like Fyshwick, for example, that might not suit current needs. There is disruption going on, particularly in the retail segment. Those are probably the tenancies that we manage that are having the biggest challenges in dealing with the increase in rates, if the landlord can actually pass the cost on to them.

There is also a legacy issue that we need to be mindful of. I have been in the Canberra real estate market for 25 years, 15 years at Civium but for 25 years overall. For the first 20 years of that, we were in the traditional private sector market where you have local investors, predominantly gross rental type tenancies. With a gross rental tenancy, basically there is a gross rent, the landlord pays the outgoings, including the statutory charges, and there are no recoveries from outgoings from the tenant.

You might have a 10-year legacy lease where you are three or four years into it, and the increase in rates that has impacted the profitability of that investment has to be absorbed by the landlord because he has no mechanism to pass that on. When he

cannot pass that on, it has an adverse impact on the value of his or her property, and that has a knock-on effect when you apply a yield multiple to the drop in that income.

MS CHEYNE: Is that what you were talking about when you mentioned before that compound impact for property investors?

Mr O'Mara: Yes. I am sure it would wash through—

MS CHEYNE: It is kind of their buying power—investing power.

Mr O'Mara: Yes. I will give you an example. I have countless examples. I will not name the properties because my clients—

MS CHEYNE: No, that is fine. It helps to picture it.

Mr O'Mara: do not want to be compromised in this discussion. At one point we have a client whose statutory rates have gone from, say, \$45,000 to \$65,000—about \$20,000 worth.

THE CHAIR: In what period?

Mr O'Mara: In a three-year period. But this landlord has no mechanism to recover that cost from the tenant because he has dealt with what has always been a gross rental environment where statutory rates have generally been in line with CPI, which is the rest of the cost base of our expenses in a commercial building. But that \$20,000 alone basically comes off his net rent. That \$20,000, capped at a seven per cent yield, which is the market rate, has a \$280,000 or \$300,000 impact on the valuation of that property.

It becomes a real issue when the bank tries to get the property revalued. The property has reduced in value as a result of the reduction in rent, and they have the valuation sitting at whatever—the X amount of dollars. It has gone down to this amount. They are going back to the clients and saying, “You have to top more money up to make sure your gearing is in line with what it was initially.”

The additional knock-on to this is what is happening in the banking sector at the moment, where lending is becoming a lot tighter. Our clients are facing all of this perfect storm at once. It will have a significant detrimental impact on the viability of Canberra's small businesses and Canberra's commercial property investors.

MS CHEYNE: Is there a particular region in Canberra where you are really seeing this impact?

Mr O'Mara: I can only speak from our own experience and I am happy to do that. For our property in Phillip we have had a significant increase—I think a 40 per cent or 38 per cent increase—in our statutory rates. There are other clients in our segment who have had 300 per cent increases because they are in, I think, the automotive sector. There have been a couple of sales—and, from what I understand, sales lead value—in our area in particular that were probably over-anxious buyers buying big because they had adjoining blocks and that was the last bit of strip of motor vehicle

sales that was available in that marketplace.

It is almost a land grab. If you get off that main street and you apply those rents off that main street to a client who we have got who is running an Indian restaurant, you start to impact that. You take \$30,000 or \$40,000 and add that to his operation.

THE CHAIR: That is a lot more butter chicken, isn't it?

Mr O'Mara: That is a lot more butter chicken. I am deeply worried about the personal angst it is causing to the community, the punter in the street.

THE CHAIR: One of the things—just to cut in here, if I can—is that some of the evidence that we have received is from tenants who are saying, “We're not seeing this.” They are people who are presumably locked into long-term contracts.

Mr O'Mara: They are on current leases.

THE CHAIR: But they are possibly going to have an awful shock at the end of their fixed term lease.

Mr O'Mara: As our leases are expiring, with the new ones we are rolling this out now and we are starting to recover the increases in outgoings, that we can, that relate to that. But the base here gets set every time you do a new lease. The landlord is going to get caught with it because the new base rates for this year will be based on last year's. It has already jumped.

THE CHAIR: And they cannot recover for the three or five or 30 years or whatever that—

Mr O'Mara: No. The really strong knock-on effect is that most Canberra property is bought by locals. There is this distrust developing that the rules are changing. You made an investment—and property is a long-term investment, as everyone knows—on a situation three or four years ago and now the situation is significantly different. I can feel that people who are not well placed or well cashed up will not have the means to deal with the issue when it comes to roost.

MS LAWDER: You have made a reference to the human angst people may be feeling which is very unfortunate. But in your rolling out of increased rents when leases come up for renewal—without any specific examples—have you had people who have said, “I cannot renew,” or, “I am thinking of moving across the border,” or those types of responses?

Mr O'Mara: What we have had is clients saying, “Okay, we need to roll these increase clauses into our leases from now on.” We roll the lease in and in that secondary market, which is probably why I started with the high level of vacancy in that market at the moment, there are desperate landlords out there saying, “I'll do that just so I can cover my mortgage on my property,” not necessarily looking at it in the commercial return sense. Those people will definitely go. There has undoubtedly been migration of business from Canberra to Queanbeyan.

We have got a presence in Queanbeyan. Our agents operate there. There is no stock in Queanbeyan as everything is sold so that is probably pushing people back into Canberra. It is a good thing but it is not what has caused the leaving or the flight to other cheaper jurisdictions.

MS LAWDER: Anecdotally, do you have anyone say, “I want to leave Queanbeyan and come to the ACT because it is cheaper”?

Mr O’Mara: Definitely never “it is cheaper”. Small business in Canberra—and generally most of the private sector in Canberra—is 20 or 30 people and smaller. We have got a very big small-business community or small companies. The impact or the saving of a threshold of tax in, say, moving from one jurisdiction to the other is never a consideration.

The real impact for owner-occupiers is in this rates section, I would say. I would not say for the tenants, because I think it will end up washing through; they will either rent it if they can afford it or they will not. But we are not seeing it. We are not necessarily seeing it.

MS LAWDER: And did you say earlier that there is very little available in Queanbeyan, which may be—

Mr O’Mara: Yes, very little in the industrial segment. The commercial segment is worse than ours, for commercial offices.

THE CHAIR: They have got high vacancy rates in commercial?

Mr O’Mara: Yes, very. It is not unusual. A building we own has been vacant for two years. There is nothing wrong with the building; it has got a reasonably new fitout. It lost the tenant two years ago and it has taken two years and we are still without a tenant. That impact, together with extra costs, could end up getting certain people into a position where they are very seriously impacted.

MS LAWDER: And finally, you talked about sometimes landlords or owners finding it better to have a property vacant than leave someone in at the lower rate. Do you experience that?

Mr O’Mara: We have seen that for a very long time. Some of it is driven by certain personalities. Most people who have been around Canberra would know who those people are. I am aware of a property that has sat vacant for—I have got a sign, when I first started, that is still on that building—25 years. It is a sign that has been up for 25 years.

THE CHAIR: It was also put to us that some people would rather keep their unit vacant or their shopfront vacant or whatever because then they can say to the bank, “It is rentable at X,” rather than if you rented at X minus 10 per cent that actually lowers the value of the property in the eyes of the bank.

Mr O’Mara: There would no doubt be those people, and those people probably do not necessarily need the income as much as the small investor that might have moved

out of a residential property into a commercial property and needed to pay the bills.

THE CHAIR: The Property Institute in its submission talked about some of the issues that they see as being a problem and they talked about issues that have arisen like bank assessments. The valuation office has not been into an area for a long time and then suddenly rates go up by a large amount in a short period but then they go through and say, “You should have been paying higher rates. We should have assessed it earlier. We are doing a back assessment.” Have you had any experience in your client base with people who have suddenly been hit with three or four or five years worth of back rates?

Mr O’Mara: Yes, most definitely. I think the argument was that the owners should have been aware. Post the charge, the argument that I think was put to two clients in particular was that at the time that you did your lease variation some sat around lease variation and some also sat around, I guess, time of not updating valuations. But the issues that I see relate to both, to be honest.

You might go back five years and they would say, “You have just varied your lease. You applied to the ACT government to vary your lease and it was approved.” There is an onus on you to actually go and tell the Revenue Office that you have changed your lease. That has only happened post discussion, not at that point of time, that that was a requirement at all.

THE CHAIR: Are you aware of mechanisms that require people to go to the Revenue Office and—

Mr O’Mara: In 25 years in the industry I am not aware that—or if there is, it has been very poorly communicated—when a change of use occurs it is your obligation to go and advise the ACT government that the ACT government has approved this variation. It is lunacy and it appears lunacy from an outsider looking in.

MS LAWDER: I was going to say that. It is like a very rigid siloing of government departments, that they are not communicating when they have that information to hand.

THE CHAIR: Presumably what happens is the planning department approves the lease purpose clause, then it goes on the register of titles but no-one tells the—

Mr O’Mara: Revenue Office.

THE CHAIR: No-one tells the Revenue Office. And the contention seems to be that it is the lessee’s responsibility to tell the Revenue Office.

Mr O’Mara: I have been doing this for a long time, but that sounds like lunacy to me, that that obligation should sit when you have already applied to the same ACT government for a variation. I do not know what the rules are. I could not tell you.

MS CHEYNE: You have obviously got a lot of clients and I am getting the sense that this is raised reasonably frequently with you.

Mr O'Mara: I would have a conversation on this issue for two hours every day.

MS CHEYNE: Is it the top issue?

Mr O'Mara: It is the single biggest issue. The rates issue is an issue that I would talk to for two hours, without doubt. It is the biggest issue that our clients have, not even in the same ballpark as anything else. What is really concerning is the confidence it takes out of people's intention to invest, and investment is driven predominantly by confidence—and local confidence in the ACT.

MS CHEYNE: I really appreciate the examples you have given and the problems you have set out. Do you have any solutions for us?

Mr O'Mara: I have not thought about solutions. There is one other issue that I would not mind raising before we get to the solutions.

THE CHAIR: Go for it.

Mr O'Mara: We do have some other clients—I listened this morning to one of the other presentations—who have had the situation where you would have a residential overlay onto a commercial use and the residential use could not get activated, but then there is a commercial factor applying to the rates that apply to that, versus using a residential GFA capacity over the top of that rating process. That had a significant impact for one client in particular. I will not mention names, but I think the value of their block is half of what it would have been, and we are talking over \$10 million, as a result of this.

THE CHAIR: Sorry, I am having trouble getting around that.

Mr O'Mara: Sorry. We need a whiteboard.

THE CHAIR: This is somebody who has a commercial property.

Mr O'Mara: We have a client that owns a commercial office building in the northern Northbourne corridor. They have in their crown lease an unlimited residential GFA, but it is a current office building.

THE CHAIR: It is a current office building, but it could become—

MS LAWDER: It is assessed on its highest possible value, which might be residential.

Mr O'Mara: But also using the highest possible factor, even though the current use of the property is as a commercial office building.

THE CHAIR: But does that mean—stop me if I have got this wrong—that you have a commercial office building which, if it were commercial, might be worth \$5 million, but if it is used for its highest and best use, which is residential, might be worth \$10 million?

Mr O'Mara: Say \$20 million or a bit more, in this case.

THE CHAIR: Therefore, the unimproved value is the residential value, but you are using it commercially. However, the problem is that commercial rates are significantly higher.

Mr O'Mara: They use a different factor.

THE CHAIR: They use a different factor, so they get you both ways: they get you at the highest value and they get you at the highest rating factor.

Mr O'Mara: Yes.

THE CHAIR: Even though you have not yet realised the value.

Mr O'Mara: It is applying a residential land value of, say, \$20 million for this building, whereas it would normally be \$5 million if it is a commercial building, which it is at the moment. The crown lease allows it to be a residential unlimited GFA, and that is why the residential component of that is \$20 million. They are using the commercial factor that has currently been applied to the \$5 million, which is a higher factor, as you rightly said, to a residential, which is a future use. With the way that client has been treated, and he is a prominent ACT developer whose family has been around for 30, 40 or 50 years, once that happens to one or two people, all of the confidence goes out. And it is immoral.

THE CHAIR: What you are saying is that because it has a higher and better use, that activates the higher value, but the rating factors are not comparable?

Mr O'Mara: Yes.

THE CHAIR: The commercial one is a much higher per dollar rate?

Mr O'Mara: Yes.

MS LAWDER: Once upon time, I presume, using it for commercial purposes would have been the highest possible sort of use.

Mr O'Mara: Quite possibly at that point, until some rezoning happened and the ACT government rezoned it as part of the rezoning of Northbourne Avenue to allow higher and better use. But the use has not been triggered yet. The increase in cost with these buildings is in seven figures. That is why, in a very big example, it has halved the value of the property. They have to have the cash flow to get themselves through to the end of the lease.

MS LAWDER: They cannot bundle out their tenants.

Mr O'Mara: No.

MS LAWDER: It may not be a propitious time to knock it down and build a whole lot of units.

Mr O'Mara: They have committed leases in place. One is to the ACT government, so there is a bit of irony there. It makes it very difficult. These types of issues are widely known through the property community, and when things like that happen, I can see a time when, until this washes through, that investment will dry up.

THE CHAIR: Have you had a chance to think about the solutions?

Mr O'Mara: The solutions include, in a valuation sense, having a better mediation process.

MS CHEYNE: We were talking this morning about an intermediate appeals process. Do you have any views on that?

Mr O'Mara: It would have to come with a ruling judgement, though. Either mediate or it gets referred, if they cannot agree on something, rather than going through an ACAT process where, in my experience, there is no consistency; it varies from member to member.

MS LAWDER: Is it costly?

Mr O'Mara: Just to put an argument forward is \$10,000, \$15,000 or \$20,000 worth of consultancy costs. When you are arguing about maybe a \$20,000 rate, you have to spend 10, 15 or 20 grand on consultants to get you there, and also have legal representation if you want to be serious about it.

THE CHAIR: They do not come cheap either.

Mr O'Mara: They do not come cheap either.

MS CHEYNE: And also we do not want more bureaucracy and more jamming up systems.

Mr O'Mara: No.

MS CHEYNE: People who do not focus on a business.

Mr O'Mara: There are so many factors at play here, with different stories for different people. It is very hard to get some consistency. I think this was rolled out without thinking. If the property investor can pass the cost on to the end user, that is okay; they are sitting on legacy leases. But to try to find out who has a legacy lease and who has not is an issue.

It is going to end up with the end user. The consumer will end up paying for it along the process sooner or later, but the impact, the hurt and the damage it will do to the property community—tenants, the business community and investors who are impacted and affected—are great.

MS CHEYNE: This morning we discussed the number of people who work as valuers in the ACT government. Is that area properly resourced, in your view?

Mr O'Mara: I think turnaround of issues or processes could be materially improved, but I would say the same thing about ACTPLA. Which one is more important? I think they are equally important.

THE CHAIR: You made a point in passing that the judgements you get out of ACAT are inconsistent.

Mr O'Mara: At times. They vary depending on the member.

THE CHAIR: Do you have a feel for whether ACAT members—this is not a criticism of ACAT members—have a property background? If they are people who are making judgements about rating valuations, do they have a property background or are they just the members you get on the day?

Mr O'Mara: We have had situations where members of our staff have attended ACAT and, in one case in particular, when a member did not understand a situation, he said, “I don't understand it. This is how it's going to be because I don't have time to go and have a look at those calculations, or interest in or knowledge of it. This is the order that I'm giving.”

MS LAWDER: Before an ACAT process, do you have any experience of your clients appealing rate increases, and what was that experience like?

Mr O'Mara: It is an arduous process; it is expensive and arduous.

MS LAWDER: Before ACAT, when you just go back to the department and say, “I disagree with the basis of your valuation,” have your clients in that instance, in your experience, been given all of the relevant information by the department that the valuation was based on?

Mr O'Mara: I think so. I think the quality of the engagement is fine. It is just the timing. The private sector probably moves a lot more quickly than what would happen on the other side. That is probably where the frustrations come; you lose valuable time, and time ends up becoming money.

MS LAWDER: Would your clients do that themselves or through you?

Mr O'Mara: It would normally go through a valuation practice. We engage valuation practices to do it on our behalf for our own investments. We would not necessarily use them, but we might have a change of use process or a valuation dispute process that could go for six months, which impacts the rates. If it impacted on rates, you have to pay them; they are not going to just set them aside until you resolve your dispute. And just the backdating of them—

MS LAWDER: A lump sum payment.

Mr O'Mara: One client had a \$250,000 back payment. Nobody has that sitting around in their back pocket. To find that in a very short period of time is challenging, to say the very least.

THE CHAIR: They had a back payment because this was one of the retrospective ones?

Mr O'Mara: Yes.

THE CHAIR: But they did not get as much time to pay as the retrospective payment—

Mr O'Mara: I am not sure; all I know is that—

THE CHAIR: You get 28 days, don't you?

Mr O'Mara: He has a \$250,000 bill that relates to something that he did not even—he thought his land value was always that, even considering his variation that he made five years ago.

THE CHAIR: One of the other things that the Property Institute raised was the issue in relation to apportionment of rates on mixed use sites. It has been put to the committee in a couple of lots of evidence that, unless you strata the block, if you have mixed use you pay it at the highest rate, which is commercial.

Mr O'Mara: Yes.

THE CHAIR: That was confirmed in the annual report hearings. The Commissioner for Revenue—

Mr O'Mara: My discussions with the Revenue Office indicate that one element of commercial on a site triggers it to have a commercial factor applied to it.

THE CHAIR: Even if it is strata-ed?

Mr O'Mara: No, not if it is strata. That would be specific to each strata—

THE CHAIR: Specific to each unit on the strata?

Mr O'Mara: Yes.

THE CHAIR: But if it is a non-strata property, you pay the highest rateable value?

Mr O'Mara: Yes. For that use, under your lease purposes.

THE CHAIR: Through your practice, have you come across people who have been adversely impacted by the inability to have apportionment according to value or according to use?

Mr O'Mara: Most definitely. Some have had to sell their properties.

THE CHAIR: Thank you very much. Your evidence is very helpful to us because it gives practical on-the-ground experience of ACT clients rather than general experience.

PROOF

Mr O'Mara: My pleasure.

THE CHAIR: Dr Lloyd will send you a proof transcript of the proof *Hansard*. If there is anything you feel you need to clarify, you can take that up through Dr Lloyd.

The committee adjourned at 4.11 pm.