# Inquiry into commercial rates

Standing Committee on Public Accounts

April 2019

Report 6

## The Committee

### Committee Membership

* Vicki Dunne MLA Chair
* Tara Cheyne MLA Deputy Chair (from 20 September 2018)
* Nicole Lawder MLA (from 20 September 2018)
* Bec Cody MLA
* Alistair Coe MLA (until 20 September 2018)
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### Resolution of appointment

At its meeting of 13 December 2016 the Legislative Assembly resolved to create ‘a Standing Committee on Public Accounts to:

(i) examine:

(A) the accounts of the receipts and expenditure of the Australian Capital Territory and its authorities; and

(B) all reports of the Auditor-General which have been presented to the Assembly;

(ii) report to the Assembly any items or matters in those accounts, statements and reports, or any circumstances connected with them, to which the Committee is of the opinion that the attention of the Assembly should be directed; and

(iii) inquire into any question in connection with the public accounts which is referred to it by the Assembly and to report to the Assembly on that question’.[[1]](#footnote-1)

On 26 October 2017 the Legislative Assembly resolved to amend the above resolution as follows:

“Insert after (e)(i)(A), the words:

(AA) matters relating to market and regulatory reform (excluding Access Canberra), public sector management, taxation and revenue.” [[2]](#footnote-2)

### Terms of reference

On 29 November 2018 the Legislative Assembly passed the following resolution:

(1) this Assembly refers to the Standing Committee on Public Accounts for inquiry and report by the last sitting day of April 2019, all issues relating to commercial rates in Canberra, including:

(a) the process for determining ratings factors;

(b) the impact of lease variations;

(c) how valuations are conducted;

(d) the amount paid by property owners; and

(e) the impact on leasing costs, property values and business viability; and

(2) the inquiry should hold public hearings and explore the effectiveness of the commercial ratings system and the impact it is having on businesses and the property sector in Canberra.[[3]](#footnote-3)

## Acronyms

|  |  |
| --- | --- |
| ACAT | ACT Civil and Administrative Tribunal |
| ACTPLA | ACT Planning and Land Authority |
| ACTVO | ACT Valuation Office |
| APC | Australian Property Council |
| API | Australian Property Institute |
| AUV | Average Unimproved Value |
| AVO | Australian Valuation Office |
| CCMIL | City Centre Marketing and Improvement Levy |
| CLV | Crown Lease Variation |
| FESL | Fire and Emergency Services Levy |
| IPART | Independent Pricing and Regulatory Tribunal (NSW) |
| NLA | Net Lettable Area |
| REIACT | Real Estate Institute of the ACT |
| SSCA | Shopping Centre Council of Australia |
| UV | Unimproved Value |

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## Recommendations

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[2.30 The Committee recommends that the ACT government publish, in each year’s budget papers and on the website of the ACT Revenue Office, the rationale for all ratings factors determined for that financial year.](#_Toc5108816)

[Recommendation 2](#_Toc5108817)

[2.31 The Committee recommends that the ACT government publish, in each year’s budget papers and on the website of the ACT Revenue Office, a schedule of anticipated ratings factors for the following three years.](#_Toc5108818)

[Recommendation 3](#_Toc5108819)

[2.32 The Committee recommends that the ACT government publish, in each year’s budget papers and on the website of the ACT Revenue Office, specific information on the rates burden apportioned to each category of rateable property.](#_Toc5108820)

[Recommendation 4](#_Toc5108821)

[3.79 The Committee recommends that the ACT government establish a more predictable and transparent means to calculate the value of properties following changes to use clauses in Crown leases, so that owners are able to anticipate the financial consequences of changes of use.](#_Toc5108822)

[Recommendation 5](#_Toc5108823)

[3.80 The Committee recommends that the ACT government considers relief to commercial lessees who experience extended vacancies in their properties.](#_Toc5108824)

[Recommendation 6](#_Toc5108825)

[3.81 The Committee recommends that the ACT government amend the means by which valuations, after changes to use clauses for Crown leases, so that the relationship between valuations ‘before’ and ‘after’ change of use is apparent.](#_Toc5108826)

[Recommendation 7](#_Toc5108827)

[3.82 The Committee recommends that the ACT government amend the ratings regime to allow for further categories of land use for ratings purposes to allow a better match between land use categories and instances of land use in practice.](#_Toc5108828)

[Recommendation 8](#_Toc5108829)

[3.83 The Committee recommends that the ACT government introduce a legislative mechanism to allow for apportionment between categories of use.](#_Toc5108830)

[Recommendation 9](#_Toc5108831)

[3.84 The Committee recommends that the ACT government considers amending the *Rates Act 2004* to provide for commercial rates to be levied on the basis of the actual, activated uses rather than all the possible uses.](#_Toc5108832)

[Recommendation 10](#_Toc5108833)

[3.85 The Committee recommends that the ACT government clarifies the process used by the Commissioner for ACT Revenue to value Crown leases in the ACT under Section 10 of the *Rates Act 2004* and publish the process on the ACT Revenue Office’s website and include it in information provided to leaseholders about the lease variation process.](#_Toc5108834)

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[3.86 The Committee recommends that the ACT government amend the *Rates Act 2004* so as to clarify the timing of—and relationship between—the method used to value properties under mass appraisal and the method used to value individual or groups of properties where it is perceived that there has been a significant change in value in a particular area.](#_Toc5108836)

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[3.87 The Committee recommends that the ACT government consider the appropriateness of long-term retrospective determinations of commercial rates.](#_Toc5108838)

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[3.89 The Committee recommends that the ACT government considers compensating rate payers who have experienced sudden large increases in rates because they have had long-term retrospective rates reassessments or have been required to pay rates on the basis of un-activated uses.](#_Toc5108840)

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[4.48 The Committee recommends that the ACT government review the mass appraisal and periodic revaluation processes to determine whether the current mix meets the tests of equity and fairness.](#_Toc5108842)

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[5.37 The Committee recommends that the ACT government prepare a reconciliation of revenue foregone and raised in the transfer from duties to a broad-based property tax.](#_Toc5108844)

[Recommendation 16](#_Toc5108845)

[7.140 The Committee recommends that the ACT government introduce a valuation mediation system between affected land-owners and the valuation service to provide a cost-effective alternative to the current ACAT objection process.](#_Toc5108846)

[Recommendation 17](#_Toc5108847)

[7.145 The Committee recommends that the ACT government breaks the connection between the Revenue Office and the Valuation Office, ideally by establishing an independent valuation service for the ACT.](#_Toc5108848)

[Recommendation 18](#_Toc5108849)

[7.147 The Committee recommends that the ACT government reassess resourcing for the ACT Valuation Office, and introducing Attraction and Retention Incentives (ARIns) to foster the recruitment and retention of valuers.](#_Toc5108850)

[Recommendation 19](#_Toc5108851)

[7.148 The Committee recommends that the ACT government liaise with the Property Council of Australia, the Australian Property Institute, tertiary education institutions and other interested parties to reassess the feasibility of introducing a valuation course in the ACT.](#_Toc5108852)

[Recommendation 20](#_Toc5108853)

[7.150 The Committee recommends that the ACT government redesign commercial rates notices to give commercial ratepayers more information, transparency and certainty. In doing so, the ACT government should give consideration to the inclusion of the following:](#_Toc5108854)

[ i) more information about flexible payment options for ratepayers charged retrospectively due to revaluations;](#_Toc5108855)

[ ii) more information about the valuation of land and how that value was calculated;](#_Toc5108856)

[ iii) more information about the applicable tax threshold;](#_Toc5108857)

[ iv) a list of past payable rates for context; and](#_Toc5108858)

[ v) an indication of likely future rates, with a disclaimer that this estimation is subject to change.](#_Toc5108859)

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[7.152 The Committee recommends that the ACT government give consideration to an education and information campaign for new and existing ACT ratepayers to ensure existing and future commercial property owners have a sufficient understanding of the commercial tax system in the ACT and how the reform is being achieved.](#_Toc5108861)

[Recommendation 22](#_Toc5108862)

[7.154 The Committee recommends that the ACT government provides commercial rates concessions on heritage-listed properties, to take account of the distinct set of planning rules that regulate their use.](#_Toc5108863)

[Recommendation 23](#_Toc5108864)

[7.156 The Committee recommends that the ACT government investigate ways to overcome the long-term anomalies relating to Block 44, Section 11, Fyshwick.](#_Toc5108865)

[Recommendation 24](#_Toc5108866)

[7.158 The Committee recommends that the ACT government:](#_Toc5108867)

[ establishes a taskforce to review commercial rates in the ACT with regard to improving transparency, certainty for property owners and having regard to the overall economic impact of the rating system; and](#_Toc5108868)

[ liaises widely with the community in the setting up of the task force to ensure wide and balanced representation of all interests in the ACT community.](#_Toc5108869)

[Recommendation 25](#_Toc5108870)

[7.160 Some Committee members recommend that while the taskforce is deliberating, the ACT government returns the system for existing commercial and residential rates in the ACT to the situation as it stood in 2012, immediately after the passage of the initial rates reform legislation.](#_Toc5108871)

## Introduction

### Conduct of inquiry

* 1. On 29 November 2018 the Legislative Assembly for the ACT resolved that the Standing Committee on Public Accounts would inquire into ‘all issues relating to commercial rates in the Canberra’.[[4]](#footnote-4) After receiving the referral, the Committee called for submissions. It received 60 submissions to the inquiry, and held public hearings on 6, 7, 22, 27 and 28 February, and 1 and 6 March 2019. Witnesses who appeared and submissions lodged with the Committee are listed in appendices to this report.
  2. In hearings, a member of the Committee asked witnesses questions as to whether they were a member of a political party, or had made donations to any political party.[[5]](#footnote-5) The Committee held two private meetings regarding the matter. In the first the Committee resolved that the questions were permitted, while in the second it resolved that they were not.[[6]](#footnote-6) Following the second meeting the Chair ruled the questions out of order.[[7]](#footnote-7)
  3. For transparency, the Committee notes a number of contributors had connections to each other. There are connections between Mr David Quinn and the Duxton at O’Connor, Mr George Cassimatis and Evri Group, Mr Jim Sarris and Canvest Pty Ltd, and Mr Peter Sarris and Ziproperty Pty Ltd. Several of the companies listed above share the same Registered Business address. It should be noted that Mr George Katheklakis, who appeared with the Property Council of Australia, is also the Managing Director of KDN Group. KDN Group lists Evri Group as an Affiliate on their website and appears to have a number of shared property holdings.

### Structure of report

* 1. The report is structured to reflect the inquiry Terms of Reference:
* Chapter 1, the present chapter, which provides a brief account of the inquiry and background on the subject-matter of the report;
* Chapter 2 considers the process for determining ratings factors, responding to Term 1(a) of the Terms of Reference;
* Chapter 3 considers the impact of lease variations, responding to Term 1(b);
* Chapter 4 considers how valuations are conducted, responding to Term 1(c);
* Chapter 5 considers the amount paid by property owners, responding to Term 1(d);
* Chapter 6 considers the impact on leasing costs, property values and business viability, responding to Term 1(e);
* Chapter 7 considers the effectiveness of the commercial ratings system and the impact it is having on businesses and the property sector in Canberra, responding to Term 2 of the Terms of Reference; and
* Chapter 8, which is the Committee’s conclusion to the report.
  1. At the end of each chapter there is a ‘Committee comment’ presenting the Committee’s view of matters considered in the chapter.

### Background: land tenure, tax reform

* 1. The present section deals with two matters—the system of land tenure in the Australian Capital Territory and the program of tax reform set out in the 2012-13 Territory Budget—in order to prepare for questions considered in the body of the report.

#### Land tenure in the Territory

* 1. In November 1995 a Board of Inquiry, constituted under the *Inquiries Act 1991* (ACT) presented a report to the Chief Minister on the *‘*administration of the ACT leasehold’, known as the ‘Stein report’. Indicating levels of controversy regarding this issue, the report identified 14 prior reports that had previously considered land tenure in the Territory.[[8]](#footnote-8)
  2. The report stated that systems of land tenure were ‘inextricably bound up with the basic structure of society’, and often mirrored ‘different cultural relationships to the land’. Despite considerable diversity, there were ‘some basic forms’ of land tenure, in which property in land was ‘usually seen as consisting of a bundle of defined rights’. Within this context, modern urban land tenure systems could be broadly categorised as ‘private freehold, private leasehold, public freehold and public leasehold’.[[9]](#footnote-9)
  3. Land tenure in the Territory was administered under ‘a public leasehold system’, the original purpose of which was to:
* avoid speculation in undeveloped land;
* allow unearned increments in land value to be retained by the Australian people;
* defray the expenses of establishing the National Capital; and
* ensure orderly planned development by lease purpose clauses.[[10]](#footnote-10)
  1. Regarding public leasehold, the report stated that in the Territory public leasehold was similar to freehold. The owner of land in the ACT was the Commonwealth, and the Territory administered ‘territory land’ on behalf of the Commonwealth. The Territory stood in the shoes of the landlord and granted leases in land to private persons and entities and, as for all leases, ‘the use to which the land is to be put is spelt out’, and as in private leasehold, ‘the leaseholder may not use the land for another purpose unless the landlord agrees and the lease is altered’.[[11]](#footnote-11)
  2. Another way of putting this was that:

One of the principal differences between private freehold and public leasehold is that the lessor is also the government and therefore owns all of the use rights in land. By granting a lease it permits the lessee to use the land for the use or uses specified in the lease but no more.[[12]](#footnote-12)

* 1. Despite similarities, characteristics of the Territory leasehold system which were distinct from freehold were therefore that:
* a lease was for a specified purpose;
* a lease was for a specified period of time, usually 99 years;
* a lease included covenants and conditions with which the lessee was required to comply; and that
* a lease was subject to the payment of land rent or a premium.[[13]](#footnote-13)
  1. It was regarding this last point, however, that significant change occurred:

The most dramatic change to the leasehold system was announced by Prime Minister Gorton in 1970. The payment of land rent for residential leases was to be abolished. Municipal rates were to be increased. The decision, made for patent political reasons, haunts the ACT leasehold system 25 years later. As one commentator observed at the time, the decision was to hand over an estimated $100 million in equity to lessees.[[14]](#footnote-14)

* 1. This abolition of land rent on Crown leases in the Territory led to the introduction of ‘betterment’ charges in January 1971, in which a lessee granted a change in lease purpose was obliged to pay to government ‘50% of the increase in value, less $1,500’. The issue of betterment remained contentious: the Stein report noted that the system had remained constant between 1971 and 1990, but that between 1990 and 1994 formulae for the calculation of betterment changed on no less than four occasions.[[15]](#footnote-15)
  2. ‘Betterment’ was the precursor to the later charges Change of Use Charge (CUC) and Lease Variation Charge (LVC) referred to by contributors in the present report, and shown in the body of this report, this is an issue which continues to be the subject of debate by some in the Territory.

#### 2012 tax reform

* 1. In 2012 the ACT government announced a program of tax reform affecting general rates (both residential and commercial), land tax, conveyancing or ‘stamp’ duty, duty on insurance and payroll tax.
  2. The 2012 ACT Taxation Review included recommendations to:
* abolish duty on conveyancing (that is, ‘stamp duty’) over a 10 to 20 year period;
* abolish duty on general insurance and life insurance; and
* adopt a broad based land tax as a base for revenue replacement.[[16]](#footnote-16)
  1. In light of this, the 2012-13 ACT Budget introduced tax reforms, specifically:
* the abolition of conveyancing duty ‘over a 20 year period’, with tax rates ‘progressively reduced to phase out Conveyance Duty in the longer term’;[[17]](#footnote-17)
* the abolition of commercial land tax from 1 July 2012 and a corresponding increase in commercial rates for ‘simplification’ and to provide ‘revenue replacement from commercial transaction taxes’;[[18]](#footnote-18)
* the introduction of new thresholds and ratings factors for general rates, for both residential and commercial properties;[[19]](#footnote-19) and
* the abolition of commercial land tax from 1 July 2012;[[20]](#footnote-20)
* the abolition of duty on insurance over five years;[[21]](#footnote-21) and
* a reduction in the amount of Payroll Tax paid by businesses.[[22]](#footnote-22)
  1. In relation to commercial rates specifically, the Budget Papers stated that:
* the new thresholds and marginal tax rates for commercial property would provide ‘revenue replacement’ for commercial land tax;
* this ‘revenue replacement’ also include ‘revenue foregone from commercial conveyance duty and duty on insurance for the commercial sector’; and
* the shift from transaction-based to land-based taxes would be ‘cost neutral for individual businesses’.[[23]](#footnote-23)
  1. Since then, each ACT Budget has made reference to taxation reform.[[24]](#footnote-24) The ACT government has maintained that it ‘is not increasing total tax revenue through the tax reform process, but is replacing inefficient transaction taxes with efficient land based taxes’. Nevertheless changes to the ACT rates regime under the banner of tax reform have been much debated.[[25]](#footnote-25)
  2. In 2018 the Committee inquired into the *Methodology for determining rates and land tax in strata residences*.[[26]](#footnote-26) In the course of the inquiry the Committee received correspondence from a person who was aggrieved with the commercial rates regime in the ACT.[[27]](#footnote-27) The Committee has considered commercial rates in its deliberations on Annual and Financial Reports but this inquiry, under the terms of a motion from the Assembly, has overtaken those deliberations.[[28]](#footnote-28)

## Process for determining ratings factors

### Introduction

* 1. The *Rates Act 2004* (ACT) sets out a formula which is applied to unimproved value (UV) to determine rates to be paid on property in the ACT.[[29]](#footnote-29) The Act defines commercial land as ‘rateable land that is not residential land or rural land’.[[30]](#footnote-30) Ratings factors for both residential and commercial land are set out in regulation, currently in the *Taxation Administration (Amounts Payable—Rates) Determination 2018 (No 1)*.[[31]](#footnote-31) There are two components of general rates: a fixed charge and a percentage rate. The current *Determination* provides that the fixed charge for commercial land is $2,463 per year.[[32]](#footnote-32) Percentage rates for commercial land are set out in Table 2: ‘Percentage rates-commercial land’ from the *Taxation Administration (Amounts Payable—Rates) Determination 2018 (No 1)*, as follows, where the ranges of value set out in Column 1, ‘base value’, determine which fixed charges and ratings factors are to be applied, as set out in Column 2, ‘P or percentage rate per year’.[[33]](#footnote-33)

Table 1 - ‘Percentage rates-commercial land’ from the *Taxation Administration (Amounts Payable—Rates) Determination 2018 (No 1)*

|  |  |
| --- | --- |
| Column 1 base value | Column 2 P or percentage rate per year |
| less than or equal to $150 000 | 3.0800% of the base value |
| more than $150 000 but not more than $275 000 | $4 620.00 plus 3.6161% of the part of the base value that is more than $150 000 |
| more than $275 000 but not more than $600 000 | $9 140.13 plus 5.1074% of the part of the base value that is more than $275 000 |
| more than $600 000 | $25 739.18 plus 5.1675% of the part of the base value that is more than $600 000 |

### Ratings factors

* 1. The Committee has considerable material on how ratings factors are set, including: statements in budget papers; an answer to a Question on Notice of 26 October 2018; a letter from the Treasurer to the Committee of 12 November 2018 pursuant to a motion of the Assembly; and evidence from hearings of 12 November 2018 for the Committee’s hearings for its inquiry into Annual Reports 2017-18.

##### Budget papers

* 1. Budget papers have made a number of statements about increases in commercial rates:
     + in 2012-13 stating that ‘Commercial land tax is abolished from 1 July 2012’ and that this ‘revenue is transferred over to commercial General Rates’;[[34]](#footnote-34)
     + in 2014-15 indicating that ‘On average, General Rates on commercial properties will increase by around 10 per cent in 2014-15’;[[35]](#footnote-35)
     + in 2015-16 stating that ‘On average, general rates on residential and commercial properties will increase by around nine per cent in 2015-16’, and that the 2015-16 Budget assumed that ‘general rates will increase by nine per cent in 2015-16, 8.75 per cent in 2016-17, 8.5 per cent in 2017-18 and 8.25 per cent in 2018-19’;[[36]](#footnote-36)
     + in 2016-17 indicating that ‘Commercial general rates will increase on average by around 6 per cent each year’;[[37]](#footnote-37)
     + in 2017-18 indicating that increases forecast for revenue from commercial general rates reflected ‘an increase of around six per cent on average, as announced in the 2016-17 Budget, as well as adjustments to the total value of commercial land and the number of properties’;[[38]](#footnote-38) and
     + in 2018-19 also indicating an ‘expected increase … primarily due to an increase in rates of around 6 per cent, as well as an increase in the number and value of new commercial properties’.[[39]](#footnote-39)

##### Question on Notice

* 1. On 26 October 2018, Caroline Le Couteur MLA asked the Treasurer, upon notice, how the government determined the ‘amount of rates to be collected from residential and non-residential sources’. The Acting Treasurer responded by advising that in ‘any given year, the proportion of total rates is affected by growth in the number and value of new properties and increases in general rates revenue due to the ACT tax reform program’, and that as such ‘the change in residential and commercial rates revenue from the previous financial year in each sector is a function of the new properties that entered the sector during the previous financial year and the average increase under tax reform’.[[40]](#footnote-40) This will be addressed later in this chapter.

##### Assembly motion on commercial rates

* 1. On 31 October 2018, the Leader of the Opposition moved a motion in the Assembly,[[41]](#footnote-41) regarding commercial rates which once amended and passed, required the government to provide information regarding commercial rates to the Committee.[[42]](#footnote-42) Under the terms of that motion, the Treasurer later wrote to the Committee, advising that the government ‘determines commercial rating factors each year as part of Budget deliberations’,[[43]](#footnote-43) and that for commercial properties, ‘the current target average increase’ for ratings factors was ‘6 per cent per year’.[[44]](#footnote-44) The ACT government also provided a submission to the inquiry.[[45]](#footnote-45)

##### Hearings of 12 November 2018

* 1. On 12 November 2018 the Treasurer and his officers appeared before the Committee for hearings for its inquiry into Annual Reports 2017-18.
  2. The Committee asked about the assumptions used by the ACT government in order to arrive at an increase in rates of 6 per cent, since it was not being achieved solely through changes to thresholds for rating factors.[[46]](#footnote-46) In responding, the Under-Treasurer told the Committee that:

The method we use is essentially the database of values across all commercial properties—the most recent, up-to-date values for all commercial properties—and we essentially work backwards from the revenue target of six per cent to work out a set of factors and thresholds that would generate that amount of revenue.[[47]](#footnote-47)

* 1. The Committee asked how the ACT government would respond to two scenarios in which there was a downturn in the property sector, with regard to setting ratings factors.[[48]](#footnote-48)
  2. When asked about how it would respond to a scenario in which there were 5 per cent reductions in property values across the ACT, the Under-Treasurer told the Committee that ‘if the government of the day sets a revenue target of X, we will set the ratings factors based on the most recent valuations for properties across the territory to get that revenue target’. When asked the same question but with reductions of 10 or 20 per cent in the property sector, the Under-Treasurer told the Committee that if ‘values came down, the ratings factors would be adjusted to ensure the desired revenue target’. Confirming that rating factors would increase, the Under-Treasurer told the Committee that similarly, ‘if property values went up, for the revenue target the ratings factors would come down’, and that this was ‘how the system works’.[[49]](#footnote-49)
  3. Also responding to the question, the Commissioner for ACT Revenue told the Committee that in such scenarios ‘we would determine whether that reduction in values is across the board, and, if it was, we would make across the board, blanket adjustments’. If reductions were ‘in particular precincts then we would similarly do a property-by-property analysis and make those adjustments to those particular properties that were affected’.[[50]](#footnote-50)
  4. The Committee asked whether, under these arrangements, the result of a scenario in which half the number of commercial properties suffered a reduction in value, would be that the remainder of properties would receive a commensurate higher rates burden. In reply, the Under-Treasurer confirmed that this was so, telling the Committee that if ‘some properties go up or down relative to the others, yes, for the rates revenue, the target would be redistributed amongst the properties based on the values’.[[51]](#footnote-51)
  5. In these hearings, the Treasurer told the Committee that commercial rates had increased; that they had increased ‘every year in the history of the territory, as have residential rates’; and that they were ‘indexed each year’.[[52]](#footnote-52) He told the Committee that commercial rates had increased by 6 per cent in the past financial year. The CPI (Consumer Price Index) for the same year, he told the Committee, was ‘between 2 ½ and three per cent’.[[53]](#footnote-53)

##### Hearings of 28 February 2019

* 1. When the Shopping Centre Council of Australia (SCCA) appeared in hearings of 28 February, its valuation and taxation adviser, Mr Marcus Conabere, told the Committee that ‘what we look at when we are doing a lot of this work is how the rates burden has actually been apportioned between the different classifications of properties’. In the ACT these were limited to residential, commercial and rural property.[[54]](#footnote-54)
  2. He told the Committee that in relation to the ACT they had sought to determine how this was done. Typically, in other jurisdictions it would be set out in government policy or the enabling legislation as to how that process occurred, but in reviewing the rates regime in the ACT, the SCCA ‘could not find where that was specified in either an ACT policy or the legislation’. An inquiry to Treasury referenced the answer to the Question on Notice of 26 October 2018, and this according to Mr Conabere was ‘the only source that we could find’.[[55]](#footnote-55) This answer to a Question on Notice is discussed earlier in this chapter.
  3. Mr Conabere told the Committee that standard rating policy, across jurisdictions, in effect stated that the state or territory needed to collect a certain amount of revenue, made an assessment of the rating base, that is the ‘total unimproved value across the entire state’, and then determined how the tax burden would be apportioned to different property categories. The answer to the Question on Notice, however, ‘did not explain … how the apportionment of that burden between the residential, the commercial and the rural is actually calculated.’ [[56]](#footnote-56)
  4. He told the Committee that in rating policy in Australia, this was ‘held generally constant; the burden is set’: so that it may be that ‘we have 50 per cent being paid by residential, 40 per cent being paid by commercial and the balance being paid by rural, just as examples’. However, he asked:

What happens when you get differential movement in the valuation? When we do a [revaluation] every year, we can have varying movement from the prior year based on a classification of property. We could have one year where residential property increases, commercial property decreases and farmland is constant. Basically what happens in that equation is that the rate in the dollar is adjusted to reflect the same collect that would occur, so you will see variations in the actual rate in the dollar.[[57]](#footnote-57)

* 1. Mr Conabere told the Committee that:

We cannot find anything that dictates how that has been done. We can go to other states and they will publish the total value for each group of property so that you can look at it and say, “That is the total figure. They have applied this taxation rate to it. Therefore the amount of tax coming from that particular category is X dollars.” If you do that for the three categories, you can determine if there is any change in the weighting of that tax burden between the three property categories.[[58]](#footnote-58)

* 1. Asked whether this allowed any change in proportionality to be tracked over time, Mr Conabere said that it did. Standard policy was that once the distribution of the tax burden had been set across the different categories of property, ‘the valuation movement is normalised in the taxation rate to make sure that, moving forward, we have the same collect from those same categories’, and so ‘we are not actually changing the rates burden between the categories’. [[59]](#footnote-59) But in the ACT, in the absence of information about the total unimproved value of each category of property, it was not possible to determine whether the rates burden had changed.[[60]](#footnote-60)
  2. The view of the SCCA was that this obscured the fact that a decision had been made to place more of the rates burden ‘onto a particular class of property from what was originally set’, and that there had ‘clearly been a redistribution of the rates burden from FY13 to FY19 to commercial ratepayers’. [[61]](#footnote-61)
  3. The SCCA outlined the reason for this:

If we completely remove the valuation discussion, so if we simply look at the taxation rates that are applied to residential and commercial, and we look at how they have changed from FY13 to FY19 … the top tax rate for commercial, the percentage change from what was charged in FY13 to FY19, is 98 per cent. That is an annual compounding growth rate of 12 per cent, which is very significant in comparison to other states. If you look at the residential tax rate over the same period, the percentage change is only 38 per cent, and therefore the compounding growth rate is five per cent.[[62]](#footnote-62)

* 1. However, this did not ‘definitively tell us that there has been a redistribution of that quantum to commercial’, because ‘what may have occurred … is that the variation in the unimproved value of those two categories year on year has changed at a different rate’. What ‘certainly it does tell us’, he told the Committee, ‘that effectively that correlates into a 98 per cent increase in rates payable by the average commercial ratepayer over that period’.[[63]](#footnote-63)
  2. This, Mr Conabere told the Committee, was ‘very significant’. He compared this to the situation in NSW and Victoria where there were caps on rates—in NSW the IPART (Independent Pricing and Regulatory Tribunal) cap, in Victoria a cap ‘that is substantially linked to CPI’—in comparison to which the annual compounding growth rate of 12% for rates in the ACT was ‘very significant’.[[64]](#footnote-64)
  3. He told the Committee that the IPART NSW rates cap was ‘not a perfect system’: if the IPART set a cap of 2 ½ per cent in a given year, it meant that councils could not levy more than that from their ratings base, but they still retained discretion to reapportion the rates burden as they saw fit. However, under this system, a 12 per cent annual growth rate for commercial property rates was ‘way off the scale’.[[65]](#footnote-65)
  4. Mr Conabere told the Committee that an historical view of the tax rate showed that in the 2014 financial year ‘the top commercial tax rate increased by 35.7 per cent, the lowest commercial tax rate increased by 15.7 per cent and the residential rate increased by 4.3 per cent’, and that this had to be ‘a significant reweighting in the rates burden’. The only other thing that could explain such an increase in commercial tax rate was that there was a ‘commensurate reduction’ in the unimproved value (UV): that is, the UV ‘would have to drop by 30 per cent across the board so that our increase in rates would be comparable to the 4.3 per cent on residential’.[[66]](#footnote-66)
  5. In light of this, Mr Conabere told the Committee, it was beyond doubt that the present scenario represented a ‘reweighting of the rates burden … onto commercial property’. The bulk of the change had occurred in the 2014 financial year. Subsequent increases were 13.8 per cent in the 2015 financial year; 10.2 per cent in the 2016 financial year; 7.6 per cent in the 2017 financial year; 4.7 per cent in the 2018 financial year; and 3.5 per cent in the 2019 financial year. He described this as a ‘very abnormal increase back in FY14, where there has obviously been a reweighting, and then that has softened over time’. The problem was that the 2014 increase had pushed commercial rates ‘well outside interstate relativities’, and this had continued to grow from an ‘unsustainable base’ established in 2014.[[67]](#footnote-67)

### Committee comment

* 1. The evidence provided to the Committee shows that ratings factors are determined in budget cabinet; that the ACT government determines the overall increase in revenue it seeks from rates in a given year; and that it determines ratings factors in the context of variations in the ACT property market. There is no evidence available to the Committee, at this point, as to how the government determines the quantum of revenue that it will derive from commercial rates.
  2. Consideration of budget papers for successive financial years also shows the absence of a clear indication of ratings factors over a period of years: budget papers typically have either shown ratings factors for two years at a time,[[68]](#footnote-68) or for the coming financial year alone.[[69]](#footnote-69) The exception is the information given for 2015-16, although set out in this instance were assumptions for that budget rather than a binding schedule of ratings factors for future years.[[70]](#footnote-70)
  3. Responses to questions to government, considered above, appear to be focussed on the outputs of the rates regime rather than the inputs: that is revenue yielded from rates rather than ratings factors. Currently, consumer information on the ACT Revenue Office does not go beyond setting out current ratings factors and providing a rates calculator.[[71]](#footnote-71)
  4. Evidence presented by the SCCA showed that there was a lack of information on how rates were set in the ACT, in particular as to how the overall burden for rates revenue was apportioned between categories of property. This lack of evidence made it hard to tell whether substantial increases in rates were intentional. The Committee considers that to the extent that such information is not available it frustrates public debate about the merits or otherwise of such policy.

|  |
| --- |
| Recommendation 1  The Committee recommends that the ACT government publish, in each year’s budget papers and on the website of the ACT Revenue Office, the rationale for all ratings factors determined for that financial year. |
| |  | | --- | | Recommendation 2  The Committee recommends that the ACT government publish, in each year’s budget papers and on the website of the ACT Revenue Office, a schedule of anticipated ratings factors for the following three years. |  |  | | --- | | Recommendation 3  The Committee recommends that the ACT government publish, in each year’s budget papers and on the website of the ACT Revenue Office, specific information on the rates burden apportioned to each category of rateable property. | |

## Impact of Lease Variations

### Introduction

* 1. Contributors to the inquiry raised concerns regarding a number of matters arising from lease variations—that is, changes to use clauses in Crown leases—including:
     + increased tax burden as a result of lease variations;
     + the effect of delays in activation of higher uses;
     + apportionment;
     + categorisation of property for ratings purposes; and
     + retrospective levying of rates liabilities arising from lease variations.

### Increased tax burden as a result of lease variations

* 1. Contributors to the inquiry told the Committee that some owners of commercial property in the ACT were seeking to vary the use clause of their Crown lease so as to increase their property’s appeal to the market, particularly in view of higher vacancy rates for some types of property, but then encountered a significantly higher rates impost as a result.
  2. Ms Catherine Mowbray of Egan National Valuers told the Committee that property owners were often advised by real estate agents that it might be easier to attract a tenant for commercial property if the use clause were widened.[[72]](#footnote-72) In hearings and in to her submission to the inquiry, she advised that property owners were ‘undertaking lease variations in the hope of attracting a tenant but the costs and as it transpires lack of demand is making this an expensive and futile exercise’.[[73]](#footnote-73)
  3. The submission provided a number of illustrations of this scenario. One detailed circumstances in relation to a property in Fyshwick where a major tenant had vacated, which was subsequently vacant for four years. The owner responded by refurbishing the property and varying the Crown lease to increase the likelihood of attracting a tenant, a process which entailed consolidating the property with an adjoining site, owned by the same Crown lessee, to provide sufficient parking. As a result the UV for the new consolidated site was determined to have increased from a previous total of $759,000 for the two previously separate sites to $1,100,000 for the consolidated site, and this had resulted in an increase in rates from $39,428 to $61,783 per year. In addition, rent five years previously had been about $350 per square metre of building area; it had now declined to about $150 per square metre and the property was still not fully leased. The submission observed that in this instance property value had been negatively affected by three factors: ‘increased rates, increased UV and negative rental growth’.[[74]](#footnote-74)
  4. In hearings, Ms Mowbray told the Committee that in this instance the only reason the owner had consolidated the two parcels of land was to comply with parking requirements, because once the lease use clause was amended to allow for an office or public agency, more parking was required. However the ‘sum of its parts became more valuable than when it was separate’, and the property’s owner was ‘surprised, or shocked’, that while gross rents on the property were ‘nowhere near’ what they had been, the rates liability had increased substantially.[[75]](#footnote-75)
  5. Other examples told a similar story. The owner of a commercial property in Kingston had refurbished and subdivided premises which had originally been a newsagency. In this case the Crown lease was varied to add a restaurant as an allowed use, and a fee of $22,500 was paid to effect the change, however the new space had been vacant for three years.[[76]](#footnote-76)
  6. In a further instance, in Phillip, a Crown lease had been varied to add community use, ‘limited to educational establishment for adult education only, indoor recreation, non retail commercial use limited to business agency and public agency, shop limited to 100 square metres’ to a purpose clause, at a cost of $18,750. Following the change of the purpose clause, the premises were vacant for two years; it was not tenanted under any of the uses specified in the new use purpose clause; and gross rents had declined which, together with increased rates liabilities, had resulted in ‘a significant decrease’ in net rents. In this case, 2018 rates liabilities amounted to more than double the 2012 impost for rates and land tax combined.[[77]](#footnote-77)
  7. These matters were also under consideration when Mr Guy Randell of the Real Estate Institute of the Australian Capital Territory (REIACT) appeared before the Committee. He told the Committee that an important characteristic of commercial property was that land value did not correlate to property value. Rather, property value ‘simply comes from the lease terms or the value you can derive from the business or building that is … on that land’, and the way costs were shared between landlord and tenant were a function of the kind of lease that was in place: either a gross, net or semi-gross lease.[[78]](#footnote-78)
  8. Mr Randell told the Committee that ‘where we have vacancies we go to the government to try to get another use on it’, which might be an industrial, a medical, an office use or some other alternative because ‘we cannot lease that property’. However, this triggered a lease variation charge, ‘which is doubled as well’, but the owner was not getting any more rent. Rather, the best outcome of such changes was that ‘We are simply getting the building rented and actually being able to afford to pay the rates and charges and taxes going forward’, but the new conditions were not releasing any additional value from the property.[[79]](#footnote-79)

#### Cost of lease variations

* 1. An associated concern was the cost of varying the use purpose clause of Crown leases.
  2. In her submission, Ms Carolyn Mowbray advised that the fee for a Crown Lease Variation (CLV) was ‘not confirmed until the end of the costly development application process’, and that this cost should be codified. It was also not known by how much UV would increase as a result of a CLV, and this added to ‘cost and uncertainty’ for property owners.[[80]](#footnote-80)
  3. In its submission, the Australian Property Institute (API) advised the Committee as to this uncertainty. As a general rule, ‘the addition of uses to a lease purpose clause increases the value of the Crown Lease’, and this ‘is set out in the V2 After Value compared to the V1 Before Value’.[[81]](#footnote-81) However, in practice, the submission advised, ‘ACT Government valuers often do not have regard to the published Unimproved Values that they have assessed when calculating values for a Lease Variation Charge Valuation’, arguing that ‘the Unimproved Value is not a true representation of market value but a figure arrived upon by statistical analysis’. This led to confusion on the part of members of the public as to ‘how a property can have an Unimproved Value and assessed Lease Variation Charge Value that differ’.[[82]](#footnote-82)
  4. In relation to this, the API advised that in order for ‘the adoption of these values to work, the ACT Government should not rely upon two differing values for the same site’, and that the ‘agreed After Value should be taken into consideration when reassessing the new Unimproved Value for the Site’.[[83]](#footnote-83) The submission referred to this in its summary where it suggested that the ACT government should ‘Align Unimproved Values and Lease Variation Charge Values’.[[84]](#footnote-84)

### Effect of delays in activation of higher use

* 1. Contributors to the inquiry spoke to the Committee about the effect, in terms of rates liabilities, of scenarios in which a higher use is attached to a Crown lease but has not yet been activated.
  2. When Capital Property Group appeared in hearings the Committee asked about instances where a property was being used for commercial purposes, but the Crown lease included residential development as a permitted use. In particular, it asked about the resulting situation where commercial ratings factors were applied to best and highest use as residential development—resulting in high ratings factors being applied to a high unimproved valuation.[[85]](#footnote-85)
  3. Mr Noel McCann, Director of Planning and Government Relations, Capital Property Group, told the Committee that this was ‘the experience of the past three or four years’ in relation to commercial property in the ACT. He told the Committee that ‘you value the property at the highest value and you hit it with the highest unit of rate’. For developers there was a ‘disproportional impact’ for ‘probably two or three years as you go through buying a property and getting it organised’, during which time the ACT Revenue Office imposed a rates liability based ‘on the highest value and the highest rate’, before any financial benefit flows back to the developer as a result of sales of dwellings from the development.[[86]](#footnote-86)
  4. This scenario was considered in detail in the submission lodged by Evri Group, in which it considered a property situated at 220 Northbourne Avenue, Braddon. The property has an existing eight storey commercial building and a four storey providing a Net Lettable Area (NLA) of approximately 8,000 square metres. There are long-term commercial leases in place (including to the ACT government) until November 2020. While commercial and residential uses were permitted under the use purpose clause for the Crown lease, residential use could not be activated until after the present commercial leases expire.[[87]](#footnote-87)
  5. The UV of the property had increased ‘from $5,880,000 on 1 January 2016 to $24,000,000 on 1 January 2017’ due to 220 Northbourne Avenue having both commercial use and residential purposes permitted under the lease purpose clause. Despite the delay until the ‘higher’—residential—use could be activated, the ACT Valuation Office had ‘valued the site on a residential UV and have also applied the commercial rating factor as there is a commercial building on the site’. The submission noted that the commercial rating factor was ‘significantly higher’ than the residential rating factor and that under present circumstances the rates liability would be charged on the residential basis until it was possible to redevelop the parcel of land.[[88]](#footnote-88)

### Apportionment

* 1. Circumstances surrounding 220 Northbourne Avenue, Braddon, also led to comment about apportionment. In the context of commercial rates. ‘apportionment’ refers to a mechanism in which, for mixed-use developments, some parts of the property are classified differently from others: for example, some could be designated commercial and some residential, thus bringing different ratings factors into play for each.
  2. In hearings of 12 November 2018, the Commissioner for ACT Revenue told the Committee that the only way to invoke apportionment in the ACT at present, in a mixed-use commercial and residential development, was for the residential dwellings to be unit titled.[[89]](#footnote-89) In other hearings, the Committee was told that the lack of a mechanism for apportionment, such as were in operation in NSW and Queensland, was a matter for concern for owners of commercial property in the ACT.
  3. Mr Guy Randell of the REIACT told the Committee that when the ACT government sells a parcel of land for mixed use through the land release program, it does so ‘for the highest price and the highest use’. Unless there was ‘100 per cent use of residential on that land’, it was valued as a commercial rate, against which rates were levied on the basis of commercial ratings factors which were nine times those for residential land, even if the commercial use only accounts for ‘a small component’ of uses on the land.[[90]](#footnote-90)
  4. This was consistent with evidence provided by Mr George Katheklakis, Managing Director, KDN Group, who appeared with the Property Council of Australia. He told the Committee that the way laws were framed in the ACT, ‘if a property has any commercial component in it, it will be rated at the full value of the full commercial rate’: if there were a mixed-use development with 60 residential units and a single small coffee shop of 50 square metres, commercial ratings factors would be applied to the value of the whole property, at ratings nine times higher than those for purely residential property. This, he told the Committee, was a ‘hangover from an older system’, and that current legislation was not suitable for managing ‘sophisticated mixed use developments’. This was a situation in which the planning system was intended to promote certain policies while the tax system was geared to earlier circumstances.[[91]](#footnote-91)
  5. When asked what kind of development would be prevented from using unit titling as a protection against such applications of commercial ratings factors to residential property, Mr Katheklakis told the Committee that one scenario would be built-to-rent developments. These were similar to developments which were ‘a condominium owned by one person’, which afforded benefits in terms of ‘affordability and access to construction at times when the market is not doing so well’. There were some instances in central Canberra where this model had been taken up but, he told the Committee, there needed to be further thought about alternatives to unit titling, including further consideration of legislative provisions to support build-to-rent developments.[[92]](#footnote-92)
  6. Concerns about lack of access to apportionment in the ACT emerged in a number of contributions to the inquiry. In his submission to the inquiry Mr Peter Sarris advised the Committee that a block of rural land he owned in Pialligo had been classified as wholly commercial once his application for a lease variation to allow a veterinary hospital to be added to the permitted uses for the site, despite the hospital not being built and it occupying only 10 per cent of the parcel of land. The remaining 90 per cent of the land had a rural use, however the ‘way the legislation is worded is if it is not 100% Residential or Rural then it must be Commercial’. While it was possible to access an apportionment mechanism in the ACT by applying unit title, this was ‘ridiculous if you own the whole parcel of land’.[[93]](#footnote-93)
  7. This issue was also raised by Evri Group in its submission regarding the property, considered above, at 220 Northbourne Avenue, Braddon where, it advised the Committee, commercial rating factors had been applied to the property at the same time as it was valued on its potential as a residential development.[[94]](#footnote-94) In light of this, Evri Group recommended that the ACT government ‘adopt the same system of apportionment of rates as NSW, under which:

if the developable GFA of 220 Northbourne Avenue was 36,000 square metres, for rating purposes, the existing 8,000 square metre commercial building should be assessed on a commercial basis and the balance of the land should be assessed as residential as that is what the UV is assessed on.[[95]](#footnote-95)

* 1. In contrast, the submission advised:

Based on the current system, ACTVO [the ACT Valuation Office] have assessed the entire 36,000 developable GFA on a residential basis and applied the commercial rating factor. Not only has the UV increased by almost 4 times from $5.88M to $21M, the developable GFA has increased significantly and the commercial rating factor applied! [[96]](#footnote-96)

* 1. Mr Steven Flannery, in his submission to the inquiry, advised the Committee that:

Despite the fact that many properties can be used for commercial purposes, the vast majority have Crown Lease purpose clauses which permit a variety of uses including residential and other uses. The most efficient and equitable answer is to assess the unimproved value of the site as at 1 January each year and assess such value based on the then 'highest and best use' and apply this value as at the relevant day. This would require the ACTVO to apportion values for each element ie. Commercial, retail, residential and other uses to make up the total Unimproved Value of a site. This methodology is adopted in other jurisdictions. The $ value ascribed could then be utilised for other administrative tasks such as the assessment of the Lease Variation Charge (LVC).[[97]](#footnote-97)

* 1. Other contributors who expressed views in support of the introduction of apportionment in the context of commercial rates included: Mr Doug O'Mara; the API; the Property Council of Australia, and Mr Paul Powderly.[[98]](#footnote-98)

### Categorisation of property for ratings purposes

* 1. This ability, by ratings systems in other jurisdictions, to offer more fine-grained characterisations which provided a better match to real-life scenarios was also noted not just in response to the question of apportionment, but also in the form of more gradations in categories of land for ratings purposes. Mr Conabere, speaking for the SCCA, told the Committee that additional categories provided an ability to better regulate changes in the land value, and that having a single taxation rate meant that it was less possible to adjust for variations in land value.[[99]](#footnote-99)
  2. He told the Committee that this was ‘a challenge in all rating models’ because rates were inherently ‘broad based’, and that ratings systems had to have ‘sufficient differentiation in land categories for that very purpose’.[[100]](#footnote-100)

### Retrospective levying of rates liabilities

* 1. Contributors to the inquiry expressed concern at instances where the Revenue Office had levied back-rates on properties for which, in the past, there had been a successful application for a change of the use clause in a Crown lease.
  2. The most notable instance occurred in relation to a property in Braddon owned by FANDS (ACT) Pty Ltd. Mr Steven Flannery of FANDS wrote to the Committee on 23 March 2018, before the present inquiry commenced. In the letter Mr Flannery advised the Committee that between 2012 and 2017 FANDS was the owner of the Crown lease for a two-storey building on the western side of Lonsdale Street in Braddon.[[101]](#footnote-101)
  3. The letter advised that Braddon had ‘undergone a profound transformation’ over the previous 10 years, during which it had changed from ‘an area of old services trades buildings and used car yards’ to ‘a focal point of restaurants, entertainment and new inner-city residential development’. This had changed property values.[[102]](#footnote-102) The Committee has heard that although the Commissioner for ACT Revenue was obliged by the Rates Act to determine the UV of leases, including those for which the lease purpose clause had been amended, the Commissioner had not undertaken any review of property values in Braddon until 2017.[[103]](#footnote-103)
  4. In 2008 FANDS applied to the ACT Planning & Land Authority (ACTPLA) for a change to the lease purpose clause for the property in Braddon, to add ‘residential uses’ and ‘restaurant’ to permitted uses. After an initial dispute FANDS paid $67,000 and on 2 November 2011 was officially notified of the variation of the lease.[[104]](#footnote-104)
  5. FANDS believed that valuation reviews were undertaken, and after the variation, from 2009 to 2016, received valuation notices indicating the unimproved value of the property, over which time valuations decreased: from $2,175,000 at 1 January 2009 to $1,678,000 at 17 August 2015. The most recent assessment under these terms was issued on 16 August 2016, when FANDS received a rates assessment for 1 July 2016 to 30 June 2017 based on a land value of $1,678,000.00.[[105]](#footnote-105)
  6. The letter advised that soon after the 2016/17 rates assessment was issued, on 6 September 2016, an officer of the ACT Revenue Office advised FANDS that the land had ‘had a recent change in purpose clause’, and FANDS was advised of the changes in UV for the years 2009 to 2016, starting at 1 January 2009 with an assessed value of $4,320,000 and increasing from 1 January 2010, and in subsequent years to 2016 at $4,800,000.[[106]](#footnote-106)
  7. On the basis of these new valuations, the Revenue Office adjusted rates assessments on the property for the years 2011-12 to 2016-17 as follows.[[107]](#footnote-107)

Table 2 – Adjusted rates assessments for property owned by FANDS P/L, 2011-12 to 2016-17

|  |  |  |
| --- | --- | --- |
| Financial year | Original assessment | Adjusted assessment in 2016 |
| 2011-12 | $23,948.89 | $22,258.92 |
| 2012-13 | $55,248.50 | $87,563.19 |
| 2013-14 | $67,965.85 | $122,536.62 |
| 2014-15 | $76,212.63 | $149,543.03 |
| 2015-16 | $85,129.21 | $164,107.54 |
| 2016-17 | $90,517.64 | $175,389.96 |

* 1. Mr Flannery’s letter advised that these increased assessments resulted in:

an increase in rates of $546,009.30, payable by 15 December 2016, an increase in land tax of $30,462.19, payable by 15 October 2016, and an increase in City Centre Marketing and Improvement Levy of $37,143.04, payable by 15 October 2016 being a total increase of $613,614.53.[[108]](#footnote-108)

* 1. At this point FANDS made a request for an extension of time to pay. The Commissioner wrote back agreeing to interim payment arrangements for six months, pending the outcome of an objection, but stating that ‘interest would continue to accrue on the outstanding balance’.[[109]](#footnote-109)
  2. FANDS objected to the retrospective assessment of rates and took the matter to the ACT Civil & Administrative Appeals Tribunal (ACAT), but obtained little relief from the action.[[110]](#footnote-110) As a result, the letter advised the Committee:

FANDS' owners had to find $613,614.53 for back rates plus $265,907.60 for the next 12 months from October 2016. Based on its rates notices for the previous five years, FANDS had budgeted to pay approximately $90,000 in rates. The consequence was that FANDS had to sell the property in order to meet the rates debt.[[111]](#footnote-111)

* 1. Mr Flannery, in his letter, stated that that retrospective rates ‘should not be imposed to make up for ACT Revenue’s administrative inertia’, and that retrospective rates are problematic because they:
     + ‘Catch businesses by surprise’.
     + ‘Make budgeting with confidence impossible’.
     + ‘May mean that it is impossible to recover under rates recovery clauses in a sublease – the lease may have expired and the tenant may have left’.
     + ‘Mean that purchasers can have no confidence in rates searches. A search which shows no rates owing on a property may later be changed by the Commissioner with the purchaser being met with years of retrospective rates debt’.
     + ‘Destroy business confidence’.[[112]](#footnote-112)

#### ACAT decision

* 1. Mr Flannery’s letter referred to the ACAT decision in *FANDS (ACT) Pty Ltd v Commissioner for ACT Revenue* (No. 2).
  2. In this decision the Tribunal referred to ‘the somewhat episodic and unpredictable nature of aspects of the redetermination process’; that it ‘might be possible to adopt procedures which introduce more rigour and predictability into the system, so that the Commissioner is notified promptly of lease variations that might affect the unimproved value of individual parcels of land’ [270]; and that, ideally, ‘the Commissioner would act as soon as practicable after a change in circumstances has occurred’.[[113]](#footnote-113)
  3. However it also indicated that:

the fact that section 9 of the *Taxation Administration Act 1999* provides that the Commissioner cannot backdate these changes for more than five years, other than in limited circumstances, indicates that the legislature was aware that there might be a delay of some years between a significant ‘change in circumstances’ in relation to parcels of rateable land and a consequential reassessment of tax liability.[[114]](#footnote-114)

* 1. On this basis, the ACAT ruled that:

although it would have been preferable for the Commissioner to have acted much sooner after the change in the purpose clauses in the Crown lease for the subject land, the Commissioner should not be prevented from reassessing the rates, land tax and CCMIL payable in relation to the subject land for the period allowed by the section 9 of the *Taxation Administration Act 1999*.[[115]](#footnote-115)

###### Notification

* 1. Mr Flannery’s letter to the Committee noted that in the ACAT case ‘it was the Commissioner's case that the obligation was on the ratepayer to notify the Commissioner that there had been a change in lease purpose clause so that the Commissioner might then adjust the ratepayer's rates’.[[116]](#footnote-116)
  2. Regarding this, the letter continued:

No such practice exists in the ACT. We have consulted the Property Council of Australia, the Australian Property Institute and various property experts including a highly experienced conveyancing solicitor. We have repeatedly been informed that there is no conveyancing practice associated with the change of lease purpose clause which sees ratepayers notify the Commissioner of a change in lease purpose clause.[[117]](#footnote-117)

* 1. The letter went on to say that:

It should be noted that in the ACAT case the Commissioner and his officers declined to give evidence and be cross-examined about this alleged practice or of any ACT Revenue internal processes to deal with it. A review of Revenue Office found no forms or practice about notifying the Revenue office of changes of lease purpose clauses and there is no evidence that people do notify them. We repeat, the Commissioner did not call any officer to swear to any such practice. He could not have. It does not exist.[[118]](#footnote-118)

* 1. In the ACAT decision, some weight was placed on the question of whether the applicant or the ACT government bore responsibility for making the Commissioner for ACT Revenue aware that the purpose clause of the Crown lease had been changed. The decision noted that the Commissioner had argued that there was:

no proper basis to find that, as a result of the Commissioner having statutory power to work out and assess LVCs from 1 July 2011, the ACTPLA (who previously worked out the CUC for the subject site) had cause to notify the Commissioner. Nor did the lodgement of the variation to the Crown Lease and its registration by the Registrar-General of Land Titles constitute notification of the change.[[119]](#footnote-119)

* 1. The decision also noted that:

Despite the extent of his involvement in such matters, no explanation was given as to why Mr Flannery (or any director of FANDS, or any other person with a pecuniary interest in FANDS) did not notify the Commissioner of the change of purposed clause immediately upon its registration or later upon receipt of the unimproved value and rates assessment in 2012.[[120]](#footnote-120)

* 1. And referenced a previous case where the ACAT had found that:

The Registrar-General of Land Titles is a separate entity to the Commissioner for ACT Revenue. … Registration of a lease with the Land Titles Office does not amount to compliance with the obligation to notify the Commissioner of the rental status of a property.[[121]](#footnote-121)

* 1. Significantly, the ACAT decision referenced evidence provided by the Chief Valuer for the ACT Valuation Office, who told the ACAT that ‘the “standard process” after the registration of a change of use was for the Valuation Office to receive an email alerting it to the change and asking it to consider the valuation in relation to that change’.[[122]](#footnote-122)
  2. In this instance, the ACAT found:

As senior counsel for the Commissioner noted, the *Rates Act 2004* does not prescribe the process that the Commissioner is to follow when determining the unimproved value of each parcel of land. When section 10 is read alongside section 11A (and section 11), it is open to the Commissioner to employ a bulk process for valuing leasehold parcels, while dealing separately with individual leases when the Commissioner becomes aware of changes in circumstances (or errors).[[123]](#footnote-123)

* 1. Regarding this, the ACAT decision found that:

Those factors arguably emphasise the onus on the ratepayer under the Taxation Administration Act 1999 to inform the Commissioner of the ‘change of circumstances’ in relation to their lease.[[124]](#footnote-124)

###### Mass appraisal

* 1. Another matter considered in Mr Flannery’s letter to the Committee was the question of whether the Commissioner for ACT Revenue had discharged ‘his statutory obligation to re-value for both changes in leases and according to market movements’.[[125]](#footnote-125)
  2. The ACAT decision noted that the Commissioner for ACT Revenue had submitted that:

redeterminations of unimproved values for the ACT are done as a mass appraisal using a data set with some annual adjustments to the data set for market trends. Periodically, unimproved values will be regraded based on a location, sampling, and might be zone specific (for example, all CZ3 zoned land). There is no specific program set for regrading, and it is often associated with a specific issue identified in the area. In that context, revaluation is not usually done on an individual block basis.[[126]](#footnote-126)

* 1. The ACAT decision stated that:

Although the Commissioner is obliged by section 10 of the *Rates Act 2004* to redetermine annually the unimproved value of each parcel of rateable land, the evidence clearly demonstrated the magnitude of that task (in terms of the number of leases to be valued) and the limited resources devoted to the task (in terms of the number of ACTVO valuers allocated to it).[[127]](#footnote-127)

* 1. Regarding this, the decision stated that:

In summary, it is apparent that redeterminations of the unimproved value of a particular parcel will be made when the Commissioner becomes aware of a ‘change of circumstances’ of that parcel, or as part of a revaluation to reflect changes in the market for land in an area. In other words, the Commissioner usually attempts to satisfy the statutory obligation by broad scale revaluations and only focuses on individual leases in certain circumstances.[[128]](#footnote-128)

### ACT government view

* 1. These matters were discussed when the Treasurer and his officers appeared before the Committee in hearings of 22 February 2019. They had been previously canvassed in Annual Reports hearings.[[129]](#footnote-129)
  2. The Committee asked the Commissioner for ACT Revenue how it had come to be that he was unaware of the lease variation for the property owned by FANDS in Braddon for a number of years. The Commissioner responded by saying that in this instance the Revenue Office had not been advised by the Environment, Planning and Sustainable Development Directorate that that lease variation had taken place ‘until some period after’.[[130]](#footnote-130) He gave a different answer in Annual Reports hearings in 2018.[[131]](#footnote-131)
  3. The Committee noted that this was a different view to that put by the ACT government in arguments to the ACAT, where it suggested that it was the responsibility of the leaseholder to tell the Revenue Office that there had been a change of lease, and that this was contrary to evidence available to the Committee that there was no mechanism for so doing.[[132]](#footnote-132)
  4. The Treasurer responded by saying that ‘in future it would be useful for that to be clarified’. He put the view that there was ‘perhaps in this instance a shared responsibility’, in that it ‘would not come as a surprise to the property owner that they had varied the lease, because they had undertaken and commenced that process’. In an ‘ideal situation’, the ‘government side of the interaction should have picked that up and it would be my expectation that there is better communication between the planning and leasing area and the Revenue Office’. Equally, he told the Committee, ‘individual taxpayers do also have a responsibility’.[[133]](#footnote-133)
  5. The Treasurer told the Committee that ‘in this instance clearly there has been a problem’, which he would not like to see repeated, and that his expectation was that ‘on the government’s side there is better communication so that we do not have this sort of circumstance arise again’. He went on to say that there was a question, ‘given the lag’ as to how best to ‘manage and negotiate an appropriate time frame for a taxpayer to meet those obligations’, and that the Revenue Office had advised, in hearings, that ‘they have quite a considerable degree of flexibility to be able to respond to those circumstances’.[[134]](#footnote-134)

#### Other contributors

* 1. A number of other contributors expressed their concern regarding the retrospective levying of rates, particularly in relation to the FANDS case.
  2. Mr Alfonso del Rio expressed concern at the fact that ‘the government approves the process to vary the lease, the government signs the lease variation, the government registers the lease variation’, and yet somehow it was ‘the responsibility of the landowner to notify the government, and the government has access to this information’.[[135]](#footnote-135)
  3. He told the Committee that, while it was undoubtedly legal to recalculate rates retrospectively and for a long period, it was a ‘fundamental problem’ as it undermined the taxpayer’s ability to predict costs and reflected badly on the nature of the polity.[[136]](#footnote-136)
  4. The API also made comment on this in its submission to the inquiry, which advised the Committee that the charging of back-rates in relation to lease variations was ‘problematic’ and required further review, in that:
     + the ACT government ‘has the opportunity to reassess Unimproved Values annually, and each Crown Lease holder receives a notice from the ACT Government noting that fact’;
     + landowners, ‘both large and small’ needed to ‘prepare operating budgets of annual expenditure that they can rely on based upon projected operating costs, a major component of which is rates’; and
     + it was ‘reasonable to assume that a statutory organisation such as ACT Government would have systems in place to assure this is, in effect, what happens’.[[137]](#footnote-137)
  5. The submission put the view that:
     + when back rates were ‘issued for an extended period, owners would likely not have budgeted for this and therefore may not have cash reserves to pay, causing [undue] financial stress’; or, alternatively,
     + ‘if left to reassess for a period, in the event a Tenant of the site being responsible for paying statutory outgoings, the lease may have expired and tenant vacated with the owner not be able to recover these outgoings’.[[138]](#footnote-138)
  6. In light of this, the submission recommended that in view of the fact that the ACT government was the approving authority for lease variations, that a mechanism be put in place ‘to trigger reassessment of an Unimproved Value at the time a variation is approved rather than putting the onus onto the property owner’.[[139]](#footnote-139)

### Committee comment

* 1. The *Rates Act 2004* (ACT) confirms the interpretation applied to it by contributors to the inquiry regarding apportionment.
  2. The *Act* states that:
     + *‘commercial land* means rateable land that is not residential land or rural land’;
     + residential land means—

(a) rateable land leased for residential purposes only; or

(b) rateable land leased for residential purposes and other purposes

but used for residential purposes only; or

(c) a parcel of rateable land included in the common property of a community title scheme under the Community Title Act 2001,

if—

(i) at least 1 parcel of land in the scheme is residential land under paragraph (a) or (b); and

(ii) no parcel of land in the scheme is leased for a commercial purpose; and that

* + - rural land means—

(a) rateable land leased for the purpose of primary production only; or

(b) rateable land leased for the purpose of primary production and other purposes but used mainly for primary production; or

(c) a parcel of rateable land included in the common property of a community title scheme under the Community Title Act 2001, if no parcel of land in the scheme is—

(i) residential land; or

(ii) leased for a commercial purpose.[[140]](#footnote-140)

* 1. This bears out the assertion by contributors to the inquiry that ACT legislation provides that parcels of land will be considered as being used for either residential, rural or commercial uses, and that if they are not considered to be used for residential or rural uses, then they are considered to be used for commercial uses — except where, under Division 5.2 of the *Act*, it is proposed to apply unit title to components of the land in question.[[141]](#footnote-141)
  2. A number of witnesses indicated the mechanism available in NSW as a model for a system of apportionment that could be employed in the ACT.[[142]](#footnote-142) Division 5 of the *Valuation of Land Act 1916 No 2* (NSW) makes explicit provision for this.[[143]](#footnote-143) These provisions are reflected in guidance material published by the NSW Valuer-General, which describes the application of a Mixed Development Apportionment Factor (MDAF), which ‘allows a property, which has a mixture of residential and non-residential uses, to be rated on the basis of part residential and part non-residential’.[[144]](#footnote-144)
  3. Although there are other matters which are raised by the commercial rates system in the ACT, consideration of lease variations in the context of commercial rates raises a number of concerns which are symptomatic of the larger field. This chapter has considered four main issues.
  4. First, some owners of commercial property in some classes and locations are facing high vacancy rates and are facing unintended consequences when they seek to vary the use purpose clause of their Crown lease in order to attract a tenant. This produces distress in that the financial pressures, as a result, in some instances make these investments unsustainable: considerably more when the lease variations do not result in tenancies. It appears that this may lead owners to divest, and this is not in the interest of the property market or the ACT as a whole. Uncertainties about the valuation process engaged where there is a lease variation as to a general sense of the unpredictability of the rates regime, which in itself inhibits the free operation of business and investors.
  5. Second, there appear to be significant anomalies in such cases as 220 Northbourne Avenue, Braddon, where a higher use attached to the Crown lease results in a valuation at the top end of the possible scale, but commercial ratings factors are applied: before any benefit may be received by the investor in relation to that higher use. Given the situation at 220 Northbourne Avenue, which at present settings this will continue until—first—commercial tenants finish their leases in 2020 and—second—the building owner commences development (at which point it can apply for remission from the Revenue Office), this appears to be a heavy impost. Some thought must be given to the capacity of business entities to sustain these costs, and the possibility that investors in property will be driven to divest from the ACT and invest in other jurisdictions.
  6. Third is the related question of apportionment. At present the ACT maintains a rates system that, for the most part, determines that a property for rating purposes is either 100 per cent residential, 100 per cent rural, or 100 per cent commercial: in the absence of titling of residential spaces in mixed-use developments. This aspect of the rates system makes a significant contribution to the heavy imposts placed on some property owners, such as in the case of 220 Northbourne Avenue. The Committee has heard that more fine-grained and responsive systems of categorisation are employed in other jurisdictions, notably in NSW and there appears not to be any particular impediment to such an approach being adopted in the ACT.
  7. Fourth—also related to apportionment—is the emergence of cases where back-rates have been levied a considerable time after a change of use was approved for a Crown lease. Here again, the results of this process appear to be a heavy impost which could have potential to threaten ongoing investment and may appear unfair and unreasonable. In this case there are a small number of legislative provisions that require amendment. Even in terms of the practical administration of the Revenue Office, it appears ill-considered to have in place legislative provisions which place all burdens for errors by the Revenue Office on investors who have complied with the law, as it provides insufficient incentive for good practice on the part of the ACT Revenue Office.

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| --- |
| Recommendation 4  The Committee recommends that the ACT government establish a more predictable and transparent means to calculate the value of properties following changes to use clauses in Crown leases, so that owners are able to anticipate the financial consequences of changes of use. |
| |  | | --- | | Recommendation 5  The Committee recommends that the ACT government considers relief to commercial lessees who experience extended vacancies in their properties. |  |  | | --- | | Recommendation 6  The Committee recommends that the ACT government amend the means by which valuations, after changes to use clauses for Crown leases, so that the relationship between valuations ‘before’ and ‘after’ change of use is apparent. |  |  | | --- | | Recommendation 7  The Committee recommends that the ACT government amend the ratings regime to allow for further categories of land use for ratings purposes to allow a better match between land use categories and instances of land use in practice. |  |  | | --- | | Recommendation 8  The Committee recommends that the ACT government introduce a legislative mechanism to allow for apportionment between categories of use. |  |  | | --- | | Recommendation 9  The Committee recommends that the ACT government considers amending the *Rates Act 2004* to provide for commercial rates to be levied on the basis of the actual, activated uses rather than all the possible uses. |  |  | | --- | | Recommendation 10  The Committee recommends that the ACT government clarifies the process used by the Commissioner for ACT Revenue to value Crown leases in the ACT under Section 10 of the *Rates Act 2004* and publish the process on the ACT Revenue Office’s website and include it in information provided to leaseholders about the lease variation process. |  |  | | --- | | Recommendation 11  The Committee recommends that the ACT government amend the *Rates Act 2004* so as to clarify the timing of—and relationship between—the method used to value properties under mass appraisal and the method used to value individual or groups of properties where it is perceived that there has been a significant change in value in a particular area. |  |  | | --- | | Recommendation 12  The Committee recommends that the ACT government consider the appropriateness of long-term retrospective determinations of commercial rates. |  * 1. Some members of the Committee supported the following recommendation.  |  | | --- | | Recommendation 13  The Committee recommends that the ACT government considers compensating rate payers who have experienced sudden large increases in rates because they have had long-term retrospective rates reassessments or have been required to pay rates on the basis of un-activated uses. | |

* 1. Some members of the Committee did not support the recommendation.[[145]](#footnote-145)

## How valuations are conducted

### Introduction

* 1. There are two main determinants of the amount property owners pay in commercial rates. One is the ratings factors that are applied, considered in an earlier chapter of this report. The second is the valuation attributed to the Crown lease.
  2. There are three scenarios in which valuations for commercial leases change. One is where valuations are amended as at 1 January each year under Section 10 of the *Rates Act 2004*, by way of a ‘mass appraisal’ approach. A second occurs when the Commissioner for ACT Revenue has reason to believe that values of particular properties, or groups of properties, have diverged from the valuations characterised in the mass appraisal and manual valuations are performed by the ACT Valuation Office. This has been referred to as a ‘regrading program’[[146]](#footnote-146) and the most recent examples are the cases of Braddon and Phillip. A third is where the owner of a Crown lease seeks to vary its use clause and ‘before and after’ valuations are performed in order to compute a Lease Variation Charge (LVC) and provide a valuation to calculate rates liabilities after the change.
  3. When the Commissioner for ACT Revenue appeared in hearings, the Committee asked questions regarding the manner in which valuations were performed in general. In responding, the Commissioner told the Committee that the Rates Act required that the valuation be based on the UV of the land, and defined what that meant. Essentially, he told the Committee, this was the market value of the land, ‘given willing buyers and willing sellers, and with consideration of the highest and best use of that land’, and that such a valuation would take into account any development rights the lease afforded.[[147]](#footnote-147)
  4. ‘Market value’ and ‘highest and best use’ are not defined in the *Rates Act*: rather they are principles common to valuations, whether conducted in the public or the private sector. The API defines ‘market value’ as:

The estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm’s length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.[[148]](#footnote-148)

* 1. The API’s definition of ‘highest and best use’ is:

The use of an asset that maximises its potential and that is physically possible, legally permissible and financially feasible.[[149]](#footnote-149)

* 1. The Treasurer, in a letter provided to the Committee, described something of the mass appraisal process:

The *Rates Act 2004* requires an annual land valuation for all rateable property in the ACT. Valuations are determined on the basis of unimproved value as at 1 January and take effect following determination by the Commissioner for ACT Revenue on 1 July of the same year.

The valuation approach is ‘direct comparison’ whereby sales of commercial land are considered and a broad adjustment to all properties is made if there is evidence of a change in general commercial property values across the Territory. There has not been a blanket increase in unimproved values across commercial property for the past five years, as there has been an insufficient volume of sales evidence (across the commercial property types) to support a change.[[150]](#footnote-150)

* 1. In the letter, the Treasurer referred to the approach taken where revaluations had been done under a ‘regrading program’:

the unimproved values for some properties have been adjusted for pockets of commercial land in the precincts of Braddon (2017, 2018), Phillip (2017), Fyshwick (2017) and part of City (2018) through a regrading program. This has been necessary as unimproved values of some properties in these areas were out of alignment with market values, relativities within the precinct, and in comparison with properties outside of the precinct. The revaluation of a property will be determined by location, block size, zoning, rights under the crown lease and an appropriate rate per square metre or per unit as determined by comparable sales evidence.[[151]](#footnote-151)

* 1. In addition, the Treasurer made reference to valuations in the context of variations to Crown leases:

Individual properties are also revalued where they have had lease variations that increase the development potential of the property. These revaluations seek to reflect the uplift in the unimproved value of the property from the lease variation. There are around 100 lease variations approved each year.[[152]](#footnote-152)

* 1. A further complicating aspect of valuations as they apply to commercial rates in the ACT is that commercial ratings factors are calculated on a ‘three-year rolling average’ which is intended to compensate for fluctuations in annual revaluations, comprising ‘the average of the current UV and the two prior UVs’.[[153]](#footnote-153)

### The valuations process

* 1. A number of contributors to the inquiry made comment on the valuations process in the ACT.
  2. Mr Greg Cummins of the API commented on the use of mass appraisal in the ACT. He told the Committee that from a distance this seemed ‘like the most economical, quickest and easiest way to do it’, but property in the ACT was ‘a lot more detailed than that’. Due to the existence of Crown lease purpose clauses, it was possible to have ‘two properties side by side with completely different permitted uses’. In the context of mass appraisal, ‘the increase in one property may well end up being the increase in the adjacent property’.[[154]](#footnote-154)
  3. Another problem with mass appraisal in the ACT was 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.[[155]](#footnote-155)

* 1. Mr Cummins also told the Committee that the Territory’s reliance on UV was problematic when there were not many sales of vacant land. This left valuers to analyse the sales of established buildings to derive UVs, which he described as ‘the darkest art’. He went on to tell the Committee there had been attempts to establish a common methodology for this but work on this had stopped some time ago.[[156]](#footnote-156)
  2. Mr Cummins went on to describe what he called discrepancies between bank value and the ACT government’s UV. He said that when valuing for a bank ‘90 per cent of the valuations are land and improvements…’, and commercial and industrial valuations did not place a separate value on land, whereas UVs ‘just analysed land value of the site’.[[157]](#footnote-157) He also made the point that most commercial properties were ‘bought and sold on a commercial term basis on the amount of income that they receive’ rather than the value of the underlying land.[[158]](#footnote-158)
  3. Mr Guy Randell of the REIACT also told the Committee that government valuations on commercial properties were at odds with market value:

If someone sells a property…it could be a private sale…and the valuation is then obtained off the deemed value. They will give a deemed value for the building. I do not know how the methodology is done by the valuers there, but they will give a deemed value of the building, which is not working out to be the actual cost of that replacement, for them to build that building in reality.[[159]](#footnote-159)

* 1. He told the Committee that in this scenario:

The residual amount ends up being the land value, which ends up being a lot higher than what it should be. The surrounding areas are then being hit with that higher valuation. With some of them, we are talking about 2½ to three times their initial rates over the last three years.[[160]](#footnote-160)

* 1. Mr Doug O’Mara of Civium Property Group told the Committee that statutory valuations were statistically derived, and that there was tension between the generalisations that were made and specific characteristics of individual properties, such as a ‘block that might be on a corner versus a block that is large, or skinny but large’, and differences between what could be done on one block and another. Other factors influencing the value of individual properties, in practice, included slopes, frontages, setbacks and improvements.[[161]](#footnote-161)
  2. Mr Phillip Doyle of CBRE Canberra told the Committee that there was ‘no direct correlation between the unimproved value and the value of the property’, and that this made it difficult to anticipate future rates liabilities on behalf of clients whose properties he managed.[[162]](#footnote-162) Similar points were made by the Manuka Business Association and representatives of Phillip Market Place.[[163]](#footnote-163)
  3. Mr Alfonso del Rio of Clayton Utz raised questions over the methodology for calculating ‘before’ and ‘after’ valuations in connection with changes of use clauses for a Crown lease, showing considerable variation between different valuers for both ‘before’ (between $2.1 million and $6.1 million) and ‘after’ (between $7.65 million and $13.4 million) valuations. In light of this he told the Committee that a single UV was ‘a pretty shaky concept’ and, given the apparent subjectivity of valuations, this strengthened arguments that valuations should be conducted by an authority independent of Treasury.[[164]](#footnote-164)
  4. In relation to the mass appraisal process Mr Steven Flannery told the Committee it was ‘fair to say…that the vast majority of Crown leases would be residential and would not change year to year, so that takes out the bulk of the issue’. However variations of Crown leases would more likely occur in commercial or a mixed-use precinct. Which was not always a simple matter of ‘looking through what the Crown lease purpose clauses are for a particular property’. He told the Committee that wording in leases might differ ‘quite insignificantly’, but ‘the impacts of the words that change can have a direct impact on value’. He said that changes happened on a regular basis, so ‘from year to year it is an obligation on the commissioner and their engaged valuer to have some understanding and record-keeping of the changes that occurred during that year before’.[[165]](#footnote-165)
  5. Mr Flannery went into further detail about the diversity of cases within Crown leases in the ACT, and the challenges this presented for meeting the requirements of Section 10 of the Rates Act. He told the Committee that he thought that use definitions in the Rates Act were ‘too simplistic’ because they stated that ‘that unless a property is 100 per cent residential or rural it is deemed to be commercial’. Recent times had seen an increase in the number of mixed-use developments, which had resulted in ‘a more complex end product and mix of uses than probably was evident previously’.[[166]](#footnote-166)
  6. He told the Committee that the ACT saw ‘properties in all sorts of locations in and around commercial areas with different zonings’, with CZ5 zoning being the most common. The Territory had, when selling land over the past decade, applied purpose clauses which were ‘as broad as possible’, in contrast to ‘some of the previous crown leases issued, which were really quite narrow in their use’, and this had led to ‘a mismatch between some crown leases which are very use-specific and the very broad nature of more contemporary crown lease purpose clauses’. In addition, he told the Committee, over the past 20 to 30 years there had been definitional changes in the Territory Plan, so that ‘some of the descriptive words within the purpose clause are not necessarily defined in the new definition’, and as a result there was ‘a distortion there just in terms of marrying potential uses’.[[167]](#footnote-167)
  7. All of this amounted to considerable diversity in the rating base. Mr Flannery told the Committee that in light of this:

Whoever’s job it is to undertake to do that valuation or unimproved value assessment must have regard to the individual crown leases. I understand that it is a big job, and it may be unfortunate, but the reality is that each crown lease is different and sometimes completely different. It could even be next door. The wording, a comma, an “and” or an “or” can change completely the meaning of a purpose clause. So, unfortunately, and as difficult as that could be, the only way to assess is probably on the basis of market value under the terms of the Rates Act, then unimproved value determined by the valuer’s judgement around highest and best use—whatever was permissible at the time and given the market forces of the day, what the land value might be.[[168]](#footnote-168)

* 1. Mr Flannery also spoke about the interplay between highest and best use and what was practically possible for an individual parcel of land. He told the Committee that there might be a number of practical constraints that prevent the actualisation of highest and best use such as constraint within the Crown lease itself, limits set by the planning code or that ‘a residential right might exist but there might be another planning rule which says you must have an active ground floor commercial and it cannot be residential’.[[169]](#footnote-169)

### Regrading program

* 1. Contributors to the inquiry spoke to the Committee about the conduct and effects of area regrading programs, particularly in Braddon and Phillip.
  2. When the Commissioner for ACT Revenue, Mr Kim Salisbury, appeared in hearings of 12 November 2018 he told the Committee that there had been no blanket increase in valuations in commercial properties over the past five years because there was insufficient sales activity. However the Commissioner had identified four precincts for closer investigation.[[170]](#footnote-170)
  3. The precincts identified by the Commissioner were Braddon, because it had ‘gone through quite a bit of renewal and redevelopment from a commercial precinct to more of a residential, retail and entertainment precinct’; Phillip, particularly at Melrose Drive, because ‘the per-square-metre valuation was out of alignment with what was happening in terms of the market’; in the city and Turner because ‘market values were not reflective of unimproved values’; and in Fyshwick because ‘a number of properties there were undervalued compared to the market evidence surrounding them’.[[171]](#footnote-171) In each case, adjustments were made to UV where ‘there was sales evidence that suggested a particular pocket of properties was out of alignment, either internally, compared to other properties in that precinct, or more broadly with other areas in the territory’.[[172]](#footnote-172)
  4. In hearings, the Committee asked the Commissioner why the regrading program in Braddon had been conducted in 2017 when there had been higher rates of change in that area over the past ten years, resulting in substantial increases to UV and thus commercial rates.[[173]](#footnote-173) In responding, the Commissioner told the Committee that a number of property sales in that area had been ‘off-market’—that is that information on for what a property was sold was not made public—and that the Valuation Office needed such information in order to gauge movements in the market.[[174]](#footnote-174)
  5. When asked how it was possible for the Revenue Office not to know the value for which a property changed hands, the Commissioner told the Committee that the office would know for conveyancing purposes, but not for other purposes. However, by 2017 the Office had sufficient evidence to suggest that UVs in Braddon, were ‘significantly out of alignment’ with market values.[[175]](#footnote-175)
  6. In the later hearings of 22 February 2019, the Commissioner told the Committee that the Revenue Office had ‘noticed the changes going on in Braddon’; that it was ‘very much on our radar that at some point we would need to have an in-depth review of Braddon’; and that by 2016 ‘there was sufficient evidence in the market—there had been many transactions—so that we could form a reasonable basis for assessing what the values were in Braddon’.[[176]](#footnote-176)

### Effects of revaluations in Phillip

* 1. Contributors from the Phillip commercial precinct— the proprietor of John McGrath Holden, and owners of properties at Phillip Market Place— spoke about the impact of revaluations. In this instance, the ACT Revenue Office derived an indication of land value from a purchase made by John McGrath’s business interests and applied it across the Phillip commercial precinct, including Phillip Market Place.

#### Mr John McGrath

* 1. In hearings, Mr John McGrath, proprietor of John McGrath Holden and associated businesses, told the Committee that in some instances rates on Crown leases in the Phillip precinct had increased considerably. In the case of 174 Melrose Drive rates had increased by 135 per cent since 2012, which equated to 19 per cent year-on-year. He noted that inflation in the broader economy was running at two or three per cent, and that in view of this he could not see how such increases could be justified.[[177]](#footnote-177)
  2. He noted that valuations of properties had increased, and that his business had objected, in 2016-17, to significant increases in unimproved valuations to its properties. He told the Committee that since 2016 these properties had seen a 66 per cent increase in rates liabilities, and this was for the most part accounted for by a 69 per cent increase in valuations.[[178]](#footnote-178)
  3. Mr McGrath agreed that property values had in fact increased in the Phillip commercial precinct, but that the unimproved valuations conducted by the Revenue Office had gone ‘too high’. On one of the properties owned by his business, the valuation rose from $3.5 million, to $8.2 million. After an objection, the unimproved valuation was amended to $6.2 million. In his view, part of the problem was a ‘fairly substantial time delay between valuations’, as the Revenue Office did not regularly update the valuations.[[179]](#footnote-179) This aspect of the rates burden, he told the Committee, was exacerbated by an increase in ratings factors from 2.61 to 5.17, starting in 2012, which had doubled again since then.[[180]](#footnote-180)

#### Phillip Market Place

* 1. Mr Arthur Lagos and Ms Sharon Cvetanoski spoke to the Committee about their experience as owners of property, and members of the executive committee for the owners’ corporation, at Phillip Market Place.
  2. They told the Committee that Phillip Market Place was situated on the corner of Botany Street and Hindmarsh Drive, Phillip. It comprised nine strata-titled commercial units, of which they owned two. Tenants included: Dan Murphy’s; a Trek bike shop; a number of franchises including Ali Baba, Subway and KFC; Petbarn; and a Salvation Army store. It was, they told the Committee, ‘essentially a convenience centre’.[[181]](#footnote-181)
  3. Central to their concerns was an increase in the UV, for rates purposes, for Phillip Market Place from $4.3 million in 2016 to a present valuation of $13.3 million, a $9 million increase, or more than 200 per cent. As a result, rates were projected to increase from $230,000 to in excess of $600,000 per annum or by $400,000 per annum. This was driven both by the increase in the Revenue Office’s assessment of land value, and an increase in ratings factors from 2.4 per cent to 5.6 per cent.[[182]](#footnote-182)
  4. It was put to the Committee that the Revenue Office’s assessment of increased land value at Phillip Market Place was based on information derived from a purchase of land elsewhere in Phillip by John McGrath in November 2018, for the purposes of housing a Maserati automotive dealership.[[183]](#footnote-183) Mr Lagos told the Committee that John McGrath had purchased the site for $9M, and that the Valuation Office had ‘deemed’ the unimproved value of that site by attributing a nominal value to improvements (that is, buildings) on the site and allocating the remainder to land value. From there the Valuation Office then made new valuations across commercial properties in the Phillip precinct.[[184]](#footnote-184)
  5. There were a number of problems with this methodology, according to Mr Lagos: firstly, the degree to which the properties are comparable; secondly, land utilisation; thirdly, whether the highest and best use could be actualised; and fourthly, the narrow base of information used.
  6. In response to this situation the Phillip Market Place Owners’ Corporation applied for a reduction in amenity including: the removal car sales as a permitted use and a reduction Gross Floor Area (GFA) by 50 per cent consistent with the current use of the site.[[185]](#footnote-185) The Revenue Office revalued the land but only offered a five per cent reduction in rates. There also remained a difference between the Valuation Office’s valuation of the property at $11-12M, and that of the Owners’ Corporation at $8M.[[186]](#footnote-186) The Owners’ Corporation considered this unreasonable, and plan to take the matter to the ACAT.[[187]](#footnote-187)

### Committee comment

* 1. The evidence in this chapter adds to a sense that the present system of valuations for rates purposes is a poor match to the realities of the commercial property market, in a number of ways.
  2. First, the way UV is calculated for rates purposes and the way the value of commercial properties is calculated in the market appear to be entirely at odds. While this is not necessarily a problem, it appears to be in this instance due to unintended effects on value in the commercial market, and this warrants further consideration.
  3. Second, the method by which the Valuation Office ‘deems’ the UV of land after a sale appears to be a crude mechanism, which also results in unintended and harmful consequences for commercial operations.
  4. Third, the procedure employed by the Valuation Office to take ‘information’ from property sales—in some cases, a restricted number of sales—and generalise this as an indication of movements in property value across a wider area appears open to question. The example of the Phillip Market Place considered in this chapter suggests that there is insufficient consideration given, in the course of this process, to significant determinants of value which are pertinent to individual parcels of land. The Committee sought to find out exactly how many leases in the Phillip area would be directly affected by the sale of a block to build a Maserati showroom, however in answer to a question on notice the government could not provide that information.[[188]](#footnote-188) The Committee does know, from the evidence before it that businesses at some distance from the Maserati site, that have no prospect of being converted to car yards, have experienced large revaluations on the back of this one sale.
  5. Fourth, reductions in some taxes and charges, which have been represented as off-setting increases in rates liabilities, appear to be irrelevant to the circumstances of many owners of commercial property. It is in the interest of both the Territory, and owners of commercial property, that investment and other business activity prosper in the ACT, and in light of this there should be due consideration of whether higher rates imposts on commercial property owners—and their flow-on effects for tenants of commercial properties—are sustainable in the present environment.
  6. Fifth, it appears that commercial property owners perceive the current rates system—including valuation methodologies—as uncertain, unpredictable and unfair. Again, this does not foster business activity in the Territory and some consideration should be given to altering this so that investors and businesses experience reasonable taxes and charges, and are able to anticipate, with some degree of certainty, future business costs.
  7. In general, the Committee considers that the evidence provided appears to point to an overall system for determining valuations and rates which has led to increased costs and uncertainty for some leaseholders. It does not appear to be possible to conduct mass appraisal with a sufficient degree of confidence that the results of the appraisal will match the Territory’s complex set of lease purpose clauses. The ways of ‘deeming’ value to the land component of commercial properties, and applying ‘information’ from one sale in a precinct to other properties in that precinct may be perceived as unjust and unfair. Further consideration must be given to the underlying causes, and potential remedies, for this situation.

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| Recommendation 14  The Committee recommends that the ACT government review the mass appraisal and periodic revaluation processes to determine whether the current mix meets the tests of equity and fairness. |

## Amounts paid by property owners

### Introduction

* 1. The amount paid by property owners for commercial rates is determined by two factors: firstly the Average Unimproved Value (AUV) of their property, a three-year rolling average of the UV; and secondly the rating factor applied to their property’s AUV.
  2. Chapter 4 outlined the process for calculating the UV of properties to which the rating factors apply. Chapter 2 discussed the formula applied to the AUV.
  3. The Committee heard evidence that the increases in the commercial rates ACT property owners have been paying over the last several years are having deleterious impacts on the viability of business in the Territory and making it a less attractive location for commercial property investors.

### Amounts paid by property owners

* 1. As noted in Chapter 1, the ACT is currently going through a process of tax reform. As part of this process, land tax on commercial properties, conveyancing duty on commercial property sales of under $1.5 million and duty on insurance have been abolished. Commercial rates have been increased to recoup losses from these revenue sources.
  2. Many submitters and witnesses expressed support for the principle of tax reform but indicated concerns with how the process has been managed by the ACT government and with how much commercial rates have been raised as part of this process.
  3. The Property Council of Australia advised the Committee that:

The Property Council supports the ambition of the ACT in undertaking tax reform to transition away from inefficient transactional based taxes such as stamp duty. However, six years into the 20-year transition, the implementation of the Government's agenda has been flawed.

The current reforms and underlying design of the ACT general rates system are imposing increasingly significant financial burdens on the property industry. For example, while rates have risen by up to 200% in some areas, the rental increase from 2010 has been limited, in most instances being limited toless than CPI.[[189]](#footnote-189)

* 1. Similar concerns were expressed by the Master Builders Association of the ACT and the Canberra Business Chamber.[[190]](#footnote-190)
  2. The Canberra Business Chamber also advised the Committee that:

…the implementation of the tax reform process to date has resulted in a more unstable and uncertain tax system. The lack of any outline over the 20-year period has meant there is uncertainty over where commercial rates will end up during the two decades of transition. This is affecting the profitability of Canberra businesses now, as well as limiting the attractiveness of the ACT as a future investment destination.[[191]](#footnote-191)

* 1. The concern expressed by such submitters and witnesses was that commercial property owners were being forced to pay a disproportionate cost for the tax reform process compared to residential property owners. They suggest that these costs are unfair and unsustainable and will inevitably result in the failure of some businesses.

#### Amounts paid by owners in commercial rates

* 1. The SCCA provided the Committee with a comparison of the amounts its Canberra-based members would pay in statutory charges if their properties were located in Queensland and NSW compared to the actual amount they pay in rates in the ACT.[[192]](#footnote-192)
  2. In devising a methodology for the comparison, the SCCA took into account the variables in the rating and taxation systems across the jurisdictions. The comparison noted that if the SCCA’s Canberra-based members’ properties were located in NSW, they would pay nearly 80 per cent more in rates; if located in Queensland, they would pay nearly 20 per cent more in rates.[[193]](#footnote-193)
  3. In response to a question taken on notice, the SCCA provided the Committee a detailed table outlining this comparison. This is reproduced at Table 3.[[194]](#footnote-194)

Table 3 – SCCA Comparison of ACT Rates with NSW and Qld

|  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| ACT | | | NSW | | | | Qld | | | | Variance | |
| ACT Centres | **AUV**  **$** | **Rates**  **$** | **Proxy**  **Tax Rate**  **%** | **Rates**  **$** | **Land Tax**  **$** | **Total**  **$** | **Proxy**  **Tax Rate**  **%** | **Rates**  **$** | **Land Tax**  **$** | **Total**  **$** | **ACT-NSW**  **%** | **ACT-Qld**  **%** | |
| Woden | 34,937,000 | 1,802,567 | 0.0093 | 324,914 | 618,816 | 1,006,730 | 0.0209 | 730,183 | 798,425 | 1,528,608 | 79 | 18 | |
| Belconnen | 44,890,00 | 2,321,539 | 0.0093 | 418,314 | 882,676 | 1,300,990 | 0.0209 | 940,082 | 1,049,500 | 1,989,582 | 78 | 17 | |
| TOTAL $ |  | 4,124,105 |  |  |  | 2,307,720 |  |  |  | 3,518,190 | 79 | 17 | |

* 1. Other submitters to the inquiry similarly noted significant increases in the rates they are paying. The Manuka Business Association reported the following examples of increases in the rates that member businesses have been paying:
* 79.9 per cent increase over the last eight years;
* 78.1 per cent increase over the last eight years;
* 266 per cent increase on Manuka Avenue since 2010;
* almost double between 2012 and 2019;
* 26 per cent increase in 2013/2014, 17 per cent increase in 2015/2016 and between four and six per cent increases in other years.[[195]](#footnote-195)
  1. Also from the Manuka area, Mrs H Samios submitted that her character/heritage property on Bougainville Street has attracted significant commercial rates increases in recent years. She advised the Committee:

The current 2018/19 year rates charge for the property is now 284% higher than it was for the 2011/12 year…

Between 2011/12 and 2012/13 the rates bill rose $17,228.32 for the year. In the next year 2013/14, the annual rates charge for the property increased a further 24% adding another $7,412.90 to the annual bill. In 2014/15 and despite such enormous increases for the previous two years, the rates charge still increased another 11.2%. In the remaining five years that followed through to 2018/19 there had been further annual increases of between approximately 4% and 8% every year.[[196]](#footnote-196)

* 1. In Chapter 4 the Committee reported on the increased rates paid by the owner of the Phillip Market Place[[197]](#footnote-197) and the John McGrath Auto Group.[[198]](#footnote-198) Mr McGrath also highlighted the ‘tremendous disparity in rates’ paid by his Canberra properties compared with his other businesses in NSW, where he pays rates of $4.23 per square metre. In contrast, the rates for his Canberra properties are: Phillip at approximately $45 per square metre; and Belconnen, Mitchell and Fyshwick at approximately $15 per square metre.[[199]](#footnote-199)

#### Paying the equivalent of stamp duty every year

* 1. The Committee heard evidence that while people felt the abolition of stamp duty on commercial properties of under $1.5 million was a positive step by the ACT government, existing owners of property gain no benefit from this change, and in fact, are paying markedly higher rates as a consequence of the tax reform process.
  2. Mr Guy Randell of the REIACT told the Committee that only a small proportion of the community benefiting from the cut in stamp duty as most owners only buy one property and that ‘stamp duty reduction means zero to them, but they are paying 5.6 per cent a year in rates and charges. They are paying stamp duty every single year on their property—more than stamp duty.[[200]](#footnote-200)
  3. Ms Adina Cirson from the Property Council of Australia, likewise, told the Committee that, while they supported the removal of conveyancing duty for commercial sales of less than $1.5 million, ‘in effect, the property industry is paying the equivalent of a stamp duty like charge every single year at five per cent for properties over $600 000’.[[201]](#footnote-201)
  4. This sentiment was shared by Mr Archie Tsirimokos, Chair, Canberra Business Chamber, who told the Committee the increased rates were onerous ‘particularly for property owners who have owned property for some time and who paid the stamp duty a number of years ago. They also now have this effect of having to pay that stamp duty, effectively, annually. The effect is a significant reduction in net incomes for property owners’.[[202]](#footnote-202)
  5. Mr Peter Sarris also mentioned this situation and contrasted it with the rating systems in other jurisdictions. He told the Committee that the losers are people who have owned blocks of land for an extended period. Now their rates equal stamp duty, year on year and concluded that ‘no other jurisdiction that I know of comes anywhere close to that’.[[203]](#footnote-203)

#### Amounts paid by tenants

* 1. The Committee heard contrasting evidence on the impact of rates increases on tenants. Depending on the location of rental property, the surrounding vacancy rates, and the nature of the sublease agreements tenants hold with their landlords, some tenants are paying more outgoing expenses due to the increase in rates while others have not significantly felt the impact of these increases.
  2. In particular, tenants who hold net subleases have felt the full impact of rates increases as these rises have been passed directly to them. Tenants with gross subleasing arrangements have avoided the impact of rates increases during the term of their sublease.
  3. In other situations, high vacancies have meant that rents have actually been stagnant, or declining, but nonetheless rates have increased. This situation has meant that property owners have been unable to pass on these increased costs to existing, or potential, tenants. More is said about this in the following chapter.
  4. Mr Peter Maguire rents a unit in Fadden shops for his hairdressing business. He told the Committee that the main rise in rent that he sees is linked to an annual CPI-based increase.[[204]](#footnote-204)
  5. Mr Michael Holmes, a commercial tenant at the Farrer Shops, indicated that he had not felt the impact of rates increases. He told the Committee that ‘I purely pay rent. I am not required to pay the outgoings on top of that’ and that ‘I am aware of the rates that the landlord pays, and there has not been what I consider to be a material increase at all’.[[205]](#footnote-205)
  6. Representatives of property owners in the Phillip Market Place told the Committee of some of the difficulties owners have in passing on statutory costs to their tenants. Mr Arthur Lagos noted that if an owner has a gross leasing agreement with a tenant, they cannot pass on costs. He also told the Committee of limits imposed by the market on the ability of owners to pass on costs:

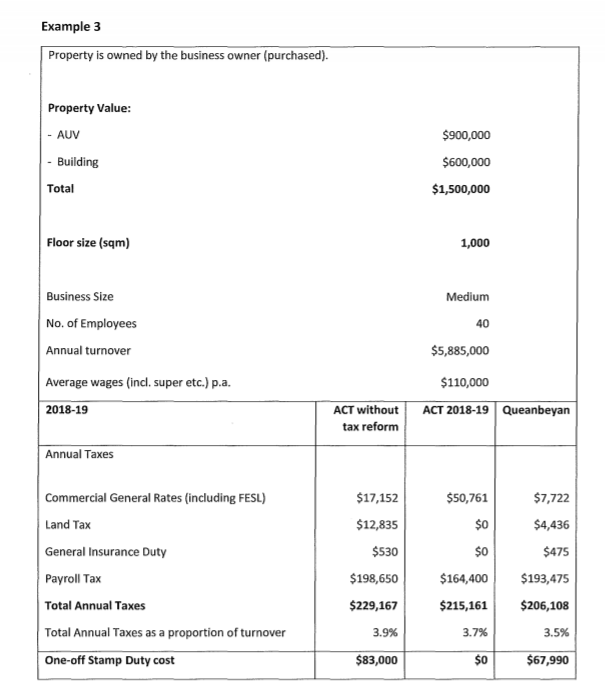
The Salvation Army cannot charge more for second-hand clothes. Dan Murphy’s cannot put an extra $10 on a slab of VB; people will not buy it. There are competitive forces out there.[[206]](#footnote-206)

* 1. In contrast to this, other tenants have had more challenging experiences in dealing with the rates increases. Mr David Quinn, Manager and Partner, the Duxton at O’Connor, told the Committee that he has a long-term sublease that includes responsibility for all of the rates. His rates contributions have increased over the past three years by $40,000 or 187 per cent. Based on the current rating factor he estimates his rates will increase to $57,000, or by 253 per cent next year. He told the Committee this ‘is a significant sum, taken directly from the bottom line, without return’.[[207]](#footnote-207) The increased rates borne by the business based on the current rating factor are set out at Table 4.[[208]](#footnote-208)

Table 4 – Duxton at O’Connor – Rates Increase

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Financial Year | UV $ | AUV $ | Rates $ | Annual Increase $ | Annual Year-on-year Increase % | 3-year Increase $ | 3-year Increase % |
| 2014/15 | 465,000 | 473,000 | 20,064 |  |  |  |  |
| 2015/16 | 465,000 | 465,000 | 21,654 | 1,589 | 8 |  |  |
| 2016/17 | 465,000 | 465,000 | 22,862 | 1,208 | 6 |  |  |
| 2017/18 | 1,400,000 | 776,667 | 42,114 | 19,252 | 84 |  | 110 |
| 2018/19 | 1,400,000 | 1,088,333 | 62,042 | 19,928 | 47 | 40,388 | 187 |
| 2019/20 | 1,400,000 | 1,400,000 | 80,711 | 18,669 | 30 | 57,849 | 253 |

* 1. The Chief Minister and Treasurer’s submission to the inquiry did not provide a reconciliation of commercial rates liabilities in successive financial years. It did however present three examples showing commercial rates before tax reform and in the 2018-19 financial year. One example is shown below.[[209]](#footnote-209)



#### Residential valuation, commercial rating factor

* 1. As discussed in Chapter 3 in relation to the issue of apportionment and the situation of Evri Group and their property at 220 Northbourne Avenue, some commercial property owners pay significantly higher rates due to valuations of their properties based on residential use clauses in their Crown leases and the application of commercial ratings factors to their properties’ AUVs. This often occurs despite the residential use clause of their Crown lease not being activated.
  2. The API explained the situation in their submission to the inquiry. They advised the Committee that:

There are many examples where properties in the inner suburbs of Canberra may have ‘residential’ as a permitted use in their Crown Lease, and in recent years this use has been determined as the “highest and best” value of the site. Thus the Unimproved Value has been reassessed accordingly. This is despite the fact that some sites may been developed a number of years ago with commercial building and are currently being used for commercial purposes (given this was the highest and best use back at the time the site was developed).[[210]](#footnote-210)

* 1. As noted in Chapters 3 and 4, according to the ACT’s rating process, unless a property is categorised as 100 per cent residential, it attracts a commercial rating factor to its AUV, which is nine times higher than the residential factor. This creates significant impost when properties are valued as residential properties according to ‘highest and best use’, yet attract commercial rating factors.
  2. Mr Guy Randell told the Committee that industrial areas are struggling, especially those that might have a CZ3 residential use because ‘…those premises have never been residential; nothing around it is residential and never will be residential’.[[211]](#footnote-211)
  3. Mr Doug O’Mara also told the Committee that if a use permitted in a Crown lease was not being used, it was questionable whether it was a realistic basis for a valuation, again drawing a contrast between market valuations and those performed for the purposes of calculating rates.[[212]](#footnote-212)
  4. Ms Susan Proctor, Representative, Manuka Business Association, told the Committee about her situation on Murray Crescent in Manuka:

…the rates we are paying are significantly higher than they would be in other precincts. That is because they are largely attached to the highest and best use, which is residential, in a lot of those circumstances. The residential rating value is the land value assessment and the commercial multiplier is then applied, to determine the use. The disparity between the residential multiplier and the commercial multiplier is significant.[[213]](#footnote-213)

* 1. To illustrate the disparity in the amounts paid by property owners whose property is valued as residential land, but rated according to commercial rating factors and residential land rated at residential rating factors, Ms Proctor told the Committee:

My building is located next to a residence. We have a central wall between our two buildings. We have identical services in terms of both taking the same garbage bins out into the street for collection every Friday. That is the only distinction in service, yet the rates that I am paying in my self-managed super fund are $40,000 and the general rates of the residents next door are $4,000. That is the disparity.[[214]](#footnote-214)

### Committee comment

* 1. Evidence considered by the Committee in relation to the amounts paid in rates by commercial property owners and their tenants suggests that they bear a heavy tax burden. At the outset the ACT government stated that the 2012-13 tax reform process would be ‘revenue neutral’; that land tax on commercial properties would be abolished, and that the resulting transfer (from commercial land tax to commercial rates) would be ‘cost neutral for individual businesses’.[[215]](#footnote-215) This is not consistent with evidence provided by owners of commercial properties, who appear to have experienced significant increases in costs since tax reform commenced.

|  |
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| Recommendation 15  The Committee recommends that the ACT government prepare a reconciliation of revenue foregone and raised in the transfer from duties to a broad-based property tax. |

## Impact on leasing costs, property values and business viability

### Introduction

* 1. The Committee heard evidence of the wide-ranging impact the rise in commercial rates is having on ACT businesses. Witnesses and submissions provided the Committee with evidence that these increases are largely being absorbed by property owners, who are seeing diminishing returns on their property investments. This is resulting in declining property values and making business in the ACT less viable.
  2. The declines in property values, combined with the diminished returns from commercial property investments, is also negatively impacting the ability of small and medium sized businesses to access finance. This is especially so given the recent tightening of lending criteria by banks in response to the outcomes of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

### Leasing costs

#### Flat commercial rental market

* 1. The Committee heard evidence that some sections of the commercial rental market in the ACT has been flat for some years. This significantly impacts the ability of property owners to pass on the costs of increased rates to tenants in the form of higher rents. Rising rates combined with a flat rental market means the increasing rates costs must be borne by property owners. This significantly impacts owners’ capacity to invest in capital improvements for their properties.
  2. Mr Guy Randell told the Committee that while for most commercial property owners rates have gone up four-and-a-half to five times in the past six years, ‘rents have not gone up at all’.[[216]](#footnote-216) Echoing this evidence, the Property Council of Australia advised that this situation meant that ‘landlords are generally bearing the costs of these unknown increases’.[[217]](#footnote-217)
  3. Ms Adina Cirson, ACT Executive Director, Property Council of Australia, reiterated this statement. She told the Committee that ‘our leasing structures in the ACT means that sometimes these costs are not able to be passed on through the leases, but are actually borne by the building owners and restrict and prevent them from reinvesting in and refurbishing their own building properties’.[[218]](#footnote-218)
  4. Ms Carolyn Mowbray, State Director (ACT), Egan National Valuers, told the Committee about the flattening of the rental market and provided specific examples of this in Phillip and Manuka.[[219]](#footnote-219) Mrs H Samios also submitted about the flat rental situation in Manuka.[[220]](#footnote-220)
  5. The Manuka Business Association shared these concerns. They submitted that the increases in rates without a commensurate increase in government services, had negatively impacted the viability of the commercial rental market in Manuka. Higher rates costs meant that property owners had reduced capacity to reinvest into their commercial property for capital improvements, leaving the precinct less attractive to potential tenants. This, in turn, has seen rents flatten in the precinct, making it impossible for property owners to pass on the costs of increased rates charges to existing or potential tenants.[[221]](#footnote-221)
  6. In a similar vein, the Canberra Business Chamber submitted that higher rates together with flat rents is negatively impacting the bottom-line of businesses. They advised the Committee that: ‘lower returns means there is less money to cover operating expenses and capital improvements, which in turn reduce the amenity of commercial properties’.[[222]](#footnote-222)
  7. Deakin commercial property owner, Mr Robert Smith-Saarinen, submitted about how the flat rental market directly impacts the value of properties. He advised the Committee that:

I am the landlord, to increase the value of my property to sell it or to satisfy the bank, I need to increase the rent, if I tried to sell it now, I would get less than I paid for it with the current rent, so to maintain the value I really have to pass on the increase, this is not great given the high vacancies in the area, my property is B grade and would typically rent lower.[[223]](#footnote-223)

* 1. Mr Doug O’Mara told the Committee how high rental vacancies ‘has a significant detrimental impact on values’.[[224]](#footnote-224) He went on to note further impacts of this situation:

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 … [The banks] 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.”[[225]](#footnote-225)

* 1. This issue is discussed in more detail below.

### Property values

#### Declining returns on investment and decreasing property values

* 1. Ms Kate Carnell AO, Australian Small Business and Family Enterprise Ombudsman, told the Committee that the ‘quite significant increases in commercial rates’ faced by ACT commercial property owners means that ‘the return on investment on the property is significantly reduced’, unless property owners are able to pass these increased costs onto their tenants. This, in turn, results in a reduction in the value of the commercial property.[[226]](#footnote-226)
  2. The API indicated in their submission to the inquiry that the increase in rates is negatively impacting returns on property investment and resulting in decreased property values. They advised the Committee that:

The most common methodology of purchasing a commercial property is by calculating the potential net rental income the property could generate. Net rental income is calculated by subtracting the annual estimated operating costs of the asset (rates, insurance, electricity etc.) from the rental paid by the tenants. Any increase in rates lowers the net income in direct proportion and therefore the amount a purchaser may pay for the premises.[[227]](#footnote-227)

* 1. Commercial property owner, Mr Scott Molloy, told the Committee how the value of commercial properties is determined by how much return they can produce and that increasing rates directly impact the value of properties:

…every thousand dollars of extra expenses on a commercial property drops your net return by a thousand dollars. Based on a seven per cent yield, which all investors want on a commercial property, every thousand dollars less in income you have means that your property drops $15 000 in value. So it has a major effect. With those rate increases, if you put rates up by $2 000 you have just dropped the value of that property by $30 000 like that.[[228]](#footnote-228)

* 1. The representatives of Phillip Market Place made a similar point.[[229]](#footnote-229)
  2. In their submissions, Mr Barry Faux and Mrs H Samios reported a decline in the value of their properties and tied this to rates increases.[[230]](#footnote-230)
  3. The Manuka Business Association also advised the Committee that: ‘The increase in rates but not proportionate increase in services in the area has resulted in diminishing returns for commercial property owners’. Their submission included an example of one property owner on Bougainville Street that ‘reported that nearly 50% of their rent is used to pay rates alone’.[[231]](#footnote-231) A similar example was raised by Mr Guy Randell.[[232]](#footnote-232) The impact of such diminishing returns on investment is that value of such commercial properties is reduced.

#### Impact on business borrowing capacity

* 1. Ms Carnell told the Committee that the reduction in property values caused by diminishing returns on property investments has impacts on the capacity for small business to access finance:

The problem for owners of those properties…is that the banks’ interest in lending them money to redevelop their commercial properties to get their commercial properties up to the sort of level that probably needs to happen to compete adequately with some of the newer buildings…is incredibly difficult.[[233]](#footnote-233)

* 1. The lower returns accruing to property owners and the consequential reduction in property values has occurred at a time of stricter lending criteria and heightened regulatory vigilance resulting from the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. Ms Carnell told the Committee that, as a result of these factors, ‘currently in the finance market in Australia the big banks, which lend something like 82 per cent of money to small to medium businesses, have really closed the doors’.[[234]](#footnote-234)
  2. Ms Anne Scott, Principal Adviser, Small Business, Australian Small Business and Family Ombudsman, told the Committee that lending conditions have become tighter particularly in the last four to six months. Further to this, she told the Committee that:

More worryingly, small businesses that are coming up to the end of their loan facility period and then going to renegotiate a new loan with their bank are finding that the door is now shutting on them. Their existing arrangements and the revenue they are generating from the business were good enough before, but they are not good enough now. When you overlay increased pressure on the business through either the rates directly or the transfer of the rates to that business’s overheads, there are even more reasons for the banks not to continue finance arrangements with the business.[[235]](#footnote-235)

* 1. Ms Scott told the Committee that ‘if you have increasing costs and lowering values of property, and the bank is being reluctant to lend anyway, that is a perfect storm’.[[236]](#footnote-236) Mr Doug O’Mara made similar remarks.[[237]](#footnote-237)
  2. The Committee heard from other witnesses, including Ms Susan Proctor and Mr Barry Faux about the stricter lending environment for small businesses and how this directly related to rising rates charges.[[238]](#footnote-238)

### Business viability

#### Flat consumer spending

* 1. The Committee heard evidence that consumer spending is currently low, making it difficult for businesses to pass on rising costs to consumers, or otherwise absorb these costs through increased sales activity.
  2. Ms Carnell told the Committee that ‘for small businesses in a pretty flat environment, particularly in hospitality, restaurants and retail—that the capacity to pass on [the increases in commercial rates] to consumers is really low’. She added that ‘We know that the market is flat and we certainly know from the stats that profits have been pretty flat for the past five years, even when revenue has gone up a bit. The increase in commercial rates…has hit the bottom line. Their capacity to pass on is low.’[[239]](#footnote-239)
  3. In response to a question on the capacity of retail businesses absorb the costs of rates increases by selling more products, Mr Guy Randell told the Committee that ‘We are in a struggling retail market. Look at the evidence in the retail market at the moment. Australia is not a growth sector in that retail market, so people do not have the disposable income’.[[240]](#footnote-240)
  4. Chapter 5 noted how properties owners of Phillip Market Place are hindered in passing on the cost of increased rates to tenants by market forces. Mr Arthur Lagos also told the Committee that:

This problem in the retail sector…is further fuelled by the broader economic situation, the softening of the housing market, which is being felt at the checkouts of many Australian retailers… Annualised sales are growing in real terms of maybe one or two per cent per annum. I see that in my turnover. The sales are sluggish. Therefore the capacity for the rent to grow is hindered because of broader economic factors.[[241]](#footnote-241)

#### Possible relocation across the border

* 1. The Committee heard evidence that the increase in commercial rates and the impact this is having on the viability of ACT businesses has pushed some business owners to consider relocating across the border to Queanbeyan and other parts of NSW.
  2. In a submission to the inquiry, the Treasurer of the ACT advised the Committee that ‘when comparing across jurisdictions, it is also important to take into account the full range of state and local government taxes paid by businesses. Commercial rates are just one tax that businesses pay’.[[242]](#footnote-242)
  3. The Treasurer noted that ‘other taxes to consider include commercial land tax, stamp duty, payroll tax and insurance duty’. The Treasurer advised that commercial land tax had been abolished, stamp duty was being phased out and ‘the ACT’s payroll tax threshold is the highest in the country at $2 million, meaning that around 90 per cent of businesses operating in the ACT pay no payroll tax’. In summary, the Treasurer submitted that:

Taking all of these taxes into account, many small businesses in the ACT pay less is state and local government taxes than similar small businesses across the border in New South Wales…[[243]](#footnote-243)

* 1. Ms Carnell addressed this point. She told the Committee that the majority of small businesses in NSW do not pay payroll tax and that ‘I do not accept that that is an argument to suggest that is reasonable to have commercial rates in Queanbeyan that can be 10 per cent of what they are in the ACT. We compete directly.’[[244]](#footnote-244)
  2. Mr Greg Cummins and Mr Doug O’Mara also suggested that the lower commercial rates in Queanbeyan are attracting some ACT businesses across the border, while the Master Builders Association of the ACT advised that some of its members are considering relocation to Queanbeyan in order to deal with increasing government charges.[[245]](#footnote-245)
  3. The Master Builders Association of the ACT provided an example contrasting rates payments in the ACT with charges in Queanbeyan. A Fyshwick property with an AUV of $748,000 is required to pay $41,655.73 in rates, whereas a property in Queanbeyan with a Rateable Land Value of $1,530,000 is required to pay $18,115.17 per annum.[[246]](#footnote-246) Mr Gerard Eschauzier provided similar evidence in relation to his ACT and Queanbeyan properties and Mr Scott Molloy contrasted the ACT commercial rates of 7 per cent with those in Queanbeyan of 1 per cent.[[247]](#footnote-247)
  4. The Capital Property Group compared the ACT rates with those in the City of Sydney. They advised the Committee that:

…the council rates payable for commercial property in the City of Sydney is 1% on the unimproved land value and land tax is 1.6% above a threshold. Even without considering the threshold this is 2.6% of the unimproved land value, with stamp duty in NSW above the threshold of $1m at 5.5%. In the ACT, rates & taxes including the FESL [Fire and Emergency Services Levy] & CCMIL [City Centre Marketing and Improvement Levy] are at 6.156%, more than twice that of Sydney, and owners who buy property for more than $1.5m still have to pay stamp duty of 5%! This is significantly out of step with other investment jurisdictions and will start to have consequences for the investment market in the ACT.[[248]](#footnote-248)

#### Uncertainty surrounding rates

* 1. Appearing before the Committee, Mr Alfonso del Rio, told the Committee that property owners need predictability in the rates process in order to budget for future expenses. By way of analogy, Mr del Rio tied this need to the ACT government’s concern through the tax reform process to make revenue more predictable. He told the Committee that, in engaging on the tax reform process, one of the government’s main principles was ‘stability’:

…that revenue is broadly predictable so that future revenue can be predicted. I would just like to make the observation that there is a flip side to that which does not seem to have been accepted, which is that as a property owner you also want to know that your expenses are predictable. It is fine for the territory to say that revenue needs to be predictable, but it is also, I would have thought, a principle of stability that the property owner have a broadly predictable system so that their future expenses are broadly predictable, which is obviously one of the main concerns of people who have addressed the Committee.[[249]](#footnote-249)

* 1. The Manuka Business Association commented on the impact of the uncertainty surrounding rates increases. They advised the Committee that:

The system leaves commercial property owners with no ability to predict future costs, which has led to uncertainty for attracting and keeping tenants. Small business owners equally are unable to predict outgoings and future expenses; raising issues of long-term viability in Manuka. This inability has resulted in longer vacancies and uncompetitive rents for commercial property owners.[[250]](#footnote-250)

* 1. The SCCA and Mr David Quinn on behalf of the Duxton at O’Connor made similar points.[[251]](#footnote-251)

### Committee comment

* 1. This chapter has provided further context for perceptions by contributors to the inquiry that the tax burden of owners of commercial properties has increased considerably. The reported effects include increased risk to the sustainability of investments and businesses and unintended incentives for investors and businesses to relocate outside of the Territory. These effects are compounded by flat consumer demand and a climate of uncertainty as a result of investors and businesses not being able anticipate their future rates liability. Together, these factors may create the type of uncertainty for investors and businesses which will begin to have an impact on business viability. The result of this might be that businesses no longer have the capacity to pay their increasing rates bills.

## Effectiveness and impact of the system

### Introduction

* 1. This chapter responds to Term (2) of the Terms of Reference for the inquiry, ‘the effectiveness of the commercial ratings system and the impact it is having on businesses and the property sector in Canberra’.
  2. The chapter considers anomalies generated by the present rates regime before considering: resourcing of the Revenue Office; transparency and equity in the system; appeals where decisions are disputed; and whether the Revenue Office is at present in an apprehended conflict of interest in administering aspects of the rates regime, particularly valuations, and whether the Territory would fare better if these functions were performed by an entity independent of Treasury, as they are in NSW.
  3. The Committee, in the course of the inquiry, was made aware of a number of instances where anomalies had been generated by the present rates regime and its administration.
  4. This included: a matter raised by an owner of commercial property in Fyshwick regarding an anomalous rates impost; a suggestion that the present rates regime was a poor fit for heritage properties in the Territory; a matter raised by the owner of commercial property in Tuggeranong; apparent unintended effects on small and self-funded superannuation schemes with investments in commercial property; and unintended effects of the present regime on car parking spaces in unit-titled developments.

### Anomalous valuation—Fyshwick

* 1. Ms Karen Paxton is the owner of a commercial property in Geelong Street, Fyshwick, regarding which she made two submissions to the inquiry,[[252]](#footnote-252) and appeared before the Committee in hearings.[[253]](#footnote-253)
  2. In her submission and spoken testimony she expressed concern regarding the valuation and consequent rates impost for a separately-titled parcel of land that was attached to her main commercial property. The subsidiary property was ‘physically separate’ but ‘legally adjoined to’ the main property, which was subject to a units plan.[[254]](#footnote-254)
  3. The subsidiary land of 290 square metres was formerly part of a railway easement. While in instances ex-railway easements in Fyshwick had been amalgamated with the land with which they were associated, in this case the land remained legally separate and was thus treated as a ‘saleable block’, ‘notwithstanding the many restrictions on its use to just parking and storage’, for the purposes of valuation by the Revenue Office.[[255]](#footnote-255)
  4. In 2016-17 the valuation of the subsidiary parcel of land ‘tripled’ to 305 per cent of its previous value. This was ‘out of all proportion to any other valuations in this area of Fyshwick, and the magnitude of the increase was, in her knowledge, ‘unprecedented’.[[256]](#footnote-256)
  5. This was a small block with ‘highly restricted use’ under its lease purpose clause and could only be used for parking and storage. The restrictions affecting use of the land were, to quote Ms Paxton’s submission:
* Its dimensions (7.6 m x 38.1 m) which preclude any development.
* The requirement to provide parking for the main property [Unit 1] is the land’s pre-eminent use.
* It can only be used for parking and / or storage, with the parking requirement overriding any storage.
* It cannot be sold independently.
* It can only legally be sold in conjunction with (and as part of) Unit 1 in UP113.
* It is a land-locked block – lacking any street frontage on Geelong Street.
* It can only be accessed by a special condition easement across UP113’s common driveway.
* It has an electrical easement (low hanging wire) through the middle of it.
* It has no services whatsoever to it (i.e. no water, electricity or sewerage).
* There is limited access (2.75 m wide strip of land via an easement) which does not allow turning.
* Two other businesses require access to the same easement 24/7.[[257]](#footnote-257)
  1. The submission advised the Committee that of the 19 properties on Geelong and Yallourn Streets which bordered the former railway easement in section 11 Fyshwick, parts of which were now amalgamated with their main property, only three land valuation increases occurred from 2016 to 2017, and of those three properties, two increased by 14 per cent and 21 per cent respectively. The remaining property was hers, for which the valuation increased to 305 per cent of its previous value, which in her view was out of step with the other 19 properties and as such appeared to be an anomaly. Moreover, valuations for land in Section 11 and part of Section 10 in Fyshwick had only increased by an average of 1 per cent since 2011, and many values had decreased, in further contrast to the result for her land.[[258]](#footnote-258) This meant that Block 44 had been subjected to 12 per cent rates per annum increases on average since 2006, increasing to an average 16 per cent rates increase per annum since land tax merged into rates in 2012/13. By way of comparison, surrounding developed property had seen an average 9 per cent rates increase year on year since 2006.[[259]](#footnote-259)
  2. By way of response to this situation, Ms Paxton had objected to the valuation in April 2018 as soon as she noticed it, but she was not able to object because it was beyond the two-month period in which she could lodge an objection. The valuation tripled from 2015-16 to 2016-17, and this tripled valuation was maintained for the 2017-18 year, so she was able to object to the second year of the increase, and at this point she lodged an objection.[[260]](#footnote-260)
  3. In the course of pursuing the objection she asked the Revenue Office for a rationale for the increased valuation and was provided with ‘mostly redacted information’, but no rationale. She also pursued this request by way of a Freedom of Information (FOI) request.[[261]](#footnote-261) The result of her inquiries, she advised the Committee, was that the increase to 305% of the previous valuation of the subsidiary parcel of land was ‘an arbitrary assessment’ for which there was ‘no supporting rationale or documentation’.[[262]](#footnote-262)
  4. After seeking information on the matter by way of inquiries to eight separate ACT government agencies, and by way of the ACT Ombudsman, she obtained copies of ACT government correspondence from 1987, when the land was divided and offered for sale, and 1994, when sales were finalised. These showed that ‘the anomaly of ownership of Block 44 was due to the ACT government’s establishment (for legal reasons only) of a separate block and section’. The resulting single anomalous parcel of land subsequently attracted increased valuations from the Valuation Office, resulting in increases in rates and land tax, while other ex-railway easement blocks that had been amalgamated did not.[[263]](#footnote-263)
  5. On the basis of this information, Ms Paxton advised the Committee that the subsidiary parcel of land should be considered part of her main parcel of land (that is, her unit-titled commercial property) and should never have been considered, valued or rated as a separate parcel of land. This underscored inconsistent treatment accorded properties in this instance, since as other ex-railway easement blocks were now part of larger blocks, they were not subject to increased valuations.[[264]](#footnote-264)
  6. The result, she advised the Committee, of this different treatment was that her small business had been liable for a further $30,000 of rates and land tax over the years since the subsidiary property was revalued, which was ‘a small fortune’ for a Small-to-Medium Enterprise (SME). In light of this, she advised the Committee, she was ‘seeking remission of all rates paid to date on Block 44 to put it on equal footing with other ex-railway easement owners’.[[265]](#footnote-265)

### Change of use-Tuggeranong

* 1. Mr Clayton Clews is the owner of a commercial property in Tuggeranong, regarding which he made a submission to the inquiry,[[266]](#footnote-266) and appeared before the Committee in hearings.[[267]](#footnote-267)
  2. Mr Clews’ property had been vacant for the previous eight years, during which time holding costs had been approximately $42,000 per annum, amounting to a ‘absolutely enormous’ accumulated costs over the period of vacancy. Two years’ previously he decided to sell the property. It had attracted interest from two different potential buyers who were dentists wishing to operate from the site, however the property was subject to strata title, each unit had its own purpose clause, and ‘it just happened to be’ that his property did not have health as a permitted use.[[268]](#footnote-268)
  3. A town planner who was a witness to an ACAT hearing to which he was a party had told him that the conduct of lease variations in the Territory 10 years ago was ‘very ad hoc’; that the Territory had ‘developed enormously’ over the past 10 years; and that he, as owner of the property in Tuggeranong, was now constrained by an earlier way of framing lease purpose clauses even though the Territory had subsequently changed the way it issued and administered leases, in the context of which Mr Clews’ property had ‘fallen through the cracks’.[[269]](#footnote-269)
  4. When he had applied to have the lease purpose clause changed to include health as a permitted use for the property, he found that this could only be achieved if he had in hand an unopposed resolution from the body corporate supporting the change.[[270]](#footnote-270) His subsequent attempt to obtain an unopposed resolution were not successful because, he told the Committee, because under present legislative arrangements ‘people can say no for the sake of saying no’. The maximum penalty for saying ‘no’ was $1,000 which was eight days of his costs, so in eight days he had ‘covered their potential loss, in terms of what I have to pay out’.[[271]](#footnote-271)
  5. Following this he took the matter to the ACAT, but did not feel that the process was transparent or clear: a case in point being that the strata manager represented Mr Clew’s opponents in the Tribunal. This was contrary to his proper role as strata manager, which was to be an administrator, without taking sides, whom Mr Clews himself should have been able to approach for advice.[[272]](#footnote-272)
  6. He told the Committee that with regard to obtaining an unopposed resolution, when there were more than half a dozen people there would always be someone who would say no. This had led to the action in ACAT, asking the Tribunal to consider whether such responses were ‘unreasonable’ under Section 129 of the *Unit Titles (Management) Act 2011* (ACT).[[273]](#footnote-273)
  7. In the meantime, between this and another property he owned, there were significant costs:

As a small property investor I pay rates and body corporate. For my two properties I pay about $16,000 a year or possibly more, maybe $20,000 for rates, and a similar amount for body corporate. Then there are the interest charges. Every time you get a valuation done you are looking at $1,500 to $1,800. The application for me to go through the town planner to achieve my lease variation was $5,500.[[274]](#footnote-274)

* 1. He told the Committee that he was caught ‘between a rock and a hard place’. He had kept up-to-date with rates while they continued to increase, and was a small-time business owner providing employment and revenue, by way of rates, to the ACT government, but without a sense of getting something in return. He told the Committee that his way of ending the story was to divest the Tuggeranong property at a loss, but due to red tape he was not able even to do that, and was asking when this was going to happen.[[275]](#footnote-275)
  2. He told the Committee:

The key with this is that I have had two dentists interested in my unit, without advertising specifically for them, and I have lost both of them. Even if I go through the [ACTPLA] process and … I can change my lease variation, I do not have anyone who wants to buy it, because they have disappeared. It is possible that I could wait one, two, three, four years. I do not know. I am 50 now and I am thinking I might be lucky enough to sell my unit before I retire, because the time frames on this are so enormous.[[276]](#footnote-276)

* 1. The irony of this, he told the Committee, was that his unit was ‘about 100 metres from the Tuggeranong town centre’ rather than some other location which was more marginal in a commercial sense.[[277]](#footnote-277)

### Heritage-listed properties

* 1. Contributors to the inquiry raised questions regarding the interaction of the rates regime with heritage-listed properties.[[278]](#footnote-278)
  2. Mr Robert Rixon made a submission to the inquiry regarding the matter and also appeared in hearings.[[279]](#footnote-279) In his submission, Mr Rixon advised the Committee that ‘unimproved land value is an inappropriate tool for calculating statutory charges for properties that have heritage listed buildings’, and that charges should be calculated based on gross rental value.[[280]](#footnote-280)
  3. The submission advised that the current method for assessing General Rates, Fire and Emergency Services Levy (FESL) and the City Centre Marketing and Improvement Levy (CCMIL) for heritage buildings was the same as for all commercial property: that is, ‘the average unimproved value (AUV) is applied to other variables determined by the ACT Revenue Office for a given period’. [[281]](#footnote-281)
  4. This approach had merit, ‘particularly for commercial areas that are still within a growth phase and where development and growth of the built environment is in the interest of the public’, as it encouraged ‘development of the land to the maximum allowed under the Crown lease as this is how your rates will be assessed anyway’. This approach encouraged ‘a more dynamic market as owners seek to optimise use of the land, reposition assets to meet contemporary market expectations and maximise profit’. Under these arrangements, cash flow was ‘enhanced by optimising development of the land’, and as well as improving gross rent, ‘larger contemporaneous buildings can also reduce the proportion of fixed costs associated with the land, such as statutory charges’, since building ‘bigger and better usually means less statutory charges on a rate $/m2 or % of gross income’.[[282]](#footnote-282)
  5. In short, the submission advised the Committee:

An approach based on land value for assessing rates of most commercial property is in the public interest because it encourages growth and changes that drive economic and social activity. The current system is therefore appropriate because it encourages dynamic land use that produces a benefit to the land owner.[[283]](#footnote-283)

* 1. However, it advised, this approach was not a good match for heritage-listed properties:

The financial burden of owning a heritage building is not subsidised by the public if it is privately owned. Restrictions on how the building can be changed by way of size or appearance also diminishes profit and increases uncertainty. The owner is less able to achieve the same cash flow growth, land use flexibility and investment certainty as an owner of a non-heritage building in the same location. The owner's use of the land is therefore far less dynamic.[[284]](#footnote-284)

* 1. In these instances, while underlying land value was still influenced by demand for the location, the key element for producing and limiting profit were the heritage elements of building. Since the objective of heritage-listing was that that the size, configuration and function of heritage buildings did not change, the owner had ‘less ability to meet current trends’ and this limited their capacity to produce income. As a result, the requirement to preserve, ‘as often outlined in a conservation management plan’, could be ‘onerous’ and was ‘a further burden on profitability’.[[285]](#footnote-285)
  2. Under these arrangements, the submission advised the Committee:

The calculation of statutory charges based on land value has produced a high proportion of fixed costs for heritage buildings. An investigation of most privately owned commercial heritage buildings in the Canberra CBD (Civic) shows statutory charges to be significantly higher on a rate $/m2 or % of gross income compared to non-heritage buildings. This demonstrates that heritage buildings have lower net income growth and greater cash flow uncertainty.[[286]](#footnote-286)

* 1. This showed that the present method of calculating rates based on underlying land value was therefore inappropriate for heritage listed commercial buildings. In light of this the submission recommended that an approach be adopted which used ‘gross rental value (GRV) of rateable commercial heritage listed buildings for calculating statutory charges’. This would ensure the property was still being assessed on its maximum potential to generate income and could be ‘easily monitored to ensure the affordability of the owner based on a rate $/m2 or % of gross income does not differ greatly from other commercial buildings’.[[287]](#footnote-287)
  2. The submission then went on to describe an approach in detail in which:
* The maximum gross/net lettable value is measured for each heritage building. This is essentially a hypothetical measurement as it may be determined that some buildings have not been built to their maximum size even with the heritage status. After the initial measurement is made and agreed by the rating authority it will become a constant.
* The highest and best use as allowed under the Crown lease should still apply. This may also have an influence on whether a gross or net lettable area is calculated. This will need to be monitored as some buildings may be adaptable to alternative uses.
* The calculated rent should be fully gross and effective to avoid confusion and possible dispute regarding outgoings and incentives.
* The ACT Revenue Office will be able to apply a single or multi threshold rate(s) to the assessed GRV.[[288]](#footnote-288)
  1. In such a scheme, the submission advised, the process if managed correctly would ‘encourage owners to submit details of current rents and recent lease deals to the ACT Valuation Office or other professional valuation entity’, and to support this ‘a standard web-based form should be developed that allows data population by the owner’.[[289]](#footnote-289)

### Appeals

* 1. In his letter to the Committee of 12 November 2018, the Chief Minister and Treasurer advised the Committee, regarding differences of opinion between property owners and the Revenue Office as to the Unimproved Value of a property, that:

Changes to the unimproved values for individual commercial properties are undertaken on a property-by-property basis. Changes have to be supported by market evidence. Where the property owner does not agree with the new unimproved value they have objection and appeal rights. On Objection (an internal review), a full report is provided explaining the basis for the new unimproved value and the sales evidence supporting the new value for commercial properties. The delegate for the Commissioner can adjust the valuation as part of this process. On Appeal, the ACT Civil and Administrative Tribunal can review the evidence supporting the valuation and any alternative valuation proposed by the property owner and can adjust the valuation.[[290]](#footnote-290)

* 1. Contributors to the inquiry expressed concern about the appeals process, and in a number of instances advised the Committee that they considered that it was a forbidding process that appeals were likely to have a high financial cost without, necessarily, a likelihood of obtaining satisfaction.
  2. The Australian Small Business and Family Enterprise Ombudsman, in her submission to the inquiry, advised the Committee that:

The increased valuations impact rating values for future years which means that the current commercial market is still impacted by previous high valuations. In other jurisdictions this can possibly be overcome by requesting a variation to the independent assessing body. However, in the ACT if the Revenue Office reject a request for a variation, for the [objection] to proceed it would need to go to ACT Civil and Administrative Tribunal, with the time and expense that entails.[[291]](#footnote-291)

* 1. When he appeared in hearings, Mr Phillip Doyle, Senior Director, Asset Services at CBRE Canberra told the Committee that:

We have found that in previous years it has been a tedious process to object. We engage valuers to do that; either our firm’s or another firm’s valuers to do that. It has not been the easiest process to work with. A lot of times it ends up in ACAT to be resolved. There have been a few over the years. One was the site we talked about, the old AFP headquarters that was redeveloped. I know that was in court for some time, in dispute with the valuers …[[292]](#footnote-292)

* 1. He told the Committee:

We do make an assessment for them and try to understand where the government valuers are coming from, with respect to the increase in the UV, the unimproved value. If we feel that an objection needs to be lodged, we will lodge it. I must say that we did not lodge any this year, for a number of reasons.[[293]](#footnote-293)

* 1. When asked as to those reasons, he told the Committee that it was ‘just put in the too-hard basket a lot of the time’. The impact was discussed with landlords, including the cost of lodging objections, and reflections were made on the basis that ‘We were unsuccessful last time; why go through the process and the cost again?’ [[294]](#footnote-294)
  2. Moreover, he told the Committee, that due to the use of the three-year AUV as the basis for determining the rating factors to be applied, owners did not feel the effect of having a valuation reduced in one particular year: it was averaged out over the three years. His firm had been involved in an appeal of a valuation in 2012-13, for a large building in the city, where $20,000 was saved in rates per annum, but it cost the landlord $40,000 proceed with the objection.[[295]](#footnote-295)
  3. Ms Sharon Cvetanoski told of her experience of appealing a decision in relation to Phillip Market Place:

We certainly did get the impression in ACAT that the ACT valuer’s office was happy to stonewall because they wanted to see how much money we had to spend on lawyers and valuers. They were not willing to listen to our side of the story, let alone justify their own position. In fact they did several things during the course of our ACAT meeting that were completely nonsensical, like revaluing a property midway through the year because the owner of that property had done some improvements. They decided to revalue it not as of January 1 but as of about June or July. That was sort of weird.[[296]](#footnote-296)

#### Property Council of Australia

* 1. In its submission to the inquiry, the Property Council of Australia advised the Committee that commercial property owners in the Territory could ‘incur costs up to $80,000 to simply seek a review of a valuation assessment through ACAT’, and that this was ‘an onerous cost which could be alleviated by establishing a simple and inexpensive mechanism to facilitate disputed rate valuations’.[[297]](#footnote-297)
  2. The Property Council made comment in this area when it appeared in hearings. Its Australian Capital Territory Executive Director told the Committee that members were reporting that there was ‘a rather large disincentive’ to go to dispute resolution through ACAT due to cost, as costs ‘ranging from $80,000 to $100,000’ were ‘very significant’.[[298]](#footnote-298)
  3. Mr Martin Elliot of Knight Frank Valuations and Advisory Canberra, who appeared with the Property Council, told the Committee that:

Crown leases are unique to the ACT leasehold system. Every block of land has its own crown lease, so you can easily get bogged down in what may be fairly trivial matters—interpreting clauses within a crown lease and their implications on value. That drags on, in time and cost. It also creates a bit of a grey area and there is a cloud of uncertainty around what an outcome may be.[[299]](#footnote-299)

* 1. In these circumstances, he told the Committee:

There is a lot of risk for a crown lessee who wants to object. With taking it to a full hearing, even if you have a very strong case and a strong, robust argument, it can be quite easy to come at it from a different point of view. It is not necessarily about one being right or wrong; it is about trying to go in there with the best intentions and negotiate an outcome. That can be difficult sometimes.[[300]](#footnote-300)

* 1. When asked about the cost of disputing decisions, Mr Elliot told the Committee that $80,000 was ‘probably an average number’. He had heard of the cost of proceedings ranging from $50,000 to more than $100,000. While the circumstances of cases varied, it would be ‘in that ballpark to see a full hearing through’, by the time that lawyers, barristers and valuers are engaged to represent and argue on behalf of their clients.[[301]](#footnote-301)
  2. Mr George Katheklakis of KDN Group, also appearing with the Property Council, told the Committee:

To be quite honest, I have not actually taken it to ACAT, on the basis that if you were to take a case up, and lawyer up, like I say, you are facing costs in excess of $80,000 to $100,000. You would have to assess very carefully what you do because in the following year after your assessment your rates can actually be assessed again on a different basis. It is a cost exercise.[[302]](#footnote-302)

#### Other contributors

* 1. Other contributors expressed similar views about current avenues for raising objections to valuations.
  2. Mr Greg Cummins of the API told the Committee that going to ACAT was ‘frustrating’, ‘very long and involved’, and expensive. Getting an answer acceptable to the client could take ‘an inordinate amount of time’.[[303]](#footnote-303)
  3. When asked whether the ACT government and the Revenue Office were model litigants— that is, whether they were reasonable to deal with or made it necessary to engage a lawyer— Mr Cummins told the Committee that it had been necessary to engage a lawyer, and he was not aware that there had been an opportunity to negotiate or hold a discussion with the Revenue Office about rating values. While mediation was part of the ACAT methodology, at this stage lawyers had already been engaged, and the ACAT process was in train.[[304]](#footnote-304)
  4. Mr Alfonso del Rio, Partner at Clayton Utz, told the Committee:

If a person comes to me and says, “I want to challenge a rates valuation in ACAT,” my answer to them is, “Mathematically, on a cost-benefit analysis, don’t waste your time,” because you do not recover the amount of money.[[305]](#footnote-305)

* 1. He told the Committee:

The problem is that the AVO in many cases, as is identified from the API submission, are not really engaging, because they have no legal obligation to engage because there is no-one that is sitting above them other than the ACAT process. And 99 times out of 100, when I am dealing with small-scale property owners, with the amount of money that is at risk from a valuation perspective, even if it is a $50,000 a year increase, in rolling the dice you have to wonder whether it is economically worthwhile.[[306]](#footnote-306)

* 1. He said that there were many people who had come to see him about this, and that his answer was always: ‘Commercially do the numbers. These are the numbers. Try to come to an agreement with the AVO’.[[307]](#footnote-307)
  2. Mr Paul Powderly, State Chief Executive at Colliers International, told the Committee that having recourse to ACAT or the ACT Supreme Court was not a cost-effective and equitable way to deal with differences of opinion over valuations and ratings.[[308]](#footnote-308)
  3. Mr Steven Flannery told the Committee:

As somebody who has worked in this space for quite a few years, I find it quite a frustrating process. There is quite a scope for people to be less than cooperative, I find, in that process. With the initial directions hearing, if we are going through the ACAT process, the applicant writes in and there are certain fees, which are not significant; that is not the deterrent. However, the mediation process that follows I have found to be very subpar. The situations where I have managed to resolve a matter at mediation I could count on probably three fingers. The process has not worked. I am not sure exactly why.[[309]](#footnote-309)

* 1. He told the Committee that in relation to disputes over lease variations, he had been party to situations where:

we are all but agreed on the before value or the after value and then we cannot agree on the other value because we want to know what the difference is. I say it is not about the difference; they are separate valuations. They are a valuation before and a valuation after. It is not about the difference. So failing to agree on one number does not mean you cannot agree on the other. It is a really frustrating process.[[310]](#footnote-310)

* 1. He told the Committee that he had ‘even had examples where the valuation office have said that they need to leave the hearing to go off to treasury or the commissioners and see what they are going to agree to’, and that this should not be part of the process.[[311]](#footnote-311)

#### Proposed solutions

* 1. Contributors who raised concerns about remedies for disputed valuations also proposed solutions.
  2. Mr del Rio told the Committee that if ACAT were a costs jurisdiction, or there were an agreement where the valuers’ costs were paid independently and lawyers were removed from the process altogether, it would result in ‘a totally different outcome’.[[312]](#footnote-312)
  3. Mr Cummins told the Committee that in commercial rent reviews, if two parties cannot agree, there was a mechanism in the lease to allow them to consult a third-party valuer who looked at the evidence and provided an answer as to what the rent should be.[[313]](#footnote-313) A similar model could be used for disputes between property owners and the Revenue Office over valuations:

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.[[314]](#footnote-314)

* 1. An independent expert, who would come from a panel that would be government acknowledged or approved, could be appointed as arbiter. Each party would contribute 50 per cent of costs for this, and arbiter would produce an independent report on what the UV might be.[[315]](#footnote-315)
  2. Mr Powderly told the Committee that the solution was to ‘set up a non-cost, cost-effective system where experts in the field who are independent can very quickly adjudicate on it and you do not have to make it a legal process’.[[316]](#footnote-316) He told the Committee that this ‘would be a very simple way to get some equity back into it, if people feel that they can go along, in a very low cost environment, to try to get things resolved’. Sometimes there was human error on the government side. Once government was made aware of it, it was corrected quickly, but it could be a ‘very costly’ exercise to try to get this done.[[317]](#footnote-317)
  3. Mr Flannery, in his submission to the inquiry, advised the Committee:

There needs to be an intermediate step between (1) a letter of objection which in my experience gets rejected 'out of hand', and (2) a formal review under ACAT. Such a system will need to be:

• Simple and transparent

• Fair and equitable

• Cost effective

• Handled by qualified mediators with appropriate property experience for which the API as the peak valuation industry body governing both government and private valuers, could assist

In the event a matter is unable to achieve a satisfactory result through mediation, then the matter could proceed to a formal ACAT hearing.[[318]](#footnote-318)

### Transparency

* 1. Contributors to the inquiry put the view that the transparency of the valuations and ratings process should be improved.
  2. The Australian Small Business and Family Enterprise Ombudsman, in her submission to the inquiry, advised the Committee that:

The process for determining rates must be more transparent. Business needs certainty. In other jurisdictions there are independent bodies this work. In the ACT the Independent Competition and Commission performs this role for services such as electricity and water and could perform a similar role for rates.[[319]](#footnote-319)

* 1. When the Committee asked about this when she appeared in hearings, the Ombudsman told the Committee:

I think everyone accepts that you are not going to be able to say what your rates will be in 10 years time, but having a scenario whereby, in the commercial space, valuations are not done every year, and they are done in the way they are done, you can end up with a significant increase that you were not expecting. We have read the Duxton submission; I know that they are appearing later and I am sure they will make their case much more strongly than I can, but there are scenarios whereby you were not expecting an $18,000 increase in your rates bill based upon a new valuation.[[320]](#footnote-320)

* 1. Ms Anne Scott, Principal Adviser, Small Business, to the Australian Small Business and Family Enterprise Ombudsman, told the Committee that valuations and rates had the potential to cause a lot of friction, and that it was a problem wherever valuations appear in a decision-making process. As a result, it was better to make the process for determining these more transparent, and make dispute resolution independent. Businesses required certainty, and having certainty relied on transparency of process so that there were no surprises. When disputes arose, and it was handled independently, and there was greater potential for these problems to be resolved.[[321]](#footnote-321)
  2. A similar view was put by the Australian Capital Territory Executive Director, Property Council of Australia, who told the Committee that no building owner expected not to pay taxes and charges. Their main concern was to have some certainty about what those charges would be long term, and transparency in the system, because these things, if they were in place, would give businesses the ability to plan strategically, ‘particularly when leasing long term’.[[322]](#footnote-322)
  3. Ms Karen Paxton, in her second submission to the inquiry, advised the Committee that transparency should extend to the historical documentation for properties:

Documentation supporting individual property valuations is prepared and available for all commercial properties which are rated, as per the legislation. Information should be transparent, justifiable, explainable and easily available, as for any property valuation documentation. This includes any relevant historical information that the Valuation Office should take into account in each re-valuation to ensure corporate memory and the reasons for non-rating of land is recorded for posterity, so owners of properties have one location to source information on their property. As ownership changes, there should be one central file on each property that is accessible by past and future owners to save time hunting up information down track i.e. for administrative ease for all parties.[[323]](#footnote-323)

* 1. Mr Arthur Lagos of Phillip Market Place expressed concern about transparency and objections to valuations. In hearings he told the Committee:

There is no transparency. We have submitted detailed valuation reports. These are commercial valuers that the banks rely on for valuations. They have industry standards. They are peer reviewed. And what we get back from the ACT valuation office is a one-pager, “Computer says no.” ACAT—you just cannot speak to them. And even when we challenge this in mediation, it is a difficult process. It is like, “This is the way it is. If you don’t like it, see you at the next level.” So it is very frustrating, time consuming and costly.[[324]](#footnote-324)

#### Transparency in rates notices

* 1. Other contributors also made comment on a need for greater transparency in rates notices.
  2. In hearings, Ms Sharon Cvetanoski of Phillip Market Place told the Committee that new format rates notices which had been released in the present year were ‘anything but transparent’. All important information was either ‘in tiny little print or missing’. In the previous format, the formula by which rates were calculated was included on the back of the rate notice, and it was possible to compare one year to the next—‘up to $100,000, this many per cent’. The calculations were shown. But this was no longer published on the rates notice, and if she wanted to know how her rates are calculated, she had to ‘chase it’.[[325]](#footnote-325)
  3. An example of this lack of transparency in presentation was that on the top right-hand corner of the rates notice it said ‘pay now’ but ‘three or four lines lower down, in very small print, it says, “due by 15 March”’. In addition, the address to which the rates applied was presented on the back of the rates notice in very small print. Overall, it was ‘not a very friendly document’, and was ‘a retrograde step’ compared to the previous format for rates notices.[[326]](#footnote-326)
  4. The Property Council of Australia, in its submission to the inquiry, advised that rates notices should ‘clearly set out details on how the rates were calculated, including the unimproved rate value and the percentage rate applied’ and, as much as possible, to provide information so that commercial property owners could understand how current general rates compares to the pre-reform taxes and charges where a separate amount was paid in relation to land tax and general rates.[[327]](#footnote-327)
  5. Mr del Rio told the Committee that consistent with the principle indicated by the government, that it was important for government to have certainty of income, it would ‘not be too hard for the consequences of the increased valuation to be reflected in the rates notice’. While electricity and gas bills provided information about consumption over time, rates notices did not, and this was a gap in transparency.[[328]](#footnote-328)
  6. He told the Committee that it would also be useful for people to understand the rolling three-year average. It would be not too difficult for the government to say, ‘On an assumption that your valuation does not change, and on an assumption that the rating value does not change, you can expect your next three yearly rates bills to be X, Y and Z’. This would be helpful in terms of planning, and would be ‘a relatively easy thing to do’. What people did not understand is that if a valuation increased by half a million dollars or a million dollars, in the first year the change would not be very big because it would deliver only ‘one-third of the increase’: it was the impact in the second and third year where the full impact was felt, and it was generally only in the second year that people realised what had happened.[[329]](#footnote-329)
  7. He agreed that a better standard of information in rates bills about valuations and their effects could lessen, to some degree, bill shock, but that it could also support decision-making, by the rate payer, to challenge a decision. This was particularly due to the fact that the majority of people, at present, did not look at the valuation notice: they looked at the rates notice alone.[[330]](#footnote-330)

### Property investment as a form of superannuation

* 1. Contributors to the inquiry told the Committee about the role of private investment in commercial property in self-managed superannuation schemes.
  2. In hearings, Mr Scott Molloy told the Committee that his investment in commercial property was, in effect, his superannuation: ‘My entire investment is in property. I have two properties. I look forward to being able to retire on those’. However, he was concerned that his decision to use commercial property as the vehicle for this would lead to a greater impost, and therefore a reduced capacity to fund his retirement:

If I bought into shares or superannuation or whatever, I would not have experienced this unannounced massive increase of taxation on my superannuation investment that the rates have imposed on my retirement plan. These huge increases are the reason why I cannot retire. Had I bought shares or bought into a super fund, I would not have this taxation.[[331]](#footnote-331)

* 1. Mr Barry Faux, who appeared with Mr Molloy, put a similar view. He told the Committee:

I have $1.1 million worth of property, according to the valuation of the ACT government. I have bought that. I have had a clear set of guidelines, as I would if I bought a retirement plan. And now the government has turned around and increased the taxation on that.[[332]](#footnote-332)

* 1. Ms Karen Paxton, in the same hearings, told the Committee:

My commercial building is my retirement; so I am looking at doing that in the near future. I am looking to sell my building so that I can get funds out of it to go and buy somewhere to live and release the property for somebody else. But all mine is tied up the same. You sacrifice left, right and centre to try to get this beast off your back—what you owe the banks et cetera—and you do everything within your power that you can scrape together, you pay it off so that you get rid of the interest burden, and then you sell it, release the funds and go and buy somewhere to live.[[333]](#footnote-333)

* 1. Mr Lagos and Ms Cvetanoski, of Phillip Market Place, were in a similar position. Mr Lagos told the Committee that investors such as himself saw their investments in commercial property as their superannuation fund.[[334]](#footnote-334)
  2. Ms Cvetanoski agreed. She told the Committee that the purpose of having investments in commercial property was to generate an income stream for retirement. She and her husband’s careers were winding down and they needed to know that they would have sufficient cash flow to support themselves in the future.[[335]](#footnote-335) However at present, she told the Committee, rates bills had ‘just eaten away at that’, and had put ‘an incredible squeeze’ on their personal cash flow, to the point where they were considering whether to divest the property and making another type of investment, such as conventional superannuation.[[336]](#footnote-336)
  3. Significantly, in this context, the FANDS matter considered elsewhere in this report concerned a self-managed superannuation fund. Mr Flannery, when he spoke about the history of the property in question, told the Committee that it had been acquired by three families, ‘largely … by their superannuation funds as part of a longer term investment strategy’, initially as a place of business and then as ‘purely an investment property’.[[337]](#footnote-337) In this context, FANDS had ‘absolutely intended’ to retain the property as part of an investment: ‘You do not do things in your superannuation fund for the fun of it; you do it for your future. We had absolutely no intention of selling it.’[[338]](#footnote-338)
  4. This characteristic of the investment in fact placed a further constraint in terms of managing the investment and its revised rates liability, Mr Flannery told the Committee, because:

With respect to the ability and capacity of a superannuation fund to raise moneys to pay rates, banks do not particularly like lending on superannuation funds, anyway, let alone for rates and charges which they would probably see as retrospective.[[339]](#footnote-339)

* 1. As a result, he told the Committee, it was not possible to borrow money to pay the revised rates liability, ‘certainly not in the time frame’, and FANDS was obliged to sell the property.[[340]](#footnote-340)
  2. Other contributors spoke to the Committee about a combination of market factors and rates imposts that were having a particular impact on people investing in commercial property in the context of self-managed superannuation funds.
  3. Mr Guy Randell of the REIACT spoke to this issue. He told the Committee:

We have had numerous people represent to us the impact that that has had on their family life. They have had marriage breakdowns; there have been all sorts of things. There are the costs. It is massive financial stress, especially from the business point of view.[[341]](#footnote-341)

* 1. He told the Committee:

Landowners recently—including several in Fyshwick—have expressed it to us again. Sometimes we are in the process of trying to lease their properties when that is their only property. They are mum and dad. They might be grandfather and grandma. That is their superannuation fund. They have a property that they have owned for 20 or 30 years. There is now a massive rates valuation change for them. It costs.[[342]](#footnote-342)

* 1. Importantly, these owners were leasing out their properties on gross leases, where they were obliged to absorb increased rates imposts, because:

because they are not in a position where they can get a net lease in the type of environment or type of building they have. The building might be a tin shed. It might be an old commercial bulky goods building. The value of that property is not ever going to exceed a certain price. It just will not, unless you have a very strong net lease ASX-listed tenant in there that is going to allow them to get a sale value out of it. They are now fighting. Their pensions are just decreasing because that is their only source of income. They have been property owners and they have several, but they are just decreasing year on year.[[343]](#footnote-343)

* 1. Mr O’Mara also spoke to this. He told the Committee:

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.[[344]](#footnote-344)

### Equity and fairness

* 1. Throughout the inquiry the Committee was asked to consider the issues of equity and fairness. Contributors to the inquiry generally took the view that the administration of commercial rates in the Territory was not done on the basis of equity and fairness.

###### Mr Steven Flannery

* 1. In relation to the FANDS matter, Mr Flannery told the Committee that ‘the findings of ACAT may well be lawful in accordance with the legislation in place at the time but, as I said initially, we just feel as though it is unjust’. [[345]](#footnote-345) He was particularly concerned at:

the approach where the commissioner … who has a statutory obligation to assess an unimproved value annually and employs who he chooses … fails to do that, and five years or six years on, he can write to people and say, “Never mind that I failed; here is your recently adjusted purpose clause as it has had the impact of X.” [[346]](#footnote-346)

* 1. He told the Committee that it was ‘just … beyond me how that is fair and equitable, and I would have thought that our taxation and rating system is all about fairness and equity’.[[347]](#footnote-347)

###### Mr Peter Sarris

* 1. Mr Peter Sarris also spoke about equity in relation to apportionment. In this case, the parcel of land he owned had rural use attached to its Crown lease until he applied for a change of use to allow a use, on a 10 per cent portion of the land, for a veterinary hospital.[[348]](#footnote-348) This use as yet had not activated: no such hospital had been built. As a result of the change of use, however, the whole Crown lease had been reclassified as ‘commercial’, bringing a significant increase in the rates liability for the lease.[[349]](#footnote-349)
  2. He told the Committee that in this instance there was no apportionment, ‘no acknowledgement that it is not all commercial’, and that the Revenue Office appeared to value commercial in the city the same as in a rural setting. Checking on the Revenue Office website, he had found that the rate he was being charged was ‘30 times what a rural piece of land would be’. He told the Committee that he owned a property with a higher valuation in Queanbeyan which attracted a much lower rates impost: $7,600 per annum for the Queanbeyan property valued at $900,000 as against $44,000 for the Crown lease in Pialligo valued at $800,000. This, he told the Committee, was ‘inequitable and unfair’.[[350]](#footnote-350)

###### Mr Paul Powderly

* 1. Mr Paul Powderly, when he appeared in hearings, told the Committee about commercial property owners facing steep increases in rates liabilities:

You have restaurateurs there who are in buildings and are there for 10 years or eight years. The developer’s land has been revalued, the rates have gone up four times, and we expect the tenants to be able just to wear that. It means that when we go and get our schnitzel or whatever else, we are going to have to pay four times. If you cannot access the development rights, you should not necessarily be paying rates on them. That is again an issue that we have not dealt with.[[351]](#footnote-351)

* 1. Mr Powderly told the Committee that a significant component of the problem with current settings on commercial rates was the distribution of the rates burden. Research conducted in his office had found that statutory charges—as a whole—for office markets in the Territory amounted to 8.57 per cent of net income. This compared with six and five per cent of income for Sydney and Melbourne, respectively; a similar amount to the Territory for Perth; and a higher amount in Adelaide, as a result of which the Territory ‘sat in the middle of the pack reasonably well, as an average, in the marketplace’.[[352]](#footnote-352)
  2. He told the Committee, however, that it was ‘at the two ends of the extreme that we have the problems in Canberra’. Average statutory charges amounted to $32 a square metre, but the ‘little guys are paying $70 a square metre in Fyshwick, Turner and Braddon’, while ‘the big end of town is paying $26’. Hence, while the average was acceptable, he told the Committee, ‘we have to finesse the extremities of it, to make sure it is a more equitable system’.[[353]](#footnote-353)
  3. Moreover, he told the Committee:

Whilst most of the institutional people would not like me saying this, an extra dollar or two a square metre in their assets, which are often $100 million or $200 million, is not as important as it is to the little guy who has an extra $3,000, $4,000 or $5,000 which can represent 20 per cent of the entire rent that he is getting from the property.[[354]](#footnote-354)

* 1. He told the Committee that under these circumstances the Territory needed to ‘do a bit of finessing to make sure that it is equitable’.[[355]](#footnote-355) Additional external factors also had a significant effect, such as: the banking royal commission; and changes in bank lending practices and bank lending ratios. Most smaller owners who had gone beyond their lending ratios did not have sufficient income to support them in meeting their obligations due to increases in statutory charges.[[356]](#footnote-356) As a result, he told the Committee, these owners were experiencing a ‘double whammy’, and the Territory should make sure that its rates and tax system was responsive to such external influences and their effects.[[357]](#footnote-357)

### Conflict of interest and resourcing

* 1. Contributors to the inquiry considered whether there were an apprehended conflict of interest on the part of the Revenue Office, in that it was responsible for providing valuations of commercial property, applying ratings factors, and ensuring compliance in connection with rates liabilities, while being a part of Treasury. An allied issue was consideration of whether sufficient resourcing was being provided to the Revenue Office and what would be required if valuations were to be provided by an independent statutory office.

#### Conflict of interest

##### Treasurer

* 1. In hearings, questions were asked of the Treasurer regarding an apprehended conflict of interest by the ACT Valuations Office, and whether it was properly resourced. In responding, he told the Committee that formerly, until 2014, valuations had been done for the Territory, for purposes of establishing UV, by the AVO under a fee-for-service agreement. In 2014, however, the Commonwealth government had abolished the AVO, leading to the creation of the ACT Valuations Office.[[358]](#footnote-358)
  2. Noting that in NSW such functions were performed by an independent Valuer General, the Committee asked whether the Territory was unusual, in the context of Australian jurisdictions, in that it did not have this kind of statutory office. In responding, the Under-Treasury told the Committee that other jurisdictions did, ‘by and large’, have such an office although, he noted, conditions were different in that in other jurisdictions rates were levied by local government, which is not present in the Territory.[[359]](#footnote-359)
  3. Regarding the question of whether the Territory should create such an office, the Under-Treasurer went on to say that the Territory was ‘a small jurisdiction in terms of this skill set’ and was ‘unique in terms of our land title system’. As a result, valuers in the Territory had to have ‘very particular knowledge that other valuers do not necessarily have across the country’. It was also ‘very difficult to recruit valuers’, in connection with which there appeared to be skills shortage.[[360]](#footnote-360) There were also problems with the size of the market, which meant that there were ‘a lot of conflicts … out there amongst valuers’, since there were ‘a lot of valuers who, by necessity, represent private interests in the market’.[[361]](#footnote-361)
  4. He told the Committee that the question of conflict of interest was ‘an interesting one’, but that valuations in the rating system did ‘not affect the aggregate amount of revenue we collect’, but only affected ‘the distribution of revenue amongst that space’, although it did have an effect ‘for questions of lease variation charge’. While there was the potential for a government to increase values to ‘rake in lots of revenue’ there was, in his view, ‘no evidence that that has occurred’.[[362]](#footnote-362)
  5. In his view, he told the Committee, ‘resourcing, like most functions of the ACT government, is tight but adequate’. The bigger challenge was ‘actually recruiting good staff’, since valuers in the ACT Valuation Office were on average more than 50 years of age, and ‘that skill and continuance of service, guaranteeing that for the long term, is a challenge that we have’.[[363]](#footnote-363)
  6. He told the Committee he was more in favour of retaining valuations as an ‘internal service where we can have better control’. If the Valuations Office were made independent ‘it would be a small team and the question of its sustainability as a small team would be a challenge’, whereas ‘in a bigger office it is easier to do and it is easier to give career paths et cetera to staff’.[[364]](#footnote-364)

##### Mr Alfonso del Rio

* 1. Regarding this issue, Mr Alfonso del Rio of Clayton Utz told the Committee that as ‘a fundamental principle of governance, the system is fundamentally flawed in an environment where there is not a genuine independent process to determine valuations’, and that this was something that should be considered.[[365]](#footnote-365) When asked why an independent body could help with valuations, he told the Committee that it because such a body would be ‘answerable to a different master’.[[366]](#footnote-366)
  2. He told the Committee that there were further problems due to variations amongst valuers in creating valuations for properties, and provided the Committee with evidence of the spread of values that had been obtained for a particular property, even where one valuer had been appointed as an independent expert. In light of this degree of variation, and the difficulties this creates, he told the Committee, ‘We cannot have a position where we are spending huge amounts of money determining these things with people who are not independent’.[[367]](#footnote-367)
  3. The solution, he told the Committee, could be either to create an independent statutory office or ‘you could have a review panel that can make a determination to overrule the AVO beyond the ACAT process’, which would be ‘a genuine review of the valuation notice’, outside of the ACAT. This would be an ‘intermediate step’ which would be ‘a lower cost appeal process’ which would avoid the high cost of going to the ACAT which, due to the involvement of lawyers such as himself, was ‘particularly expensive and time consuming’.[[368]](#footnote-368)
  4. Mr del Rio told the Committee that there were further problems with arrangements as they now stood in that representatives of the ACT Valuation Office, when it came to contesting valuations in the ACAT, felt no obligation to engage. Asked whether this was due to the fact that the Valuation Office relied on public money to defend such actions, he told the Committee:

It is even more basic than that. You have the AVO, who is accountable to the revenue office, whose job it is to maximise the amount of revenue that the territory collects. That is the fundamental problem. You should not have the person who is determining the value being employed by the person who is responsible for the collection of the rates. Ultimately, the AVO position, normally and justifiably, is “Well, I will defend my position by as much as it takes for as long as it takes because that is my position.”[[369]](#footnote-369)

* 1. This was, he told the Committee, a significant contrast between this and how matters were resolved in the commercial sector, in which case it was not uncommon to have a valuer appointed by a tenant and a valuer appointed by a landlord, who got together and had a discussion. If they could not agree or were beyond ‘a certain range’, it went to a third valuer, who made an independent determination.[[370]](#footnote-370)
  2. Under these conditions, he told the Committee, it was often the case that once people were obliged to work together and discuss the underlying assumptions of what was involved, parties tended to ‘come closer together’.[[371]](#footnote-371)

##### Property Council of Australia

* 1. When the Property Council of Australia appeared in hearings the Australian Capital Territory Executive Director told the Committee that other jurisdictions in Australian adopted approaches which created an arms’ length from government to determine rates, and that this would, if adopted in the Territory provide greater certainty in the future, and would also ‘make it easier to dispute the notices that are given from that authority’.[[372]](#footnote-372)
  2. Mr George Katheklakis, appearing with the Property Council, told the Committee that the Council supported ‘an independent valuation process prior to any formalised ACAT hearing as required’, and that this would ‘go a long way in actually providing everyone access to a neutral space where you can argue the toss in terms of where you think valuations sit’, particularly in view of ‘some rather large increases in rates and values’ which had been seen across different parts of the Territory.[[373]](#footnote-373)
  3. Mr Martin Elliot, appearing with the Council, told the Committee that in other Australian jurisdictions there was a clear recognition that the valuer-general was an independent party appointed to undertake a mass appraisal of rating valuations each year. Because there was ‘a general recognition’ that it was possible that errors would be made at times in the course of this process, other states and territories also provided an objection process ‘whereby an independent valuer is appointed somewhere along the line, prior to going to a full court or to a tribunal, to just try to mediate that step in the process and streamline that objection process’.[[374]](#footnote-374)
  4. An important feature of these other systems, he told the Committee, was ‘the independence of the valuer-general in undertaking these mass appraisals, these statutory valuations’. The Territory seemed to be the only jurisdiction where that was not the case.[[375]](#footnote-375)

##### Mr Greg Cummins

* 1. Mr Greg Cummins of the API agreed with the tenor of these comments. Reflecting this, he told the Committee that:

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.[[376]](#footnote-376)

##### Mr Guy Randell

* 1. In hearings, Mr Guy Randell of the REIACT also spoke in favour of valuations being conducted by an independent statutory office. He told the Committee that he thought there was a conflict of interest, and that valuations should done by be a valuer-general: an independent body that did not sit within treasury. A process for rates review should be similar to New South Wales, where the IPART was an independent committee charged with this responsibility which was removed from government and was an independent body ‘that can look at all aspects’.[[377]](#footnote-377)
  2. In making these observations, he told the Committee that he was not making any comment on ‘individuals, qualifications, skill levels and their integrity or anything like that’. It was just that these functions should be at a distance from Treasury: ‘It just needs to be seen to be an independent authority’.[[378]](#footnote-378)

#### Resourcing

##### Shortfalls in capacity

* 1. The Committee asked contributors to comment on whether, in their view, there was evidence that the ACT Valuation Office had insufficient capacity to meet its obligations.
  2. When asked whether it was true that the ACT Valuations Office appeared to have a full complement of five valuers, Mr Cummins told the Committee that this was correct. He told the Committee that valuations were not all that they were responsible for: they performed other roles for the treasury. Lease variation charge valuations would probably take up 70 per cent of their time. He thought that they might get some valuations right, but ‘getting most right, when there are so many sales and so many different areas’, was difficult, and they either needed ‘a lot more manpower’ or a different methodology before more accurate valuations could be produced.[[379]](#footnote-379)
  3. Mr Cummins told the Committee that his firm did a lot of lease variation valuations, where he handled negotiations with the Valuation Office, and they waited for ‘what at times seems to be an inordinate amount of time for these valuations to be completed’. They were ‘under the pump’ in getting ‘a heck of a lot of these things out’. But when rating time came around, they often ‘shut up shop for a 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 seemed that some area of business was always getting neglected, while they concentrated on another.[[380]](#footnote-380)
  4. He told the Committee that this shortfall in capacity over time contributed to sudden increases in valuations after a period of stability:

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.[[381]](#footnote-381)

##### Attracting valuers

* 1. In light of questions about resourcing, raised above, the Committee asked contributors whether there was a shortage of valuers in the Territory, and how best to attract them.
  2. Mr Doyle agreed that there were not enough valuers in the Territory. He told the Committee that people who completed valuations training also took up other roles in the property industry. It was ‘a great course’, but ‘we find that a lot of our valuers move on to other parts of the industry and become developers, analysts or property managers’.[[382]](#footnote-382)
  3. Mr Elliot told the Committee that while there were ‘plenty of other private sector valuation firms that manage to get staff’, it was not easy to hire valuers in the Territory. One obstacle was the absence of a degree-level course in valuation in the Territory, as a result of which it was necessary to attract candidates for valuer positions from Adelaide, Sydney or Melbourne. This was an obstacle, but firms operating in the private sector had ‘managed to overcome that’.[[383]](#footnote-383)
  4. Mr Rixon told the Committee:

A lot of people who do the courses see it as a great base; then they go on to become investment analysts for trusts and that sort of thing. So it is difficult. Sydney, Melbourne and the other capitals are the nursery ground for teaching, and then they also capture certainly the younger valuers. I do not know. I wish I knew the answer to that question. We have been in the hunt for new valuers for a while.[[384]](#footnote-384)

* 1. Mr Sarris told the Committee he thought that there would be real benefit in running a course in Canberra, potentially through the Property Council. He thought it was a good course, which gave a good grounding in all things property related, either for valuers, property managers or property investors.[[385]](#footnote-385)

##### Lack of capacity in processing Development Applications

* 1. Contributors to the inquiry told the Committee that this shortfall in capacity was not limited to the valuations process, but also extended to processing of Development Applications (DAs) by the ACT Planning and Land Authority (ACTPLA). Although this was not a function of the commercial rates regime in the Territory, it in effect compounded delays due to lack of capacity at the Valuations Office, presenting a significant obstacle to activity in commercial property. The Committee notes that the Standing Committee on Planning and Urban Renewal is currently undertaking an inquiry into engagement with Development Application processes in the ACT.
  2. Mr Powderly, when asked whether he had encountered difficulties with the slow processing of DAs, told the Committee:

Absolutely. The planning directorate would be sick of my calls. We are behind with the development of new buildings in the territory, for example, because you cannot get the building approvals. It is months behind. I understand that a resourcing request has been put in to get more money, to get more people to help to process things. The last thing you want to do is stifle activity and economic stimulus. We are currently growing. We have some good indicators. Unemployment is low. All of those things are great. The last thing we want to have is a blockage, and be unable to get things through the system.[[386]](#footnote-386)

* 1. He told the Committee that he was not saying that they should be approved in 30 days, but merely that approvals should be processed in line with statutory time frames. People were ‘putting up millions and millions of dollars’, and if the project was delayed for 12 months because it was not possible to get approval, and the proponents were ‘getting stung for these large rates’ on a site that has been rated as commercial and valued as residential property, it could mean ‘a difference of millions of dollars’.[[387]](#footnote-387)
  2. He thought that the head of the planning directorate was aware of this, and was trying to make changes. He had made multiple requests about this, because people were telling him that they were, still waiting on their Development Applications, which were supposed to have been processed some time ago. This was, he told the Committee, ‘an issue for everybody’.[[388]](#footnote-388)
  3. Similarly, when he appeared Mr Randell told the Committee that there were ‘500-odd DAs still sitting in the planning authority not being able to get approved’, which amounted to ‘billions of dollars of economic outcomes to the ACT government’. These should be underway but there was ‘a massive backlog’. As a result, there were ‘a lot of people who have got land sitting there getting big charges on it that they are still struggling to get either to market or on the market and sold and built on’.[[389]](#footnote-389)

### Committee comment

* 1. Reflecting on the matters considered in this chapter, the Committee takes the view that there are problems with the process where a property owner wishes to object to a rates notice. There was a general view amongst contributors that raising objections is, initially, not effective and then, if it proceeds to ACAT, is expensive as well as being of doubtful effect. The Committee considers that there should be a further avenue for objections which sits in between raising the matter with the Revenue Office alone, on one hand, and engaging with the ACAT, on the other.

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| Recommendation 16  The Committee recommends that the ACT government introduce a valuation mediation system between affected land-owners and the valuation service to provide a cost-effective alternative to the current ACAT objection process. |

* 1. Regarding apprehended conflicts of interest on the part of the ACT Revenue Office, and the ACT Valuation Office, the Committee considered in its proceedings:
     + the advantages and disadvantages of the separation of ACT valuers from the ACT Revenue Office;
     + any required changes to legislation required to enable the creation of an independent valuation office; and
     + consideration of how an independent valuation office could operate if established in the ACT, including resourcing feasibility in a jurisdiction of the Territory’s size.
  2. The Committee considers that there should be separation between the ACT Revenue Office and the ACT Valuation Office.
  3. Nevertheless, after further deliberation the Committee considers that the Territory should follow other Australian jurisdictions in establishing an independent statutory function that would provide valuations as a basis for calculating rates liabilities.
  4. Regarding transparency and rates notices, the Committee considers that greater transparency should be supported by way of an amended format for rates notices which provides greater access to information for ratepayers.

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| Recommendation 17  The Committee recommends that the ACT government breaks the connection between the Revenue Office and the Valuation Office, ideally by establishing an independent valuation service for the ACT. |

* 1. Reflecting on the present capacity of the ACT Valuation Office to meet its obligations, the Committee considers that immediate attention should be given to resourcing for the Office, and to the challenge in training, developing, attracting and retaining valuers.

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| Recommendation 18  The Committee recommends that the ACT government reassess resourcing for the ACT Valuation Office, and introducing Attraction and Retention Incentives (ARIns) to foster the recruitment and retention of valuers. |

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| Recommendation 19  The Committee recommends that the ACT government liaise with the Property Council of Australia, the Australian Property Institute, tertiary education institutions and other interested parties to reassess the feasibility of introducing a valuation course in the ACT. |

* 1. Reflecting on evidence presented to it regarding rates notices, the Committee considers that notices should be more informative and present a more transparent account of rates liabilities.

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| Recommendation 20  The Committee recommends that the ACT government redesign commercial rates notices to give commercial ratepayers more information, transparency and certainty. In doing so, the ACT government should give consideration to the inclusion of the following:   * i) more information about flexible payment options for ratepayers charged retrospectively due to revaluations; * ii) more information about the valuation of land and how that value was calculated; * iii) more information about the applicable tax threshold; * iv) a list of past payable rates for context; and * v) an indication of likely future rates, with a disclaimer that this estimation is subject to change. |

* 1. The Committee also considers that transparency would be better served if the community was made more aware of processes used to determine rates liabilities.

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| Recommendation 21  The Committee recommends that the ACT government give consideration to an education and information campaign for new and existing ACT ratepayers to ensure existing and future commercial property owners have a sufficient understanding of the commercial tax system in the ACT and how the reform is being achieved. |

* 1. Regarding Heritage-listed properties, the Committee takes the view that there is a poor fit between the imperatives that underlie heritage listing and the present commercial rates regime.

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| Recommendation 22  The Committee recommends that the ACT government provides commercial rates concessions on heritage-listed properties, to take account of the distinct set of planning rules that regulate their use. |

* 1. The Committee notes, based on evidence presented to it in the course of the inquiry, the presence of a number of anomalous cases which have not been resolved successfully under the present rates regime.

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| Recommendation 23  The Committee recommends that the ACT government investigate ways to overcome the long-term anomalies relating to Block 44, Section 11, Fyshwick. |

* 1. The Committee takes the view, on the basis of a diversity of opinion that was put to it in the course of the inquiry, that there should be a concerted effort to effect change in the commercial ratings system and that, given the range of interests involved, it is unlikely that government alone can achieve the changes that are necessary. Government should work with other stakeholders to design a new commercial rates regime that will be a better match to conditions in the Territory.

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| Recommendation 24  The Committee recommends that the ACT government:  establishes a taskforce to review commercial rates in the ACT with regard to improving transparency, certainty for property owners and having regard to the overall economic impact of the rating system; and  liaises widely with the community in the setting up of the task force to ensure wide and balanced representation of all interests in the ACT community. |

* 1. The Committee discussed whether there needed to be a change to the current commercial rating system while the taskforce was convening. Some Members recommend that the current system needs to be changed.

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| Recommendation 25  Some Committee members recommend that while the taskforce is deliberating, the ACT government returns the system for existing commercial and residential rates in the ACT to the situation as it stood in 2012, immediately after the passage of the initial rates reform legislation. |

Other Members did not support the recommendation.[[390]](#footnote-390)

## Committee conclusion

* 1. In the course of this inquiry Committee received a significant amount of information regarding the commercial rates regime in the Territory.
  2. The Committee’s recommendations reflect the high level of concern in the community about the fairness, equity and transparency of the current rating system. There are a higher than expected number of anomalies generated by the present system, and ratepayers in particular categories and circumstances are experiencing undue hardship.
  3. The system does not appear responsive to their situation. Remedies are not as accessible as they should be, in part due to inadequate internal process when it comes to raising an objection with the ACT Revenue Office, and to high expense when that process is exhausted, when the rate-payer takes matters to the ACAT.
  4. Internal and external avenues for objections and appeals are made less effective by the location of the ACT Valuation Office within the ACT Revenue Office. This creates an apprehended conflict of interest that is borne out by reports that the Valuation Office does not negotiate in good faith in the course of these processes.
  5. A compounding factor is that there is no independent avenue of appeal, short of going to ACAT. Other jurisdictions offer a model for moving beyond this situation, by providing not only mechanisms for independent review of decisions, but an independent statutory function which allows valuations to be determined entirely separate from government entities responsible for collecting revenue. As reflected in recommendations above, the Committee considers that the Territory should follow other Australian jurisdictions in adopting this model.
  6. A further concern is the burden currently being placed on commercial ratepayers which, in spite of government statements to the contrary, appears to be having a chilling effect on commercial activity and investment in the Territory. It may be taking time for statistical evidence of this to flow through, but evidence tendered to this inquiry makes it quite clear that the current regime is providing strong incentives for small to medium scale businesses and investors to move out of the Territory and locate in NSW. This should give the ACT government pause for thought, as such investors and businesses make a valuable contribution to economic activity in the Territory.
  7. Beyond these more specific concerns, the Committee considers that there are fundamental problems in the commercial rates regime to which the ACT government must attend. As noted at the beginning of the report, the Stein report noted in 1995 that there were underlying tensions within the land tenure system in the Territory, most particularly between use purpose clauses in individual leases and wider planning mechanisms. The evidence tendered to the Committee in the course of this inquiry shows that this has not been resolved. The apparent difficulty experienced by the ACT Valuations Office in administering mass appraisal of valuations for commercial properties in the Territory shows that this needs to be addressed. At present, for want of a better method, and in the face of a very complex body of information regarding Crown leases for commercial purposes in the Territory, the Valuation Office appears to be making assessments, on the basis of very little information, and then applying them across areas and precincts. It was inevitable that such an approach would produce anomalies and inequities, and that is exactly what has occurred.
  8. In short, the fundamental problem is that the Territory has adopted the mass appraisal method used in other Australian jurisdictions without attending, sufficiently, to an underlying rating base characterised by a complexity—due to the presence of use purpose clauses for individual Crown leases—not seen in any other jurisdiction. For mass appraisal to be effective, the ACT government must do something to rationalize the ratings base. While the scale of such a task is significant, not addressing it will prove in the long-run more expensive than doing nothing.
  9. If the ACT government had not embarked upon a process in which it shifted the tax burden onto rates, and commercial rates in particular, this would be less pressing. However, since tax reform was initiated in 2012-13, the contradictions in arrangements for Crown leases in the Territory have become more and more prominent, leading to many of the anomalies the Committee has seen in the course of the inquiry. These could have been anticipated by the ACT government in 2012-13, before the reform agenda was initiated. This appears not to have been the case. In any event, it is now a matter of urgency that the task begin, and for the ACT government to engage relevant stakeholders so as to support a constructive process, and an effective and equitable outcome.

Vicki Dunne MLA  
Chair

## Appendix A - Witnesses

Hearings of 12 November 2018

* + - Mr Andrew Barr MLA, Chief Minister and Treasurer
    - Mr David Nicol, Under-Treasurer
    - Mr Kim Salisbury, Commissioner for ACT Revenue

Hearings of 6 February 2019

* + - Mr Greg Cummins, Chair, ACT Committee, Australian Property Institute
    - Mr Peter Strong, Chief Executive Officer, Council of Small Business Organisations Australia
    - Mr Doug O’Mara, Chief Executive Officer, Civium

Hearings of 7 February 2019

* + - Mr Guy Randell of the Commercial Committee, Real Estate Institute of the Australian Capital Territory (REIACT)
    - Mr John McGrath, Proprietor, John McGrath Holden

Hearings of 27 February 2019

* + - Ms Adina Cirson, Australian Capital Territory Executive Director, Property Council of Australia
    - Mr Richard Snow, Head of Property, and Mr Noel McCann, Director of Planning and Government Relations, Capital Property Group / Canberra Airport
    - Mr Archie Tsirimokos, Chair, Canberra Business Chamber
    - ACT commercial property tenant, Mr Michael Holmes
    - Fyshwick property owners: Mr Barry Faux, Ms Karen Paxton & Mr Scott Molloy
    - Mr Arthur Lagos, Phillip Traders’ Marketplace
    - Another ACT property owner, Mr Clayton Clews - Weston

Hearings of 28 February 2019

* + - Ms Kate Carnell AO, Australian Small Business and Family Enterprise Ombudsman
    - Mr Angus Nardi, Executive Director, Shopping Centre Council of Australia (SCCA)
    - Mr Marcus Conabere, Urbis – SCCA’s valuation and taxation adviser
    - Mr Peter Maguire
    - Ms Carolyn Mowbray, State Director (ACT), Egan Valuers
    - Mr David Quinn, Manager and Partner, The Duxton at O’Connor
    - Evri Group – Mr George Cassimatis, Finance Manager

Hearings of 1 March 2019

* + - Mr Alfonso del Rio, Partner, Clayton Utz
    - Mr Paul Powderly, State Chief Executive, Colliers International
    - Mr Stephen Flannery, Partner and Head of Knight Frank Valuations & Advisory Canberra
    - Mr Robert Rixon
    - Mr Philip Doyle, Senior Director, Asset Services, CBRE, Canberra
    - Mr Peter Sarris

Hearings of 6 March 2019

* + - Ms Susan Proctor

## Appendix B – Submissions

* + - Submission No 01 - Mr Peter Blackshaw
    - Submission No 02 - Mr Robert Rixon
    - Submission No 03 - Mr Nunziante Losanno
    - Submission No 04 - Mr Jon Loiterton
    - Submission No 05 - Mr Frank Morella
    - Submission No 06 - Ms Kaz Bialecki
    - Submission No 07 - Mr Bernie Wilson
    - Submission No 08 - Mr Benjamin McDonald
    - Submission No 09 - Mr Trevor Vizovitis
    - Submission No 10 - Mr Tom Adam
    - Submission No 11 - Mr Clayton Clews
    - Submission No 12 - Ms Karen Paxton
    - Submission No 12A - Ms Karen Paxton
    - Submission No 13 - Mr Terry Patat
    - Submission No 13A - Mr Terry Patat
    - Submission No 14 - Mr Ben Schutte
    - Submission No 15 - Eric and Susan Cappello
    - Submission No 16 - Mr Tim Bohm
    - Submission No 17 - Hoa Nguyen
    - Submission No 18 - Mr Carmelo Abbondante
    - Submission No 19 - Mr Scott Molloy
    - Submission No 20 - Mr Stephen Hampson
    - Submission No 21 - Ms Margaret Allen
    - Submission No 22 - Mr Ravi Sharma
    - Submission No 23 - Mr Peter Sarris
    - Submission No 24 - Mr Michael Holmes
    - Submission No 25 - Mr Peter Maguire
    - Submission No 26 - Mr Adam Woodward
    - Submission No 27 - Evri Group
    - Submission No 28 - Mr Jim Sarris
    - Submission No 29 - The Duxton at O'Connor
    - Submission No 30 - Mr Sumer Singh
    - Submission No 31 - Ms Deborah Carrera
    - Submission No 32 - Mr Rodney Trezise
    - Submission No 33 - Mr Edward Gonsior
    - Submission No 34 - Ms Rosemary Dupont
    - Submission No 35 - Mr Ian Oliver
    - Submission No 36 - Sian
    - Submission No 37 - Mr Gerard Eschauzier
    - Submission No 38 - Mr Brendan Read
    - Submission No 39 - Mr Stephen Flannery
    - Submission No 40 - Manuka Business Association
    - Submission No 41 - Mrs H Samios
    - Submission No 42 - Mr Barry Faux
    - Submission No 42A - Mr Barry Faux
    - Submission No 43 - Chief Minister and Treasurer
    - Submission No 44 - Mr Jon Waterhouse
    - Submission No 45 - Shopping Centre Council of Australia
    - Submission No 46 - Egan National Valuers
    - Submission No 47 - Mr Chris Donaghue
    - Submission No 48 - Mr David Rolfe
    - Submission No 49 - Australian Property Institute
    - Submission No 50 - Australian Small Business and Family Enterprise Ombudsman
    - Submission No 51 - Capital Property Group
    - Submission No 52 - Master Builders Association ACT
    - Submission No 53 - Canberra Business Chamber
    - Submission No 54 - Property Council of Australia
    - Submission No 55 - Mr Dan Mullan
    - Submission No 56 - Mr Robert Smith-Saarinen
    - Submission No 57 - Ms Natalie Colbert

1. Legislative Assembly for the ACT, *Minutes of Proceedings No. 2*, 13 December 2016, p.13, available at: <https://www.parliament.act.gov.au/__data/assets/pdf_file/0008/1017980/MoP002F1.pdf> [↑](#footnote-ref-1)
2. Legislative Assembly for the ACT, *Minutes of Proceedings* *No. 37*, 26 October 2017, p.489, available at: <https://www.parliament.act.gov.au/__data/assets/pdf_file/0003/1122285/MOP037F.pdf> [↑](#footnote-ref-2)
3. Legislative Assembly for the ACT, *Minutes of Proceedings* *No. 82*, 29 November 2018, p.1172, available at: <https://www.parliament.act.gov.au/__data/assets/pdf_file/0006/1287357/MoP082F.pdf> [↑](#footnote-ref-3)
4. Legislative Assembly for the ACT, *Minutes of Proceedings* *No. 82*, 29 November 2018, p.1172, available at: <https://www.parliament.act.gov.au/__data/assets/pdf_file/0006/1287357/MoP082F.pdf> [↑](#footnote-ref-4)
5. *Proof Transcript of Evidence*, 6 February 2019, pp.7, 20; *Proof Transcript of Evidence*, 27 February 2019, pp.86, 87, 103, 112, *Proof Transcript of Evidence*, 1 March 2019, p.243. [↑](#footnote-ref-5)
6. Minutes of Meeting No 87, 27 February 2019, and Meeting No 91, 1 March 2019. [↑](#footnote-ref-6)
7. *Proof Transcript of Evidence*, 1 March 2019, p.243. [↑](#footnote-ref-7)
8. Justice Paul Stein, Patrick Troy & Robert Yeomans, *Report into the administration of the ACT leasehold*, 15 November ACT Government Printer, Canberra, 1995, p.35 *ff.* [↑](#footnote-ref-8)
9. *Report into the administration of the ACT leasehold*, p.19. [↑](#footnote-ref-9)
10. *Report into the administration of the ACT leasehold*, p.26. [↑](#footnote-ref-10)
11. *Report into the administration of the ACT leasehold*, p.21. [↑](#footnote-ref-11)
12. *Report into the administration of the ACT leasehold*, p.21. [↑](#footnote-ref-12)
13. *Report into the administration of the ACT leasehold,* p.23. [↑](#footnote-ref-13)
14. *Report into the administration of the ACT leasehold,* p.27. [↑](#footnote-ref-14)
15. *Report into the administration of the ACT leasehold,* p.27. [↑](#footnote-ref-15)
16. *ACT Taxation Review May 2012*, pp.6-7, viewed 6 March 2019, (also referenced in 2012-13 Budget Paper No. 3, p.41), available at: <http://www.treasury.act.gov.au/documents/ACT%20Taxation%20Review/ACT%20Taxation%20Review%20May%202012.pdf> [↑](#footnote-ref-16)
17. 2012-13 Budget Paper No. 3, p.46. [↑](#footnote-ref-17)
18. 2012-13 Budget Paper No. 3, pp.47, 49. [↑](#footnote-ref-18)
19. 2012-13 Budget Paper No. 3, pp.47-48. [↑](#footnote-ref-19)
20. 2012-13 Budget Paper No. 3, p.49. [↑](#footnote-ref-20)
21. 2012-13 Budget Paper No. 3, p.50. [↑](#footnote-ref-21)
22. 2012-13 Budget Paper No. 3, p.50. [↑](#footnote-ref-22)
23. 2012-13 Budget Paper No. 3, p.48. [↑](#footnote-ref-23)
24. See: ‘Taxation Reform’, *2013-14 Budget Paper No. 3*, pp.95-99; ‘Taxation Reform’, *2014-15 Budget Paper No. 3*, pp.247-250 and ‘2014-15 Tax Reform Measures’, pp.250-251; ‘Taxation Reform’, *2015-16 Budget Paper No. 3*, pp.219-221; ‘Taxation Reform’, *2016-17 Budget Paper No. 3*, pp.249-258; ‘Taxation reform’, *2017-18 Budget Paper No.3*, p.23 and pp.225-228; and ‘Revenue and forward estimates’, 2018-19 Budget Paper No.3, p.233 *ff.* [↑](#footnote-ref-24)
25. Different views have been put in the print media. See: ‘Budget reflects some sober truths’ *Canberra Times*, June 6 2012, pg. 12; Robert Jeremenko, ‘Leading by way of tax reform’, *Canberra Times*, October 31 2012, pg. 17; Lisa Cox, ‘Households $100 better off from tax reduction’, *Canberra Times*, May 22 2013, pg. A008; Larissa Nicholson, ‘Swings and roundabouts as stamp duty reform kicks in’, *Canberra Times*, June 5 2013, pg.A004; Kirsten Lawson, ‘Stamp duty slowdown stuns business leaders’, *Canberra Times*, June 17 2015, pg.1; ‘Stamp duty reform is far from perfect’, *Canberra Times*, October 22 2016, pg.B008; Daniel Burdon, ‘Revenue Treasury confirms 31 per cent hike over two years Rates hit for unit owners’, *Canberra Times*, September 6 2017, pg. 1; Jon Stanhope and Khalid Ahmed, ‘Did the ACT keep its word on tax changes? The evidence does not look good for the government’, *Canberra Times*, September 9 2017, pg. 10; Jon Stanhope and Khalid Ahmed, ‘The triple whammy of rates, house prices and stamp duty are not what we were promised’, *Canberra Times*, March 5 2018, pg. 16; Katie Burgess, ‘Call for ‘fairer’ rates’, *Canberra Times*, April 7 2018, pg. 1; Daniel Burdon, ‘ACT land tax revenue set to rise 45pc in five years’, *Canberra Times*, April 13 2018, pg. 4; and Katie Burgess, ‘Commercial rates revenue windfall’, *Canberra Times*, January 12 2019, pg. 1. [↑](#footnote-ref-25)
26. See Standing Committee on Public Accounts, *Methodology for determining rates and land tax in strata residences*, September 2018, available at: <https://www.parliament.act.gov.au/__data/assets/pdf_file/0003/1252830/9th-PAC-04-Methodology-for-determining-rates-and-land-tax-in-strata-residences.pdf> [↑](#footnote-ref-26)
27. Letter from Mr Steven Flannery re. retrospective application of rates liabilities, received 23 March 2018, available at: <https://www.parliament.act.gov.au/__data/assets/pdf_file/0011/1325189/Letter-from-Mr-Steven-Flannery-re-retrospective-application-of-rates-liabilities-rcd-23-March-2018.pdf> [↑](#footnote-ref-27)
28. See Legislative Assembly for the ACT, *Minutes of Proceedings* *No. 82*, 29 November 2018, p.1172, available at: <https://www.parliament.act.gov.au/__data/assets/pdf_file/0006/1287357/MoP082F.pdf> [↑](#footnote-ref-28)
29. *Rates Act 2004* (ACT), viewed 7 March 2019, available at: <https://www.legislation.act.gov.au/View/a/2004-3/current/PDF/2004-3.PDF> [↑](#footnote-ref-29)
30. Dictionary, *Rates Act 2004* (ACT). [↑](#footnote-ref-30)
31. *Taxation Administration (Amounts Payable—Rates) Determination 2018 (No 1)*, Disallowable instrument DI2018–172, made under the *Rates Act 2004* (ACT), s 46(2)(f) (Determination for deferral of rates on application) and the *Taxation Administration Act 1999* (ACT), s 139 (Determination of amounts payable under tax laws), viewed 7 March 2019, available at: <https://www.legislation.act.gov.au/View/di/2018-172/current/PDF/2018-172.PDF> [↑](#footnote-ref-31)
32. *Taxation Administration (Amounts Payable—Rates) Determination 2018 (No 1)*, s 5(1)(a)(ii). [↑](#footnote-ref-32)
33. The table reproduces Table 2: ‘Percentage rates-commercial land’ from the *Taxation Administration (Amounts Payable—Rates) Determination 2018 (No 1)*, s 5. [↑](#footnote-ref-33)
34. 2012-13 Budget Paper No. 3, p.49. [↑](#footnote-ref-34)
35. 2014-15 Budget Paper No. 3, p.50. [↑](#footnote-ref-35)
36. 2015-16 Budget Paper No. 3, p.221. [↑](#footnote-ref-36)
37. 2016-17 Budget Paper No. 3, p.164. [↑](#footnote-ref-37)
38. 2017-18 Budget Paper No. 3, p.225. [↑](#footnote-ref-38)
39. 2018-19 Budget Paper No. 3, p.235. [↑](#footnote-ref-39)
40. Legislative Assembly for the ACT, *Debates*, 29 November 2018, pp.5263-5264. [↑](#footnote-ref-40)
41. Legislative Assembly for the ACT, *Minutes of Proceedings*, 31 October 2018, p.1106. [↑](#footnote-ref-41)
42. Legislative Assembly for the ACT, *Minutes of Proceedings*, 31 October 2018, p.1107. [↑](#footnote-ref-42)
43. Mr Andrew Barr MLA, Letter to Chair, Standing Committee on Public Accounts, 12 November 2018, p.2. [↑](#footnote-ref-43)
44. Mr Andrew Barr MLA, Letter to Chair, Standing Committee on Public Accounts, 12 November 2018, p.1. [↑](#footnote-ref-44)
45. Chief Minister and Treasurer, Submission No 43, available at: <https://www.parliament.act.gov.au/__data/assets/pdf_file/0008/1317428/PAC-Submission-No-043-Chief-Minister-and-Treasurer.pdf> [↑](#footnote-ref-45)
46. *Transcript of Evidence*, 12 November 2018, p.16. [↑](#footnote-ref-46)
47. Mr David Nicole, *Transcript of Evidence*, 12 November 2018, p.16. [↑](#footnote-ref-47)
48. *Transcript of Evidence*, 12 November 2018, p.28. [↑](#footnote-ref-48)
49. Mr David Nicol, *Transcript of Evidence*, 12 November 2018, p.28. [↑](#footnote-ref-49)
50. Mr Kim Salisbury, *Transcript of Evidence*, 12 November 2018, pp.28-29. [↑](#footnote-ref-50)
51. Mr David Nicol, *Transcript of Evidence*, 12 November 2018, p.29. [↑](#footnote-ref-51)
52. Mr Andrew Barr MLA, *Transcript of Evidence*, 12 November 2018, p.12. [↑](#footnote-ref-52)
53. Mr Andrew Barr MLA, *Transcript of Evidence*, 12 November 2018, p.13. [↑](#footnote-ref-53)
54. Mr Marcus Conabere, *Proof Transcript of Evidence*, 28 February 2019, pp.184-185. [↑](#footnote-ref-54)
55. Mr Marcus Conabere, *Proof Transcript of Evidence*, 28 February 2019, p.185. [↑](#footnote-ref-55)
56. Mr Marcus Conabere, *Proof Transcript of Evidence*, 28 February 2019, pp.185-186. [↑](#footnote-ref-56)
57. Mr Marcus Conabere, *Proof Transcript of Evidence*, 28 February 2019, p.186. [↑](#footnote-ref-57)
58. Mr Marcus Conabere, *Proof Transcript of Evidence*, 28 February 2019, p.186. [↑](#footnote-ref-58)
59. Mr Marcus Conabere, *Proof Transcript of Evidence*, 28 February 2019, p.186. [↑](#footnote-ref-59)
60. Mr Marcus Conabere, *Proof Transcript of Evidence*, 28 February 2019, p.186. [↑](#footnote-ref-60)
61. Mr Marcus Conabere, *Proof Transcript of Evidence*, 28 February 2019, p.186. [↑](#footnote-ref-61)
62. Mr Marcus Conabere, *Proof Transcript of Evidence*, 28 February 2019, p.186. [↑](#footnote-ref-62)
63. Mr Marcus Conabere, *Proof Transcript of Evidence*, 28 February 2019, pp.186-187. [↑](#footnote-ref-63)
64. Mr Marcus Conabere, *Proof Transcript of Evidence*, 28 February 2019, p.187. See the webpage for the Independent Pricing and Regulatory Tribunal, viewed 27 March 2019, available at: <https://www.ipart.nsw.gov.au/Home> [↑](#footnote-ref-64)
65. Mr Marcus Conabere, *Proof Transcript of Evidence*, 28 February 2019, p.187. [↑](#footnote-ref-65)
66. Mr Marcus Conabere, *Proof Transcript of Evidence*, 28 February 2019, p.187. [↑](#footnote-ref-66)
67. Mr Marcus Conabere, *Proof Transcript of Evidence*, 28 February 2019, pp.187-188. [↑](#footnote-ref-67)
68. See: 2012‐13 Budget Paper No. 3, p.48; and 2013‐14 Budget Paper No. 3, p.99; [↑](#footnote-ref-68)
69. See: 2014-15 Budget Paper No. 3, p.249; 2017-18 Budget Paper No. 3, p.225; and 2018-19 Budget Paper No. 3, p.236. [↑](#footnote-ref-69)
70. 2015-16 Budget Paper No. 3, p.221. [↑](#footnote-ref-70)
71. ACT Revenue Office, ‘Rates’, viewed 7 March 2019, available at: <https://www.revenue.act.gov.au/rates?result_1060955_result_page=2> [↑](#footnote-ref-71)
72. Ms Carolyn Mowbray, *Proof Transcript of Evidence*, 28 February 2019, pp.210-211. [↑](#footnote-ref-72)
73. Egan National Valuers, Submission No 46, p.2. [↑](#footnote-ref-73)
74. Egan National Valuers, Submission No 46, p.3. [↑](#footnote-ref-74)
75. Ms Carolyn Mowbray, *Proof Transcript of Evidence*, 28 February 2019, p.211. [↑](#footnote-ref-75)
76. Egan National Valuers, Submission No 46, p.3. [↑](#footnote-ref-76)
77. Egan National Valuers, Submission No 46, p.2. [↑](#footnote-ref-77)
78. Mr Guy Randell, *Proof Transcript of Evidence*, 7 February 2019, p.42. In a Gross Lease, ‘the tenant pays a base rent amount and does not contribute to extra charges for outgoings or expenses accrued for the property i.e. land tax, council rates, water rates, insurance, management fees, strata levies etc. The base rent charged may have a built in allowance for market rent plus some extra for outgoings and expenses, however the total is charged as one payment.’ In a Net Lease, ‘the tenant pays a base rent amount plus they contribute to the payment of outgoings or expenses related to the property. Net leases can result in tenant contribution toward some or all outgoings expenses e.g. Land tax, council rates, water rates, insurance, management fees, strata levies etc.’ See Burgess Rawson, ‘Gross vs Net leases – understanding the difference’, 29 September 2016, viewed 18 March 2019, available at: <https://www.burgessrawson.com.au/property-blog/gross-vs-net-leases-understanding-difference/> [↑](#footnote-ref-78)
79. Mr Guy Randell, *Proof Transcript of Evidence*, 7 February 2019, p.42. [↑](#footnote-ref-79)
80. Ms Carolyn Mowbray, Submission No 46, p.2. [↑](#footnote-ref-80)
81. Australian Property Institute, Submission No 49, p.4. [↑](#footnote-ref-81)
82. Australian Property Institute, Submission No 49, p.4. [↑](#footnote-ref-82)
83. Australian Property Institute, Submission No 49, p.4. [↑](#footnote-ref-83)
84. Australian Property Institute, Submission No 49, p.8. [↑](#footnote-ref-84)
85. *Proof Transcript of Evidence*, 27 February 2019, p.101. [↑](#footnote-ref-85)
86. Mr Noel McCann, *Proof Transcript of Evidence*, 27 February 2019, p.101. [↑](#footnote-ref-86)
87. Evri Group, Submission No 27, p.1. [↑](#footnote-ref-87)
88. Evri Group, Submission No 27, p.1. [↑](#footnote-ref-88)
89. Mr Kim Salisbury, *Transcript of Evidence*, 12 November 2018, p.19. [↑](#footnote-ref-89)
90. Mr Guy Randell, *Proof Transcript of Evidence*, 7 February 2019, p.40. [↑](#footnote-ref-90)
91. Mr George Katheklakis, *Proof Transcript of Evidence*, 27 February 2019, p.85. [↑](#footnote-ref-91)
92. Mr George Katheklakis, *Proof Transcript of Evidence*, 27 February 2019, p.85. [↑](#footnote-ref-92)
93. Mr Peter Sarris, Submission No 23, p.[1]. Mr Sarris also discussed these matters when he appeared before the Committee: please see *Proof Transcript of Evidence*, 1 March 2019, pp.289-296. [↑](#footnote-ref-93)
94. Everi Group, Submission No 27, pp.[1], [2]-[3], [4]. [↑](#footnote-ref-94)
95. Everi Group, Submission No 27, pp.[2]-[3]. [↑](#footnote-ref-95)
96. Everi Group, Submission No 27, p.[3]. [↑](#footnote-ref-96)
97. Mr Steven Flannery, Submission No 39, p.1. Mr Flannery also spoke to this issue in hearings: see *Proof Transcript of Evidence*, 1 March 2019, pp.270-271. [↑](#footnote-ref-97)
98. Mr Doug O’Mara, *Proof Transcript of Evidence*, 6 February 2019, p.36; Australian Property Institute, Submission No 49, p.6; Property Council of Australia, Submission No 54, p.1 and *Proof Transcript of Evidence*, 27 February 2019, pp.79, 84; Mr Paul Powderly, *Proof Transcript of Evidence*, 1 March 2019, pp.255-256.. [↑](#footnote-ref-98)
99. Mr Marcus Conabere, *Proof Transcript of Evidence*, 28 February 2019, p.191. [↑](#footnote-ref-99)
100. Mr Marcus Conabere, *Proof Transcript of Evidence*, 28 February 2019, p.191. [↑](#footnote-ref-100)
101. Mr Steven Flannery, Letter to the Standing Committee on Public Accounts, received 23 March 2018, p.1, viewed 8 March 2019. This was published by the Committee and is available at: <https://www.parliament.act.gov.au/__data/assets/pdf_file/0011/1325189/Letter-from-Mr-Steven-Flannery-re-retrospective-application-of-rates-liabilities-rcd-23-March-2018.pdf> [↑](#footnote-ref-101)
102. Mr Steven Flannery, Letter to the Standing Committee on Public Accounts, received 23 March 2018, p.1. [↑](#footnote-ref-102)
103. In hearings of 12 November 2018 Mr Kim Salisbury told the Committee that the ACT Valuation Office conducted the review of properties in Braddon in calendar year 2016. Please see *Transcript of Evidence*, 12 November 2018, pp.6-7. [↑](#footnote-ref-103)
104. Mr Steven Flannery, Letter to the Standing Committee on Public Accounts, received 23 March 2018, p.3. [↑](#footnote-ref-104)
105. Mr Steven Flannery, Letter to the Standing Committee on Public Accounts, received 23 March 2018, p.3. [↑](#footnote-ref-105)
106. Mr Steven Flannery, Letter to the Standing Committee on Public Accounts, received 23 March 2018, p.4. [↑](#footnote-ref-106)
107. Mr Steven Flannery, Letter to the Standing Committee on Public Accounts, received 23 March 2018, p.4. [↑](#footnote-ref-107)
108. Mr Steven Flannery, Letter to the Standing Committee on Public Accounts, received 23 March 2018, p.4. [↑](#footnote-ref-108)
109. Mr Steven Flannery, Letter to the Standing Committee on Public Accounts, received 23 March 2018, p.4. [↑](#footnote-ref-109)
110. *FANDS (ACT) Pty Ltd v Commissioner for ACT Revenue* (No. 2) [2017] ACAT 112, viewed 19 March 2019, available at: <http://acat.act.gov.au/__data/assets/pdf_file/0006/1145364/FANDS-ACT-PTY-LTD-v-COMMISSIONER-FOR-ACT-REVENUE-No.-2-Administrative-Review-2017-ACAT-112.pdf> [↑](#footnote-ref-110)
111. Mr Steven Flannery, Letter to the Standing Committee on Public Accounts, received 23 March 2018, p.2. [↑](#footnote-ref-111)
112. Mr Steven Flannery, Letter to the Standing Committee on Public Accounts, received 23 March 2018, p.2. [↑](#footnote-ref-112)
113. *FANDS (ACT) Pty Ltd v Commissioner for ACT Revenue* (No. 2) [2017] ACAT 112, 71 [274]. [↑](#footnote-ref-113)
114. *FANDS (ACT) Pty Ltd v Commissioner for ACT Revenue* (No. 2) [2017] ACAT 112, 71 [274]. [↑](#footnote-ref-114)
115. *FANDS (ACT) Pty Ltd v Commissioner for ACT Revenue* (No. 2) [2017] ACAT 112, 72 [277]. [↑](#footnote-ref-115)
116. Mr Steven Flannery, Letter to the Standing Committee on Public Accounts, received 23 March 2018, p.6. [↑](#footnote-ref-116)
117. Mr Steven Flannery, Letter to the Standing Committee on Public Accounts, received 23 March 2018, p.6. [↑](#footnote-ref-117)
118. Mr Steven Flannery, Letter to the Standing Committee on Public Accounts, received 23 March 2018, p.6. [↑](#footnote-ref-118)
119. *FANDS (ACT) Pty Ltd v Commissioner for ACT Revenue* (No. 2) [2017] ACAT 112, 61 [228]. [↑](#footnote-ref-119)
120. *FANDS (ACT) Pty Ltd v Commissioner for ACT Revenue* (No. 2) [2017] ACAT 112, 62 [230]. [↑](#footnote-ref-120)
121. *FANDS (ACT) Pty Ltd v Commissioner for ACT Revenue* (No. 2) [2017] ACAT 112, 69 [262], citing *James v Commissioner for ACT Revenue* [2013] ACAT [32], [33], [35]. [↑](#footnote-ref-121)
122. *FANDS (ACT) Pty Ltd v Commissioner for ACT Revenue* (No. 2) [2017] ACAT 112, 53-54 [193]. [↑](#footnote-ref-122)
123. *FANDS (ACT) Pty Ltd v Commissioner for ACT Revenue* (No. 2) [2017] ACAT 112, 70-71 [269]. [↑](#footnote-ref-123)
124. *FANDS (ACT) Pty Ltd v Commissioner for ACT Revenue* (No. 2) [2017] ACAT 112, 71 [269]. [↑](#footnote-ref-124)
125. Mr Steven Flannery, Letter to the Standing Committee on Public Accounts, received 23 March 2018, p.1. [↑](#footnote-ref-125)
126. *FANDS (ACT) Pty Ltd v Commissioner for ACT Revenue* (No. 2) [2017] ACAT 112, 60 [224]. [↑](#footnote-ref-126)
127. *FANDS (ACT) Pty Ltd v Commissioner for ACT Revenue* (No. 2) [2017] ACAT 112, 70 [267]. [↑](#footnote-ref-127)
128. *FANDS (ACT) Pty Ltd v Commissioner for ACT Revenue* (No. 2) [2017] ACAT 112, 70 [268] [↑](#footnote-ref-128)
129. See *Transcript of Evidence*, 12 November 2018. [↑](#footnote-ref-129)
130. Mr Kim Salisbury, *Proof Transcript of Evidence*, 22 February 2019, p.69. [↑](#footnote-ref-130)
131. Mr Kim Salisbury, *Transcript of Evidence*, 12 November 2018, pp.5-6. [↑](#footnote-ref-131)
132. See Mr Phillip Walker, *Proof Transcript of Evidence*, 1 March 2019, p.268; Mr Alfonso del Rio, *Proof Transcript of Evidence*, 1 March 2019, p.239; Mr Peter Sarris, *Proof Transcript of Evidence*, 1 March 2019, p.295. [↑](#footnote-ref-132)
133. Mr Andrew Barr MLA, *Proof Transcript of Evidence*, 22 February 2019, p.70. [↑](#footnote-ref-133)
134. Mr Andrew Barr MLA, *Proof Transcript of Evidence*, 22 February 2019, p.70. [↑](#footnote-ref-134)
135. Mr Alfonso del Rio, *Proof Transcript of Evidence*, 1 March 2019, p.239. [↑](#footnote-ref-135)
136. Mr Alfonso del Rio, *Proof Transcript of Evidence*, 1 March 2019, p.238. [↑](#footnote-ref-136)
137. Australian Property Institute, Submission No 49, p.4. [↑](#footnote-ref-137)
138. Australian Property Institute, Submission No 49, p.4. [↑](#footnote-ref-138)
139. Australian Property Institute, Submission No 49, p.5. [↑](#footnote-ref-139)
140. Dictionary, *Rates Act 2004* (ACT). [↑](#footnote-ref-140)
141. Division 5.2, ‘Certain proposed unit subdivisions’, *Rates Act 2004* (ACT). [↑](#footnote-ref-141)
142. Mr George Katheklakis, *Proof Transcript of Evidence*, 27 February 2019, p.86; Mr George Cassimatis, *Proof Transcript of Evidence*, p.230. [↑](#footnote-ref-142)
143. Division 5, ‘Apportionment factors for mixed development land’, *Valuation of Land Act 1916 No 2* (NSW), viewed 18 March 2019, available at: <https://www.legislation.nsw.gov.au/#/view/act/1916/2/full> [↑](#footnote-ref-143)
144. NSW Valuer General, ‘Apportionment factors for mixed development and mixed use land’, Valuer General’s Policy May 2017, Part 1.1, viewed 18 March 2019, available at: <http://www.valuergeneral.nsw.gov.au/__data/assets/pdf_file/0009/199998/0.2_FINAL_Apportionment_factors_for_mixed_development_and_mixed_use_land_policy_May_2017.pdf> [↑](#footnote-ref-144)
145. Tara Cheyne MLA and Bec Cody MLA dissented from the recommendation. [↑](#footnote-ref-145)
146. Mr Andrew Barr MLA, Letter to Chair, Standing Committee on Public Accounts, 12 November 2018, p.3. [↑](#footnote-ref-146)
147. Mr Kim Salisbury, *Proof Transcript of Evidence*, 22 February 2019, p.60. ‘Unimproved value’ is defined in s 6 of the *Rates Act 2004* (ACT). [↑](#footnote-ref-147)
148. Australian Property Institute, ‘Definitions’, viewed 19 March 2019, available at: <https://www.api.org.au/definitions> [↑](#footnote-ref-148)
149. Australian Property Institute, ‘Definitions’, viewed 19 March 2019, available at: <https://www.api.org.au/definitions> [↑](#footnote-ref-149)
150. Mr Andrew Barr MLA, Letter to Chair, Standing Committee on Public Accounts, 12 November 2018, p.3. [↑](#footnote-ref-150)
151. Mr Andrew Barr MLA, Letter to Chair, Standing Committee on Public Accounts, 12 November 2018, p.3. [↑](#footnote-ref-151)
152. Mr Andrew Barr MLA, Letter to Chair, Standing Committee on Public Accounts, 12 November 2018, p.3. [↑](#footnote-ref-152)
153. Mr Marcus Conabere, *Proof Transcript of Evidence*, 28 February 2019, p.189. [↑](#footnote-ref-153)
154. Mr Greg Cummins, *Proof Transcript of Evidence*, 6 February 2019, p.2. [↑](#footnote-ref-154)
155. Mr Greg Cummins, *Proof Transcript of Evidence*, 6 February 2019, p.2. [↑](#footnote-ref-155)
156. Mr Greg Cummins, *Proof Transcript of Evidence*, 6 February 2019, p.12. [↑](#footnote-ref-156)
157. Mr Greg Cummins, *Proof Transcript of Evidence*, 6 February 2019, p.5. [↑](#footnote-ref-157)
158. Mr Greg Cummins, *Proof Transcript of Evidence*, 6 February 2019, p.8. [↑](#footnote-ref-158)
159. Mr Guy Randell, *Proof Transcript of Evidence*, 7 February 2019, p.39. [↑](#footnote-ref-159)
160. Mr Guy Randell, *Proof Transcript of Evidence*, 7 February 2019, p.39. [↑](#footnote-ref-160)
161. Mr Doug O'Mara, *Proof Transcript of Evidence*, 6 February 2019, p.27. [↑](#footnote-ref-161)
162. Mr Phillip Doyle, *Proof Transcript of Evidence*, 1 March 2019, p.285. [↑](#footnote-ref-162)
163. Submission No.40, Manuka Business Association, p.11; Mr Arthur Lagos, Phillip Market Place, *Proof Transcript of Evidence*, 27 February 2019, p.150. [↑](#footnote-ref-163)
164. Mr Alfonso del Rio, *Proof Transcript of Evidence*, 1 March 2019, p.240. [↑](#footnote-ref-164)
165. Mr Steven Flannery, *Proof Transcript of Evidence*, 1 March 2019, p.261. [↑](#footnote-ref-165)
166. Mr Steven Flannery, *Proof Transcript of Evidence*, 1 March 2019, p.261. [↑](#footnote-ref-166)
167. Mr Steven Flannery, *Proof Transcript of Evidence*, 1 March 2019, p.261. [↑](#footnote-ref-167)
168. Mr Steven Flannery, *Proof Transcript of Evidence*, 1 March 2019, p.261. [↑](#footnote-ref-168)
169. Mr Steven Flannery, *Proof Transcript of Evidence*, 1 March 2019, pp.261-262. [↑](#footnote-ref-169)
170. Mr Kim Salisbury, *Transcript of Evidence*, 12 November 2018, p.3. [↑](#footnote-ref-170)
171. Mr Kim Salisbury, *Transcript of Evidence*, 12 November 2018, p.3. [↑](#footnote-ref-171)
172. Mr Kim Salisbury, *Transcript of Evidence*, 12 November 2018, p.4. [↑](#footnote-ref-172)
173. Mr Kim Salisbury, *Transcript of Evidence*, 12 November 2018, p.5. [↑](#footnote-ref-173)
174. Mr Kim Salisbury, *Transcript of Evidence*, 12 November 2018, p.5. [↑](#footnote-ref-174)
175. Mr Kim Salisbury, *Transcript of Evidence*, 12 November 2018, pp.6-7. [↑](#footnote-ref-175)
176. Mr Kim Salisbury, *Proof Transcript of Evidence*, 22 February 2019, pp.64-65. Further detail regarding regrading in Braddon, City and Turner commercial districts, Phillip, and Fyshwick was provided in a letter to the Committee from Chief Minister and Treasurer dated 12 November 2018, which was published by the Committee and is available at: <https://www.parliament.act.gov.au/__data/assets/pdf_file/0007/1322989/Letter-and-advice-from-Chief-Minister-re-rates-and-valuations-12-November-2018.pdf> [↑](#footnote-ref-176)
177. Mr John McGrath, *Proof Transcript of Evidence*, 7 February 2019, p.53. [↑](#footnote-ref-177)
178. Mr John McGrath, *Proof Transcript of Evidence*, 7 February 2019, p.53. [↑](#footnote-ref-178)
179. Mr John McGrath, *Proof Transcript of Evidence*, 7 February 2019, p.54. [↑](#footnote-ref-179)
180. Mr John McGrath, *Proof Transcript of Evidence*, 7 February 2019, p.54. [↑](#footnote-ref-180)
181. Mr Arthur Lagos, Ms Sharon Cvetanoski, *Proof Transcript of Evidence*, 27 February 2019, p.149. [↑](#footnote-ref-181)
182. Mr Arthur Lagos, *Proof Transcript of Evidence*, 27 February 2019, pp.142, 150. [↑](#footnote-ref-182)
183. See Dan Jervis-Bardy & Peter Brewer, ‘Luxury car brand Maserati rolls into Canberra’, *Canberra Times*, 8 December 2018, viewed 20 March 2019, available at: <https://www.canberratimes.com.au/national/act/luxury-car-brand-maserati-rolls-into-canberra-20181206-p50khu.html> [↑](#footnote-ref-183)
184. *Proof Transcript of Evidence*, 27 February 2019, p.154. [↑](#footnote-ref-184)
185. Mr Arthur Lagos, Ms Sharon Cvetanoski, *Proof Transcript of Evidence*, 27 February 2019, p.155. [↑](#footnote-ref-185)
186. Mr Arthur Lagos, Ms Sharon Cvetanoski, *Proof Transcript of Evidence*, 27 February 2019, p.156. [↑](#footnote-ref-186)
187. Mr Arthur Lagos, Ms Sharon Cvetanoski, *Proof Transcript of Evidence*, 27 February 2019, p.155. [↑](#footnote-ref-187)
188. See answer to Question Taken on Notice No 8 from hearings of 22 February 2019, answered 8 March 2019. [↑](#footnote-ref-188)
189. Submission No 54, Property Council of Australian, p.[1]. [↑](#footnote-ref-189)
190. Submission No 52, Master Builders Association of the ACT, p.2; Submission No 53, Canberra Business Chamber, p.1. [↑](#footnote-ref-190)
191. Submission No 53, Canberra Business Chamber, p.1. [↑](#footnote-ref-191)
192. Mr Marcus Conabere, *Proof Transcript of Evidence*, 28 February 2019, p.189. [↑](#footnote-ref-192)
193. Mr Marcus Conabere, *Proof Transcript of Evidence*, 28 February 2019, p.189. [↑](#footnote-ref-193)
194. Mr Marcus Conabere on behalf of the Shopping Centre Council of Australia, answer to Question Taken on Notice, received 15 March 2019, p.3. [↑](#footnote-ref-194)
195. Submission No 40, Manuka Business Association, pp.14-15. [↑](#footnote-ref-195)
196. Submission No 41, Mrs H Samios, p.[1]. [↑](#footnote-ref-196)
197. Mr Arthur Lagos, Phillip Market Place, *Proof Transcript of Evidence*, 27 February 2019, p.150. [↑](#footnote-ref-197)
198. Mr John McGrath, Proprietor, John McGrath Auto Group, *Proof Transcript of Evidence*, 7 February 2018, p.52. [↑](#footnote-ref-198)
199. Mr John McGrath, Proprietor, John McGrath Auto Group, *Proof Transcript of Evidence*, 7 February 2018, p.52. [↑](#footnote-ref-199)
200. Mr Guy Randell, Member, Commercial Committee, Real Estate Institute of the Australian Capital Territory, *Proof Transcript of Evidence*, 7 February 2019, p.50. [↑](#footnote-ref-200)
201. Ms Adina Cirson, ACT Executive Director, Property Council of Australia, *Proof Transcript of Evidence*, 27 February 2019, p.79. [↑](#footnote-ref-201)
202. Mr Archie Tsirimokos, Chair, Canberra Business Chamber, *Proof Transcript of Evidence*, 27 February 2019, p.109. [↑](#footnote-ref-202)
203. Mr Peter Sarris, *Proof Transcript of Evidence*, 1 March 2019, p.293. [↑](#footnote-ref-203)
204. Mr Peter Maguire, *Proof Transcript of Evidence*, 28 February 2019, p.199. [↑](#footnote-ref-204)
205. Mr Michael Holmes, *Transcript of Evidence*, 27 February 2019, p.120. [↑](#footnote-ref-205)
206. Mr Arthur Lagos, Phillip Market Place, *Proof Transcript of Evidence*, 27 February 2019, p.151. [↑](#footnote-ref-206)
207. Mr David Quinn, Manager and Partner, the Duxton at O’Connor, *Proof Transcript of Evidence*, 28 February 2019, p.213. [↑](#footnote-ref-207)
208. Submission No 29, The Duxton at O’Connor, p.[1]. [↑](#footnote-ref-208)
209. Chief Minister and Treasurer, Submission No 43, p.[5]. [↑](#footnote-ref-209)
210. Submission No 49, the Australian Property Institute, p.5. [↑](#footnote-ref-210)
211. Mr Guy Randell, *Proof Transcript of Evidence*, 7 February 2019, p.44. [↑](#footnote-ref-211)
212. Mr Doug O'Mara, *Proof Transcript of Evidence*, 6 February 2019, p.27. [↑](#footnote-ref-212)
213. Ms Susan Proctor, Representative, Manuka Business Association, *Proof Transcript of Evidence*, 6 March 2019, p.299. [↑](#footnote-ref-213)
214. Ms Susan Proctor, Representative, Manuka Business Association, *Proof Transcript of Evidence*, 6 March 2019, p.299. [↑](#footnote-ref-214)
215. 2012-13 Budget Paper No 3, pp. 45, 48. [↑](#footnote-ref-215)
216. Mr Guy Randell, Member, Commercial Committee, Real Estate Institute of the Australian Capital Territory, *Proof Transcript of Evidence*, 7 February 2019, p.49. [↑](#footnote-ref-216)
217. Submission No 54, Property Council of Australia, p.9 and Appendix A. [↑](#footnote-ref-217)
218. Ms Adina Cirson, ACT Executive Director, Property Council of Australia, *Proof Transcript of Evidence*, 27 February 2019, p.79. [↑](#footnote-ref-218)
219. Ms Carolyn Mowbray, State Director (ACT), Egan National Valuers, *Proof Transcript of Evidence*, 28 February 2019, pp.206, 211. [↑](#footnote-ref-219)
220. Submission No 41, Mrs H Samios, p.[1]. [↑](#footnote-ref-220)
221. Submission No 40, Manuka Business Association. [↑](#footnote-ref-221)
222. Submission No 53, Canberra Business Chamber, p.2. [↑](#footnote-ref-222)
223. Submission No 56, Mr Robert Smith-Saarinen, p.[2]. [↑](#footnote-ref-223)
224. Mr Doug O’Mara, Chief Executive Officer, Civium Property Group, *Proof Transcript of Evidence*, 6 February 2019, p.26. [↑](#footnote-ref-224)
225. Mr Doug O’Mara, Chief Executive Officer, Civium Property Group, *Proof Transcript of Evidence*, 6 February 2019, p.28. [↑](#footnote-ref-225)
226. Ms Kate Carnell, Australian Small Business and Family Enterprise Ombudsman, *Proof Transcript of Evidence*, 28 February 2019, p.174. [↑](#footnote-ref-226)
227. Submission No 49, the Australian Property Institute, p.6. [↑](#footnote-ref-227)
228. Mr Scott Molloy, *Proof Transcript of Evidence*, 27 February 2019, pp.141-142. [↑](#footnote-ref-228)
229. Mr Arthur Lagos, Phillip Market Place, *Proof Transcript of Evidence*, 27 February 2019, p.150. [↑](#footnote-ref-229)
230. Submission No 42, Mr Barry Faux, p.2; Submission No 41, Mrs H Samios, p.[1]. [↑](#footnote-ref-230)
231. Submission No 40, Manuka Business Association, pp.10, 11. [↑](#footnote-ref-231)
232. Mr Guy Randell, Member, Commercial Committee, Real Estate Institute of the Australian Capital Territory, *Proof Transcript of Evidence*, 7 February 2019, p.48. [↑](#footnote-ref-232)
233. Ms Kate Carnell, Australian Small Business and Family Enterprise Ombudsman, *Proof Transcript of Evidence*, 28 February 2019, p.174. [↑](#footnote-ref-233)
234. Ms Kate Carnell, Australian Small Business and Family Enterprise Ombudsman, *Proof Transcript of Evidence*, 28 February 2019, p.174. [↑](#footnote-ref-234)
235. Ms Anne Scott, Principal Adviser, Small Business, Australian Small Business and Family Ombudsman, *Proof Transcript of Evidence*, 28 February 2019, pp.175-6. [↑](#footnote-ref-235)
236. Ms Anne Scott, Principal Adviser, Small Business, Australian Small Business and Family Ombudsman, *Proof Transcript of Evidence*, 28 February 2019, p.176. [↑](#footnote-ref-236)
237. Mr Doug O’Mara, Chief Executive Officer, Civium Property Group, *Proof Transcript of Evidence*, 6 February 2019, p.28. [↑](#footnote-ref-237)
238. Ms Susan Proctor, Representative, Manuka Business Association, *Proof Transcript of Evidence*, 6 March 2019, p.300; Submission No. 42A, Mr Barry Faux, p.[2]. [↑](#footnote-ref-238)
239. Ms Kate Carnell, Australian Small Business and Family Enterprise Ombudsman, *Proof Transcript of Evidence*, 28 February 2019, p.174. [↑](#footnote-ref-239)
240. Mr Guy Randell, Member, Commercial Committee, Real Estate Institute of the Australian Capital Territory, *Proof Transcript of Evidence*, 7 February 2019, p.48. [↑](#footnote-ref-240)
241. Mr Arthur Lagos, Phillip Market Place, *Proof Transcript of Evidence*, 27 February 2019, p.151. [↑](#footnote-ref-241)
242. Submission No 43, Treasurer of the ACT, p.[2]. [↑](#footnote-ref-242)
243. Submission No 43, Treasurer of the ACT, p.[2]. [↑](#footnote-ref-243)
244. Ms Kate Carnell, Australian Small Business and Family Enterprise Ombudsman, *Proof Transcript of Evidence*, 28 February 2019, p.175. [↑](#footnote-ref-244)
245. Mr Greg Cummins, Chair, ACT Committee, Australian Property Institute, *Proof Transcript of Evidence*, 28 February 2019, p.5; Mr Doug O’Mara, Chief Executive Officer, Civium Property Group, *Proof Transcript of Evidence*, 6 February 2019, p.29; Submission No 52, Master Builders Association of the ACT, p.4. [↑](#footnote-ref-245)
246. Submission No 52, Master Builders Association of the ACT, p.4. This example did not clarify if the Queanbeyan costs included land tax as well as council rates. [↑](#footnote-ref-246)
247. Submission No 37, Mr Gerard Eschauzier, p.[2]; Submission No 19, Mr Scott Molloy, p.[2]. [↑](#footnote-ref-247)
248. Submission No 51, Capital Property Group, p.[2]. [↑](#footnote-ref-248)
249. Mr Alfonso del Rio, *Proof Transcript of Evidence*, 1 March 2019, p.233. [↑](#footnote-ref-249)
250. Submission No 40, Manuka Business Association, p.5. [↑](#footnote-ref-250)
251. Submission No 45, Shopping Centre Council of Australia, p.2; Mr David Quinn, Manager and Partner, the Duxton at O’Connor, *Proof Transcript of Evidence*, 28 February 2019, pp.217-18. [↑](#footnote-ref-251)
252. Ms Karen Paxton, Submission No 12 and No 12A, available at: <https://www.parliament.act.gov.au/__data/assets/pdf_file/0003/1320096/PAC-Submission-No-012-Ms-Karen-Paxton_Redacted2.pdf> and <https://www.parliament.act.gov.au/__data/assets/pdf_file/0011/1317395/PAC-Submission-No-12A-Ms-Karen-Paxton_Redacted.pdf> [↑](#footnote-ref-252)
253. See: *Proof Transcript of Evidence*, 27 February 2019, p.125 *ff.* available at: <http://www.hansard.act.gov.au/hansard/2017/comms/pac30.pdf> [↑](#footnote-ref-253)
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