

To the personal attention of:

Terry Mulder

Victorian Minister for Public Transport & Roads
Level 16, 121 Exhibition Street, Melbourne, VIC

Dear Minister,

RE: Victoria's rights & Melbourne Airport Parking

I am writing to inform you of the interests I believe this State has in connection with the Commonwealth's land and the airport car parking controversy currently in the news.

As you know, the ACCC's Graeme Samuel is upset over an alleged \$100 million near-terminal airport parking monopoly as stated in The Age. (<http://www.theage.com.au/travel/travel-news/melbourne-airport-parking-in-crosshairs-20110207-1ak5o.html>) See also a TV news report here: <http://www.theage.com.au/travel/travel-news/welcome-back-to-melbourne-thatll-be-879-please-20110208-1almm.html> In that TV report, it was said Mr. Samuel conceded there was little he could do in the public interest.

I have knowledge of the problem through my experience in dealing with a complex property and planning dispute concerning land located next to Melbourne airport. This has come through several years of assisting an [adjoining landholder's bid](#) to establish competitive near-terminal car parking, which [proved too difficult](#). (I presently have no connection with any airport-related real estate interest or proposed interest nor am I presently looking).

From my experience, it seems to me the airport operator's market power in car parking is based upon its assumed control over exits and entry points to a portion of the Tullamarine freeway located on the perimeter of the airport site. However this road was built and maintained by Victoria on Commonwealth land. Nevertheless, in 1997 the Commonwealth "sold" control of the airport, apparently including the Victorian freeway, to a private airport operator which has, I believe, avoided a lot of legitimate parking competition thanks to road access issues under its direct control. These are matters of property law with which as a former developer, I'm sure you are familiar with.

Yet the Commonwealth agreed to transfer all the Tullamarine Freeway land solely to the State of Victoria at the time of the freeway's construction, after the alignment of the freeway became known. This was arranged in exchange for portions of the Bulla Road reserve (Victorian Crown land) upon which the airport terminal and a runway has been built. But so far, the Commonwealth has failed to transfer any of that land. (See pages 8-14 of an [attachment in PDF format to Senate submission that I wrote](#).) So it appears to me that the freeway's entries and exits should not be in private hands, since access to airports has long been the responsibility of the State in which the airport is located. This is why the Commonwealth refused to pay to upgrade Bulla Road to a freeway to connect it to Melbourne Airport - that was paid for by Victoria and as such, was and still is Victorian

State property. But somehow, a private lessee of the Commonwealth has taken over the freeway through master-plans purportedly made [under Federal law](#), even though I understand the Freeway's ongoing maintenance is still paid for by this State.

Mr. Albanese, as your Federal counterpart, has known of these concerns for some years. In fact he opposed the adjoining landowner's efforts at the AAT to have freeway access for competitive airport car parking liberalised in the Melbourne airport master plan. Mr. Albanese' representative argued the Airports Act 1996 (Cwth) was meant to favour airport operators over members of the Victorian public (see AAT transcript [published by the Senate here](#)).

So the Commonwealth clearly has no intention of allowing competitive freeway access to reduce the value of its land; moreover in 1997 the Commonwealth "sold" this land for \$1.4 billion with very limited planning controls in place, as a 50 year lease with a 49 year option to its current airport operator lessee; and I think to that extent, to avoid a purported acquisition of property otherwise than on just terms, Mr. Albanese appears as powerless to intervene as Mr. Samuel is. Therefore the Commonwealth will, I believe, continue to merely protest any perceived manipulation of transport connections to favour its privatized airports. I understand Hume City Council and VicRoads has been trying to negotiate this issue for many years also but to no avail, with successive access proposals being watered down through the airport operator's assumed of control over the Commonwealth's land.

However, it appears to me (although I'm not a lawyer) that the airport lease was granted in 1997 for Melbourne airport under [section 13 of the Airports Act 1996](#) (Cwth), with a lease being an airport site or part thereof under [section 5](#) of that Act. The areas of Commonwealth land which can be so lawfully leased under this legislative scheme are defined in the Airports Regulations 1997 (Cwth), made under [Section 252](#) of the Act. Thus the validity of the grant of any airport lease, and its terms, relies substantially on the integrity of the Airports Regulations correctly defining those areas. [Regulation 1.03](#) lists all the airport sites in [Schedule 1](#), with Part 1.12 detailing Melbourne Airport which I understand, includes all that Bulla Road Victorian Crown land over which Melbourne airport's terminal and a runway was built.

Without the saving effect of [section 22\(3\) of the Airport's Act 1996](#) *preserving Victoria's interests in any leased airport land*, if such regulations incorporated land rightfully owned by the State of Victoria and/or owed to Victoria, (as was claimed by this State just before the grant of the lease - see Victorian & Commonwealth governmental correspondence on pages 8-14 of the above mentioned [Senate submission attachment](#)), then the Airports Regulations Schedule 1 Part 1.12 acquired the Victorian State road reserve property, and its associated freeway land interests, for the the purpose of leasing these to the airport operator, otherwise than on just terms. If so, to that extent the [Commonwealth regulations must have been invalid](#) at the time (as it is doubtful the Commonwealth's Victorian Torrens Title in merely not mentioning this obligation could thereby defeat the Constitutional guarantee) and so any corresponding grant relying upon them never actually took place. (See judgment of Brennan CJ in *Newcrest Mining*.) ***But I believe [section 22\(3\) of the Airport's Act 1996](#) applies in Victoria's favour, to save the***

Commonwealth's neck by allowing it to give full control to this State of that portion of the Tullamarine freeway located on Commonwealth land, so that competitive airport car parking, and other airport-related industries, can be liberalised.

Moreover when the question of this State's rights was put by me to the airport operator in VCAT, the airport operator admitted on the record that VicRoads may have common law rights over the airport land, since it tried to rely on a letter from VicRoads to thwart a competitive near-terminal parking bid, which letter was unlawfully written in my view not according to the Roads Management Act 2004 (Vic). Of course I'm not a lawyer but given the public concern over competitive car parking, the precise status of the Tullamarine Freeway and who should control connections to and near the airport, ought to be checked out, since under the circumstances, Victorian consumers can expect no joy from the Commonwealth.

From my experience, the airport operator has demonstrated it has developed close links with Victorian officials in VicRoads and very close links with at least two officials in Hume City Council. But I think even from the airport operator's point of view, such close links can only be band-aids since the above-mentioned issues have and are increasingly becoming a matter of public interest and concern. I submit that it may well be that properly fixing Melbourne airport's boundaries and also if necessary validating the airport operator's ongoing lease, may well be beyond the powers of Federal Parliament; something only the Victorian State Parliament could fix. In that case, I believe it would be in the public interest to negotiate these issues rather than allow doubts over the airport's past to potentially cloud its present operation so vital to this State.

For the above reasons, it seems to me the airport operator's apparent near-terminal car parking monopoly concerning many Victorians today may be on shaky ground. But I believe the Commonwealth's hands are constitutionally tied in these matters rendering it impotent against its lessee's interests; so as the responsible Victorian Minister, it would in that case fall to you to forge a solution to the Tullamarine Freeway airport access impasse, allowing reasonable airport-related competition and other economic activity to finally emerge around the airport site.

Would you please investigate as I'm sure these matters will be of considerable ongoing public interest.

Looking forward to your reply,

Regards,

Eric Wilson