

GOVERNMENT CONTROL OF URBAN LAND DEVELOPMENT IN AUSTRALIA: A MODEL FOR COMPARISON

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INTRODUCTION

Australia is one of the most urbanized countries in the world and has many of the urban problems characteristic of advanced industrial states. These problems have been accentuated by a near-doubling of the Australian urban population since the end of World War II and a growing concern for the future of Australian cities and the role of government in urban development. In 1972, after twenty-three years in opposition, the Labor Party won control of the Commonwealth Government.¹ With its socialist traditions, big-city following, and leadership dedicated to a strong central government, Labor's national election victory gave a strong new impetus to government intervention in urban affairs and patterns of urban growth. Under the aggressive leadership of Prime Minister Gough Whitlam, the Labor Government pushed through Parliament a package of urban land programs involving heavy Commonwealth Government funding, and sought major reallocations of governmental power to help implement these and other programs. Often innovative, generally well-administered, and occasionally very contentious, some of these programs were cut back and others terminated after Labor was replaced by a Liberal Party-Country Party coalition government in the December, 1975 election.²

Labor's programs constitute by far the most extensive effort by any Australian Government to establish a national approach to urban land development and the physical prob-

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¹ In this article, the Australian national government is frequently referred to as the Commonwealth Government or the federal government.

² The December, 1975 election was called during the constitutional crisis that followed Whitlam's much-publicized dismissal by the Governor General. Attentive to prudent fiscal management and to states' rights, the new government and its Prime Minister, Malcolm Fraser, have sought a more modest role for the Commonwealth in relation to the cities and their problems than did the Whitlam Government.

lems of cities. As designed and originally implemented, they not only manifest a strong tendency to adopt many of the same legal devices and government controls that have been utilized in North America, England, and Western Europe, but also to strike out in new directions when this seems suited to Australian conditions and can attract the requisite political support. The reasons for and the effectiveness of these programs are matters of significance not only for Australia but for countries with comparable problems. This article focuses on the Labor Government's urban land programs, their goals, structure, problems, and significance for the future. Australian and American federal government interventions in urban land matters are compared, and the relevance of the Australian experience for the United States is specifically considered.

PROBLEMS OF AUSTRALIAN URBAN DEVELOPMENT

Population Patterns

Although Australia is vast—about the size of the contiguous United States—with a comparatively small population—12.8 million by the 1971 census³—86 per cent of its people live in urban areas.⁴ Australia is both heavily urbanized and lightly populated primarily because its land is mostly uninhabitable desert or near desert, its extensively industrialized economy is conducive to urban concentration, and its grazing and mechanized agriculture is not labor-intensive. Not only is Australia's population heavily urban, but 60 per cent of it is concentrated in the six Australian state capital cities and Canberra, the national capital.⁵ Forty per cent of the population alone are in the two great cities of Sydney and Melbourne.⁶ Also, urban Australia has been expanding very rapidly in recent years. Although total Australian population only in-

³ Commonwealth Bureau of Census and Statistics, Bull. No. 6, 1971 Census of Population and Housing pt. 1, at 1 (1974) [hereinafter cited as 1971 Census]. In 1974, the population of Australia was 13.3 million. Urban and Regional Development 1975-76, 1975-76 Budget Paper No. 9, at 25 (circulated by the Commonwealth Minister for Urban and Regional Development) [hereinafter cited as 1975-76 Budget Paper No. 9].

⁴ 1971 Census, *supra* note 3, at 48. "Urban" in Australian census data generally refers to a community of more than 1,000 persons. *Id.* at xiv.

⁵ National Population Inquiry, Population and Australia, A Demographic Analysis and Projection, First Report 158 (1975 Parliamentary Papers Nos. 6 & 7, 1975) [hereinafter cited as Nat'l Pop. Inq. Rpt.]. This population study is often referred to as the Borrie Report, after Professor W.D. Borrie, Director of the Inquiry.

⁶ 1971 Census, *supra* note 3, at 1.

creased by 5.2 million from 1947 to 1971,⁷ its urban population increased by 5.7 million during the same period.⁸ In the post-World War II period, immigration has been responsible for over half of Australia's population growth.⁹ Departing from their prior policy, the Australian authorities have since the late 1940's encouraged immigration from areas other than the British Isles, so that a substantial influx of Italians, Greeks, Yugoslavs, Dutch, Germans, and Maltese, among others, have been entering as settlers.¹⁰ Foreign migrants have settled principally in the capital cities, particularly Sydney and Melbourne;¹¹ in these two cities, sizable residential enclaves of southern European and other non-British migrant groups have formed. The non-Caucasian population of Australian cities is, however, quite small. This is to be expected, as the non-Caucasian population of the nation is also small,¹² and there are no massive concentrations of non-Caucasians in any of the major Australian cities.¹³

Australian cities are vast and sprawling, with low residential density compared to cities in many other parts of the world. Australians have a strong preference for free-standing, single-family dwellings, each located on its own lot; structures of this sort, four or five to the acre, are the typical pattern. Australians also have a marked preference for home own-

⁷ The 1947 population was 7.6 million. Commonwealth Bureau of Census and Statistics, 1953 Yearbook of the Commonwealth of Australia 516 [hereinafter cited as 1953 Yearbook].

⁸ 1971 Census, *supra* note 3, at 48; 1953 Yearbook, *supra* note 7, at 523.

⁹ From 1947 to 1973, the net gain to the Australian population from foreign immigration was 2.3 million; with their Australian-born children, these migrants accounted for 59 per cent of the nation's population growth during this period. Nat'l Pop. Inq. Rpt., *supra* note 5, at 101-02. On Australian immigration generally and the integration of immigrants see Australia's Immigration Policy (H. Roberts ed. 1972).

¹⁰ Nat'l Pop. Inq. Rpt., *supra* note 5, at 124.

¹¹ *Id.* at 159-61, 171-72.

¹² The 1971 census shows the non-European, *i.e.*, nonwhite, population of Australia to be 214,000, or 1.68 per cent of the total population, 116,000 of whom were classified as Aboriginals or Torres Strait Islanders. *Id.* at 497. The former whites-only immigration policy has been lifted. McQueen, *An End to the White Australia Policy*, 44 Austl. Q. 92 (March, 1972). Nonwhite immigration, however, has been very limited. From 1947 to 1967, for example, only 11,000 of 1,835,000 immigrants were "ethnic non-Europeans." Price, *Post-War Migration to Australia*, in Australian Politics, A Second Reader 37 (H. Mayer ed. 1969). And in 1971-72, of 132,719 immigrants, only 3,113 were non-Europeans. K. Rivett, *Australia and the Non-White Migrant* (1975). Rivett analyzes the problem in depth and favors a substantial increase in nonwhite immigration.

¹³ Sydney, for example, probably has more Aboriginals than any other major Australian city; yet a 1971 study of Sydney found only 9,000 Aboriginals there. Nat'l Pop. Inq. Rpt., *supra* note 5, at 502.

ership, with about two-thirds of the Australian population living in owner-occupied dwellings, although the percentage has been declining somewhat in recent years.¹⁴ Owning one's home is an almost universal Australian aspiration and most Australian families are willing to make major financial sacrifices to purchase a place of their own.

The tremendous recent growth in Australia's urban population has contributed substantially to a series of persistent and troublesome problems involving physical development of the nation's cities. These problems have affected all urban areas—the major cities in particular have caused considerable public and political concern—and had decisive influence on the urban land programs and policies of the Whitlam Government. One of the most serious of these problems, especially acute during the peak of the urban building boom of the early 1970's, is the price of serviced urban building lots.¹⁵ Particularly since the late 1960's, prices for such lots have gone up rapidly.¹⁶ Sydney lots generally have been most ex-

¹⁴ In 1971, 68.7 per cent of occupied private houses and self-contained flats in Australia were owner-occupied; in 1966, the figure was 72.5 per cent. Commonwealth Priorities Review Staff, Report on Housing 2 (1975).

¹⁵ A serviced urban building lot, as the Australians use the term, is one that is vacant of any buildings and yet includes required on-site utility installations, paved roads, sewers, and drainage, and meets all zoning, subdivision, and other government prerequisites for construction of dwelling units or other buildings.

¹⁶ Although urban population expansion has been an important factor in the rise in Australian building-lot prices, there have been other causes as well of the escalation of these prices. In part, the movement in building-lot prices reflects the general inflation of the Australian price structure, an inflation that is worldwide. But building-lot prices in Australian capital cities have risen more rapidly than the general Australian price level. Commonwealth Department of Urban and Regional Development (DURD), *Urban Land: Problems and Policies* 11-12 (1974). Building-lot prices have also increased more rapidly than average earnings. DURD, *Urban Land Prices 1968-1974*, at 9 (1974). An important influence on building-lot prices has been the skyrocketing costs to developers of installing services on their lots—costs that are being passed on to the buyers of the lots. Servicing-cost increases have resulted not only from much higher labor and material charges for road, sewer, utility, and other improvements that accompany the subdivision process, but also from the number and quality of installations that local governments now require before approving lots for building. Over the past fifteen or twenty years, local councils have imposed much more stringent subdivision-servicing standards on developers and have required developers to bear most of the cost of these improvements. Austl. Inst. Urban Studies, *First Report of the Task Force on the Price of Land* ch. 2 (1971); Paterson, *Land Commission and Land Tenure Legislation: Likely Effects on Private Industry*, 13 *The Developer* 39 (May, 1975). The added time that it now takes to install required services and to have them approved by the ever-more complex and demanding maze of government agencies has also substantially increased developers' financing and administrative costs, with a consequent impact on land prices. In some places it takes more than twice as long to convert rural acreage to approved urban lots as it did a decade or so ago. Austl. Fin. Rev. 21 (Dec. 30, 1975). High prices for serviced urban lots have also been attributed to the high interest rates which

pensive, and in 1974, when the Labor Government was vigorously pushing its urban land programs, the median price for serviced Sydney homesite lots in Australian dollars rose to \$20,200.¹⁷ In United States dollars this would have been about \$30,000 at the exchange rate in effect during most of 1974. Next to Sydney's prices in 1974, Melbourne's were highest among capital cities, at \$12,500¹⁸ for serviced homesite building lots, while Adelaide's were lowest, at \$5,525.¹⁹ Between 1968 and 1974, lot prices in the capital cities increased substantially, at least tripling in Sydney and Melbourne, and more than doubling in Adelaide.²⁰ Housing construction prices have also been increasing,²¹ but with less public consternation because the rate of increase has been somewhat slower than that for land. Interest rates on housing loans to individuals, a crucial cost item to most home buyers, have likewise been raised substantially. Rather surprisingly, this too seems to have generated less public concern than the movement in building-lot prices.²² A very serious consequence of the major increases that have occurred in building-lot prices, particularly when combined with expanded home construction costs and much higher costs for mortgage money, is that many prospective home buyers have been priced out of the Australian home market. In the mid-1960's, most Australian wage

private developers have been paying to finance their projects, a business fact of life that is deeply troublesome to the development industry. Urban Dev. Inst. of Austl. (New South Wales Division), Task Force Priority One Report (1974). Another factor influencing land-price movements in the larger Australian cities is the depletion of available land well-suited for development. This is contributing to the high prices of vacant land, in Sydney particularly, where the spread of the city is limited by natural barriers and, to some extent, by national parks.

¹⁷ DURD, *Urban Land Prices 1968-1974*, at 7 (1974). All references to dollars are to Australian dollars, unless otherwise noted.

¹⁸ *Id.* The Australian dollar has consistently been worth more than the United States dollar on monetary exchanges in recent years. In mid-1974, the exchange rate for the Australian dollar was fluctuating close to U.S. \$ 1.50. During and after 1972, the Australian dollar varied in the range of about U.S. \$1.20 to U.S. \$1.50, until devaluation in late 1976.

¹⁹ Average or median prices for residential lots in the other capital cities for 1974 were \$11,111 in Brisbane, \$8,379 in Perth, \$5,592 in Hobart, and \$5,682 or \$5,438 for leasehold sites in Canberra, the Canberra variation depending on whether the buyers were individuals or builders. *Id.*

²⁰ *Id.* In poorer capital-city communities, the percentage increases may have been even greater. Bromilow, *The Supply of Land for Urban Purposes*, 13 *The Developer* 32, 34 (August, 1975) [hereinafter cited as Bromilow].

²¹ This is reflected by the fact that the value of the average private or government house completed in 1974 was approximately twice that in 1964. *Statistical Review*, Housing and Constr. Q. 53 (March, 1975).

²² From 1964 to 1974, savings-bank interest rates to individuals for home loans moved from a 4 3/4 to 5 1/2 per cent range to a 9 1/4 to 10 per cent range. Bromilow, *supra* note 20, at 35.

and salary earners could afford to buy a home; a decade later only a small minority were in a financial position to do so.²³

The rapid growth of Australia's major cities, with the resultant concentration of so much of the nation's population in a few great urban centers, has brought another set of problems into the forefront of popular concern: Are some Australian cities becoming too big, and should future urban growth be channeled elsewhere? Aversion to big cities as such is particularly prevalent in Australia: They are frequently viewed as places where the worst aspects of modern culture appear in their most accentuated forms and where the essentials of good living cost too much in time, money, and stress. There is also the widespread feeling that the larger a city becomes, the worse its evils; and many Australians seem horrified by the possibilities of Sydney and Melbourne reaching populations of five million each within the next 25 to 40 years, and of Brisbane, Adelaide, and Perth exceeding two million each in the same period. The low-density residential preference of Australians, with the resultant physical and cultural isolation of many outlying residential neighborhoods, has no doubt contributed to these big-city antipathies. The continued importance of each major Australian city's central business district as a vigorous and expanding focus for white collar employment and retail trade, forces commutation and relocation hardships on residents and small businesses as the district spreads. Although downtown sections of Australia's major cities are holding their own to a greater extent than their American counterparts, this has been at a considerable cost in human and economic terms.

The massive expansion in Australia's urban population has also added to the problems of government agencies responsible for providing infrastructure and housing to urban communities. Such infrastructure as city roads, mass transit systems, sewers, and utility installations for water and electricity, have long been provided primarily by government-owned and managed enterprises. Government assistance in the housing field has included a large volume of housing, most

²³ Bromilow found that from 1964 to 1968, with housing loans at 5 per cent, over 90 per cent of wage and salary earners were eligible for maximum loans with which to purchase lower-priced homes. At the 1974 peak savings-bank loan rate of 10 per cent, however, only 14 to 17 per cent of wage and salary earners were eligible. Bromilow, *supra* note 20, at 35.

of it in major cities, which government authorities have built for sale or rental at prices generally below those for comparable housing on the private market. Increased population pressure, together with rising costs for land, construction, and loan money, has prevented the public sector from meeting all its infrastructure and housing demands, including many demands with extensive popular support. Backlogs of proposed projects have built up, and accumulated obsolescence and deterioration in older areas have enhanced the difficulties. Mass transit and public rental housing have been particularly affected because strong public resistance to any increase in charges to consumers has made it difficult to meet the rising costs of maintenance and to raise the additional capital required for new facilities and major expansion.

Government Structure

Efforts by government in Australia to influence and control urban development have been complicated and often handicapped by the way government is structured and by the allocation of power and financial resources within it. Australia has an English-style parliamentary system grafted to a federal structure, with local government powers stemming largely from state enabling acts. The Australian Constitution, dating from 1901 when colonial status was ended and an autonomous federation established, prescribes the powers of the national government and those of the states. There have always been only six states, although there are prospects of the Northern Territory's becoming the seventh, and each state has its own constitution.²⁴ The Commonwealth Government now has full sovereignty over the Northern Territory, a vast area about the size of Alaska but with a population under 100,000, and of the other mainland territory, the Australian Capital Territory, a rapidly urbanizing area of 900 square miles and 186,000 population²⁵ that was carved out of the State of New South Wales in 1909 to become the national seat of government. Canberra, the capital city, has become a world-renowned planned city.

The Australian states generally exercise more power over urban affairs than do American states. Australian states are

²⁴ See R. Lumb, *The Constitutions of the Australian States* (3d ed. 1972).

²⁵ Estimated as of mid-1975. Nat'l Capital Dev. Comm'n, *Eighteenth Annual Report 9* (1975).

responsible for administering mass transit, public housing, education, police, electricity, water supply and sewerage in some places, some urban roads, and some aspects of welfare and public health. Local Australian government provides parks and public recreation areas, rubbish and garbage collection, libraries, some local roads and electricity, and water and sewerage in some communities. Local government is also heavily responsible for the important function of urban planning, including zoning and subdivision regulation, although subject to some state guidance and review.²⁶

Until the Labor Government came to power in 1972, Commonwealth governments largely ignored city problems and left matters of urban development to the states and localities. There were important exceptions to this: the two mainland territories, where Commonwealth officials have had major responsibilities for urban areas; and urban housing and transportation, for which substantial Commonwealth Government funds had been made available for some years, largely as special-purpose loans or grants to the states for capital improvements.²⁷

Many of the states' problems stem from their heavy dependence on the Commonwealth Government for funding. Since 1942, the Commonwealth Government has totally monopolized the income tax as a source of revenue,²⁸ and the large intake from this tax, together with revenue from such other sources as customs, excise duties, and sales taxes,²⁹ has put the Commonwealth Government in a relatively favorable

²⁶ See R. Atkins & A. Graycar, *Governing Australia* ch. 4 (1972) [hereinafter cited as Atkins & Graycar]; J. Miller & B. Jinks, *Australian Government and Politics* chs. 5, 8 (3d ed. 1971); *Public Administration in Australia* chs. 3, 5-6 (2d ed. R. Spann 1960); *Commonwealth of Austl., 1970 Yearbook* ch. 19 [hereinafter cited as 1970 Yearbook].

²⁷ For the annual amounts of Commonwealth Government payments to the states for various capital purposes during the period from 1965-66 to 1975-76, see 1975-76 Budget Paper No. 9, *supra* note 3, at 21. Much of the transportation assistance, however, was used for developments in rural areas, most often to connect major cities. See Lane, *Financial Relations and Section 96*, 34 *Pub. Ad. (Sydney)* 45, 46 (March, 1975) [hereinafter cited as Lane].

²⁸ L. Crisp, *Australian National Government* 116-24 (3d ed. 1973); R. Mathews & W. Jay, *Federal Finance* 171-77, 191-92 (1972) [hereinafter cited as Mathews & Jay]. Substantial obligations by the Commonwealth Government to reimburse or provide assistance to the states accompanied the federal assumption of exclusive use of the income tax. Mathews & Jay, *supra*, at 174.

²⁹ See Mathews & Jay, *supra* note 28, at 296; May, *Federal Finance: Politics and Gamesmanship*, in *Australian Politics, A Third Reader* 237 (H. Mayer & H. Nelson eds. 1973); *Commonwealth Bureau of Statistics, Quarterly Summary of Australian Statistics* § XII (Dec., 1974) [hereinafter cited as Quarterly Summary].

position to extend financial aid to the states.³⁰ There is, however, constant maneuvering and bargaining by the states to sustain or increase their share of the very substantial Commonwealth financial allocations that each year are made available to the states.

Urban local government in Australia as in the United States suffers from over-fragmentation; many Australian municipalities are so small and poorly financed that they are unable to employ adequate planning staffs or the needed personnel for formulating and enforcing proper planning controls. There are over 900 general purpose local government units—cities, towns, and other municipalities. Metropolitan areas are extensively segmented. Metropolitan Melbourne, for example, is geographically divided into 55 municipalities, metropolitan Sydney into 39.³¹ Even central-city areas are fragmented, and unlike the American pattern of a great core city surrounded by suburbs, the core area too is often split into suburban-sized municipalities. This form of partitioning makes it difficult to develop planning controls coterminous with planning problems, and the interests of land owners and developers within submetropolitan communities tend to prevail over those of metropolitan areas as a whole.³² State intervention has not been sufficiently vigorous to counteract these very localized pressure groups.

Constitutional Limitations

Although the Commonwealth Government is in a strong financial position relative to the states and localities, its con-

³⁰ In addition to funding from the national government, the states derive income from charges imposed for services that they provide and from a multiplicity of taxes, of which payroll taxes, stamp duties, motor vehicle registration fees and taxes, probate and succession duties, and land taxes produce the largest revenues. 1970 Yearbook, *supra* note 26, at 565-73; Quarterly Summary, *supra* note 29. Local government income comes primarily from state grants and loans, most of which are for special purposes; from real property rates, analogous to real property taxes in the United States, but generally yielding much less in relation to the value of properties taxed; and from public enterprise user and other charges. 1970 Yearbook, *supra* note 26, at 600-03; Quarterly Summary, *supra* note 29, at 122-23. In recent years, state and local governments have been borrowing heavily to finance their operations.

³¹ Atkins & Graycar, *supra* note 26, at 102. Brisbane is an exception among Australian capital cities, with a Greater Brisbane City Council that has jurisdiction over most of the Brisbane metropolitan area. *Id.* at 104. For a statistical comparison of the Sydney municipalities, see R. Parker & P. Troy, *The Politics of Urban Growth* 48 (1972).

³² For critical evaluation of Australian local government planning and planning controls, see A. Fogg, *Australian Town Planning Law, Uniformity and Change*

stitutional right to intervene directly in many domestic matters is limited or doubtful. In relation to urban land development and control, two constitutional provisions are of special significance in limiting federal authority. One, section 51(xxxi), pertains to land acquisitions, and the other, section 81, deals with appropriations. Section 51(xxxi) requires that in compulsory acquisitions of land and other property by the Commonwealth, the taking must be on just terms—a requirement that neither the Australian Constitution nor the state constitutions impose on the states.³³ Under existing judicial interpretations, there remains considerable uncertainty as to what constitutes just terms. In applying the concept, however, courts have often required the Government to pay fair market value for its takings. Thus the Commonwealth Government may be legally obligated to spend very substantial sums of money if it seeks to nationalize or otherwise acquire or impair private property rights in land as part of a scheme to develop or regulate urban land. Section 51(xxxi) also mandates that any taking be for a purpose “in respect of which the Parliament has power to make laws,” although it is uncertain whether the constitution requires the purpose to be disclosed by the taking authority or adhered to if disclosed.³⁴

Section 81 also contains restrictive-purpose language, limiting Commonwealth appropriations to those “for the purposes of the Commonwealth.”³⁵ Whether this language limits

(1974); Troy, *The Role of Land Commissions*, 12 Royal Austl. Plan. Inst. J. 10 (1974) [hereinafter cited as Troy]. See generally L. Sandercock, *Cities for Sale: Property, Politics and Urban Planning in Australia* (1975).

³³ Section 51 (xxxi) reads:

The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to: . . . (xxxi) The acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws.

Const. § 51(xxxi) (Austl., 1900). See C. Howard, *Australian Federal Constitutional Law* 404-07 (2d ed. 1972) [hereinafter cited as Howard]; R. Lumb & K. Ryan, *The Constitution of the Commonwealth of Australia Annotated* 155-64 (1974) [hereinafter cited as Lumb & Ryan]. Section 51(xxxi) is generally considered to apply only to compulsory acquisitions. Howard, *supra*, at 403; J. Quick & R. Garran, *The Annotated Constitution of the Australian Commonwealth* 640-41 (1901). As executive powers are usually dependent on legislation, the section also acts as a restraint on takings by executive officials of the Commonwealth Government.

³⁴ Howard, *supra* note 33, at 407-11.

³⁵ Section 81 provides:

All revenues or moneys raised or received by the Executive Government of the Commonwealth shall form one Consolidated Revenue Fund, to be appropriated for the purposes of the Commonwealth in the manner and subject to the charges and liabilities imposed by this Constitution.

Const. § 81 (Austl., 1900).

Federal Parliament to appropriating money for purposes concerning which it has power to make laws, or whether its appropriation powers are much broader, perhaps even unrestricted by the constitution, is uncertain.³⁶ If the narrower of these positions is the proper one, then there are substantial limits to the kinds of programs and projects related to urban land, as well as to other fields of government activity, that the Commonwealth can properly fund.³⁷ Yet these doubts generally can be overcome if the Commonwealth appropriates money to be granted or loaned to the states for them to carry out program or project functions in lieu of the Commonwealth. Section 96 of the Australian Constitution authorizes Federal Parliament to "grant financial assistance to any State on such terms and conditions as the Parliament thinks fit." This financial aid, with few exceptions, may be tied to such conditions as are acceptable to the Commonwealth and the recipient states. Section 96 has thus enabled the federal government to achieve indirectly many purposes that it may not be able to achieve directly.³⁸ Much of the financial assistance made available to the states by the Commonwealth Government has been for special purposes, often with detailed conditions attached as to

³⁶ In each of the two leading cases concerned with the purposes language in section 81, different views are expressed by different judges of the scope of the purposes clause; there is no majority position. *Victoria v. Commonwealth*, 7 Austl. L.R. 277 (1975); *Attorney General for Victoria v. Commonwealth (Pharmaceutical Benefits Case)*, 71 Commw. L.R. 237 (Austl. 1945). In the former, three of the seven judges took the position that under section 81, Parliament is not restricted to purposes for which it has power to make laws, but has broader appropriation authority. Two judges disagreed with this conclusion and the other two did not decide the issue.

³⁷ Examples of urban land-related appropriations that might be unconstitutional under a narrow interpretation of the purposes clause in section 81 include such Commonwealth activities within the states as development of growth centers, operation of land commissions, installation of sewers, construction of housing for sale or lease to anyone willing to pay market prices, and urban renewal of commercial properties for commercial reuse. Section 51 of the Australian Constitution may be broad enough to authorize some or all of these functions. It includes a long list of express parliamentary powers and concludes with an incidental-powers provision as follows:

(xxxix) Matters incidental to the execution of any power vested by this Constitution in the Parliament or in either House thereof, or in the Government of the Commonwealth, or in the Federal Judicature, or in any department or officer of the Commonwealth.
Const. § 51(xxxix) (Austl., 1900).

³⁸ See Howard, *supra* note 33, at 88-101; Lumb & Ryan, *supra* note 33, at 305-09; Lane, *supra* note 27; J. Richardson, *Patterns of Australian Federalism* 58-64 (Centre for Research on Federal Financial Relations, Australian National University, Research Monograph No. 1, 1973). The Commonwealth cannot, however, condition its financial aid in a manner that would violate the Australian Constitution or that would require the states to alter their constitutions. Howard, *supra* note 33, at 92.

what the moneys may be used for and how the projects involved are to be administered.

THE LABOR GOVERNMENT'S MAJOR URBAN DEVELOPMENT STRATEGIES

When the Labor Government came to power in 1972, it was already committed to expanding Commonwealth Government responsibility for urban affairs and to extending central government aid for urban development. Major responsibility for the Commonwealth Government's urban land-related endeavors was delegated to a new Department of Urban and Regional Development (DURD), and to a new ministry with authority over the new department. The Labor Government's principal urban development strategies were: (1) to initiate and fund heavily several new programs dealing directly with problems widely perceived as serious (land commissions, growth centers, and sewers for older urban areas); (2) to increase substantially Commonwealth Government financial support for existing Commonwealth Government housing and transportation programs in urban areas; (3) to initiate new programs on a modest scale in relation to any other urban development problems perceived to be serious, for the alleviation of which Commonwealth assistance could be useful; (4) to reallocate political power and financial assistance within and among levels of government both to expand the federal government's control over urban development and to facilitate better coordination of its urban development policies; and (5) to publicize extensively and promote the Commonwealth Government's urban development plans and achievements so as to increase popular understanding and appreciation of the central government's role in this important sphere and to enhance support for the Labor Party.

Labor's urban development strategies, although politically shrewd, called for a Commonwealth Government effort that was financially expensive, administratively demanding, and politically risky. The implementation of these strategies, combined with ambitious new and expanded programs undertaken by Labor in other domestic fields, particularly in public education, social welfare, and health care,³⁹ meant heavy new

³⁹ See Australian Labor Party Policy Speech by Prime Minister Whitlam, Blacktown Civic Centre, Nov. 13, 1972 (published by Standard Publishing House Pty. Ltd.). See also Australian Labor Party Policy Speech by Prime Minister

taxes and an increased need for bureaucratic coordination. A mass of legislation had to be prepared and passed through Parliament, which required not only hard legal choices on institutional arrangements and obligations but also important budgetary decisions on program priorities. Although Labor's achievements were considerable in pursuing its urban development strategies, many difficulties were encountered, of which the Labor Government's short life ultimately proved to be the most damaging.

Land Commissions

A high-priority Labor Government program for dealing with problems of the cities was the government's entry into the land-development field on a large scale. As it first took shape, the proposal was for each state to establish a land commission, which in major areas of urban growth would compete with or replace private land developers in the production of building lots.⁴⁰ Land commissions were to be state agencies operated with managerial and financial assistance from the Commonwealth Government. When land commission lots were fully serviced they would be sold or leased by the commissions to private or public interests for construction of housing and other urban structures. Land commissions were not designed to take over all urban building-site production; rather, they were to operate only in more important areas of present or prospective urban expansion, such as the fringes of

Whitlam, Blacktown Civic Centre, April 29, 1974, at 1-2 (published by Progress Press Pty. Ltd., Canberra). A very costly but popular national health care scheme, Medibank, that relies heavily on Commonwealth Government funding, was also instituted by the Labor Government.

⁴⁰ See Lansdown, *The Development Department*, 12 *The Developer* 43, 44 (May, 1974) (Lansdown was Secretary of DURD); Troy, *supra* note 32 (Troy was Deputy Secretary of DURD and an influential advisor on urban land problems to top Labor Party members of Parliament both before and after the 1972 election); Cities Comm'n, *Leasehold Land Tenure for New Cities*, A Submission to the Commission of Inquiry Into Land Tenures 7 (1973) [hereinafter cited as Cities Comm'n]; DURD, *First Annual Report 1972-73*, at 15-16; DURD, *Urban Land: Problems and Policies* 43-45 (1974); 1975-76 Budget Paper No. 9, *supra* note 3, at 27-28 (1975); Commw. Parl. Deb., H.R. 3604-07 (Nov. 21, 1973) (remarks of Minister of Urban and Regional Development Uren); *id.* at 3555 (Nov. 14, 1974) (remarks of Minister Uren); Powell, *Residential Land—Public & Private Sector Interests*, in *Land for Building* 1.1 (22d Conf. of the N.S.W. Div., Building Science Forum of Austl., Nov. 18-19, 1974) (mimeo.) [hereinafter cited as Powell]. (Powell was Commissioner of the National Capital Development Commission). Also on land commissions see, H. Stretton, *Ideas for Australian Cities* 348-50 (2d ed. 1975) [hereafter cited as Stretton]; Murphy, *The Introduction of Land Commissions and the Future of the Urban Land Development Industry*, 47 *Austl. Q.* 32 (Dec., 1975) [hereinafter cited as Murphy]; Paterson, *Land Commission and Land Tenure Legislation: Likely Effects on Private Industry*, 13 *The Developer* 39 (May, 1975).

existing cities, designated growth centers, or renewal areas within central cities. Land could be acquired by the commissions for development in the short term or the long term, but the former was preferred because it would enable the commissions to make an impact on the building-lot market more quickly and would also require less in holding costs. Although the commissions were to have eminent domain powers, known in Australia as rights of compulsory acquisition or resumption, forced taking presumably would be used sparingly because many Australian government authorities would be wary of exercising these powers because of the risk of political backlash.⁴¹ The commissions were to retain indefinitely the lessors' interests in any leased land, and would not only manage their own lands but would also participate in managing tracts owned by other government agencies not being used for government purposes.

To satisfy land-commission capital funding needs, the federal government was willing to make available loan moneys at favorable rates for most land purchases, plus modest grants on a matching basis to acquire lands intended for uses, such as public recreation and conservation, that return little or no income. It was hoped that the land commissions would eventually become economically self-sufficient, even profitable, and need no further federal financial aid. Commission land sale and rental income would go into a revolving fund from which additional usable land could be purchased. When acquired, most tracts obtained by land commissions would be unimproved rural acreage requiring, before disposition as building lots, installation of roads, sewers, and other services. It was anticipated that this physical servicing would be done by private firms, under contract with a land commission, or by public development corporations specializing in such work.

Despite the strong initiative for the land-commission program from the Whitlam Government, considerable negotia-

⁴¹ Land commissions would acquire most of their land by direct negotiation rather than by compulsory acquisition. DURD, *Urban Land: Problems and Policies* 43 (1974).

Large tracts of land can, in some instances, be acquired by government without the use of compulsory acquisition. For example, a few years ago, a state agency acquired 10,000 acres in the Campbelltown area south of Sydney without the use or explicit threat of forced taking. Rather, the acquisition involved negotiations with many different landholders. Similarly, 40,000 acres of land for the Monarto growth center in South Australia were obtained without any compulsory acquisition proceedings being brought. *Id.* at 38.

tion and bargaining with the states would be required before commissions could be set up and made operational. To secure full state participation, the federal authorities apparently were relying both on federal financial aid and on the potential that the land commissions would offer to solve some of the more serious problems faced by Australian cities.

Federal authorities perceived several major advantages to the land commission program⁴² and stressed reduction or stabilization of urban land prices, particularly for residential lots, in their promotional efforts. Presumably, commissions could afford to sell off lots at lower prices because they would not be seeking profit, and because under proposed price stabilization laws they should be able to acquire land at lower prices and at lower financing costs than could private developers.⁴³ The second purported advantage of the land-commission program was to enable government to capture increases in urban land values resulting from community action, such as public investment, public zoning, and other public land control decisions for the benefit of the community. It was viewed as unjustified that speculators and other private parties could profit from price rises for which they were not responsible. By acquiring an ownership interest in land, land commissions could retain such benefits for themselves and hence for the community. By leasing the land and properly conditioning the leases, it would be possible to have these benefits accrue indefinitely to the commissions, even after the land was fully developed and usefully occupied. The third major advantage in land commissions as perceived by Canberra officials was the strengthening of the land-planning process itself. Several influential figures in the Commonwealth Government considered the planning potential of the commissions to be their most significant feature and regarded the other claimed advantages as little more than promotional arguments to encourage program adoption. Government

⁴² See Troy, *supra* note 32, at 10-11; DURD, First Annual Report 1972-73, at 15-16; DURD, Urban Land: Problems and Policies 3-13 (1974); Commw. Parl. Deb., H.R. 3605 (Nov. 21, 1973) (remarks of Minister Uren).

⁴³ See Murphy, *supra* note 40, at 39-42; DURD, Urban Land: Problems and Policies 43-45 (1974). In South Australia, cost advantages of the Land Commission over private land developers also include exemption from state land taxes and, for land being held for future development, exemption from local government real property rates. In addition, the South Australian Land Commission has benefited by being able to use powers of compulsory acquisition to acquire parcels of about eighty acres each, a size permitting very efficient development.

ownership of large land tracts scheduled for development would permit comprehensive government control of planning and of the implementation of planning decisions. Adequate control was commonly thought to be seriously lacking under the prevailing system of local planning schemes.

As the federal policy on land commissions evolved, troublesome issues surfaced, some of which were never resolved during the Whitlam Government's term of office. One issue was how much land a commission should acquire in those areas where it operated. To determine the general level of land prices in an area, it was clear that very substantial commission acquisitions would be necessary—perhaps ranging from one-fifth⁴⁴ to three-fourths⁴⁵ of the land in a market area, with private developers purchasing and developing the remainder. Land commission pricing policy was another difficult issue that emerged. Whether dispositions were restricted to low-income families or not, the question arose as to how prices for commission lots should be determined. Should these lots be offered at market price, cost of production, or at some below-cost subsidized price? The Labor Government never developed a clear-cut policy on these issues for all land commissions. The Canberra practice of charging commercial users the highest prices they were willing to pay seemed to have considerable support. There was also backing for the disposal of residential or nonprofit community properties at or near cost.⁴⁶ Greater uncertainty characterized the question of the disposal of industrial land,⁴⁷ however, apparently because favorable land prices might be one of the incentives needed in attracting industry to the new growth centers.

Probably the most troublesome issue concerning land commissions during Labor's period in power was whether the commissions should dispose of land on a freehold or leasehold basis. The Whitlam Government favored leasehold tenure,⁴⁸ the system under which substantially all land in the Canberra area was held. Yet as considerable support emerged within the states for freehold tenure, and as controversy developed among the leasehold adherents over the preferable form of

⁴⁴ Murphy, *supra* note 40, at 39.

⁴⁵ DURD, *Urban Land: Problems and Policies 27* (1974).

⁴⁶ *See, e.g., id.* at 28-29.

⁴⁷ *Id.* at 29.

⁴⁸ *See* Troy, *supra* note 32, at 12; Cities Comm'n, *supra* note 40, at 2.

leasehold, the Government appointed, in May, 1973, a three-man Land Tenure Commission to explore the entire matter thoroughly and postponed taking a final position on the issue before receiving the Commission report. The success of the land commissions was viewed to be largely dependent upon the particular tenure arrangements under which they released their land holdings. Over a six-month period, the Commission held extensive hearings throughout Australia, received written submissions from two hundred organizations and individuals, and in late 1973 submitted a long and carefully reasoned report to the government that was publicly released in early 1974.⁴⁹

The Land Tenure Commission's first report recommended leasehold tenure for government dispositions of land to private persons when the land was designated for development or redevelopment,⁵⁰ but an exception was proposed for residential properties.⁵¹ Because of the strong psychological preference that most home buyers have for freehold tenure, the Commission felt that residential properties should be disposed of in fee simple.⁵² Emphasis in the report, however, is not on

⁴⁹ Comm'n of Inquiry Into Land Tenures, First Report (1973) [hereinafter cited as First Report]. The Commission's views are sharpened and modified somewhat in a lengthy Final Report responding to some of the criticisms leveled at the Commission's initial effort. Comm'n of Inquiry Into Land Tenures, Final Report (1976) [hereinafter cited as Final Report]. This document, however, was not issued until after the fall of the Labor Government and, although it may have some influence on one or two of the states, it is unlikely to make any impact on the present federal government. Nevertheless, the two reports are important documents: They deal with crucial issues of urban land control prevalent in many modern societies and explore carefully and rationally the control potential of leasehold tenure and development rights. As a point of view on how and why these two control devices should be used, they are astute position papers meriting international attention by scholars, lawyers, and government officials concerned with urban land. In their outlook and approach, the Land Tenure Commission's reports are in the tradition of such English land-control documents as the Barlow Commission Report, Cmd. No. 6153 (1940), and the Uthwatt Committee Report, Cmd. No. 6386 (1942), which were sources for some of the Australian Commission's ideas and with which the Australian reports should be compared.

⁵⁰ First Report, *supra* note 49, at 62-64.

⁵¹ *Id.* at 54-56. The Commission's Final Report reaffirms the land tenure recommendations of the First Report. Final Report, *supra* note 49, at 3.

⁵² First Report, *supra* note 49, at 55. The Commission's recommendation for nationalizing future development rights, however, would limit the advantages of residential freehold ownership. If such rights were nationalized, land-value appreciation resulting from use-changes ordered by government would accrue to the government rather than to landowners. Yet the Commission did conclude that on balance it was desirable for private residential landowners to retain the benefits of land-value appreciation caused by their own land use or improvement, by that of other private residents and owners in the community, and by general price inflation. *Id.* at 50. These benefits could result from either freehold tenure or something very similar—a premium leasehold system in which leases would be purchased for

the leasehold tenure question but rather on the Commission's recommendation for radically restricting private land interests by nationalizing without compensation all future development rights in such property having no market value at the time of taking.⁵³ Under the Commission's proposal, future development rights in all privately held lands—leaseholds and freeholds, lands in the territories and in the states, and lands acquired from land commissions or from any other public or private source—would be nationalized.⁵⁴ The nationalization scheme, if adopted, would add tremendously to government

a capital sum, no rental would be owed, and the lease term would be perpetual, subject to a right of government resumption for redevelopment. *Id.* at 54. Canberra now has a 99-year premium leasehold system for residential land. The Commission favored retention of this system for Canberra if the term were made perpetual and all future development rights were reserved in the government. *Id.* at 71. Canberra leaseholds have always been a subject of controversy and here the Commission supported those who were opposed to an earlier Canberra system, in which annual rents for residential properties were charged and the amount of rent was subject to revision every ten or twenty years to reflect changes in the unimproved value of the leased land. *Id.* at 67-68.

⁵³ A future development right, as conceived by the Commission, is the right of a landowner to develop his land for a different use than that to which it was being put on a designated base-date. First Report, *supra* note 49, at 20-21, 29. The base-date would be "the date of proclamation or of the policy becoming operative." *Id.* at 21. Compensation to landowners would not be necessary, according to the Commission, as nothing of monetary value would be taken—only the prospect of securing something of value in the future, a speculative prospect dependent on future government action. *Id.* If, subsequent to nationalization, a private landowner wished to change the use to which his land was being put and the requisite government approval for the change were granted, he would be required to pay the government for the value at the time of the development right—the appreciated value of the land since the base-date attributable to the development authorization. Similarly, in any forced taking of land, the government, having earlier acquired future development rights, would not have to pay for any value these rights had acquired since the time they were nationalized. *Id.* at 20-23. The Commission also proposed that if the appropriate government agency issued a development order mandating a change in use, the landowner would have three options: (1) To develop the land in accord with the order and pay for the development rights involved; (2) to require the government to take the land and pay the landowner for his interest; or (3) to sell the land to another private person who would then be obligated to develop and pay for the development rights. *Id.* at 22, 28-29. This would result in compliance with the government's development plans and would also give the landowner flexibility of action.

Although there might be constitutional doubts about the Commission's proposals for taking development rights, section 51(xxxi) of the Australian Constitution, which permits the Commonwealth Government to take by compulsory purchase only on just terms, might be inapplicable to acquisitions of future development rights having no monetary value when taken. The states have no comparable just-terms constitutional restraint. See notes 33-34 *supra* and accompanying text.

⁵⁴ Since the report contained no limitations, the Commission's nationalization proposal apparently would apply to all privately held rural and other nonurban lands, whether or not they were likely to be developed for urban purposes. Because presumably only land to be developed for urban purposes would be subject to development orders or similar change-of-use authorizations, however, nationalization of development rights would have no serious effect on most rural or other nonurban lands.

power over land development and to its capability for ultimately preventing private speculators and others from realizing profits on unearned appreciation in land prices. Moreover, nationalization would cost the government nothing, as only rights having no market value at the time of acquisition would be taken.

The Commonwealth Government was slow in reacting to the Land Tenure Commission's report.⁵⁵ When the government did take a position, it largely ignored the nationalization-of-development-rights proposal because it was deemed politically unrealistic. There was, however, substantial government support for reserving development rights in leases of land commission and growth-center lands. The Commission's recommendations on land tenure fared better than did its development-rights proposals—the Commission's report was endorsed in principle as the basis of the government's position on leasehold tenure in its dealings with the states on federal assistance for urban land development.⁵⁶ The report's recommendation that land-commission and growth-center residential lands be disposed of on a freehold basis with development rights reserved was also endorsed, despite the position of some top federal policy-makers, who favored long-term leases of such sites.⁵⁷

Despite the difficulties apparent in mounting and operating a land commission program, the Labor Government was anxious to initiate it. By the end of 1973, after just over a year in office, Labor had pushed through Federal Parliament a legislative enactment for the preliminary funding of land commissions and was well into negotiations with all six states to set up commissions.⁵⁸ Subsequent enactments sponsored by

⁵⁵ The government was apparently waiting to gauge public reaction to the report, especially from interest groups concerned with urban development. In a series of conferences on the report sponsored by the federal government in cooperation with university town-planning departments and research staffs, the development-rights-nationalization proposal, as well as most other recommendations in the report, was critically evaluated by the interest groups attending, which included land developers, builders, real estate agents, institutional lenders, local and state government officials, land planners, academics, and others.

⁵⁶ DURD, *Urban Land: Problems and Policies* 42 (1974); Prime Minister's Press Statement No. 296 (August 6, 1974).

⁵⁷ The likelihood of political repercussions from efforts to force rent increases on householders with long-term leases was a factor influencing the government to accept the Land Tenure Commission's recommendation of freeholds for residential properties.

⁵⁸ The federal funding statute, known as the Land Commissions (Financial Assistance) Act 1973 (Commw.), is typical of much Australian legislation: short,

the Labor Government provided substantial funding for the next two fiscal years.⁵⁹

Although the federal government was ready and willing to fund state land commissions, all the states except South Australia initially were reluctant to participate in the program. In South Australia, the controlling Labor Government secured passage of a state land commission statute even before the federal government had passed its funding legislation.⁶⁰ Eventually all states except Queensland agreed to participate.⁶¹ Considerable land has now been acquired by the state bodies participating in the federal land commission program,

terse, and leaving to ministers broad policy discretion. The Act appropriated \$30 million for expenditures during the rest of the fiscal year by state land commissions or equivalent agencies operating under agreements with the federal government. These moneys were to be expended as loan funds, the long-term bond rate being the maximum interest that could be charged. The parties, however, could agree to defer repayment for as long as ten years. Independently of the statute, the federal government determined that interest rates would be reviewed during the term of the loans, with the prospect of reducing them to make land-commission projects self-financing as far as possible. Commw. Parl. Deb., H.R. 3607 (Nov. 21, 1973) (remarks of Minister Uren). If land commissions acquired lands to set aside for public recreation or conservation, the statute provided that federal moneys could be made available as nonrepayable matching grants, since the tracts involved would be large and would return relatively little income. Federal financial assistance could be conditioned in any manner not inconsistent with the statute. During the course of enactment, the Minister for Urban and Regional Development, who was to be primarily responsible for negotiating land commission agreements with the states, said that in these agreements the federal government would require two performance conditions of the states: (1) that state organizational structures for land acquisition be acceptable to the federal government; and (2) that the states pass legislation stabilizing land prices prior to acquisition by land commissions, so that prices paid by the commissions would not be inflated by the intended acquisition and development. *Id.* at 3606.

⁵⁹ In legislation applicable to the 1974-75 fiscal year, Parliament appropriated over a quarter of a billion dollars for several urban and regional development programs. Urban and Regional Development (Financial Assistance) Act 1974 (Commw.). Of this sum, land commissions and similar agencies received \$53.8 million. DURD, Third Annual Report 1974-75, at 39. For the 1975-76 fiscal year, federal financial allocations for these state bodies were also substantial. 1975-76 Budget Paper No. 9, *supra* note 3, at 29.

⁶⁰ Land Commissions Act 1973 (S. Austl.).

⁶¹ In each participating state except South Australia, an administrative body was adopted somewhat different from the independent statutory commission that Commonwealth officials originally proposed and South Australia established. A ministerially created council, rather than a statutorily created body, was set up in each of the other four states. The council members consisted of representatives from various state agencies concerned with urban affairs. As used herein, the federal land commission program refers to federal-state land development efforts that include activities of either state land commissions or state land councils.

In Queensland, concern over leasehold tenure and reservation of development rights in residential dispositions, and bitter opposition by the conservative government in that state to the Labor Government in Canberra, blocked a federal-state land commissions agreement, despite protracted negotiations with federal authorities.

most of it for development into serviced building lots and some of it for open-space uses.⁶² The building-lot land is located primarily in outer suburban areas and has been obtained for short-term development. No purchases were made with the intent of "banking" the land for urban development in the distant future,⁶³ nor has the program been used to obtain inner city land parcels for urban renewal purposes. Dispositions of land, the states have agreed, are to be in accord with tenure recommendations of the Land Tenure Commission, except in unusual circumstances.⁶⁴ To date, the South Australian Land Commission has accomplished far more than any similar body in the other states.⁶⁵

⁶² See 1975-76 Budget Paper No. 9, *supra* note 3, at 30-34; Address by Minister Uren, Government Housing and Land Policies, Fourth Australian Convention, Real Estate and Stock Institute of Australia, Oct. 5-8, 1975 (mimeo). The Victorian Council has been particularly effective in acquiring land for parks and other open-space purposes, and the Western Australian Council has acquired over 18,000 acres for urban and nonurban uses. Address by Minister Uren, *supra*.

⁶³ The South Australian Land Commission has acquired some land that it did not expect to develop for seven to ten years from the time of acquisition, which is the closest approximation to planned land-banking so far attempted under the land commission program. Holding costs, postponed political benefits, and strong opposition by the Commonwealth Department of the Treasury have deterred use of the land-banking concept.

⁶⁴ For example, the following provision was included in a Statement of Principles agreed to by the Commonwealth Government and the State of Victoria:

Residential land (defined as land used for permanent accommodation) will be freehold subject to appropriate conditions on development and use. The Victorian Government accepts the principle of leasehold tenure for commercial and industrial land purchased with Australian Government funds, save in exceptional circumstances which will be subject to approval of both Governments. Such leases would be based on economic rents other than where the land is used for community, institutional or non-profit making purposes.

⁶⁵ The South Australian Commission has purchased approximately 9,000 acres of land, nearly all of it in the metropolitan Adelaide area, and has released for sale 1,000 fully serviced lots, mostly quarter-acres. These lots, nearly all residential, are being sold at prices that the Commission asserts to be about \$1,000 below what private developers would have sold them for. Sales are at cost to the Commission. Servicing constitutes about half of the cost of each Commission lot produced from rural land; with rising labor prices, servicing soon will be two-thirds of the total cost of Commission lots ready for sale. Overhead expenses have been kept down by restricting the number of Commission employees, the full-time staff now numbering twenty-four. Compulsory acquisition has been used rather frequently by the Commission. In 30 per cent of its purchases the Commission has resorted to this device, and its threat has no doubt facilitated other acquisitions. Nearly half of all serviced lots being offered for sale in the Adelaide area are owned by the Commission; and for at least the immediate future, the Commission expects to retain this share of the market. Land developers are strongly opposed to the Commission, as it has taken away much of their business, but building developers favor the program, one reason being that the commission, with its powers of compulsory acquisition, has been able to assemble and make available to them sizable land parcels needed for construction that private enterprise could not otherwise obtain. The major source of funding for the Commission has been the Commonwealth Government, but some moneys have been obtained from elsewhere, primarily from the state government. The principal aims of the South Australian Land Commission have been to hold down prices of serviced building lots and to stabilize supply by making

Growth Centers

Another key urban program of the Whitlam Government was the development of growth centers, carefully planned new cities gradually to be expanded into middle-sized urban communities, each with populations in the two to three hundred thousand range.⁶⁶ Advocates of the growth-center program were of the opinion that new centers of this size, properly sited and developed, would be economically viable and yet would avoid many of the acute problems found in much larger cities such as Sydney and Melbourne. Canberra was considered the model of what the growth centers might become,⁶⁷ although its unique character as a national capital city with little industry, in a remote political enclave under full federal control, renders any attempt at full comparison somewhat unrealistic. English new-town experience also influenced the Australian growth-center concept and helped give it credibility.⁶⁸

The federal growth-center program called for cooperative federal-state action in the development of a limited number of growth centers. Each growth center was to be a substantially

available a steady flow of needed lots at all stages of the business cycle. Influencing the land-planning process has not been a major objective. Many of the above data on the South Australian Land Commission were provided by employees of the Commission. *See also* B. Bentick, *The Respective Roles of the Land Commission and the Private Sector in Land Development in South Australia* (Urban Dev. Inst. of Austl. S. Austl. Div. 1975); S. Austl. Land Comm'n, *Second Report* (1975); *South Australian Report*, 13 *The Developer* 34 (Dec., 1975).

⁶⁶ Prior to the federal government's proposal for growth centers, there had been efforts by some Australian states to encourage urban decentralization through incentive payments to businesses in country towns and to their employees. The growth-center proposal was an outgrowth of this decentralization movement, as it had come to be realized that state efforts were too widely dispersed and too limited to have much effect. Examples of state statutes providing for decentralization-incentive payments are *Development and Country Assistance Act 1966* (N.S.W.), *Decentralized Industry Incentives (Payroll Tax Rebates) Act 1972* (Vict.), and the *Decentralized Industry Housing Act 1973* (Vict.). In 1972, two influential reports came out urging selective decentralization on an expanded scale, aided by joint federal-state government action. *Austl. Inst. Urban Studies, First Report of the Task Force on New Cities for Australia (1972)* [hereinafter cited as *New Cities*]; *Committee of Commonwealth-State Officials on Decentralization, Report (1972)*. Blueprints for the Labor Government's growth-center program were the former report and a report issued about a year later by a Commonwealth agency. *See Cities Comm'n, A Recommended New Cities Programme for the Period 1973-1978* (Parliamentary Paper No. 223, 1973) [hereinafter cited as *Recommended Programme*].

⁶⁷ Conner, *Sub-metropolitan Centres*, 12 *Royal Austl. Plan. Inst. J.* 20, 22-24 (1974); Lansdown, *Canberra: An Exemplar of Many Decentralized Australian Cities*, 43 *Austl. Q.* 6 (Sept., 1973); Powell, *supra* note 40, at 1.5-1.7.

⁶⁸ *See, e.g.,* Crockett, *New Cities for Australia*, in *Austl. Inst. Urban Studies, First Report of the Task Force on New Cities for Australia* appendix 13 (1972).

self-contained city,⁶⁹ which apparently meant that it would be a major center of employment, as well as providing extensive residential, shopping, and recreational facilities. Sixteen sites were initially studied as possible growth centers, at least one in each state.⁷⁰ In nearly every instance, there was a country or outer suburban town in or very near the area under consideration for a growth center that would provide a useful social and infrastructural base during the initial stages of development.⁷¹ Albury-Wodonga, a growth center area overlapping the states of New South Wales and Victoria, was favored by the Prime Minister and some of his close advisors for special attention. Situated in a growing region upstream on an important river, the Murray, and on major communication lines, including those between Sydney and Melbourne, Albury-Wodonga appeared to be a particularly desirable site for a large urban community. Its interstate location might make coordination of government activities somewhat more difficult, but also could lead to political and financial benefits from the support that two rather than just one state could provide. The interstate character of the area was also attractive to Labor Party politicians because it enhanced the need for federal intervention to coordinate and adjust state differences, and would provide a precedent for creeping expansion of federal power into future development projects, both interstate and intrastate. The government classified the proposed new urban centers as either systems-cities or regional growth centers, terms little used outside Australia. Systems-cities, also known as satellite cities or submetropolitan centers, are those to be located at or near the periphery of existing large urban communities. Regional growth centers are those to be developed far from any such communities in regions presently having no major cities. Government support was favored for both categories.

The growth center program was expected to be consolidated with the land commission program, as it was proposed that land commissions or comparable government bodies ac-

⁶⁹ New Cities, *supra* note 66, at 8; Commw. Parl. Deb., H.R. 306 (Aug. 23, 1973) (remarks of Minister Uren).

⁷⁰ Neilson, *The New Cities Programme*, 12 Royal Austl. Plan. Inst. J. 14, 17 (1974); Recommended Programme, *supra* note 66, at 45.

⁷¹ For example, in 1971 the cities of Albury and Wodonga had a combined population of 38,000; Orange had 24,000; Geelong, 115,000; and Murray Bridge (near Monarto), 7,500. 1971 Census, *supra* note 2, table 5.

quire the land needed for the centers;⁷² state land-price stabilization legislation was to precede this acquisition to hold down the cost of land purchased.⁷³ One or more development corporations were to be formed to plan and construct each growth center, with federal government representation in the management of each of these corporations.⁷⁴ The federal government was prepared to make financial assistance available for planning the growth centers and for growth-center land acquisition and development. It was recognized that other forms of government aid might also be needed to enable the growth centers to survive and expand in their early years. For example, incentives might be required to attract businesses into the new centers, particularly the regional centers.⁷⁵

The federal government authorities anticipated numerous benefits of the growth-center program.⁷⁶ First and foremost it was expected that the program would help to slow expansion of existing big cities by diverting population and development away from them. Effective urban decentralization was a major aim of the growth-center proposal, certain to appeal to the many Australians with aversions to big cities. Regional centers

⁷² *New Cities*, *supra* note 66, at 16; *Recommended Programme*, *supra* note 66, at 29; DURD, *A National Strategy for Urban and Regional Development* 21, 26 (April, 1974).

⁷³ Neilson, *supra* note 70, at 17. The format for such legislation is suggested in *New Cities*, *supra* note 66, at 15.

⁷⁴ *Recommended Programme*, *supra* note 66, at 29.

⁷⁵ Among the economic inducements suggested for this purpose were improved rail facilities, favorable freight rates and telephone charges, payroll tax and land tax concessions, mortgage guarantees, sale or lease of industrial sites and completed factory buildings at subsidized prices, repurchase agreements for homes and factories, and subsidized waste disposal. *New Cities*, *supra* note 66, at 14-15. On incentives, see also Emanuel, *A Report on The New Cities Programme and Urban and Regional Development Policy in Australia*, in *Cities Comm'n, Urban and Regional Development Overseas Experts' Reports* 47, 50-52 (Parliamentary Paper No. 217, 1974).

Moving government offices to growth centers, channeling foreign migrants to the new centers, and making tariff policies favorable to growth-center industries were among other forms of possible government aid proposed. *Recommended Programme*, *supra* note 66, at 30.

⁷⁶ Potential benefits from growth centers are discussed in Neilson, *supra* note 70, at 16; Neutze, *The Case for New Cities in Australia*, 11 *Urban Studies* 259 (1974); *New Cities*, *supra* note 66, ch. 2; Payne & Mills, *The Case for New Cities in Australia*, 11 *Royal Austl. Plan. Inst. J.* 3 (1973); Searle, *A Reexamination of the Case Against Decentralization*, 12 *Royal Austl. Plan. Inst. J.* 58 (1974); Simons & Lonergan, *The Mythical Arguments For Decentralization*, *Royal Austl. Plan. Inst. J.* 85 (1973); Whitlam, *Urbanised Australia, 1972-75*, 10 *The Developer* 81 (Jan., 1973) (extracts from John Curtin Memorial Lecture); *Recommended Programme*, *supra* note 66, at 21-23; DURD, *First Annual Report* 31-32 (1972-73); *Commw. Parl. Deb., H.R.* 306 (Aug. 23, 1973) (remarks of Minister Uren); Mills, *Growth Centres in Context*, in *Land For Building* 8.1 (22d Conf. of the N.S.W. Div., Building Science Forum of Austl., Nov. 18-19, 1974) (mimeo.).

would achieve decentralization by drawing people and resources away from existing metropolitan areas to new middle-sized cities elsewhere; systems-cities would achieve it by expanding the metropolitan areas and by forming new centers near the periphery that would draw people and resources away from the present metropolitan cores.⁷⁷ It was anticipated that the concentrated planning control that development corporations could exert, strengthened by government ownership of growth-center land, would enhance the quality of life available in the new centers and yet permit them healthy economic growth. Prospects for growth center success presumably were enhanced by the tie-in between the growth centers and land commission programs, with the benefits of each program accruing to the other.

As it did with land commissions, the federal government moved rapidly to provide the legal framework for its growth center program. In October, 1973, following an understanding in principle in January, the federal Prime Minister and the Premiers of New South Wales and Victoria signed a detailed agreement for joint development of a growth center at Albury-Wodonga by the federal government and the two states.⁷⁸ The agreement was followed shortly thereafter by legislative enactments of the signatory governments approving and implementing the agreement.⁷⁹ In addition to establishing corporations for developing the Albury-Wodonga growth center, under federal pressure, the two states involved also passed land-price stabilization acts freezing the prices at which the states may secure land designated for the Albury-Wodonga Growth Center.⁸⁰

⁷⁷ Subcentralization rather than decentralization may more appropriately denote this systems-city objective.

⁷⁸ Albury-Wodonga Area Development Agreement (supplemental schedule to the three implementing statutes cited in note 79 *infra*).

⁷⁹ Albury-Wodonga Development Act 1973 (Commw.); Albury-Wodonga Development Act 1974 (N.S.W.); Albury-Wodonga Agreement Act 1973 (Vict.).

⁸⁰ Growth Centers (Land Acquisition) Act 1974 (N.S.W.); Wodonga Area Land Acquisition Act 1973 (Vict.). These are base-date freeze statutes, the base-date generally being October 3, 1973, several weeks prior to signing of the Albury-Wodonga agreement and presumably early enough to prevent word of the agreement from influencing land prices in the Albury-Wodonga area. The purpose of the acts is to eliminate from the price that the states pay for growth center land any appreciation in value resulting from the area's being planned or developed as a growth center. Other shifts in land values will be reflected in the price that the states pay, because the stabilization acts contain an adjustment factor that adds or subtracts from the base price any inflation or deflation since the base-date in the price of comparable land not located in a growth center. Land designated for growth center purposes is statutorily subject to the price-freeze for up to ten years

During the Labor Government's period in office, Federal Parliament authorized considerable financial assistance to Albury-Wodonga and such other growth centers as federal and state ministers should designate.⁸¹ Prospects for receiving Commonwealth Government aid for growth centers other than Albury-Wodonga led the states of New South Wales, South Australia, and Victoria to pass legislation that would help them qualify for such aid.⁸² In 1973, eleven sites, at least one in each state, had received federal legislative authorization for growth-center assistance, subject to appropriate ministerial approval.⁸³ All of these growth centers were to be subject to the same or similar price-stabilization legislation as applied to Albury-Wodonga.⁸⁴ Three states passed legislation focusing on the sites within their boundaries. No growth center legislation has been passed nor agreements entered into with the Commonwealth Government on growth centers by the states of Queensland, Western Australia, or Tasmania, despite detailed preliminary studies on projects in these states. With release of the National Population Inquiry Report in early 1975, it became increasingly evident that probable Australian population expansion would not justify all the growth centers that earlier had been proposed,⁸⁵ and with the

in New South Wales, Growth Centres (Land Acquisition) Act 1974, §§ 4-5 (N.S.W.), and until the end of 1976 in Victoria, Wodonga Area Land Acquisition Act 1975, § 2 (Vict.). The date in Victoria has twice been extended and could be extended again. Price-freezing means that the states retain their price protection even though they delay acquiring designated land for years, with no legal obligation to take any of the land that has been designated. The possible hardships to private landowners as a consequence of delayed or unacted-upon designations are obvious.

⁸¹ In 1973, the Federal Parliament authorized \$9 million for Albury-Wodonga. Albury-Wodonga Development (Financial Assistance) Act 1973 (Commw.). At about the same time \$24 million was authorized for eleven other growth center sites as the relevant federal and state ministers should agree upon. Growth Centres (Financial Assistance) Act 1973 (Commw.). In 1974, growth center assistance was combined with other forms of urban and regional state aid in a blanket act authorizing a total of \$258,398,000 for urban land-related assistance, of which growth centers, along with redevelopment, sewerage and water supply, could share \$124,750,000. Urban and Regional Development (Financial Assistance) Act 1974 (Commw.). These funds could be spent for any project approved by the Federal Minister of Urban and Regional Development, upon consultation with the appropriate state minister, following a federal agreement with a state for financial assistance. Urban and Regional Development (Financial Assistance) Act 1974, §§ 4-5 (Commw.).

⁸² Growth Centres (Development Corporations) Act 1974 (N.S.W.); Monarto Development Commission Act 1973-74 (S. Austl.); Geelong Regional Authority Act 1975 (Vict.).

⁸³ Growth Centres (Financial Assistance) Act 1973, schedule (Commw.).

⁸⁴ Growth Centres (Land Acquisition) Act 1974 (N.S.W.); Monarto (Land Acquisition) Act 1972-73 (S. Austl.); Geelong Regional Authority Act 1975 (Vict.).

⁸⁵ The report estimates that Australian population growth during the rest of the century will be less than had been widely predicted, since the total national

possible exception of Townsville in Queensland, priority needs for growth centers in the three states were low.⁸⁶

Government developers feel confident that with continued strong federal support, Albury-Wodonga will have a population of 100,000 in ten years' time and that the Albury-Wodonga Development Corporation will be showing a profit by then.⁸⁷ Commonwealth Government financial assistance to the other three growth centers that it is currently aiding, however, has been more limited. Clearly, plans for further growth at all sites will be substantially hampered if federal funding ceases.

Housing

When Labor came to power in 1972, the Commonwealth Government was heavily committed to housing. Labor continued and expanded that commitment.⁸⁸ In so doing, however, the Whitlam Government showed less ingenuity and innovation than in the land-commission and growth-center programs. In general, the Government merely carried on established policies⁸⁹ and programs that it had inherited upon taking office that involved large financial outlays to the states for housing purposes and direct aid to home buyers and tenants. Federal housing programs, developed at different times for different groups and purposes, provided a patchwork of aid

population will be only 15.9 to 17.6 million by the year 2001. Nat'l Pop. Inq. Rpt., *supra* note 5, at 426. Thus target proposals for regional growth-center population increases of 1,107,000 by the year 2001 (including Canberra) are considered unrealistic. *Id.* at 424-26.

⁸⁶ Some proposed new centers in the heavily populated states of New South Wales and Victoria were dropped and only four projects retained as recipients of federal growth center aid: Macarthur and Bathurst-Orange in the greater Sydney region, Monarto near Adelaide, and Albury-Wodonga.

⁸⁷ By early 1976, the favored Commonwealth-assisted growth center, Albury-Wodonga, was well under way in implementing the plan. About 70,000 of the designated 133,000 acres of land had been acquired; 2,000 lots were in the process of being serviced, including 4 industrial sites of about 200 acres each; and 180 houses were nearly complete. The initial 70,000 acres of land were acquired at a cost of \$63 million, including a 10 per cent solatium. The remaining designated acreage is scheduled for acquisition over the next decade. *See* T. Havas, *Albury-Wodonga's Recent Growth Performance (1975)* (DURD memorandum); J. Overall, *Albury-Wodonga Development Corporation 6 (1976)* (publication of the Corporation).

⁸⁸ As of 1970, 24 per cent, or 850,000, of the units of housing in Australia had been financed with the aid of government subsidies, 750,000 of them built since 1945. Federal governmental assistance contributed heavily to most of this subsidized financing. About three-fourths of government-subsidized units built by 1970 were produced by state housing authorities or with assistance of the War Service Homes Scheme, formerly known as the Defence Service Homes Program. M. Jones, *Housing and Poverty in Australia 1 (1972)* [hereinafter cited as Jones].

⁸⁹ Following the usual Australian government practice, housing programs in this analysis are considered as separate from land commission and growth center programs, despite the relevance of the latter two programs to housing.

vulnerable to criticism for its inconsistencies and inequities, most assistance going to large urban areas. Yet each program had strong political support from those it benefited, which made reform difficult.

The two largest federal housing programs in effect when the Whitlam Government came to power were housing agreement loans to the states, mostly for state public-housing projects, and the Defence Service Homes Scheme, a federally administered home-loan and home-construction program for military veterans. In addition there were smaller programs benefiting certain groups with special housing problems. Some of these programs were administered solely by the Commonwealth Government, and others by the states with the aid of federal moneys. Under Labor, nearly all of these programs were continued and in most instances funding was increased, the most marked change in federal housing policy during the Labor years being the very considerable expansion in Commonwealth Government moneys allocated to housing.⁹⁰ Most of these funds have been used for construction by state housing authorities⁹¹ of dwellings for lower-income residents, including acquisition and servicing of land on which the dwellings were built. Housing authorities may also use federal funds to purchase and renovate existing dwellings,⁹² although only a small percentage of available aid has been used for such purposes.⁹³

The state housing authorities are powerful bureaucracies that are the largest landlords in Australia and major devel-

⁹⁰ Net federal outlays for housing amounted to about one-quarter of a billion dollars in the fiscal year 1971-72. Within three years the Labor Government had tripled this annual outlay, exclusive of federal moneys channeled into residential properties under the land commission and growth center programs. The precise figures for federal housing aid in Australian dollars are \$239.1 million in 1971-72, \$259.2 million in 1972-73, \$348.6 million in 1973-74, and \$733.9 million in 1974-75. These amounts are net figures, repayments and recoveries from housing loans and advances being subtracted from funding allocations in each year. 1975-76 Budget Paper No. 9, *supra* note 3, at 57. By far the largest allocations of federal aid for housing have been loan funds made available to the states pursuant to a series of statutorily authorized federal-state housing agreements dating back to 1945.

⁹¹ In most states these authorities are known as housing commissions. The housing authority in South Australia is the South Australian Housing Trust.

⁹² 1973 Housing Agreement § 14. *See* note 93 *infra*.

⁹³ The 1973 Housing Agreement, applicable until 1978 and to which the federal government and all six states are parties, is the agreement currently in effect. It was authorized by the Housing Agreement Act 1973 (Commw.) and is included as a schedule to that act. Funding is by separate enactments, including the States Grants (Housing Assistance) Act (No. 2) 1973 (Commw.) and States Grants (Housing Assistance) Act 1974 (Commw.).

opers of housing for sale, as a substantial percentage of their units are sold to owner-occupants.⁹⁴ In most years since 1945, between 15 and 20 per cent of all housing units completed in Australia have been built by housing authorities, with state housing authority construction being carried out largely pursuant to Commonwealth-state housing agreements.⁹⁵ Much of the housing constructed by the authorities has been single-family cottages or small houses built on individual lots, but all authorities have built some multi-family dwellings. The trend in the largest states is increasingly toward apartment buildings or flats,⁹⁶ some of them high rise structures resembling the massive public-housing construction in New York and other major American cities. Because land in outer suburbs is cheaper and more readily available, Australian housing authorities have done much of their metropolitan area building in those suburbs, often a great distance from central business districts.⁹⁷

Federal government assistance, mostly in the form of favorable loans, has been the main source of state housing-authority financing, although the states have provided their authorities with loan moneys and modest grant funds, and

⁹⁴ From fiscal 1970-71 to 1974-75, state housing authorities sold 29,187 dwelling units built pursuant to Commonwealth-state housing agreements. During this same period, 48,548 new units of Commonwealth-state housing agreement dwellings were completed by the state authorities, with a ratio of 60 sales to every 100 completions. Data provided by the Commonwealth Department of Environment, Housing and Community Development.

⁹⁵ Jones, *supra* note 88, at 16. From 1945 to 1970, annual public-housing completions averaged 16 per cent of all housing units constructed.

From fiscal years 1957-58 to 1974-75, state housing authorities in the six states completed 186,562 dwelling units under various Commonwealth-state housing agreements, an average of 10,365 units per year. These completions constituted 9 per cent of all government and private dwelling unit completions during this 18-year period. Letter to author from Ken Horsham, Acting Assistant Secretary, Commonwealth Dep't of Environment, Housing and Community Development, April 30, 1976 [hereinafter cited as Horsham].

⁹⁶ See Jones, *supra* note 88, at 43-48.

⁹⁷ Authority projects tend to concentrate public housing in one area rather than scatter it widely among privately built and owned dwellings. Some projects are so large as to constitute separate residential suburbs, vast Levittown-like settlements for lower-income families. Three of these, Elizabeth, in metropolitan Adelaide, and Green Valley and Mount Druitt, in the Sydney area, have populations of about 55,000. These and other large housing authority projects have received considerable criticism. *E.g.*, T. Brennan, *New Community: Problems and Policies* (1973) (a study of Green Valley); Jones, *supra* note 88, at 182-92; Stretton, *supra* note 40, at 148-56. In response to this criticism, the 1973 Housing Agreement directs authorities to mingle their housing with that which is privately constructed and developed. Housing Agreement Act 1973 (Commw.), schedule. This scatter-site directive is so vague and conditional, however, that it is unlikely to have much effect.

some authorities have borrowed funds in the private market. Profits from home sales and rentals, when made, have generally been invested in land and home construction.⁹⁸

While in office, the Labor Government not only more than doubled annual housing-agreement funds made available to the states by the federal government,⁹⁹ but also lowered the interest on housing loans charged to state housing authorities from 8-1/2 to 4 per cent,¹⁰⁰ and imposed restrictions on the percentage of housing-authority units that could be sold.¹⁰¹

All housing authorities have given priority to lower-income applicants in renting their premises, applying "means" tests or "capacity to pay" criteria in granting admissions.¹⁰² Despite variations in these standards among the states, however, most housing authorities have rented some of their units to families who were more affluent at the time of admission. A recent study disclosed that of 183,000 housing-authority tenants nationwide, only about one-fourth had incomes below 120 per cent of the poverty line, and that far more of the poor were living in private rental accommodations than in public ones.¹⁰³ Australian housing authorities have not served primarily the housing requirements of the poor but

⁹⁸ Indicative of the magnitude of housing authority operations is the authority's experience in New South Wales. Since 1945, the state authority has spent over a billion dollars in providing 118,000 housing units. Over one-third of these units have been sold. N.S.W. Housing Comm'n, Annual Report annexure 1 (1975). In South Australia, with a population about one-fourth that of New South Wales, the powerful and active South Australian Housing Trust has built 77,000 residential units since its inception in 1938, 13,000 of them in one vast project area, Elizabeth. S. Austl. Housing Trust, Annual Report 40 (1975). The Trust is renting 37,000 dwelling units, two-thirds of them in metropolitan Adelaide. The rest of those built have been sold, many to persons who originally occupied the premises as tenants. *Id.* at 22. In 1973-74, sales of houses by the Trust ranged from \$22,000 to \$25,000. *Id.* at 33. The Trust also sells serviced home-building lots in the subdivisions that it is developing. S. Austl. Housing Trust, Annual Report 8 (1974). In addition, it builds factories on such terms as to attract industry into the state, and it also operates 41 shopping centers. S. Austl. Housing Trust, Annual Report 34-35 (1975). The Trust has shown a net loss in only two years of its operation. Losses on rental properties in the two years were not offset by surpluses in sales activities. *Id.* at 4, 51.

⁹⁹ Housing agreement loans increased from \$160 million in the 1971-72 fiscal year to \$385 million in the fiscal year 1974-75. 1975-76 Budget Paper No. 9, *supra* note 3, at 57. Home builders' account advances are included in these loans.

¹⁰⁰ N.S.W. Housing Comm'n, Annual Report 1 (1974). The repayment period for these loans is 53 years. Housing Agreement Act 1973 (Commw.), schedule § 13.

¹⁰¹ Housing Agreement Act 1973 (Commw.), schedule § 19(1).

¹⁰² Jones, *supra* note 88, ch. 3.

¹⁰³ 1 Comm'n of Inquiry Into Poverty, First Main Report 164 (1975). The same study reported that private rental housing accommodated 146,000 tenants with incomes less than 120 per cent of the poverty line, 86,000 of whom were below that line. *Id.*

have concentrated on accommodating those somewhat better off, many of whom could not afford equally good private housing but whose needs generally are less urgent than those of persons at or close to the poverty line.¹⁰⁴ The 1973 Housing Agreement also provides that some of the moneys going to the states under the Agreement shall be loaned by them to private lending institutions or state banks for lending to lower-income home buyers.¹⁰⁵ These are known as home-builders' account advances and are made available to the states in the form of long-term loans at 4-1/2 per cent interest.¹⁰⁶ Federal funding of home purchases through home-builders' account advances to the states had existed under previous federal-state housing agreements, but the 1973 Agreement increased the amounts available, made the terms more favorable to borrowers, and added a means test.¹⁰⁷

Another long-standing and substantial federal aid to housing program is the Defence Service Homes Scheme for former servicemen. In effect since 1918, this program provides housing benefits to veterans of the military services, and its ostensible purpose is to facilitate reentry into civilian life and to compensate for disadvantages in acquiring a permanent home attributable to military service.¹⁰⁸ Presumably, it is also considered an incentive to military service and a form of remuneration supplementing the relatively low pay while in

¹⁰⁴ One reason that more of the very poor are not living in public housing is that, once admitted to public housing accommodations, tenants may remain, usually at the same rental rates, irrespective of how much their incomes increase. Jones, *supra* note 88, at 152-53. The current federal-state housing agreement does not attempt to deal with this postadmission rental practice, nor with the prevailing method of setting rents on an historic-cost basis, both of which arguably involve inequitable housing-authority policies. Except for tenants so poor that their rents are subsidized by rebate arrangements, most housing authorities charge rentals on the basis of each dwelling unit's cost: a figure composed of amortized principal and interest payments on the initial capital outlay, plus operating and maintenance expenses. *Id.* at 154-56. Thus, rentals on older buildings are generally lower than those built more recently at much higher costs and usually at much higher interest rates on their capital debt. If adequate upkeep of older units is assumed, tenants in many of these dwellings are receiving major rental preferences compared with tenants of new housing authority premises.

¹⁰⁵ The private lending institutions that may receive these funds are terminating building and cooperative housing societies. Housing Agreement Act (1973) (Commw.), schedule § 23(4). These institutions are somewhat similar to building and loan associations in the United States.

¹⁰⁶ *Id.* § 12. These federal loans to the states are repayable in installments over 53 years. *Id.* § 13.

¹⁰⁷ *Id.* §§ 23-27.

¹⁰⁸ Commonwealth Priorities Review Staff, Report on Housing 146-47 (1975). It is also possible for some servicemen to qualify for benefits under the scheme, the objective being to encourage them to remain in the military.

service. As there is no cutoff time for those who are eligible, many veterans apply for assistance years after they have left the military and have been satisfactorily reabsorbed into civilian life.¹⁰⁹ For most of them, the program is a bonus for past tours of duty and is perpetuated in large part because of the political strength of the former servicemen and their organizations. Under Labor, funding for the Defence Service Homes Program was substantially increased.¹¹⁰ Since inception of the program in 1918, approximately 350,000 applicants have received Defence Services Homes benefits;¹¹¹ and by 1974-75, the program's annual budget allocation had risen to \$130 million.¹¹² The federal government has also developed a small number of Defence Service Homes Estates, subdivisions for former servicemen and their families. Completed houses or serviced building lots are sold at cost to eligible veterans, and there is a long waiting list for these premises.¹¹³ As of mid-1975, the federal government held enough land earmarked for Defence Service Homes Estates eventually to provide about 12,000 home lots.¹¹⁴

Other groups for which the federal government has developed special housing-aid programs are young married couples, single, aged, or invalid pensioners, needy families in public housing, Aborigines, migrants, and married servicemen.¹¹⁵ For all of these special group programs, the federal govern-

¹⁰⁹ For example, almost half of the 16,000 applicants for assistance under the Defence Service Homes Scheme in fiscal year 1973-74 were veterans of World War II. Commonwealth Director of Defence Service Homes, 1973-74 Annual Report 5.

¹¹⁰ In fiscal 1971-72, the program was allocated \$65 million; by fiscal 1974-75 this was raised to \$130 million. 1975-76 Budget Paper No. 9, *supra* note 3, at 57.

¹¹¹ Commonwealth Director of Defence Service Homes, 1973-74 Annual Report 6.

¹¹² 1975-76 Budget Paper No. 9, *supra* note 3, at 57. The federal government makes Defence Service Homes assistance available to recipients directly, rather than channeling such aid through state agencies. There is no means-test for benefits, other than the apparent ability to make loan repayments and maintain the property. Commonwealth Director of Defence Service Homes, 1973-74 Annual Report 4. Low-interest home loans for new or used home purchase or improvement are the major forms of aid under the program. Loan balances outstanding amount to almost \$1 billion, covered by about 185,000 mortgages or sales contracts. *Id.* at 12. Total capital expenditures by the Government have been about \$1.7 billion. *Id.* at 13. Up to \$15,000 per applicant may be borrowed for home purchase or improvement, and the interest rate on new loans currently runs as low as 3 3/4 per cent. Defence Service Homes Act 1974, §§ 5-6 (Commw.).

¹¹³ Commonwealth Dept. of Housing and Constr., 1973-74 Annual Report 64-65.

¹¹⁴ 1975-76 Budget Paper No. 9, *supra* note 3, at 64.

¹¹⁵ In fiscal 1971-72, \$41.7 million was budgeted by the federal government for housing these groups. In fiscal 1974-75, the amount was raised to \$91.4 million, the biggest increases being for Aborigines and married servicemen, who by 1974-75 were receiving over three-fourths of the total amount. *Id.* at 56-64.

ment makes grant moneys available; and all of them, except the married couples and migrants programs, are administered wholly or substantially by the states. The Home Savings Grant Scheme, under which housing grants are made to young married couples purchasing their first homes,¹¹⁶ is a program that the Labor Government was determined to phase out¹¹⁷ following adoption in 1974 of an income tax deduction for home mortgage interest payments, a measure that the Government claimed would provide benefits approximating those of the Home Savings Grant Scheme.¹¹⁸ The single, aged, and invalid pensioners program and the needy families program, both involving payments to state housing authorities, are important for the recognition that there are poor persons in public housing who need special help that the Commonwealth Government should provide. Single, aged, and invalid pensioners are assisted by grants to housing authorities to build housing units uniquely designed and equipped to enable them to live by themselves.¹¹⁹ The needy families program provides rental rebate subsidies to state housing authorities, supplementing state subsidies,¹²⁰ for those unable to pay the usual housing authority rentals.¹²¹

¹¹⁶ Home Savings Grant Act 1964-1973 § 22 (Commw.). Under the Home Savings Grant Scheme, eligible persons have been entitled to a tax-free federal grant of one dollar for every three dollars saved in an approved account toward buying or building a home. The maximum value such a home may have is \$22,500. Those eligible must have been under 36 years of age when married and when they contracted to buy or build their homes (the average age at the time of purchase has been in the mid-twenties). Commonwealth Dep't of Housing and Constr., 1973-74 Annual Report 65. During the first decade of the scheme, ending in mid-1974, \$154 million was paid out to 330,000 applicants. *Id.*

¹¹⁷ Home Savings Grant Act 1975 (Commw.). The Liberal-Country Party opposition was strongly opposed to discontinuance of the Home Savings Grant Scheme. See Commw. Parl. Deb., H.R. 2247-68 (May 14, 1975) (debate on the Home Savings Grant Bill).

¹¹⁸ Home-mortgage interest became a deduction for lower- and middle-income taxpayers on a sliding-scale. Those having net incomes of \$4,000 or less are entitled to deduct all such interest paid. The deductible percentage declines, however, as net incomes increase, and those having incomes of \$14,000 or more are entitled to no home-mortgage interest deduction. Income Tax Assessment Act (No. 2) 1974 (Commw.); 2 E. Mannix & Harris, Australian Income Tax 2773 (11th ed. 1976). It is estimated that 1,300,000 persons benefit from this deduction, representing a total annual tax saving of \$130 million. Commw. Parl. Deb., H.R. 256 (Feb. 13, 1975) (statement by the Minister of Housing and Construction).

¹¹⁹ This assistance is provided by the States Grants (Dwellings for Pensioners) Act 1974 (Commw.).

¹²⁰ Grants for this purpose are authorized by the States Grants (Housing) Act 1971-1973, §§ 10-11 (Commw.).

¹²¹ In the six states, during fiscal 1974-75, a total of 29,267 public-housing tenants received rental rebates. The average weekly rebate payment per tenant varied from \$3.50 in South Australia to \$8.05 in Tasmania, with New South Wales' payments averaging \$5.50. Horsham, *supra* note 95. In New South Wales, rental-

The federal and state governments are now making major efforts to assure proper housing for Aborigines, a high proportion of whom live in substandard or overcrowded dwellings. Most of this government-assisted housing is in rural or small-town areas. Substantial financial aid has been made available to the states by the federal government for construction or purchase of dwellings for Aboriginal occupancy,¹²² in addition to several Aboriginal housing-assistance schemes that federal agencies administer themselves.¹²³ Housing for migrants is provided by a federal government corporation that operates migrant hostels in major cities, with accommodations for 8,000 persons. In addition several hundred federally-owned flats are available for short-term occupancy by migrant families.¹²⁴ Many of the migrants taking advantage of these facilities are recent arrivals.

In rounding out this review of Commonwealth Government housing activities, a few other programs merit mention as significant additions to the patchwork of federal intervention in this field. In the two territories, federal agencies are engaged in housing activities similar to those of housing authorities in the states.¹²⁵ For example, through the same corporation that is responsible for migrant hostels and flats, the federal government provides transitory housing accommodations for government employees in such territorial centers as

rebate subsidies from state and federal sources for housing-authority tenants totaled \$2.4 million in 1973-74, 5 1/2 per cent of total housing-authority rental income. N.S.W. Housing Comm'n, Annual Report 21 (1974). *See also* Jones, *supra* note 88, at 160-64.

¹²² This aid has been made available under a series of acts, the latest being States Grants (Aboriginal Assistance) Act 1974 (Commw.), and from 1968 to 1975 it totaled \$80 million. Commonwealth Priorities Review Staff, Report on Housing 469 (1975).

¹²³ These federal schemes included direct grants to Aboriginal housing associations; low interest loans to Aborigines for home purchases; and hostel accommodations for Aborigines provided by a federal government corporation, Aboriginal Hostels Ltd., that owns, leases, or funds sixty such hostels. Commonwealth Priorities Review Staff, Report on Housing 470-74 (1975).

¹²⁴ Commonwealth Dep't of Housing and Constr., 1973-74 Annual Report 62.

¹²⁵ In 1975, the Department of the Capital Territory had a rental stock of 10,000 dwelling units in the Territory, to which an eligibility-means test of 90 per cent of average weekly earnings is applied, rather than the 85 per cent test applicable to state housing-authority rental projects. Rents are one-quarter to one-half of market rents. The federal government also has a loan scheme for purchase of housing in the Australian Capital Territory, with very favorable rates to below-average income purchasers. Commonwealth Priorities Review Staff, Report on Housing 148-56 (1975). In the Northern Territory, the Commonwealth Government spent about \$10 million a year on new housing from 1970-71 to 1974-75. This was increased to \$40.5 million in 1975-76, much of the increase apparently going to the reconstruction of Darwin. 1975-76 Budget Paper No. 9, *supra* note 3, at 24.

Canberra, Darwin, and Alice Springs.¹²⁶ To provide a short-term stimulus to the housing industry during the economic recession that developed in 1974, the federal government advanced \$150 million to certain banks for housing loans, with preferences going to moderate and low-income home buyers and to loans that would help industrial activity.¹²⁷ Since 1965, the federal government has operated a home mortgage insurance program for approved lenders through a self-financing government corporation.¹²⁸ The principal approved lenders are permanent building societies and savings banks. Only loans of owner-occupiers are insured. In its first ten years of operation, this program insured 176,000 loans in the amount of \$2.2 billion. Loss claims have been relatively few, totalling only 512 in ten years, but recently they have been increasing in number and amount.¹²⁹

OTHER URBAN DEVELOPMENT PROGRAMS

During Labor's three years in power, the Commonwealth strongly supported other urban land development programs. Some of these programs were initiated by the Whitlam Government, while others were well-established when Labor took over. Although tied loans and grants to the states were the forms of federal aid frequently used, in some cases federal funds were channeled through other institutions, and in certain fields federal agencies directly engaged in development activities. Four urban land-related programs are of special

¹²⁶ Commonwealth Dep't of Housing and Constr., 1973-74 Annual Report 62.

¹²⁷ These funds were provided mostly to savings banks (Housing Loans) Act 1974 (Commw.). See 1975-76 Budget Paper No. 9, *supra* note 3, at 63. Eighty per cent of these funds were expended in fiscal 1974-75 and the rest in the following year. 1975-76 Budget Paper No. 9, *supra* note 3, at 63.

¹²⁸ The insurer is the Housing Loans Insurance Corporation, established by the Housing Loans Insurance Act 1965-1973 (Commw.). See Commonwealth Housing Loans Ins. Corp., 11th Annual Report & Financial Statements 6 (1975) [hereinafter cited as Housing Loans]; Commonwealth Dep't of Housing and Constr., 1973-74 Annual Report 66. Loans on new or used homes will be insured, with maximum loan coverage now \$40,000 on a maximum term of 40 years, a permissible loan-to-value ratio up to 95 per cent, and loan interest rates up to 13 per cent. The top once-only premium is now 1.4 per cent of the loan, and there are no blanket age or location restrictions on coverage. A major objective of the program has been to lower down payments on home purchases, thereby making it easier for middle- and lower-income persons to buy their homes, and reducing the need for high-interest second mortgages. The average income of newly-covered borrowers is about \$10,000 per year; and through the years, the average income of insured borrowers has been very close to the average weekly earnings of Australian males. Housing Loans, *supra*, at 7.

¹²⁹ Housing Loans, *supra* note 128, at 16-17. When loans become seriously in default, the usual procedure is for the insured lender to sell the security and claim against the insurer for any loss. *Id.* at 25.

significance because they were established by the Whitlam Government and were therefore particularly indicative of that Government's priorities and its perceptions of what was politically feasible: sewerage, urban public transport, area improvement, and urban renewal.¹³⁰ All of these programs involve substantial commitments of Commonwealth Government funds and require extensive participation by other levels of government as well.

Sewerage

The sewerage program was instituted in 1973 with passage by the Commonwealth Parliament of a Sewerage Agreements Act authorizing expenditure of federal funds pursuant to agreements with each of the states.¹³¹ These funds were to be

¹³⁰ Additional urban land-related programs in effect while Labor was in power but not described in the text include the following:

Urban Water Supply. Commonwealth assistance toward major water-supply projects for Adelaide and Northwest Tasmania was provided with funds made available by the Urban and Regional (Financial Assistance) Act 1974 (Commw.). The total cost of the Adelaide project over ten years is estimated at \$100 million and the estimated eventual cost of the Tasmanian project is \$10 million. 1975-76 Budget Paper No. 9, *supra* note 3, at 42.

National Estate. This is a program for acquisition and conservation of open space and buildings of special historic, aesthetic, or social significance. In 1974-75, federal budget allocations for the program totaled \$8 million, some of which was distributed to the states and private organizations for conservation and preservation work. Hope, *The National Estate*, 12 Royal Austl. Plan. Inst. J. 25 (1974); Report of the Interim Committee on the National Estate (Parliamentary Paper No. 195, 1974). The National Heritage Commission was established by Parliament to provide advice and information on the national estate and to assist in administering the program. Australian Heritage Commission Act 1975 (Commw.).

Environmental Protection. The Commonwealth Government has shown somewhat less concern with environmental problems than have central governments in most developed countries, but its interest is increasing. The sewer, area-improvement, land commission, and public-transport programs, among others, all have aspects of environmental protection, and in 1974, the Environmental Protection (Impact of Proposals) Act 1974 (Commw.) was passed, requiring environmental assessments and impact statements for certain federal government projects and some state projects financed with federal moneys. For a brief analysis of the act's weaknesses see Final Report, *supra* note 49, at 43. Under Labor, a Department of Environment and Conservation was also formed, environmental matters having previously been assigned to a Department of the Environment, Aborigines, and the Arts.

Flood Control in Brisbane. Following the disastrous floods in Brisbane during 1974, extensive plans to mitigate flood damage were developed that will cost an estimated \$11 million to carry out. The federal government will provide grant moneys up to 40 per cent of project costs for these flood control efforts.

Rebuilding Darwin. A Reconstruction Commission was established to help rebuild Darwin after most of that Northern Territory city was destroyed by a cyclone in 1974. Darwin Reconstruction Act 1975 (Commw.).

¹³¹ Sewerage Agreements Act 1973 (Commw.). A form of the agreement is attached as a schedule to that act. The initial federal authorization for sewer expenditures was \$30 million in 1973, increased to \$225 million in 1974 and 1975, with 30 smaller cities added to the list of 10 major urban areas earlier eligible for

used to provide sewer connections and headworks for previously built-up areas without adequate sewer services. The program was principally aimed at benefiting suburban communities where home construction and occupancy had earlier been permitted without sewers, and at suburban communities with insufficient trunk-sewer or sewerage-treatment systems. The cost of providing proper sewer service to the half million dwellings in cities with a population over 20,000 that in 1973 were not tied-in with adequate sewer systems, was estimated to be \$3.8 billion, of which the Commonwealth Government planned to provide \$1.5 billion.¹³² The target date for connecting these half million homes to proper sewer systems and raising sewerage effluent treatment to acceptable standards was 1982, but by 1975 it was already apparent that there would be insufficient funds to meet this deadline.¹³³

Mass Transit

Assistance to urban mass transit by public carriers was another major new program introduced by the Labor Government. Urban mass transit in Australia is provided principally by rail, bus, tram, and ferry services owned by the states. A 1972 Commonwealth Government study of urban public transport concluded that levels of capital expenditure for this form of transport were inadequate and that sufficient financing could not be provided from current transit revenue.¹³⁴

aid. 1975-76 Budget Paper No. 9, *supra* note 3, at 41. Funds went to the states in accord with agreements, aid being mostly on a 30 per cent grant-70 per cent loan basis. Commw. Parl. Deb., H.R. 3559-60 (Nov. 14, 1974) (remarks of Minister Uren).

¹³² Commw. Parl. Deb., H.R. 3559-60 (Nov. 14, 1974) (statements by Minister Uren). By 1976, largely due to inflation, the estimated cost of eliminating unsewered premises was reputed to be \$4.7 billion.

¹³³ 1975-76 Budget Paper No. 9, *supra* note 3, at 40. Providing modern sewerage systems to the backlog areas turned out to be more complex and difficult than first contemplated. Labor politicians had considered the problem primarily one of reticulation, connecting dwellings to sewer lines, a comparatively simple and visible process that would yield quick political favor from the thousands of families benefited. It soon became evident, however, that very costly trunk sewers and treatment works were also needed; that program loans would add extensive new debt to already heavily indebted state and local agencies; and that sewer connections would require new indoor plumbing facilities for many homes, something that lower income families could ill afford. Thus, although state and local government officials generally looked with favor on Commonwealth sewer aid, it has not been the simple feat of installation nor the quick political bonanza originally expected. It has, however, made a very significant impact. About 100,000 dwelling units have been connected to sewer systems; important new trunk and treatment facilities are under construction. Also, the Commonwealth Government has started a much-needed support program for training, planning, monitoring, and research by local and state sewer and drainage agencies.

¹³⁴ \$760 million in capital expenditures was estimated to be needed during the

Losses were difficult to estimate from available data, but one expert expressed the opinion in 1972 that they were running at a rate of \$100 million annually.¹³⁵ Much of the equipment was old and deteriorated, and use of many lines was declining. In 1974, a five-year transportation agreement was negotiated by the federal government with all the states, and the Federal Parliament approved it later in the year.¹³⁶ The agreement commits the federal government to sharing with the states on a match-money basis the cost of capital equipment and construction for public transit projects proposed by the states and approved by federal officials. The federal match-money share is two-thirds of the cost and is to be made on a grant basis.¹³⁷ Most of the moneys will go for improved urban rail service. Illustrative of the approved projects are added railroad track, electrification of rail lines, and improved railway signaling systems.¹³⁸ The program is directed primarily at public transport in the state capital-cities and their surrounding metropolitan areas. Enhanced reliance on the automobile has been the major cause of urban public transportation problems in Australia as in most developed countries; and the traffic congestion, air pollution, and space demands of automobiles have raised the same concerns in Australia as elsewhere. Improved public transport has been perceived as a means of easing problems caused by the automobile and of giving the Commonwealth Government more control over the planning and development of Australian cities.¹³⁹ Large scale Commonwealth aid was to be accompanied by more Commonwealth control over routes, loads, and quality and frequency of service of the various modes of urban transportation. In subsidies for urban roads, which the federal government long had been providing in substantial amounts, tighter regulation was

period 1973-78 for public transport services within state capital-city areas alone. Commonwealth Bureau of Transport Economics, *Economic Evaluation of Capital Investment in Urban Public Transport 2* (1972) [hereinafter cited as *Bur. Transp. Econ.*].

¹³⁵ Clark, *Transport Policy for Australian Cities*, 44 *Austl. Q.* 33, 40 (Sept. 1972). The Bureau of Transport Economics study found that in state capital-cities all public transport services were being operated at a deficit and that a majority had been doing so for a decade. *Bur. Transp. Econ.*, *supra* note 134, ch. 8.

¹³⁶ The approving statute is States Grants (Urban Public Transport) Act 1974 (Commw.), and the federal-state agreement is attached as a schedule to the Act.

¹³⁷ States Grants (Urban Public Transport) Act 1974 (Commw.), schedule § 15. That act appropriated \$71.9 million and later in the same year the Appropriation (Urban Public Transport) Act 1974 (Commw.) appropriated \$66.1 million more.

¹³⁸ States Grants (Urban Public Transport) Act 1974 (Commw.), schedule.

¹³⁹ See, e.g., DURD, *First Annual Report 1972-73*, at 21; 1975-76 Budget Paper No. 9, *supra* note 3, at 43.

also imposed by the Labor Government. This further increased federal control over transportation in urban areas.¹⁴⁰

Area Improvement and Urban Renewal

The Commonwealth Government's area improvement and urban renewal programs have focused on a small sampling of urban communities with serious deficiencies—the area improvement program mostly on outer suburban districts where population growth has outstripped provision of needed public facilities and the urban renewal program on deteriorated inner city communities.¹⁴¹ A major objective of the area improvement program has been to encourage groupings of local governments in or near big cities to identify their common physical resource problems and to solve these problems on a regional basis. Although federal funding under the program is channeled through the states, the goal is to have project proposal and implementation come from local government sources.¹⁴² Commonwealth Government urban renewal assistance has been restricted to three inner-city communities, two in Sydney and one in Melbourne. All of these communities are old and deteriorated low-income residential areas threatened with private sector redevelopment for commercial or upper-

¹⁴⁰ Most federal funds for urban roads must be used for arterial roads. Federal evaluation and approval are required for all state arterial road projects, whether or not they are funded with federal moneys. Roads Grants Act 1974 (Commw.), § 4. In 1974, the Commonwealth Parliament made \$1.1 billion available to the states for roads, the funds to be spent over a three-year period, and \$385 million of this was allocated for urban roads. See Roads Grants Act 1974 (Commw.), schedule; National Roads Act 1974 (Commw.), schedule. These acts are not based on formal federal-state agreements.

¹⁴¹ On the area improvement program, see 1975-76 Budget Paper No. 9, *supra* note 3, at 71-73; A National Strategy for Urban and Regional Development 14 (1974); DURD, Second Annual Report 1973-74, at 19-21 (Parliamentary Paper No. 174, 1974); DURD, Third Annual Report 1974-75, at 22-24; Commw. Parl. Deb., H.R. 3560-61 (Nov. 14, 1974) (remarks of Minister Uren).

For a discussion of Federal urban renewal, see 1975-76 Budget Paper No. 9, *supra* note 3, at 36-38; DURD, Second Annual Report 1973-74, at 22-26 (Parliamentary Paper No. 174, 1974); DURD, Third Annual Report 1974-75, at 33-36; and in an internal departmental memorandum advocating more extensive federal government participation in urban renewal, Commonwealth Dept. of Environment, Housing and Community Development, Urban Renewal (1976).

¹⁴² For the fiscal years 1973-74 and 1974-75, \$21 million in federal grants were earmarked for area-improvement projects in thirteen regions within metropolitan areas. Most of this funding was provided by the Urban and Regional Development (Financial Assistance) Act 1974 (Commw.). The regional organizations are groupings of local councils set up pursuant to the Grants Commission Act 1973-75 (Commw.). The largest allocations went to open-space acquisition, including parks and other recreation areas, and to such environmental improvement as stream clearance, foreshore protection, tree planting, and landscaping. Drainage, waste disposal, community centers, and libraries received most of the balance. 1975-76 Budget Paper No. 9, *supra* note 3, at 72.

income residential purposes. In each instance Commonwealth Government intervention resulted only from pressure for government rescue of a troubled area, not from the government's seeking out projects to further renewal objectives.

Despite extensive run-down areas in larger Australian cities, urban renewal had a low priority among the Labor Government's urban land programs, apparently because (1) outer suburban growth problems were perceived as more urgent and hence entitled to new program funding preferences, (2) the private sector was willing and able to renew many areas satisfactorily without government subsidies, and (3) most government urban renewal projects are very costly, whether clearance or rehabilitation methods are used. In addition, if the Labor Government pushed its preferences for middle-density rehabilitation of inner-city properties for lower-income occupancy it risked strong resistance from downtown business interests desiring high density and high profit expansion in and around central business districts. It also risked confrontations with the powerful state housing commissions, some of whom favored clearing slums and replacing them with high-rise public housing, an approach generally disfavored by the Labor Government. The result was that the Commonwealth Government under Labor became involved in few urban renewal projects, special circumstances in each instance overcoming federal reticence to engage in such ventures.

REGIONAL GOVERNMENT ORGANIZATIONS

A major aim of Labor was to increase the effectiveness of local government and to build closer working relationships between the national and local levels of government.¹⁴³ The principal means by which it sought to accomplish this goal was by encouraging the formation of regional organizations of local governments to stimulate decisionmaking on a regional basis, to make requests for federal assistance, and eventually to be the recipients of substantial federal aid. These organizations were not to replace local councils but rather were to facilitate intercouncil cooperation. In 1973, a statute was

¹⁴³ *E.g.*, Uren, *The Federal Principle and National Planning*, 34 *Pub. Ad.* (Sydney) 100, 101 (1975) [hereinafter cited as Uren]; Australian Labor Party Policy Speech by Prime Minister Whitlam, Blacktown Civic Centre, April 29, 1974, at 20 (published by Progress Press Pty. Ltd., Canberra).

passed authorizing formation of regions and requiring the Grants Commission, a federal agency that had long performed an important role in screening state aid requests, also to consider aid requests from the regions.¹⁴⁴ DURD officials then formed nearly all of Australia's 902 general-purpose local government units into 76 regional organizations, and the Minister of Urban and Regional Development approved the new groupings. Subsequently, the regions made aid requests to the Grants Commission although the local councils were the ultimate recipients of the cash grants from the Commonwealth Government.¹⁴⁵ The grants were for general revenue purposes, and many were spent on urban development. The Labor Government envisioned an expansion of this form of revenue sharing, with the regions becoming increasingly important entities in the process. It was also expected that the regions would be used for other purposes, and that some of them would be selected for assistance by the Commonwealth Government under the area improvement program.

THE POST-WHITLAM GOVERNMENT PERIOD

The Liberal Party-Country Party Coalition that replaced the Whitlam Government following the national election of December, 1975 has withdrawn or cut back Commonwealth Government support from much of the Labor urban development effort. Particularly hard hit have been the new programs initiated by the Whitlam Government, including land commissions and growth centers. Legal obligations for future aid are being honored, but other requests for urban development assistance have been rejected. The emphasis of the new government is on reducing inflation, cutting the federal deficit, and expanding opportunities for private business.¹⁴⁶

¹⁴⁴ Grants Commission Act 1973 (Commw.). See Commw. Parl. Deb., H.R. 2302 (May 17, 1973) (speech by Prime Minister Whitlam, presenting the Grants Commission Bill to Parliament).

¹⁴⁵ For fiscal 1974-75, 92 per cent of the 876 councils for whom submissions were made to the Commission received grants and the total amount allocated was \$56 million. Lansdown, *Two Years of Cooperative Federalism—The Urban and Regional Experience*, 34 Pub. Ad. (Sydney) 88, 91 (1975). See also Else-Mitchell, *The Grants Commission and Local Government*, 34 Pub. Ad. (Sydney) 269 (1975); Lansdown, *supra*; 1975-76 Budget Paper No. 9, *supra* note 3, at 68-73; Grants Comm'n, *First Report on Financial Assistance for Local Government* (Parliamentary Paper No. 146, 1974); Uren, *supra* note 143, at 100-01. For broader consideration of regionalism, see *Urban and Regional Australia: Analysis and Policy Issues* (M. Logan & R. Smith eds. 1975) (partially funded by DURD); DURD, *Issues in Regionalism—the Australian Government Experience* (Strategy Division Working Paper Two, 1975).

¹⁴⁶ See Austl. Fin. Rev. (May 21, 1976). Illustrative of planned federal cutbacks

The new government also is advocating a brand of federalism that returns more initiative and responsibility to the states.¹⁴⁷ Urban development, however, is not the only field in which the Fraser Government is being economical. Commonwealth financial assistance to the states in most fields is being reduced, with the states acquiring the politically dubious opportunity of increasing their funding capacity by imposing their own income taxes in the form of a surcharge on personal income in addition to the federal personal income-tax levy.¹⁴⁸ Clearly, the balance between federal and state power is being shifted back towards the states, at the instigation of the federal government. The sharpness of the policy swings on federalism, urban development, and other issues that have occurred with the Coalition's advent to power, have been accentuated by the tremendous authority that the Australian parliamentary system gives to the Prime Minister and to the unusually acute differences in outlook between Prime Minister Fraser and his predecessor, Gough Whitlam.

Given the drastic shift in the Fraser Government's approach to federalism and state aid, what is the future for the urban development programs that the Whitlam Government supported so enthusiastically? Most of them will certainly be hurt by the new government's cutbacks, but will survive. The housing and infrastructure programs operated by the states or localities are so essential that they will generally be continued, although on a reduced scale if federal aid is heavily decreased or abandoned. Some of the states with land commission or equivalent programs and with growth-center projects probably will also sustain these activities with their own resources if further Commonwealth assistance is not forthcom-

are new allocations of only \$15 million in Commonwealth Government funds to Albury-Wodonga and \$2 million each for Macarthur and Bathurst-Orange. *Austl. Fin. Rev.* 1 (July 22, 1976). The new government has also announced that the mortgage-interest tax deduction would be cut back so that it will apply only to first homes and only to the first five years' interest payments on such homes. *Austl. Fin. Rev.* 1 (April 1, 1976). Yet at about the same time, the new Government announced that it would maintain and expand the Home Savings Grant Scheme, by making one dollar available for every three dollars saved over three years, the maximum grant being \$2,000. When fully operational, this will cost the federal government \$90 million a year. *Id.*

¹⁴⁷ See Toohey, *Flaws in Fraser's Federalism*, *Austl. Fin. Rev.* 1 (Feb. 6, 1976); Liberal and National Country Parties, *Federalism Policy* (Sept., 1975); Policy Speech by Malcolm Fraser Nov. 27, 1975, at 9 (published by Allprint, Melbourne).

¹⁴⁸ See *Commw. Treasury Memorandum for the Government Parties' Federal Affairs Committee* (April, 1976); Press Statement from the Prime Minister's Office on the Premier's Conference (April 9, 1976).

ing, although the development pace may be slower and private developers may assume a larger role than originally planned.¹⁴⁹ Overall, the creative momentum of the Commonwealth Government in the urban field has been replaced by a much more restricted and less adventuresome participation by federal authorities.

The Whitlam Government proved that a major national effort consciously designed to deal with Australia's urban development problems is possible, and that the Commonwealth Government is capable of initiating such an effort and of doing so in a relatively short time. When the Labor Party is returned to power in Canberra, as sooner or later it will, urban development will in all probability again receive heavy priority as a national objective and a strong push will be made to revive and extend urban programs dropped or cut back by the Coalition. The underlying physical problems of Australian cities are likely to remain for some time to come, and shortly they may even worsen as the Fraser Government's policies increase the financial difficulties of already hard-pressed state and local governments.

If a Labor Government gains control of the Commonwealth Government with a sufficient mandate, it may even attempt to continue most of the urban development programs without participation by the states. This involves constitutional risks, risks that the Whitlam Government at one point seriously considered taking; yet if there is strong popular support for federal action and the states are uncooperative or unresponsive, the next Labor Government may choose to make more moves on its own. At best, the section 96-type federal aid approach can be slow and cumbersome, and for Australia to solve its internal problems may require the Commonwealth Government to assert more direct control over domestic matters. Even without amendment, the Australian Constitution

¹⁴⁹ The growth centers of Macarthur and Bathurst-Orange in New South Wales have particularly high state priority and seem fairly certain to continue receiving vigorous state support. Even Monarto in South Australia is likely to remain as an active state project, at least as long as the Labor Party controls that state. Albury-Wodonga has sufficient rural and small-town support so that the Commonwealth Government is unlikely to drop entirely its participation in that venture; if it does, New South Wales and Victoria may be willing to keep the project going. Of the land commissions and land councils, the one in South Australia is most firmly established and is close enough to being self-sufficient that it readily can survive without further Commonwealth aid, although if such aid is terminated, private builders may be brought in as joint venturers with the state.

is subject to interpretations by a sympathetic court that would uphold direct Commonwealth Government incursions into urban development more extensive than have been attempted so far.

COMPARISON OF THE AUSTRALIAN EXPERIENCE WITH THAT OF THE UNITED STATES

Federal government intervention into the physical problems of cities has raised important and controversial questions in the United States as well as in Australia, and the nature of that intervention remains a troublesome issue in both countries. Particularly, as Australia and the United States are so much alike, it may be useful to compare their federal government urban land control experience. Each country may learn from the other, and the issues raised and conclusions reached in such an analysis may also have significance for comparable studies that may be made of other countries.

The Need for Federal Intervention

At the outset, the question may legitimately be raised why the federal government of either Australia or the United States should become involved in a matter of such peculiarly local concern as the development and use of urban land. The funding capability of each federal government is probably the most persuasive reason. Due largely to central government dominance of the income tax and superior borrowing powers, federal authorities in each country have the potential for allocating large amounts of funds for domestic requirements, including land development and other needs of urban communities. Without federal help the states and localities are more limited in their ability to raise funds and to accommodate new demands as they arise. The major hope for massive infusions of public moneys into the cities of each country for land-related needs is its central government.

The nationwide jurisdiction of the federal government of each country also favors central-government intervention in urban land-related problems. Because its authority extends throughout the nation, each central government can encourage national uniformity in urban land-related policies and in their implementation to the extent that there is sufficient support for such uniformity. Public housing standards, siting of federal government service or employment facilities, trans-

portation access, availability of mortgage funding, environmental protection, and freedom from racial or ethnic bias in housing, education, and employment are the sorts of urban land-related issues that in one or both countries have generated strong demands for a substantial degree of national uniformity. In each country, too, the federal government attracts a higher caliber of personnel to all branches of its public service than does state and local government, and this tends to enhance its effectiveness.¹⁵⁰

In both Australia and the United States, there is considerable support for federal intervention in urban land-related matters because of what is widely felt to be the generally unsatisfactory local government record in dealing with the physical problems of cities. Federal intervention is seen as a means of strengthening or supplementing local action by bringing to bear central government power and resources. Fragmentation of urban local government has been a serious deterrent to a coordinated approach to urban problems within metropolitan regions in both countries; and local special interests, including real estate brokers, developers, and contractors, often have an influence on local government policy disproportionate to their numbers and even their wealth. In both countries, such local government controls as zoning, subdivision regulations, and building and housing codes—labeled as police power controls in the United States—have been severely criticized. In Australia, for example, these local land controls have been criticized for being overly rigid; for delays in processing development approvals and the resulting cost increases in bringing new building lots on the market; for the “unearned” speculative profits that accrue to private land owners from favorable zoning rulings; and for the limited power that these controls give to government in determining when, where, and by whom development shall occur.¹⁵¹ Similarly, American local land controls have been criticized for their inflexibility; for their effect in excluding lower-income persons and minorities from many suburban communities; for their inadequate and inconsistent enforcement; and for the favoritism and corruption that occurs in imposing and

¹⁵⁰ Higher salaries and the greater power and influence of federal public servants compared to most state and local government personnel of equivalent rank help explain this difference in work appeal and staff quality.

¹⁵¹ Note 36 *supra*.

implementing them.¹⁵² State-government involvement in urban land problems, whether through enabling acts, financial aid to local government, or direct state action, has failed to eliminate these widely conceded weaknesses in local-government land controls.

Public housing is another sphere of urban land-related activity in which local and state government performance has been extensively criticized in Australia and the United States, despite substantial federal assistance.¹⁵³ In both countries, the concentration of lower-income persons in large residential projects built and managed by local or state authorities has been condemned as fostering economic class segregation. In the United States, given the high incidence of American public housing occupancy by minorities, residential projects are a major factor of racial segregation. The siting of housing projects in less desirable communities, commonly in inconveniently-located outer Australian suburbs or in inner-city American ghettos, has also been condemned as relegating many of the poor and near-poor to communities having serious disadvantages for their residents. Not only are most of these communities segregated by class or race, but also many are physically remote from employment opportunities. Such United States communities commonly have inferior schools, health services, and recreational facilities, and are high-crime areas. Stocks of rental public housing also have not kept pace with demand—in both countries there are long waiting lists for admission to such housing. The shortage is more severe in the United States because, in proportion to need, much less public housing has been built. The Australian practice of selling off a high percentage of its public housing stock to owner-occupants, however, has substantially reduced the number of units that can be rented. Public-housing construction in both countries has been deterred by funding lim-

¹⁵² For illustrations of the extensive literature critical of American local government controls over land, see R. Babcock, *The Zoning Game* (1966); Nat'l Comm'n on Urban Problems, *Building the American City* pt. III (1969) [hereinafter cited as *Building the American City*]; 5 N. Williams, *American Land Planning Law* ch. 161 (1975). Many of these criticisms are reflected in a major law reform proposal, ALI *Model Land Development Code* (1975) [hereinafter cited as *Model Code*].

¹⁵³ For Australia, see, e.g., M. Jones, *Housing and Poverty in Australia* (1972); Commonwealth Priorities Review Staff, *Report on Housing* (1975); C. Pugh, *Intergovernmental Relations and the Development of Australian Housing Policies* (unpublished draft, 1975). For the United States, see, e.g., L. Freedman, *Public Housing* (1969); *Building the American City*, *supra* note 152, pt. II, ch. 3; H. Wolman, *Housing and Housing Policy in the U.S. and the U.K.* chs. 3, 10 (1975).

itations and in the United States by intense political opposition from whites to locating projects in suburban or central-city white neighborhoods. High-rise public housing, frequent in the United States and not unknown in Australia, has also generated great opposition as unsuited to families with children and as not favored by many others who qualify for public housing admission.

In Australia as well as the United States urban infrastructure provided or operated by local and state government is vulnerable to criticism as insufficient, obsolete, poorly maintained, or too costly.¹⁵⁴ Mass transit, sewers, and solid waste-disposal systems are particularly deficient in one or more of these respects. In both countries, there is concern over the costly and destructive consequences of reliance on the private automobile as the primary means of urban transportation. But public urban mass transit is becoming increasingly uneconomic in both countries as its costs rise and as the public continues to favor the private automobile over public modes of conveyance.

In short, the local and state governments of Australia and the United States are having similar difficulties in dealing with the physical problems of their cities. In both countries there is extensive dissatisfaction with what subnational levels of government are doing about the urban situation. In each country there are strong pressures to increase federal government intervention in urban affairs because such intervention is deemed to be the best means of alleviating the problems of cities. Such pressures have been stronger in the United States than in Australia because American urban problems have been more severe and disruptive. American cities are older with more deterioration and obsolescence, central-city urban government is in more serious financial straits, and urban poverty is more endemic and prevalent. Australian cities are faced with no issue as pervasive, destructive, and difficult to resolve as physical separation in American cities on the basis of race, with its underpinnings of bias, hostility, and

¹⁵⁴ For Australia, see, *e.g.*, P. Harrison, Policy Objectives for Australian Cities 14-20 (1974) (monograph prepared for the National Population Inquiry); Austl. Inst. of Urb. Studies, *Vital Cities for Australia* ch. 1 (1974); notes 134, 136-37 *supra* and accompanying text. For the United States, see, *e.g.*, J. Baker, *Urban Politics in America* ch. 16 (1971); J. Bollens & H. Schmandt, *The Metropolis* ch. 7 (2d ed. 1970) [hereinafter cited as Bollens & Schmandt].

inequality. This issue has an influence on almost everything that American governments at any level seek to do or to avoid doing for American cities, and it has been a major factor in attracting support for more extensive federal involvement in urban affairs. Yet no matter how poorly American cities compare to those in Australia, the deficiencies of Australian urban communities are serious enough to have created major pressures for more central-government intervention to deal with them. The near doubling of the national population in the past thirty years, almost all of it occurring in cities, has produced costly and upsetting changes in Australian urban areas, leaving many unfulfilled needs. In Australia, as in the United States, urban dwellers, particularly the less affluent, are prone to favor heavier federal intervention in city problems to improve their lot.

Arguments Against Federal Intervention

Although expanded federal government involvement in the physical problems of cities has strong appeal in both countries, there are also arguments against such intervention. Land, wherever located, creates so many highly localized relationships that local residents and land owners commonly feel that any government controls imposed over land should be by the local or state government. National government interests in local land problems often are perceived as too peripheral to merit intervention by national authorities beyond, perhaps, financial assistance with a minimum of conditions attached. There are even those who allege that major central-government urban land programs have worsened rather than eased the problems of cities.¹⁵⁵ This sense that land-related matters are of inherent local concern is so widely shared that advocates of expanded federal intervention generally concede that states and localities should retain their control over many aspects of urban land use and development.¹⁵⁶ Another argument against federal intervention in urban land-related matters is that to the extent interaction of federal with state or local government is involved, such intervention necessitates additional administrative links and thereby enhances

¹⁵⁵ See M. Anderson, *The Federal Bulldozer* (1964).

¹⁵⁶ The National Commission on Urban Problems, an influential advocate of expanded federal intervention in urban affairs, urged that local and state government instrumentalities also be granted increased authority and that they assume greater responsibility for urban land-related problems. *Building the American City*, *supra* note 152, at 29-30.

possibilities for government inefficiency, disagreement, and costly delay. Federal involvement also usually means a greater degree of government control and added restrictions on private property and market forces. Those who favor less government intervention tend to oppose rule from Canberra or Washington and to talk euphemistically of the need for local home rule or states' rights.

The Character of Federal Intervention

Despite the fact that the arguments for and against federal government intervention in the physical problems of cities are much the same in Australia and the United States, the patterns of actual intervention of the two central governments in urban land-related matters are markedly different both in the focus of their attention and in the manner of their involvement. Although both governments have provided at least some assistance to much the same range of problems, including housing, new communities, infrastructure, central-city renewal, open-space preservation, and environmental protection, the emphasis in this aid has varied considerably. The Australian Commonwealth Government has placed greater stress on assisting newly urbanizing areas and less on aiding older central-city communities than has the United States federal government. In its growth center program, the Commonwealth Government has also given higher priority to new towns or communities and has focused far more attention on controlling the subdivision process and on holding down new building-lot prices at the urban-rural fringe. On the other hand, the American central government has done more in urban redevelopment and neighborhood conservation, in attempts to coordinate inner-city land planning with social planning, and in reducing central-city air and water pollution. Such big and costly federal urban programs as public housing, urban renewal, model cities, section 221(d)(3)¹⁵⁷ low-interest housing loans, and section 235¹⁵⁸ home-ownership have been directed primarily at revitalizing central cities and at providing better homes and physical surroundings to central-city residents, particularly the poor trapped in the ghettos. These differences in programmatic emphasis reflect the American perception that its most severe urban problems are in its

¹⁵⁷ National Housing Act, 12 U.S.C. § 715 (l)(d)(3) (1970).

¹⁵⁸ *Id.* § 715z.

central cities and that it is there that federal assistance and regulation should be concentrated. In the United States the private sector, guided and helped by local and state government, is regarded as capable of satisfactorily dealing with the land-related problems of middle-class suburbs and the urban-rural fringe with much less federal involvement. There have, of course, been federal government programs in the United States that have directly benefited suburban areas in important respects, including FHA and VA mortgage insurance and guarantees that have helped in financing much of the new suburban housing built since World War II, and the federal highway construction aid programs that were a major factor in opening up vast areas around American cities to urban development.¹⁵⁹ However inadequate federal involvement has been in preventing the continued physical deterioration of those cities and the decline in their public facilities and services, American federal government emphasis has been on the central cities.

There also are marked differences between the two governments in the regulatory and subsidy-control devices used in efforts to deal with urban land problems. Both have relied heavily on the control device of conditioned financial aid, restricting recipients' use of aid to the ways designated by the federal government. The United States Government, however, has utilized mortgage insurance and guarantees far more extensively and subtly than has the Australian Government, and has expanded its coverage to include both relatively low-risk middle-income housing and high-risk projects such as home purchases by low-income families.¹⁶⁰ The United States Government has also set up a complex secondary mortgage market structure for, among other purposes, providing a ready outlet for the mortgages it has underwritten.¹⁶¹ These moves illustrate much greater concern in the United States than in Australia for using federal government support as a means of diverting more private funds into the financing of real estate development and owner-occupant home purchases.

¹⁵⁹ See R. Starr, *Housing and the Money Market* pt. 3 (1975) [hereinafter cited as Starr]; Johnson, *The 1962 Highway Act: Its Long Term Significance*, 3 *Urban Law Ann.* 57 (1970); Reiter, *The Impact of the Federal Highway Program on Urban Areas*, 1 *Urban Law.* 76 (1969).

¹⁶⁰ Starr, *supra* note 159, ch. 12.

¹⁶¹ Starr, *supra* note 159, chs. 13-14; Bartke, *Fannie Mae and the Secondary Mortgage Market*, 66 *Nw. U.L. Rev.* 1 (1971).

In their conditioned grants and loans to states and municipalities, the federal governments of both countries have vacillated in the degree of discretion permitted to the recipient as to how funds can be spent and in the degree of federal supervision imposed on the administration of funded projects. In recent years, however, the Australian Government has moved toward somewhat greater federal restraints, largely through the medium of ministerial agreements with the states, while the United States Government has tended toward fewer federal limitations, with more of its state and local government aid being in the form of broad-discretion block grants or revenue sharing.¹⁶² In both countries federal restriction on the use of funds will probably continue to be a shifting phenomenon, with the trend moving in one direction and then the other. Certainly, the United States Congress is unlikely to give up on a permanent basis the power implicit in the restrictive and categorical nature of most state and local grants.

The federal government in the United States also has relied more heavily on income tax preferences to achieve urban land objectives than has the Commonwealth Government. In the United States, for example, home owners can fully deduct home mortgage interest¹⁶³ and property taxes¹⁶⁴ from their taxable incomes—an inducement, presumably, to home ownership, whereas Australian home owners have had only modest income tax deduction benefits.¹⁶⁵ Another type of real estate-related income tax preference that has been of major significance in the United States is accelerated depreciation. Designed to attract private investment money into real estate, this important and widely-used tax shelter device is not available in Australia, and has been significantly limited by recent tax-reform legislation.¹⁶⁶

Government ownership as a form of control over urban

¹⁶² Symposium, *General Revenue Sharing and Federalism*, 419 *Annals* (1975); Susskind, *Revenue Sharing and the Lessons of the New Federalism*, 8 *Urban Law Ann.* 33 (1974).

¹⁶³ Int. Rev. Code of 1954, § 163(a); Treas. Reg. § 1.163-1(b) (1957). See A. Axelrod, C. Berger & Q. Johnstone, *Land Transfer and Finance 196* (1971) [hereinafter cited as Axelrod].

¹⁶⁴ Int. Rev. Code of 1954, § 164(a)(1); Treas. Reg. §§ 1.164-1(a)-3(b) (1957). See Axelrod, *supra* note 163.

¹⁶⁵ See note 116 *supra*.

¹⁶⁶ In the United States, accelerated depreciation has been eliminated by the Tax Reform Act of 1976, except for low-income housing. See Tax Reform Act of 1976, Pub. L. No. 94-455, §§ 202-03 (Oct. 4, 1976); Axelrod, *supra* note 163, at 214-25. See also *Building the American City*, *supra* note 151, ch. 7.

land has been fostered by the federal governments of both countries but has been stressed to a greater degree by the Australian Commonwealth Government. Both governments have helped fund land acquisition and needed construction for such traditional government-owned facilities as roads, mass-transit installations, public school and office buildings, and public rental housing. Yet there is nothing in the United States to match the scope and ambition of the Australian Commonwealth's sponsorship of land-commission and growth-center activities under which vast tracts of land have been acquired and retained under government ownership with leases to private interests for urban use. The nearest analogy in the United States is the federal urban-renewal program, under which government ownership has been used as a means of land assembly and planned redevelopment of selected blighted urban areas.¹⁶⁷ In acreage, however, these American acquisitions have been much smaller than the Australian land commission and growth-center takings; they have been located almost entirely in depressed inner city areas; and most land so acquired, even for commercial or industrial purposes, has been sold to private developers, rather than leased. Nor is there a close analogue in the United States to Canberra, a major city actually built on land of which most has been retained in the ownership of the federal government, with extensive private land use and development taking place pursuant to government leases, many of them long-term. Furthermore, unlike Australian public-housing agencies, American federally-aided public-housing authorities, as owner-developers, have not built large stocks of housing for sale to owner-occupants. Clearly, the Commonwealth Government has been more willing to support government ownership as an appropriate and effective device for achieving its urban land objectives than has the government of the United States. Finally, in utilizing the ownership de-

¹⁶⁷ See J. Beuscher, R. Wright & M. Gitelman, *Land Use* 1032-37 (2d ed. 1976); Urban Renewal: The Record and the Controversy (J. Wilson ed. 1966); Wallace, *The Conceptualizing of Urban Renewal*, 18 U. Toronto L.J. 248 (1968). The United States Government also mounted a relatively ineffectual new-towns program with passage of the Urban Growth and New Community Development Act of 1970, 42 U.S.C. §§ 4501, 4511-32 (1970). On operations under this act, see R. Burby & S. Weiss, *New Communities U.S.A.* 58-64 (1976). The ill-fated New York State Urban Development Corporation also has functioned somewhat similarly to Australian land commissions and growth centers. See N.Y. State Urb. Dev. Corp., *Annual Report 1974*. On its financial problems, see Alexander, *What Is the Lesson of UDC for Other State Housing Agencies*, 32 J. Housing 177 (1975).

vice, the Australians have become highly experienced and versatile in the legal, political, and market potential of a wide variety of leases and lease conditions.

The Australian Government's relatively favorable position toward government ownership of urban land can be attributed in large measure to its perceived advantages and to its broad political support. Advantages include the substantial leverage it gives to government planners in regulating urban growth, the opportunity it provides for government sharing in land-value appreciation from urbanization, and the lower housing costs to consumers. Politically, the Labor Party, with its strong socialist Left, has understandably supported expanded government ownership of urban land more than has its conservative opposition. Yet many Australians in the political center are so concerned about land and housing costs that they too are attracted to government land-ownership schemes that promise to hold down costs and prevent excessive profits by land speculators and developers. Business interests generally seem willing to go along with very extensive government ownership of urban land, provided that the private sector is assured a major role in construction on government-owned land, and of reasonable opportunities to buy or lease commercial and industrial sites on such land. Australian private building-lot developers, however, are an exception. They have remained adamant in their opposition to government ownership and development of new subdivisions, as they stand to lose heavily from such government activity, but have been ineffectual in the national political arena.

The Risks of Federal Intervention

Governments face serious risks that their programs will not achieve intended goals or will do so only in an inefficient or dysfunctional manner. Federal governments, because of their size, intricate administrative and power networks, and penchant for innovation and change, encounter particularly acute risks that their programs, once started, will never be completed or will be reshaped against the wishes of their proponents. Careful program planning may reduce these hazards, but they cannot always be avoided. Some of the more significant risks that the Australian and American federal governments face in their urban land programs merit special consideration because they are so relevant to program success. Moreover, they

can be sufficiently threatening as to constitute convincing arguments against federal intervention in particular projects. One such risk is the illegality of government action. This exists in both countries but is greater in the United States because legal proscriptions on government action are more extensive, and litigation is more commonly the resort of a broader range of litigants to challenge government action.¹⁶⁸ Nor does the Australian constitution contain due process, equal protection, or other bill-of-rights-type provisions that are included in American constitutions, thus greatly reducing the vulnerability of Australian government action to invalidation for violating constitutional restraints.¹⁶⁹ Bodies of formal legal doctrine promulgated by Australian legislatures and administrative agencies also are generally simpler and clearer and grant government officials more discretion in dealing with urban land matters than is true of comparable bodies of legal doctrine in the United States, making abuse of authority more unlikely in Australia. Finally, even if government officials do act illegally, litigation of such matters is comparatively uncommon, standing to sue is more restrictive, and the practice of challenging the propriety of government action before adjudicative bodies is less frequent in Australia. Unlike the United States, citizen-group surveillance of government performance in such fields as public housing, environmental protection, and public transportation, with the objective of attacking dubious government behavior in the courts is very rare. Furthermore, in Australia there are few public interest or *pro bono* lawyers in the American sense, anxious and able to represent citizen groups against the government at little or no fee. A corollary of Australian government being subject to less risk of illegality is that Australian courts have a more limited

¹⁶⁸ Important cases that have had inhibiting effects on federal urban land programs include: *Hills v. Gautreaux*, 425 U.S. 284 (1976) (district court held to have authority to direct HUD to engage in suburban remedial efforts to eliminate racially discriminatory public housing); *District of Columbia Fed. of Civic Ass'ns v. Volpe*, 459 F.2d 1231 (D.C. Cir. 1971) (approval by Secretary of Transportation of bridge construction project held up pending new determinations by Secretary consistent with statutory standards); *Norwalk Core v. Norwalk Redev. Agency*, 395 F.2d 920 (2d Cir. 1968) (failure to make adequate efforts to relocate minorities displaced by urban renewal project considered to be denial of displaced persons' constitutional rights); *United States v. Certain Lands in the City of Louisville*, 78 F.2d 684 (6th Cir. 1935) (legislation authorizing federal government eminent domain proceedings to take land for public housing held unconstitutional); and *City of Hartford v. Hills*, 408 F. Supp. 889 (D. Conn. 1976) (Secretary of HUD held to have abused her discretion in approving community development entitlement grants to Hartford suburbs).

¹⁶⁹ Howard, *supra* note 33, at 1-2.

role in setting government policy and influencing government programs than do American courts. The result is that Australian legislators, government ministers, and bureaucrats have a freer hand in program planning and implementation.

Another risk faced by the federal governments of both countries is that the states or localities may not cooperate with federal policies and programs. Because on urban land-related matters both federal governments have chosen to act in large part through conditioned financial aid to other levels of government, it is important for the success of these ventures that designated recipients be willing to accept the proffered federal assistance on terms consistent with federal objectives. On urban matters, at least recently, this has been more of a problem in Australia than in the United States. State resistance to land commissions, and to a lesser extent to growth centers, are the most aggravated Australian examples. Some of the reasons that the American federal government has had less trouble with this problem may be (1) that it has been more generous in offering grants rather than loans if prospective aid recipients are likely to be adverse to the conditions tied to aid; (2) that a greater percentage of American than of Australian federal aid has been offered to local governments rather than to the states, and in both countries the localities are in more difficult financial circumstances than the states and therefore more likely to accept onerous conditions in order to obtain aid funds; and (3) that given the lesser importance of American political parties and party regularity, federal aid tenders are less likely to be rejected by American states and localities on partisan political grounds.

An added risk that Australian and American federal governments face in mounting major program efforts related to urban land control, or any other important sphere of activity, is that power over their efforts will become so widely dispersed among poorly coordinated and conflicting units within the federal bureaucracy as to seriously impair program effectiveness. This dispersal can be among diverse federal agencies or among divisions or regional offices within a single key agency. Most big federal programs are so complex that each involves a number of different segments of the federal bureaucracy with different and often conflicting constituencies, objectives, and priorities. This contributes to the added risk that federal policies will be so vague or contradictory as to further deter effec-

tive administrative coordination. A rather recent approach to these coordination risks taken by both the Australian and United States federal governments is the institution of a new agency with a cabinet-level official in charge and concentrating extensive urban development and housing responsibilities in this new body. The Department of Housing and Urban Development is the American agency and the Department of Environment, Housing and Community Development, formerly the Department of Urban and Regional Development, is its Australian counterpart. These organizational moves have been no panacea to coordination difficulties, but they have helped considerably.¹⁷⁰ The head of government and his cabinet in each country also perform highly significant federal government coordinating functions. The much smaller size of the federal bureaucracy in Australia reduces the risks of administrative disorganization and policy uncertainty, as does the Australian parliamentary system with its great centralization of authority in the prime minister and the national party in power, and its consolidation of legislative and executive authority at the top level. There have been American proposals to reduce policy uncertainties and conflicts through enactment of comprehensive federal urban land policy legislation. These proposals have had important support in Congress, but not enough for passage;¹⁷¹ the issues involved apparently are far too contentious for Congress to adopt a broad set of policies.

Still another risk in Australian and American federal government intervention in the physical problems of cities is that federal programs may be terminated or emasculated by drastic funding or jurisdictional cutbacks before they have had a chance to succeed in fulfilling the goals set for them. Obvious examples include the Whitlam Government's urban land programs, which were limited or abandoned when the Fraser

¹⁷⁰ DURD, a largely policy-negotiating and decisionmaking body with an unusually competent and able staff, was particularly effective in integrating Commonwealth Government activities within its fields of concern.

¹⁷¹ See Ashley, *Reshaping Urban Policy: The Need and a Critique*, in 3 *Urban Land Inst., Management and Control of Growth* 410 (1975); Hartke, *Toward a National Growth Policy*, 22 *Cath. U.L. Rev.* 231 (1973); Udall, *Toward A National Land Use Policy for Urban America*, 12 *Ariz. L. Rev.* 733 (1970). For a widely discussed growth policy report formulated by the American Institute of Architects, see AIA Report, *Structure for a National Growth Policy*, in 3 *Urban Land Inst., Management and Control of Growth* 456 (1975); U.S. Advisory Commission on Intergovernmental Relations, *Urban and Rural America: Policies for Future Growth* ch. 6 (1968).

forces came to power, and the succession of program terminations that has marked so much of the United States Government's housing aid effort for low-income persons since the 1930's.¹⁷² Most urban land programs are long-term projects and their needed political support may dissipate before they are completed, or perhaps even before they are fully operational. Federal politicians whose continued backing is necessary for instituting and sustaining federal programs commonly are dominated by short-term political considerations. They tend to support programs as long as the programs are politically popular and likely to generate a favorable reaction from the voters at the next election. Long-term consequences are often ignored. Also, new government administrations that come to power may cancel out many of the programs instituted by their predecessors, in order to discredit them, to fulfill election promises, or to substitute programs consistent with the new administration's priorities. Even without major power shifts in the political structure, however, early program termination or severe contraction may result from unanticipated deficiencies becoming apparent as programs are made operational. Commonly, a new program's financial cost to government turns out to be much greater than was planned. Furthermore, initial program achievements may be less than expected or the program may be causing unanticipated dislocating side effects.

RELEVANCE OF THE AUSTRALIAN EXPERIENCE FOR THE UNITED STATES

In important respects there is much that Americans can learn from the urban land control experience of the Commonwealth Government, and similarities in the two countries enhance the prospects for implementation of government controls and institutions borrowed from Australia in an American setting. British legal and planning controls over urban land are closely followed in the United States and have influenced the thinking of American political leaders and scholars on how American public sector controls should be structured. Because the problems and political mood in Britain continue to diverge from those in the United States, Americans could benefit by looking more widely for sug-

¹⁷² See L. Friedman, *Government and Slum Housing: A Century of Frustration* (1968); President's Committee on Urban Housing, Report 54-68 (1968); Downs, *The Successes and Failures of Federal Housing Policy*, 34 Pub. Interest 124 (1974).

gestions and guidance from abroad. Australia and Canada are the nations that probably now bear the closest resemblance to the United States, and hence their experiences with government land controls are particularly likely to be significant and useful to Americans. Among aspects of the Australian experience to which Americans should give special attention as guides to government action, now or in the future, are the following:

(1) The Australian land commission concept may be a useful means for dealing with the American problem of exclusionary zoning and other such devices used by municipalities to discourage development opposed by local interests.¹⁷³ If municipalities frustrate needed development, a state, with federal financial aid, could condemn the required land and institute the development itself, by acting through a land commission or development corporation and contracting with private enterprise where appropriate. Such intervention would not only counter local police-power restraints but also would assure that development occurs when and as needed—something that rarely will be accomplished by merely negating such prohibitions as zoning. Land-commission subdivision development on a large scale also has potential for stabilizing new home costs, an important consideration if new subdivision lot prices continue to increase dramatically and become a serious deterrent to providing new homes for moderate and lower-income families. Conceivably, cost savings to consumers eventually would be greater if land commissions followed land banking practices and acquired some large parcels for subdivision development and sale in the more distant future (forty to fifty years). Yet it should be noted that the Australian Commonwealth Government consciously has rejected such long-term land holdings, in part because of the carrying-charge costs to government.¹⁷⁴

(2) The Australian submetropolitan or systems-city development format also may have relevance to the American scene. Properly utilized, growth centers might help provide better planned, better sited, and more attractive communities in which to live and work than such typical American hinter-

¹⁷³ See 1 Urban Land Inst., *Management and Control of Growth* chs. 6-7 (1975); Williams & Norman, *Exclusionary Land Use Controls: the Case of Northeastern New Jersey*, 22 Syracuse L. Rev. 475 (1971).

¹⁷⁴ See note 60 *supra*.

land cities as Bridgeport, Racine, or San Jose, and moreover would be a vast improvement on such places as Newark, Camden, and East St. Louis. The Australians are correct in their view that the right kind of hinterland cities offer tremendous possibilities for increasing employment and cultural opportunities in outer suburbia and for providing less affluent and disadvantaged inner-city residents with attractive living and working alternatives. Such cities also hold real promise in the United States for contributing to the dissolution of central-city ghettos if job prospects, housing, educational facilities, and urban amenities are structured to encourage resettlement of present ghetto residents. Locating growth centers twenty-five to fifty miles beyond the present peripheries of metropolitan areas would not only mean cheaper land but would also reduce resistance to high-density development and lower-income families, as there would be little or no suburban development nearby and hence fewer persons in the community likely to find the growth centers objectionable. American growth centers might develop most effectively if each was initially planned for a population of about twenty-five thousand, with government ownership of sufficient surrounding land to permit staged growth to several hundred thousand. Canberra is a good example of how a modern planned city in which the government owns the land can gradually be expanded to meet growth needs. New solutions to the American central-city ghetto problem must be and are being sought. These massive segregated enclaves intensify inequities that are increasingly intolerable to ghetto residents and augment a social bifurcation that has very costly and disruptive implications for the entire nation. Growth centers appropriately sited in the metropolitan hinterland offer an alternative worth considering.

(3) Another possible American approach to the housing-cost problem of middle- and lower-income families is suggested by the practice of Australian public-housing authorities, aided by federal funding, in building housing for sale to owner-occupants. A large volume of such housing has been built by the Australian authorities—much of it as free-standing single family units in the suburbs—and sold principally to those who would find it financially difficult or impossible to buy their own homes in the conventional private market. As a means of encouraging home ownership by the growing percentage of

American families otherwise likely to be squeezed out of the home-ownership market by high housing costs, large scale housing construction for sale by public-housing authorities may become increasingly appealing in the United States. It also is an approach that could be used to facilitate breaking open central-city ghettos, through construction, by central-city housing authorities with extraterritorial jurisdiction, of suburban units for sale to ghetto residents.

(4) Another land-development control device proposed for Australia that might prove useful in the United States is the uncompensated taking of development rights advocated by the Land Tenure Commission. Applied selectively, this device could be of utility in regulating urban growth a generation or more after the takings. If American states or municipalities were to use their eminent domain powers to secure development rights for extensive areas that might ultimately be urbanized, and if these development rights had no market value when taken because urbanization prospects were so remote, future control over urban expansion could be greatly enhanced and payment for the rights probably would not be necessary. In effect, assuming no constitutional difficulties, vast urban land banks could be created in this way without cost to the government. River valleys, strips along or near ocean shores, and intercity communication corridors are among the areas suitable for such takings as they are the kinds of places where new urban settlements tend to form. The mechanism involved is a long-term one, as in the short run the rights taken are unlikely to have any value or to merit being exercised. Ultimately, however, as portions of the areas covered by these rights come under urbanizing pressure, the government instrumentalities holding the rights could use them to influence development patterns, either to determine what kind of urban development would take place or to retain the land in nonurban use as agricultural open space or for whatever else it currently is being used. Where demand for urbanization becomes substantial, the development rights would have considerable monetary value and in many instances might best be sold to private developers, thereby helping finance the public costs incident to urbanization.

(5) The Australian experience throws doubts on the merits of two proposals for power reallocation over urban land matters within the American structure of government, both

of which have had some implementation in the United States. One of these is to develop new regional local government organizations that will help to integrate local government functions more effectively, particularly those related to land;¹⁷⁵ the other is to make state governments much more responsible for the physical problems of cities.¹⁷⁶ Australian experience with these approaches has been disappointing and there is some indication that they will not be as effective in the United States, to the extent adopted, as their advocates would hope. The Commonwealth-sponsored local government regions formed in 1973 to apply for and to receive federal grants for largely land-related purposes, with expectations that their functions would later be expanded, have been undermined by strong local council opposition and by condemnation as being administratively inappropriate in size and form.¹⁷⁷ It seems clear that attempts to add a new regional level of local government as a supplement to, or as a coordinating medium for, existing municipalities may well generate so much dissatisfaction and resistance as to prove ultimately futile in both Australia and the United States. Encouraging the states to assume more power over urban land matters is another possible approach to the fragmentation, self-interest, and insufficient resources of urban local government. Yet the Australian experience in this regard is not very promising either. Australian states have long exercised more control over urban land use and development than have American states and at the same time have an unenviable record in dealing with many of the physical problems of cities. Their taxing powers are a limiting factor—powerful rural areas can often bar major new state resource allocations to the cities—and the states are commonly controlled by political forces cautious and timid about taking on additional commitments.

¹⁷⁵ See Bollens & Schmandt, *supra* note 154, at 242-48, 364-68; Building the American City, *supra* note 152, at 333, 343-45; Comus, *The Council-of-Governments Approach to Governmental Fragmentation*, 22 Vand. L. Rev. 811 (1969).

¹⁷⁶ Bollens & Schmandt, *supra* note 154, at 118-20; F. Bosselman & D. Callies, *The Quiet Revolution in Land Use Control* 3-4 (1971); Model Code, *supra* note 152, at 284-91.

¹⁷⁷ See note 146 *supra*. The Coalition Government, unenthusiastic about the new regions, declared: "Artificial regions will *not* be forced on local authorities from Canberra. Local bodies will be free to establish formal or informal groupings from time to time for particular functional purposes, but regions will not be used by the Commonwealth as centralist instruments to by-pass the States, to amalgamate areas or to impose Commonwealth policies." Liberal and National Country Parties, *Federalism Policy* § 7(iv) (1975).

(6) The major Australian cities, with their absence of any appreciable racial-minority population, may be indicative of what the big American metropolitan communities will be like if racial inequalities and prejudices are largely eliminated. Absent racial biases, it is possible that different patterns of population distribution will develop in American urban areas, with lower-income persons in much larger numbers living in outer suburbs, especially in locations beyond easy access to employment and to the commercial and cultural amenities of urban living. Concurrently, American central cities may revive as prime residential communities for the affluent. Furthermore, there may be a trend in the United States toward reconcentration downtown of a larger percentage of office employment and retail and entertainment establishments in central business districts. More severe energy shortages and fading reliance on the private automobile as the major source of urban transportation could accentuate such a demographic and functional reallocation. Demands for urban land reforms by the disadvantaged in this somewhat differently stratified society may be directed at greater government efforts to improve the position of outer suburban dwellers and to provide them with the choice of moving into the inner city.

RELEVANCE OF THE UNITED STATES EXPERIENCE FOR AUSTRALIA

Australians know far more about the United States than Americans know about Australia, and many Australian urban experts in and out of government are knowledgeable about the problems of American cities and the government controls imposed to deal with them. American professional and academic journals circulate rather widely in Australia and the Australian media extensively cover events in the United States. Many Australian intellectuals, political leaders, and businessmen have traveled or lived in the United States. Given this exposure to American culture, it is not surprising that the urban land control experience of the United States government has had some influence on the Australians, including caution about heavy federal involvement in such programs as urban renewal and urban expressways, due to their cost and dysfunctional consequences. Some of the American federal experience, however, has had more positive impact on the Australians. For example, Whitlam seems to have been influenced by the scope of HUD's pro-

grams in his proposals for Commonwealth Government involvement in urban land problems.¹⁷⁸ Similarly, commonwealth environmental protection legislation clearly shows the mark of its American prototype.¹⁷⁹ Yet the Australians might usefully draw on other aspects of the American federal urban land control experience. They might, for instance, find it beneficial to encourage more privately constructed moderate- and lower-income housing by extending government mortgage insurance to higher risk and less profitable loans and by greater use of income tax preferences as inducements to private builders. The Australians have so far refused to enact a capital gains tax, but such a tax similar to that in the United States would be a relatively simple means for reaching unearned increment profits in real estate. The Commonwealth Government also needs to give more consideration to increased citizen involvement in urban land projects that it regulates or helps fund. The Australian green-ban movement, which recently resulted in the blocking of a tremendous volume of urban construction, indicates the discontent and disruption that can emerge if affected citizens are not given a greater opportunity to participate in government decisions about the way urban land is used and developed.¹⁸⁰ American due process, notice, and hearing requirements, and the more liberal standing-to-sue criteria that prevail in the United States are illustrative of approaches to this problem that Australians should consider. Efforts of the federal Model Cities Program to involve ordinary citizens from poor and disadvantaged communities in physical and social planning for their areas is another program that Australians might be able to adapt successfully to less affluent sections of their cities.¹⁸¹

¹⁷⁸ E. Whitlam, Responsibilities for Urban and Regional Development 15-17 (Walter Burley Griffin Memorial Lecture, Sept. 25, 1968) (mimeo.).

¹⁷⁹ Environmental Protection (Impact of Proposals) Act 1974 (Commw.).

¹⁸⁰ In support of citizen-action groups opposed to new construction projects, construction trade unions, during the early 1970's, imposed so-called green bans on forty-two building sites in Sydney. These bans, most of which still have not been lifted, prevented construction of \$3 billion in new building. Similar bans have also been imposed in other Australian cities. Opposition to development was based on concern for the environment, desire to preserve architectural or historical landmarks, and preferences of residents to retain their present homes rather than relocate. See *Master Builder's Ass'n v. Australian Bldg. Constr. Employees and Builders' Labourers' Fed.*, Austl. Ind. Ct., B No. 73 of 1973 (June 21, 1974) (union deregistration proceedings with extensive findings on green bans); L. Sandercock, *Cities for Sale: Property, Politics and Urban Planning in Australia* 206-10 (1975); Munday, *Urban Development and the Common Man*, 12 *The Developer* 115 (May, 1974); McDonald, *Green Bans—Revolution and Resolution*, 12 *The Developer* 19 (May, 1974).

¹⁸¹ See C. Haar, *Between the Idea and the Reality* (1975); Burke, *The Threat to*

Quite obviously, each national government stands to gain by more closely observing the urban land experience of the other.

CONCLUSION

Australia no longer is a recently independent ex-colony dominated by British attitudes and ways of doing things but rather is a complex and creative nation working out its own destiny. Australia and the United States are similar in so many respects and the dynamic Australian political system is subjecting the legal order to such varied pressures for change, that closer attention to Australian law and legal institutions can prove helpful to Americans in many fields of law, urban land controls included. From 1972 to 1975, when the Labor Party controlled the Australian Commonwealth Government, the major attempt made to deal with the physical problems of Australian cities through new and expanded federal government programs was innovative and exciting. These programs were marked by conditioned federal financial aid to the states and localities, strong emphasis on government ownership as a means of land development and control, and stress on accommodating urban growth problems by decentralization to government-sponsored submetropolitan and regional growth centers. With the fall of the Labor Government in late 1975, the urban land programs it had featured were extensively modified and cut back, but they quite probably will be the basis for an enhanced Commonwealth Government effort when the Labor Party again returns to national power. This effort could be even more intense and creative than during the 1972-1975 period if Australian immigration restrictions are eased and the flow of migrants approaches or surpasses that of the 1950's and 1960's, with the tremendous new urban growth that this inevitably would bring about. How the Australians deal with their urban land problems merits our continued scrutiny and evaluation.

Citizen Participation in Model Cities, 56 Cornell L. Rev. 751 (1971); *Special Project—Nashville Model Cities: A Case Study*, 25 Vand. L. Rev. 727 (1972).