

Conduct of the tender process

Issues and concerns

4.1 During the inquiry the Committee heard evidence on a number of issues and concerns about the conduct of the tender process in the sale of the Christmas Island Casino and Resort. Concerns were raised with the Committee on the following issues:

- the role of the Commonwealth during the tender process;
- the conduct of negotiations with ComsWinfair during the tender process;
- the commencement of negotiations with Soft Star Pty Ltd before the conclusion of the tender process; and
- a perceived breach of confidentiality regarding the highest purchase price bid in the tender process.

4.2 In addition, a number of issues emerged concerning the outcome of the tender process and the delayed refurbishment and re-opening of the casino and resort. These will be discussed in Chapter Five.

Role of the Commonwealth

4.3 The Department of Transport and Regional Services (DoTRS) stated in its submission:

The tender process for the sale of the resort lease and other leases held by CIR was conducted solely by the Liquidator in accordance

with the *Corporations Law* and with the authority of the Federal Court (later the WA Supreme Court)....

The Commonwealth was only formally involved to the extent that its consent was required to a mortgage over the leases in favour of the Liquidator and the transfer of the leases to the new lessee.¹

- 4.4 The Committee heard evidence during the inquiry that the Commonwealth's decision not to participate more robustly in the tender process may have impacted negatively upon the conduct and the outcome of the tender process.
- 4.5 Concerns raised with the Committee, among others, focused on two specific aspects of the Commonwealth's role in the tender process:
- the Commonwealth's inability to finalise leasing and casino operational matters in the early stages of the process; and
 - the Commonwealth's decision not to play a more participative role in the due diligence process.

Finalisation of leases and gaming taxes

- 4.6 Preliminary negotiations between the Commonwealth and the Liquidator were conducted principally to resolve any issues surrounding the lease before the commencement of the marketing process. The Liquidator, Mr Herbert, told the Committee:
- We wanted to try and settle the terms of the Lease, obviously as attractively as possible from the point of view of the vendor so that when we began the marketing process we could say to the parties, 'Here is the lease,' rather than, 'Here is a lease which contains certain terms that the Government would like to change'. As in fact occurred.²
- 4.7 During a visit to Christmas Island the Committee was further told that:
- To achieve a reasonable result the Liquidator had to conclude with the Commonwealth a definitive and attractive position with respect to the casino licence and lease agreement. The real value in the business was related to the licence and the lease.³
- 4.8 As detailed in Chapter Three, the Liquidator was in contact with both DoTRS and the Minister between August 1998 and August 1999 regarding finalisation of the leases and gaming tax rates for the casino and resort.

1 DoTRS, Submission No. 11, p. 1212.

2 PPB Ashton Read, *Hansard* p. 64.

3 Mr Ed Turner, Submission No. 10, p. 1206.

- 4.9 On 30 August 1999 the Minister wrote to Mr Herbert stating that these matters would be subject to final negotiation with the eventual purchaser of the resort.
- 4.10 However, the Committee heard evidence that lack of certainty in regard to the leases and gaming tax rates may have accounted for the conditional nature of tenders submitted, and thus had a negative effect on the final purchase price.
- 4.11 ComsWinfair's initial tender for the casino and resort included a purchase price of \$11.5 million. Following the due diligence period and the ComsWinfair visit to the Island, the second round tender was submitted at \$5.5 million and was conditional upon a number of factors. ComsWinfair stated in its submission:
- The process conducted by the Receiver for the sale of the Christmas Island Casino and Resort properties was flawed due to the lack of certainty of conditions pertaining to the transfer of leases and the casino licence. The extent of this uncertainty was not fully appreciated by ourselves until we concluded our due diligence, and accounts to a large extent for the change in our tender offer.⁴
- 4.12 Uncertainty surrounding proposed amendments to the leases included a number of issues. ComsWinfair stated that while the proposed changes to the boundaries of the leases were not "deal breakers", they did increase the number of commercial variables in the determination of the purchase price.
- 4.13 In addition, the Commonwealth informed potential purchasers that conversion from leasehold to freehold would be available subject to an assessment of the price of conversion, as 'conducted by the Australian Valuation Office or other valuer'.⁵
- 4.14 ComsWinfair told the Committee that despite being interested in the proposition, the fact that no formal valuation had been undertaken on the cost of converting to freehold was an additional commercial variable which would need to be considered.⁶
- 4.15 Uncertainty surrounding the casino tax regime, however, was the primary factor in reducing the purchase price of the bid. ComsWinfair informed the Committee that the commercial value of the variables under negotiation were such that the consortium felt that the determination of the tax rate was more important than the final purchase price:
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4 ComsWinfair, Submission No. 9, p. 1200.

5 Annexure 17, PPB Ashton Read, Submission No. 7, p. 389.

6 ComsWinfair, *Hansard*, p. 198.

We came up with a number less based on commercial value than on hurdle value. That was because we could not pin down the commercial value due to the variables outstanding. As I mentioned earlier, that difference in tax between nine per cent and six per cent in a P&L sense is, on \$100 million, worth \$3 million on an earnings before interest and tax basis. That might be the only \$3 million you earn. When you start capitalising that at casino rates, at seven or eight times on a pretax basis, you are talking about 20 or 30 million dollars. That number was far more important than the number to the receiver, and yet we could not get a fix on that number.⁷

- 4.16 The Committee also noted that once the decision was made to terminate the tender process and pursue negotiations with Soft Star/APSC, the same issues in regard to gaming taxes and the lease emerged, and continued to create impediments to the sale and settlement of the casino and resort. In evidence presented to the Committee, the Liquidator stated:

We were still grappling with the question of the amendment to the leases as required by the Government. It became as problematic with APSC as it had previously been with ComsWinfair. That matter was finally resolved by the Minister agreeing to the assignment of the lease on its present terms...⁸

- 4.17 In order to achieve the settlement and sale of the casino and resort, the Commonwealth and Soft Star eventually agreed to negotiate all amendments to the lease after the sale had been completed. The gaming tax regime and operational agreement for the casino were to be negotiated upon application for a casino licence.

Lack of formal involvement in the due diligence process

- 4.18 Some concern was expressed by the Committee at the limited role the Commonwealth took in providing assistance to interested parties during the due diligence process.
- 4.19 Although the Committee recognises that a tender process is essentially a commercial procedure, the Committee believes that the Commonwealth could have been more active in establishing a systematic approach for the distribution of information, as well as clearer procedures for the conduct of negotiations on issues pertaining to the Crown leases and gaming tax arrangements.

7 ComsWinfair, *Hansard*, p. 206.

8 PPB Ashton Read, *Hansard*, p. 86.

4.20 During the due diligence period, the ComsWinfair consortium made two excursions to the Island, in April and November 1999. On the first visit Mr Jack Tse met with the Administrator of Christmas Island, Mr Bill Taylor, to discuss issues pertaining to the casino and resort as well as to the Island as a whole. The Committee was told by Mr Ed Turner that:

Mr Tse was seeking definitive answers from Mr Taylor who was unable to provide answers to many of his questions because he did not have the authority of the department or responsibility for the sale of this property. When he departed the Island Mr Tse related to me his dissatisfaction [with] the answers given by the government representative Mr Bill Taylor.⁹

4.21 Although the Committee recognises that it is not aware of the full particulars of these discussions, the Committee is, nonetheless, concerned that in a pre-arranged meeting between Mr Tse and Commonwealth representatives, it appears that the Administrator was given no formal instructions or information to provide to the ComsWinfair group relating to proposed changes to the lease which had been in circulation since August 1998.

4.22 Some concern was also expressed by the Committee that on the second visit by the ComsWinfair group to the Island in November 1999, an informal and unplanned meeting was held between DoTRS and ComsWinfair representatives on 23 November. At this meeting details of the proposed amendments to the lease were discussed, adding some uncertainty to the tender process.

4.23 Mr Ed Turner told the Committee that the day after the meeting he had been so concerned at the ramifications of the information relayed by DoTRS representatives – in an informal capacity – that he arranged a meeting with the Administrator, Mr Bill Taylor. Mr Turner further stated that:

Mr Taylor dismissed those concerns and stated that the meeting was just an information meeting.

I understand Mr Michael Asims who was employed by the Liquidator also met with Mr Taylor expressing great concern that such a meeting had been held and how alarmed the Coms/Winfair group were.¹⁰

4.24 The Liquidator also wrote to the Department following the meeting on 23 November 1999. In his submission the Liquidator stated that he was

⁹ Mr Ed Turner, Submission No. 10, pp. 1202-1203.

¹⁰ Mr Ed Turner, Submission No. 10, p. 1204.

advised that ‘the issues raised by ComsWinfair in relation to the Crown leases were not seen as “showstoppers” by the Commonwealth’.¹¹

- 4.25 The Committee believes that the Administrator could have taken the opportunity of the first meeting in April 1999 to introduce and discuss some of the amendments to the leases proposed by the Commonwealth, in a formal and controlled environment.
- 4.26 Furthermore, the Committee is concerned that DoTRS, despite assuring the Liquidator that it was ‘conflicting understandings about the nature of the advice’ presented by Commonwealth officials, which had created such alarm,¹² did not take active steps to rectify the misconceptions garnered by ComsWinfair at this meeting.
- 4.27 In its submission ComsWinfair stated:

The resolution of lease and licensing uncertainties on reasonable terms would, we believe, have established a value for the properties closer to the \$11.5 million we originally tendered, and would have provided for the early realisation of economic benefits through refurbishment and re-opening of the Resort.¹³

Summary

- 4.28 Approximately three years since the commencement of the tender process, no amendments to the Crown leases have been finalised. This includes the excision of water supply facilities to the local Shire Council and the facilitation of public access to Waterfall Bay. Nor has a new lease been assigned to replace the previous, now redundant, Crown leases.
- 4.29 Furthermore, there has been no application for a casino licence and no formal agreement has been reached with the new owners of the casino and resort on a gaming tax rate. In addition, no amendments have been drafted for regulations covering the operation of the casino on Christmas Island. Representatives of DoTRS told the Committee:
- That was a development agreement and the casino has now been built and developed...That agreement is no longer in force. It has all been completed. There is no necessity for the Commonwealth to enter into an agreement with the purchaser of this resort.¹⁴
- 4.30 With regard to the Commonwealth’s role in the tender process, DoTRS said:

11 PPB Ashton Read, Submission No. 7, p. 65.

12 Annexure 39, PPB Ashton Read, Submission No. 7, p. 526.

13 ComsWinfair, Submission No. 9, p. 1200.

14 DoTRS, *Hansard*, p. 223.

The court had set in train a process in which the authority to dispose of the asset rested with the Liquidator. It did not rest with the Commonwealth. Had we been interventionist in that process, we would have been at some risk at some stage of breaching the legal framework, which we were very careful not to do. It is a difficult process to follow because of those legal complexities, but that goes to the heart of the issue of careful separation of the roles of the Liquidator and the Commonwealth.¹⁵

4.31 However, as Mr Mortleman of ComsWinfair pointed out:

The maximum economic benefit and the maximum employment benefit comes about from that property operating as a casino resort. The Commonwealth has the lease. The Commonwealth controls the licence conditions. The Commonwealth is in a position to specify those conditions and arrangements in a manner that provides for a viable operation. I also mentioned that the Commonwealth was and is accredited, so presumably it has responsibilities to itself in that regard.¹⁶

4.32 The Committee is very concerned at the less than exuberant role the Commonwealth took in seeking the expeditious resolution of issues within the Commonwealth's jurisdiction, such as lease and licensing conditions. Furthermore, the Committee believes that the Commonwealth failed to appreciate the significant responsibility it had within the tender process, in both the due diligence period and the crucial final negotiations.

Conduct of negotiations with ComsWinfair

4.33 The Committee believes that lack of rigour on the part of the Commonwealth formed part of a larger pattern, in relation to the conduct of negotiations with the ComsWinfair group during the tender process.

4.34 As the tender process progressed, ComsWinfair clearly emerged as the only viable purchaser for the casino and resort. Furthermore, ComsWinfair had the resources, the experience and the intent to re-furbish and re-open the casino and resort, as well as to revitalise the tourism industry on the Island through the provision of air services and additional tourism-related development.

4.35 The Committee took evidence on a number of concerns regarding aspects of the conduct of negotiations with the ComsWinfair Group, during both the tender process and the subsequent termination of the formal process,

15 DoTRS, *Hansard*, p. 217.

16 ComsWinfair, *Hansard*, p. 204.

and the commencement of final negotiations for the sale of the casino and resort.

During the tender process

4.36 The Committee believes that the devolved nature of negotiations with ComsWinfair into tripartite discussions between ComsWinfair, the Liquidator and the Commonwealth was highly ineffective.

4.37 The Committee was informed by DoTRS that:

The assets of the company were real estate – a building and some land. The casino licence, the entitlement to operate the casino, was not an asset of the company and was not available for sale...The Government's position throughout the whole sale process was that the disposal of the assets of the company were a matter for the Liquidator and were not a matter for the Commonwealth. We, quite clearly, were at arm's length from that process.¹⁷

4.38 The Committee notes, however, that certain fundamental aspects of the sale process, such as leasing and gaming tax conditions, were clearly beyond the Liquidator's jurisdiction to determine. The Liquidator told the Committee that the tender process was initially structured so as to incorporate a role for the Government.

That entailed, firstly calling for expressions of interest and secondly, short-listing people for a tender process. That step was going to involve the Government, because it was anticipated that the purchaser would run the casino and that, although we did not have a casino licence to sell, a part of the process would be its issue by the Government.¹⁸

4.39 This tension between the Commonwealth's insistence that it remain at arm's length from the tender process and the Liquidator's inability to resolve fundamental aspects of the tenderer's bid without the involvement of the Commonwealth, created an impossible situation for ComsWinfair and the resolution of conditions precedent to their offer.

On the one hand we were being encouraged by the Liquidator to get these conditions sorted out with the Commonwealth and, on the other hand, we did not feel that we could. We did not feel, firstly, that while the tenders were open, they would particularly want to talk to anyone and, secondly, we did not particularly want

17 DoTRS, *Hansard*, p. 217.

18 PPB Ashton Read, *Hansard*, pp. 50-51.

to be developing a satisfactory commercial scenario for someone else to have.¹⁹

4.40 The Committee was also puzzled by the Minister's desire to inform all parties who had lodged an expression of interest about details of tax rates negotiated privately with ComsWinfair in January 2000.

4.41 Following commencement of negotiations between ComsWinfair and the Commonwealth regarding the Crown leases and casino tax rates in January 2000, this issue emerged as one of the major sticking points in resolving conditions precedent to ComsWinfair's tender.

4.42 The Liquidator told the Committee in evidence that:

ComsWinfair by that stage had made a submission to the Government about concessions that it required with respect to the casino tax rate. The Government was considering that but, prior to confirming whether it would accept that or not, the Government wanted all other parties to the tender to be advised of the tax rate concessions that it was prepared to make. It was only prepared to agree to the submissions or to consider them further if all other parties were made aware of that...²⁰

4.43 In a letter to the Minister, dated 4 February 2000, the Liquidator wrote:

ComsWinfair point out that all parties to the tender were advised that the casino tax rate would be subject to negotiation with the Government and had the opportunity to make submissions in that respect during the period of the tender. None of them raised the issue. ComsWinfair believe that it is inequitable that other parties should be given the opportunity to do so now as a result of ComsWinfair's efforts.²¹

4.44 He further noted that 'the recommencement of the tender process would also raise problems' for him, given the pressure he was under 'to deliver results to creditors'.

4.45 ComsWinfair told the Committee that it subsequently requested Preferred Tender status so as to ensure that any concessions negotiated with the Government were for the benefit of the ComsWinfair tender.

We said on several occasions to the tenderer that we felt – certainly in our case, we felt, in most other people's cases – that the process would have to proceed to a preferred tenderer type process and lead to tripartite discussions and negotiations between the

19 ComsWinfair, *Hansard*, p. 207.

20 PPB Ashton Read, *Hansard*, p. 74.

21 Annexure 60, PPB Ashton Read, Submission No. 7, p. 597. ComsWinfair, Exhibit No. 7.

Commonwealth, the Liquidator and the preferred tenderer. Indeed, at one stage I suggested to the Liquidator that I would prefer he selected someone as preferred tenderer, even if it was not us, because I did not see it leading to a conclusion otherwise.²²

4.46 In response to ComsWinfair's comments, the Liquidator stated:

ComsWinfair's demand that they be selected as the preferred tender was the main reason why the process of the tender was unable to be continued with. It was not feasible to accept an open ended tender such as ComsWinfair's whereby they could at any time withdraw from the process...The risk of CIR being left without funds and without a purchaser of the Resort and Casino was too great to allow me to accept ComsWinfair's offer in the form it was submitted.²³

Negotiations following the tender process

4.47 As discussed in Chapter Three, the Liquidator felt that a number of factors inhibited him from proceeding with acceptance of ComsWinfair's offer on a conditional basis. These included:

- protracted negotiations between the Commonwealth and ComsWinfair which may or may not have been satisfiable;
- the subsequent length of the necessary probity review, especially as ComsWinfair was partially owned by foreign interests, further delaying the realisation process; and
- the distinct possibility that significant delays, such as those listed above, could result in the casino and resort completely running out of funds with which to proceed with the sale, and with no purchaser for the casino and resort at all.

4.48 The Committee heard evidence, however, that consideration of these issues did not definitively preclude ComsWinfair from acceptance as the preferred tenderer.

Negotiations between ComsWinfair and the Commonwealth

4.49 In his submission the Liquidator stated:

I could not take the risk that, after what was likely to be an extended period of negotiations between ComsWinfair and the Commonwealth in relation to the Casino tax rate and other conditions, ComsWinfair and the Commonwealth may not have

22 ComsWinfair, *Hansard*, p. 191.

23 PPB Ashton Read, Submission No. 12, p. 1395.

been able to reach agreement and that ComsWinfair could then withdraw their tender.²⁴

4.50 The Committee heard evidence, however, that ComsWinfair had repeatedly stated its commitment to pursuing the purchase of the resort and had given a number of indications that, if successful, it was intending to re-establish and re-open the casino and resort expeditiously.

4.51 In a letter dated 24 December 1999, the solicitors Watson Mangioni wrote to the Liquidator on behalf of ComsWinfair, regarding discussions with the Commonwealth:

ComsWinfair expects that the majority of the issues may be addressed and resolved in discussions with the Minister and representatives of the Commonwealth as proposed for early January next year...

Please be assured that ComsWinfair is committed to progress these issues at the earliest convenience of yourself and the Commonwealth. ComsWinfair has committed itself to making the very significant investment needed in time and finance to achieve a successful commercial operation in the Christmas Island Casino Resort, in the full knowledge of the very significant risks involved in the venture.²⁵

4.52 Following further negotiation with the Minister in early January 2000, the gaming tax rate emerged as the only condition yet to be satisfied. In a letter to the Minister on 14 January 2000, the Liquidator wrote:

ComsWinfair have indicated that they believe that, following discussions with the Minister most, if not all, of the other conditions precedent could be deleted.

4.53 On 27 January 2000 the Minister wrote to the Liquidator summarising the Commonwealth's position on conditions precedent to ComsWinfair's tender. In evidence to the Committee ComsWinfair stated:

The essential lease and license conditions of importance to our tender were largely satisfied by the Minister's letter on 27 January 2000. We have no reason to believe that the outstanding issues would not have been resolved, or waived by ourselves, given the opportunity.²⁶

4.54 In response to this evidence, the Liquidator stated:

24 PPB Ashton Read, Submission No. 7, p. 74.

25 ComsWinfair, Exhibit No. 7.

26 ComsWinfair, Submission No. 9, p. 1200.

The letter did not make any definitive statements in relation to the lease or licensing issues. It only stated that the Minister was willing to discuss matters further.

The Minister required that I inform parties who had previously expressed an interest in the casino and resort of the reductions the Minister was considering to the tax rate to ascertain whether these reductions would be an inducement to tender...

The Minister also noted that in relation to casino operational matters, these matters were the jurisdiction of the CSA and still being considered.

Therefore ComsWinfair is incorrect in stating “that the lease and license conditions of importance to their tender had been satisfied” by the letter from the Minister.

Furthermore, if ComsWinfair believed that the lease and licence conditions of importance had been satisfied, they could have submitted an unconditional or less conditional offer to me. They were not prepared to do this despite my repeated requests.²⁷

- 4.55 As noted earlier in Chapter Three,²⁸ ComsWinfair told the Committee that a gaming tax rate of 6 per cent, with a negotiable minimum as represented in the Minister’s letter, was closer to the 5 per cent rate that ComsWinfair was aiming for.

We wanted, and asked several times, to be nominated preferred tenderer so we could basically get some comfort that we had a lock-in on the project. The Liquidator could never accommodate that request, and I do not know that the Minister could or would, but it did not happen, for whatever reason. Essentially we were asking for that on or about the 27th...we got the letter of the 27th which looked very promising, we were expecting then to go forward into basically a tripartite negotiation situation because there were no more deal breakers left in the deal. Then basically we had the rug pulled out from under us.²⁹

Allocation of time for probity review

- 4.56 The Committee heard evidence from the Liquidator that another crucial factor was the need to incorporate the probity review for the casino licence into the timeframe for the realisation of the casino and resort. In his submission to the inquiry the Liquidator stated:

27 PPB Ashton Read, Submission No. 12, p. 1397.

28 Chapter Three, paragraph 3.122.

29 ComsWinfair, *Hansard*, p. 207.

I was already concerned that, regardless of how long the satisfaction of the conditions precedent took, a probity review also had to be undertaken and that this could take up to six months.³⁰

4.57 However, the summary of conditions prepared by Watson Mangioni for ComsWinfair in December 1999 stated that:

Both Coms21 Limited and Winfair Group, shareholders in ComsWinfair, have commenced to collate information required for the probity reviews. Coms21 Limited and its directors have recently collated similar information in connection with applications made to the New South Wales Department of Racing and Gaming and so should be able to provide the information in a short timeframe. We understand that the bulk of the information required will be available for submission to the Casino Control Authority by mid-January 2000.³¹

4.58 Furthermore, at the end of 1999 ComsWinfair were anticipating holding a 'soft opening' of the casino and resort before the end of 2000, and having it fully operational by Chinese New Year in February 2001.³² This timetable would have necessitated an expeditious completion of the probity review required for a casino licence.

Prospect of running out of funds

4.59 The Committee also heard from the Liquidator that delays throughout the tender process had created added pressure on the financial resources of CIR, and consequently affected the amount of time the Liquidator could allow for finalisation of negotiations on the ComsWinfair tender.

4.60 As at 1 January 2000, CIR had approximately \$435,000 in cash in liquidation after receiving the proceeds from the sale of the Christmas Island Lodge.³³ This money was required to cover fees, amongst other costs, of approximately \$40,000 a month for the maintenance of the property.³⁴

4.61 In his submission the Liquidator commented:

I was concerned that this sum was insufficient to fund operations for approximately nine (9) months, taking into account legal costs which I was necessarily committed to incur to defend proceedings

30 PPB Ashton Read, Submission No. 7, p. 74.

31 ComsWinfair, Exhibit No. 7.

32 ComsWinfair, *Hansard*, p. 198.

33 PPB Ashton Read, Submission No. 7, p. 67.

34 PPB Ashton Read, *Hansard*, p. 86.

initiated by the Directors [of CIR] in the Federal Court, the Supreme Court and the High Court.³⁵

- 4.62 The Liquidator was also concerned that should negotiations with ComsWinfair fail, creditors would remain unpaid and even be in a position where they would have to contribute funds for maintenance of the assets. The Liquidator would then be left in a position where he did not have the financial capacity to offer the resort to the market again.
- 4.63 The Liquidator told the Committee that ‘if we got locked in, we could run out of money. We were forced to consider that. It was not a remote possibility; it was a distinct possibility.’³⁶
- 4.64 However, the Committee notes that at the time of the Liquidator’s decision to sell the casino and resort on a cash unconditional basis in February 2000, Soft Star was the only alternative purchaser to ComsWinfair. At this stage, Soft Star/APSC were not wholly committed to the satellite launching facility on the Island, and there was no guarantee that they would pursue the purchase of the casino and resort.
- 4.65 The Committee heard evidence from the Liquidator that after the contract of sale had been signed with Soft Star on 30 March 2000, a dispute developed over the inclusion of items of furniture, fittings and equipment which had previously been excluded from the ambit of the sale. The Liquidator said:
- We had so much difficulty getting to settlement that at one stage I seriously thought that they were repudiating the contract.³⁷
- 4.66 The Committee notes that had the Soft Star offer fallen through the Liquidator would have experienced the same financial difficulties as he feared might occur with regard to ComsWinfair, as outlined above.

Summary

- 4.67 The Committee acknowledges that the tender process conducted for the sale of the Christmas Island Casino and Resort was complex and fraught with challenges. The Liquidator told the Committee:

I was not certain that the tender process could be completed and I was only prepared to enter into a contract if I had a reasonable certainty that these conditions would be satisfied. A non-complying tender is a non-complying offer, and I was not going to leave the company exposed to the risk that ComsWinfair retained

35 PPB Ashton Read, Submission No. 7, p. 67.

36 PPB Ashton Read, *Hansard*, p. 73.

37 PPB Ashton Read, *Hansard*, p. 82.

the discretion to accept or reject matters solely at their discretion, for the reasons I have outlined.³⁸

4.68 The Committee accepts that continuing uncertainty surrounding negotiations between ComsWinfair and the Commonwealth on gaming tax and casino matters were beyond the Liquidator's powers to determine. However, the Committee believes that issues pertaining to the ComsWinfair tender were capable of resolution.

4.69 Furthermore, the Committee believes that the stalemate which developed in the final stages of the tender process between the Liquidator, the Commonwealth and ComsWinfair was a direct outcome of the Commonwealth's refusal or inability to resolve significant licence and leasing conditions as expeditiously as possible.

4.70 ComsWinfair told the Committee:

It is correct that a key problem for us was not being able to give certainty to the value because the licence conditions and lease conditions were insufficiently defined. I do not think it is correct to say that there had been plenty of time to get that done and I do not think it is correct to say that this was not something which could have been done in a round table session over two or three days.³⁹

4.71 The Committee believes that the Liquidator, faced with a potential shortage of funds and the prospect of continuing uncertainty in negotiations between the Commonwealth and ComsWinfair, sought the most expedient means of disposing of the assets.

4.72 Mr Thomson, General Secretary of the Union of Christmas Island Workers (UCIW), told the Committee that in a telephone conversation he had held with the Liquidator, regarding a potential bid from the Christmas Island community, Mr Herbert had given him the impression that the Soft Star bid was the most straightforward method of realising the casino and resort assets:

He had a sale with Soft Star which he said had no conditions. Here is the property; here is the key; give us the money – that is what he wanted. He wanted to get out of that liquidation as quickly as he could. He made that very clear to me.⁴⁰

4.73 Mr Mortleman of ComsWinfair commented further that the unconditional cash sale to Soft Star appeared to resolve many of the problems associated with the conditional tender of ComsWinfair:

38 PPB Ashton Read, *Hansard*, pp. 77-78.

39 ComsWinfair, *Hansard*, p. 199.

40 UCIW, *Hansard*, p. 131.

I think the Liquidator was finding it all too hard and I believe it was too hard for him to run a casino resort bid. He says he was also running out of cash – which could well be the case – and he had a responsibility there to make sure he did not run out of cash. Quite frankly I think the Commonwealth Government was finding it all too hard. I think when someone came along with a cash offer that seemed to get everyone off the hook of having to deal with the problems that were associated with getting a casino resort project up, it was easier to take the cash and reap the benefits.⁴¹

Negotiations with Soft Star/APSC during the tender process

- 4.74 The Committee is particularly concerned about evidence it received regarding the conduct of negotiations with Soft Star Pty Ltd/APSC. In particular, the Committee is concerned about the commencement of negotiations with Soft Star Pty Ltd outside the tender process, while negotiations were nearing finalisation with ComsWinfair within the tender process.
- 4.75 In addition, the Committee noted concerns raised in the course of the inquiry regarding the possibility that Soft Star had been made aware of the highest price offered for the casino and resort in the tender process through a breach of confidentiality, although no corroborated evidence of this was submitted.

Commencement of negotiations with Soft Star

- 4.76 In its submission to the inquiry Soft Star stated that:
- Soft Star Pty Ltd made an offer to purchase the Resort following the failure of a tender process undertaken by the Court appointed liquidator...Soft Star did not participate in any tender process.⁴²
- 4.77 The Liquidator informed the Committee that initial discussions with David Kwon of Soft Star/APSC began in January 2000, when he became concerned about the difficulty of completing a sale agreement with ComsWinfair.⁴³
- 4.78 In a letter to the Minister dated 14 January 2000, the Liquidator referred to a meeting to be held with David Kwon the following week to discuss a potential offer. On 20 January 2000 the Liquidator again wrote to the Minister, asking whether the Commonwealth would consent to assignment of the leases to Soft Star/APSC, given that it might or might
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41 ComsWinfair, *Hansard*, p. 205.

42 Soft Star, Submission No. 2, p. 7.

43 PPB Ashton Read, Submission No. 7, p. 76.

not operate a casino on the site. At that stage, no offer had yet been received from Soft Star/APSC.

4.79 The Minister responded on 27 January 2000, stating that 'it was unlikely that the Commonwealth would withhold consent for the assignment of the lease of the resort to a genuine purchaser'.⁴⁴ The Liquidator subsequently met with APSC on 2 February 2000 to discuss its offer. Mr Herbert was in Sydney at the time to meet with ComsWinfair to discuss its tender.

4.80 The substance of these discussions was summarised in a letter from the Liquidator to Soft Star dated 3 February 2000. In this letter he stated:

I am still yet to agree on the purchase price as offered by you. I will make a decision on this early next week. Subject to agreement on this...I will arrange to have a sale agreement prepared and will forward this to you for your inspection.

If there are no amendments to be made to the sale agreement, it may be appropriate to meet you on Christmas Island on 14 February 2000 to sign the sale agreement.⁴⁵

4.81 On 4 February 2000 ComsWinfair was informed that the tender process had 'effectively come to an end' and was offered the opportunity to make a further unconditional offer for the casino and resort.⁴⁶

4.82 Representatives of DoTRS told the Committee that 'the Minister was sounded out and then advised that the Liquidator was negotiating with another party', in a letter from the Liquidator to the Minister on 14 January 2000.⁴⁷

4.83 The Committee questioned the process of conducting negotiations subject to the framework of the tender process with one potential purchaser, while simultaneously initiating negotiations with another interested party for a cash unconditional offer outside the tender process. Former Shire President, Mr Dave McLane, stated in his submission:

The sale to Soft Star outside the tender process was alarming. I cannot see by whose authority the Liquidator acted when he stepped outside the tender process and sold the lease to Soft Star. It may be that the Commonwealth supported the sale of the resort to Soft Star despite it being outside the tender process.⁴⁸

44 Annexure 59, PPB Ashton Read, Submission No. 7, p. 595.

45 Annexure 63, PPB Ashton Read, Submission No. 7, p. 665.

46 Annexure 46, PPB Ashton Read, Submission No. 7, p. 553.

47 DoTRS, *Hansard*, p. 216.

48 Mr Dave McLane, Submission No. 3, p. 15.

4.84 In response to these concerns the Liquidator wrote in his submission:

A Liquidator is empowered by the law to act on behalf of a company and amongst other things, sell its assets...

Although discussions with APSC/Soft Star started prior to the formal termination of the tender, no agreement, written or verbal, with APSC/Soft Star was entered into prior to the formal termination of the tender. Indeed, agreement with Soft Star was only reached at the end of March 2000.⁴⁹

4.85 The Committee heard evidence from ComsWinfair, however, that it became impossible for them to compete with a party operating outside of the tender process on a cash unconditional basis.

4.86 ComsWinfair stated:

That was one of the problems we had with both sides. On the other side, the Minister was saying in his letter to us of 27 January that he would agree to these conditions, but he would be required to put them back out to all tenderers. We were stuck with the problem that we had nowhere to go. If we changed our price probably Kwon would change his. If we negotiated terms with the Commonwealth it was going out to the public arena. So we were sort of working for everyone except ourselves.⁵⁰

4.87 The Liquidator, Mr Herbert, told the Committee that ComsWinfair was given every opportunity to put forward a competitive unconditional offer following the termination of the tender process. Mr Herbert said:

We even tried to contact ComsWinfair, saying, 'we have got this increase in the vicinity of \$6 million. Are you prepared to increase it?' and they said no they were not unless we accepted a conditional tender. We tried all that.⁵¹

4.88 However, ComsWinfair responded that:

We had a difficult stance to take throughout the negotiations. Firstly, we had formed a very early view that the assets had absolutely no value to us. In fact we were never in a position to go unconditional on our bid, without the terms of the casino licence having been specified, and we made that clear to the Liquidator throughout the process.⁵²

49 PPB Ashton Read, Submission No. 7, pp. 89-90.

50 ComsWinfair, *Hansard*, p. 200.

51 PPB Ashton Read, *Hansard*, p. 78.

52 ComsWinfair, *Hansard*, p. 193.

4.89 In response to questions concerning the commencement of negotiations with Soft Star during the tender process, Soft Star/APSC reiterated to the Committee its belief that:

Soft Star did not participate in the tender process. The purchase of the Resort/Casino was a consequence of separate negotiations between Soft Star and the Liquidator after the termination of the tender process.⁵³

4.90 Representatives of DoTRS told the Committee that they ‘could not comment on that process’, and that their:

understanding of the record is that the Liquidator reached a decision to terminate the tender process. As outlined in his submission to the Committee, he reached the view that because all bids were conditional he terminated the tender process and then sought to negotiate with individual parties...it is his legal right to do that...This is a matter for him in his obligations as a court appointed Liquidator.⁵⁴

4.91 The Liquidator further commented that:

We understood that there was a process in train at that moment and that we could not do anything formally while that process was in train. We did not do anything formally until the tender process had been terminated – nor would it have been proper to do anything. We are not suggesting for a moment that it would be...

I would like to say that I think our position was extremely difficult. We had to consider various options and alternatives. Any suggestion that we acted in an improper way is one that I would try to refute very strongly.⁵⁵

Summary

4.92 The Committee acknowledges that the Liquidator’s primary obligation was to maximise the proceeds from the sale of the assets for the benefit of the creditors of CIR. Furthermore, the Committee notes that commencement of negotiations with alternative purchasers prior to the termination of the tender process does not contravene the *Corporations Law*.

53 Soft Star/APSC, Submission No. 13, p. 1421.

54 DoTRS, *Hansard*, p. 216.

55 PPB Ashton Read, *Hansard*, p. 72.

- 4.93 In addition, the Committee accepts that at the end of the tender process there were no compliant tenders, and that financial pressures on the cash resources of CIR required an expeditious sale of the casino and resort.
- 4.94 However, the Committee remains concerned about the appropriateness of commencing negotiations with an external party for a cash unconditional sale while simultaneously continuing negotiations with interested parties within the structure and preconditions of the tender process, especially in light of community expectations for the intended restoration of the asset as a casino, and the ensuing necessity of a probity review for a casino licence.

Concerns about Soft Star's purchase price

- 4.95 The Committee acknowledges concerns that Soft Star became aware of the purchase price of \$5.5 million offered by ComsWinfair Pty Ltd during the tender process, before commencing negotiations for the unconditional cash offer of \$5.7 million for the casino and resort.

- 4.96 The Liquidator told the Committee:

When we first had discussions with David Kwon...we suggested to him, through Frank Woodmore, that the assets would be available at \$10 million. In my first discussion with him, he suggested that they would be prepared to offer \$4.5 million. How he found out, if indeed he found out, that ComsWinfair's offer was \$5.5 million, I do not know.⁵⁶

- 4.97 Former Shire President of Christmas Island, Mr Dave McLane, further stated:

I was suspicious automatically when it was so close...but when I heard what Mr Herbert had to say about the negotiations I was left in no doubt whatsoever that the price was known. Mr Herbert indicated quite openly that he believed the price was known but he could not shed any light on who might have let the cat out of the bag.⁵⁷

- 4.98 Mr Frank Woodmore had been involved in encouraging Soft Star to put forward an unconditional cash offer for the casino and resort. With regard to Soft Star's initial offer and the ensuing negotiations, Mr Woodmore told the Committee that Mr Kwon:

had made an offer of \$4.5 million – not on paper, just verbally – which was totally unacceptable. We sat in his office and tried to

56 PPB Ashton Read, *Hansard*, p. 80.

57 Mr Dave McLane, *Hansard*, p. 145.

get a better offer out of them, and it was impossible. He would go up in increments of \$50, but he might hint at \$100 and then drop back another \$50 – extremely difficult to deal with in the negotiating sense. After that, I had no further dealings in those negotiations, other than to push the Liquidator to try and get a better price.⁵⁸

- 4.99 Mr Mortleman of ComsWinfair commented to the Committee that from his experience with numerous other tender processes for casinos and resorts, he was surprised at the lack of confidentiality regarding the purchase price and conditions upon the tenders submitted during this particular process.

The bid process is a rather tricky one. You have two things you have to work out. One is what you should pay, and the second is what you must pay. You always hope that what you must pay is going to be less than what you should pay, but it is a process of elimination, it is a process of information, it is a process of trying to get information from different sources. The bizarre thing in this circumstance is that these processes are run by state governments under entire and strict confidentiality. Leaks from the government organisation quite frankly are so rare that I do not think they even occur; I am not aware of them occurring. Leaks from bid to bid sometimes occur. But in this instance, we may as well have put it in the newspaper.⁵⁹

- 4.100 Mr Mortleman attributed the lack of confidentiality to a number of factors unique to the Christmas Island tender process. These included the necessity of consultations with the Commonwealth, and the committee structure involved with the liquidation. Mr Mortleman commented that ‘it is not unusual in a State situation for perhaps only one or two people to ever see the price that is actually tendered; the process is structured deliberately to avoid any potential for that sort of problem arising’.⁶⁰

- 4.101 When asked whether DoTRS knew of any discussions held between the Liquidator and any Commonwealth official, including the Administrator of Christmas Island, in relation to the particulars of offers made by companies in the tender process, DoTRS responded:

The Department has no record of any discussions between the Liquidator and Commonwealth officials in relation to the details

58 Mr Frank Woodmore, *Hansard*, p. 95.

59 ComsWinfair, *Hansard*, p. 201.

60 ComsWinfair, *Hansard*, p. 205.

of the companies who lodged tenders or the outcomes of the tender negotiations.⁶¹

4.102 Furthermore, the Department stated:

We have no record that any Commonwealth officer, Minister or member of the Minister's staff was aware of the tender price offered by ComsWinfair.⁶²

4.103 When the Liquidator was asked who would have been aware that ComsWinfair had lodged an offer of \$5.5 million, Mr Herbert told the Committee that all the members of the Committee of Inspection (COI)⁶³ were provided with details on the tenders received at a meeting on 23 December 1999.⁶⁴ Mr McLane confirmed that, at the time, 'the price offered by the tenderer was disclosed to the Committee of Inspection'.⁶⁵

4.104 Furthermore, Mr Herbert told the Committee that the 'Minister certainly knew' the details of final tenders lodged for the casino and resort.⁶⁶

4.105 In commenting upon the possibility that someone from the Committee of Inspection may have leaked the purchase price to Soft Star, Mr Woodmore stated:

The Committee was sworn to secrecy. If any member of the creditors' committee leaked that information, I would be in a position to sue them for damages and so would all the other creditors, because they would have broken a confidence which possibly resulted in a lower price for the resort.⁶⁷

4.106 In commenting upon the perceived lack of discretion in the tender process, the Liquidator stated:

There has been comment on the fact that APSC/Soft Star's offer was equal to ComsWinfair's and speculation as to how they learned of the latter's offer, if in fact they were aware of it. I at no time gave this information to APSC, was bound not to and would not in any event have done so, as I wanted to negotiate a price well in excess of \$5.5M.⁶⁸

61 DoTRS, Submission No. 11, p. 1215.

62 DoTRS, Submission No. 11, p. 1216.

63 Further details on the composition and meeting schedule of the COI are attached at Appendix E.

64 Annexure 75, PPB Ashton Read, Submission No. 7, p. 877.

65 Mr Dave McLane, Submission No. 3, p.10.

66 PPB Ashton Read, *Hansard*, p. 81.

67 Mr Frank Woodmore, *Hansard*, p. 94.

68 PPB Ashton Read, Submission No. 7, p. 77.

- 4.107 The Committee recognises that the similarity of the two purchase prices may simply have been the result of fruitful negotiations by Mr Kwon and the Soft Star group. Mr Woodmore told the Committee that a common negotiating tactic often used is to halve the original price :

When I had been speaking with [Mr Kwon] I had encouraged him to the view that the Liquidator was motivated to sell the property and that, if he could come in with an offer in the vicinity of \$12 million or thereabouts, it might go. He then said, 'How would \$10 million go?' I said, 'Try it'...However, given Mr Kwon's negotiating disposition, there is a possibility if not a probability that, in his mind, he would have immediately halved that figure and come in expecting to pick it up at \$5 million...fifty per cent off the asking price is a normal opening bid. So it may well be that he had in his mind that he could get it for \$5 million because I had suggested maybe \$10 million. For that I am kicking myself.⁶⁹

- 4.108 The Committee notes that throughout this inquiry Soft Star/APSC has maintained that it was unaware of the ComsWinfair purchase price when it entered into negotiations with the Liquidator. Mr Kwon wrote in his submission:

I did not know the highest tender price that was offered by the various tenderers. The initial offer made by Soft Star was \$4.5 million, which I now understand to be substantially less than the highest tender price. The Liquidator rejected my original offer of \$4.5 million. After considerable negotiations with the Liquidator we agreed on a figure of \$5.7 million.⁷⁰

- 4.109 Mr Kwon further told the Committee that Soft Star/APSC based their purchase price on the value of the resort and the buildings. Mr Kwon stated to the Committee that they 'emphasised the building itself and the contents of the building'⁷¹ and subsequently based their offer on the 'construction value' of the infrastructure.⁷²

Perception of conflict of interest

- 4.110 Within this context, the Committee heard evidence of a perceived conflict of interest in the relationship between the former Official Secretary of the Christmas Island Administration, Mr Graham Nicholls, and Mr David Kwon, the principal of APSC and Soft Star Pty Ltd.

69 Mr Frank Woodmore, *Hansard*, p. 93.

70 Soft Star/APSC Pty Ltd, Submission No. 13, p. 1420.

71 Soft Star, *Hansard*, p. 35.

72 Soft Star, *Hansard*, p. 28.

- 4.111 Mr Nicholls held the position of Official Secretary and Deputy Administrator of Christmas Island from April 1997 to September 2000. In August 2000 Mr Nicholls was offered a position with APSC. On 14 August 2000 he informed the Administrator of Christmas Island and the Territories Office management in Canberra of his resignation, to become effective from close of business 20 September 2000.⁷³
- 4.112 The Committee notes that there existed a perception on the Island that Mr Nicholls had used his position within the Administration to facilitate the development of the APSC satellite launching facility as well as furthering the Soft Star/APSC bid for the casino and resort.
- 4.113 Former Shire President, Mr Dave McLane, told the Committee that he had raised community concern over the potential for a conflict of interest at a meeting with the Administrator and other senior government officials on 29 June 2000.⁷⁴

I believe the conflict of interest existed from the time of the proposition that Mr Nicholls might one day be employed by Mr Kwon and when Mr Nicholls did not close that off. It was widely known around the island that Mr Nicholls was one of the people who had been offered a job by Mr Kwon. It took some time – a couple of years roughly - before it came out in the open that Mr Nicholls was going to go and work for Mr Kwon. So I first raised it in a formal way, although verbally, on 29 June 2000... On 14 August, Mr Nicholls formally indicated that he was resigning from the Commonwealth to work for APSC and that he would finish work on 23 September.⁷⁵

- 4.114 The Committee heard evidence of community concern pertaining to two specific occasions on which Mr Nicholls participated in meetings which may have created a conflict of interest:

- On 14 September 2000 Mr Nicholls accompanied the Hon Warren Entsch MP, Parliamentary Secretary to the Minister for Industry, Science and Resources, and Mr Paul Maberly of APSC, on a 'windscreen tour' of the Island, which took in the proposed development site for the satellite launching facility.

Mr Nicholls told the Committee that:

This was on instruction of the Administrator, Mr Bill Taylor. Prior to participating in the tour I raised the appropriateness of my participation with Mr Taylor. Mr Taylor instructed me to attend

73 Soft Star/APSC, Submission No. 13, p. 1437.

74 SOCI, Exhibit 2.

75 Mr Dave McLane, *Hansard*, p. 143.

the 'windscreen tour' on the Administration's behalf. He also instructed me that I should not attend the scheduled meeting between Mr Entsch and the Shire of Christmas Island in relation to the APSC project. I followed his instructions and did not attend the meeting.⁷⁶

- On 17 September 2000 Mr Nicholls took part in a meeting with Mr Willie Teo, Chairman of Phosphate Resources Ltd (PRL), and Mr Paul Maberly of APSC, to discuss APSC and PRL land negotiations. Mr Nicholls informed the Committee that he cleared his attendance at the meeting with the Administrator before participating. In regard to the meeting, Mr Nicholls stated:

I recall clearly that at the outset of the meeting with Mr Teo I advised him that I was there in my capacity of a Commonwealth public servant, and specifically at Mr Teo's invitation and with full approval of Mr Taylor.⁷⁷

- 4.115 The Shire of Christmas Island provided evidence to the Committee that it had written to the Administrator on 28 August 2000 and 25 September 2000, and to the Minister on 21 September 2000, regarding community concern over the perceived conflict of interest in Mr Nicholls' position. SOCI told the Committee:

It is a fairly widely held view that Mr Nicholls, through his position, may have been able to influence decisions made by the Commonwealth. As its principal bureaucrat on the island, he may well have been able to influence decisions in favour of his prospective employer. That is our submission on the apparent conflict of interest.⁷⁸

- 4.116 In response, Mr Nicholls told the Committee:

There was no formal relationship with APSC prior to me formally joining the company.⁷⁹

There was no conflict of interest as I took particular care while working with the Commonwealth to carry out only my Commonwealth duties and nothing else.

I at no time participated in, nor influenced the sale of the resort.⁸⁰

76 Soft Star/APSC, Submission No. 13, p. 1438.

77 Soft Star/APSC, Submission No. 13, p. 1439.

78 SOCI, *Hansard*, p. 108.

79 Soft Star/APSC, Submission No. 13, p. 1441.

80 Soft Star/APSC, Submission No. 13, p. 1439.

I refute any allegation that I passed any information regarding the sale price for the casino to Mr Kwon. I did not have any such information. This suggestion is offensive and wrong.

I worked on Commonwealth/Administration matters throughout my employment on Christmas Island. I did not misuse Commonwealth resources.⁸¹

4.117 The Committee also notes correspondence it received, dated 15 August 2000 and written by Mr Nicholls to the Registered Manager of PRL, detailing a number of arrangements to be implemented in the Administration specifically to avoid 'any situations where there could be, or could be perceived to be, conflict of interest'. These included:

- screening memos and correspondence to ensure that no information on potential areas of conflict of interest were seen by Mr Nicholls;
- removing Mr Nicholls from any dealings between the Administration and PRL;
- removing Mr Nicholls from any dealings between the Administration and Soft Star/APSC; and
- other than for social or courtesy occasions, Mr Nicholls was not to attend any meetings where APSC or casino and resort matters would be discussed.⁸²

4.118 Furthermore, Mr Kwon of Soft Star/APSC told the Committee:

All negotiations and discussions in relation to the purchase of the Resort/Casino were conducted with the Liquidator. More importantly Soft Star had no discussion with Mr Nicholls or the administration on Christmas Island in relation to the purchase of the Casino/Resort.⁸³

Summary

4.119 The Committee concluded that there was insufficient evidence to determine that Soft Star had been aware of the highest purchase price offered by ComsWinfair during the tender process.

4.120 The Committee acknowledges the concerns of the community regarding Mr Nicholls' position during the final stages of his employment with the Commonwealth, but believes that there is insufficient evidence to argue

81 Soft Star/APSC, Submission No. 13, p. 1441.

82 SOCI, Exhibit 2.

83 Soft Star/APSC, Submission No.13, p. 1424.

that Mr Nicholls demonstrably influenced the final outcome of the sale process.

- 4.121 Furthermore, the Committee acknowledges that Mr Nicholls did take active steps, where possible, to avoid areas where a conflict of interest, or the perception of a conflict of interest, might arise.

Conclusions

- 4.122 ComsWinfair told the Committee:

It was our understanding that the fundamental responsibility of the Commonwealth Government in this matter were to, I guess, optimise economic and employment matters that could result from the project, and we feel that that should have and would have been assisted by very clear competitive and viable conditions being placed on the casino licence and on the site lease. It seemed to us that perhaps as major creditors, the Commonwealth had a similar obligation.

In terms of the Liquidator's position, his job was clearly to sell the assets at the best possible value. Again, we feel that this required establishing a very clear competitive and viable set of conditions for the casino licence and for the site lease. We said on several occasions...that the process would have to proceed...to tripartite discussions and negotiations between the Commonwealth, the Liquidator and the preferred tenderer.⁸⁴

- 4.123 The tender process formally commenced in mid-1998. From August 1998 until the sale of the casino and resort in mid-2000, the Liquidator continued to negotiate with the Commonwealth regarding amendments to the Crown leases and gaming tax rates.
- 4.124 On 5 May 2000 the Christmas Island Casino and Resort was sold to Soft Star Pty Ltd for \$5.7 million on a cash unconditional basis. The leases were assigned unchanged, no agreement had been reached regarding a gaming tax regime, and no probity review had been completed, nor initiated, for the application of a casino licence.
- 4.125 The Committee reflected that many of the concerns about the conduct of the tender process originated from the tension between the Liquidator's role in an essentially commercial operation to realise the assets for the best possible price and the Commonwealth's responsibility to optimise economic opportunities on the Island through the re-establishment of a casino and resort.

84 ComsWinfair, *Hansard*, p. 191.

- 4.126 In 1995 the Commonwealth Grants Commission recommended that ‘the Government could best facilitate further economic development on Christmas Island by reducing policy and administrative uncertainty’ and by ‘making the processes for approvals and obtaining information on available assistance as simple as possible’.⁸⁵
- 4.127 Although the Committee acknowledges that whilst the Commonwealth did not have commercial or statutory obligations within the tender process as delineated by the *Corporations Law*, it did have a responsibility actively to pursue the best outcome for the Christmas Island community.

Recommendation 1

The Committee recommends that the Commonwealth, where appropriate, take a more active approach in the provision of timely and efficient support, by clarifying and streamlining processes for the deliverance of administrative and policy assistance to the Christmas Island community.