CHAPTER 2

CONDUCT OF THE INQUIRY

Significance and appropriateness of the inquiry

2.1 The conduct of this inquiry has given rise to a number of complex and politically sensitive procedural issues which, at times, have overshadowed the subject matter of the terms of reference. This high level of procedural and political sensitivity emanates from the very nature of the terms of reference. Traditionally, parliamentary inquiries have been seen to have a threefold purpose, viz, assist in developing legislation, monitoring and influencing the executive arm of government, and informing public opinion.[1] This inquiry had an intense focus on each of these goals. Its terms of reference focussed on the decisions of the executive government, encompassing the role of two Prime Ministers and three Treasurers, in two key foreign ownership decisions which resulted in foreign control of newspapers published in Sydney and Melbourne reputed to be amongst the top twenty newspapers in the world.[2]

2.2 One of the expert witnesses giving evidence on the foreign investment procedures assessed the 1991 decision as being '... the most contentious foreign investment decision probably since the war ....'.[3] Moreover, the decisions of 1991 and 1993 concerned the corporate future of an organisation with assets valued at, depending on time and share value, between $1.25 billion and $2.75 billion engaged in publishing newspapers which included *The Sydney Morning Herald, The Age* and the *Australian Financial Review.*

2.3 The inquiry incorporated a review of print media policy specifically, and foreign investment legislation and procedures generally. Each of these policy areas arouses particular community sensitivities. The inquiry took evidence from probably the most crucial agent in public opinion formation,

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[1] Galloway GB 1927 "Investigative Functions of Congress", *American Political Science Review*, 27: 47-70

[2] Mr Nic Richardson, "Loose Lips and Lost Chances", *The Bulletin*, 10 May 1994, p 27

[3] Mr Mark Burrows, Evidence p 560

the print media. It was therefore not surprising that the committee experienced spirited opposition to the gathering of certain evidence relevant to its terms of reference.

2.4 The committee noted the concern of Mr Conrad Black and Mr Stephen Mulholland regarding the nature and thrust of the inquiry. In oral evidence Mr Mulholland, the chief executive officer of John Fairfax Holdings, submitted:

> ... I feel I must say to you that as a newspaper man of almost 40 years standing I, the chief executive officer of a newspaper company, am extremely disturbed and concerned that our editors and our editorial directions are being brought before this panel of politicians to be questioned on the inner workings and editorial decisions of our company.[4]

2.5 Mr Black said of the inquiry:

> ... that normally this is not a suitable subject for a political questioning of editors to find out how newspapers function internally. But in this case I was not opposed to it, because I accepted that we had to remove any doubt that may have arisen about the probity of our behaviour in this regard.[5]
>
> ..., what more can I do to bury the putrid corpse of this myth, short of driving a silver stake through a copy of the committee's terms of reference, and I do not propose to do that. [6]

2.6 It is unfortunate that some witnesses laboured under the misapprehension that the inquiry had a licence to probe the general editorial and commercial operations of the Fairfax press.[7] The committee is at a loss to explain such a comprehensive misunderstanding, as even a cursory reading of the terms of reference would have made it clear that the committee was not at liberty to conduct a broad-ranging inquiry into the commercial and editorial entrails of the Fairfax group, but was confined to

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[4] Evidence p 249

[5] Evidence p 647

[6] Evidence p 652

[7] See para 2.4

examining the extent to which any promise of an increase in foreign ownership affected the political coverage of the Fairfax group of newspapers, particularly *The Sydney Morning Herald*, during a very narrow timeframe - November 1992 to March 1993.

2.7 As stated in Part III of this report, there are ample precedents which uphold the legal and moral right of a parliamentary committee to inquire into terms of reference of the type agreed by the Senate for this inquiry. The thrust of these terms of reference was to determine whether there had been any improper understanding or arrangement between the Prime Minister and Mr Black whereby 'balanced' political coverage would be exchanged for a government decision to grant increased ownership. If any such arrangement were even entertained, let alone entered into it would have been contrary to the principle of a free and unfettered press. In these circumstances the committee's terms of reference went to the heart of the issue.

Procedural considerations

2.8 A critical procedural issue concerned the giving of evidence by serving and former government ministers. Also at issue were the committee's powers to compel certain public servants and paid advisers to cooperate with the committee by providing information and documents in the face of a ministerial directive requiring non-cooperation. Another key issue concerned the rights of a witness involved in litigation arising out of the sale of Fairfax interests relating to the 1991 government decision. In this regard the committee was called upon to make decisions about whether insisting on obtaining certain evidence might have breached the Senate's sub-judice convention.

2.9 Consequently, in a series of private meetings and to a lesser extent in public session, the committee devoted considerable time to these types of procedural concerns. However, the procedural focus of the inquiry should not be viewed in its own spotlight for each procedural decision had a bearing on whether the committee would gain access to evidence which might prove to be highly relevant to its terms of reference and of critical significance to the development of public policy.

2.10 The committee observes that its procedural focus may have been even more intense but for the fact that, in an unusual if not unprecedented move, the Senate, in establishing the committee pursuant to its terms of reference,

determined a number of procedural matters which are usually resolved by a committee itself at an early stage of most inquiries. The terms of reference provided that:

- subject to any contrary order, submissions be published on receipt;
- subject to any contrary order, evidence which adversely reflected on a person should be forwarded to that person inviting a response;
- the chair be authorised to make public statements to the media concerning the committee's activities; and
- the broadcasting and re-broadcasting of public proceedings be authorised in accordance with the order of the Senate of 23 August 1990.

Written submissions

2.11 At its first meeting, the committee resolved that it should seek written submissions from a range of persons and organisations that might have an interest in the inquiry, and that the secretariat should prepare a list of potential witnesses which would be circulated to committee members to facilitate their nomination of additional potential witnesses. It was further agreed that advertisements be placed in the *Australian Financial Review* on 17 December 1993 and *The Weekend Australian* on 18 December 1993 calling for written submissions to be made to the committee by 20 January 1994. Ultimately, the committee invited more than 50 persons and organisations to make written submissions and/or give oral evidence at a public hearing. The committee received 34 written submissions (see Appendix B) and took oral evidence from 51 persons (see Appendix C).

The list of witnesses

2.12 The potential witness list included the Prime Minister, the then Treasurer Mr John Dawkins, a former Prime Minister, two former Treasurers, the previous and present Ministers for Communications, the heads of the consortiums bidding for the Fairfax group in 1991, the secretaries of the Treasury and the Department of Communications, and the heads of relevant government authorities including the Trade Practices

Commission and the Australian Broadcasting Authority. The Leader of the Opposition and the shadow Minister for Communications during the period 1991-1993 were also invited to participate in the inquiry. The list also included members of the Foreign Investment Review Board (FIRB), a cross-section of media proprietors and editorial staff in the Fairfax group and other print media organisations, The Australian Press Council, and academic institutions with an interest in media matters.

2.13 During January 1994, an informal sub-committee comprising Senators Alston, Kernot and Sherry agreed on a draft witness list comprising 51 names which was considered by the committee on 1 February 1994. The committee adopted this list but in a number of instances majority decisions were recorded, one of which concerned the attendance of former Treasurers, the Hon John Dawkins and the Hon John Kerin.

Use of the committee's power to summons witnesses

Clerk's advice

2.14 The secretariat received a significant number of requests for advice regarding the rights of witnesses to decline committee requests for their attendance. In addition, the committee received correspondence from several key witnesses declining the committee's invitation and subsequently refusing the committee's requests for their attendance. Accordingly, the committee sought the advice of the Clerk of the Senate on its powers to require the appearance of public servants, statutory office holders and advisers to the government to give evidence. The Clerk advised the committee as follows:

- each House of Parliament has the power to require persons to attend to give oral evidence and to produce documents but only the House may punish any default;

- ultimately the power to compel witnesses depends on the power of each House to punish any default as a contempt - see *R v Richards; ex parte Fitzpatrick and Browne* 1955 92 CLR 157 - and the *Parliamentary Privileges Act 1987* which has both limited and codified this power;

- all persons in the Commonwealth are subject to the power to compel witnesses with the exception that a House or its committees may not compel a member of another House of the Commonwealth Parliament or a state parliament; and

- on a number of occasions the executive government has claimed a right to instruct its officers to refuse to appear to give evidence or to produce documents in relation to a parliamentary inquiry. This right is known as 'crown', or 'executive privilege' or 'public interest immunity' but has not been adjudicated upon by the courts, nor has the Senate conceded its existence but has asserted that it is for the Senate to determine such a claim.[8]

2.15 In view of the high level of public and media interest in the attendance of witnesses, the committee resolved to publish letters of invitation to potential witnesses and any responses to this correspondence.

Decision to summons two witnesses

2.16 In two cases of a refusal of the committee's request for the attendance of certain witnesses, by a majority decision, it was resolved to use the power to summons. The Hon John Kerin and the Hon Bob Hawke AC were summonsed under Senate Standing Order 34 which provides that the Senate may give a committee the power to summons witnesses and require the production of documents.

2.17 The committee notes that, following its request, a former Treasurer, the Hon John Dawkins, agreed to give evidence in public session. The committee commends Mr Dawkins for agreeing to appear before the inquiry but notes its regret that Messrs Hawke and Kerin were not prepared to attend on a voluntary basis and only attended following the issuing of a summons. The evidence of these former members of the Ministry was seen as critical to the conduct of the inquiry. It is ironic that following Mr Black's evidence, Mr Hawke successfully sought the committee's consent for him to appear before the inquiry on a second occasion to respond to evidence which he perceived to have reflected adversely on his interests.

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[8] Evidence p 3-5. See also Appendix D

2.18 The direction by Mr Willis to certain current and former FIRB officers, not to give information to the committee relating to the 1991 and 1993 Fairfax ownership decisions, also heightened the need for the committee to take evidence from Messrs Hawke, Kerin and Dawkins, as well as other private individuals involved in the bidding process to acquire a share of the Fairfax group.

Claim of public interest immunity by the Treasurer

In relation to public servants

2.19 During the committee's first hearing on 4 February, a member of the committee sought from the Executive Member of the FIRB, Mr Tony Hinton, copies of four FIRB reports relating to the 1991 and 1993 Fairfax decisions. Mr Hinton indicated that he had no power to release the advice and that any such requests would need to be referred to the Treasurer.[9]

2.20 The committee adjourned the hearing and met in private session resolving that Mr Hinton should be required to produce any documentation on the 1991 and 1993 decisions relating to either correspondence received, discussions held with, or information and advice received from interested parties or persons.

2.21 Upon its resumption the chair advised Mr Hinton of the committee's decision and pointed out that, unless there are express words in a statute or there is by implication a clear intention that documents are exempt from examination by a parliamentary committee, they should be produced. The Chair also informed Mr Hinton of the advice from the Clerk of the Senate, which had been circulated to all members, and advice from the Solicitor-General previously tabled in the Senate, which indicated that the committee has absolute power to require witnesses to attend and produce documents, except perhaps in respect of members of other houses of parliament.[10]

Treasurer's response

2.22 During its second day of hearings on 11 February 1994, the committee received a letter from the Treasurer dated 10 February 1994 in response to

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[9] Evidence p 18

[10] ibid p 19

the request for the production of the FIRB documents. The Treasurer referred to three categories of documents and advised the committee of his claim for 'public interest immunity' in respect of Category 1 and 2 documents, but indicated a preparedness to release Category 3 documents:

Category 1	Confidential advice from the Board [FIRB] or the Treasury to the Government - the Government is not prepared to provide such material to the committee, because to do so would be contrary to the public interest.
Category 2	Documents revealing information provided to the Government in confidence, to the release of which originators or affected parties object - the Government is not prepared to release these because to do so would be contrary to the public interest.
Category 3	Information or documents given to the Government in confidence, to the release of which the originators or affected parties do not object - the Government is prepared to release these.

2.23 In relation to Category 1 documents, the Treasurer further advised that he had directed his department that officials should not provide the committee with information, whether orally or by way of provision of documents, information or advice provided in confidence by the Treasury or FIRB to the government. He further advised that a similar direction had been given to the previous FIRB executive member, Mr George Pooley. In relation to Category 2 documents, the Treasurer issued a similar directive. In relation to Category 3 documents the Treasurer informed the committee that he had set in train arrangements to release certain documents to the committee as quickly as possible, but that some of the material, because of its confidential nature, should not be published by the committee. The letters from the Treasurer to Mr Pooley and Mr Hinton directing them not to give evidence in respect of Category 1 and 2 documents were subsequently received by the committee.

Inquiry options

2.24 Having been advised of the likely non-cooperation of the previously mentioned key witnesses, the committee resolved that the secretariat prepare an options paper canvassing its possible courses of action to address this potential impasse. The paper identified four options, namely:

(i) The committee could agree to continue the inquiry and, when it is in a position to identify the classes of non-cooperating witnesses, seek specific legal advice on each class (for example, public servants, paid government advisers, statutory office holders, serving ministers and former ministers). Notwithstanding the need to obtain this advice, the committee could table a report on its terms of reference based on available evidence. This report could include references to any instances of witness non-cooperation. The Senate could then decide what action it might take under its powers relating to parliamentary privilege.

(ii) The committee could immediately report to the Senate instances of witness non-cooperation and recommend that action be taken against the witness under the provisions of the *Parliamentary Privileges Act 1987*. This course of action may result in the witness being punished by a resolution of the Senate.

(iii) The committee could immediately report the non-cooperation of the Government witnesses to the Senate and seek a 'return to order' resolution under Standing Order 164 of the Senate for the Leader of the Government in the Senate to table the documents requested by the committee.

(iv) The committee could seek a private meeting with the Treasurer to explore agreed ways and means of obtaining the information required by the committee.[11]

2.25 At a private meeting on 16 February, the committee discussed the options paper and resolved to adopt Option 1 as its preferred course of action.

Legal advice from Mr David Jackson QC

2.26 Accordingly, the committee continued with its schedule of hearings and sought legal advice on the compulsion of witnesses from Mr David Jackson QC based on the following questions:

[11] Evidence pp 201-202

1. Does the committee have the power to compel witnesses from each of the following **categories** to give evidence and produce documents? If so, by what means?

Category 1

Mr Tony Hinton, employed under the *Public Service Act 1922* and Executive Member of the Foreign Investment Review Board, a non-statutory body which advises the Treasurer in relation to foreign ownership decisions.

Category 2

Mr George Pooley, formerly employed under the Public Service Act and the immediate past Executive Member of FIRB. Mr Pooley is now the Commissioner, Insurance and Superannuation Commission and is employed under the provisions of the *Insurance and Superannuation Commissioner Act 1987.*

Category 3

Mr Des Halsted and Mr Ken Stone are members of FIRB. To the Committee's knowledge these witnesses are paid advisers to government. They are neither public servants nor statutory office holders.

Category 4

Messrs Kerin, Hawke and Dawkins. These witnesses were Ministers when one or both of the 1991 and 1993 decisions were made.

2. In so far as Treasurer Willis seeks to assert a conclusive claim that certain documents are not to be disclosed to the committee, is it for the government to determine the nature and extent of public interest immunity and that certain witnesses curtail their evidence to the committee and/or not disclose certain documents?

3. Are decisions of the Senate and/or the committee justiciable and in what circumstances and to what extent is a court able to go behind a decision of the committee of the Senate?

4. What steps are open to the committee to take in respect of non-cooperation with its orders?

5. Is the Treasurer in contempt of the Senate in instructing various witnesses to refrain from providing evidence to the committee and producing documents, or in other ways limiting their co-operation with the committee and other orders of the Senate? [See Standing Orders and other Orders of the Senate documents (attachment 2), especially:

- Parliamentary Privilege Resolution of 25 February 1988 Resolution 6(1), 6(10) and 6(13) (pp 97-99).

- Procedural Orders and Resolutions of the Senate of Continuing Effect. Resolution 24 and 27 (pp 122-123).]

2.27 A copy of both Mr Jackson's first opinion of 8 March 1994 and his further opinion of 31 March 1994 have been included in Appendices E and F. An opinion on questions of public interest immunity prepared by Mr Tony Morris QC, at the request of one of the committee members, Senator Kernot, is included in Appendix H.

2.28 Mr Jackson advised the committee that it does have the power to compel witnesses from each of categories 1 to 4 to give evidence and produce documents. In the event of a witness from these categories failing to provide a document or refusing to give an answer, according to Mr Jackson, the committee's power is to refer the matter to the Senate for its adjudication under section 7(3) of the *Parliamentary Privileges Act 1987* which provides that the Senate may impose a penalty of imprisonment not exceeding 6 months or a fine not exceeding $5,000.

2.29 In giving an opinion on Question 2 (whether it is for the government to determine the nature and extent of public interest immunity and to direct that certain witnesses not fully cooperate with the committee) Mr Jackson said:

> ... I do not think it is the province of the executive government to decide conclusively whether questions should not be answered, or documents produced, by reason of public interest immunity.[12]

[12] Appendix E, para 54

2.30 He also expresses an 'in the abstract view' that the Houses of Parliament did have the power to compel an answer but that that power would not 'ordinarily be exercised where there was a significant contention that the national interest would not be served by compelling the answer'. In a gratuitous remark not accompanied by any process of reasoning, detail, context or judicial precedent, he also suggested that it might be of some persuasive value to examine how a court might consider a similar claim for public interest immunity.[13] In respect of the Category 1, 2 and 3 documents, he advised that for the Category 1 documents (advice from FIRB to the Treasurer), the court would need to consider a number of factors, for example, the time that has elapsed since the advice was given. In addition, he pointed out that the court might wish to see the material itself. Having identified these considerations he concluded that it is probable that such a claim would be upheld.

2.31 Having considered Mr Jackson's opinion, the committee by majority resolved that he be requested to clarify his remarks relating to the consideration by a court of claims of public interest immunity in relation to the Category 1 documents. The further instructions sought clarification on:

- the other factors referred to in paragraph 52;
- relevant case law;
- any legislation and pending legislation pertaining to the matter; and
- the significance of the elapsed time since the FIRB advice was given.

2.32 In due course a further opinion was received which listed six factors which might be relevant to a court's determination of a claim of public interest immunity:

- the level of government at which the communication took place, that is, the higher the level the more likely that the immunity will be respected;

[13] Appendix E, para 52

- whether the communication deals with important matters of policy;
- the nature of the proceedings before the court, for example, the court would be more likely to admit a document in evidence if its exclusion would be prejudicial to the case for the accused;
- the length of time since the documents came into being; and
- whether the document had already entered the public domain.[14]

2.33 Having been given a copy of one of the documents sought by the committee, the FIRB Minute of 5 December 1991,[15] he was inclined to the view in respect of that document that the **claim for public interest immunity would not succeed.** The relevant factors in reaching such a conclusion are: that it was disclosed as a leaked document in early 1993 and confirmed by former Treasurer Kerin, the recipient of the document, before the committee on 24 March 1994; that its contents are 'only doubtfully on important matters of policy' and that the information in the documents is about events that have passed. These last two factors would seem to be of equal force in relation to the outstanding documents.

Legal Advice from Mr Tony Morris QC

2.34 The opinion of Mr Morris is somewhat more cautious as regards whether a court would uphold a claim for public interest immunity in respect of Category 1 documents as a class of document. In the summary to his opinion he states that one would not be able to predict with any certainty the way a court would resolve the question. Inherent in any such proceedings would be the need to examine the documents individually to ascertain the potential prejudice to public interest arising from disclosure and the need to balance this against the detriment which might be caused if the documents were excluded from consideration. The reasons for Mr Jackson volunteering a reference to a court are unclear in the view of

[14] Appendix F

[15] Appendix G

Mr Morris. It is not helpful to any consideration of the committee's powers to speculate as to what a court might do.

2.35 Mr Morris said of the 5 December 1991 Minute:

> **Having carefully perused that document, I must say that I am entirely at a loss to understand how it can be argued that production of the document might be inimical to the public interest.** The document does not appear to contain any information which could be regarded as having any degree of continuing commercial sensitivity. One cannot seriously imagine that the members of the Foreign Investment Review Board would be less candid in providing advice to the Treasurer or the Government, were documents of this character to be available for public scrutiny: to echo the words of Lord Radcliffe in the Glasgow Corporation Case as adopted by Stephen J in Sankey v Whitlam, one would imagine that members of the FIRB are "made of sterner stuff". It is, of course, conceivable that commercial organisations might feel more reluctant in disclosing their commercial secrets to bodies like the FIRB if they were aware that such documents could ultimately become open to public scrutiny; but it does not appear to me that this particular document discloses any commercial secrets. It may be said that the workings of the FIRB, and of the Treasury, may to some extent be prejudiced if the manner in which they operate becomes public information; **but I cannot see anything in this particular document which might be thought to disclose some highly-sensitive *modus operandi* which justifies concealment of its contents. [emphasis added].**

2.36 The concluding remarks of both members of the senior bar provide the committee with confirmation of the appropriateness of its actions in insisting on the production of the documents in question. Mr Jackson advised that he sees no reason why the committee could not require that the documents be more 'specifically identified', at least on a confidential basis as a starting point.[16] Mr Morris is of the view that the committee is balancing one public interest against another and that in pursuing its investigation it is entirely inappropriate for a committee to constrain itself by an analogy with the courts' interpretation of public interest immunity.[17]

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[16] Further Opinion of Mr D Jackson QC, p 11, see Appendix F

[17] Opinion of Mr A Morris QC, p 45, see Appendix H

In relation to FIRB Members

2.37 On 18 February 1994, the Treasurer wrote to the committee informing it that in view of the government's claim of public interest immunity in respect of certain FIRB matters he had advised two FIRB members, who were in effect paid advisers, that their duty of confidence precluded them from providing information to the committee relating to advice, views and recommendations they may have provided to him or past Treasurers. Notwithstanding this, these FIRB members attended the inquiry and gave evidence constrained by the Treasurer's direction.

Justified or unwarranted secrecy

2.38 Whether the Treasurer's claim of public interest immunity is justified was the subject of much discussion both within the committee and amongst observers of the inquiry. The committee examined this issue from a number of perspectives. The first involved weighing up the public interest in not releasing the information in the FIRB documents, including the interests of parties who made confidential submissions to FIRB, against the public benefit of knowing how that process works, including its obvious flaws, in relation to government decisions on the ownership of print media. The chapters in the report on the FIRB processes show clearly that the committee believes that future decisions should be made following a more open and transparent information gathering process, and that the parties to these decisions should enter any such process in the full knowledge that the Parliament and, thereby, the community have a right to know how the process works in relation to any particular decision.

2.39 The major shortcoming in current FIRB procedures is that, provided applicants submit material with an accompanying assertion that it is commercial-in-confidence, the information has an 'in perpetuity' secret status. It would appear that the fact that a decision has been made and the commercial transaction has been completed, has no bearing whatsoever in striking down the secret status of FIRB information. This unrealistic and over-secretive approach, which FIRB and successive governments have elected to take, is to a large extent, the reason for the committee being confronted by an inability to obtain a complete set of evidence on the 1991 and 1993 decisions.

Sub-judice matters

2.40 As foreshadowed in an earlier paragraph, the committee received a submission dated 4 February 1994 from solicitors representing Mr M Burrows and Mr J White requesting that the committee not take evidence or, alternatively, defer taking evidence from their clients until litigation had been completed. The submission informed the committee that Messrs Burrows and White are respondents to legal proceedings in which the applicants are claiming damages in the sum of $140-215 million. The submission argued that it would be prejudicial if either Mr Burrows or Mr White were required to give evidence.

Clerk's advice

2.41 The committee referred this item of correspondence to the Clerk of the Senate who advised that in making a decision on whether there is any such danger of prejudice to court proceedings, the committee needed to have knowledge of:

- whether the matters before the court will be tried by a jury;
- whether there are witnesses or potential witnesses who may be influenced by a hearing of evidence by the committee; and
- whether the particular questions in some of the legal proceedings are likely to be canvassed in any hearing of the committee.[18]

2.42 The Clerk further advised that if the committee were to come to a conclusion that there is a danger of prejudice to the court proceedings, it could avoid that danger by resolving to take evidence in private session.[19]

2.43 The committee considered the Clerk's advice and decided that it should insist on the witnesses giving oral evidence, but that they should be advised of their right to have their evidence heard in-camera. The committee

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[18] Evidence p 208, see also Appendix I

[19] Evidence p 209

further agreed to organise its line of questioning in such a way as to minimise frequent requests to move into private session. During the taking of public evidence from these witnesses, four matters were deemed to be appropriate for consideration as in-camera evidence and were subsequently examined by the committee during a very brief private hearing.

Conclusion

Incomplete evidence

2.44 As a consequence of the repeated directions by the Treasurer that public servants and advisers appearing before the committee claim public interest immunity, the committee has been unable to make definitive and conclusive findings in respect of a number of matters germane to its terms of reference. In an attempt to identify these issues the committee published in its Hansard two charts which illustrate the extent of the procedural and evidentiary impasse which it faced.[20] During the giving of a Notice seeking a resolution of the Senate to extend its date of reporting to complete the committee's report, the chair, Senator Alston tabled and incorporated these documents in Hansard.[21] These two documents appear as charts 2.1 and 2.2 in this chapter.

2.45 At this stage of the inquiry the committee resolved that letters be written to the witnesses listed in this document seeking their response to questions based on the unresolved issues. The text of the questions to these witnesses has been included in chapters 3, 4 and 5.

Private Senator's Bill

2.46 On 12 May 1994, following an extended debate involving eight of the nine committee members, on the motion of Senator Kernot, the Senate resolved that the committee should present two reports. The resolution provided that this report, to be known as the first report of the committee, would be presented by 9 June 1994. It further provided that the final report of the committee be presented by 22 September 1994.

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[20] Evidence p 739-740

[21] Senate Hansard of 3 May 1994, pp 31-32

2.47 In speaking to her motion Senator Kernot informed the Senate that the extension of the committee's date of reporting was intended to give the Senate an opportunity to resolve the impasse in relation to repeated claims of public interest immunity. This would allow the committee to make conclusive findings on all of the available evidence, including that which the Treasurer has claimed to be of a public interest immunity character.

2.48 Senator Kernot had previously introduced The Parliamentary Privileges Amendment (Enforcement of Lawful Orders) Bill 1994 to amend the Parliamentary Privileges Act by providing that the Federal Court enforce lawful orders made by Parliament and empower that court to determine claims that disclosure of information to Parliament would contravene the public interest. It was Senator Kernot's contention that the Senate Privileges committee should examine her Bill and present a report by 23 August 1994. Her resolution further provided that during the period 9 June 1994 to the day the committee presents its final report, the committee should be provided with the minimum resources required to give effect to the resolution.

Chart 2.1

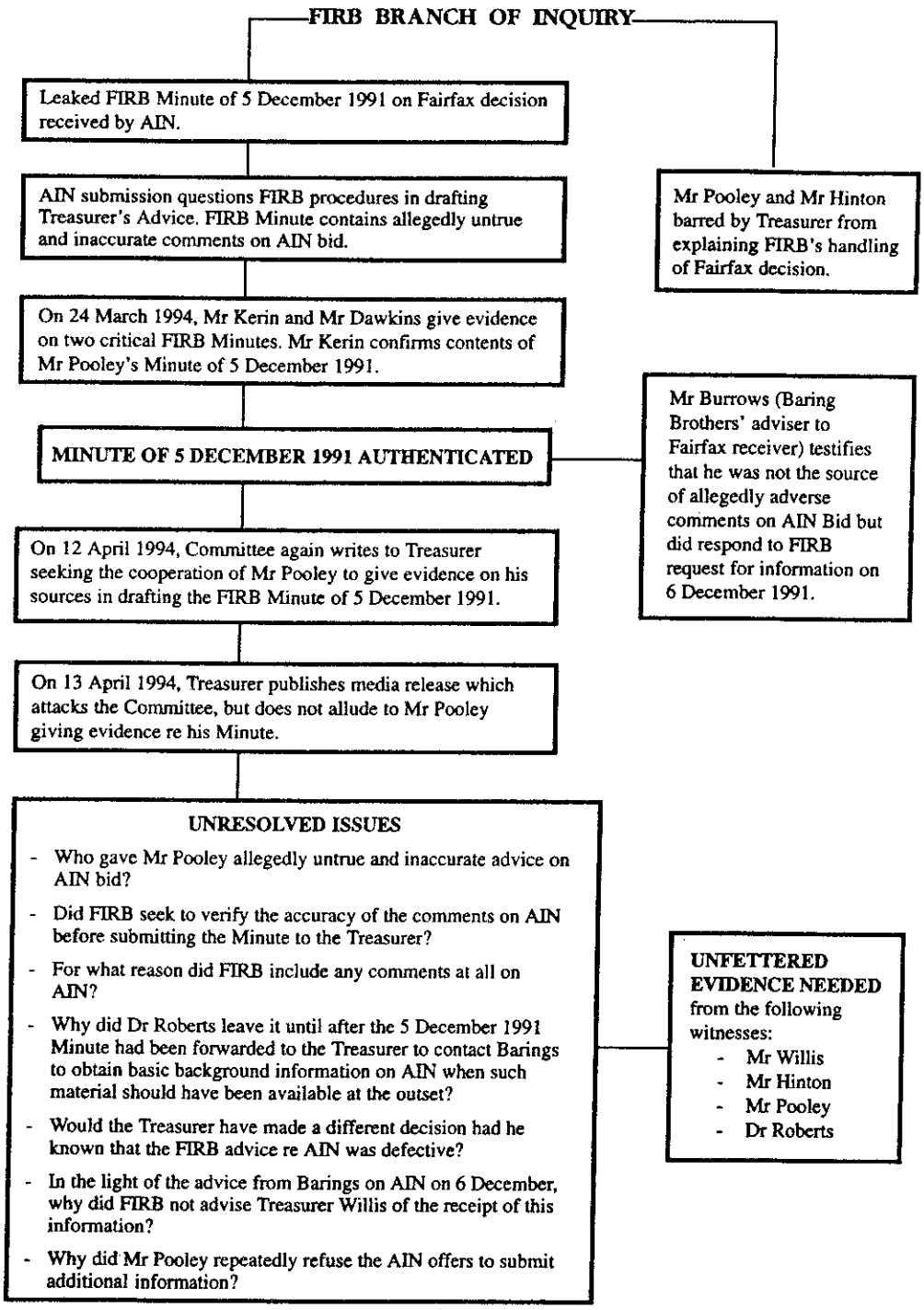
FIRB BRANCH OF INQUIRY
Leaked FIRB Minute of 5 December 1991 on Fairfax decision received by AIN.
AIN submission questions FIRB procedures in drafting Treasurer's Advice. FIRB Minute contains allegedly untrue and inaccurate comments on AIN bid.
Mr Pooley and Mr Hinton barred by Treasurer from explaining FIRB's handling of Fairfax decision.
On 24 March 1994, Mr Kerin and Mr Dawkins give evidence on two critical FIRB Minutes. Mr Kerin confirms contents of Mr Pooley's Minute of 5 December 1991.
MINUTE OF 5 DECEMBER 1991 AUTHENTICATED
Mr Burrows (Baring Brothers' adviser to Fairfax receiver) testifies that he was not the source of allegedly adverse comments on AIN Bid but did respond to FIRB request for information on 6 December 1991.
On 12 April 1994, Committee again writes to Treasurer seeking the cooperation of Mr Pooley to give evidence on his sources in drafting the FIRB Minute of 5 December 1991.
On 13 April 1994, Treasurer publishes media release which attacks the Committee, but does not allude to Mr Pooley giving evidence re his Minute.
UNRESOLVED ISSUES
- Who gave Mr Pooley allegedly untrue and inaccurate advice on AIN bid?
- Did FIRB seek to verify the accuracy of the comments on AIN before submitting the Minute to the Treasurer?
- For what reason did FIRB include any comments at all on AIN?
- Why did Dr Roberts leave it until after the 5 December 1991 Minute had been forwarded to the Treasurer to contact Barings to obtain basic background information on AIN when such material should have been available at the outset?
- Would the Treasurer have made a different decision had he known that the FIRB advice re AIN was defective?
- In the light of the advice from Barings on AIN on 6 December, why did FIRB not advise Treasurer Willis of the receipt of this information?
- Why did Mr Pooley repeatedly refuse the AIN offers to submit additional information?
UNFETTERED EVIDENCE NEEDED from the following witnesses:
- Mr Willis
- Mr Hinton
- Mr Pooley
- Dr Roberts

Chart 2.2

'BALANCED COVERAGE' BRANCH OF INQUIRY