

CHAPTER ONE

INTRODUCTION

1.1 The Senate Select Committee on Matters Arising from Pay Television Tendering Processes was established by resolution of the Senate on 27 May 1993. The Committee's terms of reference are printed on page iii.

Background to the inquiry

1.2 The tender process for satellite pay-TV licences which resulted in the announcement on 30 April 1993 of the highest bidders, became the subject of significant parliamentary and media criticism during May 1993. This criticism focussed mainly on the fact that tenderers were not obliged to lodge a deposit calculated as a percentage of their bid at the time of submitting it.

1.3 On 3 May 1993 the Minister for Transport and Communications, Senator the Honourable Bob Collins, sought advice from the Secretary to the Department, Mr Graham Evans, about the absence of a requirement for a deposit in the tendering process for the satellite pay TV licences.

1.4 As a result of that query and the developing parliamentary and media debate on the issue the Secretary subsequently asked Professor Dennis Pearce on 8 May 1993 to undertake an inquiry into this matter.

1.5 Whilst debate continued on the satellite tender process, difficulties relating to the validity of the MDS (Multipoint Distribution System) licence tendering process were emerging. Cabinet decided to abrogate the process on 17 May 1993. On 18 May Professor Pearce agreed to undertake a second inquiry this time into aspects of the MDS licence tender process. Included in this was a review of material prepared on the matter by two Deputy Secretaries from the Department, Mr M.J. Hutchinson and Ms C.M. Goode.

1.6 The reports by Professor Pearce on the satellite and MDS tendering processes were tabled in the Senate on 20 and 26 May 1993, respectively. These reports, together with those from Mr Hutchinson and Ms Goode, provide a detailed history of the two tendering processes.

1.7 During the May 1993 sittings of parliament the issue of pay TV remained prominent, being the subject of questions without notice on a daily basis, matters of public importance, adjournment debates and questions at a Senate Estimates Committee. A considerable volume of documents from the Department was tabled in the Senate, in response to an Order of the Senate of 19 May and following undertakings by the Minister. The bulk of the documentation on the satellite process was tabled on 24 May and on the MDS process on 26 May.

1.8 The Select Committee was established on 27 May 1993, the last day of the autumn 1993 sittings.

Conduct of the inquiry

1.9 The inquiry was advertised in the Australian and the Australian Financial Review on 2 June 1993. Those individuals and organisations who provided written submissions or material to the Committee are listed in Appendix 1. In view of the tight schedule the Committee was operating under, it decided that the most expedient method of gaining material relating to the concept of ministerial responsibility was to invite a variety of witnesses to open discussions with the Committee.

1.10 The Institute of Public Administration Australia (ACT Division) gave great assistance to the Committee. It has considerable experience in organising conferences, seminars and round tables to facilitate exploration of issues and did so on this occasion. The Committee now expresses its thanks to the Institute.

1.11 The Committee held public discussions in Melbourne on 20 July 1993 with former federal and state political leaders. In Canberra on 21 July it participated

in a round table discussion with academics and senior bureaucrats both past and present. Two further public hearings were held in Canberra on 6 and 20 August 1993 with the Minister, the Department and the General Manager of the ABC to discuss the tendering processes. A list of witnesses appearing at these hearings and discussions is at Appendix 2.

1.12 On 1 September 1993 the Senate agreed to extend the time for the presentation of the Committee's report on part (1) (a) of the terms of reference until 7 September 1993.

Request for SAVO coverage

1.13 Given the historical significance of the Melbourne meeting with the appearance of a former prime minister and state premiers, a request was made to the Parliamentary Sound and Vision Office to provide a video recording of the proceedings.

1.14 The request was rejected. Funding restraints and the fear that giving coverage in Melbourne would set a precedent for video recordings being made of committee hearings conducted outside Canberra were cited as reasons for this rejection.

Attendance of personal staff of parliamentarians

1.15 During the inquiry an issue arose of whether a member of a parliamentarian's personal staff at a time relevant to the matters under review ought to be called before a Committee. A former adviser to the Minister was in that position. The Minister objected to him being called before the Committee. He acknowledged that committees have the power to call witnesses. He said this power had always been exercised with discretion. The major concern was that the ability of ministers and other parliamentarians to rely on the confidentiality of their working relationship with their personal staff and advisers would be put at risk if the latter could too readily

be called as witnesses to testify about matters arising from that relationship. Research could not produce any precedent showing that the Senate, House of Representatives or Joint committees had ever called personal staff as witnesses.

1.16 The Chairman said there was a public interest in the community knowing what goes on in Government and in Parliament. At the same time there was a public interest in ministers and members of parliament being able to discuss matters with their personal advisers freely and frankly. Their ability to do this would be prejudiced by knowing those advisers could readily be called to give evidence about those discussions before parliamentary committees. Accordingly personal advisers should be called before parliamentary committees only in the most exceptional circumstances. These had not been demonstrated in the present instance.

1.17 Senators Alston and Tierney did not agree with the position taken by the Chairman. However it was supported by Senators Loosley and McKiernan and was accordingly adopted by the majority.

Consideration of ministerial responsibility

1.18 In this report the Committee discusses individual ministerial responsibility as part (1) (a) of the terms of reference requires it to.

1.19 The concept of ministerial responsibility has been the subject of considerable debate over many years in respect to its history, definition, operation and relevance to past, present and future activity by members of Government. A 'traditional' understanding of the concept identifies two components of the system - collective and individual ministerial responsibility.

1.20 It is the Committee's intention to produce an additional report which will consider the concept of ministerial responsibility further. It will explore the variety of approaches and attitudes reflected in the evidence at the round table discussions held during the inquiry and in the historical and contemporary literature on the subject.

1.21 Ministerial responsibility is but one component of the many elements which combine to mould the Australian system of government. Although its origin is in the British system it has developed characteristics of its own.

1.22 The Committee suggests that as the system develops with political and social circumstances constantly changing, it would be of greater benefit to consider the operation of ministerial responsibility in contemporary circumstances and whether such operation is appropriate, rather than attempting to define the concept.

1.23 The Committee has given considerable attention to the views of Sir Rupert Hamer in articulating a form of codification of ministerial responsibility. Sir Rupert's views are set out in paragraph 2.27.