

GOVERNMENT SENATORS' REPORT
A PRINCIPLED DECISION TO WIND UP A POLITICALLY
MOTIVATED INQUIRY

The Government Senators agree with the decision of the Committee to wind up its inquiry without holding any hearings or receiving oral evidence; this recognised the primacy of principle over pragmatism. The Government Senators share the views expressed in the report as to the importance of the Senate and its committees exercising proper caution when considering the use of the Senate's powers of compulsion over witnesses. This is especially so where this involves current or former Members of State Parliaments or employees of State Governments.

The gratuitous and baseless criticisms of the Victorian Government contained in this report are disingenuous and detract from an otherwise erudite discussion of these issues.

Further, the report is seriously flawed, both as to what it contains, and in respect of the issues it omits to deal with. The recommendation made in the report for a judicial inquiry or royal Commission into what the report mistakenly describes as the "tendering process" for the Victorian casino (in fact the process was not a tender, as the report itself makes clear) is without basis in fact or logic. The report fails to consider at all some serious issues concerning the licensing of the Christmas Island casino, and the questionable involvement of several Ministers and one Parliamentary Secretary of the former Labor Government in that process.

Issues of principle concerning inquiries into State matters

The considered views of the Clerk of the Senate, and Professor Denis Pearce (attached in the appendices) are an excellent summary of not only the legal points, but also the practical position with respect to comity.

Regrettably the majority did not see fit to elevate the principles of comity above the level of pure legality. The commonsense of comity, ie. the need for courtesy between the Parliaments given the federal nature of Australia's body politic is identified by the Government Senators as the fundamental issue.

The minority is fortified in that view by the learned opinions attached to this report.

As the Clerk of the Senate stated:

"The possibility of retaliatory inquiries cannot be ruled out. Mutual cooperation can be seen as the safeguard against mutual and escalating interference in each others operations." (Letter from the Clerk of the Senate to the Committee, 8 October 1996)

Professor Denis Pearce opined:

"The Clerk has indicated in his advice to you and to previous committees that, as a matter of comity, the practice of the Senate is not to compel the attendance of officials of State governments before Senate Committees. The application of this approach and its wisdom is not a legal issue but one that the Committee must determine for itself. The notion of comity is inextricably linked with the ideas of Federalism and the constraints that it imposes are discussed above. To take an all or nothing approach to the requirement of attendance of a State official cuts across the primacy of the Commonwealth in the Federal system. I would have thought that there were circumstances where it could be said that the Senate was not performing its duty for all of Australia if it adopted an approach that in no circumstances would it summon a State official. However, this is a matter of policy for the Committee and the Senate to resolve." (Professor Denis Pearce submission, Page 8, para 37)

The Government Senators believe the policy of the Senate ought to be to resist the temptation of inquiring in State matters as the consequences warned of by the Clerk of the Senate could do irreparable damage to the Federal compact. To allow an exemption will create a precedent and open the way for the States to embark upon retaliatory inquiries.

All future deliberations of the Senate when determining the establishment of Senate Select Committees into matters properly in the domain of the States ought to heed the sound advice proffered by the Committee. Whilst the initial thrill of a political hunt may appear attractive the beauty is illusory when considered in the context of the potential damage to the federal compact.

As such we unreservedly embrace the good sense and the principles embodied in para 2.58, subparagraphs 1,2, and 3, which we repeat below:

"The Committee is of the view that, in general and independently of any consideration of the legal position, the following guidelines should be followed by Senate Committees:

1. Current and former members of State Parliaments should not be summoned or required to answer questions on matters which relate to their activities as members of Parliament or Ministers.
2. Current and former senior public servants, ministerial advisers and members of statutory bodies should not be summoned or required to answer questions on matters which relate to their activities as advisers to State ministers or Cabinet on policy issues.
3. The production of documents which were prepared for the purpose of informing, advising or decision making by State Ministers or State Cabinets should not be demanded."

Issues not adequately dealt with in the report

The report, and the recommendation which it contains are fatally flawed. Perhaps this is not surprising, since the Select Committee was established in order to reach that recommendation, and a majority of its members determined that it should make that recommendation regardless of the lack of any evidence to justify it. Most observers will recall that the Select Committee was set up in a highly politically charged atmosphere. Regrettably, but predicatbly, that atmosphere permeates both the report and in particular its recommendation.

The issues which are not adequately dealt with in the report, and which are accordingly the subject of the discussion below, may be summarised as follows:

1. The lack of substantive evidence before the Select Committee.
2. The entitlement of the Victorian Government to respond as it did.
3. The fact that Victorian legislation provides for a mandatory further inquiry into the ongoing fitness of the casino licensee in that State at predetermined regular intervals, the first such further inquiry already being under way.
4. The failure of the Select Committee to investigate the direct political involvement of several former Federal Labor Ministers and at least one former Labor Parliamentary Secretary in the establishment and licensing of the casino on Christmas Island.
5. The politics of the establishment and conduct of the Select Committee.

Each of these issues is considered below.

Lack of evidence

It soon became apparent that those who agitated for the establishment of the Select Committee were unable to produce any evidence to support the conclusion that they hoped it would reach. There was in fact such a dearth of evidence that the Select Committee resolved to dispense entirely with public hearings. In the event, the Select Committee received no oral evidence at all. It received only 10 written submissions, most of which were completely irrelevant, and none of which contained any useful information not already publicly available.

Some who claimed to have relevant evidence inexplicably failed to produce it. One member of the Select Committee, Senator Woodley, was reported in The Age on October 1, 1996, page 5, as saying the following:

"We have a whole raft of documentary evidence and if they (the Victorian Government) do not allow the public servants to appear we will simply present that which would not be in the (Victorian) Government's interests at all."

If indeed Senator Woodley had a "raft of documentary evidence" available to him as at 1 October 1996, it is curious that he chose not to present any of it to the Select Committee.

Several current and former Victorian Labor State Members have also claimed at various times to have evidence impugning the Victorian Casino selection process. They, or any other person who wished to present such evidence to the Select Committee, was free to do so. None did.

The Victorian Government's response

The Victorian Government took a decision to exercise its rights. The stance taken by the Victorian Government is not unusual. Indeed this was recognised by the Committee in its media release of August 22, 1996 in which the Committee unanimously stated:

"The inquiry has raised complex issues about the extent of the Senate's powers and obligations and appropriate processes when dealing with State parliamentarians, officials and consultants.

"These questions are not unique to this Committee's inquiry, but have been raised on a number of occasions previously." (Emphasis added)

Thus the attitude of the Victorian Government was acknowledged by all members of the Committee as not being unique and having occurred previously. It is therefore disingenuous to use the pejorative terms employed by the majority in commenting on the Victorian Government's principled stance. Indeed the Queensland Labor Government took a similar position to the Senate Select Committee on Unresolved Whistleblowers.

As such the non-government Senator's report fulfilled the implication of bias as in Senator Woodley's statement, when he said:

"we will simply present that which would not be in the (Victorian) Government's interests at all."

The Senate will recall that the allegations against the Victorian Government have remained unsubstantiated and are vigorously denied by the Victorian Government.

Victorian inquiry already under way

In recommending a further inquiry, the report fails even to mention the fact that the Victorian Casino Control Authority is already conducting an inquiry into the fitness of the Victorian Casino licensee to retain that licence, as required by the Victorian *Casino Control Act 1991*. It is open to any person who might give evidence to a judicial inquiry or a Royal Commission to give that same evidence to the Authority. The Authority is an independent statutory body, the membership of which was controlled by the previous Victorian Labor Government. The *Casino Control Act* requires the Authority to conduct such inquiries at regular intervals, the first of which is now at hand. The Authority embarked upon its inquiry several months ago, and it invited and received submissions from the public as part of that process. It is expected to report soon. The report fails to offer any reason for duplicating the Authority's inquiry.

Failure to investigate the licensing of Christmas Island Casino

Unlike Victoria, the Commonwealth did not establish an independent authority to deal with the selection of a casino licensee on Christmas Island or to determine the terms and conditions of any licence. It took no step to remove that process from the political arena - indeed all of the key decisions in that process were taken by the Cabinet or at a Ministerial or Parliamentary Secretary level. The potential for corruption or abuse in such circumstances are obvious. However the Government Senators would not presume to make such a judgement given the paucity of evidence before the Committee.

The Government Senators note, however, that if the standards applied in the report for determining whether there should be an inquiry into the Victorian casino were applied equally to the known facts in relation to Christmas Island, the logical consequence must be that it should also be the subject of a judicial inquiry of Royal Commission. Only politics can explain why the report does not even canvass this possibility.

The Politics of the establishment and conduct of the Select Committee

The conduct of the Select Committee's deliberations made clear that its terms of reference were never genuine. When forcing this ill-conceived inquiry through the Senate, the Opposition and minor party Senators tried to hide behind the first three terms of reference to justify their pursuit of the fourth (which related solely to the Victorian casino). this pretence was exposed by the majority confirming in Chapter 3 of their report:

"Further, as a consequence, the Committee has not addressed the subsidiary issues contained within the terms of reference not relating to the Victorian Casino as these were considered contingent on the main purpose of the inquiry."

It is interesting to note that the "subsidiary issues" were listed first in the terms of reference. The "main purpose of the inquiry" was purely and simply a political attack on the Victorian Government. The purported concerns over Commonwealth legislation, the Financial Transactions Reports Act 1988 and Australia's international reputation were no more than a facade, dispensable if the underlying political motive of the inquiry could not be achieved. Yet the terms of reference were framed in such a way as to pretend that they were to be the principle areas of inquiry.

Conclusion

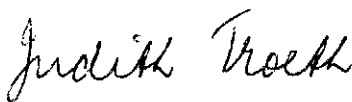
The recommendation for an inquiry (judicial or otherwise) by non-government Senators is not based on any evidence, and the body of the report does not give any justification for such a recommendation. This inquiry foundered purely and simply because its extensive advertising failed to attract a single witness willing or able to give any relevant evidence impugning the Victorian Casino licensing process.

There should not be a judicial inquiry or a Royal Commission into the Victorian Casino. That is because:

1. There is no evidence before the Committee to justify such an inquiry.
2. The Victorian Casino Control Authority is already conducting an inquiry pursuant to its obligations under the Victorian *Casino Control Act*.

If the reasoning of the majority (in concluding that there should be an inquiry into the Victorian Casino) was to be applied equally to the Christmas Island Casino, it would lead to the inevitable conclusion that the involvement of several former Labor Federal Ministers and one former Parliamentary Secretary in the process of licensing that casino should be the subject of a similar inquiry.


Care should be taken by the Senate in future to ensure that Select Committees are established only where there are legitimate and appropriate matters for inquiry.



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Christopher Ellison
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Eric Abetz
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4 December 1996