

## **Outcome of the tender process**

- 5.1 Following the sale and settlement of the Christmas Island Casino and Resort to Soft Star on 5 May 2000, a number of issues and concerns emerged regarding the outcome of the tender process. These included:
- the current status of the casino and resort;
  - the payment of funds to former employees; and
  - ramifications of the sale of the casino and resort to Soft Star.

## **Current status of the casino and resort**

- 5.2 At the time of the Committee's report, the casino and resort remains largely unopened. Refurbishment and restoration of the complex are yet to begin and arrangements for the redevelopment of the complex have not been finalised.
- 5.3 The resort is currently operating in a limited capacity as a basic 'bed and breakfast' establishment. The Christmas Island Tourism Association (CITA) website states that the resort offers double or twin rooms and suites, with a continental breakfast, starting at \$120 per room per night.<sup>1</sup> There are four people currently employed at the resort.<sup>2</sup>
- 5.4 In February 2001 CIR's financial position was as follows:

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1 [www.christmas.net.au/accom](http://www.christmas.net.au/accom)

2 Soft Star, *Hansard*, p. 36.

**Table 11 CIR's Estimated Financial Position  
(as at 26 February 2001)<sup>3</sup>**

	<b>\$'000</b>
<b>Assets</b>	
Cash at bank	4,911
	<u>4,911</u>
<b>Liabilities</b>	
Liquidator's fees	90
Legal fees	17
	<u>107</u>
<b>Assets Available to Employees (subject to cost of liquidation)</b>	
Employees claims*	2,750
<b>Assets Available to Unsecured Creditors (subject to cost of liquidation)</b>	
Unsecured creditors**	102,000
<b>Estimated Shortfall to Unsecured Creditors (subject to cost of liquidation)</b>	
	99,946

\* Subject to formal proof of debt and calculation of penalties, if applicable.

\*\* Subject to formal proof of debt.

## Continuing legal challenges

5.5 Despite the sale and settlement of the casino and resort in May 2000, the realisation of the assets for \$5.7 million has yet to result in completion of the liquidation process. Continuing legal challenges launched by the former directors of CIR have ensured that creditors and the majority of former employees remain unpaid from the proceeds of the sale.

5.6 CIR remains party to the following legal proceedings:

- District Court of Western Australia 2099 of 1997 – Skea Nelson Hager v CIR;
- Supreme Court of Western Australia CIV 2295 of 1995 – Casinos Austria International (Christmas Island) Pty Ltd v CIR;
- Federal Court of Australia WG 154 of 1998 – Union of Christmas Island Workers v CIR; and

- Federal Court of Australia WG of 1998 – Union of Christmas Island Workers & Le v CIR.<sup>4</sup>
- 5.7 In addition, former directors of CIR continue to challenge the appointment of the Liquidator in the wake of the *Wakim* High Court decision on cross-vesting and the *Federal Court (State Jurisdiction) Act 1999* (FSA Act), passed by the Parliament of Western Australia.<sup>5</sup>
- 5.8 The Liquidator informed the Committee that on 8 May 2000, three days after settlement of the casino and resort, solicitors representing the former directors of CIR advised him that an application to the High Court of Australia had been lodged, seeking to have the orders transferring the matter of his appointment to the Supreme Court quashed.<sup>6</sup>
- 5.9 On 17 May 2000 solicitors representing the former directors further advised the Liquidator that they would also be applying to the Supreme Court of Western Australia for a stay of the liquidation. Mr Herbert stated that he ‘was put on notice not to deal with the proceeds of the liquidation’.<sup>7</sup>
- 5.10 These applications relate to the validity of Mr Herbert’s appointment as Receiver and Manager and Liquidator of CIR. The basis of the appeal is ‘the alleged constitutional invalidity of the *Federal Court (State Jurisdiction) Act 1999 (WA)*, the Act pursuant to which the order transferring the Federal Court proceedings to the Supreme Court was made’.<sup>8</sup>
- 5.11 In his submission to the Committee, Mr Herbert stated:
- The resolution of these legal issues is still uncertain. Following the High Court’s decision in the Emmanuel case confirming the validity of the FSA, I am confident based on legal advice that the directors’ application to the High Court will fail and that their other legal actions will be overcome. The timing of the resolution of these matters is, however, difficult to estimate and likely to be lengthy.<sup>9</sup>
- 5.12 On 10 November 2000 Mr Herbert filed a response to the former directors’ application, refuting their claims and detailing a history of his dealings with the former directors.<sup>10</sup>

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4 Annexure 80, PPB Ashton Read, Submission No. 7, p. 1183.

5 See Chapter Three, pp. 40-42.

6 Annexure 78, PPB Ashton Read, Submission No. 7, p. 1176.

7 Annexure 79, PPB Ashton Read, Submission No. 7, pp. 1178-1180.

8 Annexure 80, PPB Ashton Read, Submission No. 7, p. 1182.

9 PPB Ashton Read, Submission No. 7, p. 83.

10 Annexure 75, PPB Ashton Read, Submission No. 7, p. 861.

## Payment of funds to former employees

- 5.13 The delays that these legal challenges have imposed on the finalisation of the liquidation process have also prevented the payment of funds owing to creditors and former employees of the casino and resort.
- 5.14 As discussed in Chapter Two, at the time of the casino and resort's closure, employees were owed between \$2 million and \$3.5 million.
- 5.15 Following his initial appointment as Receiver and Manager of CIR, Mr Herbert held discussions with the former directors, who conveyed to him their belief that CIR's debts were substantially less than the amount disclosed through the financial records of CIR. In particular, they believed that debts to employees only amounted to \$800,000.
- 5.16 In 1998 the Union of Christmas Island Workers (UCIW) lodged a claim in the Federal Court against CIR, arguing that employees of CIR were entitled to various penalty and interest amounts, in addition to their other employee entitlements, under the Enterprise Bargaining Agreement (EBA) pertaining to CIR's workers.<sup>11</sup>
- 5.17 In his submission the Liquidator stated:
- The exact method of calculation for these amounts, if they are applicable, will be clarified through application to the court for directions.
- Depending upon the method of calculation of the employee entitlements, I have estimated that the amount payable to employees could be between \$2.5m and \$3.2m. The return to unsecured creditors will vary accordingly depending on the level of employee claims.<sup>12</sup>
- 5.18 The UCIW told the Committee that the average worker who had lost their job through the closure of the casino and resort was owed between \$7,000 and \$18,000.<sup>13</sup>
- 5.19 The Committee heard evidence from a number of witnesses expressing concern at the protracted delays experienced by workers awaiting unpaid entitlements.
- 5.20 The Christmas Island Chamber of Commerce (CICC) told the Committee that the CICC was concerned:

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11 The term of the EBA was from 10 October 1994 to 10 October 1997. However, as it had not been renewed the terms of the EBA still applied. Annexure 73, PPB Ashton Read, Submission No. 7, p. 806.

12 PPB Ashton Read, Submission No. 7, p. 84.

13 UCIW, *Hansard*, p. 122.

with the ongoing and punitive delay in paying out both creditors and former employees. It is our understanding that the Liquidator does have the discretion to make these payments now, particularly given that sale proceeds were received by the Liquidator nearly twelve months ago.<sup>14</sup>

- 5.21 Since the closure of the casino and resort, the Union of Christmas Island Workers has been active in pursuing the payment of wages and entitlements for unpaid workers.
- 5.22 On 10 November 2000 a petition signed by approximately 500 Christmas Island residents, expressing concern about the delayed payment of wages owed to former employees of the casino and resort, was sent to the Minister by the UCIW.<sup>15</sup>
- 5.23 The Committee heard evidence from the Liquidator that, although there was not an injunction preventing him from paying out the creditors and employees, legal advice had been provided to him to the effect that if he paid the creditors and the High Court found in favour of the application by the former directors, he would be personally liable for approximately thirty months pay.<sup>16</sup>
- 5.24 Mr Herbert told the Committee that in view of potentially lengthy legal disputes he had attempted to negotiate an interim payment to former employees of CIR.

In view of the protracted nature of disputes with the directors, I proposed to them an interim payment to be made to employees up to the amount of the debt acknowledged by the directors of approximately \$800K...The directors refused their consent for this payment. In the circumstances, I am unable to make the payment until the legal issues referred to...above are resolved.<sup>17</sup>

- 5.25 The High Court challenge has not yet been listed for hearing. DoTRS told the Committee that the Department had 'written to the Registrar of the High Court, seeking to encourage the expediting of the hearing' but that no date had been set.<sup>18</sup>
- 5.26 The Liquidator also informed the Committee:

I have made numerous applications to the High Court and my solicitors are in contact with the High Court Registry on a regular

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14 CICC, *Hansard*, p. 177.

15 UCIW, Exhibit 3.

16 PPB Ashton Read, *Hansard*, p. 84.

17 PPB Ashton Read, Submission No. 7, p. 84.

18 DoTRS, *Hansard*, p. 228.

basis to attempt to have this matter dealt with as expeditiously as the High Court's timetable will allow...

In fact this matter is the highest priority in the liquidation at present, as its resolution is the major impediment to the finalisation of the liquidation and the payment of employees who have been waiting some 3 years for their entitlements.<sup>19</sup>

- 5.27 The UCIW told the Committee that it was very concerned that the case would not be heard for a number of years, while former employees and creditors of CIR remained unpaid.

The High Court was due to sit in Perth in April. The High Court did not list this matter. The High Court will sit again in Perth in August and will probably not list this matter...So we are facing an indefinite period – another three years maybe – before the High Court finally determines the validity or otherwise of the Liquidator's appointment.<sup>20</sup>

- 5.28 On 2 April 2001 the UCIW wrote to the Minister suggesting that, in light of the continuing delay caused by legal challenges to the Liquidator's appointment in the High Court, the Commonwealth consider underwriting the payment of former employees' entitlements.<sup>21</sup>

- 5.29 UCIW told the Committee:

We have written to the Minister and said, 'if you were so sure that the Liquidator's appointment was valid that you were able to assign the leases to a new owner, you should be just as sure that the Liquidator will be able to pay the workers' entitlements. Therefore the Commonwealth should underwrite the payout of these workers' unpaid entitlements'.<sup>22</sup>

- 5.30 DoTRS told the Committee that the Government had received a number of representations from the Shire and the UCIW in relation to the CIR workers, and that those claims were currently under review in relation to what assistance the Government might provide.

A proposal has been put to the Minister by the Union that the Commonwealth effectively, underwrite the Liquidator's ability to make that disbursement...we are now seeking advice from our legal representatives and various other advisers in relation to the provision of a Commonwealth guarantee.<sup>23</sup>

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19 PPB Ashton Read, Submission No. 14, p. 1447.

20 UCIW, *Hansard*, p. 121.

21 UCIW, Exhibit 3.

22 UCIW, *Hansard*, p. 121.

23 DoTRS, *Hansard*, p. 228.

## Sale of the Christmas Island Laundry

- 5.31 The Committee heard a number of concerns regarding the exclusion of the Christmas Island Laundry from the liquidation process, and the ramifications this had for five former workers who are still owed approximately \$20,000 in unpaid entitlements.
- 5.32 The Christmas Island Laundry was established to service the Christmas Island Resort and was operated by a company called Christmas Island Laundry Pty Ltd. It was 75 per cent owned by Mr Sumampow and 25 per cent owned by Mr Lai Ah Hong, a local businessman.
- 5.33 The Committee was told that:
- It was a very complex arrangement. The Shire of Christmas Island collected rent, the Commonwealth thought they owned it and it contained a whole lot of equipment that belonged to the owners of the Resort.<sup>24</sup>
- 5.34 The Committee heard evidence that concerns regarding the sale of the laundry focused on two specific areas:
- the exclusion of the Christmas Island Laundry assets from the liquidation of CIR; and
  - the subsequent sale of the land, building and equipment of the laundry by the Commonwealth.

## Exclusion of the laundry from the liquidation process

- 5.35 The Committee heard evidence questioning why the Liquidator did not include the assets of the laundry in the liquidation of CIR, and expressing concern that failure to liquidate the laundry with the casino and resort has prevented former employees of the laundry from receiving entitlements still owing.
- 5.36 The Committee was told by the UCIW that:
- The liquidator did not include the Christmas Island Laundry assets of the former owner of the Resort in the inventory of saleable assets. That exclusion effectively destroyed any reasonable prospect of the former laundry workers receiving their unpaid entitlements of less than \$20 000 in total.

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24 UCIW, *Hansard*, p. 129.

The Commonwealth has sold the laundry assets. The Commonwealth has refused to release funds from the sale of the laundry assets to pay the workers' outstanding entitlements.<sup>25</sup>

5.37 ComsWinfair, in its submission, also noted that the exclusion of the Christmas Island Laundry from the sale of the casino and resort was unfortunate.<sup>26</sup>

5.38 In response to claims that the laundry assets should have been included in the realisation of CIR, the Liquidator, Mr Herbert, stated:

The Christmas Island Laundry is not the property of CIR. The Christmas Island Laundry was operated by a company known as Christmas Island Laundry Pty Ltd, of which CIR is a shareholder. As such, the assets of Christmas Island Laundry did not come under my jurisdiction as Liquidator of CIR.<sup>27</sup>

5.39 Mr Herbert further stated:

As Liquidator of CIR, I did not have any power to sell assets of Christmas Island Laundry, but did have power to sell the shares. The sale of shares was not pursued, owing to the fact that the laundry's business was dependent on the casino and resort, it had ceased trading prior to my appointment and had a net asset deficiency.<sup>28</sup>

### **Sale of the laundry by the Commonwealth**

5.40 The Committee also heard a number of concerns at the approach the Commonwealth took in selling the Christmas Island Laundry land, buildings and equipment.

5.41 In March 2000 the UCIW held discussions with the Administrator of Christmas Island, Mr Bill Taylor, and the Official Secretary to the Administration, Mr Graham Nicholls. During these discussions the UCIW was advised that the Australian Government Solicitor (AGS) had written to the owners of the laundry advising them that the Commonwealth was intending to proceed with the sale of the laundry, land and contents. The UCIW subsequently wrote to the Administrator on 21 March 2000, seeking:

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25 UCIW, Submission No. 1, p. 2.

26 ComsWinfair, Submission No. 9, p. 1198.

27 PPB Ashton Read, Submission No. 12, p. 1394.

28 PPB Ashton Read, Submission No. 7, p. 86.



the agreement of the Commonwealth to apply the proceeds of the sale of the laundry to the payment of the outstanding entitlements of the former employees of the company.<sup>29</sup>

- 5.42 Mr Derek Schapper, a solicitor employed by the UCIW to act on behalf of former employees of the laundry, also wrote to the Administrator on 10 May 2000, arguing that the Commonwealth was not entitled to sell the furniture and fittings of the laundry. He argued that because the company, Christmas Island Laundry Pty Ltd, was insolvent, his clients were in a position to have it wound up and a liquidator appointed. The proceeds of the sale could therefore be distributed to creditors and former employees.
- 5.43 The Commonwealth, through the AGS, disputed Mr Schapper's assertion. In a letter dated 17 May 2000, the AGS informed Mr Schapper that the primary shareholder and owner, Mr Sumampow, had been advised on 9 March 2000 that the Commonwealth would be auctioning the laundry in March. Mr Sumampow was given until 17 March 2000 to object to the disposal of the equipment. No such objection was received, so the Commonwealth sold the land, the laundry building and the laundry's equipment.<sup>30</sup>
- 5.44 In a letter dated 19 May 2000 the AGS further informed Mr Schapper that money owed to former employees of the laundry by Christmas Island Laundry Pty Ltd, was of 'no relevance to the Commonwealth'.<sup>31</sup>
- 5.45 UCIW stated:
- The Commonwealth appeared to have tried to track down the owners of the equipment to see what they wanted to do with it. The union solicitor wrote to the Commonwealth and said, "you can't liquidate those fittings. We think they belong to the owner, and the workers are entitled to have those fittings liquidated and they would probably realise enough money to pay out their entitlements". The Commonwealth was asked not to proceed with the sale but, if they were going to, to please make a disbursement to the former workers of their full entitlements from the proceeds of the sale.<sup>32</sup>
- 5.46 The laundry assets were put up for public auction on 25 March 2000. They did not sell and were passed in at auction. A private sale was subsequently negotiated. The UCIW wrote to the Minister on 18 July 2000 stating:

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29 UCIW, Exhibit 3.

30 UCIW, Exhibit 3.

31 UCIW, Exhibit 3

32 UCIW, *Hansard*, p. 129.

This issue has been bogged down in legal argument. The justice of the workers claims has been ignored. The Commonwealth has the extraordinary advantage of having had control of the land and buildings from which Sumampow and Lai...operated the business which owes the former employees their entitlements. I think it is an extraordinary travesty of justice that the Commonwealth has sold assets which belonged to the operator and which could have been sold to pay the outstanding entitlements of the former employees. In effect the Commonwealth has profited on the misery of the former laundry workers.<sup>33</sup>

5.47 On 23 November 2000 the Minister replied:

I appreciate the concern of your members on this issue and agree that the legal basis of the current situation needs to be clarified...the Commonwealth was legally entitled to sell the land with the fixtures and fittings. This is consistent with advice from the Australian Government Solicitor dated 17 May 2000 to the Union's solicitor...Claims for entitlements for your members should be addressed to Christmas Island Laundry Pty Ltd and its directors.<sup>34</sup>

5.48 In evidence to the Committee the UCIW stated:

Infrastructure essential to the operation of the resort should have been included by the Liquidator initially in the assets for liquidation...In our belief it was open for him to do that in some form or other. He did not do it, and in our view that is a mistake. Our members have lost out. The Commonwealth had control of the property, it sold it and it has done the rotten and lousy thing and withheld all the proceeds of the sale. It is open to the Commonwealth, in our view, to pay out the entitlements of those workers, some \$20,000, which is about 20 per cent of the sale price...So it would do the Commonwealth no damage at all to pay out the entitlements of those workers.<sup>35</sup>

## Summary

5.49 The Committee believes that all avenues should be pursued to expedite the resolution of legal claims blocking the payment of creditors and former employees alike.

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33 UCIW, Exhibit 3.

34 UCIW, Exhibit 3.

35 UCIW, *Hansard*, p. 130.

- 5.50 In the Committee's view, the appointment of the Liquidator to CIR will most probably be upheld in the High Court of Australia, allowing the subsequent payment of funds to creditors and former employers of the casino and resort. Consequently, the Committee supports moves by the UCIW and the Department of Transport and Regional Services to formulate a proposal for the Commonwealth to underwrite the payment of Christmas Island Resort workers.
- 5.51 In regard to the Christmas Island Laundry, the Committee notes that legally, the Commonwealth is under no obligation to underwrite the payment of the \$20,000 still owed to former employees.
- 5.52 However, the Committee also recognises that the five former employees of Christmas Island Laundry Pty Ltd, even with the support of the UCIW, have little to no chance of recovering through legal process the money owed to them by the owners of the laundry, especially as the cost of legal fees alone would far outstrip the amount of money recovered.
- 5.53 The Committee acknowledges that former employees of both CIR and the Christmas Island Laundry have been waiting approximately three years for entitlements owing, and could be waiting a further two to three years before the legal issues preventing payment of the former employees are resolved.

## **Recommendation 2**

**The Committee recommends that the Commonwealth formulate a proposal to underwrite the payment of entitlements owed to former employees of the Christmas Island Casino and Resort.**

**The Committee also recommends that the Commonwealth underwrite the payment of salaries and entitlements owed to former employees of Christmas Island Laundry Pty Ltd, not exceeding the total sum of \$20,000.**

## **Sale of the casino and resort to Soft Star Pty Ltd**

- 5.54 As discussed in Chapter Four, there were a number of issues raised with the Committee during the course of the inquiry, regarding the sale of the casino and resort to Soft Star.
- 5.55 Issues pertaining to the conduct of the tender process, and the role of Soft Star after the termination of the formal tender process, were canvassed in

the previous chapter. This section examines concerns the Committee heard regarding:

- how Soft Star intends to utilise the facility;
- whether Soft Star was subject to the same rigorous probity checks that were built in to the tender process; and
- Soft Star's request to have the leases for the casino and resort converted to freehold.

### **Soft Star's intentions for the casino and resort**

5.56 A number of witnesses expressed concern about Soft Star's intentions for the utilisation of the casino and resort facility.

5.57 The Liquidator told the Committee:

I am aware of the dissatisfaction expressed by some persons as to the eventual outcome of the sale process. Specifically I am aware that the Christmas Island community is generally disappointed that the purchaser of the Resort, Soft Star, has not yet applied for a casino licence and that the recommencement of operations by the casino is still uncertain.<sup>36</sup>

5.58 The Committee heard evidence, particularly while on Christmas Island, from many witnesses who do not believe that Soft Star intends to refurbish and re-open the facility as a casino and resort.

5.59 At the time of the sale the UCIW held a number of community meetings to discuss the ramifications of the casino and resort being sold to Soft Star. UCIW told the Committee:

It was generally agreed that Mr Kwon may utilise the Resort as an administrative and private accommodation facility for his proposed Satellite Launching enterprise. The effect of such use would be to deprive the depressed tourist industry on the Island of the major tourist facility on the Island.<sup>37</sup>

5.60 The Shire of Christmas Island (SOCI) also commented that:

Our view was that the principal of the two companies – APSC and Soft Star – was the same person and that the new owner was more likely to use the facility as an administrative and accommodation

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36 PPB Ashton Read, Submission No. 7, p. 84.

37 UCIW, Submission No. 1, p. 3.

facility for his APSC project rather than for operating a resort. That was a widely held view.<sup>38</sup>

5.61 The Committee heard evidence suggesting that many witnesses believe that their worst fears have been confirmed over the ensuing twelve months, as no apparent work has been conducted on the proposed refurbishment and re-opening of the casino and resort. Evidence on this issue focused predominantly on two issues:

- a timetable for the re-opening of the casino and resort; and
- the role of the Commonwealth in pursuing the re-opening of the casino and resort.

### Timetable for re-opening the casino and resort

5.62 Following the execution of the contract of sale, Soft Star issued a media release, *CI Resort – Confirmation of Purchase by SoftStar Pty Ltd*, which was published in *The Islander* on 28 April 2000. In this media release Soft Star stated:

The company intends to reopen the property as a Resort and Casino complex using recognised hotel and gaming management. The Resort will continue to provide the limited services currently available until after the initial assessment and refurbishment. The complete upgrade and reopening of the Casino will be achieved progressively over the next 12-18 months.<sup>39</sup>

5.63 The Committee heard evidence, however, that since that date little has been accomplished to advance the redevelopment and re-opening of the complex.

5.64 SOCI told the Committee:

It is not operating in accordance with the expectations that we were given by Soft Star...APSC put out a press release...saying that they were going through a period of refurbishment, seeking various contracts, etcetera, and that they would have the Resort restored to the full operating capacity of its glory days within 12 to 18 months. To my knowledge, no contracts have been let for any refurbishment project. We observe what goes on at the wharf; nothing has been imported. There is no evidence that Soft Star have carried out the work that they said they would do within 12 to 18 months...On 5 May it will be a year since Soft Star took

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38 SOCI, *Hansard*, p. 109.

39 PPB Ashton Read, Submission No. 7, p. 731.

possession of the property, and we have not seen any work out there at all.

- 5.65 The Christmas Island Chamber of Commerce also commented to the Committee that although it was satisfied with both the conduct of the tender process and the sale of the casino and resort to Soft Star, it was concerned that work was yet to begin on the refurbishment of the complex.

The Chamber is concerned that the resort has not yet reopened (notwithstanding the low-key bed and breakfast arrangements currently in place) and nor is there any indication that the resort is likely to re-open in the near future. Further, we understand that no application for a casino licence has been made.<sup>40</sup>

- 5.66 Mr Ed Turner, a local businessman on Christmas Island, told the Committee:

There is a question about their accountability to this community. They made undertakings to this community that, within 12 to 18 months, they would have this resort up and operating. It is now...all but 12 months since the purchase, and nothing has happened. The community is quite rightly peeved that this is the case.<sup>41</sup>

- 5.67 Former Shire President, Mr Dave McLane, commented that in his belief, if Soft Star 'were fair dinkum, they would be applying for casino licences and liquor licences and they would have some restaurants up and running – that sort of thing, but none of that has happened'.<sup>42</sup>

- 5.68 The UCIW also told the Committee:

The UCIW is not satisfied that the current owner will deliver on his own commitment to have the resort return to its previous level of activity, after a period of refurbishment. There are fewer than five employees engaged in work at the Resort compared to 320 prior to closure in April 1998. At December 2000 there was no evidence that refurbishment has even been considered.<sup>43</sup>

- 5.69 In response, Soft Star have argued that a number of economic and commercial factors have prevented them from pursuing the refurbishment and re-opening of the casino and resort.

- 5.70 In his submission the Managing Director of Soft Star, Mr Kwon, stated:
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40 CICC, *Hansard*, pp. 177-178.

41 Mr Ed Turner, *Hansard*, p. 166.

42 Mr Dave McLane, *Hansard*, p. 153.

43 UCIW, Submission No. 1, p .4.

Soft Star purchased the resort as a strategic investment, and as a complementary element of the satellite launching facility proposed for Christmas Island by Asia Pacific Space Centre...

From the time of Soft Star taking possession of the resort it has been open for guests. It is not making profits at this time. The reasons for this include there being currently few visitors to Christmas Island, alternative accommodation that is more appropriate to the requirements of current visitors, and limited air links. Current airport facilities including runway are restrictive. Existing air services to Christmas Island are expensive and low volume.<sup>44</sup>

5.71 Mr Kwon also informed the Committee that:

Soft Star engaged lawyers at the beginning of this year to resolve the Liquor Licence for the Resort. This has been a lengthy process and is now close to being resolved. There is no use applying for a Casino Licence until the air-transport issue has been resolved and the casino could operate profitably.<sup>45</sup>

5.72 DoTRS informed the Committee that Mr Kwon had written to the Minister on 24 November 2000, reiterating his intention to refurbish and re-open the casino and resort. With regard to a timetable for the intended re-opening of the casino and resort, Mr Kwon told the Minister:

It would be financially irresponsible to provide such services (full resort and casino services) at this time, when there are relatively few people interested in visiting Christmas Island and when air links with the Island are limited and expensive and airport facilities including the runway restrictive.<sup>46</sup>

5.73 Mr Frank Woodmore told the Committee that in the context of the liquidation, the sale of the casino and resort to Soft Star was, ultimately, more beneficial for the creditors of CIR than for the Island community.

The fact is that he paid more for the property than anybody else, so from the creditors' point of view it was probably as good a deal as they were ever going to get. It may not have been the best deal for the people on the Island. Of course, one of the tragedies of this is that Kwon certainly gave indications – you have seen the press statement – that he intended to get the resort up and running.

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44 Soft Star, Submission No. 2, p. 8.

45 Soft Star/APSC, Submission No. 13, p. 1428.

46 DoTRS, Submission No. 4, p. 21.

Perhaps he had not realised the full implications of what that required.<sup>47</sup>

5.74 The Committee heard evidence, however, that Mr Kwon had been fully aware of the economic conditions on the Island before he purchased the facility, and that these issues should have already been taken into account.

5.75 SOCI commented to the Committee:

In terms of air services he has an argument...Everybody knows air services are vital and appropriate air services include services to the north which are regular passenger transit services...But I think he is piggybacking on a community issue and I do not see any attempt by him to make the resort work. We do have a community airline, which functions very well.<sup>48</sup>

5.76 Mr McLane also commented:

For Mr Kwon to now be saying, some 12 months after purchasing the establishment, 'I got sold a pup because there are no flights in and out of the Island and I can't get the thing up and running' is a mere excuse...Mr Kwon has had involvement here for probably the last four years – I cannot remember exactly, but it would be more than three. He knows the situation. He regularly charts aircraft to come in and out because the aircraft situation is so bad.<sup>49</sup>

5.77 Mr Kwon of Soft Star told the Committee that he had been engaged in discussions with airline service providers as part of a broader strategy to contract an operator for the casino and resort.

5.78 The Committee was informed that Soft Star has conducted preliminary discussions with casino and resort operators, as well as with a number of air services providers, with a view to confirming a casino operator.

It has always been Soft Star's intention to engage a hotel/casino operator for the Resort/Casino as soon as an air transport provider could be confirmed. After Soft Star purchased the Resort/Casino on 5 May 2000 we engaged International Casino Services Pty Ltd [ICS] to conduct a feasibility study of reopening the casino. On 7 August 2000 we received from ICS a report outlining the profit and loss projection and capital requirements and return on investment assessment. After receiving this preliminary report we began discussions with several casino

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47 Mr Frank Woodmore, *Hansard*, p. 104.

48 SOCI, *Hansard*, p. 118.

49 Mr McLane, *Hansard*, p. 144.



operators in order to determine their interest in performing the role of casino operator.<sup>50</sup>

5.79 However, Soft Star subsequently stated that interest in the Christmas Island Casino and Resort by resort operators had been minimal.

5.80 The Committee heard evidence from ComsWinfair that following the apparent failure of negotiations with the Commonwealth and the Liquidator during the tender process, the consortium initiated discussions with Soft Star regarding the possibility of a joint venture in the operation and management of the casino and resort.

5.81 ComsWinfair stated that in discussions with Mr Kwon it emphasised that it could both accommodate his staff requirements and provide an airlift service. On 9 February 2001 ComsWinfair forwarded Mr Kwon a management proposal for the operation of the casino and resort.

The significance of that document is that there was a clear undertaking given...that Winfair would provide an airlift or aviation to the Island at cost, but it thought that it would probably best do this by providing a 727 aircraft. Such an aircraft can be fitted with between 60 and 120 seats, depending on the nature of the passengers it is carrying. Such an aircraft, I understand, has a cargo capacity that is sufficient not only for the resort but for the Island as a whole.<sup>51</sup>

5.82 The Committee notes further comments made by Mr Mortleman:

I submit, in support of Winfair's very sincere wishes and objectives to get the project going as a substantial resort project, that they are a very substantial resort management and development company. They are also a very substantial aviation company. It would be unusual in the extreme to find a combination of those skills in any one organisation, let alone an organisation that was prepared to apply those skills to the benefit of Christmas Island.<sup>52</sup>

5.83 The Committee heard, however, that negotiations between Soft Star and ComsWinfair have been limited. Mr Mortleman stated:

We have made all the approaches. We have issued all the correspondence. The responses have been, quite frankly, not commercial, because the level of response and the quality of

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

51 ComsWinfair, *Hansard*, p. 196.

52 ComsWinfair, *Hansard*, p. 196.

response is such that no professional commercial person would bother following through on it.<sup>53</sup>

- 5.84 The Committee is disappointed that at the time of this report no discussions have been finalised between Soft Star and a reputable casino and resort operator, or for the provision of air services.

### The role of the Commonwealth

- 5.85 The Committee heard evidence questioning whether the Commonwealth had more of a responsibility to pursue the refurbishment and re-opening of the casino and resort.

- 5.86 The Committee was told by the Liquidator that:

My obligation as Liquidator was to maximise the proceeds from the sale of the assets, including the Casino and the Resort or both. It was not a condition of the assignment of the crown leases to the eventual purchaser by the Commonwealth that the purchaser conduct specific operations at the Casino and resort.<sup>54</sup>

- 5.87 The Committee was informed that a number of organisations on the Island have written to the Minister, seeking clarification on what usage of the facility Soft Star is permitted and whether any sureties have been sought by the Commonwealth regarding the re-opening of the casino and resort.

- 5.88 DoTRS told the Committee:

In correspondence between the Minister and Mr Kwon specific questions were put in relation to the timetable for the reopening of the casino and the response received at all times from them was that their intention was to operate a casino and resort; however, that would be very much dictated by the financial situation and the viability at that time...I suppose the essence of it is, we cannot dictate whether the investment opportunity is there. That is a commercial decision that Mr Kwon must make.<sup>55</sup>

- 5.89 However, the Christmas Island Chamber of Commerce argued that the Commonwealth has a responsibility actively to pursue the re-opening of the casino and resort:

We would like to see the Government be pro-active in exploring avenues for this facility to reopen. It is insufficient to stand back and say 'this is a commercial operation and the Government has no role to play'. The Chamber would like to see Commonwealth

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53 ComsWinfair, *Hansard*, p. 200.

54 PPB Ashton Read, Submission No. 7, p. 84.

55 DoTRS, *Hansard*, p. 223.

approaches be made to Soft Star Pty Ltd to negotiate on, define and fast track such issues as -

- the conditions pertaining to the issuing of a Casino Licence;
- the conditions pertaining to taxation, and particularly Gaming Tax Rates; and
- the conditions pertaining to a Community Benefit Fund.<sup>56</sup>

5.90 The Committee notes a recent announcement by Mr Kwon on 23 June 2001 regarding the satellite launching facility. A media release issued by the Minister on the same day stated:

I am also very pleased that Mr David Kwon, APSC's Managing Director, has today announced he will reopen the Christmas Island resort.<sup>57</sup>

5.91 The Committee welcomes the announcement. However, concerns regarding a proposed timetable for the refurbishment and re-opening of the casino and resort remain unresolved.

5.92 The Committee notes that the re-opening of the casino and resort is beyond the jurisdiction and responsibility of Mr Herbert in his capacity as Liquidator for CIR. However, the Committee believes that it was the responsibility of the Commonwealth to do everything within its power to ensure that the facility would be utilised as a casino and resort after it was sold.

5.93 The Committee believes that the Commonwealth consequently has a clear responsibility to initiate discussions with Soft Star regarding the development of a timetable for the refurbishment and re-opening of the casino and resort.

## **Application of background and probity review**

5.94 The Committee heard evidence that, as a result of the abandonment of the tender process and the cash unconditional sale of the casino and resort to Soft Star, there was some concern that Soft Star had not been subject to the same rigorous conditions and checks as parties within the tender process.

5.95 When Mr Herbert was appointed Liquidator for the casino and resort he deliberately chose to conduct the sale of the assets through a tender process, so as to ensure that financial and probity checks would be built in to the sale process.

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<sup>56</sup> CICC, *Hansard*, p. 178.

<sup>57</sup> Media Release: Minister for Regional Services, Territories and Local Government, *Christmas Island Has a Future*, 23 June 2001.

5.96 As discussed in Chapter Three, upon appointment as Receiver and Manager, the Liquidator commissioned Jones Lang Wootton (JLW) to act as agents to realise the casino and resort. JLW recommended the tender process as the most efficient method of sale for the property, as it allowed for the establishment of a timetable to market the assets both in Australia and internationally. In his submission the Liquidator stated:

In particular, the tender process could also be structured so as to facilitate the inclusion of a time period for the granting of a Casino Licence to the successful tenderer (Probity Review).<sup>58</sup>

5.97 On 19 January 1999 Mr Herbert met with representatives of the Casino Surveillance Authority (CSA) to ascertain how long the probity review would take and what information potential purchasers of the casino and resort would need to provide to expedite the probity review.

5.98 On 20 January 1999 the CSA wrote to the Liquidator and stated that the probity review would take three months if the purchaser had been involved in the Australian gaming industry previously, and therefore previously investigated by an Australian jurisdiction, or six months if the purchaser had not previously been involved in the gaming industry in Australia.

5.99 The CSA also stated that, for the purposes of the probity review, it would require the following information:

- the name of the company, its directors and where it is incorporated;
- the structure of the company and any affiliated companies; and
- financial statements for the past three years.<sup>59</sup>

5.100 The Committee was also told by Mr Rodger Mortleman of ComsWinfair that the probity review entailed:

An entire check done through the organisational structure, down to the beneficial owners of an interest in a casino and its operation. I guess that is on two fronts: firstly, anyone with a position of influence on the property and its operation has to pass probity checks and anyone who holds more than five per cent interest in a casino project is regarded in Australia as a person of influence. The probity checks involve a number of things: firstly, the submission of very detailed records on all your previous financial transactions, personal positions held, etcetera...It also involves checks that are

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58 PPB Ashton Read, Submission No. 7, p. 51.

59 Annexure 19, PPB Ashton Read, Submission No. 7, p. 396.

conducted...through the Federal Police, through Interpol, into individual's backgrounds.<sup>60</sup>

5.101 The Committee notes that the probity review, as incorporated in to the tender process, also served the additional function of ensuring that any company investing in the Christmas Island Casino and Resort would have all necessary background and financial checks thoroughly conducted, prior to assignment of the leases by the Commonwealth.

5.102 The Liquidator told the Committee:

We really aborted the tender process around February 2000 and decided we would try and sell. If we could obtain an offer for the assets on an unconditional basis, we would do that. In other words, we would sell it to someone who then took on the risk as to whether or not a casino licence was issued to them.<sup>61</sup>

5.103 The Committee notes, however, that the decision to sell unconditionally may also have constituted a risk to both the Commonwealth and the Christmas Island community, as to whether or not the purchaser would be able to satisfy the conditions of the probity review.

5.104 When asked if the Department had any knowledge of the financial background of the purchaser of the casino and resort, DoTRS commented:

It was obviously a matter for the Liquidator to be satisfied that the persons to whom he was selling the casino resort had the finances to pay. That was a matter for him and he did not comment on that in his submission. In the approval to transfer the lease over, one of the requirements was that the person be financially capable of operating. That was settled with the Liquidator as part of the lease transfer...we were not involved in any of those issues.<sup>62</sup>

5.105 DoTRS further informed the Committee:

Matters such as the financial status of the potential purchasers were matters for the liquidator in accordance with his legal responsibilities. No checks of Directors of any tenderers were conducted by the Commonwealth. As part of standard lease transfer procedures Soft Star Pty Ltd was required to satisfy the Commonwealth that it had sufficient financial means to enable it to perform its obligations under the leases...<sup>63</sup>

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60 ComsWinfair, *Hansard*, pp. 203-204.

61 PPB Ashton Read, *Hansard*, p. 67.

62 DoTRS, *Hansard*, p. 211.

63 DoTRS, Submission No. 15, p. 1459.

- 5.106 The Committee notes that for the Liquidator, however, the emphasis was on ensuring that the purchaser had sufficient capital with which to purchase the assets, not that they were capable of operating the facility as a casino and resort. In assigning the leases over to the new owner, however, the letter formally approving the transfer by the Administrator states:

CIR satisfies me that Soft Star Pty Ltd has sufficient financial means and is able to perform its obligations as the lessee of the above Crown Leases.<sup>64</sup>

- 5.107 The Committee was concerned that, with the termination of the tender process and the sale of the casino and resort on a cash unconditional basis, no probity checks were conducted on the ability of the purchaser to 'perform its obligations as the lessee' of the casino and resort.

- 5.108 This concern was reinforced by further evidence provided by the Liquidator. Mr Herbert advised the Committee:

In reference to the comments made by the Department of Transport and Regional Services...regarding financial checks conducted by the Liquidator to determine that the purchaser was financially capable of operating the resort, I advise that no such financial checks were performed by me.<sup>65</sup>

- 5.109 The Committee was informed that on 2 May 2000 the Liquidator wrote to the Australian Government Solicitor, advising that 'on the basis of Soft Star's prompt payment of a deposit in the amount of \$570,000 and the payment at settlement of the purchase price of \$5.13M' he had 'no reason to doubt its capacity to meet its obligations under the assigned leases'.<sup>66</sup> However, the Liquidator further stated:

It was not my concern that the purchasing party had the financial capacity to operate a casino or resort, rather it was my concern that the purchasing party had the financial capacity to pay the purchase price on the terms contracted.<sup>67</sup>

- 5.110 The Committee also heard varying evidence on what actually constituted 'the obligations of the lessee'. In a letter written to UCIW on 25 May 2000 the Minister wrote:

The transfer of the leases held by Christmas Island Resort Pty Ltd for the resort and staff accommodation to Soft Star Pty Ltd has

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64 Annexure 71, PPB Ashton Read, Submission No. 7, p. 715.

65 PPB Ashton Read, Submission No. 14, p. 1445.

66 PPB Ashton Read, Submission No. 14, pp. 1446 and 1454.

67 PPB Ashton Read, Submission No. 14, p. 1446.

been approved by the Commonwealth. The purpose clause in the resort lease states that the premises are to be used only for a “hotel/casino and ancillary thereto...”. A change in use would require the approval of the Commonwealth.<sup>68</sup>

- 5.111 The Committee notes, however, that in a similar letter of 29 November 2000, the Minister wrote:

The terms of the lease permit Soft Star to use the site for a hotel/casino and ancillary purposes. This means that the lessee is allowed, but not required, to operate a hotel/casino. Whilst the lease is current the lessee cannot change the use without the Commonwealth’s approval.<sup>69</sup>

- 5.112 The Committee queried the change in emphasis with the Department. DoTRS stated that:

It is a clarification. It is not a change. The nature of the lease is such that the use that is allowed is as a resort casino and ancillary thereto, but we cannot compel somebody to use it for those purposes.<sup>70</sup>

- 5.113 The Committee is concerned that the Commonwealth has left itself with no means with which to ensure that the facility will be used as the casino and resort for which it was intended, aside from withdrawing the lease in its entirety.

- 5.114 This is especially pertinent in the light of community concerns regarding the sale of the casino and resort with no agreement in place detailing a timetable for the refurbishment and re-opening of the complex, no revisions to the lease and no application for a casino licence lodged with the CSA by Soft Star.

- 5.115 DoTRS told the Committee:

On the question of a casino licence, yes, there was an expectation on our part that a successful bidder would apply for a casino licence. However, we do not have the power to compel somebody to apply for a casino licence. We have an expectation that they will, but we are absolutely without the powers to compel them to do so.<sup>71</sup>

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68 UCIW, Exhibit 3. SOCI, Exhibit 2.

69 UCIW, Exhibit 3.

70 DoTRS, *Hansard*, p. 229.

71 DoTRS, *Hansard*, p. 223.

## Conversion from leasehold to freehold

- 5.116 The Committee heard evidence that members of the Christmas Island community are concerned about the proposal to convert the leases for the casino and resort from leasehold to freehold, particularly within the context of those concerns referred to above.
- 5.117 On 17 May 1989 the Commonwealth issued a 99-year Crown lease to CIR, at a peppercorn rental of 5 cents per annum if and when demanded. At the time of the tender process there was an unexpired term on the lease of approximately ninety years.
- 5.118 The leasehold title for the casino and resort was the first private title issued on Christmas Island and is appropriately recorded as Lot 1. At the time the lease was issued there was no land administration system on the Island, so the Commonwealth drafted its own titles, all of which were granted on a 99-year lease. All residential leasehold titles were convertible to freehold titles.<sup>72</sup>
- 5.119 The Liquidator first raised the possibility of converting the leases from leasehold to freehold in a letter to DoTRS on 28 October 1998.

I note that the Commonwealth has recently adopted the policy of sale by freehold title for residential properties, whether owner-occupied or subject to a tenancy.

Accordingly I request consent to convert these titles (except the casino site) from leasehold to freehold. Outside the ACT, buyers and lenders are cautious of leasehold titles and the freeholding of these titles is expected to yield a better result when the properties are put to sale.<sup>73</sup>

- 5.120 Mr Frank Woodmore told the Committee that he had encouraged the Liquidator to pursue a conversion of the leases from leasehold to freehold.

I had been trying to get the board of CIR to negotiate for a long time. The benefit in getting a freehold title was that the advantages of getting finance against it are much more readily available...so I thought that if areas such as the water supply, a road called Linkwater Road and an area of rainforest were excised from the title, this would be an attractive deal for the Commonwealth to allow it to convert to freehold.<sup>74</sup>

- 5.121 On 30 August 1999 the Minister wrote to the Liquidator stating:

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72 Annexure 16, PPB Ashton Read, Submission No. 7, p. 386.

73 Annexure 10, PPB Ashton Read, Submission No. 7, p. 352.

74 Mr Frank Woodmore, *Hansard*, pp. 90-91.



A conversion of the leases held by CIR to freehold at an appropriate time in the tender process is acceptable to me. The price of the conversion to freehold would be ascertained by a valuation conducted by the Australian Valuation Office or other valuer.<sup>75</sup>

5.122 Promotional material prepared by the Liquidator subsequently stated that 'earlier 99-year leases may be converted to freehold upon application'.<sup>76</sup>

5.123 From the perspective of a potential purchaser, Mr Mortleman of ComsWinfair told the Committee:

We were not at all unhappy to proceed on a leasehold basis...Had we in future had the opportunity to undertake further developments on the site – some of those might have been condominium type residential developments – we would have preferred a freehold situation for those because they sell better.<sup>77</sup>

5.124 The Committee was informed that on 10 July 2000 Soft Star wrote to the Minister seeking to purchase the freehold of the land covered by the resort lease. Mr Kwon told the Committee that although Soft Star could operate as a leaseholder, it would prefer freehold. Mr Kwon said that he believed freehold title would give more value to the property, and would also facilitate talks with potential commercial investors or operators for the casino and resort complex.<sup>78</sup>

5.125 DoTRS stated that:

The Minister has responded that the Government would be favourably inclined to grant such an application subject to a number of issues being resolved including the need for the Casino to be operational before any change to the land title. The Minister's power to grant freehold titles in respect to Crown Land is set out in the *Land Administration Act 1997 (WA) (CI)*.<sup>79</sup>

5.126 On 9 February 2001 the Minister issued a media release stating:

He was happy to consider any application from leaseholders on Christmas Island for conversion of their lease to freehold...

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

76 Annexure 22, PPB Ashton Read, Submission No. 7, p. 430.

77 ComsWinfair, *Hansard*, p. 198.

78 Soft Star, *Hansard*, pp. 37-38.

79 DoTRS, Submission No. 11, p. 1219.

I indicated to the new owners of the Resort that I would be prepared to consider converting the leasehold to freehold, after the Resort and Casino was fully operational.<sup>80</sup>

5.127 The Committee heard evidence of mixed views among members of the Christmas Island community in response to proposals to convert the lease of the casino and resort to freehold.

5.128 The Shire of Christmas Island stated in its submission that it was 'opposed to a change in land tenure from leasehold conditions determined by the Minister to freehold title' as is currently being considered.<sup>81</sup> SOCI stated:

If freehold title is granted, it is our view that the Commonwealth and therefore this community would have no power to determine the appropriate uses for this prime island asset. It is totally unacceptable to our community, as I have said, that that should happen.<sup>82</sup>

5.129 SOCI also argued that Mr David Kwon of Soft Star had not been receptive to community consultation or community concerns affecting the casino and resort. SOCI felt that with the conversion of the leases to freehold there would be even less incentive for Soft Star to engage in effective community consultation.

The message we are getting from Kwon...is that he is not even interested in effectively communicating with this community, so why would you hand him freehold title?<sup>83</sup>

5.130 The UCIW stated that although it recognised that the collateral value of freehold for commercial land would be greater than leasehold, the UCIW was also concerned that loss of direct control by the Commonwealth would impact negatively on the community's ability to influence the use of the casino and resort.

I would think most people on Christmas Island would be opposed to freehold title being granted to Mr Kwon. I think there is a great deal of disquiet about where he is going.<sup>84</sup>

5.131 However, the Committee also heard evidence from a number of witnesses who commented that they could understand the commercial rationale behind Soft Star's request to convert the leases to freehold title.

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80 Media Release: Minister for Regional Services, Territories and Local Government, *Christmas Island Land Issues*, 9 February 2001, Exhibit 6.

81 SOCI, Submission No. 6, p. 30.

82 SOCI, *Hansard*, p. 110.

83 SOCI, *Hansard*, p. 112.

84 UCIW, *Hansard*, p. 132.

- 5.132 Mr Frank Woodmore told the Committee that in Western Australia freehold title is much more commercially attractive.

WA is very much freehold oriented and the banks here are very much freehold minded. Once you combine the doubt the banks have about leasehold land with a remote location such as Christmas Island, and throw into the equation a casino which depends on Indonesia, you are not going to get much money out of them.<sup>85</sup>

- 5.133 Mr Ed Turner also commented to the Committee that freehold land was more commercially attractive than leasehold in Western Australia.

The perception from the banker is: 'You do own something, but the problem is the Commonwealth can take it all away from you with just one letter. And you want me to lend money on that? Theoretically, not only don't you own the land, you don't even own the buildings on the land...It might be a 99-year lease but it is not freehold: we don't own it.'<sup>86</sup>

- 5.134 In evidence to the Committee, the Christmas Island Chamber of Commerce stated that it believed Soft Star should be allowed to convert the title of the property from leasehold to freehold. The CICC argued that:

Soft Star should be given every opportunity and support to enable it to make further capital investment as required to allow it to increase revenue streams to make business viable...Soft Star Pty Ltd [should] immediately [be] given freehold title to the property to allow it to both raise the capital at a competitive rate and to provide a lender with the necessary collateral security.<sup>87</sup>

- 5.135 The Committee notes that other land on the Island has been converted to freehold. The UCIW informed the Committee that 'the direct sales scheme of housing to long-term residents occurred as leasehold initially but residential housing has been freeholded over a period of time'.<sup>88</sup>

- 5.136 Mr Ed Turner told the Committee:

When land was first sold here, it was sold as leasehold land. The community had to fight to get residential land converted to freehold. Then we had to fight to get industrial land converted to freehold. And now we have the big developers who are fighting to get freehold on theirs.<sup>89</sup>

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85 Mr Frank Woodmore, *Hansard*, p. 100.

86 Mr Ed Turner, *Hansard*, p. 169.

87 CICC, *Hansard*, p. 178.

88 UCIW, *Hansard*, p. 124.

89 Mr Ed Turner, *Hansard*, p. 169.

5.137 The Committee recognises, however, that different concerns must be taken into account when examining the freeholding of the Christmas Island Casino and Resort. The casino and resort played a pivotal role in the development of the Christmas Island economy. Continuing concerns over Soft Star's lack of progress in fulfilling its own stated intention to refurbish and re-open the facility must also be taken into account.

5.138 Mr Thomson of SOCI told the Committee that the Shire did not believe that leasehold title would inhibit further development of the site, but that conversion to freehold would prevent the community and the Minister from exercising some form of control over economic development on the Island.

I do not think you need to have freehold title to make an application to the Minister or to the shire...I do not think that any reasonable authority wanting to see economic development in this place would be putting anything in the way of someone who is trying to develop it as a tourist facility. We are saying that you remove the power of the Minister and, therefore, of this community when you freehold – he does what he likes or he does nothing.<sup>90</sup>

5.139 The Committee recognises that the issue of freehold title must be placed within the broader community context of land tenure arrangements.

5.140 In 1995 the Commonwealth Grants Commission (CGC) stated that the issue of tenure arrangements, under which potential investors on Christmas Island were offered land, needed to be addressed. The CGC stated in its report that:

These need to be commercially viable in the context of the requirements financial institutions impose on projects on Christmas Island. In this regard...financial institutions place different asset requirements on businesses establishing themselves on Christmas Island. While we see this could be a difficulty, we also have some concerns with the prospect of freehold title 'locking up' serviced land because the owners choose not to develop it according to the time frame favoured by the wider community.<sup>91</sup>

5.141 However, the Committee is aware that where land has been converted to freehold from a leasehold interest in Crown land, it may take a restricted form of freehold, or 'conditional purchase', where ministerial or executive consent may be required for certain dealings with the land.

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90 SOCI, *Hansard*, pp. 111-112.

91 Commonwealth Grants Commission, *Report on Christmas Island Inquiry*, 1995, p. 77.

- 5.142 Section 15 of the *Land Administration Act 1997 (WA) (CI)* allows the Minister to register covenants on Crown land that run with the land after it has become freehold and are enforceable against successors in title. Any covenant registrable under subsection 3 may be a positive or restrictive covenant, and 'may impose an obligation on the covenantor to be performed to the satisfaction of the Minister, a State instrumentality or a local government'.<sup>92</sup>
- 5.143 The Committee heard evidence from DoTRS that a freehold title could be issued with conditions and covenants attached but that this option had not been explored in any great detail as discussions between Soft Star and the Minister were still in the preliminary stages.
- Were it to be pursued, there are various avenues available, through contracts or through covenants on title and the like, which give some comfort for what you want to see done. I do not think we have reached consideration of this point in discussions at all. We are very much at the preliminary stage.<sup>93</sup>
- 5.144 The Committee considered that it may be possible to accommodate the concerns of all sections of the community under such an agreement.

### **Community consultations on the issue of freehold title**

- 5.145 Owing to the broader community context of this issue, the Committee was concerned at a general lack of community consultation through local authorities on the Island, on the subject of the transfer of the leases for the casino and resort from leasehold to freehold.
- 5.146 The Committee questioned DoTRS on the level and nature of community consultation on the proposed conversion of the leases to freehold. DoTRS told the Committee that it was 'not aware' of any formal discussion by the Government, the Department or the Administration on Christmas Island with the community on that matter. However, the Department did add that 'a number of elements of the community have certainly written to the Minister, making their views known in relation to this matter'.<sup>94</sup>
- 5.147 The Committee notes that informal discussions took place with members of the Shire of Christmas Island and the Minister after the issue was raised during a ministerial inspection of the Island in July 2000. An itinerary was circulated prior to his visit, which referred to a discussion about freehold title being granted for the Christmas Island Casino and Resort lands.<sup>95</sup>

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92 Section 15, *Land Administration Act 1997 (WA) (CI)* [www.austlii.edu.au](http://www.austlii.edu.au)

93 DoTRS, *Hansard*, p. 21.

94 DoTRS, *Hansard*, p. 22.

95 UCIW, Submission No. 1, p. 4.

- 5.148 SOCI told the Committee that at a meeting on 18 July 2000 between the Shire and the Minister, SOCI had asked the Minister what his position was in regard to granting freehold of the lease to Soft Star.

The question put to the Minister was: if you freehold the land tenure at the resort, does that mean the resort operator and owner, Soft Star, is then free of obligations under the previous lease arrangements? He did not answer the question. It is our view that that would be the case.<sup>96</sup>

- 5.149 Former Shire President, Mr Dave McLane, also told the Committee that no formal discussions were held with the Commonwealth regarding transfer of the leases to freehold, 'until we raised that question directly with the Minister at a meeting...at the shire office during his last visit' in July 2000.<sup>97</sup>

- 5.150 The Shire of Christmas Island subsequently wrote to the Minister on 2 August 2000, asking for confirmation of the Commonwealth's position on this matter. In this letter SOCI stated:

The community is alarmed at the prospect that there is no requirement on the owners to use the land and buildings for the purposes of a resort casino.

When the original 99 year lease was granted it was conditional upon the land being used for the purposes of a resort casino. This is now apparently going to be overturned by the simple granting of a freehold title.<sup>98</sup>

- 5.151 The Minister replied on 12 September 2000:

The purpose clause in the resort lease states that the premises are to be used only for a 'hotel/casino and ancillary thereto...'. Under this clause it is permissive not mandatory for the lease to operate a casino. A change in use would require the approval of the Commonwealth...<sup>99</sup>

- 5.152 The Minister also added that 'details of negotiations with Soft Star Pty Ltd on the issue of freehold title are commercial-in-confidence'.<sup>100</sup>

- 5.153 SOCI wrote again on 4 October 2000, asking the Commonwealth if it was intending to transfer freehold title to Soft Star:

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96 SOCI, *Hansard*, p. 109.

97 Mr Dave McLane, *Hansard*, p. 159.

98 DoTRS, Submission No. 11, p. 1391.

99 DoTRS, Submission No. 11, p. 1390.

100 DoTRS, Submission No. 11, p. 1390.

The community does not support such a transfer...The community does not support the property being divided or strata titled or used for other purposes...

Why are your negotiations commercial-in-confidence? There is no one else that can seek a freehold title and applications for freehold title from a 99-year lease are lodged with the public office of the Commissioner of Titles. Is Soft Star going to be paying the Commonwealth a significant sum for the transfer of the freehold title? What is that sum and will it be used to compensate the community for the loss if the resort casino facility or is it going into consolidated revenue?<sup>101</sup>

5.154 On 6 November 2000 the Minister replied:

Negotiations between officers of my Department and Soft Star are continuing. The decision to permit or refuse Soft Star to purchase the freehold title of the resort lease will be made in accordance with the *Land Administration Act 1997 (WA) (CI)* following the outcome of those negotiations.<sup>102</sup>

5.155 The Committee is concerned that the Commonwealth has not been more active in addressing the concerns of the Christmas Island community, and has not involved the Shire of Christmas Island in the negotiation process.

5.156 The Shire of Christmas Island told the Committee:

There is no basis for the Minister to make that land freehold – none at all. In fact, it is the Shire’s view that those land issues should not be determined by the Minister without the agreement of the Shire.<sup>103</sup>

5.157 The Committee heard evidence from the Department that negotiations were continuing between the Commonwealth and Soft Star.

There have been a number of discussions, as I understood. The most recent was in a meeting some weeks ago between Mr Kwon and the Minister where the issue was raised again, where the Minister again reaffirmed his position that he would be prepared to consider a transfer to freehold, subject to evidence that there is an intention to reopen the casino resort, and that is where the matter still lies.<sup>104</sup>

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101 DoTRS, Submission No. 11, p. 1389.

102 DoTRS, Submission No. 11, p. 1392.

103 SOCI, *Hansard*, p. 117.

104 DoTRS, *Hansard*, p. 224.

## Summary

- 5.158 The Committee believes that when the Christmas Island Casino and Resort was first put to tender there was a common expectation between the Commonwealth, the Liquidator and the Christmas Island community, that the facility would be refurbished and re-opened as a casino and resort.
- 5.159 The Committee consequently welcomes all announcements by Soft Star that it has purchased the facility with the intention of operating a casino and resort, and supports any action to realise the re-opening of the facility.
- 5.160 However, the Committee remains concerned that as far as it is aware no timetable for the refurbishment and re-opening of the complex has been agreed upon. The Committee is also concerned that no contract has been finalised between Soft Star and an operator and manager for the facility, or between Soft Star and an air services provider.
- 5.161 Within this context the Committee understands that the Commonwealth has no ability to compel the owner of the facility to use it for the purpose of a casino and resort.
- 5.162 The Committee also recognises that, in comparison to freehold title, leasehold title may generate some commercial difficulties for the new owners of the facility, thereby inhibiting any further development. Under such circumstances the Committee believes that a conditional form of freehold title would be appropriate for the needs and concerns of Christmas Island.



**Recommendation 3**

**The Committee recommends that the Commonwealth seek to finalise and implement an operational agreement with Soft Star Pty Ltd to replace the original agreement previously in place with CIR. The Committee further recommends that items specified within the new agreement include:**

- **details of any proposed companies that may be contracted for the management and operation of the casino and resort;**
- **a timetable for the refurbishment and re-opening of the casino and resort, if that is the direction of Soft Star; and**
- **an administrative framework for the operation of the casino, including a gaming tax rate, Community Benefit Fee and a jurisdiction for any applicable casino control legislation.**

**Recommendation 4**

**The Committee recommends that conversion of the Crown leases of the resort from leasehold to freehold title be pursued, provided that the Commonwealth undertake the following:**

- **a formal consultation process with the Shire of Christmas Island; and**
- **incorporation of community concerns, where practicable, into the application of certain covenants and conditions on the freehold title, as is commercially appropriate, in order to ensure that the property may be used as a casino and resort and ancillary thereto.**

**Recommendation 5**

**The Committee recommends that, in the conduct of all future tender processes on the Island, the Commonwealth take active steps to ensure that all necessary financial and probity checks are comprehensively conducted before agreeing to the assignment of Crown leases.**