MINORITY REPORT BY SENATORS CARR, REYNOLDS AND WHEELWRIGHT

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PREAMBLE

1.1 Except for the recommendation that women's soccer interests be adequately represented at national level and be effectively incorporated within new administrative arrangements, Government Senators disagree very strongly with the findings and recommendations of this report, for the same fundamental reasons as set out in their minority report of the Committee's First Report of June 1995.

1.2 As stated in that report, Government Senators believe that this inquiry was unnecessary, because Soccer Australia has undertaken, of its own volition, a major administrative reform process under a new Board and management team, who have begun to implement an energetic five year plan.

1.3 This inquiry can take little credit for changes which have taken place in soccer, the need for which had been recognised long before the inquiry was established. The changes such as abolition of player transfer fees were not necessarily the result of the Committee's work, but came from the pressure and negotiation of the players' union, the Australian Soccer Players' Association (ASPA). Where there are changes in soccer administration they will occur despite this inquiry rather than in response to its recommendations.

THE ISSUE OF CIVIL LIBERTIES

1.4 The inquiry, as far as the Government Senators are concerned, was not a party political matter, but entirely an issue of civil liberties and the proper use of a Senate committee. The Government, or Labor Party, interests have not been, in any way, challenged, but the same cannot be said for the good reputation and standing of at least 79 citizens adversely named in the Committee's proceedings. The inquiry has been a clear case of a situation where politics and sport do not mix.

1.5 Sensationalised claims make good media stories, but unfounded allegations and malicious rumours have made persons prominent in soccer the object of public vilification for which there is no effective redress.

1.6 We should not confuse the "public interest" with the partisan political advantage of individual politicians.

1.7 Moreover, the current inquiry has provided an opportunity for the airing of many unfounded or unsupported allegations against persons prominent in soccer. At just one *in camera* hearing, in a transcript comprising no more than 23 pages, 36 persons were named. In public hearings, many people were named in contexts unfavourable to their good name.

1.8 The Chairman of the ASF, Mr David Hill, said in evidence on 7 April 1995:

> The mud sticks in these things. Just because people have an axe to grind and have a version of events, I do not think that constitutes grounds for sacking a national coach. It is a very difficult question. You have it; and when you finish your report, we will have it. As well as making decisions in the best interests of soccer, I think we have to have significant regard for the rights of individuals who may have been wronged in this.... In the end, my Board colleagues and I will have to act in a way we think serves the best interests of soccer. I have some regard—as I am sure my Board colleagues do—for the integrity of evidence. Really, Senator, you would have to agree that there are people who have appeared before this Committee who have said the most outrageous things based on what they have heard... Or they have repeated some rumour they are familiar with. The people who have been branded have not been charged with any offence and have not had the opportunity to say anything.

1.9 There was continual mention made by witnesses during the course of the Committee's inquiry of possible commission of serious crimes by persons connected with soccer, including non-payment of tax on significant international transfer fees; alleged bribes to ensure permanent residence status for soccer players from overseas; and financial improprieties relating to outstanding payments made to ASF Board members and staff.

1.10 The majority report claims that Government Senators misinterpreted advice from Senate officers. We reiterate our view that the Committee continued to allow itself to be used for the airing of these allegations, even though it was aware that evidence gathered by it during its inquiry may not be used in a court of law. The Clerk of the Senate gave advice that evidence before a Parliamentary committee could not be used in judicial proceedings and therefore, a committee's inquiry could make it difficult for law enforcement authorities to conduct successful investigations into the same matters. Defence counsel would obviously use the fact that a matter had been uncovered by a committee to obstruct prosecution. It was conceivable that a guilty party could intentionally raise a matter before a committee to evade subsequent conviction.

Therefore there was a distinct possibility that the Committee's pursuit of its inquiry would impede inquiries into the same matters by law enforcement authorities, and subsequent judicial proceedings.

1.11 Senator Carr voiced his concerns on these matters at the hearing on 25 May 1995:

> I want to make it very clear that I am very concerned about the abuses of natural justice that are involved in this Committee. On the one hand, you have allegations being made willy-nilly that go to the very heart of people's integrity throughout this country. Ordinary citizens' civil liberties are being infringed in that way without regard to due evidence. On the other hand, there are allegations being made about criminal activity which, in themselves, if true, cannot be used in a court of law. We have a situation where, through the work of this Committee, the innocent are being slandered and the guilty are being protected. That is why I have argued that this Committee is not doing its job well and is not doing a service to the Senate. That is why I am concerned.

1.12 Government Senators note the advice from the Department of the Senate contained in the memorandum of the Committee's Secretary to the Chair dated 28 April 1995, and express regret that the Committee did not heed the advice that it should:

> consider whether it has now reached the stage in its inquiry where it has gathered sufficient evidence to report to the Senate, as a matter of urgency, that it has concluded that a judicial inquiry should be established to inquire into the possible involvement in illegal activities of persons mentioned in the Stewart report or otherwise connected with soccer. With regard to the findings and recommendations in the Stewart report which refer to the administration of soccer (Recommendations. 8, 9, 12, 13 and 14) the Committee can report on the significant changes that have taken place since Mr Stewart reported, and make recommendation on what further action should be taken by the code of soccer itself and by the Commonwealth government in relation to it. With regard to Mr Stewart's recommendation that the internal transfer system be abolished, the Committee should note that this matter is currently before the Industrial Relations Commission, and is also being addressed directly in negotiations between the ASF and AUSPA.

1.13 The Stewart Report made serious allegations against a number of persons, but the evidence subsequently gathered by this Committee could not substantiate any of the Stewart findings against those persons.

1.14 The Stewart Report should not have been made public by this Committee.

1.15 The Committee may have been well intentioned when it released the Stewart Report, but the wisdom of hindsight shows it to have been a mistake. The Stewart Report was a private, confidential report to the Australian Soccer Federation. If its contents had appeared in the press or elsewhere, in the form of "allegations, rumours and speculation", as referred to by the majority report, those persons so referred to would have been able to seek legal redress. However, once the Stewart Report was made public by the Committee, it was under parliamentary privilege and anyone was free to publicise any of the findings about individuals with impunity.

1.16 One of the most serious threats to civil liberties posed by the current inquiry has been the denial of the opportunity for legal redress.

1.17 There were adverse findings in the Stewart Report about certain persons which, if they had been publicised, would have enabled those persons to seek damages from the perpetrators. However, when the Stewart Report was tabled their only redress was to appear before the Committee. All they received by way of compensation was a finding by the Committee that they had done no wrong, but that finding was not more than an opinion by the Committee. It did not carry with it the force of a legal determination made after proper legal process.

1.18 Far from "providing an opportunity to clear the air", as the majority report claims, those persons were subjected to considerable expense for little reward. Senators are not so naive as to ignore the fact that witnesses in such matters incur considerable expense in retaining barristers and solicitors to advise them on their evidence. Those witnesses incurred considerable expense in giving evidence to the Committee and were at the same time denied the possibility of recovering at law what could have been a substantial sum of money incurred in protecting their good name. It would have been better if the law had been left to take its normal course.

1.19 Australians should not have cause to fear their Parliament, but this inquiry has needlessly and improperly subjected persons named in its proceedings to an inquisition.

1.20 Government Senators repeat the view that they strongly expressed in their June 1995 minority report, that no clear evidence was presented that would justify the findings of the majority report against Mr Anthony Labbozzetta in connection with the Okon transfer.

1.21 It is most inadvisable for a Senate committee to allow itself to become a party to the internal political rivalries of a sporting body, such as the Australian Soccer Federation.

1.22 The Committee's inquiry was extended a number of times after the First Report was presented in June 1995, to investigate further allegations of possible conflict of interest. No such conflicts of interest were established as a result of the prolonged inquiry, but again the inquiry provided an opportunity for damaging allegations to be made under the protection of parliamentary privilege.

1.23 The recommendations arising from the Committee's investigations of alleged instances of conflict of interest leave individuals' reputations sullied, even where no findings have been made against them.

1.24 The reference in the majority report to "potential conflicts of interest" is particularly insidious. Many people are in such a situation. The only question that matters is whether they have acted in that way.

AUSTRALIAN INSTITUTE OF SPORT

1.25 Mr Tom Sermanni was called before the Committee. It should be noted for the public record that he is a highly respected soccer coach. He has in the past acted as manager for a number of soccer players, most notably Ned Zelic, whom he managed for many years well before his departure to Europe. Mr Sermanni claimed, correctly, that he was frequently approached by young players concerned about their future. He had provided advice to some without consideration of remuneration. He had become manager to a number and, in one or two cases, had advised and/or assisted players to obtain trials overseas.

1.26 In the past, most athletes who came into the AIS program were already contracted to State or National League clubs when they joined the AIS. If this was the case, they were obliged to return to their contracted club at the conclusion of their scholarship. In recent years, the majority of athletes joining the AIS have been amateurs i.e. they have not been contracted professionally to any club. The reason for this is that this has given them more flexibility in determining their future.

1.27 It has long been a matter of concern that young players contracted to League clubs are the property of the club and many have had their playing career frustrated as a result of a club being unwilling to release them, or seeking an exorbitant price for them, or selling them to make a profit for the club rather than in the interests of the players. The Australian Soccer Players' Association has taken up this issue with the Australian Industrial Relations Commission. As amateurs, players can be selected to play for any club without the requirement of a negotiation or transfer fee. This is obviously in the interest of the players.

1.28 A number of AIS players in recent years have gone overseas on the completion of their scholarship. Presumably somebody facilitated their arrangements, but in most cases these seem to have been through family or other contacts, not through the AIS. While it is regrettable that players choose to go overseas the solution is not to impose an impediment, which would probably be an illegal restraint of trade, but to improve the standing and attractiveness of the National League. The Soccer Federation under its new direction is attempting to do this.

1.29 The question arises as to whether Sermanni has acted improperly in managing players from the AIS. Under FIFA regulations an agent must be registered. An agent is a person who receives a commission on the transfer of a professional player he organises. Mr Sermanni has never claimed to be an agent. A manager is a person who receives a fee for managing the affairs of a particular player. He may organise their publicity, their marketing and promotional activities, their financial affairs, etc. There is no doubt that what Mr Sermanni has done is not illegal under Australian law or under FIFA regulations.

1.30 If an amateur player goes overseas they must be released from their club, in much the same way as a professional but without the transfer arrangements. FIFA has agreed that for these purposes the AIS can be considered to be a club. Prior to this agreement by FIFA, the AIS was informally regarded as the club. Transfers are also approved by the Australian Soccer Federation. This, however, has been a fairly informal system and the Australian Sports Commission is working with the Australian Soccer Federation to put in place an arrangement whereby an athlete leaving the AIS will be required to get a specific clearance from the ASF, which will only be granted after completely independent advice to the young player concerned. This will ensure that there is no perception of any undue pressure or that people giving advice to young players might benefit financially. It is not intended to prevent either agents or managers operating according to FIFA requirements.

1.31 The allegation concerning Mr Ron Smith was that he had somehow been implicated in this "traffic of players". It is clear that Smith has from time to time signed release papers on behalf of the AIS club as he would be required to do. There is also no doubt that he has provided advice to young players as to their future. This would be regarded as a normal and proper part of his job and inevitable in any case as the major authority for the young players in the program. He has had a friendship with Mr Sermanni for some years and there is no doubt that he has advised some players to seek advice and assistance from Mr Sermanni. Again, there is nothing wrong with this.

1.32 Mr Smith was for a time a Director of Capital Financial Services. Australian Sports Commission policy requires that employees who wish to accept positions outside the Commission require the permission of its Executive Director. Mr Smith obtained permission from Mr Robert de Castella as Director of the AIS. While this was not strictly in accordance with the policy it was in accord with its spirit.

1.33 The question must be asked as to whether non-Government Senators fairly considered all the evidence the Committee took relating to Mr Smith. In evidence before the Committee on 27 September 1995, Mr Jim Ferguson stated, in relation to Mr Smith being a director of Capital Financial Services:

> He would be required to obtain permission to take up a position like that. Had it come to me for permission, I would not have had any objection provided there did not appear to be any conflict of interest and, on the surface, there did not. Subsequently, it has been suggested that this company has provided or may provide advice to players. Mr Smith informs me that he is not aware that it has provided advice to players. He has volunteered to me that he will resign from that position.... He has advised me that he has not received any benefit. He has also advised me that he, in fact, was not aware that the company was in this position until the last week or so.... There is a potential conflict of interest if that company is providing financial services to soccer players, particularly if they are soccer players associated with the AIS. I think Mr Smith would agree with that and for that reason has intended to resign.

1.34 There is no evidence that Mr Smith has ever made any gain out of athletes leaving the AIS or indeed has encouraged athletes to go overseas. Of the 150 players who have passed through the AIS, only something in the

vicinity of six to eight have gone directly overseas; the rest continuing to play in Australia at least for some time before their departure overseas.

1.35 For the non-Government Senators to say there should be a much stronger prohibition of conflict of interest in the contracts signed by soccer coaches than in those for other sports is discriminatory. There has always been a clause prohibiting conflicts of interest in ASF contracts. How strictly could such a contract be enforced given that coaches are called upon every day to provide advice to players? At what point do we say they are acting in conflict?

1.36 With regard to the issue of compensation for AIS-trained players, paragraph 2.14 of the First Report contradicts Recommendation 14 of the Second Report. The question arises of how the AIS would assess the value of their players without talking to the coach. The recommendation of the majority report in relation to this matter is therefore confused and contradictory.

CONCLUSION

1.37 The majority report spends an enormous amount of time seeking to justify the Committee's actions during the inquiry, and is almost entirely defensive.

1.38 The inquiry has left the Committee in the position where it has even less credibility than the Stewart Report.

1.39 Government Senators believe that the Senate should consider very carefully before it again asks one of its committees to investigate conflicts of interest. Such a quasi-forensic function is not appropriate for a Senate committee and should be left to the proper judicial tribunals, who have the powers, trained officers and established procedures to undertake such difficult and sensitive tasks. It is too easy for Senate committees in such inquiries to be used to unjustly damage reputations and careers.

Senator Kim Carr Senator Margaret Reynolds Senator Tom Wheelwright