

IN DEFENCE OF CIVIL LIBERTIES

Minority Report by Senators Carr, Reynolds and Wheelwright

IN DEFENCE OF CIVIL LIBERTIES

Minority Report by Senators Carr, Reynolds and Wheelwright

1.1 During the course of the Committee's inquiry, Government Senators have objected to its operations, on several grounds. There were concerns about any apparent conflict between the role of a Senator and any police investigation or judicial proceedings that might arise from the Stewart report. There were concerns that the Stewart report itself was dangerously flawed. Government Senators also took the view that, as the Stewart report was a report to the Australian Soccer Federation (ASF), it should have been left to the ASF to deal with.

1.2 With regard to the findings of the Stewart report, as the Chair of the Committee pointed out at the hearing in Adelaide on 7 April 1995, Mr Stewart himself, on page 17 of his report, said:

The conclusions to which I have come are not 'findings' in the judicial sense. They are expressions of my opinion, formed on the basis of the material before me with all its acknowledged deficiencies, and must be seen in the context of the nature of the Inquiry. They are conclusions about which reasonable and honest minds could well differ.

1.3 The witness on that occasion, Mr Farrugia, responded: "I would have loved to have seen that, when the report was released, on the front page of the *Age* and every other front page where this story appeared, with that rider by the media. But it did not appear."

1.4 The newly appointed Chairman of the ASF, Mr David Hill, commented on the findings of the Stewart report on 7 April 1995 as follows:

... if you ask me to comment on it, I think Stewart's conclusions far exceeded the evidence he presented. It may have been that he was privy—as you are—to in camera evidence or had material where the witnesses were not prepared to be identified, and so on. If you look at Stewart's report and the evidence, which he acknowledged was untested, and then the conclusions he has reached, I think Stewart has been excessive and unfair.

1.5 Mr Hill repeated this view when he gave evidence on 14 June 1995:

I must say, as a general point, that I think Stewart's recommendations in relation to individuals in virtually every single case exceeded the evidence that he presented—in every single case. I think, in that respect, Stewart's report is a shocker. When asked by Senator Loosley at the hearing on 24 March 1995 to comment on the recommendations of the Stewart report, ASF President, Mr Wran said: "I find it hard to find the evidence to justify the recommendation that Thomson's role as coach should be terminated".

1.6 During the course of the Committee's inquiry, the civil liberties of individuals were trampled on by a gross abuse of the processes of the Senate. Under Parliamentary privilege, accusations were made about a range of prominent Soccer figures without any firm evidence and based on hearsay. We note the evidence the Chairman of the ASF, Mr David Hill, gave 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.

1.7 The Opposition sought to sensationalise the inquiry in the media by encouraging witnesses to come forward and present unfounded allegations and malicious hearsay as evidence, resulting in further unnecessary public vilification of prominent Soccer people. Further evidence of this is the fact that while in the end the inquiry failed to support Stewart's findings against individuals, during its

conduct it enabled the unsupported allegations contained in the report to receive widespread public airing, but prevented individuals from seeking legal redress. The Committee was the vehicle by which those allegations could first be made: the defamations contained in the Stewart report itself gained legitimacy and legal impunity by the Committee's work. As Senator Carr pointed out to Mr Constantine at the hearing on 25 May 1995:

It is then put on to us that one should be grateful for the opportunity to respond to allegations. It strikes me that it is a bit like a drunk driver who knocks over a pedestrian at a crossing saying that you should be grateful that we are taking you to hospital.

1.8 Senator Wheelwright reinforced this point at the hearing on 14 June 1995:

I agree with what Mr Mariani has said that, had the Stewart report come out by other means, they would have had normal civil remedies against that. I think it is a great step for the Senate committee to make to decide that they are going to decide how people should get remedies and how they should be able to clear their name. It is a great step into an arena which I am personally nervous about...

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. 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. 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.

1.10 Government Senators also note the evidence given by the Chairman of the Victorian Soccer Federation, Mr Henry Siwka, on 4 April 1995:

... Going to the Senate was then a matter of course. That was predetermined before the thing was issued to the Chairman of the Australian Soccer Federation and the Board of Commissioners. I firmly believe that.... Stewart was a willing ally to all of that. I do believe that Justice Stewart always knew this was heading for the Senate. He did not have the mandate or the power to subpoena witnesses and to grant them immunity from any defamatory action. But I think that always was the case.

1.11 On 30 June 1994, the day after Mr Stewart had agreed to commence his hearings in Sydney, Senator Campbell gave notice that he would move for the referral to this Committee of an inquiry into "the role of national sporting coaches in the international transfer of Australian players, with particular reference to matters relating to player transfers in the sport of soccer and the involvement of the national soccer coach, Mr Thompson."

1.12 Senator Carr referred to this at the public hearing on 25 May 1995:

It raises the question about how these sorts of inquiries get started. It was said last year that proposals were made for a Senate inquiry before Mr Justice Stewart. It was also said in the evidence that members of the Senate have been engaging in a great deal of private inquiry on these matters. Then we had a situation emerge whereby Stewart's report was subpoenaed by this Committee—before I was a member of this Committee, I hasten to add.

1.13 The end result of the Committee's inquiry has been a report that has no sustainable evidence of impropriety to support Stewart's accusations, makes generalised recommendations of little use to the code, but has been responsible for the unfair airing of accusations against individuals whose reputations have subsequently been trampled on. During the course of this unnecessary inquiry, the ASF has undertaken, of its own volition, a major administrative reform process which has seen: a new Board and management team appointed, and an energetic new five year plan drawn up. The National Soccer Summit held in Melbourne during 19-21 May 1995 has been recognised as a successful initiative. Government members note the response of interim ASF Chairman, Mr John Dimtsis to a question put to him by Senator Carr at the hearing on 18 May 1995, when Senator Carr asked what recommendations the Committee should make to the Commonwealth Government to further improve the administration of Soccer:

.... I heard your question. I am not suggesting that the Commonwealth Government should be doing anything. I believe that we within the soccer administrative capacity should be putting our house in order. I do not think we should be waiting on governments to be putting our place in order; I think we should be doing that ourselves. We have got our independent inquiry—that is finished. The Senate inquiry—that has got to come to a conclusion. But in the meantime I think we are getting many areas of our game in order at the moment, including our administration and the player matters, the contracts. What we are dealing with is if there is any impropriety, that should be dealt with. I think you will be able to find a lot more than Stewart. Stewart has given his recommendations, but a lot of people found it difficult to act on those recommendations without concrete evidence.

1.14 Even if it is accepted that the Committee's inquiry achieved anything, Government Senators believe that it should have been closed down much earlier given the ASF reforms. The Committee and its staff are now faced with the enormous task of complying with the Senate's procedures which oblige committees to give all persons named adversely in evidence opportunity to respond to any adverse comment.

1.15 On the findings and recommendation made in the majority report of the Committee concerning Mr Anthony Labbozzetta, Government Senators are in strong disagreement. There was no clear evidence presented that would justify the findings of the majority report in regard to the Okon transfer. The evidence of Mr Mariani which the non-Government Senators have used as the basis of their findings is far from conclusive. The Senate is not a court of law (even less a Senate Committee) and the judicial rules of evidence are not applied in its proceedings. It is not appropriate for the Committee to take on a quasi-forensic role, or that its report make findings with regard to particular persons. In this context, it is unreasonable to make findings such as those in the majority report.