VICTORIAN CASINO INQUIRY SELECT COMMITTEE

APPENDIX 3

ADVICE ON CALLING OF WITNESSES

Introduction

1 On 8 May 1996 the Senate resolved to appoint a select committee, to be known as the Victorian Casino Inquiry Select Committee. The Committee is to inquire into and report on matters relating to the establishment of the Crown Casino in Victoria. The Committee's Terms of Reference are set out in Attachment 1. It is to be noted that paras (a) and (b) of those Terms of Reference refer to the adequacy of the Federal Corporations Law and the Financial Transactions Reports Act 1988 insofar as they relate to casino licensing and para (c) refers to matters pertaining to Australia's overseas reputation. While para (d) might be thought to be concerned with a State related matter, the issue of Australia's best interests is directed to be a subject matter of inquiry. The Committee is empowered, among other things, to send for and examine persons and documents.

2 I have been asked to advise whether the Committee's power to send for and examine persons and documents may be exercised in relation to:

(i) current members of a State parliament;
(ii) former members of a State parliament;
(iii) current public servants and officials of a State;
(iv) former public servants and officials of a State;
(v) current office holders of a State statutory authority;
(vi) former office holders of a State statutory authority;
(vii) current advisers or consultants engaged by a State government or a State statutory authority;
(viii) former advisers or consultants engaged by a State government or a State statutory authority.

3 A preliminary point of importance is that there is a distinction between summoning a person to appear before a Committee and asking questions of that person. The summons may be irresistible because at that stage of proceedings it is not known what questions will be asked. However, it is when a question is asked that it is thought should not be responded to that the issue of the power of the Committee arises. For the purposes of this analysis I have taken it that the Committee is seeking advice on not only the right to call witnesses but more importantly the right to ask and receive answers to questions. I appreciate that it has been indicated that certain persons will not respond to a summons to appear but this is posited on anticipated questions rather than on the mere fact of attendance.

Short advice

4 My short advice is:

(i) current members of a State Parliament (which would include ministers) may not be summoned to appear before the Committee nor may they be required to answer any questions put by the Committee. They may appear voluntarily before the Committee.

(ii) former members of a State Parliament (again including former ministers) may be summoned to appear before the Committee. They may not be asked questions the answers to which could be described as curtailing the capacity of the State to function. Nor may they be asked to respond to questions if to do so could be thought to impinge on the freedom of speech that they enjoyed as a member of parliament.

(iii) current public servants and officials of a State may legally be required to appear before the Committee. Officials who appear may be asked any questions provided that the answers would not curtail the capacity of the State to function. Current public servants may feel constrained to refuse to answer questions on the ground of public interest immunity and it may be thought unfair to penalise a public servant who is complying with the direction of his or her minister. However, legally this is not a ground for refusing to answer a question that is otherwise relevant to the Committee's inquiry.

(iv) former public servants may be required to appear before the Committee. The same limitation in respect of curtailing State functions applies in relation to answers to questions that they might be expected to provide. Public interest immunity should not constrain their response.

(v) current office holders of a State statutory authority: same as for (iii) but with less weight to be given to public interest immunity issues depending upon the degree of independence of the authority.

(vi) former office holders of a State statutory authority: as for (iv).

(vii) curent advisers or consultants: as for (iv) unless the person is an adviser to a minister or other high level officer of the government such as to attract the constraints applicable to (iii).

(viii) former advisers or consultants: as for (iv).

5 In relation to all or some of the categories of persons listed, the Senate or the Committee may take the view that, as a matter of comity based on the Federal nature of our system of government, it is inappropriate that the person be called as a witness before a Commonwealth parliamentary committee. This is a policy not a legal decision.

Relevant legislation

6 Section 49 of the Constitution is the fundamental provision of relevance to this advice. It reads:

> 49 The powers, privileges and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of the Parliament of the United Kingdom, and of its members and committees at the establishment of the Commonwealth.

7 The Parliamentary Privileges Act 1987 has made provision for some aspects of the exercise of the powers given by s 49. However, s 5 of that Act states that, except to the extent that the Act expressly provides, the powers privileges and immunities as in force under s 49 immediately before the commencement of the Act are to continue in force. The provisions of the Parliamentary Privileges Act that appear to be of most relevance in the present context are ss 4, 7 and 16. Section 4 provides relevantly that conduct does not constitute an offence unless it amounts to an improper interference with the exercise by a committee of its authority or functions. Section 7 sets out the penalties that can be imposed by the Senate for an offence against the Senate. Section 16 provides among other things that Article 9 of the Bill of Rights applies to the giving of evidence before a parliamentary committee. Article 9 provides "That the freedom of speech, and debates or proceedings in Parliament, ought not to be impeached or questioned in any court or place out of the Parliament".

8 Section 109 of the Constitution provides:

"When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid."

9 Section 151 of the Casino Control Act 1991 (Vic) is set out at Attachment 2. Subsection (1) is the most important provision for present purposes. It provides:

> "(1) Subject to subsection (3), a person must not directly or indirectly, except in the performance of duties or exercise of powers under this Act, make a record of, or divulge to any person, any information with respect to the affairs of another person or with respect to the establishment or development of a casino acquired by the first-mentioned person in the performance of those duties or exercise of those powers."

In summary, the section then goes on specifically to prohibit disclosure to a court except with the permission of the Minister. "Court" is defined to include any tribunal, authority or person having power to require the production of documents or the answering of questions. The section permits disclosure to such persons as the Minister directs if it is necessary in the public interest.

10 While technically not legislation, regard must also be paid to the Resolutions of the Senate agreed to on 25 February 1988 relating to matters constituting contempts of the Senate (hereafter "Contempt Resolutions").

Assistance from other sources

11 It would be reasonable to expect that the question of the power of a central parliament in a Federation to call State officers before it would have arisen in other countries. However, the Clerk has advised that he has not been able to find much useful information to assist the Committee on this point. In a letter to the Committee dated 19 September 1996 he does indicate that inquiries of the United States Congress elicited the response that a duly authorised committee can compel evidence from State officials. This certainly seems to be assumed to be the position in the case of *Tobin v United States* (1962) 306 F 2d 270 although, as noted by the Clerk, the officer involved there was not a standard officer of a State. I have not been able to find any further precedents.

12 There is valuable discussion of the matters with which this advice is concerned in the publications set out in Attachment 3. Reference to these is made by author's name in this advice.

Power of committee to require attendance and question witnesses: general comments

13 The resolution establishing the Committee empowers the Committee to send for and examine persons. Resolution (12) of the Contempt Resolutions provides that a witness shall not, without reasonable excuse, refuse to answer any relevant question put to the witness. Resolution (13) provides that a person shall not, without reasonable excuse, refuse or fail to attend before a committee of the Senate when ordered to do so or refuse to produce documents in accordance with an order of a committee. The Committee may therefore summon a person falling in any one of the categories listed above. The person must appear before the Committee unless he or she has a reasonable excuse not to do so. A failure to appear may be reported by the Committee to the Senate which can then take such action in relation to the matter as it thinks appropriate. The Committee itself cannot compel a person to appear before it. Likewise the Committee may ask a witness any question relevant to its terms of reference. If the witness fails to answer the Committee may report that failure to the Senate. The issue that falls for consideration is what might constitute a reasonable excuse for failure to attend or to answer a question in the circumstances of the Committee's inquiry.

Committee acting beyond Constitutional power.

14 Judicial authority relating to the power of Royal Commissions to compel the attendance of witnesses has suggested that compulsion is not possible if the issues to be investigated exceed the legislative competence of the Commonwealth: see *Attorney-General (Cth) v Colonial Sugar Refining Co Ltd* (1913) 17 CLR 644; *Lockwood v The Commonwealth* (1954) 90 CLR 177. Whether these decisions would be followed in relation to Senate Committee inquiries is not relevant in the present context as the inquiry here clearly relates to the scope of Commonwealth legislation. There may possibly be limits on the questions that a witness may be obliged to answer. United States authorities suggest that questions must be pertinent to the inquiry and this can lead to issues of constitutional power:

see Dennis Pearce "Inquiries by Senate Committees" (1971) 45 ALJ 652. But in this case the scope of the inquiry is broad and is associated with the corporations power of the Commonwealth and also draws by implication on the external affairs power. It does not seem to me that a constitutional objection based on the power to conduct the inquiry could be successfully raised.

Integrity or autonomy of a State

15 It has been suggested that an implied limitation on the legislative power of the Commonwealth arising from the need to preserve the integrity and autonomy of the States as constituent elements of the Australian Federation may limit the power of the Committee to require the attendance of witnesses falling within the categories above. The Clerk has properly raised this matter in his advices to the Committee. See also Lindell at 388-391. It is not an issue on which it is possible to give a concluded opinion. The many discussions in the High Court reveal the difficulty of identifying, particularly in the abstract, what precisely is the scope of the implied limitation on Commonwealth power. Secondly, it seems likely that some matters that might be addressed to a witness could fall within the proscription but others would not. What I think is clear is that recent discussion by the Court of the limitation indicates that it is not an all or nothing position. The limitation does not mean that no inquiries can be made of State officials.

16 The existence and effect of an implied limitation was considered by the Court recently in *Re Australian Education Union; Ex parte State of Victoria* (1995) 128 ALR 609. The case concerned the power of the Australian Industrial Relations Commission to make awards relating to State employees. The Court acknowledged the difficulty of stating a principle of general application and noted the need to look at the question in relation to the facts of each particular case. It said

> The limitation consists of two elements: (1) the prohibition against discrimination which involves the placing on the States of special burdens or disabilities (the limitation against discrimination) and (2) the prohibition against laws of general application which operate to destroy or curtail the continued existence of the States or their capacity to function as governments.

Further analysis by the Court of earlier authorities relating to the second of these propositions revealed a distinction between the curtailment of the constitutional functions of a State government (which is not permissible) and an impairment of a function which a State government undertakes (which may be curtailed): see, in particular, the discussion at p 627 of the *Dams* case and at p 630 of the *Melbourne Corporation* case.

17 The discussion is relevant in the present context in a number of ways. First, the limitation discussed in the cases is concerned with the making of legislation. Here we are concerned with an inquiry by a Senate Committee. It could be argued that the fact that the Committee is only concerned with the investigation of a matter and that no result impinging on a State will directly follow from its findings means that it is not subject to the constraints referred to by the High Court. They were directed to legislation that does affect a State. This is a factor that cannot be disregarded. However, in the admittedly somewhat different context of inquiries by administrative bodies, the courts have been prepared to hold that an inquiry does affect a person such that the rules of natural justice must be followed even though no adverse consequences will flow automatically from the outcome of the inquiry. The same thinking could persuade a court to find that the limitation applicable to legislation applies also to inquiries directed to possible legislative outcomes by a legislative body. However, the fact that the Committee will only be asking questions is likely to lead to a greater liberality of action than would be the case if a law were imposed upon a State.

18 Assuming that the implied limitation approach is relevant to Senate inquiries, the reference by the High Court to a prohibition against discrimination may be read as referring to a circumstance where a burden is placed on an institution of a State that is not similarly borne by the like Commonwealth institution. The Senate cannot compel a Member of the House of Representatives to atttend before it or one of its committees. It can only invite Members to appear (Odgers p 443). The issue whether the Senate could compel the attendance of a member of a State parliament to appear arose in 1992. The Clerk advised the Senate that compulsion was not possible on the

grounds of comity between parliaments and also on the basis of the implied limitation in the Constitution. I express no opinion here on the comity issue but I consider that the Clerk was on strong legal ground in suggesting that the implied limitation approach made the summoning power doubtful.

19 If the Commonwealth Parliament provides in its rules or practice that Commonwealth Members of Parliament are not compellable witnesses it would seem discriminatory if it allowed State parliamentarians to be summoned and questioned. The view might also be taken that the examination of State members affected the constitutional capacity of the State to govern thereby attracting the second limitation on Commonwealth power noted above. If a member of a State parliament could be made to account for his or her actions before the Commonwealth Parliament, this would act as a substantial limitation on the member's freedom of speech and carriage of parliamentary duties. As such it might be thought to offend s 106 of the Constitution as well as the implied limitation. This conclusion is supported by the Report of the Constitutional and Legal Affairs Committee "Commonwealth Law Making Power and the Privilege of Freedom of Speech" (1985).

20 In contrast with the approach relating to current members, the Senate has summoned former members of the Commonwealth Parliament to appear before a committee (Odgers p 445). This being so, at least insofar as the implied limitation approach is based on discrimination, it would not seem to prevent the attendance of a former member of a State parliament being required. The position would seem to be the same also in relation to the other categories of persons referred to above. Employees and former employees of Commonwealth agencies are compellable as witnesses before Senate Committees (Odgers pp 449,450).

21 Can former parliamentarians and State officers past or present decline to attend on the basis of the second arm of the implied limitation test - that to require them to do so would destroy or curtail the capacity of the States to function as governments? It will depend upon the issues raised with them.

22 The terms of reference of the Committee are directed to three broad topics: Commonwealth legislation relating to casino licensing; international implications of such licensing; and the tendering processes relating to the Crown Casino. Only the last of these is directly related to the activities of a State government although I appreciate that questions relating to the first two could require the revelation of information relating to State procedures and perhaps policies. However, the establishment of a casino is essentially a State commercial enterprise. I find it difficult to see how it could be said to go to the continuing functioning of a State if its commercial activities were to be the subject of inquiry by a Senate committee, allowing for the fact that the Senate has ample facility available to it to protect confidential commercial information.

23 The High Court in the *Australian Education* case at p 629 expressed attraction to a distinction drawn by counsel between internal and external services of government. The former it was argued were protected by the implied limitation but the latter were not. Falling within the internal services description were policy formulation, reporting to the parliament, the collection and administration of government revenue and the provision of services to parliament and to the judiciary. Many matters relating to government tendering practices generally and to the Crown Casino in particular would not fall within this description of internal services.

24 I conclude that the implied limitation on Commonwealth legislative power does not act as a bar to the calling and questioning of former members of the Victorian Parliament or the various categories of State agency persons referred to above provided that the questions asked do not fall within the description of matters likely to curtail the capacity of the State to function as a government. That limitation is directed to constitutional functions and does not extend generally to the commercial activities of the government. Much Commonwealth legislation limits the activities of a State butis not on that account invalid, eg the Trade Practices Act. However, there are special features relating to the establishment of a casino that make it necessary to look carefully at the issues that may be raised with witnesses.

25 Questions to former members would be subject to the same constraints as are applicable to existing members insofar as they relate to the period when the person was a member of the Parliament. A person cannot for the same reasons as are set out above in relation to current members be called to account for activities that occurred while the person was a member. Actions that have occurred after the member has left the Parliament are a different thing and the following remarks then apply. This would be so even though the former member may be an officer or consultant to the government.

26 The submission to the Committee from the Victorian Casino and Gaming Authority raises pertinent issues in relation to the information that may be sought from the other categories of persons referred to above. Mention is made of probity checks of individuals and companies that it is suggested must be kept secret to protect the sources of the information. It seems to me that the capacity to carry out this sort of activity whether it be in regard to casino licence applicants or crime generally is an activity that could be regarded by a court as crucial to a State's functions and therefore could not be pursued by a Senate committee.

27 I am less certain about the confidentiality undertakings referred to in the Authority's submission. It may be that the ability to give such an undertaking and maintain the secrecy of the information disclosed could be seen as important to the maintenance of a State but the argument would have to be made more cogently than is put in the submission. The Senate would need to be persuaded that its mechanisms were inadequate to preserve the confidentiality of the information and that its disclosure would be such as to result in long term damage to the State such as to be characterised as affecting its continuance. This is no easy test to meet.

28 A further limitation that could be claimed with some likelihood of success would be in relation to questions that related to advice to the government on high level policy issues, Cabinet decisions, etc. A State government could expect that such matters would not be inquired into by the Commonwealth Parliament. The exposure of such matters could properly be thought as being concerned with the internal services of the government. Questions relating to them, particularly if answering the questions was compulsory, would curtail the capacity of the State to function as a government. This limitation would be readily applicable to information sought to be elicited from officers of the State government. It is less obvious that matters sought from officials of statutory offices and more particularly consultants are likely to fall within this limitation. All will depend upon the nature of the issue being pursued but simply because it relates to a matter in which the State government has an interest does not mean that investigation of it will be prevented by the implied limitation test.

29 I do not see that the mere calling before the Committee of the various categories of persons referred to above, other than existing members of parliament, can be limited by the Federalism limitation in the Constitution. Nor do I see that limitation preventing the asking of questions relating to the Committee's terms of reference and an answer being required by the Senate except in the circumstances that I have indicated. If persons before the Committee are troubled by the possible effect of an answer to a question, that will provide a reasonable excuse for them not to answer and the issue will then need to be refered to the Senate for consideration of the matter. At that time further advice might be sought. A blanket refusal to attend or to answer questions cannot in my view be sustained by reference to the constitutional limitation. (I am fortified in this conclusion by the summary of the opinion of the Queensland Solicitor-General relating to the powers of the Senate Whistleblower Committee which you have provided to me. Mr Pat Keane QC advised the Queensland government that the Committee had the legal power to summon State officials and documents.)

Secrecy Provision

30 Section 151 of the Victorian Casino Control Act 1991 can be seen to impose a wide ranging limitation on the disclosure of information relating to the establishment of a casino. Even disclosure to courts is excluded without ministerial consent. Significantly, disclosure to the Victorian Parliament or a committee of the Parliament is not mentioned. It may be that this was because it was thought unnecessary to include such a requirement in that either the secrecy

provision itself or executive privilege would preclude disclosure of information to the Parliament. This was a view that was held until recently in relation to the provision of information to the Senate where a Commonwealth Act contained a secrecy provision. However, it is no longer the view of the Government Law Officers.

31 In an opinion dated 12 August 1991 and included in the Explanatory Memorandum to the Parliamentary Privileges Amendment (Effect of Other Laws) Bill 1991, the Solicitor-General opined that a general secrecy provision cannot override the operation of s 49 of the Constitution. While a provision may exclude revelation of information to the Parliament or a committee, this needs to be specific. The Solicitor-General notes the possibility of such an intention to exclude disclosure being implied but makes it apparent that such an implication will be difficult to draw. He cites the detailed regulation of disclosure provided by section 16 of the Income Tax Assessment Act 1936 as an example of a provision that does *not* manifest the requisite intent to limit the effect of s 49 of the Constitution despite its clear intention to cover the field of disclosure of information gained by taxation officers. Section 151 of the Casino Control Act is a wide ranging but generally expressed confidentiality provision of the kind to which the Solicitor-General was referring. It makes no direct reference to the non-disclosure of information to the Parliament of Victoria and there is nothing that could lead to an implication that it was intended to have that effect.

32 In the light of the Solicitor-General's opinion, which seems to me to be correct, it is difficult to see how it can be claimed that a provision of a Victorian Act that does not itself exclude revelation of information to the Victorian Parliament could limit the Commonwealth Parliament's right of access to that information. It is not necessary under this head to consider whether an attempt by the Victorian Parliament to limit access would be invalidated by s 109 of the Constitution as the issue does not arise. However, a strong argument could be made out that s 49 of the Constitution overrides a State provision that purports to limit access by the Commonwealth Parliament to information.

Executive Privilege or Public Interest Immunity

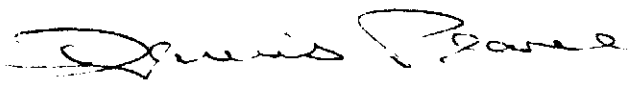
33 Commonwealth governments have, over the years, asserted that they may refuse to produce documents to the Senate or its committees and that their officers may decline to answer questions on the basis of a right that has been variously called Crown privilege, Executive privilege and public interest immunity. Under this doctrine, a minister is entitled to determine whether information pertaining to governmental affairs should be disclosed to the Parliament. The same doctrine has been asserted in relation to judicial proceedings. At one time the courts accepted that a ministerial certificate denying access to government documents was conclusive. That view has changed since the decision of the High Court in *Sankey v Whitlam* (1978) 142 CLR 1 and the courts have assumed the role of arbiter of the issue whether it is in the public interest that information be excluded from consideration in court proceedings. The ability of the executive to point to the judicial precedent as the basis for its right to refuse the parliament access to information has thus been removed. However, this has not resulted in any different attitude being taken by the executive to the parliament being given access to information.

34 The saga of the conflict between the Senate and successive Commonwealth governments over the disclusure of government information is fully described in Odgers at pp 484 - 497. The legal basis for the executive's claim of immunity has been discussed in detail by Professor Enid Campbell and Geoffrey Lindell. Both conclude that s 49 of the Constitution overrrides the immunity claimed. The Senate has likewise expressed the view that it lies in its power to determine the issue. I agree with these conclusions and do not think it would be of value in the present context to rehearse the arguments that have been cogently put in the publications referred to. But if the immunity exists, what is its scope?

35 The first point to note is that the immunity attaches to the information not to the person who is being asked to divulge it. Accordingly it is for the Victorian government to assert that information should not be disclosed if it is of that view. When such a claim is made in judicial proceedings it is the court which resolves whether the claim is justified. If it takes the view that the information is not privileged from disclosure, it can compel a witness to give the information on pain of being

Conclusion

39 A conclusive answer could only be obtained to many of the matters discussed above if a court were to rule on them. The reality is that, whatever view is taken by the Committee of the legal position, the issue will not be tested unless the Senate takes the step of finding a witness guilty of contempt for failing to disclose information or a witness is prosecuted by the Victorian government for releasing information.



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4 October 1996

dealt with for contempt of court. The position is somewhat different in the Senate and it is because of this that the problems have arisen in the past. Where a government has wished to decline to make information available on the basis of public interest immunity, it has indicated this to the Senate either directly or by instructing its officers not to reveal the information sought. Theoretically it is then left to the witness who possesses the information to determine whether to adhere to that direction. It is more than probable that a public service official will adhere to such a direction. However, some of the other categories of witness referred to above are not answerable to a minister, eg former office holders, consultants and perhaps current office holders of statutory authorities. If the Senate were to conclude that the information sought should not be protected from disclosure in the public interest, these witnesses could reveal information without the possibility of consequences that may be visited upon current public servants. In the light of my conclusion that the secrecy provision of the Casino Control Act is not infringed by revealing information to a Senate committee, they could reveal information which the Victorian government considered immune from disclosure without fear of breaching the law. It might however be necessary for the Senate to be prepared to take appropriate action to protect them if a prosecution is nonetheless launched under the Casino Control Act.

36 It should be added for the sake of completeness that it seems probable that it will only be if the Senate (and not the Committee) determines that the claim of privilege cannot be sustained and the witness still declines to respond that a contempt will have occurred. Resolution (12) of the Contempt Resolutions provides that a witness shall not "without reasonable excuse" decline to answer a question. It would seem to be a reasonable excuse, at least when the question is first put, that the witness has been directed to refuse to answer on the ground of public interest. If this is persisted with after the matter has been considered by the Senate the position would seem to be different.

Comity

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

Enforceability of orders

38 Section 7 of the Parliamentary Privileges Act 1987 empowers the Senate to impose a penalty upon a person who commits an offence against the Senate of up to 6 months imprisonment or a fine of $5000. A fundamental issue that the Senate would have to face if it sought to enforce its directions to attend and/or to answer questions by use of its powers to punish for contempt would be how to enforce its orders if a witness either declined to appear or refused to answer questions. The Senate does not have its own police force. While it would turn to the executive arm of government for assistance, it is open to question in this case whether that assistance would be forthcoming. This is obviously a matter of political judgment but I raise it in the context of the legal powers of the Senate. The Clerk's staff may be called upon to act on behalf of the Senate but the Senate cannot itself compel assistance from others. However, the power to recover a fine may be able to be carried though without executive assistance. Subsection 7(6) provides for such a penalty to be recovered as a debt due to the Commonwealth by action in a court brought by a person appointed by the Senate. Being a civil action, it would seem that the executive's discretion whether or not to prosecute would not be able to be exercised. However, it would appear that taking action to recover the fine would lead to the court having to examine the validity of the conduct of the Senate in imposing the fine. This would expose for judicial pronouncement many of the matters dealt with in this advice: cf Lindell, p 417ff in relation to challenging an order of imprisonment.

ATTACHMENT 1

RESOLUTION ESTABLISHING SELECT COMMITTEE

(1) That a select committee be appointed, to be known as the Victorian Casino Inquiry Select Committee, to inquire into and report on:

(a) the adequacy of Commonwealth legislation in relation to casino licensing, in particular:

(i) the effectiveness with which the Corporations Law operates in respect of casinos, including those laws dealing with company directors, and

(ii) the need for uniform legislation to establish standards and procedures for the licensing of casinos:

(b) the adequacy of the *Financial Transactions Reports Act 1988* in respect of transactions within casinos:

(c) whether the granting of any licence to any casino within Australia has affected Australia's overseas reputation: and

(d) whether a full judicial inquiry, Royal Commission or other form of inquiry is required into Victoria's Crown Casino, with particular reference to:

(i) the tendering process for its licence, and

(ii) whether Australia's best interests have been adequately protected during the tendering process with particular reference to the record and reputation of the tenderers.

(2) That the committee consist of seven senators, as follows:

(a) three nominated by the Leader of the Government in the Senate;

(b) three nominated by the Leader of the Opposition in the Senate; and

(c) one nominated by the Leader of the Australian Democrats.

(3) That the committee may proceed to the despatch of business notwithstanding that all members have not been duly nominated and appointed and notwithstanding any vacancy.

(4) That the chair of the committee be elected by and from the members of the committee.

(5) That the deputy chair of the committee be elected by and from the members of the committee immediately after the election of the chair.

(6) That the deputy chair act as chair when there is no chair or the chair is not present at a meeting.

(7) That, in the event of the votes on any question before the committee being equally divided, the chair, or deputy chair when acting as chair, have casting vote.

(8) That a quorum of the committee be four members.

(9) That the committee and any subcommittee have power to send for and examine persons and documents, to move from place to place, to sit in public or in private, notwithstanding any prorogation of the Parliament or dissolution of the House of Representatives, and have leave to report from time to time its proceedings and the evidence taken and such interim recommendations as it may deem fit.

(10) That the committee have power to appoint subcommittees consisting of three or more of its members, and to refer to any such subcommittee any of the matters which the committee is empowered to consider, and that the quorum of a subcommittee be a majority of the senators appointed to the subcommittee.

(11) That the committee be provided with all necessary staff, facilities and resources and be empowered to appoint persons with specialist knowledge for the purposes of the committee with the approval of the President.

(12) That the committee be empowered to print from day to day such documents and evidence as may be ordered by it, and a daily *Hansard* be published of such proceedings as take place in public.

(13) That the committee report to the Senate on or before the last day of sitting in December 1996.

(5) If—

(*a*) the Minister certifies that it is necessary in the public interest that specified information should be divulged to a court; or

(*b*) a person to whom information relates has expressly authorised it to be divulged to a court—

a person may be required—

(*c*) to produce in the court any document containing the information; or

(*d*) to divulge the information to the court.

(6) In this section—

"court" includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

"produce" includes permit access to.

ATTACHMENT 2

CASINO CONTROL ACT 1991, SECTION 151

151. *Secrecy*

(1) Subject to sub-section (3), a person must not directly or indirectly, except in the performance of duties or exercise of powers under this Act, make a record of, or divulge to any person, any information with respect to the affairs of another person or with respect to the establishment or development of a casino acquired by the first-mentioned person in the performance of those duties or exercise of those powers.

Penalty: 50 penalty units

(2) Subject to sub-section (5), a person is not, except for the purposes of this Act, required—

(*a*) to produce in a court a document that has come into his or her possession or under his or her control; or

(*b*) to divulge to a court any information that has come to his or her notice—

in the performance of duties or exercise of powers under this Act.

(3) A person may—

(*a*) divulge specified information to such persons as the Minister directs if the Minister certifies that it is necessary in the public interest that the information should be so divulged; or

(*b*) divulge information to a prescribed authority or prescribed person; or

(*c*) divulge information to a person who is expressly or impliedly authorised by the person to whom the information relates to obtain it.

(4) An authority or person to whom information is divulged under sub-section (3), and a person or employee under the control of that authority or person, is subject, in respect of that information, to the same rights, privileges, obligations and liabilities under this section as if that authority, person or employee were a person performing duties under this Act and had acquired the information in the performance of those duties.

ATTACHMENT 3

Odgers' Australian Senate Practice 7th ed.

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