

Chapter 3

Response to majority report case studies

3.1 A pattern becomes evident upon reading those chapters of the majority report that examine a few projects in detail. The majority report has selected a minority of projects and dismantled them to find fault with the minutiae of the administrative process. These case studies home in on some minor administrative glitches and magnify them in an attempt to undermine these successful Australian Government programs. The majority report degrades and devalues two of the most successful government programs in history.

3.2 The chronologies of events outlined in the majority report's examination of six RPP projects and three SRP projects are generally accurate. However, a political construction is placed on events. ALP members of the Committee alleged that these six, or 1.2% of the total approved projects, somehow represent 'systemic' weaknesses in the Regional Partnerships Program. Clearly, there are no systemic problems. The evidence to this inquiry proved that, even while ALP members were actively seeking negative evidence.

3.3 Government Senators note that none of the projects subjected to case studies in the majority report had community opposition, rather to the contrary all had strong community support. In some instances these projects have also been supported by ALP state governments. Government members further note that nowhere does the majority report state that these particular projects do not meet genuine community need. All of these projects met the relevant criteria and contract terms.

Beaudesert Rail

3.4 Rather than demonstrating, as claimed in the majority report, that the Regional Partnerships program is open to politicisation, the grant to the Beaudesert Heritage Rail instead demonstrates the Australian Government's responsiveness to widespread community support for a project.

3.5 In light of the broad based community support for this project and the monetary support from multiple levels of government, is indeed unfortunate that unpredictable events prevented this project from continuing to deliver a valuable tourist attraction for the region.

3.6 It is pointless to speculate, as the majority report does, about the potential viability of the railway in the absence of those 'mishaps that adversely affected the operation of the railway at vital times', and ill-considered of the Committee to attempt to blame DOTARS or the Australian Government for not foreseeing events such as derailments and grass and railway bridge fires.

A2 Dairy Marketers

3.7 Again, a minister has been baselessly attacked for supporting a struggling sector of the community. All that former Parliamentary Secretary Kelly is guilty of doing is supporting struggling dairy farmers in their desire 'to be able to negotiate for prices and get better returns'.¹

3.8 By their very nature, discretionary programs require the flexibility to expedite consideration of time-critical projects. As the evidence from DOTARS shows, fast-tracking an assessment does not mean altering the due diligence process in any way,² despite intimations to the contrary in the majority report.

3.9 Allegations of maladministration do not stand up in relation to this project. The evidence shows that all appropriate due diligence checks were completed and passed at the project assessment stage. The proponent did not meet the conditions that the Minister placed on the grant, and therefore DOTARS acted appropriately in not entering into a funding agreement. It must be kept in mind that the Regional Partnerships Program procedures operated as they should have and *no public funds were granted* to A2 Dairy Marketers.

Tumbi Creek

3.10 The Tumbi Creek dredging project is an important project which will deliver a range of outcomes, including mitigating flood risk for residents in the local area, improving the environmental state of the creek and restoring a natural recreational asset to its proper condition. While there have been some differences in views about the best method for dredging the creek and the amount of dredging to take place, the need to dredge the creek has been accepted and supported by all levels of government, local, state and federal and has strong support from the local community

3.11 The majority report has attempted to draw conclusions of political collusion and interference in the Tumbi Creek dredging project. The report stresses that there were discussions and email exchanges between the local government and federal member about the project. The government members make no apology for the government's support of worthwhile projects with strong community support. Mr Ticehurst's drive and tenacity in representing his constituents and delivering outcomes to his electorate is commendable. There is nothing untoward about an elected representative working cooperatively with the local government and the community he represents to bring forward projects for funding. Mr Ticehurst is an example of a hardworking member representing the best interests of his community.

3.12 The majority report also attempts to imply that funding for the Tumbi Creek dredging work was expedited due to the 2004 federal election campaign. This is not

1 Mr Strazzeri, *Committee Hansard*, 13 April 2005, p. 9.

2 Dr Dolman, *Committee Hansard*, 14 April 2005, pp 78-79.

the case. During the election campaign the ALP candidate for Dobell, Mr David Mehan, with the support of then ALP Leader Mr Mark Latham announced that Labor, if elected, would fund the dredging work. That this project was both sound and responsive to genuine community need is clearly demonstrated by the cross party support demonstrated for the project.

3.13 The examination of the Tumby Creek dredging project has been characterised by groundless, political debates. For example, Mr Beazley's assertions that members of the local council were involved in a conspiracy with federal members in an attempt to defraud the Commonwealth were baseless. On the 9 February 2005, Mr Beazley moved a motion to censure the Minister for Local Government, Territories and Roads for, among other things:

Conspiring with others to defraud the Commonwealth and specifically directing local Wyong officials who knew the truth to stay silent.³

3.14 Mayor Pavier rejected these claims at the Committee's hearing.

Senator BARNETT—So you are not involved in any conspiracy?

Mayor Pavier—I have not been involved in any conspiracy...⁴

3.15 Similarly, the perception created by Opposition members that storms had cleared the creek mouth and therefore the dredging work was no longer needed were unfounded. In his motion of 9 February 2005, Mr Beazley asserted that '... the mouth of the creek was open and such dredging was no longer required...'.⁵ The Committee received evidence that only 1,000 m³ of the 30,000 m³ of sediment in the creek mouth had been cleared. The dredging project was to remove 15,000 m³.

3.16 It is indeed unfortunate that the delay in the NSW Government issuing the local council with a dredging licence has delayed commencement of this project. NSW Government support has now come through, with the issue of a dredging licence for 5,000m³. As this licence did not reflect the level of work needed by the Council, further discussions have taken place between Council representative and the NSW Department of Lands. Details of a revised dredging offer, for a longer channel on the Council's preferred alignment, are scheduled to be considered by the Council at its meeting on 12 October 2005.⁶

3 The Hon Kim Beazley MP, Leader of the Opposition, *House of Representatives Hansard*, 9 February 2005, p. 52

4 *Committee Hansard*, 24 February 2005, p. 18.

5 The Hon Kim Beazley MP, Leader of the Opposition, *House of Representatives Hansard*, 9 February 2005, p. 52

6 Wyong Shire Council, Media release *Tumby Creek dredging licence offer*, 20 September 2005.

Privilege allegations

3.17 The majority report states that the Committee considered that answers to questions on notice provided by the Wyong Shire Council provided a *prima facie* case that Mayor Pavier provided deliberately false and misleading evidence to the Committee. The Government members strongly reject this assessment. Mayor Pavier provided written advice to the Committee clarifying his understanding of the question put to him and the nature of his answer. Mayor Pavier said:

In that email, advice was given that an announcement would be made at Tumbi Creek.

Neither the extent or details of what was to be announced was divulged to me, but Council obviously required advice that an announcement was to take place so it could plan for a Ministerial visit.

When I was asked by the Senate committee if I was aware of "any earlier decision to approve or a proposed decision to approve funding" then I am still confident the answer I provided – 'no' – is correct.

I regret any misinterpretation of the question or my response.

I trust this clarifies the matter.⁷

3.18 Mayor Pavier also stated in his letter to the Committee:

It has never been nor is it, my intention to mislead a Senate enquiry.⁸

3.19 Given the above statement, there is clearly no basis to conclude that Mayor Pavier provided false or misleading evidence to the Committee, let alone did so *deliberately*.

3.20 The majority report also indicates that Mayor Pavier's oral evidence obstructed the Committee's inquiry. The Government members find this conclusion untenable. Had Committee members felt that issues needed examining further in light of answers provided in questions on notice, various avenues were available for continuing the examination. For example, written questions on notice could have been provided, as was the case with several other witnesses to the inquiry. Alternatively, given that the Committee was still holding public hearings for this inquiry in mid-September, the Committee could have invited the Mayor to attend a further hearing.

Primary Energy

3.21 The majority report's treatment of the case of Primary Energy is highly revealing of its authors' underlying approach and the defects in their argument. The fixation on attacking the RP program has left them blind to benefits of a project of not only regional but also potentially national significance. As with the other case studies,

7 Mayor Pavier, correspondence, 11 August 2005.

8 Mayor Pavier, correspondence, 11 August 2005.

the majority report magnifies supposed shortcomings in the administrative process of the grant but, tellingly, fails to comment directly on the project itself.

3.22 It needs to be remembered that the Australian Government has allocated funding for a highly promising, innovative biorefinery plant in regional Australia. The project promises to inject over \$1 billion into the region over a five year period. The Committee took evidence in private session from the managing director of Primary Energy which revealed further substantial windfalls can be expected once the plant starts production and sales. This puts into perspective the element of risk involved with a grant of \$1.2 million for the Australian Government, as does the point that the cost of the project is over \$100 million.

3.23 The evidence also showed that the company has been successful in attracting an impressive array of financial backers and is approaching financial close. As the legal adviser to Primary Energy, Mr Carmody, told the Committee in evidence that was subsequently published:

Over four years, Matthew [Kelley, the managing director of Primary Energy] has been developing this project. He has brought together a consortium of interested parties and advisers. Some of those parties [will] seek to inject equity at the appropriate time...⁹

3.24 As that was the purpose of the RP funding for the project, the Government Senators believe that Primary Energy is a case study of well-targeted government assistance enabling a capital intensive project to get established in regional Australia.

3.25 As for the supposed flaws in the funding process, the majority report has typically exaggerated or distorted a select number of elements in the case. The evidence presented to the Committee on due diligence was incomplete, not the due diligence process itself. The criticism of ministerial intervention is mistaken. On the one hand, the majority report criticises a supposed administrative delay in processing the application, and on the other criticises a minister for getting the department to fix the situation by expediting its assessment of the project. The majority confuses fast-tracking a worthy project with railroading the matter through due process.

3.26 The argument about the involvement of a ministerial adviser, acting to ensure the department considered all the facts related to the application, is simply ludicrous. With complex projects like Primary Energy that are time-critical, it is crucial that a minister's staff and his department work together to ensure that nothing relevant is missed. Furthermore, the Public Service Commissioner, Ms Briggs, made it clear to the Committee that the adviser's behaviour in this instance was not only appropriate but also in keeping with the contemporary framework that governs working arrangements between ministers' offices and their departments. This, of course, is a topic on which the Opposition is completely out of date.

9 Mr Carmody, *Committee Hansard*, 15 September 2005, p. 4.

3.27 Finally, the comments about the evidence of departmental officers reveal the level to which the Opposition is prepared to stoop to try to get political traction. The two officers in question, Ms Riggs and Dr Dolman, performed admirably throughout an interminable inquiry hearing process. They were required to recall the minutiae of innumerable projects. They were both responsive to at times the unreasonable needs of the Committee majority, while mindful of their obligations as public servants to the minister and Government. Their explanation of an understandable confusion over two letters was convincing. The matter should have ended there. That a minor mistake in evidence, that was promptly corrected in accordance with Senate procedure, was referred to at all is a major blemish on the integrity of the majority report.

Mr Windsor's allegations

3.28 As the majority report states, the Committee was unable to find evidence to support Mr Windsor's claims that an RPP application was not approved due to his involvement. There is also absolutely no evidence to support the allegation that the Hon John Anderson, then Deputy Prime Minister, and Senator Sandy Macdonald offered an inducement to Mr Windsor not to stand at the 2004 federal election.

3.29 As acknowledged in the majority report, both Mr Anderson and Senator Macdonald have provided clear accounts in relation to this allegation, showing that there is no substance or fact to the matter. Mr Windsor was not even present at the meeting at which he purports an inducement took place. Of those witnesses who were actually present at the meeting *none* could link Mr Anderson's or Senator Macdonald's names to an inducement allegation.

3.30 Mr Windsor's allegation was wrong in matters of fact. He alleged that a meeting took place on the 18 May, but there was no meeting on that date. The Government Senators consider that in light of this error, Mr Windsor may also have facts regarding other aspects of the allegation incorrect.

3.31 In the Government Senators view, this allegation should never have been considered in the course of this inquiry. The matter had been addressed and dismissed even before the Senate referred this inquiry to the Committee for examination and report. For example, as noted in the majority report, on 17 November 2004 Mr Anderson made the following statement to the House of Representatives:

...I completely repudiate the member for New England's allegations of improper inducements were offered indirectly by Senator Macdonald and me earlier this year. I would make the first point that there was no meeting on 18 May; I was in Queensland, in Bundaberg, on the evening of the 18th. I have on three or four occasions met Mr Maguire. In total I doubt that I have spent four or five hours with him. But I want to make it very plain that, at those meetings, neither I nor Senator Macdonald gave him any indication or authorisation to suggest to the member for New England...any indication of any nature whatsoever that he might be offered some inducement in return for not running for the seat of New England. I cannot know what representations might have been made at the meeting that apparently took place on 19 May, but I can know that he had no authority whatsoever –

implied, nuanced or whatever – from me or from Senator Macdonald to stand aside in return for some inducement.¹⁰

3.32 On 22 November 2004 the Australian Federal Police, which has the appropriate jurisdiction to address the matter, publicly announced that there was no evidence of an inducement and no evidence that Mr Maguire had conspired with any one else to make an offer to Mr Windsor. The Australian Federal Police stated:

The AFP has finalised its investigation in relation to an allegation of electoral bribery regarding the Member for New England, Mr Tony Windsor MP.

As a result of advice from the Commonwealth Director of Public Prosecutions (CDPP) no charges will be laid in relation to this matter.

The AFP began its investigations after it received a referral from the Australian Electoral Commission (AEC) on 21 September 2004. This referral was based on an allegation initially raised during a radio interview by Mr Windsor.

Following investigations, the AFP sent evidentiary material to the CDPP on 7 October for advice in relation to whether a prima facie case could be substantiated in relation to allegations of an inducement being offered.

Having assessed this material the CDPP has advised that the evidence will not sustain a charge.

The CDPP concluded that "... none of the versions of the conversations related by any of the witnesses can amount to an "offer to give or confer" a benefit. Further there is no evidence in the material of Mr Maguire having conspired with any other person to make an offer to Mr Windsor."

The AFP has assessed the information provided by the CDPP and has finalised its investigations as a result of that assessment.¹¹

3.33 That the Committee decided to accept and examine evidence on this matter reflects the political motivations that directed the course of this inquiry. Even though the allegation had already been addressed and dismissed by the appropriate authority, the Committee continued to countenance the allegation in an attempt to besmirch the standing and integrity of Mr Anderson and Senator Macdonald. The Government Senators consider this conduct to be an inappropriate use of the Senate's Committee system.

3.34 The Government Senators also consider Mr Windsor's actions in maintaining his allegations following the AFP's finding to be inappropriate. The allegations seriously impugn the reputation and integrity of the then Deputy Prime Minister and Senator Macdonald. Despite the AFP's finding, Mr Windsor did not withdraw the allegations or publicly apologise for his assertions.

10 Mr Anderson MP, *House of Representatives Hansard*, 17 November 2004, p. 158.

11 Australian Federal Police, Media Statement *AFP concludes electoral bribery investigation*, 22 November 2004.

3.35 The Government Senators consider that Mr Windsor should publicly withdraw and regret his allegations and should apologise on the public record to both Mr Anderson and Senator Macdonald for his derogatory and defamatory statements.

3.36 Similarly, Mr Windsor should apologise for his 'cash-for-comment' allegations, which were found to be unsubstantiated.

3.37 The Government members would also like to comment on the detour the inquiry took in terms of seeking evidence from Mr Maguire regarding contributions to Mr Windsor's election campaigns, and referring the matter to the Australian Electoral Commission (AEC). Like the allegations themselves, this information was not at all relevant to the inquiry. However, any investigation by the AEC would presumably examine the disclosures made not only by Mr Maguire as a donor but also those required to be made by Mr Windsor as a recipient.