
The Parliament of the Commonwealth of Australia

Risky Business

**Inquiry into the tender process followed in the sale of the
Christmas Island Casino and Resort**

Joint Standing Committee on the National Capital and External Territories

September 2001
Canberra

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ISBN 0 642 78402 7



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Foreword

The development of the Christmas Island Casino and Resort, from its inception in the 1980s and during its operation from November 1993 to April 1998, had a profound impact on the Christmas Island community and on the Island's economy. It boosted employment, encouraged the growth of the tourism sector and stimulated small business generally. Unfortunately, the closure and subsequent liquidation of the casino and resort also had an impact, the effects of which are still being felt, both by individuals and businesses who suffered particular financial losses as a result of the closure, and by the Island's economy as a whole.

The liquidation process was protracted and complicated by a series of legal challenges and by a range of external factors, which combined to delay the process significantly and to make the casino and resort less attractive as a commercial proposition. Faced by continuing uncertainty as to the likelihood of a successful outcome, the Liquidator brought the tender process to an end and sold the resort to Soft Star Pty Ltd, a company associated with the Asia Pacific Space Centre, currently developing a satellite launching facility on the Island.

On 8 November 2000 the Senate referred the tender process for the sale of the resort, and matters associated with the outcome of that process, to the Committee. These included the current status of the resort and proposals for its future development.

Necessarily, the Committee's inquiry also examined a range of broader issues which provided a context for its examination of the sale process for the casino and resort, and which bear directly on the future development of the Island.

The Committee held hearings in Canberra in February and June 2001, and in Perth and Christmas Island in April 2001. Evidence was given by the Department of Transport and Regional Services, the Liquidator of the resort, the company which

had made the strongest bid during the tender process, the eventual purchaser (which had not been a part of the tender process) and a range of interested parties on Christmas Island itself.

The Committee has made six recommendations relating to:

- administrative processes relating to Christmas Island;
- the resolution of matters relating to the resort lease and the future operation of the casino and resort; and
- the payment of entitlements to former employees of the Christmas Island Casino and Resort and the Christmas Island Laundry.

Prospects for the Island are good. The construction and operation of the satellite launching facility will bring substantial benefits both to Christmas Island and to Australia more generally, and will make the operation of the casino and resort commercially viable, thereby facilitating its prompt refurbishment and re-opening. Soft Star has stated its intention to do so in the near future.

I would like to thank all those who assisted the Committee in this inquiry by making submissions, giving evidence at hearings and providing information in other ways. I would also like to thank those who helped with arrangements for hearings, and the committee secretariat for its dedicated assistance during the course of the inquiry.

Senator Ross Lightfoot
Chairman



Membership of the Committee

Chairman Senator Ross Lightfoot

Deputy Chair Senator Trish Crossin

Members Senator Brian Greig

 Senator Kate Lundy

 Senator John Watson

 Senator Sue West

 Mr Ross Cameron MP

 Ms Annette Ellis MP

 Mr Gary Nehl MP

 Mr Paul Neville MP

 Hon Warren Snowdon MP

 Hon Alex Somlyay MP

Committee Secretariat

Secretary Mr Richard Selth

Inquiry Secretary Ms Emma Herd

Administrative Officers Mr Vishal Pandey

Ms Anna Gadzinski
(from July 2001)

Ms Sarah Steele
(until June 2001)



Terms of reference

On 8 November 2000 the Senate resolved: That the following matters be referred to the Joint Standing Committee on the National Capital and External Territories for inquiry and report by 5 April 2001:

- (a) the development and implementation of the tender process followed in the sale of the Christmas Island resort; and
- (b) the outcome of the tender process, the current status of the resort and proposals for the resort's future development.

The reporting date was subsequently extended to 27 September 2001.



List of abbreviations

AGS	Australian Government Solicitor
APSC	Asia Pacific Space Centre
BTE	Bureau of Transport Economics
CAI	Casinos Austria International Ltd
CICA	Christmas Island Community Air
CICC	Christmas Island Chamber of Commerce
CIDA	Christmas Island Divers' Association
CGC	Commonwealth Grants Commission
CIL	Christmas Island Lodge
CIM	Casinos International Management Pty Ltd
CIR	Christmas Island Resort Pty Ltd
CITA	Christmas Island Tourism Association Inc
CMI	Casino Management International Pty Ltd
COI	Committee of Inspection
Coms Winfair	ComsWinfair Pty Ltd – Australian company, 50 per cent owned by eGlobal International Ltd (formerly Coms21 Ltd) and 50 per cent owned by the Winfair Group Ltd from Canada.
CSA	Casino Surveillance Authority
DOCA	Deed of Company Arrangement

DoTRS	Commonwealth Department of Transport and Regional Services
EDC	Economic Development Committee
EOI	Expression of Interest
Former directors of CIR	The directors of CIR at the time of Mr Herbert's appointment as Receiver and Manager were: Mr Sumampow, Mr Herman Gani, Mr Kwik Soen Hok and Mr Jokky Hidayat.
FSA	<i>Federal Court (State Jurisdiction) Act 1999 (WA)</i>
Mr Herbert	Mr Jeffrey Herbert was appointed Receiver and Manager of Christmas Island Resort Pty Ltd (CIR) on 29 July 1998, Provisional Liquidator on 20 October 1998 and Liquidator on 8 December 1998.
HGI	Hospitality and Gaming Investments Pty Ltd
IOT	Indian Ocean Territories
JLW	Jones Lang Wootton (now Jones Lang LaSalle)
The Minister	Senator the Hon Ian Macdonald, Minister for Regional Services, Territories and Local Government (from 21 October 1998) Prior to 21 October 1998, Hon Alex Somlyay MP was Minister for Regional Development, Territories and Local Government (9 October 1997-21 October 1998) and Hon Warwick Smith MP was Minister for Sport, Territories and Local Government (11 March 1996-9 October 1997).
NJS	National Jet Systems
ORGL	The Office of Racing, Gaming and Liquor (WA)
PRL	Phosphates Resources Limited
SOCI	Shire of Christmas Island
Soft Star	Soft Star Pty Ltd
UCIW	Union of Christmas Island Workers



Overview

In the mid-1980s to early 1990s, the Commonwealth supported the concept of the development of a casino and resort on Christmas Island. The Christmas Island Casino and Resort, as it was subsequently known, dramatically altered the social and economic fabric of the Christmas Island community.

For a period, the flow of funds to the Island's economy from the casino and resort was approximately \$11.1 million per annum. This included local wages and salaries, rates and land taxes for the Shire of Christmas Island, and the Community Benefit Fee.¹

The casino and resort employed up to 120 workers during construction and up to 350 staff when it was fully operational. While the facility was open, industries and ancillary businesses associated with the operation of the casino and resort generated a larger share of employment on the Island than any other industry.

The casino and resort brought a substantial influx of people to the Island, which consequently generated the growth of an entirely new small business sector, providing services to both visitors and employees of the casino and resort.

In addition, the casino and resort was responsible for the establishment of a tourism sector on the Island, based on promotion of the Island's numerous environmental assets, such as diving, bushwalking and bird-watching.

The closure of the casino and resort in 1998 severely affected the Christmas Island economy. Following the facility's closure, approximately 200-250 employees left the Island. The Christmas Island Chamber of Commerce estimates that since then the Island population has fallen from approximately 2600 to 1300 people.²

In addition, the closure of the casino and resort, and the cessation of regular air services between Christmas Island and Singapore and Jakarta, have combined to

1 Bureau of Transport Economics, *Christmas Island Regional Analysis*, Report Prepared for the Indian Ocean Territories Review, Canberra, 1999, p. 58.

2 CICC, *Transcript*, p. 178.

arrest expansion of the Island's tourism industry. This has subsequently had a negative flow-on effect on the small business sector.

The Committee recognises that the tender process for the casino and resort was complex and lengthy. The realisation of the Christmas Island Casino and Resort began in mid-1998. In January 1999 the casino and resort was advertised for expressions of interest. The deadline for tenders was extended a number of times before finally closing on 15 December 1999. On 5 May 2000 the casino and resort was sold to Soft Star Pty Ltd for \$5.7 million on a cash unconditional basis.

The tender process was subject to numerous legal challenges from the former directors of Christmas Island Resort Pty Ltd, which delayed the process considerably and severely depleted financial resources for the conduct of the sale process, as well as for the payment of workers.

The tender process was also adversely affected by a number of external economic factors, such as the reduction of air services to the Island, the Asian economic crisis and, more recently, the situation in East Timor. These factors impacted negatively upon the commercial viability of the project. Coupled with delays experienced as a result of continuing legal challenges, this brought about a reduction in the number of parties interested in pursuing the operation of a casino and resort on the Island.

The Committee acknowledges that the Liquidator, faced with a shortage of funds and the prospect of continuing uncertainty in negotiations between the Commonwealth and ComsWinfair, subsequently sought an expeditious resolution to the sale process by selling the assets to Soft Star Pty Ltd on a cash unconditional basis.

The Committee also recognises that the commencement of negotiations with Soft Star before the termination of the tender process did not contravene the *Corporations Law*. However, the Committee remains concerned about the appropriateness of commencing negotiations with an external party for a cash unconditional sale worth approximately \$200,000 more than the existing conditional tender price, while simultaneously continuing to negotiate tender conditions with a potential purchaser within the structure and preconditions of the existing tender process.

The Committee believes that many of the concerns heard during the inquiry regarding the conduct of the tender process, originated out of an inherent tension between the Liquidator's role in an essentially commercial operation to realise the assets for the best possible price in the shortest practicable time, and the Commonwealth's desire to optimise economic opportunities for Christmas Island through the re-opening of the casino and resort.

The Committee acknowledges that the Liquidator's primary obligation was to maximise the proceeds from the sale of the assets for the benefit of the creditors of Christmas Island Resort Pty Ltd. The Liquidator was under no formal obligation to ensure that the facility was re-opened as a casino and resort, nor was he under any obligation to ensure that the eventual purchaser obtained a casino licence and operated a casino, as a precondition to sale.

The Committee also acknowledges that the Commonwealth did not have commercial or statutory obligations within the tender process, as delineated by the *Federal Corporations Law*.

The Committee further notes that there were a number of broader community issues which provided an important context for the Committee's examination of the sale process for the Christmas Island Casino and Resort. Issues such as the provision of air services, and the level and structure of community consultation with representatives of the Christmas Island community, helped the Committee to understand the full spectrum of issues affecting both the casino and resort, and the future integrated economic development of the Island.

The Committee consequently supports recent announcements by the Minister for Regional Services, Territories and Local Government, Senator the Hon Ian Macdonald, and Asia Pacific Space Centre (APSC), regarding progress of the proposed satellite launching facility. The Committee supports the construction and operation of the facility on Christmas Island and believes that it will bring substantial benefits both to the Island and to Australia.

The Committee also supports the June 2001 announcement by Soft Star Pty Ltd of its intention to refurbish and re-open the casino and resort in the immediate future. The Committee believes that the development of the satellite launching facility will make the operation of the casino and resort commercially viable and thereby facilitate its prompt refurbishment and re-opening.



List of recommendations

Chapter 4 The tender process

Recommendation 1

The Committee recommends that the Commonwealth, where appropriate, take a more active approach in the provision of timely and efficient support, by clarifying and streamlining processes for the deliverance of administrative and policy assistance to the Christmas Island community.

Chapter 5 Conduct of the tender process

Recommendation 2

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

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

Recommendation 3

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

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

Recommendation 4

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

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

Recommendation 5

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

Chapter 6 Broader community concerns**Recommendation 6**

The Committee recommends that the Commonwealth negotiate terms and conditions for the provision of vehicular access to Waterfall Bay for members of the Christmas Island community.

Introduction

The inquiry process

- 1.1 On 8 November 2000 the Senate referred matters relating to the tender process for the sale of the Christmas Island Casino and Resort to the Joint Standing Committee on the National Capital and External Territories, for inquiry and report by 5 April 2001. The reporting date was subsequently extended to 27 September 2001. The full terms of reference are set out at the beginning of this report.
- 1.2 The inquiry was advertised in the *Territories' Tattler* on 1 December 2000 and nationally in *The Australian* on 6 December 2000. The Committee also wrote to relevant Commonwealth Departments and to a number of organisations, inviting submissions.
- 1.3 The Committee received fifteen submissions, which are listed at Appendix A, and eleven exhibits, listed at Appendix B. Submissions are available from the Committee's web site at:
www.aph.gov.au/house/committee/ncet
- 1.4 The Committee held public hearings in Canberra in February and June 2001, and in Perth and Christmas Island in April 2001. Details are listed at Appendix C.

Structure of the report

- 1.5 This report is divided into six chapters.
 - Chapter One provides a background to the inquiry and details on the social, political and economic framework of the Island;

- Chapter Two details the history and operation of the Christmas Island Casino and Resort, from its opening in 1993 to its closure in 1998;
- Chapter Three details the tender and sale process of the casino and resort;
- Chapter Four examines the conduct of the tender process;
- Chapter Five examines the outcome of the sale of the casino and resort; and
- Chapter Six details a number of broader community concerns which formed the context of the inquiry.

Background

- 1.6 Christmas Island is the summit of an extinct submarine volcano, located in the Indian Ocean 2 650 kms north west of Perth, 2 800 kms west of Darwin, approximately 380 kms south of Java and approximately 1 350 kms from Singapore. The nearest point on the Australian mainland is North West Cape, approximately 1 565 kms to the south east of the Island.
- 1.7 The Island has an area of 135 square kilometres and is encircled by a coral reef. Within 200 metres of the shore the sea plummets to a depth of 500 metres.
- 1.8 As a result of its relative isolation, Christmas Island has a unique natural topography and ecology. The Christmas Island National Park, established in 1980, now covers 63 per cent of the Island, as well as much of the fringing reef. The Park houses a large number of endemic animal species, most notably the Abbott's Booby, a rare seabird, and the Christmas Island Red Crab, of which there are approximately 100 million.
- 1.9 The Island was uninhabited at the time of European discovery in 1643. It was annexed by Britain in 1888, following the discovery of phosphate deposits. Labour for the mining of phosphate was recruited predominantly from Asia.
- 1.10 For administrative purposes the Island was incorporated into the Straits Settlement in 1889 and later the Settlement of Singapore in 1900. The Island was occupied by the Japanese during World War II and subsequently became part of the Colony of Singapore in 1946. In October 1958 Christmas Island became an Australian Territory.

The people of Christmas Island

- 1.11 Population figures for Christmas Island fluctuate with the level of economic activity. The Christmas Island Chamber of Commerce (CICC) told the Committee that the population had fallen from an estimated 2 600 people in the late 1990s to a figure of approximately 1 300 people, following the closure of the Christmas Island Casino and Resort.¹
- 1.12 The population is multicultural, reflecting both the Island's geographical position and its unique cultural heritage. In the 1996 census, 70 per cent of the population were ethnic Chinese, 20 per cent European settlers and approximately 10 per cent were Malay.
- 1.13 English is the official language on Christmas Island, although approximately 80 per cent of the population have a first language other than English. Many residents communicate in a Chinese dialect or in Bahasa Malay.
- 1.14 The majority of the population, as well as most of the facilities on the Island, are concentrated at the northern end of the Island. There are six urban areas on Christmas Island – the Settlement, Flying Fish Cove (including the Kampong), Poon Saan, Silver City, Drumsite and Taman Sweetland.²

Governance

- 1.15 Christmas Island is an Australian Territory, administered directly by the Commonwealth of Australia. Sovereignty was transferred from Britain to the Commonwealth on 1 October 1958 under the *Christmas Island Act 1958*.
- 1.16 In 1991 the Commonwealth Government and the Christmas Island Assembly³ endorsed a *Proposed Package of Changes Extending to the Residents of Christmas Island Rights, Opportunities and Obligations Equivalent to Those of Their Fellow Australians in Comparable Communities*.⁴ This was part of an Australian Government decision to engage in a program of 'normalisation' for the Island.⁵

1 CICC, *Hansard*, p. 178.

2 Bureau of Transport Economics (BTE), *Christmas Island Regional Analysis*, Report Prepared for the Indian Ocean Territories Review, Canberra, December 1998, p. 5.

3 A forerunner to the current Shire of Christmas Island.

4 Commonwealth Grants Commission, *Report on Christmas Island Inquiry 1995*, AGPS, Canberra, 1995, p 10.

5 The 'normalisation' process set out steps needed to ensure that residents of Christmas Island have access to the same services and conditions as residents in comparable communities on the mainland.

- 1.17 The current system of administration was subsequently introduced in 1992, when the *Territories Law Reform Act 1992* replaced the existing laws of the Territory with a body of Commonwealth and Western Australian law, modelled on that of the mainland but developed to suit the particular circumstances of Christmas Island.⁶
- 1.18 The Commonwealth delivers Federal and State level services to the residents of the Island. The Minister for Regional Services, Territories and Local Government exercises ministerial powers and responsibilities. The Administrator, appointed by the Governor General, is responsible for the law, order and good governance of the Territory.
- 1.19 The Administrator administers the Territory on behalf of the Commonwealth and exercises all powers and functions in accordance with instructions from the Minister. The Department of Transport and Regional Services (DoTRS) provides administrative support.
- 1.20 On 1 July 1992 the *Local Government (Transition) Ordinance 1992* was established under the *Christmas Island Act 1958*. The first Christmas Island Shire Council was elected in December 1992, superseding the Christmas Island Assembly and the Christmas Island Services Corporation.
- 1.21 The Shire Council, made up of a President and eight councillors, has powers similar to Western Australian shire councils and is responsible for local government services. However, the Shire of Christmas Island also performs additional functions which go beyond customary local government duties on the mainland.⁷ Island residents have no State level representation.
- 1.22 Christmas Island is an Electoral District of the Commonwealth Division of the Northern Territory, for the purposes of enrolment and voting in federal elections. At the 2001 federal election Christmas Island will form part of the new electorate of Lingiari, which comprises most of the Northern Territory.

Economic structure

- 1.23 The Christmas Island economy is highly dependent on large-scale projects for injections of funding and the employment of local residents. In this context, the Island's economy is based predominantly on:
- phosphate mining;

6 Those circumstances may include particular cultural or religious beliefs of the Island, or address inconsistencies between Western Australian and Commonwealth laws.

7 For example, SOCI provides Centrelink services on a contract basis, and provides water and sewerage services for the Administration. Commonwealth Grants Commission, *Report on Christmas Island Inquiry 1995*, AGPS, Canberra, 1995, p 32.

- tourism; and
 - the proposed satellite launching facility.
- 1.24 The Committee was told that an estimated 25 per cent of the Christmas Island labour force was unemployed at the time of the inquiry.⁸ The 1996 census indicated that the median personal weekly income for people aged fifteen years and over on Christmas Island was \$521. In April 2001 there were 67 small businesses operating on the Island.⁹
- 1.25 The Christmas Island Casino and Resort has played a pivotal role in the development of the tourism and small business sectors on Christmas Island, and in the Island's overall economic and social development. The closure of the resort had a devastating effect, economically, on the local community. This was not alleviated by the long and complex tendering process which followed, or the continuing closure of the casino and resort.

Phosphate mining

- 1.26 Phosphate mining has a long history on Christmas Island and continues to provide the backbone of the economy. During the 1980s, as deposits of preferred quality phosphate neared exhaustion, the mining operation faced severe economic constraints. The effects of drought and low phosphate prices finally led to a government decision to close the mine in December 1987.
- 1.27 In 1990 the mine recommenced operations as *Christmas Island Phosphates*, with a ten-year mining lease. This followed a buy-out of the company by Island residents, organised by the Union of Christmas Island Workers (UCIW).¹⁰
- 1.28 In August 1997 the company, reconstituted as *Phosphate Resources Limited* (PRL), was awarded a new 21-year mining lease under conditions determined by Western Australian mining legislation. Revenue from the sale of Christmas Island phosphate totalled \$43.8 million in 1997-98.
- 1.29 The Bureau of Transport Economics (BTE) reported in 1999 that the amount of A-grade and B-grade phosphate currently available for mining on Christmas Island was sufficient for at least twelve years of production. However, recent data from PRL indicates that there are only enough phosphate resources to last another five years.¹¹

8 UCIW, *Hansard*, p. 122.

9 CICC, *Hansard*, p. 178.

10 The Union was formed by mine workers in 1975 to agitate for labour and compensation laws in line with industrial laws on mainland Australia, and was the first union on the Island. Waters, *The Union of Christmas Island Workers*, Allen & Unwin, 1983, pp. 30-31.

11 *Christmas Island Phosphates: A Community Owned Company*, PRL promotional brochure.

- 1.30 The BTE also stated that there are prospects for the identification of additional resources in the areas covered by the mining lease, and that 'successful development of a market for the large amounts of C-grade phosphate on Christmas Island would result in a substantial increase in mine life'.¹²
- 1.31 The Committee was told that the PRL had applied for a further exploration licence in 2000. A response was expected in February 2001 but has not eventuated as yet.¹³
- 1.32 Since the mid to late 1990s, PRL have also been involved in negotiations with Asia Pacific Space Corporation (APSC) regarding the use of land at South Point for the proposed satellite launching facility.

Tourism

- 1.33 Following the opening of the casino and resort in 1993, there was a major expansion of tourism on Christmas Island. Although this was dominated by the casino, diving, eco-tourism and fishing activities also grew in subsequent years. Tourism was the largest source of employment on the Island for several years until the closure of the casino and resort in April 1998.¹⁴
- 1.34 The CICC told the Committee that until the construction of the casino and resort, there was no private accommodation on the Island at all.
- Until the late 1980s it was basically a mining town. There was no private accommodation on the Island. To even come to the Island you had to get the permission of the mine, because there would not have been anywhere to stay. There was the government representation, but there was no private business at all, as such. This private business sector has built up – entirely as a result of the opening of the resort in 1993 – into something that is quite substantial.¹⁵
- 1.35 Although numbers have dropped considerably since the closure of the casino and resort, future opportunities for tourism, focusing predominantly on diving and eco-tourism, are still being vigorously explored by the local tourism sector.
- 1.36 Christmas Island has been experiencing a small number of regular bookings each week from Austrian and other European tourists, who

12 BTE, *Christmas Island Regional Analysis*, p. 44.

13 UCIW, *Hansard*, p. 126.

14 BTE, *Christmas Island Regional Analysis*, p. 45.

15 CICC, *Hansard*, p. 185.

travelled to Christmas Island via Jakarta, using the Christmas Island Community Air service for the flight to Christmas Island.

- 1.37 Accommodation on the Island has been limited since the closure of the Christmas Island Casino and Resort and the Christmas Island Lodge. A tourism audit of accommodation available on the Island in May 2000 revealed that there were approximately 140 beds on the Island, excluding the potential 250 beds at the resort.¹⁶ This was comprised mainly of units and backpacker and lodge accommodation.
- 1.38 Any future prospects for the tourism sector on Christmas Island are highly dependent upon the affordability and regularity of air services to the Island.

Air services to Christmas Island

- 1.39 The airport at Christmas Island is located on the north-eastern part of the Island and has full international capability, including security, customs, quarantine and immigration facilities. The largest passenger aircraft that can be handled under normal conditions are Boeing 737s and Boeing 767s or equivalent (restricted).¹⁷
- 1.40 In September 1993 Ansett began a regular service to Christmas Island, operating a BAE 146 with a capacity of 70 seats and freight. This service replaced air charter services operated by the then Department of the Environment, Sport and Territories.
- 1.41 In 1996 the following scheduled return services to Christmas Island were available:
- from Perth, including regular services to the Cocos (Keeling) Islands on Saturday, Wednesday and occasionally on Sunday, with Ansett;
 - from Broome, via Denpasar and Surabaya on Thursday, with National Jet Systems;
 - from Singapore on Friday and Monday, with National Jet Systems; and
 - from Jakarta on Monday, Thursday, Friday, Saturday and Sunday, using an F28 jet through Sempati Air, connecting with the Perth-Jakarta flight.¹⁸

16 Christmas Island Tourism Association (CITA), Exhibit No. 5.

17 BTE, *Christmas Island Regional Analysis*, p. 12.

18 Annexure 61, PPB Ashton Read, Submission No. 7, pp. 608-609. (Submission page numbers refer to the consolidated volumes of submissions.)

- 1.42 Ansett ceased operating services to the Indian Ocean Territories in October 1997 because of poor profitability and a general restructuring of its Australian operations.
- 1.43 Since then, regular air services to Perth, for both passengers and freight, have been provided by the National Jet Systems (NJS) Group under a subsidy arrangement with the Commonwealth. The cost of the subsidy was approximately \$2 million in 1998-99.¹⁹

Table 1 Passenger Arrivals at Christmas Island Airport 1993-94 to 1997-98²⁰

Passengers	1993-94	1994-95	1995-96	1996-97	1997-98
Domestic	4 236	5 883	5 720	6 443	4 272
International	5 557	13 494	11 816	3 326	2 463
Total	9 793	19 377	17 536	9 769	6 735

- 1.44 Until April 2001 NJS operated a weekly service on Saturday between Perth and the Indian Ocean Territories. The service flew Perth-Cocos Island-Christmas Island-Perth and Perth-Christmas Island-Cocos Island-Perth on alternate Saturdays. Additional flights were scheduled in periods of high demand.²¹
- 1.45 On 31 May 2000 a Request for Tender to provide a commercial or, if necessary, subsidised air service was issued by the Commonwealth Government. On 14 September 2000 the Minister announced that none of the tenders submitted had complied. Through late 2000 and early 2001 there were a series of short-term extensions to the existing contract with NJS.²²
- 1.46 On 29 March 2001 the Minister announced that negotiations for a new three-year contract with NJS, beginning on 1 April 2001, had been completed. Under the new arrangements NJS will use a 56-seat Avro RJ70 aircraft to operate a service linking Christmas Island, the Cocos (Keeling) Islands and Perth twice a week.

19 Commonwealth Grants Commissions, *Report on Indian Ocean Territories 1999*, Canberra, pp. 52-53.

20 *Airport Traffic Data, 1987-88 to 1999-2000*, Aviation Statistics Unit, Department of Transport & Regional Services www.dotrs.gov.au/aviation

21 Commonwealth Grants Commissions, *Report on Indian Ocean Territories 1999*, Canberra, pp 52-54.

22 Media Release: *Extension of Arrangements for Indian Ocean Territories Air Services*, Senator the Hon Ian Macdonald, Minister for Regional Services, Territories and Local Government, 25 January 2001.

- 1.47 Under the new contract the Government's subsidy of the air service increased, as did passenger fares and the cost of freight, beginning on 1 May 2001.²³
- 1.48 From April 1998 to July 2001 a community owned commercial air service, Christmas Island Community Air (CICA), operated, carrying passengers, mail and freight. Approximately \$150 000-\$160 000 was raised on-Island through the sale of \$1000 share packages within the community. This enabled CICA to enter into a lease agreement for an eighteen-seat aircraft.²⁴
- 1.49 CICA operated flight services between Jakarta and Christmas Island, which connected with the QANTAS Jakarta-Perth service, as well as flights between Singapore and Christmas Island.²⁵
- 1.50 CICA ran its last flight service on 22 July 2001, before entering into liquidation. A charter service has subsequently been established to fill the gap, with a 100-seat aircraft servicing a flight between Christmas Island and Jakarta once a week. This service also connects with the QANTAS service between Jakarta and Perth.
- 1.51 The Bureau of Transport Economics reports, however, that small-scale air services of this kind 'have significant limitations for tourist traffic in areas such as travel time, frequency, on-board facilities and capacity'.²⁶ Consequently, passenger arrivals remain well below the numbers experienced in the early to mid-1990s.
- 1.52 Continuing uncertainty surrounding air services, as well as limited availability and high fares, act as major disincentives against further development of the Christmas Island tourism industry. In particular, it has created difficulties for international tourism operators attempting to make advance bookings.
- 1.53 Over the last eighteen months, however, there has been some speculation that once the APSC satellite launching facility begins construction there will be an increase in the number of flights from Australia and from countries to the north of Christmas Island, particularly from Singapore.²⁷

23 Media Release: Senator the Hon Ian Macdonald, Minister for Regional Services, Territories and Local Government, *Indian Ocean Territories Air Services*, 29 March 2001.

24 CICC, *Hansard*, p. 184.

25 www.christmas.net.au/flights

26 BTE, *Christmas Island Regional Analysis*, p. 37.

27 CITA, *Hansard*, p. 175.

Asia Pacific Space Centre

- 1.54 APSC is an international commercial space launch services company, which is planning to develop a commercial space launch centre on Christmas Island. APSC is an Australian company which was incorporated in 1997. It has attracted investors from Australia, the United States and South Korea.²⁸ Mr David Kwon is the Managing Director and major shareholder of both APSC and Soft Star Pty Ltd.
- 1.55 The company proposes to launch satellites for a wide range of commercial customers. It is intended that the space centre will capitalise on commercial opportunities arising from the growing demand for telecommunications, positioning and remote sensing services offered by satellites. APSC does not intend to launch military satellites.
- 1.56 The space centre will be constructed on existing mining leases on South Point, which had previously been mined for phosphate.²⁹ From this site, launches will travel over the surrounding ocean in easterly and southerly directions.³⁰ The \$800 million project will be the first fully commercial, land based space launch facility in the world.
- 1.57 Construction of the facility is due to start in 2001 and operations are scheduled to commence in late 2003. APSC expects to be launching ten rockets a year by about 2006. The expected lifespan of the facility is fifteen to twenty years, depending upon future commercial opportunities.
- 1.58 On 24 June 2001 the Minister for Industry, Science and Resources, Senator Nick Minchin, and the Minister for Regional Services, Territories and Local Government, Senator Ian Macdonald, announced that the Commonwealth Government had agreed to provide up to \$100 million to support the project, through the Strategic Investment Incentives program.³¹
- 1.59 These funds will be used for the provision of common use infrastructure, including an upgrade of airport facilities, a new port and road and

28 www.apsc2orbit.com

29 An in-principle agreement between APSC and PRL was made on 6 February 2001. Soft Star, *Hansard*, p. 42.

30 *Launching Rockets from Christmas Island: Some Frequently Asked Questions*, APSC promotional brochure.

31 \$68.6 million will go to DoTRS for construction of common use infrastructure on the Island, \$17.4 million will go to APSC through a taxable cash grant for expenditure on spaceport infrastructure, and an additional \$14 million will go to APSC for spaceport infrastructure, on the basis that APSC has committed to contribute funds to a Space Research Centre. DoTRS, Exhibit No. 9.

'assistance with spaceport infrastructure such as ground station facilities for telemetry and tracking'.³²

- 1.60 Each satellite launch will require the approval of the Commonwealth Government in accordance with the *Space Activities Act 1998*. Further launch safety regulations are being established under the Act.
- 1.61 APSC states that the establishment of the satellite launching facility will provide benefits to both the Island community and to Australia as a whole. These benefits include:
- generation of export income from satellite launch operations, leading to significant returns for Christmas Island and Australia throughout the life of the project;
 - direct generation of employment opportunities in both the construction and operational stages, many of which will be available to Christmas Islanders and other Australian workers; and
 - improvements in Island infrastructure, particularly in sea and air transport facilities and communications.
- 1.62 APSC has estimated that it could employ up to 400 people during construction of the facility and up to 550 people during operation.³³ This would bring a substantial investment of revenue, and associated services, to the Island community.

32 www.minister.industry.gov.au/minchin/releases/2001/june

33 www.apsc2orbit.com

The Christmas Island Casino and Resort

Opening of the casino and resort

- 2.1 The Christmas Island Casino and Resort was first conceived by Frank Woodmore, a Perth property developer, in the early to mid-1980s. In 1981 Indonesia had just closed its three licensed casinos, all of which were in Jakarta, owing to the perceived incompatibility of religious sensitivities with gambling in Indonesian society.
- 2.2 With Jakarta only an hour's flight from Christmas Island, it was thought that the casino and resort would be in a unique position to attract wealthy patrons or 'high rollers' from Indonesia and other parts of Asia.
- 2.3 The company now known as *Christmas Island Resort Pty Ltd* (CIR) was incorporated in 1985 to develop the resort complex.¹ Mr Frank Woodmore, through Mercator Property Consultants Pty Ltd, held 10 per cent of the share capital in CIR. By the end of 1993 interests associated with Mr Robby Sumampow² held the remaining 90 per cent.³
- 2.4 Construction of the resort began in the late 1980s. In 1992, following the failure of negotiations with Federal Hotels, which had held the original

1 *Cymes Pty Ltd* was incorporated in 1985 as the investment vehicle. This was subsequently changed to *Christmas Island Casino Resort Pty Ltd* in the same year and in 1987 was changed to *Christmas Island Resort Pty Ltd*. PPB Ashton Read, Submission No. 7, p. 110.

2 Mr Sumampow is an Indonesian businessman whose ultimate holding company is called *PT Guntur Madu Tama* (GMT).

3 Initially Mercator had invested in the company with an Indonesian-owned, Singapore based company, *Lauw & Sons Holdings Pty Ltd*, who held the remaining 90 per cent of shares. In 1990, Lauw & Sons Holdings Pty Ltd sold a controlling interest to Mr Sumampow, who later bought the remainder of their interest in CIR. PPB Ashton Read, Submission No. 7, p. 110.

contract,⁴ CIR sought expressions of interest from other companies to oversee operation of the casino and resort.

- 2.5 *Casinos Austria International Ltd* (CAI) won the contract to manage the casino and resort. The management contract was for a term of five years from the opening of the casino, and CAI was engaged in preparations for the opening of the resort from June to October 1993.
- 2.6 On 5 November 1993 there was a ‘soft opening’ of the complex, at which the resort received its first patrons, and on 18 December 1993 the Christmas Island Casino and Resort was officially opened.

The Agreement

- 2.7 The original agreement to construct and operate a casino and resort on Christmas Island was entered into between the Commonwealth of Australia, Christmas Island Casino Resort Pty Ltd⁵ (the Developer), Francis Philip Woodmore, F P Woodmore Pty Ltd⁶ and Selected Equities Limited (the Guarantors) on 4 June 1987. Selected Equities Limited, which was eventually replaced by Mr Robby Sumampow,⁷ was to manage the casino and resort.
- 2.8 The original agreement and subsequent amendments (the Agreement) established the terms under which the casino and resort would be developed and would operate.⁸ Items detailed within the Agreement included:
- those companies contractually involved in the development;
 - land and title for the hotel/casino;
 - environmental protection undertakings;
 - the development of the hotel/casino, including water supply, sewerage and electricity services for the site; and

4 In 1988-89 CIR entered into an agreement with the Federal Hotels group to operate the resort. During 1992 the three-year contract expired and negotiations began over a new agreement. The two parties were unable to reach a new agreement. Federal Hotels, however, continued to provide technical support while arrangements were made for a new operator of the hotel and casino. *Casinos Austria International (Christmas Island) Pty Ltd & ORS v Christmas Island Resort Pty Ltd & ANOR [1998]*, WASC 387 (16 December 1998).

5 Later to become Christmas Island Resort Pty Ltd (CIR).

6 Francis Philip Woodmore, F P Woodmore Pty Ltd later became Mercator Property Consultants Pty Ltd.

7 Selected Equities Limited was replaced by Lauw & Sons Holdings, which was replaced by Robby Sumampow in 1993.

8 A consolidated version of the original agreement can be found at: DoTRS, Submission No. 11, p. 1237.

- the governance and administrative structure within which the hotel/casino would operate.
- 2.9 Clause 7 of the Agreement stipulated the Developer's intent to 'encourage maximum possible investment by the residents of Christmas Island in the hotel/casino project' and to 'use its best endeavours to encourage the employment of Christmas Island residents in [the] development'.
- 2.10 Clause 8 of the Agreement also acknowledged the capacity of the casino and resort to generate the development of supporting industries on the Island and to encourage residents to invest in those business opportunities arising from the development.
- 2.11 Clauses 27-31 of the Agreement dealt specifically with the administration of the casino. The Agreement detailed the framework for:
- casino control legislation;
 - granting of the casino license;
 - review of the casino licence;
 - the casino licence fee;
 - terms of the Community Benefit Fee; and
 - Commonwealth approval of the casino operator.

The casino licence

- 2.12 On 26 September 1988 the *Casino Control Ordinance 1988* (to have effect under the *Christmas Island Act 1958*) was gazetted. The Commonwealth subsequently ceded responsibility for the regulation and control of gaming activities at the casino to the Western Australian Office of Racing, Gaming and Liquor (ORGL).⁹
- 2.13 All directors of the company were required to be licensed by the Casino Surveillance Authority (CSA), a Christmas Island regulatory body constituted under the *Casino Control Ordinance 1988*. The casino licence also required that the casino be operated by an independent third party, experienced in casinos and of good financial standing and probity.

9 The ORGL maintained an on-Island branch of the Gaming Division until 30 November 1998, whereupon the branch was closed for the foreseeable future. 'Staff were originally retained on the Island to maintain confidentiality of records and because it was considered that their presence could expedite the re-opening of the Casino...Following the cancellation of the Casino licence by the Minister on 28 July 1998 and the appointment of a Receiver and Manager of the Casino and Resort, it became apparent that the Casino would remain closed for an indefinite period. Consequently, the decision was made to close the Gaming Division's on-Island office.' *Territory of Christmas Island Casino Surveillance Authority & Casino Controller Annual Report, 1998-99*, pp. 7-8.

- 2.14 A casino licence was granted to CIR on 5 November 1993. This licence was granted subject to conditions set out in the *Casino Control Ordinance 1988* and the Agreement.
- 2.15 The initial operating licence was granted exclusively, in that no other licences would be granted in respect of Christmas Island¹⁰ and the licence was granted for a period of fifteen years.¹¹ Clause 29 of the Agreement stated that renewal of the licence for a further ten years could be negotiated during the tenth year of the casino licence.

Casino licence fee

- 2.16 As stipulated in the Agreement, the fee for the casino licence was comprised of three components:
- \$1 million per annum during each year of the casino licence;
 - 8 per cent of the casino gross profit in each year for the first two years of the casino licence; and
 - 10 per cent of the casino gross profit for the subsequent eight years.
- 2.17 The Agreement also stated that a review of the casino licence fee was to be undertaken during the tenth year of the casino licence. This would have included, among other things, an examination of casino licence fees, gaming taxes and other financial arrangements in place in other casinos in Australia at the time of the review.

Community Benefit Fee

- 2.18 In 1994 a further 1.0 per cent of the annual casino gross profit was negotiated, to be paid into the Christmas Island Community Benefit Fund.
- 2.19 Funds for the Community Benefit Fund were paid into a Commonwealth trust account and subsequently allocated to the Christmas Island Shire Council. A committee arrangement existed whereby three members of the Shire Council, the Administrator of Christmas Island and a Commonwealth representative would allocate the money to support local projects.¹²

10 Because the licence was granted exclusively, no other casino licence would be issued in respect of Christmas Island for a period of twenty years commencing on the date of the issue of the licence. Clause 28, Agreement, DoTRS, Submission No. 11, p. 1253.

11 The licence was in force from and including 5 November 1993 until and including 4 November 2008.

12 All recommendations for the allocation of funds require approval from the Parliamentary Secretary. DoTRS told the Committee that it was currently in the process of expending the remaining balance of funds collected by the Community Benefit Fund, for the restoration of Buck House. DoTRS, *Hansard*, p. 228.

The lease

- 2.20 On 17 May 1989 the Commonwealth issued CIR with a 99-year Crown lease for a 47-hectare block of land.¹³ Lease rental was 5 cents per annum if and when demanded payable by the Commonwealth.¹⁴
- 2.21 The purpose clause of the original lease provided that:
- The Lessee shall use the premises only for the purpose of a hotel-casino and, ancillary thereto, for personal services, retail and non-retail shops, recreation, accommodation and entertainment facilities or such purpose as may be approved in writing by the Commonwealth.¹⁵
- 2.22 In evidence to the Committee, the Department of Transport and Regional Services (DoTRS) advised that the purpose clause of the lease was permissive and not mandatory.¹⁶
- 2.23 A mandatory or prescriptive clause stipulates that the facility must be used *only* for the purpose stated in the clause. A permissive clause *allows* for the use of the facility for the purpose stated in the clause. In its claim that the clause is permissive, DoTRS has focused on the fact that the clause allows the Commonwealth to sanction alternative uses for the facility.
- 2.24 Covenants attached to the lease stipulated that the following conditions be adhered to:
- *Commencement and Completion of Building:* The lessee (CIR) would complete construction of the casino and resort as well as a land-backed wharf.
 - *Services:* The lessee would provide and maintain:
 - ⇒ water collection and reticulation plant;
 - ⇒ sewerage reticulation and treatment plant; and
 - ⇒ electricity generation and reticulation plant if required by the Commonwealth.
 - *Natural Springs:* The lessee would:
 - ⇒ construct works to collect water from natural springs on the land;

13 A copy of the original lease is attached to DoTRS, Submission No. 11, p. 1223. Associated properties were contained within separate leases - Christmas Island Lodge consisted of two titles held under a 99-year Crown lease issued on 30 December 1991. Seaview Lodge was held under a 99-year Crown lease issued on 14 December 1990. Staff accommodation at San Chye Loh and at Poon Saan Road, adjoining the San Chye Loh block, were both held under a 99-year Crown lease issued on 30 December 1991.

14 Clause 2(a) of Christmas Island Resort lease.

15 Clause 3(b) of Christmas Island Resort Lease.

16 DoTRS, Submission No. 11, p. 1211.

- ⇒ be permitted to use part of that water; and
- ⇒ reticulate the remainder of the water collected as directed by the Commonwealth.
- **Public Access to Shoreline:** The lessee would permit public access to the shoreline of the premises, at any reasonable time and in any reasonable manner, with the shoreline including an area not more than five metres in from the high-water mark;
- **Environmental Protection:** The lessee would develop and implement measures to protect the environment of Christmas Island throughout the construction and operation of the casino and resort. Furthermore, the lessee was to comply with any direction in writing from the Commonwealth to protect the surrounding environment and that the Commonwealth would maintain the right to serve upon the lessee a pollution control notice or decision under the relevant pollution control legislation.
- **Rates and Charges:** The lessee would pay all rates, charges and other statutory outgoings.
- **Building Subject to Approval:** The lessee would not, without the previous approval in writing of the Commonwealth, erect any building on the land or make any structural changes to the premises.
- **Determination:** The Commonwealth would have the right to determine or cancel the lease if:
 - ⇒ any monies payable under the lease remained unpaid for three months after the appointed date for payment;
 - ⇒ work on the commencement or completion of the resort/casino was not conducted by dates specified under sub-clause 3(a) of the lease;
 - ⇒ the lessee failed to observe or perform any other covenant contained within the lease, or failed to remedy any breach of the lease within a period of three months; or
 - ⇒ there was a default by the Developer or the Guarantors in the observance or performance of the terms and conditions of the Agreement.
- **Further Lease:** At the expiration of the lease, and if the Commonwealth chose not to decide to sub-divide the land or have any further use for it, the lessee would be entitled to a further lease of the land for such a term and under such conditions as were agreed between the parties.

Operation of the casino and resort

Infrastructure

- 2.25 The complex is situated on approximately 47 hectares of land at Waterfall Bay, overlooking the Indian Ocean and offering luxury accommodation.
- 2.26 At the time of its closure in 1998 the casino and resort included the following facilities:
- three casino gaming areas;
 - 156 guest rooms and suites;
 - a bar and two restaurants;
 - two nightclubs;
 - a duty free shop;
 - resort swimming pool and sunbathing area; and
 - ancillary facilities.¹⁷
- 2.27 Casino facilities included 23 gaming tables and 43 gaming machines. These operated from three rooms with a total floor area of approximately 750 square metres.¹⁸
- 2.28 Further accommodation was available in Poon Saan, on two blocks separated by a shopping centre. This complex was collectively called Christmas Island Lodge. This accommodation was also owned by CIR and offered eighty motel style rooms.
- 2.29 Staff accommodation was located in Poon Saan as well as in San Chye Loh. This consisted of 144 flats in twelve two-storey buildings with external balconies and walk-up recess.¹⁹
- 2.30 Seaview Lodge, a two-storey residence built during the 1930s, also formed part of the holdings of CIR.
- 2.31 There are two principal roads that affect the resort: Gaze Road, which travels around the coast, past the golf course and towards the Settlement, and Linkwater Road, which travels south from the resort before joining another road which turns north near the airport and then on to the Settlement.

17 PPB Ashton Read, Submission No. 7, p. 48.

18 PPB Ashton Read, Submission No. 7, p. 48.

19 PPB Ashton Read, Submission No. 7, p. 49.

Clientele

- 2.32 The casino and resort catered specifically for ‘high rollers’ – wealthy patrons of the casino arriving on the Island specifically to gamble. The Christmas Island Casino was in direct competition with only two other Asian operations, located in Macau and the Genting Highlands of Malaysia.
- 2.33 The majority of the resort’s clientele travelled from Indonesia, often arriving by private jet for short periods of time to use the casino facilities. The Commonwealth consequently allowed special short-term visas for Christmas Island in order to facilitate commercial activity for the casino.²⁰

Profitability

- 2.34 Initially, the resort operated at a profit, with revenue fluctuating from month to month. The majority of revenue was garnered from the casino with accommodation and ancillary facilities generating substantially less income. Figures indicate that the level of activity and profitability dropped substantially after 1994-95.

Table 2 Profitability and Selected Fees for Christmas Island Casino 1993-94 – 1996-97²¹

Year	Casino Gross Profit (\$m)	Casino Licence Fee (\$m)	Community Benefit Fee (\$m)
1993-94	80.7	6.5	0.8
1994-95	153.7	12.3	1.5
1995-96	79.5	7.2	0.8
1996-97	13.2	1.3	0.1

- 2.35 While the casino itself was able to sustain a profit, the overall summary of profit and loss on operations for the Christmas Island Casino and Resort shows that the year ending 30 June 1994 was the only year in which CIR made a profit. Effectively, with the exception of the first year of operations, the company made a loss in every year it was open from 1993 until its closure in April 1998.

20 The special provisions included in r.2.40 of the *Migration Regulations*, which enabled Indonesian and Singaporean guests of the casino to obtain special purpose visas, were repealed on 1 July 1999.

21 Source: Annual Reports of Christmas Island Casino Surveillance Authority as quoted in BTE, *Christmas Island Regional Analysis*, p. 19.

**Table 3 Christmas Island Casino and Resort - Summary of Profit or Loss* on Operations
1991 – 1998²²**

Operating income	Period end	Year end 30 June						
	1998** \$000	1997 \$000	1996 \$000	1995 \$000	1994 \$000	1993 \$000	1992 \$000	1991 \$000
Casino & Hotel revenue		17,372	93,833	156,089	84,044			
Interest		263	245	55	36			
Other						138	231	37
		17,635	94,078	156,144	84,080	138	231	37
Operating profit (loss)	(16,392)	(26,089)	(8,456)	(3,780)	4,175	(1,450)	(147)	(1,723)

* Figures in brackets denote a loss

** Period ending 30 April 1998

Impact on the Christmas Island community

2.36 The establishment of the Christmas Island Casino and Resort had a major impact on the local community of the Island.

2.37 The ongoing contribution of the casino and resort to the local economy varied depending on levels of activity and profitability. The Bureau of Transport Economics (BTE) estimates that the flow of funds to the Christmas Island economy from the casino and resort was approximately \$11.1 million per annum during the initial operating period. This figure comprised:

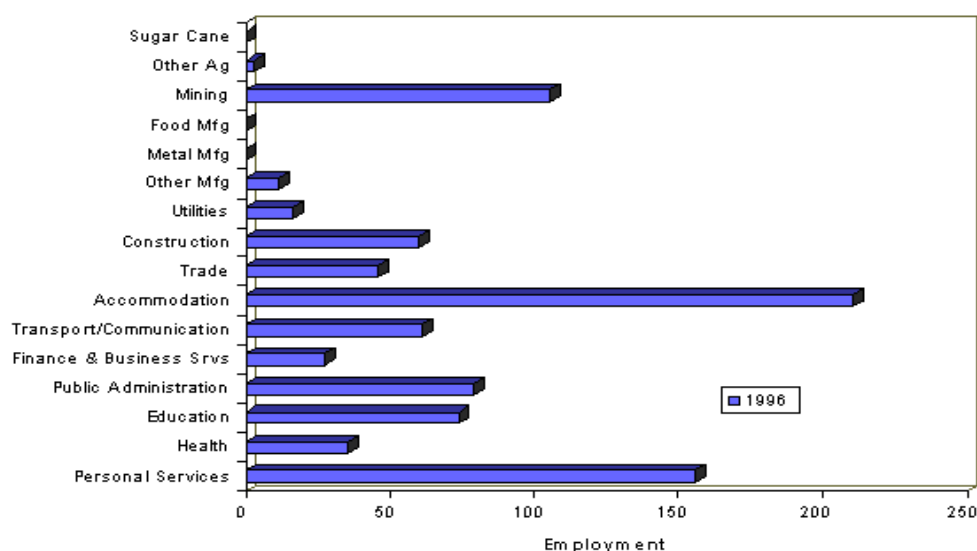
- \$9.7 million for local wages and salaries (including staff recruited off-Island);
- \$1.1 million for the Community Benefit Fee; and
- \$0.3 million in rates and land taxes paid to the Shire of Christmas Island.²³

22 Source: PPB Ashton Read, Submission No. 7, p. 115.

23 BTE, *Christmas Island Regional Analysis*, p. 58.

- 2.38 Construction of the resort alone provided a major boost to the Island's economy, requiring an average of approximately eighty construction workers, with a peak figure of 120.²⁴ In operation the resort complex employed approximately 350 staff, of whom about one third were permanent residents of the Island.²⁵
- 2.39 Figures on the distribution of Christmas Island's employment market clearly indicate that in 1996, those industries and ancillary businesses associated with the operation of the casino and resort were generating a far greater share of employment than other industries on the Island, including phosphate mining.

Graph One Christmas Island employment by industry (1996)²⁶



- 2.40 High levels of employment at the casino and resort also had repercussions for other areas of the Christmas Island tourism sector. Many employees, who were generally young and single, and had high incomes, engaged in on-Island leisure activities. This had a positive effect on the small business sector of the Island's economy, generating business for local restaurants, taverns and diving businesses.
- 2.41 In evidence provided to the Committee, the Christmas Island Chamber of Commerce (CICC) stated that:

24 BTE, *Christmas Island Regional Analysis*, p. 58.

25 Commonwealth Grants Commission, *Report on Christmas Island Inquiry, 1995*, p. 8.

26 Indian Ocean Territories – Situation Report, *Northern Forum Reports*, www.dotrs.gov.au/regional/northern_forum/locations

[the Resort] totally changed the economy of the island and the way the island was heading...This private business sector has built up – entirely as a result of the opening of the Resort in 1993 – into something that is quite substantial.²⁷

Closure of the casino and resort

2.42 Following the initial success of the Christmas Island Casino and Resort, levels of activity and profitability fell sharply after 1994-95. This was the result of a number of factors, including the Asian economic downturn, the cessation of direct air services from Asia and managerial disputes involving CIR.

Asian economic crisis

2.43 The Asian economic crisis began in 1997 in Thailand, when the collapse of the Thai baht in international currency markets precipitated a regional banking and investment crisis. Recession and negative growth spread quickly through the region, with stock market falls in many of the major trading centres of South East and East Asia, in addition to general economic instability. This led to a loss of confidence in the Indonesian rupiah, which by 1998 had pushed that country into its worst economic crisis in thirty years.

2.44 The casino was, from the beginning, targeted specifically at junket groups, together with some VIP players, sourced predominantly from Indonesia and Singapore.

2.45 With the advent of the Asian economic crisis in the mid to late 1990s, economic instability and recession in the Asia-Pacific region had a negative effect on Australia's gambling and casino industry as a whole. The Christmas Island Casino and Resort was particularly hard hit, as the predominant source of the casino's clientele was the region to the north of the Island.

2.46 In a valuation of the Christmas Island Resort prepared for the Liquidator in August 1998, JLW TransAct stated that:

The Asian currency and economic crises...had a dramatic adverse impact on casino gaming from Asian markets which has been experienced by nearly all the casinos which attract these market segments both in Australia and in the region as a whole.²⁸

27 CICC, *Hansard*, p. 185.

28 PPB Ashton Read, Submission No. 7, p. 171.

Cessation of regular air services

- 2.47 At the time of the resort's opening, regular air services were available between Christmas Island and Perth, Broome, Singapore, Jakarta, the Cocos (Keeling) Islands, Denpasar and Surabaya.
- 2.48 From October 1997 many scheduled services to the Island ceased, and for a period of time a once-weekly Perth – Christmas Island – Cocos Islands flight became the only regular air service to the Island.
- 2.49 Mr Frank Woodmore, a former director of the casino and resort, informed the Committee:

The casino depended on regular air services from Asia. Two airline operators provided a total of 7 flights a week, mainly from Jakarta, but by May 1996 both operators pulled out because Sumampow refused to authorise payment of their accounts.

In an effort to keep the business going, CAI chartered executive jets from Jakarta and organised a weekly B727 flight from Singapore. The strategy was successful but short lived...

The executive jets ceased operating because the Indonesian Transport Division would no longer issue flight permits to Christmas Island.²⁹

- 2.50 The loss of regular air services between Christmas Island and the primary tourism hubs of Indonesia and Singapore had a detrimental effect on the number of visitors staying at the resort. The loss of services to Singapore, in particular, had a negative impact on European travellers looking to travel to Christmas Island, as Singapore is the preferred regional staging post.

Managerial dispute

- 2.51 In January 1996 CIR became involved in a dispute with Casinos Austria International, and attempted to terminate their management and operating agreement. The Committee was informed that Mr Sumampow sent a large team of auditors to the resort, who produced a report which Mr Sumampow used to demand CAI's resignation for alleged incompetence.³⁰
- 2.52 CAI obtained an injunction in the Supreme Court of Western Australia, allowing it to remain in place pending a hearing of the matter.

29 Mr Frank Woodmore, Submission No. 8, p. 1188.

30 Mr Frank Woodmore, Submission No. 8, p. 1188.

- 2.53 The court hearing took place in two sessions in 1996 and 1997. After the first session, and as a result of the allegations made by both parties during the trial, the Minister for Sport, Territories and Local Government initiated an inquiry into the suitability of both CIR and CAI to be associated with a casino.
- 2.54 After the second session of the trial CAI gave seven days notice of its intention to resign as operator/manager of the casino and resort, whilst reserving its right to damages. CAI ceased management activities on 14 April 1997.³¹
- 2.55 The directors of CIR sought to appoint Casinos International Management Pty Ltd (CIM) as the replacement. However, as no prior application had been submitted and no probity review conducted, the Commonwealth refused the application. As a result the casino closed.³²
- 2.56 The Minister subsequently appointed an independent administrator - Casino Management International Pty Ltd (CMI) - to conduct gaming operations at the casino for a twelve month period. The casino was re-opened on 25 May 1997.
- 2.57 In addition, the Committee received evidence from Mr Frank Woodmore that when he complained to Mr Sumampow that his attempts to take control of the casino operations amounted to a conflict of interest, Mr Sumampow 'immediately repudiated Mercator's management contract with CIR and terminated its monthly payments'. Mr Woodmore 'was removed from all management committees and asked to resign as a director'. Mr Woodmore resigned in January 1997, and began preparations to take CIR to court.³³
- 2.58 In March 1997 Frank Woodmore offered to sell his share of CIR to Robby Sumampow for \$5.1 million. This was part of an agreement under which *Sampoerna Holdings Pty Ltd*, a Singaporean company, would purchase a 50 per cent holding in CIR. This agreement required Mr Sumampow to buy Mercator's 10 per cent holding. The contract of sale was extended twice³⁴ and negotiations continued up to the date of the casino's closure, but the sale was never made.³⁵

31 CAI was exonerated and lodged an action for damages against CIR. The matter did not proceed due to the liquidation of CIR.

32 PPB Ashton Read, Submission No. 7, p. 110.

33 Mr Frank Woodmore, Submission No. 8, p. 1188.

34 The last agreed settlement date was 31 July 1998. PPB Ashton Read, Submission No. 7, p. 112.

35 *Mercator Property Consultants Pty Ltd v Sumampow [2000]*, Supreme Court of Western Australia, WASC 157 (16 June 2000).

Closure of the casino and resort

- 2.59 On 23 April 1998 administration of the casino ceased and, with no replacement operator nominated by CIR, it closed on the same day. The resort closed with unpaid financial commitments to Mercator, the Christmas Island Power Authority, National Jet Systems Group and Christmas Island Travel Pty Ltd, among others.
- 2.60 In addition, the Christmas Island Resort had accumulated a debt of approximately \$2 million in unpaid wages to approximately 320 employees, including \$1.4 million in redundancy payments and \$400,000 in salaries and holiday pay.³⁶
- 2.61 On 16 June 1998 the Minister for Regional Development, Territories and Local Government issued a notice pursuant to s58 of the *Casino Control Ordinance 1988*, requiring CIR to show cause within 21 days why the casino licence should not be cancelled on grounds which included its failure to meet its financial obligations to specified creditors and to its employees.
- 2.62 On 3 July 1998 Mercator Property Consultants Pty Ltd applied to the Federal Court of Australia for the appointment of a Receiver and Manager over the assets of CIR.
- 2.63 On 10 July 1998, following an unsatisfactory response from CIR to the Minister's notice to show cause why its license should not be cancelled, the Minister issued a direction requiring CIR to pay certain financial commitments to its creditors and its employers within 14 days.³⁷
- 2.64 CIR did not comply with the Minister's notice of 10 July 1998, and on 28 July 1998 the Minister cancelled the company's licence to operate the casino.
- 2.65 On 29 July 1998 Mercator's application to the Federal Court was granted,³⁸ and Mr Jeffrey Herbert of PPB Ashton Read was appointed Receiver and Manager of Christmas Island Resort Pty Ltd.

36 Joint Press Release: Shadow Minister for Public Administration, Government Services & Territories and Shadow Minister for Industrial Relations, Finance & the Arts, *Christmas Island Workers – Too Little Too Late*, 29 July 1998.

37 Media Release: Minister for Regional Services, Territories and Local Government, *Hope for Christmas Island Casino Workers Wages Following Ministerial Action*, 13 July 1998.

38 *Mercator Property Consultants Pty Ltd v Christmas Island Resort Pty Ltd & Ors* [1998], 896 Federal Court of Australia, 29 July 1998.

Impact of the closure of the casino and resort on the Christmas Island community

- 2.66 The local tourism sector, in particular those businesses profiting from the large population of employees living on the Island, was devastated by the closure of the resort.
- 2.67 Following the sudden closure of the casino and resort, the number of visitors to the Island dropped dramatically. The Christmas Island Tourism Association (CITA) estimates that the number of international visitors dropped by approximately 65 per cent.
- 2.68 In addition, there was an overall loss of confidence in the Island as a viable tourism destination. Ms Teresa Hendren, the Tourism Coordinator for CITA, stated:
- Many stopped thinking of the island as a destination that was easily accessible, so the effects of past marketing by the resort of the island's attractions to this region were lost. The island also lost major tourism markets with regard to not only visitors who came to gamble but those tourists who were looking for a more luxurious holiday in facilities such as the five-star facilities offered at the resort. It was also a tourist attraction as it offered, with the casino and the nightclub, the option of nightlife for those visiting the island.³⁹
- 2.69 The closure of the Christmas Island Casino and Resort also had a substantial effect on the burgeoning small business sector on the Island, which had developed as a satellite industry for the staff of the resort, in addition to meeting the needs of tourists.
- 2.70 Approximately 200-250 former employees recruited off-Island had left by the end of 1998. In addition, the closure of the resort contributed to an increase in under-employment for those former employees remaining on the Island, particularly in the small business sector.⁴⁰
- 2.71 The Committee heard evidence from the Christmas Island Chamber of Commerce that with the downturn in both visitor and resident numbers on the Island, small businesses were finding it increasingly difficult to make ends meet.

When the resort closed in 1998, the population reduced from an estimated 2,600 to a current 1,300 people. There are approximately 67 small businesses on Christmas Island, all trying to make a

39 CITA, *Hansard*, p. 171.

40 BTE, *Christmas Island Regional Analysis*, p. 14.

living out of an estimated 340 pay packets...more than half of these businesses have lost money over the last three years and have only remained on the island because of the hope that the resort will reopen...if the resort does not reopen...the chamber forecasts a further decline in population of 400 people within the next 18 months and the near collapse of much of the small business sector built up over the last ten years.⁴¹

41 CICC, *Hansard*, p. 178.

The tender process

Appointment of Liquidator

- 3.1 By late July 1998, the casino and resort had ceased operating, the electricity and computer networks had been shut down, the casino licence had been cancelled and Christmas Island Resort Pty Ltd (CIR) was profoundly insolvent, being unable to pay debts exceeding \$104 million.
- 3.2 Under the terms of his appointment as Receiver and Manager, Mr Jeffrey Herbert¹ was ordered to investigate 'the solvency of CIR and the position CIR should take in these proceedings'.²
- 3.3 In September 1998 Mr Herbert presented CIR with two viable options: voluntary administration through the formulation of a Deed of Company Arrangement (DOCA)³ or, failing that, liquidation.⁴
- 3.4 At this stage, CIR's estimated financial position was as follows:

1 Mr Jeffrey Herbert was appointed Receiver and Manager of CIR on 29 July 1998, Provisional Liquidator on 20 October 1998 and Liquidator of CIR on 8 December 1998.

2 A copy of the Order of the Federal Court of Australia dated 29 July 1998 is attached at Annexure 1, PPB Ashton Read, Submission No. 7, p. 92.

3 A Deed of Company Arrangement (DOCA) is when an agreement is made between a company and its creditors regulating the payment of creditors' debts.

4 *Report to the Members Pursuant to an Order of the Federal Court of Australia made on 29 July 1998*, Annexure 4, PPB Ashton Read, Submission No. 7, pp. 104-140.

**Table 4 CIR's Estimated Financial Position
(as at 29 July 1998)⁵**

	Best Case* \$,000	Worst Case** \$,000
Assets		
Land & buildings – at valuation	6,460	5,240
Plant & equipment – at valuation	1,456	793
Aeroplanes – at valuation	1,716	695
Claim against Commonwealth	3,000	NIL
Debtors	100	60
Cash at bank	32	32
Stock	75	18
Investments	NIL	NIL
Total investments subject to cost of realisation	12,839	6,838
Liabilities		
	\$,000	\$,000
Employees' Claims	2, 551	3,317
Unsecured Creditors	101,670	103,762
Total Liabilities	104,221	107,079
Net Asset Deficiency subject to costs of realisation & contingent amounts	91,382	100,241

* Best Case scenario primarily assumes realisation of the assets on an 'in situ' basis

** Worst Case scenario is primarily predicated on the realisation of the assets by way of auction

3.5 Based on CIR's financial situation, Mr Herbert initially sought to pursue a DOCA with the former directors of CIR.⁶ From late August and through September 1998 Mr Herbert undertook negotiations with the former directors of CIR in pursuit of a DOCA to facilitate voluntary administration of the company.

3.6 On 28 August 1998 Mr Herbert and Mr Cliff Rocke, then a manager of PPB Ashton Read, travelled to Indonesia to meet with Mr Sumampow and other former directors of CIR to discuss 'options for the financial reconstruction of CIR and the possibility of a DOCA'.⁷ At this meeting,

5 PPB Ashton Read, Submission No. 7, p. 41. The full report, *Report to the Members pursuant to an Order of the Federal Court of Australia made on 29 July 1998*, 29 September 1998, is attached at Annexure 4, Submission No. 7, pp. 104-140.

6 The directors of CIR at the time of Mr Herbert's appointment as Receiver and Manager were: Mr Sumampow, Mr Herman Gani, Mr Kwik Soen Hok and Mr Jokky Hidayat. Annexure 4, PPB Ashton Read, Submission No. 7, p. 109.

7 PPB Ashton Read, Submission No. 7, p. 42.

Mr Sumampow stated his intent to pay all creditors in full within three months. Mr Herbert informed the Committee that he subsequently attempted to 'formulate a proposal providing for the payment of 100 cents in the dollar to creditors within a period of three months of the date of acceptance of a DOCA by creditors'.⁸

3.7 On 1 October 1998, the day on which an application for CIR to go into voluntary administration was to be heard in the Federal Court, former directors of CIR withdrew support for the DOCA with Mr Herbert and terminated all negotiations.

3.8 In his submission, Mr Herbert stated that:

In the circumstances, I had no option but to apply for CIR to go into Provisional Liquidation and, finally, liquidation; given that CIR was insolvent, that its creditors were pressing for the company to be wound up, and that the former directors were not prepared to support my proposal for a DOCA or to discuss the possibility of an alternative arrangement.

3.9 Mr Herbert was subsequently appointed Provisional Liquidator by the Federal Court on 20 October 1998. A hearing date for the winding up of CIR was set for 8 December 1998, whereupon Mr Herbert was appointed Liquidator.⁹

Development of sale strategy

3.10 Following his appointment as Receiver and Manager of the casino and resort, Mr Herbert commissioned a valuation of the property assets of CIR by the firm Jones Lang Wootton (JLW). Subsequent to Mr Herbert's appointment as Provisional Liquidator, JLW were further commissioned to formulate a marketing strategy for the sale of the resort complex.

3.11 Property assets to be included in the sale were:

- Christmas Island Casino and Resort;
- Christmas Island Lodge;
- Christmas Island staff accommodation at Poon Saan and San Chye Loh; and

8 PPB Ashton Read, Submission No. 7, p. 43.

9 Former directors of CIR opposed the liquidation on the grounds that they wished to formulate a DOCA to pay creditors 100 cents in the dollar within a period of three months. Furthermore, former directors disputed a number of debts and believed that CIR's debts were substantially lower than the amounts disclosed in the financial records of the company. PPB Ashton Read, Submission No. 7, p. 46.

- associated furniture, fittings and equipment.¹⁰
- 3.12 The casino licence and the liquor licence were not included in the saleable items because the casino licence had been cancelled and the liquor licence had been suspended. Consequently, they could not be included as part of the assets of CIR.
- 3.13 In August 1998 JLW valued the casino and resort,¹¹ including relevant licences and furniture, fittings and equipment, as follows:

Table 5 Valuation of Christmas Island Casino and Resort¹²

	Market Value \$'000	Forced Sale Value \$'000
Casino & Resort	4,500	3,500
Staff Accommodation	1,160	1,020
Christmas Island Lodge	400	350
	\$6,060	\$4,870

- 3.14 In JLW's marketing submission, dated 10 November 1998, a public tender process was identified as the preferred marketing process for the casino and resort.¹³
- 3.15 In his submission Mr Herbert states that:

In essence, the principal reason that a tender was selected as the method of sale was that it allowed the establishment of a timetable for the sale which allowed sufficient time to market the casino and resort to potential purchasers, within Australia and internationally.

In particular, the tender process could also be structured so as to facilitate the inclusion of a time period for the granting of a Casino Licence to the successful tenderer (Probity Review).¹⁴

10 PPB Ashton Read, Submission No. 7, pp. 48-49.

11 For the purposes of this chapter, the term 'Christmas Island Casino and Resort' encompasses the casino and resort, the Lodge, the staff accommodation and the furniture, fittings and equipment, unless specified otherwise.

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

13 JLW's report is attached at Annexure 7, PPB Ashton Read, Submission, No. 7, p. 159.

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

Crown leases and the casino licence

3.16 In August 1998 Mr Herbert initiated lengthy discussions with the Commonwealth regarding the Commonwealth's position on the Crown leases, the casino licence and a gaming tax regime, for the purposes of promoting and selling the casino and resort.

Crown leases

3.17 During the initial stages of the process, the Liquidator held preliminary discussions with the Commonwealth concerning the transfer of Crown leases for the properties of the Christmas Island Casino and Resort. Inquiries from Mr Herbert focussed on arrangements for the assignment of the lease and any potential changes to the lease.

Assignment of the leases

3.18 In correspondence dated 1 September 1998, Mr Herbert received advice from the Department of Transport and Regional Services (DoTRS) stating that assignment of the leases held by CIR was a matter of routine administration and unlikely to be withheld.¹⁵

Changes to the leases

3.19 DoTRS also noted that the original lease held by CIR was, in effect, a 'development lease which was tied to the Original Agreement between the Commonwealth, CIR and others'. As a consequence, many of the provisions had become redundant or inappropriate for transfer to the new owner.¹⁶

3.20 The Department advised that a prospective purchaser might wish to have a new lease drawn up, which could also incorporate some modifications which the Commonwealth was proposing, regarding changes in the boundaries of the lease. These included proposals for:

- excising and protecting an area of native rainforest on the northern side of the Linkwater Road boundary;
- ceding Freshwater Spring, the CIR sewerage plant and Linkwater Road itself to the Island community;
- excising the Waterfall Bay pump station, plant and equipment, water supply pipeline, reservoir tanks and chemical treatment plant to the Commonwealth; and

15 PPB Ashton Read, Submission No. 7, pp. 51 and 348.

16 Annexure 13, PPB Ashton Read, Submission No. 7, p. 360.

- in exchange for the land excised from the lease, a smaller area of land at the southern end of the site, previously mined and now ‘pinnacles’, would be added to the lease.¹⁷

3.21 Following the exchange of correspondence between the Liquidator and both the Department and the Minister regarding finalisation of the lease, the Minister wrote to the Liquidator on 30 August 1999, and stated that negotiations over ‘boundary changes and easements over the land to transfer services infrastructure responsibility to the Commonwealth’ would continue with any purchaser of the resort.¹⁸

Conversion from leasehold to freehold

3.22 On 28 October 1998 Mr Herbert wrote to the Commonwealth and requested consent to convert all titles, except the casino site, from leasehold to freehold. In correspondence to DoTRS dated 28 October 1998, Mr Herbert stated that ‘buyers and lenders are cautious of leasehold titles and the freeholding of these titles is expected to yield a better result when the properties are put to sale’.¹⁹

3.23 On 30 August 1999 the Minister wrote to Mr Herbert stating that ‘a conversion of the leases held by CIR to freehold at an appropriate time in the tender process is acceptable’.²⁰

3.24 In the Information Memorandum distributed by the Liquidator to interested parties during promotion of the casino and resort, the description of the land tenure stated that ‘earlier 99-year leases may be converted to freehold upon application, provided development conditions have been fulfilled’.²¹

The casino licence

3.25 Through this same period, Mr Herbert held extensive discussions with the Commonwealth regarding the granting of a casino licence. Specific inquiries from the Liquidator focused on two issues:

- wording for promotional material setting out the Commonwealth’s position in relation to the casino licence; and
- what information the Casino Surveillance Authority (CSA) would require for the assessment of potential applicants, in order to expedite the probity review component of the tender process.

17 Annexures 8-19, PPB Ashton Read, Submission No. 7, pp. 344-396.

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

19 Annexure 10, PPB Ashton Read, Submission No. 7, pp. 351-352.

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

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

Wording of promotional material

- 3.26 From August 1998 the Liquidator, initially as Receiver and Manager, was in communication with DoTRS, in order to ensure that promotional material advertising the sale of the casino and resort was factually correct regarding the statutory process required for a casino licence. Representatives of the Department told the Committee:

We wanted it clarified in the tender documents that the casino licence was a separate issue, that it had been cancelled and that if any purchaser wished to run a casino they would have to apply to the Commonwealth separately. It was something outside of the tender process. There was not a licence for sale.²²

- 3.27 On 1 September 1998 DoTRS advised Mr Herbert that:

Whilst it would not be correct to advertise the assets of CIR with a casino licence, the resort is clearly designed as, and has the potential for future operation as, a hotel casino. Any advertisement should refer only to a potential licence and clearly indicate the issue of a licence is subject to an applicant meeting the suitability requirements in the Ordinance and obtaining the Minister's approval.²³

- 3.28 On 3 November 1998 DoTRS further advised that any promotional or marketing material use the following wording to clarify the availability of the casino licence:

The Commonwealth Government is prepared to consider an application for a casino licence in accordance with the relevant legislation. The applicant and its associates must satisfy strict financial, ethical and business reputation conditions.²⁴

- 3.29 This wording was adopted in subsequent promotional material for the marketing of the casino and resort.²⁵

Probity review

- 3.30 In early January 1999 the Liquidator sought advice on the length of time required to conduct the probity review and what information would be required from potential purchasers to expedite the process. He was

22 DoTRS, *Hansard*, p. 7.

23 PPB Ashton Read, Submission No. 7, p. 52 & Annexure 9, p. 349.

24 Annexure 11, PPB Ashton Read, Submission No. 7, p. 355.

25 As can be evidenced by promotional material prepared for prospective buyers, attached at Annexures 20 and 22, PPB Ashton Read, Submission No. 7, p. 397 and p. 423 respectively.

advised by DoTRS to seek information from the CSA in matters pertaining to the probity review.²⁶

3.31 The Liquidator stated:

I needed to ascertain how long the Probity Review period would take and what information potential purchasers of the casino and resort would need to provide to facilitate the Probity Review.²⁷

3.32 The CSA provided Mr Herbert with a list of information it would require to screen out any obviously unsuitable parties from the initial phase of the tender process. He was further informed that the probity review would take between three and six months to complete.

Gaming tax regime

3.33 On 9 February 1999 a meeting was held between the Liquidator and representatives of the Commonwealth to discuss gaming tax rates, as well as issues pertaining to the Crown leases and the casino licence.

3.34 For the first two years of operation, CIR paid a combined gaming tax and Community Benefit Fee of 9 per cent of the casino gross gaming revenue. This was comprised of an 8 per cent tax rate on gaming and a further 1 per cent Community Benefit Fee. During that period average Commonwealth revenues from the casino and resort exceeded \$1 million per month.

3.35 A proposal prepared by the Liquidator, and supported by a tax study of the Christmas Island Casino and Resort formulated by Ernst & Young, argued that the subsequent gaming tax increase by 2 per cent from the third year onwards resulted in a marked fall in trade and a fall in Commonwealth revenue.

3.36 The Liquidator's proposal stated that 'in the fifth year of operation Commonwealth revenue fell to \$105,000 per month' and that it was 'evident that a major contributing factor was the level of gaming tax'.²⁸

3.37 Furthermore, because the gaming tax increased by 2 per cent from the third year onwards, the casino was unable profitably to offer competitive commissions to 'junket' operators, resulting in a fall in trade.²⁹

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

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

28 See Table 6. Annexure 14, PPB Ashton Read, Submission No. 7, p. 366.

29 Annexure 14, PPB Ashton Read, Submission No. 7, p. 366.

**Table 6 Commonwealth Receipts 1993-1998³⁰
(Paid by Christmas Island Casino)**

	1993-94 (7 months)	1994-95	1995-96	1996-97	1997-98
Gaming tax rates at 8%	\$6,453,000	\$12,300,000	\$2,322,000		
Gaming tax rates at 10%			\$4,824,000	\$1,293,000	\$957,000
Community Benefit Levy at 1%	\$807,000	\$1,537,000	\$789,000	\$129,000	\$96,000
Total Commonwealth receipts	\$7,260,000	\$13,837,000	\$7,935,000	\$1,422,000	\$1,053,000
Averaged monthly receipts	\$1,037,143	\$1,153,083	\$661,250	\$118,500	\$105,300

3.38 The Liquidator subsequently proposed to the Commonwealth that the gaming tax rate revert to 8 per cent, while the Community Benefit Fee remain at 1 per cent.³¹ In summary, the Liquidator stated :

I believe that this is reasonable from the Commonwealth's point of view and equitable from the point of view of the successful purchaser, having regard to the nature of the revenue that would be derived from casino operations on Christmas Island, and to rates payable by comparable casinos.³²

3.39 A tabular comparison between the taxing regime of the Christmas Island Casino and comparable casinos elsewhere in Australia is attached at Appendix D.

3.40 In response to the Liquidator's submission, the Minister wrote to Mr Herbert on 30 August 1999, proposing an annual fee of \$2 million or 8 per cent of gross profit, whichever was the higher, for the first two years. Thereafter the rate would be 8 per cent on revenue up to \$100 million, 9 per cent on revenue from \$100 million to \$120 million and a maximum of 10 per cent for revenue in excess of \$120 million. The Community Benefit

30 *Ernst & Young Gaming Tax Study for Christmas Island Resort - February 1998*, ComsWinfair, Exhibit No. 7. Annexure 14, PPB Ashton Read, Submission No. 7, p. 370.

31 Annexure 14, PPB Ashton Read, Submission No. 7, p. 371.

32 Annexure 16, PPB Ashton Read, Submission No. 7, p. 385.

Fee would remain at 1 per cent at all levels.³³ Along with changes to the lease, the gaming tax rates would be subject to final negotiation with the resultant purchaser.

Initial timetable

- 3.41 Following discussion with the Commonwealth and the CSA, and based on advice provided by JLW on a marketing strategy for the sale of the casino and resort, an initial timetable was formulated for the conduct of the tender process.
- 3.42 The initial timetable for the realisation of the Christmas Island Casino and Resort was as follows:

Table 7 Initial Timetable for Realisation of Christmas Island Casino & Resort³⁴

January 1999	Commence advertising the casino and resort
26 March 1999	Closing date for expressions of interest
15 April 1999	Information on interested parties sent to CSA
15 April 1999	Short-listed parties expressing an interest notified and advised to submit a formal tender
15 April 1999 – 15 June 1999	Due diligence period for prospective purchasers
15 June 1999	Tenders to be submitted
15 June 1999 – 15 December 1999	Probity review period for successful tender
31 January 2000	Settlement

33 Annexure 17, PPB Ashton Read, Submission No. 7, p. 390.

34 PPB Ashton Read, Submission No. 7, p. 55.

Expressions of Interest

Marketing and promotion

- 3.43 The first phase of the tender process involved advertising for expressions of interest (EOIs) for the purchase of the casino and resort. As noted earlier, JLW was contracted by the Liquidator to formulate and execute a marketing strategy.
- 3.44 The Committee was informed that advertising and promotion of the casino and resort was undertaken through the following methods:
- advertisements were placed in *The Australian Financial Review*, *The West Australian*, *South China Morning Post*, *The Business Times* Singapore and Malaysia and in *Bisnis* Indonesia;
 - a promotional brochure was produced and mailed directly to over ninety targeted potential purchasers or interested parties;³⁵ and
 - representatives from JLW travelled to South East Asia to meet interested parties, and Mr Herbert and Mr Cliff Rocke from PPB Ashton Read travelled to Singapore, Melbourne and Sydney to promote the casino and resort.³⁶
- 3.45 Those interested parties requiring additional, more detailed information were required to sign a confidentiality agreement and were then provided with an Information Memorandum. The Information Memorandum contained comprehensive details on the casino and resort's assets, previous operations, leases and licences.³⁷

Receipt of EOIs

- 3.46 All EOIs were to be submitted by 26 March 1999 within a standard form supplied by PPB Ashton Read.³⁸
- 3.47 At the closure of EOIs, five formal and two informal EOIs had been lodged for the purchase of the casino and resort. EOIs lodged were as follows:

35 The list of potential purchasers was compiled from a JLW database of tourism investors, the British Casino Association and other potentially interested parties known to Frank Woodmore and Mr Herbert. The mail out list is attached at Annexure 21, PPB Ashton Read, Submission No. 7, p. 404.

36 A list of the parties visited is attached at Annexure 23, PPB Ashton Read, Submission No. 7, p. 463.

37 PPB Ashton Read, Submission No. 7, pp. 56-57.

38 The EOI standardised form is attached at Annexure 24, PPB Ashton Read, Submission No. 7, p. 467.

Table 8 Expressions of Interest Lodged on 26 March 1999 ³⁹

Company	Price \$
Burswood Casino	-
Crown Casino	-
Winfair Group	12,000,000
Hospitality & Gaming Investments	20-25,000,000
John Schurmann	5-20,000,000
Casino Austria International	10,000,000
JDW Management	30-45,000,000

3.48 On 15 April 1999 all seven parties were invited to tender formally for the casino and resort.

Legal challenges

3.49 Throughout the tendering process a number of legal challenges, initiated by the former directors of CIR, jeopardised the appointment of the Liquidator and significantly delayed the sale of the casino and resort.

Mortgage claim

3.50 On 5 February 1999 the Liquidator received correspondence from the former directors claiming that Mr Sumampow had a mortgage over the leases of the casino and resort. Attached to the fax was a copy of a purported minute from a meeting of directors, authorising Mr Sumampow's security.⁴⁰

3.51 In his submission to the Committee, Mr Herbert stated that:

It was evident to me that a number of anomalies existed in relation to this claim and its timing. The security had not been registered and the relevant Minister had not given approval for any mortgage to be taken over the Crown Leases on which the casino and resort is situated, contrary to the requirements of the leases.⁴¹

3.52 On 30 March 1999 solicitors for the former directors advised that Mr Sumampow was claiming security over the Crown leases and would

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

40 A copy of the fax and the Minute are attached at Annexure 25, PPB Ashton Read, Submission No. 7, p. 481.

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

be applying for ministerial approval. Mr Herbert was further advised to 'cease negotiations for the sale of the Crown leases'.⁴²

3.53 On 15 April 1999, in correspondence inviting parties who lodged EOIs to tender formally, Mr Herbert additionally advised all seven interested parties that the tender process would be delayed pending an outcome to the matter.⁴³

Recommencement of the tender process

3.54 Following investigation of the matter by solicitors acting on behalf of the Liquidator, Mr Herbert received legal advice that 'Mr Sumampow's claim was unenforceable as it was not registered and ministerial approval for the mortgage had not been obtained'.⁴⁴

3.55 Interested parties were advised on 18 May 1999 that the tender process would recommence with the following timetable:

Table 9 Revised Timetable
(as at 18 May 1999)⁴⁵

1 June 1999	Commencement of due diligence process
6 August 1999	Submission of tenders
5 February 2000	Completion of probity reviews by CSA
6 February 2000	Acceptance of successful tender

High Court decision

3.56 On 17 June 1999 a decision was handed down in the High Court which effectively rendered certain decisions of the Federal Court, including the appointment of Mr Jeffrey Herbert as Liquidator, potentially invalid.⁴⁶

3.57 Consequently, on 22 June 1999, interested parties were advised that the tender process would be further delayed pending resolution of the issue.⁴⁷

3.58 In order to counteract the potential effect of the High Court decision on many other companies and liquidators around the country, on 13 July 1999 the Western Australian State Parliament enacted the *Federal Court*

42 A copy of the fax can be found at Annexure 27, PPB Ashton Read, Submission No. 7, p. 487.

43 Correspondence attached at Annexure 28, PPB Ashton Read, Submission No. 7, p. 490.

44 PPB Ashton Read, Submission No. 7, p. 59.

45 PPB Ashton Read, Submission No. 7, p. 59.

46 *Re Wakim: Ex parte McNally* (1999), 163 ALR 270.

47 Correspondence is attached at Annexure 30, PPB Ashton Read, Submission No. 7, p. 498.

(State Jurisdiction) Act 1999 (the FSA Act). This act 'sought to validate relevant actions of the Federal Court by deeming them to be actions of the Supreme Court'.⁴⁸

- 3.59 On 19 July 1999 Mr Herbert was advised by solicitors acting on behalf of the former directors that they would be challenging the validity of the FSA Act as well as the validity of his appointment as Receiver/Manager and Liquidator of CIR. Furthermore, they advised that if they were successful, any actions undertaken to sell or realise the assets of CIR would be considered trespass.⁴⁹

Recommencement of the tender process

- 3.60 Mr Herbert received legal advice from his solicitors that in order to continue with the tender process an order would have to be sought in the Supreme Court of Western Australia, transferring his appointments from the Federal Court to the Supreme Court, in accordance with the FSA Act. In addition, a further court order would have to be obtained directing Mr Herbert to continue with the sale of the casino and resort.⁵⁰
- 3.61 These orders were obtained in the Supreme Court on 23 November 1999 and 12 January 2000 respectively.
- 3.62 On 10 August 1999 parties were advised that the tender process would recommence with the following revised timetable:

**Table 10 Revised Timetable
(as at 10 August 1999)⁵¹**

30 August – 28 October 1999	Due diligence
29 October 1999	Lodgement of tenders
1 November 1999 – 1 May 2000	Probity review
2 May 2000	Acceptance of tender
3 July 2000	Execution of contract
3 August 2000	Settlement

48 PPB Ashton Read, Submission No. 7, p. 60.

49 Correspondence attached at Annexure 32, PPB Ashton Read, Submission No. 7, p. 503.

50 PPB Ashton Read, Submission No. 7, p. 60.

51 PPB Ashton Read, Submission No. 7, p. 61.

Ramifications of delays to the tender process

- 3.63 In total, claims of a mortgage over the leases, and legal challenges to the appointment of Mr Herbert, delayed the tender process by approximately eight months. These delays had significant ramifications for the cash resources of CIR and the number of EOIs which proceeded to tender.
- 3.64 Following the eight-month delay in the tender process, cash resources allocated from the realisation of non-core assets for the care and maintenance of the casino and resort were insufficient to cover costs. It was therefore necessary for the Liquidator to realise the Christmas Island Lodge (CIL) separately from the other assets. Tendering parties were advised formally on 19 August 1999 that the Lodge would be sold separately by auction.
- 3.65 On 17 September 1999 the Liquidator also advised the former directors of CIR that 'if they were to provide funding for the care and maintenance of the casino and resort, then the need to auction CIL could be avoided'.⁵² On 28 September 1999 solicitors representing the former directors advised only that, in their belief, the question of the validity of Mr Herbert's appointment as Liquidator was a constitutional one and that they would therefore be applying to have the matter removed to the High Court for consideration.⁵³
- 3.66 On 29 September 1999 CIL was auctioned for \$700,000, \$400,000 above the market valuation initially provided by JLW.
- 3.67 Significant delays in the tender process also had a detrimental effect on the number of tendering parties. In his submission, Mr Herbert states that:

It became evident around this time that some parties who had lodged EOI's had lost interest in the casino and resort due to external factors including the deterioration of the Australia's relationship with Indonesia (a key market of the casino and resort) due to the East Timor crisis, and the rumoured acquiescence to the establishment of casinos in Jakarta by the Indonesian authorities.⁵⁴

52 PPB Ashton Read, Submission No. 7, p. 61.

53 Correspondence attached at Annexure 36, PPB Ashton Read, Submission No. 7, p. 514.

54 PPB Ashton Read, Submission No. 7, p. 62.

Receipt of tenders

Round One

- 3.68 At the closing date of 29 October 1999, only three tenders were received. All three had conditions attached to them and were consequently nonconforming. Details of those tenders lodged are as follows:

ComsWinfair Pty Ltd

- 3.69 The tender submitted by ComsWinfair Pty Ltd (ComsWinfair) was for \$11.5m, and conditional upon completion of all due diligence inquiries by 13 December 1999.

Hospitality and Gaming Investments Pty Ltd

- 3.70 The tender submitted by Hospitality and Gaming Investments Pty Ltd (HGI) was for \$20m, and conditional upon a capital raising in the entire amount of the purchase price.

JDW Management

- 3.71 The tender received from JDW was verbal and for \$19.5m. It was conditional upon the payment of \$10m at settlement, with the remainder to be paid, either within twelve months or upon the reopening of the casino and resort, as well as upon JDW reaching an agreement with a casino operator.
- 3.72 No other parties who had submitted EOIs submitted a formal tender.

Extension of deadlines

- 3.73 On 5 November 1999, in an effort to reduce, or eliminate entirely, some of the conditions attached to the three tenders, the Liquidator advised all parties that the deadline for receipt of tenders would be extended to 15 December 1999.
- 3.74 In his submission to the Committee Mr Herbert stated:

It was evident that the tenders of HGI and JDW were, in essence, subject to finance and, while I was doubtful of the ability of these parties to obtain financing, I expected that an extension of 45 days would allow ComsWinfair to finalise its due diligence enquiry, and submit an unconditional offer.⁵⁵

Due diligence period

- 3.75 Following extension of the deadline from 19 October to 15 December 1999, tenderers were free to pursue investigations into various aspects of the operation of the casino and resort.
- 3.76 DoTRS states that ‘two potential purchasers of the resort contacted the Commonwealth with queries as part of their due diligence process during December 1999 and January 2000’.⁵⁶ One of these potential purchasers was ComsWinfair Pty Limited.
- 3.77 Following the first round of tenders, ComsWinfair quickly emerged as the most viable tenderer for the casino and resort. Without the constraints of heavy capital raising, and with experience in gaming operations, ecotourism and aviation chartering, ComsWinfair was considered the only group in the tender process with the resources to successfully undertake operation of the casino and resort.

ComsWinfair Pty Limited

- 3.78 ComsWinfair is an Australian company, 50 per cent of which is owned by eGlobal International Limited (previously called Coms21 Limited) and 50 per cent owned by the Winfair Group Limited from Canada.⁵⁷
- 3.79 At the time of the tender process, Coms21 Limited was an Australian listed company with interests in technology operations and a significant investment in the gaming sector through a controlling interest in eBet Limited, an Australian based Internet gaming services provider. In addition, certain directors of Coms21 had ‘considerable experience in casino financing, development and operations’.⁵⁸
- 3.80 The Winfair Group Limited, which is based in Canada, ‘operates several large businesses, including private jet charter, resort development, ownership and operation, ecotourism, luxury boat construction and chartering, and aircraft reconditioning’.⁵⁹ The Winfair Group’s aviation business includes operations in Singapore and Jakarta.
- 3.81 ComsWinfair was formed specifically for the purpose of tendering for the Christmas Island Casino and Resort properties, with the intention of owning and operating the resort following licensing and refurbishment.⁶⁰
- 3.82 In its submission to the inquiry, ComsWinfair stated:

56 DoTRS, Submission No. 4, p. 20.

57 ComsWinfair, Submission No. 9, p. 1197.

58 ComsWinfair, Submission No. 9, p. 1197.

59 ComsWinfair, Submission No. 9, p. 1197.

60 ComsWinfair, Submission No. 9, p. 1197.

Our plans for the Resort provided for immediate refurbishment and re-opening on a reduced scale, with a view to complete make good and refurbishment of the properties at an estimated cost of \$27 million, ultimate employment of around 300 persons, and a market share of around 10% of the Australian premium and junket casino business. Winfair was to provide or arrange necessary air travel services from target markets. Our plans further envisaged the development of new resort properties and activities, and the creation of a broader tourist offering.⁶¹

- 3.83 Following extension of the deadline from 29 October 1999 to 15 December 1999, ComsWinfair undertook an extensive due diligence process.
- 3.84 ComsWinfair states that it ‘engaged the services of legal, management, construction and engineering consultants to assist in due diligence,’ and undertook extensive on-site investigations in the period up to 15 December 1999.⁶²
- 3.85 A significant part of these investigations involved excursions to the Island for on-site inspections of the casino and resort, as well as ancillary facilities and services on the Island. Representatives from ComsWinfair made two trips to the Island, the first in April 1999 and the second in November of the same year.
- 3.86 In late April 1999 Mr Jack Tse and Mr Roger White from the Winfair Group travelled to Christmas Island to assess the potential of the Island and the facilities of the casino and resort. The Committee was told that on 25 April 1999 Mr Jack Tse held discussions with Mr Bill Taylor, Administrator of Christmas Island, regarding governance and regulation of the casino and resort.
- 3.87 Island businessman, Mr Ed Turner, told the Committee that after the meeting Mr Tse related the substance of the discussions to him:
- The Administrator naturally was not involved in the sale process, nor, I believe, was the Administrator given at any time any instructions to answer any questions on behalf of Territories. So Mr Tse went away quite dissatisfied, but he was impressed with the potential of the Island...[and] when he left he indicated that he thought there was enough interest by his group to send a delegation of other executives...to carry out a detailed feasibility...⁶³

61 ComsWinfair, Submission No. 9, pp. 1197-98.

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

63 Mr Ed Turner, *Hansard*, p. 163.

- 3.88 A senior management team from the consortium made a second trip to the Island between 21 and 25 November 1999. Representatives included:
- Mr Rodger Mortleman, Chief Executive Officer, Coms21 Ltd;
 - Mr Roger White, Vice President, Winfair Group;
 - Mr Herb May, Company Secretary, Coms21 Ltd;
 - Mr Alan Smith, Managing Director, Alan Smith Consulting;
 - Mr Barry Wormald, Principal, EMF Griffiths, Consulting Engineers;
 - Mr John Wicks, Principal Casino Consultant, Global Gaming Consultants; and
 - Ms Gail Mortleman, Director, Rodmain Pty Ltd.
- 3.89 ComsWinfair states that ‘during this period the principals met with Commonwealth and local government representatives, and with industry and business interests on the Island’.⁶⁴
- 3.90 On 23 November 1999 members of the ComsWinfair consortium met with Mr Hugh Moore from the Department of Transport and Regional Services. Mr Moore undertakes progress inspections of capital and infrastructure works on the Island every two months. These inspections involve regular community consultations. Mr Moore was on the Island at the same time as the ComsWinfair consortium, and an informal meeting was arranged at short notice for a briefing on infrastructure issues.
- 3.91 During discussions with the ComsWinfair group Mr Moore raised a number of issues concerning potential changes to the boundaries of the lease. ComsWinfair were advised that:
- **Linkwater Road**
Maintenance of the road would be taken over by the Commonwealth and public access to the road would have to be allowed.
 - **Water Supply**
\$500,000 was required to upgrade and repair the water facility, and the Commonwealth would be taking over the facility. Henceforth, the casino and resort would have to purchase water supplies at commercial rates.
 - **Public Access to Waterfall Bay**
The Commonwealth would require the construction of a road to allow public access to Waterfall Bay.

In addition, the Commonwealth was considering potential tuna boat operations in the bay.

■ **Further Construction/Workshop Area**

It was unlikely that ComsWinfair would be able to develop the site above the water table, on the construction and workshop area.

ComsWinfair was further advised that that the area was polluted and that it would most likely be served with a notice from the Commonwealth to clean up the site.

3.92 Mr Ed Turner, who assisted the consortium in its inspections on the Island, told the Committee that:

The principals of the Consortium spoke with me immediately after that meeting expressing alarm at the hardline position of the government...Both Roger White and Rodger Mortleman were extremely despondent after the meeting with Territory officials. Mr Roger White felt that Mr Tse would now not submit a tender. Mr Mortleman indicated that the whole process had now changed and that if they did tender it would be highly conditional and at a much lower figure.⁶⁵

3.93 The Committee heard further evidence that, while on the Island in November 1999, the ComsWinfair Group also received a copy of a letter dated 30 August 1999, from the Minister to the Liquidator. This letter further summarised some of the proposed changes to the leases and to the gaming tax rates.

3.94 Mr Mortleman of ComsWinfair told the Committee:

The letter of 30 August 1999 from the Minister to the Liquidator...has three very important material matters in it. One is the transfer of services infrastructure to the Commonwealth. The second is the potential to freehold the property. The third is his views on what an appropriate casino tax rate should be.⁶⁶

3.95 On 25 November 1999 the Liquidator wrote to the Department seeking clarification, and expressing concern over the response of ComsWinfair to some of the issues raised during the consortium's inspection of the Island.

3.96 Mr Herbert also raised ComsWinfair's concerns at the Commonwealth's proposal to raise the gaming tax minimum from \$1 million to \$2 million,

65 Mr Edward Turner, Submission No. 10, p. 1204.

66 ComsWinfair, *Hansard*, p. 195.

despite the 10 per cent rate under the previous tax regime being lowered to 8 per cent under the current proposal.⁶⁷

3.97 In the same letter to the Department Mr Herbert also asked:

If I agreed to allow a period of four (4) weeks from the date of acceptance of Winfair's offer for the satisfaction of the conditions (say by 25th January 2000), would this be a practicable time frame for the resolution of these issue?⁶⁸

3.98 On 14 December 1999 DoTRS responded:

There are clearly conflicting understandings about the nature of the advice provided by Mr Moore during his discussions of 23 November 1999 with representatives of Winfair/Coms21. Of the statements attributed to Mr Moore by the Winfair/Coms 21 representatives...eight are incorrect according to a record of the meeting subsequently prepared by Mr Moore and confirmed by four other attendees.⁶⁹

3.99 With regard to the lease changes raised by ComsWinfair as areas of concern, DoTRS replied that all of the issues raised could be readily clarified and that none should be considered 'showstoppers'. DoTRS further advised that gaming tax arrangements should be discussed with the Minister, as they were outside the jurisdiction of the Department's portfolio.

3.100 With regard to a proposed timetable, DoTRS stated that it would be unable to provide an unequivocal guarantee that the Commonwealth would be able to deal with any queries within a specified timetable, as January was a time in which 'budget preparations take priority' and 'many of the key staff may be on annual leave'.

Round Two

3.101 On 15 December 1999 only two tenders were submitted.⁷⁰

ComsWinfair Pty Ltd

3.102 ComsWinfair's tender bid had now dropped to \$5.5m and a number of conditions were attached to the offer. These included:

- negotiation of a taxation rate and regime with the Commonwealth to ComsWinfair's satisfaction;

67 Annexure 38, PPB Ashton Read, Submission No. 7, pp. 520-524.

68 Annexure 38, PPB Ashton Read, Submission No. 7, p. 522.

69 Annexure 39, PPB Ashton Read, Submission No. 7, pp. 525-527.

70 JDW had not submitted owing to its inability to locate a suitable casino operator.

- assignment of the Crown leases on terms agreeable to ComsWinfair;
- the Casino Control Ordinance and other relevant legislation governing the operation of the casino being to ComsWinfair's satisfaction; and
- assignment of the liquor licence on terms acceptable to ComsWinfair.⁷¹

Hospitality and Gaming Investments Pty Ltd

3.103 HGI's tender was submitted at \$14m and was subject to:

- successful capital raising for the purchase price;
- assignment of the Crown leases on terms acceptable to HGI; and
- favourable consideration of the provision of land for twelve 'kit homes'.⁷²

Termination of the tender process

3.104 Following receipt of the final tenders, uncertainty continued regarding the finalisation of negotiations on the conditions attached to each tender and the time period required to conduct the probity review.

3.105 The Liquidator notes:

The probity review of the successful tenderer – pursuant to the consideration of an application for a Casino Licence – had to be completed once a tender was selected...I had been advised that this process could take up to six (6) months in the case, particularly of foreign applicants (ComsWinfair was partly foreign based). It was, therefore, foreseeable that the settlement of the tender, allowing for time to negotiate conditions and for the settlement to take place, may not have been effected for some nine (9) months or longer.⁷³

3.106 The Liquidator subsequently undertook to resolve, or to facilitate negotiations with the Commonwealth with a view to resolving, the conditions attached to each tender.

Negotiations with HGI

3.107 As noted above, the tender from HGI was conditional upon successful capital raising for the purchase price, in addition to lease and licensing issues requiring discussion with the Commonwealth.

71 PPB Ashton Read, Submission No. 7, pp. 65-66.

72 PPB Ashton Read, Submission No. 7, p. 66.

73 PPB Ashton Read, Submission No. 7, p. 67.

3.108 On 16 December 1999 the Liquidator met with representatives of HGI, in order to 'obtain some certainty in relation to the timing and likelihood of the capital raising required to fund the acquisition of the casino and resort'.⁷⁴

3.109 In correspondence to HGI dated 17 December 1999, Mr Herbert stated:

it is difficult to accept the contract on the basis that the funds to support the acquisition of the casino and resort are still to be raised and it may also be difficult from your point of view to raise these funds without having an accepted contract. It would therefore be necessary, should you proceed to a capital raising, to provide a non-refundable deposit to allow for the continuation of the liquidation should the public offering fail to raise the capital required to purchase the casino and resort.⁷⁵

A preliminary estimate of the deposit required was set at \$250,000-300,000.

3.110 Mr Herbert maintained contact with HGI between 4 January and 7 January 2000, regarding the progress of capital raising for the purchase price. On 7 January HGI advised that they 'were pursuing the possibility of achieving an offer conditional only on the granting of an Internet gambling licence'.⁷⁶

3.111 On 13 January 2000 the Liquidator received a letter from HGI stating that it had been advised by Laverton Gold NL, the company through which HGI was conducting the capital raising, that it no longer wished to pursue its Christmas Island Resort bid.⁷⁷

3.112 Mr Herbert wrote to the Commonwealth on 14 January 2000, advising that HGI had withdrawn from the tender process.⁷⁸

Further negotiations with HGI

3.113 Following the cessation of HGI's involvement in the formal tender process, the Liquidator continued to pursue the possibility of an unconditional cash offer from HGI.

3.114 On 2 February 2000 HGI informed the Liquidator that it anticipated being able to submit an offer of \$9m which would be subject to a number of conditions, including the granting of a casino licence, an Internet gambling licence and a liquor licence.

74 PPB Ashton Read, Submission No. 7, p. 70.

75 Annexure 49, PPB Ashton Read, Submission No. 7, p. 560.

76 PPB Ashton Read, Submission No. 7, p. 71.

77 Annexure 52, PPB Ashton Read, Submission No. 7, pp. 569-570.

78 Annexure 57, PPB Ashton Read, Submission No. 7, pp. 581-583. DoTRS, Submission No. 11, pp. 1340-1341.

- 3.115 On 14 February 2000 Mr Herbert was advised that an offer, unconditional with respect to funding, would be made by 18 February 2000. However, this would still depend upon the granting of Internet gambling, casino and liquor licences. The Liquidator informed HGI that in order for HGI to remain competitive, an unconditional offer would have to be made.
- 3.116 On 18 February 2000 no offer was forthcoming. On 19 February 2000 the Liquidator was informed by HGI's financier that 'at this time the parties interested in financing the project had not been able to provide any assurances that they would proceed and, as such, that an offer could not be made'.⁷⁹

Negotiations with ComsWinfair

- 3.117 On 17 December 1999 the Liquidator corresponded with representatives of ComsWinfair regarding the price and conditions attached to its tender. The e-mail requested that ComsWinfair provide as much detail as possible regarding the conditions on the tender.⁸⁰
- 3.118 On 24 December 1999 ComsWinfair responded that the company 'had bid the highest price it deemed commercially viable', taking into account the high-risk nature of the operation, and that 'it was not prepared to alter its tender price'.⁸¹
- 3.119 First among ComsWinfair's concerns were gaming tax and operational arrangements for the casino. ComsWinfair was prepared to accept a tax rate increasing to reflect increasing revenues, but was not prepared to proceed with an initial tax rate of 9 per cent or a minimum licence fee, because it was unaware of a 'minimum tax rate...levied by any State Government for any other Australian casino'.⁸²
- 3.120 In addition, matters relating to the lease, including Linkwater Road, the water supply, environmental pollution, access to Waterfall Bay and the potential for further development on the site, were detailed.
- 3.121 In a letter to Mr Rodger Mortleman, dated 7 January 2000, the Liquidator stated that in his opinion, 'matters relating to the casino tax rate comprise the only "deal breaker" amongst all the issues raised'.⁸³
- 3.122 On 14 January 2000 the Liquidator wrote to the Minister detailing verbal advice provided by Mr Mortleman regarding ComsWinfair's requirements for the gaming tax rate. He summarised these requirements as follows:

79 PPB Ashton Read, Submission No. 7, p. 72.

80 Annexure 40, PPB Ashton Read, Submission No. 7, pp. 528-529.

81 PPB Ashton Read, Submission No. 7, p. 68.

82 Annexure 42, PPB Ashton Read, Submission No. 7, p. 534. ComsWinfair, Exhibit No. 7.

83 Annexure 44, PPB Ashton Read, Submission No. 7, p. 542.

- no minimum licence fee;
- the rate of tax on the first \$100m of revenue to be 5 per cent inclusive of the 1 per cent Community Benefit Fee, while revenues in excess of \$100m at a rate of 9 per cent would be accepted; and
- no review of the casino tax rates for at least ten years and preferably no review clause included in the casino licence agreement at all.

3.123 The Liquidator stated that ComsWinfair also indicated that:

They believe that, following discussions with the Minister most, if not all, of the other conditions precedent could be deleted.⁸⁴

3.124 The Liquidator wrote to the Minister again on 20 January, confirming arrangements for a teleconference on 24 January 2000 and summarising some of the issues to be dealt with, including 'the likelihood and timeframe for satisfying the conditions precedent, in particular, the tax rate'.⁸⁵

3.125 On 27 January 2000, in response to Mr Herbert's letters of 14 and 20 January, as well as telephone discussions on 24 January 2000, the Minister wrote to the Liquidator summarising the Commonwealth's position on issues raised by ComsWinfair. The Minister stated:

I would be prepared to consider a licence fee which was below the lowest rate currently applying to an Australian casino...it could be between 1% and 2% below that rate. However I will need to consult with my colleague the Minister for Finance and Administration on any final figure. I would only consider this provided that all organisations which submitted expressions of interest are informed of this and given the opportunity to consider whether a lower rate would induce them to submit a tender...In regard to the period of any rate, I would also be prepared to keep the rate in place for the first three years, after which a review would be conducted.⁸⁶

3.126 In summarising the Commonwealth's response in a letter to ComsWinfair dated 28 January 2000, the Liquidator stated that the Minister further indicated that 'he would propose in a minimum licence fee to cover the costs of surveillance of the Casino' and would be 'flexible with regard to implementing a minimum licence fee reflecting the costs of surveillance'.⁸⁷

3.127 Mr Mortleman of ComsWinfair told the Committee that:

84 Annexure 57, PPB Ashton Read, Submission No. 7, p. 582. DoTRS, Submission No. 11, p. 1340.

85 Annexure 58, PPB Ashton Read, Submission No. 7, p. 585. DoTRS, Submission No. 11, p. 1342.

86 Annexure 45, PPB Ashton Read, Submission No. 7, p. 547. DoTRS, Submission No. 11, p. 1344.

87 Annexure 45, PPB Ashton Read, Submission No. 7, p. 545.

Basically in that letter I believe the Minister said that he would agree to a tax rate of one to two per cent below the lowest applying in Australia. The lowest applicable tax in Australia is in Alice Springs and Darwin where the junket tax is eight per cent. Two per cent from eight per cent means a tax of six per cent. We were hoping to get five per cent; six per cent would have been close enough.

The letter also said that he would entertain the reasonable proposition on the minimum charge amount to be applied on a per annum basis. We did not get the opportunity to get around a table to decide what that might be, but it certainly provided us with some comfort that it would not be the \$2 million figure but something substantially less than that.⁸⁸

3.128 A meeting was arranged between the Liquidator and ComsWinfair for 2 February 2000, to discuss their position on the Commonwealth's response. Mr Herbert informed the Committee that two major issues emerged from these discussions:

A: ComsWinfair felt that it was unfair for the other interested parties to be advised of the proposed tax rate charges;

B: ComsWinfair was not prepared to continue to negotiate with the Commonwealth unless its tender was accepted.⁸⁹

3.129 ComsWinfair told the Committee that:

During the final stages of the tender process we advised the Receiver that we considered that it would be necessary to select a Preferred Tenderer, who would then be in a position to resolve lease and licensing conditions with the relevant Commonwealth authorities. We considered it impractical to ourselves resolve the leases and licences with the Commonwealth authorities unless selected as Preferred Tender.⁹⁰

3.130 At this stage, negotiations between ComsWinfair, the Liquidator and the Commonwealth reached an impasse. Mr Herbert told the Committee that:

Our problem in December [1999] was that we were running out of money. There was a two-phase process from there: first, the satisfaction of all these conditions and, second, the probity review. The Government told us that, where foreign companies were involved, the probity process may take up to six months. ComsWinfair was a company that was ultimately controlled by

88 ComsWinfair, *Hansard*, p. 197.

89 PPB Ashton Read, Submission No. 7, p. 69.

90 ComsWinfair Pty Ltd, Submission No. 9, p. 1200.

foreign interests, so we had the possibility of a six-month probity review and a preparatory period for the satisfaction of these conditions.

It may have taken nine months for this to happen, and they may have walked away at any time, because the Government did not agree to something which they, at their sole discretion, could accept...Our concern was that we could go through the entire nine months, end up without an offer and then be in a position where we did not have the capacity to offer the assets to the market again because we were out of money.⁹¹

- 3.131 On 4 February 2000 Mr Herbert wrote to ComsWinfair to advise the company that he could not accept its offer 'owing to the numerous uncertainties attaching to it and concerns as to the amount of [its] offer'.⁹² Mr Herbert advised ComsWinfair that any further negotiations would have to be conducted directly with the Commonwealth. In summary, the Liquidator said:

In the circumstances, whilst I am happy to maintain discussions with you to see if we can achieve a mutually acceptable deal, it is not appropriate to continue to try and pursue this in the context of the tender process, which has effectively come to an end.

- 3.132 Mr Herbert stated further:

I confirm that I am prepared to provide you with a reasonable opportunity to resubmit a bid in the event that an offer from a third party is received, but I cannot agree to the grant to you of a right of first refusal on the sale of the properties.⁹³

Further negotiations with ComsWinfair

- 3.133 Throughout February 2000 Mr Herbert maintained contact with Rodger Mortleman of ComsWinfair, in order to facilitate discussions with the Minister and to determine any progress made regarding resolution of ComsWinfair's conditions.
- 3.134 Mr Mortleman informed the Committee that ComsWinfair became aware by late January or early February 2000 that its bid was going to be unsuccessful. ComsWinfair subsequently 'endeavoured to set up a meeting with the Minister or his department' but 'no meeting came about'.

91 PPB Ashton Read, *Hansard*, p. 69.

92 Annexure 46, PPB Ashton Read, Submission No. 7, pp. 552-554.

93 Annexure 46, PPB Ashton Read, Submission No. 7, pp. 553-554.

ComsWinfair then 'engaged a lobbyist to try and find out what was going on' but by this stage, ComsWinfair was 'going nowhere'.⁹⁴

3.135 On 23 March 2000 the Liquidator received a letter from ComsWinfair advising that ComsWinfair would consider tendering a new price for the casino and resort if Mr Herbert would be prepared to accept conditional offers.⁹⁵

3.136 Mr Mortleman told the Committee that ComsWinfair 'made a final attempt to re-enter the process sometime in mid to late March...but did not really manage to get anywhere with it with the Liquidator'.⁹⁶

3.137 In his submission the Liquidator stated that he contacted Mr Mortleman by telephone and that 'Mr Mortleman could not, or would not, provide details of the increased offer ComsWinfair might make and did not have any suggestions as to how [Mr Herbert's] concerns about the lack of certainty as to the completion of its offer might be resolved'.⁹⁷

3.138 ComsWinfair told the Committee:

It was never a possibility for us to go unconditional, because we believed the assets had no value without the casino licence. Had he approached me on that basis I would have said no...there were too many variables still outstanding... the Liquidator sent us a letter saying that he had terminated the process and encouraged us to deal directly with the Minister on resolving the licence and lease conditions. But we were already getting plenty of feedback that the deal was going elsewhere.⁹⁸

Sale of the casino and resort

3.139 Following the loss of the HGI tender in early January 2000 and continuing uncertainty as to the resolution of conditions in ComsWinfair's offer, the Liquidator began considering other options for the sale of the casino and resort.

3.140 In his submission the Liquidator stated:

The only remaining offer – ComsWinfair's – was at a price which I believed could be obtained from the sale of the assets on an unconditional basis: in particular, without the need to satisfy

94 ComsWinfair, *Hansard*, p. 193.

95 Annexure 48, PPB Ashton Read, Submission No. 7, pp. 557-558.

96 ComsWinfair, *Hansard*, p. 193.

97 PPB Ashton Read, Submission No. 7, p. 70.

98 ComsWinfair, *Hansard*, p. 197.

conditions in relation to the approval of a Casino licence and changes to the Casino tax rate.

I consequently began investigating the possibility of attracting a purchaser for the casino and resort who would not require a Casino Licence as a condition precedent to the sale.⁹⁹

- 3.141 In May 1999 the Liquidator had commissioned CB Richard Ellis to prepare a valuation of the properties on a 'walk in-walk out' basis. CB Richard Ellis valued the casino and resort at \$10m.¹⁰⁰ In January 2000 the Liquidator sought confirmation from CB Richard Ellis that the valuation was still current. The valuation of the casino and resort was revised to \$5m, owing to an increased deterioration in the properties and an exacerbation of the risk factors involved in the enterprise, brought about by the East Timor crisis.¹⁰¹
- 3.142 The Liquidator told the Committee that upon receipt of the final tenders on 15 December 1999, and based on the revised valuation of the casino and resort provided by CB Richard Ellis, he:

instructed JLW and Frank Woodmore to advise interested parties identified through the tender process, and others of whom they were aware, that the casino and resort might be available on a cash unconditional basis.¹⁰²

Negotiations with other parties

- 3.143 After it became known that the casino and resort might be available on a cash unconditional basis, a number of parties based on the Island contacted Mr Michael Asims, manager of the casino and resort, for financial information on the resort complex.
- 3.144 One potential purchase involved a campaign by the Union of Christmas Island Workers (UCIW) and the Shire of Christmas Island (SOCI) to assemble a community bid for the casino and resort.
- 3.145 On 17 December 1999 Mr Frank Woodmore advised the Liquidator that he had spoken to three potential buyers for the casino and resort on a cash unconditional basis.
- 3.146 The first party was based in Melbourne and was associated with a potential Chinese purchaser. The Liquidator informed the Committee that a detailed information package was sent to the consortium and further

99 PPB Ashton Read, Submission No. 7, p. 74.

100 Annexure 61, PPB Ashton Read, Submission No. 7, pp. 599-658.

101 Annexure 62, PPB Ashton Read, Submission No. 7, pp. 659-662.

102 PPB Ashton Read, Submission No. 7, p. 75.

encouragement given to submit an offer. However, 'communications between the Melbourne and Chinese groups of this party broke down' and an offer was not submitted.¹⁰³

3.147 The second potential buyer was based in Cairns and interested in acquiring the casino and resort with a view to establishing a time share operation. Mr Herbert further stated that 'the nature of this type of operation meant that without freehold title to the land, financial backing would be difficult to obtain'. In addition, the Cairns party was interested in establishing gaming operations, in particular Internet gambling operations, and would not have been able to submit an unconditional offer.¹⁰⁴

3.148 The third party to be identified by Mr Frank Woodmore was Asia Pacific Space Centre (APSC). In his submission to the inquiry Mr Herbert told the Committee:

It seemed to me that APSC were obvious contenders for the purchase for the casino and resort, given their business interests and their accommodation requirements on Christmas Island.¹⁰⁵

Negotiations with APSC/Soft Star Pty Ltd

3.149 Initial discussions between the Liquidator and Mr David Kwon of APSC began in January 2000, following continued difficulties experienced in attempts to resolve conditions precedent to the two remaining tenders.

3.150 On 14 January 2000, in a letter to the Minister pertaining predominantly to negotiations with ComsWinfair over gaming tax arrangements, the Liquidator also referred to the fact that he would be meeting with Mr David Kwon the following week to discuss a potential offer from APSC. In the letter Mr Herbert noted that 'any offer made by APSC would most likely be for the buildings of CIR', which would only be 'a fall back position'.¹⁰⁶

3.151 In evidence to the Committee, Mr Kwon stated that APSC relied upon the resort for the accommodation of 'very high profile people, sometimes foreign country government people and sometimes very senior company people' when they were visiting the Island in relation to the proposed APSC satellite launching facility. During the tender process, APSC had experienced difficulties in accessing the facilities of the resort.¹⁰⁷ Mr Kwon

103 PPB Ashton Read, Submission No. 7, p. 75.

104 PPB Ashton Read, Submission No. 7, pp. 75-76.

105 PPB Ashton Read, Submission No. 7, p. 76.

106 Annexure 57, PPB Ashton Read, Submission No. 7, p. 583.

107 APSC/Soft Star, *Hansard*, p. 45.

stated that it was very important for APSC to have reliable access to accommodation.

Because of the nature of Asia Pacific Space Centre, we think it is very important for us to secure that our people, our guests, our clients, come to stay over there when we are operating a local launch facility. We did expect the tender to successfully close and be won by other people and we had a plan to try and negotiate with the winner of the tender but, unfortunately, no one won the tender. That is what we knew. That lease is most important to us, because we also expect that when the spaceport is operating, the resort might be a very prosperous business. That is what we expect.¹⁰⁸

- 3.152 Following the failure of the tender process, APSC was concerned that if it did not get involved the resort might remain closed for a lengthy period without an owner. Mr Kwon told the Committee that the Liquidator informed APSC that 'the tender [had] closed twice and it was possible that it could be negotiated'.¹⁰⁹ He then began investigating options for APSC to purchase the casino and resort.
- 3.153 In correspondence to the Minister dated 20 January 2000, the Liquidator again referred to the possibility of an offer from APSC, and asked 'whether the Commonwealth would consent to the assignment of the lease of Christmas Island Resort to APSC, given that it may or may not operate a casino on the site'.¹¹⁰
- 3.154 The Minister's response, dated 27 January 2000, stated that:
- It is unlikely that the Commonwealth would withhold consent for the assignment of the lease of the resort to a genuine purchaser. There is no reason why the resort should not be sold solely as a resort. If the purchaser of the resort does not wish to operate a casino, it would be possible for the purchaser to sub-let the designated casino area to a third party. Any third party would need to apply to the Commonwealth for a casino licence.¹¹¹
- 3.155 On 2 February 2000, while in Sydney for discussions with ComsWinfair regarding the conditions precedent to its tender, Mr Herbert also arranged to meet with Mr David Kwon.

108 APSC/Soft Star, *Hansard*, p. 28.

109 APSC/Soft Star, *Hansard*, p. 45.

110 Annexure 58, PPB Ashton Read, Submission No. 7, p. 586.

111 Annexure 59, PPB Ashton Read, Submission No. 7, p. 595.

- 3.156 After initial discussions, in which APSC had suggested that it would be prepared to offer \$4.5 million,¹¹² APSC indicated at this meeting that it was 'prepared to offer \$5.5m for the sale of the casino and resort, subject only to the excision of Linkwater Road and the water supply facilities from the Crown leases and the granting of a Liquor Licence'.¹¹³
- 3.157 The Liquidator confirmed the substance of APSC's offer for the purchase of the casino and resort in a letter to Mr Kwon dated 3 February 2000.¹¹⁴ On 4 February 2000 ComsWinfair was informed that the tender process had 'effectively come to an end'.¹¹⁵
- 3.158 On 7 February, in response to correspondence from the Liquidator, APSC 'advised that they did not require the excision of the water supply facilities or a liquor Licence to be conditions precedent to the sale'.¹¹⁶
- 3.159 In negotiations conducted during February 2000 regarding assignment of the leases, the Commonwealth continued to seek to excise the water supply facilities from the lease and to suggest that new leases be drawn up.¹¹⁷
- 3.160 In order to avoid another potential sticking point, the Liquidator wrote to the Commonwealth on 25 February 2000 and requested that the Crown leases 'be assigned in their current form and that, if necessary, the Commonwealth deal with modifications to the lease after settlement of the sale'.¹¹⁸
- 3.161 The Commonwealth subsequently agreed to assign the leases in their current form at the time.
- 3.162 Simultaneously, negotiations continued between the Liquidator and APSC regarding the terms of the contract of sale and the purchase price. By 16 March 2000 an offer was procured for the amount of \$5.7 million.
- 3.163 On 21 March 2000 a draft replacement lease, a draft Deed of Surrender and a draft Deed of Services Easement were sent to the Liquidator from DoTRS.¹¹⁹
- 3.164 On 30 March the Contract of Sale was executed by Soft Star Pty Ltd.

112 PPB Ashton Read, *Hansard*, p. 80. APSC/Soft Star, Submission No. 13, p. 1420.

113 PPB Ashton Read, Submission No. 7, p. 77.

114 Annexure 63, PPB Ashton Read, Submission No. 7, pp. 663-667.

115 Annexure 46, PPB Ashton Read, Submission No. 7, p. 553.

116 PPB Ashton Read, Submission No. 7, pp. 77-78. Correspondence attached at Annexure 64, PPB Ashton Read, Submission No. 7, p. 669.

117 Annexure 67, PPB Ashton Read, Submission No. 7, pp. 674-675.

118 PPB Ashton Read, Submission No. 7, p. 78. Correspondence attached at Annexure 68, PPB Ashton Read, Submission No. 7, p. 677.

119 Annexure 69, PPB Ashton Read, Submission No. 7, pp. 678-709.

- 3.165 The Committee was told that following the signing of the contract, there was some disagreement between the Liquidator and Soft Star regarding a number of the terms of the contract.
- 3.166 The Liquidator stated that there was so much difficulty getting to settlement that at one stage he seriously thought that Soft Star was repudiating the contract.¹²⁰ He told the Committee, however, that these difficulties were eventually resolved:
- There was a bit of disagreement about some of the plant and equipment. We resolved that eventually by agreeing that various items that we thought had been excluded should be included, but the value was not reflected in the material.¹²¹
- 3.167 On 6 April 2000 the Liquidator formally requested that the Commonwealth assign the leases over the casino and resort to Soft Star Pty Ltd, and on 28 April 2000 the Administrator of Christmas Island provided his consent under delegation of the Minister's powers.¹²²
- 3.168 Settlement occurred on 5 May 2000.

Correspondence and meetings with creditors and the Committee of Inspection

- 3.169 The Committee was informed that throughout the liquidation process the Liquidator has endeavoured to keep creditors apprised of developments, through written circulars, a meeting of creditors and meetings of CIR's Committee of Inspection (COI).¹²³
- 3.170 Additional information regarding circulars and correspondence sent to creditors is attached at Appendix E.
- 3.171 On 27 August 1999 a meeting of all creditors to CIR was convened in Perth. At this meeting the Liquidator informed creditors of the background to his appointment, his dealings with the former directors of CIR and the progress of the realisation of the casino and resort.
- 3.172 During the creditors' meeting, and in accordance with Section 548 of the *Corporations Law*, the creditors of CIR voted to appoint a Committee of Inspection to represent them. Additional details of the COI are attached at Appendix E.

120 PPB Ashton Read, *Hansard*, p. 82.

121 PPB Ashton Read, *Hansard*, p. 83.

122 Annexures 70 and 71, PPB Ashton Read, Submission No. 7, pp. 710-713 and 714-715 respectively.

123 PPB Ashton Read, Submission No. 7, p. 80.

3.173 The Liquidator informed the Committee that:

The COI were aware of the process of the tender, the difficulties I encountered in finalising the sale of the casino and resort and the risks CIR faced in the process.¹²⁴

Conduct of the tender process

Issues and concerns

4.1 During the inquiry the Committee heard evidence on a number of issues and concerns about the conduct of the tender process in the sale of the Christmas Island Casino and Resort. Concerns were raised with the Committee on the following issues:

- the role of the Commonwealth during the tender process;
- the conduct of negotiations with ComsWinfair during the tender process;
- the commencement of negotiations with Soft Star Pty Ltd before the conclusion of the tender process; and
- a perceived breach of confidentiality regarding the highest purchase price bid in the tender process.

4.2 In addition, a number of issues emerged concerning the outcome of the tender process and the delayed refurbishment and re-opening of the casino and resort. These will be discussed in Chapter Five.

Role of the Commonwealth

4.3 The Department of Transport and Regional Services (DoTRS) stated in its submission:

The tender process for the sale of the resort lease and other leases held by CIR was conducted solely by the Liquidator in accordance

with the *Corporations Law* and with the authority of the Federal Court (later the WA Supreme Court)....

The Commonwealth was only formally involved to the extent that its consent was required to a mortgage over the leases in favour of the Liquidator and the transfer of the leases to the new lessee.¹

- 4.4 The Committee heard evidence during the inquiry that the Commonwealth's decision not to participate more robustly in the tender process may have impacted negatively upon the conduct and the outcome of the tender process.
- 4.5 Concerns raised with the Committee, among others, focused on two specific aspects of the Commonwealth's role in the tender process:
- the Commonwealth's inability to finalise leasing and casino operational matters in the early stages of the process; and
 - the Commonwealth's decision not to play a more participative role in the due diligence process.

Finalisation of leases and gaming taxes

- 4.6 Preliminary negotiations between the Commonwealth and the Liquidator were conducted principally to resolve any issues surrounding the lease before the commencement of the marketing process. The Liquidator, Mr Herbert, told the Committee:
- We wanted to try and settle the terms of the Lease, obviously as attractively as possible from the point of view of the vendor so that when we began the marketing process we could say to the parties, 'Here is the lease,' rather than, 'Here is a lease which contains certain terms that the Government would like to change'. As in fact occurred.²
- 4.7 During a visit to Christmas Island the Committee was further told that:
- To achieve a reasonable result the Liquidator had to conclude with the Commonwealth a definitive and attractive position with respect to the casino licence and lease agreement. The real value in the business was related to the licence and the lease.³
- 4.8 As detailed in Chapter Three, the Liquidator was in contact with both DoTRS and the Minister between August 1998 and August 1999 regarding finalisation of the leases and gaming tax rates for the casino and resort.

1 DoTRS, Submission No. 11, p. 1212.

2 PPB Ashton Read, *Hansard* p. 64.

3 Mr Ed Turner, Submission No. 10, p. 1206.

- 4.9 On 30 August 1999 the Minister wrote to Mr Herbert stating that these matters would be subject to final negotiation with the eventual purchaser of the resort.
- 4.10 However, the Committee heard evidence that lack of certainty in regard to the leases and gaming tax rates may have accounted for the conditional nature of tenders submitted, and thus had a negative effect on the final purchase price.
- 4.11 ComsWinfair's initial tender for the casino and resort included a purchase price of \$11.5 million. Following the due diligence period and the ComsWinfair visit to the Island, the second round tender was submitted at \$5.5 million and was conditional upon a number of factors. ComsWinfair stated in its submission:
- The process conducted by the Receiver for the sale of the Christmas Island Casino and Resort properties was flawed due to the lack of certainty of conditions pertaining to the transfer of leases and the casino licence. The extent of this uncertainty was not fully appreciated by ourselves until we concluded our due diligence, and accounts to a large extent for the change in our tender offer.⁴
- 4.12 Uncertainty surrounding proposed amendments to the leases included a number of issues. ComsWinfair stated that while the proposed changes to the boundaries of the leases were not "deal breakers", they did increase the number of commercial variables in the determination of the purchase price.
- 4.13 In addition, the Commonwealth informed potential purchasers that conversion from leasehold to freehold would be available subject to an assessment of the price of conversion, as 'conducted by the Australian Valuation Office or other valuer'.⁵
- 4.14 ComsWinfair told the Committee that despite being interested in the proposition, the fact that no formal valuation had been undertaken on the cost of converting to freehold was an additional commercial variable which would need to be considered.⁶
- 4.15 Uncertainty surrounding the casino tax regime, however, was the primary factor in reducing the purchase price of the bid. ComsWinfair informed the Committee that the commercial value of the variables under negotiation were such that the consortium felt that the determination of the tax rate was more important than the final purchase price:

4 ComsWinfair, Submission No. 9, p. 1200.

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

6 ComsWinfair, *Hansard*, p. 198.

We came up with a number less based on commercial value than on hurdle value. That was because we could not pin down the commercial value due to the variables outstanding. As I mentioned earlier, that difference in tax between nine per cent and six per cent in a P&L sense is, on \$100 million, worth \$3 million on an earnings before interest and tax basis. That might be the only \$3 million you earn. When you start capitalising that at casino rates, at seven or eight times on a pretax basis, you are talking about 20 or 30 million dollars. That number was far more important than the number to the receiver, and yet we could not get a fix on that number.⁷

- 4.16 The Committee also noted that once the decision was made to terminate the tender process and pursue negotiations with Soft Star/APSC, the same issues in regard to gaming taxes and the lease emerged, and continued to create impediments to the sale and settlement of the casino and resort. In evidence presented to the Committee, the Liquidator stated:

We were still grappling with the question of the amendment to the leases as required by the Government. It became as problematic with APSC as it had previously been with ComsWinfair. That matter was finally resolved by the Minister agreeing to the assignment of the lease on its present terms...⁸

- 4.17 In order to achieve the settlement and sale of the casino and resort, the Commonwealth and Soft Star eventually agreed to negotiate all amendments to the lease after the sale had been completed. The gaming tax regime and operational agreement for the casino were to be negotiated upon application for a casino licence.

Lack of formal involvement in the due diligence process

- 4.18 Some concern was expressed by the Committee at the limited role the Commonwealth took in providing assistance to interested parties during the due diligence process.
- 4.19 Although the Committee recognises that a tender process is essentially a commercial procedure, the Committee believes that the Commonwealth could have been more active in establishing a systematic approach for the distribution of information, as well as clearer procedures for the conduct of negotiations on issues pertaining to the Crown leases and gaming tax arrangements.

7 ComsWinfair, *Hansard*, p. 206.

8 PPB Ashton Read, *Hansard*, p. 86.

4.20 During the due diligence period, the ComsWinfair consortium made two excursions to the Island, in April and November 1999. On the first visit Mr Jack Tse met with the Administrator of Christmas Island, Mr Bill Taylor, to discuss issues pertaining to the casino and resort as well as to the Island as a whole. The Committee was told by Mr Ed Turner that:

Mr Tse was seeking definitive answers from Mr Taylor who was unable to provide answers to many of his questions because he did not have the authority of the department or responsibility for the sale of this property. When he departed the Island Mr Tse related to me his dissatisfaction [with] the answers given by the government representative Mr Bill Taylor.⁹

4.21 Although the Committee recognises that it is not aware of the full particulars of these discussions, the Committee is, nonetheless, concerned that in a pre-arranged meeting between Mr Tse and Commonwealth representatives, it appears that the Administrator was given no formal instructions or information to provide to the ComsWinfair group relating to proposed changes to the lease which had been in circulation since August 1998.

4.22 Some concern was also expressed by the Committee that on the second visit by the ComsWinfair group to the Island in November 1999, an informal and unplanned meeting was held between DoTRS and ComsWinfair representatives on 23 November. At this meeting details of the proposed amendments to the lease were discussed, adding some uncertainty to the tender process.

4.23 Mr Ed Turner told the Committee that the day after the meeting he had been so concerned at the ramifications of the information relayed by DoTRS representatives – in an informal capacity – that he arranged a meeting with the Administrator, Mr Bill Taylor. Mr Turner further stated that:

Mr Taylor dismissed those concerns and stated that the meeting was just an information meeting.

I understand Mr Michael Asims who was employed by the Liquidator also met with Mr Taylor expressing great concern that such a meeting had been held and how alarmed the Coms/Winfair group were.¹⁰

4.24 The Liquidator also wrote to the Department following the meeting on 23 November 1999. In his submission the Liquidator stated that he was

9 Mr Ed Turner, Submission No. 10, pp. 1202-1203.

10 Mr Ed Turner, Submission No. 10, p. 1204.

advised that ‘the issues raised by ComsWinfair in relation to the Crown leases were not seen as “showstoppers” by the Commonwealth’.¹¹

- 4.25 The Committee believes that the Administrator could have taken the opportunity of the first meeting in April 1999 to introduce and discuss some of the amendments to the leases proposed by the Commonwealth, in a formal and controlled environment.
- 4.26 Furthermore, the Committee is concerned that DoTRS, despite assuring the Liquidator that it was ‘conflicting understandings about the nature of the advice’ presented by Commonwealth officials, which had created such alarm,¹² did not take active steps to rectify the misconceptions garnered by ComsWinfair at this meeting.
- 4.27 In its submission ComsWinfair stated:

The resolution of lease and licensing uncertainties on reasonable terms would, we believe, have established a value for the properties closer to the \$11.5 million we originally tendered, and would have provided for the early realisation of economic benefits through refurbishment and re-opening of the Resort.¹³

Summary

- 4.28 Approximately three years since the commencement of the tender process, no amendments to the Crown leases have been finalised. This includes the excision of water supply facilities to the local Shire Council and the facilitation of public access to Waterfall Bay. Nor has a new lease been assigned to replace the previous, now redundant, Crown leases.
- 4.29 Furthermore, there has been no application for a casino licence and no formal agreement has been reached with the new owners of the casino and resort on a gaming tax rate. In addition, no amendments have been drafted for regulations covering the operation of the casino on Christmas Island. Representatives of DoTRS told the Committee:
- That was a development agreement and the casino has now been built and developed...That agreement is no longer in force. It has all been completed. There is no necessity for the Commonwealth to enter into an agreement with the purchaser of this resort.¹⁴
- 4.30 With regard to the Commonwealth’s role in the tender process, DoTRS said:

11 PPB Ashton Read, Submission No. 7, p. 65.

12 Annexure 39, PPB Ashton Read, Submission No. 7, p. 526.

13 ComsWinfair, Submission No. 9, p. 1200.

14 DoTRS, *Hansard*, p. 223.

The court had set in train a process in which the authority to dispose of the asset rested with the Liquidator. It did not rest with the Commonwealth. Had we been interventionist in that process, we would have been at some risk at some stage of breaching the legal framework, which we were very careful not to do. It is a difficult process to follow because of those legal complexities, but that goes to the heart of the issue of careful separation of the roles of the Liquidator and the Commonwealth.¹⁵

4.31 However, as Mr Mortleman of ComsWinfair pointed out:

The maximum economic benefit and the maximum employment benefit comes about from that property operating as a casino resort. The Commonwealth has the lease. The Commonwealth controls the licence conditions. The Commonwealth is in a position to specify those conditions and arrangements in a manner that provides for a viable operation. I also mentioned that the Commonwealth was and is accredited, so presumably it has responsibilities to itself in that regard.¹⁶

4.32 The Committee is very concerned at the less than exuberant role the Commonwealth took in seeking the expeditious resolution of issues within the Commonwealth's jurisdiction, such as lease and licensing conditions. Furthermore, the Committee believes that the Commonwealth failed to appreciate the significant responsibility it had within the tender process, in both the due diligence period and the crucial final negotiations.

Conduct of negotiations with ComsWinfair

4.33 The Committee believes that lack of rigour on the part of the Commonwealth formed part of a larger pattern, in relation to the conduct of negotiations with the ComsWinfair group during the tender process.

4.34 As the tender process progressed, ComsWinfair clearly emerged as the only viable purchaser for the casino and resort. Furthermore, ComsWinfair had the resources, the experience and the intent to re-furbish and re-open the casino and resort, as well as to revitalise the tourism industry on the Island through the provision of air services and additional tourism-related development.

4.35 The Committee took evidence on a number of concerns regarding aspects of the conduct of negotiations with the ComsWinfair Group, during both the tender process and the subsequent termination of the formal process,

15 DoTRS, *Hansard*, p. 217.

16 ComsWinfair, *Hansard*, p. 204.

and the commencement of final negotiations for the sale of the casino and resort.

During the tender process

4.36 The Committee believes that the devolved nature of negotiations with ComsWinfair into tripartite discussions between ComsWinfair, the Liquidator and the Commonwealth was highly ineffective.

4.37 The Committee was informed by DoTRS that:

The assets of the company were real estate – a building and some land. The casino licence, the entitlement to operate the casino, was not an asset of the company and was not available for sale...The Government's position throughout the whole sale process was that the disposal of the assets of the company were a matter for the Liquidator and were not a matter for the Commonwealth. We, quite clearly, were at arm's length from that process.¹⁷

4.38 The Committee notes, however, that certain fundamental aspects of the sale process, such as leasing and gaming tax conditions, were clearly beyond the Liquidator's jurisdiction to determine. The Liquidator told the Committee that the tender process was initially structured so as to incorporate a role for the Government.

That entailed, firstly calling for expressions of interest and secondly, short-listing people for a tender process. That step was going to involve the Government, because it was anticipated that the purchaser would run the casino and that, although we did not have a casino licence to sell, a part of the process would be its issue by the Government.¹⁸

4.39 This tension between the Commonwealth's insistence that it remain at arm's length from the tender process and the Liquidator's inability to resolve fundamental aspects of the tenderer's bid without the involvement of the Commonwealth, created an impossible situation for ComsWinfair and the resolution of conditions precedent to their offer.

On the one hand we were being encouraged by the Liquidator to get these conditions sorted out with the Commonwealth and, on the other hand, we did not feel that we could. We did not feel, firstly, that while the tenders were open, they would particularly want to talk to anyone and, secondly, we did not particularly want

17 DoTRS, *Hansard*, p. 217.

18 PPB Ashton Read, *Hansard*, pp. 50-51.

to be developing a satisfactory commercial scenario for someone else to have.¹⁹

4.40 The Committee was also puzzled by the Minister's desire to inform all parties who had lodged an expression of interest about details of tax rates negotiated privately with ComsWinfair in January 2000.

4.41 Following commencement of negotiations between ComsWinfair and the Commonwealth regarding the Crown leases and casino tax rates in January 2000, this issue emerged as one of the major sticking points in resolving conditions precedent to ComsWinfair's tender.

4.42 The Liquidator told the Committee in evidence that:

ComsWinfair by that stage had made a submission to the Government about concessions that it required with respect to the casino tax rate. The Government was considering that but, prior to confirming whether it would accept that or not, the Government wanted all other parties to the tender to be advised of the tax rate concessions that it was prepared to make. It was only prepared to agree to the submissions or to consider them further if all other parties were made aware of that...²⁰

4.43 In a letter to the Minister, dated 4 February 2000, the Liquidator wrote:

ComsWinfair point out that all parties to the tender were advised that the casino tax rate would be subject to negotiation with the Government and had the opportunity to make submissions in that respect during the period of the tender. None of them raised the issue. ComsWinfair believe that it is inequitable that other parties should be given the opportunity to do so now as a result of ComsWinfair's efforts.²¹

4.44 He further noted that 'the recommencement of the tender process would also raise problems' for him, given the pressure he was under 'to deliver results to creditors'.

4.45 ComsWinfair told the Committee that it subsequently requested Preferred Tender status so as to ensure that any concessions negotiated with the Government were for the benefit of the ComsWinfair tender.

We said on several occasions to the tenderer that we felt – certainly in our case, we felt, in most other people's cases – that the process would have to proceed to a preferred tenderer type process and lead to tripartite discussions and negotiations between the

19 ComsWinfair, *Hansard*, p. 207.

20 PPB Ashton Read, *Hansard*, p. 74.

21 Annexure 60, PPB Ashton Read, Submission No. 7, p. 597. ComsWinfair, Exhibit No. 7.

Commonwealth, the Liquidator and the preferred tenderer. Indeed, at one stage I suggested to the Liquidator that I would prefer he selected someone as preferred tenderer, even if it was not us, because I did not see it leading to a conclusion otherwise.²²

4.46 In response to ComsWinfair's comments, the Liquidator stated:

ComsWinfair's demand that they be selected as the preferred tender was the main reason why the process of the tender was unable to be continued with. It was not feasible to accept an open ended tender such as ComsWinfair's whereby they could at any time withdraw from the process...The risk of CIR being left without funds and without a purchaser of the Resort and Casino was too great to allow me to accept ComsWinfair's offer in the form it was submitted.²³

Negotiations following the tender process

4.47 As discussed in Chapter Three, the Liquidator felt that a number of factors inhibited him from proceeding with acceptance of ComsWinfair's offer on a conditional basis. These included:

- protracted negotiations between the Commonwealth and ComsWinfair which may or may not have been satisfiable;
- the subsequent length of the necessary probity review, especially as ComsWinfair was partially owned by foreign interests, further delaying the realisation process; and
- the distinct possibility that significant delays, such as those listed above, could result in the casino and resort completely running out of funds with which to proceed with the sale, and with no purchaser for the casino and resort at all.

4.48 The Committee heard evidence, however, that consideration of these issues did not definitively preclude ComsWinfair from acceptance as the preferred tenderer.

Negotiations between ComsWinfair and the Commonwealth

4.49 In his submission the Liquidator stated:

I could not take the risk that, after what was likely to be an extended period of negotiations between ComsWinfair and the Commonwealth in relation to the Casino tax rate and other conditions, ComsWinfair and the Commonwealth may not have

22 ComsWinfair, *Hansard*, p. 191.

23 PPB Ashton Read, Submission No. 12, p. 1395.

been able to reach agreement and that ComsWinfair could then withdraw their tender.²⁴

4.50 The Committee heard evidence, however, that ComsWinfair had repeatedly stated its commitment to pursuing the purchase of the resort and had given a number of indications that, if successful, it was intending to re-establish and re-open the casino and resort expeditiously.

4.51 In a letter dated 24 December 1999, the solicitors Watson Mangioni wrote to the Liquidator on behalf of ComsWinfair, regarding discussions with the Commonwealth:

ComsWinfair expects that the majority of the issues may be addressed and resolved in discussions with the Minister and representatives of the Commonwealth as proposed for early January next year...

Please be assured that ComsWinfair is committed to progress these issues at the earliest convenience of yourself and the Commonwealth. ComsWinfair has committed itself to making the very significant investment needed in time and finance to achieve a successful commercial operation in the Christmas Island Casino Resort, in the full knowledge of the very significant risks involved in the venture.²⁵

4.52 Following further negotiation with the Minister in early January 2000, the gaming tax rate emerged as the only condition yet to be satisfied. In a letter to the Minister on 14 January 2000, the Liquidator wrote:

ComsWinfair have indicated that they believe that, following discussions with the Minister most, if not all, of the other conditions precedent could be deleted.

4.53 On 27 January 2000 the Minister wrote to the Liquidator summarising the Commonwealth's position on conditions precedent to ComsWinfair's tender. In evidence to the Committee ComsWinfair stated:

The essential lease and license conditions of importance to our tender were largely satisfied by the Minister's letter on 27 January 2000. We have no reason to believe that the outstanding issues would not have been resolved, or waived by ourselves, given the opportunity.²⁶

4.54 In response to this evidence, the Liquidator stated:

24 PPB Ashton Read, Submission No. 7, p. 74.

25 ComsWinfair, Exhibit No. 7.

26 ComsWinfair, Submission No. 9, p. 1200.

The letter did not make any definitive statements in relation to the lease or licensing issues. It only stated that the Minister was willing to discuss matters further.

The Minister required that I inform parties who had previously expressed an interest in the casino and resort of the reductions the Minister was considering to the tax rate to ascertain whether these reductions would be an inducement to tender...

The Minister also noted that in relation to casino operational matters, these matters were the jurisdiction of the CSA and still being considered.

Therefore ComsWinfair is incorrect in stating “that the lease and license conditions of importance to their tender had been satisfied” by the letter from the Minister.

Furthermore, if ComsWinfair believed that the lease and licence conditions of importance had been satisfied, they could have submitted an unconditional or less conditional offer to me. They were not prepared to do this despite my repeated requests.²⁷

- 4.55 As noted earlier in Chapter Three,²⁸ ComsWinfair told the Committee that a gaming tax rate of 6 per cent, with a negotiable minimum as represented in the Minister’s letter, was closer to the 5 per cent rate that ComsWinfair was aiming for.

We wanted, and asked several times, to be nominated preferred tenderer so we could basically get some comfort that we had a lock-in on the project. The Liquidator could never accommodate that request, and I do not know that the Minister could or would, but it did not happen, for whatever reason. Essentially we were asking for that on or about the 27th...we got the letter of the 27th which looked very promising, we were expecting then to go forward into basically a tripartite negotiation situation because there were no more deal breakers left in the deal. Then basically we had the rug pulled out from under us.²⁹

Allocation of time for probity review

- 4.56 The Committee heard evidence from the Liquidator that another crucial factor was the need to incorporate the probity review for the casino licence into the timeframe for the realisation of the casino and resort. In his submission to the inquiry the Liquidator stated:

27 PPB Ashton Read, Submission No. 12, p. 1397.

28 Chapter Three, paragraph 3.122.

29 ComsWinfair, *Hansard*, p. 207.

I was already concerned that, regardless of how long the satisfaction of the conditions precedent took, a probity review also had to be undertaken and that this could take up to six months.³⁰

4.57 However, the summary of conditions prepared by Watson Mangioni for ComsWinfair in December 1999 stated that:

Both Coms21 Limited and Winfair Group, shareholders in ComsWinfair, have commenced to collate information required for the probity reviews. Coms21 Limited and its directors have recently collated similar information in connection with applications made to the New South Wales Department of Racing and Gaming and so should be able to provide the information in a short timeframe. We understand that the bulk of the information required will be available for submission to the Casino Control Authority by mid-January 2000.³¹

4.58 Furthermore, at the end of 1999 ComsWinfair were anticipating holding a 'soft opening' of the casino and resort before the end of 2000, and having it fully operational by Chinese New Year in February 2001.³² This timetable would have necessitated an expeditious completion of the probity review required for a casino licence.

Prospect of running out of funds

4.59 The Committee also heard from the Liquidator that delays throughout the tender process had created added pressure on the financial resources of CIR, and consequently affected the amount of time the Liquidator could allow for finalisation of negotiations on the ComsWinfair tender.

4.60 As at 1 January 2000, CIR had approximately \$435,000 in cash in liquidation after receiving the proceeds from the sale of the Christmas Island Lodge.³³ This money was required to cover fees, amongst other costs, of approximately \$40,000 a month for the maintenance of the property.³⁴

4.61 In his submission the Liquidator commented:

I was concerned that this sum was insufficient to fund operations for approximately nine (9) months, taking into account legal costs which I was necessarily committed to incur to defend proceedings

30 PPB Ashton Read, Submission No. 7, p. 74.

31 ComsWinfair, Exhibit No. 7.

32 ComsWinfair, *Hansard*, p. 198.

33 PPB Ashton Read, Submission No. 7, p. 67.

34 PPB Ashton Read, *Hansard*, p. 86.

initiated by the Directors [of CIR] in the Federal Court, the Supreme Court and the High Court.³⁵

- 4.62 The Liquidator was also concerned that should negotiations with ComsWinfair fail, creditors would remain unpaid and even be in a position where they would have to contribute funds for maintenance of the assets. The Liquidator would then be left in a position where he did not have the financial capacity to offer the resort to the market again.
- 4.63 The Liquidator told the Committee that ‘if we got locked in, we could run out of money. We were forced to consider that. It was not a remote possibility; it was a distinct possibility.’³⁶
- 4.64 However, the Committee notes that at the time of the Liquidator’s decision to sell the casino and resort on a cash unconditional basis in February 2000, Soft Star was the only alternative purchaser to ComsWinfair. At this stage, Soft Star/APSC were not wholly committed to the satellite launching facility on the Island, and there was no guarantee that they would pursue the purchase of the casino and resort.
- 4.65 The Committee heard evidence from the Liquidator that after the contract of sale had been signed with Soft Star on 30 March 2000, a dispute developed over the inclusion of items of furniture, fittings and equipment which had previously been excluded from the ambit of the sale. The Liquidator said:
- We had so much difficulty getting to settlement that at one stage I seriously thought that they were repudiating the contract.³⁷
- 4.66 The Committee notes that had the Soft Star offer fallen through the Liquidator would have experienced the same financial difficulties as he feared might occur with regard to ComsWinfair, as outlined above.

Summary

- 4.67 The Committee acknowledges that the tender process conducted for the sale of the Christmas Island Casino and Resort was complex and fraught with challenges. The Liquidator told the Committee:

I was not certain that the tender process could be completed and I was only prepared to enter into a contract if I had a reasonable certainty that these conditions would be satisfied. A non-complying tender is a non-complying offer, and I was not going to leave the company exposed to the risk that ComsWinfair retained

35 PPB Ashton Read, Submission No. 7, p. 67.

36 PPB Ashton Read, *Hansard*, p. 73.

37 PPB Ashton Read, *Hansard*, p. 82.

the discretion to accept or reject matters solely at their discretion, for the reasons I have outlined.³⁸

4.68 The Committee accepts that continuing uncertainty surrounding negotiations between ComsWinfair and the Commonwealth on gaming tax and casino matters were beyond the Liquidator's powers to determine. However, the Committee believes that issues pertaining to the ComsWinfair tender were capable of resolution.

4.69 Furthermore, the Committee believes that the stalemate which developed in the final stages of the tender process between the Liquidator, the Commonwealth and ComsWinfair was a direct outcome of the Commonwealth's refusal or inability to resolve significant licence and leasing conditions as expeditiously as possible.

4.70 ComsWinfair told the Committee:

It is correct that a key problem for us was not being able to give certainty to the value because the licence conditions and lease conditions were insufficiently defined. I do not think it is correct to say that there had been plenty of time to get that done and I do not think it is correct to say that this was not something which could have been done in a round table session over two or three days.³⁹

4.71 The Committee believes that the Liquidator, faced with a potential shortage of funds and the prospect of continuing uncertainty in negotiations between the Commonwealth and ComsWinfair, sought the most expedient means of disposing of the assets.

4.72 Mr Thomson, General Secretary of the Union of Christmas Island Workers (UCIW), told the Committee that in a telephone conversation he had held with the Liquidator, regarding a potential bid from the Christmas Island community, Mr Herbert had given him the impression that the Soft Star bid was the most straightforward method of realising the casino and resort assets:

He had a sale with Soft Star which he said had no conditions. Here is the property; here is the key; give us the money – that is what he wanted. He wanted to get out of that liquidation as quickly as he could. He made that very clear to me.⁴⁰

4.73 Mr Mortleman of ComsWinfair commented further that the unconditional cash sale to Soft Star appeared to resolve many of the problems associated with the conditional tender of ComsWinfair:

38 PPB Ashton Read, *Hansard*, pp. 77-78.

39 ComsWinfair, *Hansard*, p. 199.

40 UCIW, *Hansard*, p. 131.

I think the Liquidator was finding it all too hard and I believe it was too hard for him to run a casino resort bid. He says he was also running out of cash – which could well be the case – and he had a responsibility there to make sure he did not run out of cash. Quite frankly I think the Commonwealth Government was finding it all too hard. I think when someone came along with a cash offer that seemed to get everyone off the hook of having to deal with the problems that were associated with getting a casino resort project up, it was easier to take the cash and reap the benefits.⁴¹

Negotiations with Soft Star/APSC during the tender process

- 4.74 The Committee is particularly concerned about evidence it received regarding the conduct of negotiations with Soft Star Pty Ltd/APSC. In particular, the Committee is concerned about the commencement of negotiations with Soft Star Pty Ltd outside the tender process, while negotiations were nearing finalisation with ComsWinfair within the tender process.
- 4.75 In addition, the Committee noted concerns raised in the course of the inquiry regarding the possibility that Soft Star had been made aware of the highest price offered for the casino and resort in the tender process through a breach of confidentiality, although no corroborated evidence of this was submitted.

Commencement of negotiations with Soft Star

- 4.76 In its submission to the inquiry Soft Star stated that:
- Soft Star Pty Ltd made an offer to purchase the Resort following the failure of a tender process undertaken by the Court appointed liquidator...Soft Star did not participate in any tender process.⁴²
- 4.77 The Liquidator informed the Committee that initial discussions with David Kwon of Soft Star/APSC began in January 2000, when he became concerned about the difficulty of completing a sale agreement with ComsWinfair.⁴³
- 4.78 In a letter to the Minister dated 14 January 2000, the Liquidator referred to a meeting to be held with David Kwon the following week to discuss a potential offer. On 20 January 2000 the Liquidator again wrote to the Minister, asking whether the Commonwealth would consent to assignment of the leases to Soft Star/APSC, given that it might or might

41 ComsWinfair, *Hansard*, p. 205.

42 Soft Star, Submission No. 2, p. 7.

43 PPB Ashton Read, Submission No. 7, p. 76.

not operate a casino on the site. At that stage, no offer had yet been received from Soft Star/APSC.

4.79 The Minister responded on 27 January 2000, stating that 'it was unlikely that the Commonwealth would withhold consent for the assignment of the lease of the resort to a genuine purchaser'.⁴⁴ The Liquidator subsequently met with APSC on 2 February 2000 to discuss its offer. Mr Herbert was in Sydney at the time to meet with ComsWinfair to discuss its tender.

4.80 The substance of these discussions was summarised in a letter from the Liquidator to Soft Star dated 3 February 2000. In this letter he stated:

I am still yet to agree on the purchase price as offered by you. I will make a decision on this early next week. Subject to agreement on this...I will arrange to have a sale agreement prepared and will forward this to you for your inspection.

If there are no amendments to be made to the sale agreement, it may be appropriate to meet you on Christmas Island on 14 February 2000 to sign the sale agreement.⁴⁵

4.81 On 4 February 2000 ComsWinfair was informed that the tender process had 'effectively come to an end' and was offered the opportunity to make a further unconditional offer for the casino and resort.⁴⁶

4.82 Representatives of DoTRS told the Committee that 'the Minister was sounded out and then advised that the Liquidator was negotiating with another party', in a letter from the Liquidator to the Minister on 14 January 2000.⁴⁷

4.83 The Committee questioned the process of conducting negotiations subject to the framework of the tender process with one potential purchaser, while simultaneously initiating negotiations with another interested party for a cash unconditional offer outside the tender process. Former Shire President, Mr Dave McLane, stated in his submission:

The sale to Soft Star outside the tender process was alarming. I cannot see by whose authority the Liquidator acted when he stepped outside the tender process and sold the lease to Soft Star. It may be that the Commonwealth supported the sale of the resort to Soft Star despite it being outside the tender process.⁴⁸

44 Annexure 59, PPB Ashton Read, Submission No. 7, p. 595.

45 Annexure 63, PPB Ashton Read, Submission No. 7, p. 665.

46 Annexure 46, PPB Ashton Read, Submission No. 7, p. 553.

47 DoTRS, *Hansard*, p. 216.

48 Mr Dave McLane, Submission No. 3, p. 15.

4.84 In response to these concerns the Liquidator wrote in his submission:

A Liquidator is empowered by the law to act on behalf of a company and amongst other things, sell its assets...

Although discussions with APSC/Soft Star started prior to the formal termination of the tender, no agreement, written or verbal, with APSC/Soft Star was entered into prior to the formal termination of the tender. Indeed, agreement with Soft Star was only reached at the end of March 2000.⁴⁹

4.85 The Committee heard evidence from ComsWinfair, however, that it became impossible for them to compete with a party operating outside of the tender process on a cash unconditional basis.

4.86 ComsWinfair stated:

That was one of the problems we had with both sides. On the other side, the Minister was saying in his letter to us of 27 January that he would agree to these conditions, but he would be required to put them back out to all tenderers. We were stuck with the problem that we had nowhere to go. If we changed our price probably Kwon would change his. If we negotiated terms with the Commonwealth it was going out to the public arena. So we were sort of working for everyone except ourselves.⁵⁰

4.87 The Liquidator, Mr Herbert, told the Committee that ComsWinfair was given every opportunity to put forward a competitive unconditional offer following the termination of the tender process. Mr Herbert said:

We even tried to contact ComsWinfair, saying, 'we have got this increase in the vicinity of \$6 million. Are you prepared to increase it?' and they said no they were not unless we accepted a conditional tender. We tried all that.⁵¹

4.88 However, ComsWinfair responded that:

We had a difficult stance to take throughout the negotiations. Firstly, we had formed a very early view that the assets had absolutely no value to us. In fact we were never in a position to go unconditional on our bid, without the terms of the casino licence having been specified, and we made that clear to the Liquidator throughout the process.⁵²

49 PPB Ashton Read, Submission No. 7, pp. 89-90.

50 ComsWinfair, *Hansard*, p. 200.

51 PPB Ashton Read, *Hansard*, p. 78.

52 ComsWinfair, *Hansard*, p. 193.

4.89 In response to questions concerning the commencement of negotiations with Soft Star during the tender process, Soft Star/APSC reiterated to the Committee its belief that:

Soft Star did not participate in the tender process. The purchase of the Resort/Casino was a consequence of separate negotiations between Soft Star and the Liquidator after the termination of the tender process.⁵³

4.90 Representatives of DoTRS told the Committee that they ‘could not comment on that process’, and that their:

understanding of the record is that the Liquidator reached a decision to terminate the tender process. As outlined in his submission to the Committee, he reached the view that because all bids were conditional he terminated the tender process and then sought to negotiate with individual parties...it is his legal right to do that...This is a matter for him in his obligations as a court appointed Liquidator.⁵⁴

4.91 The Liquidator further commented that:

We understood that there was a process in train at that moment and that we could not do anything formally while that process was in train. We did not do anything formally until the tender process had been terminated – nor would it have been proper to do anything. We are not suggesting for a moment that it would be...

I would like to say that I think our position was extremely difficult. We had to consider various options and alternatives. Any suggestion that we acted in an improper way is one that I would try to refute very strongly.⁵⁵

Summary

4.92 The Committee acknowledges that the Liquidator’s primary obligation was to maximise the proceeds from the sale of the assets for the benefit of the creditors of CIR. Furthermore, the Committee notes that commencement of negotiations with alternative purchasers prior to the termination of the tender process does not contravene the *Corporations Law*.

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

54 DoTRS, *Hansard*, p. 216.

55 PPB Ashton Read, *Hansard*, p. 72.

- 4.93 In addition, the Committee accepts that at the end of the tender process there were no compliant tenders, and that financial pressures on the cash resources of CIR required an expeditious sale of the casino and resort.
- 4.94 However, the Committee remains concerned about the appropriateness of commencing negotiations with an external party for a cash unconditional sale while simultaneously continuing negotiations with interested parties within the structure and preconditions of the tender process, especially in light of community expectations for the intended restoration of the asset as a casino, and the ensuing necessity of a probity review for a casino licence.

Concerns about Soft Star's purchase price

- 4.95 The Committee acknowledges concerns that Soft Star became aware of the purchase price of \$5.5 million offered by ComsWinfair Pty Ltd during the tender process, before commencing negotiations for the unconditional cash offer of \$5.7 million for the casino and resort.

- 4.96 The Liquidator told the Committee:

When we first had discussions with David Kwon...we suggested to him, through Frank Woodmore, that the assets would be available at \$10 million. In my first discussion with him, he suggested that they would be prepared to offer \$4.5 million. How he found out, if indeed he found out, that ComsWinfair's offer was \$5.5 million, I do not know.⁵⁶

- 4.97 Former Shire President of Christmas Island, Mr Dave McLane, further stated:

I was suspicious automatically when it was so close...but when I heard what Mr Herbert had to say about the negotiations I was left in no doubt whatsoever that the price was known. Mr Herbert indicated quite openly that he believed the price was known but he could not shed any light on who might have let the cat out of the bag.⁵⁷

- 4.98 Mr Frank Woodmore had been involved in encouraging Soft Star to put forward an unconditional cash offer for the casino and resort. With regard to Soft Star's initial offer and the ensuing negotiations, Mr Woodmore told the Committee that Mr Kwon:

had made an offer of \$4.5 million – not on paper, just verbally – which was totally unacceptable. We sat in his office and tried to

56 PPB Ashton Read, *Hansard*, p. 80.

57 Mr Dave McLane, *Hansard*, p. 145.

get a better offer out of them, and it was impossible. He would go up in increments of \$50, but he might hint at \$100 and then drop back another \$50 – extremely difficult to deal with in the negotiating sense. After that, I had no further dealings in those negotiations, other than to push the Liquidator to try and get a better price.⁵⁸

- 4.99 Mr Mortleman of ComsWinfair commented to the Committee that from his experience with numerous other tender processes for casinos and resorts, he was surprised at the lack of confidentiality regarding the purchase price and conditions upon the tenders submitted during this particular process.

The bid process is a rather tricky one. You have two things you have to work out. One is what you should pay, and the second is what you must pay. You always hope that what you must pay is going to be less than what you should pay, but it is a process of elimination, it is a process of information, it is a process of trying to get information from different sources. The bizarre thing in this circumstance is that these processes are run by state governments under entire and strict confidentiality. Leaks from the government organisation quite frankly are so rare that I do not think they even occur; I am not aware of them occurring. Leaks from bid to bid sometimes occur. But in this instance, we may as well have put it in the newspaper.⁵⁹

- 4.100 Mr Mortleman attributed the lack of confidentiality to a number of factors unique to the Christmas Island tender process. These included the necessity of consultations with the Commonwealth, and the committee structure involved with the liquidation. Mr Mortleman commented that ‘it is not unusual in a State situation for perhaps only one or two people to ever see the price that is actually tendered; the process is structured deliberately to avoid any potential for that sort of problem arising’.⁶⁰

- 4.101 When asked whether DoTRS knew of any discussions held between the Liquidator and any Commonwealth official, including the Administrator of Christmas Island, in relation to the particulars of offers made by companies in the tender process, DoTRS responded:

The Department has no record of any discussions between the Liquidator and Commonwealth officials in relation to the details

58 Mr Frank Woodmore, *Hansard*, p. 95.

59 ComsWinfair, *Hansard*, p. 201.

60 ComsWinfair, *Hansard*, p. 205.

of the companies who lodged tenders or the outcomes of the tender negotiations.⁶¹

4.102 Furthermore, the Department stated:

We have no record that any Commonwealth officer, Minister or member of the Minister's staff was aware of the tender price offered by ComsWinfair.⁶²

4.103 When the Liquidator was asked who would have been aware that ComsWinfair had lodged an offer of \$5.5 million, Mr Herbert told the Committee that all the members of the Committee of Inspection (COI)⁶³ were provided with details on the tenders received at a meeting on 23 December 1999.⁶⁴ Mr McLane confirmed that, at the time, 'the price offered by the tenderer was disclosed to the Committee of Inspection'.⁶⁵

4.104 Furthermore, Mr Herbert told the Committee that the 'Minister certainly knew' the details of final tenders lodged for the casino and resort.⁶⁶

4.105 In commenting upon the possibility that someone from the Committee of Inspection may have leaked the purchase price to Soft Star, Mr Woodmore stated:

The Committee was sworn to secrecy. If any member of the creditors' committee leaked that information, I would be in a position to sue them for damages and so would all the other creditors, because they would have broken a confidence which possibly resulted in a lower price for the resort.⁶⁷

4.106 In commenting upon the perceived lack of discretion in the tender process, the Liquidator stated:

There has been comment on the fact that APSC/Soft Star's offer was equal to ComsWinfair's and speculation as to how they learned of the latter's offer, if in fact they were aware of it. I at no time gave this information to APSC, was bound not to and would not in any event have done so, as I wanted to negotiate a price well in excess of \$5.5M.⁶⁸

61 DoTRS, Submission No. 11, p. 1215.

62 DoTRS, Submission No. 11, p. 1216.

63 Further details on the composition and meeting schedule of the COI are attached at Appendix E.

64 Annexure 75, PPB Ashton Read, Submission No. 7, p. 877.

65 Mr Dave McLane, Submission No. 3, p.10.

66 PPB Ashton Read, *Hansard*, p. 81.

67 Mr Frank Woodmore, *Hansard*, p. 94.

68 PPB Ashton Read, Submission No. 7, p. 77.

- 4.107 The Committee recognises that the similarity of the two purchase prices may simply have been the result of fruitful negotiations by Mr Kwon and the Soft Star group. Mr Woodmore told the Committee that a common negotiating tactic often used is to halve the original price :

When I had been speaking with [Mr Kwon] I had encouraged him to the view that the Liquidator was motivated to sell the property and that, if he could come in with an offer in the vicinity of \$12 million or thereabouts, it might go. He then said, 'How would \$10 million go?' I said, 'Try it'...However, given Mr Kwon's negotiating disposition, there is a possibility if not a probability that, in his mind, he would have immediately halved that figure and come in expecting to pick it up at \$5 million...fifty per cent off the asking price is a normal opening bid. So it may well be that he had in his mind that he could get it for \$5 million because I had suggested maybe \$10 million. For that I am kicking myself.⁶⁹

- 4.108 The Committee notes that throughout this inquiry Soft Star/APSC has maintained that it was unaware of the ComsWinfair purchase price when it entered into negotiations with the Liquidator. Mr Kwon wrote in his submission:

I did not know the highest tender price that was offered by the various tenderers. The initial offer made by Soft Star was \$4.5 million, which I now understand to be substantially less than the highest tender price. The Liquidator rejected my original offer of \$4.5 million. After considerable negotiations with the Liquidator we agreed on a figure of \$5.7 million.⁷⁰

- 4.109 Mr Kwon further told the Committee that Soft Star/APSC based their purchase price on the value of the resort and the buildings. Mr Kwon stated to the Committee that they 'emphasised the building itself and the contents of the building'⁷¹ and subsequently based their offer on the 'construction value' of the infrastructure.⁷²

Perception of conflict of interest

- 4.110 Within this context, the Committee heard evidence of a perceived conflict of interest in the relationship between the former Official Secretary of the Christmas Island Administration, Mr Graham Nicholls, and Mr David Kwon, the principal of APSC and Soft Star Pty Ltd.

69 Mr Frank Woodmore, *Hansard*, p. 93.

70 Soft Star/APSC Pty Ltd, Submission No. 13, p. 1420.

71 Soft Star, *Hansard*, p. 35.

72 Soft Star, *Hansard*, p. 28.

- 4.111 Mr Nicholls held the position of Official Secretary and Deputy Administrator of Christmas Island from April 1997 to September 2000. In August 2000 Mr Nicholls was offered a position with APSC. On 14 August 2000 he informed the Administrator of Christmas Island and the Territories Office management in Canberra of his resignation, to become effective from close of business 20 September 2000.⁷³
- 4.112 The Committee notes that there existed a perception on the Island that Mr Nicholls had used his position within the Administration to facilitate the development of the APSC satellite launching facility as well as furthering the Soft Star/APSC bid for the casino and resort.
- 4.113 Former Shire President, Mr Dave McLane, told the Committee that he had raised community concern over the potential for a conflict of interest at a meeting with the Administrator and other senior government officials on 29 June 2000.⁷⁴

I believe the conflict of interest existed from the time of the proposition that Mr Nicholls might one day be employed by Mr Kwon and when Mr Nicholls did not close that off. It was widely known around the island that Mr Nicholls was one of the people who had been offered a job by Mr Kwon. It took some time – a couple of years roughly - before it came out in the open that Mr Nicholls was going to go and work for Mr Kwon. So I first raised it in a formal way, although verbally, on 29 June 2000... On 14 August, Mr Nicholls formally indicated that he was resigning from the Commonwealth to work for APSC and that he would finish work on 23 September.⁷⁵

- 4.114 The Committee heard evidence of community concern pertaining to two specific occasions on which Mr Nicholls participated in meetings which may have created a conflict of interest:

- On 14 September 2000 Mr Nicholls accompanied the Hon Warren Entsch MP, Parliamentary Secretary to the Minister for Industry, Science and Resources, and Mr Paul Maberly of APSC, on a 'windscreen tour' of the Island, which took in the proposed development site for the satellite launching facility.

Mr Nicholls told the Committee that:

This was on instruction of the Administrator, Mr Bill Taylor. Prior to participating in the tour I raised the appropriateness of my participation with Mr Taylor. Mr Taylor instructed me to attend

73 Soft Star/APSC, Submission No. 13, p. 1437.

74 SOCI, Exhibit 2.

75 Mr Dave McLane, *Hansard*, p. 143.

the 'windscreen tour' on the Administration's behalf. He also instructed me that I should not attend the scheduled meeting between Mr Entsch and the Shire of Christmas Island in relation to the APSC project. I followed his instructions and did not attend the meeting.⁷⁶

- On 17 September 2000 Mr Nicholls took part in a meeting with Mr Willie Teo, Chairman of Phosphate Resources Ltd (PRL), and Mr Paul Maberly of APSC, to discuss APSC and PRL land negotiations. Mr Nicholls informed the Committee that he cleared his attendance at the meeting with the Administrator before participating. In regard to the meeting, Mr Nicholls stated:

I recall clearly that at the outset of the meeting with Mr Teo I advised him that I was there in my capacity of a Commonwealth public servant, and specifically at Mr Teo's invitation and with full approval of Mr Taylor.⁷⁷

- 4.115 The Shire of Christmas Island provided evidence to the Committee that it had written to the Administrator on 28 August 2000 and 25 September 2000, and to the Minister on 21 September 2000, regarding community concern over the perceived conflict of interest in Mr Nicholls' position. SOCI told the Committee:

It is a fairly widely held view that Mr Nicholls, through his position, may have been able to influence decisions made by the Commonwealth. As its principal bureaucrat on the island, he may well have been able to influence decisions in favour of his prospective employer. That is our submission on the apparent conflict of interest.⁷⁸

- 4.116 In response, Mr Nicholls told the Committee:

There was no formal relationship with APSC prior to me formally joining the company.⁷⁹

There was no conflict of interest as I took particular care while working with the Commonwealth to carry out only my Commonwealth duties and nothing else.

I at no time participated in, nor influenced the sale of the resort.⁸⁰

76 Soft Star/APSC, Submission No. 13, p. 1438.

77 Soft Star/APSC, Submission No. 13, p. 1439.

78 SOCI, *Hansard*, p. 108.

79 Soft Star/APSC, Submission No. 13, p. 1441.

80 Soft Star/APSC, Submission No. 13, p. 1439.

I refute any allegation that I passed any information regarding the sale price for the casino to Mr Kwon. I did not have any such information. This suggestion is offensive and wrong.

I worked on Commonwealth/Administration matters throughout my employment on Christmas Island. I did not misuse Commonwealth resources.⁸¹

4.117 The Committee also notes correspondence it received, dated 15 August 2000 and written by Mr Nicholls to the Registered Manager of PRL, detailing a number of arrangements to be implemented in the Administration specifically to avoid 'any situations where there could be, or could be perceived to be, conflict of interest'. These included:

- screening memos and correspondence to ensure that no information on potential areas of conflict of interest were seen by Mr Nicholls;
- removing Mr Nicholls from any dealings between the Administration and PRL;
- removing Mr Nicholls from any dealings between the Administration and Soft Star/APSC; and
- other than for social or courtesy occasions, Mr Nicholls was not to attend any meetings where APSC or casino and resort matters would be discussed.⁸²

4.118 Furthermore, Mr Kwon of Soft Star/APSC told the Committee:

All negotiations and discussions in relation to the purchase of the Resort/Casino were conducted with the Liquidator. More importantly Soft Star had no discussion with Mr Nicholls or the administration on Christmas Island in relation to the purchase of the Casino/Resort.⁸³

Summary

4.119 The Committee concluded that there was insufficient evidence to determine that Soft Star had been aware of the highest purchase price offered by ComsWinfair during the tender process.

4.120 The Committee acknowledges the concerns of the community regarding Mr Nicholls' position during the final stages of his employment with the Commonwealth, but believes that there is insufficient evidence to argue

81 Soft Star/APSC, Submission No. 13, p. 1441.

82 SOCI, Exhibit 2.

83 Soft Star/APSC, Submission No.13, p. 1424.

that Mr Nicholls demonstrably influenced the final outcome of the sale process.

- 4.121 Furthermore, the Committee acknowledges that Mr Nicholls did take active steps, where possible, to avoid areas where a conflict of interest, or the perception of a conflict of interest, might arise.

Conclusions

- 4.122 ComsWinfair told the Committee:

It was our understanding that the fundamental responsibility of the Commonwealth Government in this matter were to, I guess, optimise economic and employment matters that could result from the project, and we feel that that should have and would have been assisted by very clear competitive and viable conditions being placed on the casino licence and on the site lease. It seemed to us that perhaps as major creditors, the Commonwealth had a similar obligation.

In terms of the Liquidator's position, his job was clearly to sell the assets at the best possible value. Again, we feel that this required establishing a very clear competitive and viable set of conditions for the casino licence and for the site lease. We said on several occasions...that the process would have to proceed...to tripartite discussions and negotiations between the Commonwealth, the Liquidator and the preferred tenderer.⁸⁴

- 4.123 The tender process formally commenced in mid-1998. From August 1998 until the sale of the casino and resort in mid-2000, the Liquidator continued to negotiate with the Commonwealth regarding amendments to the Crown leases and gaming tax rates.
- 4.124 On 5 May 2000 the Christmas Island Casino and Resort was sold to Soft Star Pty Ltd for \$5.7 million on a cash unconditional basis. The leases were assigned unchanged, no agreement had been reached regarding a gaming tax regime, and no probity review had been completed, nor initiated, for the application of a casino licence.
- 4.125 The Committee reflected that many of the concerns about the conduct of the tender process originated from the tension between the Liquidator's role in an essentially commercial operation to realise the assets for the best possible price and the Commonwealth's responsibility to optimise economic opportunities on the Island through the re-establishment of a casino and resort.

84 ComsWinfair, *Hansard*, p. 191.

- 4.126 In 1995 the Commonwealth Grants Commission recommended that ‘the Government could best facilitate further economic development on Christmas Island by reducing policy and administrative uncertainty’ and by ‘making the processes for approvals and obtaining information on available assistance as simple as possible’.⁸⁵
- 4.127 Although the Committee acknowledges that whilst the Commonwealth did not have commercial or statutory obligations within the tender process as delineated by the *Corporations Law*, it did have a responsibility actively to pursue the best outcome for the Christmas Island community.

Recommendation 1

The Committee recommends that the Commonwealth, where appropriate, take a more active approach in the provision of timely and efficient support, by clarifying and streamlining processes for the deliverance of administrative and policy assistance to the Christmas Island community.

Outcome of the tender process

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

Current status of the casino and resort

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

1 www.christmas.net.au/accom

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

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

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

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

** Subject to formal proof of debt.

Continuing legal challenges

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

5.6 CIR remains party to the following legal proceedings:

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

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

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

5 See Chapter Three, pp. 40-42.

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

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

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

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

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

Payment of funds to former employees

- 5.13 The delays that these legal challenges have imposed on the finalisation of the liquidation process have also prevented the payment of funds owing to creditors and former employees of the casino and resort.
- 5.14 As discussed in Chapter Two, at the time of the casino and resort's closure, employees were owed between \$2 million and \$3.5 million.
- 5.15 Following his initial appointment as Receiver and Manager of CIR, Mr Herbert held discussions with the former directors, who conveyed to him their belief that CIR's debts were substantially less than the amount disclosed through the financial records of CIR. In particular, they believed that debts to employees only amounted to \$800,000.
- 5.16 In 1998 the Union of Christmas Island Workers (UCIW) lodged a claim in the Federal Court against CIR, arguing that employees of CIR were entitled to various penalty and interest amounts, in addition to their other employee entitlements, under the Enterprise Bargaining Agreement (EBA) pertaining to CIR's workers.¹¹
- 5.17 In his submission the Liquidator stated:
- The exact method of calculation for these amounts, if they are applicable, will be clarified through application to the court for directions.
- Depending upon the method of calculation of the employee entitlements, I have estimated that the amount payable to employees could be between \$2.5m and \$3.2m. The return to unsecured creditors will vary accordingly depending on the level of employee claims.¹²
- 5.18 The UCIW told the Committee that the average worker who had lost their job through the closure of the casino and resort was owed between \$7,000 and \$18,000.¹³
- 5.19 The Committee heard evidence from a number of witnesses expressing concern at the protracted delays experienced by workers awaiting unpaid entitlements.
- 5.20 The Christmas Island Chamber of Commerce (CICC) told the Committee that the CICC was concerned:

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

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

13 UCIW, *Hansard*, p. 122.

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

5.21 Since the closure of the casino and resort, the Union of Christmas Island Workers has been active in pursuing the payment of wages and entitlements for unpaid workers.

5.22 On 10 November 2000 a petition signed by approximately 500 Christmas Island residents, expressing concern about the delayed payment of wages owed to former employees of the casino and resort, was sent to the Minister by the UCIW.¹⁵

5.23 The Committee heard evidence from the Liquidator that, although there was not an injunction preventing him from paying out the creditors and employees, legal advice had been provided to him to the effect that if he paid the creditors and the High Court found in favour of the application by the former directors, he would be personally liable for approximately thirty months pay.¹⁶

5.24 Mr Herbert told the Committee that in view of potentially lengthy legal disputes he had attempted to negotiate an interim payment to former employees of CIR.

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

5.25 The High Court challenge has not yet been listed for hearing. DoTRS told the Committee that the Department had 'written to the Registrar of the High Court, seeking to encourage the expediting of the hearing' but that no date had been set.¹⁸

5.26 The Liquidator also informed the Committee:

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

14 CICC, *Hansard*, p. 177.

15 UCIW, Exhibit 3.

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

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

18 DoTRS, *Hansard*, p. 228.

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

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

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

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

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

- 5.29 UCIW told the Committee:

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

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

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

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

20 UCIW, *Hansard*, p. 121.

21 UCIW, Exhibit 3.

22 UCIW, *Hansard*, p. 121.

23 DoTRS, *Hansard*, p. 228.

Sale of the Christmas Island Laundry

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

Exclusion of the laundry from the liquidation process

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

24 UCIW, *Hansard*, p. 129.

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

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

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

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

5.39 Mr Herbert further stated:

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

Sale of the laundry by the Commonwealth

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

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

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

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

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

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

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

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

29 UCIW, Exhibit 3.

30 UCIW, Exhibit 3.

31 UCIW, Exhibit 3

32 UCIW, *Hansard*, p. 129.

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

5.47 On 23 November 2000 the Minister replied:

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

5.48 In evidence to the Committee the UCIW stated:

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

Summary

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

33 UCIW, Exhibit 3.

34 UCIW, Exhibit 3.

35 UCIW, *Hansard*, p. 130.

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

Recommendation 2

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

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

Sale of the casino and resort to Soft Star Pty Ltd

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

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

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

Soft Star's intentions for the casino and resort

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

5.57 The Liquidator told the Committee:

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

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

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

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

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

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

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

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

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

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

Timetable for re-opening the casino and resort

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

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

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

- 5.64 SOCI told the Committee:

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

38 SOCI, *Hansard*, p. 109.

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

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

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

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

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

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

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

- 5.68 The UCIW also told the Committee:

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

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

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

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

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

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

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

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

5.71 Mr Kwon also informed the Committee that:

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

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

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

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

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

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

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

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

Perhaps he had not realised the full implications of what that required.⁴⁷

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

5.75 SOCI commented to the Committee:

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

5.76 Mr McLane also commented:

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

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

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

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

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

48 SOCI, *Hansard*, p. 118.

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

operators in order to determine their interest in performing the role of casino operator.⁵⁰

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

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

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

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

5.82 The Committee notes further comments made by Mr Mortleman:

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

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

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

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

51 ComsWinfair, *Hansard*, p. 196.

52 ComsWinfair, *Hansard*, p. 196.

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

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

The role of the Commonwealth

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

- 5.86 The Committee was told by the Liquidator that:

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

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

- 5.88 DoTRS told the Committee:

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

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

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

53 ComsWinfair, *Hansard*, p. 200.

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

55 DoTRS, *Hansard*, p. 223.

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

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

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

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

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

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

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

Application of background and probity review

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

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

⁵⁶ CICC, *Hansard*, p. 178.

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

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

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

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

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

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

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

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

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

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

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

conducted...through the Federal Police, through Interpol, into individual's backgrounds.⁶⁰

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

5.102 The Liquidator told the Committee:

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

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

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

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

5.105 DoTRS further informed the Committee:

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

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

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

62 DoTRS, *Hansard*, p. 211.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 5.115 DoTRS told the Committee:

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

68 UCIW, Exhibit 3. SOCI, Exhibit 2.

69 UCIW, Exhibit 3.

70 DoTRS, *Hansard*, p. 229.

71 DoTRS, *Hansard*, p. 223.

Conversion from leasehold to freehold

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

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

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

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

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

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

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

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

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

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

5.122 Promotional material prepared by the Liquidator subsequently stated that ‘earlier 99-year leases may be converted to freehold upon application’.⁷⁶

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

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

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

5.125 DoTRS stated that:

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

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

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

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

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

77 ComsWinfair, *Hansard*, p. 198.

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

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

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

- 5.127 The Committee heard evidence of mixed views among members of the Christmas Island community in response to proposals to convert the lease of the casino and resort to freehold.
- 5.128 The Shire of Christmas Island stated in its submission that it was 'opposed to a change in land tenure from leasehold conditions determined by the Minister to freehold title' as is currently being considered.⁸¹ SOCI stated:
- If freehold title is granted, it is our view that the Commonwealth and therefore this community would have no power to determine the appropriate uses for this prime island asset. It is totally unacceptable to our community, as I have said, that that should happen.⁸²
- 5.129 SOCI also argued that Mr David Kwon of Soft Star had not been receptive to community consultation or community concerns affecting the casino and resort. SOCI felt that with the conversion of the leases to freehold there would be even less incentive for Soft Star to engage in effective community consultation.
- The message we are getting from Kwon...is that he is not even interested in effectively communicating with this community, so why would you hand him freehold title?⁸³
- 5.130 The UCIW stated that although it recognised that the collateral value of freehold for commercial land would be greater than leasehold, the UCIW was also concerned that loss of direct control by the Commonwealth would impact negatively on the community's ability to influence the use of the casino and resort.
- I would think most people on Christmas Island would be opposed to freehold title being granted to Mr Kwon. I think there is a great deal of disquiet about where he is going.⁸⁴
- 5.131 However, the Committee also heard evidence from a number of witnesses who commented that they could understand the commercial rationale behind Soft Star's request to convert the leases to freehold title.

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

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

82 SOCI, *Hansard*, p. 110.

83 SOCI, *Hansard*, p. 112.

84 UCIW, *Hansard*, p. 132.

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

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

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

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

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

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

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

- 5.136 Mr Ed Turner told the Committee:

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

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

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

87 CICC, *Hansard*, p. 178.

88 UCIW, *Hansard*, p. 124.

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

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

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

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

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

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

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

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

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

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

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

Community consultations on the issue of freehold title

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

92 Section 15, *Land Administration Act 1997 (WA) (CI)* www.austlii.edu.au

93 DoTRS, *Hansard*, p. 21.

94 DoTRS, *Hansard*, p. 22.

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

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

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

- 5.149 Former Shire President, Mr Dave McLane, also told the Committee that no formal discussions were held with the Commonwealth regarding transfer of the leases to freehold, 'until we raised that question directly with the Minister at a meeting...at the shire office during his last visit' in July 2000.⁹⁷

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

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

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

- 5.151 The Minister replied on 12 September 2000:

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

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

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

96 SOCI, *Hansard*, p. 109.

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

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

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

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

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

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

5.154 On 6 November 2000 the Minister replied:

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

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

5.156 The Shire of Christmas Island told the Committee:

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

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

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

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

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

103 SOCI, *Hansard*, p. 117.

104 DoTRS, *Hansard*, p. 224.

Summary

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

Recommendation 3

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

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

Recommendation 4

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

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

Recommendation 5

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

Broader community concerns

- 6.1 During the course of the inquiry a number of broader community issues emerged with respect to the resort, which provided an important context for the outcome of the tender process. These issues included:
- public access to Waterfall Bay;
 - community consultation;
 - the provision of regular air services to the Island; and
 - prospects for further economic development on the Island.

Public access to Waterfall Bay

- 6.2 Waterfall Bay forms a significant part of the land leased for the casino and resort, and is an important asset for the resort.¹ During the course of the inquiry, however, the Committee heard evidence from the Christmas Island Divers' Association (CIDA) regarding difficulties experienced by local residents seeking public access to Waterfall Bay, which is surrounded by land leased for the resort.
- 6.3 Prior to 1990, the only access to the bay terminated at a diesel powered pump station located approximately four metres above the shoreline. The shoreline itself was rocky and littered with boulders and rusted components of a wartime shipwreck. There was no pathway ladder to the shoreline.
- 6.4 In 1990 CIR relocated the pump station, cleared the shoreline, built an access road to the shoreline and constructed two breakwater walls, in

¹ See map of the Christmas Island Casino and Resort at p. 12.

accordance with a study by the Public Works Department of Victoria. The work was not fully completed but the breakwater walls functioned as envisaged, resulting in the accumulation of sand and the evolution of a beach and lagoon. The Liquidator reports that at this stage, some local fishermen were given permission to launch dinghies, but that this was withdrawn following oil pollution and concerns about public safety after several boats capsized.²

6.5 In 1996 the directors authorised the construction of a concrete platform along the top of the main breakwater and removed the secondary breakwater. This was undertaken without professional advice and without the consent of the Shire. The Liquidator stated that ‘within two weeks of completion the seasonal swell wrecked the concrete platform and the breakwater was breached’.³ Consequently, the beach disappeared overnight and the bay became polluted with rock and debris.

6.6 Under the terms of the lease for the casino and resort, public access to the shoreline was specified under sub-clause 3(d). This stated:

That the Lessee shall permit public access to the shoreline of the premises at any reasonable time and in any reasonable manner. For the purpose of this sub-clause the shoreline shall be deemed to include an area not more than five metres in from the high water mark.⁴

6.7 Mrs Diane Masters, President of CIDA, advised the Committee that when the resort was operating, members of the Christmas Island community ‘were allowed to have vehicular access down to Waterfall Bay,’ and that many divers used the bay as the basis for a shore dive.⁵

6.8 With the closure of the casino and resort, CIDA told the Committee that access has become more restricted:

Basically we have been restricted since the resort closed. There is a chain across the road and we are unable to access Waterfall Bay unless we get permission from [the current Manager of the Resort]. I understand that the answer is sometimes yes and sometimes no, but there has certainly been no vehicular access.⁶

6.9 CIDA stated that although they appreciate what limited public access is granted by resort management, the lack of vehicular access creates added difficulties for divers wishing to utilise the bay. CIDA told the Committee:

2 Annexure 14, PPB Ashton Read, Submission No. 7, p. 375.

3 Annexure 14, PPB Ashton Read, Submission No. 7, p. 375.

4 DoTRS, Submission No. 11, p. 1228.

5 CIDA, *Hansard*, p. 133.

6 CIDA, *Hansard*, p. 137.

Since the resort has closed down, there has only been pedestrian access through to Waterfall Bay. That is really quite impractical for a diver. It involves a walk of some 500 metres...It does not sound like a lot, but when you are lugging heavy dive gear and tanks it is a long way. It also becomes a health issue after a dive. After a dive you should not be doing very much physical exertion, because of the nitrogen in your system...To get out of Waterfall Bay you have to walk up a hill, once again carrying heavy dive gear. So it really becomes a health issue as far as pedestrian access is concerned.⁷

- 6.10 The Committee notes further evidence provided by CIDA, highlighting the issue of access to safe diving areas during the swell season on Christmas Island.⁸ Mrs Masters told the Committee that during the swell season the main port on the Island, Flying Fish Cove, becomes inaccessible. Consequently, for three months of the year, diving access to the sea is only available at Waterfall Bay or Ethel Beach. CIDA stated:

On Christmas Island there are very few all year round sports – boating, fishing and diving are probably the main sports that are enjoyed year round. For up to three months of the year, access to the ocean can be denied unless we can access it through Waterfall Bay and via pedestrian access through Ethel Beach.⁹

- 6.11 In addition, the Committee was informed that the road which provides access to Waterfall Bay ‘has not been maintained for a long time’ and that no repair work has been undertaken following recent heavy storms, although the Shire has recently ensured that four-wheel drive access is still available.¹⁰

- 6.12 Following the Committee’s suggestion, CIDA wrote to Soft Star Pty Ltd on 26 April 2001, to clarify arrangements for vehicular access to Waterfall Bay. In correspondence sent the same day Mr Graham Nicholls of Soft Star replied:

Soft Star’s lease provides for public access to the shoreline at any reasonable time and in any reasonable manner. The shoreline is deemed to include an area not more than five metres in from the high water mark. Therefore, and as is the case currently, Soft Star is able to provide pedestrian access to Waterfall Bay, but is not able to provide vehicular access. Additionally, the condition of the road is such that vehicular access would not be safe.¹¹

7 CIDA, *Hansard*, p. 134.

8 The swell season generally runs from November through to February.

9 CIDA, *Hansard*, pp. 133-134.

10 CIDA, *Hansard*, p. 136.

11 CIDA, Exhibit No. 4.

- 6.13 The Committee received evidence that the question of public access to Waterfall Bay was an issue which also emerged during the course of the sale process for the casino and resort.
- 6.14 During the initial stages of the realisation process for the casino and resort, the Liquidator presented a position paper to the Commonwealth regarding proposed amendments to the boundaries of the lease as well as casino gaming tax rates. In this paper, the Liquidator argued that Waterfall Bay should be retained within the lease without public access. The reasons for this were summarised as follows:
- Reasons to retain Waterfall Bay without public access
1. Unfettered public access makes it impossible for security staff to monitor the beach effectively.
 2. The lagoon is susceptible to strong swells and can be dangerous at times. Unless a full-time guard is on duty, public access will expose the lessee to a public liability risk, which would probably be uninsurable and would certainly be financially untenable.
- Reasons to retain Waterfall Bay within the Lease
1. It is a potential asset to the property which may be developed in the future
 2. For security reasons it needs to be controlled by the casino.¹²
- 6.15 As discussed earlier, amendments to the leases proposed by the Commonwealth were never finalised. Consequently, the issue of access to Waterfall Bay re-emerged in negotiations with ComsWinfair during the due diligence period of the tender process.
- 6.16 The Committee was informed that during discussions held on the Island in November 1999, between representatives of the Department of Transport and Regional Services (DoTRS) and a ComsWinfair delegation, Mr Hugh Moore from the Department 'advised or implied that the Commonwealth would require the construction of a road to allow public access to Waterfall Bay'.¹³
- 6.17 The Committee was given to understand that the construction of this road related primarily to the provision of access to the water supply facilities

12 Annexure 14, PPB Ashton Read, Submission No. 7, p. 376. A risk analysis conducted by former CIR security staff indicated that in calm conditions the lagoon may expose the Casino to a 'commando style attack'. In late 1993 this fear was confirmed when it was discovered that latches on selected access doors had been filed, allowing easy penetration from the side of the building into the gaming and cash room.

13 PPB Ashton read, Submission No. 7, p. 64.

located in the same area as the bay.¹⁴ In delineating their concerns on this issue, ComsWinfair stated:

Currently the obligation under the lease is to allow the public access to within five metres from the high water mark of the shoreline. The exact nature of that public access is not defined nor is the question of whether this access includes vehicular access.¹⁵

6.18 The Minister replied to ComsWinfair's concerns on 27 January 2000:

The lease provides that the lessee must provide public access to the shoreline up to five metres from the high water mark. As most of the shoreline is cliffs there is no viable public access except at Waterfall Bay. There is an access road through the lease to Waterfall Spring and Waterfall Bay, which is presently in disrepair...The Shire requires access to the water supply infrastructure at Waterfall Spring. The community has expressed an interest that there is access to Waterfall Bay for emergency situations.¹⁶

6.19 As detailed in earlier chapters, negotiations between ComsWinfair and the Commonwealth subsequently stalled following the Liquidator's termination of the tender process. With the transfer of the lease to Soft Star unamended, the issue of vehicular access to Waterfall Bay remains unresolved at the time of the Committee's report.

Summary

6.20 The Committee believes that the question of public access to Waterfall Bay, and in particular vehicular access, is an issue which the Commonwealth will need to clarify with Soft Star during the negotiations which are yet to be initiated, regarding proposed amendments to the leases.

6.21 The Committee supports the continuation of reasonable public access to Waterfall Bay, as detailed within the original lease for the casino and resort. Furthermore, the Committee believes that Soft Star should be encouraged to negotiate further guidelines for public access to the bay, on terms agreeable to both the community and Soft Star management.

14 Annexure 38, PPB Ashton read, Submission No. 7, p. 524.

15 Annexure 42, PPB Ashton read, Submission No. 7, p. 536.

16 Annexure 45, PPB Ashton read, Submission No. 7, p. 550.

Community consultation

- 6.22 The Committee heard evidence that many of the issues which emerged in the realisation of the Christmas Island Casino and Resort highlighted the need for more comprehensive consultation with the Shire of Christmas Island (SOCI) on policy issues affecting the Island.
- 6.23 The Committee was informed that concerns regarding the level of consultation and inclusion in the tender process focused on:
- consultation with the Liquidator, regarding development of the tender process; and
 - consultation with the Commonwealth, regarding the community's concerns about the conduct and outcome of the tender process.

Consultation with the Liquidator

- 6.24 The Committee heard evidence from a number of witnesses on Christmas Island that the sale process for the casino and resort would have benefited from a higher level of consultation between the Liquidator and the Island community.
- 6.25 SOCI stated in its submission that it was concerned that SOCI is the elected representative authority of Christmas Island and yet 'the Liquidator did not formally involve the Shire in the development of the tender process'.¹⁷
- 6.26 The Union of Christmas Island Workers (UCIW) also stated that it believes that the tender process 'could have been improved by reference to and inclusion of the affected parties in the development of the tender process'.

The UCIW is the sole representative industrial organisation on Christmas Island. Members of the UCIW are, collectively, the most significant creditors. Employees are owed more than \$3 million in unpaid entitlements. The Liquidator did not formally involve the UCIW in the development of the tender process.¹⁸

- 6.27 In response to arguments that SOCI and the UCIW should have been formally involved in the tender process on behalf of the Island community, the Liquidator informed the Committee:

At the time when I was appointed Receiver and Manager of CIR and subsequently, I held discussions with the UCIW in relation to my role as Receiver and Manager, the claims of the former

17 SOCI, Submission No. 6, p. 29.

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

employees of CIR and my objectives for the sale of the casino and resort.

The tender process was based upon my discussions with the Commonwealth and the CSA and on professional advice received by JLW...

The Liquidator is not compelled by law to consult with individual creditors as to his actions, and it is not practicable for a Liquidator to involve individual creditors or groups of creditors in the conduct of his administration, other than through the COI.¹⁹

- 6.28 As discussed in Chapter Three, the Committee of Inspection (COI) was formed at the meeting of creditors held on 27 August 1999, in accordance with Section 548 of the *Corporations Law*. Details of the members and meetings of the COI are attached at Appendix E.
- 6.29 The Committee heard evidence that it was not until the formation of the COI, upon which both SOCI and the UCIW were represented, that the community gained some knowledge of the progress of the tender process for the sale of the casino and resort.
- 6.30 Mr Gordon Thomson of SOCI told the Committee that:
- The tender process was developed in isolation. I have no doubt that it was developed in accordance with the law...But it was only after Shire President Dave McLane initiated the establishment of a Committee of Inspection, which I think first sat in late 1999, that we had any community input or inside knowledge of what the Liquidator was doing.²⁰
- 6.31 The Committee notes that two representatives of the DoTRS Territories Office in Perth attended the creditors meeting held on 27 August 1999.²¹ The Committee was surprised that the Commonwealth did not nominate a representative for the COI. DoTRS informed the Committee that 'the Commonwealth was not represented on this Committee and was given no information about its meetings or affairs'.²²
- 6.32 The Committee was concerned that the Commonwealth chose not to attend the COI meetings, especially as there was only one creditors' meeting held in late 1999. The Committee believes that representation at the COI as a creditor would have allowed the Commonwealth to maintain direct contact with progress of the realisation process. In addition, it

19 PPB Ashton read, Submission No. 7, pp. 86-87.

20 SOCI, *Hansard*, pp. 110-111.

21 Annexure 74, PPB Ashton Read, Submission No. 7, p. 858.

22 DoTRS, Submission No. 11, p. 1216.

would have allowed Departmental officers to apprise COI members of the Commonwealth's position on the conduct of negotiations with potential purchasers and the Liquidator.

Consultation with the Commonwealth

- 6.33 The Committee believes that the Commonwealth should have undertaken some formal consultations with the Community and provided some substantive information on the progress of the realisation process for the casino and resort, through established channels on Christmas Island.
- 6.34 In evidence to the Committee, SOCI argued that both isolation and the governance and administrative structure of the Island militated against more effective lobbying of the Liquidator, and may have limited the community's ability to communicate its concerns on the progress of the tender process to the Island's political representatives, where it was appropriate.

Direct access to [the Liquidator] was not easy...and I am not sure what the law on liquidations is specifically about consultation with the affected community, but we are a unique community. We do not have the proper operation of State type services, we do not have easy access to legal advisers, and we do not have easy access to political representation. Our elected members from the Northern Territory find it almost impossible to get to Christmas Island with the way the air services operate. Our remote location has militated against an effective communication with the community.²³

- 6.35 In 1999 the Commonwealth Grants Commission (CGC) also reported on the need to strengthen the consultation process:

A comprehensive approach to consultation is needed, and it must provide for both formal and informal processes. High level formal consultation, for example between the Administration, the Shires and other broadly representative groups, is needed to address major policy, service delivery or infrastructure issues. More informal consultation among those involved at the coalface of service delivery or infrastructure provision is also essential.

As well as establishing a framework for consultation, thought needs to be given to the style and timing of consultation. Existing efforts at consultation may be failing to generate appropriate outcomes because there is inadequate real communication.

Appropriate outcomes are frustrated by a lack of dialogue sufficiently early in the process.²⁴

- 6.36 In its 1999-2000 Annual Report, DoTRS advised that there are a number of mechanisms in place to ensure that the Christmas Island community is consulted on decisions that will affect services provided to the Island. These include more formal review mechanisms, such as recourse to the Commonwealth Ombudsman and the Administrative Appeals Tribunal, as well as community consultative committees. The 1999-2000 Annual Report states:

The Administrator for the Indian Ocean Territories [IOTs], Bill Taylor, has placed a high priority on enhancing community consultation. Mr Taylor established an Administrator's Advisory Committee for each Territory in late 1999 to consider the broader public policy issues affecting the social and economic well being of residents of the Christmas and Cocos (Keeling) Islands.²⁵

- 6.37 The Administrator's Advisory Committee meets at least quarterly and in response to pressing issues. The 1999-2000 Annual Report further states that the Advisory Committee discusses issues and prepares recommendations, where appropriate, for on-Island and external authorities.
- 6.38 The Committee heard evidence from SOCI that 'every now and then there is a meeting of the Administrator's Advisory Committee' but that 'we do not see too many results'.²⁶
- 6.39 The Committee believes that initiatives promoting enhanced community consultation, such as the Administrator's Advisory Committee, are to be commended. However, the issue of community input and consultation on policy could be considered in the wider governance framework of political representation.
- 6.40 The UCIW told the Committee:

We do not have decision making structures on this island which require the community to be formally consulted or for the community to make formal agreement with the great decision maker in Canberra – the Minister for Territories. He has all of the powers. He is totally remote, and we do not blame him. He is a very decent human being, as are most of the bureaucrats, but the structure and the decision making processes are the problem. If

24 Commonwealth Grants Commission, *Report on Indian Ocean Territories 1999*, Canberra, pp. 37-38.

25 www.dotrs.gov.au/dept/anrep/9900

26 SOCI, *Hansard*, p. 119.

you put the decision making power in the hands of the community, you would get much better results. All over Australia, except Christmas Island, you have elected representatives making decisions for their communities. For Christmas Island you have the Minister making decisions, and sometimes he doesn't reply to your letters for six months.²⁷

6.41 In 1999 the CGC also stated:

Consultation between the government authority and the communities is of greater importance for the IOTs than for other comparable remote communities because there is no equivalent elected State representative.²⁸

Responsibility of the Commonwealth to provide State level services

6.42 Under the current political and administrative system, the Commonwealth Minister for Regional Services, Territories and Local Government exercises ministerial powers and responsibilities with respect to Christmas Island, including the provision of State level services. Neither of the Indian Ocean Territories has State level representation.

6.43 The Committee considered that in the context of the commercial framework of the liquidation and realisation of the Christmas Island Casino and Resort, the lack of an 'equivalent State representative' created a gap between the local government of the Shire of Christmas Island and the Commonwealth.

6.44 The Committee heard evidence from the Christmas Island Chamber of Commerce (CICC) that inadequate representation at the State level hindered the conduct and outcome of the tender process. Mr Oakley from the CICC told the Committee:

In other parts of remote Australia, State and local government incentives are made available to investors willing to create employment, reduce unemployment, attract foreign income and contribute to the payment of taxes. These mainland benefits should be available to investors in the Indian Ocean Territories.²⁹

6.45 The CICC added that:

If this were a remote part of northern Queensland, I imagine the Queensland Government would be down on bended knees and

27 UCIW, *Hansard*, p. 127.

28 Commonwealth Grants Commission, *Report on Indian Ocean Territories 1999*, p. 39.

29 CICC, *Hansard*, p. 179.

have wooed an investor to come to that remote area to establish or purchase an asset such as we have at the resort.³⁰

6.46 The CICC suggested that ‘taxation incentives, allocation of land at no cost for the establishment of new businesses and industries’ or ‘further taxation zone allowances to compensate for the remoteness of the Island’ would be appropriate measures.³¹

6.47 Mr Rodger Mortleman of ComsWinfair told the Committee that many States have designated personnel to assist in their casino and resort development processes.

Certain State governments have developed quite a professionalism at doing it, particularly Queensland because they have done the most. There are people from those organisations who can very adequately advise other organisations – and do so – on how to go about that process. I think the Liquidator had a responsibility to get that sort of advice. I know he did not. I think the Commonwealth, assuming they wanted the casino and wanted employment and wanted the economic activity, also had a responsibility, and did not do so.³²

6.48 Mr Mortleman also emphasised that, in general, the bid process is almost entirely State run.³³

6.49 In 1999 the Commonwealth Grants Commission noted:

In general, assistance in this area is less than the assistance available for business development in the States. State governments offer incentives, including tax breaks, gifts of land and assistance with infrastructure costs, to encourage economic development in their States. Standard levels of industry assistance, on comparable terms, should be available to the IOTs.³⁴

6.50 The Committee notes that the Commonwealth has recently committed up to \$100 million to assist the development of the APSC satellite launching facility. This funding has been provided through the Strategic Investment Incentive program and will be ‘used for upgrading Christmas Island Infrastructure, with construction scheduled for completion in time for the commencement of space centre operations’. Projects for the improvement of Island infrastructure include:

30 CICC, *Hansard*, p. 180.

31 CICC, *Hansard*, p. 181.

32 ComsWinfair, *Hansard*, p. 199.

33 ComsWinfair, *Hansard*, pp. 201 and 205.

34 Commonwealth Grants Commission, *Report on Indian Ocean Territories 1999*, Canberra, p. 39.

- an extension to the airport runway;
- a new swell season port facility on the south east coast; and
- a new access road from the south east coast port.³⁵

Summary

- 6.51 The Committee acknowledges that the Liquidator was under no legal obligation to consult or advise the Christmas Island community on the conduct of the sale process for the Christmas Island Casino and Resort. The Committee believes that the formation of the Committee of Inspection provided the Shire of Christmas Island with a valuable insight into the development and outcome of the tender process.
- 6.52 The Committee considers it unfortunate that the Commonwealth chose not to become involved, or to remain informed, on the progress of the tender process through the Committee of Inspection.
- 6.53 Furthermore, the Committee believes that the Commonwealth had an obligation to exercise the existing consultation and advisory processes established on the Island, to provide the Christmas Island community with detailed information on the progress of the sale and to acknowledge any concerns and issues arising from the realisation process within the community.
- 6.54 The Committee concurs with the 1999 CGC report, which stated:
- There are, on the face of it, well-established frameworks which should allow effective consultation. That dissatisfaction over consultation remains widespread suggests to us that the consultation mechanisms are not sufficiently effective.³⁶
- 6.55 In addition, the Committee believes that the Commonwealth had a responsibility to undertake a more active State-type role during the tender process, through the provision of every encouragement and incentive to potential investors in the casino and resort.
- 6.56 The Committee believes that the tender process for the sale of the casino and resort would have benefited from the application of a similar approach to that applied to the facilitation of the APSC satellite launching facility.

35 Media Release: Minister for Regional Services, Territories and Local Government, *Christmas Island has a Future*, 23 June 2001, Exhibit No. 8.

36 Commonwealth Grants Commission, *Report on Indian Ocean Territories 1999*, Canberra, p. 37.

Air services to Christmas Island

- 6.57 Throughout the inquiry, the Committee received evidence on the vital importance of regular air services to the economic and social development of the Island.
- 6.58 In particular, the Committee was advised that regular air services from Jakarta and Singapore are considered essential to the future development and viability of both the casino and resort, and the tourism industry as a whole.
- 6.59 Since 1997, when Ansett announced that it would cease operating services to the Indian Ocean Territories, Christmas Island has suffered from a decline in the number of air services to the Island.
- 6.60 As discussed in Chapter One, from late 1997 to early 2001, the only air service to the Island was a weekly flight between Perth, the Cocos (Keeling) Islands and Christmas Island, operated by National Jet Systems (NJS) with a heavy subsidy from the Commonwealth.
- 6.61 In March 2001 the Commonwealth announced that a new three-year contract had been negotiated with NJS. Since April 2001 NJS have operated a 56-seat Avro RJ70 aircraft, linking Christmas Island, the Cocos (Keeling) Islands and Perth twice a week. The new agreement involves an increase in government subsidies and an increase in passenger fares and the cost of freight.
- 6.62 The Committee was advised that many members of the Island community are unhappy with Commonwealth policy with respect to the provision of air services to the Indian Ocean Territories. Mr Thomson from SOCI told the Committee:

We now have a new air service agreement, the airfares are going up...another \$200, so it will cost you \$1,680 economy to Perth. They are increasing the fares, so with inter-Island tourism...It is going to cost you \$2,000. So we have been hit very hard with this new agreement – economy airfare gone up to \$1,680 and you have to pay a much more significant payment for the inter-Island route...And, as I understand it, they have increased the subsidy to the airline. ..We think the Commonwealth moneys that are going to subsidise the NJS service would be better spent on working with the community to establish an air service based on the Island which would facilitate the tourist traffic through Jakarta-Singapore from the north.³⁷

37 SOCI, *Hansard*, pp. 112-113.

6.63 The Shire of Christmas Island also argued that the Commonwealth policy of providing a ‘safety net’ service to the Indian Ocean Territories (IOTs), while providing for the minimum necessary services required to link the territories with the mainland, ‘precludes the “safety net” service also continuing to a non-mainland port’ such as Singapore or Jakarta. SOCI stated that:

In the years the Commonwealth has operated a safety net service from the IOTs to the mainland only, it has been costly in terms of taxpayer subsidy, a generally inadequate services in respect of connections for airfreight and passenger movement to the north of the Island and extremely expensive for the consumer.

Additionally, it has not added to the economic development of the islands. This is primarily because the tourism market identified by the Christmas Island Tourism Association and travel companies is that of European and Japanese visitors who come to the Island via the Asian ports of Jakarta and Singapore.³⁸

6.64 The Committee was advised that tourism opportunities for the Island derive predominantly from Singapore and Jakarta. The Christmas Island Tourism Association (CITA) told the Committee that:

We are only an hour and a quarter flight from Jakarta, which in relative terms of flying anywhere is pretty good. So there is definitely more of an opportunity coming from the north for us than from mainland Australia.³⁹

6.65 Mr Gordon Thomson of SOCI also stated that the Island has ‘an enormous market in Europe, Japan and Singapore for tourism, but we cannot get them’ to the Island.⁴⁰

6.66 In April 1998 the Christmas Island community founded Christmas Island Community Air (CICA). From early 1998 to July 2001 CICA operated limited air services between Jakarta, Singapore and Christmas Island. CITA informed the Committee that the cost of a return fare to Jakarta from the Island was \$505 with taxes.⁴¹

6.67 CICA operated its last flight on 22 July 2001, and has subsequently entered into liquidation. A charter service has been established by Christmas Island Travel to fill the gap left by the closure of CICA. A 100-seat aircraft has been leased, which carries both passengers and cargo, and which operates a once-weekly service between Christmas Island and Jakarta.

38 SOCI, Exhibit 2.

39 CITA, *Hansard*, p. 173.

40 SOCI, *Hansard*, p. 113.

41 CITA, *Hansard*, p. 173.

- 6.68 For the purpose of promoting tourism on the Island, air services from the Indian Ocean Territories to Singapore and Jakarta remain limited.
- 6.69 CITA told the Committee:
- there is a lack of flights and a lack of a bigger plane coming from the north. The cost of flights has been a problem. They were marginally cheaper when the resort was open because of the increased number of flights.⁴²
- 6.70 The Committee heard evidence that the casino and resort had been highly dependent on regular air services from north of the Island, particularly from Singapore and Jakarta, for its ongoing profitability.
- 6.71 Mr Woodmore, a former Director of CIR, told the Committee that one of the contributing factors to the closure of the casino and resort in 1998 was the cessation of regular air services from Singapore and Jakarta.
- The casino depended for its survival on regular air services from Asia. Two airline operators provided a total of 7 flights a week, mainly from Jakarta, but by May 1996 both operators had pulled out...In an effort to keep the business going, CAI chartered executive jets from Jakarta and organised a weekly B727 flight from Singapore. The strategy was successful but shortlived.⁴³
- 6.72 The Committee was advised that a similar level of aviation services to Singapore and Jakarta would be crucial for the future viability of the casino and resort.
- 6.73 The Liquidator told the Committee that 'lack of flights to the Island' meant that many potential purchasers considered that the casino and resort was, commercially, 'an extremely risky proposition to invest on'.⁴⁴
- 6.74 Mr Woodmore told the Committee:
- It is difficult to get airlines to fly in. What is required is that the Casino must be prepared to underwrite the total cost of the operation and hope that it can recoup it from its customers.⁴⁵
- 6.75 Mr Ed Turner also stated that he believed that with the current level of services to the Island, any future operator of the casino and resort would need to increase the number of flights from Singapore and Jakarta. Mr Turner stated that recognition was needed by all parties:

42 CITA, *Hansard*, p. 172.

43 Mercator Property Consultants, Submission No. 8, p. 1188.

44 PPB Ashton Read, *Hansard*, p. 78.

45 Mr Frank Woodmore, *Hansard*, p. 102.

that this casino resort is not currently viable and that it will take significant moneys to upgrade and substantial funds to underwrite aviation flights to Asia to develop a profitable business.⁴⁶

6.76 Mr Woodmore further stated:

In my view, it is not viable at the moment to market the casino in Asia if you also have to underwrite the cost of air services...The volume is sporadic. That is the big problem. It tends to be focused on the weekends and there is very little during the middle of the week. So, if you were bringing your flights in for gamblers only, they would be coming in one way full and going home empty. It is very much a vexed question at the moment.⁴⁷

6.77 In formulating its business proposal for the casino and resort, ComsWinfair recognised that aviation services to the Island were crucial to the successful operation of the facility. ComsWinfair advised the Committee:

Indonesia provides substantial business for Australian casinos and Christmas Island is well positioned to capture additional 'impulse' business. Other markets in South East Asia augment the base business load available from Indonesia. Under appropriate management and with necessary financial resources this advantage could provide the commercial core for expansion into a broader tourist offering accessing a wider market. An imperative to capturing this business is the provision of adequate air services to the Island.⁴⁸

6.78 Soft Star Pty Ltd has also advised the Committee that the lack of regular air services has limited its ability to rehabilitate the facility at this stage.

The operation of the casino and resort from Christmas Island faces the obstacle of the unsatisfactory nature of the airline services to the Island from both Australia and Indonesia, having regard both to price and regularity. I am very mindful of this problem and have conducted numerous commercial discussions with airport transport providers in order to organise a more viable air-transport solution.⁴⁹

6.79 During the course of the inquiry, however, the Committee heard evidence of speculation that the APSC satellite launching facility will serve to

46 Mr Ed Turner, Submission No. 10, p. 1207.

47 Mr Frank Woodmore, *Hansard*, p. 103.

48 ComsWinfair, Submission No. 9, p. 1200.

49 Soft Star, Submission No. 13, p. 1422.

generate more flight services to the Island than are currently provided. Ms Theresa Hendren from CITA told the Committee:

I am aware of speculation among many of the members and the people involved that there would be an increase in the number of flights from Australia and from the north which means that airfares would be reduced and there would be the potential to increase tourism from the north.⁵⁰

6.80 This would involve more flights to the Island in 'a combination of scheduled flights and charters' as well as 'bigger planes from Singapore'.⁵¹

6.81 Mr Woodmore told the Committee that he believes that the APSC project will provide the impetus for many of the flight services required to underwrite the viable operation of the casino and resort:

I think Mr Kwon will have bought himself a very good deal because, as part of his project, he will be able to deliver air services which will generate traffic for the hotel and, on the back of that, it would then be economically feasible to bring in gaming customers from other parts of Asia. The volume from other parts of Asia is not sufficient to support a dedicated air service, but they certainly could be brought in on an ad hoc basis if there were a regular schedule from, say, Singapore or somewhere like that.⁵²

6.82 In 1999 the Bureau of Transport Economics argued that:

Major projects such as a re-opening of the resort/casino or construction of a satellite launching facility would involve a substantial increase in the demand for air transport. Additional or upgraded services may be provided by, or at least facilitated by, interests involved in these projects. Such a development would potentially lead to a greater capacity, more frequent services, larger aircraft and lower airfares with flow-on benefits for other sectors of the tourist industry.⁵³

6.83 CITA commented further that the re-opening of the casino and resort with additional flight services would subsequently stimulate growth in the entire tourism sector on Christmas Island:

The reopening of the resort and casino would mean an increase in tourism, which would give us additional improvements. Existing air service providers would be able to increase services and put on

50 CITA, *Hansard*, p. 175.

51 CITA, *Hansard*, p. 175.

52 Mr Frank Woodmore, *Hansard*, p. 89.

53 Bureau of Transport Economics, *Christmas Island Regional Analysis*, Report prepared for the Indian Ocean Territories Review, Canberra, December 1998, p. 64.

larger planes, there would be more tourism based training on the Island for Islanders and new tourism businesses would be explored and opened, adding to the attractions and the overall quality of the services on offer on Christmas Island.⁵⁴

Summary

- 6.84 The Committee recognises that the provision of regular air services between the Indian Ocean Territories and both the mainland of Australia and Singapore and Jakarta, is crucial to the economic development of the Island. In particular, the tourism sector on Christmas Island is highly dependent upon air services to the north for further development.
- 6.85 The Committee notes that the ‘safety net’ arrangement, whereby services are provided by National Jet Systems and subsidised by the Commonwealth, whilst meeting the essential needs of the territories, does not provide for air services to Singapore and Jakarta.
- 6.86 The Committee was disappointed to note the recent closure of Christmas Island Community Air, although the Committee notes the immediate establishment of a replacement charter service providing air services between Christmas Island and Jakarta. The Committee has been advised, however, that this type of arrangement is not sustainable in the long term.
- 6.87 The Committee also recognises that for the casino and resort to operate successfully, supplementary flight services and larger aircraft are required for the air link between Christmas Island and Jakarta and Singapore. The Committee believes that any increase in the availability of air services to these areas would also provide a strong boost for Christmas Island tourism and small business enterprises.
- 6.88 Should both the APSC satellite launching facility and the casino and resort remain undeveloped, the Committee believes that the provision of air services would have to be more closely examined in the context of negotiating some form of subsidy agreement for the provision of air services between Christmas Island and Singapore and Jakarta.
- 6.89 Nevertheless, the Committee believes that with the commencement of construction for the APSC satellite launching facility, flight services to the Island will increase, as the dual operation of the space facility with the casino and resort would make the provision of aviation services more viable.

54 CITA, *Hansard*, p. 171.

Future economic development

- 6.90 Through the course of the inquiry the Committee heard evidence from a number of witnesses highlighting the role of the casino and resort within the context of the Island's overall prospects for future economic development.
- 6.91 As discussed in Chapter One, the economy of Christmas Island is dependent upon large-scale projects for investment and future employment. Prospects, therefore, for economic development on the Island can subsequently be seen as being dependent upon phosphate mining, the APSC satellite launching facility and the tourism sector through the re-opening of the casino and resort.
- 6.92 The Committee remains concerned, however, that both the mine and the satellite launching facility have a finite lifespan. The Committee therefore concluded that other long-term strategies for the development of the Island should be considered.

Phosphate mining

- 6.93 Phosphate mining has historically been the backbone of the Christmas Island economy. The mine is currently under the management of Phosphate Resources Limited (PRL), and at May 2001 PRL employed 180 people.
- 6.94 However, the BTE reported in 1999 that A-grade and B-grade phosphate currently available for mining on the Island is only sufficient for approximately twelve years of production. Recent data further suggests that there are only enough resources in existing leases to last another five years.⁵⁵
- 6.95 The Shire of Christmas Island informed the Committee that PRL has applied for a further exploration licence. The licence is for the purpose of examining the future viability of remaining phosphate resources. A response had been expected by February 2001.⁵⁶
- 6.96 At May 2001 the application had completed all processes for the Western Australian Department of Minerals and Energy, and was subject to environmental assessment under the *Environment Protection and Biodiversity Conservation Act 1999*. PRL has been provided with guidelines

55 *Christmas Island Phosphates: A Community Owned Company*, PRL promotional brochure.

56 SOCI, *Hansard*, p. 126.

by Environment Australia and was preparing a Public Environment Report.⁵⁷

- 6.97 The Committee believes that while there are continuing opportunities for the operation of the mine on the Island, it can no longer be relied upon to provide the sole economic basis for all commercial activity.

APSC satellite launching facility

- 6.98 As discussed in Chapter One, the APSC facility is expected to provide a substantial boost to the Island's economy, through the generation of employment as well as a significant indirect injection of funds into infrastructure and small business.
- 6.99 The APSC facility is expected to generate 300-400 jobs in the construction phase and up to 550 jobs when fully operational. This will include the employment of 300 Russian workers on a temporary basis for launch operations in the first three to five years.⁵⁸
- 6.100 A \$100 million incentive package, announced on 22 June 2001 by the Commonwealth Government, is intended to 'assist with the development of a space launch facility on Christmas Island'. This will include funds of \$68.6 million for common use infrastructure, the allocation of which will be overseen by the Department of Transport and Regional Services. Common use infrastructure projects to be undertaken will include:
- an extension of the airport runway to 2.6km to enable the use of wide bodied and other heavy aircraft;
 - an alternate port facility on the Island's south east coast to allow freight transport during the swell season; and
 - a new road between the proposed alternate port, the airport and the APSC space facility at South Point.⁵⁹
- 6.101 In a media release issued on 23 June 2001, the Minister stated that the project facilities will have a capital value of approximately \$800 million, and that the Allen Consulting Group has estimated that 'the APSC project would increase Gross Regional Income to Christmas Island by \$33 million per annum, with a net gain to Australia of \$1.3 billion' over the anticipated lifespan of the project.⁶⁰

57 Northern Australia: Forum for Growth into the New Century, *Christmas Island Local Consultations: Formal Response by the Federal Government*, 2 May 2001, p. 10 (hereafter referred to as *Formal Response by Federal Government*).

58 DoTRS, Exhibit No. 9.

59 DoTRS, Exhibit No. 9.

60 DoTRS, Exhibit No. 8.

6.102 The project is expected to take 1.5 to two years to construct and to have an operational life-span of fifteen to twenty years, depending upon market forces governing the industry.

6.103 DoTRS informed the Committee:

The project is expected to benefit all Christmas Island residents, whose current economy is almost totally dependent on the existing phosphate mine, as it offers the potential for economic development and employment for the Island and Australia.⁶¹

6.104 However, the Committee heard evidence during the inquiry that many members of the Christmas Island community believe that other economic opportunities on the Island, such as the mine and the casino and resort, are not being maximised, because all of the Government's attention has been focused on development of the satellite launching facility. Mr Gordon Thomson of the Union of Christmas Island Workers (UCIW) told the Committee:

There is no confidence on our part that [the satellite launching facility] will happen, but we see that everything is predicated on it happening. So we are not going to do anything about airlines, we are not going to do anything about anything, because we are waiting for the space station...if it were to happen, sure, economic benefits would be enormous – but it is the case of if it happens not when it happens.⁶²

6.105 The Christmas Island Chamber of Commerce also stated that although it was very supportive of the project, and optimistic that it will proceed, it was concerned that if the APSC facility does not develop as planned the Island's economy should still be able to develop independently.

There are currently approximately 67 small businesses on Christmas Island, all trying to make a living out of an estimated 340 pay packets...more than half of these businesses have lost money over the last three years and have only remained on the Island because of the hope that the resort will reopen and/or the APSC satellite project will proceed, if the resort does not re-open and/or the APSC project does not proceed, the chamber forecasts a further decline in population of 400 people within the next 18 months and the near collapse of much of the small business sector built up over the last 10 years.⁶³

61 DoTRS, Exhibit No. 9.

62 UCIW, *Hansard*, p. 125.

63 CICC, *Hansard*, p. 178.

- 6.106 This view was reinforced by comments made by the Bureau of Transport Economics in 1999, which reported that:

The recent history of Christmas Island suggests that economic activity remains at a reasonable level when there are at least two major sources of external funds in addition to Commonwealth activities. However, closure or a significant reduction in one sector leads to a substantial downturn in the economy.⁶⁴

- 6.107 The Committee acknowledges that the commencement of the APSC project will, in all likelihood, generate an increase in air services to the Island and the re-opening of the casino and resort. The Committee consequently supports all undertakings by the Commonwealth to secure continued APSC investment in the Indian Ocean Territory.

Tourism

- 6.108 Despite positive projections for investment in Christmas Island, resulting from the satellite launching facility, the Committee heard evidence that sustainable long-term economic growth of the Island is much more likely to develop out of the tourism sector.
- 6.109 The BTE argued in 1999 that 'economic development and employment growth will only continue if there is further strengthening and diversification of the economy'.⁶⁵ The Committee heard evidence during the course of the inquiry that further strengthening and diversification of the Island's economy would be most effective in the Island's tourism sector. Mr Oakley of the CICC further argued that:

The Chamber of Commerce believes that the future of this Island is ultimately in tourism. The phosphate resource on this Island has a finite life, and the Chamber believes that the Island's economy must be able to develop irrespective of whether the APSC project proceeds or not. The Chamber is a strong supporter of both PRL Ltd and the APSC project concept. However, sustainable long-term growth will not occur without tourism. We believe that every effort must be provided at all levels to enable the quick re-opening of the resort, and the enable the Island to return to its pattern of sustainable economic growth, as was occurring some four to five years ago.⁶⁶

64 Bureau of Transport Economics (BTE), *Christmas Island Regional Analysis*, Report prepared for the Indian Ocean Territories Review, Canberra, December 1998, p. xvi.

65 Bureau of Transport Economics (BTE), *Christmas Island Regional Analysis*, Report prepared for the Indian Ocean Territories Review, Canberra, December 1998, p. 63.

66 CICC, *Hansard*, p. 178.

- 6.110 Opportunities for tourism in Christmas Island centre predominantly on capitalising upon the Island's unique environment. Activities such as the spectacular annual red crab migration, diving, fishing, bird-watching and bushwalking provide opportunities for the Island to develop a strong eco-tourism industry.
- 6.111 The Commonwealth Grants Commission, in its 1999 report on the Indian Ocean Territories, stated:
- Tourism has been identified as an industry that could make a significant contribution to the increased social and economic wellbeing of Christmas Island. Despite the fact that the industry has suffered since the closure of the Christmas Island Resort, revenue flowing from tourism still provides an important source of income for Christmas Island. The Island's unique flora and fauna and its world famous land crabs, together with diving and fishing, continue to make it an attractive destination, if marketed properly.⁶⁷
- 6.112 The Chamber of Commerce told the Committee:
- We are ranked as one of the top five diving sites in the world. World records for deep-sea fishing catches are being set around the Island. We have tropical rainforest of a type that is not found anywhere in the world. We are ranked second only to the Galapagos Islands in terms of the uniqueness of our flora and fauna. We have phenomenal bird life. We have bird watching groups coming from all parts of the world. There is an enormous potential...There is a lot that we could do.⁶⁸
- 6.113 The Committee believes that both the development of satellite launching, and the anticipated refurbishment and reopening of the Christmas Island Casino and Resort, will provide the tourism sector on the Island with the financial impetus required to develop expanded air, marketing and tourism services.
- 6.114 In particular, the re-opening of the casino and resort will augment the Island's tourism sector. Care must be taken, however, to ensure that the Christmas Island tourism sector retains its financial and practical independence in order to secure its continuing development and growth.
- 6.115 To this end, the Committee notes recent negotiations to develop a Service Delivery Agreement (SDA) with the Western Australian Tourist Commission. It is anticipated that the SDA will deliver:

67 Commonwealth Grants Commission, *Report on Indian Ocean Territories 1999*, Canberra, p. 15.

68 CICC, *Hansard*, p. 182.

- an inclusion in the Western Australian tourism network;
 - advice in relation to infrastructure development;
 - advice on strategies for the promotion of tourism on the Island; and
 - training for tourist operators.
- 6.116 The Committee supports all moves by the Commonwealth and the Christmas Island community to further develop the tourism sector on the Island, as part of a long-term economic development strategy.

Summary

- 6.117 The Committee acknowledges that the Christmas Island economy is heavily reliant upon substantial Commonwealth subsidies and other financial support. The Committee believes that the significant investment in the Island expected to flow from the APSC project will serve to alleviate some of the existing pressures on infrastructure and services to the Territory.
- 6.118 The construction and operation of the APSC facility is also expected to generate a substantial level of development in the small business and tourism industries.
- 6.119 The Committee believes that a positive balance should be maintained between existing projects, such as the phosphate mine, and future projects such as the satellite launching facility and the casino and resort, in order to ensure the continuing long-term sustainability of the Christmas Island economy.
- 6.120 The Committee consequently supports the Commonwealth's stated objective of broadening the economic base of both Indian Ocean Territories by investigating new strategies for enhancing economic development.

Economic Development Committee

- 6.121 In July 2000 the Minister for Regional Services, Territories and Local Government, the Hon Senator Ian Macdonald, announced the establishment of an Economic Development Committee (EDC) for Christmas Island. The EDC was the outcome of a series of consultative meetings, held as part of the *Northern Australia: Forum for Growth into the New Century*, which was coordinated by DoTRS.
- 6.122 The *Northern Australia* forum was initiated to examine opportunities for the economic development of northern Australia, including emerging industry opportunities. Two consultative meetings were held on

Christmas Island, on 15 May and 18 July 2000. The first meeting was convened to establish local priority issues, and to nominate a representative group to present these priorities to the Minister at the second meeting.

- 6.123 The *Formal Response by the Federal Government* to the Christmas Island Local Consultations was released on 2 May 2001. The response stated:

The Federal Government recognises this process is only a catalyst for a longer-term relationship between the various Commonwealth agencies and the Christmas Island community. That being said, this whole-of-government response provides an excellent base for further interaction between Commonwealth agencies, the Department of Transport and Regional Services' Territories office, Western Australian State agencies, the Christmas Island Shire and the private sector in assisting the sustainable development of Christmas Island.⁶⁹

- 6.124 During an inspection of the Island in May 2001, the Minister announced that nominations for the EDC had been received from those organisations invited to nominate representatives. DoTRS told the Committee in June 2001 that it was 'hopeful that there will be an announcement by the Minister very shortly' in relation to the people who will comprise the EDC.⁷⁰

- 6.125 The EDC will comprise Commonwealth, local government and community representation. The primary aim of the EDC is the formulation of a strategic plan for the economic development of the Island. The *Formal Response by the Federal Government* stated:

Such a plan would encompass economic and social issues such as identifying future industries for the Island, land usage and service planning, to provide a solid foundation for sustainable, progressive development for the Island's future.⁷¹

- 6.126 The Committee supports the establishment of the EDC, particularly in light of recent economic developments on the Island.

69 *Northern Australia: Forum for Growth into the New Century*, Formal Response by the Federal Government to the Christmas Island local consultations, 2 May 2001, p. 7.

70 DoTRS, *Hansard*, p. 227.

71 *Northern Australia: Forum for Growth into the New Century*, Formal Response by the Federal Government to the Christmas Island local consultations, 2 May 2001, p. 13.

Summary

- 6.127 The Committee considers that the Christmas Island community has the right to be kept comprehensively informed on processes which affect the economic future of the Island.
- 6.128 The Committee believes that the formulation of a Committee of Inspection by the Liquidator fulfilled all commercial responsibilities to keep the community informed on the progress of the tender process. However, the Committee believes that the Commonwealth did not fully exercise its capacity to inform advisory bodies on the Island with respect to the conduct and outcome of the tender process.
- 6.129 The Committee notes that public access to Waterfall Bay for recreational purposes, particularly during the swell season, is still unresolved.
- 6.130 In addition, the Committee considers that air services between Christmas Island and Singapore and Jakarta are vital to both the economic viability of any future operations at the casino and resort, and the economic development of the Indian Ocean Territories.
- 6.131 Therefore, the Committee concludes that, should the development of the APSC satellite launching facility and/or the reopening of the casino and resort fail to eventuate, the Commonwealth has a responsibility to facilitate the provision of 'safety net' air services to include Singapore and Jakarta.
- 6.132 The Committee believes that this issue should be examined in further detail by the Economic Development Committee, as part of a broader strategy to promote long-term sustainable economic development in the Indian Ocean Territories.

Recommendation 6

The Committee recommends that the Commonwealth negotiate terms and conditions for the provision of vehicular access to Waterfall Bay for members of the Christmas Island community.

**Senator Ross Lightfoot
Chairman**



Dissenting Report - Non-government members

Introduction

The realisation of the Christmas Island Casino and Resort began in mid-1998. In January 1999 the casino and resort was advertised for expressions of interest. On 5 May 2000 the casino and resort was sold to Soft Star for \$5.7 million on a cash unconditional basis.

At the time of the Committee's report, more than fifteen months since the sale of the facility, and over three years since the commencement of the sale process, the casino and resort remains largely closed. Restoration of the complex has yet to begin and, furthermore, no timetable has been agreed upon for the refurbishment and re-opening of the casino and resort.

No discussions have commenced between the Commonwealth and Soft Star regarding amendments to the leases, no probity checks have been conducted with Soft Star and no agreement has been reached regarding casino gaming rates or legislative requirements for the operation of the casino.

In addition, there has been no application for a casino licence and no arrangements have been finalised between Soft Star and an operator and manager of the complex, or with an air services provider.

Non-government members of the Committee believe that because of the devastating effect that the closure of the casino and resort had upon the social and economic structure of the Island, the Commonwealth has a clear responsibility to do everything within its power to ensure that the facility re-opens as a casino and resort, as soon as possible. We do not believe that the Commonwealth has met this responsibility.

Although we agree with the factual accounting of the tender process, as well as the criticisms of this process contained within the majority report, non-government members do not believe that these criticisms go far enough.

Basis of dissent

Our dissent is based upon evidence presented in the following areas:

- the purpose clause of the lease;
- conversion of the leases from leasehold to freehold title;
- the conduct of negotiations with ComsWinfair; and
- the sale of the casino and resort to Soft Star Pty Ltd.

The purpose clause of the lease

Non-government members note that many of the Commonwealth's actions were founded on the premise that the purpose clause of the lease for the casino and resort is permissive and not prescriptive or mandatory in application.

The purpose clause of the lease states:

The Lessee shall use the premises only for the purposes of a hotel-casino and ancillary thereto, for personal services, retail and non-retail shops, recreation, accommodation and entertainment facilities or such purpose as may be approved in writing by the Commonwealth.¹

The Committee heard evidence from the Department of Transport and Regional Services (DoTRS) that the purpose clause of the lease is permissive and not mandatory.² This would mean that the purpose clause *allows* for the use of the facility for the purpose stated in the clause, as opposed to stipulating that the facility be used *only* for the purpose stated in the clause.

1 Clause 3(b) of Christmas Island Resort Lease.

2 DoTRS, Submission No. 11, p. 1211.

We also note comments made by the Liquidator, who stated:

It was not a condition of the assignment of the crown leases to the eventual purchaser by the Commonwealth that the purchaser conduct specific operations at the casino and resort.³

DoTRS further told the Committee that because the purpose clause of the lease is permissive and not mandatory, 'failure to re-open the casino does not appear to constitute a breach of the lease'.⁴

Even if this interpretation is accepted, non-government members cannot understand why the Commonwealth failed to ensure that the operation of a casino and resort was mandatory within the purpose clause of the lease.

Non-government members, however, do not accept this interpretation. We believe that a different legal interpretation applies to the purpose clause. We believe that when general matters are referred to in conjunction with a number of specific matters of a particular kind, there is a *presumption* of interpretation that the general matters are limited to things of a like kind to the specific matters.⁵

In other words, things are only permitted under the purpose clause which are similar to 'personal services, retail and non-retail shops, recreation, accommodation and entertainment facilities' as ancillary to the operation of a hotel/casino.

The application of this presumption to the purpose clause of the lease means that the Commonwealth can only approve other uses as they are ancillary to the operation of a hotel-casino.

We therefore believe that the purpose clause for the Christmas Island Resort Lease is mandatory, and not permissive, and dissent from paragraph 5.161 in Chapter Five of the majority report, which states:

The Committee understands that the Commonwealth has no ability to compel the owner of the facility to use it for the purpose of a casino and resort.

We further believe that because the purpose clause of the lease is mandatory, by not utilising the facility as the casino and resort for which it was built, Soft Star Pty Ltd is in breach of the lease. We therefore recommend the following:

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

4 DoTRS, Submission No. 15, p. 1460.

5 D.C. Pearce & R.S. Geddes, *Statutory Interpretation in Australia*, 3rd edition, Butterworths, 1988, p. 75.

Recommendation 1

Non-government members recommend that if Soft Star Pty Ltd does not take demonstrable and significant steps towards the re-opening of the facility as a casino and resort within twelve months, the Commonwealth revoke the lease for the property and re-assign it to someone who will re-open the facility as a casino and resort.

Conversion of the lease from leasehold to freehold

The Christmas Island community holds grave concerns for the economic future of the Island. The Committee heard evidence throughout the inquiry that many Christmas Islanders feel that the tourism and small business sectors of the Island economy, in particular, are highly dependent upon the re-opening of the casino and resort for their survival.

It is within this context that non-government members believe that it is inappropriate to approve the conversion of the resort leases from leasehold to freehold title, even on a conditional basis.

Non-government members are particularly concerned that loss of direct control by the Commonwealth over the lease would impact negatively upon the community's ability to influence the use of the casino and resort. We are also highly concerned over the general dearth of consultation conducted with the Christmas Island community on this issue.

Arguments against conversion of the leases to freehold title

Throughout the inquiry the Committee heard evidence of community concern that Soft Star intends to utilise the complex primarily as an administrative and accommodation facility for the Asia Pacific Space Centre. A number of witnesses argued that if the leases were converted to freehold, there would no longer be any means with which to apply pressure on Soft Star to re-open the facility as a casino and resort.

Mr Gordon Thomson from SOCI told the Committee:

Our view was that the principal of the two companies – APSC and Soft Star – was the same person and that the new owner was more likely to use the facility as an administrative and accommodation facility for his APSC project rather than for operating a resort. That was a widely held view and it was put to the Minister. The Minister...said 'Don't worry about that. It is not going to be like that, because the lease says it has to be a resort'. Now he is

considering a freehold title. That is clearly not in the interests of this community.⁶

Non-government members note evidence provided to the Committee that converting the leases to freehold would improve the commercial value of the project and thereby increase the likelihood of Soft Star re-furbishing and re-opening the facility as a casino and resort in the immediate future. However, we do not believe that the evidence is conclusive in this regard.

SOCI argued further that it does not believe that conversion of the leases to freehold would result in any significant improvement in the commercial viability of the project:

I do not think that you need to have freehold title to make an application to the Minister or the shire...I do not think that any reasonable authority wanting to see economic development in this place would be putting anything in the way of someone who is trying to develop it as a tourist facility. We are saying that you remove the power of the Minister and, therefore, of this community when you freehold – he does what he likes or he does nothing. That is what is happening now: nothing.⁷

The UCIW also informed the Committee that it believes that freehold title would remove any incentive for the owner of the leases, Soft Star, to re-establish the facility as a fully operational casino and resort. The UCIW told the Committee that it believes the casino and resort is a crucial factor in revitalising the Island's depressed tourism industry.

The UCIW believes that the Christmas Island community needs the Resort to be properly managed to provide the focal point of our tourist industry [and] to provide a significant level of employment for the local population.⁸

Non-government members of the Committee feel that, in light of continuing uncertainty in the redevelopment of the complex and its re-opening as a fully operational casino and resort, the approval of Soft Star's application for conversion of the leases to freehold title would remove any influence the Christmas Island community could hold over the management of such a vital economic resource in the Island's economy.

6 SOCI, *Hansard*, p. 109.

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

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

Lack of community consultation

Non-government members of the Committee are particularly concerned about the total inadequacy of formal consultation with the Christmas Island community with regard to this issue.

We note evidence contained within Chapter Five of the majority report, which states that aside from discussions held with the Minister during an inspection of the Island in April 2000, no formal discussions have been held with Christmas Island representatives regarding community opinion on the issue of converting the leases from leasehold to freehold title.⁹

Non-government members were especially concerned over the response of the Department of Transport and Regional Services (DoTRS) to community concerns and objections to the granting of freehold title.

It is the Government's policy position that freehold title will be available on the Island...I would say that the Minister is well aware of some views held in the community about that. There are other views on the Island which favour freeholding...I certainly do not dispute that [the Shire of Christmas Island] were democratically elected to represent views...but I would say that there are other views.¹⁰

Non-government members believe that there is an absolute obligation on the part of the Commonwealth to have due and proper regard to the representations of the Shire of Christmas Island – as the democratically elected representative body of the Christmas Island community. This is especially pertinent considering the complex administrative framework governing Christmas Island.

We believe that the level of consultation on this issue indicates that the Commonwealth has not fulfilled its obligation to consult the Island community fully on this issue, and to incorporate their concerns into any final decision.

Non-government members therefore believe that the leases for the casino and resort should remain under leasehold title, in order to ensure that the Commonwealth and the Christmas Island community retain the ability to influence usage of the facility for the benefit of the Christmas Island community.

We therefore dissent from paragraph 5.162 of the majority report, which states:

The Committee believes that a conditional form of freehold title would be appropriate for the needs and concerns of Christmas Island.

9 Evidence on this issue is presented in paragraphs 5.145 to 5.157 of Chapter Five of the majority report.

10 DoTRS, *Hansard*, pp. 225-226.

Non-government members also dissent from **Recommendation 4** of the majority report, which supports conversion of the leases to a conditional form of freehold title.

Recommendation 2

Non-government members recommend that the leases for the Christmas Island Casino and Resort not be converted to freehold title.

We further recommend that if conversion of the leases to freehold title is pursued, the Commonwealth consult with, and seek the approval of, the Shire of Christmas Island before any steps towards converting the leases to freehold are taken.

The Committee's inquiry into processes relating to the casino and resort has highlighted the need for increased consultation with the Island community generally. We therefore make the following recommendation:

Recommendation 3

Non-government members of the Committee believe that, henceforth, no decisions or changes relating to the legal status or administrative processes of Christmas Island and its residents, be made by the Commonwealth without full consultation with the Christmas Island community through the Shire of Christmas Island.

Negotiations with ComsWinfair

Non-government members of the Committee believe that the evidence presented to the Committee clearly indicates that conditions under negotiation between ComsWinfair and the Commonwealth in the final stages of the tender process were capable of resolution.

We believe that ComsWinfair clearly emerged from the tender process as the only viable tenderer with the experience, financial resources and intent to refurbish and re-open the casino and resort to its full operational capacity. Coms21 have had considerable experience in gaming financing, development and operations. The Winfair Group specialises in the operation of resort complexes, in addition to offering aviation services from Singapore and Jakarta. ComsWinfair were further

planning for the development of new resort properties and activities and the creation of a broader tourist offering.

The Committee received evidence from the Liquidator, Mr Herbert, that concerns regarding the resolution of negotiations between ComsWinfair and the Commonwealth, the allocation of time for the conduct of the probity review and the prospect of running out of funds, were all contributing factors in his decision to terminate the tender process and seek an unconditional cash offer for the facility.

However, Mr Rodger Mortleman, Director of ComsWinfair Pty Ltd, informed the Committee that ComsWinfair believed that all outstanding conditions were essentially resolved as at January 2000. ComsWinfair informed the Committee:

The essential lease and license conditions of importance to our tender were largely satisfied by the Minister's letter on 27 January 2000. We have no reason to believe that the outstanding issues would not have been resolved, or waived by ourselves, given the opportunity.¹¹

The Committee also received evidence that ComsWinfair were anticipating holding a 'soft opening' of the casino and resort before the end of 2000, and having the casino and resort fully operational by Chinese New Year in February 2001.¹²

With regard to the timeframe of the probity review, directors of Coms21 Ltd had recently collated similar information for the New South Wales Department of Racing and Gaming. ComsWinfair were thereby anticipating that the bulk of the information required would be available for submission by mid-January 2000.¹³

We believe that this evidence suggests that ComsWinfair were anticipating resolving all outstanding issues regarding both the conditions of sale and the probity review, in the shortest timeframe possible. This would have alleviated whatever concern the Liquidator held regarding the prospect of Christmas Island Resort Pty Ltd (CIR) running out of funds for the conduct of the realisation process.

Non-government members believe that the evidence received during the course of the inquiry indicates that the primary impediment to the resolution of negotiations with ComsWinfair was the Minister's insistence that all parties who had expressed some interest in purchasing the casino and resort be made aware of tax conditions and concessions negotiated privately between the Commonwealth and ComsWinfair.

11 ComsWinfair, Submission No. 9, p. 1200.

12 ComsWinfair, *Hansard*, p. 198.

13 ComsWinfair, Exhibit No. 7.

Although the majority report does contain some criticism of the conduct of negotiations with ComsWinfair during the tender process, non-government members do not believe that it goes far enough.

We believe the decision to jettison negotiations with ComsWinfair, and to abandon the tender process as a whole, has denied the Christmas Island community the injection of revenue and investment it desperately needs, and has also jeopardised a substantial source of revenue for the Commonwealth.

Sale to Soft Star Pty Ltd

Non-government members of the Committee dissent from a number of conclusions in the majority report with regard to the sale of the casino and resort to Soft Star Pty Ltd. These include:

- the appropriateness of commencing negotiations with Soft Star before the termination of the tender process;
- the fact that probity and financial background checks were not applied to Soft Star before the sale of the property; and
- the likelihood of Soft Star being aware of the highest bid made within the tender process through a breach in confidentiality.

Commencement of Negotiations with APSC/Soft Star

Non-government members recognise that the commencement of negotiations with Soft Star before the termination of the tender process did not contravene the *Corporations Law*. However, we remain concerned about the appropriateness of commencing negotiations with an external party for a cash unconditional sale, while simultaneously negotiating tender conditions with a potential purchaser within the structure and preconditions of the tender process.

We acknowledge evidence provided by Mr David Kwon of APSC/Soft Star, who stated:

Soft Star did not participate in the tender process. The purchase of the resort/casino was a consequence of separate negotiations between Soft Star and the Liquidator after the termination of the tender process.¹⁴

The Liquidator, Mr Herbert, also told the Committee:

Although discussions with APSC/Soft Star started prior to the formal termination of the tender, no agreement, written or verbal,

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

with APSC/Soft Star was entered into prior to the formal termination of the tender. Indeed, agreement with Soft Star was only reached at the end of March 2000.¹⁵

However, the fact remains that the Liquidator met with APSC/Soft Star on 2 February 2000 to discuss their offer. The outcome of these discussions was summarised in a letter from the Liquidator to APSC/Soft Star on 3 February 2000:

I am still yet to agree on the purchase price as offered by you...Subject to agreement on this...I will arrange to have a sale agreement prepared and will forward this to you for your inspection.

If there are no amendments to be made to the sale agreement, it may be appropriate to meet you on Christmas Island on 14 February 2000 to sign the sale agreement.¹⁶

The tender process was formally terminated on 4 February 2000. This clearly indicates that the tender process was terminated subsequent to an agreement being reached, however informal, between the Liquidator and APSC/Soft Star for the sale of the Christmas Island Casino and Resort to Soft Star Pty Ltd.

Non-government members accept that the commencement of negotiations with Soft Star before the formal termination of the tender process did not contravene the *Corporations Law*. However, we also believe that it was inappropriate and counter-productive to the aims and intent of the tender process.

Failure to apply probity and background financial checks

Non-government members are also highly concerned that probity and financial background checks structured into the tender process through the probity review component of the casino licence application, were never applied to Soft Star. This concern is particularly acute in the context of community and Commonwealth expectations that the facility be re-opened as a casino and resort.

The Committee received unequivocal evidence that no financial and background checks have been conducted for Soft Star Pty Ltd. DoTRS informed the Committee:

Matters such as the financial status of the potential purchasers were matters for the Liquidator in accordance with his legal responsibilities. No checks of Directors of any tenderers were conducted by the Commonwealth. As part of the standard lease transfer procedures Soft Star Pty Ltd was required to satisfy the

15 PPB Ashton Read, Submission No. 7, p. 90.

16 Annexure 46, PPB Ashton Read, Submission No. 7, p. 665.

Commonwealth that it had sufficient financial means to enable it to perform its obligations under the leases...¹⁷

The Liquidator informed the Committee that:

In reference to the comments made by the Department of Transport and Regional Services...regarding financial checks conducted by the Liquidator to determine that the purchaser was financially capable of operating the resort, I advise that no such checks were performed by me.¹⁸

The Liquidator further stated:

It was not my concern that the purchasing party had the financial capacity to operate a casino or resort, rather it was my concern that the purchasing party had the financial capacity to pay the purchase price on the terms contracted.¹⁹

Non-government members are astonished that the Commonwealth has undertaken no financial or background checks to ensure that the purchaser of the casino and resort even has the ability to operate a casino and resort, let alone to fulfil the stringent conditions of the casino licence Probity Review.

Concerns about Soft Star's purchase price

Non-government members believe that there is significant evidence to indicate that there was a breach of confidentiality in the tender process, and that Soft Star was aware of the highest offer submitted within the tender process by ComsWinfair when Soft Star initiated final negotiations with the Liquidator on a purchase price for the casino and resort.

The final purchase price negotiated with Soft Star Pty Ltd was \$5.7 million. This was \$200,000 more than the purchase price bid by ComsWinfair during the tender process. The Committee heard evidence that Mr Kwon had initially been informed that bids were in the vicinity of between \$10 and \$12 million. The Liquidator told the Committee:

When we first had discussions with David Kwon...we suggested to him, through Frank Woodmore, that the assets would be available at \$10 million. In my first discussion with him, he suggested they would be prepared to offer \$4.5 million. How he found out, if indeed he found out, that ComsWinfair's offer was \$5.5 million, I do not know.²⁰

17 DoTRS, Submission No. 15, p. 1447.

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

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

20 PPB Ashton Read, *Hansard*, p. 80.

Mr Rodger Mortleman of ComsWinfair also commented upon the lack of confidentiality surrounding the tender process. Mr Mortleman stated:

Leaks from the government organisation are so rare that I do not think they even occur; I am not aware of them occurring. Leaks from bid to bid sometimes occur. But in this instance, we may as well have put it in the newspaper.²¹

Non-government members believe that the evidence received throughout the course of the inquiry indicate that it is highly likely that information on the highest offer made within the tender process was somehow leaked to Soft Star Pty Ltd. We therefore dissent from paragraph 4.119 of the majority report, which states:

The Committee concluded that there was insufficient evidence to determine that Soft Star had been aware of the highest purchase price offered by ComsWinfair during the tender process.

Conclusion

Non-government members believe that the tender process for the sale of the Christmas Island Casino and Resort was flawed from the outset. We believe that the Commonwealth's handling of its role within the process and its responsibilities to the Christmas Island community have been totally inadequate.

Lack of rigour and timeliness in the handling of issues pertaining to the Commonwealth's jurisdiction, and a pronounced lack enthusiasm for the process, have diminished the final outcome of the sale process for the casino and resort for both the Christmas Island community and the Commonwealth.

Overall, non-government members are disappointed that in a situation where Christmas Island could have benefited from the presence of both the satellite launching facility and the casino and resort, with all the employment and investment opportunities that this entails, the Island currently has no operational projects on this scale confirmed.

21 ComsWinfair, *Hansard*, p. 201.

Non-government members concur with evidence provided to the Committee by Mr Gordon Thomson:

The resort exists, it is there, and it can be up and running with the right decisions being made. The two engines can keep us going. We had 320 people employed at the resort before. We had a vibrant economy. We want to get that back.²²

Senator Trish Crossin
Deputy Chair

Senator Brian Greig

Senator Kate Lundy

Senator Sue West

Ms Annette Ellis MP

Hon Warren Snowdon MP

²² UCIW, *Transcript*, p. 127.



Appendix A – List of submissions

- 1 Union of Christmas Island Workers
- 2 Soft Star Pty Ltd/Asia Pacific Space Centre
- 3 Mr Dave McLane
- 4 Department of Transport and Regional Services
- 5 Christmas Island Divers' Association
- 6 Shire of Christmas Island
- 7 PPB Ashton Read, Chartered Accountants
- 8 Mercator Property Consultants
- 9 Comswinfair
- 10 Mr Ed Turner
- 11 Department of Transport and Regional Services
(Supplementary Submission)
- 12 PPB Ashton Read, Chartered Accountants
(Supplementary Submission)
- 13 Soft Star Pty Ltd/Asia Pacific Space Centre
(Supplementary Submission)
- 14 PPB Ashton Read, Chartered Accountants
(Supplementary Submission)
- 15 Department of Transport and Regional Services
(Supplementary Submission)



Appendix B – List of exhibits

- 1 Mr Jeff Herbert, Receiver and Manager, Liquidator, PPB Ashton Read, Chartered Accountants: correspondence between Shire of Christmas Island and PPB Ashton Read
- 2 Mr Gary Dunt, CEO, Shire of Christmas Island: correspondence to Shire of Christmas Island
- 3 Mr Gordon Thomson, General Secretary, Union of Christmas Island Workers: correspondence to Union of Christmas Island Workers
- 4 Mrs Diane Masters, President, Christmas Island Divers' Association: correspondence between Christmas Island Divers' Association and Soft Star Pty Ltd
- 5 Ms Teresa Hendren, Tourism Coordinator, Christmas Island Tourism Association: tourism information on Christmas Island
- 6 Department of Transport and Regional Services: Media Release from Senator the Hon Ian Macdonald, *Christmas Island Land Issues*
- 7 Mr Rodger Mortleman, Director, Comswinfair: *Christmas Island Gaming Tax Report*, February 1998
- 8 Ms Rosanne Kava, First Assistant Secretary, Territories and Regional Support, Department of Transport and Regional Development: Media Release, *Christmas Island has a future*
- 9 Confidential exhibit
- 10 Department of Transport and Regional Services: correspondence regarding Commonwealth Assistance to Asia Pacific Space Centre, and Joint Media Release, *Australia Launches into Space Age*
- 11 Senator the Hon Ian Macdonald: correspondence to Senator Ross Lightfoot, Chairman, Joint Standing Committee on the National Capital and External Territories



Appendix C – List of hearings and witnesses

Wednesday, 7 February 2001 – Canberra

Department of Transport and Regional Services

Mr Peter Yuile, Deputy Secretary

Mr Michael Mrdak, Acting First Assistant Secretary, Territories and
Regional Support Division

Ms Janet Thompson, Senior Lawyer, Legal Office, Business Services and
Strategy Group

Soft Star Pty Ltd

Mr David Kwon, Managing Director

Mr Graham Nicholls, Director, Government Relations & Christmas Island
Management

Wednesday, 18 April 2001 – Perth

Mercator Property Consultants

Mr Frank Woodmore, Managing Director

PPB Ashton Read, Chartered Accountants

Mr Jeff Herbert, Receiver and Manager, Liquidator

Mr Marco Poelzl, Senior 1

Mr Clifford Rocke, Partner

Thursday, 19 April 2001 – Christmas Island

Mr Dave McLane

Mr Ed Turner

Christmas Island Chamber Of Commerce

Mr Don O'Donnell, President

Mr Phillip Oakley, Vice President

Christmas Island Divers' Association

Mrs Diane Masters, President

Christmas Island Tourism Association

Ms Teresa Hendren, Tourism Coordinator

Shire of Christmas Island

Mr Gordon Thomson, Councillor

Union of Christmas Island Workers

Mr Gordon Thomson, General Secretary

Monday, 25 June 2001 – Canberra**ComWinfair Pty Ltd**

Mr Rodger Mortleman, Director

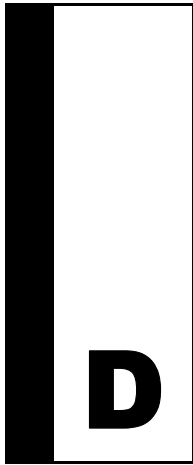
Department of Transport and Regional Development

Mr Michael Mrdak, Acting First Assistant Secretary, Territories and Regional Support Division

Dr Andrew Turner, Assistant Secretary, Non Self-Governing Territories, Territories and Regional Support Division

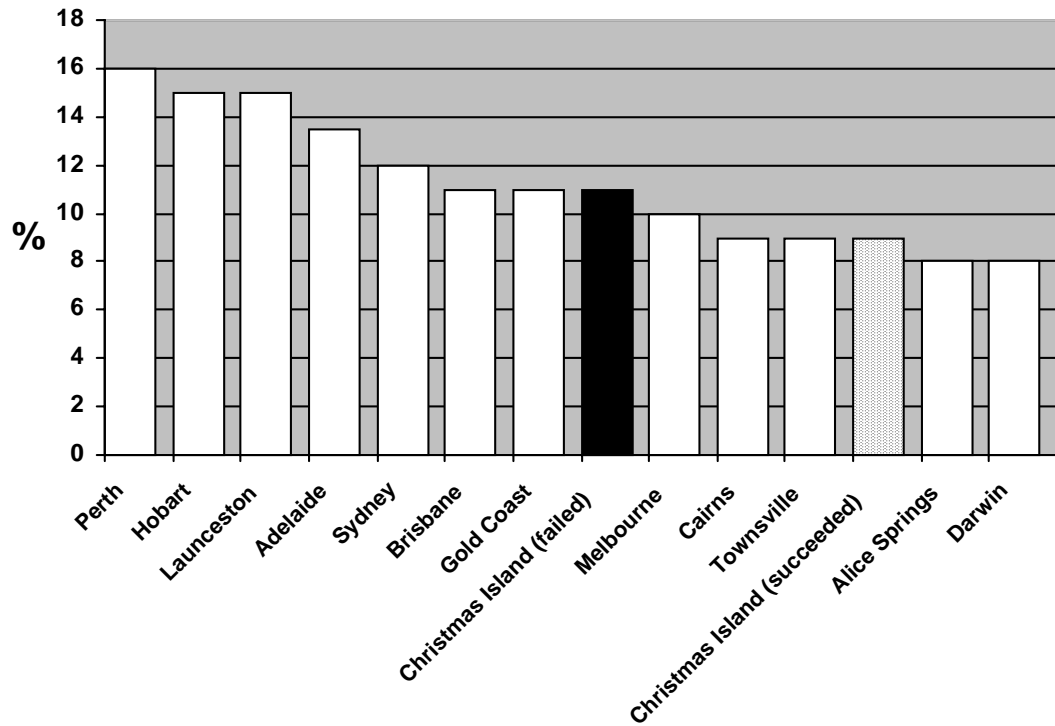
Mr Michael Moran, Principal Lawyer, Legal Group

Ms Janet Thompson, Senior Lawyer, Legal Office, Business Services and Strategy Group



Appendix D

Comparison of Gaming Tax Regimes (February 1999)





Appendix E

Correspondence with creditors¹

Creditors were kept informed of the progress and development of the realisation process, through the distribution of circulars. These circulars were often comprehensive reports including information on all matters pertaining to the liquidation, as determined by the Liquidator.²

Circulars were sent to the creditors on the following dates:

Distribution of Circulars³

31 July 1998
4 August 1998
27 November 1998
4 December 1998
18 February 1999
11 March 1999
13 August 1999
15 November 1999
2 June 2000
18 December 2000

A meeting of creditors was held on 27 August 1999, in Perth. At this meeting a resolution was passed to elect a Committee of Inspection (COI) to represent the creditors.

1 PPB Ashton Read, Submission No. 7, p. 80.

2 The circulars are attached at Annexure 73, PPB Ashton Read, Submission No. 7, p. 720.

3 PPB Ashton Read, Submission No. 7, p. 80.

The Committee of Inspection⁴

The Committee of Inspection (COI) was formed in accordance with section 548 of the *Corporations Law*, on 27 August 1999 at the meeting of creditors.⁵ The following persons were elected:

Members of the COI⁶

Person	Creditor
Mr Dave McLane*	Shire of Christmas Island
Mr Derek Schapper	Various Employee creditors (UCIW)
Mr Paul Vaile**	National Jet Systems
Mr Frank Woodmore	Mercator

* On 7 February 2001, Mr McLane was replaced by Mr Gordon Thomson.

** On 11 September 1999, Mr Vaile resigned from the COI and was not replaced.

Meetings of the COI were held on the following dates:

Meetings of the COI⁷

17 September 1999
 18 October 1999
 3 December 1999
 23 December 1999
 11 January 2000
 7 April 2000
 12 May 2000
 5 December 2000
 26 February 2001

Information packages were prepared for the COI to review, prior to meetings held on 17 September 1999 and 18 October 1999.

4 Minutes of meetings of the COI are attached at Annexure 75, PPB Ashton Read, Submission No. 7, p. 860.

5 Minutes of the meeting can be found at Annexure 74, PPB Ashton Read, Submission No. 7, p. 822.

6 PPB Ashton Read, Submission No. 7, p. 81.

7 PPB Ashton Read, Submission No. 7, p. 81.