

**THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA**

**THE SENATE**

**COMMITTEE OF PRIVILEGES**

**POSSIBLE IMPROPER INFLUENCE  
AND PENALTY ON A SENATOR**

**103<sup>RD</sup> REPORT**

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# POSSIBLE IMPROPER INFLUENCE AND PENALTY ON A SENATOR

## Introduction

1.1 On 7 August 2001 the Senate referred the following matter to the Committee of Privileges:

- (a) Whether any person or body purported to direct Senator Tambling as to how he should exercise a vote in the Senate;
- (b) whether a penalty was imposed on Senator Tambling in consequence of his vote in the Senate; and
- (c) whether contempts of the Senate were committed in that regard.<sup>1</sup>

## Background

1.2 On 19 July 2001, former Senator Grant Tambling raised with the President a matter of privilege in the following terms:

On 18 June 2001 I received a letter from the President of the Northern Territory Country Liberal Party which set out requirements of the Party with regard to my voting on the Interactive Gambling Bill 2001 which was then before the Senate. ... That letter confirmed instructions given to me at a Management Committee meeting of this Party on 12 June 2001.

At a subsequent meeting of the Northern Territory Country Liberal Party on 3 July 2001 the following resolution was carried: *“that Senator Tambling’s position as a pre-selected candidate for the Senate at the next Federal election be revoked immediately”*. ... The basis upon which the motion was moved and carried was that I had refused to comply with the Party’s direction.<sup>2</sup>

1.3 The letter from the President of the Northern Territory Country Liberal Party (CLP) read as follows:

I write to you to formalise the advice given to you at Management Committee on Tuesday 12 June, 2001.

As you are aware Management Committee was delegated the responsibility by Central Council of advising you how to vote on the Interactive Gaming [sic] Bill 2001.

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1 *Volume of Documents*, p. 1.

2 *Volume of Documents*, p. 3.

The advice was unequivocal and irrespective of any amendments to the Bill you are required to cross the floor.

It is noted that you gave no such commitment and I ask that you seriously reconsider and remember that this is a matter of principle of State and Territory rights. You should not desert the Territory Party and Territory people who have supported you through your political career in the Northern Territory.<sup>3</sup>

1.4 On 6 August 2001, the first day of sitting following Senator Tambling's letter to the President, the President gave precedence to a notice of motion to refer the matter of privilege, drawing on Senator Tambling's comments. She also observed that:

The facts as stated by Senator Tambling appear to involve breaches of [paragraphs (1), (2) and (4) of the Senate's Privilege Resolution No. 6]. There are relevant precedents for such actions being found to be contempts of Parliament.<sup>4</sup>

Senator Tambling duly gave notice, and the motion was moved on 7 August by the Leader of the Government in the Senate, Senator Hill, at Senator Tambling's request.

1.5 Senator Tambling had been a long-serving member of Parliament, first as a member of the Northern Territory Legislative Assembly from 1974 to 1977 and then as a member for the Northern Territory in the House of Representatives between 1980 and 1983. He first stood, successfully, for the Senate in 1987, retaining his seat at four subsequent elections, the last of which occurred in 1998.

1.6 As a member of the Northern Territory Country Liberal Party, during his time in the Senate he sat with the federal National Party and held several positions with them. He was also a parliamentary secretary, from 1996 to 2001.

#### *Northern Territory Country Liberal Party [CLP]*

1.7 The Northern Territory Country Liberal Party is a political party, registered under the *Commonwealth Electoral Act 1918*. It was formed in 1974 and is an unincorporated association of members who subscribe to its platform and constitution. The version of the CLP Constitution in force at the relevant time is dated August 2000. The party organisation consists of, inter alia, an Annual Conference, a Central Council, and a Management Committee.<sup>5</sup> Delegates entitled to participate in and vote at the Annual Conference include members of Central Council, honorary life members and branch delegates.<sup>6</sup> Delegates to the Annual Conference elect eight members to the

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3 *Volume of Documents*, p. 38.

4 *Volume of Documents*, p. 2.

5 CLP Constitution clause 28.

6 CLP Constitution clause 33.



Central Council, which also comprises the NT CLP members of federal Parliament, the leader and deputy in the NT Legislative Assembly, the chairman and one councillor from each branch, and possible youth councillors. Central Council, under clause 53(c) of the constitution, ‘Shall have charge of all matters whatsoever relating to Federal and Territory elections and referenda’. The Management Committee, which administers party affairs between Central Council meetings, comprises the NT CLP President, two vice-presidents, the leader and deputy leader of the party in the NT Legislative Assembly, the treasurer, the general secretary, four members of Central Council elected annually, a possible junior member, and federal members of parliament who are *ex officio* members of Central Council.<sup>7</sup>

### *Senator Tambling’s preselection*

1.8 On 16-18 February 2001, a CLP Central Council meeting was held in Darwin. On Sunday 18 February, Central Council acting as a preselection committee re-endorsed Grant Tambling for the No. 1 position on the CLP Senate ticket. During the preselection interview:

Marshall Perron asked a general question from the floor to the effect of “How would you vote in relation to the Interactive Gambling Bill?” Marshall Perron asked this same question of every candidate. Senator Tambling responded with words to the effect that, “I will listen to the Party. I’d be foolish to go against a groundswell of support in the Party.”<sup>8</sup>

1.9 CLP members’ later recollections suggested that the question was put to Senator Tambling in the following terms:

Would you cross the floor to support your party even if it meant opposing the coalition government’s position?

to which he was said to have replied as indicated above. They went on to assert:

That answer left us in no doubt he would vote against the legislation and satisfied the doubters in the room. Accordingly he was endorsed as the Party’s No. 1 Senate Candidate for the forthcoming Federal Election.<sup>9</sup>

### *The Interactive Gambling Bill*

1.10 On 5 April 2001 the Minister for Communications, Senator the Hon. Richard Alston, introduced the Interactive Gambling Bill 2001 into the Senate. Its purpose was to prohibit Australian-based interactive gambling services being provided to customers in Australia and to limit the ability of Australian customers to access internet gambling sites located overseas. This bill followed passage in December 2000

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7 CLP Constitution clause 70.

8 *Volume of Documents*, p. 57.

9 *Volume of Documents*, p. 72.

of the Interactive Gambling (Moratorium) Bill, which had imposed a 12-month moratorium on the development of the interactive gambling industry, with effect from 19 May 2000, until a regulatory regime was established.

1.11 The then NT CLP Government strenuously opposed both the 2000 (moratorium) and the 2001 (regulatory) legislation, given that it had the potential to disrupt thriving online gaming businesses in the Northern Territory. Its Minister for Racing, Gaming and Licensing, the Hon. Tim Baldwin MLA, actively lobbied against the 2001 legislation, distributing to all senators, shortly before the second reading debate was to resume in the Senate in June, a two-page statement of the NT position and three pages of a preferred model for the regulation of interactive gambling. The NT Government's preferred position was 'that the Bill should be defeated outright'. It nevertheless acknowledged that there was room for compromise: 'I understand that amendments to the Bill are proposed, to exempt wagering and lotteries from its scope and to clarify its operation in respect of the "unintended consequences" for current forms of gambling'.<sup>10</sup>

#### *CLP communications to Senator Tambling*

1.12 The proposed legislation had already received much attention at CLP gatherings, for example, at a Central Council meeting at Alice Springs in November 2000, well before the February 2001 preselections, and nearly five months before the regulatory bill was introduced into the Senate. The draft minutes provide the following account:

Grant Tambling then took questions from the floor ... Gambling on the Internet – correspondence read out between Senator Tambling and Marshall Perron. Question raised as to the representation as a CLP Senator in Canberra. Suzanne Cavanagh stated that the Senator had never been directed on a course of action to take.

Understanding that you do what the CLP direct you to do. Communication block between the NT and Federal arena.

Marshall Perron foreshadowed a motion for the next Central Council:

MOTION:

"that this Central Council records its opposition to intervention by the Federal Government in the Legitimate affairs of the NT Parliament and directs CLP members of Federal Parliament to uphold the principles of States rights".<sup>11</sup>

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10 *Volume of Documents*, p. 75.

11 *Volume of Documents*, p. 29.

1.13 At the subsequent Central Council meeting at Tennant Creek on 28-29 April 2001, internet gambling was discussed again. The Perron motion was not put; instead three other motions were put and carried unanimously:

“that this Central Council deplores the Federal Government’s attempt to use the Federal Communications Act to over ride and interfere with the States and Territories powers in relation to gambling;

and further:

this Central Council calls on the Federal Government to set aside the Interactive Gambling Bill 2001 and redraft it after the current Ministerial Council on Gambling has introduced effective measures for harm minimisation across all areas of gambling;

and further that:

that this Central Council specifically directs Management Committee to monitor the proposed Federal legislation regarding Internet Gambling and further empowers Management Committee to liaise with all interested parties including Northern Territory Government, Federal Government and Liberal and National Parties and further advise Senator Tambling as to what position he should take when the Bill finally comes to the Senate.”<sup>12</sup>  
[emphasis added]

1.14 The CLP Management Committee met on 12 June, nine days before the Senate second reading debate resumed on the bill, when the matter was again addressed. The minutes of the meeting give a detailed account of the discussion which took place. They read, in part:

[Senator Tambling] has raised all the Territory concerns in the Wing and in Cabinet with little support. He will make a decision on his position after seeing the amendments and talking to the Prime Minister. ...

Grant again raised the point that this legislation does not target the NT directly it is all encompassing and so cannot be compared to the Andrews Bill. It is not the issue on which to fight a Territory election. He was not going to be a scapegoat although he knew his Senate preselection for the next term was at risk. ...

All members gave their opinion as to the course of action and unanimously supported Grant voting against the Bill regardless of the consequences and if he loses his position as Parliamentary Secretary then we make the most of a bad job. Marshall raised the possibility of Grant’s endorsement being removed and that it could be damaging at such a sensitive time.

Grant was advised to cross the floor and vote against the Bill regardless of any amendments [emphasis added]. Grant said that he heard the message,

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12 *Volume of Documents*, p. 33.

that he would make up his mind later, he would talk to the Prime Minister, he would host the industry delegation in Canberra and that he disagreed with us all.<sup>13</sup>

1.15 In a submission to the Privileges Committee Mr Gary Haslett, who was present at both the April Central Council meeting and the June Management Committee meeting, stated:

We all understood at this time [the April meeting] that ‘advise’ meant that we would provide advice as one friend would to another and that it was up to Senator Tambling to judge for him self the worth of this advice. He could take this information and use it in his process of considering what was the correct course of action. I note that this type of advice could not be a mere direction of this is how we want you to vote. Friendly advice would be less directional and more of a statement of ones belief in the best course of action. To say you must vote this way or we will punish you is not giving advice and this is not what Central Council intended in April 2001.<sup>14</sup>

1.16 But according to Mr Haslett, by the time of the Management Committee meeting in June 2001, the mood of the Party had changed. Senator Tambling had been told directly that if he did not cross the floor and vote against the Internet Gambling Bill, his preselection would be revoked.<sup>15</sup> Mr Haslett thought, however, that the matter would blow over. When it did not, he resigned from the CLP ‘as a result of my displeasure and disappointment in the actions that they took’.<sup>16</sup>

1.17 Another CLP member, Mr Rick Setter, questioned the intention of the April Central Council meeting internet gambling motion at a Central Council meeting held on 3 July, following passage of the bill through both Houses of Parliament late in June. The notes attached to the draft minutes of this meeting read, in part, ‘Rick Setter asked for clarification of the wording of the Tambling motion from Tennant Creek’. In the course of the subsequent legal action between Senator Tambling and the CLP, Senator Tambling’s solicitor advised:

We are instructed that the clarification which was sought by Mr Setter was clarification of the wording of the Internet Gambling Motion passed by Central Council at Tennant Creek in April. In particular, Mr Setter sought clarification of the third point of that motion, namely as to whether the motion required the Management Committee to advise Senator Tambling of the party’s view on the Interactive Gaming Bill then before the Federal Parliament, or whether the motion required the Management Committee to

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13 *Volume of Documents*, p. 36.

14 *Volume of Documents*, p. 69.

15 See also minutes of 12 June meeting, *Volume of Documents*, pp. 34-37.

16 *Volume of Documents*, p. 70.

direct Senator Tambling on how to vote. We are instructed to request that the minutes be amended accordingly.<sup>17</sup> [emphasis in original]

1.18 In the notes attached to the draft 3 July minutes, Mr Setter is recorded as having stated that ‘in 25 years or so he could not recall any occasion that Central Council had directed a Federal or NT Parliamentarian’.<sup>18</sup>

1.19 On 18 June 2001 the then CLP President, Mrs Suzanne Cavanagh, wrote to Senator Tambling in the terms quoted at paragraph 1.3 above. On the same day, Mrs Cavanagh issued the following press release:

#### **NT CLP SENATOR MUST VOTE AGAINST FEDERAL BILL**

CLP Senator Grant Tambling knows exactly that he must vote against the Interactive Gaming [sic] Bill 2001 when it comes before the Senate this week, CLP President, Suzanne Cavanagh, said today.

“Simply stated the Senator must vote against legislation that would overrule Territory laws on gaming and cost Territory jobs.

“On Tuesday 12 June 2001 CLP Management Committee unequivocally advised the Senator to vote against this proposed Federal legislation.

“I am disappointed that on radio this morning the Senator was still equivocating on his voting intention.

“The CLP, its members and representatives, have only one loyalty and duty - to stand up for the Territory.

“That is fundamental to CLP representation in the Territory and in Canberra.

“If the Senator does not heed that advice then he can be certain that the party that pre-selected him will review that decision,” Mrs Cavanagh said.<sup>19</sup>

1.20 The then Chief Minister of the NT, the Hon. Denis Burke MLA, also issued a press release on 18 June 2001, headed ‘Territorian’s [sic] interests come first over gaming issue’. He stated that he expected ‘CLP Senator Grant Tambling to vote against the Federal Government’s proposed ban on online gaming when it comes before the Senate’. He added that Senator Tambling would have no option but to resign his parliamentary secretaryship in consequence, but ‘[t]hat comes with the job if you are a member of the CLP and you are representing the people of the Northern Territory on issues that run counter to their interests’.<sup>20</sup>

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17 *Volume of Documents*, p. 22.

18 *Volume of Documents*, p. 44.

19 *Volume of Documents*, p. 80.

20 *Volume of Documents*, p. 81.

*The Interactive Gambling Bill 2001 in the Senate*

1.21 The second reading debate on the legislation resumed on 21 June 2001, following the bill's introduction in April and a report on the bill by the Environment, Communications, Information Technology and the Arts Legislation Committee which was tabled on 23 May. Senator Tambling gave his second reading speech on 27 June 2001.<sup>21</sup> In it, he questioned the adequacy of the original legislation and outlined his efforts to achieve amendments; he mentioned that the NT commercial operators 'were all openly appreciative of the government's amendments relating to the exemptions for wagering and sports betting' and stated his intention, therefore, to vote with the government. The legislation passed the Senate, as amended, on 28 June 2001 by 34 votes to 28, with Senator Tambling voting with the Government.<sup>22</sup> It passed the House of Representatives without amendment early the following morning, 29 June.

1.22 Also on 29 June, Senator Tambling issued a statement to all NT CLP members, giving his reasons for his decision to vote with the Government and against the wishes of the CLP. He stated that his own polling of CLP members showed that the internet gaming issue was rated the lowest of ten priority issues, by a wide margin; there was no support in the party room in Canberra; his own vote would have made no difference to the outcome; he would have lost the CLP voice in Canberra (that is, he would have lost his parliamentary secretaryship for voting against the wishes of the Government); he fought hard and successfully for the amendments which protected the NT companies involved and those players thanked him for his efforts; and there had been no adverse impact on the NT community.<sup>23</sup>

*Senator Tambling's disendorsement*The CLP Central Council meeting of 3 July

1.23 A special Central Council meeting was held on Tuesday, 3 July 2001, four days after the passage of the Internet Gambling Bill 2001 through the federal Parliament. The major agenda item was 'the issues relating to the interactive gambling act'<sup>24</sup> and Senator Tambling's role.

1.24 After a lengthy discussion, a motion was moved by Mr Len Notaras (then delegate representing the Casuarina/Marrara branch of the CLP and now President) and seconded by Bob Johnson (delegate representing the Vanderlin branch) that 'Senator Tambling's position as the preselected candidate for the Senate at the next

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21 *Volume of Documents*, pp. 13-15.

22 *Journals of the Senate*, No. 197, 28 June 2001, p. 4474.

23 *Volume of Documents*, pp. 16-17.

24 *Volume of Documents*, p. 39.

Federal election be revoked immediately'. The motion was carried.<sup>25</sup> Senator Tambling refused to resign and indicated that he would appeal the decision.

### *Senator Tambling's appeal*

1.25 On 5 July 2001 Senator Tambling's solicitors lodged with the CLP a 'Notice of Appeal'<sup>26</sup> against the decision to deselect him as a Senate candidate, followed on 7 July 2001 by a 'Statement of Grounds of Appeal'. The solicitors for the CLP, Clayton Utz, replied on 12 July 2001, advising that the CLP did not intend to convene an appeals committee, on the basis that appeals against the selection of federal candidates were not covered by the appeals process allowed for under clause 103 of the CLP Constitution.

### The legal challenge to the disendorsement

1.26 Following this refusal to consider an appeal, Senator Tambling's solicitors sought an injunction to prevent the CLP from implementing the decision of 3 July 2001 to revoke his preselection. Bailey J of the NT Supreme Court issued such an order on 20 July 2001, and the matter was set down for mention and possible argument on 10 August. On 7 August 2001 the Senate had referred Senator Tambling's matter to the Committee of Privileges, so on 10 August 2001 the question as to whether the court proceeding should continue pending the outcome of the privileges reference was also considered.

1.27 Bailey J determined that the matter was urgent (the CLP needed to establish its candidates in advance of the expected federal election) and that there was no legal impediment to the trial proceeding in advance of the Committee of Privileges and Senate deliberations.<sup>27</sup> Consent directions were made, extending to 28 August the undertaking of the CLP not to act upon the motion of 3 July or to appoint an alternate Senate candidate.

1.28 The proceeding was next before the Court on 28 and 29 August 2001 for the hearing of Senator Tambling's interlocutory injunction application to restrain the CLP from acting on the motion revoking his preselection until the matter came to trial. The defendants' counsel gave certain undertakings to the Court on 29 August, indicating a willingness to settle the case.<sup>28</sup> Senator Tambling agreed, inter alia, to a proposal that a new preselection committee be constituted.

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25 *Volume of Documents*, p. 41.

26 See *Volume of Documents*, p. 28.

27 Supreme Court transcript SC129 of 2001, p. 45.

28 *Volume of Documents*, pp. 64-65.

### The outcome

1.29 On 14 September 2001 the CLP Central Council, sitting as a preselection committee, considered the motion:

That Senator Tambling's position as the preselected candidate for the Senate at the next Federal election be revoked immediately.

The motion was passed.

1.30 Senator Tambling withdrew his candidacy and Mr Nigel Scullion and Mr John Lopes were preselected as the CLP's Senate candidates; Mr Scullion was elected as a senator for the Northern Territory at the 2001 federal elections.

### **Conduct of inquiry**

#### *Correspondence with Senator Tambling*

1.31 Following receipt of the reference, and associated documentation, the Committee of Privileges wrote on 9 August 2001 to Senator Tambling, seeking the following information:

- (a) details of any threats made to you that certain consequences would follow if you were to vote on a bill in the Senate in a particular way;
- (b) the names of any persons who made any such threats;
- (c) the nature of any penalty which any person or persons threatened you would, or might, be imposed if you were to vote on a bill in the Senate in a particular way;
- (d) whether any such penalty was so imposed;
- (e) if so, details of whether and how it was made clear to you that the penalty was imposed as a direct result of your voting on a bill in the Senate in a particular way; and
- (f) the names of any persons who advised you in terms referred to in paragraph (e).<sup>29</sup>

1.32 Senator Tambling responded on 21 August in terms of the letter included in the volume of documents accompanying this report.<sup>30</sup> This consisted mostly of identification of documents which have been used to compile much of the background to this report. Also based on the information he provided, the committee compiled a

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29 Letter, dated 9 August 2001, to Senator Grant Tambling.

30 *Volume of Documents*, pp. 66-68.



list of persons who might have knowledge of the matter before it, and on 28 August wrote individually to each.

#### *Other submissions*

1.33 The committee received one substantive submission, from Mr Gary Haslett, before the dissolution of the House of Representatives and the prorogation of Parliament on 8 October 2001.<sup>31</sup> Mr Haslett's submission provided a useful basis for determining the tenor of the various meetings on the Interactive Gambling Bill, and as the above quotations from his submission indicate the committee has drawn on his comments to validate other material.

1.34 Later, on 8 October, the committee received a joint submission signed by several members of the CLP. The CLP members expressed their 'dismay that this [their actions] could be a breach of Privilege', indicating that 'we were not aware that our actions could be construed as anything other than advice to Senator Tambling, advice he chose to ignore' and adding that Senator Tambling's disendorsement was a result of the Party's 'loss of confidence' in him as their representative in the Senate.<sup>32</sup>

1.35 These documents too are included in a separate volume of documents. Two sentences in Mr Haslett's submission, which are not relevant to the committee's terms of reference, have been expunged.

1.36 In addition, in January 2002 Senator Tambling made available a significant number of documents relating to the matter. Much of this material was either not relevant to the committee's terms of reference or was otherwise publicly available. The committee has therefore returned the documentation to Senator Tambling in accordance with his request. The committee did not find it necessary to seek further information from other persons.

#### *Clerk's advice*

1.37 The committee, as is its practice, sought advice from the Clerk of the Senate on the precedents referred to in the President's statement when giving the matter precedence. In response, he advised that there are no directly relevant Senate precedents of privilege cases involving extra-parliamentary bodies purporting to direct senators as to their votes or to penalise senators for not complying with such direction. He stated that there have, however, been comparable cases in the United Kingdom, one of which he described as follows:

The first [case] arose in 1947 when it was suggested that an extra-parliamentary body had attempted to influence a member. While finding nothing improper in the activities of that body, the Privileges Committee

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31 *Volume of Documents*, pp. 69-71.

32 *Volume of Documents*, pp. 72-73.

gave consideration to the boundary which should be drawn between legitimate political activity and improper influence of a member. The committee concluded that it is proper for a body to support and endorse a member, including by way of financial support, and to withdraw that support and endorsement on the basis of disagreement with the policies pursued by the member, but improper influence arose when a body purported to direct a member as to the performance of the member's duties or to inflict a penalty or detriment on a member in consequence of the member's performance of those duties. The committee declared that an extra-parliamentary body is not entitled to use support of a member, or the withdrawal of that support, "as an instrument by which it controls or seeks to control the conduct of a Member or to punish him for what he has done as a Member". ...

The boundary drawn by the Committee of Privileges in this report has been reiterated in subsequent cases in which extra-parliamentary bodies purported to direct members or to withdraw support in retaliation for members' conduct in Parliament. Further cases occurred in 1971, 1975, 1977 and 1991. In each case the Privileges Committee, while reiterating the ruling principles, did not find it necessary to recommend further action by the House because of the circumstances of the case or remedial action by the offending body.

In these cases a purported direction to a member was regarded as a contempt in itself, quite apart from any threatened or actual withdrawal of support from a member in consequence of the member's performance of parliamentary functions. The rationale of treating the purported direction as an offence in itself was that, where a body has a relationship with a member which could be regarded as giving it some particular control or influence over the member, a purported direction in itself would be an interference with the free exercise by a member of the member's functions.

All of these cases involved professional associations or trade unions which support members of Parliament, rather than organs of political parties as such. The extra-parliamentary organs of political parties as such appear not to purport to direct members as to how they are to vote on particular issues in comparable jurisdictions.<sup>33</sup>

### Questions for determination

1.38 Under the Privilege Resolutions of the Senate, the committee is required to reach a determination as to whether a contempt of the Senate has been committed, based on the following criteria:

- (a) the principle that the Senate's power to adjudge and deal with contempts should be used only where it is necessary to provide reasonable protection for the Senate and its committees and for

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33 *Volume of Documents*, pp. 11-12.

Senators against improper acts tending substantially to obstruct them in the performance of their functions, and should not be used in respect of matters which appear to be of a trivial nature or unworthy of the attention of the Senate;

- (b) the existence of any remedy other than that power for any act which may be held to be a contempt; and
- (c) whether a person who committed any act which may be held to be a contempt:
  - (i) knowingly committed that act, or
  - (ii) had any reasonable excuse for the commission of that act.<sup>34</sup>

1.39 The Committee of Privileges is required to answer each of the following questions, taking into account the above criteria:

- (a) Whether any person or body purported to direct Senator Tambling as to how he should exercise a vote in the Senate;
- (b) whether a penalty was imposed on Senator Tambling in consequence of his vote in the Senate; and
- (c) whether contempts of the Senate were committed in that regard.

#### *Comment on criteria*

1.40 It is clear that any question of potential improper obstruction of a senator in the performance of that senator's duties is a potentially serious matter, and thus meets criterion (a). The committee observes, however, that in the six cases, dating from 1904 to the last case involving possible interference with a senator, in 1997, successive committees and the Senate have taken the view that senators have a capacity to protect themselves at a level not available to other persons, such as witnesses before committees. In all cases, findings of contempt have not been made against persons who under other circumstances might not be so leniently dealt with.

1.41 In respect of criterion (b), the Committee notes that, at the same time as Senator Tambling raised the matter of privilege, he took court action to overturn the decision to 'de-select' him, in accordance with an increasingly common practice of recourse to the courts in matters relating to the internal structures of political parties. The proceedings were ultimately stayed because a political solution was found in the internal workings of the party. However, this does not absolve the Committee of Privileges of its responsibility to examine the matter as a potential contempt.

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34 Privilege Resolution 3, *Standing Orders and Other Orders of the Senate*, February 2002, pp. 104-105.

1.42 The third criterion goes to the question of contempt, and will be discussed below.

### Comment on circumstances of case

1.43 The context in which the Committee of Privileges is required to reach its conclusions on this matter is unusual. The committee draws particular attention to the point made in the advice from the Clerk of the Senate that the only comparable precedents have not involved political parties as such, although he goes on to advise that no party organisation has attempted to direct a member to vote or behave in a particular way.<sup>35</sup>

1.44 However, as the Chair of the Committee of Privileges, Senator Ray, put it when speaking to the motion to refer the matter to the committee, there is a difficulty in resolving the ‘conflicting principles ... between privilege and political practice’.<sup>36</sup> And when moving the motion, the Leader of the Government in the Senate, Senator Hill, observed:

I think it is fair to say that one accepts certain restraints when operating within the spectrum of a political party. We choose to enter politics and either seek office as Independents or we may do it with both the comfort and the restraints or the down side of a political party. It is not surprising that it is therefore unusual for such a matter to be brought before the Privileges Committee.

although he added:

However, I think Senator Tambling would say that the events in this instance were extraordinary and certainly, on their face, they seem to be far from the culture and history of political parties on our side of the chamber. In those circumstances, I am prepared to move the motion on behalf of Senator Tambling.<sup>37</sup>

### *Debate during passage of Privilege Resolutions*

1.45 This potential conflict between the principles identified by Senator Ray was recognised at the time the Privilege Resolutions were under consideration by the Senate. The explanatory notes to proposed paragraph (2) of ‘Privilege Resolution 6: Matters constituting contempts’, relating to improper interference with a senator, contained the following observation:

It may be thought that the wording suggested by [the Joint Select Committee on Parliamentary Privilege] is too wide and could make contempts out of

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35 See paragraph 1.37 above, and see *Volume of Documents*, p. 12.

36 *Volume of Documents*, p. 7.

37 *ibid.*, p. 5.

normal, acceptable and democratic activities, e.g., a member agreeing to be bound by the decision of the member's party, or accepting the political support of an interest group, or agreeing to make representations on behalf of an interest group.<sup>38</sup>

1.46 On 25 February 1988, during debate on the motion to adopt the Privilege Resolutions. Senator Haines adverted to several questions going to improper influence with the free performance by a senator of the senator's duties as a senator, with particular reference, and for the purpose of this present case appositely:

A person shall not inflict any punishment, penalty or injury upon, or deprive of any benefit, a Senator on account of the Senator's conduct as a Senator.<sup>39</sup>

1.47 Senator Haines specifically addressed 'that part of a senator's conduct [which] is that senator's voting pattern and voting decision', and went on to state:

I wonder where that leaves [the then Labor Party] government members who apparently willingly sign a pledge that makes them bound to vote according to the majority decision of the Caucus. The penalty for voting against a decision by Caucus on a piece of legislation is expulsion. ...

I would like to know precisely what we are going to do about this situation. If these matters relating to privilege which constitute contempt are passed, does that mean that we either release all Labor Party senators and members from any contract they entered with the Labor Party, or do we move contempt proceedings against those people who have influenced them by intimidation, force or threat into making those contracts? If so, whom do we charge with this contempt?<sup>40</sup>

1.48 After a few more comments on a specific case, Senator Haines commented:

Essentially, we are saying that no outside person — that is, no non-political party person — can act improperly in this way, can attempt to influence a senator's conduct as a senator, can attempt to influence the way that senator votes or speaks, either in this chamber or on a committee. We will not allow an outsider to do that but we are perfectly happy to allow a majority of senators, wilfully and willingly, to do it to themselves or allow others to do it to them.<sup>41</sup>

1.49 In response, the then Manager of Government Business in the Senate, the Hon. Gareth Evans, stated:

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38 See *Volume of Documents*, p. 85.

39 *Volume of Documents*, p. 86.

40 *Volume of Documents*, pp. 86-87.

41 *Volume of Documents*, p. 87.

Senator Haines referred (Hansard pp. 639 and 640) to the inclusion in the list of matters which may be treated as contempts of the references to influencing Senators and Senators seeking benefits in return for the discharge of their parliamentary duties. That these statements may be too broadly worded was suggested in the explanatory notes accompanying the draft resolutions. Again it must be stressed, however, that Resolution 6 is simply an indication, for the guidance of the public, of matters which may be treated as contempts. The resolution does not commit the Senate Committee [of Privileges] to treat any particular matters as contempts, nor does it affect the ability of the Senate to judge particular cases on their merits and according to circumstances. The resolution therefore does not create any difficulties or give rise to any questions which did not exist before the resolution was passed [emphasis added].<sup>42</sup>

1.50 The tenor of the debate indicated the satisfaction of the Senate with the terms of the resolution and left it, as Senator Evans suggested, to the Committee of Privileges and the Senate to judge, based on their merits and according to circumstances.

#### *Matters for consideration*

1.51 The conflict of principle identified, both then and in debate when the Senate referred the current matter to the committee, lies in finding a balance between the obligations of a member of a political party and what may be regarded as improper coercion of that member in fulfilling parliamentary duties. The first set of obligations results from a member's voluntarily joining a political party and taking both the benefits and the privileges associated with that membership. In the case of a member of parliament, the ultimate privilege is to be selected to represent one's party with the obvious benefits which preselection and ultimately election to a House of Parliament entail.

1.52 The question is, what obligations on that member flow from this and what sanctions, if any, are available to those who consider that the member has not met them. In the words of the Leader of the Government in the Senate, Senator Hill, when responding to the concerns raised by Senator Ray:

[W]e would not seek this chamber to be interfering in a usual preselection process or for the Privileges Committee to be involved in the usual preselection process. ...The issue here is whether there is, on the facts of this particular matter, an exceptional circumstance that might mount to a breach of privileges and what action the chamber ... should take.<sup>43</sup>

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42 Senate Hansard, 15 March 1988, p. 722.

43 Volume of Documents, p. 10.

It is therefore up to the Committee of Privileges, at all times when matters of this nature come before it, to make a judgment as to whether the circumstances are so extraordinary or disproportionately intimidating as to lead to a conclusion that a contempt finding is required.

### **Conclusions in respect of questions (a) and (b)**

1.53 It appears to the committee, and the above outline of the circumstances of the case demonstrates, indisputable that the reason for Senator Tambling's loss of preselection was his decision to support the Interactive Gambling Bill, against the wishes, and the purported direction, of the CLP. While there could be scope to discuss whether the CLP 'advised' or 'directed' Senator Tambling to follow that course, the committee regards the evidence in the letter from the President of the CLP,<sup>44</sup> and the attendant press release,<sup>45</sup> as representing the collective view of the CLP executive. The committee therefore considers that the answers to questions (a) and (b) must be yes.

### **Conclusions in respect of question (c)**

1.54 At first sight, therefore, it might be assumed that the corollary of answering these two questions in this way would be that a contempt has been committed. However, this third question does not lend itself to an easy answer. It is clear that the CLP intended to direct Senator Tambling to vote a certain way, and punished him when he did not follow that direction. These actions meet the first requirement in criterion (c) — that in order to find a contempt the committee must determine whether a person who committed any act which may be held to be a contempt knowingly committed that act. The Committee of Privileges must, however, make a judgment as to whether these actions met the remaining requirement of criterion (c), whether the CLP had any reasonable excuse for the commission of that act.

1.55 In addressing the specifics of the matter, the CLP administration summarised its view of Senator Tambling's actions as follows:

- The Party advised Senator Tambling over a long period its position on the Gaming Legislation.
- Senator Tambling gave undertakings at pre-selection that he would support the Party's position if pre-selected.
- He subsequently voted according to his own wishes.
- In doing so he lost the confidence of the CLP.

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44 *Volume of Documents*, p. 38.

45 *Volume of Documents*, p. 80.

- His position as the Party's representative after his current term finishes is now in doubt.<sup>46</sup>

1.56 The committee was astonished at the crass way in which the collective CLP administration attempted to impose its views on its Senate representative. It accepts, however, that, while the actions were inept and the dealings with Senator Tambling were badly handled, the CLP was acting, as it saw it, in accordance with its rights to make its views known to and through its only Northern Territory representative in the federal Parliament.

1.57 In the particular circumstances of this case, the committee draws attention to the approach of the Northern Territory Supreme Court in this matter. As indicated at paragraph 1.41 above, the proceedings were stayed, and the CLP agreed to pay Senator Tambling's legal costs. Both the party administration and Senator Tambling agreed that the outcome of the political processes which then followed would be binding; Senator Tambling lost out in this new process and abided by the decision.

1.58 The committee is of the view that it was appropriate that a political resolution within the organisation concerned was reached. Problems involving preselection are best resolved by political parties ensuring that their practices, procedures and rules minimise any possibility of challenge either in the courts or in the parliament, rather than by turning to other bodies in an attempt to force a solution. The committee has therefore followed the court in staying its hand in respect of an internal party matter. Thus, while it is open to the committee to find a contempt, under the circumstances it would not be appropriate to do so. In other words, the committee notes that an alternative remedy under Privilege Resolution 3(b) was both available to and used by the parties, and that ultimately a political resolution was reached after both court action and action before the Committee of Privileges.

1.59 This is not to say that under other circumstances the committee would be prepared to take this view. The committee, in making this present finding, would not, and in any case could not, close off any option for a senator to raise a matter of privilege. Nor would it deny the possibility that a committee might at some future time ultimately make a finding of contempt.

## FINDINGS

**The Committee of Privileges has made the following findings:**

**1.60 In respect of question (a) — whether any person or body purported to direct Senator Tambling as to how he should exercise a vote in the Senate —**

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46 *Volume of Documents*, p. 73.



The Northern Territory Country Liberal Party purported to direct Senator Tambling as to how he should exercise a vote in the Senate on the Interactive Gambling Bill 2001.

**1.61 In respect of question (b) — whether a penalty was imposed on Senator Tambling in consequence of his vote in the Senate —**

The Northern Territory Country Liberal Party imposed a penalty on Senator Tambling in consequence of his vote in the Senate by the action of its Central Council on 3 July and 14 September 2001 to revoke Senator Tambling's position as the preselected candidate for the Senate at the next federal election.

**1.62 In respect of (c) — whether contempts of the Senate were committed in that regard —**

While the actions of the Northern Territory Country Liberal Party were reckless and ill-judged, on balance, and given that Senator Tambling reached a settlement with the Northern Territory Country Liberal Party, a contempt of the Senate should not be found.

**Robert Ray**  
**Chair**