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JOINT STANDING COMMITTEE ON THE NATIONAL CAPITAL
AND EXTERNAL TERRITORIES

Reference: Sale of the Christmas Island casino and resort

MONDAY, 25 JUNE 2001

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JOINT COMMITTEE ON THE NATIONAL CAPITAL AND EXTERNAL TERRITORIES

Monday, 25 June 2001

Members: Senator Lightfoot (*Chair*), Senators Crossin, Greig, Lundy, Watson and West and Mr Cameron, Ms Ellis, Mr Nehl, Mr Neville, Mr Snowdon and Mr Somlyay

Senators and members in attendance: Senators Crossin, Lightfoot and Watson and Mr Cameron, Mr Neville and Mr Snowdon

Terms of reference for the inquiry:

To inquire into and report on:

- (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.

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Committee met at 10.13 a.m.

CHAIRMAN—I declare open this public hearing of the Joint Standing Committee on National Capital and External Territories inquiry into the tendering process followed in the sale of the Christmas Island casino and resort. The inquiry was referred to the committee by the Senate on 8 November 2000. The purpose of the inquiry is to examine (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. At the conclusion of the inquiry, the committee will table its findings, conclusions and recommendations in the parliament in a report which will be publicly available.

The committee normally authorises submissions for publication and they are placed on the committee's web site. To date, the committee has received 13 submissions from interested parties. Is it the wish of the committee that submissions tabled by the Department of Transport and Regional Services, PPB Ashton Read and Soft Star Pty Ltd be accepted as evidence to this inquiry and authorised for publication? There being no objection, it is so ordered.

The committee has also received a number of exhibits from interested parties. Is it the wish of the committee that exhibits tabled by the Christmas Island Divers Association, the Christmas Island Tourism Association and the Department of Transport and Regional Services be accepted as evidence to this inquiry? There being no objection, it is so ordered.

[10.15 a.m.]

MORTLEMAN, Mr Rodger John, , Director, ComsWinfair Pty Ltd

CHAIRMAN—Welcome. Although the committee does not require witnesses to give evidence under oath, you should understand that these hearings are legal proceedings of parliament and warrant the same respect as proceedings of parliament itself. Giving false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Are there any corrections or amendments you would like to make to your submission?

Mr Mortleman—No, there are no corrections or amendments. I do have other documents,

CHAIRMAN—We will come to those. The committee prefers that evidence be taken in public but if you wish to give confidential evidence to the committee you may request that the hearings be held in camera and the committee will consider your particular request. Before we ask you some questions, do you wish to make an opening statement?

Mr Mortleman—Yes, I would like to make an opening statement.

CHAIRMAN—Please proceed.

Mr Mortleman—Can I table the documents now or can we come to those afterwards?

CHAIRMAN—Why don't you make your opening statement now and you can request leave of the committee to table the documents at the cessation of the contribution of your submission.

Mr Mortleman—Let me firstly lead you through the documents that will be tabled.

CHAIRMAN—If you are going to read the document, there is no sense in tabling it. It will be reported in *Hansard*. So you can either read the document in or you can table it without reading it in.

Mr Mortleman—I wish to table them without reading them.

CHAIRMAN—There are no problems with that, Mr Mortleman. Would you like to pass the document over or give it to one of our staff.

Mr Mortleman—They are coming.

CHAIRMAN—That is not what you have there?

Mr Mortleman—No. I will go into my statement, if I might.

CHAIRMAN—Yes, please proceed.

Mr Mortleman—I mentioned in my written submission that we felt that the process was flawed.

CHAIRMAN—That is the tendering process?

Mr Mortleman—That is right. And I would like to say a little about that. Firstly, it was our understanding that the fundamental responsibilities 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 a major creditor, 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 to the tenderer that we felt—certainly in our case and, 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 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.

We were encouraged by the liquidator throughout the process to endeavour to secure the licence conditions and lease terms that we sought from the Commonwealth government. We did not make any approach along those lines to the Commonwealth government because we thought it was impossible for the Commonwealth to deal with a number of tenderers that were interested at that time, and it seemed to us that there was a process that would, firstly, give us difficulty in getting their attention while the matter was still up in the air and, secondly, cause problems for the Commonwealth in dealing perhaps with a number of parties on similar variables.

But, as an indication of the significance of the matters that we are concerned about, we have the variance that came about in the casino tax rate from the minister's letter of August 1998, which suggested a tax rate of the order of nine per cent of revenue, subject to a \$2 million minimum, evolving by 27 January 2000 to a tax rate indicated at six per cent of revenue, and a negotiable minimum. The difficulty for us was the differences between those two numbers—we are talking tens of millions of dollars of value in the project, and that was very hard for us to come to terms with.

CHAIRMAN—That was six per cent on turnover, wasn't it?

Mr Mortleman—Yes. Well, it is actually casino win. It is generally referred to as casino revenue. That is the amount the players lose.

Mr SNOWDON—What was the first figure you gave?

Mr Mortleman—It was nine per cent subject to a \$2 million minimum per annum.

Mr SNOWDON—That was 1998?

Mr Mortleman—That was in the August 1998 letter, and in the 27 January 2000 letter, based, I might say, on our representations through the liquidator, it was indicated at as low as six per cent and a negotiable minimum.

CHAIRMAN—That was six per cent on what? That was a six per cent net revenue, six per cent of winnings?

Mr Mortleman—Six per cent of winnings, yes.

CHAIRMAN—Before other deductions or extraneous items had been taken from that figure?

Mr Mortleman—That is right, which are basically things like your junket commission fees, your staff costs, your operating costs.

CHAIRMAN—Salaries, of course.

Mr Mortleman—Salaries, wages, finance costs, et cetera.

CHAIRMAN—So it could turn out that nine per cent could be quite a high percentage rate.

Mr Mortleman—Nine per cent was probably not a viable proposition for Christmas Island. The six per cent was certainly a viable proposition.

Mr SNOWDON—And you had done your calculations up until 27 January on nine per cent?

Mr Mortleman—We did our calculations on a number of bases. In all honesty, without referring to some documents which would take me a bit of time, I am not sure what we ended up with, but I think it was five or six per cent that we based it on in our final work. We reduced our offer from \$11.5 million in our first tender to \$5.5 million, largely as an outcome of the uncertainty pertaining to the lease and the casino licensing conditions that we discovered or confirmed during the due diligence process when we visited the island.

CHAIRMAN—What were those uncertainties?

Mr Mortleman—Firstly, what would the tax rate be. It was not until we got to the island that we became aware of the minister's letter of August 1998. That letter was very important. We discovered the letter on the island. It was, in our view, a material omission on the part of the liquidator that that letter, or at the least the contents of it, did not form part of the tender process. The letter had three matters of great significance in it. The first concerned the transfer of services infrastructure under the terms of the lease. I think those matters might have been referred to in the tender documents. The second matter, that certainly was not referred to, was the potential to freehold the site. I do not believe we knew anything about that till we visited the island. And the third matter was the casino tax rate and regime that was given in the letter of 30 August, the nine per cent and the \$2 million minimum.

Mr SNOWDON—Who was that letter from?

Mr Mortleman—It was from the minister to the liquidator, and I think that letter got lost in the process. Those were the major areas of uncertainty. Quite frankly, at the end of the day, we had two key points that we lived and died on. One was the absolute tax rate, that is, the percentage, and the second was the minimum annual amount that had to be paid and, as I mentioned in my submission, we felt that we were very close to a satisfactory outcome on both of those points from the minister's letter of 27 January.

We had a difficult stance that we had to take throughout the negotiations. Firstly, we had formed a very early view that the assets had absolutely no value to us, in fact were a liability, without a casino licence, and therefore we were never in a position to go unconditional on our bid without the terms of the casino licence having been specified. We made that clear to the liquidator throughout the process, and he, I believe, understood and sympathised with our view, and in fact encouraged us to lodge a tender at the second closing date of December, knowing that it would still be conditional. We had explained that quite clearly to him.

CHAIRMAN—Wasn't the tender process predicated on unconditional offers?

Mr Mortleman—It was, and we said, certainly in the second phase, and I think in the first phase, that we could only submit a conditional offer, and the liquidator certainly did not discourage us, and I recall he encouraged us to submit conditionally in any event. I think he sympathised with the issues that we faced in terms of coming up with a proper valuation of the property.

By late January or early February 2000, basically we knew, or we were very much aware, that we had been gazumped on the project, firstly, following the minister's letter of 27 January and a further letter from the receiver of 4 February, indicating that we should deal with the minister directly and, I guess, leaked advice that perhaps someone else was in play. We endeavoured to set a meeting up with the minister or his department through a gentleman by the name of Robert Reid.

Mr SNOWDON—Who is Robert Reid?

Mr Mortleman—I think he is one of the minister's personal PAs or something. No meeting came about. We engaged a lobbyist to try and find out what was going on but, basically, we were going nowhere. On 10 February I met with Mr Kwon to see if there might be any mutual room in the project.

CHAIRMAN—That is 20 February 2000?

Mr Mortleman—Yes, and he was certainly at that time very confident of his position. On 17 February I had a further discussion with Mr Kwon. He said at that time that he'd met with the minister. His bid was proceeding. His offer was cash, unconditional, in excess of \$6 million, and indeed the only condition he required was a liquor licence. That didn't leave us too much room to move. We made a final attempt to re-enter the process sometime in mid to late March, when we became aware that Mr Kwon did not have the money to settle on the property at that stage, but did not really manage to get anywhere with it with the liquidator.

I guess we are a little curious about a few things. One is why Soft Star was not a subsidiary of APSC. We are certainly quite curious as to who financed the acquisition of Christmas Island Resort. I was approached by someone in Korea to see if we would finance it sometime in February, and I guess we are a little curious as to why there has been no application for a casino licence to date.

Just to conclude my submission—and I would like at the end, if I might, to mention some of the documents I wish to table, just the key points to them—we admit we knew this process was flawed when we went into it. We thought it would evolve to a situation of a tripartite negotiation and discussion and an outcome with someone. We hoped it would be ourselves but had no idea that that would be the case. But, quite frankly, with the way it ended up, the poorness of the result, we think the role we have played in this is pretty much one of assisting the liquidator to come up with some sort of price, and we think the costs that we have incurred should be charged as a cost of the liquidation.

I don't know quite where this inquiry goes to and what you can and cannot do, but we would certainly appreciate any support you can give, that perhaps what we have done and what we endeavoured to achieve in the best interests of the island, and ourselves, of course, might be at least compensated on a cost basis as a cost of the liquidation. Thank you.

Resolved (on motion by **Senator Watson**):

That the documents be accepted as exhibits to the inquiry.

Mr Mortleman—Two of the exhibits relate to submissions we made to Mr Kwon, which we would prefer not to go into a public record. Is that possible?

CHAIRMAN—Can you tell us what they are.

Mr Mortleman—Can I just run through them.

Senator WATSON—Mr Chairman, if the witness runs through the issues of the documents that he wants in camera, those comments cannot be in camera.

CHAIRMAN—You can't if you make comments.

Mr Mortleman—I am not worried about the comments, just the documents.

CHAIRMAN—As long as the documents themselves are not in the public record?

Mr Mortleman—Yes.

CHAIRMAN—That is okay.

Mr Mortleman—The first document I have submitted is a draft report prepared by Ernst and Young dated March 1998, which was provided to us when we visited the island, which establishes, at least in the draft report, a very strong argument that the appropriate tax rate for the island is a tax rate of five per cent. The reason I table that document is I would assume that

information was available certainly to the liquidator and to the Commonwealth government because it was made available to us. The second document is a copy of the letter I have referred to—the letter of 30 August 1999 from the minister to the liquidator—which has three very 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.

CHAIRMAN—That is the letter to Mr Jeff Herbert.

Mr Mortleman—That is right.

Mr SNOWDON—The first you saw of this document was when?

Mr Mortleman—When we visited the island to undertake due diligence, which was the period between the first and second tender—November.

Mr SNOWDON—The liquidator had not advised you of the contents of this document prior to that?

Mr Mortleman—No, he had not. When I called him and asked him about it he expressed some surprise at its existence. I think he had lost it.

Mr SNOWDON—Thank you.

Mr Mortleman—The third document is a copy of a letter of 24 December 1999 to the liquidator from our solicitors, specifying the matters we would like addressed in the licence and lease conditions. The fourth matter is a letter dated 7 January 2000 from the liquidator to ourselves, which clearly identifies, correctly, his understanding that the potential deal breakers for our tender were the tax rate per se and the minimum tax rate, as I have explained. The other matters were matters we would like addressed but they were not deal breakers.

A further document is the minister's letter of 27 January 2000 addressed to the liquidator, addressing our issues. Having read the previous submissions, I suspect when you compare page 5 of the letter provided to us with the one that Mr Herbert may have given you, you will see an omission on our letter but it is probably an appropriate one. I think it relates to discussions he was having with APSC at that time. Although, seeing as he did not notify us of the determination of the tender process until 4 February, it is a little interesting that he was entering into formal correspondence with the minister—I suspect—somewhat prior to that.

Another document is the covering letter to the minister's letter, dated 28 January from the liquidator to ourselves. It is not of great substance in its own right. I have further submitted a copy of a letter of 4 February from the liquidator to ourselves, declining to accept our tender; and a letter of the same date from the liquidator to the minister, asking if he would proceed in negotiations with us as to licence terms.

The final two documents include a letter from ourselves, dated sometime in March—I cannot remember the exact date—to David Kwon. We endeavour to follow through on discussions in reaching accommodation on an arrangement that would see the casino hotel opened and

proceeding at a somewhat earlier date than is being achieved at the moment. We emphasise, in following through our discussions, that we can probably accommodate his staff requirements for the APSC project and that we can provide an airlift.

The final document is a copy of the management proposal that was submitted to Soft Star. We first submitted it through Mr Woodmore, who we were discussing a relationship with in December 2000, to see if we could get back into the project. We then forwarded the proposal directly to Soft Star on 9 February this year. The significance of that document is that there was a clear undertaking given in that document that Winfair would provide an airlift or aviation to the island at cost, and it thought that it would probably best do this by using 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.

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. Thank you.

CHAIRMAN—Thank you, Mr Mortleman. Before I pass over to my deputy, Senator Crossin, could I ask you: how would it be possible to have the costs that you have incurred forming part of the payout from the liquidator when the liquidator would have closed off his books prior to those costs being incurred?

Mr Mortleman—I do not think the liquidator will have closed off his books at this time and I assume he is still incurring expenses. In the process of the liquidation he would incur a number of outside professional expenses. In a sense, it is a shame he did not incur an outside professional expense in getting someone involved in the process who knew something about casinos. But certainly I would hope that he might treat our expense as an expense of liquidation. It is my understanding that that cost would be recouped as a second ranking cost after direct staff salaries and wages. The third ranking cost for recoupment would be indirect staff and salary costs such as leave entitlements, superannuation and the like. The next ranking would be for secured creditors and the final ranking would be for unsecured creditors.

CHAIRMAN—Where does the Australian Tax Office fit in?

Mr Mortleman—I believe they line up with unsecured creditors under current arrangements. I think all taxation including local, federal and state taxation rank as unsecured creditors now but I am not 100 per cent sure.

CHAIRMAN—Have all funds been disbursed?

Mr Mortleman—I have no idea.

CHAIRMAN—Maybe we could find that out and see what funds are available, if any. Now I will pass over to the deputy chairman, Senator Crossin.

Senator CROSSIN—What conditions did you place on your tender at the time of your bid?

Mr Mortleman—We had a range of matters that we needed addressed. The key ones were a satisfactory casino tax rate and removal or minimisation of the minimum tax that was to be payable. There was another range of matters but none of them were deal breakers. That is evidenced by a letter from the liquidator to ourselves. I think I mentioned that letter was dated 7 January.

Senator CROSSIN—Those two matters you believe were minor and easily resolved?

Mr Mortleman—No, they were major. But the fundamental of them was addressed satisfactorily in a letter from the minister to the liquidator on 27 January. Basically in that letter I believe the minister said that he would agree to a tax rate of one or two per cent below the lowest applying in Australia. The lowest applicable tax in Australia is 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.

Senator CROSSIN—When did you become aware of this letter that he wrote to the liquidator?

Mr Mortleman—I think the liquidator sent it to us immediately, on the 28th. The liquidator's cover letter to us is dated the 28th.

Senator CROSSIN—What occurred between you getting that letter from the liquidator and then suddenly your offer being rejected?

Mr Mortleman—I think I was in Korea at the time and I may have received a call from the liquidator asking if we would go unconditional on our offer. 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. Had he asked me to increase the bid at that stage I would have also said no because there were too many variables still outstanding. I do not know what happened, but on 4 February 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.

Senator CROSSIN—Upon what decision did you then reduce your purchase price?

Mr Mortleman—There were a number of key things. When we went to the island to undertake due diligence, we found that the position of the Commonwealth leases and the casino licence was not as certain as we had hoped it might be. In particular, while the changes to the lease conditions were not necessarily all that fundamental—and I do not recall any of them being deal breakers—the manner in which they were presented to us was pretty unfriendly. We

knew we had a very difficult forthcoming negotiation with the casino licence and, quite frankly, it did not give us much confidence that it would be an easy negotiation.

Senator CROSSIN—Was the issue of the land being freehold ever raised with you or, if my memory serves me correctly, the issue of repairing the road or a particular beach access? Were those issues ever part of the discussions?

Mr Mortleman—The freehold issue came up when we were on the island. I am not sure whether it was raised with us initially, but while we were there we came across a letter from the minister to the liquidator—dated 30 August 1998 or whatever—that said we could freehold the site. We did not know how to deal with it because commercially it was difficult. The site lease still had a long period to run—90 years. The value equation between a 90-year lease and freehold is nothing; it was a peppercorn lease essentially. The Commonwealth revenue was coming out of the casino tax, not the site lease, and there was no valuation done as to what it was going to cost to freehold the site. We asked what it would cost for freehold.

We were attracted to freehold, of course, but we had no idea what it would cost. At that stage we could not deal with it, so we ignored it. We were not at all unhappy to proceed on a leasehold basis anyway. 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. When people buy a residential property, they tend to like it to be on a freehold site. For the hotel, casino and the commercial premises it was not really important. Once you have a lease for over 60 years, the difference in an actuarial evaluation between freehold and leasehold is minimal.

There was some talk concerning the fixing of roads and things. It was not a huge issue to us. We were more perturbed about losing control of the water supply to the council than anything else, because we did not know what they would charge us for water. We did not know what the commercial terms would be. Taking the road out was in our favour; we were quite happy about that.

Senator CROSSIN—Mr Mortleman, do you believe that there has been interference in the tender process by either the minister or his department?

Mr Mortleman—No, but I think that both the liquidator and the minister jumped at an opportunity to hop out of this by taking an unconditional cash offer.

Senator CROSSIN—How soon could you have had the casino up and operating?

Mr Mortleman—We were bidding at this stage at the end of 1999. We planned to have a soft opening before the end of 2000 and certainly be open for the Chinese new year in the following year.

Senator CROSSIN—Are you putting to us that you do not believe there was any interest at all in having the casino reopened; it was simply a position by this government that they wanted to sell it off basically?

Mr Mortleman—If they wanted to reopen it, they should have gone about it in quite a different way. They should have got the variables out of the equation, struck a commercial deal and run a bid. But that was not done. So I do not know.

Senator CROSSIN—Do you think there was never an intention to reopen the casino?

Mr Mortleman—I do not know if there was no intention or there was bad management, but it was one of the two.

Senator CROSSIN—Thank you, Chairman.

Mr ROSS CAMERON—Didn't you have the problem that the liquidator was under an obligation to dispose of the assets relatively quickly? Your view was that the assets really only had value in combination with a licence and the value of the assets depended to some extent on the tax treatment that attached to the licence. But the liquidator was not in a position to negotiate the tax outcomes, so that in effect a key dimension of determining the value of the assets was really outside the hands of the liquidator and that is what resulted in the involvement of the minister. Is that a correct reading?

Mr Mortleman—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 not been plenty of time to get that done and I do not think it is correct to say that that was not something which could not have been done in a round table session over two or three days.

Mr ROSS CAMERON—Is it your impression that there was a deliberate tardiness to resolve those issues because there was a lack of enthusiasm for the project?

Mr Mortleman—I think there was a lack of enthusiasm. I think the liquidator found it too hard. The task of preparing and issuing a casino licence and project is a very onerous task. 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 the employment and wanted the economic activity, also had a responsibility, and did not do so.

Mr ROSS CAMERON—The bid of the successful tenderer, APSC, though, included the redevelopment of the casino and the resort. Is that correct?

Mr Mortleman—I have no idea. All I know is that any approaches we have made to them along those lines have not been very successful. I must admit that, commercially, it has been difficult, because Mr Kwon has asked us to put up the money on each occasion, but he wants to keep the ownership.

Mr ROSS CAMERON—So you are saying that he has been willing to engage in commercial discussion about your participation in the development of the resort part of his project, but that he has not been prepared to do it on terms that are interesting to you?

Mr Mortleman—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 response is such that no professional commercial person would bother following through on it. So I do not know if he is not interested or if he is not capable, but he is one or the other.

Mr SNOWDON—Mr Mortleman, there are a number of issues I would like to explore with you, but the first one is this period after 27 January where you made a protest to the minister's office through Robert Reid. What exactly transpired there?

Mr Mortleman—I first called Mr Reid on 7 February. It seemed to be quite an encouraging call and I believed from that that there would be a meeting set up. Then it did not happen, and when I called at least once or twice further, I got the view it was not going to happen. Then we engaged the services of a lobbyist to try and uncover what was going on and, quite frankly, we were going nowhere and Soft Star was going everywhere.

Mr SNOWDON—In relation to Soft Star, when did you first become aware that they were involved in separate negotiations with the liquidator?

Mr Mortleman—Certainly we knew by 10 February, and I think it was during the first week of February that we got some information that that was occurring.

Mr SNOWDON—So in December and January when you were talking to the liquidator you had no knowledge of his concurrent discussions with Soft Star?

Mr Mortleman—Absolutely none, although the liquidator did say at times that he was keeping his options open.

Mr SNOWDON—Had you been aware of his discussions with Soft Star in December and January, would that have made any difference to the way in which you had approached the negotiations? Well, let me ask you another question first. Do you think it was appropriate that he should be actually negotiating with another party outside of the tender process?

Mr Mortleman—I think it is a little rough.

Mr SNOWDON—Well, I think it is bizarre.

Mr Mortleman—I do not think it is illegal, but I do not think it is very appropriate.

Mr SNOWDON—It is hardly a level playing field, is it?

Mr Mortleman—Not at all. 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 require 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.

Mr SNOWDON—This is probably a question which calls for speculation, but I am interested in how Mr Kwon came to the price he came to, just marginally above your bid and—on his own admission—with no experience in casino operations or hotel management, on his own admission having no due diligence of how it would operate as a casino. Could you just outline your experience in the casino industry. Perhaps that might be a start.

Mr Mortleman—Certainly. I have been involved in casino bids for the last 10 years. I started my involvement by being in the New South Wales government, on a selection committee for Darling Harbour—one of its earlier rounds. Through the private sector, I participated in many bids in Australia and in New Zealand, probably 10 or so in total. 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 organisations 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.

Mr SNOWDON—When you were going through this bid process you clearly had in mind a development plan for the casino and its operation.

Mr Mortleman—Winfair had, and still is pursuing, a broad plan throughout Asia to purchase hotels and to develop boutique resort properties. They have been, and still are, negotiating on properties in Bali, in Indonesia. They have had a licence to operate aircraft out of Jakarta for some time. They have a licence and operations in Singapore. We envisaged the potential to bring Christmas Island into a network of resort properties which would be marketed as resorts rather than casinos, to bring some good business in. Within the island itself we had concepts but we had no developed plans to expand the resort and hopefully to find a way to put further development on the property. I must say in that regard we had very little encouragement from anyone as to the ability to develop anything on that property; in fact, quite the contrary.

Mr SNOWDON—So in terms of that plan, you obviously contemplated how you would use a 727 and where it would fly from.

Mr Mortleman—Yes, we did. We still envisaged a lot of the business coming out of Indonesia. I know a lot of people are sceptical about the ability to get business out of Indonesia. We are not so sceptical. People are sceptical that, because there are illegal casinos operating in Indonesia at the moment, we will not get any business out of there. It would seem to me that if there are illegal casinos operating there, we are far less likely to have our business stopped than was the case previously when there were no illegal casinos operating.

Mr SNOWDON—In terms of that business plan you had, how quickly after you had purchased the property would you have had these 727s flying, would you think?

Mr Mortleman—We would have been up and running by the end of the year. A large part of the time in that process was an assumption of six months for probity clearance, so if that process could have been shortened, we would have been quicker.

Mr SNOWDON—In the context of the casino licence arrangements, what was your understanding of what you would be entitled to on the transfer of the lease?

Mr Mortleman—Sorry, I do not quite understand.

Mr SNOWDON—When you purchased the lease or when you purchased the casino, what was your assumption in terms of the lease conditions which would apply to the casino or to the site?

Mr Mortleman—It was made pretty clear to us that the road would be excised. We did not have a problem with that. It was made pretty clear that we would probably lose the water. We did not like that, but we did not have a major problem with it. The question of access to Waterfall Beach or whatever was a bit vague. We thought we would have to provide emergency access. We did not have a problem with that. We were not particularly keen on providing full-time public access simply because of disruption to the resort. That is about the extent of it, I think.

Mr SNOWDON—In terms of the conditions of the casino licence, what was your understanding of what would transpire after you had purchased the resort?

Mr Mortleman—We would not have purchased it without having the casino licence terms specified. We assumed that we would either have a licence or an agreement for a licence at the time of settlement and conclusion and that we would have been through probity following that process. There is little point in going through probity until you know what the licence conditions are and you are going to accept them.

Mr SNOWDON—Are you aware, or have you subsequently become aware, of what the situation was in 1987 or 1988 when the original casino was developed?

Mr Mortleman—I am generally aware of it, but I cannot recall the detail.

Mr SNOWDON—Are you aware that they were guaranteed access to a licensing process?

Mr Mortleman—No, but it does not surprise me.

Mr SNOWDON—It would be appropriate, would it not, if I were to sell a casino in this manner, to say that I would guarantee you a licence provided that you pass through the processes of probity?

Mr Mortleman—Of course. That was fundamental to the project.

Mr SNOWDON—Which is what happened in the original sense.

Mr Mortleman—Of course. It happens in all casino bids.

Mr SNOWDON—So it was rather unusual not to be guaranteed access to a licence?

Mr Mortleman—It was ridiculous. But we assumed that the licence must flow and we conditioned our bid that there would be licence on satisfactory terms. But never in our wildest dreams did we think there might not be a licence.

Mr SNOWDON—No.

Mr Mortleman—Otherwise we would to have bothered.

Mr SNOWDON—Right. So were you operating on the assumption that there was a condition precedent from the Commonwealth's point of view that this property would operate as a casino and hotel?

Mr Mortleman—Essentially, yes. But perhaps we saw no option but for it to do so.

Mr SNOWDON—Yes, because you wanted to raise revenue.

Mr Mortleman—Exactly.

Mr SNOWDON—And it was a business proposition.

Mr Mortleman—Yes. I think at that time we also knew the property had been flogged around for a hotel and had had not gone anywhere.

Mr SNOWDON—Yes.

Mr Mortleman—And the documents, all the invitation documents, read casino all over. There are just a few little words there saying you will have to apply for a licence separately.

Mr SNOWDON—Yes.

Mr Mortleman—You know, the number of blackjack tables, all the financials in the back had it operating as a casino, not as anything else.

Mr SNOWDON—Yes. Are you somewhat surprised that it is not operating as a casino currently?

Mr Mortleman—I guess it has been bought for a different purpose. Yes, I am surprised. Even if it has been bought for a different purpose, I do not know why it is not operating. It does not make sense to me.

Mr SNOWDON—Could you outline to us your understanding of what the probity issues are in the obtaining of a licence for a casino generally?

Mr Mortleman—Yes. Firstly, there is 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 being 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, et cetera. That generally runs to a 200 or 300-page document. It also involves checks that are conducted, I think, through the Federal Police, through Interpol, into individuals' backgrounds.

Mr SNOWDON—You would have been quite happy about all those processes.

Mr Mortleman—Of course.

Mr SNOWDON—Do you still have a view that the casino on Christmas Island or the resort casino could operate profitably as a casino?

Mr Mortleman—Yes, although it would be impossible without an air lift. It is quite difficult without a broader infrastructure to support it, such as we had planned. But certainly the plan that we had, we believed, would have provided for certainty of viability.

Mr SNOWDON—Right. I think you stated earlier that you had a view that the Commonwealth ought to have had some regard for the employment and economic spin-offs that apply.

Mr Mortleman—Exactly. The maximum economic benefit and the maximum employment benefit comes about from that property operating as a casino resort. The Commonwealth has the licence. 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 a creditor, so presumably it has responsibilities to itself in that regard.

Mr SNOWDON—And you would anticipate they would be looking forward to the tax revenues they might raise out of a casino.

Mr Mortleman—I would think so, yes.

Mr SNOWDON—Just speculating, what sort of turnover, through the casino itself, would you be after to get a six per cent tax of the type you described?

Mr Mortleman—Around about \$100 million a year or more.

Mr SNOWDON—How much of that would be gambling turnover—the lot?

Mr Mortleman—That is virtually all gambling turnover, certainly 90 per cent of it.

Mr SNOWDON—Are you aware of the money which was going through the place in 1994 and 1995?

Mr Mortleman—Yes.

Mr SNOWDON—What is your understanding of how much money went through the place at that point?

Mr Mortleman—I would have to check my records. I think the first year did about \$120 million. I am sorry, I cannot recall.

Mr SNOWDON—But it was very profitable.

Mr Mortleman—Yes, it was good; it was great.

Mr SNOWDON—How would you summarise your view of your organisation's experience with this tender process?

Mr Mortleman—What do we think of the process?

Mr SNOWDON—Yes.

Mr Mortleman—We think it was flawed. We think this process should have concluded with a tripartite discussion and negotiation between the Commonwealth liquidator and the preferred tenderer—whoever that might have been—and a casino resort should now be operating there. But it never got there.

Mr SNOWDON—I am not involved in commercial law, but it smacks to me a bit of insider trading.

Mr Mortleman—I have no idea. I do not know if it was insider trading. I think it was easiest way out.

Mr NEVILLE—What do you mean by 'easiest way out'?

Mr Mortleman—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 are associated with getting a casino resort project up, it was easier to take the cash and drop the benefits.

Mr NEVILLE—You said you believed there had been a lack of confidentiality between the time of your first bid and the second and, in your experience, that had not happened elsewhere in negotiations. What did you attribute it to? I think you used some expressions like—

Mr Mortleman—Firstly, this committee structure involved with the liquidation which I guess has to be consulted. I guess, in this case, the Commonwealth probably had to be consulted. 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.

Mr NEVILLE—You just think too many people had access to the price.

Mr Mortleman—I think too many people had access to the price but, quite frankly, I do not know that the price is so much the problem here.

Mr NEVILLE—Not so much the price but the narrowness between the two prices.

Mr Mortleman—Yes, as I mentioned earlier, Mr Kwon told me on 17 February that he had bid in excess of \$6 million for this property, and that it was on a cash basis. He ended up at \$5.7 million: maybe he is just a good negotiator, I am not sure. But I feel the shame of this process is that the price should not have been \$5.5 million or \$5.7 million, it should have been up around the \$8 million to \$12 million mark. That was certainly our early assessment of the price, and we discounted it for risk—not risk of business, risk of process.

Mr NEVILLE—So that was the main determinant in you dropping your price?

Mr Mortleman—Yes, that was the major determinant.

Mr NEVILLE—But you could not get any security?

Mr Mortleman—We could not get any security. We could not get a value. Quite frankly, we dropped our price down to what we thought might clear a hurdle. Without the licence conditions being certain, we could not value the project. I will tell you how we came up with our price, if you like?

Senator WATSON—What was your final price?

Mr Mortleman—Our final price was \$5.5 million.

Senator WATSON—The same as what was accepted?

Mr Mortleman—It was \$5.7 million, I think.

Senator WATSON—Yes.

Mr Mortleman—We basically looked at what we thought was needed to perhaps get over the line into discussions on the project. We looked at key creditors that were outstanding. We looked at what the liquidator would need to cover his position. 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.

Mr SNOWDON—What was your estimate of how much you would have to invest in the property to get it up to scratch?

Mr Mortleman—We looked at a staged development. We wanted to get up and running very early in the piece and get the facility open and progressively develop it. A full refurb and makeup we estimated would cost \$27 million. We did not intend to spend all that money at the outset, but I think we budgeted on about a further \$10 million on top of purchase cost—something of that order—to get the place open. That was without a junket/working capital provision.

Mr SNOWDON—Let's go back, if I may, just for a moment. After 27 January we have the process of you establishing contact with the minister's office. You have met with David Kwon. David Kwon has indicated a \$6 million offer. Subsequently, presumably, there have been discussions with him and someone, and presumably the minister's office, because the minister's office seems to be aware of it all, and yourself. Now, the minister's office would have been aware of your price?

Mr Mortleman—Not from me, but presumably from the liquidator. I had no discussions with the minister's office at all, except on the couple of occasions that I called Mr Reid to try and set up a meeting.

Mr SNOWDON—What was your advice, via the department, in terms of these processes?

Mr Mortleman—I had really no discussions with the department. My solicitors had discussions with the department in terms of getting lease documents and that sort of thing but, as I mentioned, 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 to be developing a satisfactory commercial scenario for someone else to have.

Mr SNOWDON—Yes.

Mr Mortleman—So 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 would 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. We got gazumped on it.

Mr SNOWDON—You said you were curious as to why Soft Star was not a subsidiary of APSC. Why that curiosity?

Mr Mortleman—Well, why wouldn't it be? It is supposed to have the same principles. Can I address that in camera?

Mr SNOWDON—Yes, that can be arranged if you need to do that.

Senator WATSON—No, I object.

Mr SNOWDON—No, we can move to go in camera.

Senator WATSON—It is up to the chairman. I am reluctant to take any evidence part-way through in camera. I have had too much adverse experience from it.

ACTING CHAIR (Senator Crossin)—It is not unusual, Senator Watson, that somebody would leave a section of their evidence and go in camera at the end of their evidence.

Senator WATSON—We are taking some documents in camera. I suggest the information be put in those documents.

ACTING CHAIR—I cannot see why we would not give Mr Mortleman the chance to present some oral evidence in camera. It is not an unusual precedent, and it occurs in a number of committees.

Senator WATSON—Well, just based on objection—that is all.

ACTING CHAIR—We will clarify that.

Mr NEVILLE—Perhaps leave it to the end of the evidence. I have a couple more questions, Madam Chair.

ACTING CHAIR—We will finish the questions, and then we will give Mr Mortleman the chance to provide that evidence in camera as his final evidence before he leaves us today. Mr Neville.

Mr NEVILLE—Given its reasonable profitability, until it got into difficulties—it means it must have been kept in some sort of reasonable condition—and given that you were only going to pay \$5.5 million for it, what would lead you to spend \$27 million on it? What are the main elements of that? That is five times your initial investment.

Mr Mortleman—The residential component of the complex—that is, the rooms—required a full refit from top to bottom, airconditioning, services, carpets, wall treatments, et cetera. Some of them could be restored for a few more years of work but basically they were in need of a refit. The roof of the entire complex is corrugated iron, and the builders had used steel nails and they were rusting out. The roof could be coated and protected for perhaps another five to seven years, but it was eventually going to have to be replaced. That was a massive cost. There was salt corrosion in certain parts of the structure, particularly in the structural members near the vents at the top of the building, and it is very susceptible to corrosion obviously, and a lot of poor materials had been used. There was full replacement of plant and equipment—kitchens, et cetera—in that number. That is not an unusual amount to spend on a resort of that size, and it is approaching that period where it is due for a decent refit anyway. You are quite right in saying that that number is more important than the \$5.7 million or the \$5.5 million but unfortunately that number at the bottom is the one that residualises out of all this, and it can get very small. In fact, it can go down to nought quite easily.

ACTING CHAIR—Senator Watson, do you have any further questions?

Senator WATSON—No.

ACTING CHAIR—We invite Mr Mortleman to present his final submissions to us in camera for five minutes.

Senator WATSON—Could I have my objection recorded?

ACTING CHAIR—I would ask people to leave the room, please.

Evidence was then taken in camera, but later resumed in public—

[11.30 a.m.]

MORAN, Mr Michael Arthur, Principal Lawyer, Legal Group, Department of Transport and Regional Services

MRDAK, Mr Michael, Acting First Assistant Secretary, Territories and Regional Support, Department of Transport and Regional Services

THOMPSON, Ms Janet Margaret, Senior Lawyer, Legal Office, Business Services and Strategy Group, Department of Transport and Regional Services

TURNER, Dr Andrew, Assistant Secretary, Non Self-Governing Territories, Territories and Regional Support Division, Department of Transport and Regional Services

ACTING CHAIR—Although the committee does not require witnesses to give evidence under oath, you should understand that these hearings are legal proceedings of parliament and warrant the same respect as proceedings of the parliament itself. Giving false or misleading evidence is a serious matter and may be regarded as contempt of the parliament. Are there any corrections or amendments to any of your submissions today?

Mr Mrdak—No, Chair.

ACTING CHAIR—The committee prefers that evidence be taken in public. If you wish to give confidential evidence to the committee, you may request that the hearings be held in camera and the committee will consider your particular request. Before we go to questions, do you have any opening statements?

Mr Mrdak—Not particularly. I would just mention for the committee's information that over the weekend the government made a major announcement in relation to Christmas Island. I would like to, for the committee's record, circulate a number of media statements that have been released by the minister in relation to the future of the space launch facility on the island. I would like to table those and distribute them to the committee.

ACTING CHAIR—Thank you. Mr Mrdak, we also have a joint media release distributed by Senator Minchin and Senator Ian Macdonald on 24 June.

Mr Mrdak—In addition to those, Senator Ian Macdonald issued two press releases over the weekend specifically in relation to Christmas Island and northern Australia on the project itself.

ACTING CHAIR—Thank you.

Senator WATSON—Do you know the source of finance for the casino proposed project, the alternative offer?

Mr Mrdak—From Soft Star?

Senator WATSON—The source of the Korean funds.

Mr Mrdak—No, I do not.

Senator WATSON—Has the question ever been asked?

Mr Mrdak—Not that I am aware of.

Senator WATSON—Is where the funds come from significant?

Mr Mrdak—Not for us. 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 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.

Senator WATSON—Did you have any doubts about the financing of Mr Mortimer's proposal?

Mr Mrdak—We were not involved in any of those issues. As I say, it was a commercial liquidation process. It was really a matter for the liquidator to be satisfied that the parties offering to purchase the casino resort had the financial resources to meet that.

Senator WATSON—Given the delays in selling or disposing of the property, were you surprised at the final decision?

Mr Mrdak—We were not aware of any of the bids being made in the tender process. The first that the department was aware of actual tender prices was when we saw the submission from the liquidator to this committee. We were not really involved at that point in terms of the bid prices or how financially sound they were. The Commonwealth had clear statutory responsibilities in relation to the lease. Obviously the minister was involved in that and the issues relating to tax policy and the like. I am not aware that the Commonwealth was involved in issues of ascertaining the financial viability of the bids.

Mr NEVILLE—No doubt you would be aware from his submission that Mr Mortleman talked about investing \$27 million in refurbishment. Were you aware of that as part of the negotiations?

Dr Turner—Not until we saw his submission.

Mr NEVILLE—But you were aware—

Dr Turner—We were not aware at the time. At least, I was not aware at the time of the specifics of \$27 million.

Mr NEVILLE—They didn't mention that in their contact with the department?

Dr Turner—We could check the records but I have no recollection of the specifics. There was a meeting with officers of the department, with some discussion of their investment intentions, but I do not remember specifics of \$27 million being mentioned.

Mr NEVILLE—Did you have similar discussions with Mr Kwon?

Dr Turner—I cannot remember any discussions with Mr Kwon.

Mr NEVILLE—Did he make any indication of upgrading the facilities?

Dr Turner—I cannot now remember the sequence of events but at various times there were public statements made about the intention to reopen the resort and the casino. I have no recollection of a specific sum of money being talked about.

Mr NEVILLE—No money?

Dr Turner—I have no recollection of a sum of money being mentioned.

Mr NEVILLE—We are led to believe the thing is partially run down. If we want to open this in the interest of the island and broadly in the Australian national interest, how would we approach something like that? If we want a resort and a casino that is going to enhance the viability of Christmas Island and is going to be an income stream for Commonwealth taxation and the like, wouldn't we want to know—quite apart from the purchase price—what was going into that operation? Did we seek any indication from either of the tenderers?

Mr Mrdak—As part of the tender price they would have made some judgments about what they would need to expend in relation to bringing the casino and the resort back up to the standard that they felt warranted their marketing plans. I am not aware that it was explicitly something the Commonwealth sought or was involved in. As I read the records, the Commonwealth was looking very closely at its statutory and legal responsibilities at this point and obviously had a close eye in what the economic development opportunities would be for the island. But it also recognised that there was a commercial liquidation process going on that had to be first gone through. I think much of those sorts of issues would be issues that would be taken up—

Mr NEVILLE—I accept that. I just find it interest that, looking at before it got into difficulty, its potential earning capacity and what it could return to the island community, and tourism for Australia and for the national interests broadly were not probed in either of the tenders. We have seen a lot of these sorts of things where someone who wants to be exploitative comes in and buys a resort, tizzes it up, bleeds it for five or six years and then walks away again. How do we know that wasn't going to happen?

Mr Mrdak—My understanding is that the casino is in a reasonably ready position to reopen, subject to the market opportunities. My advice from Soft Star is that the casino, should the market be there, could be reopened relatively quickly. It is really a commercial decision in terms of the facility itself.

Mr NEVILLE—You are spot on. It could be opened fairly easily but at what level of expertise and ongoing viability? That is the first question. We have established that there was not, at least at your department's level, much probing of what was going to be investigated.

Mr Mrdak—That is my understanding.

Mr NEVILLE—What sorts of checks did you on the directors and the various funding arms of the two tenders at various times? Did you seek profiles of the directors and so on?

Mr Mrdak—I would have to take that on notice.

Dr Turner—I do not think we did. I cannot comment on what the liquidator may have done. It was the liquidator who was responsible for the disposal of the asset.

Mr Mrdak—If I may take it on notice, we will check our records and see what examination was done. At this stage, from my examination of the information before me, I am not aware that the department did go into that examination of the bona fides of the company.

Mr NEVILLE—But wouldn't that be fundamental to a thing like this, something offshore, something where there was a commercial interest for the island involved? Wouldn't we be looking for an ongoing viability, and with casinos in particular, given that there is an amount of international criminality around to do with casinos? I am not talking necessarily about licensed casinos but various groups, without mentioning them by name, China and Italy and the like, that have had a reputation over the years for getting involved in those things. We in no way probed the sorts of directors and companies that might be involved in those two quotes.

Mr Mrdak—Certainly in relation to the casino operations, it was made quite clear by the start of the process to the liquidator and to the tenderers that there was no casino licence on the table at this point, that what they were purchasing or looking to purchase was the facility, and then they would have to undertake a casino licensing process under the relevant ordinances which apply, and that contains all of those checks that are done on parties to meet the fit and proper—

Mr NEVILLE—But, in the world of reality, who would do that without some sort of at least tacit understanding that a licence was going to be granted? Why would you go and buy what we now believe was a partially run down resort or super motel on an island, with no certainty of receiving a licence?

Mr Mrdak—On my understanding of the way in which these operate, often the people who own the facility are not necessarily operators of the casino.

Mr NEVILLE—I understand that.

Mr Mrdak—They bring in casino operators. I think in a lot of these cases that they would then contract a casino operator which to my understanding had been the case when the casino had been operating previously, that Casino Austria and others had operated the casino, and in terms of the surveillance and the fit and proper person, they are the persons who are then assessed for the people for the casino licence.

Mr NEVILLE—You are saying that that process would not have taken place until you got to the licence issuing stage?

Mr Mrdak—That is right. Essentially, you have a liquidation of the physical assets, and that was following its process. In terms of those questions about the fitness and properness of operating a casino and the financial viability of the casino operator, we were not in a position to make any judgments because we had received no applications for licences at that point, and we really could not consider that. Right at the expressions of interest stage, the liquidator did seek advice from the Commonwealth about how we would undertake a licensing process, and my understanding is that the advice that went back to the liquidator at that point—it was disseminated to tenderers—was, ‘Here is the statutory requirement.’ There is a Casino Surveillance Authority which would then judge applications as to whether they would meet our requirements, but we obviously could not prejudge that in advance of formal applications being submitted.

Mr NEVILLE—Was there any committee between the various departments for assessing this and discussing these broad issues?

Mr Mrdak—Principally, our department is the department that has responsibility in relation to the territories. Were there issues in relation to tax and other matters then, obviously, we would have consulted with Treasury and Finance and the like when it came to that. Certainly, in relation to those matters, the minister had referred in his correspondence to the liquidator that where issues were in relation to tax rates they were matters that he would have to be discussed with his colleagues, particularly the Treasurer and Minister for Finance.

Mr NEVILLE—Did that happen?

Mr Mrdak—No, not at that point.

Dr Turner—I have no recollection of a committee as such, but there were telephone conversations and correspondence between ourselves, Finance and Treasury, from memory.

Mr NEVILLE—Would it be fair to say there was a lack of rigour at all levels on this? We have heard evidence today that there was a lack of rigour by the liquidator. We heard Mr Mortleman saying that everyone was finding it too hard, that there was no committee examining what the tax rates might be, there was no liaison with the licensing-issuing people. Wasn't it all just a little bit flippy-floppy?

Mr Mrdak—No, I wouldn't say that. I cannot comment on the liquidation process and the process undertaken by the liquidator. He has made a detailed submission and given answers to the committee and he has legal obligations as a liquidator, but certainly from the department's perspective I would not agree that there was no action being taken. There was quite a degree of liaison between ourselves and the Casino Surveillance Authority in relation to matters. There was also advice being given by the department at all stages in relation to the legal areas where we had responsibility. As I say, I think there are some issues here in relation to the liquidation process vis-a-vis government statutory processes, but I would not say that a proper process was not being followed.

Mr NEVILLE—I am not talking about process. I am talking about the rigour to make it happen. Everyone can stand behind their processes ad nauseam and nothing can happen if the various interlinking mechanisms do not occur. It just seems to me that this thing has drifted for so long that it lacked some sort of rigour or some sort of determination to make it happen, and to do that you needed to involve various levels. I just find the lack of information that was sought by various departments a little bit on the light side, quite frankly.

Senator WATSON—With respect, isn't it dependent on how the process was envisaged? For example, as I understand it, it was the sale or lease of some premises, real estate, followed by a consideration, maybe, of a suitable applicant to run a casino. To me, the previous witness seemed to be saying that the process should have been trying to sell a casino rather than sell real estate, so it was a failure to acknowledge the process, as I say, which was essentially one of—after a lot of protraction—trying to sell some real estate and then maybe, as a secondary consideration, establish a casino. That is where I felt the logic of the previous witness was astray in that he did not understand the essentials. He felt it was a process of selling a casino licence and at that stage he tried to get the best deal he possibly could, whereas what was set up and what the liquidator was required to do was to sell and get the best price for a piece of real estate.

Mr Mrdak—I think that is correct, in relation to the correspondence.

Mr SNOWDON—That is bizarre.

ACTING CHAIR—That is not correct.

Mr SNOWDON—The original ordinance says that with this property, the premises shall only be used for the purposes of a hotel casino et cetera. The original lease documents say something similar. Letters from the minister to various persons say that the premises are to be used only for a hotel casino and ancillary purposes. There can be no doubt what this land was to be used for. It was not just to sell off property. I am absolutely astounded, frankly, by the attitude of the department. When was the department aware of the change in tax regime? The August letter says eight per cent, \$2 million minimum. The January letter says six per cent. What happened in the meantime? Who made the decision and how was it made?

Ms Thompson—There is no decision. There is no rate at the moment.

Mr SNOWDON—With great respect, the correspondence says—and we have seen it, we have been given copies of the correspondence now.

Ms Thompson—There is no rate, because the rate was set in the agreement with Christmas Island Resort, and that agreement is no longer in force. It is not written anywhere in legislation, so it is open for negotiation.

Mr SNOWDON—I am aware of that. I was involved in some negotiations in a previous life. What I am trying to establish here is that we had an offer from the Commonwealth, effectively, of eight per cent with \$2 million minimum, and then six per cent in January.

Mr Mrdak—My understanding of the record is that the minister's letter of 30 August 1999 proposed a casino licence fee be \$2 million or eight per cent of gross profit, whichever was higher, plus the community benefit fee. In the letter from the liquidator on behalf of ComsWinfair was raised their proposal for a lesser rate, and the minister in his response indicated that he would be prepared to consider a lesser rate; however, he would need to consult his colleagues, the Minister for Finance and the Treasurer. Therefore, as Ms Thompson has indicated, there was no final agreement reached on that, but certainly what changed was the approach coming back from the liquidator on behalf of one of the tenderers, seeking a lower rate than the minister had foreshadowed in the original—

Mr SNOWDON—What rate was agreed to with Soft Star?

Mr Mrdak—No rate has been agreed because there has been no application for a casino licence.

Mr SNOWDON—Doesn't it strike you as slightly bizarre? What is the Commonwealth's interest here?

Mr Mrdak—From my reading of the record, from the start the Commonwealth has been very concerned about the economic downturn on the island since the closure of the resort, and it certainly did see the resort as a major economic stimulus. However, there was obviously the legal process in relation to liquidation of the assets which had to be observed, but there is no doubt that the record reads that every effort was being made by the government to try and have a positive outcome on completion of the liquidation and sale process, with a view then to the resort opening.

Mr SNOWDON—How do you view the position that the liquidator can obviously be negotiating with a third party outside the liquidation process, with the full knowledge, I imagine, of the department and the minister?

Mr Mrdak—I cannot comment on that process. My understanding of the record is that the liquidator reached a decision to terminate the tender process. As he outlined in his submission to the committee, he reached the view that because all the bids were conditional he terminated the tender process and then sought to negotiate with individual parties. My understanding is that it is his legal right to do that. We could not comment on that, obviously. That is a matter for him in his obligations as a court appointed liquidator. The documentary record that we have provided to the committee shows that the minister was sounded out and then advised that the liquidator was negotiating with another party. That is a matter for the liquidator, not for the Commonwealth.

Mr SNOWDON—When was this?

Mr Mrdak—In the liquidator's letter to the minister, I think, of 14 January.

Mr SNOWDON—Which is prior to him sending the letter saying the process had been terminated?

Mr Mrdak—I would have to check the record on that.

Mr SNOWDON—It is. So in January the minister and the department become aware that there is a process going on outside of the formal liquidation process.

Mr Mrdak—Certainly at that time he asked the view of the minister in relation to a party that he may have been negotiating with. But I would have to check the record as to whether we were aware at that stage that he had terminated the formal tender process.

Mr NEVILLE—My colleague from the Northern Territory has probably come to the point that I was trying to drive at. Given the historic connection between the resort and the casino, given the relative isolation of the island, a resort being purchased as a resort without the certainty of a casino licence would be very remote and you would have to concede that anyone buying that without some sort of certainty would be buying a very benign investment. When the focus was to get it up and running for the benefit of the island, the benefit of employment and a taxation flow to the Commonwealth, I cannot understand why the linkages were missing.

Dr Turner—I can provide some background on that issue. It was always a very complex process in which we had to be mindful of the legal roles assigned to different people within the statutory framework and within which we had to operate. Essentially, the liquidator was appointed by the court to dispose of the assets of the company. 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. That left the liquidator in a difficult position. The government's position throughout the whole 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.

Senator WATSON—Because the process had been set in train by the court?

Dr Turner—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.

Mr NEVILLE—You are saying that at no stage of the process was there any negotiation between the liquidator and the Commonwealth about the licensing of the casino?

Dr Turner—The liquidator asked us questions—which I am sure are canvassed in his oral evidence and his submission—on a number of occasions. They were attempting to establish questions of fact, to define the asset that he was disposing of.

Mr NEVILLE—For example, if some loony sect had wanted to buy that as a cheap motel to run their activities, the Commonwealth would not have had any worries about it?

Dr Turner—I think what we might have worried about and what we could have done about it would be two different things. We may well have worried about a number of things, but what we could do about them—

Mr NEVILLE—We might have had a very clear idea of what we wanted, at the end of the process. Notwithstanding the separation between the court ordered processes and the Commonwealth's processes, we all had a very clear idea of where we wanted to go in the end, didn't we?

Dr Turner—The minister always had, at the end of the process, to approve the transfer of the lease, but the criteria on which he could base that decision were very severely constrained. We were aware all through the process that at the end the minister had to approve of the transfer of the lease.

Senator WATSON—From your perspective, why did the previous operator fail? Obviously there were economic problems in Indonesia, they had problems with the air link, a high level of junket business.

Mr Mrdak—That is my understanding, that the market on which the casino had been dependent was the high-roller market from Indonesia and that market, through a combination of political and economic factors in Indonesia, effectively disappeared overnight. What has been put to me is that it was a very targeted casino, it had a clearly defined market. It is not like most of the casinos which operate in Australia which look at a small turnover in terms of individual patrons. They were clearly targeted to a high roller of a particular market.

Senator WATSON—Have those economic circumstances changed in the intervening period?

Mr Mrdak—The evidence from a number of people before this committee, on the island and this morning, is that it has not at this point. I do not know anything about the casino operators, but that is what I have gathered from reading the evidence to the committee at this point.

Mr SNOWDON—Presumably you have asked Soft Star when they intend to open the casino?

Mr Mrdak—I understand that Mr Kwon, during the announcement of the space launch facility on the weekend, has announced that he will be reopening the resort and, in fact, that is referred to in the minister's media statement.

Mr SNOWDON—Was he asked about the casino?

Mr Mrdak—I was not at the launch so I cannot comment as to how far he went. He talked about the reopening of the resort.

ACTING CHAIR—What is the time line for the opening of the resort?

Mr Mrdak—I am not aware of that. We would be seeking information from Mr Kwon about that. He did make an announcement on Friday, but I have not seen anything more detailed than that.

Mr SNOWDON—The original lease under 3(b) says 'to use the premises only for the purposes of a hotel casino and ancillary bar.'

Ms Thompson—Or any other thing approved by the minister.

Mr SNOWDON—I understand that, but the minister has not approved of anything. I want to get this very clear. This property went into liquidation with this lease in existence. There was no indication from the minister, was there, that he would contemplate another purpose?

Mr Mrdak—No.

Mr SNOWDON—Therefore, none of the purchased property went into liquidation with this lease in existence. There was no indication from the minister, was there, that he would contemplate another purpose?

Mr Mrdak—No.

Mr SNOWDON—Therefore, none of the purchasers would have been in any doubt that what they were purchasing here was a hotel casino.

Mr Mrdak—Or use permitted by that lease.

Mr SNOWDON—I understand that. But we understand what we are talking about here: this is a casino.

Mr Mrdak—Well, a resort which had operated with a casino, but with the clear understanding, as Dr Turner has indicated, that there was no licence for the casino.

Mr SNOWDON—I understand that. But there was an expectation that whoever purchased it would get a licence.

Mr Mrdak—I could not comment about an expectation. There was clearly a process set out for the tenderers as to how they would go about applying for a licence in the event that they wished to do so.

Mr SNOWDON—No, hang on. Let us go back here. Are you telling us that there was no intention from the Commonwealth that this be opened as a casino?

Mr Mrdak—No, I am not saying that at all.

Mr SNOWDON—What are you saying?

Mr Mrdak—What I am saying is that quite clearly there is a purpose clause in the lease which you identified.

Mr SNOWDON—Was the Commonwealth prepared to guarantee them a right to have access to the application for a casino licence?

Mr Mrdak—I do not think the Commonwealth could do that. There were statutory obligations to meet in getting a licence. Obviously the Commonwealth cannot prejudge those processes.

Mr SNOWDON—I am not suggesting that. I am saying that the Commonwealth presumably can say, ‘We will not stop you. We would be proposing that you actually go and apply for a casino licence.’

Mr Mrdak—Yes, it was clear. We outlined to them how they would go about applying for the licence.

Mr SNOWDON—Does the Commonwealth have an interest in determining whether or not any of the applicants or any of the tenderers had a business plan for the operation of the casino or a hotel?

Mr Mrdak—Not that I am aware of. As I say, the Commonwealth did not delve into that aspect of their operations. That was a commercial matter with the liquidator.

Mr SNOWDON—So when the discussion was taking place between the man from Soft Star, Mr Kwon, and the Commonwealth about his intended use, was there any discussion with him about operating as a casino?

Mr Mrdak—My understanding is that negotiations were between Mr Kwon and the liquidator, not with the Commonwealth.

Mr SNOWDON—But there were discussions, were there not, between the minister’s office, the minister and Mr Kwon?

Mr Mrdak—I would have to take that on notice. I am not aware of that.

Dr Turner—There were some discussions. I am not quite sure of the sequence of events, because we were not controlling them. There were discussions between the liquidator and Mr Kwon. At some stage they entered into an agreement and at some stage there were discussions involving the minister. My recollection is that the discussions between Mr Kwon and the minister followed the original signing of an agreement between the liquidator and Soft Star, but I cannot be absolutely sure of that.

Mr Mrdak—We will take it on notice, if we can.

Mr SNOWDON—When the original lease was granted, there was a casino licence, where the Commonwealth agreed to grant the developer a casino licence, subject to—

Ms Thompson—the ordinance.

Mr SNOWDON—So why wouldn’t the Commonwealth do that now?

Ms Thompson—We have not been approached for a casino licence. No-one has put in an application.

Mr SNOWDON—That is not what I am asking. If the Commonwealth has an interest in a property as a creditor, as a landlord, and the Commonwealth sees this property go into liquidation and its purpose is to operate as a hotel casino, in the way it was when the lease was originally granted, why wouldn't the Commonwealth indicate to the liquidator that a casino licence would be granted upon them going through a process?

Ms Thompson—We never did not say that.

Mr SNOWDON—I am not asking whether you did not; did you?

Ms Thompson—Yes.

Mr SNOWDON—So it was indicated that a licence would be granted.

Dr Turner—We indicated that a licence was available to be applied for and would be granted subject to that application and the passing of the probity requirements of the law. We did not indicate to any particular bidder that they would be granted the licence, because we had no legal authority to make that commitment.

Mr SNOWDON—Did you not have an expectation that the bidders would submit for a licence?

Dr Turner—Yes, that was the expectation.

Mr SNOWDON—And you gave that indication to all the bidders.

Mr Mrdak—The tender documents, copies of which we have provided to the committee, created an expectation that a licence would be applied for. But, as Dr Turner indicated, we obviously could not in any way pre-empt that. But we certainly were aware that the expectation was that a licence would be applied for.

Mr SNOWDON—What discussions took place, subsequent to February when the deal was done, with Mr Kwon about the operation of this hotel casino? What has taken place since February of whatever year it was, to date, about the Commonwealth's expectations in relation to this property?

Dr Turner—I think it is canvassed in some of the evidence given by Mr Kwon and Mr Woodmore that in the weeks following that decision there were a number of discussions with the Commonwealth about the details of the lease. I do not recall any discussions about the detailed operations of the resort. There were discussions about the lease pertaining to issues which have been canvassed quite widely in evidence before the committee dealing with the Linkwater Road, the water supply, infrastructure on the lease and the lease boundary.

Mr SNOWDON—There has been no discussion with Soft Star or any agent of Soft Star about the Commonwealth's desire to have this place opened as a hotel resort?

Mr Mrdak—Certainly there has been. There has been correspondence between the minister and Mr Kwon in relation to his plans.

ACTING CHAIR—Are you able to table some of that correspondence?

Mr Mrdak—I can take it on notice. There has been correspondence and, with the clearance of the minister, I am happy to provide that. All of the indications continuing have been that the intention of Soft Star is to ultimately seek to provide a full range of casino and hotel services. However, they have couched all that very much in terms of the market opportunities to do it and whether it is financially responsible to do that at this point. The discussions that have been taking place since the time the lease transferred have always been on that basis. Mr Kwon has made a number of public statements, I understand, in relation to his intention for the resort.

Mr SNOWDON—None of which have come to fruition.

Mr Mrdak—But, again, all of those are premised on the basis of reopening the casino hotel at a time when it is financially viable to do so.

Mr SNOWDON—What does that mean? The previous witness, whom you heard, talked to us about a business plan which would have had the casino operating well and truly by now. We had Mr Kwon come here and he basically or essentially told us that he had no business plan at the time he purchased the property. Can you see why there is a bit of passing interest in this exercise?

Mr Mrdak—Certainly. I suppose it is difficult for us to comment in relation to the financial viability of the casino. I cannot make a comment on that.

Mr SNOWDON—But you have made judgments about it already. You have already indicated in your previous discussion here about air flights, et cetera. We have had someone come here and make a bid with a proposition that they would open up a casino resort using air links which they would supply. We had Mr Kwon come here and say, 'The big problem is we have no air links.' Can you see why I, particularly, have a bit of an interest in this, and why I think it is passing strange that the Commonwealth did not give any indication at any stage to anyone that there was a real expectation that this place would be up and running as quickly as possible, including to the liquidator?

Mr Mrdak—As I say, all of the public statements by Mr Kwon to this point have been along the lines of his intention to reopen, provided the market is available. I think, as the previous witness has indicated today, there is still a great deal of uncertainty whether that market is there now, given that the focus of the casino was very much on a narrow Indonesian market.

Mr SNOWDON—But, with respect, the previous witness at least was a casino operator, or at least had a background in casinos.

Mr Mrdak—Yes. As I said previously, my understanding is that in the past the owners of the casino resort were not necessarily operating the casino. They then brought in experts to do that. All the indications thus far from Soft Star is that that would be their intention when they move down that path and reopen the casino—they will bring in operators. We had no time frame and, as I said, the comment that I understand from the weekend from Mr Kwon was that he would be looking to reopen the resort shortly.

Mr SNOWDON—I am interested in the operation of the casino. It is the expectation of the community of Christmas Island and my own expectation, as a federal member for the Northern Territory, which includes Christmas Island, and from my previous experience with the organisations on Christmas Island, that this place should operate as a casino. Bearing in mind this discussion, both when you were previously here and now, I must say that I am quite amazed that there seems to be no action by the department to give a strong expectation to whoever—as it did when this place was first purchased with Woodmore. Time lines were given about what would happen and when they would happen, and there seems to be no expectation from the Commonwealth of Soft Star on time lines, when, if, where and how. Why is this?

Ms Thompson—That was a development agreement and the casino has now been built and developed, and the resort. 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 the resort.

Mr SNOWDON—Hang on, this is Commonwealth land. We are leasing this land to this person.

Ms Thompson—They have a lease.

Mr SNOWDON—They have a lease and the purpose of that lease is to operate as a casino hotel and ancillary, et cetera. We know what the lease is.

Dr Turner—Can I go back to the framework within which we were operating. The process we found ourselves in was one dictated by the liquidation of the company. The liquidator was appointed by the court to liquidate the assets of the company. The assets of the company are irrelevant to this discussion of the lease for the resort. That physical asset was his to dispose of. 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.

Mr Mrdak—I would just add that, as indicated earlier, 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 do not think it is fair to say that the Commonwealth has made no approach. 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.

Mr SNOWDON—What was the latest undertaking given by the government or the minister to Mr Kwon about freeholding the land in question?

Mr Mrdak—There have been a number of discussions, as I understood. The most 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.

Mr SNOWDON—Casino and resort, or the casino resort? What are we talking about here?

Mr Mrdak—The casino and the resort.

Mr SNOWDON—To operate as a casino and a resort?

Mr Mrdak—That is what the minister was putting.

ACTING CHAIR—Are you putting to us that that is the minister's position, that it will be considered on the basis—

Mr Mrdak—of evidence that there is an intention to operate a casino and resort.

Mr SNOWDON—Are you aware of the evidence given to us by Mr Thomson on 19 April regarding the community's attitude, when he was speaking on behalf of the Christmas Island shire council about freeholding?

Mr Mrdak—Yes, I read the evidence provided by Mr Thomson.

Mr SNOWDON—What subsequent discussions have there been between yourselves or the minister with Mr Thomson and the shire council of Christmas Island in relation to the freeholding of this particular property?

Mr Mrdak—I would have to check the record, if I may, but I am not aware of any recent discussions in relation to it.

Mr SNOWDON—So despite the fact that the representative body which speaks on behalf of the community of Christmas Islanders says it opposes freehold title, the minister is intent on pursuing that objective?

Mr Mrdak—As I think was given in evidence to the committee during a visit to the island, there are a number of other groups on the island.

Mr SNOWDON—With respect, the elected representative body for the community of Christmas Island shire council—like it or lump it. Is that correct? You may not like it, but it is correct, is it not?

Dr Turner—Yes, but it is also essentially a matter of policy that we are not open to comment. It is the government's policy position that freehold title will be available on the island. It is a matter of government policy, and we are not in much of a position to comment on that.

Mr NEVILLE—It is confirmed in the minister's letter of 30 August.

Mr SNOWDON—What is the status of the land release strategy?

Mr Mrdak—During the minister's recent visit to the island he held discussions with the shire in relation to advancing—

ACTING CHAIR—Was this last Friday?

Mr Mrdak—No, this was in early May, during the minister's visit. He held discussions with the shire and in relation to advancing the planning scheme for the island and in relation to the land release strategy, we have worked forward a way where the Commonwealth will be funding a consultant to assist the shire to progress the land use planning strategy for the island, and we are now working with the shire to get that up and running. The town plan for the island has now been through a further consultation process and through the WA local government authorities, and is now before the minister for final clearance. But, as I say, in relation to the broader land use strategy, that is now work under way with the shire council.

Mr SNOWDON—Does that include the question of discussion about freeholding and leaseholding of land?

Mr Mrdak—As I say, and as Dr Turner has indicated, the government's position is that freeholding should be available to residents on the island, as it is on the mainland. I suppose that is the broader policy position. I am not too sure whether the plan itself will go into those sorts of issues.

Dr Turner—I would not expect the plan to do such things as identify particular blocks where the tenure—I mean, it would be a land use control device rather than a land tenure device.

Mr SNOWDON—You can see why the committee might be a bit concerned, if the minister or some agent outside of the community was picking which bits of land will be freehold and which will not be.

Mr Mrdak—I think the essence of trying to get a proper planning strategy in place is designed to obviate a number of those issues in terms of where certain planning takes place. But, as Dr Turner has indicated, the government's position is that, as a matter of principle, freeholding should remain available.

Mr SNOWDON—Whatever the Christmas Island community might say, or the majority of Christmas Islanders through their elected representative organisation might say, the government position ignores it?

Mr Mrdak—I would not say ignores it. I would say certainly 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.

Mr SNOWDON—There might well be in Canberra, too, but if the Commonwealth government talks to the ACT government and says, ‘We want to start freeholding land in this circuit here,’ which we have the power to do, what do you think the ACT government might say?

Mr Mrdak—As I say, the minister has to weigh up all the views put to him and reach a position.

ACTING CHAIR—Mr Mrdak, Dr Turner just told us that in fact it was this government’s policy that the land would be granted freehold. Is that correct?

Mr Mrdak—That is right, that it should be made available as freehold.

ACTING CHAIR—Despite the fact that that is not what the majority of Christmas Island residents want, as voiced through their elected shire council?

Mr Mrdak—That is certainly the shire’s view.

Mr SNOWDON—Do you accept that the shire council is a democratically elected organisation which represents the views of the majority of people on Christmas Island?

Mr Mrdak—I certainly do not dispute that they were democratically elected to represent views, certainly.

ACTING CHAIR—No, we asked you if you accepted that that was the case.

Mr Mrdak—Of course I accept it, but I would say that there are other views—

Mr NEVILLE—It is not uncommon for matters of freeholding—in the states, anyhow—to be handled by the state governments. While they would obviously consult people like city and shire councils, the ultimate freeholding of land usually goes through the lands department or the resources department of the state government.

Mr SNOWDON—But, Paul, we are not talking about a state here, we are talking about a very small block of land in the Indian Ocean.

Mr NEVILLE—It is analogous in this situation, isn’t it?

Mr SNOWDON—Only in the sense of a superior governance, but that is all. I have had some experience of going through this process and there are mixed views on the island—that is without doubt—but it seems to me that there is an absolute obligation on the Commonwealth to have due and proper regard to the views of that elected representative body. Whether the Commonwealth likes it, or I like it, or you do not like it—whatever happens—it is a duly

elected body from amongst the community of Christmas Island. Its views must be taken account of. The fact that the government appears to be not wanting to take account of them is something I have some concerns about, and I will express those elsewhere, don't worry!

ACTING CHAIR—Before we wind up, what is the status of the Economic Development Committee?

Mr Mrdak—The minister during his trip in May announced his intention to finalise the formation. Nominations have now been received from the organisations identified, and we are hopeful there will be an announcement by the minister very shortly in relation to the people who will be on the EDC to allow it to be properly incorporated and to get up and running.

ACTING CHAIR—Who identified those organisations?

Mr Mrdak—The minister invited a number of organisations to nominate representatives to the EDC.

ACTING CHAIR—Can you provide us with a list of those organisations?

Mr Mrdak—Yes, I will.

ACTING CHAIR—What is the statutory framework of the department's role and responsibilities in the tender process?

Mr Mrdak—The tender process for this?

ACTING CHAIR—Yes.

Mr Mrdak—We have no formal role in the tender process in that sense. The tender process for the sale of the assets of the Christmas Island Resort was a matter for the court appointed liquidator in accordance with the Corporations Law and the powers given him by the court in WA who appointed him. In terms of that tender process, we did not have any statutory role at all.

ACTING CHAIR—During the tender process how many times would the department have made contact with the liquidator or vice versa?

Mr Mrdak—There would have been numerous discussions held over that protracted period over a range of issues, which were the sorts of things being discussed here in relation to—right up-front—what the assets were, what the status of the lease and licence were, and all of those sorts of things. There would have been quite lengthy and detailed discussions and negotiations extending over the whole period of the liquidation and sale process.

ACTING CHAIR—In relation to the announcement about the satellite launching facility, we heard in evidence here in Canberra on 7 February that an in principle agreement was to be signed between APSC and Phosphate Resources. Has this agreement been signed?

Mr Mrdak—Yes, it has.

ACTING CHAIR—Are you able to provide this committee with a copy of that agreement?

Mr Mrdak—I will take that on notice.

ACTING CHAIR—Thank you.

Mr SNOWDON—What has happened to the funds collected from the community benefit fund as part of the taxing arrangements for the previous casino operation?

Mr Mrdak—There are some discussions at the moment, most recently in relation to the restoration of Buck House, and there is some work going on now with the council in relation to funds being used for that restoration process, but I would have to check in more detail, if I may, in relation to the status. We would have to talk to the shire.

Dr Turner—There are some funds remaining unspent. If we have not recently written to the community benefit fund board seeking their disbursement, we are about to. We are in the process of expending the remaining balance of the funds.

ACTING CHAIR—Have the former workers been paid their entitlements yet?

Mr Mrdak—My understanding is that they have not.

ACTING CHAIR—What is the department doing about that?

Mr Mrdak—My understanding is that because of the legal action being taken by some of the former directors of Christmas Island Resort the liquidator has been advised by the court that were he to make a disbursement of funds that he holds he may be personally liable in the event that his appointment is found not to be valid. The government has received a number of representations from the shire and the Union of Christmas Island Workers in relation to those workers, and individual representations. We are now having a look at those claims, in respect to what assistance the government might provide, but there has been no final position reached on that.

ACTING CHAIR—Do you know when that case is due to be heard in the courts?

Dr Turner—We have written to the Registrar of the High Court, seeking to encourage the expediting of the hearing, but I do not think that we have a date as yet.

ACTING CHAIR—Are you aware of whether the government or the department are leaning towards paying the costs to those employees, despite the inaction of the courts?

Mr Mrdak—A proposal has been put to the minister by the union that the Commonwealth, effectively, underwrite the liquidator's ability to make that disbursement. As I say, we are now seeking advice from our legal representatives and various other advisers in relation to the provision of a Commonwealth guarantee, but the government has not received that advice.

Mr NEVILLE—What is the volume of that?

Mr Mrdak—My understanding from the submission he made to this committee is that about \$3½ million is employee entitlements. I would have to check. I think that is the maximum at this point, but I will check that.

Mr NEVILLE—The submission is that the Commonwealth underwrite that, pending the outcome of the court action?

Mr Mrdak—That is the submission that has been put to the government, yes.

ACTING CHAIR—What course of action is available to the Commonwealth should Soft Star choose not to reopen the resort and the casino?

Dr Turner—I suppose we could seek to resume the lease, but I would have to take that on notice.

ACTING CHAIR—Thank you.

Mr SNOWDON—In a letter dated 25 May 2000 from the minister to the Shire of Christmas Island, the minister stated:

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.

In a letter of 29 November 2000 to the Union of Christmas Island Workers, he wrote that 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. What explains the change in wording from ‘only’ to ‘allowed but not required to’?

Dr Turner—I think 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.

Mr SNOWDON—If you can do ‘only’ something, that is a very strong word. It defines that you can ‘only’ do something.

Dr Turner—I cannot argue that interpretation, but I am trying to explain that the position is that the lease stipulates the use that the facility can be put to.

Mr SNOWDON—The lease says ‘shall use the premises only’.

Dr Turner—Yes, but we cannot compel them to use the premises.

Mr SNOWDON—If they do not use the premises only for a hotel casino, presumably you withdraw their right to have a lease.

ACTING CHAIR—We have had advice that it is mandatory. If they tried to use it for something else, bulldozed it and—

Mr SNOWDON—Or as staff accommodation.

Mr Mrdak—Then they would have to seek Commonwealth approval.

ACTING CHAIR—They would have to seek approval, but at the moment I understand it is open for bed and breakfast, with very limited resort facilities, and it has to be all along.

Mr SNOWDON—It is not a resort. It is operating as, basically, a bed and breakfast.

Mr Mrdak—Yes, that is right. There are a limited number of rooms available for people to use as a hotel.

ACTING CHAIR—Given our constraints of time—we do not have permission to sit while the House is sitting—I will need to close. If we have further questions, we will put them on notice. Thank you for your attendance here today. If there are any matters on which we might need additional information, the secretary will write to you. You will be sent a copy of the transcript of today's evidence, to which you will be invited to make editorial corrections if that is needed. The Hansard reporter might wish, of course, to clarify anything with you before you leave.

Resolved (on motion by **Mr Snowdon**):

That this committee authorises publication of the evidence given before it at public hearing this day.

Committee adjourned at 12.27 p.m.