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The Parliament of the Commonwealth of Australia

# **Risky Business**

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

**Joint Standing Committee on the National Capital and External Territories**

September 2001  
Canberra

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# Contents

Foreword.....	vii
Membership of the Committee.....	ix
Terms of reference .....	xi
List of abbreviations.....	xiii
Overview.....	xv
List of recommendations.....	xix
<b>1 Introduction.....</b>	<b>1</b>
<b>The inquiry process .....</b>	<b>1</b>
<b>Structure of the report .....</b>	<b>1</b>
<b>Background.....</b>	<b>2</b>
Economic structure.....	4
<b>2 The Christmas Island Casino and Resort.....</b>	<b>13</b>
<b>Opening of the casino and resort .....</b>	<b>13</b>
The Agreement.....	14
The casino licence.....	15
The lease.....	17
<b>Operation of the casino and resort.....</b>	<b>19</b>
Infrastructure .....	19
Clientele.....	20
Profitability .....	20
Impact on the Christmas Island community .....	21
<b>Closure of the casino and resort .....</b>	<b>23</b>
Closure of the casino and resort .....	26
<b>Impact of the closure of the casino and resort on the Christmas Island community .....</b>	<b>27</b>

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<b>3</b>	<b>The tender process</b> .....	29
	Appointment of Liquidator .....	29
	Development of sale strategy.....	31
	Initial timetable.....	38
	Expressions of Interest.....	39
	Legal challenges.....	40
	Receipt of tenders .....	44
	Termination of the tender process.....	50
	Sale of the casino and resort.....	56
<b>4</b>	<b>Conduct of the tender process</b> .....	63
	<b>Issues and concerns</b> .....	63
	Role of the Commonwealth .....	63
	Conduct of negotiations with ComsWinfair.....	69
	Negotiations with Soft Star/APSC during the tender process .....	78
	Conclusions .....	89
<b>5</b>	<b>Outcome of the tender process</b> .....	91
	<b>Current status of the casino and resort</b> .....	91
	Continuing legal challenges .....	92
	<b>Payment of funds to former employees</b> .....	94
	Sale of the Christmas Island Laundry .....	97
	Summary .....	100
	<b>Sale of the casino and resort to Soft Star Pty Ltd</b> .....	101
	Soft Star's intentions for the casino and resort .....	102
	Application of background and probity review.....	109
	Conversion from leasehold to freehold.....	114
	<b>Summary</b> .....	122
<b>6</b>	<b>Broader community concerns</b> .....	125
	<b>Public access to Waterfall Bay</b> .....	125
	Summary .....	129
	<b>Community consultation</b> .....	130
	Consultation with the Liquidator .....	130

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Consultation with the Commonwealth .....	132
Summary .....	136
<b>Air services to Christmas Island</b> .....	137
Summary .....	142
<b>Future economic development</b> .....	143
Phosphate mining.....	143
APSC satellite launching facility .....	144
Tourism.....	146
Summary .....	148
<b>Summary</b> .....	150
<b>Dissenting report of the non-government members</b> .....	151
<b>Introduction</b> .....	151
<b>Basis of dissent</b> .....	152
<b>The purpose clause of the lease</b> .....	152
<b>Conversion of the lease from leasehold to freehold</b> .....	154
<b>Negotiations with ComsWinfair</b> .....	157
<b>Sale to Soft Star Pty Ltd</b> .....	159
<b>Conclusion</b> .....	162
<b>Appendix A – List of submissions</b> .....	165
<b>Appendix B – List of exhibits</b> .....	167
<b>Appendix C – List of hearings and witnesses</b> .....	169
<b>Appendix D – Comparison of gaming tax regimes</b> .....	171
<b>Appendix E</b> .....	173
<b>Correspondence with creditors</b> .....	173
<b>The Committee of Inspection</b> .....	174





## Foreword

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

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

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

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

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

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

The Committee has made six recommendations relating to:

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

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

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

**Senator Ross Lightfoot**  
**Chairman**





## **Membership of the Committee**

**Chairman**     Senator Ross Lightfoot

**Deputy Chair**     Senator Trish Crossin

**Members**     Senator Brian Greig

                  Senator Kate Lundy

                  Senator John Watson

                  Senator Sue West

                  Mr Ross Cameron MP

                  Ms Annette Ellis MP

                  Mr Gary Nehl MP

                  Mr Paul Neville MP

                  Hon Warren Snowdon MP

                  Hon Alex Somlyay MP

## **Committee Secretariat**

**Secretary**                      Mr Richard Selth

**Inquiry Secretary**           Ms Emma Herd

**Administrative Officers**   Mr Vishal Pandey

Ms Anna Gadzinski  
(from July 2001)

Ms Sarah Steele  
(until June 2001)



## **Terms of reference**

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

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

The reporting date was subsequently extended to 27 September 2001.





## List of abbreviations

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

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



## Overview

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

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

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

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

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

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

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

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

2 CICC, *Transcript*, p. 178.

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

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

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

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

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

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

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



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

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

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

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

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





# List of recommendations

## Chapter 4 The tender process

### Recommendation 1

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

## Chapter 5 Conduct of the tender process

### Recommendation 2

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

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

**Recommendation 3**

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

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

**Recommendation 4**

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

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

**Recommendation 5**

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

**Chapter 6 Broader community concerns****Recommendation 6**

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

