

THE JOINT STANDING COMMITTEE OF PUBLIC ACCOUNTS MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART, ON 10 MARCH 2009.

INQUIRY INTO COMPLIANCE WITH THE DEED OF AGREEMENT, SCHEDULE 1 OF THE GAMING CONTROL ACT.

Mr DON CHALLEN, SECRETARY, DEPARTMENT OF TREASURY AND FINANCE, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Mr Wilkinson) - Thank you, Don, for coming in. You have sat at these tables more than probably all of us put together, so you know what the situation is. We are looking into the deed with the casino and as a result of that, as I stated to the committee, I had a call from Leigh Sealy, who said that with a couple of the questions you could not really understand what was needed. Therefore I thought it would be best if you came before us and we asked questions as appropriate. Don, do you wish to make an opening statement?

Mr CHALLEN - Over the weekend I have reread the files and the *Hansards* of my previous appearance before this committee and Mr Nicholl's appearance back in November. It might help you if I just ran through a summary of how the negotiations went and the way in which the Coles Bay resort issue was dealt with in those negotiations that seem to me to be the focus of the questioning, particularly of Mr Nicholl. So I have prepared a brief summary that will only take a few minutes but that might be helpful and provide some focus.

CHAIR - Yes, thank you.

Mr CHALLEN - I think it goes to one of the questions in your letter that we found difficult to answer - the way the question was framed.

The process of the negotiations really got going on 19 December 2002 when Greg Farrell met the then Treasurer, David Crean. I saw file notes of that meeting and one of Dr Crean's staffers, a David Bartlett, was with him at the meeting. Greg Farrell followed that up with an e-mail to me on 22 December 2002 in which he told me what had taken place at the meeting and later confirmed by the file note, proposing that he and I might meet. I responded to him on 23 December, saying that we would need to get some work done and have some discussions with the Treasurer before it would be profitable to have a meeting, but I suggested that something would be possible in January 2003. At the same time I arranged for some preparatory work and analysis to be done.

During January 2003, as you can see from the files, there is a lot of e-mail traffic, there are notes of internal discussions and so on and discussions with the Treasurer of the time and all this was focused on the limits on gaming machine numbers. There is one brief mention in a Greg Farrell e-mail to me of an east coast resort commitment - that is the way it was characterised at that stage. On 28 January 2003, in an internal Treasury document in which we are mapping out for discussion with the Treasurer what the new deed might contain, there is no mention whatever of the resort but on 3 February, a later

version of a similar internal Treasury document called *Issues for Consideration* includes the following words:

'A commitment to undertake and complete the Coles Bay development to a four-and-a-half star standard costing \$(x) million by (date to be agreed).'

So that evidence is that by 3 February we internally - and I emphasise this hadn't been discussed with Federal Hotels at this stage - had thought that we might include a commitment of that sort in the documentation and on 6 February Federal Hotels sent us a document headed *A Concept Paper* which included the following words - again, an illustration of the kind of commitment they might make:

'The provision of a longer term exclusive licence will enable the Federal group to cement in place its financial arrangements, thereby facilitating the construction of its proposed \$25 million tourist resort at Coles Bay.'

On 5 February 2003 I e-mailed Greg Farrell confirming a meeting date of 7 February that had been canvassed beforehand. In that e-mail I provided a list of 11 issues for discussion, an agenda for the meeting, if you like. One of those was Coles Bay development commitment. On 7 February, after the meeting - there are no notes of the meeting; we didn't typically take notes of those sorts of meetings - we produced a document that summarised the outcomes of the meeting and it was in the form of a term sheet, so there was a preliminary record of where the negotiations were going. This is the very first version of the term sheet that we produced on 7 February. It includes the following words:

'Federal Hotels to commit, subject to relevant permits and associated approvals, to invest at least \$25 million in a new premium tourist resort/facility near Coles Bay, to include accommodation, convention, restaurant and recreation facilities. Construction to commence October 2003 for completion by early 2005. In the event that the necessary approvals are not forthcoming, Federal Hotels will enter good faith discussions with the Government to agree on an alternative equivalent development on another site.'

I think you'll recognise the flavour of those words. It's interesting that where we talk of a new premium tourist resort, the word 'premium' is in inverted commas. On 14 February, after a number of meetings and e-mail exchanges, we produced another version of this term sheet. The words were exactly the same on the Coles Bay resort. Other things were changing as the negotiations were developing but we had added, for the first time, a local preference clause which appeared in the final deed.

Then on 20 February, we produced - or at least the Crown Solicitor produced - the first draft of the deed for us. The words that appear around the Coles Bay resort are not identical but are quite close to those that appeared in the final deed and when you track on later you can see that it wasn't until the lawyers got to work at the very final stages of finalising the deed that the words got tweaked; they didn't really move from that first term sheet. Interestingly enough, the local preference clause has dropped out of the document at this stage.

Between 3 and 12 March 2003 the lawyers had got into the act, so there were e-mails going back and forth between the Crown Solicitor and John Harry, the solicitor at Page Seager who was acting for Federal Hotels, all about working towards finalising the deed and, as I mentioned a moment ago, at the later stages of those exchanges Page Seager proposed some minor changes to the wording that ultimately became the final versions of what are clauses 4.2 and 4.3 in the deed. But it's pretty clear all through that process that other clauses were the main focus. Federal Hotels were asking for things the Government didn't wish to agree to in particular.

The deed was agreed, so we had an exchange of e-mails in which we agreed that there were no outstanding issues on 12 March. After approval by Cabinet, the deed was executed on 18 March and then the Treasurer made a ministerial statement, making it all public in the Legislative Council on 15 April and, as they say, the rest is history.

I noticed in the *Hansard* of Mr Nicholl's appearance that Mr Hidding gave notice of some questions to me about my idea of what this premium resort represented. To be honest with you, I don't know what was in my mind. There is nothing in the record to remind me of what I had in mind at the time. I think all the evidence is that I was focussed on the word 'premium' and on the \$25 million. Certainly, there is nothing in the exchanges between us and Federal Hotels that put any more definition around the concept than those two things. I notice, and I don't know whether you saw this, but I will be happy to leave this with you as it is not something that I necessarily need to keep. This is a magazine that was in the *Financial Review* on Friday.

Mr KONS - They come out just before our committee meetings every year.

Mr CHALLEN - Everybody does this when they have to appear before your committee do they?

Mr HIDDING - No, only this company. They put this out the day that we start an inquiry.

Mr CHALLEN - Anyway, it is headed 'a best kept secret' and it has a picture of the proposed resort:

'Freycinet on Tasmania's East Coast the location for Sapphire a new lodge that will open in late 2009, five star stays for 40 guests, day spa ...'

blah, blah, blah, blah,

' ... helicopters, 20 free-standing suites with individual plunge pools' -

I have no idea what a plunge pool is - '

... ranging in size from 80-150 square metres'.

This was the thing that rocked me

' ... will cost between \$1 000- and \$3 000 a night, including breakfast and some activities'.

They would have to be pretty good activities. I think it passes the definition of a 'premium resort'.

Ms FORREST - When was that in the *Financial Review*?

Mr CHALLEN - On Friday.

CHAIR - So, Don, when you are asked what was in the mind of the negotiators in relation to the outcome from the 2003 deed, what do you say?

Mr CHALLEN - As I have said in evidence before this committee before - and you can look back to the *Hansard* of the last time I appeared here - we were not focused on this resort commitment. We were worried about gaming machine numbers and delivering on some of the parameters the Treasurer had given to us as our riding instructions for the negotiations. We were trying to improve the deal for venues. We were trying to increase the tax take. On my previous appearance before this committee there was a lot of discussion about how we prepared ourselves for the negotiation and why we had chosen an over-the-life-of-the-agreement tax stream as opposed to an upfront licence fee and a lower tax take. If you go back to the *Hansard* you will see that it is all extremely well documented.

But, as I said on that occasion when I gave evidence, this resort commitment was something that Federal Hotels had already made publicly, or spoken about publicly at least; whether it was a commitment or not I do not know, and we had literally just thrown it into the deed negotiations to keep them honest. And in my mind, that is all I was doing.

There was a public expression of an intention that they had already made. I did not see that we ought to pass up this opportunity to prevent them weaselling out of it, so I did - I chucked it in, but it was not central to the negotiations; it was not an important thing in our mind. Certainly, it has grown in importance over time, but in the minds of the negotiators back then in early 2003 it was not a big issue.

CHAIR - I notice in the 1993 deed there was talk there about employment at both the Wrest Point casino and the Country Club casino of endeavouring to increase employment to 200-300 employees et cetera. Was there any discussion at all about how many people that would employ and the benefits that would be the flow-on to the east coast area and the tourism in general?

Mr CHALLEN - No, none whatever. It is interesting: Mr Fletcher was a previous chairman of this committee and he quizzed me at one appearance about how he as a member of the committee could make a judgment about the benefits of the deed. I took the question on notice and wrote to him after the meeting.

I am sure the letter is on your file. It is very interesting that in setting out the benefits of the deed in a summary form in that letter I did not even mention the Coles Bay resort. In my mind at the time it clearly was not the issue.

CHAIR - In relation to the benefits at the time of the deed being signed, what do you believe the benefits were, and I know that you have written to or you wrote to the committee via Tony back then?

Mr CHALLEN - Increased tax take. The limit on gaming machine numbers, which was very important to the Treasurer of the day; improved arrangements for the venues; more flexibility about what they could do; and a better financial deal for them. Some of the costs that had previously been passed onto them were taken back. Can I just refresh my memory? I have mentioned three. I have a feeling there is a fourth. Sorry, this is a letter I signed to your committee in July 2003. Sorry, yes, and an increase in the contributions to the community support levy, that was it. The things I mentioned in that letter were a statewide cap, additional payments to the CSL, increased licence fees, increased revenue take and improved arrangements for the venues.

Mr KONS - Just on the tax takes, Don, what was the additional tax take - just a ball park figure?

Mr CHALLEN - There was an additional \$1 million per annum indexed in casino licence fees; an additional \$1 million a year in revenue immediately; and a further \$1.5 million which cuts in on 1 July 2013 as a result of the restructuring of the tax take.

Mr KONS - One of the questions I asked Mr Farrell whether he was getting a better deal than New South Wales, where they were auctioning the machines off and the State collected \$50 000 per machine. In essence they ended up with a gift of \$120 million and they were going to put back into the community an additional \$2 million. So over 10 years they were going to give us \$20 million more but they were getting \$120 million of value. He said this was good for the State. I do not see it as good for the State when at the same time another State is making a killing on issuing these licences.

Mr CHALLEN - Again, I point you back to the extensive evidence I gave this committee in 2003 in relation to that. It is all on the *Hansard*. Essentially the debate was whether Federal Hotels would continue beyond the end of their then existing licence on an exclusive or a non-exclusive basis, so the possibility that Federal Hotels would not have any business at all was not something that was taken very seriously, although it was used as a negotiating argument with Federal Hotels.

What we did was model what the Federal Hotels business would look like beyond the end of their then existing licence in two states of the world - one where they were competing with another or other operators and a second one in which they were operating exclusively. We worked out what the value to the Federal Hotels business was back in 2003, of the difference between those two states of the world, and in our negotiations we tried to get increased revenue from the State that took out at least 50 per cent of that benefit. As I said in evidence at the time, we believe we achieved that.

Comparing that to a different set of arrangements in which you go for an upfront licence fee and a different tax rate is just a different way of packaging the benefits over time. We were greatly constrained by the fact that my instructions from the Treasurer of the day were that the most important thing we had to achieve out of these outcomes was a statewide cap on gaming machine numbers, effective immediately - not from the end of the then existing licence, which had I think at least five years to run, but right now.

Mr KONS - You are a smart bloke - you know the law says that Parliament would have been able to do that without any issue anyway.

Mr CHALLEN - I do not believe that the Legislative Council would have passed such legislation. The sovereign risk would have been horrendous. That is not real life. I had a negotiation in which I had to achieve an outcome with an existing operator with a particular set of parameters put on me by the Government; it made it difficult to get an outcome but we got an acceptable outcome, given the parameters that I was forced to operate.

Mr KONS - The parameters that constrained you got this deal rather than what you would have got had you been told to go out there and negotiate off your own bat?

Mr CHALLEN - I would not have gone about the exercise the way we did if I had been the decision-maker, but I am not the decision-maker, the Treasurer is. I operate under the Treasurer's instructions.

Mr HIDDING - Would you have arranged for a competition for the -

Mr CHALLEN - That is hypothetical. I am not the decision-maker. I gave advice to the Treasurer of the time; he made decisions about how he wanted us to go about it. We followed his instructions and went about it in a particular way.

CHAIR - Am I right in saying, Don, that at that time - and I can recall that time quite clearly - there was a real push to put a cap on gaming machine numbers? They could have increased by a certain amount, could they not, for five more years? Is that right, five or six more years?

Mr CHALLEN - Correct.

Mr HIDDING - Yes, it is about right. He was not going to roll out any more.

CHAIR - It would seem that the major talk of government at that time was that there were not to be any more rolled out and, as a result, that was the major thrust that brought about these negotiations. Is that a fair summary?

Mr CHALLEN - Yes, the Treasurer of the day had a very strong view indeed that we had to get in place a statewide cap on gaming machines. We had an opportunity because Federal Hotels came to the Government and said that their bankers, ANZ at the time - and I do not know who it is now - were getting uncomfortable that their licence had only about five years to run and were looking for more certainty in terms of providing the financing that the company apparently needed at the time. If that opportunity had not been there, one wonders whether we could have achieved that cap on gaming machine numbers at all. But Federal Hotels came to the Government and said, 'What can we do about this?' The Treasurer said, 'Okay, let us grab this opportunity to get this cap on gaming machine numbers.' Then, obviously, we just turned it into a complete renegotiation of the arrangements as best we could.

I would not claim, Mr Hidding, that this was the best state of the world. It was not, and I have repeatedly said in evidence to this Committee that I did what I thought was the best

deal I could, given the parameters I was required to operate under. It is very important that you hear that.

CHAIR - Were there any other parameters? We have spoken about the cap on the gaming machines; were there any other parameters that you had to work with that hamstrung you?

Mr CHALLEN - Yes, as I mentioned to Mr Hidding a moment ago, the Treasurer of the day had a particular view about the way in which he wanted to issue the licence extension. So the opportunity of doing it the way it had been done Victoria, for instance, of waiting until the near the end of a term of a licence and then putting it out to tender, which you might say is the conventional way of going about it, was not in contemplation.

No, I am very reluctant to step over into the area of what advice I have given Treasurers at various points in time, but you would know from the way in which we approach these exercises that Treasury usually takes a fairly hard-nosed view about getting the best outcome for the taxpayer in these things. On occasions, for good reasons, the Treasurers say thank you very much but we are going to go about this in a slightly different way.

Mr HIDDING - They do, and it is your job to ensure that they have the information before them to make a decision.

Mr CHALLEN - To advise, correct.

Mr HIDDING - Could we take from that that you had placed before the Treasurer of the day the conventional way of extracting full value from these things?

Mr CHALLEN - The answer is yes, we had. We had given the Treasurer advice on what his options were and how we would recommend going about it.

CHAIR - So it was really a policy issue that seems to have driven this deed?

Mr CHALLEN - Indeed, yes. But that is very common. Civil Construction Corporation was not sold by competitive tender; it was sold by a private treaty, effectively, with the successful party. We have never sold any other business that way. But look at the way we sold the airport, for instance, the way we sold the Grain Elevators, the way we sold the Printing Authority and the way we are proposing to sell the TOTE, assuming the Parliament passes the necessary legislation.

Mr HIDDING - None of those were licences to print money.

Mrs BUTLER - I was just interested in how much a part of the deed the East Coast Resort was. Was it critical? Did it have to be there? What was the rationale for east coast and was it explained fully to you, to your satisfaction? Could it have been anywhere?

Mr CHALLEN - No, Mrs Butler. As I said earlier, it was, if you like, a bit of cream on the coffee. It was just a little added benefit that we grabbed, that they had already said in public that they, I think, had already acquired a site or were about to acquire the site, the old caravan park, as it is called. They had already said in public that they intended to build a resort there.

Mrs BUTLER - It would not have mattered too much.

Mr CHALLEN - I said, 'Okay, we will chuck it in,' and, I guess, realistically, if Greg Farrell had said to me, 'No way Jose, I'm not having that in this deed', I probably would have let it pass, but he didn't. He said, 'Yes, I'm up for the statewide cap on gaming machine numbers.'

Mr HIDDING - He wishes otherwise. On the earlier deed, you would have had some -

Mr CHALLEN - The 1993 deed?

Mr HIDDING - Yes.

Mr CHALLEN - Yes, I was up to my neck in that too. Different government, of course, Mr Hidding.

Mr HIDDING - Oh yes, it was a very good deed.

Laughter.

Mr KONS - Poor policy advice.

Mr CHALLEN - That's a bit cruel.

CHAIR - The same figure was quoted then too, in 1993.

Mr HIDDING - It was, strangely - the same figure was quoted. However, this is what I wanted to test with you: back then it was expressed in terms of an up to or at least a \$25 million development in 1993.

Mr CHALLEN - Oh, sorry, this is the 2003 deed you are talking about.

Mr HIDDING - No, wasn't the -

Mr CHALLEN - Are we talking about the Coles Bay development?

Mr HIDDING - No.

Mr CHALLEN - The 1993 deed was the original one signed in Ray Groom's time.

Mr HIDDING - No, this is the one where they had to do up the facilities. Yes, '.... undertake significant building and upgrading work at both Wrest Point and the Country Club at an estimated capital cost of not more than \$25 million.'

Mr CHALLEN - Is that right? So is this the 1993 deed, is it?

Mr HIDDING - This is 1993.

Mr KONS - Is it not more or not less?

Mr CHALLEN - Yes, that is when they built the water garden.

Mr HIDDING - Not more. That is not more than \$25 million, that was the deal. In other words -

Mr KONS - You could have spent nothing.

Mr HIDDING - Estimated capital cost of not more than \$25 million. That was the deed back then. In this deed, in the 2003 deed, it clearly says that that was a minimum.

Mr KONS - Perhaps Creany was smarter than we all thought he was.

Mr HIDDING - Absolutely. But we have ended up at 22 rooms.

Mr CHALLEN - Special rooms though. None of us will be able to afford to stay there, but never mind.

Mr HIDDING - Neither will anyone else except for his high-rolling gamblers whom he will helicopter in. What do you recall from the 2003 negotiations of making that a minimum? That could be \$25 million, \$26 million, \$32 million, whatever; clearly, it was in there to say it would be at least \$25 million. It has to be more than that. What was the thinking on that?

Mr CHALLEN - I cannot remember, to be honest. But I imagine, and I think that the words in the 1993 deed are a drafting error by the sound of it; who would say 'up to'?

Mr KONS - Ray would.

Mr CHALLEN - Well, don't blame him - he did not negotiate the deal. If someone says we are going to build this premium resort and it is going to cost \$25 million, you would put 'at least' in there so they could not spend less than \$25 million. That just seems to me to be logical. There is no great science in that.

Mr HIDDING - You just told us that you spent the weekend reading documents. We, in our first request to you asked you about documents, so that we could read documents too. You appear to have ignored the -

Mr CHALLEN - No, no I wrote to the chairman of the committee after some discussion with the Solicitor-General and said that I would see if I could meet your need for information through this process and if I could not we would then discuss what I could usefully give you. I should say that because I have been pilloried for more than a decade about these issues, the only protection I have for my reputation is those files and I am very reluctant to let them out of my hands for fear that people will pull them apart, photocopy them and precious documents will be lost. Let me tell you, those documents will protect my reputation and it is very important to me.

Mr KONS - Copy them.

Mr CHALLEN - I will photocopy them if that is what you wish.

Mr HIDDING - So would you care to expand on -

Mr CHALLEN - People have accused me of all sorts of things - of doing bad deals, giving government bad advice, of not getting the best outcome that I could in the circumstances. When you read the files you will find those things are not true.

Mr HIDDING - This is a Public Accounts Committee at which these things surely can be provided under certain circumstances.

Mr KONS - What is wrong with getting photocopies of them?

Mr HIDDING - That is right. How do these things normally work - you have a file and if you are worried about someone knocking off bits out of your file perhaps someone had better stand by while you photocopy them or something? You have faced this sometime before in your career, surely, where a -

Mr CHALLEN - No, I have never been asked for Treasury's files before by a parliamentary committee. I have now been asked twice because Mr Hall's committee that I appeared before on Friday summonsed me to produce the files.

Mr HIDDING - What was your response to that?

Mr CHALLEN - I produced them on a summons. I did not want to go to jail, Mr Hidding.

Mr HIDDING - It was a real summons?

Mr CHALLEN - Yes. You only asked me, you did not summons me.

Mr HIDDING - You are very reticent to provide these documents; are you saying that the release of these documents could harm your reputation?

Mr CHALLEN - No, on the contrary, the release of these documents will do my reputation no end of good, but I need to be confident - when I say 'my reputation' I mean the department's reputation of course - that if this issue blows up again in five or 10 years' time those documents will be there for people to go back to and if some historian is writing a history of this, tasmaniantimes.com. or something like that, I want to make sure that the documents are there so that the truth can be told.

CHAIR - I know that with that other committee the documents are held if a person wishes to make an appointment with you or a person you designate, they could go in and have a look at that documentation without removing it from the area. This is a bit different to what has happened in the other committee, as you know; they are held here and people can sign a log to say they saw it at such and such a time.

Mr CHALLEN - Mr Hall's committee has accepted photocopies of the documents. He has accepted a statement from me about how we identified which documents met the terms of the committee's request. He has agreed that my having handed over a set of documents, they will not be permitted to be copied, all access to them will be logged and they will be returned to me at the end of the committee's use of them. I do not need them back in this

particular case, as the documents are not commercially sensitive like the documents I have given to Mr Hall's committee, which I believe have the potential to harm Tasmania's interests if they get into the public domain.

The set of files that you are talking about is about this high and I had them sitting on my desk this morning. The relevant bits are about that fat in the middle so I will be happy for someone you designate to come up and sit with me and I will walk them through the files and show them what is in there and they can decide what information they would like and we will then copy it for them if that is acceptable to you. Alternatively, if you want, I will have the entire set photocopied from end to end. It will just take a bit longer and use a bit more paper and it will take you a long time to wade through it.

CHAIR - That has to be a committee decision and we will discuss that.

Mr CHALLEN - In your letter to me you were particularly focused on who was at meetings and file notes of meetings and so on. I should emphasise that there are no file notes of meetings. What there are are endless e-mail exchanges between me and Mr Farrell, between me and Mr Eakins, between me and my staff, between the Crown Solicitor and Federal Hotels' solicitors, and so on. I do not want you to be disappointed because you will see that what tracks the course of the negotiations are changes in this term sheet and e-mails in which we are discussing - they put a proposal up and we say, 'No, what about this?' While there were conversations going on, face-to-face, over the phone and by e-mail, the way you track negotiations is through changes to the term sheet and then changes in the drafting of the deed as it works its way through.

If the committee is interested in who said what to whom and when, you are going to be disappointed because it is not there and I cannot remember. But in this summary that I have given to you this morning I have focused on the Coles Bay resort because I thought that was the point of particular interest. That is about all there is, really. It is a huge amount of paper. There is lots of duplication, as there always is on files, rude e-mails between people, things people wish they had not said. There are annotations that people have gone through later -

Mr HIDDING - It is a live work environment and I think everybody understands that.

Mr CHALLEN - We made a major effort to update these files in 2006 because we were moving to an electronic document management system at that time and I was concerned that some of our really important files like this one were not complete, because we had been managing a paper filing system up until then. Although the records procedures require people to put printed copies of electronic documents on the file, it gets observed in the breach, and when I looked through the files back in 1996 there was a huge amount missing, so I had a big beat-up around all the people who had been involved and got them all to print out all their electronic documents, e-mails and so on. So you will see large numbers of documents dating back from 2003 that go on to the files for the first time in 1996, and you will see some funny things in there. For instance, we and Page Seager, interestingly enough, use Word templates, so if you are producing an external letter you pull up a template and Word automatically puts addresses and the date and so on. Now unfortunately the version of Word that we had back then was very clumsy, and you could not finalise the documents so the date was fixed; it used to put the date that you printed the document out as the date of the letter, and you will see copies of

documents that come from Page Seager that actually arrived, I think, on 4 March that in one place are dated 24 November 1996. Now I have gone through and annotated the documents to explain to people that come on in five years' time, so you will see lots of my hand annotations in there to explain to others what was happening.

CHAIR - Of course, Don, this meeting is not in camera.

Mr CHALLEN - No, no.

CHAIR - I just thought I would let you know that, because of what we were talking about a short time ago. I didn't want you to say anything that you wanted in camera.

Mr CHALLEN - No, I am happy with this on the public record.

Mr HIDDING - It is obvious to me that you, as the head of Treasury, are jealous of your reputation about this whole matter. You are quite sensitive about misuse of documents and whether good professional advice was given of a high standard. The deal we are talking about here is one of the biggest government deals that could be done, and so therefore to me this is a very serious matter too, and reviewing it has only come about because of a genuine fear that an element of puffery came into the selling or the inducements before Parliament to agree to the deed, to get the final tick before it did become law. And so your files become relevant to our considerations. As you say, and as Mr Farrell told us, 'I do not know why that east coast resort is even in there. I do not know why on earth they agreed to even put it in there' as though it was a minor thing, but later on he made it *the* big thing. He didn't come before this committee talking about changes to table gaming and the increase in taxes - none of that was mentioned. It was all about the 150-room hotel. So there is no question that your files are relevant and of interest to this committee, but I guess we will discuss that in committee.

Mr CHALLEN - Sure. I should emphasise, though, that if what you are looking for is discussion about 180 rooms and 150 employees or whatever, you will be totally disappointed. There is not a single mention on the files, not one. Maybe that is what you want to see - I don't know.

Mr DEAN - I just wanted to go a bit further. You mentioned to Heather that that resort was the cream on the cake, as it were, and I think you are saying that quite obviously Federal or Greg Farrell raised that as an issue at the time. Quite obviously you cannot tell us what was in his mind, but it would seem to be that he was obviously feeling somewhat uncomfortable with the way the deal was going for him to raise that as an inducement to get this deal finalised and sorted out. Did you believe that at any stage that could have been the case?

Mr CHALLEN - Mr Dean, I don't think it was like that. I accept Mr Hiddings' characterisation that it became important later, but at the beginning it was - -in negotiating parlance they talk about wish list items, the things you just sort of keep for the very final moments that you think 'Oh, well, the deal's all done'. If you're buying a new car you then say, 'Let's see if we can get car mats'.

Ms FORREST - Mud flaps.

Mr CHALLEN - Mud flaps, yes. These are the standard things, and the dealer will throw them in because he wants to clinch the deal. It was in that category, it was just a thing. But they had made public statements about their intentions, and I thought, 'Let's keep them honest, let's stick it in there so they can't weasel out.'

Ms FORREST - Just to clarify that point, Don. People have made public statements about building a resort, but it was Treasury who suggested they put it into the deed as part of the agreement.

Mr CHALLEN - That is my memory, yes, though if you look at the files, the very first mention of it is in a Federal Hotels document to us. So if you look at the files in strict time sequence, the first time it gets mentioned is in a Federal Hotels document. But my memory is that I said to Greg that this was one of the things we'd be looking to have in the deed. He probably shrugged his shoulders and said okay.

Ms FORREST - So maybe that followed that discussion.

Mr CHALLEN - Yes. There were also lots of discussions with the Treasurer that are not very well documented on the files, and my opening position with Federal Hotels was conditioned by my instructions from the Treasurer. The filing system was not very good at recording exactly what it was the Treasurer said to me. A couple of years later when I was trying to improve the quality of the files, I put an extensive document on the file which I wrote and which explains the policy advice we had given the then Treasurer and the position that he had taken on it. I had my other colleagues that were involved in the discussions at the time verify that my recollection was correct.

Mr KONS - So your policy advice would be, if we were independently assessing this, this is the way we would recommend for you to go.

Mr CHALLEN - Yes.

Mr KONS - So that's available, is it?

Mr CHALLEN - It's on the file, yes.

Mr KONS - Okay.

Mr CHALLEN - I think, Mr Chairman, if you want this, you should summons me because, not that I want to be seen to be invited to being summonsed, but the normal convention is that the advice that a head of agency gives a minister is privileged. Mr Hall's committee has some policy advice because they summonsed me, so while I would prefer that the advice I give my ministers remains between me and them, you have certain powers under the Parliamentary Privileges Act.

Mr DEAN - I just want to take it a bit further and refer to one part of it. If this wasn't really a part of what we were looking at at the time - this is the exclusivity deal for Federal Hotels to continue with the pokies and capping the machines - it was obviously put in there for the purposes of influencing those who would be making the decisions at the end of the day, hence the Parliament. Is that a fair position there? It didn't have to be there, did it? It wasn't part of the deal.

Mr CHALLEN - It was a part of the deal because we put it in and made it a part of it.

Mr DEAN - Exactly, that is what I mean.

Mr CHALLEN - But in my mind, the deal would stand or fall in terms of parliamentary approval on the quality of the set of arrangements that we'd come up with - the fact that they were an improvement on what we had before, and met certain specific policy objectives of government. It's conjecture now, but I suspect if Mr Farrell had resisted at the earlier stage and said, 'No, no, I'm not including that as part of the deal', we wouldn't have pressed too hard because, as I have said in answer to a couple of other questions, we didn't see it as a key element of the deal.

Interestingly enough, in the final deed, there is a definition of fundamental terms, and the clause that has the Coles Bay development in it is listed as one of the fundamental terms. So by the end, you see, we were looking to keep them honest.

Mr HIDDING - And regardless of what the negotiators had in mind, these things take on a life of their own once they're out of your hands because in a question to Jim Bacon about this deal, the first card to be played was the east coast resort. So it becomes a major issue.

Ms FORREST - Can I clarify a point in relation to that, Don? You say it was not an important part of the deed and you would not have died in a ditch over it, basically, if it was or wasn't there originally. So once it was put into the deed as a fundamental aspect of that deed was there an expectation that it would be a certain structure? This premium resort, whatever 'premium' means, worth \$25 million at least, is pretty simple. Was there an expectation it would be a certain structure or was it open entirely?

Mr CHALLEN - No, again, I have no memory of taking any particular interest in this. I was very focused on the revenue flow, the cap on gaming machine numbers and trying to improve the deal for the venues. Remember I was the chairman of the Gaming Commission at the time and I had been getting lots of complaints from the venues about the bad deal in the 1993 deed, so we wanted to improve that. I do not think I would have taken a great interest in it and 'premium resort' and '\$25 million' was probably enough for me. As I say, there is absolutely no evidence on the files that we took any interest in it beyond that.

CHAIR - It would seem to me, Don, that there could be no undertaking given though by yourself or the Government in relation to how many rooms because it would be a planning issue and the issue would have to firstly get by council, which is one of the areas that -

Mr CHALLEN - Indeed.

Mr HIDDING - I do not agree with that at all. The announcement to the Australian Tourism Exchange was about the number of rooms. When you are selling something to the tourism market that is what you say; you say 'It is going to be a 150-room resort', not 'It is going to be a \$25 million resort'. It becomes a room issue then and it depends who you are talking to.

CHAIR - There is still a proviso rule in all that though. It has to get past planning otherwise you could say whatever you like and unless it gets past planning -

Mr HIDDING - Of course, that is right.

Mr CHALLEN - I think it is fair to say that different people have different perspectives on a document like this. The head of Treasury is naturally going to be focused on revenue flows and the things that have been giving him aggravation as chairman of the Gaming Commission. I think it is natural and legitimate for a Premier announcing this to put a big focus on a new resort development and, no doubt, he would make that announcement to the tourism industry and they would naturally focus on things like that. But, from where I sat, they just were not issues. I am afraid I cannot help you on that.

Mrs BUTLER - Don, can we move to the extensions of time? Are you happy with the mechanisms that were put in place there? Would you like to talk to that?

Mr CHALLEN - I do not think it is a matter of being happy, it is just that the deed created a process under which extensions of time could be given. They were asked for. The reasons each time appeared legitimate. We provided some advice to the Treasurer or the Minister for Finance of the day, depending on who was responsible for the administration of the deed and a draft letter for them to send back to Federal Hotels. On each occasion the relevant minister signed the letter. By the time we arrived at the third of those extensions, the final one, I felt that it was getting a bit beyond the pale. This thing was drifting out and drifting out. So, I asked the officers who prepared the advice to the Treasurer to find a way of giving the Treasurer some words to send a message to Federal Hotels that he would not look too kindly on any further extensions and we drafted some advice saying it was time to put the acid on them. We put some words to that effect in the draft letter and Mr Aird, as Treasurer, signed that letter a year or so ago, I forget exactly when now.

Mr HIDDING - On that question, the committee is grappling with those extensions of time. The committee has before it a view that the third extension should not have been granted because there were no rules in order to grant it. It goes on like this: the two first extensions were granted on regulatory approvals which is exactly what the out was for the extensions, but the last one was more to do with the company advising the Treasurer on 20 September that it had decided to review the resort design - 'We changed our mind, we are going to do something completely different and therefore request an extension'. There were no terms in the contract that allowed for that. The Treasurer advised publicly that he had accepted that Federal Hotels had used its best endeavours to advance the project and they had taken the opportunity to review the project and decided to take an alternative approach to the resort design. An extension was subsequently approved to enable Federal Hotels to obtain the approvals. In your response you indicated that as the nature had not changed, nor its scale, as it still would be a \$25 million development, therefore the extension was granted. But the nature and the scale changed considerably - a massive change.

Mr CHALLEN - Not between the second extension and the third, though.

Mr HIDDING - Yes. I mean that is what that was about. The request was, 'Could you give us a third extension because we are completely changing the nature and the scale of the development?'

Mr KONS - That did not come into the deed, did it, the nature of it? The scale was a \$25 million resort.

Mr HIDDING - The extensions could be granted if they were regulatory difficulties. Do you understand?

Mr CHALLEN - All right, yes.

Mr HIDDING - The third extension was granted on the fact that, yes, we need a regulatory approval because we are changing the nature and the scale of the development. On the basis of that granting, if that was a legitimate granting of an extension, this could go on for another 10 years because they could simply change the design.

Mr CHALLEN - I think at the end of the day this is a legal point and if you really want to pursue it you should take legal advice. From my perspective as a bush lawyer the relevant clause 4.3 says:

'If after exhausting all reasonable efforts the companies cannot obtain the regulatory approvals on commercially reasonable terms necessary to complete the development... they will negotiate on an extension of time or another development'.

I think the lawyers would say 'on commercially reasonable terms' means that if what they were proposing to build was not going to be an economic proposition, then it would not meet the commercially reasonable terms test. I was not involved in the detail of the drafting of the advice to the Treasurer on this matter; it was done by other officers, though I did intervene because I knew this was happening and was concerned that things were dragging on so that 'turn the heat up' clause that I mentioned earlier was my doing.

I imagine the officers who did the work would have been focusing on the 'commercially reasonable terms' clause, but at the end of the day it is a legal point on which maybe you should take legal advice. It is possible that our advice was flawed. I would hope not.

Mr KONS - The current deed is 10 years plus five?

Mr CHALLEN - It was 15, but it was 10 years from the date of expiration of the old deed, so it is a 15-plus - what is called a 'five year evergreen' licence. It gave them certainty of 15 years and then if at the end of the 15 years the Crown wants to terminate the agreement they can do so, but effectively they have to give five years' notice and then one year later you can still terminate it but you always have to give five years' notice.

Mr KONS - One of the concerns I have, which has been raised with hoteliers around the place, is getting a better deal for the venues - and I know you do not like these sorts of things whether you are a regulator or an operator, but this company now has that ability to exclude people from the market by buying hotels in certain areas. Wynyard is one in

my electorate where they buy the hotel and other venues completely miss out and they can do that throughout the State with this deed.

Mr CHALLEN - In my time on the Gaming Commission we - the commission - put some restrictions on Federal Hotels' capacity to operate gaming machines in venues that they owned and the conditions that were then in place prevented them from excluding competing venues. Again if you read the *Hansard* of my evidence back in May or June 2003 you will see that I covered that very extensively. I have not been a member of the Gaming Commission for quite a few years now and I am not up to whether those restrictions still apply.

Mr KONS - I know the commission can agree to someone getting a licence and then you go to the people that own the licence and then just say, well, no.

Mr CHALLEN - Well the commission in my day put restrictions on Federal Hotels. We put a limit on the number of hotels they could own that had gaming machine licences.

Mr KONS - Is that a publicly available document?

Mr CHALLEN - Yes because it was on the record in 2003, it is in the *Hansard*. We had a restriction that prevented them from excluding venues that they did not own from the marketing groups that their own venues were in and we had a requirement that they had to deal with their own venues at arm's length on exactly the same commercial terms that they dealt with all other venues, so at that time there was a set of restrictions that would have prevented Federal Hotels from excluding others. I assume those restrictions are still in place, but I do not know.

CHAIR - Don, can I ask you in relation to the audit - in the letter that we wrote you responded that the department does not have any plans to audit the contracts under which Federal Hotels will develop the resort in question and the answer went on:

'The specific requirement of the deed is, as can be seen, 'to undertake the development of a new premium standard resort near Coles Bay including accommodation, convention, resort, restaurant and recreational facilities with infrastructure development such as the provision of sewerage, water and electricity services and site works or actual construction starting by October 2003 and to be completed by early 2005 and at a capital cost of at least \$25 million'.

How is it proposed to audit that?

Mr CHALLEN - We do not have any specific proposals but I expect that when the resort is completed we will arrange for the Treasurer of the day to write to Federal Hotels to demonstrate to him how they have met the requirements of those clauses of the deed. We have obviously been taking an interest in the local preference clause, the one that appears as 4(2)(b):

'undertaking the development Federal Hotels will engage Tasmanian contractors and labour and will use Tasmanian materials where it is possible and commercially feasible to do so'

So we have been taking an interest in who they have been using as architects and who they have been using as head construction contractor and so on.

I do not think there is any reason to believe they are not fully complying with that, but we do not have any specific plans to do an audit per se but I would expect we would go through a process at the end to make sure they have complied with that clause of the deed. Obviously other clauses of the deed are being monitored in real time - for instance, the Gaming Commission is getting daily data on the number of gaming machines that are out there to make sure that they are complying with the statewide cap. Obviously we know they are complying with their obligations to pay licence fees and taxes and so on because we do a monthly audit on all their returns to make sure we are getting the right amount of money.

CHAIR - In relation to Federal paying the costs of the central monitoring system - number of tables, range of games et cetera - I suppose you would be giving me the same answer?

Mr CHALLEN - Yes. They are being monitored in real time.

Mr KONS - Just on that clause that talks about the local preference, could that be enforced?

Mr CHALLEN - If we found evidence that they were not meeting that, we would have to go to the default clauses of the deed and give notice that we believed they had failed to comply and they would then have 20 business days to rectify it or if they could not then a compensation clause would be triggered in most cases.

Mr KONS - Is there not a New Zealand/Australian treaty that says you are not allowed to favour a local?

Mr CHALLEN - We are not, the Crown, but we can make them. They are not a signatory to the New Zealand agreement, although this pre-dated that agreement anyway. Actually that is an interesting question. Maybe by our actions we cannot do those sorts of things anymore.

Mr KONS - So there is no enforcement?

Mr CHALLEN - Very interesting question.

Mr HIDDING - Not a lot to worry about. The builders, architects and designers in Tasmania are better than anywhere in the world anyway so they would use them by choice.

Mr CHALLEN - Yes.

CHAIR - Don, the \$25 million, is there any unwritten rule within the deed or in your knowledge to say that was \$25 million as at 2003 when it was going to be completed? Is there going to be interest on top of that, CPI, or does it still remain \$25 million and if nothing happens until 2020 is it still \$25 million?

Mr HIDDING - It is minimum.

Mr CHALLEN - Yes, minimum. Because of the lack of focus on that clause, the drafting of it is not as good as it could be. If it had been a hugely important thing in our minds I am sure we would have said \$25 million in 2003 terms and that would have been automatically indexed but we did not, so if it turns out to be \$25.5 million, let us say, we will have a bit of an argument with them but we will not have a leg to stand on.

CHAIR - Are there any other questions of Don? If not, Don, thanks for coming along.

Mr CHALLEN - Mr Chairman, in terms of your letter and my response to it, can I assume that you will write me a fresh letter that specifies what it is you now want because I have answered your questions 3 and 4 and I have said I will leave your questions 1 and 2 until after today but I think it would be helpful if we could have a fresh letter so I do not have to try to interpret the old. If I could be so presumptuous, if perhaps you could show me a draft of the letter before you put your signature on it I might be able to help you refine it so it is easy for me to respond to.

CHAIR - You can be presumptuous - it's not a drama.

Mr HIDDING - A very good piece of advice.

Mr CHALLEN - I do hope that I have again demonstrated today that I am very respectful of the processes of the Parliament and always willing to assist committees such as yours, Mr Chairman.

CHAIR - We know that.

THE WITNESS WITHDREW.