



PARLIAMENT OF TASMANIA

**PARLIAMENTARY STANDING COMMITTEE OF PUBLIC
ACCOUNTS**

REPORT ON

**COMPLIANCE WITH THE DEED OF
AGREEMENT, SCHEDULE 1 OF THE *GAMING
CONTROL ACT 1993***

Laid upon the Tables of both Houses of Parliament

*The Committee was appointed under the provisions of section 2 of the Public Accounts Committee Act 1970
(No 54)*

MEMBERS OF THE COMMITTEE

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1 Summary of Notings, Findings and Recommendations

1.1 Compliance by Federal Hotels in relation to the commitments in the Deed of Agreement in Schedule 1 of the *Gaming Control Act 1993*

1.1.1 Clause 4.1 of the Deed

The Committee notes that

1. The Deed places a legal obligation on Federal Hotels to expressly prohibit it from recovering from hotels and clubs any amounts attributable to the cost of monitoring, operating and redeveloping the Central Monitoring System.
2. The Deed also requires Federal Hotels to conduct table gaming every day in Tasmania's two casinos and to provide the number of tables and range of games to sufficiently meet patron demand.
3. Federal Hotels has received legal advice that it has complied with the Deed and any representation it has made in relation to it.

The Committee finds that

1. Based on the evidence available to the Committee, Federal Hotels has complied with clause 4.1 of the Deed.

1.1.2 Clause 4.2 of the Deed

(i) Subclause 4.2(a)

The Committee notes that

1. The Deed requires a new premium standard resort at a capital cost of at least \$25 million to be built near Coles Bay by early 2005. Such a resort is to have accommodation, convention and restaurant facilities.
2. There is nothing in the Deed that specifies how many rooms the resort is required to have.
3. Infrastructure works associated with the resort commenced prior to October 2003. Dams have been built to increase the water storage capacity at Coles Bay which will benefit both the resort and the community.
4. Enhanced sewerage infrastructure for the community is not being progressed as part of the resort development.
5. The developer claims that the Saffire resort will cost approximately \$32 million.

The Committee finds that

1. The resort was not a major component of the 2003 Deed. The basis of the Deed was to progress the Government's social policy agenda of capping the number of gaming machines and introducing enhanced player protection measures as well as improving the financial return to the State from gaming machines.
2. The Saffire resort complies with the requirement for the new premium standard resort as outlined in sub-clause 4.2(a) of the Deed.

(ii) Subclause 4.2(b)

The Committee notes that

1. The majority of contractors engaged for the Saffire resort complex are Tasmanian based. Federal Hotels provided reasons as to why it needed to engage three mainland contractors.

(iii) Subclause 4.2(c)

The Committee notes that

1. Federal Hotels has introduced the Flexible Operator Model.

The Committee finds that

1. Based on the evidence available to the Committee, Federal Hotels has complied with clause 4.2 of the Deed.

1.1.3 Clause 4.3 of the Deed

The Committee notes that

1. The Deed provided, in the event that Federal Hotels be unable to obtain the regulatory approvals on commercially reasonable terms to complete the resort by early October 2005, for:
 - (i) extensions of time to complete the development; or
 - (ii) an equivalent development to be built elsewhere in Tasmania.
2. Federal Hotels requested extensions in September 2004, December 2005, September 2007 and August 2009. The requests were approved. The first two requests were made because of delays in obtaining the necessary regulatory approvals. The third request was made because of Federal Hotels' decision to revise the resort's design which meant that a new planning application was required. The fourth request was due to adverse weather conditions delaying the construction.

The Committee finds that

1. The extensions provided by the State Government were consistent with the intention of the Deed as they enabled the resort to proceed taking into account delays in regulatory approvals and building works as well as the need to ensure that the resort was going to be an economic proposition.

2. Based on the evidence available to the Committee, Federal Hotels has complied with clause 4.3 of the Deed.

1.1.4 Clause 4.4 of the Deed

The Committee notes that

1. Federal Hotels has introduced a number of player protection measures.

1.1.5 Audit

The Committee notes that

1. The Deed imposes a number of obligations on Federal Hotels including: the development of a resort with a capital cost of at least \$25 million, engagement of Tasmanian contractors and labour and the use of Tasmanian materials where it is possible and commercially feasible to do so.
2. The Deed also imposes a number of obligations on Federal Hotels in relation to gaming operations and the payment of licence fees and taxes.

The Committee finds that

1. The Department of Treasury and Finance does not have any plans to formally audit the resort contracts; some of the gaming operations are being monitored in real time; and there are monthly audits of the payment of licence fees and taxes.

The Committee recommends that

1. The Auditor-General undertakes a formal audit of Federal Hotels' compliance with the commitments in the Deed which is then tabled in Parliament.

1.2 Compliance by Federal Hotels in relation to the evidence provided to the Public Accounts Committee in the course of the Committee's Inquiry into the Deed of Agreement in 2003

1.2.1 Premium Resort

The Committee notes that

1. There is no definition in the Deed as to what constitutes a 'premium standard tourist resort'.

The Committee finds that

1. While the term 'premium standard tourist resort' is not defined in the Deed, the Saffire development is consistent with Federal Hotels' undertaking during the 2003 Inquiry to develop a premium standard tourist resort.
2. The subjective test of whether the resort ultimately satisfies the requirement that it is a 'premium resort' must await its completion.

1.2.2 Size and design of the complex

The Committee notes that

1. The 2003 Deed does not make any specific reference to size and design of the resort, such as the number of rooms.
2. Federal Hotels initially indicated to the 2003 Committee that it estimated the resort would have between 100 to 150 rooms.
3. The company has subsequently revised this to 20 rooms for the Saffire resort.
4. While commerciality concerns were disavowed in the 2003 evidence Federal Hotels now relies on commerciality as the key reason for the radical restructure of the development proposal.

The Committee finds that

1. Federal Hotels made representations to the 2003 Committee in relation to the proposed Coles Bay resort, including its size and design.
2. It was up to Legislative Council members to make a decision on the Gaming Control Amendment Bill based on the findings and recommendations contained in the 2003 Committee's report as well as other material before it.
3. While the size and design of the proposed resort was referred to on a number of occasions by Legislative Council members during the debate of the Gaming Control Amendment Bill, this Committee cannot infer what weight Legislative Council members gave to Federal Hotels' representations regarding the resort.
4. There was no contract between Federal Hotels and the 2003 Committee in relation to the Deed. Therefore there can be no legal implication that the Deed required the resort should have a certain number of rooms.
5. The development of a 150 room hotel at Coles Bay would have provided significantly enhanced benefits to the local and regional community, both in terms of employment and commercial activity flowing from a larger number of tourists to the region.

1.2.3 Employment numbers

The Committee notes that

1. The 1993 Deed specifically referred to employment numbers and committed Federal Hotels to employ an extra 300 people following completion of the upgrading of Tasmania's two casinos and the extension of gaming machines.
2. The 2003 Deed did not make any specific reference to employment numbers.
3. Federal Hotels indicated to the 2003 Committee it estimated that the resort would lead to the creation of between 150 and 180 jobs for the original 100 to 150 room resort.
4. The company has subsequently revised this estimate to between 38 and 54 jobs for the 20 room Saffire resort.

The Committee finds that

1. The representations by Federal Hotels to the 2003 Committee in terms of the number of people that may be employed at the resort were made with a view of persuading that Committee to recommend to the Legislative Council that it should pass the *Gaming Control Amendment Act 1993*.
2. There was no contract enacted between Federal Hotels and the 2003 Committee in relation to the Deed. Therefore there can be no legal implication that the Deed formally required a certain number of staff to be employed at the resort.
3. While it was not possible to understand precisely the weight given by the 2003 Committee and Legislative Councillors to the employment numbers and the size and nature of the development, they were entitled to believe that the eventual outcome would be somewhere near the levels stated by Federal Hotels.

1.3 The responsibility of the State Government to keep Parliament (and the people) informed of any variations to the projected timelines and the nature of the development at Coles Bay

The Committee notes that

1. Federal Hotels actively released information, often at crucial times in negotiations with Parliament and the Committee, by way of media announcements in relation to the ongoing developments of the resort. Inspection of the media releases over a number of years revealed that there was a steady reduction in the company's stated intention on the number of rooms at the resort.

The Committee finds that

1. The State Government had a duty to keep the Tasmanian community informed of variations to the projected timelines and to the substantial change to the nature of the development at Coles Bay, particularly at the time of the third extension. The Government failed in its duty in not doing so.
2. Both the State Government and Federal Hotels, as parties to the Deed, should have advised the Tasmanian public of the reasons for the significant change in the size and nature of the development and employment levels.

The Committee recommends that

1. The State Government require appropriate communication strategies be developed on the progress or otherwise of commitments made as part of public contracts or Deeds that have been enshrined in legislation for major programs, such as the implementation of the 2003 Deed.

1.4 Any other matters incidental hereto

The Committee recommends that

1. The Government should, when drafting future Deeds, define key terms (such as premium standard resort), clearly identify required outcomes (such as employment numbers) as well as ensure that figures are indexed to the Consumer Price Index where appropriate.
2. An open and transparent tender process should apply to the issuing of gaming licences unless exempted by Parliament.

2 The Public Accounts Committee

The *Public Accounts Committee Act 1970* provides for the establishment of a joint committee, comprising three members from the Legislative Council and three from the House of Assembly.

The statutory function of the Parliamentary Standing Committee of Public Accounts (the Committee) is as follows:

The Committee must inquire into, consider and report to the Parliament on any matter referred to the Committee by either House relating to:

- a) the management, administration or use of public sector finances; or
- b) the accounts of any public authority or other organisation controlled by the State or in which the State has an interest.

The Committee may inquire into, consider and report to the Parliament on:

- a) any matter arising in connection with public sector finances that the Committee considers appropriate; and
- b) any matter referred to the Committee by the Auditor-General.

The Committee has the power to summon witnesses to appear before it to give evidence and to produce documents and, except where the Committee considers that there is good and sufficient reason to take it in private, all evidence is taken by the Committee in public.

The current membership of the Committee is:

| | |
|--------------------------------|--------------------|
| Hon J.S. Wilkinson MLC (chair) | Mrs H.R. Butler MP |
| Hon I.N. Dean MLC | Mr M.T. Hidding MP |
| Hon R.J. Forrest MLC | Mr S. Kons MP |

In its work the Committee was supported by Ms Heather Thurstans, Mrs Dianne Hudson and Ms Sally Shepherd. The Committee is grateful for their contribution.

3 The Gaming Control Act 1993 and Associated Deed

The *Gaming Control Act 1993* provides a detailed legislative framework for the control and regulation of gaming in Tasmania. The Act also ratifies and gives the force of law to the Deed between the State Government and Federal Hotels Pty Limited (Federal Hotels). The Deed is Schedule 1 of the Act.

Under the original 1993 Deed, in return for the exclusive rights to operate gaming machines for a 15 year period ending on 31 December 2008, Federal Hotels agreed to a number of undertakings. The undertakings included:

- building and upgrading work at both the Wrest Point and Country Club casinos at an estimated cost of \$25 million, employing an extra 300 people following the completion of works and the extension of gaming machines;
- guaranteeing revenue to the Government from gaming machine operations and the payment of annual casino licence fees; and
- operating gaming machines in licensed clubs and hotels from 1 January 2007.¹

In early 2003 the Government and Federal Hotels met to discuss a possible renegotiation of the Deed. This was as a direct result of the Government wanting to cap the number of gaming machines in the State and to increase player protection measures as part of its social policy agenda. The Government also wanted to improve the financial return to the State from the tax derived from gaming machine profits.²

Evidence obtained by the Committee from the Secretary of the Department of Treasury and Finance showed that he gave advice that the process should go to Public Tender but the then Treasurer, Dr David Crean, chose not to accept that advice.^{3 4}

Negotiations between the parties resulted in a new 15 year Deed which was signed on 18 March 2003. The Committee's 2003 Inquiry into the Federal Hotels Agreement summarised the new Deed, which commenced on 1 July 2003, as follows:

- Exclude from their charge to all clubs and hotels, all amounts attributable to the cost of monitoring, operating and re-developing the Central Monitoring System.
- Conduct table gaming on every day of each year at both Wrest Point and the Country Club and provide both the number of tables and range of games sufficient to meet patron demand from time to time.

¹ Parliamentary Standing Committee of Public Accounts, 2003, Inquiry into the Federal Hotels Agreement, p.11.

² Crean, Dr D., Treasurer, Transcript of Evidence, 12 August 2003, pp. 10-12.

³ Challen, Mr D., Department of Treasury and Finance, Email of 29 October 2007.

⁴ Nicholl, Mr R., Department of Treasury and Finance, Email of 18 July 2007.

- Undertake the development of a new premium standard resort near Coles Bay:
 - a) including accommodation, convention, restaurant and recreation facilities;
 - b) with infrastructure development (such as the provision of sewerage, water and electricity services and site works) or actual construction starting by October 2003 and project to be completed by early 2005; and
 - c) at a capital cost of at least \$25 million.
- Use Tasmanian contractors, labour and materials for the construction of the Coles Bay development where possible and commercially feasible to do so.
- Introduce a flexible operating model that permits a licensed premises gaming operator of a club or a hotel to choose, from the selection available from Federal Hotels, the games and gaming machines that the operator considers most appropriate for those premises.
- Using their best endeavours to continue to improve player protection measures and to support the Crown's initiatives in that field.
- Pay tax on gaming machine gross profit at the rate of:

| Gross Profit | Tax Payable |
|---------------------------------------|------------------------|
| \$30 million or less | 15.88% of gross profit |
| Between \$30 million and \$35 million | 20.88% of gross profit |
| \$35 million or greater | 25.88% of gross profit |

- Pay tax on table gaming profit at the rate of 0.88% of the gross profit.
- Pay tax on keno gross profit at the rate of 5.88% of the gross profit.
- Pay annual Casino Licence fees of approximately \$1 349 600 per casino.

In May 2003 the Gaming Control Amendment Bill 2003 and the associated new Deed (as Schedule 1) were introduced into the House of Assembly and subsequently passed all stages.

Following the introduction of the Bill to the Legislative Council, the Legislative Council agreed to a motion to have the new Deed referred to the Parliamentary Standing Committee of Public Accounts.

On 29 May 2003 the Committee received a reference from the Legislative Council to investigate and report upon:

- a) the new Deed between the Government and Federal Hotels and its return to taxpayers;
- b) issues related to transparency in the negotiation of the Deed;
- c) issues relating to the quality of the deal extracted by the Government in the Deed;
- d) the non-competitive nature of the negotiation of the Deed; and
- e) any other issues relevant to the Deed.

During the 2003 Inquiry the Committee, Federal Hotels and the Government discussed the size and nature of the Coles Bay Resort.⁵

⁵ Challen, Mr D., Department of Treasury and Finance, Transcript of Evidence, 10 March 2009.

The Committee's report⁶ was subsequently tabled in Parliament. It recommended that the Legislative Council pass the Gaming Control Amendment Bill. The Bill was subsequently passed and the amendments were incorporated into the *Gaming Control Act 1993*.

4 The Terms of Reference

In mid 2008 the Parliamentary Standing Committee of Public Accounts resolved to inquire and report upon:

- a) compliance by Federal Hotels in relation to the commitments in the Deed of Agreement in Schedule 1 of the *Gaming Control Act 1993*;
- b) compliance by Federal Hotels in relation to the evidence provided to the Public Accounts Committee in the course of the Committee's Inquiry into the Deed of Agreement in 2003;
- c) the responsibility of the State Government to keep Parliament (and the people) informed of any variations to the projected timelines and the nature of the development at Coles Bay; and
- d) any other matters incidental hereto.

5 Submissions Received and Evidence Taken

The Parliamentary Standing Committee of Public Accounts advertised in the three regional newspapers and received written submissions. A list of the submissions which were taken into evidence by the Committee is provided in Appendix A. A number of supplementary documents were provided to the Committee and taken into evidence during the Inquiry. Details are in Appendix B.

In addition to these written submissions and documents a number of parties were called to give verbal evidence. Details are in Appendix C.

To assist the Committee with its understanding of the negotiations and background to the signing of the 2003 Deed, it sought and gained access to a number of Department of Treasury and Finance files. This additional background provided a chronology of the events leading up to and during the negotiations and finalisation of the 2003 Deed. Given the confidential nature of the information in the Department's files the Committee agreed that the majority of the documentation would not be taken as formal evidence. However two of the documents were taken as formal evidence (refer to documents 5, 6 and 7 in Appendix B).

The Committee's Terms of Reference will now be addressed in the following sections.

⁶ Parliamentary Standing Committee of Public Accounts, Inquiry into the Federal Hotels Agreement, 2003.

6 Compliance by Federal Hotels in relation to the commitments in the Deed of Agreement in Schedule 1 of the *Gaming Control Act 1993*

In Mr Farrell's opening address to the Committee at the public hearing held on 11 November 2008 he stated that:

*"What we sought to do in our submission was demonstrate that the company at all times complied with each and every obligation under the deed. Subsequent to attending the PAC [Public Accounts Committee] inquiry in July 2003, the company decided on several occasions to revisit the design of the development at Coles Bay and subsequently a number of changes have been made which resulted in yesterday's announcement of the construction of Saffire. It is fair to say that those changes in no way undermine or diminish the company's commitments under the deed."*⁷

Clause 4 of the 2003 Deed, which is reproduced on the following page, outlines the companies' covenants. The companies are defined in the Deed as *"Federal Hotels Pty Limited, Australian National Hotels Pty Limited and Tasmanian Country Club-Casino Propriety Limited, and their successors and assigns."*⁸

During the course of the Inquiry the Committee determined that it was important to gain an understanding of what was in the 'mind' of the key negotiators of the 2003 Deed to assist it in determining whether the Deed had been complied with. Additional information was subsequently sought from the Department of Treasury and Finance in relation to the negotiation of the Deed. The Committee also sought legal advice in relation to the broader terms of the Committee's Inquiry. It decided not to approach the Solicitor-General for this advice, on the basis of a possible conflict of interest.

In undertaking its work the Committee determined that it was important to examine clause 4 of the Deed in detail as this was central to its Terms of Reference.

⁷ Farrell, Mr G., Federal Hotels, Transcript of Evidence, 2008, p. 22.

⁸ 2003 Deed, p. 5.

Clause 4 of the Deed of Agreement in Schedule 1 of the *Gaming Control Act 1993*

| | |
|-----|---|
| 4 | Companies' Covenants |
| 4.1 | <p>In consideration of the grant of the Exclusive Right, the Companies covenant with the Crown that, throughout the term of the Exclusive Right, they will:</p> <ul style="list-style-type: none">(a) not negligently, knowingly or wilfully do anything to be done, that in any way impairs the operation of this Deed or dilutes the obligations of the Companies under it (but nothing in this subclause (a) prejudices the Companies' rights to take action under this Deed);(b) exclude from their charges to all Clubs and Hotels, all amounts attributable to the cost of maintaining, operating and re-developing the Central Monitoring System;(c) conduct table gaming on every day of each year at both Wrest Point and the Country Club, and provide both the number of tables and range of games sufficient to meet patron demand from time to time. These obligations do not prevent the Companies from changing or varying the types, or the daily hours of operation, of table games to maintain their commercial viability. |
| 4.2 | <p>The Companies covenant with the Crown that:</p> <ul style="list-style-type: none">(a) (subject to clause 4.3), they will undertake development of a new premium standard tourist resort near Coles Bay:<ul style="list-style-type: none">(i) including accommodation, convention, restaurant and recreation facilities;(ii) with infrastructure development (such as the provision of sewerage, water and electricity services and site works) or actual construction starting by October 2003 and the project to be completed by early 2005; and(iii) at a capital cost of at least \$25 Million.(b) in undertaking the development described in clause 4.2(a) or any alternative development, they will engage Tasmanian contractors and labour and will use Tasmanian materials, where possible and commercially feasible to do so;(c) they will introduce a flexible operating model that permits a Licensed Premises Gaming Operator of a Club or Hotel to choose, from the selection then available from the Companies, the games and Gaming Machines that the operator considers most appropriate for those premises. |
| 4.3 | <p>If, after exhausting all reasonable efforts, the Companies cannot obtain the regulatory approvals (on commercially reasonable terms) necessary to complete the development described in clause 4.2(a), the Companies will negotiate in good faith with the Crown to agree on either:</p> <ul style="list-style-type: none">(a) a reasonable extension of the times allowed under clause 4.2(a)(ii), if it is reasonably likely that an extension of time will enable the Companies to obtain those regulatory approvals; or(b) otherwise, an equivalent development on another site in Tasmania. |
| 4.4 | <p>Throughout the term of the Exclusive Right, the Companies will use their best endeavours to continue to improve player protection measures and to support the Crown's initiatives in that field.</p> |

6.1 Clause 4.1 of the Deed

6.1.1 Consideration of the evidence

Clause 4.1 of the Deed states that:

- 4.1 In consideration of the grant of the Exclusive Right, the Companies covenant with the Crown that, throughout the term of the Exclusive Right, they will:
- (a) not negligently, knowingly or wilfully do anything to be done, that in any way impairs the operation of this Deed or dilutes the obligations of the Companies under it (but nothing in this subclause (a) prejudices the Companies' rights to take action under this Deed);
 - (b) exclude from their charges to all Clubs and Hotels, all amounts attributable to the cost of maintaining, operating and re-developing the Central Monitoring System;
 - (c) conduct table gaming on every day of each year at both Wrest Point and the Country Club, and provide both the number of tables and range of games sufficient to meet patron demand from time to time. These obligations do not prevent the Companies from changing or varying the types, or the daily hours of operation, of table games to maintain their commercial viability.

Sub-clause 4.1(a) Operation of the Deed and obligations of the Deed

Federal Hotels in its submission to the Inquiry states that:

"It is Federal's submission that this undertaking has been complied with in full.

To Federal's knowledge, the allegations surrounding the timing and re-scaling of the Coles Bay Resort are the only allegations that have ever been made against it in relation to compliance with the 2003 Deed.

*In relation to the timing of the resort, Federal has always operated within the terms of the Deed. In particular when it became clear that the timing of the development needed to change due to regulatory processes, Federal sought from the Crown, and was provided with, extensions in accordance with clause 4.3(a) of the Deed."*⁹

As part of its submission to the Inquiry Federal Hotels provided legal advice it had received that the company had complied with the Deed and any representations it had made in relation to it.¹⁰

No other submission received by the Committee directly addressed this matter.

⁹ Federal Hotels, Submission to the Parliamentary Standing Committee of Public Accounts, 2008, p. 2.

¹⁰ Federal Hotels, Submission to the Parliamentary Standing Committee of Public Accounts, 2008, Appendix E.

Sub-clause 4.1(b) Central Monitoring System

In its submission to the Inquiry Federal Hotels stated that:

“It is Federal’s submission that this commitment has been complied with in full.

Changes for the Central Monitoring Systems have been excluded from venue charges since 2003, at a total cost to Federal to date of \$1,548,500. Annual costs over the next two years will be around \$200,000 and additional capital expenditure on equipment upgrades is required to be made by Federal in 2010.”¹¹

No other submission directly addressed this matter.

Sub-clause 4.1(c) Table gaming and the range of games

Federal Hotels’ submission also stated that:

“It is Federal’s submission that this commitment has been complied with in full.

This is a matter of fact. Table gaming operates each day of the year and since 2003 Federal has introduced new casino games such as rapid roulette and Texas Hold’em in order to meet changing market demand.”¹²

No other submission directly addressed this matter.

6.1.2 The Committee notes that

1. The Deed places a legal obligation on Federal Hotels to expressly prohibit it from recovering from hotels and clubs any amounts attributable to the cost of monitoring, operating and redeveloping the Central Monitoring System.
2. The Deed also requires Federal Hotels to conduct table gaming every day in Tasmania’s two casinos and to provide the number of tables and range of games to sufficiently meet patron demand.
3. Federal Hotels has received legal advice that it has complied with the Deed and any representation it has made in relation to it.

6.1.3 The Committee finds that

1. Based on the evidence available to the Committee, Federal Hotels has complied with clause 4.1 of the Deed.

¹¹Federal Hotels, Submission to the Parliamentary Standing Committee of Public Accounts, 2008, p. 3.

¹²Federal Hotels, Submission to the Parliamentary Standing Committee of Public Accounts, 2008.

6.2 Clause 4.2 of the Deed

6.2.1 Consideration of the evidence

Clause 4.2 of the Deed states that:

- 4.2 The Companies covenant with the Crown that:
- (a) (subject to clause 4.3), they will undertake development of a new premium standard tourist resort near Coles Bay:
 - (i) including accommodation, convention, restaurant and recreation facilities;
 - (ii) with infrastructure development (such as the provision of sewerage, water and electricity services and site works) or actual construction starting by October 2003 and the project to be completed by early 2005; and
 - (iii) at a capital cost of at least \$25 Million.
 - (b) in undertaking the development described in clause 4.2(a) or any alternative development, they will engage Tasmanian contractors and labour and will use Tasmanian materials, where possible and commercially feasible to do so;
 - (c) they will introduce a flexible operating model that permits a Licensed Premises Gaming Operator of a Club or Hotel to choose, from the selection then available from the Companies, the games and Gaming Machines that the operator considers most appropriate for those premises.

Sub-clause 4.2(a) Resort

There are a number of specific requirements outlined in the Deed in relation to the resort.

(i) Accommodation, convention, restaurant and recreation facilities

Federal Hotels advised the Committee that it understood that the Inquiry had been established to investigate compliance with the undertakings set out in the 2003 Deed and, in particular, the undertaking to develop a new premium standard tourist resort near Coles Bay at a capital cost of at least \$25 million. It was in that context that Federal Hotels wrote its submission.

*“Our submission is that Federal has complied with both the spirit and word of the Deed. The Deed has expressed the commitment to a premium resort at Coles Bay in terms of the minimum amount that is to be invested in the development. This is expressed as \$25 million. The commitment is not expressed in terms of size or employment levels as these are matters that would follow from the ideal product required to satisfy the covenant that the resort be of a “premium standard”.”*¹³

As part of its submission Federal Hotels referred to research undertaken by Quantum Market Research on behalf of the company. Federal Hotels argued that the research demonstrated that the premium standard resort for the site must be small and discreet. The company accordingly revised its plans for the resort and have named the complex Saffire.

¹³ Ibid, p. 4.

The revised plans, which include the construction of 20 high quality suites, have been approved by the Glamorgan/Spring Bay Council. Mr Farrell advised the Committee at the public hearing on 11 November 2008 that construction works had commenced and that it was envisaged that the resort would be completed by December 2009.¹⁴ The Committee was subsequently advised that the resort was now due to be completed by April 2010.¹⁵

Federal Hotels also advised that the main building would contain:

- the reception and main lounge;
- a first class restaurant for 50 people;
- a bar and lounge area;
- state of the art conference facilities for 20 people; and
- a wellness centre and gymnasium.¹⁶

As was noted earlier, at the public hearing the Committee requested the Department of Treasury and Finance to provide information to assist it in gaining an understanding of what was envisaged in the terms of the Deed and, more specifically, what was in the 'mind' of the negotiators with respect to the size and design of the resort. Information from the Department's files was duly provided to the Committee to enable it to gain such an understanding.

It was clear from the Department's files that the resort was not a major element in the negotiations of the Deed. The Government claimed that the primary rationale behind renegotiating the 1993 Deed was the then Treasurer's social policy agenda to cap the number of gaming machines and enhance player protection measures as well as to improve the financial return to the State from gaming machines.

The Committee stated in its 2003 Report that:

*"It is likely that a Coles Bay development would have proceeded in some form in the absence of the renegotiated Deed but as a result of signing the Deed, Federal Hotels assumed a legal obligation to undertake the development to a premium standard and with a range of obligations relating to the use of Tasmanian contractors, labour and materials."*¹⁷

Based on the information available to the current Committee, it appears that the resort requirement was a lesser matter in the 2003 Deed negotiations, especially given that Federal Hotels had already publicly announced that it had purchased the Coles Bay site with the intention of building a resort. Mr Challen reiterated this at the public hearing on 10 March 2009 when he stated that:

¹⁴ Farrell, Mr G., Transcript of Evidence, 2008, p. 22.

¹⁵ Aird, the Hon M., Treasurer, Correspondence to the Parliamentary Standing Committee of Public Accounts, 1 September 2009.

¹⁶ Federal Hotels, Submission to the Parliamentary Standing Committee of Public Accounts, 2008, p. 9.

¹⁷ Parliamentary Standing Committee of Public Accounts, Inquiry into the Federal Hotels Agreement, 2003 p. 22.

*“..... it was not central to our 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.”*¹⁸

The Committee found no evidence of any specific mention to the size and scale of the proposed resort in terms of room numbers and associated employment numbers in the negotiations leading up to the signing of the Deed on 18 March 2003.

(ii) Infrastructure development

The 2003 Deed requires the infrastructure development associated with the tourist resort to be started by October 2003 and for the project to be completed by early 2005. However, extensions are permitted in accordance with clause 4.3 of the Deed.

Federal Hotels’ submission provided a chronology of milestones and documentary evidence which, the company argued, demonstrated that it had gone beyond ‘reasonable efforts’ in order to establish such infrastructure at Coles Bay.¹⁹ For example:

- infrastructure development commenced prior to October 2003;
- dams have been built which will increase water storage at Coles Bay from 70 mL to 360 mL;
- the company has worked with the Glamorgan/ Spring Bay Council to look at an expanded waste water treatment plant; and
- permits have been issued by the Council to enable the resort to be constructed.

At the public hearing on 11 November 2008, Mr Farrell confirmed that the water storage capacity at Coles Bay had been increased and that it would directly benefit the Coles Bay community.²⁰

However, there will be no direct benefit for the community in terms of sewerage infrastructure. Federal Hotels advised that while it had worked with the local council regarding additional sewerage infrastructure for the community it was unable to progress the matter further. At the public hearing on 11 November 2008 Mr Farrell reiterated that the 2003 Deed does not require water and sewerage infrastructure to be provided to the community.²¹

Other than higher levels of employment and increased tourism traffic to the region, Federal Hotels’ original larger resort proposal would have resulted in opportunities for the existing golf club at Swanwick.²² The company had proposed that the club would receive reused water to assist with irrigating its course. This matter is no longer being pursued by the company.²³

¹⁸ Challen, D., Transcript of Evidence, 2009, p. 4.

¹⁹ Federal Hotels, Submission to the Parliamentary Standing Committee of Public Accounts, 2008, pp. 4-6, Appendices C & F

²⁰ Farrell, Mr G., Transcript of Evidence, 2008, p. 22.

²¹ Farrell, Mr G., Transcript of Evidence, 2008, pp. 44-45.

²² Farrell, Mr G., Transcript of Evidence, 2003, p. 16.

²³ Farrell, Mr G., Transcript of Evidence, 2008, p. 43.

The Department of Treasury and Finance noted at the public hearing on 11 November 2008 that the management of water and sewage on the East Coast would be considered as part of the new regional corporation framework currently being progressed.²⁴

(iii) Capital cost of at least \$25 million

The Deed requires the development of a premium standard tourist resort near Coles Bay at a capital cost of at least \$25 million. In Federal Hotels' 2008 submission the company advised that the current design of the proposed resort complex would cost an estimated \$32 million, with \$2.895 million of this having been spent as of 30 June 2008.²⁵ The Committee noted that \$25 million in 2003 would equate to around \$32 million in today's money should the Consumer Price Index (CPI) be applied.

At the public hearings of 11 November 2008 Mr Nicholl advised that he was unaware of an upper limit being discussed on the cost of the resort, other than the general concept of a substantive high-quality resort.²⁶

6.2.2 The Committee notes that

1. The Deed requires a new premium standard resort at a capital cost of at least \$25 million to be built near Coles Bay by early 2005. Such a resort is to have accommodation, convention and restaurant facilities.
2. There is nothing in the Deed that specifies how many rooms the resort is required to have.
3. Infrastructure works associated with the resort commenced prior to October 2003. Dams have been built to increase the water storage capacity at Coles Bay which will benefit both the resort and the community.
4. Enhanced sewerage infrastructure for the community is not being progressed as part of the resort development.
5. The developer claims that the Saffire resort will cost approximately \$32 million.

6.2.3 The Committee finds that

1. The resort was not a major component of the 2003 Deed. The basis of the Deed was to progress the Government's social policy agenda of capping the number of gaming machines and introducing enhanced player protection measures as well as improving the financial return to the State from gaming machines.
2. The Saffire resort complies with the requirement for the new premium standard resort as outlined in sub-clause 4.2(a) of the Deed.

²⁴ Nicholl, Mr R., Department of Treasury and Finance, Transcript of Evidence, 2008, p.17

²⁵ Federal Hotels, Submission to the Parliamentary Standing Committee of Public Accounts, 2008, p. 4.

²⁶ Nicholl, Mr R., Department of Treasury and Finance, Transcript of Evidence, 2008, p. 4.

Sub-clause 4.2(b) Tasmanian contractors and labour and Tasmanian materials

Federal Hotels stated in its submission that this commitment to use Tasmanian contractors, labour and material will be complied with in full. Details of the Tasmanian contractors who have been engaged for the Coles Bay resort to date were listed. The company also provided details of the three mainland contractors and the reasons they were employed.²⁷ The mainland contractors were employed because of their specialist skills or because local firms were unavailable.

At the public hearing on 11 November 2008 the Committee sought advice from the Department of Treasury and Finance as to whether there had been any specific audit undertaken of the contractors, labour and materials used. Mr Nicholl advised that:

*“I’m not aware that there’s been any specific audit of the contracts for construction.”*²⁸

Further information was sought from the Department as to whether it has plans to do an audit. This is further discussed in Section 7.

6.2.4 The Committee notes that

1. The majority of contractors engaged for the Saffire resort complex are Tasmanian based. Federal Hotels provided reasons as to why it needed to engage three mainland contractors.

Sub-clause 4.2(c) Flexible operator model

In relation to 4.2(c) Federal Hotels considers that this commitment has been complied with in full and advised the Committee that:

*“In late 2003 the Flexible Operator Model was introduced as agreed and it has operated each year since that date.”*²⁹

At the public hearing on 11 November 2008 the Department of Treasury and Finance advised that compliance with this commitment was a matter for the Gaming Commission as it is responsible for the administration of the *Gaming Control Act 1993*.³⁰

6.2.5 The Committee notes that

1. Federal Hotels has introduced the Flexible Operator Model.

²⁷ Federal Hotels, Submission to the Parliamentary Standing Committee of Public Accounts, 2008, p. 6.

²⁸ Nicholl, Mr R., Department of Treasury and Finance, Transcript of Evidence, 2008, p. 16.

²⁹ Federal Hotels, Submission to the Parliamentary Standing Committee of Public Accounts, 2008, p. 7.

³⁰ Nicholl, Mr R., Department of Treasury and Finance, Transcript of Evidence, 2008, p. 16.

6.2.6 The Committee finds that

1. Based on the evidence available to the Committee, Federal Hotels has complied with clause 4.2 of the Deed.

6.3 Clause 4.3 of the Deed

6.3.1 Consideration of the evidence

Clause 4.3 of the Deed states that:

- 4.3 If, after exhausting all reasonable efforts, the Companies cannot obtain the regulatory approvals (on commercially reasonable terms) necessary to complete the development described in clause 4.2(a), the Companies will negotiate in good faith with the Crown to agree on either:
- (a) a reasonable extension of the times allowed under clause 4.2(a)(ii), if it is reasonably likely that an extension of time will enable the Companies to obtain those regulatory approvals; or
 - (b) otherwise, an equivalent development on another site in Tasmania.

Clauses 4.2 and 4.3 of the Deed requires infrastructure development or actual construction to have commenced by October 2003 and for completion of the project by early 2005. The Committee, in its 2003 Report, noted that:

*“By early 2005 a new premium standard resort at Coles Bay with a capital cost of at least \$25 million will have been completed.”*³¹

This was also noted by Mr Biggs in his submission that Federal Hotels had agreed to build a luxury eco-resort in the Freycinet Peninsula by 2005. He states that by 2008 Federal Hotels had only built a caravan park in Coles Bay. He therefore considers that the company has not complied with the Deed as the company had not built the resort by 2005.³²

However, clause 4.3 of the Deed enables the Crown and Federal Hotels to negotiate a reasonable extension of time should the company be unable to complete the development within the stipulated time.

Federal Hotels argued that it has gone beyond ‘reasonable efforts’ to complete the development in the prescribed timeframe. The company’s 2008 submission provided a detailed chronology of events outlining the reasons for the delays including planning appeals, investigating changes to the resort’s wastewater treatment plant and a redesign of the resort.

³¹ Parliamentary Standing Committee of Public Accounts, Inquiry into the Federal Hotels Agreement, 2003, p. 21.

³² Biggs, Mr J., Submission to the Parliamentary Standing Committee of Public Accounts, 2008, p. 1.

Federal Hotels gave no indication in its submission or evidence at the public hearing on 11 November 2008 that the company intended to build an equivalent development on a site in Tasmania other than Coles Bay. On the day of the public hearing an article appeared in the *Mercury* newspaper which provided details of the Coles Bay resort as well as a diagram. Construction of the resort has commenced and Federal Hotels now expects that the resort will be completed by 30 April 2010.

Federal Hotels has requested the following four extensions under clause 4.3 of the Deed:

- a) *Request for extension – 16 September 2004:* Federal Hotels requested an extension to the fourth quarter of 2006. The then Treasurer, the Hon Paul Lennon, approved the extension. This was on the basis that infrastructure development had commenced within the required timeframe and there had been difficulties in obtaining the relevant approvals.
- b) *Request for extension – 19 December 2005:* A further request for an extension until the fourth quarter of 2006 was received. The then Minister for Finance, the Hon Jim Cox, approved the extension. This was on the basis of delays due to appeals, a Resource Management and Planning Appeals Tribunal hearing and obtaining the necessary regulatory approvals to develop improved sewerage and fresh water infrastructure for the community of Coles Bay.
- c) *Request for extension – 20 September 2007:* Federal Hotels wrote to the Department of Treasury and Finance on 20 September 2007 advising that the company had decided to revise the resort's design and that, as a result, a new development application would be required from the Glamorgan/Spring Bay Council and construction would therefore be delayed. The Treasurer, the Hon Michael Aird MLC, agreed to an extension of time to complete the resort until the last quarter of 2009.
- d) *Request for extension - 21 August 2009:* The Government received a further request for an extension due to building delays resulting from the adverse weather conditions on the East Coast. The Treasurer, the Hon Michael Aird MLC, advised the Committee on 1 September 2009 that he had granted an extension to complete the resort by 30 April 2010.^{33 34}

In March 2009 Mr Challen advised the Committee that the reasons for the three extensions granted to date appeared legitimate³⁵ and that each extension was authorised by the Treasurer of the day:

*“...in each instance the Treasurer of the day was advised by the Department of the request from Federal Hotels for an extension, the reasons for the request and he was also provided with a suggested draft response granting the extension...”*³⁶

³³ Department of Treasury and Finance, Submission to the Parliamentary Standing Committee of Public Accounts, 2008.

³⁴ Aird, the Hon M., Treasurer, Correspondence to the Parliamentary Standing Committee of Public Accounts, 1 September 2009.

³⁵ Challen, Mr D., Department of Treasury and Finance, Transcript of Evidence, 10 March 2009, p.15.

³⁶ Challen, Mr D., Department of Treasury and Finance, Correspondence to the Parliamentary Standing Committee of Public Accounts, 16 January 2009, p. 2.

In its 2008 submission to the Committee the State Government indicated that it was of the view that:

*“...the project was proceeding in full accordance with the terms of the Deed (in terms of legitimate extensions of time).”*³⁷

However, during the public hearing on 11 November 2008 Mr Nicholl noted that in his opinion:

*“...we would probably be trying to build into that some tighter mechanism for the way in which extensions could be considered, but that is just my view; that might not necessarily be the view of government or anyone else.”*³⁸

The Committee’s legal advice of June 2009 noted that, in relation to each of the three extensions granted to date, the Crown had granted the extensions by the discretion provided under clause 4.3. Therefore, given that the extensions have been granted, failure to complete the development by early 2005 could not amount to a breach of clause 4.2.³⁹

At the public hearing in November 2008 Mr Nicholl stated that:

*“...the only...discretionary extension might be this final 12-month extension because the previous extensions of three-and-a-half years were definitely on the basis of extraneous issues of a technical nature”*⁴⁰

However, Mr Challen noted in his correspondence to the Committee that:

*“in the case of the third extension, to my knowledge as far as the Department was concerned, the nature of the development in question had not changed from one of a premium resort, nor had the scale changed given it continued to be of a capital value of at least \$25 million (as required under the Deed).”*⁴¹

Indeed Mr Challen argued at the public hearing on 10 March 2009 that clause 4.3 specifically allows for an extension of time, enables an equivalent development on another site in Tasmania and refers to ‘commercially reasonable terms’. He advised that the ‘bottom line’ was the company needed to be able to build a resort that was going to be an economic proposition.⁴²

³⁷ Department of Treasury and Finance, Submission to the Parliamentary Standing Committee of Public Accounts, 2008.

³⁸ Nicholl, Mr R., Department of Treasury and Finance, 2008, p. 17.

³⁹ Jackson, Mr P., Correspondence to the Parliamentary Standing Committee of Public Accounts, 15 June 2009.

⁴⁰ Nicholl, Mr R., Department of Treasury and Finance, Transcript of Evidence, 2008, p. 12.

⁴¹ Challen, Mr D., Department of Treasury and Finance, Correspondence to the Parliamentary Standing Committee of Public Accounts, 16 January 2009, p. 2.

⁴² Challen, Mr D., Department of Treasury and Finance, Transcript of Evidence, 2008, p.16.

The Committee expressed concern at the public hearing on 11 November 2008 that it appeared that the Government had provided ‘blanket acceptance’ of what Federal Hotels was proposing without any ‘real test’ being undertaken to ascertain whether the new proposal met the requirements of the 2003 Deed.⁴³

In March 2009 the Committee sought specific legal advice as to whether this third extension complied with clause 4.3. The advice was sought in the context of the need for a further extension because a new development application needed to be submitted to the local council as the result of a change in the nature and scale of the development. The first two extensions had been granted because of delays in obtaining regulatory approvals in relation to an existing development application rather than on the basis of a new development application being required.

The legal advice indicated that there was no reason why clause 4.3(a) should not be construed as enabling the parties to keep alive the obligation under clause 4.2 if there remains a reasonable prospect of obtaining regulatory approvals necessary to complete a development that complies with clause 4.2. This was in the context of the approvals being required for a new design after approvals for the original design have already been obtained.⁴⁴

The Committee was also advised that to construe the clause in that way is consistent with the intention of the parties that emerge from the words in the Deed, and therefore it is reasonable to conclude that the third extension was granted in accordance with the Deed.⁴⁵

On 21 August 2009 Federal Hotels wrote to the Government seeking a fourth extension to the company to complete the resort given the adverse weather conditions on the East Coast. Mr Aird advised the Committee on 1 September 2009 that he had received the request and had agreed to the extension due to the unavoidable delays caused by the wet weather.⁴⁶

In making his decision to provide an extension until 30 April 2010 the Treasurer considered the material which had been provided by the company which included a builder’s report stating that construction had been delayed by approximately 11 weeks. In making his decision the Treasurer noted that significant progress had been made with the construction of the resort.

⁴³ Hidding, Mr R., Transcript of Evidence, 2008, p. 7.

⁴⁴ Jackson, Mr P., Correspondence to the Parliamentary Standing Committee of Public Accounts, 15 June 2009.

⁴⁵ Jackson, Mr P., Correspondence to the Parliamentary Standing Committee of Public Accounts, 15 June 2009.

⁴⁶ Aird, the Hon M., Treasurer, Correspondence to the Parliamentary Standing Committee of Public Accounts, 1 September 2009.

6.3.2 The Committee notes that

1. The Deed provides, in the event that Federal Hotels be unable to obtain the regulatory approvals on commercially reasonable terms to complete the resort by early October 2005, for:
 - (i) extensions of time to complete the development; or
 - (ii) an equivalent development to be built elsewhere in Tasmania.
2. Federal Hotels requested extensions in September 2004, December 2005, September 2007 and August 2009. The requests were approved. The first two requests were made because of delays in obtaining the necessary regulatory approvals. The third request was made because of Federal Hotels' decision to revise the resort's design which meant that a new planning application was required. The fourth request was due to adverse weather conditions delaying the construction.

6.3.3 The Committee finds that

1. The extensions provided by the State Government were consistent with the intention of the Deed as they enabled the resort to proceed taking into account delays in regulatory approvals and building works as well as the need to ensure that the resort was going to be an economic proposition.
2. Based on the evidence available to the Committee, Federal Hotels has complied with clause 4.3 of the Deed.

6.4 Clause 4.4 of the Deed

6.4.1 Consideration of the evidence

Sub-clause 4.4 of the Deed states:

- 4.4 Throughout the term of the Exclusive Right, the Companies will use their best endeavours to continue to improve player protection measures and to support the Crown's initiatives in that field.

In Federal Hotels' submission the company advises that:

*"this commitment has been complied with in full."*⁴⁷

In support of this the company quoted from a June 2008 study undertaken by the South Australian Centre for Economic Studies. Federal Hotels considers the study demonstrates that Tasmania is leading other jurisdictions in relation to player protection measures. Such measures include no venues operating gaming for 24 hours a day, a maximum bet limit of \$10 in clubs and hotels as well as the Tasmanian Self-Exclusion Scheme.

⁴⁷ Federal Hotels, Submission to the Parliamentary Standing Committee of Public Accounts, 2008, p. 7.

6.4.2 The Committee notes that

1. Federal Hotels has introduced a number of player protection measures.

6.5 Audit

6.5.1 Consideration of the evidence

The Committee was also interested in ascertaining how the Department of Treasury and Finance would be ensuring that the contractual arrangements of the Deed were being complied with.

As a result of the evidence provided, either through the submission process or in public hearings, the Committee requested further details from the Department. Specific information was requested as to whether the Department had any plans to audit the contracts, material etc used by Federal Hotels. If there were no such plans to audit then the Committee sought advice as to how the Deed was to be ratified.

Mr Challen advised the Committee on 16 January 2009 that:

*“the Department does not have any plans to audit the contracts under which Federal Hotels will develop the resort in question given that there are no criteria under the Deed against which to gauge such an audit. At the completion of the project the Government will be well within its rights to request that Federal Hotels show that it has expended at least \$25 million in the course of development [of] the resort. I expect that the Government will do so and Treasury will assist in the normal way.”*⁴⁸

Mr Challen further advised on 10 March 2009 that, in relation to the building of the resort, the Department was taking a particular interest in the ‘local preference clause’ (sub-clause 4.2(b)) for engaging Tasmanian contractors and labour and using Tasmanian materials where possible and commercially feasible to do so. He also indicated that:

*“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.”*⁴⁹

Mr Challen, however, noted that there were clauses in the Deed which were being monitored in ‘real time’. Such monitoring includes the daily data being collected by the Gaming Commission on the number of gaming machines to ensure that the statewide cap on machines is being complied with. Also monthly audits are being undertaken on the payment of licence fees and taxes.⁵⁰

⁴⁸ Challen, Mr D., Department of Treasury and Finance, Correspondence to the Parliamentary Standing Committee of Public Accounts, 16 January 2009, p. 2.

⁴⁹ Challen, Mr D., Department of Treasury and Finance, Transcript of Evidence, 2009, pp. 17-18.

⁵⁰ Challen, Mr D., Department of Treasury and Finance, Transcript of Evidence, 2009, p. 18.

6.5.2 The Committee notes that

1. The Deed imposes a number of obligations on Federal Hotels including: the development of a resort with a capital cost of at least \$25 million, engagement of Tasmanian contractors and labour and the use of Tasmanian materials where it is possible and commercially feasible to do so.
2. The Deed also imposes a number of obligations on Federal Hotels in relation to gaming operations and the payment of licence fees and taxes.

6.5.3 The Committee finds that

1. The Department of Treasury and Finance does not have any plans to formally audit the resort contracts; some of the gaming operations are being monitored in real time; and there are monthly audits of the payment of licence fees and taxes.

6.5.4 The Committee recommends that

1. The Auditor-General undertakes a formal audit of Federal Hotels' compliance with the commitments in the Deed which is then tabled in Parliament.

7 Compliance by Federal Hotels in relation to the evidence provided to the Public Accounts Committee in the course of the Committee's Inquiry into the Deed of Agreement in 2003

In June 2003 the then Committee invited Federal Hotels to make a submission to its Inquiry into the Agreement between the Crown and Federal Hotels regarding the ongoing management of gaming in Tasmania. In July 2003 Federal Hotels made a written submission and gave verbal evidence to the Committee.

As part of the current Inquiry, Federal Hotels provided a written submission in September 2008 and gave evidence at the public hearing in November 2008. The current Committee decided that it would focus on this evidence as it related to the commitments associated with the building of a new premium standard resort near Coles Bay. As detailed earlier, while the resort was not central to the negotiation of the 2003 Deed, its importance in relation to the Deed grew over time.

It should be noted that, as part of its submission, Federal Hotels provided a copy of legal advice it had received which advised that it had complied with the Deed and any representation it had made in relation to it.⁵¹ The Committee also sought legal advice as to whether the statements made by Federal Hotels in the media and in evidence to the Committee in relation to the 2003 Deed have any implied or legal status.⁵²

The 2003 Deed required the development of a new premium standard tourist resort at Coles Bay. The Deed provided for an investment of at least \$25 million in a premium standard resort near Coles Bay. It also stipulated that the resort is to have accommodation, convention, restaurant and recreation facilities as well as associated infrastructure development (such as the provision of sewerage, water and electricity services and site works).

During the 2003 and 2008 Inquiries, Federal Hotels reaffirmed its intention to the building of a proposed resort at Coles Bay, through providing details in relation to the design and size of the resort as well as employment numbers.

Federal Hotels, in its July 2003 submission to the then Committee, advised that:

“Federal has also given an undertaking under the new agreement to continue with the development of a new premium tourist resort on the East Coast. This resort, which is due to open in early 2005, will represent an investment of upwards of \$25 million.”⁵³

In its 2008 submission Federal Hotels clearly accepted that a 150 room development was the version in its mind in 2003 and also in the minds of the then members of the Committee and the Legislative Council.

“During evidence before the Committee the matter of the Coles Bay resort was discussed. At that time Federal was working on a plan to build between 100 and 150 rooms on the site and its best estimate of employment levels between 150 and 180 people.”⁵⁴

In relation to the evidence provided to the Committee in the course of the 2003 Inquiry into the Deed, there are a number of matters which will now be discussed in relation to Federal Hotels’ compliance.

⁵¹ Federal Hotels, Submission to the Parliamentary Standing Committee of Public Accounts, 2008, Appendix E.

⁵² Jackson, Mr P., Correspondence to the Parliamentary Standing Committee of Public Accounts, 15 June 2009.

⁵³ Federal Hotels, Submission to the Parliamentary Standing Committee of Public Accounts, 2003, p. 7.

⁵⁴ Federal Hotels, Submission to the Parliamentary Standing Committee of Public Accounts, 2008, p. 9.

7.1 Premium resort

7.1.1 Consideration of the evidence

Given Federal Hotels' commitment to develop a new premium tourist resort in the course of the Committee's Inquiry in 2003, the current Committee considered that, as a starting point, there was a need to examine what constitutes such a resort.

The Deed does not define what constitutes a 'premium standard resort'. The legal advice received by the Committee indicates that the term is:

*"a widely descriptive phrase that on its own has no particular meaning. What might constitute a 'tourist resort' of 'premium standard' is a matter for broad subjective opinion. The Deed itself imposes no definite standards."*⁵⁵

In the material provided to the Committee there did not appear to be any statements made by either party before the Deed was executed as to what constituted a 'premium standard tourist resort'.

On 10 March 2009 Mr Challen advised the Committee that:

*"...there is nothing in the record that would remind me of what I had in my mind at the time. I think all the evidence that I was focussed [was] on the word 'premium' and on the \$25 million. Certainly there was nothing in the exchanges between us and Federal Hotels that put any more definition around the concept than those two things."*⁵⁶

At the public hearing on 11 November 2008 Mr Nicholl argued that the Department of Treasury and Finance was not in a position to determine what constitutes a premium resort. He advised the Committee that:

*"...probably ultimately the test of whether the development is a premium quality tourist resort development will be a judgement by the market and those who use the facility....If I were to come in and say that I was focusing on a premium resort, there is no particular definition as such. This is about judgements people make....."*⁵⁷

Given this difficulty Mr Nicholl further advised that this is why there had been an emphasis on the capital value of the complex when negotiating the Deed.

However, statements were made by Federal Hotels after the execution of the Deed as to what such a resort may mean. For example, to demonstrate that the Saffire development is of a premium nature, Federal Hotels noted that it would cost \$32 million and have 20 suites which would cost \$1.6 million per suite. Furthermore, each suite would range in size from 97 square metres to 129 metres.⁵⁸

⁵⁵ Jackson, Mr P., Correspondence to the Parliamentary Standing Committee of Public Accounts, 15 June 2009.

⁵⁶ Challen, Mr D., Department of Treasury and Finance, Transcript of Evidence, 2009, p. 3.

⁵⁷ Nicholl, Mr R., Department of Treasury and Finance, Transcript of Evidence, 2008, p. 8.

⁵⁸ Federal Hotels, Submission to the Parliamentary Standing Committee of Public Accounts, 2006, p. 9.

While such statements give some meaning to the phrase ‘premium resort’, the legal advice received by the Committee indicates that:

*“such statements are still quite ambiguous and cannot, in any event, be used for the purpose of construing the Deed.”*⁵⁹

7.1.2 The Committee notes that

1. There is no definition in the Deed as to what constitutes a ‘premium standard tourist resort’.

7.1.3 The Committee finds that

1. While the term ‘premium standard tourist resort’ is not defined in the Deed, the Saffire development is consistent with Federal Hotels’ undertaking during the 2003 Inquiry to develop a premium standard tourist resort.
2. The subjective test of whether the resort ultimately satisfies the requirement that it is a ‘premium resort’ must await its completion.

7.2 Size and design of the complex

7.2.1 Consideration of the evidence

The Deed does not refer to the specific design and size of the resort. However, the Deed stipulates that the resort is to have accommodation, convention, restaurant and recreation facilities.⁶⁰

Federal Hotels advised that the original plan for the resort was:

*“...to build between 100 and 150 rooms on the site...”*⁶¹

On 20 September 2007 Federal Hotels advised the Government that:

“...due to its complexity in a somewhat remote construction environment, Federal also took the opportunity to review the resort design during this time. Following that review, Federal has decided to take a new approach to the resort design and has appointed a new architect to work with the existing development team. The re-designed development will require a new Development Application to be made to the Council.

*The newly designed resort will meet Federal’s covenant under the Deed in terms of premium standard facilities and level of investment.”*⁶²

⁵⁹ Jackson, Mr P., Correspondence to the Parliamentary Standing Committee of Public Accounts, 15 June 2009.

⁶⁰ 2003 Deed, p. 8.

⁶¹ Federal Hotels, Submission to the Parliamentary Standing Committee of Public Accounts, 2008, p. 9.

⁶² Federal Hotels, Submission to the Parliamentary Standing Committee of Public Accounts 2008, Appendix A

The company subsequently advised that, after conducting in-depth market research, it became clear to it that premium standard and a large number of rooms were not compatible. It therefore proposed a resort that would consist of 22 high quality suites, a number which later became 20. The new complex would also have:

- a reception and main lounge;
- a restaurant;
- a bar and lounge area;
- external balcony including open fire;
- conference facilities;
- wellness centre and gymnasium; and
- back of house kitchens, stores etc.⁶³

In the company's submission to the Committee it stated that the "critical component for the Crown was the \$25 million plus investment."⁶⁴ Mr Farrell then went on to say at the public hearing on 11 November 2008 that:

*"...at no time did I or Don [Challen] believe that in fact the carriage of the \$25 million commitment to Coles Bay to build any number of rooms was going to be the critical point as to whether the deed was approved or not by Parliament."*⁶⁵

Committee members questioned Mr Farrell about the above statement and indicated that they believed the size and nature of the Coles Bay development was indeed relevant and of interest to Legislative Councillors in forming a voting position on the Deed.

The company argued in its 2008 submission that such a statement meant that the 2003 Committee acknowledged that the form of the resort was uncertain and the critical components for the resort were that it was of a 'premium standard' and that Tasmanian contractors labour and materials were used, rather than the resort being of a certain size and design.

Indeed Mr Farrell argued that in relation to the number of rooms:

*"...to put this in the proper context I think you should look at not just the comments I made but also the findings of the PAC. I think if you go back to what the committee found, it was that the company had a commitment to building a \$25-million development at Coles Bay. Even your own findings didn't say that company had a commitment to build 150 rooms or whatever."*⁶⁶

⁶³ Federal Hotels, Submission to the Parliamentary Standing Committee of Public Accounts, 2008, p. 9.

⁶⁴ Federal Hotels, Submission to the Parliamentary Standing Committee of Public Accounts, 2008, p. 10.

⁶⁵ Farrell, Mr G., Federal Hotels, Transcript of Evidence, 2008, p. 28.

⁶⁶ Farrell, Mr G., Federal Hotels, Transcript of Evidence, 2008, p. 27.

In terms of whether the resort should be 20 or 150 rooms, Mr Farrell considers that:

*“...it is a commercial consideration of the company.”*⁶⁷

Hansard from the 2003 Inquiry shows that in response to questions as to the commerciality of the 150 room development, Mr Farrell explained that with the granting of the exclusive licence to conduct gaming in the State, the ANZ Bank had indicated that cross subsidy available from the gaming income meant that commerciality was not an issue.

*“There is no doubt our financiers, the ANZ bank, saw the outcome of a longer licence period – even though we were paying additional taxes and licence fees – as being something which they saw as being very supportive of the company’s tourism and investment strategy, which quite clearly is more cyclical and, I suppose, has more risk and is perhaps less generally bankable than many other businesses in Tasmania. They saw and we saw the longer licence period would help provide the company and its financiers with a greater ability to see that the company would be able to ride out any storm that may appear through events unbeknown to the company in the future, and to meet what we see as our vision for tourism investment strategy in the State.”*⁶⁸

In correspondence of 10 December 2008 to the Committee Mr Farrell went on to say that the resort had not been downgraded by reducing the number of rooms to 20 for the new Saffire resort. Mr Farrell argued that the objective of the 2003 Deed was for the development of an iconic resort and that would be achieved with the Saffire development. He went on to state that:

*“Larger size does not imply icon status nor does it necessarily make a tourist development successful. A development in tune with the market and in sympathy with the location does...it will be a product that can gain cut-through on the international stage and that will position Tasmania as a genuine premium standard tourist destination.”*⁶⁹

However, Mr James Boyce stated in his 2008 submission that:

*“In evidence to PAC in 2003 the commitments made by Mr Farrell in relation to the Coles Bay development have clearly not been honoured. There is no doubt that Mr Farrell made a commitment to a specific development proposal and that this development was later substantially downgraded. The commitment made by Mr Farrell to PAC was quite simply dishonoured. We have paid a very high price for the baseless threats and false promises made by Mr Farrell to PAC.”*⁷⁰

⁶⁷ Farrell, Mr G., Federal Hotels, Transcript of Evidence, 2008, p. 34.

⁶⁸ Farrell, Mr G., Federal Hotels, Transcript of Evidence, 2003, p. 6.

⁶⁹ Farrell, Mr G., Federal Hotels, Correspondence to the Parliamentary Standing Committee of Public Accounts, 10 December 2008.

⁷⁰ Boyce, Mr. J., Submission to the Parliamentary Standing Committee of Public Accounts, 2008.

When the Chair of the 2008 Committee specifically inquired into whether the Government endeavoured to extract particulars of the development Mr Farrell advised:

*“No. The Government sought, through the final negotiations, to trap elements that were in the deed, which is the \$25 million, the use of Tasmanian suppliers and materials, and I think very much on the basis that they also envisaged that the ultimate outcomes of what we are going to build would be determined by the company’s best views at that time as to what would be most appropriate.”*⁷¹

Mr Challen advised the Committee on 10 March 2009 that he has no memory of any discussion around the proposed structure of the resort as he was of the view that ‘premium resort’ and ‘\$25 million’ were sufficient for the terms of the Deed.⁷² Furthermore, at the public hearing on 11 November 2008 Mr Nicholl questioned whether the Department is:

*“...best equipped to make judgements about what the configuration of the resort should look like and should we be trying to lock in a level of detail that just made the administration of the deed so complex and inflexible over a period of time if the need for sensible change did arise?”*⁷³

Mr Farrell also indicated at the public hearing on 11 November 2008 that:

*“...most people were more concerned about the negative consequences of large numbers of people than they were about the consistency of the boutique nature of Saffire being entirely consistent with the values of Coles Bay.”*⁷⁴

In terms of the configuration of the proposed resort, Mr Nicholl advised that:

*“...it is difficult to be prescriptive about the configuration of a resource [resort]...focussing on a premium resort, there is no particular definition as such.”*⁷⁵

and then went on to say:

*“...what was expected and what was envisaged was a separate stand-alone resort development facility...there was no commitment to a particular configuration as I recall.”*⁷⁶

⁷¹ Farrell, Mr G., Federal Hotels, Transcript of Evidence, 2008, p. 33.

⁷² Challen, Mr D., Department of Treasury and Finance, Transcript of Evidence, 2009, p. 14.

⁷³ Nicholl, Mr R., Department of Treasury and Finance, Transcript of Evidence, 2008, p. 11.

⁷⁴ Farrell, Mr G., Federal Hotels, Transcript of Evidence, 2008, p. 45.

⁷⁵ Nicholl, Mr R., Department of Treasury and Finance, Transcript of Evidence, 2008, p. 8.

⁷⁶ Nicholl, Mr R., Department of Treasury and Finance, Transcript of Evidence, 2008, p. 12.

He also indicated that:

*“Certainly there was some discussion about the size of the complex in terms of examples given in terms of number of rooms but I do not recall any discussion about the specifics of the convention facilities other than the fact that the resort complex would incorporate some restaurant and convention facilities and others.”*⁷⁷

Mr Farrell provided further details at the public hearings advising that the proposed conference facilities at Saffire will be designed to accommodate a 20-seat board table or meeting rooms designed for exclusive use. He also provided details of the restaurant and recreational facilities which would be offered by Saffire.⁷⁸

Given that the size and design of the complex has changed significantly the Committee sought legal advice as to whether the statements made by Federal Hotels in the media and in its advice to the Committee leading up to the 2003 Deed, that the development would comprise 150 rooms and employ up to 180 staff, gave rise to a collateral contract in relation to clause 4.2 of the Deed.

The Committee’s legal advice was that no such collateral contract resulted.⁷⁹ This is because the Legislative Council is not a party to the Deed. The parties are the companies (Federal Hotels, Australian National Hotels and Tasmanian Country Club-Casino) and the Crown in the Right of the State of Tasmania. The passing of the *Gaming Control Amendment Act 2003* (which had the 2003 Deed as Schedule 1) by the Council was therefore not the making of a contract.

It follows that any representations that were made to the Committee with a view to persuading it to recommend to the Council that it should pass the amending Act cannot constitute consideration for entry into the Deed by the Crown. Such representations were not made in the context of contractual negotiations but in the context of promoting the enactment of particular legislation.

Therefore, neither the statements attributed to Federal Hotels before the Deed was executed on 18 March 2003, nor those reported and recorded as having been made by Federal Hotels after the Deed was entered into, concerning the size of the proposed resort or the number of people that it might employ, gave rise to a collateral contract in the Deed in relation to those matters.

⁷⁷ Nicholl, Mr R., Department of Treasury and Finance, Transcript of Evidence, 2008, p. 9.

⁷⁸ Farrell, Mr G., Federal Hotels, Transcript of Evidence, 2008, p. 41.

⁷⁹ Jackson, Mr P., Correspondence to the Parliamentary Standing Committee of Public Accounts, 15 June 2009.

The Committee's legal advice also indicated that the statements cannot therefore be elevated from mere representations to the status of contractual promises. Furthermore, based on the information available to the Committee, there is no evidence:

- to link those statements with negotiations that resulted in the execution of the Deed; or
- that any particular characteristics of the proposed development were offered to the Crown in the course of the negotiations for the Deed.

If it had been intended by the parties that matters, such as the number of rooms to be included in the development, should be the subject of contractually binding promises then they should have been included in the Deed. However, it must be recognised that the Parliament at the time was operating in an environment where the Deed had already been signed between Federal Hotels and the Government.

*“The Treasurer says I am trying to negotiate a deed. What he has given us is a deed which has been negotiated, set in concrete, and he says we should not have any opportunity to in any way amend this bill.”*⁸⁰

Therefore, the obligations imposed on Federal Hotels in relation to the development of the resort are confined to those that are expressed in the Deed or which are to be implied in the Deed. As noted earlier, nothing that occurred after the Deed was executed could give rise to a collateral contract between them.

In the event there was no such collateral agreement the Committee sought specific legal advice as to whether or not there is to be ‘implied into the Deed’ a term that requires a development comprising 150 rooms and employing up to 180 staff.⁸¹ The Committee was advised there are no such implications.

The contract can be performed without the need to specify the size of the development. The parties to the Deed were looking at the quality rather than the size as the determining characteristic of the development.

The Committee also sought advice as to whether it can be implied into the Deed a term requiring that each party shall do all such things as are necessary to enable the other party to have the benefit of the contract.

The lawyer, in providing his advice to the Committee, makes reference to the principle that:

*“It is a general rule applicable to every contract that each party agrees, by implication, to do all such things as are necessary on his part to enable the other party to have the benefit of the contract.”*⁸²

⁸⁰ Harris, Mr G., Legislative Council Hansard, 1 October 2003.

⁸¹ Jackson, Mr P., Correspondence to the Parliamentary Standing Committee of Public Accounts, 15 June 2009.

⁸² Butt v. M'Donald (1896) 7 QJ 68 at pp. 70-71 per Griffith CJ; Mackay v Dick (1881) 6 App Cas 251 at 263; Secured Income Real Estate (Australia) Ltd v St Martins Investments Pty Ltd (1979) 144 CLR 596 at

The principle does not provide a basis for the implication for the benefit of one of the parties of terms that are not expressed in the Deed. In other words, it is not a basis for imposing on Federal Hotels an obligation to build a resort with a specified number of rooms or to employ in that development a specified number of people.

The Committee also sought advice in relation to the statements made by Federal Hotels as reported in newspapers before the execution of the Deed and in evidence to the Committee before the legislation passed the Legislative Council. These statements were that the resort would comprise 150 rooms and employ up to 180 staff.

The advice received was that there was no such misrepresentation which might provide a remedy for the Crown in Tort for two reasons.

Firstly, there is no evidence that any statements made in relation to the number of proposed rooms were made directly to the Crown in the course and context of negotiation of the Deed. There is also no evidence that such statements were intended to be relied on by the Crown in that context, or that they were in fact relied on to any extent and, in particular, that they induced the Crown to enter into the Deed. There would therefore be no basis for a claim by the Crown for damages for the tort of deceit in respect of representations concerning the size of the resort.

Secondly, the cause of action for damages for negligence in respect of any of the statements concerning the size of the resort and the number of people it might employ depends on establishing that there was a duty of care owed by Federal Hotels and an essential element of the tort is loss that results from reliance on the misrepresentation.

The legal advice the Committee received indicated that, apart from the fact that it seems highly unlikely any loss could be found to have flowed from reliance by anyone on the relevant statements, it is equally doubtful that any duty of care arose in respect of any of them.

7.2.2 The Committee notes that

1. The 2003 Deed does not make any specific reference to size and design of the resort, such as the number of rooms.
2. Federal Hotels initially indicated to the 2003 Committee that it estimated the resort would have between 100 to 150 rooms.
3. The company has subsequently revised this to 20 rooms for the Saffire resort.
4. While commerciality concerns were disavowed in the 2003 evidence Federal Hotels now relies on commerciality as the key reason for the radical restructure of the development proposal.

607-608 cited in Jackson, Mr P., Correspondence to the Parliamentary Standing Committee of Public Accounts, 15 June 2009.

7.2.3 The Committee finds that

1. Federal Hotels made representations to the 2003 Committee in relation to the proposed Coles Bay resort, including its size and design.
2. It was up to Legislative Council members to make a decision on the Gaming Control Amendment Bill based on the findings and recommendations contained in the 2003 Committee's report as well as other material before it.
3. While the size and design of the proposed resort was referred to on a number of occasions by Legislative Council members during the debate of the Gaming Control Amendment Bill, this Committee cannot infer what weight Legislative Council members gave to Federal Hotels' representations regarding the resort.
4. There was no contract between Federal Hotels and the 2003 Committee in relation to the Deed. Therefore there can be no legal implication that the Deed required the resort should have a certain number of rooms.
5. The development of a 150 room hotel at Coles Bay would have provided significantly enhanced benefits to the local and regional community, both in terms of employment and commercial activity flowing from a larger number of tourists to the region.

7.3 Employment numbers

7.3.1 Consideration of the evidence

The 1993 Deed makes specific reference to employment numbers in Clause 3 which outlines Federal Hotels' obligations. The Deed states that Federal Hotels is:

*"To use their best endeavours to ensure that an additional 300 positions are created between Wrest Point and the Country Club as a result of the works referred to in clause 3(a) hereof and the exclusive rights granted pursuant to the terms hereof;"*⁸³

The works referred to in the clause are building and up-grading works to provide international standard areas and facilities for Gaming Machines and other facilities at an estimated capital cost of no more than \$25 million. It should be noted that the 2003 Deed, unlike the 1993 Deed, does not refer to employment numbers.

However, in evidence provided to the 2003 Committee Federal Hotels advised that:

*"...we are anticipating the high season employment to be about 180 people. That is directly with the resort, that is not directly with a large number of other providers of tourism activities and infrastructure that will be actually supported by the resort."*⁸⁴

⁸³ 1993 Deed

⁸⁴ Farrell, Mr G., Federal Hotels, Transcript of Evidence, 2003, p. 14.

Federal Hotels further advised that:

*“We also intend to commence a cruise boat operation on the east coast, which will be above that of the 140 to 180 employed seasonally at the Hazards.”*⁸⁵

The 2003 Committee noted in its report that:

*“the Coles Bay development will result in the creation of approximately 180 ongoing jobs in addition to substantial flow-on benefits to the Tasmanian economy.”*⁸⁶

Mr John Biggs, in his 2008 submission to the Committee, expressed concern that Federal Hotels had promised that the resort would generate 180 direct jobs and claims that this:

*“...seems to have been a lie simply to obtain Parliament’s agreement to agree to the 2003 Deed.”*⁸⁷

In the Committee’s 2008 public hearings it emerged that during the negotiation of the 2003 Deed there was no specific discussion in relation to the numbers of people who would be employed other than in terms of the resort proposal that was then on the table.⁸⁸ At the time it was understood by both Federal Hotels and the 2003 Committee that the resort would have between 100 and 150 rooms and that between 150 and 180 people would be employed.⁸⁹

Mr Nicholl advised the Committee that:

*“As I recall, what fell out of the nature of a premium resort development of a capital value of \$25 million plus would have been x number of employees, but I do not see how anyone could have sat there and been prescriptive looking forward about how many employees the resort should have employed. That would have been a matter for the operator to determine and not really something, I would have thought, for the Government to be prescriptive about.”*⁹⁰

Mr Challen advised the Committee that in relation to employment numbers there was no discussion in the Deed negotiations about how many would be employed and the benefits that would flow to the East Coast area and tourism in general.⁹¹

In the legal advice provided as Appendix E of the submission, Federal Hotels’ lawyer stated that the reference made in relation to:

*“...the number of employees must be read and considered in the context they were made. They are clearly estimates based upon the development then envisaged.”*⁹²

⁸⁵ Farrell, Mr G., Federal Hotels, Transcript of Evidence, 2003, p. 16.

⁸⁶ Parliamentary Standing Committee of Public Accounts, 2003, Inquiry into the Federal Hotels Agreement, p. 3.

⁸⁷ Biggs, Mr J., Submission to the Parliamentary Standing Committee of Public Accounts, 2008.

⁸⁸ Dean, the Hon I., Transcript of Evidence, 2008, p. 50.

⁸⁹ Federal Hotels, Submission to the Parliamentary Standing Committee of Public Accounts, 2008, p. 9.

⁹⁰ Nicholl, Mr R., Department of Treasury and Finance, Transcript of Evidence, 2008, p. 5.

⁹¹ Challen, Mr D., Department of Treasury and Finance, Transcript of Evidence, 2009, pp. 4 & 12.

*“Employment outcomes depend on the type of development being undertaken. That has changed. Delivery of a suitable development for the market is a starting point. Federal has a duty to ensure the development is a suitable one, which includes the concept of a development which will be sustainable and successful and appropriate for the place. In the long term it is only such a development that will deliver enduring returns to the Tasmanian economy including jobs.”*⁹³

Federal Hotels’ lawyer advised that the employment outcomes depend on the type of development being undertaken and that Federal Hotels has a duty to ensure that its development is a suitable one and that it:

*“...is precisely because the right type of development is subject to change that the obligation was expressed as one requiring a certain investment, and not a certain number of jobs.”*⁹⁴

The lawyer then stated that:

*“The answers given at the Public Accounts Committee are properly characterised as best estimates genuinely given in circumstances where a particular sort of development was envisaged. They are not specific but suggest a possible range of employment numbers. It is precisely because the right type of development is subject to change that the obligation was expressed as one requiring a certain investment, and not a certain number of jobs. In our assessment it is reasonable to conclude that the market in Tasmania has matured and is no longer one which considers the bulk and size of a development is the real measure of its worth.”*⁹⁵

In response to a question to Mr Farrell from the Committee as to what weight should be given in relation to the matters provided to the 2003 Committee as evidence on Parliament’s *Hansard*, Mr Farrell replied:

*“In relation to the deed, they have no weight. In relation to what I believed at the time, they were what I believed at the time, and I think if you read the way in which I expressed them they were couched in those terms.”*⁹⁶

Mr Farrell advised the Committee that in relation to the employment associated with the 20 room Saffire development:

*“At this point we believe that in peak periods the employment level would be around 54 full-time equivalents. You probably just need 38-odd people just to run the development on a day-to-day basis.”*⁹⁷

⁹² Federal Hotels, Submission to the Parliamentary Standing Committee of Public Accounts, 2008, Appendix E p. 2.

⁹³ Federal Hotels, Submission to the Parliamentary Standing Committee of Public Accounts, 2008, Appendix E p. 2.

⁹⁴ Federal Hotels, Submission to the Parliamentary Standing Committee of Public Accounts 2008, Appendix E p. 2.

⁹⁵ Federal Hotels, Submission to the Select Accounts, 2008, Appendix E p. 2.

⁹⁶ Farrell, Mr G., Federal Hotels, Transcript of Evidence, 2008, p. 27.

⁹⁷ Farrell, Mr G., Federal Hotels, Transcript of Evidence, 2008, p. 30

Mr Farrell also indicated that staff would also be required for the spa development which is to be an integral part of the new development. Furthermore, staff would be required for the ‘signature experiences’ which would normally:

“...have a guide ratio of at least two guides or more, depending on the experience.”⁹⁸

However, he did note that it was difficult to quantify the number that would be employed as part of the signature experiences.

Mr Farrell also noted other opportunities:

“If we are right it [the Saffire resort] will hopefully create other opportunities for other investors in the State to also develop high-end boutique niche products entirely consistent with Tasmania’s brand qualities.”⁹⁹

During the 2008 public hearing the Committee Chair summarised the current employment situation as follows:

“So the actual FTE numbers envisaged at first were between 140-180 but as a result of the reduction in size of the development and also the signature experience, it is now about 50 FTEs?”¹⁰⁰

Mr Farrell agreed and noted:

“...that would be during the peak period, but just to run the place we will be needing 30-plus people just to keep the door open.”¹⁰¹

As noted in section 7.2, the Committee sought legal advice on a number of issues regarding the current Inquiry including representations made by Federal Hotels in relation to the size of the resort and the number of people to be employed. The advice received in relation to this is summarised in section 7.2.

7.3.2 The Committee notes that

1. The 1993 Deed specifically referred to employment numbers and committed Federal Hotels to employ an extra 300 people following completion of the upgrading of Tasmania’s two casinos and the extension of gaming machines.
2. The 2003 Deed did not make any specific reference to employment numbers.
3. Federal Hotels indicated to the 2003 Committee it estimated that the resort would lead to the creation of between 150 and 180 jobs for the original 100 to 150 room resort.
4. The company has subsequently revised this estimate to between 38 and 54 jobs for the 20 room Saffire resort.

⁹⁸ Farrell, Mr G., Federal Hotels, Transcript of Evidence, 2008, p. 30.

⁹⁹ Farrell, Mr G., Federal Hotels, Transcript of Evidence, 2008, p. 38.

¹⁰⁰ Wilkinson, the Hon J., Transcript of Evidence, 2008, p. 32.

¹⁰¹ Farrell, Mr G., Federal Hotels, Transcript of Evidence, 2008, p. 32.

7.3.3 The Committee finds that

1. The representations by Federal Hotels to the 2003 Committee in terms of the number of people that may be employed at the resort were made with a view of persuading that Committee to recommend to the Legislative Council that it should pass the *Gaming Control Amendment Act 1993*.
2. There was no contract enacted between Federal Hotels and the 2003 Committee in relation to the Deed. Therefore there can be no legal implication that the Deed formally required a certain number of staff to be employed at the resort.
3. While it was not possible to understand precisely the weight given by the 2003 Committee and Legislative Councillors to the employment numbers and the size and nature of the development, they were entitled to believe that the eventual outcome would be somewhere near the levels stated by Federal Hotels.

8 The responsibility of the State Government to keep Parliament (and the people) informed of any variations to the projected timelines and the nature of the development at Coles Bay

8.1.1 Consideration of the evidence

Mr Challen advised the Committee that:

*“..the Department did not provide advice to the Government to the effect that Parliament should be specifically advised of all or any changes to the Deed. The Deed which was approved by Parliament provided specifically for extensions of time. The extensions were a matter of public record and the correspondence between the Treasurer of the day and Federal Hotels was available for the public record.”*¹⁰²

This was reiterated in the Department of Treasury and Finance’s submission which stated that due to the process involved, the difficulties and delays Federal Hotels experienced in obtaining the necessary regulatory approvals would have been matters largely in the public domain. The Department therefore considered that anyone who had an interest in the proposed development would have ready access to the information required to monitor the progress of the development.¹⁰³

¹⁰² Challen, Mr D., Department of Treasury and Finance, Correspondence to the Parliamentary Standing Committee of Public Accounts, 16 January 2009, p. 2.

¹⁰³ Department of Treasury and Finance, Submission to the Parliamentary Standing Committee of Public Accounts, 2008.

Given this, and because the Department considered that the development was proceeding in full accordance with the terms of the Deed (in terms of legitimate extensions of time), the revised timeframes were considered to be of an administrative nature. Therefore the Department was of the view that there was no requirement for further public advice.¹⁰⁴

At the public hearing on 11 November 2008 Mr Farrell advised that:

*“The Government, like the community, like the newspapers, were kept aware of changes in our thinking and the changes in our design principles since 2003. So it has been, in my view, a totally measurable process that has been done totally with our hands above the table.”*¹⁰⁵

*“The reality is that we released information at every turn that was relevant by way of media announcements.”*¹⁰⁶

The Committee expressed concern that the variation to the projected timelines and the nature of the development was being ‘run’ by the company and not in a collaborative manner with the other party to the Deed – the Crown. The Committee is aware, however, that the Treasurer, the Hon Michael Aird MLC, did more recently issue a media release advising that he had agreed to a further extension to complete the resort and outlined the reason for the extension.

8.1.2 The Committee notes that

1. Federal Hotels actively released information, often at crucial times in negotiations with Parliament and the Committee, by way of media announcements in relation to the ongoing developments of the resort. Inspection of the media releases over a number of years revealed that there was a steady reduction in the company’s stated intention on the number of rooms at the resort.

8.1.3 The Committee finds that

1. The State Government had a duty to keep the Tasmanian community informed of variations to the projected timelines and to the substantial change to the nature of the development at Coles Bay, particularly at the time of the third extension. The Government failed in its duty in not doing so.
2. Both the State Government and Federal Hotels, as parties to the Deed, should have advised the Tasmanian public of the reasons for the significant change in the size and nature of the development and employment levels.

¹⁰⁴ Department of Treasury and Finance, Submission to the Parliamentary Standing Committee of Public Accounts, 2008.

¹⁰⁵ Farrell, Mr G., Federal Hotels, Transcript of Evidence, 2008, p. 47.

¹⁰⁶ Farrell, Mr G., Federal Hotels, Transcript of Evidence, 2008, p. 50.

8.1.4 The Committee recommends that

1. The State Government require appropriate communication strategies be developed on the progress or otherwise of commitments made as part of public contracts or Deeds that have been enshrined in legislation for major programs, such as the implementation of the 2003 Deed.

9 Any other matters incidental hereto

In its early deliberations the Committee decided that it was not its role or function to comment on, or to inquire into, the broad aspects of gaming which have been considered previously by other Parliamentary committees and, in particular, the 2003 Committee's Inquiry into the Federal Hotels. The 2003 Committee scrutinised the provisions of the 2003 Deed. The current Committee's major task was to look at Federal Hotels' compliance in relation to both the commitments in the 2003 Deed and the evidence provided to the 2003 Committee.

9.1 Drafting of deeds

In relation to compliance with the 2003 Deed, this report has made reference to concerns about what is meant by key terms such as 'premium standard resort', whether employment numbers are either explicitly or implicitly implied and the need to consider dollar amounts which are indexed for inflation. Such issues need to be carefully considered in drafting future Deeds.

9.1.1 The Committee recommends that

1. The Government should, when drafting future Deeds, define key terms (such as premium standard resort), clearly identify required outcomes (such as employment numbers) as well as ensure that figures are indexed to the Consumer Price Index where appropriate.

9.2 The non-competitive nature of the negotiation of the Deed

Submissions from Mr Biggs and Mr Boyce expressed concern that Federal Hotels had been provided with a public monopoly which was being subsidised by the taxpayer. They argued that the Committee should therefore, as part of the current Inquiry, require financial modelling to be undertaken of the 2003 Deed. Mr Biggs stated that:

*“It now appears that [the] Public Accounts Committee recommended that the enabling legislation be passed without amendment, even though the Government had not provided any financial modeling of the deal. This seems in retrospect to be a gross error, but one that is now within the power of the PAC to rectify.”*¹⁰⁷

This was also reiterated in the submission from Mr Boyce who stated:

*“The PAC is not only justified, but obligated – given the manipulation and deceit of Parliament in 2003 – to quantify the market value of the licence.”*¹⁰⁸

In Section 3 of this Report it was noted that the Committee obtained evidence from the Department of Treasury and Finance that the Department had recommended to the then Treasurer, in discussions prior to the signing of the 2003 Deed, that the process should go to Public Tender.

The 2003 Committee specifically addressed the issue of the non-competitive nature of the Deed and found that:

*“Any unilateral move by the Government to terminate or invalidate the current Deed to facilitate a competitive tendering process, prior to 2009, would have the potential to raise issues relating to sovereign risk as well as creating a potential for civil action leading to financial compensation.”*¹⁰⁹

9.2.1 The Committee recommends that

1. An open and transparent tender process should apply to the issuing of gaming licences unless exempted by Parliament.

9.3 Other matters

The Committee received a number of submissions from interested parties, some of which focused squarely on the Terms of Reference, others have gone to a wider range of inputs. For example, in the submissions from Mr Biggs and Mr Boyce concern was expressed that the social implications of the 2003 Deed have not been fully considered. Mr Boyce goes further and expressed particular concern that the Government had given an undertaking that the community and welfare groups would be provided with the opportunity to provide input prior to the expiry of the 2003 Deed. He argued that this opportunity was never provided and that:

*“...this highly disturbing break down of due process has never been investigated.”*¹¹⁰

¹⁰⁷ Biggs, Mr J., Submission to the Parliamentary Standing Committee of Public Accounts, 2008, p. 1.

¹⁰⁸ Boyce, Dr J., Submission to the Parliamentary Standing Committee of Public Accounts, 2008, p. 5.

¹⁰⁹ Parliamentary Standing Committee of Public Accounts, 2003, Inquiry into Federal Hotels Agreement, p. 32.

¹¹⁰ Boyce, Dr J., Submission to the Parliamentary Standing Committee of Public Accounts, 2008, p. 2.

The Committee, however, considered that while the 2003 Inquiry specifically dealt with social returns to the State ¹¹¹, this was not a matter which was within the specific terms of reference for the current Inquiry.

Other issues raised in the two submissions that were considered to be outside the scope of the current Inquiry included:

- community groups were not involved in discussions culminating in the 2003 Deed; and
- the 2003 Deed has worsened the conditions for gambling addiction in the State. ^{112 113}

The Committee also noted that a submission had been received from Mr Glenn Lennox and that he had requested that the Committee accept his submission under all its terms of reference, but in particular term of reference (d).

He argued that there was a ‘secret’ deal between the Government and that of Federal Hotels/ Network Gaming in 2004 to restrict competition in the rollout of poker machines across the State. This, he believes, is contrary to the ‘Relationship of Parties’ in the Deed which specifically prohibits the creation of partnerships between the parties to the Deed. ¹¹⁴

The Committee deliberated on the nature of the issues raised in Mr Lennox’s submission and considered that it was unable to give further consideration to these issues under its current terms of reference.

Jim Wilkinson MLC
CHAIRMAN

Parliament House, Hobart
17 November 2009

¹¹¹ Parliamentary Standing Committee of Public Accounts, Inquiry into the Federal Hotels Agreement, 2003, p. 14.

¹¹² Biggs, Mr J., Submission to the Parliamentary Standing Committee of Public Accounts, 2008.

¹¹³ Boyce, Mr J., Submission to the Parliamentary Standing Committee of Public Accounts, 2008.

¹¹⁴ Lennox, Mr G., Submission to the Parliamentary Standing Committee of Public Accounts, 2008.

10 APPENDICES

10.1 Appendix A - Written Submissions Taken Into Evidence

| | Name | Address |
|----------|---|----------------------------------|
| 1 | Mr R. Nicholl Acting Secretary Department of Treasury and Finance | GPO Box 147 Hobart |
| 2 | Mr G. Lennox | PO Box 76 Campania |
| 3 | Mr G. Farrell Chairman and Managing Director The Federal Hotels Pty Limited (with attached appendices) | 410 Sandy Bay Road Sandy Bay |
| 4 | Mr J. Biggs | PO Box 1083 Sandy Bay |
| 5 | Dr J. Boyce | 27 Rossendell Avenue West Hobart |

10.2 Appendix B - Documents Received and Taken Into Evidence

| | Name | Documents |
|----------|---|---|
| 1 | Mr G. Farrell Chairman and Managing Director The Federal Hotels Pty Limited | Letter of 10 December 2008 |
| 2 | Mr D. Challen Secretary Department of Treasury and Finance | Letter of 16 January 2009 |
| 3 | Mr P. Jackson Barrister at Law | Letter of 15 June 2009 and attached Memorandum of Advice |
| 4 | The Hon M. Aird MLC Treasurer | Letter of 1 September 2009 and enclosures |
| 5 | Mr D. Challen Secretary Department of Treasury and Finance | Email of 29 June 2007 |
| 6 | Mr R. Nicholl Deputy Secretary Department of Treasury and Finance | Email of 18 July 2007 |
| 7 | Mr D Challen Secretary Department of Premier and Cabinet | Letter of 3 November 2009 |

10.3 Appendix C - Witnesses – Transcripts of Evidence

| Name | Date |
|---|-----------------------------|
| Mr R. Nicholl Acting Secretary Department of Treasury and Finance | 11 November 2008 |
| Mr G. Farrell Chairman and Managing Director The Federal Hotels Pty Limited | 11 November 2008 |
| Mr A. Eakins Director Finance The Federal Hotels Pty Limited | 11 November 2008 |
| Mr B. Blomeley Corporate Affairs Manager The Federal Hotels Pty Limited | 11 November 2008 |
| Mr D. Challen Secretary Department of Treasury and Finance | 10 March 2009 |
| Mr D. Challen Secretary Department of Treasury and Finance | 17 June 2009 (IN CAMERA) |