

General Purpose Standing Committee No 4

Budget Estimates 2000-2001

Volume 2

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How to contact the Committee

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Terms of Reference¹

1. That the Budget Estimates and related documents presenting the amounts to be appropriated from the Consolidated Fund be referred to the General Purpose Standing Committees for inquiry and report.
2. That the Committees consider the Budget Estimates in accordance with the allocation of portfolios to the Committees.
3. For the purposes of this inquiry any Member of the House may attend a meeting of a Committee in relation to the Budget Estimates and question witnesses, participate in the deliberations of the Committee at such meeting and make a dissenting statement relating to the Budget Estimates, but may not vote or be counted for the purpose of any quorum.
4. The Committees must hear evidence on the Budget Estimates in public.
5. Not more than 3 Committees are to hear evidence on the Budget Estimates simultaneously.
6. When a Committee hears evidence on the Budget Estimates, the Chair is to call on items of expenditure in the order decided on and declare the proposed expenditure open for examination.
7. The Committees may ask for explanations from Ministers in the House, or officers of departments, statutory bodies or corporations, relating to the items of proposed expenditure.
8. The report of a Committee on the Budget Estimates may propose the further consideration of any items.
9. A daily Hansard record of the hearings of a Committee on the Budget Estimates is to be published as soon as practicable after each day's proceedings.
10. The Committees have leave to sit during the sittings or any adjournment of the House.
11. After a Committee has considered proposed expenditure referred to it by the House and agreed to its report to the House, the Committee must fix:
 - (a) a day for the submission to the Committee of any written answers or additional information relating to the proposed expenditure, and
 - (b) a day for the commencement of supplementary meetings of the Committee to consider matters relating to the proposed expenditure, which day must be not less than 10 days after the day fixed under subparagraph (a).

¹ Legislative Council Minutes of the Proceedings, No.41, 23 May 2000, items 16, 19 and 20.

12. (1) A Member may lodge with a Committee, not less than 3 working days before the day fixed under subparagraph (11) (b), notice of matters relating to the written answers or additional information, or otherwise relating to the proposed expenditure referred to the committee, which the Member wishes to raise at the supplementary meetings of the Committee.
- (2) Any notice lodged with a Committee must be forwarded by the Committee to the Minister in the House responsible for the matters to which the notice relates.
13. A Committee may determine at any time the number and duration of any supplementary meetings.
14. At a supplementary meeting, questions may be put to Ministers or officers of departments, statutory bodies or corporations, relating to matters of which notice has been given, and the proceedings of the Committee must be confined to those matters.
15. A Committee may report to the House any recommendation for further action by the House arising from the Committee's supplementary meetings.
16. Written questions relating to the Budget Estimates may be supplied to the Clerk of the Committee, who must distribute them to the relevant Minister and to Members of the Committee. Answers must be supplied to, and circulated by, the Clerk.
17. The Committees must:
 - (a) present a first report to the House before the House adjourns for the winter recess, and
 - (b) present a final report to the House by the first sitting day in August 2000.

Committee Membership

The Hon Jenny Gardiner MLC, *Chair*

National Party

The Hon Ian Cohen MLC, *Deputy Chair*

The Greens

The Hon John Hatzistergos MLC

Australian Labor Party

The Hon Charlie Lynn MLC

Liberal Party

The Hon Ian Macdonald MLC

Australian Labor Party

The Hon David Oldfield MLC

Pauline Hanson's One Nation

The Hon Janelle Saffin MLC

Australian Labor Party

Other Members who attended the hearing

The Hon John Hannaford MLC

Liberal Party

The Hon John Johnson MLC

Australian Labor Party

The Hon Richard Jones MLC

Independent

The Hon Peter Primrose MLC

Australian Labor Party

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Chair's Foreword

General Purpose Standing Committee No 4 undertook a supplementary hearing to enable further examination of the 2000-2001 Budget Estimates for the portfolio area of Gaming and Racing on 11 August 2000.

In this final report on the 2000-2001 Estimates, the Committee summarises a number of specific matters relating to the Casino Surveillance Division, Department of Gaming and Racing and the Casino Control Authority, which were the subject of questions to departmental and agency officers, at the supplementary hearing.

The Committee expresses its appreciation to officers of the Department of Gaming and Racing and the Casino Control Authority who appeared before it.

The Hon Jenny Gardiner MLC
Chair

Gaming and Racing supplementary hearing

On 23 June 2000, General Purpose Standing Committee No. 4 tabled Volume 1 of its report entitled "Budget Estimates 2000-2001". The report summarised a number of specific matters relating to the various portfolio areas which were the subject of questions to Ministers, as well as departmental and agency officers, at public hearings held on 6, 7, 9 and 19 June 2000.

During consideration of Volume 1 of the report, the Committee resolved to hold a supplementary hearing to examine expenditure of the Casino Surveillance Division, Department of Gaming and Racing and the Casino Control Authority and requested staff of these organisations to attend.

Chapter one of this report summarises matters discussed at the supplementary hearing. Chapter two outlines dates that the Committee submitted questions on notice from the initial round of budget estimates hearings to Ministers and details of when Ministers' responded.

Chapter 1 Gaming and Racing

The Committee heard evidence from Mr Ron Harrex, Director of Casino Surveillance, Mr Robert Wright, Supervising Inspector, Mr Marc Duggan, Inspector, Mr Vince Mossfield, Inspector and Mr Paul Terrett, Inspector, all of the Casino Surveillance Division, Department of Gaming and Racing and Mr Brian Farrell, Chief Executive, Casino Control Authority, at a public hearing held on 11 August 2000. During the course of the hearing one document was tabled (see Appendix 1). A summary of issues discussed at the hearing is provided below.

Casino Surveillance Division, Department of Gaming and Racing

Secrecy provisions of s.148 of the Casino Control Authority Act 1992

- 1.1** Mr Harrex tabled advice from the Crown Solicitor to the Minister concerning the application of s.148 of the *Casino Control Authority Act 1992*, for departmental officers divulging information to the Committee, and made the following statement:

As public servants we are bound to follow the legal advice provided by the Crown Solicitor. The course of action that will be followed in answering questions is for officers to assess whether an answer to a Member's question would divulge information acquired in the exercise of their functions under the Casino Control Act. When that is the case officers will take the questions on notice, and responses to the questions will be prepared and forwarded to the Casino Control Authority. The Authority will be asked whether it is in a position to certify that it is necessary in the public interest for that information to be divulged to the committee.²

- 1.2** Mr Wright, Mr Mossfield, Mr Terrett and Mr Duggan all indicated that they were unable to answer certain questions as disclosure may breach s.148 of the Casino Control Authority Act 1992. In some instances witnesses indicated they would take certain questions on notice subject to s.148 of the Act. For example, the Chair asked these witnesses "Do you believe that the casino is operating free of criminal influence?" Each of the inspectors indicated that they believed they would be breaching s.148 if they were to respond to the question.
- 1.3** Prior to the hearing the Chair of the Committee sought advice from the Clerk of the Parliaments about the impact of legislative secrecy provisions on the ability of witnesses to answer questions in public hearings of parliamentary inquiries. This advice differed substantially from that provided by the Crown Solicitor to the Minister. The Committee resolved to seek independent legal advice about this matter. The Crown Solicitor's advice can be viewed as part of an attachment to the Clerk's advice presented at Appendix 2 of

² Evidence of Mr Harrex, Director, Casino Surveillance, Department of Gaming and Racing, 11 August 2000, p. 2.

this report. The Committee will consider the independent legal advice when it is received and report it to the House.

Staff reductions in the Casino Surveillance Division

- 1.4** Mr Harrex advised that since May 1999, staff numbers in the Casino Surveillance Division had been reduced from 58 to 29 as a result of a lower budget allocation in 1999-2000. No further staffing reductions have occurred as a consequence of the 2000-2001 budget.
- 1.5** Mr Harrex explained that during the casino's commencement, efforts were made to implement a conservative approach to casino surveillance while resources were available and operations were still being bedded down. Reference was made to the 1998 Auditor General's performance audit on surveillance activities which concluded that the Casino Surveillance Division should be moving to a risk managed approach. Implementation of this approach had contributed to reductions in budget and staff.
- 1.6** Mr Harrex advised that the Casino Surveillance Division operates with five teams of four inspectors. Mr Harrex stated that the optimum operating level for a team is four, although inspectors taking leave or absent due to illness diminishes operating numbers in a team. The Committee heard evidence that on a couple of occasions team numbers had been reduced to one, necessitating other inspectors to be called in for overtime.
- 1.7** The Committee heard evidence concerning the impacts of budget and staff reductions on operations of the Casino Surveillance Division. Mr Harrex agreed that the reduction in staff numbers has reduced the regularity with which inspectors are able to monitor the casino complex. Mr Harrex stated: "with the cutback in shift numbers, we no longer have the opportunity to get about the large complex or to look at all of those issues as regularly as we used to".³ Mr Wright explained that alterations to procedures within the casino have reduced the necessity for the physical presence of an inspector in some instances.
- 1.8** The Committee heard evidence that since the commencement of the temporary casino in 1995, the Casino Surveillance Division has looked to place one inspector in the CCTV surveillance room. While occasions may arise where two people are working in the CCTV area, inspectors are not normally rostered on that basis.
- 1.9** Mr Wright indicated that changes to procedures for the casino operator in revenue protection had occurred subsequent to the Auditor General's report. This had led to a reduced workload for the Casino Surveillance Division in this field of operation.

Use of CCTV surveillance equipment

- 1.10** In response to a question about whether cameras were located in toilets to monitor the use and trafficking of drugs, Mr Harrex advised the Committee that cameras are not located in toilets, privacy being one of the considerations.
- 1.11** Mr Harrex stated he was not aware of any instances where inspectors had taken photographs of patrons for personal interest.

³ Evidence of Mr Harrex, Director, Casino Surveillance, 11 August 2000, p18.

- 1.12** Mr Harrex advised the Committee that the Casino Surveillance Division monitors, records and stores CCTV activity. The casino operator's surveillance unit also uses CCTV facilities, retaining a circulation of around 12,000 videotapes to enable recordings to be held for seven days prior to being reused.

Casino Surveillance incident reporting

- 1.13** Mr Harrex acknowledged that there were a number of occasions where incident reports had been made in relation to gaming shoes missing one or more cards and that details had been provided to the Casino Control Authority. Evidence was received on the procedures that the casino operator has in place for shuffling of cards and ensuring all cards are within a deck.
- 1.14** Evidence was received in relation to a reported incident of the casino operator breaching licensing conditions by operating in excess of 200 gaming tables.
- 1.15** Mr Harrex reported that the casino operator had requested its card manufacturer provide decks without jokers to avoid these cards inadvertently appearing on the table.
- 1.16** Witnesses answered a number of questions relating to the death of Mr Peter Dalamangas at the Sydney Casino and video surveillance of the incident.
- 1.17** The Committee heard evidence relating to the Casino Surveillance Division's procedure for handling a major incident and keeping recorded material secure.

McClellan inquiry

- 1.18** Mr Harrex noted that the public release of information concerning casino operations may have an impact on proceedings of the inquiry currently being conducted by Mr Peter McClellan in accordance with s.31 of the Act.
- 1.19** In response to questions from the Committee relating to the possibility of criminal influences operating within the casino, Mr Harrex indicated that the McClellan inquiry, operating under s.31 of the Act, was considering such matters.

Casino Control Authority

Secrecy provisions of s.148 of the Casino Control Authority Act 1992

- 1.20** Mr Farrell declined to discuss whether policy principles on excluding patrons exist, claiming this would involve divulging information that was obtained in performing functions under the Act.

Use of CCTV surveillance equipment

- 1.21** Mr Farrell explained the positive and negative implications of using digital technology.

Casino Surveillance Division incident reporting

- 1.22** Mr Farrell outlined the process for the Casino Surveillance Division to report matters to the Casino Control Authority.

McClellan inquiry

- 1.23** Mr Farrell detailed the powers, operating processes and legislative requirements of an inquiry operating under s.31 of the Act such as the McClellan inquiry.
- 1.24** In response to a question from the Committee relating to the possibility of criminal influences operating within the casino, Mr Farrell claimed that to answer such a question would be prejudicial to the outcomes of the McClellan inquiry.
- 1.25** Mr Farrell indicated a preference not to elaborate on details contained in reports provided by the casino operator's surveillance team to the Casino Control Authority claiming it may prejudice the McClellan inquiry.

Exclusion of patrons

- 1.26** Mr Farrell explained that authority to exclude patrons of the casino was limited to the Director of Casino Surveillance, the casino operator and the Commissioner of Police.

Chapter 2 Questions on notice – all portfolios

2.1 Following completion of the initial round of budget estimates hearings, the Committee set 21 July 2000 as the date by which the Ministers should respond to questions placed on notice. The table below details the dates on which questions were forwarded to the Minister and when responses were received.

Portfolio	Date of hearing(s)	Date that Committee delivered questions on notice	Date that Committee received responses to questions on notice
Urban Affairs and Planning, Aboriginal Affairs and Housing	6 June 2000	9 June 2000	27 July 2000
Gaming and Racing	7, 19 June 2000	29 June 2000	28 August 2000
Transport, and Roads	7, 19 June 2000	7 July 2000	27 July 2000
Public Works and Services	9 June 2000	7 July 2000	28 July 2000

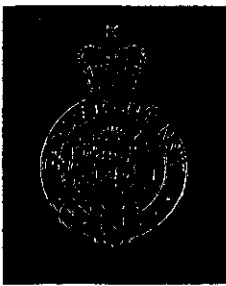
Appendix 1 – Documents tabled at the hearing

Gaming and Racing

11 August 2000

Advice from the Crown Solicitor to the Minister for Gaming and Racing, undated, concerning application of s. 148, *Casino Control Act 1992*, to the divulging of information to the Legislative Council General Purpose Standing Committee No.4.

**Appendix 2 – Advice from the Clerk of the Parliaments
on secrecy provisions under s.148 of the Casino Control
Act 1992 (includes advice from the Crown Solicitor)**



ADVISORY NOTE

STATUTORY SECRECY PROVISIONS

At the meeting of General Purpose Standing Committee No.4 on 22 June 2000, the Chair advised that advice would be sought from the Clerk of the Parliaments regarding the impact, if any, of secrecy provisions under s.148 of the *Casino Control Authority Act 1992*, on the ability of witnesses to answer questions in public hearings of a parliamentary inquiry.

Statutory secrecy provisions aim to prohibit the disclosure of particular information by making such a disclosure a criminal offence. In so doing, secrecy provisions aim to protect the functions and objectives of the Act to which the provisions are a part.

The impact of statutory secrecy provisions on the powers of the Commonwealth Senate and its committees is clearly reflected in *Odgers*:

“The position which has always been adhered to by the Senate and its advisers is that such provisions have no effect on the powers of the Houses and their committees to conduct inquiries, and that general secrecy provisions do not prevent committees seeking the information covered by such provisions or persons who have that information providing it to committees. The basis of this view is that the law of parliamentary privilege provides absolute immunity to the giving of evidence before a House or a committee...

...It is also a fundamental principle that the law of parliamentary privilege is not affected by a statutory provision unless the provision alters that law by express words.”¹

Section 148 of the *Casino Control Authority Act 1992* makes no reference to the application of the secrecy provisions to a House of Parliament or a parliamentary committee. In the absence of such express wording, the powers of parliamentary committees to conduct hearings (in public or private) and examine witnesses in relation to the Casino Control Authority are unaffected.

¹ *Odgers' Australian Senate practice*, 9th Edition, CanPrint Communications Pty Limited, Canberra, 1999, p. 47.

See also the following cases: *Duke of Newcastle v. Morris* (1870) LR 4HL 661 at 668, *R v. Graham-Campbell; ex p Herbert* [1935] 1 KB 594 at 603; *Hammond v. Commonwealth* (1982) 152 CLR 188 at 200, *Prebble v. Television New Zealand Ltd* (1994) 1 A.C 321, *CJC & Ors v. Dick*, Supreme Court of Queensland, 25 July 2000, paragraph 13.

It is my view that the secrecy provisions of s.148 have nothing to do with provision of information to a committee of the Legislative Council and therefore there is no offence for divulging information to it. In drawing this conclusion I refer to the powers of freedom of speech in parliament sourced from article IX of the *Bill of Rights 1689*.² I cite *Erskine May* in this matter:

...final legal recognition of the privilege of freedom of speech in both Houses of Parliament is to be found in article IX of the Bill of Rights 1689, which states that 'the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament'.³

A "proceedings in parliament" may consist of strangers taking part in proceedings of the House such as giving evidence before parliamentary committees.⁴

Crown Solicitor's Office advice⁵, received by the Office of the Minister for Gaming and Racing and forwarded to General Purpose Standing Committee No.4, asserts that the secrecy provisions of s.148 place limitations on a person who acquires information in the exercise of functions under the Act from divulging this information before the committee.⁶

In the Crown Solicitor's opinion, parliamentary committees fall within the definition of a "court" under the Act⁷ and thus are prohibited from requiring staff to divulge information that is not in accordance with s.148(3) and (4) of the Act.⁸

The validity of this advice is brought into question when considering the following two points:

1. First, the New South Wales Crime Commission, the Independent Commission Against Corruption and the National Crime Authority are identified in the Act as exempt from the secrecy provisions.⁹ I would propose that it was not the intention of the Parliament, in passing the legislation, to instil greater powers in these agencies than in the House itself or its committees. This view was reinforced in the recent judgement of *CJC & Ors v. Dick*¹⁰, where Helman J. held:

More cogent perhaps than those considerations is, however, the implausibility of the proposition that Parliament should have intended by such an indirect means to surrender by implication part of the privilege attaching to its proceedings. The proposition advanced on behalf of the applicants really comes down to an assertion

² Incorporation of article IX of the *Bill of Rights 1689* into the enactment legislation of New South Wales Parliament is clearly expressed under s.6 of the *Imperial Acts Application Act 1969*.

³ *Parliamentary Practice*, Erskine May, 22nd edition, Butterworths, London, 1997, p. 83.

⁴ *Ibid*, p. 95.

⁵ See Appendix 1.

⁶ Correspondence from Office of the Minister for Gaming and Racing, to General Purpose Standing Committee No.4, dated 2 August 2000, pp. 5-6.

⁷ Definition of court in s.148(8), *Casino Control Act 1992*.

⁸ Correspondence from Office of the Minister for Gaming and Racing, to General Purpose Standing Committee No.4, dated 2 August 2000, pp. 6-7.

⁹ s.148(6), *Casino Control Act 1992*.

¹⁰ Supreme Court of Queensland, 25 July 2000.

that by providing for a limited immunity for acts and omissions of the parliamentary commissioner the Parliament intended substantially to derogate from its own privilege. I do not accept that construction of the Act.¹¹

2. Addressing similar matters in the Senate, the Clerk noted that:

The great weakness of this argument was revealed by the question: If an officer of the Authority gave information to the committee, could the officer then be prosecuted under the secrecy provision?¹²


It is my opinion that no offence can be created under the protection afforded to witnesses by parliamentary privilege. Since divulging information creates no offence, the secrecy provisions and penalties cannot apply to limit witnesses providing information, or committees examining witnesses.

The circumstances under which a committee must consider and determine any objection by a witness to answering any question are rare.

If witnesses have some difficulty in answering a question, they usually indicate that difficulty and the committee does not press the question or seeks the desired information by an alternative form of questioning...It is for a committee to decide whether a particular objection will be sustained and whether a question will be pressed.¹³

If the committee is faced with this situation, it is recommended that the committee follow the relevant clauses of the Senate Resolution relating to procedures to be observed for the protection of witnesses.¹⁴

During any private deliberations the committee should give consideration to its powers under the *Parliamentary Evidence Act 1901*.¹⁵


John Evans
Clerk of the Parliaments

¹¹ *CJC & Ors v. Dick*, Supreme Court of Queensland, 25 July 2000, paragraph 13.

¹² *Odgers' Australian Senate practice*, 9th Edition, CanPrint Communications Pty Limited, Canberra, 1999, p. 48.

¹³ *Ibid*, at p.426.

¹⁴ See Appendix 2.

¹⁵ See Appendix 3.

Appendix 1

Crown Solicitor's advice (CSO ref: CHS030.750 IV Knight), 27 July 2000



MINISTER FOR GAMING AND RACING

Minister Assisting the Premier on Hunter Development

2 August 2000

Mr Steven Carr
Director (Standing Committee
on State Development)
Legislative Council
Parliament House
SYDNEY NSW 2000

Dear Mr Carr

I refer to your facsimile message addressed to my Minister dated 26 July 2000 in which you sought, on behalf of the General Purpose Standing Committee No 4, legal advice as to the impact of the secrecy provisions of the Casino Control Act 1992 on the ability of departmental officers to answer questions put by the Committee at either public or private supplementary hearings.

As requested, please find attached legal advice obtained from the Crown Solicitor, Mr I V Knight, with respect to the questions raised.

Yours sincerely

Sue O'Brien
Chief of Staff



Crown Solicitor's Office

NEW SOUTH WALES

Advice

Re: Application of s. 148, *Casino Control Act 1992*, to the divulging of information to the Legislative Council General Purpose Standing Committee No. 4.

1. Advice sought

- 1.1 I am asked to advise the Minister for Gaming and Racing as to the application of s. 148 of the *Casino Control Act 1992* ("the Act") to the divulging of information to the above Committee at hearings held in public and in private.

2. Background

- 2.1 The Committee has resolved to conduct a supplementary hearing into the portfolio of Gaming and Racing on 11 August 2000 as part of its 2000-2001 budget estimates reference.
- 2.2 The Minister has been asked by the Committee to advise as to the application of s. 148 of the Act to the divulging of information the subject of that section to the Committee. I have been asked to address whether that application is affected by whether the hearing is held in public or in private.

3. Relevant legislation

- 3.1 Section 148 of the Act provides:

"(1) A person who acquires information in the exercise of functions under this Act must not, directly or indirectly, make a record of the information or divulge the information to another person, except in the exercise of functions under this Act.

Maximum penalty: 50 penalty units.

- (2) Despite subsection (1), information may be divulged:
- (a) to a particular person or persons, if the Authority certifies that it is necessary in the public interest that the information be divulged to the person or persons, or
 - (b) to a prescribed person or prescribed authority, or
 - (c) to a person who is expressly or impliedly authorised to obtain it by the person to whom the information relates.

- (3) A person cannot be required:
- (a) to produce in any court any document or other thing that has come into the person's possession, custody or control by reason of, or in the course of, the exercise of the person's functions under this Act, or
 - (b) to divulge to any court any information that has come to the person's notice in the exercise of the person's functions under this Act.
- (4) Despite subsection (3), a person may be required to produce a document or other thing in a court or to divulge information to a court if:
- (a) the Authority certifies that it is necessary in the public interest to do so, or
 - (b) a person to whom the information relates (or to whom the information contained in the document or thing relates) has expressly authorised it to be divulged to or produced in the court.
- (5) An authority or person to whom information is divulged under subsection (2), and a person or employee under the control of that authority or person, are, in respect of that information, subject to the same rights, privileges and duties under this section as they would be if that authority, person or employee were a person exercising functions under this Act and had acquired the information in the exercise of those functions.
- (6) This section does not apply to the divulging of information to, or the production of any document or other thing to, any of the following:
- the New South Wales Crime Commission,
 - the Independent Commission Against Corruption,
 - the National Crime Authority,
 - any other person or body prescribed for the purposes of this subsection.
- (7) This section does not prevent a person being given access to a document in accordance with the *Freedom of Information Act 1989*, unless the document:
- (a) contains matter the disclosure of which could reasonably be expected to do any of the following:
 - prejudice the investigation of any contravention or possible contravention of the law (including any revenue law) or whether generally or in a particular case,

- enable the existence or identity of any confidential source of information, in relation to the enforcement or administration of the law, to be ascertained,
 - prejudice the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law (including any revenue law), or
- (b) is a document the disclosure of which would disclose any of the following information:
- information concerning the business, commercial, professional or financial affairs of an applicant for a casino licence or a licence under Part 4,
 - information obtained in the course of an investigation of an application for such a licence,
 - information concerning the system of internal controls and administrative and accounting procedures for a casino.
- (8) In this section:

"court" includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

"produce" includes permit access to."

4. Advice

- 4.1 The Committee does not as a result of s. 148 or otherwise have the power to require the staff required to attend the supplementary hearing to produce any document to the Committee (the House does have the power to compel compliance with an order that the Executive produce State papers).
- 4.2 As a consequence of s. 148(1) and (2), the staff required by the Committee to attend the supplementary hearing may only **voluntarily** divulge to the Committee information they have acquired in the exercise of functions under the *Act* if:
- (i) they do so in the exercise of functions under the *Act*;
 - (ii) the Casino Control Authority certifies that it is necessary in the public interest that the information be divulged to the Committee; or
 - (iii) the Committee is expressly or impliedly authorised to obtain it by the person to whom the information relates.

The prohibition against divulging information to which s. 148(1) applies ("s. 148 information"), which prohibition does not apply in any of the above circumstances, is a prohibition against divulging information "acquired in the exercise of functions

under the *Act*" ie the act of acquiring the information must have been in the exercise of such a function.

It does not seem that any divulging to the Committee by the subject staff of s. 148(1) information would be done by them in the exercise of a function under the *Act* within the meaning of (i) above. Such divulging does not appear to be part of any function under the *Act*.

4.3 As a consequence of s. 148(3) and (4), read with the definition of "court" in s. 148(8), the Committee, which I consider is a "court" for the purposes of s. 148(3) given it has the power to require the answering of questions under the *Parliamentary Evidence Act 1901*, is prohibited from requiring such staff to divulge any information that has come to their notice in the exercise of their functions under the *Act* except where:

- (i) the Authority certifies that it is necessary in the public interest to do so; or
- (ii) a person to whom the information relates has expressly authorised it to be divulged to the Committee.

The prohibition in s. 148(3) against requiring information applies to information that has "come to the person's notice" in the exercise of the person's functions under the *Act*. That is not necessarily the same as s. 148(1) information. The noticing of the information does not have to have been part of the person's functions under the *Act*, it is enough that in the exercise of a function of the person under the *Act*, the information came to notice.

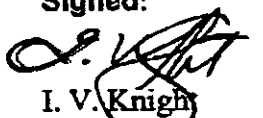
The circumstances in (i) above in which the divulging of such information can be required by the Committee are the same as the circumstances in (ii) in 4.2 above in which s. 148(1) information may be volunteered to the Committee. It is matter for the Authority whether it is prepared to certify that it is necessary in the public interest that particular information be divulged to the Committee.

The circumstances in (ii) above in which the divulging of such information may be required by the Committee are not identical to the circumstances in (iii) in 4.2 above in which s. 148(1) information may be volunteered to the Committee. The necessary authorisation to enable information to be required by the Committee must be express; it cannot be implied. Authority to voluntarily disclose s. 148(1) information can be either express or implied. Furthermore, while I cannot be certain as to this, it would seem that not every person to whom the information relates must authorise its divulging to the Committee in order for the Committee to be able to require it. While such information may be required if "a person" to whom the information relates gives authority, authority to voluntarily divulge s. 148(1) information must be given by "the person" to whom the information relates. The same piece of information can, I think, relate to more than one person. "Relates" is a word of broad meaning. Provided there

is some connection or relationship between information and a person, the information can be said to relate to the person. If information can relate to more than one person it would seem that in the context of the giving of authority the singular "the person" should include the plural ie all the persons to whom the information relates. Section 8(b) of the *Interpretation Act 1987* requires such a construction in the absence of a contrary intention. In the same context of giving authority but in relation to required information, the draftsman has chosen to use the words "a person", suggesting that it is enough that authority be given by one of the persons to whom the information relates. That is not necessarily a result that could not have been intended. It can be argued that if a person is to be able to volunteer to a person information acquired in the exercise of functions under an *Act* the authority of all persons to whom that information relates should be obtained. There would seem to be no basis upon which to conclude that the authority of any one of them should be able to result in information which relates to all of them and the disclosure of which could affect all of them being able to be volunteered to a person. In the case of a "court" which otherwise has a power to require answers to questions for the purpose of its proceedings, it may have been thought that a requirement that all persons to whom the subject information relates must give authority would impose an unreasonable fetter upon that power and the functioning of the "court". That one person to whom the information relates is desirous of or agreeable to it being divulged in "court" may have been thought sufficient to make it appropriate that this information should be able to come before the "court" when otherwise it would not.

- 4.4 It is irrelevant to the operation of s. 148 whether the divulging of information by the subject staff would be to the Committee in private or in public.

Signed:


I. V. Knight
Crown Solicitor

Prepared for: The Minister for Gaming and Racing
Date: 27 July 2000
Client ref: Sue O'Brien
CSO ref: CHS030.750 I V Knight

Appendix 2

Parliamentary Privilege Resolutions agreed to by the Senate on 25 February 1988

1. Procedures to be observed by Senate committees for the protection of witnesses¹⁶

That, in their dealings with witnesses, all committees of the Senate shall observe the following procedures:

(9) A chairman of a committee shall take care to ensure that all questions put to witnesses are relevant to the committee's inquiry and that the information sought by those questions is necessary for the purpose of that inquiry. Where a member of a committee requests discussion of a ruling of the chairman on this matter, the committee shall deliberate in private session and determine whether any question which is the subject of the ruling is to be permitted.

(10) Where a witness objects to answering any question put to the witness on any ground, including the ground that the question is not relevant or that the answer may incriminate the witness, the witness shall be invited to state the ground upon which objection to answering the question is taken. Unless the committee determines immediately that the question should not be pressed, the committee shall then consider in private session whether it will insist upon an answer to the question, having regard to the relevance of the question to the committee's inquiry and the importance to the inquiry of the information sought by the question. If the committee determines that it requires an answer to the question, the witness shall be informed of that determination and the reasons for the determination, and shall be required to answer to the question only in private session unless the committee determines that it is essential to the committee's inquiry that the question be answered in public session. Where a witness declines to answer a question to which a committee has required an answer, the committee shall report the facts to the Senate.

¹⁶ *Odgers' Australian Senate practice*, 9th Edition, CanPrint Communications Pty Limited, Canberra, 1999, pp. 551-552.

Appendix 3

Parliamentary Evidence Act 1901

PARLIAMENTARY EVIDENCE ACT, 1901, No. 43

Reprinted under the Acts Reprinting Act, 1972

[Reprinted as at 9th May, 1979]

New South Wales.



ANNO PRIMO

EDWARDI VII REGIS

Act No. 43, 1901 (1), as amended by Act No. 8, 1939 (2).

An Act to consolidate the law relating to the summoning, attendance, and examination of witnesses before either House of Parliament or any Committee thereof.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited as the "Parliamentary Evidence Short title. Act, 1901."

2. The Act mentioned in the First Schedule to this Act is Repeal. hereby repealed. First Schedule.

70910—21586 (8)

(1) Parliamentary Evidence Act, 1901, No. 43. Assented to, 7th November, 1901.

(2) Parliamentary Evidence (Amendment) Act, 1939, No. 8. Assented to, 4th September, 1939.

Parliamentary Evidence.

Interpre-
tation.

45 Vic. No. 5,
s. 1.

3. In this Act—

“Assembly” means the Legislative Assembly.

“Committee” means a Committee of the Council or Assembly.

“Council” means the Legislative Council.

“President” means the President of the Council.

“Speaker” means the Speaker of the Assembly.

Witnesses
how sum-
moned.

45 Vic. No. 5,
s. 2.

4. (1) Any person not being a Member of the Council or Assembly may be summoned to attend and give evidence before the Council or Assembly by notice of the order of the Council or Assembly signed by the Clerk of the Parliaments or Clerk of the Assembly, as the case may be, and personally served upon such person.

(2) Any such person may be summoned to attend and give evidence before a committee by an order of such committee signed by the chairman thereof and served as aforesaid.

Members of
Parliament.

45 Vic. No.
5, s. 2.

5. The attendance of a Member of the Council or Assembly to give evidence before the Council or Assembly or a committee shall be procured in conformity (so far as practicable) with the mode of procedure observed in the British House of Commons.

Expenses of
witnesses.

45 Vic. No. 5,
s. 4.

6. (1) Every witness summoned as aforesaid shall be entitled to be paid at the time of service of such notice or order his reasonable expenses consequent upon his attendance in obedience thereto according to his condition or profession, to be calculated in accordance with the scale in force for the time being for the payment of witnesses in actions in the Supreme Court.

Parliamentary Evidence.

(2) The expenses of any witness summoned at the instance of a party shall be defrayed by such party; but if the witness be summoned for any public inquiry to be examined either by the Council or Assembly or by a committee, his expenses shall be paid by the Colonial Treasurer out of the Consolidated Revenue Fund on the receipt by him of a written authority in that behalf signed by the Clerk of the Parliaments or Clerk of the Assembly or Chairman of the Committee respectively, according to the nature of the summons.

7. If any witness so summoned fails to attend and give evidence in obedience to such notice or order, the President or the Speaker, as the case may be, upon being satisfied of the failure of such witness so to attend and that his non-attendance is without just cause or reasonable excuse, may certify such facts under his hand and seal to a Judge of the Supreme Court, according to the form in the Second Schedule hereto, or to the like effect.

Non-attendance of witness to be certified to a Judge.
Second Schedule.
45 Vic. No. 5, s. 5.

8. Upon such certificate any Judge of the said Court shall issue his warrant in the form in the Third Schedule hereto, or to the like effect, for the apprehension of the person named in such certificate, for the purpose of bringing him before the Council, Assembly, or Committee to give evidence.

Warrant to issue thereupon.
Third Schedule.
45 Vic. No. 5, s. 5.

9. (1) Such warrant shall be a sufficient authority for all persons acting thereunder to apprehend the person named in such warrant, and to retain him in custody, to the intent that he may from time to time be produced for the purpose of giving evidence, or be remanded and finally be discharged from custody, pursuant to any order under the hand and seal of the President or Speaker, as the case may be.

Warrant and order of President or Speaker to be sufficient authority for acts thereunder.
45 Vic. No. 5, s. 5.

(2) Every such order shall be a sufficient warrant for all persons acting thereunder.

Parliamentary Evidence.

Administra-
tion of oath.
45 Vic. No.
5, s. 3.

10. (1) Every witness attending to give evidence before the Council, Assembly, or a Committee of the Whole shall be sworn at the bar of the House; and the customary oath shall be administered by the Clerk of the Parliaments or Clerk of the Assembly, as the case may be (or in his absence by the officer acting for him).

(2) Every witness attending to give evidence before a Committee other than a Committee of the Whole shall be sworn by the chairman of such Committee.

Declaration,
&c., in lieu of
oath.
45 Vic. No.
5, s. 3.

(3) Provided that in any case where a witness, if examined before the Supreme Court, would be permitted to make a solemn declaration or to give evidence in any other way than upon oath, a witness summoned under this Act shall be in like manner allowed to give evidence upon declaration or otherwise, as aforesaid.

Penalty for
refusal to
answer.
45 Vic. No.
5, s. 7.

11. (1) If any witness refuses to answer any lawful question during his examination, he shall be deemed guilty of a contempt of Parliament, and may be forthwith committed for such offence into the custody of the usher of the black rod or sergeant-at-arms, and, if the House so order, to gaol, for any period not exceeding one calendar month, by warrant under the hand of the President or Speaker, as the case may be.

(2) Such warrant shall be a sufficient authority for all gaolers and other officers to hold the body of the person therein named for the term therein stated.

(3) No person acting under the authority of this section shall incur any liability, civil or criminal, for such act.

Privilege of
witness.
45 Vic. No.
5, s. 6.

12. No action shall be maintainable against any witness who has given evidence, whether on oath or otherwise, under the authority of this Act, for or in respect of any defamatory words spoken by him while giving such evidence.

Parliamentary Evidence.

13. If any such witness wilfully makes any false statement, knowing the same to be false, he shall, whether such statement amounts to perjury or not, be liable to penal servitude for a term not exceeding five years.

Penalty for
false
evidence.
45 Vic. No.
5, s. 6.

14. A reference in this Act to a "committee" shall extend to include a reference to a joint committee of the Council and the Assembly appointed either before or after the commencement of the Parliamentary Evidence (Amendment) Act, 1939.

Joint
committees.
New section
added,
Act No. 8,
1939, s. 2.

In the application of the provisions of this Act to and in respect of any such joint committee, such provisions shall be construed as if the joint committee were a committee of that House of the Parliament in which the proposal for the appointment of the joint committee originated.

SCHEDULES.

FIRST SCHEDULE.

Reference to Act	Short title.	Extent of repeal.
45 Vic. No. 5	Parliamentary Evidence Act, 1881	The whole.

Act No. 43, 1901.

Parliamentary Evidence.

Section 7.

SECOND SCHEDULE.

Form of certificate.

To His Honor

In the matter of the "Parliamentary Evidence Act, 1901," and
A.B. of

THIS is to certify to your Honor that it hath been made to appear to me
that the said A.B. has been duly summoned to
attend and give evidence before the pursuant to
the "Parliamentary Evidence Act, 1901," and that the said A.B. has failed
to appear, and that his non-appearance is without just cause or reasonable
excuse.

Given under my hand and seal at this day of
in the year one thousand nine hundred and
President of the Legislative Council
or
Speaker of the Legislative Assembly
(as the case may be).

Section 8.

THIRD SCHEDULE.

Form of Judge's warrant.

In the Supreme Court of
New South Wales. }

In the matter of the "Parliamentary Evidence Act, 1901," and
A.B. of

To the Sheriff of New South Wales, his deputy and assistants, and to all
constables and other His Majesty's officers and ministers of the peace
whom it may concern.

WHEREAS it hath this day been certified under the hand of*
that of has been duly summoned to attend and
give evidence before the pursuant to the "Parliamentary
Evidence Act, 1901," but hath failed to appear.

This is to require you forthwith to apprehend the said
and to detain him in custody for the purpose of being brought before
to give evidence and there to obey all further orders under
the hand of the* for his remand or for his final discharge
from custody.

Given under my hand and seal at aforesaid this
day of in the year one thousand nine hundred and
A Judge of the Supreme Court of New South Wales.

* President or Speaker (as the case may be).

PARLIAMENTARY EVIDENCE ACT 1901 No. 43

Date of last reprint: 9 May 1979

Amendments not included in current print

Made by	Provisions affected
Statute Law (Miscellaneous Provisions) Act 1986 No. 16	s. 11
Statute Law (Miscellaneous Provisions) Act (No. 2) 1994 No. 95	ss. 6-13; Second Sch.; Third Sch.
Statute Law (Miscellaneous Provisions) Act 1995 No. 16	Second Sch.
Evidence (Consequential and Other Provisions) Act 1995 No. 27	s. 11

AMENDMENTS ARE SHOWN IRRESPECTIVE OF WHETHER THEY ARE IN FORCE AT THE DATE OF ISSUE OF THIS SHEET. FOR FURTHER INFORMATION ABOUT THE EXACT STATUS OF LEGISLATION ETC. PLEASE CONSULT THE MONTHLY ACTS TABLES OR CONTACT THE LEGISLATION INFORMATION SERVICE AT THE PARLIAMENTARY COUNSEL'S OFFICE ON (02) 228 7139.

*Parliamentary Evidence.***INDEX.**

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Proceedings of the Committee

Minutes No. 13

Thursday 22 June 2000
At Parliament House at 9.00 am

1. Members Present

Ms Gardiner (in the Chair)
Mr Cohen
Ms Burnswoods (Saffin)
Mr Hatzistergos
Mr Lynn (from 9.10am)
Mr Oldfield
Dr Pezzutti (Lynn) (until 9.10am)

2. Apologies

Mr Macdonald

3. Confirmation of minutes

Resolved, on the motion of Mr Cohen, that the minutes of meetings no 11 and 12 be confirmed

4. Budget Estimates 2000-2001

The Committee deliberated.

Mr Lynn moved: that:

1. the Committee hold a supplementary hearing in relation to the Gaming and Racing portfolio from 10am to 4pm on either Friday 11 August 2000 or Monday 14 August 2000; and
2. the Director of Casino Surveillance, the Chief Executive and Chairperson of the Casino Control Authority, and a number of inspectors appointed under the *Casino Control Authority Act 1992* (whom the Chair of the Committee is given discretion to select), be requested to attend the hearing.

Debate ensued.

Question put.

Ayes: Ms Gardiner
Mr Cohen
Mr Lynn
Mr Oldfield

Nos: Ms Burnswoods
Mr Hatzistergos

Question resolved in the affirmative.

The Committee deliberated.

Resolved, on the motion of Mr Lynn, that the Chair write to the Minister for Gaming and Racing advising the Minister of the Committee's decision to hold a supplementary hearing on either 11 August or 14 August 2000, at which the Director of Casino Surveillance, the Chief Executive and Chairperson of the Casino Control Authority, and a number of inspectors appointed under the Casino Control Authority Act 1992 will be invited to attend, and seek written advice from the Minister, by a specified date, as to the availability of these persons to attend on the nominated days.

The Committee deliberated.

Resolved, on the motion of Mr Hatzistergos, that the Chair seek advice from the Minister about the impact of secrecy provisions of the *Casino Control Authority Act 1992* on the ability of witnesses to answer questions before the Committee at a public hearing; and ensure that inspectors called to appear before the Committee attend during periods when they are not rostered on standard surveillance operations.

The Chair advised the Committee she would seek advice from the Clerk of the Parliaments about whether legislative provisions impact on the powers of a Committee to question witnesses.

The Committee deliberated.

5. **Adjournment**

The meeting adjourned at 9.58 am until the 10am on the day of the Gaming and Racing supplementary hearing (either 11 or 14 August 2000).

Velia Mignacca
Clerk to the Committee

Minutes No. 14

Friday 11 August 2000
At Parliament House at 9:37am

1. Members Present

Ms Gardiner (in the Chair)
Mr Cohen
Mr Hannaford (Lynn)
Mr Hatzistergos
Mr Johnson (Macdonald)
Mr R Jones (Oldfield)
Mr Primrose (Saffin)

2. Budget Estimates reference

In accordance with paragraph 7 of the resolution establishing the General Purpose Standing Committees, the Chair advised that: Mr Hannaford would be representing Mr Lynn, Mr Johnson would be representing Mr Macdonald, Mr R Jones would be representing Mr Oldfield and Mr Primrose would be representing Ms Saffin.

The committee deliberated.

Resolved, on motion of Mr Hannaford, that the request by the Minister for Gaming and Racing that the Chairperson, Casino Control Authority be excused from the supplementary hearing of 11 August 2000, be accepted.

The Chair made a statement to Members regarding the broadcasting of proceedings.

The Committee deliberated.

Resolved, on motion of Mr Hannaford, that Members will question witnesses on specific issues rather than allocating blocks of time to individual parties or Members.

Mr Hannaford moved that:

The Chair issue a summons to each witness appearing at the hearing today and that each witness be sworn.

Debate ensued

Question put

The Committee divided:

Ayes: 4
Ms Gardiner
Mr Cohen
Mr Hannaford
Mr R Jones

Noes: 3
Mr Hatzistergos
Mr Johnson
Mr Primrose

Question resolved in the affirmative.

The public and media were admitted.

The Chair made a statement regarding certain procedural matters during hearings on estimates.

The Chair declared the proposed expenditure for Casino Surveillance, Department of Gaming and Racing and the Casino Control Authority within the portfolio of Gaming and Racing open for examination.

Mr Ron Harrex, Director, Casino Surveillance, Department of Gaming and Racing, was examined. Mr Harrex proposed the following course of action for himself and other departmental witnesses in responding to committee questions:

The course of action that will be followed in answering questions is for officers to assess whether an answer to a Member's question would divulge information acquired in the exercise of their functions under the Casino Control Act. When that is the case officers will take the questions on notice, and responses to the questions will be prepared and forwarded to the Casino Control Authority. The Authority will be asked whether it is in a position to certify that it is necessary in the public interest for that information to be divulged to the committee.

Mr Harrex tendered one document in support of his evidence.

Evidence concluded and the witness withdrew.

Mr Robert Wright, Supervising Inspector, Mr Marc Duggan, Inspector, Mr Vince Mossfield, Inspector and Mr Paul Terrett, Inspector, all of Casino Surveillance, Department of Gaming and Racing were sworn and examined. On advice from the Crown Solicitor, each witness claimed that they were unable to answer certain questions as disclosure may breach s.148 of the *Casino Control Authority Act 1992*. Some questions were taken on notice subject to s.148 of the Act.

Mr Hannaford sought leave of the committee to table a document entitled "JPH1."

Leave not granted.

Evidence concluded and the witnesses withdrew.

Mr Brian Farrell, Chief Executive, Casino Control Authority, was sworn and examined. On advice from the Crown Solicitor, the witness declined to answer certain questions as disclosure may breach s.148 of the *Casino Control Authority Act 1992*.

Evidence concluded and the witness withdrew.

The public and media withdrew.

The committee deliberated.

Mr Hannaford tendered a document entitled "JPH1" to the committee for its consideration.

Resolved, on motion of Mr Hatzistergos, that:

The Clerk of the Parliaments forward correspondence to Mr Brett Walker, SC, seeking advice on the impact of legislative secrecy provisions on Legislative Council committees. The committee have an opportunity to comment or amend the correspondence prior to it being forwarded.

Resolved, on motion of Mr R Jones, that the committee seek written advice from the Clerk of the Parliaments detailing the appropriate procedures for serving summons' to witnesses.

Resolved, on motion of Mr Cohen, that the committee meet to consider the draft final report into the 2000-2001 budget estimates reference on Monday, 28 August 2000.

3. Adjournment

The meeting adjourned at 3:30pm until Monday, 28 August 2000 at a time to be determined.

Steven Carr
Clerk to the Committee

Minutes No. 15

Monday 28 August 2000
At Parliament House at 10:10am

1. Members present

Ms Gardiner (in the Chair)
Mr Cohen
Mr Hannaford (Lynn)
Mr Johnson (Hatzistergos)
Mr Macdonald
Mr Oldfield
Ms Saffin

2. Substitute Members

The Chair advised that Mr Hannaford would be representing Mr Lynn and Mr Johnson would be representing Mr Hatzistergos.

3. Confirmation of minutes

Resolved, on the motion of Mr Cohen, that the minutes of meetings no 13 and 14 be confirmed.

4. Tabled documents

4.1 Correspondence received

The Chair tabled three items of correspondence received.

Letter from the Hon Dr Andrew Refshauge, MP, Deputy Premier, Minister for Urban Affairs and Planning, Minister for Aboriginal Affairs and Minister for Housing, to Director, dated 27 July 2000, providing responses to questions on notice from the initial round of hearings of the 2000-2001 budget estimates reference.

Letter from the Hon Carl Scully, MP, Minister for Transport, and Minister for Roads, to Director, dated 27 July 2000, providing responses to questions on notice from the initial round of hearings of the 2000-2001 budget estimates reference.

Letter from the Hon Morris Iemma, MP, Minister for Public Works and Services and Minister Assisting the Premier on Citizenship, to Director, dated 28 July 2000, providing responses to questions on notice from the initial round of hearings of the 2000-2001 budget estimates reference.

The Committee deliberated.

Resolved, on motion of Mr Hannaford that: the Clerk of the Committee approach the Office of the Minister for Gaming and Racing requesting a response to questions on notice from the initial round of hearings of the 2000-2001 budget estimates reference by 5:00pm Monday, 28 August 2000. If a response is not forthcoming, the Committee recommend to the President that she advise the House of the Minister's failure to respond by the due date.

5. Budget Estimates 2000-2001

The Chair submitted her draft report entitled "Budget Estimates 2000-2001, Volume 2", which having been circulated to each Member of the Committee, was accepted as being read.

Resolved, on the motion of Mr Hannaford: that paragraph 1.3 be amended by inserting "The Committee will consider the independent legal advice when it is received and report it to the House.", as a final sentence.

Resolved, on the motion of Mr Hannaford: that the report, as amended, be adopted.

Resolved, on the motion of Mr Hannaford: that the report be signed by the Chair and presented to the House in accordance with the resolution referring the Budget Estimates.

Resolved, on the motion of Mr Hannaford: that responses to questions on notice and the document tendered by Mr Harrex be tabled with the report and made public.

6. Adjournment

The meeting adjourned at 10:25am *sine die*

Steven Carr
Clerk to the Committee