

Pokies Plunder: The Final Chapter?

Submission to the Social and Economic Impact Study

Tasmania

9 October 2020

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It is within our capabilities to do what we think is in the best interests of the people of Tasmania and future generations.

Will Hodgman, Premier, evidence to the Joint Select Committee on Future Gaming Markets 22 March 2017

We think this process... does provide what many people have called a once-in-a-lifetime, once-in-a-generation opportunity to have a fresh look at how gambling is conducted in Tasmania.

Jenny Cranston, Chair Tasmanian Liquor and Gaming Commission, evidence to the Joint Select Committee on Future Gaming Markets 7 February 2017

Foreword

My book *Losing Streak: How Tasmania was Gamed by the Gambling Industry* (2017) chronicles the political influence of Federal Hotels (now the Federal Group) since they obtained the first casino licence in Australia in 1968. For most of this period, Federal Hotels enjoyed exclusive rights to own and operate not just table games in Tasmania but keno and poker machines as well. For nearly fifty years the company's power was largely wielded behind closed doors. This changed in September 2015 after the company was trumped by David Walsh who publicly objected to having his desire for a high-roller pokies-free casino at Mona being used as the excuse for yet another pokies contract extension.

People who have read *Losing Streak* can skip the first section of this submission which essentially provides an overview of the book. They will be interested to know, however, that the Cabinet papers from 1993 – the year that the pokies legislation was passed – have become available for public perusal since *Losing Streak* was published in 2017. These reveal that the Government had decided that the proposed poker machine licence would be owned by a new government statutory authority in order to ensure all surplus profits were returned to the state. The alternative considered was an open tender process. The sudden reversal of this considered decision in August 1993 –when the poker machine licence was given to Federal Hotels without any payment at all– was supported by no policy paper, advice or rationale. Well over a billion dollars of public revenue has been lost in Australia's poorest and most disadvantaged state as a result of the government caving into a vociferous company. Reclaiming Tasmanian democracy is not just an ethical imperative; it is a practical necessity.

The remarkable events which have occurred in the poker machine policy debate in Tasmania since 2016 are worthy of a fully-fledged sequel to *Losing Streak*, but as an unwaged historian and writer, this has not been a realistic task to undertake (although I hope someone else will fill the void). This volume is the inadequate alternative. I write it both to provide some record of what has gone on and because the story is not quite finished yet.

Most Tasmanians will be aware that in late 2017, the ALP became the first branch of the Liberal or Labor party in any state with poker machines to commit to withdrawing them from pubs and clubs. Everyone bore witness to what followed - the pokies industry locally and nationally (recognising the dangerous precedent of reform) directly intervened in the election through bankrolling the Liberals and funding their own anti-Labor and anti-Green advertising campaign. It is for good reason that the 2018 election is now popularly known as the 'bought election'.

What even many Tasmanians don't know, however, is that the Liberals sought to deliver equally radical reform – one that would see massive windfall capital gains to their donors through new poker machine licences and further concessions on casino pokie taxes for the Federal Group.

The legislation to implement the reform sought by the poker machine industry is expected to come before Parliament in in late 2020 or early 2021, and given that it is already clear that it will abandon the Government's earlier commitment to achieve a market based return for pokies licences, provide further tax concessions to the Federal Group at a time of severe budget pressures, go against the advice of the Tasmanian Liquor and Gaming Commission and, in the Commissions judgement, increase social harm; the legislation should not get through Parliament if MPs do the job they are elected to do.

It has become critically important that MPs and the wider community are informed by reliable, up to date research on the level of gambling harm before deciding to issue 100 new poker machine licences which will last until 2043.

The problem is that the financial and political power of the industry is such that, as Tim Costello has pointed out, MPs are as frightened to do the will of the people on this issue as American politicians are on gun reform. With the pokies industry, like the NRA, targeting any party who doesn't do its bidding, it will be up to the media, civil society and MPs of integrity to hold the major parties to account if the public financial return is to be maximised, social harm minimised and democracy reclaimed.

This submission has been written to contribute to the SEIS in the hope that this will in turn inform the forthcoming public and parliamentary debate on an issue that will decide the life chances of thousands of vulnerable Tasmanians.

James Boyce

Hobart

9 October 2020

1. History of the poker machine contract¹

An explicit promise was made in during the 1968 casino plebiscite (subsequently enshrined in the casino licencing legislation) that poker machines would remain illegal in Tasmania. This promise was broken in 1985 when legislation was passed allowing what were called 'video gaming machines' - a form of poker machine that was required to simulate casino table games.

In 1992, the Groom Liberal Government moved to follow other eastern states and introduce the new high intensity, highly addictive, 'repetitive press of a single button' poker machines into Tasmanian pubs and clubs. This was done as a revenue-raising measure at a time of when the Government was carrying high levels of debt.

Two reports were undertaken, one by the Committee for State Taxes and Charges, and another by a Select Committee of the Legislative Council (there was also a government funded report done by TasCOSS on the social harm likely to result from the introduction of poker machines).

The Committee for State Taxes and Charges found that *if* poker machines were to be introduced (a question the Committee was ambivalent about given the economic costs and social harm they found associated with it), the best model for Tasmania was a single licence, with the operator decided through a 'competitive tendering process'. Going to the market to get the best possible price for the licence was the way to ensure 'the best revenue options for Tasmania'. The danger highlighted by the committee was that the licence holder would otherwise make excessive returns because the 'variable' or operation costs of poker machines were low, meaning that 'any additional revenue translates almost wholly into profits'. To further safeguard against this, the Committee recommended that the licence period not exceed ten years, and that there should be some form of 'revenue cap' once profits exceeded a certain level. To reduce social harm, the bet limit should be twenty cents, a restriction 'in keeping with the entertainment concept of gaming machines promoted by both the AHA and the RCT'.²

Federal Hotels, concerned about competition for their casinos, campaigned hard against the government's plan. In their submission to the Legislative Council they made a number of points:

- 'In reality', machines would be concentrated in some venues, which would be 'detrimental to the pub and club industry as a whole.'
- Economic harm would result from the 'redistribution of household disposable income towards machine gaming from other areas of spending'.
- The 'reduction in revenue in the racing industry, restaurants, cinemas, theatres, retail and speciality shops would also lead to significant employment reductions.'
- 'Any business which relies on discretionary income will be threatened'
- The effects on 'businesses that currently do not compete against gaming machines in their immediate area would be disastrous'.
- Poker machines in 'will not attract one extra visitor to the state or promote the state to one new domestic or international market.'

¹ For more detail and full references for the information on this section, see James Boyce *Losing Streak: How Tasmania was Gamed by the Gambling Industry*, Black Inc 2017, Chapters 1 to 12

² Committee for the Review of State Taxes and Charges, *Report into the Extension of Gaming Machines into Hotels and Licenced Clubs*, October 1992, p. 25

- ‘Gaming machines in hotels and clubs give easy access and little control’ whereas the ‘two casinos are located in areas that require a conscious decision to travel’;
- That the Dutch government had recently removed 10 000 gaming machines in response to their addictive nature – this followed an earlier lead by France, with other countries also looking to restrict access to gaming machines ‘to overcome the social problems that accompany widespread availability’.
- In summary, the proliferation of poker machines ‘would have a disastrous effect on the social fabric and special culture of Tasmania.’³

Despite Federal Hotel’s activism, the 1993 Legislative Council Select Committee made similar recommendations to the Committee for State Taxes and Charges, including that:

- ‘The operator of the extended system of video gaming machines into hotels and clubs should be determined by competitive tender’.
- No more than 15 machines should be installed in any hotel.
- Bet limits should be 30 cents per spin.⁴

In 2018, the Cabinet papers from 1993 were made available to the public as the 25-year protection had concluded.

These papers revealed that a detailed policy proposal was taken to Cabinet by Treasurer, Tony Rundle, on 26 March 1993 (Minute 680). This canvassed all options regarding the proposed gaming industry model, tax rates and so on. It recommended against hotels and clubs being allowed to own machines (direct licencing) on the basis that: ‘There is a considerable amount of published material supporting the security deficiencies which this approach has permitted, particularly the opportunity for widespread corrupt conduct and the barriers to effective regulation’.

Instead, the Cabinet paper supported a single licence for ‘a third party operator’ which could be a ‘private operator or a statutory authority’ that did not own poker machine venues themselves. If a private operator option was chosen, this should be determined by ‘open tender’. However, a statutory authority was preferred because this would ensure ‘substantial additional revenue’. Using the government owned TAB was one option but the recommendation was for a new statutory authority to be established which would own all poker machines in Tasmania. This would ensure all surplus profits were returned to the Government.

This proposal was accepted by Cabinet but a few months later, without any further policy work or modelling being presented, the decision was reversed. In August 1993, the Cabinet signed off on a deal negotiated by the incoming Treasury Secretary, Don Challen, for the monopoly poker machine licence to be granted to Federal Hotels without a tender being conducted or a market price being sought. The licence was handed to Federal Hotels for free while the tax rate was the same as that recommended by the company itself in an earlier submission to the Legislative Council committee proposing new high-intensity poker machines in the casino. The tax rate - which peaked according to turnover at around 25 cents – was considerably lower than that recommended by both the Committee for State Taxes and Charges and the Legislative Council.

³ *Federal Hotels Submission to the Legislative Council Select Committee*, 28 May 1993, signed by Greg D. Farrell, Director, The Federal Hotels Limited. A copy of this submission is available from the Parliamentary Library.

⁴ *Report of the Legislative Council Select Committee on Video Gaming Machines Extension Beyond Casinos*, 1993

The deal allowed for the introduction of high intensity poker machines into the casino from 1 January 1994 and into clubs and hotels from 1 January 1997. Venues were to keep just 30 per cent of the losses in their business (less than the share going to Federal Hotels) but bear the full refurbishment costs required to install pokies *plus* pay a monthly rental fee to Federal Hotels to ensure the licence holder recouped the full cost of the machine *and* a further administration fee to cover other running costs the company might otherwise bear.

The release of the cabinet papers has confirmed that the government's policy reversal was not based on any policy paper, modelling or advice. The decision has never been investigated by a Parliamentary committee or any other body. Serious unanswered questions remain about the circumstances in which the policy change was made.

Once Federal Hotels secured its licence, the active opposition of the ALP (whose Gaming Industry Spokesperson was Paul Lennon) to the introduction of poker machines into Tasmania, effectively ceased.

The major amendment agreed to by the Government during parliamentary debate in late 1993 was the establishment of a three-member independent Tasmanian Gaming Commission which was to have broad regulatory and policy advice powers. The Commission was to have its own independent source of funds through its statutory administration of the Community Support Levy, part of which was to be spent on research – another statutory function of the Commission. Bet limits were set until 1 January 1999, with a parliamentary commitment made by the Government that they would be thereafter set by the TGC. It was further agreed that the Treasury Secretary would continue as Gaming Commissioner for 12 months as an interim arrangement but that he would step down after this time.

The Commission was never established as the Legislative Council intended. It effectively forfeited responsibility for the CSL and research, and while the Treasury Secretary finally stepped down as Chair in 2003, it remains totally reliant on Treasury for staffing and support. The spirit and implication of the 1993 Gaming Control Bill was that the TGC would be established as a fully independent statutory authority with its own staffing, office and resources.

In January 1994, Federal Hotels introduced high intensity poker machines into the casinos in accordance with the legislation passed the previous month, and thereafter focussed on a pokies business model to an extent unprecedented in Australian casinos. By the end of that year, and continuing ever since, around 90 per cent of gambling revenue in Tasmanian casinos has come from poker machines, largely played by local people. Most of the rest of casino gambling revenue comes from keno, which Federal Hotels also enjoyed a state monopoly over, with a tax rate set at the lowest in the nation.⁵

Employment intensive table gaming has been largely ignored by Federal Hotels since 1994, with the facilities becoming so run down that the reason given for virtually eliminating table gaming taxes in 2003 (they were reduced to 0.88 per cent of losses) was that otherwise they might not remain at all. The unanswered question was whether Wrest Point would still be a 'casino' and thus entitled to various regulatory privileges without them.

⁵ See the later table. At first sight, the ACT seems to have a lower percentage tax rate but as was detailed in the 2017 parliamentary inquiry into Future Gaming Markets, because ACT keno tax rates are not calculated on total losses,, the effective tax rate in the ACT is also higher than Tasmania.

Even after poker machines came into pubs and clubs in 1997, casino poker machines accounted for close to half of poker machine losses in the state, a much higher proportion than anywhere else in Australia. In the past decade it has usually been around 40 per cent.

The profit of Federal Hotels increased from \$596000 in 1993 to \$29 million in 2003-4.

The justification given for casino poker machines being less regulated and lower taxed (as they were not subject to the CSL) than hotel pokies (despite being lower cost due to economies of scale) was the need to recognise the role played by Federal Hotels in marketing Tasmania to interstate tourists. Greg Farrell gave another reason for the exemption in his evidence to the recent parliamentary Committee - that there were already poker machines in the casinos - but this was not the reason given at the time (rather up to 1993 it had always been emphasised that the existing VGMs were not pokies at all but just electronic versions of existing table games).

Federal Hotels was required by the 1993 Deed to spend 'up to' 25 million dollars on capital investment but it was later admitted by the Treasury Secretary to a parliamentary inquiry that Federal Hotels investment had never been monitored, and even if it had been, it would have meant nothing because a 'drafting error' (the use of 'up to' rather than 'at least') ensured that *any* level of expenditure complied with the contract.

In 2002, Premier, Jim Bacon, who was a regular visitor to the casino at the time, admitted to Parliament that the company had only done work 'which they had already planned to do in any event'. He summarised Federal Hotels efforts as 'tarting up a couple of cafes... that is about all they did'. He claimed that the casino refurbishment 'was well overdue anyway at both Wrest Point and Country Club casinos'.⁶ This history is relevant given the strong likelihood that based on past practice, the 2020 legislation will yet again be accompanied by promises of 'new' investment from the Federal Group.

The main investment made by Federal Hotels after being gifted the poker machine contract in 1993 was the purchase of existing poker machine hotels. By the early 2000s, they had purchased most of the 12 large poker machine pubs they now own.

No control was placed in the legislation over the right of Federal Hotels to choose which venues could get poker machines despite the Cabinet papers from 1993 revealing that this topic was of concern and the Premier assuring parliament that this would not be the case.

The end result of this unique power is that poker machines have been placed to an unusually large extent in Tasmania in the most highly profitable venues and regions, which are mostly located in disadvantaged communities. The new community interest test cannot change this reality because existing venues are not subject to it.

Because of the small margins available to venues under the exclusive licence arrangement, over time most clubs and smaller hotels gave up their licences.

The end result was that despite the benefits for clubs being emphasised in public and parliamentary debate in 1993, only six clubs now have poker machines in Tasmania, all of which are small venues. All of the clubs combined account for less than one million in total pokie losses - about one quarter of the Federal Group's Elwick Hotel alone. Poker machines are concentrated in large venues owned by half a dozen major players. No other state has such a low proportion of losses going to clubs or small venues, or such a high concentration of pokie losses in a few hands. This concentration of

⁶ Hansard, 16 April 2003

profit will be cemented under the Liberals new legislation which guarantees free licences to existing venues but protects them from competition through a cap set at the current number of machines.

After the election of the Bacon Labor Government in 1998, the first policy act of the new Gaming Minister, Paul Lennon was to abolish all bet limits from 1 January 1999. He claimed that this was required under the Deed. This was incorrect – the Deed only specified the initial betting limits and had nothing to say on what bet limits would apply from 1999.

On 2 December 1993, Legislative Councillor Stephen Wilson asked the leader of Government, Peter McKay: 'After that two-year period, isn't the discretion to vary that initial requirement [for bet limits] left to the Gaming Commission?', to which McKay replied, 'That's right'. The TLGC made it clear in their evidence and submission to the recent parliamentary inquiry that the Commission currently supported a one dollar bet limit. The 2020 parliamentary debate provides the opportunity to implement the promises made to parliament in 1993 in relation to the establishment of a fully functioning Gaming Commission and to enshrine the Commission's legal right and responsibility to set its preferred bet limit (which is currently \$1) for all poker machines in Tasmania.

In the face of considerable community and party disquiet about the ongoing rollout of poker machines, both the new Premier and Gaming Minister repeatedly claimed that Tasmania had the best player protections in the country. The truth was that the Patron Care code was a voluntary one which was totally unmonitored. There was no authority which breaches could be reported to. A mandatory code would not replace it until 2012.

When the voluntary code was introduced, Greg Farrell personally and publicly promised it would be evaluated in the second half of 1998. This evaluation was never done.

Poker machines were not an issue in the 2002 election in part because Mr Lennon and Mr Farrell both said that the market was now 'mature' and the quantity of machines was 'about right'. Moreover, the government had regularly stated to the community sector that while no changes would be made during the life of the contract because of 'statutory risk', everyone would have a chance to have a say well before its expiry in 2008.

But with the election out of the way, it is now known that in late 2002 the Government commenced secret negotiations with Federal Hotels to extend the poker machine contract.

After a few private meetings between Greg Farrell and Don Challen, the new contract was publicly announced as a fait accompli in May 2003. It extended the status quo until 2018 with only small tax increases and minor financial concessions to the hotels.

The social 'win' was the introduction of a cap on poker machine numbers, set at 3680, which was 287 more than the current number of machines even though it had so recently been emphasised that the market was already 'mature'. The truth of the latter proposition is borne out by the fact that the number of venues had actually declined slightly in the previous two years.

Two parliamentary inquiries confirmed that no modelling was done on the value of the licence prior to the 2003 contract being signed. Nor was a study undertaken on the social or economic impact of poker machines, or any external advice sought. It is not clear on what basis the cap was decided other than the 'current level and add a bit' (which is similar to the most recent 'process' where the Treasurer has stated that the newly revised 'cap' was just the number of machines existing on the day the policy announcement was made).

Gaming industry analysts, including Citigroup and ABN Amro, provided estimates of the money foregone by not putting the licence to tender. These range between \$100 and 300 million dollars, but assume a 15-year licence (it was actually effectively a minimum of 20) and exclude casino poker machines.

No consultation occurred with any group in writing the new contract, including the hotels. No public criticism was made by the AHA despite this. The boss of the AHA at this time was Daniel Hanna, who is now a senior executive with the Federal Group.

There was a poorly understood rolling clause attached to the Gaming Control Act which meant it would continue indefinitely after 2018 unless notice to end it was given by either party (after which the contract would expire in five years). The minimum date the contract could end was therefore 2023, not 2018 as parliament was told at the time.

In 2015, Don Challen told me that this rolling clause was inserted after his negotiations had concluded and followed a direct approach from Mr Farrell to the Government. This means that a minimum of a further five years licence extension were gifted to Federal Hotels without even token further concessions being able to be sought from the company.

When the poker machine contract was presented to parliament in 2003, the government insisted (as they did in 1993 and are likely to again) that parliament could not amend the legislation where it impacted on the new contract without the whole arrangement falling over. In 2003, both the Government and Federal Hotels said repeatedly that if this was to occur the company would have 'no choice' but to flood Tasmania with 1500 more poker machines to ensure that there was no possible venue for a new operator to move into. The fact that this would be irrational behaviour given that the company would soon have no legal right to operate these machines was a point later raised by the National Competition Council which found the deed, contrary to government assurances, to be in breach of national competition guidelines.

The 'carrot' in the legislation was an already announced new hotel for the east coast on the site of the former Coles Bay Caravan Park, which would be the first new-build undertaken by Federal Hotels since the Launceston casino in the mid-1980s (which was a joint venture with Edmund Rouse – the businessman who would later be imprisoned for attempting to bribe an MP). Mr Farrell repeatedly assured a sceptical Public Accounts Committee that this hotel would be such a scale to provide 180 new jobs (nearly as much as the planned Tamar Valley pulp mill). The end result, after many delays was less than 40 FTE jobs. The promised sewerage solution for Coles Bay was also never realised.

The Public Accounts Committee was clear that it was not furnished with sufficient information to make a judgement on the financial quality of the deed. This was not surprising given that Treasury were unable to provide them with any modelling or even an interstate tax comparison. Nevertheless, in a brief and perfunctory report, the PAC recommended that the legislation be passed. The chair, Tony Fletcher, had made clear his support for the Bill from the start. Only one member, Rene Hidding, conducted rigorous questioning and most of what we know about the 'process' came from this.⁷

On 29 May 2003, the new Liberal MP and former Bridport hotelier, Peter Gutwein made a speech concerning the poker machine contract which is as relevant in 2020 as it was in 2003:

⁷ Hiddings questions and the information gained from this is set out in *Losing Streak*, Chapter 8.

The circumstances that we find ourselves in at the moment... are just incredible... I am a new parliamentarian and I thought politics was about democracy. But it is not about democracy; it is about stealth, secrecy, about a government not wanting to be transparent or accountable... I think this is absolutely outrageous... I will be 58 years of age before we get an opportunity to make changes to this once this Parliament signs off... there was no transparency. Nobody knew what was being negotiated at all... It was a deed signed in secret, sat on for 30 days, and then released to the Parliament of Tasmania as a done deal... I just think it is absolutely scandalous... It is scandalous!

After the legislation was passed, freed from public sensitivity about machine numbers, the number of poker machines increased to approach but rarely reach the new 'cap'.

Much was made in subsequent years by the new Premier Paul Lennon of an '\$80 million dollar investment' by Federal Hotels in Tasmanian tourism that flowed in during the next five years. But apart from the continually delayed, scaled down and contractually-mandated east coast project, this exclusively related to the purchase of *existing* tourism businesses, all of which except for the already highly acclaimed Henry Jones Art Hotel, were later sold to the RACT. The one clear benefit for the tourism industry was Federal Hotels agreeing to run the Abt Railway, restored as a federation project by the Commonwealth government. When the rebranded Wilderness Railway lost money, Federal Hotels walked away from its contract without finding an alternative operator, leaving the west coast without one of its major attractions for over a year.

John Lawrence has documented that dividends to the five Farrell siblings who fully own the company have averaged around 75 per cent of profits (as well as receiving salaries, director fees and so on). In 2013-4, dividends took the entire net profit after tax of \$26 million. As Lawrence noted, 'Tourism businesses are capital hungry and almost all need a much higher level of retained earnings.'⁸

The lack of investment in Wrest Point and other venues has become obvious to even casual visitors – with the strategy presumably been to again hold back investment until contract renewal time (a strategy that has been successfully pursued since the 1970s).

There has been a consistently large gap between the promises of investment made by the Federal Group and the reality delivered. The truth is that other than the contractually-mandated Saffire already discussed, the company has undertaken no new builds for over thirty years. A new hotel in Port Arthur was first announced in 2005 and re-announced many times since. The Federal Group threatened to cancel it when the mandatory code came in and again in 2015 when their exclusive licence was not extended. In the most recent annual report of the Port Arthur Authority, the chair, Professor Sharon Sullivan, called for the company to act as

This project was first proposed by the Group over 14 years ago. The continuing delays in finalising planning for the project and setting a definite commencement date are frustrating and present difficulties for decision making in relation to tourism opportunities in the area

The only major new investment undertaken by the Federal Group this century was the Maq01 hotel. However this was built by the Vos group with the Federal Group winning the tender to operate the hotel. The link between this hotel and the poker machine contract is that it allowed the Federal Group to outbid rival operators – that is the pokies contract ensured there was no level playing field.

⁸ *Tasmanian Times*, 30 October 2015

A number of operators over the years, notably and loudly the Doherty Group, have complained about the distortion in the tourism market caused by the public subsidy of the Federal Group (the market value of the poker machine licence provided to the Federal Group is in economic terms a public subsidy). The fact that these concerns have not found any expression in the advocacy of the peak bodies is presumably explained by the fact that the Federal Group provide a large share of their funding. The recent Deloitte report, commissioned by the Federal Group itself to measure the company's economic contribution, confirmed that monies paid to the peak bodies were included in the \$1.8 million 'community contribution' that the company often highlights to prove it is a 'good corporate citizen'.

Before the Labor Party's change of poker machine policy in 2018, there had been only one example of serious parliamentary debate between the major parties concerning the poker machine contract. In 2008, the new opposition leader, Will Hodgman, asked a question in parliament as to whether the terms of the poker machine contract had been fulfilled in the context of the delays and downgrades to the east coast development. The response of Federal Hotels and the peak bodies was ferocious. Full page advertisements, in the form of a personal letter from Greg Farrell, attacking the Liberals were taken out in all three papers. The company's manager of Corporate Affairs declared that 'The irresponsible actions of the State Liberals seriously call in to question their capacity to be genuinely considered capable of governing Tasmania'. The CEO of the AHA, Steve Old, claimed 'Just when people started to think Will had some leadership qualities, he shoots himself in the foot and falls back into the shameless Liberal way of politics.'⁹.

This incident is significant because Mr Hodgman has never again publicly criticised the company. The Liberals did take a policy to support one dollar bet limits to the 2010 election and with the Greens also supporting this, had the numbers to have it passed it through parliament in the hung parliament that followed. Instead, after a drawn-out parliamentary inquiry, their policy was quietly dropped. However, the Liberals did support the recommendation of this committee that on the expiry of the contract it should go to open tender and Mr Hodgman maintained his support for the licence or licences to go to the market until (and indeed after) this commitment was abandoned in the Liberals 2018 election policy.

⁹ *Mercury* 7 March 2008.

2. Aftermath of the Walsh intervention

In September 2015 the Government was on the verge of signing a new secret extension to the monopoly poker machine licence with the Federal Group.

The catalyst to the contract extension was David Walsh approaching the Government to discuss a licence for a new high roller pokies-free boutique casino at MONA aimed at overseas high-rollers. He was advised that because the government was not willing to amend the exclusive gambling rights of the Federal Group without their agreement, he needed to negotiate with Greg Farrell.

David Walsh offered the Federal Group a number of financial and other concessions but the Federal Group rejected these despite the fact that there was no dispute that the small high-end casino proposed by Walsh would have no impact on Wrest Point's business model.

The Federal Group advised the Government that the only way it would entertain a casino licence for MONA was if its exclusive poker machine licence was extended.

The Government then commenced negotiations with the Federal Group. While it admitted these negotiations were underway, there was no opportunity for consultation or input by other parties, and no information or modelling was released. The process was secret.

The details of the agreement reached have never been made public because on the evening of 14 September 2015, David Walsh went public with his opposition to the deal on the basis that the Government and Federal Group were using his wish for a high-roller casino to justify extending the poker machine status quo. He posted a long blog which discussed his concerns and included his correspondence with the Government and the Federal Group.¹⁰

The Government then ended the process and announced that they would be taking some time to consider their position. This provided the first ever opportunity for a genuine public debate in Tasmania about the poker machine contract without the essential matters having already been settled. During the spring and summer of 2015-16, the Federal Group threatened to end all new investment in Tasmania but with tourism booming, and new hotels being knocked back in Hobart, it had become difficult to explain why the company needed own every poker machine in Tasmania before it would invest.¹¹ Concentrating on the long-heralded Port Arthur project did not help the Federal Group's PR pitch given that this development had previously been presented as a benefit of the 2003 pokies contract. As David Walsh observed: 'They've held it over to make a splash a perfectly sensible strategy but it's also transparent.' Walsh was buoyed by the support he received for his anti-pokies stance, telling ABC TV's 7.30 that people had been telling him 'Go, you good thing, this is great, the pokies have been bringing down Tassie for too long.... I got a pretty positive response when MONA opened for the first few months but nothing like this and I must say I didn't anticipate it.'¹²

¹⁰ This episode is discussed and documented in Chapter 13 of *Losing Streak*, pp 154-168.

¹¹ For example, in the *Mercury* October 17 2015, Farrell said 'future projects were dependent on extending their exclusive licence' – including Port Arthur and the casino redevelopment.

¹² ABC TV's 7.30, 28 October 2015

One little known symptom of the political flux was that for the first time ever, a debt to the Federal Group – long term donors to both major parties - was listed on the Liberals AEC annual disclosure return.

On 12 June 2015 the Liberal Party held an event at Wrest Point to celebrate 20 years in parliament for Eric Abetz. The AEC return for 2014-5 recorded a debt of \$38324 debt to Wrest Point. In early February 2016, the Liberal Party Director, Sam McQuestin, informed the *Mercury* that the debt was 'likely' to relate to the 12 June function. At this time it was still unpaid.

It is improbable that the state branch of the Liberal Party would have organised such a lavish event for the Senator if they hadn't assumed, as presumably had been past practice for the many party fundraisers, gatherings and conferences held at Wrest Point and the Country Club, that the tab would largely be picked up by the Federal Group. It is more likely that the invoice was only issued after negotiations for a pokies contract extension were ended as a warning as to what would be lost if the mutual beneficial relationship between the company and the party broke down. The Liberal Party has still not clarified whether the 'debt' was subsequently ever paid.

On 22 February 2016, the Treasurer announced that he would soon be issuing a statement on the Government's 'preferred position' on poker machine policy. On 17 March 2016, Peter Gutwein made a ministerial statement to Parliament that set out the broad principles that were to guide the reform process.¹³ The main points he made were:

- 'the tax rates and licence fees for casino gaming and keno are to be reviewed against the broader Australian market'.
- 'in relation to EGMs in hotels and clubs, our policy position is that the right to operate these machines post 2023 will be allocated and priced by a market-based mechanism, such as a tender.'
- the current cap of 3680 'will be decreased to the level of EGMs that is in place as of today. I am advised that this is 3530 machines'.
- 'the process that led to the development of the earlier Deeds caused concern in the community and cast a shadow over the appropriateness of structural arrangements. The Government does not want a repeat of this outcome. There needs to be a fully transparent public consultation process that enables interested Tasmanians... to have their say on the future structure of the gaming sector post 2023, with the Government's policy position as the starting point.'

The Premier's media release of 17 March 2016 further emphasised the transparency of the process: 'Today the Government announced a new way forward for gaming in Tasmania, which makes a clean break with the secretive ways of the past.'

The position set out in the Ministerial Statement was then detailed in a policy position paper entitled 'Hodgman Liberal Government Post-2023 Gaming Structural Framework'. This reiterated that:

- 'The tax rates and licence fees for casino gaming (table gaming and EGMs) and keno are to be reviewed against the broader Australian market'.

¹³ <https://www.tas.liberal.org.au/sites/default/files/Future%20of%20%20Gaming%20Tas.pdf> This ministerial statement is also included as an appendix to the Select Committee Report on Future Gaming Markets which can be found on the parliamentary website: file:///D:/Pokies%202018-19%20files/Select%20Committee%20Pokies%20Report.pdf.

- In regard to hotel and club EGMS: 'The right to operate these machines post 2023 will be allocated and priced by a market based mechanism, such as a tender'.

The vehicle chosen the Government to conduct the community consultation and decide on the final industry model was a joint select committee of Parliament.

3. The Joint Select Committee into Future Gaming Markets – testimony and evidence.

In his evidence to the Committee into Future Gaming Markets on 22 March 2017, the Premier emphasised how central a market-based mechanism was to his Government's policy position:

Most importantly we believe the right to operate electronic gaming machines post-2023 should be determined, allocated and priced by testing the market... What we are proposing is a game changer in determining the future of electronic gaming machines operating in our state. For the first time we are proposing to put to the market, have the market test, the licence to operate electronic gaming machines in pubs and clubs in our state. Handling the licence to a single operator without a competitive process is something we have consistently been critical of and we believe very strongly it must not happen again...¹⁴

The Premier did not rule out removing pokies from the community, rather making it clear that this was a real option for the committee to consider. Although 'we have to balance a number of competing issues', he had no fixed position. Rather, 'It is within our capabilities to do what we think is in the best interests of the people of Tasmania and future generations.'

Hodgman was asked about donations to the Liberal Party from the Federal Group 'I do not think we have taken any for some years'. Donations had 'no influence over our policy position'.

Treasurer Gutwein's evidence to the committee also focussed on the Government's commitment to a market mechanism: 'It is complex and challenging, but from the Government's point of view we are determined that we want to test the value through the market of this licence'.¹⁵

Committee member, Robert Armstrong, pointed out to the Treasurer that both Treasury and the Gaming Commission believed in the advantages of a single licence put to tender: 'Last month, Treasury and the Gaming Commission both expressed a strong preference for the single-operator model. Do you agree with Treasury and the Gaming Commission? Do you have a preferred model?'

Peter Gutwein replied that while he did not have a 'preferred model. I have a preferred outcome, and that is the value of the network is tested and that we take that to tender.'

The Treasurer acknowledged that 'my understanding from the Gaming Commission is that they do see a single network model, as we have at the moment, an easier model to regulate'.

Gutwein, like the Premier, kept returning to the need to have a market based mechanism to test the value of the licence(s): 'There is an opportunity to consider what might be the best model for Tasmania and the best way to take it to the market. We want to take it to the market... As to how the tender is framed up at the end of the day, I would think it would obviously take into account the benefits to the community including harm-minimisation options.'

In regards to the length of the poker machine licence, the Treasurer noted that the Deputy Secretary of the Revenue, Gaming and Licencing Division, Jonathan Root, 'informs me the normal lease for

¹⁴ *Hansard* 22 March 2017. This can be accessed online at <file:///D:/Pokies%202018-19%20files/Gutwein%20and%20Hodgman%20evidence%20Committee.pdf> It is also cited in the Select Committee report, pp 33-34

¹⁵ *Hansard* 22 March 2017. This can be accessed online at <file:///D:/Pokies%202018-19%20files/Gutwein%20and%20Hodgman%20evidence%20Committee.pdf> It is also cited in the Select Committee report, pp 33-34

machines is usually up to five years. They turn over quite quickly... The licence for individual venues is for five years... Any term needs to consider the investment.'

Separate conflicting submissions were made to the parliamentary inquiry by the big hotel pokie chains (under the auspice of the THA) and the Federal Group. The former sought a greater share of the spoils through direct licencing of venues that would end the Federal Groups monopoly ownership. The latter supported the status quo. However by the middle of 2017, it had become clear that the Government's emphasis on a market based mechanism meant that if the single licence was to continue, the licence would go to tender – either costing the Federal Group hundreds of millions of dollars or leading it to lose the licence altogether.

After 25 years, the inflated returns flowing to the single licence holder under the current arrangement (that is, the level of public subsidy) were finally being openly acknowledged. Treasury were clear that its modelling confirmed that Federal Hotels through Network Gaming 'retains significant returns under the current operating model' that could be made available to the state.

The independent consultants to the Committee, Synergies Economic Consulting, also found 'that returns to the State are low relative to mainland jurisdictions and that the low returns could largely be addressed by the State retaining excessive returns to Network Gaming.'¹⁶

Even the industry indirectly acknowledged the excessive returns flowing to the Federal Group by presenting a model that increased taxation on hotel pokies. One multiple venue owner, Peter Dixon, noted that if the return to Federal dropped to 19 or 20 per cent, 'they would still be doing really well'.

The Federal Group pointed out that the single operator model was a positive because it dampened competition by decreasing incentives for unscrupulous practices and noncompliance.

Critically, the submission of the TLGC, which has a statutory function to provide independent policy advice, opposed the direct licencing model: 'The TLGC is of the view that that a system allowing individual pubs/clubs to tender for the operation of the EGMs is highly problematic.'

The evidence from the TLGC also confirmed their long-standing opposition to a multi-licence model because it would increase social harm and be difficult and more expensive to regulate.

The TLGC also rejected the claim that Tasmania 'has a low level of problem gamblers' and called for much stronger regulations to help problem gamblers including slower spin speeds, \$1 bet limits, longer shutdowns and at more effective times, and tighter regulations for the casinos.

The TLGC pointed out that 'The Productivity Commission found in 2010 that the gaming machine of 2010 differs greatly from the early 1990s (and especially the earlier era)...There are more features, more networked games, new graphics and many more playing styles – as well as significantly increased potential for losses in a given period of play'. This was still more true in 'in 2016 when machine design has developed further in sophistication'.

The TLGC described the \$1 dollar bet limit as a 'simple, cheap, and effective way to reduce the amount that can be lost and therefore reduce harm to problem gamblers'.

¹⁶ *Joint Select Committee Report*, p 17.

Halving the spin rate from three seconds to six seconds combined with a one dollar bet limit could cut likely losses per hour cut from \$600 to \$60 (currently the maximum bet per spin is \$5 with a three second spin rate).

Furthermore, machines should only celebrate net wins and there should be proper messages about losses.

A former Chair of the TLGC, Peter Hoult, also gave evidence to the committee. He noted that 'interstate experience has shown that such [a direct licencing] ownership model results in dangerous inter-venue competition to attract more gamblers and very high costs for the government in oversight and compliance'.

Hoult also warned against drawing lessons from interstate regarding the best industry structure: 'There is little to be gleaned from other jurisdictions in these matters. Such arrangements have largely been the result of historical factors, the will of various governments at various times and the relative strengths and influence of the industry at various times in each location'.

In regard to Tasmanian regulation being better in some areas than that applying in some other states, Hoult observed: 'Given the laissez faire approach taken in other jurisdictions this is not a massive achievement'.

Jonathon Root, Deputy Secretary, Revenue, Gaming and Licencing Division at the Department of Treasury and Finance, gave evidence on behalf of Treasury.

Root noted that:

- 'Keno remains a popular product in Tasmania. The tax rate... is low on a national comparison...'
- 'the Government's policy position is that the allocation and pricing of the entitlements to operate EGMs be determined by a market-based mechanism.'
- 'the Government's view was that the cap should be the level it was on the day the announcement was made... On 17 March. That number is the number of machines that were out in venues on that day.'

Root ran through the current tax rates: 'Casino table games are taxed at 0.88 per cent of annual gross profit, keno at 5.88 per cent of annual gross profit, and gaming machines at 25.88 per cent of annual gross profit. In addition to that 25.88 per cent there is the 4 per cent Community Support Levy, which is paid for by the profits on gaming machines in hotels and clubs...'

Root noted that "if you were to ask what is the appropriate tax rate to apply to gaming machine entitlements in a purely theoretical environment ... You would say this is a heavily-regulated industry with low competition, it is an industry where there are barriers to entry, and the best taxation model might be to look at what a fair return on an investment in a pretty safe low-risk environment might be and then use your tax to take away any excess profits that in a normal competitive environment the active competition would take away.'

What could a poker machine licence deliver to the state? 'In terms of what a licence is worth, it does depend a bit on the rules and parameters you put around them. I have a figure here from the Victorian process - in terms of the club entitlement, the average price per [machine] entitlement was \$42 014. It is hard to say whether that number would translate into this environment because it is a different sort of environment.' [the main difference in 'environment' is that Victorian machines are

also higher taxed than in Tasmania, not just currently, but even under the government's revised schedule].

Root was clear that there was no need for 'compensation' for existing venues or the Federal Group: 'we would not anticipate there would be any compensation due when the licence agreement has come to an end.'

Root noted that a market mechanism was also needed to enable licences to be traded: 'It is not a particularly good outcome if you put in place an arrangement where all the entitlements are dispersed out and then nothing ever changes because you cannot get new players in the market.'

What about licence length? Root noted: 'Victoria, I think, has a 10-year licence. It does vary a little bit. If you were to truly leave it to the market, you would look at what people would pay for various durations and make a decision from there.'

Root did though get his history wrong: 'As I understood it, Federal has built up substantial assets in its casinos in Tasmania. It has invested heavily in those assets ...If you go back to the debates in 2003, there were similar arguments made that if you have a responsible operator who has been in the market for a long time and has substantial investments, there is a community interest in supporting operations that have invested to that level.' However there is no evidence for the claim that the Federal Group have invested 'heavily' in its casino assets since 2003. The focus has almost been exclusively on pokies and keno. In terms of their gambling operations, Wrest Point and the Country Club more closely resemble a large mainland pokies club than any mainland casino. Most observers recognise that the Wrest Point in particular is 'tired' and has been well overdue for a major refurbishment for many years despite high profits being returned to the operator – around 75% of which on average have been paid out in dividends to the five family shareholders.

Jenny Cranston, the Chair of the Tasmanian Liquor and Gaming Commission and fellow long-term commissioner, Stuart Barry, also provided evidence. Barry was the most experienced Commissioner, nearing the end of his second four year term. The TLGC evidence to the Committee makes it clear why the Treasurer would soon refuse the Chair's request that, given Barry's experience and the major regulatory reform underway, his term be extended until the review process was concluded.¹⁷

In regard to direct licencing and regulatory reform, the commissioners noted: 'If we were dealing with 100 venues, all with their own different interpretations and need to consult, it would be a higher-cost model and probably a lower-outcome model as well, so it wouldn't necessarily be in anyone's best interest if we were too fragmented.'

In relation to reducing problem gambling the commissioners' evidence was: 'If you look at it from a harm minimisation point of view, there are two things problem gamblers have in common. One is the amount they gamble per spin, and the other is the amount of time they spend at the machine. One of the proxy measures to try to reduce the amount of time at the machine is about hours of operation. It is one of the tools in the kit that can potentially be used to create the need for the gambler to leave the machine, and particularly a problem gambler.'

The TLGC rejected the argument that those with a poker machine problem would transfer to the internet: 'it is a separate group of gamblers - the ones who are online versus the ones who like to sit at the machines'.

¹⁷ The information that a request to extend Barry's term was made to the Treasurer by the Chair of the TLGC, and much to her disappointment was refused, was provided to me by Ms Cranston herself.

What was most critical was to ensure a 'break of play - either the venue not being open or they are forced to take breaks away from the machine. Often that will snap problem gamblers out of their attachment to the machine.'

Greg Farrell also presented evidence to the Committee and provided incorrect information on the issue of casino taxes: 'If we look at other regional casinos such as Townsville, Cairns and Darwin, we are talking about tax rates of electronic gaming machines of 20 per cent'. He then compared this to the 35 per cent tax rate in Tasmania. In presenting the interstate figures, Farrell excluded GST but in Tasmania included it. The actual comparison was 25 versus 20 per cent –with Tasmania having much lower taxes in keno and table games.

Farrell also provided incorrect information to the Committee when he asserted that keno taxes 'are about mid-range in line with other jurisdictions'. Accurate information provided to the Committee, as well as the Social and Economic Impact Study, confirmed that Tasmanian keno taxes are the lowest in Australia.¹⁸

Farrell's view was that promoting gambling in casinos and hotels *helped* problem gamblers: 'My view is that the more that we can promote a healthy, well-regulated industry that is attractive for people to go and play the gaming machines, play their table gaming, play their flutter on the keno, that is healthy... particularly [for] those who have problem gambling tendencies.' His argument was that if problem gamblers were driven from the pokies they would go to unregulated sites on line where they could never be helped. However, as the TLGC pointed out, there is no research evidence for the industry's heavily-advertised claim that people addicted to poker machines will transfer their addiction online if poker machines are not available to them.

¹⁸ As already noted, whereas the ACT percentage figure seems lower, the tax take is higher when their different method of calculating the tax is considered.

4. Joint Submission from the multi-venue ‘big pub’ owners and the Federal Group

On the last day of the Parliamentary Committee hearings a new *joint* submission by the pokies machine industry was made. The two men who were presumably central to negotiating a deal between Federal Group and the large poker machine hotels were Paul Lennon, now the paid lobbyist for the Federal Group, and Steve Old, his former ministerial gaming adviser and now THA boss.

This submission supported direct licencing of all existing venues with no market based mechanism, an increase in hotel poker machine tax rate from the current tax rate of approximately 28 per cent to 39 per cent (figures inclusive of CSL and exclusive of GST) *and* a cut in the state tax rate on casino poker machines to 10 per cent from the current 25 per cent.¹⁹

The submission noted: ‘The proposed model would redistribute EGM revenue from Network Gaming [the Federal Group’s poker machine business] to hotels and clubs. This would result in a significant increase in the capital value of hotels and clubs by an average of over \$1.5 million and deliver increased investment, employment opportunities, and services for locals and visitors’.

The justification given for the reduction in the casino poker machine tax rate was that ‘The proposed model would... bring the EGM tax rates paid by Wrest Point and Country Club into line with those in place in other regional casinos in Australia, such as Cairns and Townsville. This would make Wrest Point and Country Club competitive nationally and allow greater certainty to undertake future investments’.

By ruling out a market-based mechanism, the poker machine industry claimed that it ‘avoids the need for a tender process, which would be very costly and generate considerable uncertainty and massive disruption for all stakeholders’.

The interstate tax comparison given in the submission was incorrect because it presented all figures as GST inclusive whereas the cited north Queensland casino tax rate of 20% was GST *exclusive*. The state tax rate there (the only figure relevant to the policy debate in Tasmania) is 20%.

An accurate interstate tax table on which debate can rely was provided as an appendix on page E1 in Volume One of the *Social and Economic Impact Study* released in January 2017 (which is available on the Treasury website). A recent question from Mike Gaffney MLC, who chaired the parliamentary committee, to the Treasurer has confirmed the accuracy of the table below taken from the SEIS:

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<http://www.parliament.tas.gov.au/ctee/Joint/Submissions/JSC%20FGM/Supplementary%20Submission/Federal%20Group%20THA%20Submission%20August%202017.pdf>

TABLE E-1 STATE AND TERRITORY TAXES ON CASINOS

NSW	VIC	QLD	WA	SA	TAS	NT	ACT
<p>A progressive tax scale applies to EGM and table game gross revenue. In 2016-17 gross revenues up to \$722.4 million faced a base rate of 10.41%, progressively increasing to a maximum rate of 38.91. Tax bands are indexed annually to the Sydney All Groups CPI and rounded up to the nearest \$100,000.</p> <p>A 2 % Responsible Gambling Levy also applies to gross gaming revenue.</p> <p>International VIPs Tax rate is 10% with a minimum of \$5m paid in two non-refundable instalments of \$3m in January and July each year.</p> <p>Licence fee Exclusivity agreement extended for 12 years from November 2007 for a fee of \$100 million.</p>	<p>From 1 July 2012 Regular Players 31.57% of gross gaming revenue (player loss) from gaming machines, plus a 1% Community Benefit Levy, plus super tax.</p> <p>21.25% of gross gaming revenue from table games, plus a 1% Community Benefit Levy, plus super tax.</p> <p>Super tax A tax on gross gaming revenue (gaming machines plus table games) above the base amount.</p> <p>The 2014-15 base is \$933m (equal to \$500m CPI-adjusted from 1994, plus an additional \$5m in 2009-10 and 2010-11 and \$30m in 2011-12 and 2012-13).</p> <p>Tax rate is 1% for revenue up to \$20m over the base amount, rising in 1% increments for each \$20m bracket to a maximum of 20% on</p>	<p>From 1 July 2009 20% of monthly gross revenue on table games and Keno for Gold Coast and Brisbane casinos and 10% of gross revenue on table games and Keno for Townsville and Cairns casinos.</p> <p>30% of monthly gross revenue on gaming machines for Gold Coast and Brisbane casinos and 20% of gross revenue on gaming machines for Townsville and Cairns casinos.</p> <p>Licence fee \$237,800 per quarter. Amount is indexed annually each year on 1 July.</p>	<p>Gaming Machines: 12.42% tax of EGM gross revenue plus a 2% levy on total revenue for environmental conservation spending</p> <p>Fully Automated Gaming Machines (FATG): 12.42% of FATG gross revenue</p> <p>Table Games & Keno 0.37% of table game and keno gross revenue plus a 1% levy for environmental conservation spending</p> <p>International Commission Business 1.75% tax on international commission business gross revenue, plus a 1% levy for environmental conservation spending</p> <p>Licence fee \$2,769m (2016) (indexed annually according to CPI).</p>	<p>Table games at 3.41% of net gambling revenue.</p> <p>Gaming machines at 41.0% of net gambling revenue.</p> <p>Premium table games (incl. automated) at 0.39% of net gambling revenue.</p> <p>Premium gaming machines at 10.91% of net gambling revenue (less approved deductions for costs to attract premium customers).</p> <p>Licence fee Not imposed.</p>	<p>The gaming tax rate applying to casino table games is 0.88% of gross profit.</p> <p>The tax rate applying to keno is 5.88% of gross profit.</p> <p>From 1 July 2013, a single flat tax rate of 25.88% applies to all gross profit on EGMs.</p> <p>Licence fee For 2016-17, \$152,200 per month (amount is indexed annually).</p> <p>Licence fee Not imposed.</p>	<p>Lasseters Casino: Table games are taxed at the GST rate.</p> <p>The tax rate applying to keno is 5.88% of gross profit.</p> <p>Gaming machines are taxed at 11% of gross profit, plus a 10% community benefit levy</p> <p>SKYCITY Darwin Casino: Table games are taxed at the GST rate. EGMs are taxed at 15% of gross profit. Keno is taxed at 10 % of gross profits. There is also a 10% community benefit levy.</p> <p>Internet Casino: Australian sourced bets are not permitted. International sourced bets at 4% of gross profit (not subject to GST)</p> <p>Licence fee Not imposed.</p>	<p>General gaming: 10.0% of gaming revenues.</p> <p>Commission-based Operations: 0.0% of gaming revenues.</p> <p>Licence fee Annual fee \$881,877 for 2011-12 payable quarterly (August, November, February and May). Amount is indexed annually according to CPI.</p>

FOURTH SOCIAL AND ECONOMIC IMPACT STUDY OF GAMBLING IN TASMANIA (2017) VOLUME 1: INDUSTRY TRENDS AND IMPACTS

E-2

This table makes it clear that casino tax rates in Tasmania are already low – the lowest for table games, the lowest for Keno (once the different way of calculating the tax in the ACT is allowed for) and at the lower end for poker machines. Only the casino licence fee is in the mid-range.

No argument was presented in the joint submission to explain in what sense the poker machine industry in Tasmania ‘competes’ with Northern Australia given that poker machine players are largely local people. There was no explanation as to why, given poker machines in Wrest Point and the Country Club are *lower* cost due to economies of scale and regulatory exemptions, they should be taxed at a lower level than those in pubs.

It should be remembered that the casino licencing fee is an acknowledgment of these cost advantages and regulatory privileges.

Tasmania has never had different levels of poker machine taxation. No other individual or organisation giving evidence to the Committee suggested that this should be introduced.

The capital gain windfall that would flow to the existing venues through avoiding a market based mechanism to price licences was openly acknowledged by the industry: ‘The greater share of EGM revenue received by hotels and clubs will also have a significant positive impact on the valuation of these venues. This increase in valuation will allow hotels and clubs to get better access to finance and this will allow them to make further investments in their businesses...’

However, no mechanism was recommended to ensure the capital gain was invested or limit suggested on the sale of hotels to prevent proprietors simply taking the windfall gains as profits.

Indirectly, the potential difficulties of monitoring and regulation under direct licencing, as well as the dangers of increased competition were also admitted by the industry: ‘Hotels and clubs will also have far greater control over the operation of their gaming business under the proposed model.’

The cap was supported – unsurprisingly because without no market-based mechanism, a cap substantially enhances the capital value of existing venues by guaranteed them their machines while protecting them from competition; thus inflating the value of the freely-bestowed licence.

The Committee had no time to consider this submission but did commission an analysis of it from Synergies Economic Consultants which was included as an appendix to the final report. Synergies did *not* believe the arguments presented ‘constitute a compelling case to change the current taxation arrangements applying in Tasmanian casinos.’

The TLGC also made a highly significant response to the joint submission. In a letter dated 8 September (also attached to the report as an appendix) it was highly critical of what was being proposed by the industry (the same model which would soon be adopted by the Liberal Party):

- The TLGC is ‘on the record as having outlined potential increased compliance issues and associated costs (for all) with such a [direct licencing] model’.
- ‘The Commission is concerned that the proposed model is not the result of a competitive market-based mechanism (such as a tender). This was clearly stated in the Hodgman Liberal Government post 2013 Structural Gaming Framework.’
- ‘A competitive mechanism would provide all potential operators (other than those already present) with the opportunity to enter a commercially profitable market (and the State to achieve a fair market price). More importantly from the Commission’s point of view, this would represent an opportunity to test the market for the introduction of best practice harm minimisation measures such as mandatory pre-commitment.’
- ‘the TLGC has a long record of dealing with compliance breaches in hotel venues and nothing in this model provides comfort that this would not continue and, in fact, increase’.
- ‘The proposal is not, in the view of the TLGC, consistent with the Hodgman Government’s Gaming Structural Framework which states that ‘the right to operate these machines post 2023 will be allocated and priced by a market based mechanism such as a tender’.
- ‘The proposal appears to replace one form of monopoly with another – a direct licencing model for the venue operators licenced at 30 June 2023 without any competitive market process. This is clearly inconsistent with the Hodgman Government’s stated intention of market testing and pricing entitlements’.
- ‘It is claimed, without evidence, that that moving to this model ‘will not increase the incidence of problem gambling’. The Commission considers that the incidence of problem gambling in Tasmania is not insignificant and that there is nothing in this proposal that addresses this.’
- ‘The TLGC has a long record of dealing with licence breaches by individual venue operators... For example, there are significant self-exclusion issues in venues; this is evidenced most recently by significant breaches around multiple uses of EFTPOS by a self-excluded problem gambler involving more than one member of staff.’
- ‘The compliance issues particularly for small venues that would become owner/operators of EGMs remain a concern for the TLGC and there is nothing in the proposal that addresses this concern. Additionally, there would be increased regulatory costs for venues and the Commission (Government) under the multiple owner model.’

- ‘Without a market based process there is no opportunity for any stakeholder – community, regulator or other industry players – to influence the shape of EGM location into the future.’
- ‘The TLGC’s view is that the duration of licences should align more closely to machine turnover times of around seven years’.

The Commission still preferred a reformed single licence provided it is ‘a market tested, competitive process that provides transparency for the community and returns the appropriate revenue to Government (and the Tasmanian community) that such an entitlement is worth.’

The economist, John Lawrence, also made a response to the industry submission. He noted that the extra \$20 million flowing to the pubs would increase their value by about \$150 million – in line with the industry estimate (He explained that the ‘rule of thumb’ is that one extra dollar in the bottom line increases the value of a hotel by 7 to 8 dollars.) However, big venues that would get most of this benefit:

For example, the top performing EGM pub in Glenorchy [the Federal Group’s Elwick] will receive a windfall of probably \$4 million via increased capital value of its business. The Dover RSL Club on the other hand will show a minimal increase. The Federal Group will receive an estimated 25 per cent of the state-wide windfall of \$150 million, other multi venue owners like.. the ALH Group, and local groups including the Goodstone Group, Dixon Hotel Group, Kalis Group and the Prescott-Hibbered Group will share 50 per cent of the windfall, while the remaining 25 per cent will go to individual, mostly smaller operators

Lawrence pointed out that “the issue at stake here is whether allocating windfall gains to those at the head of the queue is the best public policy approach” given:

We are not talking about compensation to those affected by an adverse government decision. We are talking about a brand-new post 2023 arrangement to replace an agreement due to expire. The point of a tender is to ensure the benefits of a licence would be valued by the market and the sale value would be received by the government on behalf of the community. Federal Group/THA argue gifting licences to existing EGM hotels and clubs is a superior way of allocating resources.

Lawrence pointed to the high likelihood that rather than using the extra value to invest in the venue as the industry suggested, some, including the Federal Group, were likely to just sell up and cash in their windfall:

Federal Hotels twelve EGM hotels in the Vantage Group will be ripe for sale ... The last three additions to the stable have cost over \$40 million in total, which when combined with the other nine plus the mooted windfall gain from individual venue licences means the pubs will be worth \$200 million. Without EGMs the value would be around \$60 million... That gives some idea of what the current battle ... is really about. The government can hardly insist... the Federal Group not sell its hotels thus preventing it from riding off into the sunset with saddlebags stuffed with proceeds from cashing the windfall gain.

The only certain outcome of the process, Lawrence concluded, was that ‘hotel prices will just increase and new purchasers will want a return on their investment... The proposal is public policy nonsense’.

5. Liberal Election Policy *The Future of Gaming in Tasmania*

The Liberal party released their election policy in January 2018 *after* the ALP had committed to removing poker machines from all venues other than the two casinos.²⁰

The election policy abandoned the government's previous policy framework and publicly stated positions, ignored the recommendations of the parliamentary inquiry and the advice of Treasury and the TLGC, in favour of adopting the core proposals set out by the poker machine industry in their joint submission to the committee.

The Liberals election policy:

- Guaranteed all existing venues free poker machine licences.
- Rejected any market-based mechanism for pricing the licences despite their previous position that this would be central to any reform.
- Set a tax rate for pubs and clubs that was exactly the same as those set out in the joint industry submission.²¹
- Affirmed that casino poker machine taxes would for the first time in Tasmania be differentiated from hotel taxes and implied an acceptance of the validity of the industry argument that they should be 'competitive' with those applying in Far North Queensland.

Taxes and Licence fees

The election policy stated that the intention is for the government in relation to hotel poker machines to 'retain around 48% of all revenue including the CSL (GST inclusive) while licenced venues will receive no less than 50% of the gross returns, with the monitoring network receiving the balance.' [A commitment to these tax rates was confirmed by the Government in November 2019].

The only market mechanism related to a proposed tender for running the monitoring network. Given this was reduced from 31 per cent of losses currently to 2%, and that the Federal Group have the infrastructure in place now, there is unlikely to be a change in the status quo. Regardless, the revenue implications are insignificant.

Any attempt to claim that putting the monitoring network to tender honours the Liberals previous commitment to a market-based mechanism is wrong. As already documented, the core principles set out the Government and repeated by the Treasurer and Premier directly stated that: 'The right to *operate* these machines post 2023 will be allocated and priced by a market based mechanism, such as a tender' (my emphasis.)

The commitment to a market-based mechanism was abandoned in the Liberals election policy in favour of giving the licences away for free to all existing licence holders. An annual licence fee of \$1000-2500 per machine was set out but there is no suggestion that this is a market price or has been determined by any market modelling. It also very closely resembles the industry proposal and

²⁰ <https://www.tas.liberal.org.au/sites/default/files/Future%20of%20%20Gaming%20Tas.pdf>

²¹The Liberal tax seems to be one cent *lower* than that set out by industry— 48 versus 49 cents, but this discrepancy is explained by the fact that the industry had again got in a muddle over GST. The figures are GST inclusive and the state tax figure is actually the same because the industry added ten cents GST whereas they should have only added 9 cents. While GST is 10% it is 10% of the *pre*-GST price.

is a fraction of a likely market price. Almost all the windfall capital gains suggested in the industry submission will still apply. A market price would return this windfall to the state rather than venue owners. In other words, most of the financial benefits accruing from ending the monopoly under the Liberal policy will flow to a few big pokie hotel owners rather than the state.

Casino poker machine taxes

The Liberal election policy did not decide on a tax for casino poker machines but agreed with the industry proposal that they be differentiated, and strongly implied that they will be set lower than those applying to hotels. The election policy states that casino poker machine taxes ‘will be benchmarked against comparable casino operations interstate to ensure that the returns are competitive and fair for the community, players and the casino operator’.

This represents another abandonment of the original *Hodgman Liberal Government Post-2023 Gaming Structural Framework* which stated that ‘The tax rates and licence fees for casino gaming (table gaming and EGMs) and keno are to be reviewed against the broader Australian market.’

No longer are casino taxes to be ‘reviewed against the broader Australian market’ – which would have seen them *increase*. Now they are only to be reviewed (as the Federal Group argued for), ‘against comparable casino operations interstate’ by which the Liberal party presumably means the regional casinos in North Queensland that the Federal Group claim most closely resemble the Tasmanian situation. In other words, instead of moving to *increase* casino pokie taxes under their original policy framework, the Liberal party election policy was now moving to *reduce* them.

Much was made by the Liberal party during the election campaign of their policy to ‘cut’ 150 poker machines. But this was not in fact, as had been made clear in the original ministerial statement and later in the Committee process, a cut in actual machine numbers at all. The Treasurer and Treasury officials had openly admitted in 2016-17, that the new ‘cap’ was exactly equivalent to the number of machines in Tasmania on the day the policy was announced. All the ‘cap’ achieved was to guarantee all existing licence holders all their existing machines while adding value to their licences by protecting them from future competition. The cap was not a social harm measure but a further financial gift to the venue owners and was thus unsurprisingly supported by the industry in their joint submission.

There has never been any explanation as to how the Liberals determined their election policy. Are Tasmanians expected to believe that the policy’s remarkable similarity with the industry’s submission to the parliamentary committee is just a coincidence?

Why did the Liberals not only ignore the recommendations of the Committee they established but abandon their own clearly enunciated and oft-repeated reform principles?

It seems likely that an informal indication of broad government support to the joint industry submission was given *before* the Federal Group agreed to it, especially in regard to reviewing casino taxes in line with North Queensland.

Improper intervention by Peter Gutwein on behalf of the THA has now been confirmed to have occurred on at least two occasions. The first was established by the ABC following an RTI request. This revealed that in September 2017 the Treasurer got Treasury staff to resource the THA in combatting an Anglicare report about jobs impacts of removing poker machines.²² The second was a

²² ABC News 24 April 2018

RTI request I submitted in relation to the decision taken by the TLGC in 2019 to double cash withdrawal limits in poker machine venues. This confirmed that even though the poker machine industry meet regularly with the TLGC, following an approach from the THA, the Treasurer sought a meeting with the TLGC so he could actively support the THA position. This was a highly improper act given that the Treasurer had no advice or information as to the accuracy of the THA claim that tourists were being unduly inconvenienced by the cash withdrawal limit (let alone that any such inconvenience was greater than the benefit flowing to problem gamblers and their families), and because the TLGC is fully reliant on Treasury for staffing and support.

But the main evidence that the Treasurer or someone acting on his behalf gave an indication of broad support to the central elements of the industry deal is the improbability that the Federal Group would have supported it, let alone have provided funding support to the Liberal party, without this.

It is usually forgotten that despite the lost value in their pokie hotels, the ALP election policy of withdrawing poker machines from pubs and clubs would have provided considerable benefits to the Federal Group by ensuring the company a continued monopoly of poker machines in the state. Much of the business lost in pubs would have gone to the casinos and a long term secure profit stream guaranteed without the brand damage accruing to their high end hotels from the company's ownership of poker machines.

If the Liberals had opted to support an open tender for the poker machine licence (as was supported by Treasury and the TLGC), the Federal Group would have been financially better off under the Labor plan.

If the Liberals had chosen any other market-based mechanism to recoup the full value of the surplus or excess profits currently accruing to the Federal Group, the Federal Group would have been better off under the ALP plan.

If the Liberals were to tax casino poker machines at the same rate as is proposed for hotels - 38 cents – the Federal Group would probably have been better off under the Labor plan (provided the ALP had not also increased casino taxes).

It therefore highly improbable that the Federal Group would have signed off on supporting direct licencing if there had been no indication at all from the Government that they would be broadly supportive of the tax concessions for the casinos set out in the joint industry submission.

6. Liberal Party AEC Disclosure Return 2017-8

Because Tasmania is the only state or territory with no donation disclosure laws, the only legal requirement political parties have to follow in relation to House of Assembly elections are the national laws administered by the Australian Electoral Commission –the weakest in the country.²³

It was February 2019 before any disclosure had to be made about expenditure in 2017-18, the period covered by the Tasmanian election campaign.

The AEC reported that the Tasmanian branch of the Liberal party had income of \$4.169 million.

Because there are so many loopholes under AEC rules, less than 20% of total donations were disclosed (this is not just a matter of the high threshold for disclosure but the fact that there is no restriction on a single donor making multiple donations under the threshold).

Nevertheless, because of the refusal of the Liberal party to make further voluntary disclosures, the only evidence the Tasmanian people have for the source of party donations is what has been presented by the AEC.

Of the donations disclosed, \$123000 was received by companies not connected to the poker machine industry; \$404 000 was from the pokies industry and \$118 000 was an account owing to Zest – the company who ran the Liberal advertising campaign. Unanswered questions remain about the latter – with the most likely scenario being that the Zest bill was also picked up by the poker machine industry.²⁴

The THA alone disclosed \$ 269 750 in donations to the Liberal party.

In other words, on the evidence available (and it is open to the Liberal party to correct this), about 80% of corporate donations to the Liberal party was provided by the poker machine industry.

By contrast in 2013-14, the disclosure covered by the previous election, while total party income was similar at \$4.2 million, of the disclosed total of \$560 000 by far the biggest single amount of \$310 000 came from the Federal Secretariat with another \$30 000 from NSW Liberals. Non poker machine corporate donations of \$118 00 were similar to 2017-8 but the poker machine industry only donated \$40 000.

The other difference between the two election campaigns was the completely undisclosed level of expenditure on the 'Love your Local' campaign which saturated Tasmanian media for over two months from late 2017. This involved overtly pro-Liberal advertising with advertisements often not even mentioning poker machines. The message was simple and direct – vote Liberal. It was

²³ The Tasmanian Government announced its plan to review Tasmania's Electoral Act 2004 and associated campaign funding and disclosure laws in May 2018 but no legislation has been presented to parliament yet and all indications are that the Liberal Party is seeking to delay and minimise reform.

²⁴ The Liberal Party and Zest have not answered questions about this. The former State Director of the Liberal Party writing to the *Mercury* that it was an 'account credit' although given this is not a debt, it is not exactly clear what it is. The AEC advised in a letter of 15 November 2019, that the three transactions from Zest were classified by the Liberals as 'other receipts' – that is they were not a 'gift'. Who then paid the Zest account?.

indistinguishable from party advertising but because it was run by a third party, under Tasmanian law no disclosure was required.

The fact that the PR company responsible for developing 'Love Your Local', Fontpr, chose to virtually stop mentioning poker machines altogether in the final phases of the campaign indicates the continued popularity of the Labor policy despite the saturation advertising against it. This was confirmed by a ReachTEL poll taken on 26 Feb 2018 for the *Mercury* which found that "when comparing pokies policies from the two major parties, more than half (57.1%) would go with the Labor Party plan to restrict poker machines to casinos by 2023". Support for the Liberals plan was only 42.9% despite the polls showing a clear lead for the Liberal party overall. There was majority support for Labor's policy in every electorate although it was highest in Denison where it was 70.9% (probably a reflection of the seat having the largest concentration of poker machines in the state and a comparatively high level of knowledge concerning the issue due to it being highlighted by local MPs).

Support from the Government to THA

There are unanswered questions about the government's election policy to provide an unpublicised \$6.8 million grant to the THA.

Christine Milne lodged a complaint with the Integrity Commission in relation to this. In a letter from the Commission dated 29 August 2018, Milne was advised (this information is no longer confidential) that

- 'Open source checks by the assessor have not been able to identify any other Liberal Party or Tasmanian government publicity about this funding to the THA'.
- 'The Liberal commitment *Taking Hospitality to the next level*' was made public (but not publicised) on the Liberal Party's website on 19 February 2018'.
- 'The release of a policy which is primarily about providing the THA with government funding of \$6.8 million to achieve set hospitality outcomes via an announcement more related to a justice and law and order issue [the only reference to the policy was an indirect one provided in a law and order release] is certainly noteworthy. Such an announcement presents as having an aim of stimulating only limited public awareness and discussion before the election. It could be perceived that the Liberals were not keen to advertise the funding.'

More recently, as already alluded to, the letter set out below confirms that the Treasurer personally lobbied on behalf of the THA to have harm minimization measures watered down. The overturning of a measure that research has shown is effective in reducing poker machine losses by problem gamblers can only have increased the suffering of highly vulnerable Tasmanians and their families .

7. The 2018 Election Campaign: A Mandate for Change?

The Liberal party election policy opened with a line adapted from the 'Love your Local' campaign funded by the large poker machine hotels and the Federal Group: 'The Gaming Industry estimates that around 5000 jobs are at risk if Electronic Gaming Machines are removed from pubs and clubs'.

This employment forecast was repeated by the Treasurer during the election campaign.²⁵

The Liberal claim was radically different from the findings of the Social and Economic Impact Study, funded by the government itself, that were released prior to the Liberal policy being (The SEIS was publicly released in early January 2018 but was available to the Government since before Christmas). This found that "there are an estimated 240 FTEs employed relating to EGM operation" in hotels and clubs.²⁶

The Liberal claim was also fact checked by the ABC/RMIT Fact Checking Unit and found to be false. This was not surprising given that it included every job in the Federal Group and the large pubs, only a small minority of which had anything to do with poker machines, and many of which would benefit from their withdrawal. Thus, for example, every job in the casino was assumed to be 'impacted' even though the casinos would have a monopoly of poker machines in Tasmania if they were taken out of hotels. The only possible consequence of the ALP giving the casinos a monopoly on poker machines was that poker machine profits would substantially increase in casinos. Just how jobs at the \$2000 a night Saffire or other high-end hotels such as Henry Jones and Macq01, let alone the Federal Group's transport company, were to be negatively impacted by a policy on poker machines was also not explained.

Becher Townshend of Fontpr that developed the campaign told the Fact Check Unit that the employment claims were based on a survey he undertook, in which he asked pubs and clubs with poker machines what the impact on jobs would be if poker machines were withdrawn. Every expert consulted by the Fact Check Unit, as well as everyone who commented on the issue publicly, condemned this patently self-serving methodology. Mr Townshend claimed to the Fact Check Unit that he resorted to the survey in the absence of other data. In fact, the ABS publishes data on this specific question. Furthermore, by legislation every three years Tasmania undertakes a Social and Impact Study into Gambling. A number of these have addressed this question, not just the most recent one referred to above. All had direct or indirect employment figures in the gambling industry dramatically below the figures suggested.

Even more disturbing is that despite the magnitude of the lies told by the poker machine industry, the stated Liberal party policy and the Treasurer's commentary during the campaign, went beyond even what the industry itself claimed.

The Liberals claimed that around 5000 jobs were 'at risk'. Even the gambling industry only suggested that this number of jobs would be 'impacted'. During the Fact Check investigation, Becher Townshend from Fontpr admitted that the claim that 5100 jobs were 'at risk' was incorrect. Yet this was the very claim made by the Liberal Party and the Treasurer.

In going beyond even the outlandish claims made by poker machine industry itself, the Liberal Party and Peter Gutwein clearly misled the Tasmanian people.

²⁵ For example on 29 January 2018 Peter Gutwein told reporters that 'around 5000 jobs would be affected' by Labor's policy'

²⁶ SEIS, Vol. 1, p 51.

The grossly exaggerated employment claims were made *after* the latest facts were available to the Government through the release of the SEIS. Even after the mistake was highlighted, and the Factcheck unit had interviewed Becher Townshend, the Treasurer made no attempt to correct the record. The Liberals policy continued to clearly state and be aggressively sold to the Tasmanian people on the basis that 5000 jobs were 'at risk' unless poker machines remained in hotels. Since the SEIS, the authoritative report meant to guide policy which the Government itself paid for and commissioned, left no doubt that this was incorrect, and the Treasurer refused to amend his position even after the PR firm that invented the '5100 jobs impacted' claim acknowledged these jobs were not 'at risk'; the Liberal Party cannot be said to have a 'mandate' for their poker machine policy. Any mandate is always conditional on accurate policy information being provided to voters.

Other lies repeated through the campaign included:

- The Federal Group website claimed for almost the entire period of the campaign that 'Just 24% of gambling expenditure in Tasmania occurred via EGMs in FY16' whereas the true figure was 58.6%.
- 'we have less pokies per capita than all other Australian states' (Tasmania has more than Victoria and about the national average when pokies saturated NSW is excluded).
- 'Not only the 2400 staff directly employed by Federal Group but another 1500 indirectly supported will be hit by the pokies policy... Federal Group employs or supports 3900. All of these jobs will be impacted to some degree under Labors gaming policy'. As noted above, to claim employment would negatively suffer at Cope Sensitive Transport, the casinos that were to be afforded a monopoly on poker machines or the company's high-end hotels was absurd.
- '99.4% of Tasmanian adults are not problem gamblers'. This claim, made in different forms and times by the gambling industry and the Treasurer, is a highly unethical misrepresentation and misuse of the problem gambling data. As the prevalence studies themselves highlight, and the TLGS has observed over many years, this conclusion cannot be drawn from the problem gambling headline rate for methodological reasons.²⁷

²⁷ For a detailed explanation of why this is so see *Losing Streak*, pp 6-8 and especially the associated endnotes. For background to the misuse of gambling research, see my article in *The Monthly*;

8. Some Questions Outstanding

- How was the Liberal party policy arrived at given it contradicts the advice of the TLGC, the Treasury, the parliamentary committee and the Government's own clearly laid out principles of reform?
- What was the process that led to the Government policy of directly licencing all existing venues, protecting them from future competition, and abandoning a market-based mechanism?
- Why is the Government's tax rate for hotel poker machines the same as that set out in the industry's joint submission to the parliamentary inquiry?
- Why did the Government abandon its oft-repeated commitment to using a market-based mechanism?
- Why did the Government decide on a twenty year licence when TLGC believed it should be only for seven years, Treasury indicated it should be related to the length of machine life which is five years, and Victoria decided on ten years?
- What advice and modelling supports the Government's policy?
- Why did the Government reject TLGC advice documented during the parliamentary inquiry?
- Why did the Government reject Treasury advice documented during the parliamentary inquiry?
- Why is the Government putting in place a system which guarantees licences for existing venues but locks out new entrants even though the market is dominated by big players, there are so few clubs or small hotels with poker machines, and venues are concentrated in disadvantaged regions to an extent unparalleled in Australia?
- Why is the government only listening to the big pub chains that make up the nine member gaming subcommittee of the THA?
- How has the Government consulted with the 74% of Tasmanian hotels and 96% of Tasmanian clubs which don't have poker machines, and what is being done to ensure a level playing field?
- How will the government ensure that there is no cross subsidies of food and drink, or other anti-competitive and socially harmful incentives designed to attract patrons under a direct licencing model?
- What is being done to ensure the windfall capital gain of \$150 million which will flow to the owners of pokie hotels (the figure given by the industry itself) is invested in venues rather than being taken as profits by owners?
- What restrictions will be in place to stop the Federal Group and other big pokie pub owners from selling their venues once the free pokie licences are granted and just cashing in their windfall profit?
- Why are casino poker machine taxes being set lower than hotel poker machine taxes given casino pokies are lower cost (due to economies of scale) and higher profit (due to regulatory privileges)?
- On what basis can it be said that Tasmania competes with the NT and Far North Queensland in regard to poker machine venue investment?
- Why is the keno licence not going to tender?
- Why are keno taxes not been increased to ensure a full market based return or at least made comparable with other states and territories?

- What was the source of the millions of dollars in Liberal donations not explained in the disclosure return?
- Which government MPs received individual donations from the gambling industry and will these be disclosed before a vote on the legislation occurs?
- Will the Premier apologise to the Tasmanian people for the Liberal Party misleading the Tasmanian people by claiming that 5100 jobs were 'at risk' by confining pokies to casinos - a claim that went beyond even what the industry were claiming?
- Will the Premier apologise to the Tasmanian people for repeatedly assuring them that the right to operate poker machines will be decided by a market based process such as a tender?

9. Misleading Messages likely to be made by Industry and Government in the Debate

- *There is no time for lengthy scrutiny or debate.*

The government/industry plan will probably be similar to 2003 –try and rush this legislation through parliament without it being properly scrutinised through claiming that the contract attached to the legislation will fall over if the legislation is delayed or amended, and the supposed social and tax ‘gains’ will be lost.

Parliament has a right to amend legislation. That is a simple principle of the sovereignty of parliament – if the industry wants to then walk away from a contract that is up to them. But parliament cannot be dictated to.

- *The new legislation delivers a much better return than the current contract*

The current contract delivers such a low financial return, that almost anything would be better than it. However, this is not a proper basis of comparison, given the current contract is expiring with no compensation due. The past contract is not relevant to the future one. The only relevant comparison is between what *is* being proposed and what *could* be delivered in terms of the financial return to the state and harm minimisation measures. As former Premier Hodgman put it on 22 March 2017 to the parliamentary inquiry: ‘It is within our capabilities to do what we think is in the best interests of the people of Tasmania and future generations.’ It should never be forgotten that, as Jenny Cranston, the Chair of the TLGC observed, ‘this process... does provide what many people have called a once-in-a-lifetime, once-in-a-generation opportunity to have a fresh look at how gambling is conducted in Tasmania.’

- *The new legislation will deliver new investment for Tasmania*

Long overdue and previously announced major refurbishments for the casino are almost certain to be announced as part of this package.

The broken promises in this area by the Federal Group are well documented, have been discussed earlier in this paper and are detailed in full in chapter nine of *Losing Streak*.

For example, in 2002 Jim Bacon, who knew the Farrells and the casinos well, admitted that after the 1993 contract the company had only done work ‘which they had already planned to do in any event’ including a refurbishment which ‘was well overdue anyway at both Wrest Point and Country Club casinos’.²⁸ Greg Farrell’s broken promise to MPs to deliver 180 jobs for the East Coast so long as Parliament did not amend the 2003 contract is documented in Hansard through the Public Account Committee Inquiries of 2003 and 2008.

- *If this legislation is defeated or substantially amended so that the contract falls over, there will be uncertainty for the industry and no change to the costly status quo.*

The Treasurer has not given notice of the current contract ending (the process that is set out in the deed itself). Instead he is seeking to end the current deed by legislation. This means that if the Bill is defeated, the current contract remains until the necessary five-year notice is given. Notice can still

²⁸ Hansard, 16 April 2003

be given at any future time by any Government once a responsible policy has been formulated. It is much better to keep the status quo and get reform right, then to lock in bad policy until 2043.

In other words, the rolling clause actually gives the Tasmanian community and MPs a real choice. If this bill is defeated, there will be no change to current arrangements – the existing system will remain in place but can still be ended at any time with five years notice.

The Tasmanian Liquor and Gaming Commission is the body charged by Parliament with providing independent policy advice on gambling matters – its establishment and broad functions was the principal safeguard insisted on by the Legislative Council as a condition of allowing pokies into Tasmania in the first place. MPs believed that while it was possible for the Government to ignore the Commission's advice it would be too politically difficult for them to do so.

It is incumbent on MPs, media and everyone concerned with proper public policy process in Tasmania to consider the concerns put by the TLGC to the Select Committee and its strong criticism of the industry reform proposal that was adopted by the Liberal Party (which forms an appendix to the Select Committee's final report). The TLGC opposed direct licencing, extended licence terms and advocated for 'a market tested, competitive process that provides transparency for the community and returns the appropriate revenue to Government (and the Tasmanian community) that such an entitlement is worth.' This was also broadly the advice of Treasury. Indeed, every expert on gambling policy for three decades has emphasised that if this small jurisdiction is to have poker machines, the best way to maximise the state's financial return, ensure proper regulation and minimise social harm is having one well-regulated licence that is put out to tender. If parliament defeats the Liberals pokies bill, there is no reason why this straightforward advice cannot still be implemented. The TLGC also clearly stated to the parliamentary inquiry that new harm minimisation measures, including a one dollar bet limit, slower game speeds and son on, should be put in place and that the licence term should not exceed ten years.

The Government has ignored this expert advice. Premier Gutwein has not explained how his policy, which abandoned his own previously enunciated reform principles, was arrived at. Nor can the Government be said to have a mandate for their policy because they knowingly misled the Tasmanian people about the employment impacts of policy reform during the election campaign through exaggerating made-up industry figures which were directly contradicted by the expert report they commissioned – the Social and Economic Impact Study.

The Government abandoned its oft-stated commitment to achieving a market-based return for poker machine licences, in favour of a policy which was a carbon copy of that developed by their major donors. It is the responsibility of all MPs to defend the integrity of public finances and protect vulnerable Tasmanians from increased harm by rejecting the forthcoming legislation. The common good must come before the profits of a vested interest.