

18th March 2020

The Secretary
Department of Treasury and Finance
GPO Box 147
Hobart TAS 7001
Attention: Future Gaming Market Project
By e-mail: future.gaming@treasury.tas.gov.au

Dear Sir/Madam,

On behalf of Federal Group, I am submitting a response to the February 2020 public consultation paper "Future of Gaming in Tasmania".

The attached submission incorporates an executive summary and a considered and detailed response to the items contained within the public consultation paper.

Federal Group is comfortable for all details of this submission to be treated as public.

I would welcome the opportunity to discuss this submission further or answer any questions that may arise.

Yours sincerely



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Federal Group Tasmania

Federal Group

Submission to Future of Gaming in Tasmania – Public Consultation Paper 2020

Executive Summary

Honour the Deal

The key elements of the current gaming arrangements are specified in the 2003 Deed between the Crown and Federal Group. As part of the *Gaming Control Act 1993*, the Deed has the force of law. It sets out the licence term and the conditions of the licence.

Through the Rolling Term provision, the Deed gives Federal Group the certainty it needs to invest in its properties and equipment. It gives the company's financiers the certainty they need to make available the debt funding essential to normal company operations and for significant investments.

The Rolling Term guarantees Federal Group a minimum of 4 years of future certainty of its licence and conditions. This time is also needed to permit an orderly and well-managed transition to the new gaming industry arrangements.

The Tasmanian Government's stated intention is to legislatively override the Rolling Term and bring the licence to an end in June 2023. To do so constitutes sovereign risk – legislatively overriding a contract entered into in good faith. That would be grievously unfair to the company and set a horrendous precedent. No Tasmanian government has ever acted in this way. It will be a truly sad precedent if this Tasmanian Government becomes the first.

Federal Group calls on the Government to honour the deal in the 2003 Deed. This will require the Government to provide a minimum 4-year period of notice from the passage of the enabling legislation before the new gaming industry arrangements become effective.

Provide Best Practice Probity Standards

The community has had the luxury for nearly 50 years of not having to worry about probity, financial stability or criminal activity in its gaming industry. Federal Group and generations of its staff have upheld the highest possible probity standards and operated casinos and gaming in an exemplary manner.

With the shift from a single operator to three casino operators and many EGM licence holders, the rules around who can operate casinos and gaming, and how they conduct these activities, should be subjected to the highest possible probity standards and levels of scrutiny.

The probity standards to be applied in Tasmania's new gaming future should equal best practice of other Australian jurisdictions.

The process should include detailed scrutiny of each key individual within the applicant company and their associates. In other states, key personnel, their family members and associates, have their full financial history (including bankruptcy and credit checks) assessed and their police record scrutinised. This scrutiny gives the community confidence that casino and gaming licence holders meet the highest standards of probity and financial viability and that criminal activity cannot encroach on the industry.

Community Support Levy (CSL)

Future CSL arrangements should ensure that more funds are available to make positive contributions in areas not otherwise funded by governments.

\$1.5 million annually for Neighbourhood Houses currently forms the largest single area of funding from the CSL and represents over one third of the entire funding allocation. This should not occur – it is a core responsibility of the government's budget.

Not a single charitable grant and no gambling research funding was allocated during 2018-19 because all the funding was provided to Neighbourhood Houses. This is not in line with the intention of the CSL and denies small charitable organisations access to CSL funding as originally intended.

A more effective model for the operation of the CSL is needed. Federal Group proposes that an independent board be established to determine the distribution of CSL funds to take political interference out of CSL funding decisions.

Background on Federal Group

Federal Group has a long and proud history as a hotel and casino operator, running outstanding businesses in Tasmania for over 60 years. The company is the largest private sector employer in the state (employing nearly 2,000 Tasmanians) and a major investor in the Tasmanian tourism and hospitality industry.

The company is values led and a responsible operator of casinos and gaming. Federal Group founded the Australian casino industry and has owned and operated Australia's first casino at Wrest Point in Hobart for nearly 50 years. Federal Group is proud of its track record in ensuring that gaming in Tasmania has been operated in a responsible and sustainable manner.

Federal Group is committed to Tasmania. The company is a major investor with world class tourism assets that significantly contribute to the Tasmanian brand – such as Saffire Freycinet and MACq 01. Federal Group has a long-term policy of supporting other Tasmanian businesses by preferencing local suppliers, even where it is more expensive to do so. A 2016 study by Deloitte Access Economics found that the company contributed \$343 million per annum in value added to the Tasmanian economy.

General Comments on the gaming model outlined in the paper

The company has two major contributions in response to the public consultation paper. The first relates to the Tasmanian Government honouring the terms of the 2003 Deed, specifically the Rolling Term provision. The second relates to the need to maintain rigorous processes of probity and financial viability checking of potential licence holders to ensure integrity and public confidence in the future gaming industry in Tasmania.

Honouring the 2003 Deed

The key elements of the current gaming arrangements are specified in the 2003 Deed between the Crown and Federal Group. The 2003 Deed is Schedule 1 to the *Gaming Control Act 1993* and, as part of the Act, has the force of law. The Deed outlines the key commitments made by both parties including the licence term and exclusive right, gaming machine caps, licence fees, tax rates, and the Rolling Term.

When the 2003 Deed was being negotiated by the parties, the arrangements for concluding Federal Group's exclusive licence or changing the conditions of that licence were clearly set out. A major concern was to ensure that Federal Group had enough certainty of future operations to continue to invest in its properties and equipment (including electronic gaming machines) and software (including EGM games). The company's financiers also required a minimum period of future licence certainty to make available the debt funding essential to normal company operations and for significant investments. This certainty was not only for the period of the licence, it was also for the conditions attaching to the licence – both fundamental to the viability of Federal Group's gaming operations. The 2003 Deed also provided the Government with a minimum period of certainty of future revenue.

The mechanism to deliver this certainty for both parties in the 2003 Deed was the Rolling Term provision. The Rolling Term ensures that the company is provided with at least four year's notice of any changes to the arrangements. Under the Rolling Term, the arrangements set out in the 2003 Deed between the Crown and the company are deemed to continue unless the Minister otherwise provides formal written notice.

The Deed requires that the company had to be provided with formal written notice by 30 June 2019 if there was to be a change to the current arrangements to take effect on 1 July 2023. No such notice was provided and under the terms of the 2003 Deed the new end date for the current arrangement automatically became 30 June 2024. Should notice not be provided by 30 June 2020, then the current arrangements automatically extend to 30 June 2025.

It is appropriate that the Minister has not yet provided notice to the company under the 2003 Deed. He cannot yet do so because he has no certainty of what arrangements will apply beyond the end date of the current arrangements – and the reason for that is that no legislation has yet been put to the Parliament to determine what those arrangements will be.

In addition, given that the Tasmanian Government has announced that it plans to bring before Parliament legislation to profoundly change the gaming arrangements at the conclusion of the current licence period, there is an obligation to provide enough time to allow the company to work with its financiers to restructure its business. This cannot occur until the new arrangements are known (with the passage of legislation).

To meet both the intent and the formal requirements of the 2003 Deed and the Rolling Term provision, it is therefore important for the Tasmanian Government to provide a minimum of four year's notice once the legislation is passed and the new arrangements are confirmed.

The Tasmanian Government should honour the Rolling Term provisions of the 2003 Deed. The reasons for this are as follows.

Firstly, the Rolling Term provides fairness for the company to be able to restructure its business once the new arrangements are confirmed. Federal Group holds many gaming related assets and substantial debt with its financiers. The company will require a significant period to make the transition from the current licence to the new legislated arrangements.

Secondly, there will be a major transition for the wider hospitality industry that will require significant time and resources. The transition in other states from a single or dual licence holder to a venue licensing model involved disruption, cost and uncertainty for all parties.

In Tasmania, the gaming machine arrangements require a period of transition from one model to another. All gaming machines are owned by Federal Group and leased to hotel and club venues; these leases cannot at this point extend beyond 30 June 2023. This is because the future arrangements are uncertain, and it is not viable to purchase gaming machines for lease to hotels and clubs beyond the period for which certainty currently exists.

The period of amortisation for a gaming machine is generally 4-5 years. Honouring the Rolling Term provision would therefore allow a continuation of new gaming machine products to be available to hotels and clubs. Because there is no certainty of the arrangements beyond June 2023 – just over three years away – it will be increasingly difficult for new gaming machines or games to be purchased and made available to hotels and clubs at this time. The available time is insufficient to amortise the costs, making this unviable for both the company and hotels and clubs. The industry has therefore been placed in a hiatus. Honouring the Rolling Term would allow the gaming market to operate effectively and allow a better transition to a new gaming model.

Thirdly, and the most significant reason why the Tasmanian Government should honour the Rolling Term and the 2003 Deed, is sovereign risk. Unique among contracting parties, governments have the capacity to avoid their contractual commitments by legislating away their obligations. The risk of a government acting in this way is called sovereign risk. Sophisticated, advanced governments resist this temptation because to legislatively override contracts willingly entered into, completely erodes the confidence of other parties to contract with government and creates damaging precedents which go far beyond the circumstances of the contract overridden. Sovereign risk events are not a feature of modern, western governments.

It is therefore well-established practice that governments honour the letter and the spirit of the commitments they make by contracting with other parties; especially the private sector.

To use legislative means to extinguish rights and obligations under an existing agreement (the 2003 Deed), as the Tasmanian Government has announced it intends to do, is a clear example of the government intending to create a sovereign risk event.

Federal Group has assiduously worked to honour and respect all terms of the 2003 Deed between the company and the Crown. For the government to use legislation to override a crucial element of the 2003 Deed – the Rolling Term – is grievously unfair to the company and sets a horrendous precedent. To the company's knowledge, no Tasmanian government has ever acted to create a sovereign risk event. It will be a truly sad precedent if this Tasmanian Government becomes the first.

Governments throughout the entire developed world have resisted using legislation to override the terms of an existing agreement between government and the private sector. Using this power would significantly diminish the confidence of the business and wider community in entering into contracts with government.

Using legislation to override the Rolling Term in the 2003 Deed would be a clear example of sovereign risk, would be unfair to the company, and would set a dangerous precedent that would erode business and community confidence in the capacity to contract with the Tasmanian Government.

Probity and Financial Viability

The other major issue of concern that the company holds regarding the new arrangements is probity.

In Tasmania, the wider community and the Government have had the luxury of not having to be concerned about the issue of probity in the casino and gaming industry. This is because Federal Group has exclusively held the licence and is the most experienced casino operator in Australia, founding the national casino industry and operating gaming for nearly fifty years.

Federal Group has conducted gaming operations and run casinos with the highest levels of integrity to ensure that the community is free from concerns about probity or financial viability. Indeed, this has allowed the Tasmanian public debate and government regulatory activity to follow a different path. Harm minimisation has been the focus. In most other jurisdictions, the public debate and government focus is on ensuring that the gaming and casino industries are free from links to criminal activity and inappropriate operations.

Federal Group and generations of its key personnel have upheld the highest possible probity standards and operated casinos and gaming in a manner that has been an exemplar. This has given the Tasmanian Government and its regulator, as well as the wider community, the comfort that the operator runs gaming operations free from links to crime or criminal activity and in a responsible way that ensures regulatory compliance.

This can be demonstrated through Federal Group's responsible approach to achieving compliance with relevant legislation and rules. Our company has extensive systems and audit procedures to ensure compliance. We have a strong culture of self-reporting any potential non-compliance to the regulator. Indeed, in the past five years over 80% of incidents of potential non-compliance have been self-reported by the company. Consequently, the Tasmanian regulator does not need to have staff permanently on-site at the Tasmanian casinos; because the company monitors and regulates itself, and *always* reports incidents of potential non-compliance.

Having confidence that Tasmanian casinos and gaming operations are free from links to criminal activity and that players will receive their winnings should be a significant concern for the Tasmanian Government and the wider community. Tasmania has had an exclusive licence holder that has upheld the highest standards, and this has provided the confidence the community expects and needs.

With the operating model shifting to one in which there will be three casino operators and many EGM licence holders, Federal Group strongly argues that the rules around who can operate casinos and gaming, and how they conduct these activities, should be subjected to the highest possible probity standards and levels of scrutiny. The Tasmanian Government and regulator have limited experience in this regard because casino and gaming licences have been held exclusively by the Federal Group since gaming commenced in Tasmania in 1973.

The consultation paper includes no discussion of the standards of probity that will be applied to future applicants for casino and gaming licences, or indeed the risks faced by the from operators who do not meet the highest standards of probity and financial viability. Federal Group's position is that the standards of probity and financial viability to be applied should equate with Australian jurisdiction best practice.

The process should include detailed and in-depth scrutiny of the background and appropriateness of each key individual within the applicant company and their associates. In other jurisdictions there is a requirement for key personnel (those with the ability to exercise control over the operation) to have their full financial history assessed (including bankruptcy and credit checks) and to have their police record scrutinised. This analysis and scrutiny extend to family members and associates. Key individuals are the subject of extensive personal interviews with regulators and their investigation teams to provide the confidence that casino and gaming licence holders meet the highest standards of probity and financial viability.

As the sole licence holder for nearly fifty years, Federal Group feels responsible as the custodian of the industry that it has built. It would be a retrograde step if the new gaming model allowed inappropriate individuals or operators to infiltrate such a sensitive industry in a state with such a proud record.

Other comments on specific elements of the consultation paper

The company would also like to make some brief comments regarding some specific issues raised in the consultation paper.

Exclusivity

Federal Group rejects the approach proposed and calls on the Tasmanian Government to honour the 2003 Deed with Federal Group. Specifically, the Rolling Term provisions of the 2003 Deed should be honoured as this is fair for the company, manageable for the industry, and would mean that the Tasmanian Government would not engage in sovereign risk.

The views of the company regarding this issue are outlined above in the section titled "Honouring the 2003 Deed".

Community Support Levy

Federal Group contends that any changes to future Community Support Levy (CSL) arrangements should work to ensure that more funds are available to make positive contributions to the state in areas that would not otherwise be funded by governments.

One major change that is required is to ensure that the distribution of the levy does not include funding of programs or organisations that are outside the scope of the Levy. A clear example of this is the current funding of Neighbourhood Houses from the current CSL, something that should not occur.

The Neighbourhood House Program has never fitted within the intended scope of the CSL and any government assistance to this program should come from the State Budget. The current annual funding of \$1.5 million for Neighbourhood Houses forms the largest single area of funding from the Levy and represents over one third of the entire funding allocated each year.

The funding of Neighbourhood Houses comes at the expense of other charitable grants. According to the 2018-19 Tasmanian Liquor and Gaming Commission Annual Report, not a single charitable grant was allocated during that year because all the funding had been provided to Neighbourhood Houses. This is not in line with the intention of the CSL and is denying small charitable organisations the opportunity to access funding for their organisation or cause. Similarly, there was no funding provided for Tasmanian gambling research during 2018-19.

Federal Group contends that a more effective model for the expenditure of the CSL needs to be developed. This model could operate with the following principles:

- The Neighbourhood House Program should be funded from the State Budget and not the CSL; and
- Administration and government staffing costs should be funded from departmental budgets and not the CSL.

These two changes, in addition to the significant increase in the CSL proposed, would allow several importance changes to occur, including:

- Increasing the funding available for treatment and support services;
- Increasing the funding available for gambling research;
- Increasing the funding available for gambling education;
- Providing funding for harm minimisation initiatives and trials, including the use of new technology;
- Providing funding for gaming care to be provided in venues and for increased venue staff training in minimising harms;
- Significantly increasing the funding available to local sporting and recreation clubs, local charities, and local community organisations under a more robust governance model; and
- Providing greater clarity about the source of CSL funding to recipients and the wider community.

Federal Group proposes that an independent expertise-based board be established to determine the distribution of CSL funds. Such a board would be supported and assisted by relevant departmental officers as at present. However, funding decisions would be made independently and not subject to political interference.

Casino

Federal Group broadly endorses the potential future model regarding Federal Group's casinos. There are some detailed elements not yet included, and Federal Group would argue that these should incorporate arrangements that benchmark Federal Group's casinos with casinos in other comparable regional destinations in Australia.

High roller casino

Federal Group has been supportive of the establishment of high-roller casinos at MONA and in Northern Tasmania, with commencement at the end of the current licence period.

The 2015 proposal mentioned in the consultation paper is not in the public domain. It is therefore difficult to determine the details of what is proposed. Until those details are made public, the company cannot make a judgment in support or otherwise of the high-roller casinos proposed.

Keno

Federal Group notes that the arrangements for Keno will not change, with Federal Group conducting games as the Keno operator, and venue commissions will continue to be a regulated arrangement between the operator and the venue. The paper also outlines a new Keno licence fee of \$500,000 per annum.

Federal Group argues that the detailed arrangements must ensure that Keno in Tasmania is in line with comparable jurisdictions in Australia, including and especially the most comparable with Tasmania, namely the Northern Territory.

Hotels and clubs

Federal Group broadly supports the arrangements for hotels and clubs outlined in the consultation paper. It is important to acknowledge that the changes proposed are significant and will require a comprehensive transition process to ensure all the players are ready for their new responsibilities – including hotels, clubs and the regulator.

As the licensed operator for wide area gaming in hotels and clubs for well over 20 years through Network Gaming, Federal Group has strongly developed systems, processes and culture to support compliance with all regulatory and taxation requirements. It will be a significant shift for hotels and clubs to take on these responsibilities and will require a strong probity and financial viability check for all licence holders to provide players and the wider community with confidence in the integrity of the new gaming model.

The proposed arrangements for the right to operate EGM in hotels and clubs – through an “EGM authority” – appear to be an appropriate mechanism. While other jurisdictions allow these authorities to be traded, it is generally considered a safer option to have them as non-transferrable authorities.

The changes outlined to the gaming arrangements are far reaching and Federal Group urges the Tasmanian Government to ensure enough time is available for the transition to the new model to be as smooth as possible, and for public confidence in the probity and financial viability of operators to be assured.

Licensed Monitoring Operator

Federal Group notes that the new model will require a Licensed Monitoring Operator (LMO). Federal Group, through Network Gaming, has undertaken these functions in Tasmania for over 20 years – since the introduction of gaming machines in hotels and clubs. Network Gaming has been a rigorous and highly effective LMO for the industry since its commencement.

Since 2017, Federal Group has also been the owner and operator of Odyssey Gaming, an LMO in Queensland. This operation has been highly successful and since Federal Group took over the operations, Odyssey has grown its market share in the competitive LMO environment in Queensland.

It is very important that the LMO has the systems, processes and people to operate a system that guarantees the integrity of the operation of electronic gaming machines and makes data and information available to regulatory agencies.

Federal Group notes and supports the concept of splitting the functions into three categories: core, regulated and other.

We note and agree with the core functions being provided on a fee per EGM per day basis. This is how the model works in other jurisdictions, although we would note that the small, yet highly dispersed nature of the Tasmanian EGM market will make the delivery of these services more expensive on a per unit basis than other states and territories.

We note and agree with the regulated functions and acknowledge that this fee will be the subject of a fixed price as per the proposal submitted by the LMO. We also note and agree with the other functions, although it is assumed that these market-based functions could also include the ownership and leasing of EGMs to gaming venues that may require these services.

Federal Group makes the following general comments regarding the arrangements for the LMO in the future gaming market.

Firstly, it is important for the LMO to run the operation within the state of Tasmania. This will ensure a high level of service and responsiveness to individual gaming venues and provide the government with immediate access to key personnel and data. There are currently over 30 highly skilled and experienced Federal Group employees involved in the delivery of LMO functions in Tasmania and it is important that the operation of the LMO retains expertise and employment in the state.

Secondly, the process for the advertising, selection and establishment of the LMO will be a lengthy one and there must be enough time allowed for a smooth transition. The LMO function is a critical one, albeit often underappreciated, for the integrity of gaming machines and the state-wide gaming network.

Thirdly, the selection process for a future LMO should place the highest priority on quality and capacity to deliver – rather than price. The integrity and reliability of the gaming system can only be assured if the LMO is incentivised to deliver a high level of quality to the industry and the Tasmanian Government. If the selection process is solely based on the lowest price, then it sets up a significant risk.

Miscellaneous

Federal Group supports the miscellaneous changes proposed to support the future gaming model.

Transitional Arrangements

Federal Group is concerned about the industry's capacity to manage a smooth transition to the new arrangements considering the Government's unfortunate stated intention of not honouring the Rolling Term provision of the 2003 Deed. These concerns have been raised earlier in this submission in the section headed "Honouring the 2003 Deed".

Federal Group also holds concerns about issues of probity and financial viability under the proposed new arrangements. These concerns have been raised earlier in this submission in the section headed "probity and financial viability".