

THE EMPEROR'S NEW CLOTHES¹: THE TASMANIAN GAMING COMMISSION

Margie Law
SOCIAL ACTION &
RESEARCH CENTRE
Anglicare Tasmania
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Poker machines, also known as electronic gaming machines, were introduced into Tasmanian clubs and hotels in 1997 following legislation introduced in 1993 by the then-Liberal Government.

Over the past 6 years, 2233 poker machines have been rolled out into clubs and hotels,² on average one for every 139 Tasmanians of gambling age.³ Prior to this, 1079 poker machines were located in the casinos in Hobart and Launceston. Today, turnover on poker machines is approximately \$1.7 billion per year, with \$850 million of this from machines played in clubs and pubs.⁴ Tasmanians lose more than \$80 million each year on the machines at clubs and pubs.⁵ Poker machines provide substantial income via taxes and fees to the State: \$41 million in 2001-2002,⁶ which is approximately 5 per cent of State-sourced taxation revenue.⁷

Weaving Threads of Gold: The intent of Parliament for the regulation of gaming

In 1993, Parliament was considering a commercial contract with Federal Hotels, which would allow poker machines to be located in clubs and hotels.

¹ In the Hans Christian Anderson fable, *The Emperor's New Clothes*, two men offer to make new clothes for the Emperor out of golden cloth so fine that only stupid or incompetent people would be unable to see it. Although the two men presented the Emperor with nothing but air and the Emperor could see nothing, he pretended he could so as not to appear stupid or incompetent. He paraded in front of his subjects who also pretended they could see a fine cloth until a boy yelled, "The Emperor is naked!" Everyone finally agreed with the boy. The Emperor realised that the people were right but could not admit it and he continued with the parade. The fable reminds us of the importance of examining Government policies and practices with a discerning and observant eye.

² Ministerial Statement by the Treasurer Hon. Dr. David Crean, MLC on the subject of gaming machines in Tasmania – 15th April 2003.

³ ABS 2001 Census, www.abs.gov.au/ausstats accessed 8.7.03. Note, the 2001 census lists 311,098 Australian citizens aged 18 years and over in Tasmania. Thus, people who are not Australian citizens have been omitted from this calculation.

⁴ *Tasmanian Gaming Commission 2001-2002 Annual Report*, page 17.

⁵ Figures for 2000-2001, from Tasmanian Gaming Commission, 2001, Australian Gambling Statistics, Table 54.

⁶ *Tasmanian Gaming Commission 2001-2002 Annual Report*, page 17.

⁷ *Budget Overview 2002-2003 Paper 1*, page 59.

They wished to ensure that gaming would be monitored independently and that Parliament would be able to get independent advice on gaming policy. Both houses of Parliament resolved to establish a gaming commission with the intention of providing a strong regulatory framework for gaming in Tasmania.

The Tasmanian Gaming Commission (TGC) was to regulate and control gaming and “investigate and make recommendations to the Minister on matters relating to gaming policy”.⁸ It was also to administer the Community Support Levy, which was largely to fund research into gambling and support services for people with gambling problems.

The Liberal, Labor and Green parties all agreed that the new Commission would need “to be seen to be at arm’s length from government, as well as being so”⁹ and would need extra staff “so that it can carry out its functions in a proper manner and be independent from Treasury.”¹⁰

The Government appointed Mr. Don Challen, the Secretary of the Department of Treasury and Finance to the position of Commissioner for Gaming.

Mr. Lennon, Shadow Minister for Racing and Gaming in 1993, argued forcefully that this appointment compromised the integrity of the gaming commission. He complained that “the Secretary of Treasury is now the Gaming Commissioner. In effect that means the position of Gaming Commissioner in this State is no longer independent from Government, because the Secretary of the Treasury is answerable to the Treasurer, who in turn is a member of Cabinet.”¹¹

As Commissioner for Gaming, Mr. Challen was to “carry out the functions of the commission for the **first twelve months**, but he will cease to do so as soon as the new commission is appointed.”¹² This was to “allow time for the appointment of the commissioners, and to ensure a smooth transition from the current arrangements”.¹³

⁸ *Gaming Control Act 1993*, Functions of Commission, clause 125.

⁹ Mr. Lennon, Shadow Minister for Racing and Gaming, 7 December 1993, *Hansard*, page 7314.

¹⁰ Mr. Cornish, Minister assisting the Treasurer, 7 December 1993, *Hansard*, page 7320.

¹¹ Mr. Lennon, Shadow Minister for Racing and Gaming, 17 November 1993, from <http://www.hansard.parliament.tas.gov.au/> Part 2 - Pages 37 – 83; accessed 15 July 2003.

¹² Mr. McKay, Leader for the Government in the Legislative Council, 2 December 1993, *Hansard*, page 5529. (Emphasis added.)

¹³ Mr. McKay, Leader for the Government in the Legislative Council, 2 December 1993, *Hansard*, page 5529.

The Invisible Suit: The TGC today

A change of Government saw no change in the administration of the Tasmanian Gaming Commission (TGC). Ten years later, the TGC still sits within the Department of Treasury and Finance and Mr. Challen has been Secretary of Treasury as well as Chair of the Commission since the Commission started its regulatory function in September 1994. Other commissioners have been Mr. Clyde Eastaugh (since inception), Mrs. Jean Trethewey (1994 - 2001) and Professor Kate Warner (June 2001 - present).

The current arrangement has Mr. Challen, as Secretary of the Department of Treasury and Finance, reporting to Government on Government gambling policy and providing policy advice to the TGC¹⁴ whilst Mr. Challen, as Chair of the TGC, also provides “independent” gambling policy advice to Government. In both of these roles Mr. Challen is directly responsible to the Treasurer.

Nowhere in this circle of advice is there an independent voice.

The TGC is simply a division of the Department of Treasury and Finance and not the independent body Parliament intended. It has no staff, offices or management of its own.¹⁵ Its phone listing, email address and web site come under the Department of Treasury and Finance. It does have a glossy annual report, a corporate seal, legal entity and a monthly board meeting but two of the commissioners are totally dependent for information on their Treasury chair and Treasury staff.

“The Emperor is Naked, the Emperor is Naked”: The Policies and Practices of the TGC

In 2002, the Legislative Council Select Committee conducted an inquiry into the impacts of poker machines, which found that, “The public perceives the Tasmanian Gaming Commission as being not independent of Government. It relies heavily on the Department of Treasury and Finance, not only for its advice and administrative resources, but also for the chairmanship.”¹⁶

¹⁴ One of the performance indicators for the Department of Treasury and Finance (under Mr. Challen) is measured by the percentage of departmental recommendations accepted by the TGC (under Mr. Challen). The percentage of recommendations accepted by the TGC for 2001-2002 was 83% and ongoing targets are greater than 80%. Source: Parliament of Tasmania, 2003, *Budget paper No. 2 Operations of Government Departments 2003-2004*, Volume 2, page 510.

¹⁵ The TGC is staffed by Treasury employees that perform TGC functions.

¹⁶ Parliament of Tasmania, Legislative Council Select Committee, 2002, *Impacts of Gaming Machines*, page 51.

In the nine years since commencing its legislated regulatory function, the TGC has failed to:

- establish an independent research and knowledge base on gambling for Tasmania;¹⁷
- query the use of Community Support Levy (CSL) funds by Government departments;¹⁸
- investigate a suitable cap on the total number of poker machines in Tasmania;¹⁹
- recommend that the Commission be moved out of Treasury and be provided with staff and a Chair independent of Treasury;
- provide independent monitoring of existing patron care policies and procedures;²⁰
- investigate the effects of removing betting limits;²¹
- ensure that access to cash facilities is totally separate to gaming venues;²²

¹⁷ Although a baseline study into the extent and impact of gambling in Tasmania was conducted in 1994, this study and the follow-up studies in 1996 and 2000 have not formed the basis for policy advice. Further, no social and economic impacts study has been conducted in Tasmania.

¹⁸ In 1999, the position and functions of the Executive officer – Community Support Levy (CSL) were transferred from the Department of Treasury and Finance to the Department of Health and Human Services (DHHS). Part of the CSL funds the Gambling Support Bureau within the DHHS including its public service staff.

¹⁹ Although the TGC was involved in the negotiations for a new Deed between the Crown and Federal Hotels, the TGC failed to conduct research or ensure that the community was consulted. The new Deed sets the overall cap at 3680 poker machines, which means that the Government intends to roll out 1 gaming machine for every 84 Tasmanian of gambling age.

²⁰ The existing patron care regime was established on the basis of recommendations in the 1996 Anglicare report *Patron Care Policies and Programs for the Tasmanian Gambling Industry*. This report recommended, “That initially an industry code of practice be voluntary. The voluntary code of practice should be independently assessed between July and December 1998 to measure how widely it has been adopted.” This evaluation did not occur because the Gambling Industry Group, which consists of representatives from Federal Hotels, Australian Hotels Association, Tattersalls, Registered Clubs Tasmania and TOTE Tasmania along with invited Government officers from the TGC and the Gambling Support Bureau, decided that it was not necessary. Although there is no independent evaluation or monitoring, the TGC is fully confident in self regulation.

²¹ Betting limits were imposed through the Deed between the Crown and Federal Hotels such that Federal was to limit coin denominations used and impose maximum bet limitations until 31 December 1998 (Clause 3 (i)). The Deed did not state what should happen after that date. When community groups campaigned against the removal of betting limits the TGC offered no opinion claiming this to be a Government policy area. However, back in 1993, Mr. Wilson, MLC, asked of betting limits, “After that two-year period, isn't the discretion to vary that initial requirement left to the Gaming Commission?” The Leader of the Government, Mr. McKay, replied, “That’s right”. Source: <http://www.hansard.parliament.tas.gov.au>; accessed 15 July 2003.

- investigate whether making gaming rooms smoke-free would reduce problems for gamblers;²³
- conduct a review of the opening hours of gaming rooms;
- research options for shut-down times as happens in other states;
- research the impacts of changes to game speeds and note acceptors;
- review the effects of the continuous roll-out of poker machines;²⁴
- follow-up the recommendations of *Tasmania Together*;
- provide the Government with recommendations based on the 1999 Productivity Commission inquiry into Australia's gambling industries;
- respond to *Tasmania Responds*;²⁵ and
- assess the combined cost of Government and NGO gambling services, gambling-related crime and other social and economic costs that result from gambling.

²² In 1999, the TGC recommended that cash access facilities should not be allowed in gaming venues. However, a somewhat surprised industry group conducted a very public campaign and succeeded in overturning this recommendation. Although, according to the Licensed Premises Gaming Operators Code of Practice, ATMs and other cash dispensing facilities including EFTPOS are not permitted inside licensed gaming venues, many gaming venues are immediately adjacent to the bar or restaurant, which do have cash facilities. In order to limit access to cash facilities, the rules need to be tightened and surveillance improved.

²³ In 2003, the State Government sought the views of Tasmanians on whether or not to extend smoke-free legislation into gaming venues. The TGC made no comment.

²⁴ An independent regulatory body should have gathered information on the effects on Tasmanian communities of the continuous roll out of poker machines. The reason for spacing the studies into the extent and impact of gambling over a period of time was so that they could contribute to policy advice. The latest study was conducted in 2000 and although the study raised serious issues concerning the impacts poker machines were having on individuals and communities, TGC advice and Government policy have not reflected the study.

²⁵ *Tasmania Responds* drew together the views to the Productivity Report of the gambling industry, TGC, local government and Break Even service providers. *Tasmania Responds* was supposed to be part of an ongoing process established by Government, which included a Responsible Gambling Consultative Committee that was to consider areas of action and a Steering Committee to oversee *Tasmania Responds*. The Minister nominated a TGC representative to sit on the Consultative Committee. However, the Director of Revenue and Gaming attended the meetings as a representative of Treasury and claimed that the only representation possible from the TGC was if a Commissioner attended, which he said would be not possible nor appropriate. After two meetings, the Consultative Committee never met again and *Tasmania Responds* and the Productivity Report were put aside, unanswered by the TGC. In a letter to the Legislative Council Select Committee regarding *Tasmania Responds*, Mr. Lennon, Minister for Racing and Gaming, said that "the report is generally regarded as having little or no authoritative standing regarding issues related to the gambling industry in Tasmania."

A former member of the Commission, Mrs Jean Trethewey, explained to the Inquiry that, "The Commission had absolutely no influence...on Government...on increasing machines and increasing the amount that people were allowed to bet with. The Commission had absolutely no say in that so basically the Commission did not have any influence over the revenue Government received because we had no influence on that. The Government made that decision and then that was something we had to live with."²⁶

In 2002, the Legislative Council Select Committee recommended that, "The Tasmanian Gaming Commission be restructured to ensure total separation from Government."²⁷

However, in 2003, the Bacon Government rejected this recommendation, claiming they were confident in the independence of the Commission. The Treasurer, Mr. Crean, believes that the Legislative Council's concern "relates to a perception, rather than to any concern over the outcomes that have been achieved by the commission."²⁸

Mr. Crean's statement was made one month after the Government had concluded secret negotiations with Federal Hotels over a new Deed of agreement. At the time that this Deed was being negotiated, the TGC was supposed to be conducting a review of the maximum number of poker machines permitted in any one venue.²⁹ The TGC had promised that this review "would involve consulting widely with other stakeholders"³⁰

However, the review was not undertaken. According to Mr. Challen, the Government had commenced negotiations over a new Deed before the TGC commenced the review.³¹ According to the Government, the TGC was involved in the negotiations "for some months".³² Indeed, it appears that Mr. Challen negotiated the Deed as Chair of the TGC and signed the Deed as

²⁶ Parliament of Tasmania, Legislative Council Select Committee, 2002, *Impacts of Gaming Machines*, page 51. (Use of ellipsis in quote as original.)

²⁷ Parliament of Tasmania, Legislative Council Select Committee, 2002, *Impacts of Gaming Machines*, page 52.

²⁸ Ministerial Statement by the Treasurer Hon. Dr. David Crean, MLC on the subject of gaming machines in Tasmania – 15th April 2003.

²⁹ The 1993 Deed of Agreement between the Crown and Federal Hotels directed that in the 6 months leading to 30 June 2003 the TGC was to review the venue limits (clause 9 (f)).

³⁰ Statement made by Mr. Challen, as Chair of the TGC, to the Legislative Council Inquiry into the Impacts of Gaming Machines, 2002. In a letter to Anglicare dated 17th April 2003, Mr. Challen, Chair of the TGC, reiterated that "it was the Commission's stated intention to seek community views on the issue of venue machine number limits before undertaking discussions with Federal Hotels."

³¹ Letter to Anglicare from Mr. Challen, Chair of the TGC, 17 April 2003.

³² Mr Jim Bacon, Wednesday 16 April 2003, *Hansard*, Parliament of Tasmania, Question Time: Gaming Operation of poker machines and casinos. From www.hansard.parliament.tas.gov.au.

Secretary of Treasury. These negotiations, conducted in the absence of research, propose an increase in the total number of poker machines permitted in Tasmania. The last time the Government sought the views of Tasmanians on gaming was in October 2000.³³ At that time, there were 1630 poker machines in hotels and clubs and 79 per cent of people surveyed thought that "the Tasmanian community had not benefited from having poker machines in clubs and hotels."³⁴ The new Deed would enable there to be 870 more machines in clubs and hotels than in October 2000 at the time of this research, an increase of 53 per cent.³⁵

One month after signing the new Deed and 4 months into the 6 month period designated for a review of venue limits, Mr. Challen wrote to Anglicare that "As the new deed will set venue limits at current levels, with no provision for any increase, the Tasmanian Gaming Commission has determined that there is no need to consult with Federal Hotels and the broader community on gaming machine limits in hotels and clubs from 1 July 2003. Federal Hotels has confirmed that consultation is no longer warranted."³⁶

It is extraordinary that Federal Hotels, a corporate entity engaged in a business transaction with Parliament, was given veto by the TGC and the Government over whether the correct processes are followed for the review of public policy in Tasmania.

Mr. Challen explained that he was unable to undertake a review of venue limits "until the outcome of the negotiations became clear."³⁷ This is clearly unsatisfactory as the TGC should have insisted on seeking community views before a new deed was negotiated and signed.

Although the Premier claims that, "In relation to consultation with the community groups I can certainly say that the Treasurer has had a number of meetings with community groups about the issue of gaming in the community and he has taken their views on board,"³⁸ neither Anglicare nor

³³ Roy Morgan Research, 9th February 2001, *The Third Study into the Extent and Impact of Gambling in Tasmania with Particular Reference to Problem Gambling*, Follow up to the Baseline Studies Conducted in 1994 and 1996.

³⁴ Roy Morgan Research, 9th February 2001, *The Third Study into the Extent and Impact of Gambling in Tasmania with Particular Reference to Problem Gambling*, Follow up to the Baseline Studies Conducted in 1994 and 1996, page 89.

³⁵ Ministerial Statement by the Treasurer Hon. Dr. David Crean, MLC on the subject of gaming machines in Tasmania – 15th April 2003. The Deed allows for a further 290 machines to be rolled out, an increase of 870 on October 2000 figures, when the Roy Morgan research was conducted.

³⁶ Letter to Anglicare from the Chair of the TGC, 17 April 2003.

³⁷ Letter to Anglicare from the Chair of the TGC, 17 April 2003.

³⁸ Mr Jim Bacon, Wednesday 16 April 2003, *Hansard*, Parliament of Tasmania, Question Time: Gaming Operation of poker machines and casinos. From www.hansard.parliament.tas.gov.au.

any member of the Interchurch Gambling Taskforce were consulted over the venue limits and changes to gaming policy proposed in the new Deed.

The Government should have ensured there was community input prior to directing the TGC to negotiate the new contract and the TGC should have provided independent research and policy advice.

A New Emperor: A model for a truly independent regulatory gaming commission

The TGC is not a truly independent regulatory body, but simply performs administration functions relating to gambling for the Government.

The TGC's mandate and proscribed area of responsibility is set not by the Government of the day but by the Gaming Control Act of 1993. It is the law, not ministerial direction that should determine the Commission's role. The Parliament in 1993 intended the TGC to be something much more than an administrative arm of Government.

Professor Jan McMillen, Executive Director of the Australian Institute for Gambling Research at the University of Western Sydney, explains that "government is a stakeholder in this. They have a vested interest. They are not independent, with respect, and the public representation, the watchdog for the public, should be the commission."³⁹

According to the Productivity Commission, which was commissioned by the Federal Government in 1998 to conduct an inquiry into gambling in Australia, "The control function ought to be undertaken by an independent body, at arm's length from the government and from interest groups."⁴⁰

An independent commission must:

- comprise of independent commissioners appointed for a fixed term with an independent chair and its own manager and staff;
- have its own budget, voted by parliament;
- report direct to Parliament;
- have independent administrative and legal support;
- be able to commission independent research advice; and

³⁹ Parliament of Tasmania, Legislative Council Select Committee, 2002, *Impacts of Gaming Machines*, page 48.

⁴⁰ Productivity Commission, 1999, *Australia's Gambling Industries*, Report No. 10, AusInfo, Canberra, Volume 2, page 22.26.

- work from offices separate from the public service with its own phone numbers, web site, email address.⁴¹

Public confidence in the Commission would be increased if the Commission valued public submissions and consultations and if its policies, practices and advice to Government are transparent. That Mr. Challen regularly reports to Parliament wearing both hats of Chair of the Commission and Secretary of Treasury and Finance blurs the situation.

By removing the Commission from Treasury and removing the duel-hat of the Commission's Chair the Commission should be in a better position to critique changes in Government policy. Separating the regulatory function from policy development would further enhance independence.

As well as being independent from Government, the Commission should be independent from industry. Commissioners should not be appointed for more than one or two terms so that they do not become too familiar with the regulated party. Further, prior to choosing potential commissioners, an audit of skills required for the Commission to perform its functions should be conducted.

Tasmania's State Parliament should fund a gaming commission that is genuinely independent of Treasury and other Government departments. The growth in revenue from gambling provides the State Government with the flexibility to fund an independent commission.

It is clear that the TGC, as "Emperor", is naked and yet the State Government continues to ignore and dismiss the cries that point this out. The Tasmanian public sees through the rationales and justifications which cloak this issue and recognises that the TGC is failing in its regulatory role. Until we have a truly independent gaming commission, Tasmanians cannot be assured of the duty of care expected of Parliament on gaming issues.

Recommendations

Anglicare recommends that the State Parliament:

- implements recommendations of the Legislative Council Select Committee Inquiry Impacts of Gaming Machines, namely that:

⁴¹ Compiled from the Productivity Commission, 1999, *Australia's Gambling Industries*, Report No. 10, AusInfo, Canberra, Volume 2, page 22.1; and Parliament of Tasmania, Legislative Council Select Committee, 2002, *Impacts of Gaming Machines*, pages 45-50.

1. The State Government immediately commission a biennial independent study to determine the social and economic impacts on the Tasmanian community since the expanded operation of poker machines in hotels and clubs;
 2. That harm minimisation programs be properly researched, funded, monitored and evaluated by an independent agency; and
 3. That the Tasmanian Gaming Commission be immediately restructured as a regulatory body that is independent of Government, including independent Chair, staff and administrative support;
- uses relevant and independent research as the basis for policy development and political decisions;
 - instigates an independent review of patron care policies in Tasmania;
 - ensures that any consultations over commercial gambling contracts be overseen by an independent body;
 - immediately freezes the roll out of poker machines at current levels until an independent gaming commission is established and able to conduct relevant independent research, including community consultation, into a suitable state-wide cap and limit on the number of poker machines permitted in each venue;
 - returns management of the Community Support Levy to the Tasmanian Gaming Commission once it has been restructured into an independent body;
 - separates the regulatory function from policy development;
 - instructs the Tasmanian Gaming Commission to review the level of club and hotel contributions to the Community Support Levy annually to ensure that the Levy is able to fund projects that reduce harm caused to individuals and communities caused by gambling;
 - instructs the Tasmanian Gaming Commission to include and value consultation with the community as part of research function;
 - ensures that commissioners of the Tasmanian Gaming Commission are not appointed for more than two terms, to reduce risks that they

become too familiar with the regulated party, and that prior to choosing potential commissioners an audit of skills required for the Commission to perform its functions is conducted.; and

- instructs the Tasmanian Gaming Commission to review the risks to forming good policy due to Government reliance on gambling taxation.