

PRODUCTIVITY COMMISSION INQUIRY INTO
AUSTRALIA'S GAMBLING INDUSTRIES

Submission

by the

Licensed Clubs' Association of Victoria

25th November, 1998

PRODUCTIVITY COMMISSION INQUIRY INTO AUSTRALIA'S GAMBLING INDUSTRIES

Submission by the Licensed Clubs' Association of Victoria

25th November, 1998

1. Introduction

The purpose of this document is to outline the views of the Victorian club industry on the Terms of Reference of the Productivity Commission Inquiry into Australia's Gambling Industries, as they particularly relate to Victoria.

The Council of Community Clubs of Australia and New Zealand presented evidence to the Inquiry on behalf of the Australian club industry, at a sitting in Sydney on 16th November, 1998.

The Licensed Clubs' Association of Victoria Inc. (LCAV) assisted in the preparation of the submission by the Council of Community Clubs and fully supports the views put forward.

However, the LCAV wishes to specifically address the issues of the Regulatory Structure, Social Impact, and Taxation of Gaming, as they relate to the club industry in Victoria.

2. Background

The LCAV was established in 1916 as the representative body for licensed clubs in Victoria.

There are currently 789 clubs with Full Licences and 1520 clubs with Restricted Licences in Victoria. (Annual Report 1997/98 Liquor Licensing Commission, Victoria).

The LCAV offers full and affiliated membership to all licensed clubs.

The mission of the LCAV is "to represent and support all licensed clubs in their collective efforts to serve their members and the community in providing professional and responsible hospitality, entertainment and recreation facilities".

Clubs are groups of people sharing a common interest who club together to promote and provide facilities to pursue that interest.

They are an efficient, democratic and economical means of funding, on a user pays basis, facilities for the benefit of the whole community, because club income cannot, by law, be distributed to its members, corporations or any individual. The facilities provided by clubs are essential to the quality of life in Victoria. The club industry, because of its unique structure, relieves the Victorian Government of much responsibility in providing these facilities.

Clubs achieve this through a painless application of the user pays principle by distributing revenue from popular income generating activities to pay for the facilities and services the clubs provide.

There are many types of clubs in Victoria which are truly representative of the social demographics of the State. Club members come from all walks of life. Clubs cover every sport, social, community, workers, ethnic, religious, and returned service interest that can be thought of in Victoria.

Clubs make contributions to the following types of organisations:

- Small sporting clubs
- Educational institutions
- Veterans affairs - welfare
- Welfare - support groups
- Charity organisations
- Service clubs, e.g. Rotary, Lions, APEX
- Hospital - hospice
- Police - fire brigade (9CFA and MFB)
- SES - ambulance
- Festivals, special events and cultural events
- Recreation - leisure
- Local community groups
- Small clubs and associations.

In many regional centres and smaller country towns, the "local club" is an essential part of the local community, providing employment for the local population, and trading with local small businesses.

The community as a whole is the beneficiary from a vibrant and viable gaming industry centred in clubs.

3. Overview of the Victorian Licensed Club Gambling Industry

At 30th June, 1998, there were 13,230 electronic gaming machines located in 302 licensed clubs and racing clubs in Victoria. There were 13,735 electronic gaming machines in 257 hotels. The average club had 43 electronic gaming machines.

By Ministerial Direction, clubs are allowed a maximum of 105 electronic gaming machines. There are 18 clubs with 105 electronic gaming machines and 28 clubs with the minimum of 5 electronic gaming machines.

Section 135 of the Gaming Machine Control Act 1991 (as amended) requires that not less than 87 per centum of the total amounts wagered each year at the venue, after deducting the sum of jackpot special prizes, is returned to the players. In practice the average return to the player is approximately 91 per centum.

In 1997-98 the club gaming venues received approximately 40 per centum of the Victorian electronic gaming machine turnover whilst the hotel gaming venues received approximately 60 per centum.

Clubs with electronic gaming machines allow access to their club by financial members of the club, a guest in the company of a member of the club and an authorised gaming visitor admitted in accordance with the rules of the club, provided the authorised gaming visitor resides more than 5 kilometres from the club in the metropolitan area and more than 10 kilometres from the club in the country area.

4. Regulatory Structure

To be granted a Venue Operators Licence in Victoria, a licensed club must hold a Club Licence under Section 48 of the Liquor Control Act 1987 (as amended) and a racing club must hold a Licence under Part 1 of the Racing Act 1958.

Section 13 of the Gaming Machine Control Act 1991 authorises a club venue operator to obtain from a gaming operator, gaming machines of a type approved by the Victorian Casino and Gaming Authority; and to possess gaming equipment; and to do all things necessarily incidental to carrying on the activities authorised by this Section.

Section 14 of the Gaming Machine Control Act 1991 authorises a gaming operator to:

- obtain from manufacturers and suppliers listed on the Roll approved gaming machines and restricted components
- manufacture approved gaming machines and restricted components
- supply approved gaming machines and restricted components to venue operators
- sell or dispose of gaming equipment with the approval of the Victorian Casino and Gaming authority
- to service, repair or maintain gaming equipment through the services of licensed technicians.

Section 19A of the Gaming Machine Control Act 1991 provides that a gaming operator must not be granted, and must not hold, a Venue Operator's Licence.

Under Section 12 of the Gaming Machine Control Act 1991 the Minister may from time to time give a direction in writing to the Victorian Casino and Gaming Authority as to the requirements for the conduct of gaming.

The following Ministerial Direction issued by the Minister for Gaming on 4th April, 1997, and still in force governs gaming in Victoria.

"I, Roger M Hallam, MLC, Minister for Gaming, pursuant to section 12 of the Gaming Machine Control Act 1991, hereby revoke all previous directions to the Victorian Gaming Commission and the Victorian Casino and Gaming Authority and in substitution therefore, hereby direct the Victorian Casino and Gaming Authority

- (a) that the maximum number of gaming machines permitted in the State to be available for gaming in all venues licensed under the Gaming Machine Control Act 1991, other than the Melbourne Casino, is 27,500; and

- (b) that, in respect of the 27,500 gaming machines permitted to be available for gaming in all licensed venues, other than the Melbourne Casino, the proportion of gaming machines to be located outside the Melbourne Statistic Division is not less than 20%, and
- (c) that in respect of the 27,500 gaming machines permitted to be available for gaming in all licensed venues, other than the Melbourne Casino, the maximum permissible number of gaming machines to be placed -
- (i) in restricted areas in the State is 100 with no bet limit applying; and
- (ii) in unrestricted areas in the State is five with a bet limit of \$2.00 to apply; and
- (a) that, in respect of the 27,500 gaming machines permitted to be available for gaming in all licensed venues, other than the Melbourne Casino, the proportion to be placed in premises, in respect of which -
- (i) a residential licence under section 46 of the Liquor Control Act 1987 or a general licence under Section 47 of the Act is in force, is 50%; and
- (ii) a club licence under section 48 of the Liquor Control Act 1987 or a licence under Part I, II or III of the Racing Act 1958 is in force, is 50%; and
- (a) that, in respect of the 27,500 gaming machines that are permitted to be available for gaming in all licensed venues, other than the Melbourne Casino, the proportion of gaming machines which each gaming operator is permitted to operate is 50%."

The two gaming operators TABCORP and Tattersalls are each permitted to operate 50 per centum of the 27,500 gaming machines permitted to be available for gaming in all licensed venues, other than the Melbourne Casino.

Under Section 136 of the Gaming Machine Control Act 1991; the gaming operator is entitled to $33\frac{1}{3}$ per centum of the total daily net cash balances, during a prescribed period of gaming machines of the gaming operator at that venue; the club venue operator is entitled to $33\frac{1}{3}$ per centum of the total daily net cash balances, during the period; and the State Government is entitled to $33\frac{1}{3}$ per centum.

The control of gaming is vested in the Victorian Casino and Gaming Authority which is charged with such issues as to:

- ensure suitability of participants and premises in the gambling industry
- ensure the honest conduct of gambling and minimise criminal influence and exploitation
- ensure fairness to players
- ensure that all monies are properly accounted for and distributed as prescribed
- identify the social and economic impact of gambling
- assist in the development of gambling policy and legislation
- assist the Minister for Gaming in discharging his statutory and other obligations.

5. Gaming Operator System

The LCAV is concerned that the vast majority of club gaming venue operators do not support the continuation of the system in its present form.

With all due respect to the constructive efforts of the two operators, TABCORP and Tattersalls, it is critical that the role they play be fully reviewed. Whilst it is recognised that the Victorian Government have contractual obligations to the operators and the operators have invested on the basis of these agreements, the club industry believe there is a need for change. Some of this change can possibly occur within the system of two operators, other changes may require special agreements with the operators. More cost effective provision of machines and network service, allowing greater venue returns, is crucial to the long term viability of the industry.

The two operators system involves the highest cost in the provision of gaming machines and network service in Australia. This wealth is directed away from the community clubs. Clubs are not in a position to fully control the percentage return to players and the normal competitiveness through machine choice is negated. Clubs have had player returns dictated by the gaming operators. Venues are not able to fully control their destiny. Gaming becomes a matter of commission earning, with earnings strongly dictated by club location. Good management is somewhat stifled and not sufficiently rewarded. The two operators become powerful controllers of club fortunes. A degree of compulsory turnover levels for each machine, leading to removals for poor turnover per machine (by operator standards) is one example of this.

The two operator system is dictating a stereotyped gaming sub-structure in the gaming venues. The operators totally control the way in which gaming is conducted. Few variances can be negotiated with the operators who hold the power through promotional revenue. Significant variation of machine type is not an option on offer to gaming venues, yet this is a key managerial skill in interstate venues. Wide selection of machine type, coupled with venue determination of player returns per machine, enables clubs to respond to their patrons' needs. The current system denies clubs the right to manage their club's services to meet the needs of the patrons and the club.

It is acknowledged that some clubs have indicated advantages in the assistance by the operators to clubs lacking strong management and sound understanding of gaming. Another distinct advantage of the two operator system has been the provision of a network control system that has the faith of the Government, public and venues. Continued good faith in the control system is essential to the continuation of gaming.

Many clubs insist that they be offered the choice of purchasing or leasing machines. Although a controversial request, it is seen as a critical element of venue management. Interstate venue comparisons highlight the need to offer these alternative sources of machines.

6. Venue Operators

The LCAV is aware that the Victorian Government is under strong pressure from the commercially orientated gaming operators and the hotel industry to dismantle the 50/50 ratio of electronic gaming machines between club venues and hotel venues.

On reflection the LCAV believes the ratio was always going to come under pressure because, on the whole, hotel venues are situated in better strategic locations than club venues, and the hotel venues are not hampered by the requirements to police the door of the venue.

In the past some criticism occurred on the slowness of Victorian licensed clubs to introduce gaming, in comparison to hotels. This is to be expected, given that licensed clubs operate under member and community guidance with executive committees reluctant to take risks with community property. The returns from gaming are so tight, considering the risk, that it is difficult to justify the initial investment. Licensed clubs are also required to ensure that the majority of their membership are committed to the changes required by gaming and this takes time. Licensed clubs are now much better prepared to advance gaming throughout club venues. There have been positive changes in club administration and committees are now more likely to accept the need for commercial decision making. Licensed clubs remain disappointed that the returns from gaming are so limited.

Licensed clubs are venues desired by the community and slow growth is appropriate for the stability of operations. Licensed clubs offer an effective basis for the further conduct of gaming in Victoria and have a social role to play. They will continue to improve this foundation. Better performing licensed clubs should also be utilised as a base for greater market expansion.

Experience in the ACT and NSW has shown that patronage of venues is attracted by improved facilities, value in food service, reasonably priced liquor service and good entertainment. This attracts gaming patrons and revenue is achieved from gaming, rather than the concept that gaming attracts patrons who then provide revenue through the utilisation of other clubs services. Gaming revenue returns are essential to create, promote and subsidise the necessary facilities, services and welfare activities.

Venues in Victoria, other than clubs, hotels, or the casino must continue to be excluded from the gaming machine industry, these include reception centres, restaurants, shopping centre taverns and bingo halls. These venues are inappropriate for the conduct of gaming.

Having made a substantial investment in facilities, clubs have no security of tenure over the electronic gaming machines. Both Tattersalls and TABCORP may pull machines out of venues when their turnover is judged too slow and not commercially viable. This is causing considerable concern in the club industry. Individual clubs are worried as to what their club's future is, as many have long term financial commitments based around gaming. The club also loses revenue from other services provided by the club, such as the bar and bistro.

7. Taxation

Club gaming venues in Victoria are disadvantaged by the high rate of taxation paid to the Victorian Government. The club gaming venues pay a rate of $33\frac{1}{3}$ per centum on the daily net cash balance. In the other Australian States the tax is paid on a sliding scale, starting as low as 1% and progressing as high as 45 per centum, depending on the size of the gaming venue. The Victorian gaming tax system is regressive as it does not differentiate between the small and large venues.

The combination of the huge monopoly rents provided to its gaming operators plus a substantially higher tax rate than imposed on clubs in other Australian States has an obvious and crushing effect on the gross margins received by clubs in Victoria. These lower gross

margins understate the effect on club viability and the ability to provide facilities and support since the proportional differences in net margins (after allowance for labour costs and other club expenses) are higher again.

To compound this situation, the Australian Taxation Office advised the Victorian club industry, in October 1997, that due to the structure of the Victorian gaming industry the income from electronic gaming machines is derived by the gaming operator and not the club venue operator. As such, it is the view of the Australian Taxation Office that the proportion of a club's gaming revenue which is derived from its members should be fully assessable for Company Tax purposes. Previously the proportion of club gaming revenue derived from the club members was considered to be covered by the Mutuality Principle, and was not subject to Company Tax.

Investigation by the LCAV has revealed that over 60 non-RSL licensed clubs in Victoria could be drastically affected by any decision of the Australian Taxation Office to retrospectively apply full tax liability on gaming machine revenue derived by licensed clubs in Victoria.

There is also a possibility that close to 70 RSL clubs could also be affected, although RSL State Headquarters are separately negotiating with the Australian Taxation Office in an attempt to obtain total tax exemption.

The Australian Taxation Office has indicated that in their view only club gaming venues that have a "Sporting Club Exemption" from the Australian Taxation Office will be free from the proposal to both retrospectively and prospectively tax club gaming venues.

There have been protracted negotiations between the LCAV and the Australian Taxation Office, and the most recent proposal from the Australian Taxation Office is that clubs be retrospectively assessed for the 1996/97 year and prospectively assessed for the 1997/98 year and there onwards. Many clubs have already advised the LCAV that the ATO proposal would lead to the demise of the "local club" as they would not have the funds to meet the proposed tax liability. Those clubs that survive will have no option but to cut employment, and withdraw business from the local small businesses that supply them. In many cases the shock waves will translate to the entire local community, staff and club members. It will force the downgrading of facilities and services.

The LCAV is concerned that if the Australian Taxation Office proposal for full assessability of gaming machine revenue is imposed on the club gaming venue, that has previously applied the 50 per centum partial Mutuality Principle to its gaming and other income, then the taxable income of the club will be greater when compared to that of a hotel.

Example club as discussed:

	Gaming	Bar	Restaurant	Wagering	Administration	Taxable Income
	\$	\$	\$	\$	\$	\$
Club	800,000	50,000	(35,000)	(40,000)	(300,000)	475,000
Club - 50% Mutuality	400,000	25,000	(17,500)	(20,000)	(\$150,000)	237,500
Club - 50%						

Mutuality except gaming	800,000	25,000	(17,500)	(20,000)	(150,000)	637,500
Hotel	800,000	50,000	(35,000)	(40,000)	(300,000)	475,000

8. Social Impact

Gaming is part of the leisure and entertainment enjoyed by Australians every day, but we read daily in the newspapers of concerns over how gambling is affecting the lives of some Victorians.

In 1997 the Victorian Casino and Gaming Authority commissioned a study into the "Definition and Incidence of Problem Gambling, including the Socio-Economic Distribution of Gamblers". The study found that community surveys of problem gambling in different Australian States show that this at risk group of problem gamblers ranges between 1 per centum and 3 per centum. The interviews with the key stakeholders demonstrated that there was significant community and industry concern about the harm that was arising from people's gambling and an awareness of the variety of services and strategies in place in Victoria to address them.

The club industry in Victoria believes that it has acted responsibly by recognising the problem and putting measures in place to assist patrons who may have gambling problems.

In late 1996, the Victorian Gaming Machine Industry, consisting of Australian Hotels and Hospitality Association (Victoria), Licensed Clubs' Association of Victoria, Crown Limited, TABCORP and Tattersalls, developed a self-regulatory Accord and a number of Codes of Practice. The Accord and Codes were launched on 5th February, 1997, and came into operation on 17th February, 1997.

A Working Group consisting of representatives of the signatories to the Accord has been responsible for the implementation and operation of the Accord and Codes.

The signatories made a decision to carry out a review and evaluation of the Accord and Codes after they had been in operation for a period of six months.

The review and evaluation of the implementation and initial operation of the Victorian Gaming Machine Industry Accord and the Codes of Practice has provided the Working Group with valuable information as the industry adopts a self-regulation model. The task of implementing such a system, the first of its kind in Australia, has required considerable work. The industry is pleased with the initial effort but recognises there is a need for further work to be done.

The industry has:

- Maintained dialogue and worked with interested community groups and problem gambling support services.

- Established a workable, credible Independent Resolution Process.

- Introduced "Responsible Service of Gaming" training for venue staff.

- Acknowledged that a small percentage of patrons may experience problems associated with gambling and has made a commitment to assisting these patrons.

Established a self-exclusion process from gaming venues that has patron acceptance.

The gaming machine industry in Victoria led the way with the introduction of its self regulatory Codes of Practice and has been the first State to carry out such a review and evaluation. However, the industry accepts more can be done and will be undertaken in the future.

The Codes make up an Accord between the key gaming machine industry participants by which they commit to the principles of self-regulation, consultation and timely and effective handling of complaints.

The Accord is in five parts:

- The Gaming Machine Industry Accord;
- The Gaming Operators' Code of Practice;
- The Venue Operators' Code of Practice;
- The Advertising Code of Ethics, and
- The Crown Code of Practice.

The Codes are "a first" in voluntary self-regulation in Australia and lead the way for other Australian jurisdictions in this area. The ACT has already launched "Responsible Gaming: A Voluntary Code of Practice for Australian Capital Territory" in August 1997 and NSW is in the process of adopting similar Codes. Tasmania has also launched a Code of Practice. The Codes of Practice operate in conjunction with all existing Government legislation and regulation.

The Accord binds the signatories to their respective Codes of Practice. The interlocking nature of the Codes also means that the signatories support other Accord signatories in their commitments.

An important keystone of the Accord is the Independent Complaints Resolution Process. The Working Group believed that the establishment of a credible process was central to any ongoing operation of the industry's self-regulation. The Working Group was also conscious that at the announcement of the Accord there would be an enormous task in ensuring its appropriate implementation. It spent considerable care and time in establishing and then fine tuning this process.

The process is now in place and works. The Working Group believes that it provides any complainant with the appropriate surety that the matter will be dealt with in an appropriate arms length fashion if the complain cannot, in the initial stage, be resolved between the parties.

The Victorian Gaming Machine Industry Secretariat plays an important role in providing information and in the facilitation and conduct of the complaints process on behalf of the industry. Many of the complaints have consumed considerable time possibly because this is a new operation.

The Secretariat has operated a freecall telephone number (1800 641 503) and collected relevant call data for the period since the Codes of Practice became operational on the 17th February, 1997. Quantitative data has been collected about initial telephone inquiries and registered written complaints.

"Initial telephone inquires" are defined as inquiries pertaining to the making of a complaint. Where the caller wishes to make a complaint and is willing to identify personal details, information is forwarded about the Codes of Practice, the Independent Complaints Resolution Process and a complaint form on which a complaint may be registered.

Some callers wish to remain anonymous. In these situations their complaint does not proceed any further through the Independent Complaint Resolution Process. Details of complaints are included in a data base and, where relevant, forwarded to the nominated respondent as a courtesy and for any appropriate attention.

"Written complaints" are defined as those complaints which are registered with the Secretariat, generally by mail, and proceed into the Independent Complaint Resolution Process. Complaint forms can be obtained from the Secretariat or from a gaming machine venue.