SELECT COMMITTEE
OF THE
LEGISLATIVE COUNCIL
ON
GAMING LICENSING

FINAL REPORT

MAY 2008
3.3.1 Meeting between the then Premier, Hon. Steve Bracks and Tattersall’s Board - 19 February 2003 ................................................ 42
3.3.2 26 November 2003 meeting between Tattersall’s and Hawker Britton lobbyist Hon. David White ....................................................... 50
3.3.3 December 2003 Meeting in Lorne between Hon. Steve Bracks and Hon. David White ............................................................................... 50
3.3.4 Tattersall’s Decision to become a Publicly Listed Company .......... 55
3.3.5 Hawker Britton Lobbying Issues ......................................................... 57
3.3.6 Success Fee ....................................................................................... 58
3.3.7 Prohibited Contact .............................................................................. 60
3.3.8 Preferential Contact between the Government and Hawker Britton.... 61
3.3.9 Issues Relating to Intralot ................................................................. 63
3.3.10 Role of the Probity Auditor ............................................................... 66
3.4 Concluding Comments With Respect to Lotteries Licensing Process ...... 69

CHAPTER 4: ELECTRONIC GAMING MACHINES............................................... 71
4.1 Electronic Gaming Machine (EGM) Licensing ............................................ 71
4.1.1 Background to Victoria’s Gaming Machine Arrangements ................. 72
4.1.2 Review of Electronic Gaming Machines ............................................. 74
4.1.3 Post-2012 Gaming License Arrangements ......................................... 77
4.1.4 Select Committee Evidence ................................................................ 77
4.1.5 Implications of the Gambling and Lotteries Licence Independent Review Panel ................................................................. 83
4.2 Gaming Machine Legislative and Regulatory Framework ....................... 84
4.2.1 Gambling Regulation Act 2003 ........................................................... 84
4.2.2 Machine Specification ......................................................................... 86
4.2.3 Role of Victorian Commission for Gambling Regulation ................. 87
4.2.4 Gaming Premises and Machine Approval Process ........................... 88
4.2.5 VCAT Appeal Process ........................................................................ 89
4.2.6 Regional Caps .................................................................................... 90
4.2.7 Role of Local Government in Location and Density of Gaming Venues and Machines ................................................................. 94

CHAPTER 5: PROBLEM GAMBLING ................................................................ 97
5.1 Introduction .............................................................................................. 97
5.2 Incidence of Problem Gambling .............................................................. 98
5.2.1 Prevalence Rates ............................................................................. 100
5.3 Victorian Government Problem Gambling Policies ............................ 103
5.4 Select Committee Evidence .................................................................. 106
5.4.1 Destination Gaming / Volume of Electronic Gaming Machines .... 106
5.4.2 Product Safety & Consumer Protection ............................................ 108
SELECT COMMITTEE ON GAMING LICENSING

Committee Members

Mr Gordon Rich-Phillips – Chairman
Member for South Eastern Metropolitan Region

Mr Matthew Viney – Deputy Chairman
Member for Eastern Victoria Region

Mr Greg Barber
Member for Northern Metropolitan Region

Mr Damian Drum
Member for Northern Victoria Region

Mr Matthew Guy
Member for Northern Metropolitan Region

Mr Peter Kavanagh
Member for Western Victoria Region

Mr Martin Pakula
Member for Western Metropolitan Region

Committee Staff

Mr Richard Willis – Secretary to the Committee

Mr Anthony Walsh – Research Assistant

Address all correspondence to –

Council Committee Office
Department of the Legislative Council
Parliament of Victoria
Spring Street
EAST MELBOURNE VIC 3002

Telephone: (03) 9651 8696
Facsimile: (03) 9651 6799
Email: richard.willis@parliament.vic.gov.au
CHAIRMAN’S FOREWORD

I am pleased to present the Final Report of the Legislative Council Select Committee on Gaming Licensing.

Over the past 15 months the Committee has undertaken a wide ranging inquiry into gambling matters focussing on the recent lotteries licensing process, the post-2012 arrangements for Electronic Gaming Machine operations, problem gambling and the Community Support Fund.

As reported previously, the Government has attempted to frustrate the Committee’s investigations by blocking access to evidence. Issues of the relative powers of the Parliament to request and the Government to deny access to documents and other evidence remain unresolved.

In relation to the lotteries process the Committee investigated a number of allegations of impropriety. While insufficient evidence was obtained to prove or disprove the allegations it is clear that the probity sign offs the Government relied upon were an inadequate assurance that no impropriety had occurred in the wider process.

The Electronic Gaming Machine (EGM) inquiry notes a number of issues arising from the Government’s decision to end the dual operator model for EGMs post-2012. In particular the capacity of the Victorian Commission for Gambling Regulation to ensure the integrity of operations at hundreds of venues and to implement a new central monitoring system were of concern.

The Committee rejected the Government’s claim that the prevalence of problem gambling in Victoria has halved, and has called for the introduction of consistent and transparent trend monitoring data. The Committee also noted the best-practice approaches to minimising gambling relating harm being trialled in Canada and New Zealand as a possible way forward for Victoria.

I would like to thank those parties who made submissions to the Committee and appeared as witnesses at public hearings. The Committee appreciates their substantial efforts.

This Inquiry was particularly broad and complex and I would like to thank the Committee members for their sustained work and commitment to the task.

Finally, on behalf of the Committee I would like to thank the Committee Secretary Mr Richard Willis, and the Research Assistant Mr Anthony Walsh, for their hard work on this Inquiry over the last 15 months.

Gordon Rich-Phillips MLC
Chairman
COMMITTEE FINDINGS

FINDING 2.1

Significant disagreement exists between the Legislative Council and the Government regarding the power of the Legislative Council and its committees to compel the production of documents and papers.

It is likely these matters will only be resolved by judicial determination.

FINDING 2.2

The Government made a broad claim of Executive privilege which inhibited the Committee’s gathering of evidence.

The breadth of the Government’s claim far exceeded the parameters laid down in the legal opinion the Legislative Council obtained from Mr Bret Walker SC.

It is likely that this matter will only be resolved by judicial determination.

FINDING 2.3

Despite repeated requests, Mr Geoff Walsh of Pitcher Partners, failed to provide to the Committee the information which he had undertaken to provide on notice.

FINDING 2.4

The Committee was inhibited in gathering evidence, both documentary and verbal, by broad claims of Executive privilege, statutory confidentiality, and commercial-in-confidence.

The inability to gather complete evidence limited the Committee’s requirement to fully investigate the matters referred to it.
FINDING 3.1

Due to a number of unforeseen issues within the lottery licence process there was a delay. At all times the Government kept registrants and applicants abreast of delays within the provisions of the Gambling Regulation Act 2003.

FINDING 3.2

The Minister’s announcement of 7 March 2007 that the process was delayed due to the completeness of the VCGR reports was misleading and did not reflect the Government’s true concerns.

FINDING 3.3

The cost of the additional VCGR evaluation of the two applicants was borne by taxpayers. This was estimated at $200,000 per applicant.

FINDING 3.4

The delays in the licensing process and the resultant extension to Tattersall’s existing licence meant that the Government had to forego a licence premium payment in respect of lottery operations in the 2007-08 financial year.

FINDING 3.5

No formal records of the Tattersall’s Board meeting of 13 February 2003 exist to conclusively prove what was discussed between Mr Bracks and the Board.

FINDING 3.6

Conflicting views exist among former Tattersall’s Board members as to the nature of discussions at the meeting, and as to whether any issues were excluded from discussion.
FINDING 3.7

The refusal by Mr Bracks to give evidence to the Committee inhibited the Committee’s investigation of this matter. The Committee notes that at no stage during the taking of evidence did any witness make a specific allegation against Mr Bracks that he would have been required to rebut.

FINDING 3.8

The Committee concludes that while it is probable the meeting discussed the lotteries licence and gaming review processes in general terms, it has received no evidence that commitments were given to Tattersall’s.

FINDING 3.9

Mr White dined with (then Premier) Mr Bracks in December 2003. In February 2004 Mr White reported this meeting to Tattersall’s Trustees to reinforce the strength of his contacts in Government.

FINDING 3.10

At the February 2004 meeting Mr White informed the Trustees that it was the Government’s position that Tattersall’s should become a publicly listed company if it wished to renew its gambling licences.

FINDING 3.11

Mr Peter Kerr formed the view that Mr White’s message to the Trustees (Finding 3.10) arose from his dinner with Mr Bracks. The Committee is unable to determine if that was an intentional inference by Mr White.
FINDING 3.12

The refusal by Mr Bracks to give evidence to the Committee inhibited the Committee’s investigation of what discussions took place at the dinner with Mr White.

FINDING 3.13

The Committee’s knowledge from first hand accounts of what transpired at the dinner between Mr White and Mr Bracks is limited to the evidence given by Mr White and Mr Bracks’ public comments. On that basis, the Committee can reach no definitive consensus as to what transpired at the dinner.

FINDING 3.14

The Government’s preference for Tattersall’s to be a publicly listed company, a desire to provide liquidity to the Tattersall’s beneficiaries, and the insistence of the Chief Executive Officer Mr Duncan Fischer, were all factors in the Board’s decision to publicly list the business in 2005.

FINDING 3.15

Tattersall’s agreed to pay a success fee to Hawker Britton on the basis that Mr White would undertake activities above and beyond those of the on going consultancy, contrary to the evidence provided by Mr White, and with the aim of securing an exclusive lottery licence for Tattersall’s. This agreement was entered into at a time when the tender rules strictly prohibited, under penalty of disqualification, any lobbying of the type Mr White and Hawker Britton were to be engaged in.

FINDING 3.16

The Committee received no evidence to suggest that the Lotteries Tender Strategy was acted upon after the commencement of the formal lotteries licensing process.
FINDING 3.17

Through Hawker Britton, Tattersall’s received access to one piece of Government information in the morning of and prior to its public release.

This places in doubt the probity of the process as this breach of the tender process rules was never investigated by the Probity Auditor, the VCGR or the Steering Committee.

The Committee also notes the refusal of any Government Minister or Member, and the refusal of the Government to allow Ministerial staff to appear before this Committee has directly hampered the Committee’s ability to investigate this breach.

FINDING 3.18

The Gambling Licences Review team did not investigate public allegations of prohibited contact. If these allegations were true they constituted a breach of the terms of the ‘Brief.’

FINDING 3.19

Intralot expressed concerns to the Gambling Licences Review team regarding the protection of its reputation and breaches of the tender rules. Intralot did not pursue its concerns with the Select Committee.

FINDING 3.20

The Committee took evidence from numerous witnesses and each one was asked about the possibility of a smear campaign being undertaken by Hawker Britton on behalf of Tattersall’s. The Committee received no evidence that Hawker Britton engaged in any such activity.
FINDING 3.21

The Probity Auditor did not, and the probity plan did not require him to, investigate probity allegations relating to parties and activities outside the GLR team.

FINDING 3.22

The Probity Auditor’s ‘sign-off’ does not extend to the allegations that were investigated by the Committee.

FINDING 3.23

The nature of the allegations against the Government, Tattersall’s and Hawker Britton warranted investigation by the Select Committee.

FINDING 3.24

Due to a lack of conclusive evidence the Committee makes an open finding with respect to the allegations against the Government, Tattersall’s and Hawker Britton.

FINDING 4.1

The decision to move away from a two operator system is consistent with the views of many of the witnesses who gave evidence to the Committee. However, this may place substantial new demands on the VCGR in maintaining the ongoing integrity and probity of the EGM network.

FINDING 4.2

The decision to reduce the term of the EGM licences post-2012 is welcomed.
FINDING 4.3

The proposed venue based model will require changes in the way network wide initiatives, including measures to reduce gambling related harm, are implemented and may increase complexity.

FINDING 4.4

Operating conditions for EGMs should continue to be specified in legislation, regulation and by ministerial direction rather than set in the licences. This will preserve flexibility to address changing circumstances.

FINDING 4.5

The shift away from the two operator model will require the development of a new central monitoring system by the VCGR to cover all gaming venues (currently 525). An independent monitoring system will assist in implementing measures to reduce gambling related harm, and is essential to the operation of a player pre-commitment system.

Development of such a system will require substantial resources to be provided to the VCGR, and substantial lead time ahead of the post-2012 licences coming into operation.

FINDING 4.6

In some cases, the views of local communities have not been accorded sufficient weight by VCAT in assessing applications for EGMs. Cognisance of the recent Court of Appeal decision should ensure this is addressed.

FINDING 4.7

The role of local government authorities is appropriately recognised by the requirement for venue licence applicants to obtain a planning permit. However, the
capacity for local government to influence outcomes under the new planning provisions is yet to be fully tested.

FINDING 5.1

Problem gambling prevalence rate data from the 1999 Productivity Commission study and the 2003 Gambling Research Panel longitudinal study are not comparable, and should not be used to suggest a halving of the problem gambling prevalence rate in Victoria.

FINDING 5.2

The Committee recommends that the Government commission independent open and transparent research to quantify the full extent of gambling related harm in Victoria. In particular, consistently based and measured trend data is required to monitor changes in the prevalence of gambling related harm.

FINDING 5.3

The New Zealand Gambling Act 2003 contains significant measures to address gambling related harm and should be examined by the Victorian Government.

FINDING 5.4

A reduction in EGM accessibility through fewer, less accessible venues would probably help to reduce gambling related harm. Accordingly, the Committee recommends the Government investigate destination gaming as it undertook to do in its 2006 ‘Taking Action on Problem Gambling’ strategy.

FINDING 5.5

The awarding of individual post-2012 EGM licences to venues must have regard to the number and geographical distribution of venues in local areas.
FINDING 5.6

Gambling related harm can be reduced by slowing the rate of play on EGMs. This can be achieved by the slowing down of spin rates, a reduction in maximum number of betting lines and a reduction in the maximum number of credits that can be bet per line.

FINDING 5.7

The *Gambling Regulation Act 2003* should be amended to limit EGM note acceptors to an amount less than $50.00.

FINDING 5.8

The prospect of winning large linked jackpots has the potential to encourage behaviour which leads to gambling related harm. Less emphasis should be placed on large jackpots in favour of more frequent smaller payouts.

FINDING 5.9

Consistent with the Gaming Machine National Standard, the VCGR should ensure that no ‘near miss’ technology is employed in EGMs in Victoria.

FINDING 5.10

Signage advising patrons of the probability of losing and that EGMs should be used for entertainment only should be displayed on each EGM.

FINDING 5.11

Regulations against advertising EGMs or other forms of gaming either at EGM venues or the Melbourne casino, should be enforced.
FINDING 5.12

The trial of pre-commitment technology for EGM operation in Nova Scotia, Canada has produced generally positive results in terms of reduction in player losses and time spent using EGMs.

FINDING 5.13

Mandating the availability of pre-commitment technology in post-2012 EGMs is welcome. However, careful consideration should be given as to the impact of mandating the use of pre-commitment technology on casual and recreational EGM users.

FINDING 5.14

The proposed removal of ATMs from gaming venues is an important measure to reduce the impact of problem gambling.

This initiative should be implemented as soon as practicable.

Criteria for granting rural exemptions to the ‘no-ATMs in gaming venues’ policy must be transparent, and allowed only where there is genuinely no feasible alternative.

FINDING 6.1

Community Support Funding should not limit an organisation’s ability to undertake independent gambling related advocacy.

FINDING 6.2

The Community Support Fund suffers from a lack of transparency. To address this, the Department of Planning and Community Development, instead of only listing allocations in the Annual Report, should also publish Annual Accounts, providing
balances, cashflows and an operating statement for the CSF. These accounts should also be subject to a financial audit by the Auditor-General.

FINDING 6.3

The *Gambling Regulation Act 2003* appropriates revenue to the Community Support Fund for specific purposes as detailed in the Act. As such, CSF monies should not be used for general government programs historically funded through the Consolidated Fund.

FINDING 6.4

Net community benefit should be afforded a higher weighting than geographic source of funds when allocating CSF monies for the purposes prescribed in the *Gambling Regulation Act 2003*.

FINDING 6.5

The Committee acknowledges the inherent role of clubs in providing community benefit. The Committee supports the retention of a Community Benefit Statement system for clubs rather than a shift to local government controlled trusts.

FINDING 6.6

The Committee believes that the criteria for expenditure to be included on Community Benefit Statements has been inadequate, and welcomes the tightened criteria to apply from 2008-09.

The application of the new criteria should be monitored for ongoing effectiveness over the next three years and as a guide to a new community benefit framework for the post-2012 EGM licences.
CHAPTER 1: INTRODUCTION

1.1 Terms of Reference

1. On 14 February 2007, the Legislative Council resolved to appoint a Select Committee of seven members to inquire into and report on:

a. the conduct, processes and circumstances (including but not limited to the probity thereof) pertaining to post-2008 public lotteries licensing in Victoria pursuant to the Gambling Regulation Act 2003 (the Act) and any related matter;

b. the conduct, processes and circumstances (including but not limited to the probity thereof) pertaining to the extension of Tattersall's public lotteries licence until 30 June 2008;

c. the conduct, processes and circumstances (including but not limited to the probity thereof) pertaining to post-2012 Electronic Gaming Machine (EGM) operator licensing in Victoria pursuant to the Act, and any related matter;

d. the adequacy or otherwise of the legislative and regulatory framework pertaining to the number, location, distribution and specification of EGMs in Victoria and any related matter;

e. the effectiveness or otherwise of current measures to minimise and address the incidence of problem gambling in Victoria, the merits of alternative measures and any related matter;

f. the financial position of the Community Support Fund (the Fund) described in the Act, including, but not limited to:

   i. payments into the Fund under section 10.3.2 of the Act (and its predecessors);

   ii. payments from the Fund under section 10.3.3 of the Act (and its predecessors); and

   iii. the criteria, processes and methodology for the selection of projects funded by payments referred to in sub-paragraph (ii) above; and

   iv. the community benefit statements prepared by those venues not required to contribute to the Fund;

   g. any other associated matters dealing with gaming licensing issues.
1.2 Inquiry Process

2. The Committee’s investigations, including public consultation, comprised three stages:

Stage 1: Call for Written Submissions (March – May 2007).
Stage 2: Parts (a) & (b) of Reference - Lotteries Licence investigations including: Summons for Papers (March 2007) and Public Hearings (August – October 2007).
Stage 3: Parts (c) to (g) of Reference – Electronic Gaming Machine operator licensing and legislative framework, problem gambling, Community Support Fund, and other associated matters (December 2007 – March 2008).

3. The Committee advertised its full terms of reference calling for public submissions in early March 2007. Advertisements were placed in *The Age* and *Herald-Sun* newspapers on 3 March 2007 and in the *Financial Review* on 5 March 2007. Written invitations to make a submission were also sent to a wide range of government agencies, private organisations and individuals. The Committee received a total of 52 written submissions as at the close of submissions on 22 May 2007 (see Appendix I).

4. On 13 March 2007, the Committee resolved to summons documents from a number of individuals, government agencies and private organisations relating to public lotteries and gaming licensing processes.

5. Between 23 March and 30 March 2007, 39 separate summonses were issued by registered post to recipients listed in Appendix II. Recipients of summonses can be grouped under the following categories:

- Relevant Members of the Legislative Assembly;
- Relevant Government Departments;
- Victorian Commission for Gambling Regulation;
- Lotteries Licence Review Steering Committee;
- Chief Commissioner of Victoria Police;
- Solicitor-General for Victoria;
- Tattersall’s Limited (including current and former executives and trustees);
• Intralot & Euro Pacific Strategies;
• Tabcorp Holdings Limited;
• Pitcher Partners Consulting Pty Ltd;
• Hawker Britton; and
• Australian Securities Investment Commission (ASIC).

Recipients of summonses were given 21 days in which to respond.

6. On 17 July 2007, the Committee tabled a First Interim Report, in which it reported issues relating to the non-compliance of summonses, together with a legal opinion sought by the Legislative Council regarding the Council and Committee’s powers to order the production of documents.

7. Separate to the Committee’s powers and investigations, the Legislative Council pursued the production of documents pertaining to the lottery licence process in the latter part of 2007.

8. Between 3 August 2007 and 24 October 2007, the Committee held public hearings in relation to parts 1 (a) and (b) of its terms of reference, with evidence received from 18 witnesses. A full list of witnesses is provided in Appendix III.

9. On 10 October 2007, the Committee tabled its Second Interim Report, in which it presented a further legal opinion regarding to the Committee’s powers to call for documents when statutory secrecy is claimed.

10. On 21 November 2007, the Legislative Council resolved to extend the Committee’s reporting deadline, with its final report to be tabled by 9 May 2008.

11. Between 11 December 2007 and 3 March 2008, the Committee held public hearings in relation to parts 1 (c) to (g) of its terms of reference. Evidence was taken from 48 witnesses (see Appendix IV).
CHAPTER 2: CONSTRANTS ON THE COMMITTEE’S INVESTIGATIONS

12. As outlined in the Committee’s First Interim Report tabled in July 2007, the Committee encountered a number of impediments in gaining access to documents and papers relevant to the lottery licensing process. The Committee was similarly impeded in obtaining verbal evidence from government and non-government witnesses throughout the lottery licensing public hearings held in August-September 2007.

2.1 Summons for Documents

13. Between 23 March and 30 March 2007, a number of summonses were issued to various government and non-government individuals seeking documents that related to:

- the public lotteries licensing process (including probity investigations);
- the extension of Tattersall’s lotteries licence;
- corporate diaries for the relevant period, and
- communication between the witness and relevant Ministers, Departments, Victorian Commission for Gambling Regulation (VCGR), Lotteries Licence Review Steering Committee (LLRSC), the Victoria Police and any other person.

A list of the individuals/organisations to which summonses were issued is located in Appendix II.

14. The Attorney-General advised the Committee that recipients of summonses from Government departments would decline to provide certain documents to the Committee on the basis of one or more of the following:

- Executive privilege;
- confidentiality provisions (10.1.30, 10.1.31 & 10.1.34) under the Gambling Regulation Act 2003 (the confidentiality provisions of this Act are located in Appendix V);
- commercial-in-confidence; and/or
• legal professional privilege.

15. Other non-government individuals in receipt of a summons, including Tattersall’s Limited, and Intralot, also refused to provide various documents on the grounds of confidentiality provisions under the *Gambling Regulation Act 2003* and commercial-in-confidence.

16. The Committee’s July 2007 Interim Report provided details of a legal opinion obtained from Mr Bret Walker SC in relation to the powers of the Legislative Council and its select committees to order the production of documents. A further legal opinion from Mr Walker specifically dealing with statutory secrecy provisions was tabled in the Legislative Council by the Committee on 10 October 2007.

17. Having presented an interim report to the Legislative Council on the non-production of documents and in view of the Government’s rejection of Mr Walker’s opinion on the powers of the Council and committees to call for documents, the Committee was unable to take any further action with respect to non-compliance with summonses.

18. Independent of the Committee’s investigations, the Legislative Council, through a sessional order dealing with production of documents, pursued various VCGR documents relating to the lottery licensing process. To date the documents that were the subject of orders by the Legislative Council have not been provided by the Government.

19. On 5 November 2007, the Minister for Gaming wrote to the Committee confirming that while the Government was yet to provide a final response to the summonses, it would claim Executive privilege, as foreshadowed in earlier correspondence (see Appendix VI).

20. On 13 November 2007, Ms Penny Armytage, Secretary, Department of Justice, advised the Committee that the Department had completed the review of documents summonsed by the Committee. Ms Armytage advised the Department had complied with the Committee’s summons as far as
possible and that any documents withheld from the Committee was on the basis of the Executive privilege claim by the Minister for Gaming.

21. On 15 November 2007, Mr Grant Hehir, Secretary, Department of Treasury and Finance, advised the Committee that the review of the documents summoned by the Committee had been completed. After taking the Government’s claim of Executive privilege into consideration no further documents would be provided.

22. On 22 November 2007, Mr Terry Moran, Secretary, Department of Premier and Cabinet, advised the Committee that the Department would not be providing any further documents, as the remaining documents which had been withheld were the subject of the claim of Executive privilege.

**FINDING 2.1**

Significant disagreement exists between the Legislative Council and the Government regarding the power of the Legislative Council and its committees to compel the production of documents and papers.

It is likely these matters will only be resolved by judicial determination.

**2.2 Request for Members of the Legislative Assembly to give evidence**

23. Following a request from the Committee, on 18 July 2007, the Legislative Council, pursuant to Standing Order 18.03, resolved to send a message to the Legislative Assembly, requesting that leave be granted to the Hon. Steve Bracks MP, the then Premier; the Hon. John Brumby MP, the then Treasurer; the Hon. Daniel Andrews MP, the then Minister for Gaming; Mr Tim Pallas MP, Minister for Roads and Ports; and the Hon. John Pandazopoulos MP, to appear before the Select Committee to answer questions in relation to parts 1 (a) and (b) of the Committee’s terms of reference.
24. On the same day, the Legislative Assembly sent a message back to the Council refusing consent for its members to appear before the Committee.

25. The Committee does not possess the power to summons Legislative Assembly members to appear as witnesses. Accordingly, no further action was able to be taken with respect to obtaining evidence from the key Ministers involved in the lottery licence process.

2.3 Restrictions on Evidence received at Public Hearings

26. On 18 June 2007, the Committee resolved to invite selected individuals to give evidence under oath or affirmation in respect to parts 1 (a) and (b) of its reference dealing with the lottery licensing process. A list of witnesses is provided in Appendix III, and can be categorised into the following groups:

- Department of Justice / Lottery Licence Steering Committee;
- Victorian Commission for Gambling Regulation;
- Tattersall’s Limited (current and former executives);
- Former Tattersall’s trustees;
- Intralot;
- Pitcher Partners Probity Auditors; and
- Hawker Britton.

27. All invitations to give evidence, issued on 18 June 2007, were accepted.

28. Prior to giving evidence, a number of witnesses wrote to the Committee advising that their evidence would be limited by virtue of one or more of the following claims:

- Executive privilege;
- confidentiality provisions under the Gambling Regulation Act 2003;
- commercial-in-confidence; and/or
- legal professional privilege.

The Committee held public hearings over seven days between 3 August 2007 and 11 October 2007. All evidence was given under oath or affirmation.
2.3.1 Department of Justice

29. Prior to the commencement of the Committee’s public hearings with Government witnesses, the Minister for Gaming wrote to the Committee on 2 August 2007 reiterating the Government’s claim of Executive privilege and enclosing a Certificate. The Minister stated that the disclosure to the Committee of any of the matters in the Certificate would be ‘prejudicial to the public interest’, and had advised Government witnesses accordingly (see Appendix VII).

30. The Certificate included references to the following types of documents:

- Cabinet documents and information (including submissions and briefing papers);
- legal communications;
- material obtained on the basis that it would be kept confidential; and
- non-Cabinet deliberative information.

31. On 29 June 2007, Ms Penny Armytage, Secretary, Department of Justice wrote to the Committee on behalf on all Department of Justice witnesses advising that any evidence provided to the Committee would be constrained by the Code of Conduct for Victorian Public Sector Employees (No 1) 2007, the Public Administration Act 2004, and the confidentiality provisions in the Gambling Regulation Act 2003 (see Appendix VIII).

32. Witnesses from the Department of Justice advised the Committee at the commencement of their hearings on 3 August 2007 that they had received Ministerial direction to claim privilege in respect of matters identified in the Certificate.

33. During their evidence, some Department witnesses referred to various documents. The Committee’s request for a copy of these documents was subsequently refused on the basis of the claim of Executive privilege and confidentiality provisions in the Gambling Regulation Act 2003.
34. Subsequent legal opinion from Mr Bret Walker SC indicated that the statutory confidentiality provisions of the Gambling Regulation Act 2003 did not apply to the Legislative Council or its committees. An earlier opinion, also obtained from Mr Walker, indicated that claims of Executive privilege should be limited to those documents which would disclose the deliberations of cabinet.

35. The direction from the Minister placed public servants in the situation of conflict and where witnesses declined to answer questions on the grounds outlined in paragraph 30; the Committee did not pursue the matter further.

2.3.2 Victorian Commission for Gambling Regulation

36. On 28 June 2007, Prof Ian Dunn and Mr Peter Cohen of the Victorian Commission for Gambling Regulation (VCGR) wrote to the Committee accepting the invitation to give evidence. Both witnesses indicated that any evidence they provided to the Committee would be constrained by the confidentiality provisions (ss 10.1.30, 10.1.31 & 10.1.34) within the Gambling Regulation Act 2003 (See Appendices IX & X).

37. The witnesses from the VCGR advised the Committee that although the VCGR is not subject to ministerial direction, they would need to take account of the Minister’s view on the issue of Executive privilege. As such, the witnesses declined to answer some of the questions put to them by the Committee, either on this basis or due to confidentiality provisions in the Gambling Regulation Act 2003.

2.3.3 Probity Auditor - Pitcher Partners

38. Prior to his appearance before the Committee, Mr Geoff Walsh, Probity Auditor, wrote to the Committee on 29 August 2007 advising he would be unable to give evidence on matters that were subject to the claim of Executive privilege (see Appendix XI).
39. In his opening statement to the Committee Mr Walsh advised that he had been given direction by the Minister for Gaming regarding his answers to questions from the Committee:

Mr WALSH - ...I have also received correspondence from the Minister for Gaming that the information obtained in the course of providing probity practitioner services to the executive government is subject to deeds of confidentiality and Pitcher Partners contract, which oblige me to act in accordance with the government’s claim of Executive privilege. I am not authorised to disclose any protected information.¹

40. The Committee notes that Mr Walsh was a private contractor and not an officer in the public service. As such he was not bound by the Minister’s Certificate claiming Executive privilege.

41. Like many witnesses, Mr Walsh took questions on notice during his public hearing. The Committee notes that Mr Walsh is the only witness who subsequently failed to provide answers to questions taken on notice, and that unsuccessful attempts were made to obtain these answers from Mr Walsh.

**FINDING 2.2**

The Government made a broad claim of Executive privilege which inhibited the Committee’s gathering of evidence.

The breadth of the Government’s claim far exceeded the parameters laid down in the legal opinion the Legislative Council obtained from Mr Bret Walker SC.

It is likely that this matter will only be resolved by judicial determination.

¹ Mr G. Walsh, Executive Director, Pitcher Partners, Transcript of Evidence, 30 August 2008, p. 272.
FINDING 2.3

Despite repeated requests, Mr Geoff Walsh of Pitcher Partners, failed to provide to the Committee the information which he had undertaken to provide on notice.

2.3.4 Tattersall’s Limited

42. In their opening statements, witnesses from Tattersall’s Limited advised the Committee that they had received legal advice that based on the terms of the Lottery Licence Registration of Interest, Invitation to Apply, and the confidentiality provisions of the Gambling Regulation Act 2003, they would not be permitted to disclose certain information relating to the lottery licensing process.

43. The Committee notes that former employees of Tattersall’s Limited also indicated that it was not appropriate for them to disclose certain details claiming commercial-in-confidence.

2.3.5 Intralot Australia

44. On 28 August 2007, two days before Intralot Australia’s appearance at a public hearing, Intralot’s lawyers sent a letter to the Committee advising that Intralot would not be discussing matters relating to confidential commercial communications with the Crown, including details of Intralot’s lottery licence application (see Appendix XII).

2.4 Invitation to the Hon. Steve Bracks to give evidence

45. On 27 July 2007, the Hon. Steve Bracks MP announced his resignation both as Premier of Victoria and as Member of the Legislative Assembly for the district of Williamstown.
46. On 29 August 2007, the Committee resolved to send an invitation to Mr Bracks to appear before the Committee and give evidence with respect to the lottery licensing process.

47. On 12 September 2007, Mr Bracks wrote to the Committee declining to appear before it, arguing that he could not be compelled to give evidence by virtue of his former membership of the Legislative Assembly (see Appendix XIII).

48. On 8 October 2007, the Committee resolved to write back to Mr Bracks seeking a further explanation of his refusal and requesting he reconsider his position.

49. On 26 October 2007, Mr Bracks again declined to appear before the Committee and restated his grounds for declining the invitation (see Appendix XIV).

50. The Committee acknowledges that there is no definitive answer as to whether former Members are protected by immunity. It notes that House of Representatives Practice states:

Opinions differ over whether the immunity of Members and Senators from compulsion by the other House extends to former Members and Senators. Odgers asserts that it does not, citing the case of a former Treasurer and a former Prime Minister, no longer Members, being summoned to appear before a Senate committee in 1994. This question again arose in 2002 during the inquiry by the Senate Select Committee on a Certain Maritime Incident. Legal opinions provided to the committee and advice from the Clerk of House and the Clerk of the Senate did not agree on whether the former Minister for Defence, a former Member of the House, could be compelled to give evidence to the committee relating to his conduct as a Minister and Member. The view of the Clerk of the House was that the immunity probably extended to former Members. The committee accepted the view of the Clerk of the Senate, but decided not to summons the former Minister, stating that it believed the summons would be contested in the courts, incurring expense for the taxpayer and causing delay to the inquiry.²

51. No further action was taken to receive evidence from Mr Bracks.

² I.C.Harris (ed), House of Representatives Practice, 5th ed, Department of the House of Representatives, Canberra, 2005, p. 659.
2.5 **Conclusion**

52. The Committee notes the difficulty in comprehensively investigating its terms of reference given the restrictions placed on its evidence gathering.

---

**FINDING 2.4**

The Committee was inhibited in gathering evidence, both documentary and verbal, by broad claims of Executive privilege, statutory confidentiality, and commercial-in-confidence.

The inability to gather complete evidence limited the Committee’s requirement to fully investigate the matters referred to it.
CHAPTER 3: POST-2008 PUBLIC LOTTERIES LICENSING

3.1 Introduction

53. A key focus of the Select Committee’s investigations centred on delays and reported probity concerns with respect to the application process for the awarding of public lottery licences in Victoria post June 2007.

54. On 14 February 2007, the Legislative Council debated the establishment of the Select Committee and canvassed alleged probity concerns pertaining to the lotteries licence process as reported in an ABC Stateline program and in the Herald-Sun and The Age during November 2006.

55. The major concerns raised in the public domain and in Parliament, which led to the establishment of the Committee and formed the basis of its investigations, can be summarised as follows:

- Reasons for the granting of a 12 month extension to Tattersall’s lottery licence;
- The nature of discussions between the (then) Premier, the Hon. Steve Bracks MP, and the Tattersall’s Board in February 2003;
- Involvement of lobbyist the Hon. David White and Hawker Britton in the lottery licence process, including the nature of lottery related discussions Mr White allegedly had with Mr Bracks and Tattersall’s;
- The nature of Victorian Commission for Gambling Regulation (VCGR) reports to the Minister for Gaming in May 2006 dealing with lottery licence applications; and
- Advice provided to the Minister by the Victorian Solicitor-General that the VCGR report, findings and recommendations were inadequate and required further work, and in particular a reported suggestion that one of the applicants was not afforded natural justice.
3.2 Lottery Licence Process Background and Timelines

56. Tatts Group Ltd (Tattersall’s) and its predecessor entities have held an exclusive licence to conduct public lotteries in Victoria since 1954 with periodic extensions granted over that period. In June 2004, Tattersall’s public lotteries licence was extended for three years to 30 June 2007. Due to delays in the lottery licence review process outlined in this report, on 22 December 2006, Tattersall’s was granted a one year licence extension to 30 June 2008.

57. In 1998, a National Competition Policy Review of Victoria’s lotteries legislation proposed that the Government competitively tender the lotteries licences, and provide for two operator licences per product category and licence terms between 5-10 years.

58. The *Gambling Regulation Act 2003* provides the legislative framework for gambling in Victoria. Section 5.3 of the Act provides for the grant of public lottery licences. In particular, the Act sets out the following key stages:

- Registration of Interest – by notice in the Government Gazette the Minister invites eligible parties to submit a registration of interest (S 5.3.2A);
- Application process – short listed registrants invited to lodge an application for a lottery licence;
- VCGR Report – the Victorian Commission for Gambling Regulation must provide a written report to the Minister on each applicant’s reputation, technical, financial and commercial attributes; and
- Granting of Licences – upon receipt of the Commission’s Report, the Minister may determine to grant a licence application.

59. The Victorian Commission for Gambling Regulation (VCGR) came into operation on 1 July 2004 following the proclamation of the *Gambling Regulation Act 2003*. The Commission assumed responsibility for the regulation of gambling from the Victorian Casino and Gaming Authority, Director of Gaming and Betting and the Director of Casino Surveillance. These statutory entities ceased to exist as at 30 June 2004 along with the Office of Gambling Regulation, the administrative unit within the Department of Justice which assisted the aforementioned statutory entities.
3.2.1 Commencement of Review Process

60. On 13 July 2004, the Minister for Gaming announced the Gambling Licence Review (GLR) to review Victoria’s public lotteries, electronic gaming machine (EGM) and wagering licences. The review was to comprise two stages: the Lotteries Licence Review commencing July 2004; and the EGM, Club Keno and wagering licences review commencing in late 2005.

61. The Government established a GLR Steering Committee chaired by Ms Penny Armytage, Secretary, Department of Justice. A subordinate Lottery Licences Review Steering Committee (LLRSC) was established under the chairmanship of Mr Ross Kennedy, Executive Director - Gaming and Racing, Department of Justice. In addition to Mr Kennedy, an officer from each of the Department of Premier and Cabinet and the Department of Treasury and Finance were appointed members of the LLRSC. The steering committee was supported by the GLR team, which forms part of the Office of Gaming and Racing.

3.2.2 Lotteries Licence Review Issues Paper – September 2004

62. On 9 September 2004, the Minister for Gaming called for submissions from interested parties on the future arrangements for public lotteries in Victoria, and released the Lotteries Licence Review – Issues Paper prepared by the GLR team. Comment was specifically sought on:

- the dimensions and future of the lotteries market in Victoria;
- harm minimisation issues;
- regulatory arrangements;
- licence conditions and eligibility; and
- distribution systems.

63. At the close of submissions on 19 October 2004, 23 written submissions had been received. On 10 December 2004, non-confidential submissions were released publicly.
3.2.3 Public Lottery Licensing Information Paper – April 2005

64. On 15 April 2005, the Department of Justice released the Public Lottery Licensing Information Paper with the purpose of providing information on:

- the proposed public lottery licensing system;
- the proposed licensing process;
- the significant policy changes arising from the Lotteries Licence Review;
- lotteries and responsible gambling; and
- proposed legislative changes to the Gambling Regulation Act 2003.

65. The Information Paper outlined that the granting of the post-June 2007 licence(s) would follow a two-staged process:

- an initial Registration of Interest by interested parties; followed by,
- the issue of Invitations to Apply for a public lottery licence.

66. The Information Paper outlined a proposed timetable for the licensing process as follows:

- May-August 2005 – Registration of Interest process;
- September 2005 – February 2006 – Invitation to Apply process;
- Early 2006 – announcement of the outcome of the lottery licence application process and licence arrangements;
- 30 June 2007 – current public lottery licence expires; and
- 1 July 2007 – new licence(s) commence.

3.2.4 Registration of Interest Process

67. On 17 June 2005, the Minister for Gaming called for Registrations of Interest (ROIs) in the granting of a public lottery licence by notice published in the Victoria Government Gazette (S.113). ROIs were to be submitted by 13 July 2005. The notice (or “Brief”) outlined the:

- procedure for registering;
- minimum standards to be met by a registrant;
- information required to be provided by a registrant;
matters concerning a registrant on which VCGR is required to report; and
other matters relevant to a Registration of Interest.

68. Of interest to the Committee’s investigations are section 2.6.2 of the Brief dealing with prohibited contact and section 5.1.1 of the Brief which sets out matters concerning a registrant on which the VCGR will report to the Minister. Briefly, these matters related to probity, the commercial and financial viability of a registrant, and the technical capability of a registrant to conduct a public lottery.

69. Section 3.12.2 of the Brief required each party submitting an ROI to pay the costs associated with the VCGR evaluating the ROI. This cost was estimated at $25,000 for each ROI.

70. By the 13 July 2005 closing date, five ROIs were received. In late August 2005, the VCGR assessed each ROI in accordance with the above requirements and provided a report on each registrant to the Minister on 31 August. The VCGR appointed Ms Jane Hider, Partner, Phillips Fox Solicitors, as an independent Probity Auditor for its role in the ROI stage of the lotteries licence review. This Probity Auditor was separate to the LLRSC Probity Auditor.

71. On 2 September 2005, a request for clarification of a specific matter in one of the reports was made by the GLR team, and a response was provided on 5 September. On 15 September, a request was received from the Minister seeking further information and clarification regarding a registrant. Further information in response to the request was provided on 16 and 30 September.\(^3\)

72. The LLRSC considered these assessments and recommended a short list of registrants to the Minister in late October 2005. The short listed registrants were Tattersall’s and Intralot Australia (Intralot). Of the three remaining

---

\(^3\) Mr P. Cohen, Executive Commissioner, Victorian Commission for Gambling Regulation, *Transcript of Evidence*, 16 August 2007, p. 106.
registrants, two were assessed as not meeting the required standards and one withdrew.

3.2.5 Application process

73. On 10 November 2005, the Minister invited Tattersall's and Intralot to apply for either a single, exclusive public lottery licence or one of two licences covering specified segments of the public lotteries market in Victoria. The invitees were provided with the Invitation To Apply (ITA) documentation.

74. The ITA documentation specified that the duration of the licence or licences would be 10 years. Applications were to be lodged in two parts; the first part dealing with probity information was lodged on 12 January 2006. The second part dealing with commercial and technical information was lodged on 23 February 2006.

75. Consistent with the ROI stage, section 6.3.2 of the Brief required each party responding to the ITA to pay the costs of the VCGR’s investigation of its application. This cost was estimated at $200,000 per application.

76. Copies of the applications were provided to the VCGR on 16 January 2006 (first part) and 2 March 2006 (second part) with a request that the VCGR report by early May 2006.4

3.2.6 Report from VCGR

77. In mid-January the VCGR developed a time table to complete and deliver the report to the Minister for Gaming by 5 May 2006. In late March, the VCGR advised the Minister of delays in completing the report and proposed a new delivery date of early June 2006.

78. The VCGR advised the Committee that the reason for the delay was largely due to one applicant having an overseas based parent company.5

---

4 ibid, p. 107.
On 2 June 2006, the VCGR report was hand delivered to the Minister for Gaming, and referred on the same day to the LLRSC.

In late June the LLRSC sought legal advice about the process adopted by the VCGR in preparing the report, and whether it complied with the requirements of the Gambling Regulation Act 2003, the ITA and common law. The LLRSC was concerned that Intralot had not been accorded natural justice by way of an opportunity to respond to adverse assessments about it contained in the VCGR report.

On 3 July 2006, the LLRSC advised the Minister that the VCGR report could not be relied upon until advice was obtained from the Solicitor-General.

In late August 2006, the LLRSC conveyed Solicitor-General’s advice to the Minister that he could not rely on the report and recommended the Minister seek more detailed reports from the VCGR on its investigations on each applicant.

On 1 September 2006, the Department of Justice wrote to the VCGR advising that the LLRSC had identified concerns with the VCGR’s report and requesting that an amended report be submitted to the Minister by 4 October 2006.

3.2.7 Amended Report from VCGR

During September 2006, the VCGR was provided with extracts of the Solicitor-General’s advice relating to the deficiencies in the VCGR report.

---

5 Mr I. Dunn, Chair, Victorian Commission for Gambling Regulation, Transcript of Evidence, 16 August 2007, p. 80.
7 ibid.
86. On 17 November 2006, the VCGR provided the Minister with an amended report which was subsequently provided to the LLRSC, and then to the Solicitor-General for consideration.

87. In November 2006, there was media speculation that the adverse assessment of Intralot contained in the initial VCGR report arose from information fed to the VCGR by the Hon. David White, acting on behalf of Tattersall’s.  

88. On 22 December 2006, the Minister, the Solicitor-General, the Victorian Government Solicitor, Mr Kennedy, Ms Armytage and the Probity Auditor met to discuss the amended VCGR report. At that meeting it was decided that a second VCGR report should be prepared by newly appointed commissioners.

3.2.8 Second Report from VCGR

89. On 14 February 2007, the Minister directed that a reconstituted VCGR prepare fresh reports on the two applicants consistent with Section 5.3.4 of the Brief.

90. On 7 March 2007, the Minister announced the appointment of Mr Neil Clelland SC and Mr Ken Loughnan as additional commissioners of the VCGR specifically to prepare a new report on the applicants. The Minister advised that there was a delay in the process due to “the completeness of the reports”.

91. Following this announcement the applicants were invited to update their applications in relation to any factual matters which may have changed in the twelve months since they were submitted.

92. On 20 July 2007, the new VCGR commissioners submitted their report (the second VCGR report) to the Minister.

---

8 Cohen, Transcript of Evidence, p. 108.
9 Ms P. Armytage, Secretary, Department of Justice, Transcript of Evidence, 3 August 2007, p. 5.
93. The costs to the VCGR associated with producing the second VCGR report were not passed on to the applicants as required by Section 6.3.2 of the Brief.¹⁰

**FINDING 3.1**

Due to a number of unforeseen issues within the lottery licence process there was a delay. At all times the Government kept registrants and applicants abreast of delays within the provisions of the *Gambling Regulation Act 2003.*

**FINDING 3.2**

The Minister’s announcement of 7 March 2007 that the process was delayed due to the completeness of the VCGR reports was misleading and did not reflect the Government’s true concerns.

**FINDING 3.3**

The cost of the additional VCGR evaluation of the two applicants was borne by taxpayers. This was estimated at $200,000 per applicant.

### 3.2.9 Extension of Tattersall’s Lotteries licence

94. On 7 September 2006, the Minister for Gaming announced that the Government had agreed to a request from the LLRSC for additional time to complete its report into the granting of the public lotteries licences. In view of the anticipated delay into 2007, the Minister approached Tattersall’s with respect to it making an application for a one-off 12 month extension to its lotteries licence.

¹⁰ Mr A. Sheehan, Director, Intralot Australia, *Transcript of Evidence*, 30 August 2007, p. 256.
95. Section 5.3.8 (3) of the *Gambling Regulation Act 2003*, provides:

> On application under subsection (2), the Minister may, after consulting the Commission, extend the licence for a period not exceeding 12 months from the date it would otherwise expire.

96. On 2 November 2006, Tattersall’s formally applied to the Minister under section 5.3.8 (3) of the Act for a 12 month extension of its public lotteries licence.

97. On 22 December 2006, the Minister wrote to Tattersall’s advising that, after receiving advice from his Department and consulting the VCGR, he had determined to extend Tattersall’s public lotteries licence for 12 months until 30 June 2008. The Committee was advised that there was no capacity in the Act to charge a premium payment for the licence extension. Applicants were advised of the delay in the licensing timetable.

**FINDING 3.4**

The delays in the licensing process and the resultant extension to Tattersall’s existing licence meant that the Government had to forego a licence premium payment in respect of lottery operations in the 2007-08 financial year.

### 3.2.10 Gambling and Lotteries Licence Review Panel

98. On 17 November 2006, the Premier announced that the Government would establish an Independent Review Panel to assess the recommendations of the GLR Steering Committee.

99. On 27 February 2007, the *Gambling Regulation (Review Panel) Bill 2007* was introduced into the Legislative Assembly to establish an independent panel to review gambling licences.
On 7 March 2007, the Minister announced the appointment of Ron Merkel QC as Chairman of the Gambling and Lotteries Licences Review Panel (the Merkel Review).

On 30 May 2007, the Minister for Gaming finalised the membership of the Merkel Review panel. The role of the panel was to examine the processes undertaken to grant the lotteries licence and to present a report through the Minister for Gaming for public release upon announcement of post 2008 lotteries licensing arrangements.

On 11 October 2007, the Merkel Review completed its report and concluded:

- Tattersall’s and Intralot have been treated equally and impartially and have been given the same opportunity to access information and advice about the licensing process;
- all protected information has been managed to ensure its security and confidentiality;
- Tattersall’s and Intralot have been evaluated in a systematic manner against explicit predetermined evaluation criteria;
- the entities referred to above have been required to declare any actual or perceived conflict of interest before participating in the process;
- any declared conflict of interest has been appropriately addressed;
- there is no evidence of any improper interference with the making of a recommendation or report; and
- the preparation of recommendations and reports of the entities referred to above do not disclose bias or anything that could lead to a reasonable apprehension of bias.

However, the Merkel Review expressed concern over lobbying and breach of confidence which occurred during the assessment process prior to the appointment of additional commissioners to the VCGR. ¹¹

The Committee also notes that the Merkel Review found that:

Because any role of Mr White with Tattersall’s Ltd ceased by about November 2006, and the Special Commission was only established early in 2007, it is difficult to see how he could have influenced the current licensing process. The reason for that is that the process after

¹¹ Merkel Report, p. 61.
Mr White’s resignation consisted of the new, extensive and thorough investigation and reports of the Special Commission during the first half of 2007, and the subsequent extensive investigation and reports of the GLR team and the Steering Committee. The process moved into the negotiation phase with Tattersall’s Ltd and Intralot in September 2007. There is no suggestion, nor is there any evidence, that Mr White could have had any influence upon any of these processes. All that currently remains to be done is for the present Minister, who was only recently appointed as the responsible Minister, to determine to whom the lottery licence or licences is or are to be granted.\textsuperscript{12}

### 3.2.11 Awarding of post June 2008 Public Lottery Licences

103. On 11 October 2007, the Victorian Government accepted the determination of the Minister for Gaming to award 10 year public lottery licences to Tattersall’s and Intralot. The new licence arrangements will come into effect from 1 July 2008.

104. Under the new licence arrangements, Tattersall’s will continue to operate lottery Bloc products such as Saturday Lotto, Oz Lotto and Powerball, while Intralot has been awarded the licence to operate instant lotteries, known as scratchies.

### 3.3 Specific Probity Concerns Examined by Committee

105. During the protracted lotteries licensing process a number of potential probity issues regarding the process came to public attention. As part of the Committee’s reference it has investigated these wider issues and offers the following comments.

#### 3.3.1 Meeting between the then Premier, Hon. Steve Bracks and Tattersall’s Board - 19 February 2003

106. Prior to the formal commencement of the lotteries licensing process, a meeting took place between the then Premier the Hon. Steve Bracks MP and Tattersall’s Board on 19 February 2003. The Committee sought to understand the extent to which the lottery and EGM licence processes were discussed at

\textsuperscript{12} ibid, p. 63.
the meeting, and the role of Hawker Britton lobbyist the Hon. David White in preparation for the meeting.

107. Following the re-election of the Bracks Government in November 2002, the then CEO of Tattersall’s, Mr Duncan Fischer, wrote to Mr Bracks on 13 December 2002, seeking a meeting to discuss various issues and to generally develop closer relationships with the Government.

108. Mr Fischer advised that the Board sought such a meeting following a meeting Mr Bracks had with its competitor, Tabcorp. Mr Fischer explained the purpose of the meeting:

_Mr Fischer_ — I suppose it was to just share with him my views of the business, of the industry, to share with him some of the difficulties that we were experiencing, how the industry was going and how business was going. As one of the major tax collectors in the state, I thought it important for us to keep the Premier and the Government informed as to what we were doing, what issues we are were facing, because if there were issues that were identified as important in anything I corresponded with him on, they would come back and say, ‘What about’ — it was merely an exchange of information so that the Premier and the Government understood how I felt about the industry, and of course partially whenever you have the opportunity to say what a good job Tattersall’s is doing…

109. Former Tattersall’s Trustee, Mr Peter Kerr, also advised the Committee of his view of the purpose of the meeting:

_Mr Kerr_ — We had always enjoyed excellent relationships with the various governments that we had dealt with, but at the time that letter was written, we had some very significant issues that were causing us concern. I refer specifically to the fact that smoking bans had been introduced and had a dramatic effect on our gaming business. The revenue had dropped by about 15 to 20 per cent overnight. We were also subject to very significant regulatory constraints, bans on advertising, 24-hour trading, regional caps; so there were a range of issues. Also, we were about to embark on a massive capital expenditure program for our lottery network to replace our central system and our terminals throughout Australia. We were concerned to express our views to the Premier, and that was the reason for the letter being sent.

---

13 Mr D. Fischer, former Chief Executive, Tattersall’s Ltd, _Transcript of Evidence_, 30 August 2007, p. 294.
14 Mr P. Kerr, former Trustee, Tattersall’s Ltd, _Transcript of Evidence_, 29 August 2007, p. 215.
110. Evidence put to the Committee confirms that Tattersall’s utilised the services of Hawker Britton lobbyist, the Hon. David White, in preparation for the meeting with Mr Bracks. Mr White assisted in the drafting of the December 2002 letter to Mr Bracks seeking a meeting, and further briefed Tattersall’s prior to the meeting on issues to be raised.

Mr KERR — … David was just doing his job. He played an integral role in arranging the meeting. He played a very key role in setting the agenda for the meeting. He was at pains to assist us in the proper method of conducting ourselves at the meeting.15

Mr Fischer advised that he was instrumental in arranging the meeting:

Mr FISCHER – I arranged it because I was running the business, obviously, and I knew the Premier had met with our competitor, Tabcorp, some time before and I thought it very important. The Premier had not met my board. I thought it important for the Premier to come in, meet the board and for us to share this sort of stuff with him. Effectively a lot of that stuff would have just been discussed again with him in that meeting.16

111. The Committee received a copy of notes from the Tattersall’s Board meeting on 19 February 2003 taken by former Tattersall’s Trustee, Mr Peter Kerr. The agenda for the meeting recorded the following items:

• Opening Statement;
• Government/Industry Consultation;
• Smoke-free Legislation;
• Gambling Research;
• The Way Forward;
• Close.

112. Mr White advised the Committee that his role in relation to the 2003 meeting was to advise the Premier’s office, in advance, of the issues that would be raised. Similarly, he had advised the Tattersall’s Board of protocols preventing certain issues being raised, such as the lotteries licensing process.

Mr WHITE — … there were firm protocols reached before the meeting transpired, and I had the opportunity speak to the trustees probably the day before the meeting, and it was made abundantly clear that whatever matter

15  Kerr, Transcript of Evidence, p. 217.
16  Fischer, Transcript of Evidence, p. 294.
was raised with the Premier, it was not appropriate and no trustee was to raise an issue to do with the lottery tendering process or the gaming tendering process, and the penalty for the trustees and the management of Tattersall’s is that they would never see the Premier again.\(^{17}\)

113. However, evidence from Mr Kerr suggests there were no subjects which should be avoided during the meeting with Mr Bracks.

   \textit{The CHAIRMAN} — So there were no areas that were off limits — you could not talk about lotteries or gaming?

   \textit{Mr KERR} — I do not believe so, no.\(^{18}\)

114. Mr Kerr’s evidence was supported by Mr Ray Hornsby, the former Chairman of Trustees for Tattersall’s.

   \textit{The CHAIRMAN} — Was there anything off the table during discussions or any areas that were not open for discussion?

   \textit{Mr HORNSBY} — No, not that I can recall. I do not think there was anything that was off the table or not freely discussed.\(^{19}\)

115. Mr Fischer confirmed that there was a general discussion at the February 2003 meeting around the need for ongoing consultation on gaming matters, including the licence review processes.

   \textit{Mr FISCHER} — When I say we did not talk about licences, there was no real focus on renewing Tattersall’s licence when it came up. That was not the discussion. But, yes, as I said before, understanding the licence review processes going forward and having consultation around them was critical to us as a business so that we would understand what was required of us going forward.\(^{20}\)

However, Mr Fischer also noted as follows:

   Obviously, as we set up that meeting, it was very important for us to ensure we complied with whatever protocol the Premier chose to put on us, and at the time the gaming adviser was Jane Garrett, I think her name was, and she made specific reference to the fact that under no circumstances should we be discussing licences or licence renewal issues with the Premier because they were out of bounds, off the agenda. So I briefed my board along those lines to say that we cannot talk about licence issues; it is a condition on the meeting.

\(^{17}\) Mr D. White, Director, Hawker Britton, \textit{Transcript of Evidence}, 17 September 2007, p. 351.


\(^{19}\) Mr R. Hornsby, former Trustee, Tattersall’s Ltd, \textit{Transcript of Evidence}, 29 August 2007, p. 238.

\(^{20}\) \textit{ibid}, p. 297.
116. Central to alleged probity issues surrounding the lotteries licensing process was the suggestion that Mr Bracks gave certain undertakings to Tattersall’s at the February 2003 Board meeting relating to Tattersall’s gambling licences and the continuation of the EGM duopoly.

117. Mr Kerr noted in evidence that Tattersall’s gambling licences were discussed during the Board meeting.

Mr Guy — When the Premier came to the Tatts board meeting on 19 February, I am just wondering if you could confirm, were issues relating to the gaming licences discussed at that meeting?

Mr Kerr — Yes.

Mr Guy — Where the Premier was present?

Mr Kerr — Yes.

However, Mr Fischer went on to contradict the version given by Mr Kerr and said:

The Chairman - Those protocols - you said they were communicated by Jane Garrett, the Premier’s gaming adviser.

Mr Fischer - Yes.

The Chairman - How were they communicated? Was there an exchange of letters before the formal meeting?

Mr Fischer - I do not recall letters, but definitely undertakings to say, ‘no we will not talk about licences’.

…

The Chairman - At that meeting, the preparatory meeting, you outlined those protocols to the trustees?

Mr Fischer - I believe so.

The Chairman - We heard evidence yesterday from Mr Kerr and Mr Hornsby. Both L- those gentlemen suggested there were no constraints on what could be discussed at the boardroom lunch with the Premier.

Mr Fischer - That is wrong.

---

21 Fischer, Transcript of Evidence, p. 295.
22 Kerr, Transcript of Evidence, p. 227.
23 Fischer, Transcript of Evidence, p. 295-6.
118. The Committee attempted to clarify whether the outcome of the 19 February 2003 meeting was that Mr Bracks had suggested the existing gaming duopoly of Tattersall’s and Tabcorp would be maintained.

119. Mr Kerr indicated that he took that impression from the meeting, however also noted that the Government had previously publicly stated a preference for the duopoly.

Mr KAVANAGH — …In regard to the meeting with Mr Bracks on 19 February, you said that there was an indirect assurance or confirmation that the Government was keen to maintain the duopoly; is that right?

Mr KERR — Yes. Again referring to my notes, my understanding was that it was stated as early as 2000 that the Government was very keen to maintain the duopoly and there was a reference to the fact that the Treasury had commenced a preliminary review. Yes, that was my understanding, that the duopoly would be maintained.24

120. Mr Hornsby expressed a different view of the meeting, rejecting the suggestion that Mr Bracks had given an assurance as to a continuation of the EGM duopoly.

Mr KAVANAGH — So you would not say the government gave you an assurance of the continuation of the duopoly at that meeting?

Mr HORNSBY — No.25

121. Mr Hornsby further indicated that while issues of the review of the gaming industry were discussed, no commitments were made by Mr Bracks as to Tattersall’s gambling licences.

Mr HORNSBY — …my understanding is that nothing was said or indicated that Tattersall’s would receive any preferential treatment or be in any better position than anybody else would be, that the process would take its place, and that was the end of it. But we did discuss the type of process, what sort of form it would take, what the consultation with the industry would be and how it would be structured. So they were discussions about the process of the 2007 review more than specifics about whether Tattersall’s would get an ongoing licence or not.26

24 Kerr, Transcript of Evidence, p. 223.
122. The Committee notes the conflicting evidence as to what matters were discussed during the 13 February 2003 meeting between the Tattersall's Board and Mr Bracks.

123. In order to confirm the nature of the discussions at the 19 February 2003 Board meeting, the Committee sought under summons, copies of minutes and formal records of the meeting from Tattersall’s. The Committee is concerned and surprised that Tattersall’s was unable to locate and provide such records.

124. The Committee further notes that notwithstanding speculation as to the existence of a tape recording of the meeting, Tattersall’s were unable to provide a transcript or copy of the tape, or verify whether such a tape ever existed.

125. The Committee heard conflicting evidence as to when Mr Duncan Fischer obtained probity clearance and the circumstances under which this occurred.

Mr VINEY — Okay; thanks. In Mr Dunn’s evidence there were some questions raised about the consideration of Mr Fischer, his appropriateness and the issuing of a certificate or whatever for Mr Fischer. You were presumably in the audience and you may recall that. Are you aware of whether your regulating authority, in your 11 years, has issued such a certificate to Mr Fischer in terms of being an appropriate person to be involved in this industry? Was that done under your watch?

Mr COHEN — It was. Mr Fischer was approved as an associate of Tattersall’s some time back in the early 1990s. That information was publicly available on our website from probably when we put that information up, which was probably around about 1998 or 1999 when we had a website, and he remained approved until he stood down as CEO of Tattersall’s in October last year.

Mr VINEY — It was in the early 1990s, you said, that he was approved?

Mr COHEN — I am sorry — the mid-1990s.

Mr VINEY — The mid-1990s. That would have been at the time Mr Haddon Storey was Minister?

Mr COHEN — No, it was not the time Mr Haddon Storey was Minister, because I did not join what was then the VCGA until after the 1996 election.

Mr VINEY — So it would have been at the time of — —

Mr COHEN — Mr Hallam. Mr Hallam was the Minister for Gaming at that time.27

---

Mr GUY — We had evidence from Mr Cohen that you first obtained probity in 1995. My question to you was going to be how you operated without probity from 1992 to 1995, but you are saying that you obtained probity approval in 1992?

Mr FISCHER — When I joined the business, absolutely. I had to, it was conditional part of the business. You had to fill out your probity forms and send them in and go through the process.

Mr GUY — What month in 1992? That was September 1992?

Mr FISCHER — July 1992. 28

---

**FINDING 3.5**

No formal records of the Tattersall’s Board meeting of 13 February 2003 exist to conclusively prove what was discussed between Mr Bracks and the Board.

**FINDING 3.6**

Conflicting views exist among former Tattersall’s Board members as to the nature of discussions at the meeting, and as to whether any issues were excluded from discussion.

**FINDING 3.7**

The refusal by Mr Bracks to give evidence to the Committee inhibited the Committee’s investigation of this matter. The Committee notes that at no stage during the taking of evidence did any witness make a specific allegation against Mr Bracks that he would have been required to rebut.

---

28 Fischer, Transcript of Evidence, p. 315.
FINDING 3.8

The Committee concludes that while it is probable the meeting discussed the lotteries licence and gaming review processes in general terms, it has received no evidence that commitments were given to Tattersall’s.

3.3.2 26 November 2003 meeting between Tattersall’s and Hawker Britton lobbyist Hon. David White

126. The Committee received notes provided by Mr Kerr summarising an account of a Board meeting on 26 November 2003, where Mr White briefed the Board.

127. These notes attributed a number of comments to Mr White, including the suggestion by Mr White that the Government favoured a continuation of the gaming duopoly of Tabcorp and Tattersall’s, and that the Government’s preference was for Tattersall’s to become a publicly listed company as a precondition of obtaining new licences.

128. Mr Hornsby advised the Committee that the notes, taken by another former trustee Mr William Adams, were an accurate reflection of the meeting and that he agreed with them.

129. However, Mr White suggested that the notes provided to the Committee were not accurate, denied the statements attributed to him and suggested that Mr Adams was not a reliable minute secretary.

130. The Committee notes that Mr White was either unable or unwilling to offer any document to contradict the contemporaneously written account of the meeting, provided by the former Tattersall’s trustees.

3.3.3 December 2003 Meeting in Lorne between Hon. Steve Bracks and Hon. David White

131. On 16 November 2006, the Herald-Sun reported that on 30 December 2003, the then Premier, the Hon. Steve Bracks, had shared a private dinner with Mr White. It was further reported that this meeting coincided with a period of
lobbying by Mr White on behalf of Tattersall’s, and while Mr White was briefing Tattersall’s on the Government’s position on future licences.

132. _The Age_, also on 16 November 2006, published an article alleging that during the course of the above mentioned dinner, Mr Bracks had given Mr White an assurance that if Tattersall’s (at the time a tightly held trust) became a publicly listed company, it would be guaranteed the lottery licence.

133. Mr Bracks subsequently released a statement to the _Herald-Sun_, claiming that the meeting with Mr White and their respective wives was a social one and that the lotteries licences were not discussed.

134. There are two issues arising from this reported meeting that the Committee has sought to investigate, being:

- To what extent, if any, was the lottery licence process discussed?
- Did Mr Bracks convey to Mr White the Government’s preference for Tattersall’s to become a publicly listed company?

135. The Committee received evidence from the former Tattersall’s trustees that at the February 2004 Board meeting, Mr White briefed it on the Government’s position with respect to the lotteries licensing process and also referred to his Lorne meeting with Mr Bracks two months earlier.

136. Mr Hornsby advised the Committee that Mr White reported that he had had a meeting with Mr Bracks where a wide range of matters were discussed, including matters that related to Tattersall’s.

**Mr Hornsby** - … [Mr White] said that he had attended a convivial at Lorne with his old colleagues and friends, and that there had been an opportunity to talk about a whole range of matters, and certainly some of those matters revolved around Tattersall’s, gaming, lotteries and the other bits and pieces of course that surrounded that.29

However, Mr Hornsby went on to say:

**Mr Hornsby** - As our political lobbyist and adviser. It would be unfair to say that what he was saying came directly from any government minister or the Premier, because Mr White was telling us what I think he wanted us to hear,

29 _ibid._
on many occasions; because at no time during my discussions with Mr White was there any direct inference that this was what the Premier said. It was what Mr White said to us that he believed was the Premier’s thinking on certain matters. I am trying to put it into its proper context.

**The CHAIR** - Do you believe that Mr White reached those conclusions as a consequence of a discussion with the Premier?

**Mr HORNSBY** - Well, that is one of the problems, I was not there.

**The CHAIR** - Did he intimate that he had had a discussion with the Premier?

**Mr HORNSBY** - He intimated that this was the thinking of the government, and this was the thinking of certain government ministers. Specifically, I do not think at any time he said, ‘This is a direct quote of what the Premier said to me’. And I think that is one of the things that we have got to bear in mind.30

137. Mr Kerr provided a similar account of the meeting to that of Mr Hornsby, advising the Committee that Mr White reported that he had held discussions with the Premier in December 2003, and the message from the Premier was that Tattersall’s needed to become a publicly listed company if it wished to maintain its lottery licence.

**Mr KERR** - … [Mr White] indicated that he had discussions with the Premier during the New Year holiday period. He had a very strong message to deliver to our Board — this was David White talking. … what he said was, quoting the Premier, we needed to go public to maintain our licences.31

138. However, Mr White disputed the accounts of the Board meeting provided by Mr Hornsby and Mr Kerr, advising the Committee that the dinner with Mr Bracks was a social occasion, and he mentioned it to the Tattersall’s Board to demonstrate his contacts. Further he claimed that the information provided to the Tattersall’s Board at this time had been obtained prior to the December 2003 meeting with Mr Bracks.

**Mr WHITE** - I did have a dinner with the Premier on 30 December between 7.00 and 10.00 p.m. at Lorne. I did tell the trustees that I had dinner. I wanted to reinforce to the client that I had good contacts — a lobbyist is expected to have good contacts. I made it clear to the trustees that I had advice from Government, but I did not say or attribute any of those comments to the Premier. In fact, the advice that I had and was seeking from Government I had received before Christmas 2003.32

---

30 ibid, p. 237.
31 Kerr, Transcript of Evidence, p. 228.
32 White, Transcript of Evidence, p. 373.
139. Mr White advised the Committee that his advice to the Tattersall’s Board was based on a number of sources and was known to Hawker Britton prior to Christmas 2003.

Mr WHITE - At Hawker Britton we clearly knew before Christmas the view of Government and its longstanding policy view on the merits of Tattersall’s floating. The first available opportunity we had to report to the trustees was in February 2004.33

140. It has been made clear to the Committee through evidence of both the former Trustee Mr Hornsby and former CEO Mr Fischer that Tattersall’s had for a number of years deemed it desirable to list as a public company.

Mr HORNSBY — The decision to float Tattersall’s actually goes back a lot earlier than that, because there were pressures from the beneficiaries in the early 2000 — 2001; something like that — that we should float, and at that particular time we did put a proposal to the beneficiaries which was knocked back by them. They decided it was not what they wanted, so it continued on until such time as this time in 2003 when the media were beating up continuously the secret society, the faceless beneficiaries and all this money these people are getting out of this industry et cetera. So there were pressures building up that had us concerned about the ongoing licence and how we should view our position to put us in the most favourable position as far as an ongoing licence is concerned.34

In regards to going public Mr Fischer went through the steps that the company undertook and also contradicted Mr Kerr’s version:

Mr FISCHER — I will take it back to 2000, even further back, when I took on the managing director’s role for Tattersall’s. I have always had a vision that Tattersall’s should be listed on the stock exchange, ...

The imperative for listing was therefore purely commercial. ... But in that process one of the most important aspects of listing the company was we needed government approval to change the legislation under which we operated.

Back when we negotiated — I was involved in 1994, I think it was — with the previous gaming minister, Haddon Storey, and we negotiated the licence fee at that stage, I made sure that we incorporated into the agreement we had with government that government would facilitate or accommodate changes in structures, particularly in public listing sort of structures, because I always had in my mind that we would have to come back some time and do it.35

33 ibid, p. 351.
34 Hornsby, Transcript of Evidence, p. 241.
35 Fischer, Transcript of Evidence, p. 298.
141. Given the refusal of the Legislative Assembly to grant leave for the then Premier to appear before the Committee, and Mr Bracks’ subsequent refusal to give evidence after his resignation from Parliament, the Committee has been unable to verify Mr White’s account of his dinner with Mr Bracks.

142. The Committee notes that the Merkel Review did not inquire into this issue on the basis that it was outside its terms of reference.

… the recent controversy over the role of Mr David White with Tattersall’s Ltd before September 2004, and any contact he had with the Premier in 2003, plainly fall outside the period for the Panel’s review of the licensing process.\(^{36}\)

143. The evidence available to the Committee from Mr Kerr and Mr Hornsby on the one hand, and Mr White on the other is in conflict, and pertains to two separate though related events. The evidence of Mr Kerr and Mr Hornsby relates to their claim of what Mr White told the Tattersall’s Board about his dinner with Mr Bracks. By contrast, Mr White’s evidence relates to what he claims was discussed at the dinner, as well as what he claims to have told the Board.

144. There arise a number of equally plausible scenarios which depend upon what was discussed at the dinner; whether Mr White’s report of the dinner to the Board was accurate; and, which party’s evidence about Mr White’s report to the Board is accurate.

**FINDING 3.9**

Mr White dined with (then Premier) Mr Bracks in December 2003. In February 2004 Mr White reported this meeting to Tattersall’s Trustees to reinforce the strength of his contacts in Government.

---

\(^{36}\) *Merkel Report*, p. 12.
FINDING 3.10

At the February 2004 meeting Mr White informed the Trustees that it was the Government’s position that Tattersall’s should become a publicly listed company if it wished to renew its gambling licences.

FINDING 3.11

Mr Peter Kerr formed the view that Mr White’s message to the Trustees (Finding 3.10) arose from his dinner with Mr Bracks. The Committee is unable to determine if that was an intentional inference by Mr White.

FINDING 3.12

The refusal by Mr Bracks to give evidence to the Committee inhibited the Committee’s investigation of what discussions took place at the dinner with Mr White.

FINDING 3.13

The Committee’s knowledge from first hand accounts of what transpired at the dinner between Mr White and Mr Bracks is limited to the evidence given by Mr White and Mr Bracks’ public comments. On that basis, the Committee can reach no definitive consensus as to what transpired at the dinner.

3.3.4 Tattersall’s Decision to become a Publicly Listed Company

145. The Committee sought to ascertain what influences from the Government, if any, led to Tattersall’s becoming a public company as a precondition to being granted new gaming licences.
146. Mr Fischer advised the Committee that there had been internal discussion for some time regarding whether Tattersall’s should become a public company. Mr Fischer advised that a beneficiaries committee was formed in 2000 to investigate this issue, however the proposal was rejected by a majority of the beneficiaries in a vote. The 2004 decision to float Tattersall’s, was based on business considerations and pressure from the beneficiaries of George Adams’ will to be able to have greater access to the capital value of their beneficial interest.

Mr FISCHER - The main reasons for listing were commercial. It was pressure we were getting from major shareholders, major beneficiaries who wanted to realise and have a liquidity event and the back-door listing processes that were already underway.37

147. While Mr Kerr confirmed that there were commercial considerations underlying the decision to become a public company, he believed the message allegedly conveyed by Mr White from Mr Bracks was a major influence and consideration on this decision.

148. Mr Hornsby also advised the Committee that while the Tattersall’s Board had been considering publicly listing the company for some time, the Government’s preference for Tattersall’s to be a public company with greater transparency was also relevant.

149. The Committee received evidence that there had been internal discussion at Tattersall’s for some time regarding becoming a public company. The Tattersall’s Board moved forward with this proposal and achieved a public listing in 2005.

150. While the Committee has received varying accounts of the substance and source of the information presented to the Board by Mr White at this time, undeniably the message conveyed was that there was a strong preference from the Government for Tattersall’s to become a public company.

151. The Committee also notes that the minutes of the Trustees of the Estate of the late George Adams dated 25 March 2004 stated that:

37 Fischer, Transcript of Evidence, p. 310.
The Trustees also met with the Treasurer and the Minister for Gaming to confirm the political preferences, and it was confirmed at that meeting that the Government’s preference was for Tattersall’s to be a 100% listed entity. Furthermore, it became apparent that, if we did not follow this course of action, Tattersall’s could be at a disadvantage in any future processes or extensions of our licence.

**FINDING 3.14**

The Government’s preference for Tattersall’s to be a publicly listed company, a desire to provide liquidity to the Tattersall’s beneficiaries, and the insistence of the Chief Executive Officer Mr Duncan Fischer, were all factors in the Board’s decision to publicly list the business in 2005.

**3.3.5 Hawker Britton Lobbying Issues**

152. In addition to the matters referred to above, the Committee had a number of questions over the involvement of Mr White and Hawker Britton in the lottery licence process. These concerns were also highlighted in the report of the Merkel Review and relate to:

- proposed success fee to be paid to Hawker Britton by Tattersall’s;
- any preferential access to licensing documents granted to Hawker Britton;
- any possible breaches of the Registration of Interest requirements, including prohibited contact;
- any comments Mr White may have made regarding another Applicant.

153. Mr White, a Director of Hawker Britton, was engaged by Tattersall’s from January 2000 to November 2006 as a lobbyist and to maintain close relationships between Tattersall’s and the newly elected Bracks Government. In his evidence to the Committee, Mr White outlined his role and Tattersall’s requirements:

Mr WHITE —……. to provide advice about what the views of the Government might be on gaming issues; their attitude to Tattersall’s, both at a ministerial level, at an advisory level and among senior public servants. If it is of benefit
to this committee, it would be rare to be contacting any other members of Parliament.\textsuperscript{38}

However Mr Fischer explained that the role of Mr White was:

\textbf{Mr FISCHER} - It was basically a continuation of keeping us informed on government process, on government policy; making sure that what we were doing was acceptable in his mind and his opinion to government requirements of a lottery operator; and, of course, not going with another person; working only for Tattersall’s. So we were basically tying him down to keeping us informed as far he could. To the extent that information came to his attention he would share that with us, and we would have a look at that with him. It was really a watching brief more than anything else. There were not any steps 1, 2 or 3, or specific tasks that we asked him to do at that stage.\textsuperscript{39}

\subsection*{3.3.6 Success Fee}

154. During the period of Mr White’s engagement, and that of his colleague Mr Danny Pearson, Tattersall’s paid Hawker Britton a monthly retainer for the services provided by Mr White and Mr Pearson.

155. On 5 May 2006, Mr White wrote to Tattersall’s outlining a proposal for a success fee amounting to $350,000. The letter states:

\textit{In the event that Tattersall’s is named as preferred bidder for an exclusive lottery license and successfully completes the negotiation of its terms and conditions to Tattersall’s satisfaction, Hawker Britton would seek a success fee of $350,000 to be made payable on the completion of these negotiations and the award of the exclusive license to Tattersall’s.}

156. While the success fee was never paid due to the termination of Hawker Britton’s engagement with Tattersall’s, the Committee had concerns over what activities were to be undertaken by Hawker Britton which would warrant a success fee of $350,000, given it was already receiving a monthly retainer for its consultancy/lobbying work.

157. In his evidence to the Committee, Mr White was unwilling to explain what additional work would be undertaken to justify a success fee:

\textbf{Mr WHITE} — We put forward a success fee proposal to Tattersall’s because we felt that this recognised the value that Hawker Britton had added to the

\textsuperscript{38} White, \textit{Transcript of Evidence}, p. 344.

\textsuperscript{39} Fischer, \textit{Transcript of Evidence}, p. 293.
company over a lengthy period of time, and Tattersall’s made an offer. But no success fee was paid nor are we entitled to receive one.

The CHAIRMAN — Weren’t you being paid a retainer for the work you had done for Tattersall’s?

Mr WHITE — We were.

The CHAIRMAN — So what additional work were you undertaking that would entitle you to a success fee?

Mr WHITE — I do not have anything further to add.

The CHAIRMAN — What additional work were you undertaking that would lead Tattersall’s to agree to a success fee?

Mr WHITE — Tattersall’s agreed to pay the success fee; that is a question to put to them.40

158. The timing of Mr White’s request for a success fee, May 2006, followed the Application process and the initial VCGR reports on each Applicant.

159. The Committee notes that the Merkel Review shares the Committee’s concerns on this issue. Paragraph 160 of its report states:

Mr White’s letter proposing a success fee for Hawker Britton does not expressly provide for Mr White to engage in any conduct that constitutes prohibited contact under the ITS. Nonetheless, the magnitude of the success fee, in addition to the ongoing monthly retainer, can give rise to the perception that Mr White was expected by Tattersall’s Ltd to have some kind of involvement in the licensing process beyond giving mere advice to Tattersall’s Limited.41

**FINDING 3.15**

Tattersall’s agreed to pay a success fee to Hawker Britton on the basis that Mr White would undertake activities above and beyond those of the ongoing consultancy, contrary to the evidence provided by Mr White, and with the aim of securing an exclusive lottery licence for Tattersall’s. This agreement was entered into at a time when the tender rules strictly prohibited, under penalty of disqualification, any lobbying of the type Mr White and Hawker Britton were to be engaged in.

40 ibid, pp. 348-9.
41 Merkel Report, p. 62.
3.3.7 Prohibited Contact

160. On 20 April 2005, Hawker Britton sent a document via email to Tattersall’s entitled ‘Lottery Tender Strategy’. This document identified key messages to be delivered to senior Government Ministers (Premier, Treasurer, Minister for Finance, and Minister for Gaming) and their staff over the course of 2005-06. The document also identified other messages relevant to the non-government parties, and Members of Parliament generally. The document was developed by Mr Pearson at the request of Mr Fischer.\(^{42}\)

161. On 17 June 2005, a notice from the Minister for Gaming calling for Registrations of Interest in the Grant of a Public Lottery Licence (the ‘Brief’ as described at paragraph 67) was published in the Victorian Government Gazette. Paragraph 2.6.2 of the Brief outlined the types of contact between registrants and Members of Parliament or Public Servants which were prohibited, stating:

\[
\text{Prohibited Contact} \\
\text{Except as specified in this Brief, Registrants must not, and must ensure that their officers, employees, agents, contractors, advisors shareholders and Associates do not, contact, communicate with or seek assistance from, any officers, employees, agents or advisors of the Minister, the State, Members of Parliament or their staff and advisors in connection with this Brief or the Licensing Process. This obligation does not prevent a Registrant from continuing to engage with the Minister of the State as part of any dealings separate from this Licensing Process.} \\
\text{Except as permitted for the submission of a Registration of Interest or an Application for a Public Lottery Licence, the Registrant must not engage in any activities which may be perceived as influencing the outcome of this Licensing Process in any way.}
\]

162. The Prohibited Contact provisions of the Brief matched those which were released by the Minister in a draft Brief on 19 May 2005.

163. Under the provisions of the draft and final Brief, the actions proposed in the Lotteries Tender Strategy document would constitute prohibited contact if they

\[^{42}\text{Mr D. Pearson, Director, Hawker Britton, Transcript of Evidence, 17 September 2007, p. 328.}\]
occurred after the formal commencement of the ROI process on 17 June 2005.

164. Mr Pearson advised the Committee that he had not briefed anyone in Government in relation to the contents of the Lotteries Tender Strategy document.43

165. On several occasions Mr White informed the Committee that once the lottery tender process commenced, Hawker Britton did not have contact or meetings with any Minister, adviser or public servant, and that once the tender process commenced Hawker Britton’s role was to give advice to and assist in the preparation of Tattersall’s bid.

166. When asked whether to his knowledge Hawker Britton undertook any of the activities proposed in the strategy document referred above, Mr Fischer advised that he was uncertain and did not know if Hawker Britton briefed anyone in the Government on the contents of the document.44

**FINDING 3.16**

The Committee received no evidence to suggest that the Lotteries Tender Strategy was acted upon after the commencement of the formal lotteries licensing process.

### 3.3.8 Preferential Contact between the Government and Hawker Britton

167. On 15 April 2005, Mr Michael Mangos, General Manager – External Communications for Tattersall’s sent an email to Tattersall’s Executives attaching a copy of a Department of Justice Information Paper. In the email Mr Mangos indicated that the Information Paper had been obtained by Hawker Britton and that it was not for public consumption until it was released publicly later that day.

43 ibid.
44 Fischer, Transcript of Evidence, p. 320.
168. The email referred to above, was also identified as being of concern by the Merkel Review. Paragraph 162 of its report states:

... While Tattersall's Ltd's access to the paper was on the same day, but prior to, its public release the fact remains that its lobbyist or Tattersall's Ltd might have been given preferred access to licensing process documents.45

169. Hawker Britton advised the Merkel Review that it believed a copy of the Information Paper had been received from the Minister for Gaming’s Office, and a copy was forwarded to Tattersall’s. The Committee notes that the Merkel Review did not attempt to speak to the Office of the Minister for Gaming or the Hon. John Pandazopoulos to verify the above.

170. The Merkel Review acknowledged that the event outlined in paragraph 167 demonstrated the possibility that Hawker Britton was able to obtain preferred access to information for Tattersall’s. However, it suggested that in this instance the earlier access to information probably did not give Tattersall’s any real advantage.

---

FINDING 3.17

Through Hawker Britton, Tattersall’s received access to one piece of Government information in the morning of and prior to its public release.

This places in doubt the probity of the process as this breach of the tender process rules was never investigated by the Probity Auditor, the VCGR or the Steering Committee.

The Committee also notes the refusal of any Government Minister or Member, and the refusal of the Government to allow Ministerial staff to appear before this Committee has directly hampered the Committee’s ability to investigate this breach.

3.3.9 Issues Relating to Intralot

171. One of the key allegations surrounding the lotteries licensing process was the suggestion that the VCGR’s assessment of the application from Intralot was influenced by information fed to the VCGR with a view to undermining Intralot’s application. (See paragraph 87).

172. As previously discussed, the Minister for Gaming, acting on the advice of the Solicitor-General rejected the original VCGR assessment of the two applicants. The Committee attempted to obtain evidence with respect to the Solicitor-General’s advice to the Minister that natural justice had not been afforded to one of the applicants. As outlined in Chapter 2 this evidence was not provided to the Committee.

173. Concerns over the VCGR report and issues surrounding Intralot were first brought to the public’s attention through the ABC’s Stateline program on 10 November 2006:

JOSEPHINE CAFAGNA - The VCGR, the Victorian Commission for Gaming Regulation delivered its findings on the two companies to the minister's office in early June. They had conducted extensive probity investigations on the two firms here and overseas. It found in favour of Tattersall's. Intralot did not meet the probity requirements. The head of Intralot, Greek billionaire Socrates
Kokkalis, has over the years been subject to numerous allegations, including fraud, espionage and money laundering and Stateline makes the point that Mr Kokkalis has never had a conviction recorded against him. A gaming commission’s report was handed to a steering committee set up by the Government to manage the tendering process. It then passed it on to the Victorian Solicitor General, Pamela Tate, for her legal opinion. It's what is in that legal opinion that's led to the Government delaying its decision. It is lengthy and detailed. Few people have seen it. In it the Solicitor General Pamela Tate describes the gambling commission’s report as "inadequate" and says the minister cannot rely on it. She recommends that for the moment the minister not accept the commission’s findings. Stateline understands the Solicitor General concludes that Intralot has not been accorded natural justice. She says Intralot should have been given proper opportunity to respond to the report's conclusions. It is understood the Solicitor General advises the minister to ask for more details of the probity investigation conducted by the commission, which he has now done. It's believed the Solicitor General also points out that a refusal to grant Intralot a lotteries licence could open up a legal challenge from the company. Stateline understands members of the gambling commission are furious about the Solicitor General's advice and have sought their own, which is at odds with the Solicitor General’s.\footnote{Josephine Cafagna, ‘Lottery License Renewal – The Recommendation given to Government by Victoria’s Gaming Commission and why the decision has been delayed’ Broadcast 10 Nov 2006, Stateline, transcript - \url{http://www.abc.net.au/stateline/vic/content/2006/s1785836.htm} accessed 2 May 2008.}

174. On 16 November 2006, The Age, published allegations that Mr White was conducting a campaign against Intralot by circulating information concerning its overseas reputation. In evidence Mr White rejected that allegation, stating:

\textit{Mr WHITE - No, I have not spoken to any Cabinet Minister in relation to Intralot. I have not spoken to any adviser in relation to Intralot. I have not spoken to any public servant in relation to Intralot. I have not passed any documents to any person in relation to Intralot. I have not issued any instructions to anyone to pass any documents, or made any requests to anyone to pass any documents in relation to Intralot, and I have received no instructions to do that from the client.}\footnote{White, Transcript of Evidence, p. 350.}

175. The Committee sought evidence as to what action was taken by the GLR team in relation to the allegations aired in the media. Mr Garth Lampe, the former Director of the Gambling Licence Review advised the Committee that no investigation took place.

\textit{Mr GUY — Can I just ask again for the record: did the GLR investigate the allegations against David White made in the Age on 16 November 2006? Yes or no?}
Mr Lampe advised the Committee that the applicants had expressed concerns about the process, however those concerns were never formalised in writing. The Hon. Anthony Sheehan, Director of Intralot subsequently advised the Committee that he had raised concerns with the GLR.

Mr Guy — The material that had been appearing publicly in relation to David White trashing your reputation or Intralot’s reputation, did you ever raise that?

Mr Sheehan — There were a number of meetings. What may have been put to them [the GLR] is that we sought that, in even handedness, the reputation of the applicants should be protected.

The Merkel Review reported that it received a letter from Mr Sheehan complaining of apparent breaches of confidentiality, referring to a newspaper article in the Herald-Sun on 20 September 2007. Further, Mr Sheehan indicated he had spoken to Mr Clayton alleging that a member of the VCGR had been talking to the press in a highly prejudicial way about Intralot.

The Merkel Review advised that Mr Sheehan later withdrew the complaint referred to above; however he persisted with a complaint in relation to the alleged involvement of Mr White in circulating information about Intralot.

Mr Sheehan’s complaint was that there was no investigation about the circulation of the material and, in particular, about whether Mr White (or through him Tattersall’s Ltd) was responsible for it.

---

48 Mr G. Lampe, former Director Gambling Licences Review, Department of Justice, Transcript of Evidence, 3 August 2007, p. 75.
49 Sheehan, Transcript of Evidence, p. 262.
50 Merkel Report, p. 79.
51 ibid, p. 80.
**FINDING 3.18**

The Gambling Licences Review team did not investigate public allegations of prohibited contact. If these allegations were true they constituted a breach of the terms of the ‘Brief.’

**FINDING 3.19**

Intralot expressed concerns to the Gambling Licences Review team regarding the protection of its reputation and breaches of the tender rules. Intralot did not pursue its concerns with the Select Committee.

**FINDING 3.20**

The Committee took evidence from numerous witnesses and each one was asked about the possibility of a smear campaign being undertaken by Hawker Britton on behalf of Tattersall's. The Committee received no evidence that Hawker Britton engaged in any such activity.

### 3.3.10 Role of the Probity Auditor

179. In July 2004, Mr Geoff Walsh, Executive Director – Pitcher Partners, was appointed as Probity Auditor for the GLR stream of the lotteries licensing process, reporting to the Minister for Gaming.

180. Mr Walsh advised the Committee that his role as Probity Auditor was to report on the appropriateness of the probity plan for the process, and compliance with that plan throughout the duration of that process.\(^{52}\)

181. The probity plan, prepared by the GLR team and endorsed by Mr Walsh, related to ensuring the probity of the various activities undertaken by the GLR

---

\(^{52}\) Walsh, *Transcript of Evidence*, p. 273.
team during the lotteries licence process. However, the probity plan did not extend to activities and parties external from the GLR team.

182. As outlined elsewhere in this chapter, the Committee sought evidence in relation to allegations of external contact and influence on the conduct of the lotteries licensing process.

183. Mr Walsh confirmed to the Committee that as these allegations were beyond the scope of the probity plan they were not relevant to his role as Probity Auditor. In relation to allegations of contact between lobbyists and ministers Mr Walsh advised:

> The CHAIRMAN — The point I am getting to there is: it [the probity sign-off] is on the process that you have been engaged to look at, which does not include any external factors, meetings with ministers, social engagement with ministers, which are beyond your brief?

> Mr WALSH — I have no knowledge of social contact with ministers and members of the public.

> The CHAIRMAN — And they are not relevant to your role?

> Mr WALSH — And they are not relevant to my role.53

To further questions Mr Walsh advised:

> Mr GUY — Having said that, did you ever investigate any of the allegations that the Premier talked about or discussed with the Tattersall’s Board — the lotteries licence process?

> Mr WALSH — No, I did not investigate that because it was not relevant to the work that was being undertaken within the GLR. The GLR were undertaking their roles and responsibilities in the way that had been documented. Their conduct was consistent with everything that had been agreed and documented. What speculation there might be in other places was not relevant to the conduct of their actions. They were pursuing their responsibilities in a way that I anticipated and expected.54

184. In February 2007, the Minister for Gaming referred to the fact that Mr Walsh had issued three ‘sign-offs’ attesting to the probity of the lottery licence

---

process as a basis for rejecting the allegations that were subsequently referred to this Committee.  

185. The Committee notes however that Mr Walsh’s probity ‘sign-offs’ related only to adherence to the probity plan by the GLR team and did not involve the investigation of allegations about the actions of external parties.

186. The Merkel Review also sounded caution about the reliance on Probity Auditor ‘sign-offs’:

…the Panel would caution against over-reliance on Probity Auditors’ ‘sign-offs’. This is because of the limitations of a Probity Auditor’s role, in a context where breaches of probity requirements and, in particular, deliberate breaches will necessarily be difficult to detect. The responsibility of each relevant entity for the integrity of its process cannot be devolved to the Probity Auditor. Rather, the relevant entity remains fully responsible and accountable for any probity breaches within the entity’s domain. The Probity Auditor can, at best, provide an additional check on such breaches, rather than provide an assurance that they have not occurred.

187. At the time of his appearance before the Committee (30 August 2007) Mr Walsh advised that he did not have any concerns with the probity of the lotteries licensing process, and saw no evidence of any attempt to influence the process.

**FINDING 3.21**

The Probity Auditor did not, and the probity plan did not require him to, investigate probity allegations relating to parties and activities outside the GLR team.

---

56 Merkel Report, p. 59.
57 Walsh, Transcript of Evidence, p. 286.
3.4 Concluding Comments With Respect to Lotteries Licensing Process

188. The Committee notes that a number of probity concerns were raised around the lotteries licensing process. These include alleged agreements between the Government and Tattersall’s prior to the formal commencement of the lotteries process and suggestions of prohibited contact between Hawker Britton, acting on behalf of Tattersall’s, and the Government during the formal process.

189. The Committee believes that the nature of these allegations was such that it was absolutely appropriate for a Select Committee to be established to enquire into these matters.

190. As previously noted in this report the Committee was unable to gain access to a significant volume of evidence and relevant documents held by the Government and other parties.

191. As a consequence, the Committee has been unable to fully investigate these allegations. The evidence available to the Committee has not established that the allegations against the Government, Tattersall’s and Hawker Britton are true. However, the Committee is not satisfied that it has sufficient evidence to disprove the allegations.

192. Accordingly, the Committee makes an open finding with respect to the allegations against the Government, Tattersall’s and Hawker Britton.
FINDING 3.23

The nature of the allegations against the Government, Tattersall’s and Hawker Britton warranted investigation by the Select Committee.

FINDING 3.24

Due to a lack of conclusive evidence the Committee makes an open finding with respect to the allegations against the Government, Tattersall’s and Hawker Britton.
CHAPTER 4: ELECTRONIC GAMING MACHINES

193. This chapter deals with parts 1 (c) and (d) of the Committee’s reference, namely:

- the Electronic Gaming Machine (EGM) post-2012 licences; and
- the legislative and regulatory framework with respect to the number, location, distribution and specification of EGMs in Victoria.

4.1 Electronic Gaming Machine (EGM) Licensing

194. Part 1 (c) of the Committee’s terms of reference requires an examination of the conduct, processes and circumstances (including but not limited to the probity thereof) pertaining to post-2012 Electronic Gaming Machine (EGM) operator licensing in Victoria pursuant to the Gambling Regulation Act 2003, and any related matter.

195. Due to the timing of the Committee’s investigations and the fact that the Registration of Interest and Application process for post-2012 licensing has yet to commence, the Committee’s analysis of these matters during the course of the Inquiry is limited. However, a body of evidence was put to the Committee on the merits of the existing dual operator system, including views on the terms and conditions for the new licences.

196. Following completion of the Select Committee’s public hearings and during the drafting of this final report, the Government announced on 10 April 2008 an end to the electronic gaming machine duopoly between Tabcorp and Tattersall’s. Under new licensing arrangements to apply from 2012, pubs and clubs will be able to own and operate their own gaming machine licences for up to 10 years.

197. The Committee received considerable evidence from interested parties on the question of an operator model versus venue model. This evidence is referred to in this report for the sake of completeness even though the Government has now announced the new licence models. Evidence was also received in
relation to new licence conditions and the need for measures to reduce gambling related harm to be a condition of any new licence. These issues should be taken into consideration by the Government during the next stage of the post-2012 licence process. In particular, it is worth highlighting evidence from the InterChurch Gambling Taskforce which is relevant to the new licence awarding process:

Mr ZIRNSAK — It is the view of the Taskforce that new licences must ensure that the government is free to regulate the industry to minimise the harm caused by electronic gaming machines and to maximise the benefits to the community from allowing electronic gaming machines to operate. The licences should in no way restrict the government from legislating and regulating the number of electronic gaming machines in Victoria, their distribution, their design and the operation and layout of the gaming venues themselves. The licences should not create any legally binding expectation of minimum levels of revenues from electronic gaming machines.58

198. Due to the timing of the new licence arrangements announcement, the Committee has not been able to investigate, or obtain public comment on the implications of the new arrangements.

4.1.1 Background to Victoria’s Gaming Machine Arrangements

199. Electronic gaming machines first came into operation in Victoria in 1992 with the granting of two gaming operator licences to the then Totalisator Agency Board (TAB) and the Trustees of the late George Adams.

200. In 1994, following the public float of TAB as Tabcorp Holdings Ltd, the Victorian Government granted an 18 year gaming operator licence to Tabcorp expiring on 15 August 2012. The gaming operator licence granted to the Trustees of the late George Adams was transferred to Tattersall’s Limited (Tattersall’s) in 2005 following the public float of the company and will expire on 14 April 2012.

201. Victoria’s dual operator licensing system is unique in Australia. In all other States and Territories, the venues own or lease machines and monitoring is conducted by independent licensed monitoring operators. In Victoria, gaming

58 Mr M. Zirnsak, Chair, InterChurch Gambling Taskforce, Transcript of Evidence, 3 March 2008, p. 624.
machines within licensed venues are owned, operated and maintained by the two operators.

202. The framework for the operation of gaming machines is set out in the *Gambling Regulation Act 2003*. The Act provides for Ministerial directions with respect to the requirements for gaming machine operations in Victoria, including the setting of a maximum permissible number of machines. At present, the maximum number of machines permitted is 30,000, comprising 27,500 machines in hotel and club venues, and a further 2,500 within the Melbourne casino. The post-2012 EGM licence process relates to the 27,500 machines operated by Tabcorp and Tattersall’s outside the casino.

203. Tabcorp and Tattersall’s have a 50:50 share of the 27,500 gaming machines. At present (April 2008) there are 525 gaming venues in Victoria: 251 hotel venues and 274 club venues. The median number of machines in a hotel venue is 47 and in a club venue, 43.\(^\text{59}\)

204. Gaming operator licences authorise the operator to:

- obtain gaming machines and restricted components directly from an approved supplier (a person approved under the Act by the VCGR and listed on the Roll of Manufacturers, Suppliers and Testers of, among other things, gaming machines);
- manufacture approved gaming machines and restricted components;
- supply approved gaming machines and restricted components to venue operators; and
- conduct gaming at an approved venue.

205. Conditions within each gaming operator licence are not publicly available and have not been provided to the Committee as such documents are classified as prohibited under the Act. However, the Committee understands that the *Gambling Regulation Act 2003*, regulations, and ministerial directions rather than the licences are the basis for the operational obligations imposed upon the gaming operators and their venues.

4.1.2 Review of Electronic Gaming Machines

206. On 13 July 2004, the Minister for Gaming announced the broad scope, approach, and timetable for the review of Victoria’s lotteries licences together with EGM, Club Keno, wagering licences. The review was to comprise two stages: the Lotteries Licence Review commencing July 2004; and the EGM, Club Keno and wagering licences review commencing in late 2005. Both gambling reviews were to be overseen by the Gambling Licences Review Steering Committee within the Department of Justice.

207. In January 2006, the Minister for Gaming released an information paper on the review of EGM, Club Keno and wagering licences. The information paper set out the scope and terms of reference for the review and the approach and timetable for public submissions and consultations. The review and consultations were to occur in 2006 with the announcement of a post-2012 structure to occur in 2007, and the licences awarding process to follow.

208. A Department of Justice fact sheet outlined that major issues to be included in the gaming machine review would be:

- How should the industry be structured and machines distributed? Should there be operators at all, and, if so, how many and what should their functions be?
- Are supervisory and monitoring of gaming machine arrangements appropriate and adequate?

209. In March 2006, the Minister released an issues paper and called for written submissions. The issues paper on the review of the gaming machine licence arrangements post-2012 provided an overview of and information on:

- the scope of the gaming machine licence review;
- the current gaming machine licence arrangements in Victoria;
- the 2000 National Competition Policy Review of gaming machine legislation;
- gaming machine and other gambling expenditure;
- restrictions on gaming machines by venue and local government area;
- distribution of gaming machine revenue;
• state taxation and returns to gaming operators;
• the current linkages between gambling licences and authorisations and restrictions;
• on the holding of licences; and
• responsible gambling.

210. Written submissions closed on 4 May 2006 with the receipt of 96 written submissions which were referred to the GLR Steering Committee for consideration.

211. A Probity Auditor for the review was appointed in April 2006 to develop the review’s probity plan which was adopted in May 2006. Among other things, the plan sets out the review’s probity principles, project management structure, decision-making processes, probity tasks and conflict of interest protocols. The plan has been updated on two occasions. The most recent update was approved in November 2007. It includes recognition of the role of the Merkel Review as well as reflecting suggestions made by the review panel in relation to the lotteries licensing process, which were considered equally relevant to the post-2012 review process.

212. All organisations and individuals who lodged submissions that were accepted by the review were invited to participate in the public consultations undertaken by Peter Kirby, and supported by the GLR project team. Seventy-one organisations and individuals subsequently presented their submissions. The public consultations commenced on Monday, 24 July 2006, and concluded on Wednesday, 30 August 2006.

213. Major issues arising from the public consultations and submissions included:

• operator system;
• licence obligations, including measures to reduce gambling related harm;
• length of future licence(s); and
• access to gaming venues.

214. Many submitters questioned whether the unique dual-operator system in Victoria should continue post-2012, or whether Victoria should adopt the
approach of other States and Territories where the venues own or lease machines and the monitoring is conducted by independent licensed monitoring operators. If the operator system were to continue, consideration should be given to whether licences would be granted to one, two, or multiple operators.

215. There was also significant comment on obligations imposed upon future licence holders with respect to gambling related harm. The report by Peter Kirby on public consultation and submissions noted:

*There was a general concern to see that any future licence(s) for gaming will contain a number of provisions that would ensure accountability of the licence holder for responsible gambling, public safety and duty of care. It was suggested that the licence should contain benchmarks and/or targets against which performance in these matters could be measured. Issues relating to community health and wellbeing, consumer protection and fairness in treatment of all venues were other matters that some thought should be included in the licence, but overall there was little by way of suggestions as to what actual standards and benchmarks might be set.*

*There was considerable support for basing the licence conditions on public health and consumer protection principles. This approach would have the licence holder(s) taking a precautionary stance to the impact of electronic gaming on the player and being responsible for any adverse health or other conditions arising from using the electronic gaming machines. This was seen as an approach that would be consistent with the Government’s overall policy framework as outlined in the A Fairer Victoria statements.*  

216. The Kirby Report further noted the input received in relation to gaming machine access and location:

*A good deal of the discussion about venues revolved around access. Easy access to gaming venues was seen as a very important consideration in relation to responsible gambling. It was stated that most gamblers would not travel more than five kilometres to access electronic gaming machines and therefore that ‘destination’ venues (venues that are set apart from local communities) offered greater likelihood of responsible gambling.*

---

60 *Gaming Machine Licence Arrangements Post-2012: Report by Peter Kirby on Public Consultations and Submissions, Department of Justice, October 2006, p. 12.*

4.1.3 Post-2012 Gaming License Arrangements

217. On 10 April 2008, the Government announced a new venue operator EGM licence system post-2012. Details of the announcement include:

- following the expiry of the existing gaming operators’ licences in 2012, the State will not issue any further gaming operator licences;
- the State will allocate gaming machine entitlements to approved venue operators through a competitive bidding process;
- a gaming machine entitlement will authorise the approved venue operator to possess and operate a gaming machine;
- the Victorian Commission for Gambling Regulation (VCGR) will continue to approve and regulate venue operator licensing;
- gaming machine entitlements will be granted to operate for 10 years from 2012;
- at the end of the new licences, which commence in 2012, the Government may extend these licences for up to a further two years;
- venue operators will be able to transfer gaming machine entitlements to other licensed venue operators; and
- an independent monitoring function will be established to monitor gaming machine transactions in venues.

4.1.4 Select Committee Evidence

218. Evidence put to the Select Committee on the future post-2012 licence arrangements was consistent with the views presented to submitters during the Kirby Review (many of the submitters were the same organisations and individuals). Key issues raised focussed on:

- the merits of the existing operator system;
- the length of licences; and
- licence conditions and obligations, particularly with respect to gambling related harm.

219. Existing EGM operators, Tattersall’s and Tabcorp, both expressed a view to the Committee that they believed the dual operator system is the preferred structure post-2012.
220. Tattersall’s Limited were represented in a hearing by Mr Frank Makryllos, Chief Executive of Tatts Pokies, and Mr Andrew Birks, Responsible Gambling Manager.

Mr MAKRYLLOS – I believe the operator system is the best system for operating gaming machines, especially in a jurisdiction with such a capped number of machines.

I think if you look at per capita, Victoria has by far the lowest number of machines and has evolved very differently to other states where machines went out organically to all licensed premises. What enables it to keep it at the levels it is right now is the fact that operators actually work with the venue networks. Both clubs and hotels work with the VCGR in planning to most appropriately place a limited number of machines.62

Mr BIRKS – Certainly in terms of a responsible gambling approach the operator model is the best approach, we believe, because it provides for consistency of responsible gambling delivery across the network of venues. Operators have the resources to invest in responsible gambling programs which probably do not show any immediate returns, but operators have the ability to invest in those sorts of longer term strategies in terms of responsible gambling delivery.63

221. Tabcorp’s Managing Director and Chief Executive, Mr Elmer Funke Kupper, also expressed his support for the existing operator model:

Mr FUNKE KUPPER —When it comes to gaming, Victoria has a very unique model with two operators providing gaming machines in both hotels and clubs. That model has proven very successful for customers, for venues, for the government, for the community and for the administration of responsible gambling. Firstly, for customers and venues, the model that is in existence in Victoria consistently provides the best products and services to customers. The dual operator model allows this to happen regardless of the size of the venue. The final element is responsible gambling. We take that responsibility very seriously. We recognise that we must show leadership as a company in this area. Again Victoria is unique in that we have two public companies involved in the gaming industry. That does two things. First, it puts a lot of public scrutiny on the system and on our behaviour and the things that we do. Secondly, it provides scale. It makes it relatively easy for the government and the regulators to interact with those two companies.64

62 Mr F. Makryllos, Chief Executive, Tatts Pokies, Transcript of Evidence, 11 December 2008, p. 419.
63 Mr A. Birks, Responsible Gambling Manager, Tattersall’s Ltd, Transcript of Evidence, 11 December 2008, p. 419.
64 Mr E. Funke Kupper, Managing Director and Chief Executive, Tabcorp Limited, Transcript of Evidence, 11 December 2008, p. 444.
222. Aside from the existing operators who supported the dual operator model, the majority of evidence put to the Committee raised concerns over the existing licence structure. Key issues included:

- views that the duopoly operator model as it is currently configured creates an incentive for the operators to maximise profits which subsequently exacerbates gambling related harm;
- concerns over length of new licences (20 years) and views that shorter licence periods would enable greater review/monitoring by government;
- licence agreements should not limit governments from legislating and regulating number of machines, location, design, operation and layout; and
- new licence agreements should include a requirement for harm minimisation and consumer protection.

223. Mr Phillip Ryan, Chief Executive Officer, Responsible Gaming Networks, put to the Committee a financial model indicating how a single operator model could increase government revenue at the same time as reducing gambling related harm.

Mr RYAN — However, there is a solution for the government which will reduce problem gambling but not cost it any revenue loss. ..... if you eliminate one of the current operators from the industry structure, whoever that may be — and give its former revenue to the government, this will be more than be sufficient to compensate the government’s revenue loss. You have eliminated one operator, the remaining sole operator takes revenue of $316 million and the government’s revenue actually increases from $792 million up to $950 million per annum — that is, approximately $160 million extra per annum, which is $3200 million over a 20-year licence period; an extra $3.2 billion revenue for the government, and at the same time it has reduced problem gambling. There are many precedents for a single operator in gambling. Most states of Australia have a single casino operator, most states have a single TAB operator, and most states have a single lottery operator. It is well accepted that a single gambling operator can be controlled far better than a duopoly in this dangerous industry.65

224. A number of other witnesses raised concern over the existing licence arrangements, in particular, the need for post-2012 licence holders to take greater measures to provide less harmful products.

---

65  Mr P. Ryan, Chief Executive Officer, Responsible Gaming Networks, Transcript of Evidence, 12 February 2008, p. 493.
225. Associate Professor Linda Hancock from Deakin University raised concern over the incentive to maximise profits under the operator system.

Assoc. Prof. HANCOCK — One is the way that the duopoly as it is currently configured has set up a profit-maximising model that is detrimental to disadvantaged communities with the arm’s length that is given within the current licensing model. This has resulted in high-impact machines with lines of play and so on, intensity of play and potentially $12,000 to $15,000 lost per hour. Also it has led to a concentration of machines in areas of high socioeconomic disadvantage.66

226. Ms Sue Pinkerton from Duty of Care also implored the Government to place more stringent conditions on post-2012 licence operators.

Ms PINKERTON - The Victorian government is soon to decide the terms and condition that will govern gaming machine licensing beyond 2012. Changes must be made to the current condition and contract. Licensees must be required to provide their product responsibly or risk losing their privilege of operating gaming machines in Victoria. Consumer protection laws must be changed and updated so they protect the rights of consumers rather than just the rights of the industry. Prospective licensees wishing to continue operating gaming machines beyond 2012 should or must accept a sinking-lid policy, whereby no machine can be repaired, replaced or relocated after 2012. If Tattersall’s and Tabcorp are not prepared to accept these conditions, then so be it. If they accept them, then they should be allowed to keep their duopoly beyond 2012. On behalf of tens of thousands of Victorians already harmed by poker machines, Duty of Care implores the members of the committee to recommend the changes we have so suggested.67

227. Mr Tim McCorriston from the Salvation Army stressed the need for licence conditions to include harm minimisation requirements:

Mr McCORRISTON — One thing I would like to add is an idea that the Salvation Army has put forward previously. It is the idea of embedding into licences a requirement to measure harm and have harm-reduction goals over time.68

228. In both the 2006 Kirby Review and the Select Committee Inquiry, there exists a strong view that 20 year gaming licences are too long and do not allow for adequate control and review by Government.

Major Brad Halse, Communication Director, Salvation Army:

---

66 Assoc. Prof. L. Hancock, Director, Corporate Citizenship Research Unit, Deakin University, Transcript of Evidence, 12 February 2008, p. 524.
67 Ms S. Pinkerton, Secretary, Duty of Care, Transcript of Evidence, 12 February 2008, p. 541.
Maj. HALSE — We certainly think that a reviewing process of greater frequency than has thus far existed should exist, and we do not think that the licensing arrangements post-2012 should go for another 20 years or some such thing like that.

We would suggest that in granting the licences going forward, if that is going to be the decision of the government, that there should be much stronger conditions within that. But whatever the means, there needs to be significant, demonstrable evidence of a reduction in problem gambling. … we just think that whatever the means, whether it is about their education processes, whether it is about the machinery, it is up to the industry which reaps huge financial benefits, to make the product safer and the practice of gambling safer. We would respectfully say it is not for us to come up with those answers in terms of technology or the actual practice of enticing people into the gaming machine situations. It is up to them, and it should be a licence condition that is actually able to be monitored and evaluated in an ongoing sense.69

229. The InterChurch Gambling Taskforce is a major advocate of reducing the incidence of gambling related harm. The Taskforce has been a key contributor to recent reviews and inquires into Victoria’s gambling industry. In its submission to the Select Committee, the Taskforce strongly expressed a view that the duration of post-2012 licences should be significantly reduced.

The Taskforce believes that the profit and revenue margins on EGMs are sufficiently high that venues and any operators do not need long licences to ensure that there is cost recovery on any capital outlays and start-up investments associated with owning and operating EGMs. It is the Taskforce’s understanding that a new EGM ‘box’ costs in the order of $20,000 and that it is depreciated over three years. Therefore the Taskforce would prefer that operator and venue licences last only five years, allowing the Victorian Government greater flexibility to vary licences over time to be greater benefit of the Victorian community.70

230. Macedon Ranges Shire Council put to the Committee that reviews of licences should be conducted every five years to take account of rapidly evolving and emerging technologies and to ensure that benchmarks are met. The Council suggested unless these benchmarks are met, licences should be revoked.71

231. The Committee notes the new licences announced in April 2008 will be for a period of 10 years, halving the previous 20 year licences. The decision to

70 InterChurch Gambling Taskforce, Submission No. 26, 2 April 2007, pp. 4-5.
71 Macedon Shire Ranges Council, Submission No. 42, 30 April 2007, p.9.
reduce the length of the licences is consistent with the evidence received during this Inquiry and is welcomed by the Select Committee. It is anticipated that shorter licence periods will provide the Government with greater flexibility and capacity to monitor the gaming machine industry to ensure higher standards of probity, transparency and accountability which is consistent with measures to reduce gambling related harm.

232. However, the Committee notes that smaller clubs with limited capacity to raise capital may be disadvantaged if they are required to purchase licences upfront and then amortise the licence fees over a 10 year period.

**FINDING 4.1**

The decision to move away from a two operator system is consistent with the views of many of the witnesses who gave evidence to the Committee. However, this may place substantial new demands on the VCGR in maintaining the ongoing integrity and probity of the EGM network.

**FINDING 4.2**

The decision to reduce the term of the EGM licences post-2012 is welcomed.

**FINDING 4.3**

The proposed venue based model will require changes in the way network wide initiatives, including measures to reduce gambling related harm, are implemented and may increase complexity.
FINDING 4.4

Operating conditions for EGMs should continue to be specified in legislation, regulation and by ministerial direction rather than set in the licences. This will preserve flexibility to address changing circumstances.

4.1.5 Implications of the Gambling and Lotteries Licence Independent Review Panel

233. In Chapter 3 the Committee noted the work undertaken by the Merkel Review, established to examine the lotteries licence processes. The Department of Justice advised the Committee that it would take account of the Review’s findings and recommended improvements for future licensing processes including:

- more detailed provisions addressing activities that may be perceived as improper interference;
- prohibition on contact with applicants and their officers and agents by those involved in the licensing process;
- requirements that applicants have protocols in place for compliance with prohibited contact clauses; and
- confirmation at the conclusion of the licensing process, by way of statutory declaration of an appropriate officer of the relevant applicant, that those protocols have been followed.


235. This report examined the probity of the regulatory structure and associated arrangements, for the operation of gaming machines, wagering, approved betting competitions, Club Keno and the funding of the racing industry that were to apply from 2012.
236. The main issue that the Merkel Review discussed in its second report related to the possible conflict of interest involving Corrs Chambers Westgarth, the State’s legal adviser in respect of the regulatory review. The possible conflict stemmed from Mr John Story having dual roles in Corrs Chambers Westgarth and Tabcorp Holdings Ltd.

237. The report concluded that given issues were appropriately addressed once they came to the attention of the Steering Committee and the Probity Auditor, that there were no significant probity issues with respect of the regulatory review.

4.2 Gaming Machine Legislative and Regulatory Framework

238. Considerable evidence was received with respect to the adequacy or otherwise of the legislative and regulatory framework pertaining to the number, location, distribution and specification of EGMs in Victoria. This evidence dealt with accessibility to gaming machines and the causal link to gambling related harm, regional caps, the role of local government in relation to location and number of EGMs, and the specification of gaming machines.

4.2.1 Gambling Regulation Act 2003

239. The Gambling Regulation Act 2003 establishes the Victorian Commission for Gambling Regulation, and provides the framework for EGMs, wagering and betting, lotteries, Club Keno and interactive gambling. The Act generally prohibits gambling and activities relating to gambling unless authorised under the Act or the Casino Control Act 1991.

240. Section 3.2.3 of the Act enables the Minister for Gaming to issue direction to the VCGR with respect to:

- the maximum permissible number of gaming machines in the State;
- the maximum permissible number of gaming machines in any approved venue;
- the proportion of gaming machines to be located outside Melbourne;
• the bet limits to apply to gaming machines;
• the proportion of gaming machines to be placed in pubs, clubs and racing clubs; and
• the proportion of gaming machines that each gaming operator is permitted to operate.

241. Under this power the Minister for Gaming has issued the following directions to the VCGR:

• that the maximum number of gaming machines, other than the Melbourne Casino, is 27,500;
• that the two operators share a 50:50 split of the 27,500 gaming machines;
• that there be a 50:50 split of the 27,500 gaming machines between pubs and clubs;
• that the maximum number of machines to be placed in any approved venue is 105;
• that the proportion of machines to be located outside of Melbourne is 20 per cent; and
• the setting of a $10 bet limit to apply to all gaming machines other than in the Melbourne Casino.

242. On 25 March 2008, as part of initiatives to address problem gambling, the Government announced that the maximum betting limit on EGMs will be reduced from $10 to $5 per spin as of 1 July 2008 on new EGMs and as of 1 January 2010 for existing EGMs.

243. The Gambling Regulation Act 2003 also regulates the distribution and specification of EGMs in Victoria. Section 3.2.4 empowers the Minister to set regional caps on gaming machines. The issue of regional caps was dealt with extensively in submissions received by the Select Committee, particularly from local government and is covered later in this Chapter.

244. Part 5 of the Act deals with control of gaming and in particular sets out various provisions with respect to the specification of gaming machines, control of machines and games, and measures to reduce gambling related harm. Key regulatory provisions as they apply to machine specifications and responsible gaming are outlined below.
245. Section 3.5.3 of the Act empowers the VCGR, with Ministerial approval, to make and amend standards for gaming machine types and games. In approving a new gaming machine or type, the VCGR must have regard to:

- player return, game fairness and security, and responsible gambling;
- the Commission’s standards for gaming machines under section 3.5.3; and
- a certificate from an independent Accredited Testing Facility.

4.2.2 Machine Specification

246. In its evidence to the Committee, the VCGR explained the machine and game approval process and the standards it must apply:

Mr COHEN - ... the Act requires the Commission to have regard to player return, game fairness and security, responsible gambling, the Commission’s standards for gaming machines and a certificate from an independent accredited testing facility. They test the machine to make sure it does everything it is required to do. ... The Commission will not approve a game where the theoretical long-term average return to player is lower than 87 per cent. In considering game fairness and security we check that the game is reliable and is not misleading, that the rules and the artwork are correct and that it has been certified by an accredited testing facility. ...

The Commission’s standards comprise the Australian/New Zealand National Standard for Gaming Machines plus the Victorian appendix. As I said, it includes a chapter on responsible gambling. It is primarily a technical standards document designed to ensure the integrity and security of the equipment as well as incorporating player fairness provisions. For example, the standards do not allow a game which would mislead players into believing they can in any way control the outcome of the game or that a result displayed was a near miss, which means one symbol off winning a prize, unless that outcome was the natural outcome of the spin.

Every gaming machine is connected to an approved central monitoring system. Every gaming machine is continuously monitored by that central monitoring system to ensure it operates as approved. If a gaming machine is in any way tampered with, the central monitoring system will automatically switch that game off — that is one of its functions. We regularly audit the central monitoring system to make sure it is operating as approved.  

247. A number of witnesses were critical of the central monitoring systems which are run by each gaming operator, under approval from the VCGR, to oversee their respective networks of machines. Criticisms related to the data from the monitoring systems being available to the operators to make commercial decisions as to placement and operation of machines, however not being available to interested third parties to assess the impact of EGM operations.

FINDING 4.5

The shift away from the two operator model will require the development of a new central monitoring system by the VCGR to cover all gaming venues (currently 525). An independent monitoring system will assist in implementing measures to reduce gambling related harm, and is essential to the operation of a player pre-commitment system.

Development of such a system will require substantial resources to be provided to the VCGR, and substantial lead time ahead of the post-2012 licences coming into operation.

248. In Chapter 5, the Committee deals with measures to reduce gambling related harm and refers to evidence calling for changes to gaming machine specifications including:

- eliminating bank note acceptors;
- reducing spin rates;
- reducing maximum allowable bet per spin;
- reducing number of lines;
- removing linked jackpots; and
- the need to introduce a player pre-commitment system.

4.2.3 Role of Victorian Commission for Gambling Regulation

249. The Victorian Commission for Gambling Regulation came into operation on 1 July 2004 following the proclamation of the Gambling Regulation Act 2003.
The VCGR regulates the gambling industry in accordance with the Act and the following Government principles against which its gambling policy is to be assessed:

- developing and reinforcing the Government’s commitment to responsible gambling through measures that assist and protect problem gamblers and those at risk of becoming problem gamblers, their families and the wider community;
- developing and maintaining the State’s commitment to the highest standards of probity for gambling service providers;
- accepting gambling is a valid activity for many Victorians who are entitled to expect ongoing high standards of service, transparency and accountability from the gambling sector;
- ensuring that the legitimate financial benefits of gambling (both private and public) are transparent, appropriately recognisable and fairly distributed to the Victorian community;
- that to the extent possible consistent with the other principles, that gaming service providers operate in a competitive environment; and
- establishing proper consultative processes to ensure that appropriate information is given to, and input is received from, the wide variety of persons interested in gambling including stakeholders, affected parties and, to the wider extent possible, the broader Victorian community.

4.2.4 Gaming Premises and Machine Approval Process

250. Gaming machines located in licensed pubs and clubs require the approval of the VCGR. From October 2006, all applications for new gaming venues or increases in gaming machine numbers at existing venues require a planning permit issued by the relevant local government authority.

251. The VCGR approval process incorporates:

- premises or gaming machine approval;
- venue operator’s licence, including probity;
- approval of licensed staff; and
- approval of equipment.

252. When an application for new premises or an increase in gaming machine numbers is made to the VCGR, the applicant must also provide a copy of the application within 14 days to the relevant local government authority. The
council will then have a period of 60 days to provide a submission to the VCGR, following which the VCGR will assess the application, together with any local government submission.

253. In assessing an application, the VCGR has regard to EGM density, numbers of venues, and expenditure per adult in the municipality in which the venue will operate.  

254. Section 3.3.7 of the Act requires that before granting approval, the VCGR must be satisfied that:

- the applicant has the authority to make the application;
- the premises, including the size, layout and facilities, are, or will be, suitable for the management and operation of gaming; and
- the net economic and social impact of approval will not be detrimental to the well-being of the community of the municipal district in which the premises are located.

255. Section 3.3.9 of the Gambling Regulation Act 2003 specifies that every premises approval is subject to conditions that provide for a continuous four hour break from gaming after every 20 hours and not more than 20 hours gaming each day.

4.2.5 VCAT Appeal Process

256. A person who made an application for approval or a local council who made a submission to the VCGR may apply to the Victorian Civil and Administrative Tribunal (VCAT) for review of the VCGR's decision. A decision of VCAT may, in certain circumstances, be appealed to the Supreme Court.

257. The Committee received evidence from a number of local councils highlighting concerns with the VCAT process and recent decisions by VCAT to overturn decisions by the VCGR. Councils also raised concern over having to outlay considerable expense in VCAT appeal cases.

---

73 ibid, p. 457.
In recent times a number of decisions by the VCGR have been overturned at the Victorian Civil and Administrative Tribunal (VCAT). These cases were all opposed by the local governments and tens of thousands of dollars are spent by councils at VCAT. On each occasion the VCGR did not defend their decision at VCAT and instead it fell to local government to engage barristers and prepare briefs to oppose these applications in the community’s interest.74

258. Other local government submissions specifically raised concern over decisions made by the former President of VCAT, Justice Stuart Morris, in approving gaming machines and venues without due regard to local community views, council submissions and on some occasions against the VCGR’s independent assessment.75

259. One case that received particular attention during the course of this Inquiry was the Romsey case in the Macedon Ranges Shire. In his decision of 11 January 2007, Justice Morris overturned the VCGR’s 21 April 2006 decision to refuse the application for 30 poker machines to be installed at the Romsey hotel. Macedon Ranges Shire subsequently challenged the VCAT decision in the Supreme Court of Victoria.

260. On 19 March 2008, the Court of Appeal ruled former VCAT president Justice Stuart Morris incorrectly disregarded the results of a shire-wide community survey in which 80 per cent of respondents, or 476 households, opposed the introduction of poker machines.

4.2.6 Regional Caps

261. The Productivity Commission’s 1999 report, Australia’s Gambling Industries found that there is clear evidence to suggest ‘a significant connection between greater accessibility – particularly to gaming machines – and the greater prevalence of problem gambling.’ As a consequence, and as part of its problem gambling strategy, in 2001 the Government implemented regional caps on gaming machines to protect areas of socio-economic vulnerability, which have high concentrations of gaming machines.

---

74 City of Greater Geelong, Submission No. 47, 15 May 2007, p. 4.
75 Maroondah City Council, Submission No. 6, 29 March 2007, p.6, & Cardinia Shire Council, Submission No.46, 9 May 2007, p.7
262. The Government set caps according to various regions, not specifically based on municipal boundaries, in order to provide protection to vulnerable areas bordering on municipal regions.

263. Using gaming machine density, average player loss per adult per year and the socio-economic status of areas, the Government identified five regions for capping in the first round. The first round of regional caps were implemented in February 2001 in the following regions:

I Maribyrnong Plus—the City of Maribyrnong plus the adjoining postcodes 3015, 3020 and 3031;
II Greater Dandenong Plus—the City of Greater Dandenong plus the adjoining postcodes 3170, 3177 and 3803;
III Darebin Plus—the City of Darebin plus the adjoining postcodes 3058, 3060, 3061, 3074 and 3081;
IV Bass Coast Shire; and
V City of Latrobe.

264. The cap was set at a level of 11.7 gaming machines per thousand adults, requiring the removal of 406 gaming machines from four of the capped regions over three years. (Darebin Plus was capped at its existing level of machines at 30 June 2000 because it had a gaming machine density level below that of the cap.)

265. Following the initial round of caps, in March 2005 the Government announced the formation of the Regional Electronic Gaming Machine Review Panel (REGMRP) to review the gaming machine cap policy and to advise as to how to best implement the second round of regional caps.

266. The REGMRP found that the first round of regional caps did not have a major impact on reducing accessibility to gaming machines. This finding was based on stakeholder submissions, particularly from local government. In its November 2005 report to the Minister for Gaming, the REGMRP noted:

---

77 ibid.
The Panel agrees that the regional caps policy implemented in the first round was not of a scale and scope that would lead to a shift in the way gaming machines are distributed and, therefore, was unlikely to reduce accessibility to gambling opportunities. The findings of the study are supported by the evidence the Panel collected during its review.

... Venue operators generally reported that the number of machines taken out of each venue was not significant enough to have a big impact on problem gambling. Stakeholders indicated to the Panel that, in venues that lost machines in the first round, the remaining machines were used more intensively.

Local councils were particularly supportive of the regional caps policy. Some community stakeholders also supported a cap, but indicated that they did not believe that the government would implement caps at a level that would impact on the accessibility of gaming opportunities.78

267. In recommending a capping level and system for the second round, the REGMRP considered the need to set the cap at a level that reduces the accessibility to gambling opportunities in vulnerable communities and the impact that removing a significant number of machines from these communities will have on gaming venues. The Panel considered a range of caps levels at densities of 7.0, 8.0 and 8.5 gaming machines per thousand adults and ultimately recommended that the universal cap be set at a density of 8.0.

268. A second round of regional caps was announced in October 2006, increasing the total number of regional caps to 19. The new capped areas are based on:

- City of Ballarat;
- City of Warrnambool;
- City of Greater Geelong, including the Borough of Queenscliff;
- City of Greater Shepparton; and
- Moonee Valley Plus, including parts of City of Moreland, as well as part of the City of Melbourne.

269. Despite the recommendations of the REGMRP, the Government set the level of second round of regional caps at the lesser of either 10 gaming machines...
per 1,000 adults or the density of gaming machines in the region as at 12 October 2006.

270. As at 18 December 2007, the Government’s regional caps policy has resulted in 949 gaming machines being removed.

271. The Committee received evidence from local government that the capping level of 10 gaming machines per 1,000 is still too high and does not reflect the findings of the independent Review Panel in terms of adequate impact on reducing accessibility to gaming machines.

City of Greater Geelong

Current caps by Victoria State Government of 10 machines per thousand adults (Victorian State Government Gaming Strategy October 2006) is more than lenient … Setting a cap of 8 machines per 1000 adults would help to address the issue of density for large municipalities like Geelong where there are areas of significant disadvantage with very high ratios of machines to residents, however the size of the LGA hides this figure. Further the City of Greater Geelong policy supports redistribution of machines within the municipality where the EGMs are leaving disadvantaged communities.79

Macedon Ranges Shire Council

Governments have failed to identify the appropriate distribution and number of pokie machines necessary to avoid economic and social harm to individuals and communities. In Victoria, the reasons are two-fold: such work is not a priority of government; and the necessary data for this work is owned by the industry and not made available. Of particular concern is the willingness of government to introduce pokies-related policies that have a flimsy evidence-base. … A recent example of this is the cap of 10 pokie machines per 1,000 adult population announced by government (and which is above the level recommended by the Regional Electronic Gaming Machine Caps Review Panel of 8 machines per 1,000 adult population). Justification for the increase in ratio is that “setting a cap level is an inexact process” and “varies widely” across localities (Letter from the Executive Director, Gaming and Racing to Macedon Ranges Shire Council’s Mayor, 2 March 2007). These ‘justifications’ should be used to reduce the cap not increase it.80

272. While the Committee notes the evidence it received in support of regional caps, it also notes an equal body of evidence from witnesses who believe caps on EGM numbers are relatively ineffective and instead venue numbers

79 City of Greater Geelong, Submission No. 47, 15 May 2007, p. 3.
80 Macedon Shire Ranges Council, Submission No. 42, 30 April 2007, p. 6.
should be restricted. This approach, know as ‘destination’ gaming is predicated on removing EGMs from multiple, local, easy access venues in favour of single ‘destination’ gaming venues. This is explored further in Chapter 5.

4.2.7 Role of Local Government in Location and Density of Gaming Venues and Machines

273. Previously in this Chapter, reference has been made of local government and local community desires to have a greater say in location of gaming machines and venues. The Committee notes the changes to legislation in October 2006 that requires all applications for new gaming venues or increases in gaming machine numbers at existing venues to obtain a planning permit issued by the relevant local government authority.

274. Local government welcomed these new powers but have expressed to the Select Committee that local council’s powers should be further increased in relation to the control of venues and to prevent the introduction of EGMs where they are not welcome. There was a general view in submissions that local communities should be empowered to make decisions on volume and location of EGMs in their community.

275. The City of Greater Geelong has been a strong advocate of the role of local government in the licensing of EGMs.

As the community voice, councils are in the best position to reflect the local views and opinions about EGM density and location. The City of Greater Geelong believes that there is room to move some of the planning controls from the Victorian Commission for Gaming Regulation (VCGR) to local councils who can better reflect local concerns and trends. This move is supported by the Victorian Local Governance Association who also argue that local government is best placed to evaluate the local social and economic dimensions of gaming.81

276. The Victorian Council of Social Services, in its evidence to the Committee, also advocated for greater community input.

---

81 City of Greater Geelong, Submission No. 47, 15 May 2007, p. 3.
Ms WEBSTER — We believe there needs to be much stronger regulation around the planning processes in relation to the location of machines and that if there was a stronger regulatory framework provided centrally, local government and local communities should have a much greater say in the location of machines.82

277. The Committee noted however that an enhanced regulatory role for local government is complicated by the potential for conflict of interest where local government authorities are themselves associated directly or indirectly with gaming venues.

278. Associate Professor Linda Hancock of Deakin University noted:

But on the other hand, there are some issues to do with some local councils that have entered into public-private partnerships with providers, so I guess there is a balancing act here. The case I am thinking of is Casey Fields in Cranbourne, where that led to machines being shifted around like the deckchairs on the Titanic, I guess, into this new facility, so that both providers were given something in the Lyndhurst and Casey Fields decision, but in that case local government was in favour of it, but lots in the community had given up.83

279. The Committee is mindful that local government and local communities have a strong desire to have a direct influence in the decision making process for the location of new gaming venues and machines. There have been cases in the past where the views of local council have not been adequately considered in the application process. However, the requirement for applicants to now obtain a planning permit from a local authority places more control in local councils. Further, the Supreme Court ruling in the Romsey case referred to earlier in this Chapter also has implications for future VCAT appeals and the need to recognise local community views.

280. The Committee notes that local community sentiment and local council decision making is not always the one and the same. The example provided above in relation to Casey Fields is a case in point.

281. The Committee believes that the VCGR is best placed to independently assess applications for venues and machines with respect to requirements

---

82 Ms M. Webster, Vice-President, Victorian Council of Social Services, Transcript of Evidence, 12 February 2008, p. 525.
83 Hancock, Transcript of Evidence, p. 529.
within the *Gambling Regulation Act 2003* and Ministerial directions. Local government authorities are able to consult their communities with respect to applications and make a submission to the VCGR. The recent Court of Appeal ruling should ensure that VCGR deliberations (and subsequent VCAT appeals) accord appropriate weight to the needs and views of local communities.

**FINDING 4.6**

In some cases, the views of local communities have not been accorded sufficient weight by VCAT in assessing applications for EGMs. Cognisance of the recent Court of Appeal decision should ensure this is addressed.

**FINDING 4.7**

The role of local government authorities is appropriately recognised by the requirement for venue licence applicants to obtain a planning permit. However, the capacity for local government to influence outcomes under the new planning provisions is yet to be fully tested.
CHAPTER 5: PROBLEM GAMBLING

5.1 Introduction

282. Part 1 (e) of the Committee’s reference required an examination of the effectiveness or otherwise of current measures to minimise and address the incidence of problem gambling in Victoria, the merits of alternative measures and any related matter.

283. Evidence received by the Committee highlights the significance of gambling related harm as a major social, economic and public health issue in Victoria. While there still appears to be a lack of quantifiable data to measure and define problem gambling, it is clear that a large number of Victorians have a serious problem with gambling. For some, these problems extend to extreme financial difficulties, pressures on relationships and for dozens if not hundreds of Victorians every year, depression and despair to the point of suicide. It is also clear that a large proportion of gaming revenue is derived from problem gamblers.

284. The need to reduce the incidence of gambling related harm were constant themes throughout all parts of the Committee’s reference, from the awarding of new lottery and electronic gaming machine (EGM) licences, to the number, location, distribution and specification of EGMs in Victoria.

285. When the Government announced that from 1 July 2008 lottery licences would be split between Tattersall’s and a new entrant in the Victorian gambling industry, Intralot, concerns were raised over the impact the new arrangements and new lottery products may have on problem gambling. In particular, the Committee received input from concerned individuals and groups over the operation of instant lotteries (scratchies) and the possible expansion of these products into supermarkets and service stations.
As part of its April 2008 announcement that Victoria’s dual-operator EGM licences are to be replaced with new venue-based licences from 2012, the Government highlighted the need to promote responsible gambling and noted that the new licence arrangements would be introduced with a range of new harm minimisation measures. These new measures are examined by the Committee later in this chapter and to some extent address concerns put to the Committee during its Inquiry.

Issues including regional caps, the application process for new gaming venues and new machines, and machine specifications were covered in Chapter 4 but are directly related to measures to minimise and address the incidence of problem gambling in Victoria. These matters are dealt with further in this chapter.

While the Committee heard a range of strong opinions and evidence on how to reduce problem gambling, including calls to ban EGMs altogether, the Committee recognises that gambling is a legitimate leisure and entertainment activity for many Victorians, and is a significant contributor to the Victorian economy.

However, gambling can have serious impacts for individuals, families and local communities. Accordingly government must continue to implement measures to reduce problem gambling, including making gaming venues less accessible and ensuring greater consumer protection from potentially harmful products.

### 5.2 Incidence of Problem Gambling

Evidence put to the Committee suggests the full extent of problem gambling is difficult to quantify and that continued research into the nature, prevalence and causes of problem gambling is necessary. However, despite the lack of quantifiable data, it is widely claimed that more than two per cent of the
Victorian adult population are classified as problem gamblers.\textsuperscript{84} As outlined below, the Victorian Government claims the figure is closer to one per cent.

291. There are a range of consequences and social impacts arising from gambling related harm including financial loss, family breakdown, crime and suicide. The Committee heard that there are many difficulties in quantifying the full extent of gambling related harm as existing data is based on the number of people seeking some form of assistance such as problem gambling help services or financial counselling. The Committee heard that many people who have a problem with gambling do not seek assistance because of a perceived stigma attached to the problem or because they fail to acknowledge that a problem exists.

292. The Committee notes that the Government has adopted the following definition of problem gambling: ‘\textit{Problem gambling is characterised by difficulties in limiting money and/or time spent on gambling which leads to adverse consequences for the gambler, others or for the community.}’\textsuperscript{85}

293. It is generally accepted that Victoria’s level of gambling related harm increased significantly following the introduction of EGMs in the early 1990s and became a serious concern in the second half of the 1990s. Evidence put to the Committee indicates that any form of gambling has the potential to lead to addictive behaviour; however, it is clear that EGMs have been the single largest contributor to gambling related harm in Victoria. Evidence highlighted throughout this chapter suggests existing EGMs are unsafe and greater consumer protection is required.

294. The other concerning statistics put to the Committee include:

- the gaming industry is dependent on problem gamblers for over 40 per cent of its revenue; and
- approximately 85 per cent of problem gambling is attributable to EGMs.

\textsuperscript{84} \textit{Taking Action on Problem Gambling}, Office of Gaming and Racing, Department of Justice, October 2006, p. 6.

295. The Committee has not attempted to undertake a detailed assessment of the impacts of problem gambling, rather, its evidence focussed on the existing Government measures to reduce gambling related harm. The Productivity Commission’s comprehensive 1999 report *Australia’s Gambling Industries* provides a detailed analysis of the impacts of gambling. The Department of Justice, has also released several recent reports and strategies dealing with problem gambling (*Taking Action on Problem Gambling* – Oct 2006 and *Regional Electronic Gaming Machine Caps Review Panel Final Report* – Nov 2005).

296. The key findings from the above reports are consistent with the evidence received by the Committee.

297. Firstly, there is a clear link between accessibility and concentration of EGMs and an increase in gambling related harm. Secondly, there is a relationship between EGM density and socially and economically disadvantaged areas. These relationships have had a direct influence on the Government’s regional caps policy as outlined in Chapter 4.

298. There is also recognition that the specifications of EGMs and gaming environments (venues) can significantly impact on player losses and a player's cognitive decisions to continue to gamble.

### 5.2.1 Prevalence Rates

299. As mentioned above, reference was made to a statistic that over two per cent of the adult population are classified as problem gamblers. This figure arose out of the Productivity Commission’s 1999 *Australia’s Gambling Industries* report. However, evidence put forward by the Department of Justice with respect to the Victorian Government’s problem gambling initiatives and problem gambling prevalence rates, suggests the figure in Victoria has been halved:

*Ms ARMYTAGE – From 2000 to 2006 the strategy was the central plank of the government’s public health-based response to problem gambling. In 1999, according to the Productivity Commission’s Australia’s Gambling...*
Industries report, problem gambling prevalence rates in Victoria were 2.14 per cent. In 2003, according to the community attitudes survey of the gambling research panel report, prevalence rates in Victoria were 1.12 per cent.86

300. Other evidence put to the Committee does not support the claim that prevalence rates have been halved in recent years and if anything, the figure of two per cent is an under-estimation. The Australian Family Association submission noted:

The numbers of problem gamblers can never be more than estimates, based on the observations of the various welfare agencies and the self-identified clients of Gambler's Help. Those who make contact only by telephone are another group whose numbers can only be estimated. Therefore, when the Premier in October 2006 claimed that problem gambling under Labor had halved to 1.1% of the population - while more problem gamblers are accessing counselling - the apparent precision of the rubbery figures was extraordinary.87

301. Dr James Doughney from the Victoria University of Technology, was highly critical of the Government’s claim, based on a small telephone survey, that only 1.1 per cent of the Victorian adult population could be classified as problem gamblers. More to the point, Dr Doughney criticised the Department of Justice officials who ignored the limitations and caveats of a small telephone survey and promoted to the Minister a statistic that could not be relied upon.

Dr DOUGHEY — One of the big problems with any prevalence study is when you ring people up on the telephone in their home, you cannot get any certainty that the answers that you will get will be honest. …..Prevalence surveys by themselves have this intractable problem. You just cannot get around the problem of honesty when you are ringing people up on the telephone. It is as simple as that.

My problem is simply that the government, and those who promoted the view — the Department of Justice in its gambling strategy — did not acknowledge the caveats that were right up the front of that document, and they promoted it, and we still hear it being promoted now. My view is that those who were responsible for promoting that view have deceived the Victorian community. To me it is a simple as that. I would put it to you that the people who put together the government’s gambling strategy document — 2006 I think it was,

86 Department of Justice, Transcript of Evidence, 11 December 2007, p. 407.
87 The Australian Family Association, Submission No. 12, 29 March 2007, p. 2.
or 2005 — were in full knowledge of the doubts that exist about the veracity of prevalence studies, and yet they put it out there.\textsuperscript{88}

302. The Committee also notes the submission by Duty of Care which believes any figure based on the total adult population is misleading:

\textit{How often we have read or heard in the media some gambling machine industry representative (or industry apologist) stating “ONLY 1, 2, or 3% of Victorians have a gambling problem”? While this statistic may be correct, it fails to take into account the fact that 40,000 people being harmed by just one gambling product – the EGM – is an unacceptably high number, especially given that only 30% of the adult population ever put a coin into one of the states gambling machines.}\textsuperscript{89}

303. The Committee heard evidence contrary to the Government’s claim that the incidence of gambling related harm in Victoria has been halved over the last 5-7 years. It is clear that there is a disagreement on the rate of problem gambling in Victoria. The Committee supports further independent research to be undertaken in this area.

304. Evidence clearly indicates EGM gambling related harm is a significant social health issue that needs to be reduced through stringent regulations and preventative measures.

**FINDING 5.1**

Problem gambling prevalence rate data from the 1999 Productivity Commission study and the 2003 Gambling Research Panel longitudinal study are not comparable, and should not be used to suggest a halving of the problem gambling prevalence rate in Victoria.

\textsuperscript{88} Dr James Doughney, Victoria University of Technology, \textit{Transcript of Evidence}, 18 February 2008, p. 587.

\textsuperscript{89} Duty of Care, \textit{Submission No. 36}, 30 April 2007, p. 8.
FINDING 5.2

The Committee recommends that the Government commission independent open and transparent research to quantify the full extent of gambling related harm in Victoria. In particular, consistently based and measured trend data is required to monitor changes in the prevalence of gambling related harm.

5.3 Victorian Government Problem Gambling Policies

305. One of the stated objectives of the Gambling Regulation Act 2003 is to foster responsible gambling in order to:

- accommodate those who gamble without harming themselves or others; and
- minimise the harm caused by gambling related harm.

306. Key provisions within the Gambling Regulation Act 2003 aimed at minimising harm include:

- controls and standards relating to EGM and game design;
- limiting machine note acceptors to $50 and banning autoplay facilities;
- limiting EGM spin rates to a minimum of 2.14 seconds;
- prohibiting licence holders and gaming operators from extending credit to any EGM players;
- limiting cash withdrawals from ATM/EFTPOS machines located in gaming venues at $200 per transaction; and
- a requirement that payouts of winnings over $2000 be by cheque.

307. Other harm minimisation measures implemented since the introduction of EGMs and growing incidence of problem gambling include:

- establishment of Gambler’s Help Line telephone counselling service;
- elimination 24 hour gaming venues other than at the Melbourne casino;
- requirement that all EGMs have clocks installed;
- ban of smoking from all EGM venues including the casino, other than in the high roller rooms;
ban of EGM advertising and restricted venue signage;
advertising campaigns highlighting the dangers of problem gambling;
implementation and expansion of the Regional Caps Strategy; and
establishment of the Advocate for Responsible Gambling.

308. In October 2006, the Government released a five year strategy for dealing with problem gambling. Key initiatives within ‘Taking Action on Problem Gambling’ include:

• increasing funding for gambler's help services to $79.8 million over five years;
• $2.6 million to strengthen the industry self-exclusion program;
• $1.2 million to resource the Responsible Gambling Ministerial Advisory Council;
• $37.5 million over five years to further develop the Problem Gambling Community Awareness and Education Strategy;
• doubling the number of capped regions and extending the boundaries of the existing metropolitan capped regions;
• setting a maximum EGM density for all other local government areas (with the exception of the central business district, Southbank and Docklands) at 10 EGMs per thousand adults, with areas below 10 EGMs per thousand adults able to increase machine numbers up to the maximum density;
• investigating whether destination gaming would deliver a net community benefit to Victoria;
• capping daily withdrawals from any automatic teller machine in a gaming venue, or within 50 metres of an entrance to the Melbourne casino gaming floor at $400;
• giving the VCGR and the Minister for Gaming new powers to ban a product or practice that encourages consumers to engage in behaviours associated with problem gambling or that is designed to explicitly avoid or undermine any aspect of the government's responsible gambling policy or legislation;
• for non-casino EGMs, reducing the maximum amount that a player can put into an EGM at the start of play to $1000, and require that all winnings over $1000 be paid out fully by cheque;
• reviewing the matters the VCGR are required to consider when determining an application for approval of a new gambling venue or determining an application for an increase in the number of machines in an existing venue; and
• providing $7.2 million for gambling related research.\textsuperscript{90}

309. In March 2008, the Government announced several further harm minimisation measures including:

• removal of ATMs from gaming venues by the end of 2012;
• from 2010 all EGMs must give players the option to pre-commit the amount of time and money they spend;
• penalties for allowing minors to gamble to be increased from a minimum $1,100 to a possible maximum of $13,000;
• the maximum betting limit on EGMs to be reduced from $10 to $5 per spin as of 1 July 2008 on new EGMs and as of 1 January 2010 for existing EGMs; and
• new powers for the Minister for Gaming and the VCGR to ban products or practices that undermine responsible gaming practices.

310. The Committee’s evidence outlined below is broadly consistent with these recently announced measures, including the removal of ATMs and a player pre-commitment system. However, as the Committee’s evidence highlights, a number of these measures should be implemented sooner and/or expanded.

311. With respect to EGM legislation, the Committee believes that the Government should examine the New Zealand Gambling Act 2003, which contains stringent requirements to address gambling related harm. The New Zealand legislation mandates a set percentage of gaming revenue be specifically directed to public health measures to reduce gambling related harm, while regulations limit gaming machine licences to two years and give local authorities significant control in the location and number of machines. New Zealand is also moving to legislate for player-tracking mechanisms.

\textsuperscript{90} Department of Justice, Submission No. 32, 5 April 2007, pp. 23-24.
FINDING 5.3

The New Zealand Gambling Act 2003 contains significant measures to address gambling related harm and should be examined by the Victorian Government.

5.4 Select Committee Evidence

312. The Committee received a wide range of views in written submissions and throughout public hearings on possible measures to minimise the incidence of problem gambling in Victoria. In summary, the evidence suggests harm minimisation measures should be aimed at:

- reducing accessibility to gambling (destinational gambling venues and reductions in number if EGMs);
- providing greater consumer protection with EGMs and thereby reducing the rate of loss (changes to machine specifications and introduction of a player pre-commitment system); and
- reducing ready access to cash in gambling venues (removal of ATMs and reduction in winnings to be paid by cheque).

5.4.1 Destination Gaming / Volume of Electronic Gaming Machines

313. As is highlighted elsewhere in this report, overwhelming research and evidence indicates a link between accessibility and gambling related harm, particularly in relation to EGMs. The Committee received a range of opinions on reducing the number of gaming venues, making them less accessible and reducing the overall number of EGMs in the State. The need to make venues and machines less accessible, particularly within communities with a low socio-economic profile, formed the basis of the Government’s regional caps policy as outlined in Chapter 4.

314. The Committee notes the Government’s Regional Electronic Gaming Machine Caps Review Panel supported destination gaming and recommended ‘the Minister for Gaming examine options to restructure the gaming industry that result in:'
gaming venues that are less accessible to vulnerable communities;  
a shift towards more destination gaming venues; and  
fewer venues across Victoria.\textsuperscript{91}

315. The Committee considers that the Government’s regional caps policy, whilst  
being a positive initiative, does not sufficiently address the above  
recommendation of its own panel, and does not address the calls for  
destination gaming. In evidence from the Salvation Army, the Committee was  
told:

\textit{Maj. HALSE} — \textit{We think the number of machines and the correlated issue of  
accessibility is a key driver of the extent of gambling problems, so we would  
call for a reduction. We have certainly endorsed the idea of further exploring  
in a major way destinational gambling, so that if people wish to play pokies  
they are not available in such a proliferation.}\textsuperscript{92}

316. Other witnesses, such as Ms Gabriela Byrne from Chrysalis Insight, also  
supported destination gaming over a reduction in number of machines.

\textit{Ms BYRNE} — \textit{... I do not believe just reducing the number of poker  
machines in Victoria would solve the problem. I believe the accessibility to  
this product is the major problem that we have to face and have to deal with.  
So I believe fewer venues is really what is needed.}\textsuperscript{93}

317. The Victorian Council of Social Services supported fewer, but larger venues:

\textit{Ms WEBSTER} — \textit{We think a larger venue that might have more machines  
that required people to travel to get to it would probably be more protective  
than machines easily accessed at the end of the street.}

\textit{Assoc. Prof. HANCOCK} — \textit{Just on the other side to that argument is: are  
detrimental effects of having smaller venues and localised machines? In  
Norway, where they have just been eradicating machines from corner stores  
and so on, that is seen to be a very successful reform.}\textsuperscript{94}

318. As discussed in Chapter 4, there are currently 27,500 EGMs located in  
Victoria outside the Melbourne casino. Any one venue is not permitted to have  
more than 105 machines. The Committee notes that the Government has

\textsuperscript{91} Regional Electronic Gaming Machine Caps Review Panel – Final Report, Office of Gaming  
and Racing, Department of Justice, November 2005, p. xiii.

\textsuperscript{92} Halse, \textit{Transcript of Evidence}, p. 615.

\textsuperscript{93} Ms G. Byrne, Chair, Chrysalis Insight, \textit{Transcript of Evidence}, 12 February 2008, p. 514.

\textsuperscript{94} Webster & Hancock, \textit{Transcript of Evidence}, p. 529.
indicated that it does not support change to the statewide cap of 27,500 non-casino EGMs.

319. The Committee’s evidence supports a shift to fewer, less accessible, gaming venues to assist in reducing problem gambling. Consequently the Committee is concerned at how the new venue based licences will be distributed and whether the new licences will be consistent with previous recommendations to make gaming venues and machines less accessible.

**FINDING 5.4**

A reduction in EGM accessibility through fewer, less accessible venues would probably help to reduce gambling related harm. Accordingly, the Committee recommends the Government investigate destination gaming as it undertook to do in its 2006 ‘Taking Action on Problem Gambling’ strategy.

**FINDING 5.5**

The awarding of individual post-2012 EGM licences to venues must have regard to the number and geographical distribution of venues in local areas.

**5.4.2 Product Safety & Consumer Protection**

320. The Committee received a significant volume of evidence indicating existing EGMs are addictive and unsafe. Despite various machine specifications within the *Gambling Regulation Act 2003*, many individuals and groups stressed the need for greater consumer protection.

321. The Committee attempted to ascertain the extent to which EGMs have the potential to lead to addictive behaviour. The Committee heard from the Department of Justice how addictive gambling behaviour is being addressed
through counselling services and the machines themselves are regulated to reduce player losses. However, the Committee’s evidence highlights that more needs to be done to reduce gambling related harm.

322. The Committee notes with concern the reluctance of existing EGM operator, Tattersall’s to acknowledge the addictive potential of electronic gaming machines. Mr Frank Makryllos, Chief Executive, Tatts Pokies:

**Mr BARBER** — I earlier asked Ms Armytage if she believed that EGMs were addictive, and I think she eventually admitted that for some people they could be, and she then volunteered that that is why they operate their problem gambling policies under a drug and alcohol-type model. What is it about your machines that you believe some people find addictive?

**Mr MAKRYLLOS** — First of all, you put the question earlier, if you do not mind, saying it was a simple question. I will put it as a simple answer: I do not think they are addictive. They are not addictive. As I think we heard in earlier evidence, a lot of people have issues with various forms of gambling and also various forms of other social interactions. Poker machines are no different.

**Mr BARBER** — So there is no feature of your machine that develops in the user any physiological, psychological, behavioural kind of pattern that can be discerned that keeps them at that machine longer than perhaps a conscious free-will type of person would be there?

**Mr MAKRYLLOS** — It is an entertainment product, so it is designed to entertain.95

323. The evidence received from Ms Gabriela Byrne from gamblers help organisation, Chrysalis Insight, was particularly insightful given Ms Byrne once had an addiction to poker machines.

*I consider myself somewhat of an expert in regards to pokies, and especially in regards to problem gambling because, in 1992, when poker machines were introduced to Victoria, I developed a hot, passionate love affair with this product. I was addicted to poker machine gambling. I lost about $40 000 in five months before my husband controlled the access to money; I lost the money, though, on poker machines with a maximum of five lines compared to players who can play 50 lines right now; I lost it on poker machines with a lot slower spin rate; and I had to push $40 000 in coins through a slot because we did not have note acceptors at that stage.

...*

Poker machines are basically unsafe and there is no regulation of what this machine can be set up to do or not do. New machines are not tested for consumer safety by the government, and there is no regulation that prevents

---

a new generation of machines entering the market to extract more money in shorter periods of time. … How is it possible that one of my clients — a young, single mother of two children — is able to lose $7000 on a 1 cent machine in 45 minutes? I do not call this entertainment — I think this is an irresponsible industry supported by a government addicted to the revenue.

If the product — and I am just calling it as I believe it is, a product — any product has the potential to harm individuals, then our government has an obligation to its citizens to put legislation and regulation in place that will prevent people from getting hurt, even if it is just to protect people from themselves, and I quote here the seatbelt legislation.96

324. The Committee also heard from Mr John Stansfield, Chief Executive Officer with Problem Gambling Foundation of New Zealand who, when asked by the Committee what single action the Government could take to reduce problem gambling, spoke of product safety measures:

I would definitely have a crack at seatbelts and airbags. I think making a safer product is the first thing that needs to be examined.97

325. Ms Sue Pinkerton, from Duty of Care, went further and suggested it would be impossible to make EGMs a safe product:

I believe that EGMs are cognitively manipulative, that they alter people’s perceptions about what is possible, they shape and condition behaviour, and they cannot, I believe, be made safe.98

326. In summary, evidence indicated the following changes should be made to EGMs in order to make the products less harmful:

- eliminate bank note acceptors;
- reduce spin rates;
- reduce maximum bet per spin;
- reduce number of lines;
- remove linked jackpots; and
- reducing credit balances.

96 Ms G. Byrne, Chrysalis Insight, Transcript of Evidence, 12 February 2008, p. 514.
97 Mr J. Stansfield, Chief Executive Officer, Problem Gambling Foundation of New Zealand, Transcript of Evidence, 3 March 2008, p. 646.
98 Ms S. Pinkerton, Duty of Care, Transcript of Evidence, 12 February 2008, p. 542.
327. The InterChurch Gambling Taskforce listed in its submission a number of measures to reduce the rate of loss on each EGM including:

- ban on note acceptors;
- a maximum bet limit of $1 per button push;
- reduction in the maximum number of lines that can be bet on to six;
- reduction in the maximum number of credits that can be bet per line to four;
- mandatory breaks in play, and on-line help prompts;
- inform the gambler of how the EGM works and the likely rate of loss by playing;
- one EGM per player;
- prohibition on linked jackpots;
- removal of the double-or-nothing feature; and
- limiting the opening hours of gaming areas.99

328. Further evidence put to the Committee by Dr Charles Livingstone, from the Department of Health Science, Monash University highlighted the need to review technical standards of EGMs to ensure greater product safety:

The other problem is the national technical standards at the moment do not go to issues of consumer safety. They go to issues such as, ‘The machine shall do this when a particular event happens’, and if somebody opens the door, then it has to send a signal and it has to be interrogated and turned off and all that sort of stuff; and it is not allowed to electrocute the patrons. But it does not go to issues of consumer safety about what we regard as the principal harm associated with gaming machines, which is problem gambling.

The technical standards, we would argue, need to be directed in that direction. In order to do that you need to get a systematic approach, which analyses the data and utilises it for public health purposes, which is quite feasible but is not yet done.100

329. Evidence put to the Committee consistently indicated a measure to reduce the incidence of problem gambling is to slow down and reduce a player’s rate of loss. Existing measures such as the banning of smoking in gaming venues was seen to have had an impact in that players who smoke are forced to take

---

99 InterChurch Gambling Taskforce, Submission No. 26, 2 April 2007, p. 7.
100 Dr C. Livingstone, Department of Health Science, Monash University, Transcript of Evidence, 18 February 2008, p. 570.
a break and leave their machines, in which time they may have second thoughts about returning.

330. The Committee welcomes some of the initiatives recently announced by the Government but believes stronger measures must be taken to provide consumer protection through regulations governing electronic gaming machine specifications.

331. The banning of note acceptors was seen by many witnesses as a key measure required to reduce the rate of loss on EGMs. At present, legislation limits note acceptors to $50. The Committee believes this amount is too high.

332. Further, evidence indicates that large payouts encourage problem gambling and that more frequent smaller payouts will reduce incidence of problem gambling. It is clear that people may continue to play a machine in the hope of winning a jackpot or significant payout. The InterChurch Gambling Taskforce highlighted the need for a review of linked jackpots:

Linked jackpots may encourage problem gambling behaviour, encouraging EGM gamblers to spend more than they otherwise would in the hope of a large win. A Victorian Department of Human Services report on the impact of gambling on women found that jackpots influenced the amount of time and money spent and on the frequency of gambling on EGMs. A moratorium should be placed on all EGM linked jackpots until the Victorian government is able to conduct credible research to demonstrate conclusively that linked jackpots do not contribute to problem gambling behaviours.101

333. The Committee supports the suggestion by the InterChurch Gambling Taskforce that the Victorian Government undertake credible research into the impacts of linked jackpots.

334. A further issue put to the Committee related to the use of near-miss technology in EGM design. It was suggested to the Committee that such machine design was one of the factors responsible for gambling related harm.

335. Dr Livingstone suggested to the Committee that near-miss technology can encourage problem gambling through the expectation that a win is imminent.

101 InterChurch Gambling Taskforce, Submission No. 26, 2 April 2007, p. 11.
**Dr LIVINGSTONE** — … the machine is configured to induce you to part with your money in that way, by having near misses that would appear if you are simply playing one or a smaller number of lines. So in other words, what you do is you get people to bet on all the available options, they have intermittent small wins, that keeps them reinforced, as it were, and the capability of betting on as many lines as possible makes you think that you are covering your bets; you are insuring yourself against a near miss, but in order to do that they have to bet much more money.\(^\text{102}\)

336. The VCGR advised that the use of near-miss technology was controlled in accordance with *Australian and New Zealand Gaming Machine National Standard*, which prohibits EGMs from artificially creating a ‘near-miss’. However, other evidence put to the Committee suggested some machines in operation still incorporate near-miss technology.

---

**FINDING 5.6**

Gambling related harm can be reduced by slowing the rate of play on EGMs. This can be achieved by the slowing down of spin rates, a reduction in maximum number of betting lines and a reduction in the maximum number of credits that can be bet per line.

**FINDING 5.7**

The *Gambling Regulation Act 2003* should be amended to limit EGM note acceptors to an amount less than $50.00.

---

\(^{102}\) Livingstone, *Transcript of Evidence*, p. 566.
FINDING 5.8

The prospect of winning large linked jackpots has the potential to encourage behaviour which leads to gambling related harm. Less emphasis should be placed on large jackpots in favour of more frequent smaller payouts.

FINDING 5.9

Consistent with the Gaming Machine National Standard, the VCGR should ensure that no ‘near miss’ technology is employed in EGMs in Victoria.

FINDING 5.10

Signage advising patrons of the probability of losing and that EGMs should be used for entertainment only should be displayed on each EGM.

FINDING 5.11

Regulations against advertising EGMs or other forms of gaming either at EGM venues or the Melbourne casino, should be enforced.

5.4.3 Introduction of player pre-commitment technology

337. Throughout the Committee’s evidence there were strong calls for the introduction of player pre-commitment technology that allow players to set time or loss limits before playing on a gaming machine.

338. Witnesses emphasised the importance of EGM players making those decisions prior to commencing gambling. Mr Philip Ryan of Responsible Gambling Networks stated:

The academics argue that people cannot make rational decisions in front of these machines; they need to make rational decisions away from them. So
the process would be that a player would say, ‘I want to play these machines, I want to make a decision about what I am prepared to spend on a daily, weekly basis, I will make a rational decision here away from the machines, and here is my identity’.  

339. The Committee welcomes the recent announcement by the Government that it intends to introduce such mechanisms from 2010. Details of how this system would work are yet to be decided, however the Government noted:

*The Government will require all new gaming machines from 2010 to have a pre-commitment mechanism that allows a gambler to pre-set time and loss limits. Gamblers will be able to limit how much they want to spend, or how long they want to spend playing, prior to commencing play. The Government will consult with technical experts and gambling researchers to determine the best method.*

340. Many witnesses agreed that pre-commitment technology would alleviate gambling related harm but there is still a need for further research into various player protection technologies.

341. A number of written submissions and witnesses at public hearings referred to a responsible gaming trial conducted in Nova Scotia, Canada, and recommended the Government consider the introduction of this technology in Victoria.

342. The Committee notes that Nova Scotia has introduced a number of measures to reduce gambling related harm, the most significant one being the introduction of a Responsible Gaming Card (RGC). Results of the trial to July 2006 suggested that the RGC introduction was responsible for a 14 percent reduction in the amount of money spent on EGMs and a 16 per cent reduction in the time spent playing EGMs.  

343. The Nova Scotia RGC trial was conducted in a number of phases. Between October 2005 and April 2006 all EGM players were required to obtain a RGC in order to play EGMs, with only one card being issued per player. Players could obtain a RGC by swiping their identity card or drivers licence which

---

103 Ryan, *Transcript of Evidence*, p. 496.
would create an anonymous account based on the letters in the person’s name and their date of birth. Players were then required to select a Personal Identification Number (PIN) for their card. This system ensured only one card per player would be issued, without needing to store personal information on the card.106

344. The Committee received evidence proposing that any Victorian introduction of RGCs require a biometric identifier as opposed to a PIN in order to prevent the sharing of RGCs.

345. During the Nova Scotia trial, players were required to have a RGC in order to access EGMs, however they were given the option as to whether they wanted to access any of the responsible gaming features.107 Five responsible gaming features were offered to players:

- **Account Summary** – a record of wins/losses over time (eg day, week, month);
- **Live Action** – the wins/losses and limits (if set) for the current session;
- **Money Limits** – allows players to set spending/time limits for certain periods;
- **Play limits** – allows players to exclude themselves from play for a given period; and
- **48-Hour Stop** – allows players to enact an immediate 2 day exclusion.108

346. The trial recorded some impressive take-up rates. It was reported that during the trial 71 per cent of regular players (defined as playing EGMs 6+ times during the trial) used at least one of the responsible gaming features.109 Further once tried, 65 per cent of players continued to use these features.110 It has been suggested that even problem gamblers used these features,

---

110 Ibid.
however it was reported they tended to use the ‘Live Action’ feature showing the current session 3–4 times more often than other players who tended to access the ‘Account Summary’. Further, Mr Freethy from the Council of Gamblers Help Services advised that even though these features were not mandatory to use, in some respects they surpassed current measures to protect problem gamblers.

Interestingly enough, in Nova Scotia what happened there was that they did not mandate that you use these features. They had a range of them. You could ban yourself on the machines. Unlike here, where you have to apply for self-exclusion, the card actually let you ban yourself and would not work — which we think is a great idea, so you are instantly out — and you choose the time period you are out for. You can limit the amount of time, you can limit the amount of money, or you can simply receive information about how your expenditure is going. Most of the problem gamblers actually used the information option more than anything else, but it had quite an impact on their behaviour apparently.

347. At the end of the trial it was concluded that there were no negative impacts detected from the introduction of the RGC. However, it was noted that players who used the responsible gaming features had a tendency to increase their session length while reducing the amount spent per session. There was no change to the frequency of play.

348. The introduction of a RGC system would need to be mandatory across the State, especially with respect to the setting of spending and time limits, given the results from Stage 1 of the trial. It was reported that 68 per cent of players said they had reached their money limit at some point. Of this group, 61 per cent said that once they reached their limit they stopped playing, while 44 per cent said once they reached their limit they removed their card and continued playing.

111 ibid, p vii.
112 Mr C. Freethy, Council of Gamblers Help Services, Transcript of Evidence, 12 February 2008, p. 509.
113 VLT Player Tracking System, p. viii.
114 ibid, p vii.
FINDING 5.12

The trial of pre-commitment technology for EGM operation in Nova Scotia, Canada has produced generally positive results in terms of reduction in player losses and time spent using EGMs.

FINDING 5.13

Mandating the availability of pre-commitment technology in post-2012 EGMs is welcome. However, careful consideration should be given as to the impact of mandating the use of pre-commitment technology on casual and recreational EGM users.

5.4.4 Removal of Automatic Teller Machines from Gaming Venues

One of the common recommendations put to the Committee to reduce the incidence of problem gambling was the removal of automatic teller machines (ATMs) from gaming venues.

Dr LIVINGSTONE — If you took out ATMs from venues, would that have an impact? Yes, I think it would. Again, all you have to do is to listen to what gamblers tell you and look at how they use ATMs, and it becomes pretty clear that there is a close link. Many people would spend less money if the ATMs were not there. It is very difficult for many gamblers to control their urges so if they make the mistake of taking their ATM card to the venue, then they will use it. There is no doubt of that. If they have money accessible they will access it.116

Ms PINKERTON — We are supportive of removal of ATM machines from the venues. Equally, I suspect — because I have developed a rather cynical kind of view of the industry — that it will not take much for the industry to convince the business next door to put in an ATM, which will help. We know that where smoking bans have come into force, the length of time that you can reserve a machine has extended from 3 minutes to 5 minutes to give people time to go outside, have their cigarette, come back and still play that machine. I suspect that the industry will respond. However, I believe that removing ATMs from the venue where you have to walk at least 3 minutes to an ATM and 3 minutes to get back is going to give people time to stop and think.117

116 Livingstone, Transcript of Evidence, p. 570.
117 Pinkerton, Transcript of Evidence, p. 543.
350. The Committee welcomes the Government’s announcement that it will be prohibiting all automatic teller machines in gaming venues, including areas within 50 metres of an entrance to the Melbourne Casino gaming floor, from the end of 2012. However, given the strong link between access to ATMs and gambling related harm, the Committee believes this initiative should be introduced as soon as practicable.

351. The Committee notes the Government will provide exemptions for venues in rural areas who can demonstrate that there is a real need for an ATM in their community. Evidence indicates many Victorian rural communities are particularly vulnerable to the social and economic impacts of EGM related problem gambling. Accordingly, any rural exemptions to the policy should only be provided when no feasible alternative exists to provide an ATM other than in a gaming venue.

FINDING 5.14

The proposed removal of ATMs from gaming venues is an important measure to reduce the impact of problem gambling.

This initiative should be implemented as soon as practicable.

Criteria for granting rural exemptions to the ‘no-ATMs in gaming venues’ policy must be transparent, and allowed only where there is genuinely no feasible alternative.

5.5 Conclusion

352. Evidence to the Committee, and the broad thrust of the Government’s most recent announcements, highlights that one of the keys to mitigating the effects of problem gambling is addressing easy convenient access to gaming venues and the capacity for rapid EGM play.
353. As the existing entitlements of all gaming venues will expire by 2012, there exists a unique opportunity for the Government to develop policies as to venue density and location prior to commencing the post-2012 licensing process.
CHAPTER 6:
The Community Support Fund

354. Part 1 (f) of the Committee’s reference required an examination of the financial position of the Community Support Fund (the Fund) described in the Act, including, but not limited to:

- payments into the Fund under section 10.3.2 of the Act (and its predecessors);
- payments from the Fund under section 10.3.3 of the Act (and its predecessors);
- the criteria, processes and methodology for the selection of projects funded by payments referred to in 2 above; and
- the community benefit statements prepared by those venues not required to contribute to the Fund.

6.1 Background

355. Prior to the introduction of gaming machines in Victoria in September 1991, the *Gaming Machine Control Act 1991*, came into operation in order to provide for the regulation, supervision and control of gaming machines and the proceeds from gaming machines.

356. Within the *Gaming Machine Control Act 1991*, the Community Support Fund (CSF) was created and was administered by the Minister for Gaming. The purpose of the fund was to direct the majority of revenue raised towards addressing the problems arising from gambling.

357. The Act provided the CSF with three revenue streams:

- 1 per cent of the total amount wagered during the period;
- 8 1/3 per cent of the total daily net cash balances during the period; and
- interest derived from investment of the money in the Fund.

358. The Minister for Gaming was able to allocate funds on the following basis:
• towards the expenses of the Victorian Gambling Commission; 
• payment to the Research and Development Fund; and 
• no less than 70 per cent of the remainder to the provision of financial support and assistance for families in crisis and prevention of problem gambling (allocated by the Community Services Minister).

359. The balance of funds were to be allocated by the Ministers for Arts and Tourism for the promotion of the arts and tourism.

360. The *Gaming Machine Control Act 1991* was repealed on 1 July 2004 and replaced by the *Gambling Regulation Act 2003*.

### 6.2 Current Framework

361. The *Gambling Regulation Act 2003* shifted responsibility for the administration of the fund from the Minister for Gaming to the Minister for Community Development and removed the minimum proportion of the fund to be spent in support of those affected by problem gambling.

362. The CSF is now funded by a levy of 8.33 per cent of EGM net daily balances in hotel venues. Holders of gaming operator licences are required to pay this amount to the Consolidated Fund which in turn pays it into the CSF. For the financial years 2003-04 to 2011-12, an amount of $45 million is retained within the Consolidated Fund to be directed to drug services with the balance paid to the CSF. In 2006–07, $93 million was paid into the CSF.

363. The use of the fund has been expanded under the *Gambling Regulation Act 2003*, with the fund able to be used for three broad purposes:

- firstly, for research relating to:
  - the social and economic impact of gambling;
  - the causes of problem gambling;
  - strategies to minimise harm from gambling;
  - the publication of the results of the research;
  - payment towards the provision of programs to prevent problem gambling; and
- for treatment or rehabilitation of persons affected by problem gambling.

- secondly, for payment for or towards:
  - programs for the treatment or rehabilitation of persons who are addicted to drugs;
  - educational programs relating to drug addiction/abuse;
  - financial counselling services or support and assistance for families in crisis;
  - programs for the benefit of youth;
  - research or pilot programs relating to community advancement programs;
  - programs for the benefit of sport and recreation;
  - programs for the promotion or benefit of the arts;
  - programs establishing or developing tourist destinations or services for the promotion of tourism; and
  - any program or purpose to support the advancements of the community as determined by the Minister.

- thirdly, for the costs incurred in the administration and management of the fund.

364. In 2005, the Gambling Regulation Act 2003 was further amended to require the equivalent of one day’s revenue to the CSF to be paid to the Victorian Veterans Fund on 1 September each year.

365. The Committee’s evidence highlighted the importance for groups funded under the CSF to be able to continue to undertake independent gambling related advocacy work without any constraints from CSF funding agreements.

366. The Council of Gamblers Help Services was asked by the Committee if its funding agreements are linked to participation in Government communication strategies.

Mr FREETHY — It is part of the expectation that we will deliver an agreed community education plan every year. That includes those sorts of issues and it does allow us some scope to do other things as well. Our question is whether the scope to do some of those other things is not being reduced.

Mr GUY — So the reality is that if you are not following the communications strategy set by the Department of Justice you could lose funding?

Mr FREETHY — That is technically true, although we have never attempted not to or never sought not to. It is not about that. As I said, it is about
maintaining a breadth of activities. Particularly more in the community strengthening, community building, prevention kind of work, we would like to ensure that Gamblers Help continues to be involved in that kind of work and is not somehow moved out of that by centralised initiatives that take it over, if you will.118

**FINDING 6.1**

Community Support Funding should not limit an organisation’s ability to undertake independent gambling related advocacy.

6.3  *Payments into and from the Fund*

367. Payments to the fund have increased over time in proportion to the increase in net gaming machine losses.

368. Between 1992 and 2001 there was a gradual accumulation of funds as revenues were received faster than they were dispersed. The Committee was advised that in the last six years there has been an attempt to bring the fund back to balance.

369. The graph below outlines the amounts paid into and out of the fund for the last three years. For 2006-07 revenue was $96.4 million and expenditure $110.8 million. The CSF balance as at 30 June 2007 was $50.9 million.

118  Freethy, Transcript of Evidence, p. 510.
6.4 Concerns over the criteria, processes and methodology for funding CSF projects

370. The Government’s October 2006 Kirby Report on Gaming Machine Licence Arrangements Post-2012 highlighted criticisms made in submissions and public consultations over the lack of transparency of the allocation of funds from the CSF to local communities and the perceived lack of a return of gambling related funds to each community. The Kirby Report noted:

Many of the councils drew attention to the large and increasing amounts of revenue that the gaming venues drew from their community – Monash $126 million; Frankston $62 million; Moonee Valley $74 million; Dandenong $106 million; Kingston $85 million; Shepparton $27 million. Kingston and Moonee Valley reported that after searching the annual reports of the Department for Victorian Communities they had managed to identify $0.3 million and $0.4 million respectively going back into their communities in recent years.\(^{119}\)

371. The Committee received a large proportion of its written submissions from local government. A great many of these submissions highlighted concerns with the CSF along similar lines to those reported to the Kirby Review. Various concerns included:

\(^{119}\) Gaming Machine Licence Arrangements Post-2012: Report by Peter Kirby on Public Consultations and Submissions, Department of Justice, October 2006, p. 23.
6.5 Transparency of Community Support Fund

372. The perceived lack of transparency and accountability in use of the CSF was raised by a number of witnesses. Ms May Haeder of the City of Moreland noted:

*I think probably council’s concern in relation to the Community Support Fund is more in relation to transparency and accountability. Council too has benefited from grants received from the Community Support Fund, but as a total it appears there is only a small amount of that total Community Support Fund available for local government to apply for and that otherwise there is a whole range of state government — I agree, important — services, but without any transparency being provided.*

373. The Victorian Local Governance Association’s submission to the Committee represented the views by local government and community organisations including the Local Government Working Group on Gambling, and Community Action on Pokie Problems. The submission summarised local government concern over transparency of the CSF:

*Despite the fact that the CSF grows by approximately $120 million each year, it has only ever been independently evaluated once since it was introduced in 1991. Indeed, it is now ten years since any further independent evaluation has been undertaken. There is no transparent reporting by Treasury in its Budget papers of the CSF, that is, Treasury does not state income from CSF and it does not state expenditure from CSF either.*

*Attempts to ascertain from government a clear audit trail of what comes in as CSF revenue equalling what goes out as expenditure is difficult. Hence the public reputation of the CSF is easily damaged. There is no performance outcome framework for the levying of CSF. Notionally it was approved by*

---

government on the basis that it be used for projects that tackle problem gambling. However, there are no indicators or objectives that can be used for such an assessment of performance.\footnote{Victorian Local Governance Association, Submission No. 41, 30 April 2007, p. 9.}

374. The local government sector was not alone in raising concern with the lack of transparency of the CSF. The Australian Hotels Association (Victoria) submission also questioned the adequacy of CSF reporting:

\begin{quote}
AHA (Vic) has over a number of years sought from the government a detailed accounting for transactions through the CSF without success. Whilst we have been referred to the Annual Report of the Department of Victorian Communities (now Department of Planning and Community Development), we are not satisfied that the presentation of financial information related to the CSF in such reports is such as to allow for an understanding of funds received, finds expended and to which projects, services or initiatives and the balance of funds available.\footnote{Australian Hotels Association (Victoria), Submission No. 30, 3 April 2007, p. 7.}
\end{quote}

375. Good Shepherd Youth and Family Services also highlighted the lack of CSF transparency:

\begin{quote}
The operations of the Community Support Fund have lacked transparency. The fund is derived from gaming venues, and disproportionately from problem gamblers (Productivity Commission), yet there is little accountability of the proportion returned to the regions or players from whence the fund originates.\footnote{Good Shepherd Youth and Family Service, Submission No. 44, 3 May 2007, p. 9.}
\end{quote}

376. While the Department of Victorian Communities (now Planning and Community Development) have published some data on CSF funding in its annual report, the data does not provide a full account of CSF monies and is not subject to a formal audit. This was confirmed in evidence from the Secretary of the Department, Mr Yehudi Blacher:

\begin{quote}
Mr PAKULA — …you indicated that the approvals of all CSF moneys are contained in the DPCD annual report. That is an audited report, isn’t it?

Mr BLACHER — Indeed, yes. It is the financial reports of the department.

Mr PAKULA — So it is audited by the Auditor-General?

Mr BLACHER — It is audited by the Auditor-General.

…

The CHAIRMAN — I have a follow-up from Mr M P Pakula’s question re auditing of the annual report. The appendix that contains the list of
\end{quote}
Community Support Fund approvals — I think it was appendix 4 in the back of your annual report — is that part of the audited statement that the Auditor-General ticks off on?

Mr BLACHER — Yes, it is.

The CHAIRMAN — The appendix?

Mr BLACHER — I am advised no, it is not. 124

**FINDING 6.2**

The Community Support Fund suffers from a lack of transparency. To address this, the Department of Planning and Community Development, instead of only listing allocations in the Annual Report, should also publish Annual Accounts, providing balances, cashflows and an operating statement for the CSF. These accounts should also be subject to a financial audit by the Auditor-General

### 6.6 Use of the Community Support Fund

377. A strong view was put to the Committee that CSF money is being used to fund broad general programs and commitments which were traditionally funded from the Consolidated Fund. While local communities welcome these funding initiatives, questions were raised as to why money which is specifically hypothecated to the CSF is being used for these broader funding priorities.

378. When questioned by the Committee over the use of funds, the Secretary of the Department of Planning and Community Development, Mr Yehudi Blacher, confirmed that some programs currently provided from the CSF, such as drug services, were previously funded from consolidated revenue prior to the introduction of the CSF.

---

379. Tabcorp Chief Executive Mr Funke Kupper also raised concerns over the community benefit of the CSF:

Mr FUNKE KUPPER — Let us put it this way: our view is — and you talk about the industry, but I can only talk about Tabcorp — like any taxpayer we would like the money to be well spent and to benefit the community. As long as that is the case and it helps the community in general, then I have no particular reason to want to either be involved with that or be unhappy about it.

Mr DRUM — So if the government substitutes Community Support Fund money to pay for services that it has historically funded through the budget, and leaves money that was previously spent in those areas?

Mr FUNKE KUPPER — If your question is: do we like as a taxpayer the money that we provide through our activities to go into general revenue, I would prefer them to be specifically allocated and see the benefits of those, but it is not my choice.125

380. The Committee received evidence that questioned the use of the CSF, given that some of the programs funded lacked a direct link to addressing social disadvantage. The City of Maroondah commented:

The purposes to which CSF money may be applied are listed in section 10.3.3 of the Gambling Regulation Act 2003. Council considers the parameters prescribed in this section to be overly broad. Section 10.3.3(b) lists ten types of programs to which CSF money can be allocated. While there is a clear link between some of the listed program types and social disadvantage (eg prevention of excessive gambling or drug abuse, and families in crisis), the links between addressing social disadvantage through the funding of other program types appear to be more tenuous (eg programs for the benefit of sport or recreation, programs for the promotion or benefit of the arts, and programs establishing or developing tourist destinations or facilities or services or for the purposes of promoting tourism).126

381. The Committee notes that in the 2006-7 financial year $88 million in CSF funding was allocated to sporting programs and a further $20 million was allocated to the arts, while the total amount allocated for problem gambling programs until 2011 was $100 million.

382. A constant theme presented to the Committee from local government was that there was an expectation that the CSF would be spent in the areas where the revenue was derived, and there was disappointment as this was not occurring.

125 Funke Kupper, Transcript of Evidence, pp. 450-1.
126 Maroondah City Council, Submission No. 6, 29 March 2007, p. 2.
Maroondah City Council

… to ensure the fair distribution of the financial benefits of gambling, the annual distribution of CSF funding to each local government area needs to be proportionate to the recorded net gaming expenditure from the municipality.\(^\text{127}\)

City of Moonee Valley

*Significant doubts exist about the benefit to local communities from EGMs. There is no connection between the extent to which communities contribute to the Community Support Fund and the funding they receive.*\(^\text{128}\)

City of Brimbank

*Council strongly advocates that those local governments and communities which have a higher burden related to the negative impacts of gaming should have increased and more equitable access to Community Support Funds.*\(^\text{129}\)

383. Mr Blacher advised the Committee on several occasions that it was not Government policy to allocate funds to the source from which they were derived:

*There is no specific requirement, as I indicated previously, that funds generated from a particular area are then allocated to that area. Essentially the funds collected under this umbrella are allocated for particular purposes which are outlined in the Act, and geography is not one of them.*\(^\text{130}\)

384. The Committee received evidence from numerous witnesses that suggested a fixed amount of revenue should be set aside to address problem gambling with the balance to be reported annually to improve the accountability and transparency of the Fund.

385. The issue of matched funding for some CSF projects was also highlighted as a concern for some smaller local authorities with limited revenue. The City of Brimbank noted:

*A number of the current arrangements and requirements in the operation of the Community Support Fund clearly disadvantage Councils that have a limited capacity to provide matching funds. For example, the Building Community Infrastructure category of the Community Support Fund clearly*

\(^{127}\) *ibid*, p. 3.

\(^{128}\) *Moonee Valley City Council, Submission No. 18, 30 March 2007, p. 7.*

\(^{129}\) *Brimbank City Council, Submission No. 38, 30 April 2007, p. 6.*

\(^{130}\) *Mr Y. Blacher, Secretary, Department of Planning and Community Development, *Transcript of Evidence*, 18 February 2008, p. 599.*
discriminates against inner and middle Melbourne municipalities in the application of funding ratios. To be eligible to receive funding, for each dollar requested, metropolitan Councils need to match this with three dollars.

This requirement serves to exclude applications from Councils that have significantly disadvantaged communities, low land values and complex social needs. Indeed, Council argues that the requirement for matching funding should be removed, at a minimum, from those Councils with a highly disadvantaged population. Comparing Council revenue assists in illustrating this point. A local government area equivalent in population size to Brimbank in a more affluent area of metropolitan Melbourne reported receiving nearly $14 million more than Brimbank in rates revenue in the 2005/2006 financial year. Councils with affluent communities and a strong rates base are in a better position to raise the necessary funds and in kind resources required. Councils located in disadvantaged communities are also extremely mindful of the additional burden that any rates increases places on many of their community members. Increasing rates to match Fund applications is not an option.131

**FINDING 6.3**

The *Gambling Regulation Act 2003* appropriates revenue to the Community Support Fund for specific purposes as detailed in the Act. As such, CSF monies should not be used for general government programs historically funded through the Consolidated Fund.

**FINDING 6.4**

Net community benefit should be afforded a higher weighting than geographic source of funds when allocating CSF monies for the purposes prescribed in the *Gambling Regulation Act 2003*.

### 6.7 Community Benefit Statements

386. Under the *Gambling Regulation Act 2003* club-based gaming venues are exempt from making payments to the CSF on the basis that they make a direct contribution to the community in which they are located. Accordingly,

---

131 Brimbank City Council, Submission No. 38, 30 April 2007, p. 6.
section 3.6.9 of the Act requires all non-pub venue operators with EGMs to lodge an audited Community Benefit Statement (CBS) with the VCGR on an annual basis.

387. The intention of the CBS is to detail how gaming revenue in a given club is used to provide benefits to the community, and to demonstrate that the community contribution from the club is at least equal to the 8.33 per cent levy that hotels pay into the CSF.\textsuperscript{132}

388. The Minister for Gaming, by way of a determination published in the Government Gazette, has determined what are appropriate purposes and activities to be defined as community purposes in order to be included in a CBS.\textsuperscript{133} Appropriate purposes are:

- any philanthropic or benevolent purpose; and
- any sporting or recreational purpose.

The activities that constitute community purposes are:

- employment expenses of all staff employed by venue operators;
- gifts and sponsorships by venue operators;
- subsidised activities where the venue operator provides a commercial service to members of the community at less than commercial rates; and
- the provision of fixed assets, other than fixed assets used for gaming purposes.

389. The Committee received evidence from a number of local councils criticising the inadequacy of the CBSs provided by venues. These criticisms were also highlighted in the aforementioned 2006 Kirby Review of EGM Licence Arrangements.

390. Several local councils suggested that rather than allowing clubs to determine where to allocate their community contribution, a better method would be for a trust to be created for each local government area to which all clubs and

\textsuperscript{133} Victorian Government Gazette, S.124, 26 June 2003.
hotels in the area would contribute 8.33 per cent of gaming revenue. Local groups could then bid for funds. The City of Maroondah noted:

An alternate proposition … is the direct allocation of the 8.33% contribution from both club and hotel venues in each municipal district to a specific fund administered by the local government authority of the municipality. Local government is the level of democracy closest to the community and its key role continues to be the promotion of the wellbeing of its local community. Thus, such a mechanism for the distribution of gaming revenue will more appropriately ensure that local gaming revenue is distributed in an equitable and transparent way for means that best improve the health and wellbeing outcomes of the local community.\textsuperscript{134}

391. The City of Boroondara expressed a similar view:

Council would prefer that the community benefit concept was overhauled and that hotels and clubs contribute 8.33% to a local foundation in each local government area to distribute the funds through an open application processes. This task could be facilitated by local government or a stand alone foundation could be developed.\textsuperscript{135}

392. The Committee received evidence suggesting that changes were required to the current guidelines concerning Community Benefit Statements to avoid inconsistency and ensure that the community was really obtaining a benefit from the clubs' use of funds. The City of Maroondah noted:

In relation to the CBS, Council is of the view that the activities and purposes that constitute community purposes (as specified in the Minister's Determination dated 24 June 2003) are too broad and the level of information required for completion of a CBS is insufficient to ensure that the financial benefits of gambling are appropriately recognisable.\textsuperscript{136}

393. The City of Boroondara expressed similar views on the purposes and activities which may be included on a CBS:

Council would expect that the legislative framework for the community benefit statement would be reviewed to ensure that the community does benefit from the expenditure. As reported in the VCGR Annual Report 2005-2006 employment costs (65%) and fixed assets (14%) accounted for 79% of community benefit and excluding volunteer activities only 2.5% of funds were expended organisations other than by the venue.\textsuperscript{137}

\begin{footnotesize}
\begin{itemize}
  \item \textsuperscript{134} Maroondah City Council, \textit{Submission No. 6}, 29 March 2007, p. 3.
  \item \textsuperscript{135} City of Boroondara, \textit{Submission No. 37}, 30 April 2007, p. 4.
  \item \textsuperscript{136} Maroondah City Council, \textit{Submission No. 6}, 29 March 2007, p. 3.
  \item \textsuperscript{137} City of Boroondara, \textit{Submission No. 37}, 30 April 2007, p. 4.
\end{itemize}
\end{footnotesize}
394. However, while Clubs Victoria noted that there were inconsistencies concerning community benefits provided by clubs, it expressed the view that clubs maintaining their capital generated a community benefit. Ms Margaret Kearney of Clubs Victoria stated:

_We maintain that maintaining the capital for the not-for-profit clubs is part of the community purpose. Some of it is spent outside the club, and some of it is spent inside the club. What I am amused about is that if an organisation that has gaming machines was to support the club without gaming machines down the street by buying them some chairs for their members’ lounge, that would be considered a community benefit. But if the club with gaming machines buys their own members chairs for the members’ lounge, that is not a community benefit._

395. In response to concerns raised in the October 2006 Kirby Review as to how some CBSs were failing to meet the purpose for which they were introduced, the Office of Gaming and Racing released an issues paper in June 2007 detailing changes to the system.

396. Changes to the Community Benefits Statements include:

- ensure that community benefit statements meet the objective of demonstrating a club’s contribution to the community;
- ensure that clubs contribute 8.33 per cent of their net gaming revenue either by way of direct community benefit or by the payment of additional tax;
- require clubs that fail to make a community contribution of 8.33 per cent of their net gaming revenue to pay the shortfall by way of additional tax contributions to the CSF; and
- require clubs that fail to lodge a community benefit statement to pay an additional 8.33 per cent of their net gaming revenue into the CSF until the CBS is lodged.

397. Consistent with the announced changes to CBSs, on 18 March 2008, the Minister for Gaming published a new determination in the Government Gazette pursuant to section 3.6.9(3) of the Gambling Regulation Act 2003. The new determination tightens the criteria for expenditure to be counted as community benefit and provides a far more detailed list of activities.

---

138 Ms M. Kearney, Executive Director, Clubs Victoria, _Transcript of Evidence_, p. 433.
FINDING 6.5

The Committee acknowledges the inherent role of clubs in providing community benefit. The Committee supports the retention of a Community Benefit Statement system for clubs rather than a shift to local government controlled trusts.

FINDING 6.6

The Committee believes that the criteria for expenditure to be included on Community Benefit Statements has been inadequate, and welcomes the tightened criteria to apply from 2008-09.

The application of the new criteria should be monitored for ongoing effectiveness over the next three years and as a guide to a new community benefit framework for the post-2012 EGM licences.
APPENDIX I:
List of Written Submissions Received

1. Mr Tom Wilson, individual
2. Tattersall's Limited
3. City of Kingston
4. Lotteries Agents’ Association of Victoria
5. Mildura Rural City Council
6. Maroondah City Council
7. National Trust
8. Hobsons Bay City Council
9. Indigo Shire Council
10. Dr Charles Livingstone, Department of Health Sciences, Monash University
11. Geelong Catholic Social Justice Committee
12. The Australian Family Association
13. City of Melbourne
14. City of Yarra
15. AMC Convergent IT
16. Grandparents Victoria
17. Ms Jennifer Borrell, Social Consultant
18. Moonee Valley City Council
19. Dr James Doughney, Victoria University
20. The Council of Gambler’s Help Services
21. Mr Chris Cullinan, individual
22. City of Whitehorse
23. City of Greater Dandenong
24. Chrysalis Insight Inc
25. Financial and Consumer Rights Council Inc.
26. InterChurch Gambling Taskforce
27. The Salvation Army Australia Southern Territory
28. Responsible Gaming Networks
29. Moreland City Council
30. Australian Hotels & Hospitality Association Inc.
31. Victorian Council of Social Services
32. Department of Justice  
33. Tabcorp Holdings Limited  
34. Wyndham City Council  
35. Regis Controls Pty Ltd  
36. Duty of Care  
37. City of Boroondara  
38. Brimbank City Council  
39. Mitchell Shire Council  
40. City of Darebin  
41. Local Governance Association of Victoria  
42. Macedon Ranges Shire Council  
43. Municipal Association of Victoria  
44. Good Shepherd Youth and Family Services  
45. City of Casey  
46. Cardinia Shire Council  
47. City of Greater Geelong  
48. Australian Newsagents' Federation  
49. City of Whittlesea  
50. City of Hume  
51. Local Government Working Group on Gambling  
52. Swan Hill Rural City Council
APPENDIX II: Individuals / Organisations Summonsed to Produce Documents

Australian Securities and Investments Commission (ASIC)
- Mr Jeffrey Lucy, Chairman

Hawker Britton
- Mr Bruce Hawker, Managing Director
- Mr Danny Person
- The Hon. David White

Intralot
- The Secretary
- The Hon. Tony Sheehan
- Mr Alan Egan, Chief of Staff, Euro-Pacific Strategies Pty Ltd

Ministers
- The Hon. Stephen Bracks, Premier
- The Hon. John Brumby, Treasurer
- The Hon. Daniel Andrews, Minister for Gaming

Members of the Legislative Assembly
- The Hon. John Pandazopoulos, former Minister for Gaming

Pitcher Partners Consulting Pty Ltd
- Mr Don Rankin, Managing Partner

Victoria Police
- Ms Christine Nixon, Chief Commissioner

Relevant Government Departments
- Ms Penny Armytage, Secretary, Department of Justice
- Mr Grant Heir, Secretary, Department of Treasury and Finance
- Mr Terry Moran, Department of Premier and Cabinet
Lotteries Licences Review Steering Committee (former employee)

- Mr Garth Lampe, former Project Director

Gambling Licences Review (current employee)

- Mr Alan Clayton, Project Director

Solicitor-General for Victoria

- Ms Pamela Tate

Tabcorp Holdings Limited - current employees

- Mr Elmer Funke Kupper, Acting Managing Director
- Mr Kerry Willcock, Secretary

Tabcorp Holdings Limited - former employees

- Mr Matthew Slatter, former Chief Executive Officer

Tattersall’s Limited - current employees

- Mr Harry Boon, Chairman
- Mr Ray Gunston, Investor Relations, Chief Financial Officer
- Mr Michael Mangos, Media Liaison
- Mr Dick McIlwain, Managing Director, Chief Executive Officer
- Ms Marion Rodwell, Secretary

Tattersall’s Limited - former employees

- Mr David Carlson
- Mr Simon Doyle
- Mr Duncan Fischer
- Mr John Harris
- Ms Pamela Makings
- Mr Adrian Nelson

Tattersall’s Limited - former Trustees

- Mr Raymond Hornsby
- Mr David Jones
- Mr William Adams
Appendix II: Individuals / Organisations Summoned to Produce Documents

- Mr Peter Kerr

Victorian Commission for Gambling Regulation
- Mr Peter Cohen, Chief Executive Officer
- Professor Ian Dunn, Chair
APPENDIX III:
List of witnesses who gave evidence in public hearings in relation to parts 1 (a) and (b) of the Committee’s Terms of Reference

3 August 2007
- Ms Penny Armytage, Secretary - Department of Justice
- Mr Ross Kennedy, Executive Director - Office of Gaming and Racing, Department of Justice
- Mr Alan Clayton, Director - Gambling Licences Review, Department of Justice
- Mr Garth Lampe, Former Director Gambling Licences Review, Department of Justice

16 August 2007
- Professor Ian Dunn, Chair - Victorian Commission for Gambling Regulation
- Mr Peter Cohen, Executive Commissioner - Victorian Commission for Gambling Regulation

28 August 2007
- Mr Harry Boon, Chairman - Tattersall's Limited
- Mr Dick McIlwain, Chief Executive - Tattersall's Limited
- Mr Michael Mangos, General Manager, External Communications - Tattersall's Limited
- Mr Ray Gunston, Investor Relations & CFO - Tattersall's Limited

29 August 2007
- Mr Peter Kerr - Former Tattersall's Trustee
- Mr Raymond Hornsby - Former Tattersall's Trustee

30 August 2007
- Mr Anthony Sheehan, Director - Intralot
- Mr Geoff Walsh, Executive Director - Pitcher Partners Consulting
- Mr Duncan Fischer, Former Tattersall's Chief Executive
Appendix III: Witnesses who gave evidence in relation to parts 1(a) and (b) of the Terms of Reference

17 September 2007
- Mr Danny Pearson, Director - Hawker Britton
- Hon. David White, Director - Hawker Britton

24 October 2007
- Mr Adrian Nelson, Former Tattersall's Employee
APPENDIX IV: List of witnesses who gave evidence in public hearings in relation to parts 1 (c) to (f) of the Committee’s Terms of Reference

11 December 2007

Department of Justice
- Ms Penny Armytage – Secretary
- Mr Ross Kennedy - Director, Office of Gaming and Racing
- Mr Michiel Brodie - Director, Gambling Policy and Research
- Mr Alan Clayton - Project Director, Gambling Licences Review

Tattersall’s Limited
- Mr Frank Makrylllos, Chief Executive - Tatts Pokies
- Mr Andrew Birks, Responsible Gambling Manager

Clubs Victoria
- Ms Margaret Kearney - Executive Director

Tabcorp Limited
- Mr Elmer Funke Kupper - Managing Director and CEO

Victorian Commission for Gambling Regulation
- Mr Ian Dunn - Chair
- Mr Peter Cohen - Executive Commissioner

11 February 2008

Macedon Ranges Shire Council
- Cr John Connor, Deputy Mayor
- Dr Lorraine Beyer, Social Planning Co-ordinator
Appendix IV: Witnesses who gave evidence in relation to parts 1(c) to (f) of the Terms of Reference

City of Moreland
- Ms May Haeder, Social Planning and Policy Officer

12 February 2008

Responsible Gaming Networks
- Mr Phil Ryan, Chief Executive

Council of Gamblers Help Services
- Ms Wendy Sengotta, Executive Officer
- Mr Chris Freethy, Member

Chrysalis Insight
- Ms Gabriela Byrne, Chair
- Mr Tim Falkiner, Barrister

Victorian Council of Social Services
- Ms Cath Smith, Chief Executive
- Ms Marilyn Webster, Vice-President
- Assoc. Prof Linda Hancock, Deakin University

Grandparent's Victoria
- Mrs Anne McLeish, Director
- Mrs Helen Brown
- Mrs June Smith

Duty of Care
- Ms Sue Pinkerton, Secretary
- Ms Elizabeth Mitchell, Vice-President

City of Greater Geelong
- Cr Jan Farrell
- Ms Lisa Armstrong-Rowe, Community Development Officer
- Mr Terry Demeo, Manager - Planning Strategy
18 February 2008

Monash University
- Dr Charles Livingstone, Department of Health Sciences

Intralot
- Mr Anthony Sheehan, Director

Victoria University of Technology
- Dr James Doughney

Department of Planning and Community Development
- Mr Yehudi Blacher, Secretary
- Mr Damian Ferrie, Executive Director - Community Programs and Volunteers
- Mr Stephen Gregory, Chief Finance Officer

City of Darebin
- Mr Roderick McIvor, Manager - Social Policy

3 March 2008

Salvation Army
- Major Brad Halse
- Mr Tim McCorriston

InterChurch Gaming Taskforce
- Mr Mark Zirnsak, Chair and Uniting Church Representative
- Mr Brent Lyons-Lee, Baptist Church Representative
- Major Brad Halse, Salvation Army Representative
- Rev Margaret Burt, Anglican Church Representative
- Mr Mark Clarke, Catholic Church Representative
Appendix IV: Witnesses who gave evidence in relation to parts 1(c) to (f) of the Terms of Reference

Problem Gambling Foundation of New Zealand
- Mr John Stansfield, Chief Executive Officer

AMC Convergent IT
- Mr John Szymanski
- Mr John Flanagan

Regis Controls Pty Ltd
- Mr Elik Szewach, Chief Executive
- Ms Lisa Horten, Director
APPENDIX V:
Confidentiality Provisions in the Gambling
Regulation Act 2003

Division 6—Confidentiality

10.1.29 Definitions

(1) In this Division—

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

*enforcement agency* means a person or body in Victoria or another
jurisdiction (whether in or outside Australia)—

(a) that is responsible for, or engages in, law enforcement
generally; or

(b) that is approved by the Minister under subsection (2);

*gambling regulator* means a person or body in Victoria or another
jurisdiction (whether in or outside Australia) that is responsible for
the licensing, supervision or regulation of gambling activities;

*produce* includes permit access to;

*protected information* means—

(a) information with respect to the affairs of any person; or

(b) information with respect to the establishment or development
of a casino;

*regulated person* means—

(a) the Commission;

(b) a commissioner;

(c) an employee or member of staff referred to in section 10.1.25;

(d) the Minister;

(e) an employee in the department administered by the Minister;

(f) a person acting on behalf of the Commission or the Minister;

(g) a member of the Review Panel established by section
10.2A.2.

(2) The Minister may, by written notice given to the Commission, approve
as an enforcement agency a person or body that is responsible for, or
engages in, the administration of a licensing or other regulatory scheme
that requires licensees or other persons regulated to be suitable, or fit and proper, persons.

10.1.30 General duty of confidentiality

(1) A regulated person must not, directly or indirectly, make a record of, or disclose to someone else, any protected information acquired by the person in the performance of functions under a gaming Act or gaming regulations.

Penalty: 60 penalty units.

(2) Subsection (1) does not apply to—
(a) a record or disclosure made in the performance of functions under a gaming Act or gaming regulations; or
(b) a record or disclosure permitted or required to be made by or under another provision of this Division.

10.1.31 Disclosure in legal proceedings

(1) Subject to subsection (2), a regulated person is not, except for the purposes of a gaming Act or gaming regulations, required—
(a) to produce in a court a document that has come into the person's possession or under the person's control; or
(b) to disclose to a court any protected information that has come to the person's notice—
in the performance of functions under a gaming Act or gaming regulations.

(2) A regulated person may be required to disclose protected information to a court or produce in court any document containing information if—
(a) the Minister certifies that it is necessary in the public interest that the information should be disclosed to a court; or
(b) the person to whose affairs the information relates has expressly authorised it to be disclosed to a court.

10.1.32 Other permitted disclosures

(1) A regulated person may disclose protected information—
(a) with the consent (express or implied) of the person to whose affairs the information relates; or
(b) to an enforcement agency for the purpose of law enforcement; or
(c) to a gaming regulator for regulatory or law enforcement purposes; or
(d) with the authorisation of the Minister or the Commission under subsection (3); or
(e) if the information was considered at a meeting or inquiry, or part of a meeting or inquiry, of the Commission that was held in public.

(2) In addition to any disclosure permitted under subsection (1), the Minister or the Commission may disclose protected information if the Minister or the Commission (as the case requires) considers that—

(a) disclosure of the information is in the public interest; or

(b) in the circumstances, disclosure of the information is not unreasonable.

(3) The Minister or the Commission may authorise the disclosure of protected information, or protected information of a specified class, if the Minister or the Commission (as the case requires) considers that—

(a) disclosure of the information, or information of the class, is in the public interest; or

(b) in the circumstances, disclosure of the information, or information of the class, is not unreasonable.

(4) An authorisation under subsection (3) may be expressed to apply to a specified regulated person, to regulated persons of a specified class or to all regulated persons.

(5) A function of the Commission under subsection (3) may be performed by any commissioner.

10.1.33 Aggregation of statistical information

(1) Any statistical information published about gambling expenditure in relation to gaming venues (whether pursuant to an authorisation under section 10.1.32(3) or otherwise) must be aggregated—

(a) to give the total gambling expenditure for all approved venues in a municipal district; and

(b) if a municipal district has less than 3 approved venues, to give the total gambling expenditure for all approved venues in the municipal district together with an adjoining municipal district or districts so that the statistical information indicates gambling expenditure for at least 3 approved venues—except as authorised by or under subsection (2).

(2) The Minister or the Commission may publish, or authorise the publication of, disaggregated statistical information if the Minister or the Commission (as the case requires) considers that—

(a) publication is in the public interest; or

(b) in the circumstances, publication is not unreasonable.

10.1.34 Third party disclosures
(1) A person (other than a regulated person) to whom protected information is disclosed by a regulated person must not make a record of, or disclose to someone else, any of the information.

Penalty: 60 penalty units.

(2) Subsection (1) does not apply to—

(a) a record or disclosure made with the prior written authorisation of the Commission or the Minister; or

(b) a record or disclosure made by an enforcement agency or a gambling regulator in the performance of functions of the agency or regulator (as the case requires); or

(c) protected information that has been given in evidence or produced before a court.
APPENDIX VI:
Letter from Minister for Gaming dated 5 November 2007

Mr Richard Willis
Secretary
Select Committee on Gaming Licensing
Legislative Council
Parliament House
EAST MELBOURNE VIC 3002

Dear Mr Willis

SELECT COMMITTEE SUMMONSES FOR GOVERNMENT DOCUMENTS

On or about 20 March 2007, the Select Committee on Gaming Licensing issued a number of summonses seeking government documents and papers. The summonses were issued to, amongst others, a number of Ministers, departmental secretaries and the Solicitor-General. On 11 April 2007, the Attorney-General wrote a number of letters to the Select Committee:

- asserting the immunity of Members of the Legislative Assembly from the processes of the Legislative Council;
- advising the Committee that the Executive Government, on behalf of the Crown, claimed Executive privilege in relation to each document that fell within the terms of the summons served on the Solicitor-General; and
- foreshadowing, in the context of the summonses to public officials, that the Executive Government, on behalf of the Crown, would claim Executive privilege in relation to specified classes of documents.

I understand that the departmental secretaries, in particular, while not having provided a final return to the summonses addressed to them, have had regard to the foreshadowed claim of Executive privilege in preparing the responses that have been given to the Select Committee so far.

The purpose of this letter is to inform you that the Executive Government claims, on behalf of the Crown, Executive privilege in relation to documents the subject of summonses from the Select Committee containing information of specified classes. The classes of information are specified in the attached Certificate. The claim is made in relation to such documents where they relate to the terms of reference of the Select Committee, whether those documents are the subject of existing or any future summonses from the Committee.

So there should not be any doubt, I note that the claim of Executive privilege has been made in relation to documents specified in the Certificate whether or not they are held by or on behalf of the Crown, by statutory officers and bodies which are not the Crown, by government contractors who have created or
received documents while performing services for the Crown, or by third parties holding government documents or information.

The basis for the claim of Executive privilege in relation to documents is the same as that conveyed by the former Minister for Gaming in his letter dated 2 August 2007 in relation to oral evidence. That basis was explained in greater detail by the Attorney-General in his letter to the Select Committee dated 21 June 2007.

Further, as noted by the former Minister for Gaming, the operation of a claim of Executive privilege with respect to evidence before parliamentary committees is reinforced by the Code of Conduct for Victorian Public Sector Employees (No 1) 2007, which binds public servants by the operation of the Public Administration Act 2004. That Code, which expressly deals with the way public servants must behave towards parliamentary committees, provides that information sought by parliamentary committees should be provided unless the relevant Minister certifies that disclosure would be prejudicial to the public interest. That is, makes a claim of Executive privilege. This provision applies equally to oral and to documentary evidence.

For the avoidance of doubt, for the purposes of the Code of Conduct, I certify that the disclosure of the documents referred in the attached Certificate to the Committee would be prejudicial to the public interest.

Further, the departmental secretaries in receipt of summonses are employed by the Crown and are responsible to their respective Ministers, with the Secretary to the Department of Justice being responsible to me. In those circumstances, I have informed the three secretaries of the claim for Executive privilege as specified in the Certificate. I have also directed the Secretary to the Department of Justice both to abide by the claim of privilege and not to provide any documents that fall within the claim as specified in the Certificate in the response to her summons and in response to any future summons from the Committee seeking documents containing information of the types set out in the Certificate. Copies of my letters to the secretaries are attached.

I understand that directions to the same effect will be given by the Premier and Treasurer to, respectively, the secretaries to the Department of Premier and Cabinet and the Department of Treasury and Finance. Others in receipt of summonses from the Select Committee who may hold documents which fall within the claim of Executive privilege will be informed and directed as to the claim as appropriate.

Yours sincerely

HON TONY ROBINSON MP
MINISTER FOR GAMING
APPENDIX VII:
Minister’s Certificate

Minister for Gaming

I Macarthur Street
East Melbourne, Victoria 3002
Australia
GPO Box 4356
Melbourne VIC 3001 Australia
Telephone +61 3 8684 1400
Facsimile +61 3 8684 1444

- 7 NOV 2007

- 5 NOV 2007

Mr Richard Willis
Secretary
Select Committee on Gaming Licensing
Legislative Council
Parliament House
EAST MELBOURNE VIC 3002

Dear Mr Willis

SELECT COMMITTEE SUMMONSES FOR GOVERNMENT DOCUMENTS

On or about 20 March 2007, the Select Committee on Gaming Licensing issued a number of summonses seeking government documents and papers. The summonses were issued to, amongst others, a number of Ministers, departmental secretaries and the Solicitor-General. On 11 April 2007, the Attorney-General wrote a number of letters to the Select Committee:

- asserting the immunity of Members of the Legislative Assembly from the processes of the Legislative Council;
- advising the Committee that the Executive Government, on behalf of the Crown, claimed Executive privilege in relation to each document that fell within the terms of the summons served on the Solicitor-General; and
- foreshadowing, in the context of the summonses to public officials, that the Executive Government, on behalf of the Crown, would claim Executive privilege in relation to specified classes of documents.

I understand that the departmental secretaries, in particular, while not having provided a final return to the summonses addressed to them, have had regard to the foreshadowed claim of Executive privilege in preparing the responses that have been given to the Select Committee so far.

The purpose of this letter is to inform you that the Executive Government claims, on behalf of the Crown, Executive privilege in relation to documents the subject of summonses from the Select Committee containing information of specified classes. The classes of information are specified in the attached Certificate. The claim is made in relation to such documents where they relate to the terms of reference of the Select Committee, whether those documents are the subject of existing or any future summonses from the Committee.

So there should not be any doubt, I note that the claim of Executive privilege has been made in relation to documents specified in the Certificate whether or not they are held by or on behalf of the Crown, by statutory officers and bodies which are not the Crown, by government contractors who have created or
received documents while performing services for the Crown, or by third parties holding government
documents or information.

The basis for the claim of Executive privilege in relation to documents is the same as that conveyed by
the former Minister for Gaming in his letter dated 2 August 2007 in relation to oral evidence. That
basis was explained in greater detail by the Attorney-General in his letter to the Select Committee dated
21 June 2007.

Further, as noted by the former Minister for Gaming, the operation of a claim of Executive privilege
with respect to evidence before parliamentary committees is reinforced by the Code of Conduct for
Victorian Public Sector Employees (No 1) 2007, which binds public servants by the operation of the
Public Administration Act 2004. That Code, which expressly deals with the way public servants must
behave towards parliamentary committees, provides that information sought by parliamentary
committees should be provided unless the relevant Minister certifies that disclosure would be
prejudicial to the public interest, that is, makes a claim of Executive privilege. This provision
applies equally to oral and to documentary evidence.

For the avoidance of doubt, for the purposes of the Code of Conduct, I certify that the disclosure of the
documents referred in the attached Certificate to the Committee would be prejudicial to the public
interest.

Further, the departmental secretaries in receipt of summons are employed by the Crown and are
responsible to their respective Ministers, with the Secretary to the Department of Justice being
responsible to me. In those circumstances, I have informed the three secretaries of the claim for
Executive privilege as specified in the Certificate. I have also directed the Secretary to the Department
of Justice both to abide by the claim of privilege and not to provide any documents that fall within the
claim as specified in the Certificate in the response to her summons and in response to any future
summons from the Committee seeking documents containing information of the types set out in the
Certificate. Copies of my letters to the secretaries are attached.

I understand that directions to the same effect will be given by the Premier and Treasurer to,
respectively, the secretaries to the Department of Premier and Cabinet and the Department of Treasury
and Finance. Others in receipt of summons from the Select Committee who may hold documents
which fall within the claim of Executive privilege will be informed and directed as to the claim as
appropriate.

Yours sincerely

HON TONY ROBINSON MP
MINISTER FOR GAMING
CERTIFICATE

Cabinet documents and information

1. Documents and oral evidence which directly or indirectly disclose the deliberations of Cabinet (including a committee or subcommittee of Cabinet), including (in the case of documents):
   (a) official records or minutes of Cabinet meetings;
   (b) agenda papers of Cabinet;
   (c) documents which disclose or reveal the decisions or deliberations of Cabinet (including the date when a matter was considered or decided) but which are not part of the official records of Cabinet, unless the documents are already in the public domain;
   (d) Cabinet submissions and attachments to Cabinet submissions (that is, documents prepared outside Cabinet, such as reports or submissions, for the assistance of Cabinet);
   (e) documents prepared for the purposes of briefing a Minister in relation to issues to be considered by Cabinet;
   (f) documents (including papers, communications or e-mails) brought into existence for the purpose of preparing submissions to Cabinet which may, directly or indirectly, reveal the deliberations of Cabinet (for example, because they may disclose the subject matter of submissions presented for the consideration of Cabinet); and
   (g) drafts, copies or extracts of documents referred to in paragraphs (a) to (f), and including (in the case of oral evidence) oral evidence which would disclose the contents of the documents listed above.

Legal communications

2. Documents and oral evidence which disclose communications brought into existence for the purpose of seeking or giving legal advice or the conduct of litigation, and other documents brought into existence for one of those purposes, including:
   (a) confidential communications made between a client and a lawyer for the dominant purpose of the lawyer providing legal advice to the client;
   (b) confidential communications made between two or more lawyers acting for the client for the dominant purpose of the lawyer providing legal advice to the client;
   (c) the contents of a confidential document (whether delivered or not) prepared by the client or a lawyer for the dominant purpose of the lawyer providing legal advice to the client;
   (d) the contents of a confidential document which summarises or expresses the conclusion of legal advice;
   (e) a confidential communication between a client and another person or between a lawyer acting for the client and another person that was made for the dominant purpose of the client being provided with professional legal services relating to
an existing, anticipated or pending Australian or overseas proceeding in which
the client is or may be, or was or might have been, a party; and

(f) the contents of a confidential document (whether delivered or not) that was
prepared for the dominant purpose of the client being provided with professional
legal services relating to an existing, anticipated or pending Australian or
overseas proceeding in which the client is or may be, or was or might have been,
a party.

Material obtained on the basis that it would be kept confidential

3. Documents and oral evidence which would disclose information obtained on the
basis that the information would be kept confidential, including:

(a) confidential documents or information obtained after the provision of assurances
or undertakings that it would be kept confidential;

(b) documents or information the subject of a statutory provision requiring that it be
kept confidential, including documents or information the subject of sections
10.1.31(1) or 10.1.34(1) of the Gambling Regulation Act 2003.

4. Section 10.1.31(1) of the Gambling Regulation Act 2003 applies to:

(a) documents that have come into a “regulated person’s” possession or control
(including by being created by an officer of the Department or Commission) in
the performance of functions under a gaming Act or regulations, including in the
course of advising a Minister or the Commission etc as to how they should
exercise their functions and powers under the Gambling Regulation Act 2003;

(b) “protected information” (including information about the affairs of any person)
acquired by a “regulated person” in the performance of functions under a gaming
Act or regulations, including in the course of advising a Minister or the Victorian
Commission for Gaming Regulation etc as to how they should exercise their
functions and powers under the Gambling Regulation Act 2003;

unless section 10.1.31(2) applies to that information or the information or documents
are disclosed in the course of performing functions under a gaming Act or
regulations.

5. Section 10.1.34(1) of the Gambling Regulation Act 2003 applies to:

information with respect to the affairs of any person, including a corporation,
(that is, “protected information”) which has been disclosed by a “regulated
person” to a non-regulated person;

unless section 10.1.34(2) applies to that information.
Deliberative information (non-Cabinet)

6. Documents and oral evidence which would disclose information relating to the deliberative processes of government, including:

(a) documents or information disclosing the opinion, advice or recommendation of an officer or Minister (e.g. the advice contained in, or the recommendations made in, a briefing paper);

(b) documents or information disclosing deliberations that have taken place between officers, Ministers or officer(s) and Minister(s) (e.g. opinions expressed in deciding or reaching outcomes, decisions or conclusions); or

(c) drafts of documents which exist in a final form;

but not:

(d) documents containing, or information in relation to, authoritative rules, policies, guidelines, practices or precedents (e.g. manuals, rules of procedure, statements of policy, document management plans, probity plans);

(e) information of a purely descriptive nature about a meeting, communication or briefing (e.g. subject-matter, date, place and time, attendees of a meeting, participants in a communication, author and recipient of a briefing);

(f) the outcomes, decisions and conclusions (other than those constituting opinion, advice or recommendation) reached or made as a result of a meeting, communication or briefing;

(g) the content of purely factual or statistical material considered in reaching an outcome, decision or conclusion;

(h) the identity of documents considered in reaching an outcome, decision or conclusion; or

(i) details of matters which were considered relevant to the reaching of an outcome, decision or conclusion where those details have already been made public or the giving of evidence on them has been approved;

except where:

it would not be in the public interest to disclose the information in (d) to (i), because, for example:

(j) disclosure would prejudice a process currently underway;

(k) disclosure might harm relations with other States, or divulge confidential material communicated by any other government;

(l) disclosure might adversely effect the economy by revealing consideration of the anticipated movement in a range of economic indicators;

(m) disclosure would result in the unreasonable disclosure of confidential personal information or commercially confidential information; or

(n) disclosure would result in the unreasonable disclosure of material relating to the enforcement of the law or the protection of public safety.
APPENDIX VIII:
Letter from Secretary, Department of Justice
dated 28 June 2007

Mr Richard Willis
Secretary, Legislation & Select Committees
Department of the Legislative Council
Parliament House
EAST MELBOURNE VIC 3002

Dear Mr Willis

SUMMONS FOR PAPERS AND DOCUMENTS FROM THE SELECT COMMITTEE ON GAMING LICENSING

I refer to your letter dated 20 June 2007 inviting me and the following people to give evidence:

- Ross Kennedy
- Garth Lampe
- Alan Clayton
- Rowena Scheffer
- Brad Akers

I note that Mr Lampe is currently employed in the Department for Victorian Communities but was employed in my department at the relevant time. Further, Mr Akers is currently overseas on leave. In the circumstances, I write on their behalf, as well as on behalf of the officers referred to above.

Your letter asks for each officer to confirm an appropriate time for their appearance before the Committee, referring to either Monday 30 July or Friday 3 August 2007.

I presume that you invite me and the other officers to give evidence in an official, rather than personal, capacity. I note that the general practice, as stated in the 2002 Department of Premier and Cabinet Guidelines on appearing before State Parliamentary Committees, is for Select Committees to request the responsible Minister to identify the most appropriate officials to provide the information sought by the Committee. That would be done in consultation with the relevant Secretary.

In the circumstances, I do not think it appropriate that Ms Scheffer and Mr Akers give evidence to the Committee. Ms Scheffer is not an executive officer and therefore cannot provide authoritative advice to the Committee. Because of her level, she worked only on particular aspects of the matters dealt with
in the Committee’s terms of reference and worked to the more senior officers. Further, Mr Akers has only been employed to perform functions in relation to gambling regulation since 5 March 2007 and thus has knowledge of the matters raised only over a very limited period of time, further, he reports directly to Mr Clayton. As a result, any subject-matter that they could provide evidence on would be able to be covered by the more senior officers, who will be able to deal with those matters in context.

In the circumstances, it is my view that the following officers should appear in the following order on 3 August 2007:

- me, Penny Armytage
- Ross Kennedy
- Garth Lampe
- Alan Clayton

Given my responsibilities as Secretary of the Department, I think it is appropriate that my evidence be given first. The order of the remaining witnesses reflects their seniority and the order in which they held various positions. I have suggested 3 August 2007 because, given leave arrangements already made, I will not be in a position to provide any evidence on 30 July 2007.

The Guidelines for the Protection of Witnesses provided with your invitation to give evidence state that a witness shall be given the opportunity to make a submission in writing before appearing to give oral evidence. In light of those guidelines, I am currently arranging for witness statements to be prepared which I will endeavour to provide you prior to 3 August 2007.

I note, however, that the officers referred to will be subject to two constraints in the evidence that they give:

- First, they will be bound by the Code of Conduct for Victorian Public Sector Employees (No 1) 2007 which will come into force on 1 July 2007. That Code, which binds those witnesses by virtue of section 63(3) of the Public Administration Act 2004, expressly deals with the way in which they must act towards the Committee.

- Second, as mentioned in my letter of 11 April 2007, I (and the other officers) are “regulated persons” within the meaning of the Gambling Regulation Act 2003 and are bound by sections 10.1.30 and 10.1.31 of that Act. Section 10.1.31(1)(b) of that Act expressly abrogates the power of a court (defined in a way that would include the Select Committee) to compel a regulated person to disclose “protected information” that has come to that person’s notice in the performance of functions under that Act. Section 10.1.30(1) then makes it an offence for a regulated person to disclose such information.

Finally, should the Committee remain of the view that Ms Scheffer and Mr Akers should give evidence to the Committee, I ask that you contact me directly on 8684 0501 about the appropriateness and timing of their attendance.

Yours sincerely

PENNY ARMYTAGE
Secretary
APPENDIX IX:
Letter from the Chairman of Victorian Commission for Gambling Regulation dated 28 June 2007

Mr Richard Willis
Secretary
Select Committee on Gaming Licensing
Parliament House
EAST MELBOURNE VIC 3002

Dear Mr Willis,

I refer to your invitation to me by letter of 20 June 2007 to attend and give evidence at a hearing of the Select Committee on either 30 July 2007 or 3 August 2007.

I accept your invitation to attend and am available on Monday 30 July 2007.

I note, however, that I will be subject to a constraint in the evidence that I give:

I believe that I am a “regulated person” within the meaning of the Gambling Regulation Act 2003 and I am therefore bound by sections 10.1.30 and 10.1.31 of that Act. Section 10.1.31(1)b of that Act expressly abrogates the power of a court (defined in a way that would include the Select Committee) to compel a regulated person to disclose “protected information”, that has come to that person’s notice in the performance of functions under that Act. Section 10.1.30(1) then makes it an offence for a regulated person to disclose such information.

Yours sincerely,

IAN DUNN
Chair
APPENDIX X:
Letter from the Executive Commissioner of Victorian Commission for Gambling Regulation dated 28 June 2007

RE: INQUIRY INTO GAMING LICENSING IN VICTORIA – INVITATION TO ATTEND

Dear Mr Willis,

I refer to your invitation to me by letter of 20 June 2007 to attend and give evidence at a hearing of the Select Committee on either 30 July 2007 or 3 August 2007.

I accept your invitation to attend and am available on Monday 30 July 2007.

I am also writing to respond on behalf of Judith Foreman, Steve Thurston and Jim Holcombe, all of whom have authorised me to do so.

I advise that, in respect of Judith Foreman, Steve Thurston and Jim Holcombe, none of these officers are executive officers. Each worked only on particular aspects of the matters dealt with in the Committee’s terms of reference and provided recommendations to the Victorian Commission for Gambling Regulation. Mr Ian Dunn and I are members of that Commission. As a result, I anticipate that the Committee would be better informed if any matters that those officers could provide evidence on would be covered by my evidence and that of Mr Dunn. We would be able to deal with those matters in the broader context.

I note, however, that I may be subject to two constraints in the evidence that I give:

First, I consider myself bound to act in compliance with the Code of Conduct for Victorian Public Sector Employees (No 1) 2007 which will come into force on 1 July 2007. That Code expressly deals with the way in which witnesses must act towards the Committee.

Secondly, as mentioned in my letter of 11 April 2007, I am a “regulated person” within the meaning of the Gambling Regulation Act 2003 and I am therefore bound by sections 10.1.30 and 10.1.31 of that Act. Section 10.1.31(1)(b) of that Act expressly abrogates the power of a court (defined in a way that would include the Select Committee) to compel a regulated...
person to disclose “protected information” that has come to that person’s notice in the performance of functions under that Act. Section 10.1.30(1) then makes it an offence for a regulated person to disclose such information.

Yours sincerely

PETER COHEN
Executive Commissioner
APPENDIX XI:
Letter from Probity Auditor dated 29 August 2007

Ref: GEW:tg

28 August 2007

Mr Richard Willis
Secretary
Select Committee On Gaming Licensing
Legislative Council
Parliament House
EAST MELBOURNE VIC 3002

Dear Mr Willis

At the invitation of the Select Committee, I will be attending to give evidence this Thursday.

I have received a copy of a letter dated 2 August 2007 from the Minister for Gaming to you in which a claim to Executive privilege is set out. I am aware of the claim to Executive privilege in respect of the matters identified in the certificate accompanying that letter and the evidence that I am able to give is subject to that claim to Executive privilege.

I would be grateful if you would bring this to the attention of the Chair and members of the Committee.

Yours sincerely

G E WALSH
Executive Director
APPENDIX XII:
Letter from Intralot Australia’s lawyers
dated 28 August 2007

28/08/2007

Richard Willis
Secretary
Select Committee on Gaming Licensing
Parliament House
EAST MELBOURNE VIC 3002

Dear Mr Willis

Inquiry into Gaming Licensing in Victoria

1) We act for Intralot Australia Pty Ltd. Tony Sheehan a director of the company is to appear before the Committee on Thursday 30 August 2007.

2) We have advised our client that most of the material which was sought under your summons was subject to public interest immunity.

3) Public interest immunity can be invoked by persons and entities other than the Crown1. To the extent that material sought by the Committee relates to confidential commercial communications between Intralot and the Crown and those responsible for making decisions with respect to the invitation to Apply (ITA), Intralot refuses to divulge such information. To release details of the Application on Tender submitted by Intralot into the public domain would jeopardise the tender process which is on foot.

4) In light of this Mr Sheehan has requested we advise you he will not comment on material in Intralot’s Application on the ITA.

Yours faithfully

Mark Henry
Partner

---

APPENDIX XIII:
Letter from Hon. Steve Bracks dated 12 September 2007

The Honourable
STEVE BRACKS

12 September 2007

Mr Richard Willis
Secretary
Select Committee on Gaming Licensing
Parliament House
EAST MELBOURNE 3002

Dear Mr Willis

SELECT COMMITTEE ON GAMING LICENSING – INVITATION TO GIVE EVIDENCE

I refer to your letter dated 29 August 2007 inviting me to give evidence before the Select Committee. I have given proper consideration to whether I should accept your invitation but have ultimately decided to decline it. In making this decision I have particularly taken into account the precedent my appearance would set.

The Select Committee is inquiring into matters relating to my time as Premier and Member of the Legislative Assembly. I was (and remain) accountable and responsible to that House of Parliament alone for the performance of my functions as Premier. The Select Committee has already acknowledged that the independence of both Houses of Parliament means that a Committee of one House cannot claim much less exercise, any authority over a Member of the other House. This immunity must continue after a person has ceased being a Member: otherwise the purpose of the immunity – to preserve the independence of the Houses – would be defeated.

In any event, I understand that the Government has made a claim of Executive privilege on behalf of the Crown in relation to some of the subjects over which evidence may be sought by the Committee. Given the relationship I had as Premier with the Crown, and particularly given the oath of office I gave as an Executive Councillor, I could not act inconsistently with that claim.

Yours sincerely

Hon Steve Bracks
APPENDIX XIV:
Letter from Hon. Steve Bracks dated 26 October 2007

The Honourable
STEVE BRACKS

26 October 2007

Mr Richard Willis
Secretary
Select Committee on Gaming Licensing
Parliament House
Spring Street
EAST MELBOURNE 3002

Dear Mr Willis

Select Committee on Gaming Licensing – Invitation to give evidence

I refer to your letter dated 12 October 2007 requesting me to reconsider my position to give evidence before the Select Committee.

I have again given consideration to your request but must inform you that I stand by my previous decision and decline your invitation.

As I outlined previously the Select Committee is enquiring into matters relating to my time as Premier and Member of the Legislative Assembly. I was (and remain) accountable and responsible to that House of Parliament alone for the performance of my functions as Premier.

The Select Committee has already acknowledged that the independence of both Houses of Parliament means that a committee of one House cannot claim much less exercise any authority over a member of the other House.

I again affirm that this immunity must continue after a person has ceased being a member; otherwise the purpose of the immunity – to preserve the independence of the Houses – would be defeated.

The Government continues to assert its claim of executive privilege on behalf of the Crown in relation to the subjects over which evidence may be sought by the committee. So given the relationship I had as Premier with the Crown and particularly given the oath of office I gave as an executive councillor, I could not act inconsistently with that claim.

Taking into account all of these matters there is no reason to alter my initial decision to decline your invitation.

Yours sincerely

Hon Steve Bracks

Old Treasury Building
20 Spring Street Melbourne 3000

Telephone: 61 3 9651 2223
Facsimile: 61 3 9651 5453
Web www.stevebracks.com.au
Email: info@stevebracks.com.au
EXTRACTS OF PROCEEDINGS

Legislative Council Standing Order 24.08 requires the Committee to include in its report all the divisions which occurred during meetings and the names of Members voting for each side on a question. The Chairman of the Select Committee can only vote when there is an equality of votes.

Between 26 February 2007 and 6 May 2008 the Committee held 31 meetings and divided on the following questions:

MEETING NO 2 – 1 MARCH 2007

Question – That this Select Committee give priority to clauses 1 (a) and (b) of its Terms of reference to thereby enable the delivery of an interim report regarding those matters at which time the Committee shall determine the process for the consideration of the remainder of the subject Terms.

Ayes: 3  Noes: 3
Mr G J Barber  Mr P D Kavanagh
Mr D K Drum  Mr M P Pakula
Mr M J Guy  Mr M S Viney

There being an equality of votes, the Chairman gave his casting vote for the Ayes.

Question agreed to.

MEETING NO 3 – 13 MARCH 2007

Question – That the meeting be temporarily adjourned for a period of 15 minutes to allow for consideration of the Clerk’s procedural advice.

Ayes: 4  Noes: 2
Mr D K Drum  Mr G J Barber
Mr P D Kavanagh  Mr M J Guy
Mr M P Pakula  Mr M S Viney

Question agreed to.

Question – That the Committee proceed to formally summons documents and papers in relation to the gaming licensing process.

Ayes: 3  Noes: 3
Mr G J Barber  Mr P D Kavanagh
Mr D K Drum  Mr M P Pakula
Mr M J Guy  Mr M S Viney

There being an equality of votes, the Chairman gave his casting vote for the Ayes.

Question agreed to.
Question – That a decision to summons documents be deferred until the Committee receives an opinion from the Victorian Government Solicitor within the next week in relation to the procedural advice from the Clerk dated 13 March 2007.

**Ayes:** 3  
Mr P D Kavanagh  
Mr M P Pakula  
Mr M S Viney  

**Noes:** 3  
Mr G J Barber  
Mr D K Drum  
Mr M J Guy  

There being an equality of votes, the Chairman gave his casting vote for the Noes.

Question negatived.

Question – That in relation to the procedural advice tabled by the Clerk on the powers of select committees to compel witnesses and documents, Committee members be permitted to seek independent legal advice.

**Ayes:** 4  
Mr G J Barber  
Mr P D Kavanagh  
Mr M P Pakula  
Mr M S Viney  

**Noes:** 2  
Mr D K Drum  
Mr M J Guy  

Question agreed to.

Question – That the Committee formally summons documents as outlined in the list circulated by the Chairman at the meeting on 1 March 2007.

**Ayes:** 4  
Mr G J Barber  
Mr D K Drum  
Mr M J Guy  
Mr P D Kavanagh  

**Noes:** 2  
Mr M P Pakula  
Mr M S Viney  

Question agreed to.

**MEETING NO 4 – 15 MARCH 2007**

Question – That the timeline for return of summons for papers and documents be 21 days.

**Ayes:** 4  
Mr G J Barber  
Mr D K Drum  
Mr M J Guy  
Mr P D Kavanagh  

**Noes:** 2  
Mr M P Pakula  
Mr M S Viney  

Question agreed to.
MEETING NO 6 – 30 APRIL 2007

Question – That the Committee issue a further summons to Intralot seeking documents relating to Intralot’s participation in the Lottery Licences process.

Ayes: 4
Mr G J Barber
Mr D K Drum
Mr M J Guy
Mr P D Kavanagh

Noes: 2
Mr M P Pakula
Mr M S Viney

Question agreed to.

MEETING NO 7 – 21 MAY 2007

Question – That the Committee issue a further summons to Tattersall’s seeking documents relating to Tattersall’s participation in the Lottery Licence process, including Registration of Interest and Application. The summons should advise that commercial-in-confidence is not proper grounds for refusing to comply with a summons.

Ayes: 4
Mr G J Barber
Mr D K Drum
Mr M J Guy
Mr P D Kavanagh

Noes: 2
Mr M P Pakula
Mr M S Viney

Question agreed to.

Question – That with respect to any potential tape recording of a meeting obtained through a summons, the Committee obtain legal advice regarding the use of such a tape recording that may not have been made with the consent of all parties.

Ayes: 3
Mr P D Kavanagh
Mr M P Pakula
Mr M S Viney

Noes: 3
Mr G J Barber
Mr D K Drum
Mr M J Guy

There being an equality of votes, the Chairman gave his casting vote for the Noes.

Question negatived.

Question – That the Committee seek clarification from Tattersall’s as to the existence of a possible tape recording of the 19 February 2003 Board meeting and seek legal advice concerning the evidentiary implications of the Committee using a tape recording of a meeting that may not have been made with the consent of all parties.

Ayes: 3
Mr P D Kavanagh
Mr M P Pakula
Mr M S Viney

Noes: 3
Mr G J Barber
Mr D K Drum
Mr M J Guy

There being an equality of votes, the Chairman gave his casting vote for the Noes.
Question negatived.

Question – That the Committee notes the highly confidential nature of the documents provided to the Committee by the Probity Auditors, Pitcher Partners, and note their concern that the release of these documents into the public domain may present a very high risk that the integrity of the Lottery Licence Process will be prejudiced. That the Committee write to Pitcher Partners seeking further clarification of the status of the documents provided.

Further, that the Committee resolves that:

a. no further copies of the documents are made;
b. the documents can only be viewed in the office of the Committee Secretary, with the Committee Secretary present;
c. any summary or analysis of the documents made by the Committee Secretary are held with the documents;
d. a record of copies, analysis or summaries be made of these documents and who these were provided to prior to this resolution is distributed to the Committee Members within 24 hours.
e. any copies of the documents that exist are returned to the Secretary's office.

Ayes: 4  Noes: 2
Mr G J Barber  Mr D K Drum
Mr P D Kavanagh  Mr M J Guy
Mr M P Pakula  Mr M S Viney

Question agreed to.

MEETING NO 8 – 7 JUNE 2007

Question – That in view of the legal advice from Brett Walker, that the Committee write to Tattersall’s, Intralot and Hawker Britton providing a copy of the legal advice and requesting they reconsider their responses to the summons.

Ayes: 4  Noes: 2
Mr G J Barber  Mr M P Pakula
Mr D K Drum  Mr M S Viney
Mr M J Guy  Mr P D Kavanagh

Question agreed to.

Question – That the Committee write to the President requesting further legal advice with regard to the Committee’s powers to call for documents covered by statutory secrecy provisions, in particular, relevant provisions within the Gambling Regulation Act 2003.

Ayes: 3  Noes: 3
Mr G J Barber  Mr P D Kavanagh
Mr D K Drum
Mr M J Guy
Mr M P Pakula
Mr M S Viney

There being an equality of votes, the Chairman gave his casting vote for the Ayes.

Question agreed to.

Question – That the letter to the Attorney-General include advice that the Committee
has written to the President seeking further legal advice with respect to statutory
secrecy provisions.

Ayes:  3  Noes:  3
Mr P D Kavanagh
Mr M P Pakula
Mr M S Viney
Mr G J Barber
Mr D K Drum
Mr M J Guy

There being an equality of votes, the Chairman gave his casting vote for the Noes.

Question negatived.

MEETING NO 9 – 18 JUNE 2007

Question – That the Committee Secretariat prepare an interim report for
consideration at the next meeting, dealing with non-compliance to the Summonses
issued by the Committee.

Ayes:  4  Noes:  2
Mr G J Barber
Mr D K Drum
Mr M J Guy
Mr P D Kavanagh
Mr M P Pakula
Mr M S Viney

Question agreed to.

Question – That a Message be sent to the Assembly requesting that leave be
granted to the Premier, the Hon. Steve Bracks, the Treasurer, the Hon. John
Brumby, the Minister for Gaming, the Hon. Daniel Andrews, the Minister for Roads
and Ports, Mr Tim Pallas, and the Hon. John Pandazopoulos, to appear before the
Select Committee to answer questions in relation to parts 1 (a) and (b) of the
Committee’s Terms of reference.

Ayes:  4  Noes:  2
Mr G J Barber
Mr D K Drum
Mr M J Guy
Mr P D Kavanagh
Mr M P Pakula
Mr M S Viney

Question agreed to.

MEETING NO 10 – 16 JULY 2007

The Committee considered the First Interim Report at this meeting. All divisions are
MEETING NO 13 – 28 AUGUST 2007

Question – That the media quote made by Mr G J Barber is in breach of Standing Orders and accordingly the Committee write to the President requesting the matter be referred to the Privileges Committee.

Ayes: 2
Mr M P Pakula
Mr M S Viney

Noes: 4
Mr G J Barber
Mr D K Drum
Mr M J Guy
Mr P D Kavanagh

Question negatived.

MEETING NO 14 – 29 AUGUST 2007

Question – That the Committee invite the Hon. Steve Bracks, former Premier, to give evidence in a forthcoming public hearing in relation to parts 1 (a) and (b) of its Terms of reference.

Ayes: 3
Mr G J Barber
Mr M J Guy
Mr P D Kavanagh

Noes: 2
Mr M P Pakula
Mr M S Viney

Question agreed to.

MEETING NO 17 – 8 OCTOBER 2007

Question – That the Committee take note of the letter from former Premier the Hon. Steve Bracks.

Ayes: 4
Mr G J Barber
Mr P D Kavanagh
Mr M P Pakula
Mr M S Viney

Noes: 2
Mr D K Drum
Mr M J Guy

Question agreed to.

Question – That the Committee write to the former Premier the Hon. Steve Bracks, seeking clarification on the grounds for his refusal to appear before the Committee, request that he reconsider his decision and that he be formally re-invited to give evidence at a future hearing.

Ayes: 3
Mr G J Barber
Mr D K Drum
Mr M J Guy

Noes: 3
Mr P D Kavanagh
Mr M P Pakula
Mr M S Viney

There being an equality of votes, the Chairman gave his casting vote for the Ayes.

Question agreed to.
Question – That the Committee issue an invitation to Mr Adrian Nelson to appear before the Committee at a date to be determined.

**Ayes: 4**
- Mr G J Barber
- Mr D K Drum
- Mr M J Guy
- Mr P D Kavanagh

**Noes: 2**
- Mr M P Pakula
- Mr M S Viney

Question agreed to.

Question – That correspondence between Committee and the former Premier be confidential until such time as the Committee resolves otherwise.

**Ayes: 4**
- Mr G J Barber
- Mr P D Kavanagh
- Mr M P Pakula
- Mr M S Viney

**Noes: 2**
- Mr D K Drum
- Mr M J Guy

Question agreed to.

**PROCEEDINGS ON CONSIDERATION OF DRAFT REPORT**

The Committee divided on the respective questions –

1. That paragraphs 17, 55, 102, 110, 117, 123, 124, 135, 148, 150, 300, as amended, stand part of the Report.

2. That findings 2.2, 3.1, 3.2, 3.3, 3.4, 3.7, 3.8, 3.10, 3.11, 3.13, 3.15, 3.17, 3.23, 4.6, 5.12, 6.1, 6.2, 6.4, stand part of the Report.

3. That new paragraphs and findings be incorporated into the report.

4. That Chapter 3 stand part of the report.


The result of the divisions are detailed below:

(Paragraph and finding numbers refer to the Committee’s draft report.)
MEETING NO 30 – MONDAY 5 MAY 2008

PARAGRAPH 55

The major concerns raised in the public domain and in Parliament, which led to the establishment of the Committee and formed the basis of its investigations, can be summarised as follows:

- Reasons for the granting of a 12 month extension to Tattersall’s lottery licence;
- The nature of discussions between the (then) Premier, the Hon. Steve Bracks MP, and the Tattersall's Board in February 2003;
- Involvement of lobbyist the Hon. David White and Hawker Britton in the lottery licence process, including the nature of lottery related discussions Mr White allegedly had with Mr Bracks and Tattersall’s;
- The nature of Victorian Commission for Gambling Regulation (VCGR) reports to the Minister for Gaming in May 2006 dealing with lottery licence applications; and
- Advice provided to the Minister by the Victorian Solicitor-General that the VCGR report, findings and recommendations were inadequate and required further work, and in particular a suggestion that one of the applicants was not afforded natural justice.

Amendment moved by Mr M P Pakula – That in paragraph 55, the words ‘The major concerns raised in the public domain and in Parliament’ be omitted with the view of inserting in its place the following: ‘The concerns raised by the Opposition in the media and in Parliament’.

Question – That the amendment be agreed to – put.

The Committee divided:

Ayes 3  Noes 3
Mr P D Kavanagh  Mr G J Barber
Mr M P Pakula  Mr D K Drum
Mr M S Viney  Mr M J Guy

There being an equality of votes, the Chairman gave his casting vote with the noes.

Amendment negatived.

Amendment moved by Mr M P Pakula – That in paragraph 55, the words ‘Mr White may have had’ in the third point be omitted with the view of inserting in its place the following: ‘Mr White allegedly had’.

Question – That the amendment be agreed to – put.

The Committee divided:

Ayes 4  Noes 2
Mr G J Barber  Mr D K Drum
Mr P D Kavanagh  Mr M J Guy
Amendment agreed to.

Amendment moved by Mr M P Pakula – That in paragraph 55, the word ‘reported’ be inserted before the word ‘suggestion’ in the last point.

Question – That the amendment be agreed to – put.

The Committee divided:

Ayes 4
Mr G J Barber
Mr P D Kavanagh
Mr M P Pakula
Mr M S Viney

Noes 2
Mr D K Drum
Mr M J Guy

Amendment agreed to.

FINDING 3.1

The timeline laid out for the lotteries licence process was unrealistic. As the process had already been delayed by two months by the ITA stage, the Government should have issued an updated timeline.

Inadequate time was set aside for the VCGR assessment of applications.

Amendment moved by Mr M P Pakula – That Finding 3.1 be omitted with the view of inserting in its place the following: ‘Due to a number of unforeseen issues within the lottery licence process there was a delay. At all times the Government kept registrants and applicants abreast of delays within the provisions of the Gambling Regulation Act 2003.’

Question – That the amendment be agreed to – put.

The Committee divided.

Ayes 4
Mr G J Barber
Mr P D Kavanagh
Mr M P Pakula
Mr M S Viney

Noes 2
Mr D K Drum
Mr M J Guy

Amendment agreed to.

FINDING 3.2

The Minister’s announcement of 7 March 2007 that the process was delayed due to the completeness of the VCGR reports was misleading and did not reflect the Government’s true concerns.

Question – That the paragraph stand part of the report – put.
The Committee divided.

Ayes 4
Mr G J Barber
Mr D K Drum
Mr M J Guy
Mr P D Kavanagh

Noes 2
Mr M P Pakula
Mr M S Viney

Question agreed to.

FINDING 3.3
The cost of the additional VCGR evaluation of the two applicants was borne by taxpayers. This was estimated at $200,000 per applicant.

Amendment moved by Mr M P Pakula – That Finding 3.3 be omitted with the view of inserting in its place the following: ‘The cost of the additional VCGR evaluation was estimated at $200,000 per applicant.’

Question – That the amendment be agreed to – put.

The Committee divided.

Ayes 2
Mr M P Pakula
Mr M S Viney

Noes 4
Mr G J Barber
Mr D K Drum
Mr M J Guy
Mr P D Kavanagh

Amendment negatived.

FINDING 3.4
The delays in the licensing process and the resultant extension to Tattersall’s existing licence meant that the Government had to forego a licence premium payment in respect of lottery operations in the 2007-08 financial year.

Amendment moved by Mr M P Pakula – That Finding 3.4 be omitted with the view of inserting in its place the following: ‘The Government under the Gambling Regulation Act 2003 extended the lottery licence of Tattersall’s for a period of no more than 12 months. Under the aforementioned act the steering committee did consider the issue of premium payments and took legal advice on that matter. The conclusion reached was that there is no capacity within the Gambling Regulation Act to require a premium payment, noting that the premium payment is a tax.’

Question – That the amendment be agreed to – put.

The Committee divided.

Ayes 2
Mr M P Pakula
Mr M S Viney

Noes 4
Mr G J Barber
Mr D K Drum
Mr M J Guy
Amendment negatived.

PARAGRAPH 102
On 11 October 2007, the Merkel Review completed its report and concluded:

• Tattersall’s and Intralot have been treated equally and impartially and have been given the same opportunity to access information and advice about the licensing process;
• all protected information has been managed to ensure its security and confidentiality;
• Tattersall’s and Intralot have been evaluated in a systematic manner against explicit predetermined evaluation criteria;
• the entities referred to above have been required to declare any actual or perceived conflict of interest before participating in the process;
• any declared conflict of interest has been appropriately addressed;
• there is no evidence of any improper interference with the making of a recommendation or report; and
• the preparation of recommendations and reports of the entities referred to above do not disclose bias or anything that could lead to a reasonable apprehension of bias.

However, the Merkel Review expressed concern over lobbying and breach of confidence which occurred during the assessment process prior to the appointment of additional commissioners to the VCGR.

Amendment moved by Mr M P Pakula –, That the following words be inserted at the end of paragraph 102:

‘The Committee also notes that the Merkel Panel found that:

Because any role of Mr White with Tattersall’s Ltd ceased by about November 2006, and the Special Commission was only established early in 2007, it is difficult to see how he could have influenced the current licensing process. The reason for that is that the process after Mr White’s resignation consisted of the new, extensive and thorough investigation and reports of the Special Commission during the first half of 2007, and the subsequent extensive investigation and reports of the GLR team and the Steering Committee. The process moved into the negotiation phase with Tattersall’s Ltd and Intralot in September 2007. There is no suggestion, nor is there any evidence, that Mr White could have had any influence upon any of these processes. All that currently remains to be done is for the present Minister, who was only recently appointed as the responsible Minister, to determine to whom the lottery licence or licences is or are to be granted.’ (para 161)

Question – That the amendment be agreed to – put.

The Committee divided.

Ayes 4
Mr G J Barber
Mr P D Kavanagh

Noes 2
Mr D K Drum
Mr M J Guy
Amendment agreed to.

PARAGRAPH 110

Evidence put to the Committee confirms that Tattersall’s utilised the services of Hawker Britton lobbyist, the Hon. David White, in preparation for the meeting with Mr Bracks. Mr White assisted in the drafting of the December 2002 letter to Mr Bracks seeking a meeting, and further briefed Tattersall’s prior to the meeting on issues to be raised.

Mr KERR — … David was just doing his job. He played an integral role in arranging the meeting. He played a very key role in setting the agenda for the meeting. He was at pains to assist us in the proper method of conducting ourselves at the meeting.140

Amendment moved by Mr M P Pakula — That the following words be inserted at the end of paragraph 110:

‘Mr Fischer advised that he was instrumental in arranging the meeting:

Mr FISCHER - I arranged it because I was running the business, obviously, and I knew the Premier had met with our competitor, Tabcorp, some time before and I thought it very important. The Premier had not met my board. I thought it important for the Premier to come in, meet the board and for us to share this sort of stuff with him. Effectively a lot of that stuff would have just been discussed again with him in that meeting.’

Question — That the amendment be agreed to – put.

The Committee divided.

Ayes 5
Mr G J Barber
Mr D K Drum
Mr P D Kavanagh
Mr M P Pakula
Mr M S Viney

Noes 1
Mr M J Guy

Amendment agreed to.

PARAGRAPH 117

398. Mr Kerr noted in evidence that Tattersall’s gambling licences were discussed during the Board meeting.

Mr M J Guy — When the Premier came to the Tatts board meeting on 19 February, I am just wondering if you could confirm, were issues relating to the gaming licences discussed at that meeting?

Mr KERR — Yes.

Mr M J Guy — Where the Premier was present?

Mr KERR — Yes.141

140 Kerr, Transcript of Evidence, p. 217.
Amendment moved by Mr M P Pakula – That the following words be inserted at the end of the paragraph 117:

‘However Mr Fischer went on to contradict the version given by Mr Kerr and said:

*The CHAIR* - Those protocols - you said they were communicated by Jane Garrett, the Premier’s gaming adviser.

*Mr FISCHER* - Yes. -

*The CHAIR* - How were they communicated? Was there an exchange of letters before the formal meeting?

*Mr FISCHER* – I do not recall letters, but definitely undertakings to say, ‘no we will not talk about licences’.

…

*The CHAIR* - At that meeting, the preparatory meeting, you outlined those protocols to the trustees?

*Mr FISCHER* - I believe so.

*The CHAIR* - We heard evidence yesterday from Mr Kerr and Mr Hornsby. Both L-those gentlemen suggested there were no constraints on what could be discussed at the boardroom lunch with the Premier.

*Mr FISCHER* – That is wrong.’

Question – That the amendment be agreed to – put.

The Committee divided.

<table>
<thead>
<tr>
<th>Ayes 5</th>
<th>Noes 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mr G J Barber</td>
<td>Mr M J Guy</td>
</tr>
<tr>
<td>Mr D K Drum</td>
<td></td>
</tr>
<tr>
<td>Mr P D Kavanagh</td>
<td></td>
</tr>
<tr>
<td>Mr M P Pakula</td>
<td></td>
</tr>
<tr>
<td>Mr M S Viney</td>
<td></td>
</tr>
</tbody>
</table>

Amendment agreed to.

**PARAGRAPH 123**

In order to confirm the nature of the discussions at the 19 February 2003 Board meeting, the Committee sought under summons, copies of minutes and formal records of the meeting from Tattersall’s. The Committee is concerned and surprised that Tattersall’s was unable to locate and provide such records.

Amendment moved by Mr M P Pakula – That the last sentence in paragraph 123 be omitted with the view of inserting in its place the following: ‘Tattersalls was unable to locate or provide such records.’

Question – That the amendment be agreed to – put.

The Committee divided.

---

141 Kerr, Transcript of Evidence, p. 227.
Ayes 2
Mr M P Pakula
Mr M S Viney

Noes 4
Mr G J Barber
Mr D K Drum
Mr M J Guy
Mr P D Kavanagh

Amendment negatived.

PARAGRAPH 124
Amendment moved by Mr M P Pakula –, That all words after the word ‘meeting’ in paragraph 124 be omitted with the view of inserting in its place the following: ‘It is the conclusion of the Committee that this alleged tape recording of the meeting does not exist.’

Question – That the amendment be agreed to – put.
The Committee divided.

Ayes 2
Mr M P Pakula
Mr M S Viney

Noes 4
Mr G J Barber
Mr D K Drum
Mr M J Guy
Mr P D Kavanagh

Amendment negatived.

FINDING 3.7
The refusal by Mr Bracks to give evidence to the Committee inhibited the Committee’s investigation of this matter.

Amendment moved by Mr M P Pakula – That the following words be inserted at the end of Finding 3.7: ‘The Committee notes that at no stage during the taking of evidence did any witness make a specific allegation against Mr Bracks that he would have been required to rebut.’

Question – That the amendment be agreed to – put.
The Committee divided.

Ayes 5
Mr G J Barber
Mr D K Drum
Mr P D Kavanagh
Mr M P Pakula
Mr M S Viney

Noes 1
Mr M J Guy

Amendment agreed to.
FINDING 3.8

The Committee concludes that while it is probable the meeting discussed the lotteries licence and gaming review processes, it has received no evidence that commitments were given to Tattersall's.

Amendment moved by Mr M P Pakula – That the words 'in general terms' be inserted after the words 'review processes' in Finding 3.8.

Question – That the amendment be agreed to – put.

The Committee divided.

Ayes 5 Noes 1
Mr G J Barber
Mr D K Drum
Mr P D Kavanagh
Mr M P Pakula
Mr M S Viney

Amendment agreed to.

PARAGRAPH 135

Mr Hornsby advised the Committee that Mr White reported that he had had a meeting with Mr Bracks where a wide range of matters were discussed, including matters that related to Tattersall's.

Mr HORNSBY - … [Mr White] said that he had attended a convivial at Lorne with his old colleagues and friends, and that there had been an opportunity to talk about a whole range of matters, and certainly some of those matters revolved around Tattersall's, gaming, lotteries and the other bits and pieces of course that surrounded that.

Amendment moved by Mr M P Pakula – That the following words be inserted at the end of paragraph 135:

‘However Mr Hornsby went on to say:

Mr HORNSBY - As our political lobbyist and adviser. It would be unfair to say that what he was saying came directly from any government minister or the Premier, because Mr White was telling us what I think he wanted us to hear, on many occasions; because at no time during my discussions with Mr White was there any direct inference that this was what the Premier said. It was what Mr White said to us that he believed was the Premier's thinking on certain matters. I am trying to put it into its proper context.

The CHAIR - Do you believe that Mr White reached those conclusions as a consequence of a discussion with the Premier?

Mr HORNSBY - Well, that is one of the problems, I was not there.

The CHAIR - Did he intimate that he had had a discussion with the Premier?

Mr HORNSBY - He intimated that this was the thinking of the government, and this was the thinking of certain government ministers. Specifically, I do not think at any time he said, 'This is a direct quote of what the Premier said to me'. And I think that is one of the things that we have got to bear in mind.’
Question – That the amendment be agreed to – put.
The Committee divided.

Ayes 5  
Mr G J Barber  
Mr D K Drum  
Mr P D Kavanagh  
Mr M P Pakula  
Mr M S Viney

Noes 1  
Mr M J Guy

Amendment agreed to.

FINDING 3.10

At the February 2004 meeting Mr White informed the Trustee’s that it was the Government’s position that Tattersall’s should become a publicly listed company if it wished to renew its gambling licences.

Amendment moved by Mr M P Pakula – That Finding 3.10 be omitted with the view of inserting in its place the following: ‘At the February 2004 meeting Mr White confirmed with the Trustees; that it was the Government’s long standing preference that Tattersall’s be a publicly listed company.’

Question – That the amendment be agreed to – put.
The Committee divided:

Ayes 3  
Mr G J Barber  
Mr M P Pakula  
Mr M S Viney

Noes 3  
Mr D K Drum  
Mr M J Guy  
Mr P D Kavanagh

There being an equality of votes, the Chairman gave his casting vote with the noes.

Amendment negatived.

Finding 3.11

The Trustees formed the view that Mr White’s message to the Trustee’s (Finding 3.10) arose from his dinner with Mr Bracks. The Committee is unable to determine if that was an intentional inference by Mr White.

Amendment moved by Mr M P Pakula – That the words ‘The Trustees’ in Finding 3.11 be omitted with the view of inserting in its place the following: ‘Mr Peter Kerr’.

Question – That the amendment be agreed to – put.
The Committee divided.

Ayes 4  
Mr G J Barber  
Mr P D Kavanagh  
Mr M P Pakula

Noes 2  
Mr D K Drum  
Mr M J Guy
MEETING NO 31 – TUESDAY 6 MAY 2008

PARAGRAPH 17

Having presented an interim report to the Legislative Council on the non-production of documents and in view of the Government’s unwillingness to accept Mr Walker’s opinion on the powers of the Council and committees to call for documents, the Committee was unable to take any further action with respect to non-compliance with summonses.

Amendment moved by Mr M P Pakula – That the words ‘unwillingness to accept’ in the second line of Paragraph 17 be omitted with the view of inserting in its place the following: ‘rejection of’.

Question – That the amendment be agreed to – put.

The Committee divided.

Ayes 4
Mr G J Barber
Mr P D Kavanagh
Mr M P Pakula
Mr M S Viney

Noes 2
Mr D K Drum
Mr M J Guy

Amendment agreed to.

FINDING 2.2

The Government made a broad claim of Executive privilege which inhibited the Committee’s gathering of evidence.

The breadth of the Government’s claim far exceeded the parameters laid down in the legal opinion the Legislative Council obtained from Mr Bret Walker SC.

It is likely that this matter will only be resolved by way of judicial determination.

Amendment moved by Mr M P Pakula – That the word ‘broad’ be omitted from the first line in Finding 2.2.

Question – That the amendment be agreed to – put.

The Committee divided.

Ayes 2
Mr M P Pakula
Mr M S Viney

Noes 4
Mr D K Drum
Mr G J Barber
Mr M J Guy
Mr P D Kavanagh
Amendment negatived.

**Amendment moved by Mr M P Pakula** – That the following words be inserted at the end of the second sentence in Finding 2.2: ‘a New South Wales based constitutional law expert.’

Question – That the amendment be agreed to – put.

The Committee divided.

<table>
<thead>
<tr>
<th>Ayes 3</th>
<th>Noes 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mr P D Kavanagh</td>
<td>Mr G J Barber</td>
</tr>
<tr>
<td>Mr M S Viney</td>
<td>Mr D K Drum</td>
</tr>
<tr>
<td>Mr M P Pakula</td>
<td>Mr M J Guy</td>
</tr>
</tbody>
</table>

There being an equality of votes, the Chairman gave his casting vote with the noes. Amendment negatived.

**NEW PARAGRAPH**

**Amendment moved by Mr M J Guy** – That the following new paragraph be inserted after paragraph 124: ‘The Committee heard conflicting evidence as to when Mr Fischer obtained probity clearance and the circumstances under which this occurred.

*Mr VINEY* — Okay; thanks. In Mr Dunn’s evidence there were some questions raised about the consideration of Mr Fischer, his appropriateness and the issuing of a certificate or whatever for Mr Fischer. You were presumably in the audience and you may recall that. Are you aware of whether your regulating authority, in your 11 years, has issued such a certificate to Mr Fischer in terms of being an appropriate person to be involved in this industry? Was that done under your watch?

*Mr COHEN* — It was. Mr Fischer was approved as an associate of Tattersall’s some time back in the early 1990s. That information was publicly available on our website from probably when we put that information up, which was probably around about 1998 or 1999 when we had a website, and he remained approved until he stood down as CEO of Tattersall’s in October last year.

*Mr VINEY* — It was in the early 1990s, you said, that he was approved?

*Mr COHEN* — I am sorry — the mid-1990s.

*Mr VINEY* — The mid-1990s. That would have been at the time Mr Haddon Storey was Minister?

*Mr COHEN* — No, it was not the time Mr Haddon Storey was Minister, because I did not join what was then the VCGA until after the 1996 election.

*Mr VINEY* — So it would have been at the time of — —

*Mr COHEN* — Mr Hallam. Mr Hallam was the Minister for Gaming at that time.

*Mr GUY* — We had evidence from Mr Cohen that you first obtained probity in 1995. My question to you was going to be how you operated without probity from 1992 to 1995, but you are saying that you obtained probity approval in 1992?
Mr FISCHER — When I joined the business, absolutely. I had to, it was conditional part of the business. You had to fill out your probity forms and send them in and go through the process.

Mr GUY — What month in 1992? That was September 1992?


Question – That the new paragraph be agreed to – put.

The Committee divided.

Ayes 4 Noes 2

Mr D K Drum Mr M P Pakula
Mr G J Barber Mr M S Viney
Mr M J Guy Mr P D Kavanagh

Question agreed to.

FINDING 3.13

The Committee is unable to determine if Tattersall’s was discussed during the dinner between Mr Bracks and Mr White.

Amendment moved by Mr M P Pakula – That Finding 3.13 be omitted with the view of inserting in its place the following: ‘The Committee's knowledge from first hand accounts of what transpired at the dinner between Mr White and Mr Bracks is limited to the evidence given by Mr. White and Mr. Bracks' public comments. On that basis, the Committee can reach no definitive consensus as to what transpired at the dinner.’

Question – That the amendment be agreed to – put.

The Committee divided.

Ayes 4 Noes 2

Mr G J Barber Mr D K Drum
Mr P D Kavanagh Mr M J Guy
Mr M P Pakula Mr M S Viney

Amendment agreed to.

PARAGRAPH 148

While the Committee has received varying accounts of the substance and source of the information presented to the Board by Mr White at this time, undeniably the message conveyed was that there was a strong preference from the Government for Tattersall’s to become a public company.

Amendment moved by Mr M P Pakula – That Paragraph 148 be omitted with the view of inserting in its place the following: ‘The Committee has received varying reports about what occurred at the meeting, however the information provided by Mr White was that the company should continue working toward listing as a public company, consistent with the view that the Government had held for some time.’
Question – That the amendment be agreed to – put.

The Committee divided.

**Ayes 3**

Mr P D Kavanagh  
Mr M P Pakula  
Mr M S Viney

**Noes 3**

Mr G J Barber  
Mr D K Drum  
Mr M J Guy

There being an equality of votes, the Chairman gave his casting vote with the noes.

Amendment negatived.

**PARAGRAPH 150**

Mr White, a Director of Hawker Britton, was engaged by Tattersall’s from January 2000 to November 2006 as a lobbyist and to maintain close relationships between Tattersall’s and the newly elected Bracks Government. In his evidence to the Committee, Mr White outlined his role and Tattersall’s requirements:

_**Mr WHITE** — … to provide advice about what the views of the Government might be on gaming issues; their attitude to Tattersall’s, both at a ministerial level, at an advisory level and among senior public servants. If it is of benefit to this committee, it would be rare to be contacting any other members of Parliament._

**Amendment moved by Mr M P Pakula** — That the following words be inserted at the end of paragraph 150:

_‘However Mr Fischer explained that the role of Mr White was:*

_**Mr FISCHER** - It was basically a continuation of keeping us informed on government process, on government policy; making sure that what we were doing was acceptable in his mind and his opinion to government requirements of a lottery operator; and, of course, not going with another person; working only for Tattersall’s. So we were basically tying him down to keeping us informed as far he could. To the extent that information came to his attention he would share that with us, and we would have a look at that with him. It was really a watching brief more than anything else. There were not any steps 1, 2 or 3, or specific tasks that we asked him to do at that stage.’_

The Committee divided.

**Ayes 4**

Mr G J Barber  
Mr P D Kavanagh  
Mr M P Pakula  
Mr M S Viney

**Noes 2**

Mr D K Drum  
Mr M J Guy

Amendment agreed to.

**FINDING 3.15**

Tattersall’s agreed to pay a success fee to Hawker Britton on the basis that Mr White would undertake activities above and beyond those of the on going consultancy, with the aim of securing an exclusive lottery licence for Tattersall’s.
Amendment moved by Mr M J Guy – That Finding 3.15 be omitted with the view of inserting in its place the following: ‘Tattersall’s agreed to pay a success fee to Hawker Britton on the basis that Mr White would undertake activities above and beyond those of the ongoing consultancy, contrary to the evidence provided by Mr White, and with the aim of securing an exclusive lottery licence for Tattersall’s. This agreement was entered into at a time when the tender rules strictly prohibited, under penalty of disqualification, any lobbying of the type Mr White and Hawker Britton were to be engaged in.’

Question – That the amendment be agreed to – put.

The Committee divided.

Ayes 3
Mr G J Barber
Mr D K Drum
Mr M J Guy

Noes 3
Mr P D Kavanagh
Mr M P Pakula
Mr M S Viney

There being an equality of votes, the Chairman gave his casting vote with the ayes.

Amendment agreed to.

Question – That the finding, as amended, stand part of the report – put.

Ayes 3
Mr G J Barber
Mr D K Drum
Mr M J Guy

Noes 3
Mr P D Kavanagh
Mr M P Pakula
Mr M S Viney

There being an equality of votes, the Chairman gave his casting vote with the ayes.

Question agreed to.

FINDING 3.17

Through Hawker Britton, Tattersall’s received preferential access to Government information prior to its public release on at least one occasion.

Amendment moved by Mr M P Pakula – That Finding 3.17 be omitted with the view of inserting in its place the following: ‘Through Hawker Britton, Tattersall’s received access to one piece of Government information in the morning of and prior to its public release.’

Question – That the amendment be agreed to – put.

The Committee divided.

Ayes 4
Mr G J Barber
Mr P D Kavanagh
Mr M P Pakula
Mr M S Viney

Noes 2
Mr D K Drum
Mr M J Guy

Amendment agreed to.
Amendment moved by Mr Mr M J Guy – That the following words be inserted at
the end of Finding 3.17: 'This places in doubt the probity of the process as this
breach of the tender process rules was never investigated by the Probity Auditor, the
VCGR or the Steering Committee.'

Question – That the amendment be agreed to – put.

The Committee divided.

Ayes 3  Noes 3
Mr D K Drum  Mr G J Barber
Mr M J Guy  Mr M P Pakula
Mr P D Kavanagh  Mr M S Viney

There being an equality of votes, the Chairman gave his casting vote with the ayes.
Amendment agreed to.

Amendment moved by Mr Mr M J Guy – That the following words be inserted at
the end of Finding 3.17: ‘The Committee also notes the refusal of any Government
Minister or Member, and the refusal of the Government to allow Ministerial staff to
appear before this Committee has directly hampered the Committee’s ability to
investigate this breach.'

Question – That the amendment be agreed to – put.

The Committee divided.

Ayes 3  Noes 3
Mr D K Drum  Mr G J Barber
Mr M J Guy  Mr M P Pakula
Mr P D Kavanagh  Mr M S Viney

There being an equality of votes, the Chairman gave his casting vote with the ayes.
Amendment agreed to.

NEW FINDING

Amendment moved by Mr M P Pakula – That the following new finding be inserted
after Finding 3.19:

‘The Committee took evidence from numerous witnesses and each one was asked
about the possibility of a smear campaign being undertaken by Hawker Britton on
behalf of Tattersall’s. The Committee received no evidence that Hawker Britton
engaged in any such activity.’

Question – That the new finding be agreed to – put.

The Committee divided.

Ayes 4  Noes 2
Mr G J Barber  Mr D K Drum
Mr P D Kavanagh  Mr M J Guy
Mr M P Pakula  Mr M S Viney
FINDING 3.23

Due to a lack of conclusive evidence the Committee makes an open finding with respect to the allegations against the Government, Tattersall’s and Hawker Britton.

Question – That Finding 3.23 stand part of the report – put.

The Committee divided.

Ayes 3  Noes 3
Mr G J Barber  Mr P D Kavanagh
Mr D K Drum  Mr M P Pakula
Mr M J Guy  Mr M S Viney

There being an equality of votes, the Chairman gave his casting vote with the Ayes.

Question agreed to.

NEW FINDING

Amendment moved by Mr M P Pakula – That the following new finding be inserted after Finding 3.23:

‘In relation to the former Premier, Mr Bracks, the Committee has not received any direct evidence to sustain any allegation of improper conduct.’

Question – That the new finding be agreed to – put.

The Committee divided.

Ayes 3  Noes 3
Mr P D Kavanagh  Mr G J Barber
Mr M P Pakula  Mr D K Drum
Mr M S Viney  Mr M J Guy

There being an equality of votes, the Chairman gave his casting vote with the noes.

Question negatived.

FINDING 4.6

In some cases, the views of local communities have not been accorded sufficient weight by the VCGR and VCAT in assessing applications for EGMs. Cognisance of the recent Court of Appeal decision should ensure this is addressed.

Amendment moved by Mr M P Pakula – That the words ‘the VCGR and’ be omitted from Finding 4.6.’

Question – That the amendment be agreed to – put.

The Committee divided.

Ayes 4  Noes 2
Mr G J Barber  Mr D K Drum
Amendment agreed to.

PARAGRAPH 300

The Committee does not accept the Government’s claim that the incidence of problem gambling in Victoria has been halved over the last 5-7 years. Evidence put to the Committee suggests at least two per cent of the total adult population has a problem with gambling and that EGMs are responsible for an overwhelming proportion of the problem gamblers. A far larger proportion of people who actually use EGMs can be classified as problem gamblers.

Amendment moved by Mr M P Pakula – That Paragraph 300 be omitted with the view of inserting in its place the following: ‘The Committee heard evidence contrary to the Government’s claim that the incidence of problem gambling in Victoria has been halved over the last 5-7 years. It is clear that there is a disagreement on the rate of problem gambling in Victoria. The Committee supports further independent research to be undertaken in this area.

Question – That the amendment be agreed to – put.

The Committee divided.

Ayes 4
Mr D K Drum
Mr M J Guy
Mr M P Pakula
Mr M S Viney

Noes 2
Mr G J Barber
Mr P D Kavanagh

Amendment agreed to.

NEW FINDING

Amendment moved by Mr P D Kavanagh – That the following new finding be inserted after Finding 5.10, ‘Any signs or other advertising enticing patrons to use EGMs by proclaiming amounts previously won at the venue should be made to include advice to patrons of the amount lost by patrons at that venue.’

Question – That the new finding be agreed to – put.

The Committee divided.

Ayes 2
Mr G J Barber
Mr P D Kavanagh

Noes 4
Mr D K Drum
Mr M J Guy
Mr M P Pakula
Mr M S Viney

Question negatived.
NEW FINDING

Amendment moved by Mr P D Kavanagh – That the following new finding be inserted after Finding 5.12: ‘As a potentially hazardous activity, the consumption of alcohol while using EGMs is undesirable in principle. Although effective prohibition is likely to be problematic, venues should nevertheless be required to at least discourage patrons from simultaneously using alcohol and EGMs.’

Question – That the new finding be agreed to – put.

The Committee divided.

Ayes 1
Mr P D Kavanagh

Noes 5
Mr G J Barber
Mr D K Drum
Mr M J Guy
Mr M P Pakula
Mr M S Viney

Question negatived.

FINDING 5.12

Mandating the availability of pre-commitment technology in post-2012 EGMs is welcome. However, careful consideration should be given as to the impact of mandating the use of pre-commitment technology on casual and recreational EGM users.

Amendment moved by Mr G J Barber – That the second sentence in Finding 5.12 be omitted with the view of inserting in its place the following: ‘To be effective in achieving reductions in gambling related harm, pre-commitment technology would need to be mandated on all EGMs in Victoria. This will cause some inconvenience to casual or irregular users of EGMs.’

Question – That the amendment be agreed to – put.

The Committee divided.

Ayes 2
Mr G J Barber
Mr P D Kavanagh

Noes 4
Mr D K Drum
Mr M J Guy
Mr M P Pakula
Mr M S Viney

Amendment negatived.

FINDING 6.1

Community Support Funding should not limit an organisation’s ability to undertake independent gambling related advocacy.

Amendment moved by Mr G J Barber – That Finding 6.1 be omitted with the view of inserting in its place the following: ‘Organisations funded under the CSF to assist those with gambling problems should also be explicitly mandated to undertake
broader public interest advocacy and education on issues relating to gambling related harm.'

Question – That the amendment be agreed to – put.

The Committee divided.

Ayes 2
Mr G J Barber
Mr P D Kavanagh

Noes 4
Mr D K Drum
Mr M J Guy
Mr M P Pakula
Mr M S Viney

Amendment negatived.

FINDING 6.2

The Community Support Fund suffers from a lack of transparency. To address this, the Department of Planning and Community Development should publish annual accounts providing balances, cashflows and an operating statement for the CSF. These accounts should be subject to a financial audit by the Auditor-General.

Amendment moved by Mr M P Pakula – That the first line in Finding 6.2 be omitted with the view of inserting in its place the following: ‘The Community Support Fund lacks sufficient transparency.’

Question – That the amendment be agreed to – put.

The Committee divided.

Ayes 2
Mr M P Pakula
Mr M S Viney

Noes 4
Mr G J Barber
Mr D K Drum
Mr M J Guy
Mr P D Kavanagh

Amendment negatived.

FINDING 6.4

Net community benefit should be afforded a higher weighting than geographic source of funds when allocating CSF monies for the purposes prescribed in the Gambling Regulation Act 2003.

Amendment moved by Mr G J Barber – That the words ‘Net community benefit’ in the first line of Finding 6.4 be omitted with the view of inserting in its place the following: ‘Socio-economic disadvantage’.

Question – That the amendment be agreed to – put.

The Committee divided.

Ayes 2
Mr G J Barber

Noes 4
Mr D K Drum
Amendment negatived.

CHAPTER 3

Question – That Chapter 3, as amended, stand part of the report – put.

The Committee divided.

Ayes 4
Mr G J Barber
Mr D K Drum
Mr M J Guy
Mr P D Kavanagh

Noes 2
Mr M P Pakula
Mr M S Viney

Question agreed to.

ADOPTION OF REPORT

The Chairman put the question, That the Draft Final Report, together with Appendices, be adopted as the Final Report of the Committee.

The Committee divided.

Ayes 4
Mr G J Barber
Mr D K Drum
Mr M J Guy
Mr P D Kavanagh

Noes 2
Mr M P Pakula
Mr M S Viney

Question agreed to.
MINORITY REPORT:
Mr M S Viney & Mr M P Pakula

1 Introduction

Government Members do not believe that there was sufficient basis for the establishment of the Committee, given that it was solely based on allegations peddled by the Opposition in the media.

Notwithstanding that, Government Members took an open approach to the hearings and sought to assist the Committee in its activities where appropriate.

2 Key findings of the Committee

The Committee was established with a single political imperative – an attempt to establish improper conduct by former Premier Steve Bracks, the Government and Hawker Britton.

The Committee received more than 80 folders of documents taking up an entire wall of one office in the Parliament.

It held 12 days of hearings, totalling 44 hours of evidence from 58 witnesses. The costs to business, the public service and the parliament could be estimated at over $2 million.

Despite all of that, over the 15 months that the Committee sat, there was not one witness or document that substantiated the allegations by the Opposition against former Premier Steve Bracks, the Government or Hawker Britton.

Specifically there has been no evidence;

- sufficient to sustain an allegation of interference by Hawker Britton or Tattersall’s in regards to the lotteries licence process,
• to contradict the Government’s position that it consistently stated its preference that Tattersall’s become a public company, and it was the urging of beneficiaries and the insistence of the CEO Mr Fischer (from as far back as 1994) that convinced the Tattersall’s Trustees to move to make Tattersall’s a public company, and critically

• that former Premier Steve Bracks had any discussions with gaming licence applicants/holders or those acting on their behalf, that could be construed as in any way improper.

3 The “open finding”

The open finding regarding the Government, Hawker Britton and Tattersall’s is an abrogation of the Committee’s responsibilities.

The fact that the conclusions made no mention whatsoever of former Premier Steve Bracks, is almost impossible to comprehend.

Put simply, if the Committee, dominated by non-government parties had found any evidence to sustain an allegation against the former Premier, it would have found as such.

That it did not is self evident. Having been unable to sustain any allegation of improper conduct against the former Premier, Government Members believe that the Committee was duty bound to say so.

**Detailed Findings**

4 Meeting between the former Premier and the board of Tattersall’s

The Committee heard witness accounts of what occurred at the meeting between the former Premier Steve Bracks and the board of Tattersall’s on 19
February 2003, a full 1 year and 7 months before the new Lottery tender process commenced.

Mr Fischer who was CEO at the time said that he asked for the meeting with the former Premier to be arranged.

Mr Fischer confirmed that there was a general discussion at the February 2003 meeting around the need for ongoing consultation and said that there were strict protocols around what could be discussed and that he briefed his board as required by the Premiers Office that discussing licences or the renewal was not allowed.

Mr Ray Hornsby confirmed that there were no undertakings or suggestions of preferential treatment made by the former Premier.

The only person to say that he came away from that meeting believing that Tattersall’s would be given favourable treatment was the former Trustee, Mr Peter Kerr. And Mr Kerr by his own admission could not refer to anything the former Premier actually said. Rather, he relied on an “impression” he left the meeting with.

We also note that if Mr Kerr, an experienced lawyer, thought that there were any inappropriate actions or discussions, he never lodged his concerns with any authority.

5 Floating of Tattersall’s

There were allegations made to the Committee by Mr Kerr that he believed the Victorian Government required Tattersall’s to list on the Australian Stock Exchange.

This version of events was contradicted by Mr Hornsby and also by the former CEO Mr Fischer.
Mr Hornsby said that the decision to float Tattersall’s actually went back to 2000/2001 because of pressure from the beneficiaries.

Mr Fischer said that the company has first considered listing as a public company in 1994, corporatised in 1998 and took further steps in 2000.

It has been made clear to the Committee through evidence of both Mr Hornsby and Mr Fischer that Tattersall’s had for a decade deemed it necessary to list as a public company and that their decision to do so was based primarily on the company’s own needs.

6 Allegations of prohibited contact

The Committee took evidence from 18 witnesses specifically on the lottery licences. Each one was asked about the possibility of a smear campaign being undertaken by Mr White on behalf of Tattersall’s. The Committee received no evidence that Mr. White engaged in any such activity.

The Committee should also note that the Merkel Panel found that “There is no suggestion, nor is there any evidence, that Mr White could have had any influence upon any of these processes”.

7 Dinner between the former Premier and Mr White

The Committee also considered allegations that former Premier Steve Bracks indicated to Mr White at a dinner in Lorne that it was the Government’s requirement that Tattersall’s publicly list. It was alleged that Mr White came back to the Tattersall’s board with a report on that dinner.

Mr Kerr, Mr Hornsby and Mr Fischer all gave conflicting accounts of their discussions with Mr White about the dinner.
Mr White’s evidence was that following the dinner he merely confirmed what Tattersall’s had known for a number of years – that it was the Government’s preference that Tattersall’s be a publicly listed company.

Mr Kerr however, suggested that the news came as a “bombshell”. But Mr Kerr contradicted himself when he indicated that he and the Trustees knew the Governments long standing preference for Tattersall’s to become a publicly listed company to improve transparency.

On that basis it is simply not plausible that Mr Kerr was surprised to discover that the Government’s preference was for Tattersall’s to list.

8 Government Representation on the Select Committee

From the time of the establishment of the Committee, Government Members have had ongoing concerns about the politicisation of the Committee by the Liberal/ National Coalition.

At the last State election the people of Victoria voted for 19 ALP members, 17 Coalition members, 3 Green members and 1 DLP member of the Upper House. Despite this the Committee was comprised of three Coalition members and only two Government members.

It is clear from the record of proceedings that if the Committee’s composition had been reflective of the make up of the Legislative Council the findings in this report would have been entirely different.

9 Conclusion

It should be noted that, despite some misgivings, Government Members voted to adopt 5 of the 6 Chapters in the report. Had the Committee had the courage to make the appropriate findings in Chapter 3, based on the evidence
(or lack thereof); there would have been no necessity for a Minority Report to be tabled.

The open finding at the end of Chapter 3, naming not one individual, but broadly nominating the Government and two companies, confirms what Government Members suspected from the outset – that the Opposition established the inquiry with the intent of smearing the former Premier.

Having been unable to find any evidence to substantiate their allegations, they chose to say nothing at all.

Matthew Viney, MLC
Deputy Chair

Martin Pakula, MLC
MINORITY REPORT:
Mr P D Kavanagh

The Committee’s findings reflect the evidence obtained in its hearings. It should be noted, however, that the evidence received by the Committee was limited by the Government’s determination, from the Committee’s inception, to frustrate its investigations.

Of even more significance than investigations into probity issues, was the Committee’s investigation into problem gambling.

Evidence before the Committee demonstrated the enormity of the harm done by problem gambling in Victoria. The Committee heard evidence of problem gambling, especially EGM gambling, leading to extreme financial difficulties for some families, destroying marriages and other relationships and causing extreme personal anguish. One counselling service gave evidence that suicide is not an uncommon consequence of problem gambling.

Evidence before the Committee suggested that the usefulness of counselling in dealing with problem gambling is quite limited.

In view of the depth of personal, social, health and crime problems arising from EGMs, the recommendations adopted by the Committee, while likely to be useful, arguably do not go far enough.

As a potentially hazardous activity, it is undesirable that the users of EGMs consume alcohol while they are playing. Fairness to EGM users suggests that EGM licensees should be required to at least warn against the simultaneous use of EGMs and alcohol.

The Government has announced that EGM “pre-commitment technology” will be introduced in the near future. The Government has not made it clear if this technology will be voluntary or mandatory. The scale of the problems arising from the use of EGMs warrants working towards making the use of these
technologies compulsory with the exception of very small bets of perhaps ten cents or less per spin.

Mr John Stansfield, the CEO of the Problem Gambling Foundation, gave powerful testimony of New Zealand’s approach to problem gambling. Mr Stansfield explained that in New Zealand, licensees are legally required to minimise gambling related harm. Problem gambling counselling service providers in New Zealand are also specifically authorised to engage in public advocacy and education. Mr Stansfield persuasively argued that these measures have provided very considerable benefits in minimising problem gambling. In respect to problem gaming policies, the evidence before the Committee suggests that Victoria could learn a lot from New Zealand.

P D Kavanagh, MLC