

**Submission to Gambling Licences Review**  
**WHY REMOVE ‘GAMING OPERATORS’**

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Monday, 8 May 2006

**1. Should there be gaming operators at all?**

This submission to the *Review of the Electronic Gaming Machine, Club Keno and Wagering Licences and Funding Arrangements for the Racing Industry Post-2012* (the *Review*) will concentrate on public policy principles. It will, therefore, focus on the following questions of principle that the Government of Victoria has asked the *Review* to consider:

- How should the industry be structured and machines distributed?
- Should there be gaming operators at all? (*Gaming Machine Licence Arrangements Post-2012 Issues Paper (Issues Paper)*, p. 8)

The submission will address these questions in the context prescribed for the *Review* by the Government. This is that ‘the Review will give *foremost* consideration to the Government’s principles for guiding policy and legislative development’ (*Issues Paper*, p. 3; emphasis added). In particular this submission will give foremost consideration to the first of the Government’s ‘principles to guide future gambling policy and legislation’, namely:

... 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*’ (*Issues Paper*, p. 3; emphasis added).

**2. Primary focus to protect and assist problem gamblers**

Both the focus of this paper and its emphasis on the first of the Government’s principles – especially the words in italics above – are appropriate. Indeed the *Issues Paper* clearly accords the first principle primary status. It states unambiguously that:

... the *primary* focus of the Government’s gambling framework is the 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. (p. 37; emphasis added)

Regrettably the *Issues Paper* also states clearly that ‘consideration of *specific* problem gambling measures’, including the number of 27,500 machines in community settings, ‘... are outside the scope of this Review’. However, it also states that the *Review* ‘has been directed to report on the post-2012 *licensing structures and associated arrangements* that best address the Government’s objectives including those of responsible gambling’ (pp. 38-9; emphasis added).

The last paragraph proper of the *Issues Paper* explains what this might mean. It also confirms that both the focus and the emphasis of this paper are appropriate to the *Review*. It says that, in the context of meeting the Government's objectives (principles):

... relevant considerations for the post-2012 arrangements are not only the overall structure of the gaming machine licences, *but also the accompanying regulatory framework or instruments*. As noted, the approach to date [regarding the primary principle of 'measures that assist and protect problem gamblers and those at risk of becoming problem gamblers, their families and the wider community'] has been based on legislative changes or regulations ... Other options include the post-2012 licences including *responsible gambling obligations* supported by on-going obligations in terms of information on patterns of gambling expenditure and regular reviews of responsible gambling approaches and practices. (p. 39; emphasis added)

Given the *Review's* terms of reference, and in accordance with the stated 'foremost' consideration for the *Review* – namely the Government's policy principles for future legislation and regulation – and the stated 'primary' focus of the Government's policy principles – namely 'measures that assist and protect problem gamblers and those at risk of becoming problem gamblers, their families and the wider community' – this submission will address the following question:

*Would licence structures and machine distribution without gaming-machine operators achieve the stated primary public policy principle of assisting and protecting problem gamblers and those at risk of becoming problem gamblers, their families and the wider community?*

### **3. Evidence and ethics must inform public policy**

This submission, as stated above, will focus on questions of public policy principle. It will emphasise the objectives of assisting and protecting those harmed by electronic gaming machine (EGM) use. In doing so it will:

1. be based on evidence;
2. employ an ethical approach;
3. combine the evidence and ethical reasoning in arguments that offer a sound guide for public policy principles;
4. apply those principles to proposed EGM licence arrangements; and
5. inform the accompanying EGM legislative framework and instruments.

In this respect the submission hopes to achieve the broad objective of so-called evidenced-based public policy. That is, policy without evidence would be ill informed. Similarly, policy uninformed or badly informed by ethical reasoning and argument would be deficient. Evidence-based policy that offers value-neutrality is, quite simply, incoherent: indeed the term 'evidence-based policy' would be an oxymoron. Values informing policy are either explicit or implicit, never absent.

#### 4. Focus on two sides of the transaction ‘user losses = industry revenues’

This submission will use evidence that is relevant to the question posed in 2 above. That is, the evidence will bear upon the factual case, which is the effect of existing operators’ licences and machine distribution on the harms from EGM use evident in Victoria. It will also bear upon the counterfactual case (the ‘what if?’), which is whether the absence of the operators and a different distribution regime would assist and protect those harmed.

Hence the evidence must consider ‘user losses = industry revenues’ and their impact. The submission will use this otherwise awkward locution (user losses = industry revenues) throughout to emphasise the two-sidedness of the relationship. It is not just a question of someone using an EGM and losing. Too often policy (and regulation) focuses on this side only, as if correcting the behaviour of the ‘problem gambler’ were all there is to consider. This one-sided emphasis ignores the ‘industry’ side of the relationship. To use the awkward term user losses = industry revenues then is just to emphasise that it is the industry side that brings the EGM product to the market. The industry side encourages the user to use the EGM, knowing inter alia that use will cause losses and consequential harms (see section 5 below) and will, in equal measure, cause the industry to profit. Policy therefore must concern itself with the industry, its product, issues of product safety and the circumstances in which the product is offered.

The submission will use the term ‘industry’ to describe the ‘revenue’ side of the relationship. Given that the Victorian Government created the EGM market by legislation, in large part to raise ‘taxation’ revenues, it is appropriate both to include the Government on the industry side with the operators and the venues and to register, without need for further comment, that this position conflicts with its public policy and regulatory role.

#### 5. First consider total and average losses by users of EGMs

User losses = industry revenues have been immense (\$24.9 billion in total) since the EGM market was created by statute in Victoria in 1992. Chart 1 gives the relevant data. The 2004-5 figure of \$2.393 billion represents almost 2 per cent of total household consumer spending. It is almost half the amount Victorians spend on clothing and footwear; two-thirds of the amount they spend on gas and electricity; nearly one-third the amount they spend on health; and about one-fifth the amount they spend on food (Australian Bureau of Statistics (ABS), *Expenditure Components of Gross State Product: Victoria*, Cat. No. 5220.07).

**Table 1. EGM venues, averages and average losses per adult Victoria and Melbourne 2004-5**

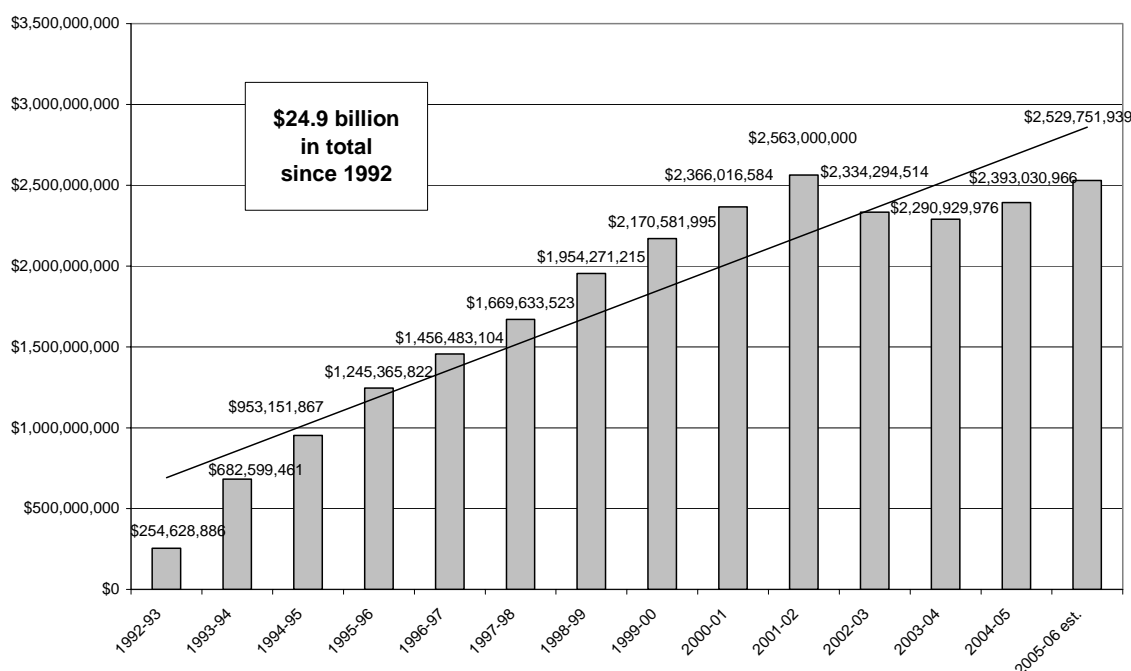
	<i>Venue no. per adult (18+) 2004-05 (2005 population projection)</i>	<i>EGM no. per adult (18+) 2004-05 (2005 population projection)</i>	<i>Total net losses per adult (18+) 2004-05 (2005 population projection)</i>
<i>Metropolitan Melbourne total</i>	0.12	7.01	664.77
<i>Victorian total</i>	0.14	7.01	618.27

Source: Victorian Commission for Gambling Regulation (VCGR)

<http://www.vcgr.vic.gov.au/CA256F800017E8D4/Statistics/64C96ACCFB03A5EDCA257021002BF26C?OpenDocument>

It is common to represent EMG user losses = industry revenues as an average percentage of household disposable income or as an average per adult. On the latter account we would use data such as those in table 1 for Victoria. However, these data are misleading, especially for policy formation and evaluation.

**Chart 1. Total poker machine (EGM) user losses = industry revenues 1992-3 to 2005-06\* Victoria**



Source: Victorian Commission for Gambling Regulation (VCGR)  
<http://www.vcgr.vic.gov.au/CA256F800017E8D4/Statistics/64C96ACCFB03A5EDCA257021002BF26C?OpenDocument>

## 6. Note that totals and averages are misleading if used wrongly

The data in table 1 and chart 1 by themselves are misleading for two reasons:

1. not all Victorian adults use EGMs in any given year (only 33.5 per cent did in 2004-5); and
2. averages disguise the amounts lost by heavy, regular and problematic users.

Recall that ‘measures that assist and protect problem gamblers and those at risk of becoming problem gamblers, their families and the wider community’ (*Issues Paper*, p. 3) are the focus here and the stated ‘primary focus of the Government’s gambling framework’ (*Issues Paper*, p. 37). Hence it is wrong to rely on mere average data (see e.g. *Issues Paper*, table 3, p. 23). It is right to focus instead, as the *Issues Paper* itself proposes, on the fact that the ‘available information suggests that, in line with a number of other gambling products ... a high proportion of the expenditure on gaming machines is spent [i.e. user losses = industry revenues] by regular or heavy gamblers’ (p. 23). The *Issues Paper* then provides evidence of the concentration of losses, citing the Productivity Commission’s 1999 *Australia’s Gambling Industries*

study and, obliquely, leaked data concerning a card-based loyalty membership scheme tested by Tattersall's across 13 venues in 2002.

## 7. Distribution of losses among EGM users in Victoria

This submission will use the latter, in part because its data correspond precisely with industry evidence given to the Productivity Commission that 80 per cent of total losses = total revenues came from 20 per cent of users (Tricia Wunch, Tabcorp 1998, <http://bilbo.indcom.gov.au/inquiry/gambling/trans/melbourne981124.pdf>). Equally influential is that Tattersall's stated that it regards members of its trial scheme as a reasonable approximation of poker-machine users in general (*Customer Relationship Management Program: What Have We Learnt? (Tattersall's CRP 2002, p. 42)*). The key data, reported accurately in the *Issues Paper*, are that 15 per cent of users contribute 57 per cent of losses = revenues, and 34 per cent of users contribute 82 per cent of losses = revenues (*Issues Paper*, p. 24). The 15 per cent of users were regulars who spent an average of two hours and 33 minutes at the machines and lost more than \$100 each time (*Tattersall's CRP 2002, p. 42*).

Using two different 'participation rates' – i.e. the percentage of adults who use EGMs in a given year – for comparison it is easy to calculate the average losses per year for the heavy users (i.e. the 15 per cent above). The formula simply is:

$$L_h = (60/15) \times (\sum L / u \sum P) = 4(\sum L / u \sum P)$$

which is to say that average losses per heavy user ( $L_h$ ) are equal to four times (which, of course, is also equal to 80/20) the ratio of total user losses = industry revenues ( $\sum L$ ) to the number of the adult population who use EGMs (i.e. total adult population ( $\sum P$ ) times ( $u$ ) the participation rate). Table 2 gives the data for participation rates of 40 per cent and 33.33 per cent.

**Table 2. EGM losses = revenues for heavy users Victoria and Melbourne dollars and per cent 'equivalised' household disposable income**

	<i>Total net losses per adult (18+) 2004-05 (2005 population projection)</i>	<i>Total net losses per heavy user 2004-05 (with 40 per cent rate)</i>	<i>Total net losses per heavy user 2004-05 (with 33.3 per cent rate)</i>	<i>Total net losses per heavy user 2004-05 (with 40 per cent rate) as per cent of approx. equivalised HDI</i>	<i>Total net losses per heavy user 2004-05 (with 33.3 per cent rate) as per cent of approx. equivalised HDI</i>
<i>Metropolitan total*</i>	664.77	\$6,785	\$8,141	23.7%	28.4%
<i>Victorian total</i>	618.27	\$6,183	\$7,419	21.6%	25.9%

Sources: Victorian Commission for Gambling Regulation (VCGR)

<http://www.vcgr.vic.gov.au/CA256F800017E8D4/Statistics/64C96ACCFB03A5EDCA257021002BF26C?OpenDocument>

Australian Bureau of Statistics (ABS)

<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/6523.0Main+Features12003-04?OpenDocument>

The data show that losses are indeed heavy. According to the most recent ABS household income data (2005), in 2003-4:

... average (mean) equivalised disposable household income ... (i.e., the income that a single person household would require to maintain the same standard of living as the average person living in all private dwellings in Australia) was \$549 per week (*Household Income and Income Distribution, Australia, 2003-04*, Cat. No. 6523.0).

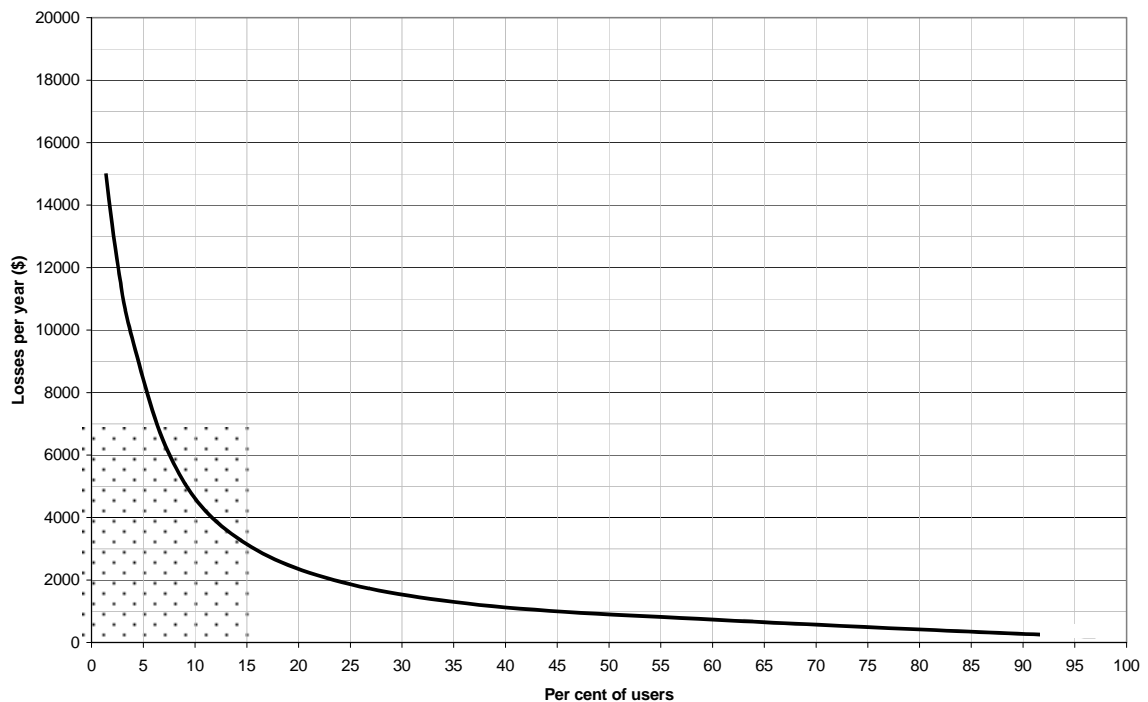
This weekly figure corresponds to almost \$29,000 per year, meaning that heavy users with average disposable incomes are losing an average of one-quarter or more of that income to EGMs (i.e. to the industry). That, precisely, is the meaning of the percentages in the right-hand column of table 2. These are the percentages that correspond to the most recently estimated participation rate of 33.5 per cent.

### 8. Concentration (stacking) of losses on heavy EGM users in Victoria

The next diagram (figures 1) uses the above data about distribution of losses. It is drawn from the data above according to a number of assumptions. The first is that we can represent the distribution of users losses = industry revenues as a smooth curve. The second is that the limited data above can be applied across all percentiles or numbers. The third is that the section of the curve to the left of the 15 per cent mark on the horizontal axis is a reasonable estimate.

Prima facie these assumptions are reasonable, as can be gauged quickly by comparing the areas in the segments under the curves. Each of the areas (representing proportions of total losses = revenues) corresponds reasonably well to the 15:60, 20:80, 34:82 and 100:100 distributions.

**Figure 1. Distribution of Victorian EGM losses = industry revenues by per cent of users 2004-5 (approx)**



On the vertical axis is average user losses = industry revenues per year. On the horizontal axis are percentages users or the Victorian adult population. The diagram shows approximately the average level of loss corresponding to the percentage of users involved. Depicting the relationships in this way has the effect that the area under the line or curve represents the share (or proportion) of user losses = industry revenues contributed by the percentage of users shown on the horizontal axis. The shaded area in figure 1 represents 15 per cent of users losing 60 per cent of total losses = industry revenues.

That is, the area under the curve depicts concentration because it is 'stacked' or concentrated in the left-hand corner of the diagram. Translated into human terms, concentration of losses = revenues means that the industry currently relies overwhelmingly on the fact that a relatively small proportion of the adult population loses a relatively large sum of money.

Translating the 15 per cent of users into raw numbers means that the industry currently relies overwhelmingly on the fact that about 225,000 Victorian adults lose a relatively large sum of money. Translating the 15 per cent of 225,000 Victorian adults into a percentage of the population means that the industry currently relies overwhelmingly on the fact that about 6 per cent of Victorian adults lose a relatively large sum of money.

### **9. Losses are concentrated in areas of lower socio-economic status (SES)**

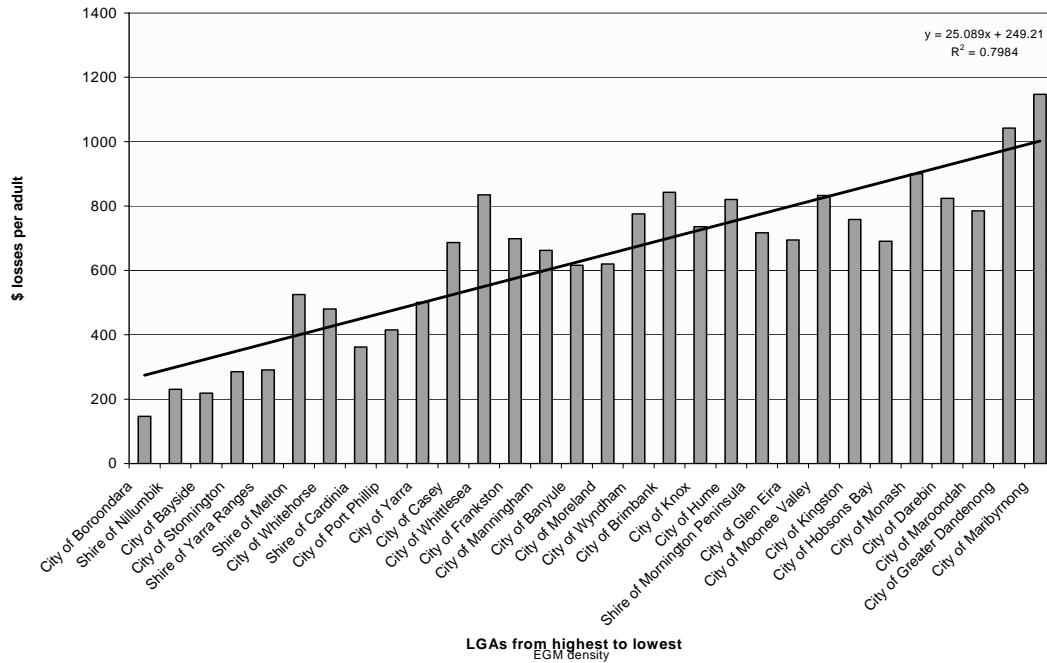
From the start the EGM operators targeted, to use the marketing vernacular, users in low-SES communities by placing more machines per capita in these areas than they did in areas of higher SES (see e.g. Productivity Commission 1999 *Australia's Gambling Industries*, chapter 10.5). Industry representatives would openly say that this was what they were doing, describing the industry as offering a 'blue collar' form of entertainment (Tabcorp executive cited by Doughney, *The Poker Machine State: Dilemmas in Ethics, Economics and Governance* 2002, p. 21). Another put it bluntly: 'This is a poor man's sport, playing gaming machines. It is simple, unstimulating and non-interactive but more poor, lesser educated like it more than do rich, educated people' (Clubs Victoria representative cited by Productivity Commission, *Australia's Gambling Industries* 1999, p. 10.43).

Because of public criticism such target-marketing is less congenial for the industry to admit to today. Nevertheless, the evidence is overwhelming. Losses per adult in the lowest-SES local government areas (LGAs) of Victoria and metropolitan Melbourne LGAs are much higher than the State or metropolitan averages. In fact they are more than five times the losses per adult in the richest LGAs. Charts 2 and 3 demonstrate the relationships between losses = revenues per adult, EGM density in LGAs and the SES of those LGAs. SES is represented here by the ABS Socio-economic Indexes for Areas (SEIFA) index of disadvantage.

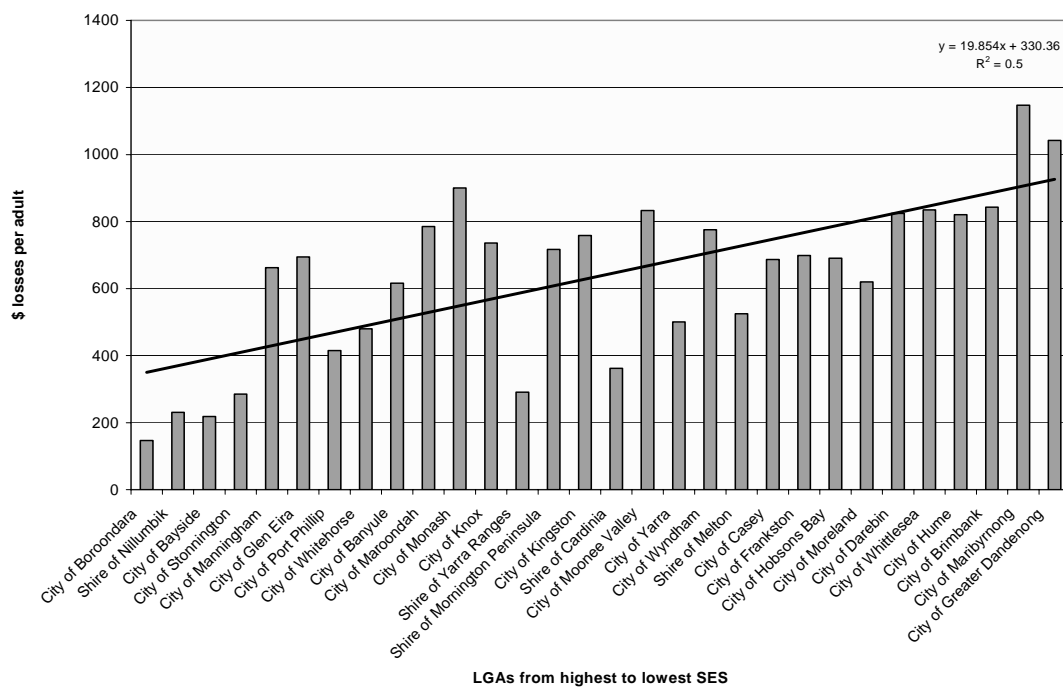
Using the equation in the preceding section we can estimate the losses per adult for heavy or regular users in the lower-income LGAs. Tables 3a and 3b give the results for metropolitan Melbourne (in which 80 per cent of EGMs reside). This calculation assumes that the same participation rate ( $u$ ) for metropolitan Melbourne prevails in each LGA. Actual participation rates, of course, vary across LGAs. However, the

available evidence (see McMillen & Marshall, 2003 *Victorian Longitudinal Attitudes Survey* 2004, p. 57) is that variance in participation corresponding to changing SES is small ( $R\text{-square} = 0.13$ ).

**Chart 2. Losses per adult per year by LGA from lowest to highest density 2004-05**



**Chart 3. Losses per adult per year by LGA from highest to lowest socio-economic status 2004-05**



Sources (for both charts): Victorian Commission for Gaming Regulation (VCGR) [http://www.vcgr.vic.gov.au/domino/web\\_notes/vcgr/site.nsf/pages/industryinfo](http://www.vcgr.vic.gov.au/domino/web_notes/vcgr/site.nsf/pages/industryinfo)  
 ABS (2003), *Socio-Economic Indexes for Areas, Australia 2001*, Cat. No. 2039.0



**Table 3a. Losses per adult and heavy users by Melbourne metropolitan LGA (above average)**

City / Shire	SEIFA index of disadvantage ranking (1= highest to 30= lowest)	Average losses per adult 2004-05	Average losses per heavy user 2004-05 (with 40 per cent rate)	Average losses per heavy user 2004-05 (with 33.3 per cent rate)
City of Maribyrnong	29	1,147.29	11,472.90	13,767.48
City of Greater Dandenong	30	1,042.47	10,424.70	12,509.64
City of Monash	10	900.14	9,001.40	10,801.68
City of Brimbank	28	842.96	8,429.60	10,115.52
City of Whittlesea	26	834.46	8,344.60	10,013.52
City of Moonee Valley	17	832.89	8,328.90	9,994.68
City of Darebin	25	824.20	8,242.00	9,890.40
City of Hume	27	820.48	8,204.80	9,845.76
City of Maroondah	11	784.78	7,847.80	9,417.36
City of Wyndham	19	775.71	7,757.10	9,308.52
City of Kingston	15	758.37	7,583.70	9,100.44
City of Knox	12	735.85	7,358.50	8,830.20
Shire of Mornington Peninsula	14	716.99	7,169.90	8,603.88
City of Frankston	22	698.75	6,987.50	8,385.00
City of Glen Eira	6	694.34	6,943.40	8,332.08
City of Hobson's Bay	23	690.88	6,908.80	8,290.56
City of Casey	21	686.61	6,866.10	8,239.32

Sources: Victorian Commission for Gaming Regulation (VCGR)

[http://www.vcgr.vic.gov.au/domino/web\\_notes/vcgr/site.nsf/pages/industryinfo](http://www.vcgr.vic.gov.au/domino/web_notes/vcgr/site.nsf/pages/industryinfo)ABS (2003), *Socio-Economic Indexes for Areas, Australia 2001*, Cat. No. 2039.0

... continued

**Table 3b. Losses per adult and heavy users by Melbourne metropolitan LGA (below average)**

City / Shire	SEIFA index of disadvantage ranking (1= highest to 30= lowest)	Losses per adult 2004-05	Losses per heavy user 2004-05 (with 40 per cent rate)	Losses per heavy user 2004-05 (with 33.3 per cent rate)
City of Manningham	5	662.44	6,624.40	7,949.28
City of Moreland	24	620.07	6,200.70	7,440.84
City of Banyule	9	615.89	6,158.90	7,390.68
Shire of Melton	20	525.15	5,251.50	6,301.80
City of Yarra	18	500.97	5,009.70	6,011.64
City of Whitehorse	8	480.54	4,805.40	5,766.48
City of Port Phillip	7	415.41	4,154.10	4,984.92
Shire of Cardinia	16	361.94	3,619.40	4,343.28
Shire of Yarra Ranges	13	291.18	2,911.80	3,494.16
City of Stonnington	2	285.53	2,855.30	3,426.36
Shire of Nillumbik	4	230.72	2,307.20	2,768.64
City of Bayside	3	218.73	2,187.30	2,624.76
City of Boroondara	1	146.95	1,469.50	1,763.40
Metropolitan average	n.a.	678.45	6,784.53	8,141.44

Sources: Victorian Commission for Gaming Regulation (VCGR)

[http://www.vcgr.vic.gov.au/domino/web\\_notes/vcgr/site.nsf/pages/industryinfo](http://www.vcgr.vic.gov.au/domino/web_notes/vcgr/site.nsf/pages/industryinfo)ABS (2003), *Socio-Economic Indexes for Areas, Australia 2001*, Cat. No. 2039.0

## 10. It is not 'just about where the hotels are'

Note also that Charles Livingstone has comprehensively refuted the

... the idea articulated by some gambling industry advocates and others that ... [the distribution of poker machines] in Victoria is explicable at least in part by

the comparative over-abundance of venues for poker machine placement in disadvantaged areas of Melbourne, and the scarcity of venues in the more affluent eastern suburbs (*International Gambling Studies*, Vol. 1. 2001, pp. 52-4).

Livingstone's data show that in the six highest-SES LGAs, only one-quarter of venues contained machines. In contrast about 40 per cent of venues in the six lowest-SES LGAs had machines. Ample room for expansion existed in the more affluent suburbs had Tattersall's and Tabcorp chose to target them.

### **11. People use poker machines close to where they live**

Finally, the evidence about losses and their geographic distribution, tells us that people use poker-machine venues close to their homes: mostly within a couple of kilometers (see e.g. KPMG, *Longitudinal Community Impact Study 2000*; McMillen & Marshall, *2003 Victorian Longitudinal Attitudes Survey 2004*). That is, the losses come from people who live in the areas around the venues. These people will themselves, on average, have the socio-economic profile of their areas. Moreover, as the Caraniche report, *Evaluation of Electronic Gaming Machine Harm Minimisation Measures in Victoria*, noted:

Given most Victorian EGM players gamble near their homes – and the strong epidemiological relationship between access to gaming venues and problem gambling – it would seem that reducing either the number of venues or the availability of EGMs could have an impact on problem gambling. (2005, p. 55)

Therefore people living in the low-SES municipalities, in which EGM numbers and user losses = industry revenues are higher, will have worse problem-gambling outcomes. Indeed this is precisely what the data in the right-hand column of table 3a tell us. Again, these are the percentages that correspond to the most recently estimated participation rate of 33.5 per cent.

### **12. Why concentrated losses in low-SES areas is a serious problem**

Straightforwardly, the distribution of losses per adult (= industry revenues per adult) across municipalities is serious for two reasons:

1. they are higher in lower-SES municipalities on average and, in the cases of Greater Dandenong, considerably higher; and
2. residents of lower-SES municipalities, by definition, can afford to lose less, which is to say that the dollar-for-dollar impact of user losses = industry revenues is more severe than it is in more well-off areas.

### **13. Distribution of the *impact* of user losses = industry revenues**

This section will combine the evidence above about losses and their distribution among users of EGMs and losses by the average socio-economic status of users. It will use two methods already canvassed above.

First, recall that table 2 provided evidence that heavy users with average disposable incomes (i.e. currently about \$29,000 per year) are losing an average of one-quarter or more of that income to EGMs (i.e. to the industry). Data from the 2001 Australian Census showing how household income is distributed across metropolitan Melbourne LGAs allow us to estimate how more recently estimated average ('equivalised') disposable income is distributed across the city.

**Table 4. Distribution of the impact of user losses = industry revenues by Melbourne LGA**

<i>City / Shire</i>	<i>Losses per heavy user 2004-05 (with 33.3 per cent rate)</i>	<i>Estimated average (‘equivalised’) disposable income</i>	<i>Losses per heavy user as per cent of estimated average (‘equivalised’) disposable income</i>
<i>Maribyrnong</i>	13,767.48	23,440	58.7
<i>Greater Dandenong</i>	12,509.64	23,028	54.3
<i>Darebin</i>	9,890.40	24,058	41.1
<i>Brimbank</i>	10,115.52	27,524	36.8
<i>Monash</i>	10,801.68	29,927	36.1
<i>Mornington Peninsula</i>	8,603.88	24,092	35.7
<i>Moonee Valley</i>	9,994.68	28,657	34.9
<i>Whittlesea</i>	10,013.52	28,897	34.7
<i>Hume</i>	9,845.76	28,725	34.3
<i>Kingston</i>	9,100.44	28,108	32.4
<i>Maroondah</i>	9,417.36	29,309	32.1
<i>Frankston</i>	8,385.00	26,392	31.8
<i>Wyndham</i>	9,308.52	30,098	30.9
<i>Moreland</i>	7,440.84	24,710	30.1
<i>Hobson’s Bay</i>	8,290.56	27,833	29.8
<i>Knox</i>	8,830.20	30,750	28.7
<i>Glen Eira</i>	8,332.08	29,103	28.6
<i>Metropolitan average</i>	<i>8,141.44</i>	<i>29,000</i>	<i>28.1</i>
<i>Casey</i>	8,239.32	29,618	27.8
<i>Banyule</i>	7,390.68	30,000	24.6
<i>Manningham</i>	7,949.28	37,477	21.2
<i>Melton</i>	6,301.80	29,858	21.1
<i>Yarra</i>	6,011.64	30,441	19.7
<i>Whitehorse</i>	5,766.48	29,378	19.6
<i>Port Phillip</i>	4,984.92	30,373	16.4
<i>Cardinia</i>	4,343.28	28,554	15.2
<i>Yarra Ranges</i>	3,494.16	28,966	12.1
<i>Stonnington</i>	3,426.36	37,065	9.2
<i>Bayside</i>	2,624.76	37,751	7.0
<i>Nillumbik</i>	2,768.64	42,865	6.5
<i>Boroondara</i>	1,763.40	39,811	4.4

Sources: Brown, H., Local Government Working Group on Gambling (2006, *Average Household EGM Gambling Losses, as a percentage of Median Household Income: Metropolitan Municipalities, 2001*)

Victorian Commission for Gaming Regulation (VCGR)

[http://www.vcgr.vic.gov.au/domino/web\\_notes/vcgr/site.nsf/pages/industryinfo](http://www.vcgr.vic.gov.au/domino/web_notes/vcgr/site.nsf/pages/industryinfo)

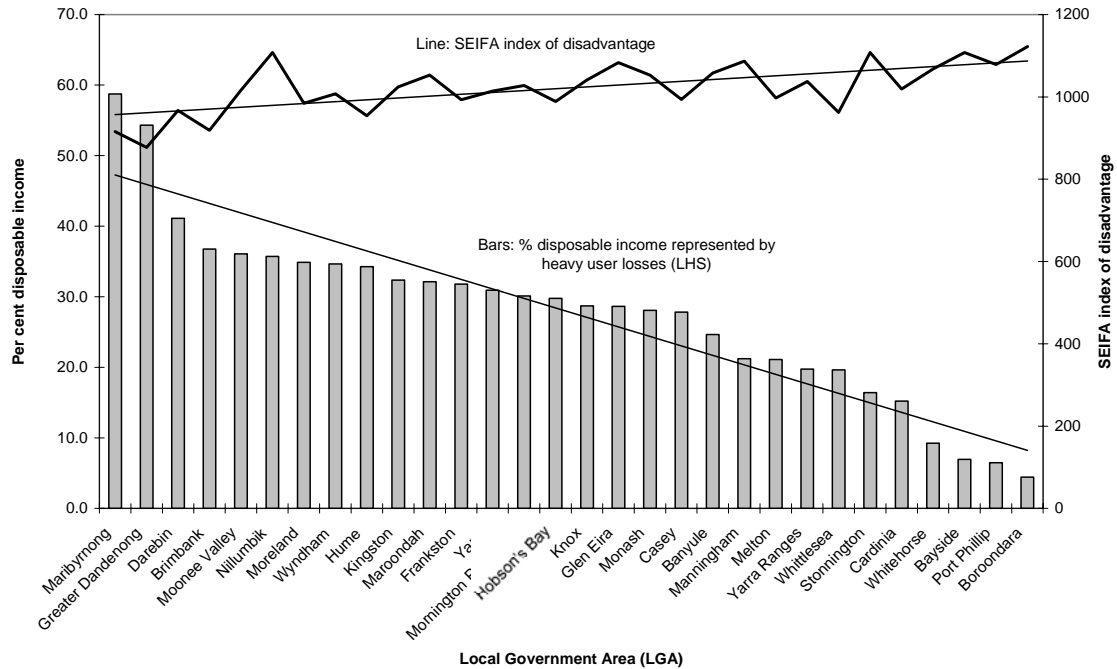
Australian Bureau of Statistics (ABS)

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The method is simple. It is to estimate how much of the average disposable income in their areas a heavy user would lose. That is, we can calculate the percentage of average disposable income that the average user losses = industry revenues in tables 3a and 3b constitute. Table 4 and chart 4 summarise the results. The more severe impact, shown by the average percentage of disposable income assumed to be lost by heavy users, is clearly in less well-off LGAs. Also included is the SEIFA index of

disadvantage for each LGA. As would be expected the two trendlines shown move apart.

**Chart 4. Distribution of the impact of losses on heavy users by Melbourne LGA**



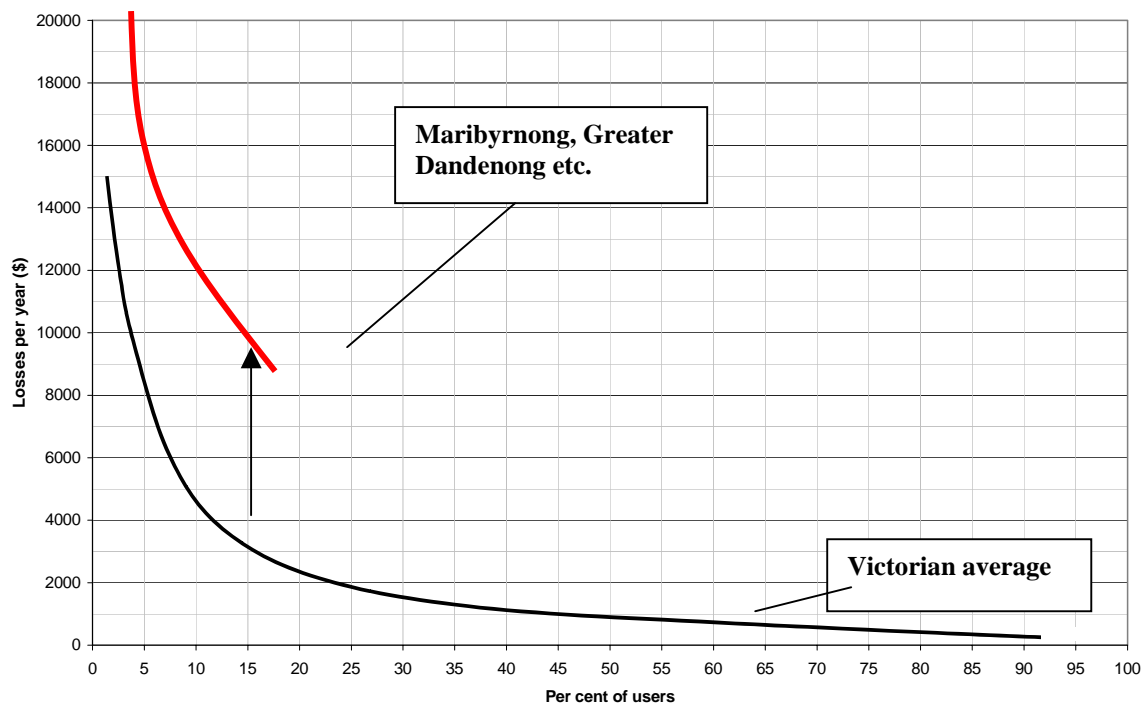
Sources: Sources: Brown, H., Local Government Working Group on Gambling (2006, *Average Household EGM Gambling Losses, as a percentage of Median Household Income: Metropolitan Municipalities, 2001*)  
 Victorian Commission for Gaming Regulation (VCGR)  
[http://www.vcgr.vic.gov.au/domino/web\\_notes/vcgr/site.nsf/pages/industryinfo](http://www.vcgr.vic.gov.au/domino/web_notes/vcgr/site.nsf/pages/industryinfo)  
 Australian Bureau of Statistics (ABS)  
<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/6523.0Main+Features12003-04?OpenDocument>  
 ABS (2003), *Socio-Economic Indexes for Areas, Australia 2001*, Cat. No. 2039.0

Second, we can represent the impact on heavy users in lower-SES LGAs by using the approach in figure 1 above. Here only one diagram will be needed. Figure 2 plots a shift upward of the average metropolitan loss to a position that depicts the assumed higher losses per adult at each percentile for those users living in lower SES areas.

The shift upwards of the low-SES user losses = industry revenues distribution curve thus corresponds to the fact of higher average losses per adult in lower-SES parts of Melbourne and Victoria.

Of course, this and the other evidence in this section derive from the evidence of relatively uniform participation rates across Melbourne and the assumption that the relative distribution of losses among users is approximately the same in lower-SES LGAs as it is on average. That is, the assumption is that the 15:60, 20:80, 34:82 and 100:100 distributions hold. It is a reasonable working assumption, and no hard evidence has been presented to contradict it.

**Figure 2. Distribution of Victorian EGM losses = industry revenues by per cent of users 2004-5 according to SES (approx)**



#### **14. Introducing ethical considerations for public policy: focus on the industry**

In the sections 15-21 I will consider briefly four additional aspects of the poker-machine regime in Victoria. They are: (1) heavy users necessarily lose control; (2) the nature of poker-machine provision necessarily causes and constitutes harm; (3) governments perpetrate the harm; and (4) the agents of the harm, business corporations, profit from it.

I will present below normative positions. These positions, however, are not mere interpretations of the facts that we draw from a separate faculty of mind containing opinions or values. Rather they comprise part of the ensemble of facts we describe and analyse. We should enquire as much to find moral as we do other data. Indeed we can even use financial data to make self-evident points with moral content, as was the case in sections one and two. Therefore the arguments below, in describing and analysing the facts from the four additional perspectives, use ethical/moral terms in their repertoire. The power of the arguments in each case lies entirely in their faithfulness to the evidence and in the realism of their ethical and other claims.

The first fact to understand is that every 'game' or use of a poker machine constitutes a transaction. It seems obvious to say this, but many contributors to the debate conveniently forget that a transaction has two (or more) sides or parties. To concentrate exclusively or mainly on the phenomenology of problem gambling and 'the' problem gambler is the most transparent form of this error. The industry and Government, of course, have an interest in perpetuating a one-sided focus. It diverts attention from their respective roles. Therefore, on the principle that a reasonable transaction requires both sides to act reasonably, I will invert the focus. The questions

I ask therefore concern the reasonableness of the industry and Government side(s) of the transaction.

In Victoria the revenues that equal users' losses comprise the following: the Government gets somewhat more than one-third in 'taxes'; the two gambling companies, Tabcorp and Tattersall's, to which Government has given a license to operate the machines, take about one-third; and hotels, mostly chain-owned, and clubs will take the remainder. Tax revenues will go to Government programs. The other two-thirds of total losses will part pay wages and salaries in the poker-machine and downstream industries. Much will be profit for the well-off owners of shares in gambling corporations, hotels and clubs.

### **15. The inevitable harms that EGM losses cause**

We also know that the six per cent of so-called regulars or heavy users or, definitional disputes notwithstanding, 'problem gamblers', will suffer consequential harms. Given that current individual disposable income in Australia averages about \$28,500 (ABS, 2005b), it is easy to understand intuitively why such losses cause harm. After all, they represent between one-quarter and one-half of the average individuals have to spend. In the words of the Australian Medical Association:

The AMA acknowledges that the social, physical and mental health of people with problem gambling and of their families are often at risk as a result of reduced household income and associated social disruption. They may experience stress-related physical and psychological ill health. Other adverse effects include family breakdown, domestic violence, criminal activity, disruption to or loss of employment and social isolation. Additionally, problem gambling may compromise their capacity to afford necessities such as adequate nutrition, heating, shelter, transport, medications and health services. Severe problem gamblers are at risk of self-harming behaviour including attempted [and actual] suicide. (AMA, 1999)

### **16. The industry knowingly supplies a harm-causing product**

In effect the industry knowingly causes the six or so per cent of the population to experience financial harm and other physical and psychological harms that result from the financial harm. The facts are available for anyone who takes the time and the care to look. Poker machines cause harm to those who use them regularly. The product evidently is harm-causing, and it is supplied by the industry side of the transaction in the knowledge that harm will result.

The question we must now answer is why providing this particular product to the market actually does cause harm to some of those who use it. Analysing the phenomenology of impaired control is an important part of the answer.

### **17. Users inevitably lose control of time and money**

Professor Mark Dickerson (2003a) presented evidence to the Independent Pricing and Regulatory Tribunal of NSW (IPART) from a study of more than 200 regular users (in a research program involving more than 700 regulars). In short Dickerson found that 'impaired control i.e. being unable to stick to limits of time and money spent

gaming is very common among players who play pokies once per week or more often'. The cause of impaired control was the experience of strong emotion 'experienced during play (enhanced by more playing time and prior levels of mild negative mood)' (2003a).

It appears that the research ... has shown the obvious: when shorn of all words that speak of pathology it seems quite obvious that if the purchase point of an extremely attractive entertainment product is embedded in the same process of the player actually enjoying the emotional stimulation and pleasure that arises, why on earth would any person in their right mind expect them to continue to make rational, informed decisions i.e. to gamble responsibly? Impaired ability to control cash and time expenditure during gaming is not about pathology it is a typical human response that despite all the notices and warnings is commonly reported by almost every other regular player. (Note: The research was conducted in venues where warning notices were on the machines, in the toilets, on the walls, pamphlets about problem gambling were available at the bar etc.) If this is taken as a common sense starting point then the obvious question is whether these regular consumers of gaming are getting a fair go? If any other product than gaming were involved then the answer would clearly be 'no'. It would be entirely unacceptable for a product to be sold in an automated, emotionally distracting way that resulted in every other regular consumer buying more than they intended. Add the facts that the typical expenditure per annum of such players is over \$10,000 and that 1 in 4 or 5 of them report harmful impacts arising from purchasing gambling then it is not surprising that recent legal opinion has supported the view that to market gaming to such regular players may be unconscionable conduct in terms of the Trade Practices Act ... (2003a; citing ABC, 2003)

Dickerson urges a shift in policy focus from 'individual difference(s) inherent in some players' to the fact that 'loss of control is the common and expected outcome of the interaction between human beings and contemporary forms of continuous gambling' (2003a). Inherent in continuous use is the reinforcement process of regular 'wins'. Elsewhere Dickerson refers to studies of human cortical responses where the subjects expect to win money (Breiter, Itzhak, Kaheman, Dale & Shizgal, 2001), arguing that these sit well with his conclusion that powerful 'emotional/physiological responses during a session' are natural. 'The expectation that the player will be able to continue to make controlled, informed, rational decisions during such a session of continuous gambling is ill-founded.' (2003b)

### **18. Shift the focus to consumer protection and product safety**

Furthermore, Dickerson explained to a 2004 international conference on problem gambling, until such time that consumer protection were ensured, any talk of responsible gambling would 'remain egregious platitudes'. He added that '... embedding the purchase point of gambling in a sequence that undermines self-control is not a "fair go"... it appears unethical' (2004). These are strong conclusions from a long-time gambling researcher.

Recall that we are analysing a transaction. We are focusing on the ethics of the side or the party who benefits financially. Because we know that the product inherently undermines self-control we can conclude reasonably that the intense, concentrated focus of the industry (and Government) on a small group of regulars who provide 60 per cent of revenues means that the industry intends to rely on this inevitable (natural) loss of control. The industry, therefore, depends on users' vulnerability. The financial, physiological and psychological harm that this focus causes (AMA, 1999) is, therefore, necessary to the way this industry operates. It is not a side effect – foreseen but unintended and in proportion to possible benefits – but core business.

### **19. It is unjust to continue the existing regime**

Moreover this very feature compounds the harm. 'The harm suffered by victims of injustice', Australian philosopher Raimond Gaita explains, 'is never merely material or psychological harm' (1999, p. 7). We intuitively understand the distinction when we compare the accidental but otherwise equal physical and psychological harms that might occur in a car accident to those due to a deliberate assault. Something about the latter makes it worse. The very word assault, regardless of the nature of physical and psychological harms that might ensue, conveys the notion of a constitutive harm, a harm-in-itself. Even if you were never to know that someone had tried to shoot you (and missed), harm would have been committed nonetheless: an injustice, a crime, attempted murder.

Harm done is in this way worse than harm suffered. That is why the harms caused by the poker-machine business are 'never merely material or psychological'. They are harms committed by the business because the business targets regulars who lose control. Such harms are committed knowingly, and the business depends on them. It is reasonable to say then that the harm done, constitutively and causally, by the industry, because it inherently exploits vulnerable regular users, is unjust.

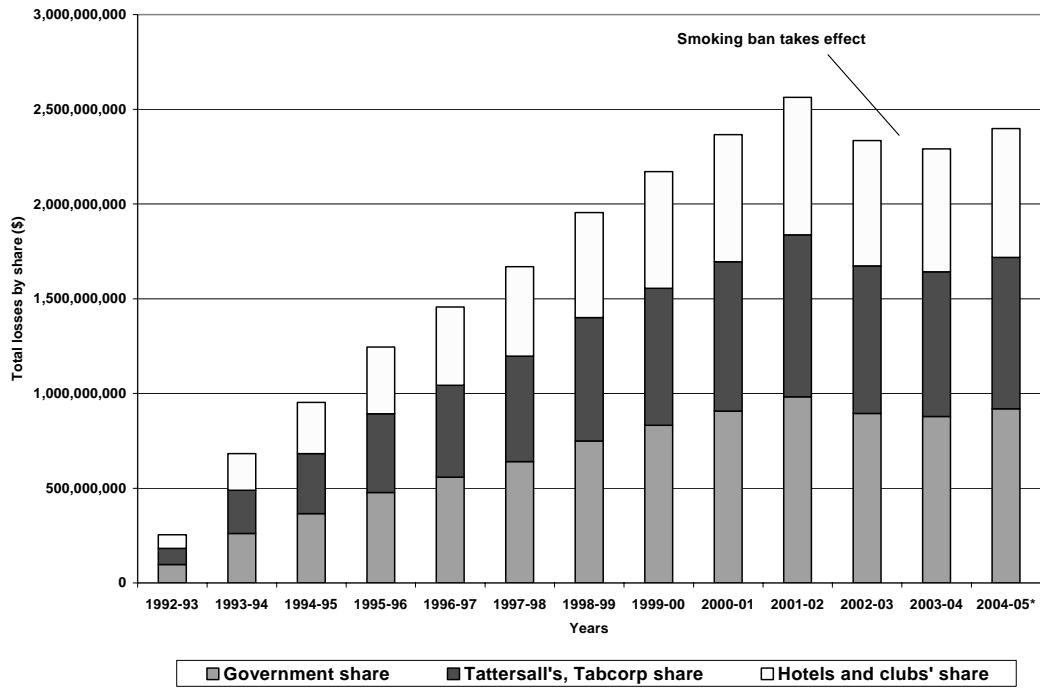
### **20. The Victorian Government is in breach of its duty to protect**

Worse still is the fact that the harm done is done by Government, as a partner in industry revenues and as the legislator-regulator of the activity. This is worse precisely because it is reasonable to require that governments act justly. As Hippocrates insisted of doctors, governments first should 'do no harm'. Rather they should act to enhance the common good and act to protect the populace from harm. When governments impose burdens upon citizens, such as taxes and other duties, the burdens should be fair and equitable. These are basic precepts, yet each one of them the Victorian Government violates in its poker-machine policies and laws. It is right to call these laws unjust. (See charts 5 and 6 and table 5.)

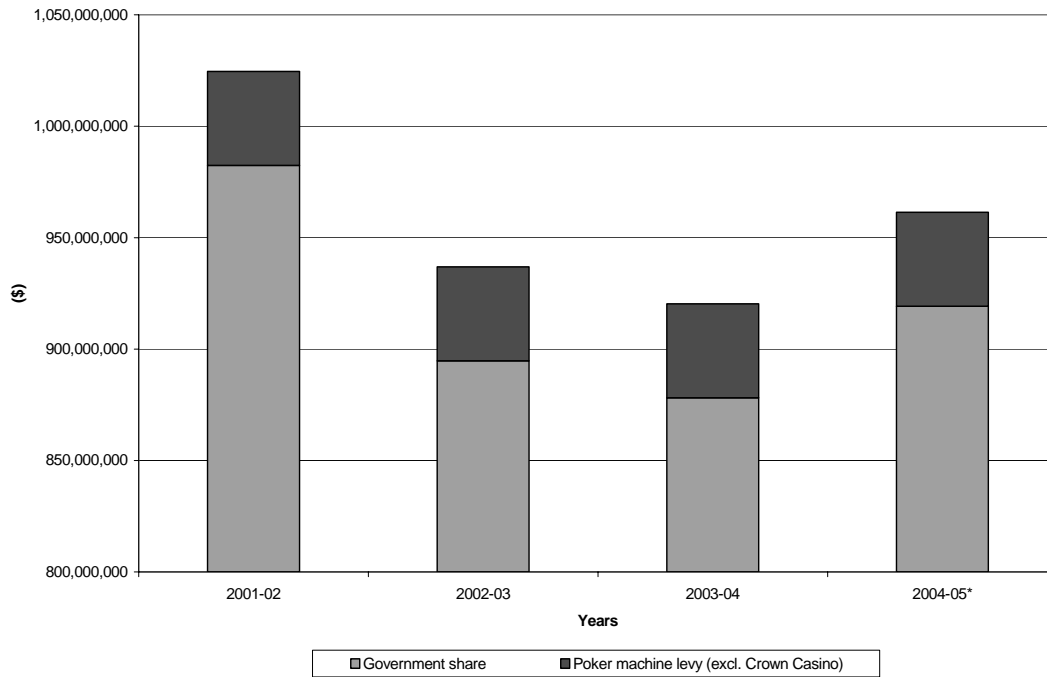
Chart 5 also demonstrates the take from heavy, regular or problematic users that business corporations accrue each year. This immediately poses the question of whether it is right that companies such as these should profit from harm. Would, for instance, the law today permit firms to market asbestos products to the public, even with warnings? The answer would clearly be no. Another cause for argument that poker-machine businesses wrongly profit from harm is the legal notion of unconscionable conduct.



**Chart 5. Total poker-machine losses in Victoria 1992-93 – 2004-05**



**Chart 6. Victorian Government poker machine 'tax' and 'levy' revenues (\$)**



**Table 5. The States' own-source taxation revenues 2003-04 (per cent)**

	<i>NSW</i>	<i>Vic.</i>	<i>Qld</i>	<i>SA</i>	<i>WA</i>	<i>Tas.</i>	<i>NT</i>	<i>ACT</i>	<i>Total</i>
<i>Payroll</i>	29.0	26.8	22.2	25.4	27.6	26.5	34.5	23.5	26.8
<i>Property</i>	9.4	9.4	7.9	10.6	9.7	5.9	-	23.6	9.4
<i>Financial</i>	0.9	2.6	3.9	2.7	2.6	4.8	3.4	2.3	2.2
<i>Stamp duties</i>	30.1	27.2	33.9	24.8	33.4	22.5	26.9	28.0	29.8
<i>Lotteries</i>	1.9	3.0	2.8	2.7	1.8	3.2	4.5	1.7	2.4
<i>Poker machine</i>	5.3	8.0	6.8	10.0	-	8.7	-	4.4	6.0
<i>Casino</i>	0.5	1.0	0.8	0.6	0.5	0.5	6.8	0.3	0.7
<i>Racing</i>	1.0	1.1	0.5	0.2	0.8	-	-	0.1	0.8
<i>Other gambling</i>	0.0	0.0	-	-	-	-	3.4	-	0.0
<i>Total gambling taxes</i>	8.7	13.1	10.9	13.5	3.2	12.4	14.8	6.5	10.0
<i>Insurance (fire)</i>	2.5	2.9	-	-	0.8	4.8	-	-	1.8
<i>Third party</i>	0.2	1.0	0.7	1.4	-	0.5	-	-	0.5
<i>Other insurance</i>	5.3	5.5	4.8	8.1	7.2	4.8	7.6	5.0	5.7
<i>Motor vehicle taxes</i>	11.9	11.1	14.6	13.3	15.6	17.7	12.9	11.0	12.7
<i>Fuel</i>	-	-	-	-	-	-	-	-	-
<i>Tobacco</i>	-	-	-	-	-	-	-	-	-
<i>Liquor</i>	0.0	0.1	-	-	-	-	-	-	0.0
<i>Other</i>	1.9	0.5	1.2	0.1	0.0	0.3	0.0	0.0	1.0
<i>Total</i>	29.0	26.8	22.2	25.4	27.6	26.5	34.5	23.5	26.8

## 21. A case for 'unconscionable conduct'

A leading Victorian barrister, Brian Walters SC, explained this to journalist Jonathan Holmes during the Australian Broadcasting Corporation's (ABC) 4 Corners program 'George's gold' in October 2003 (Walters, 2003):

Under the old branch of the law called equity, a bargain was unconscionable, and still is unconscionable, if it involves one party taking advantage of another party ... party's disadvantage knowingly. So someone might be drunk and you get them to sign a contract – that's unconscionable, an unconscionable bargain, and would be set aside. What the Trade Practices Act does is make unconscionable conduct unacceptable to the law. If a company was receiving a good part of its revenue from people with a gambling problem and knowingly receiving a good part of its revenue from such people, then that, prima facie, would be unconscionable conduct unless there was some system in place to filter those people out. If they were actually targeting people with a gambling problem, then that would be seriously contrary to the law.

John Middleton QC and John Manetta had made a similar point in a 2002 opinion. They explained that the Trade Practices Act uses a wider concept that goes beyond specific separate transactions. Significantly it:

... includes doing or refusing to do any act [see TPA s. 4(2)]. It can include the operation of an entire line of business, or its operation in a certain manner: for example, without certain safeguards ... It would not therefore distort the meaning of the section to frame the question in this way: if a gaming operator suspects that a large proportion of its revenues derives from compulsive gamblers, but is unwilling to implement effective screening measures, does the operator's ongoing acceptance of

bets from an anonymous public at large make for conduct that is, in all the circumstances unconscionable? (Middleton & Manetta, 2002, p. 22)

Middleton and Manetta answer their own question: ‘... It is hard to see why the answer to the question would not be yes.’ (2002, p. 22)

Holmes put another question to Walters based on the leaked data from Tattersall’s mentioned in previous sections. What if operators of poker machines knew who used machines and the extent to which heavy users contributed to losses? Walters’s answer was unambiguous (Walters, 2003):

That is a firm foundation for taking a case before a court. The ... fact that they are aware that people have gambling problems is manifest – I mean, they have signs on the machines referring to that. Once they have a close demographic understanding of people using their machines in a way that can’t rationally be justified, and they’re not doing anything to filter them away, but, in fact, trying to make them choose to come to their venues, then that does smack of unconscionable conduct. They are making money from people who they know to be disadvantaged ... and the material that you’ve raised with me ought to be enough to justify the ACCC [the Australian Competition and Consumer Commission] referring the matter to the courts.

Three grounds that the lawyers highlighted in their comments are germane to the description that I have unfolded in this submission. The first is that business knowingly takes advantage of someone’s incapacity to engage in a transaction/contract competently (e.g. drunkenness, acting compulsively etc.). The second is that the business knows that a large proportion of losses came from people with gambling problems. The third is the availability of screening measures to identify those with problems, such as smart-card technologies and observational techniques (Schellinck & Schrans, 2004; Dickerson, 2004, 2003a, 2003b). These grounds imply that the poker-machine businesses are patently ‘making money from people who they know to be disadvantaged’ (Walters, 2003).

## **22. Why we already know enough to make policy judgements**

The prevailing state of affairs is unjust. Merely by saying this is also to state an imperative, namely that Government must act to end the injustice. This might be by dramatic reforms that change the character of poker-machine provision (fewer machines, fewer lines, slower spins, smart-card tracking, smaller ‘bets’ etc.). If this is unacceptable to the industry then the lesser evil would be prohibition, until such time that the machines could be introduced according to the precautionary principle: i.e. prove that the product and its method of provision are safe.

The Victorian Government has precluded the above as outcomes of the licencing review. However, it has not precluded such options entirely, stating that ‘... relevant considerations for the post-2012 arrangements are not only the overall structure of the gaming machine licences, *but also the accompanying regulatory framework or instruments*’ (*Issues Paper*, p. 39; emphasis added). Nor does this review preclude imaginatively using a mix of licencing decisions and other policy options to effect

change to ‘assist and protect problem gamblers and those at risk of becoming problem gamblers, their families and the wider community’. (p. 37; emphasis added)  
Altogether the worst possible state of affairs would be the status quo.

Do we need further research? Of course, while the status quo prevails continuing psychiatric/psychological and neurobiological research will be needed to understand the problem and to help people who use poker machines in ways that harm them. Mesothelioma and asbestosis, too, require research to help in treatment and to understand their specific pathologies and cellular causes. However, do we really need research to tell us what is their first-order cause? No, we know the answer to that. Exposure to asbestos causes asbestosis and mesothelioma. Similarly, poker machines cause poker-machine caused harms and associated ‘problem gambling’ behaviours. For policy, we know enough.

### **23. Remove the ‘gaming operator’ industry segment**

By removing one slice of the industry – operators – Victoria would remove the need for one-third of harm-causing losses. The government would more clearly be seen to be responsible for the industry. In spite of the risk of government dependency on poker-machine revenues continuing, the Victorian Government should become ‘the operator’. This lesser evil nonetheless has the following additional public policy benefits:

1. obviating need for commercial-in-confidence arrangements;
2. obviating the danger of contractual ‘lock-in’ of public policy;
3. obviating the supposed need for long-term contractual arrangements;
4. allowing for reduction in harms by excising the operators’ profit motive from policy consideration; and
5. consequently allowing for policy to focus on measures to institute product safety.

Section 23 will present the negative case for not having operators. It will look at the irresolvable contradiction at the heart of the Victorian licencing regime. Section 24 will present the positive case for removal. That is, it will explore the benefits to be derived from the operators’ absence.

### **24. The negative case for not having ‘gaming operators’**

The current licensing regime is the least conducive to reducing harm. It would be disastrous were this regime to continue to 2032. Both Tattersall’s and Tabcorp are now giant corporate entities whose principal responsibility is to their shareholders. Even if one were to believe Tattersall’s and Tabcorp’s claims to ‘corporate social responsibility’ and to the ‘sustainability’ of their industry, their primary responsibility remains intact. In practice this means:

1. sustaining and improving corporate profitability generally (however measured);
2. sustaining and increasing the short-run share price; and
3. ‘growing’ the business, especially through merger, acquisition and expansion into new markets (including those offshore).

Each of these imperatives – for imperatives they are – conflicts with the only possible means to reduce EGM harm. The industry necessarily generates the lion's share of its revenues = losses from people who demonstrably:

1. lose more than they can afford to lose (in proportion to income and to SES);
2. lose control of their time and money; and therefore
3. experience psychological, physical and relational damage.

Hence the only way to reduce harm is reduce substantially the losses of the relatively small proportion of users (loosely 'problem gamblers') upon whom the industry depends for its revenues. The fact is that this cannot be done with corporate entities such as Tabcorp and Tattersall's without reducing profitability, share prices and business growth.

There is an irresolvable contradiction in the current licensing regime between:

1. '... the primary focus of the Government's gambling framework', namely 'the 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' (*Issues Paper*, p. 37); and
2. ownership of poker machines by entities that, by their nature, must have the end or purpose of profitability.

John Maynard Keynes exposed this contradiction long ago in evidence to the 1932 British Royal Commission into Lotteries and Betting (Doughney 2002, p. chapter 9). His advice was unambiguous. Except for a few relatively minor instances, gambling enterprises should not be run privately for profit. To do so would cause the private owners to exploit and consequently, to harm, gamblers. The state should run legal gambling in order to protect citizens' interests. While Keynes was clearly overly sanguine about governments' own possible motivations, in Victoria we nonetheless have had to relearn Keynes's main lesson to our considerable cost.

## **25. The positive case for not having 'gaming operators'**

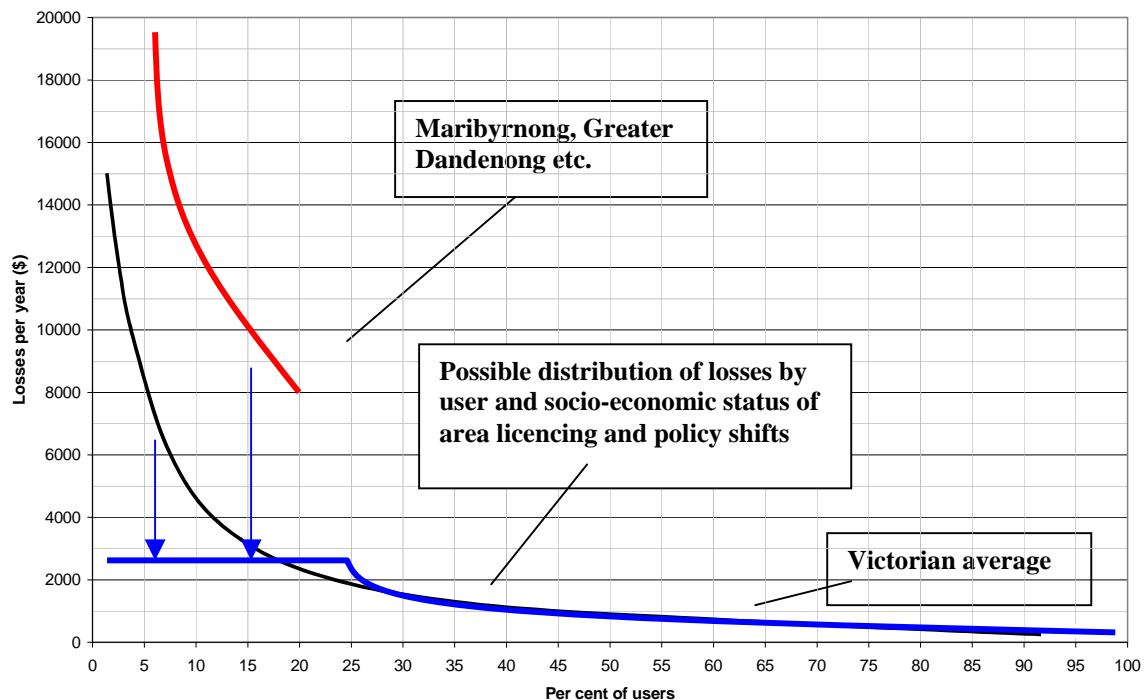
The principal immediate gain of removing the operators' slice of the industry is that Victoria would remove the need to generate one-third of current harm-causing losses. The government would more clearly be seen to be responsible for the industry, including venues and their shares in revenues = losses. By legislating for a different licencing regime, one without operators, the Victorian Government would be unconstrained in implementing measures to 'assist and protect problem gamblers and those at risk of becoming problem gamblers, their families and the wider community' (*Issues Paper*, p. 37).

Indeed, looked at rationally, operators serve no functional role that could not be taken up by government or venues. Their existence has been a gift of government. The approximately \$8 billion they have garnered from their licences – almost \$5 billion of which has been from the 6 per cent of Victorians or 15 per cent of users who experience some level of harm because they have lost control of time and money – was likewise a gift. It reeks of the monopoly rents that Adam Smith railed against in

his attacks on the mercantilist system. The best that can be said for operators' licences is that they were and are unjustified.

The absence of operators' revenues, whatever the contractual penalties remaining, would allow for dramatic reforms that change the character of poker-machine provision (fewer machines, fewer lines, slower spins, smart-card tracking, smaller 'bets' etc.). A serious start could be made to reduce losses in order seriously to reduce harms. The dark slice of revenues in chart 5 could disappear. Moreover, in the terms of figures 1 and 2, product safety and consumer protection measures could aim to reduce losses (and their consequential harms) as demonstrated in figure 3.

**Figure 3. A possible new distribution of Victorian EGM losses = industry revenues by per cent of users according to SES (approx)**



## 26. Conclusion

This submission has sought to focus on questions of public policy principle rather than administrative detail. If we sort these out, the detail can fall into place. The submission has emphasised the objectives of assisting and protecting those harmed by electronic gaming machine (EGM) use. The submission:

1. was based on evidence;
2. employed an ethical approach;
3. combined the evidence and ethical reasoning in arguments to offer a sound guide for public policy principles;
4. applied those principles to proposed EGM licence arrangements; and
5. sought to inform the accompanying EGM legislative framework and instruments.

Its central conclusion was that the Victorian Government should remove operators' gaming licences and take on this task itself. This task would be the beginning of serious reform, not the beginning of increasing government revenues. Indeed the government will be tested in its responses to this review. In particular it will be tested on its stated '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*' (*Issues Paper*, p. 3; emphasis added).

The test will be whether the commitment is genuine.

END