



LEGISLATIVE COUNCIL  
Select Committee on Gaming Licencing

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The Secretary  
Legislative Council Select Committee on Gaming Licensing  
Parliament of Victoria  
Spring Street  
MELBOURNE VIC 3000

Email: richard.willis@parliament.vic.gov.au

Dear Sir,

**RE: VCOSS Submission to the Legislative Council Select Committee on Gaming Licensing**

We have pleasure in forwarding our submission to the above named Committee and flag our wish to give evidence in a public hearing on these issues.

We would welcome any follow up enquiries from your panel through the address above or call VCOSS on 9654 5050.

Yours sincerely,

Cath Smith  
CEO VCOSS  
On behalf of the VCOSS Gambling Policy Committee.

## **VCOSS Submission to the Legislative Council Select Committee on Gaming Licensing**

### **Introduction**

In this submission we flag issues that would be the subject of more detailed evidence presented at the Committee's public hearings.

With regard to the process of the review, and the tight timelines for submissions, VCOSS recommends that the Select Committee undertake official community consultations, particularly aimed at eliciting testimony from communities and individuals affected by gambling harms (including at the individual, family and community levels)

Submissions to the Gambling Licensing Review confirmed the widespread community view that the social and economic impact of EGMs is now reaching a critical level that merits for a roll-back on gambling- rather than 'business as usual' and renewal of the previous duopoly licence. The Review on Gaming Licences was a lost opportunity to consult with the Victorian community on whether or not the licences should be renewed and to assess whether the harms of gambling outweigh the claimed benefits after 2012 when the current licences expire.

EGM gambling takes place in a context where there is still significant community opposition to this form of gambling. The Gambling Research Panel 2003 *Community Attitudes Survey* found;

- 85% of Victorians agreed that 'Gambling is a serious social problem in Victoria'
- 76% agreed that 'Gambling is too widely accessible in Victoria'
- 74% agreed that 'The number of poker machines in Victoria should be reduced'
- 91% agreed 'There should be more clubs and hotels without poker machines'
- 87% agreed 'Banknote acceptors should be removed from EGMs'.

(*Centre for Gambling Research, Australian National University 2004a*)

Australian and international research confirms the Productivity Commission (1999) finding that 42.3% of net gaming machine revenue comes from gambling by problem gamblers and that there is significant community impact when every problem gambler affects an estimated 5-10 others.

When the Gambling Research Panel was abolished in December 2004, a planned 2005 Community Attitudes and Problem Gambling Prevalence study, already approved and funded by the CSF; was not actioned under the new internal arrangement for research. The survey series had previously informed the Victorian community every two years, of trends in community attitudes and the new survey, with the tender already prepared and funded, was to include the use of the international measure the Canadian Problem Gambling Index as a measure of problem gambling prevalence.

New measures are needed during the five years remaining on the current duopoly agreement to inform the Victorian community on problem gambling prevalence and to give better protection to communities and especially disadvantaged and vulnerable communities, from the harms caused by gambling. Indeed, the terms of any new agreement post 2012 need to be the subject of a transparent consultative process, over the next 4 to 5 years, culminating in a referendum as to whether and on what terms EGM gambling should be retained in this state. In rushing headlong into a renewal process the Licensing Review overlooked many of the submissions made to that inquiry.

The previous agreement has been shrouded in secrecy on the grounds of commercial in confidence. It was only with the Unitab merger that the agreements that Tattersalls entered into with the Minister for Gaming on 17 November 1995 and 28 June 1999 came to light (See <http://imagesignal.comsec.com.au/asxdata/20060531/pdf/00618449.pdf>)<sup>1</sup>

**We make the following comments in relation to the specific terms of reference of the Committee.**

**Lotteries**

- (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 license until 30 June 2008 and any related matter;

Lotteries generate significant income for the Victorian Government. In conducting the review of lotteries and the current single, exclusive licence granted to Tattersall's to conduct public lotteries in Victoria; VCOSS is of the view that insufficient attention was given in the Review to the benefits that would flow to the Victorian community if the Western Australian model were adopted in Victoria. In other words, expiration of the licence (and the single year extension) provides an opportunity for the Victorian government to adopt the WA Lotteries Commission model. Under this model, the government sells lottery games and distributes all the profits from games directly to the Western Australian community. This is in stark contrast to the Victorian licence, which

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<sup>1</sup> <http://imagesignal.comsec.com.au/asxdata/20060531/pdf/00618449.pdf>

To quote 3.12.(b)

Government Minister for Gaming

An agreement was entered into between the Trustees and the Victorian State Government Minister for Gaming on 17 November 1995 and was amended by a further agreement between those

Parties on 28 June 1999. These agreements (among other things):

- recognise that the Victorian gaming business of Tattersall's is to be regulated on terms substantially as favourable as the terms regulating the gaming business operated by the other gaming operator in Victoria;

Licence Value = \$520,000,000 x A, where A is the amount calculated in accordance with the formula:

A = B/\$13,705,000,000, where B is the aggregate sum of the actual daily net cash balance (within the meaning of Section 3.4.33 of the Gambling Regulation Act) of gaming machines of Tattersall's for each day from and including 1 January 1995 to and including the last day of the period of Tattersall's licence, but:

- (a) if the amount so calculated is less than 0.25, A is 0.10;
- (b) if the amount so calculated is more than 0.25 and less than 0.45, A is 0.45;
- (c) if the amount so calculated is more than 0.45 but less than 0.85, A is 0.85; or
- (d) If the amount so calculated is more than 1.15, A is 1.15.

OVERVIEW OF TATTERSALL'S UNiTAB Limited Explanatory Memorandum 45

- provide that the Minister for Gaming will endeavour to ensure, as far as reasonably able, that no variation is made to the gaming operator's licence except by the Governor in Council with the consent of Tattersall's;
- set out the terms of any Licence Expiry Payment; and
- were assigned to Tattersall's pursuant to the Transfer Agreement on 31 May 2005.

has gone to a commercial company based on different executive remuneration and management than prevail under a State-run model such as that in Western Australia. Under WA legislation, a set percentage of lottery sales go annually to WA hospitals, sports groups and arts organisations and Lotterywest makes hundreds of grants to community groups and local government. Approximately 60 percent of lottery product sales are spent in prizes (over \$304m of \$546m of sales of lottery products in 2005-06) and operating costs account for approximately 7% of sales income with 8% on retailer's commissions.

With lotteries acknowledged as a less harmful form of gambling than other forms such as electronic gaming machines, the planned re-granting of the licence to a commercial operator loses a valuable opportunity for the state government to assess the relative merits of the Western Australian model.

### **Gaming**

(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;

The data presented in the Gaming Licensing Review background paper made available statistical information on gaming in Victoria, including Victorian's expenditure (losses) on gaming, statistics relating to EGM machine numbers and distribution of ownership. These built up a picture of the escalating losses caused by EGM gambling and the increased reliance of government on the tax derived from gaming revenue.

We note that the questions posed by the review were very restrictive. As follows:

1. How should the industry be structured and machines distributed?
2. Should there be gaming operators at all? If so, how many and what should their functions be?
3. What should be the regulatory, financial and accountability framework for the proposed licensing arrangements?
4. What should be the broad approach and timing to implementing the proposed licensing arrangements?

We note with disappointment that the following items were **not** up for consideration as part of the review:

- *Machine numbers: The government's position of 27,500 machines outside the casino was taken as a given;*
- *Questions about the sustainability of government reliance on gaming tax (losses) revenue;*
- *Impact of current licensing arrangements on detrimental social and economic community impacts of gambling, especially the concentration of machines in disadvantaged areas of Melbourne and regional cities and towns;*
- *The type of machines, and their features and safety concerns with gaming products were outside the scope of the review;*
- *Product safety was not to be considered;*

- *The review did not include review of the lack of local government planning control and autonomy regarding venue/gaming machine applications at VCAT and the Gambling Commission;*
- *Particular responsible gambling initiatives were not to be considered;*
- *The review lacked a commitment to community consultation on whether local communities want gambling or want gaming industry applications for increased numbers of machines granted by the licensing body.*

We also note that research reports that could have helped resource community advocacy in evidence raised by submissions to the Review were not released in a timely fashion. This included the Regional Caps Legislation Report (the Hudson Review), the proposed changes to the Victorian Planning Provisions and the research commissioned by the Gambling Research Panel on EGMs conducted by La Tribe University (Livingston 2006). Late release of the latter report (submitted in 2005 and internationally refereed but kept from public release for some months) kept important information from the community sector regarding the EGM industry, changes to EGM technology and its impact on gaming consumers, and the workings of the current duopoly arrangement. The new government policy, striking a rate of 10 EGMs per 1000 head of population; amounts to a measure aimed at giving the gambling industry access to the new markets afforded by 'growth corridor' communities with previously low density of EGMs.

With regard to changing EGM technologies, the GRP research project on EGMs *The Changing Electronic Gambling Machine (EGM) Industry and Technology*, (Livingston 2006) informs the argument that technologies have been moving very quickly and that gambling revenue (losses) will be yet again increased as older machines are replaced with new generation machines; with features such as increased lines of play, spin reel speeds and note acceptors, which combine to result in some of the highest per hour losses in the world. Australian and international researchers are coming to the conclusion that the EGMs currently operating in Victoria have reached a level of technological sophistication that renders them dangerous to consumers who play them regularly.

The terms of any new agreement post 2012 need to be the subject of a transparent consultative process, over the next 4 to 5 years, culminating in a referendum as to whether and on what terms EGM gambling should be retained in this state.

(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;

This submission speaks mainly to issues related to the impact of electronic gaming machines (EGMs) and the need for reforms that adopt a preventive public health and consumer protection approach that would lessen the social and economic impact of EGM gambling on individuals and communities. In addition, the policy platform of *Fairer Victoria* needs to engage with a public health framework based on the *precautionary principle*, to counter the disadvantage created by gambling in communities.

This means that new measures are needed during the six years remaining on the current duopoly agreement to give better protection from the harms caused by gambling, to communities and especially disadvantaged and vulnerable communities.

Gaming is conducted in a very different context today than a decade ago. Technological changes have substantially changed gaming products and the gaming industry has had access to commercial information that has enabled it to position and test products in markets that yield the highest revenue; with little regard for adverse community impact or harm reduction interventions; and with protection from public scrutiny under protections based on commercial in confidence. Those outside the industry have been in a position of 'information asymmetry' with regard to venue-based data on gambling losses at particular venues, that could then be related to localised detrimental community impacts.

The structure of the duopoly has enabled providers to target disadvantaged communities which have worsening per capita rates of gaming losses.

There is currently a complaint by the *Australian Reel Gaming Machine Standards Network* to the Australian Competition and Consumer Commission (ACCC) under the Trade Practices Act 1974 in relation to unbalanced reels on EGMs drawing on S65C Mandatory Consumer Product Safety Standards; S52 Misleading or Deceptive Conduct and S51AB Unconscionable Conduct. The Network members are seeking action from the ACCC under the Trade Practices Act and any other relevant federal legislation on the basis that the unbalanced reel gaming machines are:

- an unsafe consumer product
- misleading and deceptive to the consumer
- Unconscionable in their operation against the consumer.

To date, the industry collects data for its own ends and sends data on request to the regulator. This is problematic due to probity concerns and the need to put this rich source of player data to use for consumer protection and public interest concerns. Monitoring in real time by an independent on-line authority at arms length from the regulator would enable research on harm and detriment to take place and paired with smart card access to machine play, would enable more interventionist consumer protection strategies, as are now being trialed in Canada in response to insurance risk (of litigation based on lack of proper consumer protection) driving new strategies.

With regard to gaming machines (especially in VIP areas) in Crown Casino, the Canadian player protection systems now commercially available should be used to protect players in the Casino by using the Crown Loyalty Club as a now well-recognised means of identifying problem patterns of play such as loss chasing with responses such as mandatory counselling, machine shut-down and player-exclusion. The changing of Crown reporting from 3 yearly to 5 yearly is also a concern.

The government could use the re-licensing process as an opportunity to reduce the number of EGM machines in Victoria significantly, if it adopted the Canadian model, where government runs the industry and is therefore more closely tied to accountability issues than an 'arms-length' licensing approach. The advantage would be that increased concentration of revenue to government could assist in a radical downscaling of the industry and would enable consideration of new mutuality models which could restrict gambling to clubs or destination 'racinos' or other options put to the community to decide closer to the end of the current duopoly contract.

The NCP Review makes a number of points arguing that the current arrangement with regard to the distribution of revenue from gaming machines:

- *'Generates payments to the operators very substantially above the fee levels received for the same functions when undertaken in other states*
- *Shifts the decision rule for machine allocation from maximising revenue and welfare at the venue to maximising net revenue per machine for the operators*

*The shift in decision rule occurs because the two operators are given a share of the profits as distinct from approved maximum fees. This shift is of fundamental importance in its wider impact on the Victorian industry (p. 32).*

This shows the potential for government to subsidise a significant reduction in gaming if it adopted a different model where there was less leakage of profit to for-profit providers. This model would replace the current three-tiered structure with a two-tiered system with government as the operator and a licensing and regulatory system that prioritises consumer protection and product safety (as per the principles below).

The maximum number of permitted machines in Victorian venues is high by international standards (new venues in New Zealand are restricted to 16). The Review assumed that the state-wide cap should stand, thus restricting consideration to a mix of larger venues in fewer locations or other alternatives based on consumer and community protection rather than current policy which facilitates the reach of the industry into new markets such as sporting clubs and growth corridor suburbs. Local communities need to be able to determine whether they want gambling.

The current duopoly arrangement has led to a lack of venue-owner autonomy and has contributed to some decisions resulting in financial hardship for venues. Licensing machines to venues could overcome much of this and would, if government were the owner-operator, result in more integration of a real time CMS system; rather than the current system where the industry have absolute access to real-time data and the regulator merely request summary data that fulfils taxation and probity requirements. Consumer protection measures are also needed in terms of EGM machine features such as note acceptors, lines of play (now up to 50), the features of particular games aimed at entrapping particular market segments of users and the issue of asymmetrical virtual reels which is misleading to players.

It is of concern that licences are being extended to sports clubs as 'new markets' and that this puts youth significantly at risk of exposure to a culture of gambling. The harms that come from gambling, the lack of consumer protections on the product itself, the addictive design (based on well-researched expert operant conditioning models), need addressing prior to any discussion of extending access to a broader range of not-for-profit organisations.

The regulatory approach should be in accord with the principles outlined below. To ensure optimum consideration of the public interest, the operating and monitoring functions should be separated; with a priority put on the requirement, in the interests of consumer protection that manufacturers should prove that gaming products are safe rather than waiting for evidence to emerge on safety and that product/venue safety measures will be adopted in relation to controlling aspects of machine design (such as note acceptors) and venue design (such as ATMs on site); that have a known association with problem gambling.

The outcome post 2012 should be determined by a referendum to 'ask the people' whether they want another 20 years of gambling in its current form.

Licencees and their operators need to be trained and accredited in responsible gaming practice management that includes a duty of care to intervene (e.g. stop machine access, refer to counselling) when players show signs of problem gambling behaviour (as shown by smart card linked problem gambler identification Central Monitoring System).<sup>2</sup>

(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;

Problem gambling prevalence screens have become a proxy for defining the extent of problem gambling; with debates in Victoria concerning the exact level of 'problem gambling' and government erroneously claiming a reduction in prevalence (due to its harm minimisation measures and the smoking ban) between 1999 (the Productivity Commission report) and 2003 (the Gambling Research Panel (GRP) report *Validation of the Victorian Gambling Screen (Centre for Gambling Research, Australian National University 2004b)*). In fact, in the forward to the latter report, the GRP cautioned that the prevalence rates reported therein were likely to be an underestimate, due to the filter question asked in relation to regular gambling (whether people had gambled weekly, rather than the more inclusive filter of on average, monthly.)

*Readers are reminded that the main aim of this study was that the main aim of this study was cross validation of the three screens, since developing a new measure would be an expensive and time consuming exercise. This led to a range of methodological decisions with this aim in mind. In reading the problem gambling prevalence rates in this study, the standard errors of estimate suggest caution. Also, the application of gambling prevalence screens only to regular gamblers (defined as those who gambled at least weekly or 52 times per year, in gambling activities other than lottery games or instant scratch tickets) may have excluded others who gamble less frequently but for whom gambling is nevertheless problematic.*

*The measurement of problem gambling is a complex area and prevalence screens applied across whole populations are only one measure of relevance to problem gambling. Prevalence screens may be more useful for signaling those who may need help rather than qualifying other concerns, such as the impact of problem gambling or harm to self, family or the broader community (Assoc. Prof. Linda Hancock, 2004, p. 3).*

By claiming a reduction in problem gambling, the government does not see any need to modify its 'light regulation' of the gaming industry.

The term 'problem gambling' is itself problematic as it implies that the problems generated by gambling reside at the individual and not structural i.e. product and system levels. Gambling impacts on individuals, families, local communities and at a more generalized community level, impacting on wellbeing and social sustainability. It is a problem at the community level when gambling re-directs investment away from more

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<sup>2</sup> The Saskatchewan Lotteries Commission has been piloting such a scheme in order to fulfil the requirements of liability insurance cover.



sustainable types of enterprise, when gambling displaces more sustainable forms of entertainment such as local music, when people steal and embezzle to fund their gambling and when gambling takes funds from other household expenditure such as rent, food, utilities, education expenses and other family costs.

In contrast, recent Australian research has found that the main risk of impaired control or being at risk of losing control whilst gambling on EGMs, is regular exposure through playing them (Dickerson 2003; Dickerson et al 2003; Dickerson 2004; Dickerson and O'Connor 2006). Acknowledgment of this research would direct government policy to assessments of product safety and would require the gaming industry to demonstrate what it is doing to actively promote consumer protection; in comparison to the current emphasis on information and informed choice.

In its policy document *Taking Action on Problem Gambling* (2006) the government acknowledges that '(s)ome gambling products have inherent risks but adopts an informed choice-personal responsibility approach rather than a regulatory approach which puts the onus back onto the industry to prove that gambling products are safe in terms of consumer protection.

The matter of lack of transparency of problem gambling data needs to be addressed. Currently, data on gambling losses is not available on a venue basis; a concern in LGAs with high levels of gambling losses; which intercorrelate with high levels of disadvantage. (See Livingston 2006).

Government policy emphasises an individualised informed consent model in its approach to problem gambling, at the expense of taking a proactive consumer protection and public health approach that interrogates the safety of EGMs.

(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

The operation and distribution of funds from the CSF has lacked transparency and the Review needs to investigate its operations, expenditure and community benefit over the last decade.

With regard to the differential taxation applied to clubs and hotels, a prior question is the assumed role of mutuality (for example in clubs) or community benefit in the distribution of gaming revenues. New data will be presented on the poor returns to surrounding communities from both clubs and hotels, which points to the lack of community benefit from venues that have considerably re-directed local economies since the introduction of EGMs. Clubs need to demonstrate more effective community benefit via the regulatory system. Hotels are more firmly driven by the profit motive, but new analysis of club/hotel revenue-community benefit indicates there is little real return to local communities from most venues.

The current Victorian government reliance on gambling and especially EGM revenue (losses) is of concern. There needs to be a strategy to replace reliance on gambling tax as a regressive tax (impacting disproportionately on disadvantaged communities) with a strategy for more progressive, equitable and socially sustainable revenue sources. Government gambling income goes to general revenue and to the CSF.

The CSF has been used non-transparently as a source of revenue for wide-ranging projects, frequently unrelated to gambling and with poor connection to the communities from which greater gambling losses were generated. Community benefit from clubs needs to be better demonstrated and hotel's corporate social responsibility needs to be emphasised more within the regulations. Current statements of community benefit show that most costs claimed as community benefit are in fact business costs or benefits to venue owners and or patrons. The New Zealand community trust model has greater local focus and alternative models of community contribution need to be reviewed.

(g) Any other associated matters dealing with gaming licensing issues.

Consideration of gaming licensing issues needs to be made with regard to the following principles.

#### **PRINCIPLES**

- adoption of a public health consumer protection over-arching framework for gambling policy, regulation and implementation in Victoria;
- prioritise a 'whole of government' approach to a comprehensive strategy that combines all elements of gambling, bringing together all government agencies and departments, with adoption of the precautionary principle as the foremost priority;
- a commitment by the government to a phased reduction strategy with targets to reduce government reliance on gambling revenue (losses) and to set in place guarantees that revenue will not be derived from problem gambling;
- significantly reduce the reliance on problem gamblers for government gambling revenue (based on an evidence base and regular reporting);
- prioritise preventative initiatives that render gambling less attractive to problem gamblers;
- a commitment to 'let local communities decide' in relation to new applications and downscaling/retention of gaming machines in their area;
- monitoring and measurement of indicators of social and economic impact with reporting to an independent research institute, as recommended by the Productivity Commission (1999) report;
- a commitment to providing an evidence base to inform policy and community advocacy: public transparency and openness of detailed revenue (losses) data at the venue level, sub LGA and LGA levels;
- a commitment to reducing conflicts of interest by separating operational and data monitoring functions;
- a commitment to 'breaking the cycle of gambling addiction' by adopting preventative strategies including: individual non-transferable smart card<sup>3</sup> access to gaming machines (that enable precommitment limits, state-wide self exclusion and exclusion of minors) and EGM machine modifications that set hourly maximum losses of \$100 per hour on EGMs;

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<sup>3</sup> Smart cards refer to card-based player management tools for pre-commitment, self exclusion, prevention of minors etc

- up to 2012, implement a strategy to reduce localised and strip-shopping access (in clubs and pubs) to gambling by restricting hours of opening (mandatory 8 hour close-down) and review gaming in hotels;
- protect new communities by banning gaming venues for at least 5 years to enable development of community social infrastructure independent of gambling;
- place the onus on operators and EGM suppliers to demonstrate that gaming products are safe and not harmful i.e. 'the precautionary principle' (See Dickerson 2003; Productivity commission 1999);
- as part of gaming policy, prioritise a wider range of leisure activities in local communities-especially those aimed at older Victorians;
- prioritise community education and information on the odds of winning;
- Actively implement the good governance principles of: transparency, accountability, probity and responsible gambling to gambling policy and programs.

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